

# **RESERVES AND DOMAINS**

## **A Summary of Legislation**

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## RESERVES AND DOMAINS LEGISLATION

### 1. PROVISIONS FOR THE CREATION OF RESERVES

The provision of land from the Crown's estate for the use of the public for recreation and health purposes, for cemeteries, for public utilities, such as gravel pits, municipal and government buildings and similar uses goes back to the earliest days of New Zealand's constitutional development.

While New Zealand was still a pioneering community, a separate Government was set up by Royal Charter under the New Zealand Act 1840 (Imperial) which created New Zealand a separate colony and among other things, authorised the disposal of land "to any persons, bodies, public or corporate, in trust for the public uses of our subjects there resident or any of them."

This authorisation was set out in The Royal Instructions of 1840 to Governor Hobson.

The complete restriction on the alienation of such lands is detailed in my paper, "Reserves Along Water Boundaries."

A subsequent Royal Instruction dated 1846, provided for the vesting of reserves in trust, and the New Zealand Company's Colonization Act 1847 (Imperial) provided that the Company could convey land to any person or persons or to any body or bodies corporate, in trust, for any public purpose or uses, sanctioned and approved by the Governor or by one of Her Majesty's Principal Secretaries of State, without any payment.

The first New Zealand legislation on the subject was the Land Claims Ordinance 1841. This provided that Crown Grants were not to be issued to lands which, in the opinion of the Land Claims Commissioners, were required for defence or for any other purposes of public utility and the Governor could direct the Commissioners to reserve land for these purposes.

Similar legislation for the provision of reserves from the Crown's estate was enacted in subsequent Land Acts. The most recent being the Land Act 1948.

### 2. LEGISLATION FOR CREATING RESERVES ON SUBDIVISIONS

The wisdom of providing areas for public purposes on the subdivision of land into residential sections has long been recognised by the legislature and the following is a brief summary of relevant legislation.

In the case of town subdivisions by the Crown, the Plans of Towns Regulations Act 1875 provided:

- (a) That open spaces should be set apart and reserved for recreation grounds; that they should comprise not less than one-tenth of the superficial area of the town; and that the separate areas should be not less than 1 acre 1 rood;

- (b) that as a nucleus of municipal property to be subsequently vested in the governing body of the town, 1 acre be set apart for every 10 acres of the town's total area; and,
- (c) that sites be provided for depositing rubbish, for sanitation, for gravel pits and stone quarries and for depositing material for road -making.

The 1875 Act was repealed by the Land Act 1885 which brought forward the previous provisions with an alteration in the method of calculating the land for a nucleus of municipal property to 1 acre for every 10 acres of Crown town lands already sold or still available for sale in the town. The Act allowed for reserves to be made under these provisions in existing towns and required the approval of the Governor to be obtained to plans of both Crown and private townships. The plans were required to show streets and reserves. The Land Act 1885 was repealed and the provisions relating to subdivisions were carried forward into the Land Act 1892 and then into the Land Act 1908.

Section 3 of the Land Laws Amendment Act 1912 repealed Section 16 of the 1908 Act prescribing in more definite terms that a private subdivider could not sell urban sections until the plan was approved by the Governor. An amendment in 1914 provided for the Minister to approve subdivisional plans. Section 17 Land Laws Amendment Act 1920 provided that, on the deposit of the plan of subdivision of private land, the reserves shown on the plan vested in the Crown as public reserves. Prior to 11 November 1920 there was no provision for automatic vesting and the subdivider had to complete transfers for the purpose.

The Land Act 1924 repealed the prior legislation on the subject but in s.16 carried forward the provisions requiring the Minister's approval to plans which were to show roads and reserves and for lands shown as reserves to vest in the Crown as public reserves on deposit of the plan. The various Land Acts contained no provision as to the area of land to be set aside as reserves on subdivision of land by private owners. This was provided for in Survey Regulations, e.g., N.Z.Gazette 1923, p.1809 specified that not less than 5% of the area of any subdivision was to be reserved for public purposes.

Section 16 Land Act 1924 was repealed by the Land Subdivision in Counties Act 1946 which dealt with the subdivision of private land outside boroughs and town districts. It provided, inter alia, that land in subdivisions along the seashore and banks of lakes, rivers, etc., was to be reserved for public purposes and that in addition reserves for public purposes were to be set aside on a basis of not less than 4 perches for each residential section in the subdivision. Separate provision was made for reserves where the land was subdivided for

commercial or industrial purposes. Where the Minister considered the reservation of land unnecessary or undesirable or where the area which would be reserved was too small, the appropriate area could be set aside as Crown Land or payment of the value of the appropriate area in lieu of the reserve contribution. The proceeds from disposal of the Crown land and the cash payments received were used for purchase of other reserves or for improvements to existing ones. All land marked as reserves or as Crown Land on the plans vested in the Crown on deposit of the plan.

The Land Subdivision in Counties Act 1946 was repealed by s.43 Counties Amendment Act 1961. Part II of that Act with its amendments dealt with the subdivision of private land in counties including dependent town districts. The Act provided for the control of subdivisions by the local authority. The provisions for the setting aside of reserves are similar to those in the Land Subdivision in Counties Act 1946 but on deposit of the subdivisional plan reserves vested in the local authority subject to the Reserves and Domains Act 1953.

Statutory provisions for reserves on subdivisions in boroughs and town districts are contained in Part XXV of the Municipal Corporations Act 1954. Plans of subdivision required the consent of the borough or town council; plans were required to show proposed reserves; and the council could accept in lieu of reserves cash payment to be applied in purchasing land for public reserves or for the improvement or development of existing reserves. On deposit of the plan, areas shown as reserves vested in the corporation of the district, subject to the provisions of the Reserves and Domains Act 1953.

The Counties Amendment Act 1961 and the Municipal Corporations Act 1954 were repealed by The Local Government Amendment Act 1978.

Reserve requirements under this 1978 Act required council to comply with the council's reserves policy as set out in the proposed or operative scheme for the locality, or in the case of a subdivision solely or principally for residential purposes if there was no proposed or operative scheme or if the proposed or operative scheme contained no such policy the Council shall have regard for the desirability of providing reserves totalling not less than 4 hectares for every 1000 of the likely maximum population for the locality.

Provision was to be made for public reserves under the Reserves Act 1977 within the scheme plan of not more than 130 square metres for each allotment in excess of the number of allotments comprised in the land before the subdivision, that could be used for residential purposes. If the area of the proposed reserves was less than 1000 square metres the Council could require an amount of money or an area of land set aside and vested in Council. The Value of this contribution was not to exceed 7.5% of the value of the allotments.

Reserves Contribution for commercial and industrial subdivisions required either 10% of the value of the allotments in excess of the original number before subdivision or land was to be set aside equal in value to the 10%. In the case of developments for administrative, commercial or industrial purposes and the assessed value of the development was not in excess of \$50 million the Council could require either a sum of money not exceeding 0.5% of the assessed value of the development or an area of land of equal value or a combination of the two. In developments for residential purposes the Council could require land to be vested as public reserves under the Reserves Act 1977 of an amount not more than 20 square metres for every new household unit, or to pay to the Council a sum of money for the purchase of land of an equal amount.

The Resource Management Act 1991 repealed Part XX of The Local Government Act 1974, and provides for reserves along water boundaries only. Other reserves are as set out in district plans.

### **3. LEGISLATION FOR CREATING AND VESTING RESERVES**

#### **(a) Introduction**

The method of creating and vesting reserves has changed considerably since 1840 and a summary of the legislative provisions follows. It was not always necessary to Gazette reserves; consequently land marked on plans as reserves prior to the necessity for gazetting are properly constituted reserves and are to be dealt with as such. Similarly, vesting was done by Crown grants which show that the land is held "In Trust" for a specified purpose. It may be that some of these cases are recorded in the Crown Land Register as freeholds. The purpose for which reserves may be made and the definition of the term "Public Reserve" have also been subject to considerable change over the years. To decide if land is a public reserve, the statutory requirement at the time the reserve was made is the deciding factor.

#### **(b) Pre-Provincial Period**

The Royal Instruction of 1840 (effective from 5 December 1840) and 1846 (effective from 23 December 1846) provided for the reservation of land to be recorded by the Surveyor-General on maps.

These provisions operated until the new provisions in the various provinces become effective except that from 15 February 1860 to 31 December 1877 land could be reserved under the Waste Lands Act 1858 for use of General Government or for other purposes of public utility by Notice by the Governor in the New Zealand Gazette.

(c) Provincial Era 1853-1876

(i) Auckland Province

15 June 1856	Waste Lands Regulations N.Z. Gazette 1856 p.88	) Superintendent ) could reserve lands ) - not necessary to ) be gazetted.
9 March 1858	Waste Lands Act 1858 Auckland Province	) ) )
1 Oct. 1859	Waste Lands Regulations N.Z. Gazette 1858 p.201	) Specific provisions ) re Church. Sites ) and vesting thereof. ) )
10 Oct. 1867	Auckland Waste Lands Act 1867	) Reserves to be ) notified in ) Provincial Gazette
31 Aug. 1874	Auckland Waste Lands Act 1874	) Special provision ) for lands for ) Religious and ) Educational purposes ) which could be vested ) by Crown Grant and ) were not gazetted as ) Reserves.

(ii) Taranaki Province

New Zealand Company Settlement - Reserves made by the Company and shown as such on plans. Company ceased operations 5 July 1850.

30 Nov. 1855	Waste Lands Regulations N.Z. Gazette 1855 p. 245	) Reserves to be made ) by Governor no ) mention of Gazetting. )
31 Aug. 1874	Taranaki Waste Lands Act 1874	) Reserves to be ) notified in ) Provincial Gazette.

(iii) Hawkes Bay Province

New province from 1 November 1858 - previously part Wellington Province.

19 July 1855	General Crown Lands Regulations N.Z. Gazette 1855 p. 12	) ) ) ) )	Reserves to be notified in Provincial Gazette
31 Aug. 1874	Hawkes Bay Waste Lands Regulations Amendment Act 1874.	) ) ) ) )	"

(iv) Wellington Province

New Zealand Company Settlement - Reserves made by the Company and shown as such on plans. Company ceased operations 5 July 1850.

19 July 1855	General Crown Lands Regulations N.Z. Gazette 1855 p.12	) ) ) ) )	Reserves to be notified in Provincial Gazette.
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(v) Nelson Province

New Zealand Settlement - Reserves made by Company and shown as such on plans. Company ceased operations 5 July 1850.

15 Feb. 1860	Nelson Waste Lands Act 1858	) ) ) ) ) ) ) )	Reserves to be made by Waste Lands Board and deemed to vest in Superintendent as if they were Crown granted under the Public Reserves Act 1854.
14 Sept. 1864	Nelson Waste Lands Act 1863	) ) )	Reserves to be notified in Provincial Gazette.
31 Aug. 1874	Nelson Waste Lands Act 1874	) )	"

(vi) Marlborough Province

New province from 1 November 1859 - previously part Nelson Province; provisions for Nelson Province apply until 9 October 1867.

10 Oct. 1867	Marlborough	)	Reserves to be
	Waste Lands	)	notified in N.Z.
	Act 1867	)	Gazette.

(vii) Canterbury Province

Originally settled by the Canterbury Association, a subsidiary of the New Zealand Company. The Association made Reserves and these were by Deed conveyed to the Crown as reserves. This Association ceased operations 27 December 1852.

9 Feb. 1856	Land Regulations	)	Reserves to be
	N.Z. Gazette	)	notified in
	1856 p. 25	)	Provincial Gazette

(viii) Westland Province

Separate administration from 1 January 1868. Previously part Canterbury Province.

1 May 1868	Land Regulations	)	Reserves to be
	N.Z. Gazette 1868	)	notified in
	pages 145, 198.	)	Provincial Gazette
17 Nov. 1869	Land Regulations	)	"
	N.Z. Gazette 1869	)	
	p.641	)	
12 Sept. 1870	Westland Waste	)	"
	Lands Act 1870	)	

(ix) Otago Province

Originally settled by the Association of the Lay Members of the Free Church of Scotland, a subsidiary of the New Zealand Company - Reserves made by Association and shown on plans. Association ceased operations December 1852.

1 April 1856	Waste Lands	)	Reserves may be
	Regulations N.Z.	)	made and dealt
	Gazette 1856 p. 34	)	with by
		)	Ordinance of
		)	Provincial
		)	Council. Not
		)	necessary to
		)	Gazette.



8 Oct. 1866	Waste Lands Regulations	) Reserves to be ) notified in ) Provincial Gazette
25 Oct. 1872	Otago Waste Lands Act 1872	) " )

Some reserves were made in Otago by special ordinances of the Provincial Council, e.g. The Cemeteries Ordinance 1865.

(x) Southland Province

New Province from 1 April 1861. Previously part Otago Province, reunited with Otago on 5 October 1870 for all matters except those relating to sale, etc., of Land.

Otago Province Provisions apply to 29 October 1865.

30 Oct 1865	Southland Waste Lands Act 1865	) Reserves to be ) notified in ) Provincial ) Gazette.
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The Provinces were abolished as from 1 November 1876 by the Abolition of the Provinces Act 1875.

(d) General Government Era

1 Nov. 1876	Waste Lands Act 1876	) Lands Reserved ) by notice in ) N.Z. Gazette.
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1 Jan. 1878-  
31 March 1949 Reserves made by two notices in N.Z. Gazette. First a Temporary reservation and then a Permanent Reservation within six months of the first notice.

31 March 1949

Statutory Authorities -	Part VII	Land Act 1877
	Part IX	Land Act 1885
	Part VIII	Land Act 1892
	Part XI	Land Act 1908
	Part XI	Land Act 1924

The purposes for which reserves may be made are set out in the above Acts and the list varies somewhat in each Act.

From 1 April 1949 the Land Act 1948 (s.167) applies.

Land reserved by one notice in Gazette.

The Land Subdivision in Counties Act 1946, The Municipal Corporations Act 1954, The Counties Amendment Act 1961 and The Local Government Amendment Act 1978 provided for reserves on private subdivisions to vest in the Local Authority.

The Crown could declare land as reserve by notification in the gazette.

#### **4. LEGISLATION FOR ADMINISTRATION OF PUBLIC RESERVES**

**(i) Public Reserves Act 1854 (14.9.1854)**

The first general legislation providing for administration of public reserves was the Public Reserves Act 1854. The Act laid down that the purposes of reserves in the various provinces could not be changed except by an Act or Ordinance of the Provincial Council.

Grants could also be made of lands reclaimed from the sea or land below high water mark. Such lands were to be held upon trust for public service of the province for the purposes specified in the grant. Reserves for public utility could be Crown granted to the Superintendent of the province concerned. Reserves for Defence purposes, General Government purposes and Maori Reserves were not permitted to be vested in the Superintendent.

Reserves for General Government purposes were to be notified in the New Zealand Gazette.

**(ii) Public Reserves Amendment Act 1862 (15 September 1862)**

This Act authorised the passing of legislation to transfer and vest reserves in local bodies or corporate bodies in trust for the purposes for which they were reserved.

**(iii) Public Buildings Reserves Act 1867 (10 October 1867)**

Authorised the transfer of reserves for General Government purposes from the control of the Provincial Government to the General Government.

**(iv) Municipal Reserves Act 1874 (31 August 1874)**

Authorised the making of Municipal Reserves and Endowments.

(v) Municipal Corporations Act 1876

Section 352 provided that Municipal Reserves and Endowments granted to Superintendents may be granted to the municipality.

N.B. The above acts were repealed by the Public Reserves Act 1877.

(vi) The Abolition of Provinces Act 1875

Operative from 1 November 1876, this Act vested all lands granted to Superintendents in the Crown.

(vii) Public Reserves Act 1877 (8 December 1877)

Section 5 provided that reserves may be granted to or vested in any governing body, trustee or other persons; s.13 provided reserves were to be held for the purpose for which they were reserved and s.11 that recreation reserves may be granted to trustees or brought under the provisions of the Public Domains Act 1860.

(viii) Public Reserves Amendment Act 1878 (1 November 1877)

Provided for the vesting of reserves either by grant or by Order in Council.

N.B. Acts (v), and (vii) were repealed by the Public Reserves Act 1881.

(ix) Public Reserves Act 1881 (19 September 1881)

Section 4 provided for the vesting of reserves by Order in Council. This Act was repealed by the Public Reserves and Domains Act 1908.

(x) Public Reserves and Domains Act 1908 (4 August 1908)

Section 4 provided for vesting of reserves by Order in Council. This Act and amendments were repealed by the Public Reserves, Domains and National Parks Act 1928.

(xi) Public Reserves Domains and National Parks Act 1928 (1 April 1929)

Section 9 provided for vesting of Reserves in Trust and s.17 for the vesting of control only of reserves.

(xii) Other provisions for vesting Reserves

The Royal Instructions of 1840 (Clause 37) and 1846 (Clause 18) provided that grants may be made to persons, bodies politic or corporate in trust for public uses of the people. The Auckland Waste Lands Regulations of 1856 and 1859 and the Auckland Waste Lands Act 1858 and 1867 gave power to vest lands in trust and to grant lands to nominated persons for religious purposes. In both the above cases it was not necessary to gazette lands as reserves and these may have been recorded as freeholds. The words "in trust" in a grant may indicate that the land is a reserve.

The first legislation for the administration of domains was the Public Domains Act 1860 while scenic and historic reserves were provided for by the Scenery Preservation Act 1903. An amendment to this Act in 1906 set up the Scenery Preservation Board which, in earlier years, did good work in creating extensive reserves throughout the country. In later years its function were exercised by the Department of Lands and Survey. General provisions for national parks administration were contained in the Public Reserves Domains and National Parks Act 1928 and in earlier special Acts dealing with individual national parks.

In addition to the general legislation affecting reserves, a good deal of legislation affecting particular reserves and domains has been passed by the various Provincial Councils and by the general Government.

(xiii) Vesting by Freehold Title

Section 146 of Land Act 1877 (from 1.1.1878) stated:

"Lands reserved may be granted for such purposes in fee simple or disposed of in such manner as for the public interest as may seem best subject to the condition that they shall be held in trust for the purpose for which they were reserved, unless such purpose be lawfully changed."

Similar provisions were contained in the following Land Acts:

<u>Year</u>	<u>Section</u>	<u>Effective from</u>
1885	229	1.11.1885
1892	237	1.11.1892
1908	323	4.11.1908
1924	361	1. 1.1925
1948	167(2)	1.4.1949

(xiv)

**Reserves and Domains Act 1953**

With the passing of time it became evident that the legislation relating to scenic and other reserves, domains and national parks needed overhauling and bringing up to date. The first step in this direction was the passing of the Land Act 1948 which provided for the reservation of land by one notice in the Gazette. Previously land was first temporarily reserved and a further notice was necessary to permanently reserve the land. This was followed by the National Parks Act 1952 and the Reserves and Domains Act 1953. The 1953 Act retained the spirit of former legislation, but provided simpler procedures designed to streamline administration. The Act, in contrast to previous legislation, contains standard provisions for appointment of Boards, acquisition of land, exchanges and revocations of reserves etc., no matter what their purpose; more extensive leasing powers, particularly for public amenities; more liberal provision for charges and charge days for admission to recreation reserves and stricter conditions in respect of offences on reserves and domains.

Many of the cumbersome features of administrative procedure of the former Acts are replaced by simpler ones, e.g., the former need for Orders in Council and other documents requiring the signature of the Governor-General has been almost eliminated and replaced by notices under the hand of the Minister. The Act repealed the Scenery Preservation Act 1908 and its amendments- special provisions for administration of scenic and historic reserves being contained in Parts IV and V.

This Act with 125 sections is a consolidation and updating of the Reserves and Domains Act 1953 and its amendments. The revision of the 1953 Act was found necessary because of the changes in attitude to the preservation of open space, and the increasing pressures for the use and development of reserves. Emphasis in the new Act is on the retention of open spaces and outdoor recreation activities, including walking tracks to the countryside.

The Reserves Act 1977 establishes seven distinct categories of reserves, each with its own management requirements. The seven categories are: recreation, historic, scenic, nature, scientific, Government purpose, and local purpose. The Act also gives the Minister of Lands the power to declare any specific reserve or part of a reserve to be a New Zealand reserve. These reserves will protect assets of national or international significance for which special management policies are needed.

## 5. GENERAL

This brief historical outline of reserves administration over more than a century illustrates the importance the legislature has placed on the creation and administration of reserves. The wisdom and foresight of the early administrators of the country is apparent in towns and cities laid out by the Government.

Today's need is for continued enlivened administration with the requirements of both the present and future in mind. The founders of the country made strict provisions for the preservation of reserves and their example can well be followed with benefit to the community as a whole.

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