



**SUBMISSION ON LOCAL GOVERNMENT REGULATORY PERFORMANCE
IN RESPONSE TO
NEW ZEALAND PRODUCTIVITY COMMISSION ISSUES PAPER JULY 2012**

**OFFICERS' COMMENTS RE
RESERVES ACT 1977**

DM 1352122 (Refer also DM 1345164 - CM 08 28 01 v04)

Background

In 1998 a joint review was undertaken by Local Government NZ and the Department of Conservation through a working party on improving the administration of the Reserves Act 1977. That principally culminated in the granting of ministerial delegations to Territorial Local Authorities where they were the administering body for reserves, as a means of giving more autonomy to Council's to exercise statutory decisions under the legislation. The exercise of the delegation Minister of Conservation's powers by Territorial Local Authorities was principally limited to making a decision where the activity was contemplated and provide for in an Approved Management Plan and in some cases where the Council was the owner of title to the reserve.

While devolution of some of the Minister's powers through the exercise of delegation has resulted in efficiencies in decision making by Territorial Local Authorities (over and above autonomous powers already held by TLA's under the Act) it is considered that there is considerable room for further efficiency gains in line with those sought by the Government as part of current local government regulatory reform.

In particular, amending the legislation to provide that public notice be at the discretion of Territorial Local Authorities based on the merits of the case (to avoid frivolous mandatory notice) and required statutory duplication of the consultation under the Local Government Act 2002. In addition to provide autonomous statutory power for Territorial Local Authorities as the administering body to make statutory decision in relation to reserves owned by the body corporate, while maintaining current provisions for Crown owned reserves.

As a means of looking to achieve meaningful efficiencies gains in terms of part of the Government's local government regulatory reforms, a review of the Reserves Act 1977 by the Department of Conservation and Local Government NZ is seen as an essential way forward as a means of reducing administrative Council overheads/rating burden without losing sight of the tenor of the legislation. The granting of further powers to TLA will also reduce the cost burden on the Department of Conservations limited resources.

The following is a suggested preliminary (but not exhaustive) list of provisions in the Reserves Act 1977 that should be considered for review based on the premise that the review should encompass the entire Act to identify changes that will result in common sense efficiency gains.

Amend Section 14 - Local Authority may declare land vested in it to be a reserve.

Amend subsection (2) to remove the mandatory requirement to publicly notify calling for objections where a local authority considers it unnecessary to do so for any reason.

Subsection already provides a limited exemption from public notice where land is designated for reserve under an operative District Plan.

Explanation: Provision for discretion to publicly notify provides flexibility for a TLA (as the administering body) to decide based on the merits of the case whether to resolve to declare land a reserve, savings in time and cost. Note that TLA have consultation obligations to consider under the Local Government Act 2002.

Section 15 - Exchange of Reserves for Other Land - Amend subsection (2) to remove the mandatory requirement to publicly notify calling for objections where for any reason the local authority considers it unnecessary to do so for any reason.

Explanation: Discretion allows for a TLA to decide on the need for public notice, saving time and money. In many cases land swaps involve encroachments, boundary adjustments, or other logical land rationalisation with adjoining land. TLA have consultation obligations to consider under the Local Government Act 2002.

Section 16 - Classification of Reserves - Amend Section 16(1) to provide that all reserves created after the enactment of the Resource Management Act 1991 that vested in a TLA on subdivision are automatically classified for the purpose for which they vested.

Explanation: Currently all reserves created before and after the enactment of the Reserves Act 1977, are required (mandatory) to be classified which includes reserves currently being created on vesting under the Resource Management Act 1991. The requirement to continually classify reserves on vesting creates an administrative burden on TLA's and an unnecessary local central government duplication of effort that could be avoided by automatic classification. It is also doubtful that many TLA are complying with the RA in so classifying reserves being created daily under the RMA.

Section 24 - Change of Classification or purpose or revocation of reserves - Amend subsection (2) to remove the mandatory requirement to undertake public notice calling for objection making the provision discretionary for the TLA.

Explanation: An exemption from public notice already exists in subsection (7) for certain types of reserves. Note that TLA have consultation obligations to consider under the Local Government Act 2002.

Amend Section 24 – Revocation of reserve status of Council owned reserves – This would give a TLA autonomous statutory power (held by the Minister) to revoke the

reservation over Council owned titled local purpose and recreation reserves whether classified or not. This amendment would preserve the Ministers power for a decision on revocation for other reserve classes or where the reserve is Crown owned.

***Explanation:** There are many small Council owned local purpose and recreation reserves that over time are no longer required. On satisfying LGA consultation requirements these should be able to be more readily disposed of without reference to the Minister for declassifying. This would provide efficiency gains to both local and central government, and in particular, the Department of Conservation which has limited and stretched resources for this work.*

Amend Section 40 – Offer Back provisions - to provide that the Section 40 offer back requirement under the Public Works Act 1981 does not apply to Council owned revoked reserves created and vested on subdivision.

***Explanation:** This will remove an administrative burden and cost as the majority of reserves do not fall within the ambit of a public work.*

Section 25 Effect of Revocation of a reserve or change of classification - Amend Subsections (1) and (4) to provide in addition that where the TLA purchased land for consideration from the Crown that even although that reserve derived from the Crown that the title shall vest in the body corporate and not as Crown land.

***Explanation:** This corrects a legislative anomaly where land was sold in the past as part of Government policy for financial consideration by the Crown to TLA subject to reserve status (as opposed to a free vesting at consideration). Due to the current legislative provisions such land becomes subject to Crown reversionary title ownership on revocation of reserve status, notwithstanding that the TLA paid market value for the land*

Note: The provisions relating to gifting also need to be reviewed where land (including improvements thereon) proposed as an intended express gifting to the TLA was gifted to the Crown to accommodate statutory management purposes.

Section 26 - Vesting of Reserves - Amend to provide that all reserves that are classified or subsequently become local purpose reserve, or recreation reserve, are automatically vest in the TLA where it has an appointment to control and manage that was in place on enactment of the Reserves Act or administration was granted under local Government succession.

***Explanation:** Many reserves are held by TLA by way of appointment to control and manage resulting in the need for any leasing under Section 59A of the RA (Crown's concession regime) whereas in practice TLA are using the non-Crown leasing provisions under the RA as if the reserve were vested because due to a lack of understanding are not making a distinction in the type of control. Note that this reinforces the Department of Conservation's policy that local purpose and recreation reserves be vested in TLA for better management purposes.*

Section 26A Vesting of Certain Reserves - Review subsection (1) to provide clarity around the statutory vesting of reserves where a TLA was appointed a Domain Board.

Explanation: While a statutory vesting of local purpose and recreation reserves following classification is transparent, some clarification around the statutory vesting of reserves where the TLA was appointed the Domain Board may need some review.

Section 27 Cancelling the Vesting of Reserves - Amend subsection (1) to provide that the Minister shall cancel the vesting in local purpose reserves where the TLA resolves to do so, but retaining ministerial discretion in the case of recreation and other reserves.

Explanation: This suggested amendment removes the Ministers discretion in the case of local purpose reserves vested from the Crown, where a TLA wishes to relinquish its vesting over a local purpose reserve for any reason. That reserve would then re-vest in the Crown. The basis for this change is that a Council should be able to resolve whether or not it wishes to relinquish its management over a Crown reserve. The change does not affect vesting of reserves owned by the TLA

Section 41 Management Plans – Consider amending to provide that where an approved management plan contemplates managing reserves based on a classification proposed or reserve declaration in that plan, but not so classified at the time of that plan, that, any such classification for the sake of clarity need not be publicly notified and can be so gazetted for the specified classification or declaration once the Management is approved.

Explanation: This caters for those situations where reserves are not classified or declared until the end of the public process for a draft Management Plan and subsequent approval of the Management Plan, noting that normal practice is to classify and declare reserves prior to a draft Mgt plan. In essence this allows a two tied approach to remove duplication of public notice where reserves are not classified or declared before a Management Plan is approved.

Section 44 Unauthorised Use of A Reserve - Review situations where residences on reserves were gifted conditionally or unconditionally prior to and contrary to the enactment of this Section, and (notwithstanding Section 5) may be authorised to be removed for any reason by the TLA or Minister as the case maybe (with or without public notice) notwithstanding any condition contrary to the terms of gifting. The decision would be made by the TLA where it owns the reserve and the Minister where the reserve is Crown owned and administered by a TLA.

Explanation: Section 44 limits residences on reserves, but many dwellings historically already exist on reserves through past gifting or other conditional or unconditional conveyance prior to the enactment of the restrictive provisions in Section 44. There needs to be a way of dealing efficiently with removal in cases where the residence is not required or is uneconomic to continue to maintain. In many instances these dwelling are privately leased and are not directly for the use or benefit of the reserve as provided in Section 44.

Section 48 Grant of Rights of Way and Other Easements - Amend subsection (1) to give the TLA autonomous power to grant easements over local purpose and recreation reserves (whether classified or not) where the Council as the body corporate is the owner of that reserve. In the case of Crown reserves it would be still subject to the current statutory provisions noting ministerial delegations that are in place. Amend subsection (2) to provide for the TLA to have full discretion on the giving of public notice outside the exemptions in subsection (3).

Explanation: TLA can already exercise ministerial delegation in the exercise of granting easements, but there needs to be full autonomy to TLA where it owns the title to local purpose and recreation reserve as a means of dealing with any applications efficiently in addition to full discretion on whether public notice should be given. Note that TLA have consultation obligations to consider under the Local Government Act 2002.

Section 48A Use of Reserve for communication purposes - Needs examination in line with the recent legal advice from Simpson Grierson which indicated that TLA do not have full legal power to grant licences under this proviso. An earlier amendment proposed by the Department of Conservation did not proceed.

Explanation: This matter concerned the siting of a cellphone tower in an urban location where the best environmental outcome would have been to locate the tower on Council reserve remote from dwellings and local roads. The present wording of s48A prevented the best option being selected.

Section 53 Powers other than leasing in respect of recreation reserves - Review this Section of the Act to see if any changes should be considered to clarify or widen TLA powers

Section 54 Leasing in respect of recreation reserves - Review this Section to see if changes should be made to clarify or widen TLA powers and make public notice requirements discretionary.

Explanation: The above sections are widely used as the key provisions in the management and leasing of recreation reserves so could be reviewed to see if any administrative efficiency can be achieved.

Section 58A- Leasing Powers in Respect of Historic Reserves - Review subsection (1) to include the granting of leases and licences by TLA over reserves that are held by way of appointment to control and manage from the Crown (already powers where vested) and widen the purposes for the better management of the reserve. Make the public notice requirement discretionary.

Section 59A - Granting of Concessions on Reserves Administered by the Crown - Amend subsection (1) to exclude reserves controlled or managed by TLA.

Explanation : The suggested change means that TLA's can manage both vested and control and managed reserves under the same leasing provisions of the Reserves Act for

consistency rather than the Crown's concessions regime under Part IIIB of the Conservation Act 1987.

Section 61 Powers (including leasing) in respect of local purpose reserves - Amend subsection (2A) to include reserves held by TLA that are controlled and managed (only provides for reserves vested) and look at widening the purposes in subparagraph (a) for clarity.

***Explanation:** Reserves that are controlled and managed by TLA as the administering body are vested in the Crown, and so are subject to the Crown concession leasing regime. However, for consistency the amendment would mean that TLA would administer all reserves in terms of the leasing powers under the Reserves Act.*

Section 73 Leasing of recreation reserves for farming, grazing afforestation or other purposes - Amend subsection (3A) (a) to include reserves controlled and managed by a TLA and provide for subsection (4) on the giving of public notice discretionary

Section 74 Licences to occupy reserves temporarily - Amend subsection (3) to provide that public notice by a TLA is discretionary

Section 75 Afforestation on by administering body - Amend to give TLA autonomous power in the case of reserves owned by the TLA and for discretion in the case of TLA to give public notice.

***Explanation:** Removal of mandatory public notice by TLA allows for Council flexibility to decide on the merits and need for public notice and provides for efficiencies to be gained by providing regulatory flexibility.*

Section 4 of the Conservation Act 1987 (as it binds the Reserves Act 1977) Amend to provide that where a TLA owns a public reserve that it may at its discretion decide whether or not to consult Iwi/hapu, but would otherwise consult in the case of Crown reserves it administers.

***Explanation:** Council owned reserves (and other owned land) are deemed to be private land for Crown treaty settlement purposes and on that basis the TLA should be able to exercise discretion on any need to consult. Note that TLA have consultation obligations to consider under the Local Government Act 2002.*

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Other suggestions for improving local (and central) government regulatory performance in respect of dealing with land

Local Government Act 1974

A TLA has statutory power under the Local Government Act to stop and sell unformed legal road. Most TLA have literally enormous amounts of unformed legal road which were historically laid out in the past two centuries.

The provisions are rigid in requiring a survey plan as a pre requisite to stopping, mandatory public notice requirements, limiting advanced conditional contracting to sell road. The provisions put the Council in risk in that there is no certainty that a stopping can actually be implemented. In addition there are mitigating inequitable circumstances where it is simply not practicable to undertake public notice calling for objection and for subsequent appeal to the Environment Court and that needs to be addressed.

The ability to reduce the width of esplanade reserves created by statute along qualifying water bodies needs to provide flexibility for TLA to fix the width outside any rules in the District Plan.

The following suggested review of legislative provisions is outlined as a means of providing for a more practicable and flexible approach for the sake of achieving both cost effective and objective outcomes.

Section 342 - Stopping of Roads - Amend to provide that:

- a TLA may stop an unformed legal road or any part in a rural area without the need for the consent of the Minister provided the access of any adjoining owner is not affected.
- Amend the 10th Schedule to provide that a TLA may prepare in the first instance a scheme plan of stopping where it undertakes public notice calling for objections so that should the stopping not proceed for any reason a costly survey is avoided.
- Provide that a TLA may stop any road or part thereof without the giving of public notice where it considers at its discretion taking into account the circumstances that such notice to be unnecessary or undesirable or not in the public interest in the circumstances or where such road has been encroached upon or for any other reason and that's its decision would not be subject to any appeal to the Environment Court.
- Provide that a TLA may contract in advance to conditionally sell the freehold of stopped road prior to undertaking the entire road stopping steps.

Explanation:

- i. The current provisions in Section 342 are inflexible. They require that a survey plan must be prepared as a pre-requisite to the stopping process while there are no guarantees any stopping will be successful with the possible burden of an unnecessary and costly survey by the TLA or applicant. Using a scheme plan avoids the outright cost of a survey which can come later once there is certainty that the road will be stopped.*
- ii. Remove the need to secure prior ministerial consent to the stopping of rural roads where adjoining owner access is not affected consistent with the requirements of stopping under the Public Works Act 1981. There seems to be no reason that a TLA legislation should be different in applying the same requirements.*
- iii. Situations arise where road has been historically encroached upon by buildings and improvements by adjoining land owners and these improvements cannot be relocated, or for other reasons, it is desirable to stop the affected road and sell or lease the land*

to those owners. In such circumstances the requirement to publicly notify the stopping of such privatised road for objection and or appeal to the Environment Court are difficult to justify. It is suggested the TLA should have discretion to waive the public notice requirement and its decision should not be subject to appeal to the Environment Court

- iv. *Where adjoining owners wish to acquire unformed legal road, it is subject to public notice and objection, which legally cannot be pre-empted by the TLA entering into an Agreement for Sale and Purchase. The TLA can then be left in the situation where it has undertaken survey and stopping but the adjoining owner then decides not to proceed with purchase. There needs to be certainty of contract between the parties before road stopping process is undertaken but without prejudice to any final decision on stopping by the Council.*

Section 345 (1) (d) Disposal of land not required for road - Amend to include that a TLA may:

- Declare any stopped road or part thereof to be a reserve
- Amend subsection (4) and Section 77 of the RMA to provide that if a TLA chooses not to include a rule in its plan on the width of an esplanade reserve that may apply on stopping but may in its discretion decide in its discretion that width to be shown on the plan of survey

Explanation: *A TLA must lay off a mandatory 20 metre reserve or if less than that the width of the stopped road unless a rule in the District Plan provides for a width. Many TLA do not have rules in their District Plan, but it is more sensible for the TLA to decide the width at the time of stopping.*

Resource Management Act 1991

Section 11 Restrictions on subdivision of land - Amend subsection 1 (cb) to provide in addition cases where it necessary to give effect by gazettal to a classification or change of purpose of a reserve or part thereof.

Explanation: *Classification or change of purpose of a reserve requires those to be separately defined by survey to meet Section 167 of the Land Transfer Act 1952 for gazettal registration/title purposes. Such actions are more in the nature of legalisation as opposed to subdivision and need to be so exempt to be cost effective for TLA's and the Crown.*

Section 226 Restrictions upon issue of certificates of title for subdivision - Amend by the addition of a subsection to Section (1) (e) that notwithstanding any rule in a District Plan where it is necessary for a separate title to issue for the purpose of classification or change of purpose of the part or the whole of any reserve under the Reserves Act 1977, that involves an application for a whole section or part of a section or allotment, the principal administrative officer may issue a certificate to that effect to authorise the issue of a separate certificate of title.

***Explanation:** Currently a certificate can be issued by the principal administrative officer for a whole section or allotment, (not part) if reserves comply with the District Plan. A change is needed to provide a cost effective and efficient means for a TLA to secure title to an existing reserve or part to enable classification or a change of purpose.*

Public Works Act 1981

A comprehensive review of the Act was initiated by Land Information NZ in 2000, followed by the submission process in 2002. In October 2003, LINZ indicated that the submissions would be used as the basis for policy development, but no draft legislation has resulted.

Accordingly, that as part of the current local government reforms, it is suggested that legislative review of the Public Works Act 1981 be completed which includes proposed changes to Section 40 of the Act.

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