

Waitaki District Council Reserves and Other Land Empowering Bill

Local Bill

Explanatory note

General policy statement

The purpose of this Bill is to revoke the reservation of 2 pieces of land within the Waitaki District and to clarify the status of a third piece of land in that district.

Palmerston Showgrounds

The Bill revokes the reservation of Part Lot 7, DP 6425 (the **Palmerston Showgrounds**) under the Reserves Act 1977 and vests ownership of the land in the Waitaki District Council (the **Council**) absolutely.

The Council purported to enter into an agreement for sale and purchase of the Palmerston Showgrounds with the current lessees on 19 May 2000. However, the reserve status of the subject property gives effective ownership of the Palmerston Showgrounds to the Crown as a Crown-owned reserve.

Ngai Tahu and the Department of Conservation have consented to the sale of the Palmerston Showgrounds by the Crown to the Council. The Council has publicly notified its intention to apply to the Department of Conservation to revoke the reservation of the land. No objections were received to the public notification and the Council resolved on 23 March 2004 (confirmed on 6 April 2004) to enter into

the proposed sale. A requirement of the purported sale was that the current registered lease would be surrendered. However, that leaves the current lessees in an untenable position because their dwelling is situated on the subject land.

The Council considers it appropriate to regularise the current lessees' occupation of the Palmerston Showgrounds property by—

- revoking its reserve status and freeing it of all express and implied reservations or restrictions to which it was subject under the Reserves Act 1977; and
- vesting ownership of the property in the Council absolutely (subject to lease 738032 and easement 7201478.3) so that the Council may consider selling the property to the current lessees.

The Department of Conservation and Ngai Tahu have consented to the revocation of the reserve and to the vesting of the property in the Council.

Lot 1, DP 345820

The Bill also revokes the reservation of Lot 1, DP 345820 under the Reserves Act 1977 and vests ownership in the current registered proprietors absolutely.

The Council entered into an agreement for sale and purchase of the freehold of this property with its then registered proprietors, with settlement scheduled for 30 January 2004. At that time, the Council was unaware that the reserve status of the property as a Crown-owned reserve gave effective ownership of the property to the Crown. The property was then sold to 2 subsequent registered proprietors before it was sold to the current registered proprietors.

Ngai Tahu and the Department of Conservation have consented to the revocation of the reserve status and ratification of the sale of the freehold of the property by the Council to the original registered proprietors. The ratification of the sale necessarily also ratifies the subsequent sales of the subject property to the subsequent registered proprietors.

The current registered proprietors have their dwelling on the property and the Council considers it appropriate—

- to regularise their occupation of the property by revoking the reserve status of the property and freeing it of all express and

implied reservations or restrictions to which it is subject under the Reserves Act 1977; and

- to vest ownership of the property in the current registered proprietors, subject to mortgage 7263041.3.

Lookout Point land

The Bill clarifies the status of the Lookout Point land, also known as Forrester Heights. It was originally set aside in 1885 by Order in Council, as part of a larger block, for the purposes of an endowment in aid of the funds of the Oamaru Borough Council, a predecessor to the Waitaki District Council.

In 1937, by Order in Council, the Lookout Point land was set apart as reserves for an endowment in aid of the funds of the Oamaru Borough Council and, erroneously, made subject to (a predecessor of) the Reserves Act 1977 (*Gazette* 1937, Vol III, p 2549).

Title was issued in 1942 to the land now comprising Computer Freehold Register OT325/79.

In 1947, a certificate of title in the name of the Oamaru Borough Council was issued for the Lookout Point land. The title carried forward the reference to reserves legislation.

Uncertainty now exists as to whether the Lookout Point land—

- (a) was vested in the Oamaru Borough Council as an endowment;
- (b) is subject to the Reserves Act 1977.

The Waitaki District Council, the successor to the Oamaru Borough Council, wishes to have the status of the Lookout Point land confirmed as that contemplated in the 1885 Order, namely, as endowment land, so that it may sell the land in accordance with sections 140 and 141 of the Local Government Act 2002.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides that the Bill commences on the day after the date on which it receives the Royal assent.

Clause 3 provides definitions for key terms used in the Bill.

Clause 4 authorises and directs the Registrar-General of Land to give effect to the vesting provided for by the Act by making the relevant entries in the register kept under the Land Transfer Act 1952.

Clause 5 revokes the reservation of the specified land and frees it of any trusts, reservations, and restrictions arising under the Reserves Act 1977 that applied before the commencement of the Bill, but leaves the specified encumbrances in place.

Clause 6 provides that the land is vested as specified. The clause also confers on the Council, in relation to the land specified in Part 1 of the Schedule, the power to dispose of the land. In relation to the land described in Part 2 of the Schedule, the clause deems the Council always to have had the power to dispose of the land, thereby validating the earlier sale of that land.

Clause 7 declares the land to be vested in the Waitaki District Council as an endowment property for the purposes of aiding Waitaki District Council funds and states the land is an endowment property within the meaning of section 140(2) of the Local Government Act 2002 (and therefore able to be sold in accordance with sections 140 and 141 of that Act).

The *Schedule* sets out, in 3 Parts, descriptions of the land to which *clauses 5, 6, and 7* apply, and the encumbrances to which the land is subject.

Jacqui Dean

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Waitaki District Council Reserves and Other Land Empowering Act **2012**.

- 2 Commencement**
This Act comes into force on the day after the date on which it receives the Royal assent.
- 3 Interpretation**
In this Act, unless the context otherwise requires,— 5
Council means the Waitaki District Council
land means the land described in the Schedule
Lookout Point land means the land described in **Part 3** of the Schedule
registered proprietors means the persons who are registered 10
as the proprietors in Computer Freehold Register 187727
Schedule means the Schedule of this Act.
- Entries in register*
- 4 Powers of Registrar-General of Land** 15
The Registrar-General of Land is authorised and directed to make the entries in the register that is kept under the Land Transfer Act 1952, and do all other things necessary to give effect to this Act.
- Change of status and vesting of land (other than
Lookout Point land)* 20
- 5 Existing reservation revoked**
(1) The reservation of the land under the Reserves Act 1977 is revoked.
(2) The land is freed and discharged of any trusts, reservations, and restrictions arising under the Reserves Act 1977 and to 25
which the land or any part of it was subject immediately before the commencement of this Act, but subject to the encumbrances included in the Schedule.
- 6 Vesting of fee simple estate** 30
(1) The fee simple estate vests, in respect of the land described in—
(a) Part 1 of the Schedule, in the Council; and
(b) Part 2 of the Schedule, in the registered proprietors.

- (2) The Council has the power to dispose of the land described in Part 1 of the Schedule and is deemed always to have had the power to dispose of the fee simple estate in the land described in Part 2 of the Schedule.

Lookout Point land

5

7 Lookout Point land declared to be endowment land

- (1) The Lookout Point land—
- (a) is vested in the Waitaki District Council as an endowment property for the purposes of aiding Waitaki District Council funds; and 10
 - (b) is an endowment property within the meaning of section 140(2) of the Local Government Act 2002.
- (2) **Subsection (1)** applies—
- (a) in order to avoid doubt; and
 - (b) despite any enactment or instrument to the contrary. 15

Schedule
Land vested in Council**ss 5, 6, 7****Part 1****Description of land**

Otago Land District
9604 square metres, more or less, being Part Lot 7, DP 6425. All Computer Freehold Register OT5A/401

Encumbrances

Subject to: Lease 738032, with fencing and renewal clauses CT 331609 and variation of lease 7201478.2; and
Right of way created by easement instrument 7201478.3, together with right of way appurtenant to Part Lot 7 created by that instrument

Part 2**Description of land**

Otago Land District
809 square metres, more or less, being Lot 1, DP 345820. All Computer Freehold Register 187727

Encumbrances

Subject to: Mortgage to ASB Bank Limited 7263041.3

Part 3**Description of land**

Otago Land District
2.0234 hectares, more or less, being sections 1 to 5, 7 to 15, and 17 to 22 block XXXI Town of Oamaru. All Computer Freehold Register OT325/79

Encumbrances

245256 Order in Council consenting to the closing of portions of Test Street fronting sections 1 to 5 and 7 to 11 inclusive, 30 April 1962 at 9.13 am