

# **Auckland City Endowments and Reserves Amendment Bill**

Local Bill

As reported from the Local Government and  
Environment Committee

## **Commentary**

### **Recommendation**

The Local Government and Environment Committee has examined the Auckland City Endowments and Reserves Amendment Bill and recommends that it be passed with the amendments shown.

This is a local bill. We have determined that the Standing Orders have been complied with and that the rights and prerogatives of the Crown are not affected.

### **Introduction**

Certain Auckland City properties were transferred from the Superintendent of Auckland Province and vested in the Auckland City Council (the council) under the Auckland City Endowments and Reserves Act 1875, as endowments for the city's benefit and improvement, subject to the powers and restrictions in that Act. The Auckland City Endowments and Reserves Amendment Bill (the bill) seeks to give four of these properties a new status so that the council can make wider use of these lands. These properties can be leased for up to 99 years, let annually or otherwise with or without conditions. The council can build roads through these properties, and any part can be used for public or recreational purposes, but the council does not have any express powers to sell any of these properties.

### **Description of properties**

These properties are described in clauses three to six of the Second Schedule of the principal Act. The first is located on the corner of Wellesley and Victoria Streets opposite Victoria Park. The property is subject to perpetually renewable ground leases. The ground leases were established under the authority of the Auckland City Parks Improvement and Empowering Act 1916, which authorised the council to grant leases of the land to lessees displaced by the creation of Victoria Park. A four storey commercial building erected in 1987 is situated on this land. The council seeks to add this latter property to the First Schedule of the principal Act, so that the leases can be sold to lessees. Under the Local Government Act 1974, the council would be required to apply the proceeds of sale towards the purchase of other land for community facilities or open space.

The second property comprises the apex of the Town Hall land at the junction of Queen Street and the former Greys Avenue. The council considers it sensible that the bill vest this land in fee simple in the council so that it is held in the same way as all other Town Hall land.

The third property is a vacant property which comprises a mid street island at the top of Wakefield Street. The fourth property is a vacant property at the junction of Wakefield Street and Airedale Street, and is adjacent to the third property. It is proposed that both these properties be held as recreation reserves under the Reserves Act 1977.

### **Treaty of Waitangi claims and land relating to the bill**

In the context of a submission from the then Minister in Charge of Treaty of Waitangi Negotiations, the previous Internal Affairs and Local Government Committee considered a Crown Law Office opinion, which stated the status of the lands was uncertain. It was also unclear whether the lands were reserves or whether the Crown had a reversionary interest in them. Accordingly, the Treaty of Waitangi implications of the bill were also uncertain.<sup>1</sup> The Minister concluded that these uncertainties need not prevent the bill from proceeding in its current form, because consultation with iwi would determine whether the lands would be of any relevance to future

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<sup>1</sup> Letter from Minister in Charge of Treaty of Waitangi Negotiations, to Internal Affairs and Local Government Committee, 6 August 1998.

Treaty of Waitangi claims.<sup>2</sup> Following a meeting with the Internal Affairs and Local Government Committee, the council undertook to consult with tangata whenua.

The council reported to us on its consultation with iwi, attaching their responses. The Hauraki Māori Trust Board requested that the leased land be “land banked”. Ngāti Paoa Whānau Trust Board consented to the bill with the sole provision that the council consult with them should it ever propose to sell the Town Hall. Awaroa Environment (on behalf of Ngāti Te Ata—Wai o Hua) remained neutral, but expressed the wish to protect any Treaty of Waitangi rights and be consulted on any sales so that tangata whenua could present submissions on their history and facts in relation to the land. Huakina Development Trust criticised the council for failing to consult prior to introducing the bill, and set down the same requirement as Ngāti Paoa to be consulted should the council propose to sell the Town Hall. Ngāi Tai Ki Tamaki Tribal Trust also criticised the lack of initial consultation, and requested that the exact status of the land be resolved, together with certain cultural issues relating to water in Auckland’s central business development area. That Trust also expressed concern that enactment of the bill would mean that the Town Hall and the leased land would not be available for Treaty of Waitangi settlements. Kawerau a Maki Trust and Ngāti Whatua both reserved their positions.

We invited these iwi groups to make late submissions on the bill with any further relevant information. They did not take up our invitation. The Waitangi Tribunal has provided some preliminary advice that none of these four parcels of land are subject to any Treaty of Waitangi claims.<sup>3</sup> A member of our committee, Mr Joe Hawke MP, reserves his position on the application of the current Treaty of Waitangi claim WAI 388 Tamaki Makaurau. He has therefore abstained from voting on this bill.

<sup>2</sup> Submission from Minister in Charge of Treaty of Waitangi Negotiations, 18 September 1998.

<sup>3</sup> A letter received from the Waitangi Tribunal notes that claim WAI 388 specifically excludes any claims that are made in regards to the Orakei Block in Auckland, which constitutes most of what is now the Auckland central business district. The land owned by the council is considered private land and the Tribunal has no jurisdiction to recommend the return of the land, unless there is a memorial placed on the certificate of title. A preliminary search of claims has not revealed any additional claims that have regard to the properties referred to by the bill.

We are aware that the categorisation of local government land as private land is raised by a number of claims that are presently before the Waitangi Tribunal.

### **Amendments**

Our recommended amendments redraft the bill to take account of changes to drafting styles and formats. These amendments do not substantially alter the effect of the bill.

### **Conclusion**

We consider the bill facilitates the original purpose of the principal Act in that the alteration of the status of these lands will facilitate an increased use for the benefit of Auckland city. We are satisfied that the action taken by the council to consult with tangata whenua has been adequate. The council has given its word to consult with iwi groups should it ever propose to sell the Town Hall. We note that the council is legally required under section 230(4) of the Local Government Act 1974 to apply any proceeds from the sale of the properties to the acquisition of other land for community facilities or public open space, with such lands remaining subject to the purposes set out in the principal Act.

## **Appendix**

### **Committee process**

The Auckland City Endowments and Reserves Amendment Bill was referred to the previous Internal Affairs and Local Government Committee on 13 May 1998. The closing date for submissions was 26 June 1998. Four submissions were received, from the Office of the Minister in Charge of Treaty of Waitangi Negotiations, the Department of Internal Affairs, the Auckland City Council, and Land Information New Zealand. The previous committee heard four submissions orally, its hearing of evidence took 40 minutes and consideration 45 minutes. Our hearing of evidence from one submitter took 20 minutes, and our consideration took one hour and 25 minutes.

We received advice from the Department of Internal Affairs and information from the Waitangi Tribunal.

### **Committee membership**

Jeanette Fitzsimons (Chairperson)

Martin Gallagher (Deputy Chairperson)

David Benson-Pope

Georgina Beyer

Ann Hartley

Joe Hawke

Gerrard Eckhoff

Brian Neeson

Eric Roy

Hon Dr Nick Smith

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

**Struck out (unanimous)**

**[** Subject to this Act, **]**

Text struck out unanimously

**New (unanimous)**

**[** Subject to this Act, **]**

Text inserted unanimously

*(Subject to this Act,)*

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

Note: This bill has been reformatted in accordance with the resolution of the House of 22 December 1999.

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*Hon Judith Tizard*

# Auckland City Endowments and Reserves Amendment Bill

Local Bill

## Contents

1	Title	4	Consequential amendments to principal Act
1A	Commencement		
2	Certain land freed from restrictions		
3	Powers of Registrar-General of Land		

**The Parliament of New Zealand enacts as follows:**

### **1 Title**

- (1) This Act is the Auckland City Endowments and Reserves Amendment Act **1997**.
- (2) In this Act, the Auckland City Endowments and Reserves Act 1875 is called “the principal Act”.

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#### **New (unanimous)**

### **1A Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent.

#### **Struck out (unanimous)**

### **2 New sections inserted**

The principal Act is amended by inserting, after section 4, the following sections:

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#### **“4A Certain land freed from endowments, etc.**

- “(1) The land fourthly described in Schedule 2 is omitted from that Schedule and added to Schedule 1 and accordingly shall be subject to the provisions of section 3.

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- “(2) The land thirdly, fifthly, and sixthly described in Schedule 2 is freed and discharged from all express or implied trusts, reservations, and restrictions imposed by sections 2 and 4.

**Struck out (unanimous)**

- “(3) The land thirdly and sixthly described in Schedule 2 is vested in the Auckland City Council as reserves within the meaning of the Reserves Act 1977, and must be held by the Council as recreation reserves under section 17.
- “(4) The provisions of the Reserves Act 1977 apply in respect of the land vested in the Council under **subsection (3)** in the same manner as if the Auckland City Council had, pursuant to section 14 of that Act, declared the land to be held as recreation reserves under section 17 of that Act. 5
- “(5) The land fifthly described in Schedule 2 is vested in the Auckland City Council for an estate in fee simple subject to all leases, licences, easements, liens, and encumbrances existing in respect of the land immediately before the commencement of this Act. 10
- “4B **Powers of District Land Registrar** 15  
The District Land Registrar for the North Auckland Land Registration District is authorised and directed to make such entries in the registers and to do all such other things as may be necessary to give effect to **section 4A.**”

**New (unanimous)**

- 2 Certain land freed from restrictions** 20
- (1) The land that immediately before the commencement of this Act was thirdly, fourthly, fifthly, and sixthly described in the Second Schedule of the principal Act is freed and discharged from all express or implied trusts, reservations, and restrictions imposed by sections 2 and 3 of the principal Act. 25
- (2) On the commencement of this Act,—
- (a) the land thirdly and sixthly described in the Second Schedule of the principal Act becomes vested in the Auckland City Council as reserve within the meaning of the Reserves Act 1977: 30
- (b) the land fourthly described in that schedule becomes subject to section 4 of the principal Act:

**New (unanimous)**

- (c) the land fifthly described in that schedule becomes vested in the Auckland City Council for an estate in fee simple, subject to all leases, licences, easements, liens, and encumbrances to which it was then subject.
- (3) After the commencement of this Act,— 5
- (a) the Auckland City Council must hold the land thirdly and sixthly described in the Second Schedule of the principal Act under section 17 of the Reserves Act 1977 as recreation reserve; and
- (b) the Reserves Act 1977 applies to that land in the same manner and to the same extent as if the Council had, under section 14 of that Act, declared it to be held under section 17 of that Act as recreation reserve. 10
- (4) **Paragraph (a) of subsection (3) is subject to paragraph (b).**
- 3 Powers of Registrar-General of Land 15**  
The Registrar-General of Land must make all entries in the registers, and do all other things, necessary to give effect to **section 2.**
- 4 Consequential amendments to principal Act 20**  
The principal Act is amended by—
- (a) omitting from the Second Schedule the descriptions of land set out thirdly, fourthly, fifthly, and sixthly in it; and
- (b) adding to the First Schedule the description of land formerly set out fourthly in the Second Schedule. 25

**Auckland City Endowments and  
Reserves Amendment**

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**Legislative history**

6 May 1998  
13 May 1998

Introduction and first reading (Bill 22-1)  
Second reading and referral to the Internal Affairs  
and Local Government Committee

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