

Date released: 17th April 2023

Request: OIA- 1174

Original LGOIMA Request:

"I am requesting copies of all emails and written communication, dated from 1 January 2019 until 28 April 2021, between the WDC and DoC, regarding the land status of Awamoa Park, and/or the ability of the WDC to lease part of Awamoa Park"



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Official LGOIMA Response:

The only emails located that are directly via WDC and Doc are attached. There would appear to be a few phone conversations that took place which may explain the lack of some momentum re written correspondence. Emails provided below:

[Redacted]

From: [Redacted]
Sent: Tuesday, 5 November 2019 4:30 PM
To: [Redacted]
Subject: RE: Reserve status of Awamoa Park

Hi [Redacted]

In essence whether the land is reserve or not depends on whether it falls within the definitions of definition of "public reserve" and "reserve" in the Public Reserves and Domains Act 1908. If it does as we have suggested then the fact that it was set apart is not relevant. Interestingly Sections 22 and 26 of that Act deal with provisions relating to reserves for "public health or recreation", a description no too dissimilar to this land

Clearly the land is listed as a type of reserve in Schedule 1 of Oamaru Town Reserves Management Ordinance 1872, however as you have pointed out the subsequent vesting in the Oamaru Borough Corporation through the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1925 does not vest it as reserve.

Clearly the underlying land status is not clear cut and really relies on some interpretation of the various legislation. If Council wishes to proceed on the basis of the advice it has received the department will not oppose that approach.

Regards

[Redacted]
Senior SLM Advisor
[Redacted]

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Christchurch Service Centre

From: [REDACTED]

Sent: Thursday, 10 October 2019 3:42 p.m.

To: [REDACTED]

Subject: RE: Reserve status of Awamoa Park

Hi [REDACTED]

We refer to your email dated 29 August 2019 regarding the above matter. It is not clear whether you have sought advice from the Department's legal team in preparing your email.

While we accept that there is an alternative argument to that preferred by the Council (as discussed by [REDACTED] —and set out in your email) it is the Council's position, that Awamoa Park is not reserve. Rather, it is fee simple land, held in trust for the purposes of "health and public recreation."

No doubt you are familiar with the report from Abercrombie and Associates Limited dated 1 July 2019 (Abercrombie Report) which has previously been provided to you.

As mentioned in the Abercrombie Report, the original Crown Grant did not state that the land was reserved for any purpose. Rather the land was set apart (and not "reserved") for the purpose of public utility. There is no specific evidence to support a conclusion that the land is now subject to the Reserves Act 1977 based on this original vesting or any subsequent vesting.

The Oamaru Town Reserves Management Ordinance 1872 transferred and vested management of the land in the Town of Oamaru. That did not result in any change of status.

Further, your email does not discuss section 58 of the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1925 which vested ownership of Awamoa Park in the Oamaru Borough Corporation "in trust for the purposes of health and public recreation". The language of section 58 clearly indicates that the land has been vested in trust, but there is no mention of it being vested as a reserve.

The Council is of the opinion that the absence of any language in section 58 that clearly states that the land is a reserve, and the fact that the Schedule 2 categories in the 1908 Act do not include the relevant purpose for which the land is held, support the conclusion that the land is not reserve.

As indicated in the Abercrombie Report, there is a significant difference between land being reserved for a certain purpose, and land being declared or vested as a reserve. The Council is of the view that Awamoa Park falls under the former category and does not accept that the purpose for which the land was originally vested in 1925 falls within the definition of "public reserve" and "reserve" in the Public Reserves and Domains Act 1908.

As pointed out by Simpson Grierson, the Schedule 2 categories in that Act do not include ("health and public recreation". Therefore, unless it comes within the Schedule 2 "catch-all" category ("for the purpose of public safety, utility, advantage or enjoyment") it is reasonable to conclude that Awamoa Park is not reserve.

In the Council's opinion, and as discussed in the Abercrombie Report, there are strong arguments to the effect that a purpose of "health and public recreation" does not come within the Schedule 2 catch-all, and it is reasonable for the Council to rely on the Cromwell Borough v Skinner case as authority to conclude that Awamoa Park is not reserve.

As you are aware, the Council is working with St John's to explore whether it is possible to facilitate the use of a small part of Awamoa Park for use as a new ambulance station. The existing ambulance station is no longer fit for purpose. It is located in the tsunami zone, does not have any room for expansion and the exit via a busy carpark to State Highway 1 is problematic.

This is an important project for the community, but if Awamoa Park is reserve, it will be extremely difficult for the Council to enter into a lease with St John's to enable an ambulance station to be constructed and operated from the site, whether the land was classified as local purpose reserve or recreation reserve. While the Council would still need to undertake a statutory consultation process to grant a lease if the land is considered to be fee simple land held in trust (because it would be a park under section 138 of the Local Government Act 2002 if it is not reserve) the process would be more straightforward and would not present as many difficulties.

In summary, the Council is of the view that it is entitled to deal with Awamoa Park on the basis that it is not reserve, and considers that it can proceed with the proposal to grant a lease to St John's accordingly.

We look forward to your reply.

Kind regards,

[REDACTED]
Property Manager

Email: [REDACTED]
Web: www.waitaki.govt.nz
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Waitaki
DISTRICT COUNCIL
TE KAUNIHERA Ā ROHE O WAITAKI
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From: [REDACTED]
Sent: Tuesday, 24 September 2019 4:47 PM
To: [REDACTED]
Subject: RE: Reserve status of Awamoa Park

Hi [REDACTED]

That's fine, I will await your response

Regards

[REDACTED]
Senior SLM Advisor
[REDACTED]

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Christchurch Service Centre
Department of Conservation - Te Papa Atawhai
Private Bag 4715, Grand Central Building, 161 Cashel St, Christchurch

From: [REDACTED]
Sent: Tuesday, 24 September 2019 4:27 p.m.
To: [REDACTED]
Subject: RE: Reserve status of Awamoa Park

Hi

I think we need to look at this a little closer. I will formulate a response and have it back to you soon.

Thanks,

[REDACTED]
Property Manager Waitaki 20 Thames District Street Council

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From: [REDACTED]
Sent: Thursday, 29 August 2019 11:30 AM
To: [REDACTED]
Subject: FW: Reserve status of Awamoa Park

Hi

The land status report from Abercrombie and Associates (A&A), together with the memo from [REDACTED] has been referred to DOC for our view on the status of 'Reserve C'

In Schedule 1 of the of the Oamaru Town Reserves Management Ordinance 1872, Area C is referred to in the list of "Reserves for Health and Public Recreation" of lands to be vested in the Corporation of the Incorporated Town Of Oamaru. The land was clearly considered to be reserve at that point.

In addition the [REDACTED] memo quite correctly refers to the Schedules in the Public Reserves and Domains Act 1908 (RA1908). This legislation was a "catch-all" act to define what was land was now reserve, given that land came to be 'reserved' in various ways through provincial and central government legislation. In the interpretation section of that Act "Public Reserve" and "Reserve" include "Land heretofore granted, reserved or set apart for any of the purposes mentioned in the Second Schedule hereto". The A&A advice references the land being 'set apart' rather than being 'reserved' but the interpretation of "reserve" in the RA1908 clearly includes land that was "set apart"

The real question is, do the uses set out in Schedule 1 of the RA1908 include "Reserves for Health and Public Recreation". The Simpson Greerson memo suggests that there could be an argument that this might be covered by the definition in Class II of "Any other reserve not herein defined, and made for the purpose of public safety, utility, advantage or enjoyment". We agree with the view expressed in the Simpson Greerson memo that "health" in this context means the healthy enjoyment of being outdoors rather than health in the medical sense. It is therefore our view that this reserve use would be included in the "advantage or enjoyment" part of that particular defined use.

It is our view therefore that Awamoa Park is subject to the Reserves Act 1977 and the use of part of it for a St Johns Ambulance facility would require re-classification.

Please let me know if you need any further information

Regards

[REDACTED]

Senior SLM Advisor

[REDACTED]

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Christchurch Service Centre

Department of Conservation - Te Papa Atawhai

Private Bag 4715, Grand Central Building, 161 Cashel St, Christchurch

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