I hereby give notice that an ordinary meeting of the Maungakiekie-Tāmaki Local Board will be held on:

**Date:** Tuesday, 23 April 2019
**Time:** 4.00pm
**Meeting Room:** Onehunga Community Centre, 83 Church Street, Onehunga

---

Maungakiekie-Tāmaki Local Board

OPEN ADDENDUM AGENDA

---

**MEMBERSHIP**

Chairperson
Debbie Burrows

Deputy Chairperson
Don Allan

Members
Bernie Diver
Nerissa Henry
Maria Meredith
Alan Verrall

(Quorum 4 members)

Tracey Freeman
Democracy Advisor

18 April 2019

Contact Telephone: 021 537 862
Email: Tracey.Freeman@aucklandcouncil.govt.nz
Website: www.aucklandcouncil.govt.nz

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**Note:** The reports contained within this agenda are for consideration and should not be construed as Council policy unless and until adopted. Should Members require further information relating to any reports, please contact the relevant manager, Chairperson or Deputy Chairperson.
<table>
<thead>
<tr>
<th>ITEM</th>
<th>TABLE OF CONTENTS</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>26</td>
<td>Urgent decision - Maungakiekie-Tamaki Local Board feedback on the Department of Conservation proposal to revoke the Reserves Act 1977 delegations</td>
<td>5</td>
</tr>
</tbody>
</table>
Urgent decision - Maungakiekie-Tamaki Local Board feedback on the Department of Conservation proposal to revoke the Reserves Act 1977 delegations

File No.: CP2019/05760

Te take mō te pūrongo
Purpose of the report
1. To inform the Maungakiekie-Tāmaki Local Board that an urgent decision was made and approved under delegation by the Chair and Deputy Chair on the local board’s formal feedback regarding the Department of Conservation proposal to revoke the Reserves Act 1977 delegations.

Whakarāpopototanga matua
Executive summary
2. At the 22 November 2016 Maungakiekie-Tāmaki Local Board meeting the board considered the urgent decisions process and passed resolution MTLB/2016/210:

That the Maungakiekie-Tāmaki Local Board:

a) adopt the urgent decision-making process for matters that require a decision where it is not practical to call the full board together and meet the requirement of a quorum;

b) delegate authority to the chair and deputy chair, or any person acting in these roles, to make urgent decisions on behalf of the local board;

c) agree that the relationship manager, chair and deputy chair (or any person/s acting in these roles) will authorise the urgent decision-making process by signing off the authorisation memo;

d) note that all urgent decisions will be reported to the next ordinary meeting of the local board. CARRIED

3. Auckland Council received notification of a proposal to revoke the Reserves Management Act 1977 delegations to Territorial Authorities by the Department of Conservation. A draft submission was prepared by staff and local boards had an opportunity to provide formal feedback on the draft Auckland Council submission by Thursday 18 April.

4. An urgent decision was required because the proposal relates to core responsibilities of local board decision making and the timeframes to submit formal feedback was before the next scheduled local board business meeting on Tuesday 23 April.

5. Details are contained in the urgent decision document included with this report as Attachment A.

Ngā tūtohunga
Recommendation/s
That the Maungakiekie-Tāmaki Local Board:

a) note the decision made under the urgent decision-making process on 17 April 2019, providing formal local board feedback on the Department of Conservation proposal to revoke the Reserves Act 1977 delegations.
Ngā tāpirihanga
Attachments

<table>
<thead>
<tr>
<th>No.</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Maungakiekie-Tamaki Local Board Feedback on the Department of Conservation proposal to revoke the Reserves Act 1977 delegations</td>
<td>7</td>
</tr>
<tr>
<td>B</td>
<td>DoC proposal to revoke reserves act 1977 delegations</td>
<td>11</td>
</tr>
<tr>
<td>C</td>
<td>Submission to DoC proposal</td>
<td>21</td>
</tr>
</tbody>
</table>

Ngā kaihaina
Signatories

<table>
<thead>
<tr>
<th>Authors</th>
<th>Mal Ahmu - Local Board Advisor - Mngke-Tmk</th>
</tr>
</thead>
</table>
| Authorisers | Louise Mason - GM Local Board Services
|            | Victoria Villaraza - Relationship Manager                          |
Memo

(12 April 2019)

To: (Victoria Villaraza – Relationship Manager, Maungakiekie-Tāmaki and Puketāpapa Local Board)
cc: (Mal Ahmu – Local Board Advisor, Maungakiekie-Tāmaki Local Board
     Christie McFadyen – Senior Local Board Advisor, Maungakiekie-Tāmaki Local Board)
From: (Chris Makoare – Chairperson, Maungakiekie-Tāmaki Local Board
       Debbie Burrows – Deputy Chairperson, Maungakiekie-Tāmaki Local Board)

Subject: Urgent decision request of the Maungakiekie-Tāmaki Local Board

Purpose
To seek the local board relationship manager’s authorisation to commence the urgent decision-making process and if granted, seek formal approval from the chair and deputy chair (or any person acting in these roles) to use the process to make an urgent decision.

The decision required, and the supporting report, are attached to this memo. The urgent decision being sought needs to be authorised by the chair and deputy chair (or any person acting in these roles) by signing this memo. Both this memo and the report will be reported as an information item at the next business meeting if the urgent decision-making process proceeds.

Reason for the urgency
There is an opportunity for Auckland Council to make a submission regarding the Department of Conservation’s proposal to revoke certain delegations which are currently made to Territorial Authorities under the Reserves Act 1977.

The case for an urgent decision is made due to the need for local board input into the Auckland Council submission to be made by 18 April 2019, in order for the submission to be approved by the Environment and Community Committee on 14 May 2019 and the feedback to meet the Department of Conservation deadline of 17 May 2019. The Maungakiekie-Tāmaki Local Board’s next scheduled business meeting is Tuesday 23 April 2019.

Local boards have the opportunity to provide feedback on the draft Auckland Council submission, so that their views can be considered by staff drafting the submission. All formal local board feedback will also be attached verbatim to the final Auckland Council submission.

The proposal relates to core responsibilities of local board decision making under the Auckland Council shared governance model, and could have potentially far reaching time and cost implications.

The urgent decision will be reported to the full local board during the next scheduled meeting on Tuesday 23 April 2019.

Decision sought from the chair and deputy chair (or any person acting in these roles)
That the Maungakiekie-Tāmaki Local Board:
   a) provide formal feedback on the Department of Conservation proposed revocation of certain delegations to Territorial Authorities under the Reserves Act 1977.
Background

The Department of Conservation wrote to all territorial authorities on 14 March 2019 seeking feedback on a proposal to revoke most Ministerial powers currently delegated to councils under the Reserves Act 1977. Territorial authorities have exercised these powers since 2013.

The letter and associated table outlining the proposed changes are attached to this memo.

If the proposal were to proceed, it would mean most decisions regarding local reserves will require Minister of Conservation approval, in addition to the relevant decision made by the local board.

These delegated “supervisory” Ministerial decisions currently sit with the Governing Body and have been sub-delegated to staff.

There are likely to be time delays on decisions as well as costs associated. Based on current timing and cost-recovery policies this could be of up to one year and $3,000 per decision. It is assumed that there would also be a considerable increase in staffing resources required to process decisions for local parks under the Reserves Act 1977 throughout New Zealand.

Attachments

<table>
<thead>
<tr>
<th>No.</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Report: <em>Department of Conservation proposal to revoke Reserves Act 1977 delegations.</em></td>
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</tr>
<tr>
<td>B</td>
<td>draft Auckland Council Submission to the Department of Conservation.</td>
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</table>
Authorisation of the urgent decision-making process

Signed by Victoria Villaraza
Relationship Manager, Maungakiekie-Tāmaki and Puketāpapa Local Board Date: 16/04/2019

Approval to use the urgent decision-making process

Chris Makoare
Chairperson, Maungakiekie-Tāmaki Local Board Date: 17/04/2019

Debbie Burrows
Deputy Chairperson, Maungakiekie-Tāmaki Local Board Date: 17/04/2019

Maungakiekie-Tāmaki Local Board Resolution/s

That the Maungakiekie-Tāmaki Local Board:

a) oppose the proposal to revoke 44 of the 50 Ministerial powers within the Reserves Act 1977
b) endorse the key points, overall position and impacts on council in the draft Auckland Council submission to the Department of Conservation
c) request that the Minister of Conservation engages with local government, including Local Boards and goes through an extensive consultation process with local communities on the proposed changes and how this will affect the use of reserves by the public and the cost this proposal will have on ratepayers
d) note that the Department of Conservation proposal to revoke Reserves Act delegations will impact local decision-making, in particular:
   i) approval of Reserve Management Plans
   ii) classification of reserves
   iii) the change of classification or purpose of a reserve
   iv) declaration of land vested in council to be a reserve
   v) exchange of reserves for other land
   vi) granting of rights of way and other easements
   vii) powers (other than leasing) in respect of reserve
viii) leasing of reserves

e) request that if the proposed change is to proceed this year then:
   i) changes should be limited in scope to address high-level issues such as alienation
      of reserve land (through sale or partial sale, land swaps, etc.), revocation of reserve
      status or changes to reserve classification, approval of management plans, etc.
   ii) that day-to-day management of reserves (particularly those owned by local
       government entities) should be unaffected, as local decisions should be made at the
       relevant local level.

Chris Makoare
Chairperson, Maungakiekie-Tāmaki Local Board

Date: 17/04/2019

Debbie Burrows
Deputy Chairperson, Maungakiekie-Tāmaki Local Board

Date: 17/04/2019
Department of Conservation proposal to revoke Reserves Act 1977 delegations

Te take mō te pūrongo
Purpose of the report
1. Provide the local board with an opportunity to formally resolve its feedback to the proposal by the Department of Conservation to revoke powers delegated to territorial authorities by the Minister of Conservation under the Reserves Act 1977.

Whakarāpopototanga matua
Executive summary
2. The Department of Conservation has written to all territorial authorities (Attachment A) advising that due to a recent Court of Appeal decision (Opua Coastal Preservation Inc v Far North District Council) that the current Minister of Conservation, Hon Eugenie Sage, is considering revoking powers delegated to territorial authorities by the former Minister, Hon Dr Nick Smith in 2013 (Attachment A).
3. The reason provided for the majority of the proposed revocation is that under the current delegation, council makes its decision as the territorial authority and then reviews that decision under ministerial delegation. This is viewed as potentially putting council in a conflict of interest situation, as it is effectively reviewing its own decision(s).
4. This proposal has been reviewed by staff and a briefing was provided for local board members on Monday 8 April 2019 on the proposal. A draft submission will be prepared for feedback and circulated based on feedback and input from council departments and local boards. This draft will be circulated to members of the Environment and Community Committee and local board members for review and comment on 15 April 2019. There will be two drop-in sessions for elected members to provide in-person feedback on the draft submission.
5. A final draft submission will be prepared for approval by the Chairperson of the Environment and Community Committee prior to the due date of 26 April 2019. This draft response will need to be retrospectively adopted by the Environment and Community Committee on 14 May 2019.
6. Staff recommend local boards to provide formal feedback on the draft submission to the Department of Conservation’s proposal. Due to the short timeframes an urgent decision is required to do this as the due date for local board feedback is 18 April 2019, which is prior to the next Maungakiekie-Tāmaki Local Board business meeting on 23 April 2019.
7. This urgent decision will be noted at the boards next business meeting on 23 April 2019.
8. All formal local board feedback will inform and be attached to the Auckland Council submission, which will be lodged on behalf of the Environment and Community Committee.
Ngā tūtohunga
Recommendation/s
That the Maungakiekie-Tāmaki Local Board:

a) use an urgent decision to provide feedback on the Department of Conservation proposal to revoke current ministerial delegations to Auckland Council under the Reserves Act 1977, noting that feedback is required by the close of business on 18 April 2019.

Ngā tāpirihanga
Attachments

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<thead>
<tr>
<th>No.</th>
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<tbody>
<tr>
<td>A</td>
<td>Letter and attachment from Department of Conservation to Chief Executive’s territorial authorities</td>
</tr>
</tbody>
</table>

Ngā kaihaina
Signatories

Authors: Mal Ahmu – Local Board Advisor – Mngke-Tmk
Authorisers: Victoria Villaraza – Relationship Manager
Ref: DOC 5730277

14 March 2019

Attn: Chief Executive
All Territorial Authorities

Tēnā koe

Subject: The revocation of certain delegations to Territorial Authorities under the Reserves Act 1977

In June 2013, the Minister of Conservation delegated certain powers under the Reserves Act 1977 (the 2013 delegations) to Territorial Authorities. Over the past year or so there have been instances where Territorial Authorities have relied on the delegations to exercise the prior consent role of the Minister in circumstances where they have also made the initial decision to grant the instrument or activity applied for.

In a recent Court of Appeal decision, (Opua Coastal Preservation Inc v Far North District Council)¹ the Court considered a delegation of the Minister’s prior consent role under s 48 of the Reserves Act 1977 to be “highly unusual”. The Court commented that it could be argued that it replaced a two-step process involving two separate decision makers (the Council and the Minister) with a single-step process and a single decision maker. The Court noted that the effect of the delegation was that the Council made both decisions contemplated by s 48(1)(f) of the Reserves Act and observed that “[I]t might be thought that in these circumstances any difference of view between the two decision makers is unlikely”. The Court did not rule on the legality of the delegation because the Appellant had not pursued the matter. Nevertheless, it seems that had the lawfulness of the delegation been in issue the Court would have ruled it to be unlawful.

In light of the above, we have undertaken a review of the 2013 delegations was undertaken, it would appear some are potentially unlawful and would put Councils in a position of conflict of interest, for example;

a) Those where a Council makes its own decision and then acts under delegation to exercise the prior consent role of the Minister;

b) Those where the Minister’s power to carry out certain actions has been delegated to Councils, including a requirement for the Minister to consult with a Council before exercising the power. In this situation, a Council would end up consulting with itself.


Department of Conservation Te Pūpa Ataehai
Where Kaupapa Ataehai / Conservation House
PO Box 10420, Wellington 6143,
www.doc.govt.nz
In view of the above, the Minister of Conservation is considering a proposal whether to revoke certain delegations and has requested that the Department seek your comments before the Minister makes a decision. Attachment 1 to this letter sets out the delegations proposed to be revoked and contains a column for you to insert your comments/views.

We also take this opportunity to invite you to identify any new delegation proposals that you believe would improve efficiencies for Councils and that you would like the Minister to consider. We ask that you use Attachment 2 for this purpose.

A table of the sections, the power delegated and the reasoning for the revocation is attached, along with a table for any new items you may want considered.

Please forward your responses no later than 26 April 2019 to Sheryll Johnson, sjohnson@doc.govt.nz. All comments will be collated and forwarded to the Minister for a final decision.

Naku noa, nā

Marie Long
Director, Planning, Permissions and Land
## Proposed Delegations for Revocation

<table>
<thead>
<tr>
<th>Section Heading</th>
<th>Power Delegated</th>
<th>Reason</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 14</td>
<td>Local authority may declare land vested in it to be a reserve for certain purposes</td>
<td>Section 14(4) Minister must consider resolution and cause it to be gazetted or refuse to do so</td>
</tr>
<tr>
<td>Section 15</td>
<td>Minister may authorise exchange of reserves for other land</td>
<td>Section 15(1) Minister may authorise exchange provided that Minister not exercise power in respect of a reserve vested in an administering body except pursuant to a resolution of that body requesting exchange Section 15(3) The Minister or the administering body, as the case may require, may do all things necessary to effect any exchange, including the payment of money</td>
</tr>
<tr>
<td>Section 24</td>
<td>Change of classification or purpose or revocation of reserve</td>
<td>Section 24(1) If Minister considers the change of classification or purpose advisable or if the local authority notifies Commissioner that pursuant to a resolution of the local authority of proposed changes, Minister may make changes Section 24(2)(e) Before classification or purpose is changed or reservation revoked, the Minister must consider proposal and, in the case of objections made to an administering body, the administering body's resolution</td>
</tr>
<tr>
<td>Section 41</td>
<td>Management Plans</td>
<td>Section 41(1) Administering body must prepare and submit to Minister a management plan for approval</td>
</tr>
<tr>
<td>Section 42</td>
<td>Preservation of trees and bush</td>
<td>Section 42(1) The destruction of trees and bush on any historic, scenic, nature or scientific reserve may not occur without a permit granted under s 48A or with the express consent of the Minister</td>
</tr>
<tr>
<td>Section 45</td>
<td>Erection of shelters, cabins and lodges</td>
<td>Section 45(1) The administering body may with the Minister’s prior consent approve certain things</td>
</tr>
<tr>
<td>Section 48</td>
<td>Grants of rights of way and other easements</td>
<td>Section 48(1) Where reserve vested in administering body, it may with the consent of the Minister grant rights of ways and easements</td>
</tr>
<tr>
<td>Section 48A</td>
<td></td>
<td>Section 48A(1)</td>
</tr>
</tbody>
</table>
### Attachment B

**Item 26**

<table>
<thead>
<tr>
<th>Section 51</th>
<th>Description</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Use of reserve for communication station</td>
<td>The administering body of a reserve vested in it acting with the consent of the Minister may grant a licence for certain things.</td>
<td>The administering body can give itself consent by exercising the delegation</td>
</tr>
</tbody>
</table>

Section 48A(3)
A licence issued under s 48A(1) must be subject to such terms and conditions as the administering body imposes with the approval of the Minister.

The delegation is inappropriate.
The administering body makes the initial decision on terms and conditions and can then ratify it by exercising the delegated power.

<table>
<thead>
<tr>
<th>Section 51</th>
<th>Description</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction of flora and fauna</td>
<td>For the purpose of restoring, promoting or developing certain reserves, the Minister may authorise the administering body to introduce flora or fauna.</td>
<td>The delegation is inappropriate. The administering body is able to act in its own interests.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Section 53</th>
<th>Description</th>
<th>Action</th>
</tr>
</thead>
</table>
| Powers (other than leasing) in respect of recreation reserves | Section 53(1)(d).
The administering body may prescribe not more than 40 days in any year that the public shall not be entitled to have admission to reserve unless on payment of charges provided that with the Minister’s prior consent the number of days may be increased.

Section 53(1)(e).
The administering body may grant exclusive use of reserve but not for more than 6 consecutive days, with power for licensee to charge admission fees provided that the Minister may consent to an increase in the number of consecutive days. | The delegation is inappropriate. The administering body is able to increase the maximum number of days to exclude the public from a reserve unless they pay money, and then confirm the decision by exercising the delegated power. |

The delegation is inappropriate. The administering body makes the initial decision on closure and can then increase the period by exercising the Minister’s powers.

<table>
<thead>
<tr>
<th>Section 54</th>
<th>Description</th>
<th>Action</th>
</tr>
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</table>
| Leasing powers in respect of recreation reserves (except farming, grazing, or afforestation leases) | Section 54(1).
With the prior consent of the Minister the administering body in which a reserve is vested may lease parts of a reserve to a third party. | The delegation is inappropriate. The administering body makes an initial decision to lease and then exercises the Minister’s powers to grant prior consent. |

<table>
<thead>
<tr>
<th>Section 55</th>
<th>Description</th>
<th>Action</th>
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</thead>
</table>
| Powers (other than leasing) in respect of reserves | Section 55(2)(a).
The administering body of a scenic reserve may, with the prior consent of the Minister, enclose open parts of the reserve.

Section 55(2)(d).
The administering body of a scenic reserve may, with the prior consent of the Minister, set apart areas for gardens, baths, picnic grounds etc for the public.

Section 55(2)(e).
The administering body of the scenic reserve may, with the Minister’s prior consent, erect buildings on the reserve.

Section 55(2)(f).
The administering body of the scenic reserve may, with the prior consent of the Minister, do such things as it considers necessary, including the erection of buildings and structures for public use to obtain the enjoyment of the sea, lake, river or stream. | The delegation is inappropriate. The administering body makes both the initial decision and the Minister’s decision. |

The delegation is inappropriate. The administering body makes both the initial decision and the Minister’s decision.

The delegation is inappropriate. The administering body makes both the initial decision and the Minister’s decision.
<table>
<thead>
<tr>
<th>Section 56</th>
<th>Leasing powers in respect of scenic reserves</th>
<th>Section 56(1)</th>
<th>With prior consent of the Minister, the administering body in the case of a scenic reserve may grant leases or licences</th>
<th>The administering body makes both the initial decision and the Minister’s decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 56</td>
<td>Leasing powers in respect of scenic reserves</td>
<td>Section 56(2)</td>
<td>Before granting a lease, the administering body must give public notice</td>
<td>This delegation is not necessary</td>
</tr>
<tr>
<td>Section 56A</td>
<td>Leasing powers in respect of historic reserves</td>
<td>Section 56A(1)</td>
<td>With prior consent of the Minister, the administering body of an historic reserve may grant leases or licences</td>
<td>The administering body makes both the initial decision and the Minister’s decision</td>
</tr>
<tr>
<td>Section 58</td>
<td>Powers in respect of historic reserves</td>
<td>Section 58(b)</td>
<td>With prior consent of the Minister, the administering body may set apart and use part of an historic reserve for residences for officers and staff</td>
<td>The administering body makes both the initial decision and the Minister’s decision</td>
</tr>
<tr>
<td>Section 59A</td>
<td>Granting of concessions on reserves administered by Crown</td>
<td>Section 59A(1)</td>
<td>The administering body may grant concessions</td>
<td>This seems inappropriate. If administering bodies of vested reserves need the prior consent to Minister to grant leases and licences, why should administering bodies of controlled and managed reserves be able to grant concessions?</td>
</tr>
<tr>
<td>Section 67</td>
<td>Leasing</td>
<td>Section 67(1)(b)</td>
<td>With prior consent of the Minister, the administering body may lease a recreation reserve set apart for racecourse purposes to a racing club</td>
<td>The administering body makes both the initial decision and the Minister’s decision</td>
</tr>
<tr>
<td>Section 72</td>
<td>Farming by another person or body</td>
<td>Section 72(1)</td>
<td>Where a recreation reserve or local purpose reserve is not required for purposes of classification, the administering body may enter into an agreement or lease with the Minister to provide for a third party to carry out farming</td>
<td>The delegation is inappropriate as the administering body would end up entering into an agreement with itself</td>
</tr>
<tr>
<td>Section 73</td>
<td>Leasing of recreation reserves for purposes of farming, grazing, afforestation or other purposes</td>
<td>Section 73(1)</td>
<td>Where recreation reserve not currently required for purposes of its classification, the administering body may with the prior consent of the Minister if reserve vested in the administering body, grant a lease, otherwise only Minister can grant leases</td>
<td>The administering body makes both the initial decision and the Minister’s decision</td>
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<tr>
<td>Section</td>
<td>Description</td>
<td>Delegation Evaluation</td>
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<tr>
<td>Section 73(2)</td>
<td>Likewise, for afforestation</td>
<td>The administering body makes both the initial decision and the Minister’s decision</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section 73(3)</td>
<td>Leases of recreation reserves where inadvisable or inexpedient to revoke reservation of recreation reserve</td>
<td>The administering body makes both the initial decision and the Minister’s decision</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section 73(5)</td>
<td>Prior consent of Minister before any member of administering body becomes the lessee of land under control of administering body</td>
<td>Delegation is inappropriate</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section 73(6)</td>
<td>Any lease under s 73 may with approval of administering body be surrendered</td>
<td>Delegation is unnecessary</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section 74</td>
<td>Licences to occupy reserves temporarily</td>
<td>This delegation is misconceived. This power relates to Crown vested reserves managed by the Department</td>
<td></td>
<td></td>
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<tr>
<td>Section 75</td>
<td>Afforestation by administering body</td>
<td>The administering body makes both the initial decision and the Minister’s decision</td>
<td></td>
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</tr>
<tr>
<td>Section 75(1)</td>
<td>With prior consent of the Minister an administering body of a recreation reserve may afforest it.</td>
<td>The administering body makes both the initial decision and the Minister’s decision</td>
<td></td>
<td></td>
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<tr>
<td>Section 75(2)</td>
<td>Minister may refuse to give consent</td>
<td></td>
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<tr>
<td>Section 16</td>
<td>Classification of reserves</td>
<td>The delegation effectively means the Council consults with itself.</td>
<td></td>
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</tr>
<tr>
<td>Section 16(1)</td>
<td>Minister must by GN classify reserves according to their primary purpose provided that where reserves are controlled or managed by a Council the Minister must not classify without consulting it</td>
<td></td>
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</tr>
<tr>
<td>Section 16(4)</td>
<td>Before classifying a reserve, the Minister must give public notice</td>
<td>If the previous delegation is revoked this will need to be revoked as well</td>
<td></td>
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</tr>
<tr>
<td>Section 18</td>
<td>Historic reserves</td>
<td>The Minister may wish to maintain control of these decisions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section 18(2)(e)</td>
<td>Except where the Minister otherwise determines, the indigenous flora and fauna and natural environment of an historic reserve shall as far as possible be preserved</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section 19</td>
<td>Scenic reserves</td>
<td>The Minister may wish to maintain control of these decisions</td>
<td></td>
<td></td>
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<tr>
<td>Section 19(2)(a)</td>
<td>Except where the Minister otherwise determines, the indigenous flora and fauna and natural environment of a scenic reserve classified for its scenic values shall as far as possible be preserved and exotic fauna and flora shall be exterminated</td>
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<td>Section 24</td>
<td>Change of classification or purpose or revocation of reserve</td>
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<tr>
<td>Section 24(3)</td>
<td>No change of classification or purpose of a scenic, nature or scientific reserve to a recreation, historic, government purpose or local purpose should be made except where the Minister considers the purpose etc no longer appropriate because of destruction of bush or natural features</td>
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<tr>
<td>Section 24(5)</td>
<td>Minister may change the classification or purpose or revoke the reservation of an historic reserve by reason of destruction of historic features</td>
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<thead>
<tr>
<th>Section 42</th>
<th>Preservation of trees and bush</th>
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<tbody>
<tr>
<td>Section 42(1)</td>
<td>Minister must consent to cutting or destruction of bush on any historic, scenic, nature or scientific reserve except in accordance with a permit under s 49A or with the express consent of the Minister and subject to any terms and conditions the Minister chooses to impose</td>
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<tr>
<th>Section 50</th>
<th>Taking or killing of fauna</th>
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<tr>
<td>Section 50(1)</td>
<td>The Minister in the case of a scenic, historic, nature or scientific reserve and the administering body of any recreation, government purpose or local purpose reserve may grant any qualified person authorisation to take and kill any specified type of fauna and authorise the use of firearms etc.</td>
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<tr>
<td>Except where the Minister otherwise determines, the flora and fauna, ecological associations and natural environment and beauty of a scenic reserve classified for the purpose of providing suitable areas to develop for purposes of generating scenic beauty or interest, shall as far as possible be preserved</td>
<td>The Minister may wish to maintain control of these decisions</td>
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<td>The Minister may wish to maintain control of these decisions given the importance of the type of reserve</td>
</tr>
<tr>
<td></td>
<td>The Minister may wish to maintain control of these decisions given the relative importance of historic reserves</td>
</tr>
<tr>
<td>The section 49A permit issue has been dealt with in the table above</td>
<td>The Minister may wish to maintain control over the circumstances of providing express consent to destroying or cutting down bush.</td>
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<tr>
<td>The Minister may wish to maintain control over authorisations on the killing etc of fauna on scenic, historic, nature and scientific reserves</td>
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</table>
Submission to the Department of Conservation

In the matter of the proposal on the revocation of certain delegations to territorial authorities under the Reserves Act 1977

Auckland Council, (X) May – 2019
Mihimihi

Ka mihi ake ai ki ngā maunga here kōrero,
ki ngā pari whakarongo tai,
ki ngā awha tuku kiri o ōna manawhenua,
ōna mana ā-iwi taketake mai, tautihi atu.
Tāmaki – makau a te rau, merau a te tina, wenerau a te mano.
Kāhore tō rito i te ao.

I greet the mountains, repository of all that has been said of this place,
there I greet the cliffs that have heard the ebb and
flow of the tides of time,
and the rivers that cleansed the forebears of all who
came those born of this land
and the newcomers among us all.
Auckland – beloved of hundreds, famed among the
multitude, envy of thousands.
You are unique in the world.
Taitara/ Title: Submission on the revocation of certain delegations to Territorial Authorities under the Reserves Act 1977

Submission to the Department of Conservation.

1. This submission is from Auckland Council (the council) and has been approved by the Environment and Community Committee.

Key Points

2. The council does not support the proposal to revoke 44 of the 50 Ministerial powers within the Reserves Act 1977, delegated to local authorities. The reasons for this are outlined below:

3. Substantive justification for the proposed revocation of delegations has not been proved, and cannot be supported by Auckland Council. The council recommends that the Minister be advised that:
   - the Court of Appeal did not make a decision on the lawfulness of the Ministerial delegations to local authorities under the Reserves Act 1977
   - the Opua decision has been appealed to the Supreme Court
   - the leading court decision on Ministerial delegations to local authorities under the Reserves Act 1977 is the 2004 High Court decision of Gibbs v New Plymouth District Council CIV 2004-443-115
   - there is no justification to change the current Ministerial delegation as the leading court decision supports Ministerial delegations to local authorities under the Reserves Act 1977 as lawful.

4. A clear identification of the problems exercising dual delegations by councils under the Act is lacking and undermines local decision-making and community outcomes. The council recommends that the Minister be advised that:
   - Auckland Council, like other local authorities is very capable and experienced at differentiating and making decisions under the Act as both the administering body and under Ministerial delegation
   - Auckland Council has in the exercise of delegation fulfilled the supervisory intent of the Ministerial powers, to ensure compliance with the requirements of the Act
   - it would be a backwards step to undo decision-making at the local level for local communities. It will cause delay in delivering a range of health, wellbeing and social outcomes under the Auckland Plan for our communities
   - Auckland Council has robust processes and systems to appropriately manage potential or actual conflicts of interest when exercising dual decision-making, including having regard to the Reserves Act Guide 2004. This mitigates the risk raised by the judicial comments in the Opua decision
• the most appropriate place to identify concerns and responses to specific practice by
council when exercising dual decision-making (administering body and under Ministerial
delegation) under the Act is through an update of the Reserves Act Guide 2004. A review
that we note has been pending for several years.

5. Delays in Ministerial decision-making would be inevitable and would be at the expense of local
communities. The council recommend that the Minister be advised that:

• revoking Ministerial delegations will add significant delays to all Reserves Act 1977
processes
• Auckland Council’s ability to be responsive to communities and the changing needs of
customers will be severely impacted. This could lead to a decline in trust and confidence.

Ngā koringa ā-muri/Next Steps

6. Auckland Council is available to discuss and provide its view to the Minister of Conservation
before a decision is made. This is essential given the number of reserves held under Reserves
Act 1977 in Tāmaki Makaurau and the number of New Zealanders we serve.

7. We also strongly urge the Minister to talk to a range of local authorities, including Local
Government New Zealand, before making a decision.

Horopaki/Context

8. This submission responds to correspondence from the Department of Conservation (the
Department) to all Chief Executives of Territorial Authorities dated 14 March 2019.

9. The Department requested feedback on a proposal to revoke Ministerial powers under the
Reserves Act 1977 (the Act) currently delegated to councils. It proposes to revoke 44 of the 50
Ministerial powers currently delegated to local authorities.

10. The Department also requested that territorial authorities identify any new delegation
proposals that would improve efficiencies.

Tunga whānui/Overall Position

Substantive justification for the proposed revocation of delegations has not been proved, and
cannot be supported by Auckland Council

11. The council does not support the proposal to revoke 44 of the 50 Ministerial powers,
delegated to territorial authorities under the Reserves Act 1977.

12. The Department has provided no substantive justification for the proposal.

13. The Department is seeking to justify changes to Ministerial delegations based solely on
comments made by the Court of Appeal in its decision of Opua Coastal Preservation Inc v Far
North District Council [2018] NZCA 262. The Department has expressed a view of the case
that:

• some of the existing Ministerial powers delegated to a council could be potentially
unlawful
councils could have a conflict of interest when they make a decision and then use the delegated Ministerial powers

the requirements for the Minister to consult with the council, may mean that council consults with itself, which is potentially another conflict of interest.

14. We are concerned that the Department is seeking to take action in response to the Opua decision, yet the court did not reach a conclusion on the lawfulness of the dual decision-making process in this case. The Department, in undertaking this review, expressly acknowledges that the Court may have decided about the legality of the delegation of Ministerial powers had the Court considered it.

15. Auckland Council respectfully submits that the Department is erring in its advice to the Minister of Conservation regarding the voracity of the comments made by the Court of Appeal.

16. The Opua decision has been appealed to the Supreme Court, which could make any changes premature.

The Department has overlooked case law on the lawfulness of Ministerial delegations

17. The leading decision on Ministerial delegations to local authorities under the Act, is the 2004 High Court decision of Gibbs v New Plymouth District Council CIV 2004-443-115.

18. This decision supports the Ministerial delegations to local authorities as lawful.

19. The council argues that this legal case should be relied on, rather than judicial comments on a case under appeal to the Supreme Court.

20. We recommend that the Minister be advised that:

- the Court of Appeal did not make a decision on the lawfulness of the Ministerial delegations to local authorities under the Reserves Act 1977
- the Opua decision has been appealed to the Supreme Court
- the leading court decision on Ministerial delegations to local authorities under the Reserves Act 1977 is the 2004 High Court decision of Gibbs v New Plymouth District Council CIV 2004-443-115
- there is no justification to change the current Ministerial delegation as the leading court decision supports Ministerial delegations to local authorities under the Reserves Act 1977 as lawful.

A clear identification of the problems exercising dual delegations by councils under the Act is lacking and undermines local decision-making and community outcomes

21. Delegation of Ministerial powers to local authorities under the Reserves Act 1977 have taken place since 1999. This was intended to deliver three primary outcomes:

- devolution of a high level of decision-making to local authorities
- greater flexibility in the approach to reserves management
- standardisation and updating of process and terminology.
22. Further delegation of the Ministerial powers to local authorities in 2013 sought to allow for improved decision-making at a local level. It also recognised that the Ministerial powers were supervisory to ensure compliance with the requirements of the Act.

23. The council does not support any proposal that will undermine the primary outcomes sought from improved delegation under the Act. It would be a backwards step to unwind decision-making at the local level and to disempower local communities. There is also a risk that the proposed changes will reduce our ability to deliver a range of health, wellbeing and social outcomes under the Auckland Plan for our communities.

*Auckland Council has experience and clear systems and processes to exercise its responsibilities and delegations under the Act*

24. There is no clear and compelling problem definition to support the Department’s proposal. No evidence has been provided by the Department to illustrate unlawful or persistent problems by local authorities exercising dual decision-making under the Act. No evidence has also been provided about local authorities being unable to recognise and manage potential or actual conflict of interest in dual decision-making.

25. The council has more than 20-years’ experience exercising its responsibilities and delegations under the Act. We have invested in clear systems and processes to discharge our functions under the Act and to lawfully use Ministerial delegations.

26. Auckland Council, like other local authorities, is very capable of differentiating and making dual decisions under the Act as both the administering body and under Ministerial delegation.

27. The council has exercised these Ministerial delegations lawfully and responsibly in service to local communities. We have fulfilled the supervisory intent of the delegated Ministerial powers, to ensure compliance with the requirements of the Act.

28. Elected members across Auckland Council are experienced at making decisions in an independent and objective manner. This includes making many separate decisions with different legal requirements and acting in different statutory roles. This is business as usual for local authority decision-makers.

29. Auckland Council as a unitary authority frequently balances both territorial and regional responsibilities and the inherent conflicts of interest that some of these responsibilities pose. The dual governance structure made up of the Governing Body: Mayor and 20 councillors; and 21 local boards also provides an additional layer of challenge and scrutiny in decision-making.

30. Elected officials are supported in their decision-making capacity with formal training and staff advice.

31. We have processes and systems to manage any actual and potential conflicts of interest, particularly for dual decision-making situations: as an administering body, under Ministerial delegation, in quasi-judicial circumstances and as a territorial authority with regional council oversight.

32. These dual roles are frequently implemented for the same proposal. Key examples include landowner and resource consent approval; asset-owner, service provider and environmental compliance, monitoring and enforcement.
33. The council considers that the many processes, systems and practices we have in place allow legally robust dual decision-making while managing any potential or actual conflict of interest. This mitigates the risk raised by the judicial comments in the Opua decision.

34. We are also guided by the Reserves Act Guide 2004 and through sharing and debating practice with other local authorities and officials from the Department.

35. The council recommends that the Minister be advised that:
   - Auckland Council, like other local authorities is very capable and experienced at differentiating and making decisions under the Act as both the administering body and under Ministerial delegation
   - Auckland Council has in the exercise of delegation fulfilled the supervisory intent of the Ministerial powers, to ensure compliance with the requirements of the Act
   - it would be a backwards step to undo decision-making at the local level for local communities. It will cause delay in delivering a range of health, wellbeing and social outcomes under the Auckland Plan for our communities
   - Auckland Council has robust processes and systems to appropriately manage potential or actual conflicts of interest when exercising dual decision-making, including having regard to the Reserves Act Guide 2004. This mitigates the risk raised by the judicial comments in the Opua decision
   - the most appropriate place to identify concerns and responses to specific practice by council when exercising dual decision-making (administering body and under Ministerial delegation) under the Act is through an update of the Reserves Act Guide 2004. A review that we note has been pending for several years.

Ngā whakaaweawe a Kaunihera/Impacts on council

36. The following section outlines the impact the revocation of delegations under the Reserves Act 1977 would have, should the proposal proceed.

Auckland is experiencing fast-paced growth and we need to empower and meet diverse community needs

37. Tāmaki Makaurau is the largest and fastest growing region in New Zealand.

38. Auckland’s parks and reserves provide critical social infrastructure that support and respond to this growth. They provide opportunities for all Aucklanders to participate in sport and recreation and for a range of social and environmental outcomes.

39. Tāmaki Makaurau is one of the most diverse cities in the world with over 180 ethnicities. 40 percent of the population was born overseas.

40. It is essential that council have the most efficient and effective decision-making processes. This enables the council to provide accessible services, social and cultural infrastructure that are responsive to Aucklanders diverse and evolving needs.

41. The Ministerial delegations are essential to manage the enormous scale and volume of decisions that are required for the effective and efficient administration of reserves, as required under the Reserves Act 1977.
42. Tamaki Makaurau has over 4000 parks and reserves amounting to over 18,000 parcels of land. Auckland Council also has 792 leases that authorise sporting and community organisations to occupy recreation reserves and local purpose reserves.

43. The continually evolving processes and systems that council has had in place to implement the delegations since 1999 has ensured that council can deliver effective service for our local communities under the Reserves Act 1977.

Delays in Ministerial decision-making would be inevitable and would be at the expense of local communities

44. The number of reserves that we administer means council will likely request decisions from the Minister on weekly basis if the delegations were to be revoked. These decisions would relate to:
   - reserve management plans
   - classification (recreation, scenic, historic, local purpose) and reclassification
   - land exchanges
   - easements
   - leases and licences.

45. Seeking approval under the Reserves Act 1977 from the Department on any of the above matters would lead to significant delays. The council also seeks an understanding from the Department on how it proposes to resource the significant volume of work required to process these decisions.

46. These delays would have a pronounced impact on our ability to deploy and manage community infrastructure, programmes and activities that are core to our local government function. It would reduce our ability to effectively improve the quality of our environment and social wellbeing across our communities.

47. These issues would be exacerbated in Auckland because of growth and associated high-speed change in infrastructure and the tensions around the delivery of multiple outcomes from scarce resources managed under the Reserves Act 1977.

48. The council is concerned that the Ministerial decision-making would be undertaken with little understanding of the local issues. We do not see any benefit to decision-making from this perspective and we are concerned that this would ultimately cause unnecessary delay to delivering health and wellbeing benefits to our local communities. This could lead to a decline in trust and confidence in local and central government.

49. The proposed revocation of delegations will mean that the Minister (or delegate in the Department) will largely focus on whether procedural steps were followed.

50. The council recommend that the Minister be advised that:
   - revoking Ministerial delegations will add significant delays to all Reserves Act 1977 processes
   - council’s ability to be responsive to communities and the changing needs of customers will be severely impacted. This could lead to a decline in trust and confidence.
Ngā koringa ā-muri/Next Steps

51. Auckland Council is available to discuss and provide its view to the Minister of Conservation before a decision is made. This is essential given the number of reserves held under Reserves Act 1977 and the number of New Zealanders they serve.

52. We also strongly urge the Minister to talk to a range of local authorities, including Local Government New Zealand, before making a decision.