

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, (*Opuā 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.

¹ *Opuā Coastal Preservation Incorporated v Far North District Council & Others* [2018] NZCA 262 20 July 2018.

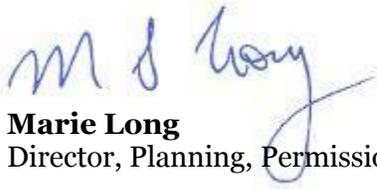
In view of the above, the Minister of Conservation is considering a proposal whether to revoke certain delegations and has requested that the Department seek your comments before the Minister makes a decision. Attachment 1 to this letter sets out the delegations proposed to be revoked and contains a 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.

Nāku noa, nā

A handwritten signature in blue ink, appearing to read 'M Long', is positioned above the printed name and title.

Marie Long
Director, Planning, Permissions and Land