

**Date:** Thursday 18 April 2019  
**Time:** 9.30am  
**Meeting Room:** Upper Harbour Local Board Office  
**Venue:** 30 Kell Drive  
Albany

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## Upper Harbour Local Board

### OPEN MINUTE ITEM ATTACHMENTS

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# 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 awa tuku kiri o ōna manawhenua,  
ōna mana ā-iwi takelake mai, tauwi atu.  
Tāmaki – makau a te rau, murau a te tini, wenerau  
a te mano.  
Kāhore tō rite 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.*

**Ko te tāpaetanga o te Kaunihera o Tamaki Makaurau**

**Auckland Council Submission**

(X) May 2019

**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 Opuia 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 Opuia 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 urges 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 Opuia 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 Opuia 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 Opuia 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 Opuia 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 Opuia 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. Tāmaki 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 urges the Minister to talk to a range of local authorities, including Local Government New Zealand, before making a decision.

DRAFT



Upper Harbour Local Board  
12 May 2015



15 Local Dog Access Review Statement of Proposal

Resolution number UH/2015/54

MOVED by Chairperson LM Whyte, seconded by Member MA Miles:

That the Upper Harbour Local Board:

- a) adopt the following options in relation to the dog access rules reviewed:

Topic	Option
Dog access on current time and season beaches	Option 1: Retain on-leash access on Christmas Beach, allow under control off-leash access on all other foreshore areas except as identified under 'wildlife protection'.
Wildlife and habitat protection	Option 1: Prohibit dogs on the shell banks adjacent to Bomb Bay, Limeburner's Bay and Orukuwai Point, and allow dogs on-leash in Brigham Creek, Paremoremo Creek, Lucas Creek, and Hellyers Creek (staff recommended option).
High use parks	Option 2: Allow dogs on-leash on parts of Keil Park, Collins Park and Rosedale Park, allow dogs on-leash on all of Albany Lakes and Christmas Beach Park, retain the off-leash rule on Hobsonville Coastal Walkway, Luckens Landing, Wainoni Park, Hooton Reserve, and implement the Sanders Reserve management plan.
Kauri dieback on Gills Road Reserve and Paremoremo Scenic Reserve	Option 2: Apply on-leash rule.
Bushwalks	Option 1: Allow dogs under control on-leash.
Picnic areas, fitness apparatus areas and 20 metres of beaches	Option 2: Replace current general rule with a specific rule for high use area of parks.

- b) confirm its intention to amend the Auckland Council Policy on Dogs 2012 pursuant to section 10(8) of the Dog Control Act 1996.
- c) subject to any amendments to reflect the local board decision in (a):
- i) adopt the Statement of Proposal titled 'Statement of Proposal Amendments to Auckland Council Policy on Dogs 2012 – Upper Harbour Local Board Area May 2015' in Attachment A for public consultation using the special consultative procedure.
- confirm that the proposed amendments contained in the Statement of Proposal:
  - are consistent with the policy, principles and criteria for making dog access rules contained in the Auckland Council Policy on Dogs 2012.



Upper Harbour Local Board  
12 May 2015

Upper Harbour  
Local Board  
Auckland Council 

- are not inconsistent with any decision in relation to region-wide dog access rules contained in the Auckland Council Policy on Dogs 2012.
- are in accordance with relevant legislative requirements in particular the Local Government Act 2002 and Dog Control Act 1996.
- ii) authorise the Manager Social Policy and Bylaws to make any minor edits or amendments to the Statement of Proposal to correct any identified errors or typographical edits.
- iii) authorise the Manager Social Policy and Bylaws, in consultation with the Chairperson, to make any amendments to the Statement of Proposal to reflect decisions made by the local board.
- d) appoint and delegate a panel of the whole of the board to receive, hear, deliberate and resolve on submissions and other relevant information.

CARRIED

Item 16

Attachment A

08 April 2019

Open Letter to His Worship the Mayor  
Auckland Council Governing Body  
Phil.Goff@aucklandcouncil.govt.nz

Your Worship

The 21 Local Board Chairs of Auckland Council hold significant concerns as to what appears to be a gradual but consistent reduction of subsidiarity in their shared governance role within Auckland Council.

In 2017 a review was conducted by Gareth Stiven<sup>1</sup> on the shared governance model of Auckland Council. His report identified Local Boards did not hold enough subsidiarity delegations. His report provided multiple recommendations to the Governing body to improve the governance role of Local Boards, these were addressed under four themes:

- organisational structures and culture have not adapted to the complexity of the model<sup>2</sup>
- complementary decision-making, but key aspects of overlap
- lack of alignment of accountabilities with responsibilities
- local boards are not sufficiently empowered.

As a result, the Governance Framework Review Political Working Party was formed, with participants chosen by yourself, to identify priority recommendations and progress implementation of those including delegations and decision making. This work is fundamental to ensuring the intention of the Act<sup>3</sup> is fulfilled.

It is an irony that Local Boards now find themselves in a worse position than in 2017 in terms of their input into decision making on by-laws, as per the Act.<sup>4</sup>

*s16 (b) identifying and communicating the interests and preferences of the people in its local board area in relation to the content of the strategies, policies, plans, and bylaws of the Auckland Council;*

For example, in the current consultation on the "Policy on Dogs" and "Dog Management Bylaw" Local Boards have been invited to speak to the Hearings Panel with their input **before** the consultation period closes. This is not appropriate if Local Boards are to identify and communicate the interests and preferences of their local board area.

This by-law is going through a formal consultation process, therefore Local Boards should be receiving and analysing the formal feedback before they present their community's views to the Hearing Panel.

<sup>1</sup> Governance framework review 17 November 2016 FINAL REPORT

<sup>2</sup> Governance framework review 17 November 2016 FINAL REPORT, p6

<sup>3</sup> Local Government (Auckland Council Act 2009)

<sup>4</sup> Local Government (Auckland Council Act 2009) s16

A similar approach was taken with the 'Freedom Camping in Vehicles Bylaw' where by Local Boards were again limited to their input in the process of the development of the by-law.

There has been no sympathy from the Community and Social Policy Department in response to the advocacy of many Chairs on the right for their governance role to be respected. They are unmoved. In fact, one Chair has been advised they may attend a formal 'Have Your Say' event but may not speak.

The 21 Local Board Chairs are united in their concerns over limitations being placed over our legislated roles for our communities. This culture of marginalising Local Board's input and undermining of the shared governance model is particularly an issue we have encountered within the Community and Social Policy Department.

It is unclear to us why the previous practice of Local Board input has changed, particularly when we are dealing with internal Council processes where the Council organisation is totally in control of the timeframe and could easily add in time to properly include Local Boards as required by the legislation and allocation table.

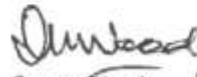
Another consequence of the limitation of our input is that it places us in a difficult position with our communities. The perception is we are not fulfilling our responsibilities on their behalf and as the first point of contact for the public we are front facing their understandable angst with no apparent recourse to adjust the current process.

We respectfully request a meeting with you and a delegation of local board chairs to discuss our concerns.

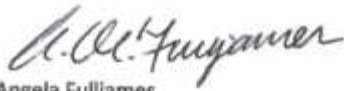
Yours sincerely



Peter Haynes  
Chair – Albert Eden Local Board



George Wood  
Chair – Devonport Takapuna Local Board



Angela Fulljames  
Chair – Franklin Local Board



Izzy Fordham  
Chair -Great Barrier Island Local Board



Shane Henderson  
Chair - Henderson-Massey Local Board



Julia Parfitt  
Chair - Hibiscus and Bays Local Board



David Collings  
Chair – Howick Local Board



Leumaga Lydia Sosene  
Chair - Māngere-Ōtāhuhu Local Board



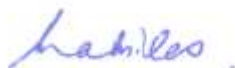
Angela Dalton  
Chair – Manurewa Local Board



Lotu Fuli  
Chair – Ōtara-Papatoetoe Local Board



Harry Doig  
Chair - Puketāpapa Local Board



Margaret Miles  
Chair – Upper Harbour Local Board



Greg Presland  
Chair – Waitākere Local Board



Tracy Mullholland  
Chair - Whau Local Board



John Gillon  
Chair – Kaipātiki Local Board



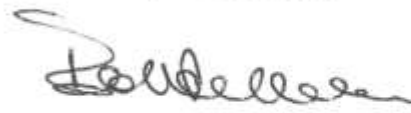
Chris Makoare  
Chair – Maungakiekie-Tāmaki Local Board



Kit Parkinson  
Chair - Ōrākei Local Board



Brent Catchpole  
Chair - Papakura Local Board



Beth Houlbrooke  
Chair – Rodney Local Board



Cath Handley  
Chair – Waiheke Local Board



Pippa Coomb  
Chair – Waitemātā Local Board





**From:** Michael Sinclair, Policy Manager, Community and Social Policy  
**Sent:** Tuesday, 16 April 2019 10:22 AM  
**To:** GRP AC All Local Board Members **Cc:** Adam Milina <Eric Perry <Glenn Boyd <Helgard Wagener <Lesley Jenkins <Manoj Ragupathy >; Nina Siers <Rina Tagore <Trina Thompson <Victoria Villaraza  
**Subject:** Auckland Council Policy on Dogs and Dog Management Bylaw Hearings Panel

*Last week staff received a copy of the letter sent from the 21 Local board chairs to the Mayor raising concerns about when and how local boards get to present their views to the hearings panel during formal consultation on bylaws. In response to this; and subsequent meetings with the Mayor's office, the meeting for the local board to present to the hearings panel on the Auckland Council Policy on Dogs and Dog management Bylaw will now be moved from the last week of the consultation period (3 May) to the first day of the panels deliberations (21 June).*

*This will mean that the Local Boards will:*

- *have an extra month to resolve delegations to speak and/or formalise their views through a business meeting if they want to*
- *have access to all of the submissions (sorted by local board) when these are posted on-line and*
- *have access to the deliberations report containing the summary of all submissions at the same time as the hearings panel members get it (typically four days before deliberations commence)*

*Local Boards will not have their views on the statement of proposal included in the deliberations report; as these would not have been received prior to the report being drafted; but the hearings panel will consider the views presented to them and a summary of these will be able to be included in the panels report back to the Governing Body.*

*In order to further assist local boards to understand the views of their community, we will also:*

- *sorting all of the submissions by local board when they are uploaded to the web and*
- *let the local boards know when the deliberations report and submissions goes online*

*As we have received high volumes of submissions on this proposal (over 2000 on-line submission were completed in the first 10 days), we will also be pushing the deliberations back a couple of weeks to give staff sufficient time to process and analyse all of the submissions. The new dates for deliberations will be:*

- *Friday 21 June, 9.30am – 1.00pm . Local boards present views to the Hearings panel*
- *Friday 21 June, 1.30pm – 5.00pm. Deliberations commence*
- *Wednesday 26 June, 12.30pm – 5.00pm. Deliberations session 2.*
- *Wednesday 3 July, 1.30pm – 5.00pm. Deliberations session 3.*
- *Thursday 4 July, 1.00pm – 5.00pm. Deliberations back up (if required).*
- *Friday 5 July, 1.00pm – 5.00pm. Deliberations back up (if required).*