

Governance framework review: Reserves Act land exchanges

Purpose

1. At the Political Working Party meeting on 13 July, you asked for further options in regard to the decision-making roles for land exchanges under s 15 of the Reserves Act 1977 (Reserves Act), including advice on whether this could be delegated to local boards.

Status quo: land exchange

2. Occasionally, opportunities will arise for the mutually beneficial exchange of land between the council and another landowner, through boundary adjustments or outright 'swapping' of land. Open space acquisition opportunities, including land exchanges, are assessed against the criteria of the council's Parks and Open Space Acquisition Policy and Parks Provision Policy.
3. A review of council decisions over the last three years indicates that there have been two reserve land exchanges during this time: the Three Kings Quarry reserve exchange and a proposed exchange at Northboro Reserve in Belmont. Both of these came about because of proposals for development.
4. For example, the Northboro Reserve exchange (which is part of a development proposal by Ngāti Whātua Ōrākei Whai Rawa Limited and is currently being consulted on) includes a proposed land exchange of 1802m² of Northboro Reserve in Belmont for 3510m² of other land within the Hillary Crescent Special Housing Area. The proposed exchange aims to improve physical access to the reserve and the recreation opportunities for the community. Exchange of other, non-reserve land is a governing body decision.
5. The proponent of the land exchange may be required to undertake remediation or development of the 'new' reserve, or make some payment to the council and must cover the costs of the land exchange. There will be operational and maintenance costs associated with proposals.
6. As described in the discussion document provided to you in advance of the 8 June meeting, reserve land exchanges require a decision by the council as an administering body, as well as a Ministerial decision. The Ministerial decision has been delegated to local authorities where the exchange relates to a completely council-owned reserve. A decision to exchange land under the Reserves Act involves:

- A decision to acquire some land and dispose of other land (acquisition and disposal of assets are non-regulatory decisions and currently allocated to the governing body), and
 - A classification and revocation decision (which are regulatory decisions).
7. Advice sought by the Political Working Party, and distributed on 20 June 2017, confirms that an exchange decision under the Reserves Act is a regulatory decision, and therefore currently the governing body's responsibility under s 15(1)(a) of the Local Government (Auckland Council) Act 2009.
8. This means that if the decision is to be exercised by local boards, it must be delegated by the governing body in accordance with clause 36C of Schedule 7 of the Local Government Act 2002. However, clause 32 of Schedule 7 of the LGA provides that the governing body cannot delegate the power to purchase or dispose of assets, other than in accordance with the Long-Term Plan.

Possible changes to financial decision-making for local boards

9. Under the two options being considered through the finance and funding workstream, some changes are proposed to decision-making on the disposal and acquisition of assets. It is proposed that:
- Local boards are allocated final decision-making on the disposal and acquisition of service assets where they have been subject to the "service property optimisation" policy administered by Panuku (no changes to decision-making are proposed on non-service properties).
 - Decisions on the acquisition of major assets continue to be made by the governing body and funded through general rates.

Options

10. The possible options for changes to the decision-making roles for land exchanges are:
1. Status quo: reserve exchange decisions continue to be made by the governing body, with local boards consulted on the decision
 2. Delegate reserve exchange decisions to local boards (subject to the statutory tests being met)
11. The options have been assessed against the criteria agreed to by the Political Working Party. This analysis is contained in Table 1.

Table 1 – assessment of options against agreed criteria

Criterion	Option 1	Option 2
Consistency with the statutory purpose of local government (s10 LGA)	Yes	Yes
Does the option contribute to improving role clarity between the two arms of governance, both internally and for the public?	Minimal	Minimal
Does the option provide for decision making at the appropriate level, as set out in s17 of the LGACA and reflect the subsidiarity principle	<p>Acquisition and disposal decisions (one part of the exchange decision) are allocated to the governing body as these have financial impacts, and currently the governing body is responsible for setting rates.</p> <p>If there are no financial impacts of a proposed exchange, this argument holds less weight. However, this would then create different decision-makers depending on the particular financial implications of the exchange. In practice, there will nearly always be financial implications of an exchange of assets.</p>	<p>It would align this with other decisions of local boards about the use of reserves, e.g. landowner consent.</p> <p>However, this would create a decision-making right for local boards over acquisition and disposal of reserve land (in the case of exchanges), but not over other assets, unless the changes to funding and financing of local boards are progressed.</p>
Does the option provide for increased empowerment of local boards, especially in their place shaping role?	No	Yes

Criterion	Option 1	Option 2
Does the option ensure accountability and incentives for political decisions?	The accountability sits with the governing body.	A delegation could provide a level of influence to local boards over the outcome of RMA plan change and consent decisions (which currently sit with the governing body).
What is the administrative feasibility of the option, including efficiency and feasibility of implementation?	Is feasible	Is feasible
Does the option contribute to improved community engagement with and better services for Aucklanders?	No change	No change

Conclusion and potential recommendations

12. In summary, we do not recommend that reserve exchange decisions should be delegated to local boards, for the following reasons:

- Delegating this decision would create a different set of decision-making rights (on acquisition and disposal) for reserves in comparison to other assets that are under local control. For example, where small parcels of land are acquired or disposed of outside of the Reserves Act, the governing body would continue to be the decision-maker.
- The decision-maker (either the governing body or the relevant local board) would differ depending on the financial implications of the reserve exchange, which creates uncertainty. For example, if a proposed exchange were to have an impact on debt, the decision-maker would need to be the governing body.
- Delegating reserve exchange decisions could have the effect of providing a veto right to local boards over the outcome of some RMA plan change and consent decisions (which are governing body decisions). This would introduce further complexity, time and cost to these processes.