

# **Governance framework review discussion document: allocations and delegations**

## **Introduction**

This document is designed to assist the political working party (PWP) and the executive steering group overseeing the implementation of the governance framework review.

It sets out the work of the project team on specific issues in a structured way to facilitate discussion of the options and the development of recommendations for the governing body. It is one of a series of papers that will be presented to the working party as part of the process of considering the governance framework review's recommendations.

The first part of the paper gives a brief outline of the purpose of this paper and the problem definition, it also provides context and outlines any previous relevant decisions.

The second part of the paper outlines potential options or proposed responses to specific issues. It also provides an indicative assessment of the various options against the agreed criteria.

Each paper will be considered by the political working party at one of its workshops in May and June and will be supported by a presentation by workstream leads and other relevant staff e.g. finance, legal, local board services.

## Purpose

1. This paper covers recommendations from the governance framework review relating to the allocation and delegation of specific decision making powers between local boards and the governing body.

## Background

2. The Governance Framework Review (GFR) explored issues around a lack of role clarity and potential overlaps in role between the two arms of governance, misaligned incentives and the fact that local board powers on paper may not align in practice. Most of these themes are related in some way to the core roles that local boards and the governing body are designed to fulfil, and the resulting allocation of decision-making between the two.
3. The GFR report noted the complementary, but potentially overlapping, roles of the two governance arms of Auckland Council, and that the governance reforms had intended that the two each had “a distinct and complementary role to play in the overall governance of the Auckland region”.
4. With respect to the specific decision-making responsibilities, the GFR report noted that most of the individuals canvassed through the review “felt that the split of decision-making allocation was reasonably well understood and sensible”, but there were several areas where the allocation (and / or delegations) were challenged.
5. However, the report also noted that there can be a misaligned incentive for local boards to act in the purely local interest despite possible regional impacts, and recommended that a process be established that enabled the governing body to “call in” decision making over local assets in circumstances where the regional impacts would be significant. This report considers options for change in relation to that issue.
6. In regard to areas where the allocation (and/or delegation) of responsibilities was challenged, some of these issues have been superseded by legislative change, or are part of other work programmes that are currently underway. These covered:
  - Delegated responsibilities for granting swimming pool fencing exemptions – the issues identified in the GFR report have been superseded by legislative change that aligns the granting of swimming pool fencing exemptions with other safety and building regulation powers in the Building Act, which are delegated to staff

- Delegated responsibilities for setting time and season rules for dog access – in March 2017 the Regulatory Committee of the Governing Body resolved to begin the Dog Management Review, which encompasses a review of the effectiveness of the Dog Management Bylaw 2012 and Policy on Dogs 2012 (REG/2017/16). The review will be completed before 2019, with an issues and options paper expected in November 2017.
- The role of local boards in regard to resource consent applications – in September 2016 the previous Hearings Committee adopted the recommendations of the Local Board Involvement in Resource Consents Working Party about the role of local boards in resource consents. This included refinement of the triggers for providing information about resource consent applications to local boards, and adopting a standard practice for local boards to speak to local views and preferences in hearings.

### **Connections to other workstreams in this project**

7. The Finance and Funding workstream is looking at options for changes to local board funding. Depending on the outcome of this workstream, there may be impacts for the allocation of non-regulatory decision-making. This workstream will be further considered by the Political Working Party on 21 June.
8. A separate workstream is looking at the interface between Auckland Transport and local boards, place-making (including considering delegations). This workstream will also be considered by the Political Working Party on 21 June.

### **Structure of this paper**

9. This paper has two parts. The first part examines the proposal to make provision for local decisions to be made on a regional basis in circumstances where they may have impacts that will be felt regionally.
10. The second part of the paper focuses on:
  - A detailed analysis of decisions under the Reserves Act, and whether there is a case to delegate or allocate some decisions to local boards, and in what circumstances; and
  - Changes to the allocation of decision-making to clarify the practical role of local boards with respect to open space acquisitions.

## Part 1: Local decisions that may have regional impact

11. The Governance Framework Review report concluded that the current model *“provides limited incentives for local boards to consider local assets in a regional context, or contemplate divestment or re-prioritisation of assets or facilities in their local board areas. This leads to situations where conflict between local decision-making and regional decision-making arises”*.
12. The report cites the hypothetical example of a local sports field which has been identified as having a capacity to be developed to contribute to the regional strategy to grow the capacity of the existing regional sports fields network.
13. In this scenario, the local board does not support this development because of the possible impacts on local residents of increased noise, traffic and light. Under current allocations, the local board has the ability to decide against the development on the basis of those local concerns. In this situation, the regional impact of that decision is the resultant shortfall in sports field capacity.

### *Frequency and scale of these problems*

14. Further investigation into possible circumstances where this might arise indicates that, in the more than six years since amalgamation, these situations have arisen reasonably infrequently. Where they have occurred, they are often about the use of assets and land which are under pressure.
15. While it is difficult to conclusively quantify how often these situations will occur, it appears likely that they will remain reasonably infrequent in the future. However, as growth continues and pressure on services and assets increases, it is possible that they may occur more frequently.
16. Where they have occurred, the GFR report notes that “the process and the outcomes have not been collaborative” and have led to local boards feeling disempowered and contributed to an “us-and-them” mentality.
17. While the current system may not necessarily provide the right incentives for local board members to consider the regional impacts of a decision, it does not necessarily follow that a local board will not do so if it receives appropriate advice.

### **Call-in right**

18. To address this, the GFR report recommended a process which would allow the governing body to “call-in” decisions about local assets where there is an important regional priority.
19. A broad “call-in” right of decisions explicitly and unambiguously allocated to local boards, as recommended by the GFR report, is not available under LGACA or

the LGA. Non-regulatory decisions must be allocated to either the governing body or local boards. Once a decision has been explicitly and unambiguously allocated to local boards, then they are responsible for it and the governing body is not.

20. However, it is possible for the governing body to allocate non-regulatory decision-making over local services and assets to itself, where that allocation is consistent with the principles in s 17 of LGACA.

## Options

21. The following options have been developed as a possible means of addressing the problem identified above.

**Table 1 – Description of options for decision-making with possible regional impact**

Option	Description
1. Enhanced status quo	No change to decision-making roles or processes, but a focus on council staff ensuring that advice to local boards covers possible regional implications of a particular decision, where they exist.
2. Establish a process to achieve a solution that recognises both regional and local priorities	<p>This option would involve a process between the two arms of governance being made available. This option would provide a vehicle to bring both arms of governance together, where there is an important regional priority impacting on a local asset, and a possible conflict with local priorities.</p> <p>The purpose would be to attempt to reach a solution, before decisions are made, that appropriately provides for regional and local priorities. Preferably, this process would be put into place before a dispute arises. This option does not represent any change to decision-making roles.</p>
3. An amendment to the allocation of non-regulatory decision-making	<p>This option would involve an amendment to the allocation of non-regulatory decision-making to allocate to the governing body decision-making responsibility over an asset that is currently local in a situation <i>where there is a regional or sub-regional need or impact</i>.</p> <p>A process with agreed criteria should be developed to identify when this allocation is intended to apply (discussed further below). This could incorporate elements of option 2.</p> <p>The decision-making allocation would relate to specific decisions about the local asset; it would not extend to ongoing governance over it. The process could be triggered by either a local board or the governing body.</p>
4. As per option 3, with the decision then delegated to a joint committee made up of local board and governing body members	<p>This option would involve the same amendment to the allocation of decision-making as in option 3.</p> <p>Once a decision has been identified as meeting the criteria, the governing body would delegate that decision to a joint committee made up of local board and governing body members to consider the issue, consult where appropriate and make a decision.</p> <p>The composition of the committee could be determined by the governing</p>

Option	Description
	body, or jointly by agreement.

22. These options have been assessed against the assessment criteria agreed to by the Political Working Party in Table 2.

23. Options 3 and 4 cannot be used to 're-make' a decision that a local board has made and is within its rights in doing so. Once a final decision has been made, and has been communicated to affected parties, the decision cannot be revoked, remade or modified. Any attempt to re-make a decision carries a significant risk of successful legal challenge.

### **Identifying criteria for regional impact**

24. Options 3 and 4 both involve amending the allocation table to allocate decision making over local assets to the governing body where there is a clear regional or sub-regional need or impact. As identified in each option, however, it will be important to have an established set of criteria (or a policy) to identify when the allocation to the governing body is intended to apply, and a process for resolving disputes as to the appropriate decision-maker.

25. The criteria should reflect the principles in s 17 of LGACA, and may include factors such as:

- The impact on services for all Aucklanders, including the ability to maintain current levels of service
- Whether a service or asset may have a 'catchment' that extends beyond the local board area, and may be more regional or sub-regional in nature
- The likely financial impact of a decision
- Where there is an important regional (or national) priority project e.g. a regional development priority

26. If the Political Working Party wishes to progress either option 3 or 4, we can develop a refined set of criteria for consideration and inclusion in final recommendations.

### *Mitigation measures*

27. If option 3 or 4 was progressed, it would be appropriate to consider measures to mitigate the local impact. This could include some elements of the process in option 2, should option 3 or 4 be progressed. Any mitigation measures would need to be made on a case-by-case basis in light of the situation at hand.

Table 2 – Assessment of options

	<b>1 Enhanced status quo</b>	<b>2 Establish a process to achieve a solution that recognises both regional and local priorities</b>	<b>3 Amendment to the allocation of decision-making</b>	<b>4 As per option 3, with the decision delegated to a joint committee made up of local board and governing body members</b>
1. <i>Consistency with the statutory purpose of local government (s10 LGA)</i>	<ul style="list-style-type: none"> <li>• Yes</li> </ul>	<ul style="list-style-type: none"> <li>• Yes</li> </ul>	<ul style="list-style-type: none"> <li>• Yes</li> </ul>	<ul style="list-style-type: none"> <li>• Yes</li> </ul>
2. <i>Does the option contribute to improving role clarity between the two arms of governance, both internally and for the public?</i>	<ul style="list-style-type: none"> <li>• No impact</li> </ul>	<ul style="list-style-type: none"> <li>• No impact</li> </ul>	<ul style="list-style-type: none"> <li>• Internally – negative impact</li> <li>• Externally – negative impact</li> </ul>	<ul style="list-style-type: none"> <li>• Internally – negative impact</li> <li>• Externally – negative impact</li> </ul>
3. <i>Does the option provide for decision making at the appropriate level, as set out in s17 of the LGACA and in accordance with the subsidiarity principle</i>	<ul style="list-style-type: none"> <li>• Some decisions that may be more appropriately made regionally will continue to be made locally</li> </ul>	<ul style="list-style-type: none"> <li>• This should increase awareness of regional and local implications for both arms of governance, and may create an impetus to reach agreement about a way forward. However, it does not change decision-making roles</li> </ul>	<ul style="list-style-type: none"> <li>• In theory this would mean that decisions with a regional impact will be considered regionally, although it will depend strongly on how the criteria are defined</li> </ul>	<ul style="list-style-type: none"> <li>• This would mean that decisions with both local and regional impact will be made by a committee that represents both of those perspectives. However, as for option 3 it will depend strongly on how the criteria are defined</li> </ul>
4. <i>Does the option provide for increased empowerment of local boards, especially in their place shaping role?</i>	<ul style="list-style-type: none"> <li>• No impact</li> </ul>	<ul style="list-style-type: none"> <li>• It may provide marginally more empowerment for local boards through perceived leverage over the GB</li> </ul>	<ul style="list-style-type: none"> <li>• The option does not increase empowerment for local boards</li> <li>• It does provide for the recognition of regional and local priorities when local decisions have a wider impact</li> <li>• It could be initiated by local boards as well as the GB</li> </ul>	<ul style="list-style-type: none"> <li>• The option does not increase empowerment for local boards</li> <li>• It does provide for the balancing of regional and local priorities when local decisions have a wider impact</li> <li>• It could be initiated by local boards as well as the GB</li> <li>• It would include local board membership on the committee</li> </ul>
5. <i>Does the option ensure appropriate accountability and incentives for political decisions?</i>	<ul style="list-style-type: none"> <li>• There is a misaligned incentive for local boards where the decision has regional impacts, and the local board may not be accountable to everyone the decision impacts</li> <li>• It creates a perception of the local board having ‘leverage’ over the governing body</li> </ul>	<ul style="list-style-type: none"> <li>• The incentives for decision-makers will still be mis-aligned if there is a truly regional impact of the asset or service in question</li> <li>• This option may increase the perception of the local board having ‘leverage’ over the governing body</li> </ul>	<ul style="list-style-type: none"> <li>• The incentives for decision-makers will be more appropriate if there is a truly regional impact of the asset or service in question. However, having a process available may create an incentive to use it.</li> <li>• The option reduces the accountability of local boards for decisions, but moves that accountability to the governing body</li> </ul>	<ul style="list-style-type: none"> <li>• The incentives for decision-makers will be more appropriate if there is a truly regional impact of the asset or service in question. However, having a process available may create an incentive to use it.</li> <li>• The option reduces the accountability of local boards for decisions, but moves that accountability to a joint committee</li> </ul>

	<b>1 Enhanced status quo</b>	<b>2 Establish a process to achieve a solution that recognises both regional and local priorities</b>	<b>3 Amendment to the allocation of decision-making</b>	<b>4 As per option 3, with the decision delegated to a joint committee made up of local board and governing body members</b>
6. <i>What is the administrative feasibility of the option, including efficiency and feasibility of implementation?</i>	<ul style="list-style-type: none"> <li>The option is feasible, but where disagreement occurs decisions are generally not efficient</li> </ul>	<ul style="list-style-type: none"> <li>The option is feasible to administer, but is likely to increase the time and resources required to make a decision e.g. participants in the mediation process may have to seek mandate from their respective decision-making entities (local board or governing body committee)</li> </ul>	<ul style="list-style-type: none"> <li>The option is feasible to administer. There may be some increase in decision-making costs</li> </ul>	<ul style="list-style-type: none"> <li>The option is feasible to administer, but could be cumbersome to administer and support</li> </ul>
7. <i>Does the option contribute to improved community engagement with and better services for Aucklanders?</i>	<ul style="list-style-type: none"> <li>No improvement from status quo</li> </ul>	<ul style="list-style-type: none"> <li>It may result in better services for Aucklanders, but this is strongly dependent on the outcome of mediation which is difficult to predict</li> </ul>	<ul style="list-style-type: none"> <li>It may result in better outcomes for Aucklanders overall, but potentially have some negative local impacts. Mitigation could be put in place to address these.</li> </ul>	<ul style="list-style-type: none"> <li>It may result in better outcomes for Aucklanders overall, but potentially have some negative local impacts. Mitigation could be put in place to address these.</li> </ul>
<i>Risks</i>			<ul style="list-style-type: none"> <li>A possible risk is the possibility for a 'gold rush' –there may be an incentive for both the local board and the governing body to make a decision quickly before it is clear whether or not the decisions meet the criteria or not.</li> <li>This risk could be mitigated by introducing a robust process and criteria for identifying issues that may fall within the scope of the allocation (in advance of any decision-making reports being presented), and ensuring that both arms of governance receive appropriate and timely advice from staff.</li> </ul>	<ul style="list-style-type: none"> <li>As for option 3, but the likelihood of this risk is lower</li> </ul>



## Recommended option

28. Based on an analysis of the options against the criteria, all have costs and benefits. We consider that option 3 is likely to produce the best outcome, provided that:

- the process is clearly defined;
- there is an opportunity to bring together the arms of governance to understand both perspectives and work collaboratively; and
- there is a commitment to mitigating local impacts of decisions where appropriate.

29. Option 4 could also be a viable option, and does provide for more recognition of local interests in the decision-making process, but is likely to be more resource-intensive, take more time, and there may be difficulties in setting the membership of the joint decision-making committee.

## Part 2: Reserves Act decision-making roles

31. This part of the paper focuses on the allocation and delegation of a range of decisions made by local authorities under the Reserves Act 1977. This was identified as a specific area of concern in the governance framework review, which made some recommendations for change.

### Context

32. There are over 4000 parks and reserves located within the Auckland region (excluding road reserves). Of these, many have status as reserves and are held subject to the Reserves Act. The scale and pace of population growth of Auckland is placing pressure on existing open space, and increased requirements for different use and activities on the open space network. Changing demographics are also changing demand, and urban intensification increases the cost of acquiring land for open space. This is reflected to varying degrees across each local board area.

33. The council holds land under two statutory regimes:

- parks held by council under the Local Government Act 2002 (LGA)
- reserves held by council under the Reserves Act 1977.

34. Reserves are held by the council in three ways:

- as the owner of a reserve;
- as the 'administering body' of a Crown-owned reserve which has been vested in Council to be held in trust; and
- as the administering body of a Crown-owned reserve which Council has been appointed to control and manage.

35. The reserves held by the council across the region include a mixture of the three, with the majority of reserves being Crown-owned reserves that are vested in the council as the administering body.

36. The Reserves Act provides a set of rules for the preservation, management and use of reserves. Each reserve must be classified according to its principal or primary purpose, and this establishes the framework of rules that apply to reserves. Management plans are also required for most reserves.

### Reserves Act decision-making roles

37. The Reserves Act provides different decision-making responsibilities to the council and to the Minister of Conservation.

38. The Minister's decision-making responsibilities include substantive decisions the Minister must make in relation to reserves (such as classification of Crown-owned reserves), as well as "supervisory" decisions to approve or consent to many decisions of the council. The Minister has delegated a number of these decision-making responsibilities to local authorities, except for the power to approve revocation of reserve status (as well as some others outside of the scope of this paper).
39. As such, for most decisions that the council makes about a reserve, it must make a decision as a local authority or administering body, and a separate decision as the Minister's delegate. The Department of Conservation's guidance accompanying the Minister's delegation instrument notes that there is an expectation that the council will clearly distinguish between its two roles when making decisions about a reserve.

#### *Local Government (Auckland Council) Act 2009*

40. Auckland Council - not the governing body or local boards - is the owner and administering body of reserves, and is also the Minister's delegate under the delegation instrument.
41. Whether the governing body or local boards are responsible for making the council's decisions under the Reserves Act is established in accordance with Council's decision-making framework under the LGACA, which provides that the governing body is responsible for regulatory decision-making. The governing body may delegate a regulatory decision to local boards or to staff in accordance with schedule 7 of the LGA.
42. If a decision relates to a non-regulatory activity, then it must be allocated to either the governing body or local boards in accordance with the principles in s 17 of LGACA. Once a decision is clearly allocated to local boards or the governing body, then that body is responsible for it, except if the decision is subsequently delegated in accordance with schedule 7 of the LGA.

#### **Problem definition**

43. Overall, the Reserves Act does not mesh easily with the council's governance model and decision-making framework. Currently, local boards are allocated decision-making for 'the use of and activities within local parks', and 'reserve management plans for local parks'. However, the council's Reserves Act regulatory decisions are the responsibility of governing body. The GFR report concluded that 'where a local park has reserve status under the Reserves Act, it can impact or limit the decision-making authority of local boards in relation to that park'.
44. Further, the report recommended that there 'is a case for local boards having consistent decision-making rights across all local parks'. It noted that this would 'mostly cover classification and reclassification decisions'. We have taken a slightly wider scope, and examined the four key regulatory decisions within the Reserves Act to

identify areas where the regulatory nature of decisions may limit local boards from making decisions in the spirit of the allocation. These are the powers to:

- declare land to be a reserve, which brings it into the regime set out by the Reserves Act;
- classify or reclassify a reserve, which has an impact on how the reserve can be used;
- exchange reserve land; and
- request the revocation of reserve status.

## Analysis

45. Options for these decision-making roles have been developed and assessed against each of the criteria that the Political Working Party agreed to in its first meeting.

46. Given all of the options for change of decision-maker in relation to regulatory Reserves Act decisions require a delegation from the governing body under the LGA, that decision must also comply with the requirements of the LGA.

47. The Minister's delegated supervisory powers to approve or consent to these decisions are considered separately later in this report.

### **Declaring land to be a reserve**

48. The council may declare any land vested in it to be a reserve for the purposes specified in the Reserves Act (s 14 of the Reserves Act). This decision requires a decision by the council as local authority, and a Ministerial decision, which has been delegated to the council. As discussed in the GFR report, land can also be brought within the scope of the Reserves Act through a Resource Management Act 1991 (RMA) process; in this situation, the local board role is limited to communicating views and preferences to the RMA decision-maker.

49. The council decision is a regulatory decision, because it has the effect of putting in place rules about what activities can take place on a reserve, and is therefore currently the responsibility of the governing body. The Minister's decision is non-regulatory, and is primarily about considering any objections to the council's decision and whether those are justified.

50. There are different costs and benefits attached to different land status options, and to date, the council has not developed a position on the preferred 'land status' option for different types of open space which would balance between flexibility and protection.

51. We have assessed three options, one of which would involve the council developing a regional policy or guidelines on the preferred land status for different types of open space before delegating responsibility to local boards.

Table 3 – Options for decision-making over declaring land to be a reserve

	<b>Status quo</b>	<b>Delegate the decision to declare a reserve to local boards</b>	<b>Delegate the decision to declare a reserve to local boards once a regional policy or guidelines about land status have been developed</b>
1	Yes	Yes	Yes
2	No impact on role clarity for the public, minimal negative impact on role clarity internally	No impact on role clarity for the public, minimal positive impact on role clarity internally	No impact on role clarity for the public, minimal positive impact on role clarity internally
3	Yes – although it may be frustrating for local board members that such a decision has to be approved by the governing body	No - this option could have unintended consequences of enabling new activities that could have both a positive and negative impact on park and open space values	Yes - a regional policy about land status could mitigate the impacts of inconsistency across the region while allowing the decision to be made at the local level
4	The option does not provide for more discretion by local boards	The option would provide more discretion for local boards	The option would provide more discretion for local boards, within the parameters of the policy or guidelines
5	None identified	Local boards are accountable to the local community, but may be incentivised to make decisions which are purely in the local interest	Local boards would be accountable to their communities, but any possible regional network impacts of changes to the regional network would be mitigated
6	These decisions are relatively infrequent. The option is feasible	The option is feasible	There would be implementation costs of developing a policy or guidelines
7	Impact difficult to define	Impact difficult to define	Impact difficult to define

52. Recommended option: agree in principle to delegate the decision-making power to declare a reserve be delegated to local boards pending the development of regional policy or guidelines to provide some consistency about the land status of open space.

### **Classification and reclassification**

53. The council makes classification and reclassification decisions under ss 16, 24 and 24A of the Reserves Act. Specifically, the council makes classification decisions for Crown-owned land under s 16(1) under delegation from the Minister, and under s 16(2A) in its own right for council-owned land. Reclassification decisions are made for

local purpose reserves under s 24A, and for other reserves under s 24 which requires both an administering body decision and a Ministerial oversight decision. The Ministerial oversight decision has been delegated to local authorities (this is considered later in the paper).

54. Council’s classification and reclassification decisions are regulatory as they set rules around the activities that can take place in or on a reserve. For example, reserves classified as local purpose (community buildings) reserves cater for community activities such as preschools, kindergartens, community halls and art centres, whereas these activities are generally not catered for under a recreation reserve classification. As they are regulatory decisions, they are currently the governing body’s responsibility and fall within the terms of reference of the Environment and Community Committee.
55. It is worth noting that there are a number of active Reserve Act-related issues on parks that are currently being addressed by the organisation. Some local boards have become frustrated with some of the restrictions and lengthy processes required by the Reserves Act when they want to grant a lease or license for an activity in a local reserve. Some of these decisions are linked to the classification of reserves.

**Table 4 – Options for classifying land under the Reserves Act**

	<b>Option 1: Status quo</b>	<b>Option 2: Delegate Auckland Council’s power to classify and reclassify reserves to local boards (s16(2A) and s24(1)(b))  Delegate the Minister’s powers to classify to local boards (s16(1))</b>	<b>Option 3: Delegate Auckland Council’s power to classify and reclassify reserves to local boards (s16(2A) and s24(1)(b))  The Minister’s powers remain with the GB (s16(1))</b>
1	Yes	Yes	Yes
2	Local boards have decision-making over some aspects of how local reserves are used	This option provides more role clarity as local boards have a consistent set of decision-making powers over local reserves	This option would likely increase confusion
3	In table 2 below		
4	Does not increase empowerment of local boards	This provides local boards with more control over local reserves i.e. through classification, leasing and licensing	This option partially increases empowerment for local boards
5	This option partially increases accountability for decisions	This option increases accountability for decisions over local reserves by bringing the decision closer to the community affected	This option partially increases accountability for decisions
6	Currently a recommendation from the local board and a decision from the governing body are required, which increases the transaction	More simple to implement and reduced costs. This may allow some of the issues noted above to be resolved, where they relate to the classification	Not simple to implement – where the decision sits will depend on the underlying title, which may not be clear until researched, and may appear

	<b>Option 1: Status quo</b>	<b>Option 2: Delegate Auckland Council’s power to classify and reclassify reserves to local boards (s16(2A) and s24(1)(b))</b>  <b>Delegate the Minister’s powers to classify to local boards (s16(1))</b>	<b>Option 3: Delegate Auckland Council’s power to classify and reclassify reserves to local boards (s16(2A) and s24(1)(b))</b>  <b>The Minister’s powers remain with the GB (s16(1))</b>
	costs		arbitrary
7	Impact difficult to define	Impact difficult to define	Impact difficult to define

56. The preferred option is option 2. To proceed with option 2, requires the governing body to delegate the decisions to local boards. The question of whether a decision to delegate is lawful depends on whether the governing body has appropriately carried out the test in the LGA, which requires it to “weigh the benefits of reflecting local circumstances and preferences (through a delegation) against the importance and benefits of using a single approach in the district (through itself retaining the responsibility, duty, or power concerned).

57. In principle we can see no reason why that delegation would not be lawful, provided the weighing up exercise is fulsomely carried out and the decision that Governing Body reaches is reasonable.

**Table 5 – Proposed delegation of classification**

<b>Local circumstances and preferences</b>	<b>Single approach in the district</b>
<ul style="list-style-type: none"> <li>• Classifications should reflect the ‘primary purpose of the reserve’ – there will be better knowledge locally about primary purpose and values of the reserve and the way in which it is used</li> <li>• Aligns the decision with other decision-making abilities over local parks and reserves</li> <li>• Classification decisions are made about a geographically proscribed area</li> </ul>	<ul style="list-style-type: none"> <li>• Reduces the risk of inconsistent classifications across the region</li> <li>• Reduces the risk of classifications that are inconsistent with regional strategies</li> <li>• A more regionally consistent network approach to open space across the region may be desirable in the context of the increasing demands on open space</li> </ul>

58. Recommended option: That the decision-making power to classify a reserve under s16(1) and s16(2A), and to reclassify a reserve under s 24 and 24A are delegated to local boards

**Exchange of reserve land**

59. The council may exchange any land in any reserve with any other land to be held for the purposes of that reserve (s 15 of the Reserves Act). This decision requires 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.

60. The exchange decision includes several substantive elements, namely:

- it involves a decision about the acquisition and disposal of land (which is non-regulatory and currently allocated to the governing body), and
- it involves a classification and revocation decision (which are regulatory decisions).

61. As noted in the GFR report, this may limit local boards from exercising their allocated decision-making right on the 'specific location' of park land, because it inherently involves an acquisition and disposal. However, it is not possible to separate the two decisions, and therefore no options have been assessed.

### **Request the revocation of reserve status**

62. A decision to revoke reserve status is made under s 24 of the Reserves Act. This provides that the Minister may revoke the reserve status of the land, following a resolution of the administering body requesting the revocation. The Minister's power to revoke has not been delegated to local authorities.

63. The administering body decision to request revocation of reserve status is regulatory and is therefore currently the responsibility of the governing body.

64. For Crown-owned reserves, the automatic consequence of a revocation decision is that the land reverts to the Crown for it to dispose of as it sees fit. In these cases the revocation inherently involves a form of "disposal" as the land will no longer be vested in and available to the local authority.

65. In contrast, a revocation decision over Council-owned reserve land results in the land being held by Council under the LGA and the land is therefore available for subsequent use or disposal by the Council in accordance with the LGA.

66. Currently, reserve status is generally only revoked infrequently where:

- Disposal: A council-owned reserve has been found to be surplus to requirements, or is no longer fit for purpose, and it has been agreed that it should be disposed of (Panuku Development Auckland is usually involved in this process)
- Return to the Crown: A Crown-owned reserve managed by the council has been found to be surplus to requirements, or is no longer fit for purpose, and the council does not wish to manage it any longer. In such instances the Crown will either retain the revoked reserve in the Crown's land bank for future Treaty settlement purposes, or dispose of it



- Desire to manage under the LGA: A council-owned reserve is occupied by existing activities that are supported by the council but are in breach of the Reserves Act, but where the land will still be retained by the council as open space under the LGA.

Table 6 – Options for requesting revocation of reserve status

	<b>Option 1: Status quo</b>	<b>Option 2: Delegate Auckland Council’s power to request the Minister to revoke reserve status to local boards</b>	<b>Option 3: Delegate Auckland Council’s power to request the Minister to revoke reserve status to local boards, once a regional policy or guidelines on land status has been developed</b>
1	Yes	Yes	Yes
2	No impact on role clarity for the public, minimal negative impact on role clarity internally	No impact on role clarity for the public, minimal positive impact on role clarity internally	No impact on role clarity for the public, minimal positive impact on role clarity internally
3	Where it is to facilitate disposal of land, this option gives effect to the subsidiarity principle - revocation decisions should be made regionally.	Given that the principal reason for revocation is the desire to dispose of land, which is a governing body decision, there is an argument for revocation requests to be made on a regional basis.  Outside of disposal, this could have unintended consequences of enabling new activities that could have both a positive and negative impact on park and open space values	A regional policy about land status could mitigate the impacts of inconsistency across the region
4	No increased empowerment for local boards	This would provide increased empowerment for local boards	Some increased empowerment for local boards, depending on the parameters of the regional policy or guidelines
5	None identified	Could provide an incentive for local boards to prevent disposal of land, when a decision has been made by the governing body that it is in the regional interest to do so	Depends on the parameters of the regional policy
6	These decisions are relatively infrequent. Currently a recommendation	Option is feasible. Reduces the costs of making such decisions	Increased costs to develop a regional policy or guidelines

	<b>Option 1: Status quo</b>	<b>Option 2: Delegate Auckland Council’s power to request the Minister to revoke reserve status to local boards</b>	<b>Option 3: Delegate Auckland Council’s power to request the Minister to revoke reserve status to local boards, once a regional policy or guidelines on land status has been developed</b>
	from the local board and a decision from the governing body are required		
7	Impact difficult to define	Impact difficult to define	Impact difficult to define

67. Where the Reserves Act has been found to be inhibiting activities supported by the council on council-owned reserves, and there is no significant known conservation values present, there may be an argument that it is more desirable to manage land under the LGA and the reserve status should be revoked. However, this issue has regional impacts on the reserve network and needs to be considered carefully from a regional perspective.

68. Recommended option: agree in principle to delegate the decision-making power to request the revocation of reserve status be delegated to local boards pending the development of regional policy or guidelines to provide some consistency about the land status of open space.

### **“Supervisory” powers**

69. The GFR report also considered the Minister’s delegated “supervisory” powers, which are powers delegated by the Minister to Council to approve or consent to substantive decisions of Council (including decisions to consent to the declaration of reserve status, an exchange, reclassification, lease, licence or easement, or to approve a reserve management plan).

70. The Minister’s role involves general oversight or “checking” of the process followed and decision made by the council to ensure compliance with the Reserves Act. The Minister’s delegation instrument suggests that the Minister’s delegated supervisory decisions require a focus on:

*“ensuring that the necessary statutory processes have been followed; that the administering body has taken the functions and purposes of the Reserves Act into account in respect of the particular classification and purposes of the reserve; that it has considered any objections or submissions from affected parties; and that, on the basis of the evidence, the decision is a reasonable one<sup>i</sup>.”*

71. The council is also required to ensure that it clearly distinguishes between its two roles when making decisions.
72. The GFR report considered options for who should exercise the Minister's delegated supervisory powers and recommended two preferred options: the substantive decision-maker (a local board in the case of a local reserve) exercises both roles, or that staff should continue to exercise these responsibilities.
73. Given the nature and character of the Minister's delegated supervisory decisions (which do not focus on the substance of a matter), we do not consider there is a clear need or case for local boards to exercise the Minister's delegated supervisory powers.
74. Further, from a legal perspective, a decision to allocate or delegate the Minister's delegated supervisory powers to local boards would be difficult to justify at law.
75. Therefore, of the two options considered in the GFR report, we recommend that staff continue to carry out these functions, but that where a decision is likely to be contentious or there may be multiple objections, staff should employ an independent commissioner to carry this function out.

## Conclusion and potential recommendations

76. In summary, we recommend that:

- the council's substantive decision-making powers to classify a reserve under s16(1) and s16(2A), and to reclassify a reserve under s 24 and 24A are delegated to local boards
- agree in principle that the decision-making power to declare a reserve and to request revocation of reserve status be delegated to local boards, pending the development of regional policy or guidelines to provide some consistency about the land status of open space
- the Minister of Conservation's delegated "supervisory" powers remain with staff, but where a decision is likely to be contentious or there may be multiple objections, staff should consider employing an independent commissioner to carry this function out.

---

<sup>i</sup> Minister of Conservation's delegation instrument, signed by Hon Nick Smith on 12/06/13.