

Memorandum

April 2019

To: Penny Hulse, Chair, Environment and Community Committee
Alf Filipaina, Deputy Chair, Environment and Community Committee

Cc: Sonja Tomovska, Governance Advisor
Emma Golightly, Team Leader, Parks and Recreation Policy
All Waitematā Local Board members

Subject: Feedback on the Department of Conservations' proposed revocation of certain delegations to Territorial Authorities under the Reserves Act 1977

From: Waitematā Local Board

Purpose

1. To provide Waitematā Local Board's feedback on the Department of Conservations' proposed revocation of certain delegations to Territorial Authorities under the Reserves Act 1977.

Summary

At its April 2019 business meeting, the Waitematā Local Board resolved:

Resolution number WTM/2019/60

MOVED by Chairperson P Coom, seconded by Deputy Chairperson S Chambers:

That the Waitematā Local Board:

- a) delegate authority to the Waitematā Local Board Chair and Member D Roche to provide formal feedback by 18 April 2019 on behalf of the local board in relation to the Department of Conservation proposal to revoke most Ministerial delegations to Territorial Authorities under the Reserves Act 1977..

The Waitematā Local Board:

- a) recommends that no decision on the proposed changes to the Reserve Act 1977 Ministerial delegations be made until the appeal of the Opuā Coastal Preservation Inc v Far North District Council [2018] NZCA 262 decision to the Supreme Court has been completed.
- b) supports the council's position to not support the proposal to revoke 44 of the 50 Ministerial powers within the Reserves Act 1977, delegated to local authorities.
- c) supports the following submission points:
 - i. that substantive justification for the proposed revocation of delegations has not been proven, and a clear identification of the problems exercising dual delegations by councils under the Reserves Act 1977 is lacking

- ii. that the proposed revocation of delegations will undermine local decision-making and community outcomes and would be a backwards step to undo decision-making at the local level for local communities
 - iii. that the proposed revocation of delegations will add significant delays to all Reserves Act 1977 processes, and council's ability to be responsive to communities will be severely impacted
 - iv. that the revocation of delegations will mean that the Minister of Conservation (or delegate) will largely focus on whether procedural steps were followed, and decision-making would be undertaken with little understanding of local issues.
- d) recommends a full review of the Reserves Act 1977, rather than an update of the *Reserves Act Guide 2004*, as noted in the council submission.
- e) supports other key points highlighted in the council submission, which include:
- i. council has significant experience exercising its responsibilities and delegations under the Reserves Act 1977
 - ii. council has invested in processes, systems and practices to allow robust dual decision-making, while managing any potential or actual conflicts of interest
 - iii. the Ministerial delegations are essential for council 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.

Context/Background

2. A letter dated 14 March 2019 has been received from the Department of Conservation addressed to all Territorial Authorities seeking feedback on a proposal to revoke most Ministerial delegations currently delegated to councils under the Reserves Act 1977.
3. The Department has provided no substantive justification for the proposal.
4. The Department is seeking to justify changes to Ministerial delegations based 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.
5. There is concern 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.

6. The Opuia decision has been appealed to the Supreme Court, which could make any changes premature.
7. 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.
8. 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.
9. 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.
10. 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.
11. 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.
12. 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.

Next Steps:

13. Local board feedback will be considered as part of the final submission and will be reported to the Environment and Community Committee meeting on 14 May 2019.
14. The final response deadline to DOC has been extended to 17 May 2019.