



Powers Under The Reserves Act

This Chapter outlines the powers of various parties in administering land subject to the Act. Within appendices clarification of key provisions of the Act which require (or do not require) the input of the Minister of Conservation is provided. In 1999 the Minister reviewed some of his powers which resulted in specific powers being delegated directly to local authorities, in certain circumstances. These ‘delegations’ are fully detailed within the text.

Division of Powers

The Reserves Act gives statutory powers to:

- the Minister of Conservation
- the Administering Body (see Chapter 10)
- the “Commissioner”.

These powers enable the person or body holding them to make decisions in accordance with the Act.

A local authority, acting as a reserve administering body, has 26 unique and independent powers under the Act which other types of reserve administering bodies do not have (see Appendix 2a). In addition, it has the same powers given in the Act to other administering bodies. Refer to Part III of the Act for these powers – primarily in ss.42 to 74.

Certain powers of an administering body are expressed in the Act as being subject to the consent of the Minister.

The Minister also has powers to make other decisions affecting the administration and management of reserves (see Appendix 2b).



Administering Body

S.2 of the Reserves Act defines an administering body in relation to any reserve, as the person or body appointed to control and manage that reserve or in which that reserve is vested under the Act or any corresponding former Act. It may be:

- a board
- a trustee
- a local authority
- a society
- an association
- a voluntary organisation
- a person or body of persons whether incorporated or not
- a Minister of the Crown other than the Minister of Conservation.

Further information about administering bodies is provided in Chapter 10.

Delegation of Powers by a Council

Decision-making by administering bodies must be made within the powers conferred by the Act. In practice, for some decisions, the Act overrides other legislation, such as the Local Government Act 1974, particularly as it applies to a local authority's powers to delegate decision making to committees of councils and/or officers.

A "local authority" under the Local Government Act *may* delegate any of its powers under the Reserves Act to a Committee of Council, including powers requiring a resolution of the local authority.

A "local authority" under the Local Government Act *may* delegate any of its powers under the Reserves Act to a community board, in its jurisdiction, except those powers excluded by section 101ZZ Local Government Act.

The above *exclusions* include "the power to acquire, hold or dispose of property". A community board should *not* therefore be given delegated authority, for example, under section 14, section 15(2), section 16(2A), section 24A or section 24(1)(b) Reserves Act, nor any power under the Act to lease or issue licences in respect of any reserve.

A local authority does *not* have authority to delegate any of its powers to an officer of the Council.

A local authority *cannot* sub-delegate any power delegated to it as administering body by the Minister of Conservation, whether to a committee, community board, or an officer.

If there is any doubt, a legal opinion should be sought to confirm the local authority's practice. Committees and sub-committees in most cases can be used effectively in streamlining internal processes, but careful attention to the requirements of the Act is needed in establishing the terms of reference of committees and sub-committees.



Further details on the delegation of the Minister's powers to Conservators and to local authorities are provided below.¹

The Commissioner

The "Commissioner" (where mentioned in the Act in relation to any reserve) means an officer designated by the Director-General of Conservation for the purposes of the Act.

Usually this officer is the Conservator for the conservancy in which the reserve lies. The Conservator is therefore the officer whom a Council (as administering body) would, for example, consult with over a proposed change of classification of a reserve, or a proposed revocation of a reserve (s.24(2)(b) Reserves Act).

Delegation of the Minister's Powers

The Minister of Conservation has delegated all the Minister's powers under the Reserves Act to officers of the Department of Conservation.

Councils will therefore deal directly with their nearest Department of Conservation area or conservancy office on actions (not covered by their autonomous or delegated powers) which require the consent or approval of the Minister under the Act. Examples of actions would include gazettal of a resolution to declare vested land to be reserve (s.14(4)); classification of reserves by *Gazette* notice (s.16(1)); and the grant of rights of way and other easements (s.48(1)).

Also, the Minister has delegated certain powers to "territorial authorities"², which apply only where the territorial authority is the administering body of the relevant reserve (ie it is affected by the decision to be made). More details are given about these delegations under the headings below.

Instrument of Delegation to Local Authorities

A copy of the Instrument of Delegation to local authorities is attached as Appendix 2c. The Instrument of Delegation relates to the delegation of the Minister's powers, functions and duties under the Act to local authorities, which includes the following types of bodies:

- district councils
- city councils
- regional councils
- unitary authorities
- the Chatham Islands Council.

General Conditions of Delegation

The delegated decisions (allowed for in the Instrument referred to above) must be made by a resolution of the full Council concerned and cannot be sub-delegated to a committee or officers. In relation to the delegations, s.10 Reserves Act provides as follows:



1 A practice note on a land exchange regarding s.15 is provided in Chapter 3 (page 3/12). This example highlights the interpretation of the Act for decision-making by local authorities.

2 The term "territorial authorities" is used by the Department of Conservation to mean district, city, regional, unitary or the Chatham Islands Council, who have responsibilities under the Reserves Act. The term more generally used by the local government sector is "local authorities"; territorial authorities under the Building Act 1991 and Resource Management Act 1991 refer to city, district and unitary authorities. Under the Reserves Act, the interpretation is as set out in Appendix 2c.



- “(3) Subject to any general or special directions given by the Minister, any ... local authority, ... to which ... any powers have been so delegated may exercise those powers in the same manner and with the same effect as if they had been directly conferred on that ... local authority, ... by this Act and not by delegation.
- (4) Every ... local authority, ... purporting to act under any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting within the terms of the delegation.
- (5) Any such delegation may at any time be revoked by the Minister in whole or in any part, but that revocation shall not affect in any way anything done under the delegated authority.
- (6) No such delegation shall prevent the exercise by the Minister himself of any of the powers and functions conferred on him by this Act.”

S.121 of the Act provides that the Minister may give any consent or approval subject to such conditions as the Minister thinks fit.

Chapter 4 of this Guide regarding obligations under s.4 Conservation Act and the Treaty of Waitangi, is also relevant to the exercise of any delegations under the Act.

Specific Directions Over Delegations

The specific directions of the Minister of Conservation (if any) applicable to delegating each power are set out in the Instrument of Delegation referred to above.

Some powers (not all) are conditional on there being an approved management plan for the reserve/group of reserves affected by a proposal. This stems from the principle that once an administering body has an approved management plan for a reserve it should be empowered to implement the plan (see Chapter 1).

However, because some reserves are still not covered by approved management plans, the delegation extends to existing uses of a reserve where effects of the use will be the same or similar in character, intensity or scale.

The Council will need to make an informed judgement on whether or not it has the delegated power to make a decision in a given case. For example:

- a) No management plan approved where the Council is considering the re-lease of land to a recreation club, and there is no intensification of use.
- b) Management plan approved where the Council is considering a proposal for an access easement and it is contemplated within the management plan.
- c) No management plan approved where the Council is considering a proposal to erect a telecommunications tower, where no other telecommunications or other use has been allowed in the past.
- d) Management plan approved where the Council has not anticipated in a management plan the cutting or destruction of exotic and indigenous trees and bush on a scenic reserve.

Summary: a) and b) Council would have delegated powers. c) and d) Council would not have delegated powers.



A number of powers in the Act are expressed as subject to the Wildlife Act 1953. For example, the delegated power to authorise the taking or killing of fauna (s. 50) in a scenic, historic, nature or scientific reserve extends only to species in the Fifth and Sixth Schedules to the Wildlife Act, and to species in the First, Second, Third and Fourth Schedules to that Act when given in accordance with the requirements of that Act.

For example, when exercising the power under s.51(1) councils should be aware that indigenous flora and fauna may only be introduced into a reserve:

- to restore ecological communities in historic, scenic, nature or scientific reserves (s.51(1)(a))
- to promote the survival of any indigenous flora or fauna species in a nature or scientific reserve (s.51(1)(b))
- to develop a scenic reserve of a type specified in s.19(1)(b) of the Act (s.51(1)(c)).

Exotic flora may only be introduced into a scientific reserve or a scenic reserve classified under s.19(1)(b) and s.51(1)(c). The council must have due regard for the purpose of the reserve and the possible effects of an introduction on other flora and fauna already in the reserve (s.51(2)). These matters will need to have been considered in management planning for the reserve when introductions are provided for.

Councils should note that separate approvals are required for the translocation of protected wildlife under the Wildlife Act 1953 and of freshwater fish under the Conservation Act 1987.

The powers of administering bodies of recreation and local purpose reserves are set out in Reserves Act 1977 s.53 and 61 respectively.

Gazette Notices Associated with Use of Delegated Powers

The following actions for which territorial authorities have delegated power or limited delegated power (see Appendix 2C) do not take effect until the relevant action is notified in the *Gazette*:

- s.14(4) – declaring vested/fee simple land to be reserve
- s.15(1) – authorisation of an exchange
- s.16(1) – classifying a reserve (see Appendix 8e)
- s.25(1) – declaring the manner & purpose of disposal if reservation revoked (see Appendix 9a)
- s.52(1) – uniting two or more reserves.

So that a notice in the *Gazette* give proper legal effect to the Council's decision it is important that it follows a suitable format.

A standard formula for the wording of the relevant notices is given in the Chapter references above. The notices of Council resolution need to be signed by the Council Chief Executive or other officer authorised by the Council.



For the remaining actions the following are standard notice formulas:

- a) an action under s.14(4) of the Act:

Declaration that Land is a Reserve

"In exercise of the powers conferred on it by delegation under the Reserves Act 1977 the....Council notifies the following resolution, passed by the Council on the day.... of.....20....:

"That under section 14 of the Act theCouncil resolves to declare that the piece of land vested in [held in fee simple by] the Council and described in the Schedule , be declared to be a [purpose] reserve."¹

- b) an action under s.15(1) of the Act:

Authorisation of the Exchange of a Reserve/Part of a Reserve/for Other Land

"...notifies that the following resolution was passed by theCouncil on theday of20 ..."

"In exercise of the powers conferred on it by delegation under the Reserves Act 1977 the Council authorises the exchange of the [name\purpose] reserve/that part of the[name\purpose] reserve described in the First Schedule for the land described in the Second Schedule."

- c) an action under s.52(1) of the Act:

Union of/parts of/Reserves

.....notifies that the following resolution was passed by theCouncil on the Day of ..20..:

"In exercise of the powers conferred on it by delegation under the Reserves Act 1977 the Council declares that on the date of publication of this notice, the reserves/parts of the reserves described in the Schedule, shall be united to form one reserve to be known as the [name & purpose] Reserve."

An alternative resolution where only two reserves are involved:

Declaration that a Reserve be Part of the Reserve

".....declares the [name\purpose] reserve, described in the Schedule, form part of the [name & purpose] Reserve."

Judicial Review

There are grounds for challenging a decision made by a Council if it has not acted within the scope of the delegated power conferred on it. A Court may set aside the decision as unlawful.

A Council should take legal advice before exercising a power in any case where it is unclear whether or not a delegation to the Council applies. It is good administration practice for a council to:

¹ "[name] Chief Executive [or equivalent] forCouncil"



- ensure that there is ongoing dialogue with affected parties
- be able to demonstrate that relevant responses have been considered properly.

Councils should keep a written record of the decision making process. This is because records that are prepared well after a decision has been made are often perceived to be fabricated (eg in response to an Official Information Act inquiry or judicial review). In the case of judicial review the Courts need to know what matters the decision-maker took into account to determine whether: a decision was properly made, any irrelevant matters were taken into account, there were any factual errors and the process was fair.

The judicial review process and requirements of the Official Information Act reflect a desire for transparent decision-making. In reality this means that a decision-maker should prepare written account of the decision-making process either at or near the time that the decision is made.

Councils should also provide feedback to submitters. The failure to do so may generate ill-will towards the council. It may also discourage people from participating in processes, which could result in the council making a decision without having considered all the relevant responses. Such a decision could be legally challenged.

