



# Leases, Licences, and Easements Over Vested Reserves

This Chapter provides details of which part of the Act governs the granting of leases, licences and easements over reserves. This Chapter and the Minister’s ‘instrument of delegation’ explained in Chapter 2 should be read together.

Section 7.1 summarises the provisions of the Act. Section 7.2 explains the differences in administration of leases, licences and easements where a local authority has been appointed to control and manage a Crown reserve (s.59) and has full delegation to grant interest from the Minister as detailed in Chapter 2. Section 7.3 goes on to explain the situation where full delegation has not been given by the Minister.

## 7.1 What Provisions of the Reserves Act Authorise the Council to Grant Leases or Licences or Easements Over a Reserve Vested<sup>1</sup> in the Council?



**1** Note that this part of the Guide does *not* apply to reserves which the Council holds under an appointment to control and manage (see Chapter 10). Leases, licences and easements over these reserves will be granted as concessions (see Chapter 7.2). In some cases the 1996 Amendment Act restricted the application of these provisions to reserves vested under s.26 Reserves Act only. Reserves vested under other provisions cannot be dealt with at the moment. This is to be the subject of an amendment Act.

This table shows the relevant provisions:

Section of Act	Class of vested Reserve	Type of Right	Purpose	Act Requires Consent of Minister
48	All	Easement incl. an easement granted by the Council to itself	<ul style="list-style-type: none"> <li>(i) Any public purpose</li> <li>(ii) distribution or transmission by pipeline of natural or manufactured gas, petroleum or geothermal energy</li> <li>(iii) an electrical installation or work as defined in s.2 Electricity Act 1992</li> <li>(iv) the provision of water systems; providing or facilitating the supply of water to or the drainage of</li> </ul>	Yes



Section of Act	Class of vested Reserve	Type of Right	Purpose	Act Requires Consent of Minister
			any other land not forming part of the reserve or any other purpose connected with any such land (v) providing access to any area included in an agreement, lease or licence granted under the Act or facilitating access to any land not forming part of the reserve.	
48A	All, if vested under s.26 Reserves Act	Licence	Use for radio, electric, or electronic communication station (associated buildings, dwellings, masts and other structures and tracks).	Yes
54	Recreation <sup>2</sup>	Lease	(i) Baths, camping ground, parking or mooring place or other facilities for public recreation or enjoyment (ii) stands, pavilions, gymnasiums <i>and</i> (subject to s.44 and s.45) other buildings and structures associated with or necessary for the use of the reserve for outdoor sports, games or other recreational activities or lease any of the above buildings (iii) if in the public interest, buildings and structures for sports, games or public recreation not directly associated with outdoor recreation. [Note also that <i>agreements</i> – not a lease or licence – can be entered into under s.53(1)(f)]	Yes
		Lease or licence		Yes



**2** Where a management plan is *not* in place, or the lease/licence is not contemplated in the management plan for the reserve. For vested recreation reserves that have an approved management plan, consent of the Minister is not required (Ss.54(1A)). See "What Consent is Required if Any?" on page 7/5.

Section of Act	Class of vested Reserve	Type of Right	Purpose	Act Requires Consent of Minister
			Carrying on of any trade, business or occupation necessary to enable the public to obtain the benefit and enjoyment of the reserve or for their convenience.	
56	Scenic	Lease	Baths, picnic ground, camping ground, parking or mooring place or other facilities or amenities for public recreation and enjoyment.	Yes
		Lease or licence	Carrying on any trade, business or occupation necessary to enable the public to obtain the benefit and enjoyment of the reserve or for their convenience.	Yes
58A	Historic	Lease or licence	Domestic residential purposes or for carrying on any activity, trade or business, or occupation.	Yes
61(2)	Local purpose	Lease	Lease under Public Bodies Leases Act 1969.	No
61(2A)			Community building, playcentre, kindergarten, plunket room or other like purpose; farming, grazing, cultivation, cropping or other like purpose.	No
61A	Aerodrome	Lease	Lease under Airport Authorities Act 1966	No



Section of Act	Class of vested Reserve	Type of Right	Purpose	Act Requires Consent of Minister
67	Recreation (set apart for racecourse purposes)	Lease	Any purpose, not inconsistent with the purpose of the reserve, to a racing club. If up to 7 years If over 7 years	No Yes
72	Recreation or local purpose	Lease or licence	[Provision not in use by the Minister of Conservation who would be the other party to the lease or licence.]	No
73	Recreation	Lease	Farming, grazing, or afforestation or other purpose where: (i) the land is not for the time being required for recreation purposes; or (ii) it is in the public interest; or (iii) it is necessary or desirable to farm or graze or afforest the reserve as part of a development, improvement or management programme for the reserve; or (iv) the reserve is not being used for recreation purposes, and it is not likely to be used for that purpose, but it is inadvisable or inexpedient to revoke the reservation.	Yes
74	All, except nature reserve	Licence	Grazing, gardening, or other similar purposes or felling or removing timber or flax, or to win and remove timber or flax or kauri gum where that is necessary or desirable for managing the reserve for the purpose for which it is classified.	Yes/ No <sup>3</sup>



**3** Consent is only required in the case of a licence over a vested historic, scenic, or scientific reserve.

### What Consent is Required if Any?

The need for consent, indicated by a “Yes” in the above table, refers to the statutory requirement for the consent of the Minister of Conservation. It fetters the Council’s power to approve a lease, licence or easement.

The power of consent may in some lease, licence or easement proposals be delegated to the Council (see Chapter 2 and Appendix 2c) and may be exercised by the Council if the circumstances of the case meet the conditions of the delegation.

A consent may be given conditionally (s.121) or only after the approval of a management plan (see Chapter 6).

The Department of Conservation will recover from the Council the cost of giving a consent on behalf of the Minister.

Consent is not required (s.54(1A)) for a lease or licence under s.54, over a recreation reserve vested in the Council, if:

- a management plan has been approved in accordance with s.41 (see Chapter 6)
- the lease or licence is in conformity with and contemplated by that management plan.

In the case of a licence under s.74 consent is only required if the licence is over an historic, scenic, or scientific reserve. Consent is not required for recreation or local purpose reserves.

### Should the Council Obtain Legal Advice?

The Council would be wise to take legal advice *before*:

- deciding which statutory provision in the above table is the best one to meet the circumstances of the case
- exercising the power of approval [it needs to ensure that the decision is consistent with both the limitations or restrictions in the relevant statutory provision and the requirements of administrative law]
- finalising the draft terms and conditions of the lease, easement or purpose [it needs to ensure they are consistent with relevant statutory requirements].

A solicitor would also usually draw up any document for execution by the parties (s.113) and (where appropriate) arrange for it to be lodged for registration against the title. Several local authorities use as the basis for all leases, licences or easements, standard forms/precedents. These are extremely useful to maintain a consistent approach in all land administration matters. In addition, it is suggested that local authorities adopt a check list which would include the process steps as outlined in this Chapter, plus the internal local authority procedures required for decision making.



If referring in the Act to a section reference from the table above, any member of Council staff should be careful to read the section as a whole, and any other statutory provisions cross-referenced within it. [The Council or a staff member may seek technical assistance from the nearest conservancy office of the Department of Conservation (s.39). This advice should not substitute for the Council obtaining its own legal advice where appropriate. The Council has a personal liability.]

#### **If the Consent of the Minister of Conservation is Required What Information Should the Council Send to the Department of Conservation?**

The details of the information required to facilitate prompt consideration of a consent application are set out in Appendix 7a to this subsection.

#### **Can the Covenants, Terms and Conditions in a Lease or Licence be Varied After it is Executed?**

Such variation is possible. It is provided for in s.114 Reserves Act for reserves vested in the Council under s.26. Both parties need to agree.

#### **What Obligations Does the Council Have Under the Treaty of Waitangi?**

Refer to Chapter 5 in this Guide. Note in particular the requirements of Part 9 Ngai Tahu Claims Settlement Act if a long-term lease is involved.

#### **Can a Lease or Licence be Transferred, Sub-Leased or Mortgaged?**

These matters are usually dealt with in the conditions of the lease or licence. The Council's powers are set out in s.115 for reserves vested in under s.26.

#### **What Process Does the Act Require the Council to Follow for Granting a Lease, Licence or Easement Over a Reserve Vested in the Council?**

This process will normally be initiated by an application or a proposal for a lease, licence or permit. This is the process:

Stage	Who Does It	What Happens
1	Officer <sup>4</sup>	<ul style="list-style-type: none"> <li>• Makes a decision to begin the process (eg on receipt of application).</li> <li>• Confirms that the land involved is a reserve and that the reserve is vested in the Council.</li> <li>• Identifies the authority for the vesting and any limitation of the authority.</li> <li>• Identifies the purpose of the reserve.</li> <li>• Determines the appropriate statutory power to grant the lease, licence or easement and any limitation of the power.</li> </ul>



**4** "Officer" refers to the employee or contractor of the Council authorised to undertake the action.

Stage	Who Does It	What Happens
		<ul style="list-style-type: none"> <li>Identifies any statutory requirements related to terms and conditions.</li> <li>Identifies any relevant policy of the Council (eg in a management plan – see Chapter 6).</li> </ul>
2	Officer	<ul style="list-style-type: none"> <li>Formulates a proposal (which complies with the Act) to grant a lease, licence or easement.</li> <li>If public notification is required then arranges for public notice to be given in accordance with s.119.</li> <li>If public notice is not required then records the reason for the exemption.</li> <li>Arranges action to comply with s.4 Conservation Act (see Chapter 4).</li> </ul>
3	Officer	<ul style="list-style-type: none"> <li>Arranges any hearing required in accordance with s.120(1)(c) Reserves Act.</li> <li>Arranges a report on any hearing.</li> </ul>
4	Officer	<ul style="list-style-type: none"> <li>Arranges for the Council to give full consideration to every objection or submission (s.120(1)(d)).</li> </ul>
5	Council <sup>5</sup>	<ul style="list-style-type: none"> <li>Determines the extent to which it will allow or accept or disallow or not accept every objection or submission.</li> <li>Determines whether or not to approve the grant of a lease, licence or easement (subject to consent where needed).</li> </ul>
6	Officer	<ul style="list-style-type: none"> <li>Acts in accordance with the Council's decision.<sup>6</sup></li> <li>If the lease, licence or easement is approved and the consent of the Minister of Conservation<sup>7</sup> is required then applies for that consent, attaching a statement which meets the requirements of s.120(1)(e).</li> <li>If consent is not required then proceeds to Stage 8.</li> </ul>
7	Officer	<ul style="list-style-type: none"> <li>Acts in accordance with the decision of the Minister.</li> <li>If consent is given conditionally <i>then</i> meets the terms of the conditions.</li> <li>If consent is given <i>then</i> proceeds to Stage 8.</li> </ul>
8	Officer	<ul style="list-style-type: none"> <li>Arranges for the lease, licence or easement Document to be drafted in final form.</li> <li>Meets any related policy requirements of the Council.</li> <li>Submits the offer of a lease, licence or easement to the applicant/applicant's solicitor.</li> </ul>



**5** "Council" refers to the full Council.

**6** The Officer should, however, be satisfied that any changes made by the Council are consistent with the Act and the Council's statutory power under the relevant provisions of the Act.

**7** "Minister of Conservation" refers to the officer in DOC exercising the delegated authority on behalf of the Minister or to the full Council if the Council has the power to exercise the consent under delegated authority (see Chapter 2).

Stage	Who Does It	What Happens
9	Officer	<ul style="list-style-type: none"> <li>• If the offer is accepted <i>then</i> ensures the Document is properly executed.</li> <li>• Meets any related policy requirements of the Council.</li> </ul>
10	Officer	<ul style="list-style-type: none"> <li>• If the Document is to registered <i>then</i> ensures it is lodged for that purpose.</li> <li>• Meets any related policy requirements of the Council.</li> </ul>

## 7.2 Concessions Over Reserves Vested in the Crown Where the Council is the Administering Body and is Exercising the Delegated Power of Approval

### Which Statutory Provision Deals With Concessions?

S.59A Reserves Act deals with the granting by the Minister of Conservation of a concession over a reserve in accordance with Part IIIB Conservation Act 1987.

### What is a Concession?

A “concession” is a collective term which covers any lease, licence, permit or easement granted under s.59A. It includes any activity authorised by the concession Document (s.2 Reserves Act).

The only exclusions are entry permits granted under s.57 (to nature reserves) or s.59 (to scientific reserves) (s.59(7)).

A leaflet providing “An Introduction to Concessions” can be obtained from any Department of Conservation office.

### What are the Alternatives to a Concession?

Instead of a concession it may be appropriate for the Council to grant:

- (if a recreation reserve) one of the rights provided for in s.53 (see below)
- a licence to occupy a reserve temporarily for grazing, gardening or other similar purpose or for the cutting, felling, removing or winning timber or flax (s.74(1)(b)).

### When Can a Territorial Authority Grant a Concession?

A territorial authority can grant a concession when (all three conditions must be satisfied):

- it is the administering body of the reserve through an appointment to control and manage (not a vesting)
- it has the delegated power under s.59A Reserves Act
- it can meet any specific direction of the delegation [see Chapter 2 and Appendix 2c].

If the Council is *not* able to exercise its delegated power in a particular case (see Chapter 2) then the correct guideline to use is Paragraph 7.3 in this Chapter (“Concessions over reserves vested in the Crown where the Council is the administering body but does not have the delegated power to approve the concessions.” Page 7/10) eg where the approved management plan for the reserve does not provide for or contemplate the activity.

### When Can a Council Use the Provisions of s.53 Reserves Act Instead of s.59A?

S.53(1) gives certain powers to administering bodies of **recreation reserves** in exercising their functions under the Act and to the extent necessary to give effect to the principles set out in s.17. Included among these powers is the right (s.53(1)(e)) to grant exclusive use of the reserve:

- for up to 40 days in any year (but for no more than six consecutive days at any time) [NB 40 days in any year is the maximum number of days admission can be charged to the reserve or part of the reserve for all purposes, unless the Minister of Conservation consents – s.53(1)(d)]
- to any person, with the power to demand a fee or to charge for admission not exceeding an amount specified by the Council (s.53(2))
- for the purpose of:
  - particular games, sports or other activities
  - public recreation or enjoyment.

Under s.53(1)(f) an administering body can enter into an agreement:

- for up to 10 years (although the Council may extend this term) (s.53(2))
- with any person, body, society or voluntary organisation
- for the use of the reserve, or part of it, on a specified number of days in each year during the term of the agreement
- subject to specified limitations (refer to the Act).



If the agreement under s.53(1)(f) includes a right under s.53(1)(e), or the Council permits use under s.53(1)(e) alone, then s.59A overrides the provisions of s.53 in the following circumstances:

- the person or body wishes to conduct an activity for gain or reward
- the nature of the fee charged by the user is not just for a right of entry but the right to carry out an activity on the reserve from which the operator derives an income.

For example, in the case of sports clubs such as rugby, soccer, swimming and hockey clubs, s.53(1)(e) will likely apply. Such sports as squash, tennis, bowls, golf and golf driving ranges will most likely fall under s.59A. The line between the two groups may be fine in some cases.

#### **How Does the Council Apply Part IIIB of the Conservation Act in Granting a Concession Over a Reserve?**

The following adjustments apply when a Council considers and makes a decision on a concession proposal under delegated authority:

- The Council exercises its delegation as if the Act had directly conferred the power on the Council [see Chapter 2]. Therefore, in applying the provisions of Part IIIB Conservation Act, the words “local authority” should be substituted for “Minister”.
- Any reference in Part IIIB Conservation Act to a “conservation management strategy” or “conservation management plan” is to be read as a reference to a management plan approved under s.41 Reserves Act (s.59A(3)).

#### **How Can the Council Obtain a Standard Operating Procedure for Granting Concessions?**

A Council which wishes to exercise its delegated authority can obtain from the Department of Conservation a copy of the Department’s standard operating procedure. The procedure provides detailed guidelines about the grant of concessions and a process which meets the requirements of the Act.

A Council and its staff can use the procedure obtained from the Department when dealing with concession applications under delegated authority (with the modifications outlined in the above subsection (regarding application of Pt IIIB Conservation Act).

#### **What Obligations Does the Council Have Under the Treaty of Waitangi?**

Refer to Chapter 4 in this Guide. Note in particular the requirements of Part 9 Ngai Tahu Claims Settlement Act if a long-term lease is involved.

### 7.3 Concessions Over Reserves Vested in the Crown Where the Council is the Administering Body But Does Not Have the Delegated Power to Approve the Concession

#### Which Statutory Provision Deals With Concessions?

S.59A Reserves Act deals with the granting by the Minister of Conservation of a concession over a reserve in accordance with Part IIIB Conservation Act 1987.

#### What is a Concession?

A “concession” is a collective term which covers any lease, licence, permit or easement granted under s.59A. It includes any activity authorised by the concession Document (s.2).

The only exclusions are entry permits granted under s.57 (to nature reserves) or s.59 (to scientific reserves) (see s.59A(7)).

A leaflet entitled “An Introduction to Concessions” can be obtained from any Department of Conservation office.

#### What are the Alternatives to a Concession?

Instead of a concession it may be appropriate for the Council to grant:

- (if a recreation reserve) one of the rights provided for in s.53 Reserves Act
- a licence to occupy a reserve temporarily for grazing, gardening or other similar purpose or for cutting, felling, removing or winning timber or flax (s.74(1)(b)).

#### When is a Concession Application Dealt With by the Department of Conservation and Not the Council?

A concession application is dealt with by the Department of Conservation (DOC) when the reserve is vested in the Crown, and the Council is the administering body (under an appointment to control and manage) but does not have the delegated power to process or decide on a concession application (see Chapter 2)<sup>8</sup>. This part of Chapter 7 applies in such a situation.

If the concession proposal can be dealt with under a power delegated to the Council then Paragraph 7.2 of this Chapter (Page 7/7) is the correct guideline to follow. The Council has the delegated power only if it can meet the general conditions and specific directions of the delegation (see Chapter 2 and Appendix 2c) in the particular instance.



**8** The Department also deals with concessions when the reserve is vested in the Crown and administered by the “Commissioner”.



### What Happens if the Council Receives an Application for a Concession?

The process set out below is to be followed where an application for a concession is lodged with the Council.

Stage	Who Does It	What Happens
1	Officer <sup>9</sup>	<ul style="list-style-type: none"> <li>Receives application.</li> <li>Determines whether:               <ol style="list-style-type: none"> <li>the land is a reserve subject to the Reserves Act 1977 <i>NB if it is not, then notifies the applicant.</i></li> <li>a concession is the best way to grant the right sought by the applicant <i>NB see Section 7.1 of this Chapter as to alternatives. If the alternative is better then discusses withdrawing the concession proposal with the applicant.</i></li> <li>the Council holds an appointment to control and manage the reserve <i>NB if the Council holds a vesting of the reserve then goes to Section 7.1.</i></li> <li>the Council holds the delegated authority to deal with the application (see above). <i>NB if the Council holds the delegated authority then goes to Section 7.2.</i></li> </ol> </li> </ul>
2	Officer	<ul style="list-style-type: none"> <li>Informs the applicant that the application will be dealt with under s.59A Reserves Act.</li> <li>Sends the application to the Department of Conservation.</li> </ul>
3	DOC <sup>10</sup>	<ul style="list-style-type: none"> <li>Assesses the application.</li> <li>Obtains further information from the applicant if required and collects application fee.</li> <li>Prepares an assessment and recommendation. <i>NB The application may at this stage be declined – see ss. 17T or 17U Conservation Act.</i></li> </ul>
4	DOC	<ul style="list-style-type: none"> <li>Informs Council of decision to decline; or</li> <li>Invites the views of the Council as administering body on the concession proposal.</li> </ul>
5	Officer	<ul style="list-style-type: none"> <li>Provides a report to the Council.</li> </ul>
6	Council	<ul style="list-style-type: none"> <li>Determines its views on the proposal.</li> </ul>



**9** "Officer" refers to the employee or contractor of the Council authorised to undertake the action.

**10** "DOC" refers to the employee in the Department of Conservation office authorised to deal with the application.

Stage	Who Does It	What Happens
7	Officer	<ul style="list-style-type: none"> <li>Conveys Council view to DOC.</li> </ul>
8	DOC	<ul style="list-style-type: none"> <li>Having regard to Council's views, completes the process of considering the application.<sup>11</sup></li> <li>Notifies decision to: <ul style="list-style-type: none"> <li>Council</li> <li>applicant.</li> </ul> </li> <li>If concession approved, provides copy of signed Document to Council.</li> </ul>
9	Officer	<ul style="list-style-type: none"> <li>Records concession.</li> <li>Sets up arrangements for collection of rent and/or any other charges.</li> </ul>

### What Should the Officer Tell the Applicant at Stage 2?

A standard acknowledgement letter to the applicant is attached as Appendix 7b.

The acknowledgement letter should outline the relevant provisions of both the Reserves Act and the Conservation Act that apply to the processing of the application. The limits to Council's delegations under both Acts should be pointed out. In addition the applicant should be made aware that their application has been referred to the Department of Conservation for processing and that a change may be made by the Department.

### What Information Should be Provided to DOC at Stage 2?

The information provided should be able to clearly identify the site and describe the values of the land that the proposal relates to. Full details about the proposal and key background information on the status of the land should also be provided.

A standard list of information to be sent to DOC is attached as appendix 7c.

### What Happens if DOC Receives the Application?

If the application is for a concession over a reserve where the Council holds an appointment to control and manage, DOC will:

- consult with the Council about jurisdiction
- notify the applicant whether or not the Council has the power to deal with the concession under a delegated power; if so, DOC will send the application on to the Council



**11** If the proposal is publicly notified and changes are made as a result of public submissions, DOC will carry out a second consultation with the Council before a final decision is made.



- take up the action from Stage 3 of the above process if the Council does not have the delegated power.

If the reserve is vested in the Council then DOC will send the application to the Council and notify the applicant.

#### **What Happens if the Council Wants to Invite Applications for a Concession?**

If the Council wants to invite applications for a concession, and it does not have the delegated power to grant the concession, Council should first take up the matter with DOC.

DOC will devise a concession proposal, having regard to the views of the Council, and invite applications. DOC will consult the Council on the choice of concessionaire.

Stages 8 and 9 in the process above complete the action.

#### **What Obligations Does the Council Have Under the Treaty of Waitangi?**

Refer to Chapter 4 in this Guide. Note in particular the requirements of Part 9 Ngai Tahu Claims Settlement Act if a long-term lease is involved (Page 4/4).