



Reserve Revocation and Disposal

This Chapter discusses the uplifting of the status as “reserve” from land. Generally, uplifting the status or “revocation” of the reserve is triggered by an administering body either wishing to dispose of the land, or to use the land for an alternative local authority purpose or “public work” which is not compatible with management of the land under the Act.

In addition reserve status can be uplifted through an exchange under s.15. In this instance, the status of the existing reserve is uplifted at the same time as the proposed reserve is declared reserve. This process is not covered by this Guide, but will be the subject of a comprehensive update in the near future.

A summary of powers under the Act is given along with practical advice over processes especially relating to the interaction of a local authority with the Department of Conservation.

9.1 Under What Circumstances can a Reserve be Disposed of?

A reserve may be disposed of only after its reservation is revoked (s.25 Reserves Act). After the revocation is notified in the *Gazette* (s.24):

- The Crown will dispose of a reserve¹ vested in it, or in a local authority or trustees deriving title from the Crown, under the provisions of the Land Act 1948. Disposal may be by way of sale for cash, or there may be a limited disposal by way of lease or licence.
- Other reserves (including those referred to in s.25(4) and (5)) will be disposed of in accordance with the manner and purpose specified by Minister of Conservation.



1 Any reference to reserve revocation and disposal in this Chapter includes part of a reserve.

These conditions will be included in the *Gazette* notice revoking the reservation (s.25(2)). Appendix 9a gives typical examples of formulas used in past notices in the *Gazette*.



Does the Council Hold any Relevant Statutory Powers?

The Council has the following powers in connection with the revocation or disposal of reserves:

- s.24(1)(b) – as a local authority it can initiate the process to revoke the reservation over any reserve in its district. Using this power would be unusual.
- s.24(1)(b) – as an administering body of a reserve it can initiate the process to revoke the reservation of that reserve. This process is set out in the table at the end of this Section (9.1).
- s.25(1) – as a territorial authority, it can through its delegated authority, specify the manner and purpose of disposing of a reserve vested in it that was not derived from the Crown (see below).

In the case of a reserve not derived from the Crown, the Council can only dispose of a reserve vested in it after approval of the revocation of the reservation, and then subject to any specifications in the *Gazette* notice putting the revocation into effect (see Appendix 9a).

Relevant provisions in Acts other than the Reserves Act have to be complied with (eg Public Works Act 1981, s.4 Conservation Act – see Chapters 2, 3, 4 and 5).

The Council does not have the power to approve the revocation of the reservation of a reserve, nor does it have the power to dispose of a reserve it holds under an appointment to control and manage.

In summary:

Status of the Reserve	Can Council initiate revocation?	Who approves revocation?	Can Council dispose of land after revocation?
Vested in Crown (controlled by another administering body or the Commissioner)	Yes (as local authority)	MOC	No
Vested in Council as administering body			
- title derived from Crown	Yes	MOC	No
- title not derived from Crown or deemed not derived	Yes	MOC	Yes

Vested in another administering body	Yes	MOC	No
Held by Council under appointment to control and manage	Yes	MOC	No

It would be unusual for the Minister of Conservation to initiate action to revoke the reservation of a reserve for which the Council is the administering body.

It would also be unusual for a Council, as local authority, to initiate the action for a reserve for which it is not the administering body.

For the purpose of this Guide, it is assumed that the Council will initiate the action as the administering body of a reserve under s.24(2).

For What Reasons can the Reservation of any Land as a Reserve be Revoked?

Revocation can take place for any reason considered advisable in terms of the purposes of the Reserves Act (s.24) where the outcome will be a disposal of the land (s.25) either by the Crown or the Council (see above).

There are however some limitations. A nature or scientific reserve cannot be revoked unless, in the opinion of the Minister, the reserve is no longer suitable for the purposes of its classification because of the destruction of the forest, bush, or other vegetation, or of the fauna or scientific or natural features, or for any other comparable reason (s.24(4)).

Similarly, an historic reserve cannot be revoked unless, in the opinion of the Minister, the reserve is no longer suitable for the purpose of its classification because of the destruction of the historic features or for any other reason or the revocation is required in the public interest (s.24(5)).

The most common reasons for revocation and disposal are:

- The land is surplus to Reserves Act requirements and the monies derived under s.82 will provide a net benefit in terms of the purposes of the Act (eg for exchange or purchase of other reserve land or improving/enhancing existing reserves).
- The community benefit is better met by the Council holding the land free of a Reserves Act trust (eg Council offices, workshops and car parks, or properties occupied by a commercial entity such as a Local Authority Trading Enterprise (LATE)).
- An exclusive right of use is held by one group in the community and that situation of public exclusion is unlikely to change in the long term.



Each case must however be considered on its merits.

What Process Should the Council Follow?

In cases where a Council initiates the revocation process under s.24(1)(b) Reserves Act, as the administering body of the reserve, the following process meets the requirements of the Act.

Stage	Who does it	What Happens
1.	Officer ²	<ul style="list-style-type: none"> Makes a decision to begin the process (eg in accordance with the Council’s asset management strategy). Determines the following: <ul style="list-style-type: none"> - That the land is a reserve subject to the Reserves Act <i>NB If it is not then this process is not appropriate.</i> - That the Council is the administering body of the reserve <i>NB If it is not then this process is not appropriate.</i> - Whether, on revocation of the reservation, the land would become Crown land or not (s.25).
2.	Officer	<ul style="list-style-type: none"> Develops a proposal to revoke the reservation, to enable disposal (including, where appropriate, the manner and purpose of disposal). Determines whether or not to undertake internal or external consultation on the proposal (before public notice) in accordance with Council practice and the Guidelines in Chapter 4. Consultation with the Commissioner is compulsory (s.24(2)(b)) before public notice is given if public notice is required. If consultation takes place, determines how to have regard to views received from the consulted parties.
3.	Officer	<ul style="list-style-type: none"> Makes a recommendation to the Council on the revocation and (if appropriate) seeks approval to give public notice (s.24(2) and S.119) and the manner and purpose of disposal. Seeks direction from Council on what it wants to specify in the public notice about the proposal and reasons for the proposal.
4.	Council	<ul style="list-style-type: none"> Resolves as administering body that, for the reason stated in its resolution, the reservation of the reserve should be revoked (s.24(1)(b)). Makes a decision on any recommendation about public notice. (If appropriate) makes a decision under delegated



² “Officer” refers to the employee or contractor of the Council authorised to undertake the action.

authority on the manner and purpose of disposal (s.25(1)).

Stage	Who Does It	What Happens
5.	Officer	<ul style="list-style-type: none"> • Arranges public notice if required. NB If not required, then goes to Stage 7. • Reports the Council on any objections.
6.	Council	<ul style="list-style-type: none"> • Makes a resolution on the objections (s.24(2)(e)).
7.	Officer	<ul style="list-style-type: none"> • As appropriate, provides the required information to the Department of Conservation.
8.	Officer	<ul style="list-style-type: none"> • Receives Department's decision. • Notifies Council (if required by Council practice) and any other affected party. • If revocation is approved, awaits receipt of <i>Gazette</i> notice from the Department. NB If not, the process ends.
9.	Officer	<p>On receipt of the <i>Gazette</i> notice:</p> <ul style="list-style-type: none"> • records revocation in Council records³ • arranges registration of the notice (if appropriate – see Chapter 5) • if appropriate,⁴ arranges disposal in accordance with Council practice and in compliance with the manner and purpose of disposal specified in the <i>Gazette</i> notice.

Is Public Notification Required?

s.24 determines whether public notification is required or not. An officer would inform the “administering body” what the requirement is and the “administering body” would proceed with the revocation.

If the decision to proceed is made, the requirement to publicly notify must be met, unless there is an exemption under ss.24(6) or 24(7). The discretion in the proviso to s.24(7), that the Minister can still require s.24(2) to be used, is not delegated by the Minister to councils. However, in practice it would only be rarely used and the need would/should likely be established at the earlier consultation stage under s.24(2)(b).

The Council has the discretion (s.119(1)(b)(ii)) to decide whether or not to advertise in additional newspapers, although it may have delegated this to an officer.



If the Council Initiates the Action What Information Should it Send to the Department of Conservation?

The Council should send the following information to the Department at Stage 7 of the process (if not provided earlier):

- a copy of the Council’s resolution (s.24(2)) and (if appropriate) delegated decision in principle (s.25(1)), together with any supporting information (eg justification for revocation)
- (if appropriate) the resolution of the Council on any objections and a copy of the objections (s.24(2)(e)) or confirmation that no objections were received
- a copy of the instrument of vesting (eg certificate of title) or appointment to control and manage (*Gazette* notice). [If the reserve was classified by Council resolution also provide a copy of the resolution]
- if part of a reserve is involved, a plan of the part to be revoked
- a copy of any lease, licence, permit or easement current over the land affected by the revocation and a physical description of the land
- information about any action taken by the Council under s.4 Conservation Act (Chapter 4).

3 The land remains a reserve until the notice is published in the *Gazette*.

4 If the reserve becomes Crown land on revocation, then DOC will arrange disposal through Land Information NZ under the Land Act 1948.

At Stage 2 of the process the Council must provide sufficient information to allow consultation with the Commissioner (this may include all the above items except the Council’s resolutions and delegated decision).

The Department will as soon as practicable consider the proposed revocation, the objections, and the resolution of the administering body on the objections (s.24(2)(f)).

Will the Department Recover its Costs?

The following Guidelines apply to the **cost of revocation**:

- The Council will meet its own costs (but see Section 9.2 of this Chapter).
- The Department will meet its own costs in any case where the land will become Crown land on revocation of the reservation (but see Part 9.2 of this Chapter).
- The Department may recover its costs from the Council in accordance with s.60B Conservation Act in any case where the land will **not** become Crown land on revocation of the reservation.

The Council can ask for these latter costs to be estimated before action is taken. However, the Department is not bound by the estimate.

If the revocation of the reservation results in the land becoming Crown land the Department will be responsible for all **disposal costs**.

If the land does not become Crown land then the Council will meet its own disposal costs.



Practice Note

Council wishes to dispose of a reserve. The Council did not derive the title or vesting from the Crown or it is deemed not to be derived from the Crown for the purposes of s.25 Reserves Act.

The Council would begin at Stage 1 of the process set out on page 9/4.

At Stage 4 the Council would (by exercise of its delegated statutory authority) adopt a resolution along the lines:

..... resolves that, subject to revocation of the reservation over ... [legal description of the land] ... that land may be ...

The concluding words in the resolution would be chosen by the Council according to the preferred formula in each case, derived from Appendix 9a.

The Council would then send the resolution to the Department of Conservation with other information at Stage 7 of the process.

The Department would notify the Council decision in the *Gazette*, as part of the notice under s.24 of the Act, if revocation of the reservation is approved (Stage 8 of the process).

The registration of the *Gazette* notice (Stage 9) would then enable the council to transfer the title or take other action as appropriate to its resolution.

9.2 Proceeds of Disposal of Crown Reserves

When May a Council Obtain Access to the Monies Derived as a Result of a Disposal of a Revoked Reserve?

The Hon Dr Nick Smith, Minister of Conservation, announced on 30 August 1999 that the Crown and territorial local authorities⁵ will equally share the net amount available as a result of disposal of revoked Crown reserves, and be reimbursed for costs.

The policy applies to any Crown reserve which is vested in, or held under an appointment to control and manage by, a Council, where the revocation process (for the whole or part of the reserve) is initiated after 1 September 1999.

The policy initiative is designed to encourage councils to:

- Dispose of a small number of reserves that no longer serve a useful purpose
- Acquire new property interests in natural or historic heritage areas or secure access to them.

The rationalisation of the reserve holdings managed by Councils is anticipated to increase benefits to communities through an improved network of protected areas, with better access opportunities. The policy will provide an incentive for Councils to



5 The policy would cover Regional Council controlled reserve which was derived from the Crown. The policy does not extend to other administering bodies nor to reserves that have no administering body.

initiate the process of revoking the reservation over surplus Crown reserves which they administer.

The policy will also encourage Councils to acquire new property interests in natural and historic heritage areas, or for public access to them.

What is the Basis of Sharing?

The monies available under the policy will generally be shared on the basis shown in Appendix 9b, with each case being considered on its merits.

Direct costs include those of:

- publication (newspapers and the *Gazette*)
- contractors (eg LINZ accredited agents, surveyors, external solicitors and valuers, land agents)
- registration and lodgement fees (LINZ)
- subdivision consent fees.

What are the Conditions Attached to the Policy?

The policy is conditional on the following:

- the money becoming available under s.82(1)(a) of the Act from a sale by the Crown for cash. (NB. It is discretionary, not mandatory that money becomes available – see below)
- only direct costs can be recovered, not indirect costs such as staff time
- the value only of improvements paid for by the Council (“Council improvements”) can be taken into account
- all monies paid to a Council (excluding costs) being spent by the Council on the acquisition of land as a reserve or on conservation covenanting to protect natural or historic heritage values, or on public access to reserves. (NB The money is not available for other purposes allowed under s.82(1)(a) of the Act)
- the disposal is part of a reserve rationalisation by the Council, undertaken in accordance with the following principles:
 - it should follow a comprehensive audit of Council reserve land holdings, in the context of community goals and strategies for reserves and open space
 - the Council should give priority to acquiring interests in land (to become subject to the Reserves Act) over areas identified in District Plans for the protection of significant indigenous vegetation and significant habitats of indigenous fauna or the enhancement of public access to and along the



coastal marine area, lakes and rivers (s.6 Resource Management Act), providing the interest serves the purposes in s.3 of the Reserves Act

- the Council putting each proposed disposal should go through a cost-benefit analysis (including not just the fiscal but also the ecological, social and cultural elements to the extent consistent with s.24)
- reserves (or parts of reserves) with significantly high, or uncertain, natural historic or recreation value should be retained, regardless of whether the management costs are high.

What Happens if the Cost of Revocation and Disposal/Value of Council Improvements is Greater than an Amount Equal to the Proceeds of Disposal?

Any amount available will be shared (after the disposal) in the manner shown in Appendix 9b. Each party will bear its respective loss, if any.

How Does the Council Access Monies Available Under the Policy?

The Council can access monies available under the policy by making an application to the Department of Conservation at the time it notifies the Commissioner under the provisions of s.24(1)(b) of the Act that a reservation should be revoked (see Section 9.1 of this Chapter). The onus is on the Council to present the merits of its case in the application.

If the conditions of the policy are met (see above) the Council will be asked to submit details of its direct costs, proof of its claim to, and details of, Council improvements. The improvements will be valued, by the Crown, for sale with the land. The Council will be asked to enter into an agreement over the use of the monies under s.82 Reserves Act. Then the monies due to the Council in accordance with the policy will be paid out. All payments will be GST inclusive.

What Happens to the Actual Proceeds of Disposal of Revoked Crown Reserves?

The proceeds of disposal of revoked Crown reserves (land and fixtures) must be paid into the Crown Bank Account (s.82(1) Reserves Act).

The proceeds are not available to the Department of Conservation nor the administering body.

The Minister of Conservation does, however, have the discretion, where the land is sold for cash, to direct that an amount equal to the proceeds of sale is paid from the Crown Bank Account to be used for purposes specified in the Act.