Please note that this is the original Reserves Act Guide and does not take into account changes to legislation, policy and delegations since 2004.
For some years I have been anxious to modernise some aspects of the administration of the Reserves Act, especially to focus on the core purposes of the Act, simplify bureaucratic processes and achieve consistency of application of the law across different administering bodies. To address these issues I readily accepted the proposal of Local Government New Zealand to set up “The Reserves Act Review Working Party” with representatives from local authorities, and the Department of Conservation.

The Working Party recommended a number of changes to the Act, and to administrative procedures and policy. They also recommended the development of this practice Guide which has been prepared jointly by the Department and Local Government New Zealand, with contributions on best practice from local authorities.

I am sure that local authorities and other reserve administering bodies will find this Guide useful in achieving the purposes of the Reserves Act, and an indispensable reference in the effective day-to-day administration of reserves.

The Guide includes some new policy on matters such as the disposal of redundant reserves and the use of revenue from such disposals. These changes are intended to encourage local authorities to audit and manage their reserve portfolios so that they continue to meet the heritage conservation and community needs of their districts. The streamlined administrative provisions developed by the Working Party and contained in this Guide will offer new opportunities and rewards for Councils wishing to strategically manage their reserves.

The Working Party has produced a much-needed impetus to improved reserve management. I thank them for their wide-ranging and careful review of procedures. I congratulate Local Government New Zealand and the Department of Conservation for compiling this Guide. I urge all reserve administrators to take the opportunity of this initiative to initiate their own reviews of policy and procedures, for the reserves they administer.

Minister of Conservation

[Will need to be updated to reflect the views of the Minister at the time.]
From the President of Local Government New Zealand

The 1997/98 Workplan of Local Government New Zealand included a commitment to explore issues and formulate recommendations to improve the efficiency of the Reserves Act 1977.

The Act has now been operational for 21 years without major amendment. While the Act has, in the main, stood the test of time, the National Council of Local Government New Zealand considered a review was necessary as some aspects had lost much of their relevance and practicability in today’s world.

In June 1997 Local Government New Zealand sought views on the Act from all local authorities. Their concerns suggested three primary needs:

- the devolution of a higher level of decision-making to local authorities
- greater flexibility in approaches to management
- standardisation and updating of process and terminology.

Those needs led to a joint local government and Department of Conservation Working Party being constituted.

At the same time the Reserves Act Review Working Party considered a parallel issue concerning the difficulties of rationalising existing reserve holdings. This step is necessary to ensure that the mix of reserves held by each local authority best meets the present and future needs of communities for open space, community services and conservation values.


This Guide is an essential tool to implement the recommendations in both reports, to assist with improving practice and understanding of the Act.

We welcome two important outcomes from the review. They are:

- wide acceptance that the underlying philosophy and structure of the Reserves Act is still sound, and that no major reform beyond a few technical amendments is warranted at this time. This situation differs from the commonly held view of the Working Party at the beginning of the process

- the establishment of a first-class working relationship between senior staff from Local Government New Zealand, various local authorities and the Department of Conservation on Reserves Act matters.
I thank Wynne Raymond, Mayor of Timaru, the Chair of the Reserves Act Review Working Party, and all of his team for their efforts. Their work will prove invaluable to all who are interested in Reserves Act administration.

It is a great pleasure for me to launch this document with the Minister, reflecting the productive and close working relationship established in this exercise between local government and central government.

President
Local Government New Zealand

[Will need to be updated to reflect the views of LGNZ at the time.]
Please note that this is the original Reserves Act Guide and does not take into account changes to legislation, policy and delegations since 2004.

Acknowledgements

The Joint Reserves Act Review Working Party:

Wynne Raymond, Mayor, Timaru District (Chair)
Catherine Wilson, Open Space Planner, Auckland City
Robin Quigg, Recreation Planner – Team Leader, Dunedin City
Gordon Bailey, Superintendent Parks & Recreation, Gore District
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Richard Hollier, Manager Parks & Environment, North Shore City
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Timoteh Mansfield, Department of Conservation Head Office, Wellington
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Gary Saunders, Waimakariri District
Derek Thompson, Virginia Terpstra and Andrew White, Wellington City
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John Hutchings, Local Government New Zealand
Elizabeth Hughes, Local Government New Zealand
Pippa Player, Local Government New Zealand
Donna de Brouwer, Local Government New Zealand
Dianne McPhail, Local Government New Zealand

[Will need to be revisited at the time of the next edition.]
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<td><strong>Administering body</strong></td>
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<tr>
<td><strong>Administrative law</strong></td>
<td>a body of specialist law concerned with the way bodies charged with statutory or other administrative functions (usually involving the exercise of a discretion) conduct those functions</td>
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<tr>
<td><strong>Appointment to control and manage</strong></td>
<td>the appointment of an administering body for a reserve under s.28 (local authority) or s.29 (voluntary organisation) or s.30 (board) or s.35 (trustees) or s.36 (Minister of the Crown) Reserves Act or under some corresponding provision in an earlier Act. [The land remains vested in the Crown.]</td>
<td></td>
</tr>
<tr>
<td><strong>Autonomous powers</strong></td>
<td>statutory powers held by an administering body under the Reserves Act which can be exercised by the administering body without the prior consent or approval of the Minister of Conservation</td>
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</tr>
<tr>
<td><strong>Beneficiary</strong></td>
<td>the person who benefits from an action, interest or right</td>
<td></td>
</tr>
<tr>
<td><strong>Bylaws</strong></td>
<td>an ordinance affecting the public, or some portion of the public, imposed under the provisions of s.106 Reserves Act and accompanied by some sanction or penalty for its non-performance (s.104 of the Act). [If validly made (s.107 and s.108 of the Act) a bylaw has the force of law within its legitimate operation.]</td>
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<tr>
<td><strong>Cadastral description</strong></td>
<td>the unique description of a parcel of land given to it on a Survey Office Plan or a Deposited Plan or a Maori Land Plan – see Survey Regulations 1998. [Typically you will find these types of descriptions for reserves used in the schedule of a Gazette notice, a certificate of title, or on plans illustrating land boundaries.]</td>
<td></td>
</tr>
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<td><strong>Certificate of title</strong></td>
<td>a certificate of title under the Land Transfer Act 1952 – see also s.116 Reserves Act</td>
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<tr>
<td><strong>Change of purpose</strong></td>
<td>the change of purpose of a local purpose or Government purpose reserve under s.24 or s.24A Reserves Act. [A change of classification would involve a change between two of the classes provided for in ss.17 to 23 of the Act.]</td>
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<td>Term</td>
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<tr>
<td>Change of use</td>
<td>any change of use to which a reserve is put. [If the changed use is not consistent with the principal purpose for the class to which the reserve belongs then it would be outside the authority of the administering body to allow it. A change of purpose or classification must be considered and the use not allowed if the change is not made.]</td>
<td></td>
</tr>
<tr>
<td>Classification/sub-classification</td>
<td>covers the mandatory process under the Reserves Act for putting a reserve into a class under that Act; or a scenic, or a government or local purpose reserve into a type.</td>
<td></td>
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<td>Commissioner</td>
<td>see s.2 Reserves Act</td>
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<td>Concession</td>
<td>see s.2 Reserves Act [Does not apply to reserves vested in an administering body.]</td>
<td></td>
</tr>
<tr>
<td>Consent</td>
<td>generally refers to a consent by the Minister of Conservation where specified by the Reserves Act; it may be conditional (s.121 of the Act)</td>
<td></td>
</tr>
<tr>
<td>Conservancy</td>
<td>a branch of the Department of Conservation reporting to a Regional General Manager. Each Conservancy will have a number of Area Managers (in Area offices) reporting to a Conservator</td>
<td></td>
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<tr>
<td>Conservation Board</td>
<td>see s.2 Reserves Act</td>
<td></td>
</tr>
<tr>
<td>Conservator</td>
<td>see Conservancy</td>
<td></td>
</tr>
<tr>
<td>Consideration (contract)</td>
<td>the amount paid by the beneficiary (eg rent) for the rights obtained under the contract</td>
<td></td>
</tr>
<tr>
<td>Consultation</td>
<td>a process of seeking the views of an affected party, and carefully considering those views before making a decision</td>
<td></td>
</tr>
<tr>
<td>Council</td>
<td>in relation to delegated and statutory powers under the Reserves Act it refers to the full Council of the local authority which is the administering body for the reserve; otherwise used to denote the Council as a corporate organisation</td>
<td></td>
</tr>
<tr>
<td>Covenant</td>
<td>generally refers to a conservation covenant under s.77 Reserves Act [A valuable reference is Conservation Covenants: A guide to assist local authorities to protect and conserve waterways, wetlands and other natural areas Water Services Unit Christchurch City Council 1998 ISBN 0-9583696-5-8.]</td>
<td></td>
</tr>
<tr>
<td>Crown</td>
<td>HMQ acting through the Minister of Conservation</td>
<td></td>
</tr>
<tr>
<td>Current market value</td>
<td>the amount which the land, if sold on the open market by a willing seller to a willing buyer on the specified date, might be expected to realise [cf Public Works Act]</td>
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</tr>
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### Glossary

**Deed**

a type of instrument which meets certain legal requirements. A deed is a written document that is signed, sealed and delivered. If it is a contractual document it is referred to as a *contract under seal* (or specialty). A promise contained in a deed is called a covenant and is binding. A deed of covenant contains an undertaking to pay an agreed amount over an agreed period.

**Delegated powers**
powers under the Reserves Act delegated by the Minister of Conservation under the provisions of s.10 of that Act.

**Devolution of powers**

the granting of powers to reserve administering bodies by Parliament through the Reserves Act as opposed to delegated powers.

**Discretion**
generally refers to the choice of approving or declining an application or proposal under the Act, or regarding the requirement of complying with specified criteria or considerations.

**Disposal of land**
in relation to a reserve means the outcome of the process in ss.24 and 25 Reserves Act, which results in the reservation being revoked and the land becoming available for disposal.

**District plan**

the purpose of the preparation, implementation and administration of district plans is to assist territorial authorities to carry out their functions in order to achieve the purpose of the RMA (s.72 RMA).

**Domain board**

redundant term – now a reserve board or a local authority (s.16(7) Reserves Act).

**Easement**
generally an interest in land granted under s.48 Reserves Act over a reserve or acquired under s.12 Reserves Act over private land, or similar.

**Esplanade reserve**
a type of local purpose reserve (see s.229 RMA).

**Exchange**
an exchange of reserve land for other land (s.15 Reserves Act).

**Execution (of document)**
signing by the parties in front of witnesses (eg s.117 Reserves Act).

**Exemption**
either a term in a contract purporting to exclude or restrict the liability of one of the parties in specified circumstances; or where an obligation under a statute is waived, eg through exercising a statutory power.

**Fee simple**

commonly called the “freehold” interest in land, the highest or most absolute interest in land held under the Crown.
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<th><strong>Definition</strong></th>
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<td><strong>Gazette notice</strong></td>
<td>a notice published in the Gazette. The Reserves Act requires certain transactions to be put into effect by such a notice</td>
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<td><strong>Government purpose reserve</strong></td>
<td>a class of reserve provided for in s.22 Reserves Act</td>
</tr>
<tr>
<td><strong>Instrument</strong></td>
<td>any printed or written document, map or plan relating to the transfer of or dealing with land, or evidencing title to land (c.f.s.2 Land Transfer Act 1952)</td>
</tr>
<tr>
<td><strong>Interest (in land)</strong></td>
<td>a bundle of rights which may be exercised in respect of the piece of land in which the interest is held</td>
</tr>
<tr>
<td><strong>Iwi</strong></td>
<td>tribe; people</td>
</tr>
<tr>
<td><strong>Judicial review</strong></td>
<td>a review by a judge of the High Court of any exercise, or any refusal to exercise a statutory power of decision to determine whether that decision or action is unauthorised or invalid</td>
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<tr>
<td><strong>Lease</strong></td>
<td>see s.2 Reserves Act eg a lease granted under s.54 Reserves Act in respect of a recreation reserve, or a lease granted as a concession under s.59A of the Act etc</td>
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<tr>
<td><strong>Legal description</strong></td>
<td>see cadastral description; the two terms are used interchangeably</td>
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<td><strong>Lessee</strong></td>
<td>the holder of a lease</td>
</tr>
<tr>
<td><strong>Licence</strong></td>
<td>see s.2 Reserves Act eg a licence granted under s.74 to occupy a reserve temporarily, or a licence granted as a concession under s.59A of the Act, etc</td>
</tr>
<tr>
<td><strong>Licensee</strong></td>
<td>the holder of a licence</td>
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<tr>
<td><strong>Local authority</strong></td>
<td>see s.2 Reserves Act</td>
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<td><strong>Local purpose reserve</strong></td>
<td>a class of reserve provided for in s.23 Reserves Act</td>
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<td><strong>Management plan</strong></td>
<td>a management plan provided for in s.41 Reserves Act</td>
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<td><strong>Maori terminology</strong></td>
<td>in Chapter 5</td>
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<td><strong>he here kia mohio</strong></td>
<td>duty to be informed</td>
</tr>
<tr>
<td><strong>kaitiakitanga</strong></td>
<td>the exercise of guardianship/custodianship/stewardship by the tangata whenua</td>
</tr>
<tr>
<td><strong>kawanatanga</strong></td>
<td>government</td>
</tr>
<tr>
<td><strong>mana Maori</strong></td>
<td>exclusive and undisturbed possession</td>
</tr>
<tr>
<td><strong>oritetanga</strong></td>
<td>equality and privileges of citizenship</td>
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<tr>
<td><strong>Glossary</strong></td>
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<tr>
<td><strong>Tautiaki ngangahau</strong></td>
<td>active protection</td>
</tr>
<tr>
<td><strong>Tino rangatiratanga</strong></td>
<td>iwi authority and control over Taonga; absolute sovereignty</td>
</tr>
<tr>
<td><strong>Whakatika i te mea he</strong></td>
<td>redress of Treaty claims and avoidance of future breaches</td>
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<td><strong>Whakawhanaungatanga</strong></td>
<td>towards partnership and relationships</td>
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<tr>
<td><strong>National reserve</strong></td>
<td>an overlay on a reserve declared under s.13 Reserves Act</td>
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<td><strong>Nature reserve</strong></td>
<td>a class of reserve provided for in s.20 Reserves Act</td>
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<td><strong>Objection</strong></td>
<td>an objection for the purposes of s.120 Reserves Act</td>
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<td><strong>Parcel of land</strong></td>
<td>an area of land with a unique legal description</td>
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<tr>
<td><strong>Partnership (Treaty of Waitangi)</strong></td>
<td>see whakawhanaungatanga or any authoritative Treaty text</td>
</tr>
<tr>
<td><strong>Permit</strong></td>
<td>see s.2 Reserves Act</td>
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<tr>
<td><strong>Provincial Ordinance</strong></td>
<td>an Ordinance dating from the days of provincial government in New Zealand</td>
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<tr>
<td><strong>Public notice</strong></td>
<td>a notice to which s.119 or some other provision of the Reserves Act applies</td>
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<td><strong>Public reserve</strong></td>
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<td><strong>Recreation reserve</strong></td>
<td>a class of reserve provided for in s.17 Reserves Act</td>
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<td><strong>Regional council</strong></td>
<td>as specified in Pt I of the First Schedule to the Local Government Act 1974, and in Pt 39A and in sections 684C to 684F, includes the Chathams Islands Council</td>
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<td><strong>Regional plan</strong></td>
<td>an operative plan (including a regional coastal plan) approved by a regional council or the Minister of Conservation under the First Schedule to the RMA, and includes all changes to such a plan</td>
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<td><strong>Registration</strong></td>
<td>the registration of an instrument under the Land Transfer Act 1952</td>
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<td><strong>Regulatory instrument</strong></td>
<td>a document which has a regulatory effect</td>
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<td><strong>Resolution</strong></td>
<td>a Council resolution eg s.14 Reserves Act</td>
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<td><strong>Revocation</strong></td>
<td>the process of reserve revocation under s.24 Reserves Act</td>
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<td><strong>Right (in land)</strong></td>
<td>generally the same as interest in land, but could be a lesser right eg a permit</td>
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<td><strong>Road dedication</strong></td>
<td>the process in s.111 Reserves Act</td>
</tr>
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</table>
**Road reserve**
unformed legal road or a local purpose (road) reserve to which s.111 Reserves Act applies

**Scenic reserve**
a class of reserve provided for in s.19 Reserves Act; there are two types

**Scientific reserve**
a class of Reserve provided for in s.21 Reserves Act

**Statutory authority**
the authority for an action under the Reserves Act

**Statutory power**
the power to make a discretionary decision

**Subdivision**
under s.218 RMA the term “subdivision of land” means the division of an allotment, or an application to a Registrar for the issue of a separate certificate of title in circumstances where the issue of that certificate of title is prohibited by s.226

**Submission**
a submission for the purposes of s.120 Reserves Act

**Territorial authority**
a district or city council as specified in s.37L, Part 1 of the Local Government Act 1974; see s.2 Reserves Act but also see Chapter 2 as to use of the term in relation to delegations

**Transfer (of title to land)**
transfer to another owner following reserve revocation; s.112 Reserves Act also applies

**Trust**
generally used to refer to the obligations of the administering body under s.40 Reserves Act

**Trustee**
see s.2 Reserves Act

**Ultra vires**
outside or beyond the terms of the proper authority

**Union of reserves**
unitary authority – a territorial authority which has, in respect of the district for which it is constituted, the functions, duties and powers of a territorial authority and, in respect of the regional under its control, the functions, duties and powers in a regional council

**United council**
unitary authority – a territorial authority which has, in respect of the district for which it is constituted, the functions, duties and powers of a territorial authority and, in respect of the regional under its control, the functions, duties and powers in a regional council

**Vested reserve**
a reserve which is vested in an administering body and not vested in the Crown. Note that land which has been declared to be a reserve (s.14 Reserves Act) or has been acquired “in trust” as a reserve, is treated as “vested” in the reserve’s administering body for the purpose of administration of the Reserves Act

**Vesting**
the vesting of a reserve in an administering body (s.26 or s.26A Reserves Act, where the land ceases to be vested in the Crown, or a corresponding provision in an earlier Act [but subject to s.25 Reserves Act] or under some other Act [eg on subdivision under the RMA]) and the underlying title or reversionary interest remains with the Crown.
The development of this Reserves Act Guide was a direct result of the joint review of the Reserves Act by the Minister of Conservation, the Department of Conservation and Local Government New Zealand. The joint review had its origins in two independent projects, both started in early 1997. One project, initiated by Hon Nick Smith, Minister of Conservation, comprised an investigation into options available for improving the ability of local authorities to rationalise their reserve portfolios to better meet the purposes of the Act. Local Government New Zealand initiated the second project, where it sought submissions from its members on the difficulties faced in administering the Act.

After discussions between the Minister, Local Government New Zealand and the Department of Conservation, it was agreed to jointly undertake a formal review of the Act as it affects local authorities. Local Government New Zealand convened a Working Party, which was chaired by Wynne Raymond (Mayor of Timaru).


The good news is that the Working Party concluded that:

- the underlying philosophy and structure of the Reserves Act is still sound
- no major reform beyond some technical amendments is warranted.

The Working Party also made a series of specific recommendations to improve the workability of the Act and its administration. These recommendations were endorsed by the Local Government New Zealand National Council in December 1998 and by the Minister of Conservation in January 1999.

Four key actions were supported by the Minister which are detailed below.
A Reserves Act Guide

The development of a set of guidelines to the Act to be prepared by the Department of Conservation and Local Government New Zealand for local authorities.

Sharing Proceeds of Disposal

A policy that Crown and local authorities will share the net proceeds from the sale of revoked land that was originally Crown land and previously vested or held by appointment by councils.

The policy is designed to help encourage councils to dispose of a small number of reserves that no longer serve a useful purpose, and to acquire new property interests in natural or historic heritage areas or to secure access to them.

It is important to note that there is no intent to sell off our natural and historic heritage in reserves.

Delegations

The delegation of some of the Minister’s approval and consent functions under the Act to territorial authorities as reserve administering bodies. The Minister has signed an “instrument of delegation” to implement the delegations. Many local authorities will require some guidance on how to exercise these new approval and consent functions. This Guide provides this help.

Amendments to the Reserves Act

Minor amendments to the Act will improve workability and reduce administration costs. These amendments will cover matters such as vesting and classification of reserves, management planning, reserve exchanges, and concessions.

The introduction of amendments is a high priority for the Department for the year 2000.

About The Reserves Act Guide

Purpose of the Guide

This Guide is the direct result of one of the key actions supported by the Minister which arose from the review of the Reserves Act by the Joint Working Party. The Minister and the Joint Working Party considered the production of a Guide to the Reserves Act as the critical basis for improving practice and the understanding of the Act by local authorities.
In mid 1999, the Department developed the technical aspects of the Guide. Local Government New Zealand then finalised the format and built in some best practice examples to make the Guide practical and relevant to councils for day-to-day decision-making.

This Guide is primarily targeted at local authority staff who manage a reserve land portfolio. However, it will also provide a sound information source for councillors involved in decision-making under the Act and those 90 or so non-local authority bodies which administer land under the Act.

**Content of the Guide**

There are ten chapters to the Guide:

Chapter 1 An introduction to the Reserves Act 1977 and its origins
Chapter 2 Powers under the Reserves Act
Chapter 3 Interrelationship between the Reserves Act and other Statutes
Chapter 4 The Treaty of Waitangi as it applies to reserves administration
Chapter 5 Checking the status of reserves and recording information
Chapter 6 Management planning for reserves
Chapter 7 Leases, licenses and easements over vested reserves
Chapter 8 Classification of reserves and changes of classification or purpose
Chapter 9 Reserve revocation and disposal
Chapter 10 Reserve administering bodies.
Chapter 11 Exchanging reserves for other land – will be added as part of the revision]

In addition to these Chapters a glossary of terms provides a quick reference to common terms used in this Guide.

Appendices are located with each Chapter eg Appendix 2a, 3a and so on.

The format of the Guide is designed so that additional material and information can be easily updated by the Department or Local Government New Zealand (eg should amendments to the Reserves Act be made) and by the user of the Guide.

Each local authority has different internal procedures, committee structures for decision-making and policy direction. This Guide does not attempt to provide advice on the frameworks within each local authority – it aims to set out clearly the requirements of the Reserves Act, so that the administrative requirements are incorporated appropriately within the policies and procedures of a local authority.

1 Non-local authority administering bodies should note that this Guide was written for local authorities and not everything in it will apply in the same way to other administering bodies.
An Introduction to The Reserves Act 1977 and Its Origins

Current Act

The current Act for administering public reserves is the Reserves Act 1977.

The long title of the Act describes it as:

“An Act to consolidate and amend certain enactments of the Parliament of New Zealand relating to public reserves, to make further provision for their acquisition, control, management, maintenance, preservation (including the protection of the natural environment), development, and use, and to make provision for public access to the coastline and the countryside.”

Purposes of the Reserves Act

The general purpose of the Reserves Act is set out in s.3 of the Act. Among other things, the Act deals with the powers and responsibilities of a local authority as the administering body of a reserve. The principles and objectives that lay behind the Reserves Act are described in Chapter 1.

This is a summary of the purposes of the Act, as set out in s.3:

- providing for the preservation and management of areas for the benefit and enjoyment of the public
- ensuring, as far as possible, the survival of all indigenous species of flora and fauna
- ensuring, as far as possible, the preservation of access for the public
- providing for the preservation of representative samples of all classes of natural ecosystems and landscape
- promoting the protection of the natural character of the coastal environment and the margins of lakes and rivers.
Areas are provided and managed as reserves under the Act to protect a range of special features or values, including recreational, historical and community ones.

Greater detail on the application of the Act and its relationship to other statutes is provided in Chapter 3.

Guiding Principles

The guiding principles for the 1977 Act when it was conceived were that:

- the number of types of reserve should be reduced to an absolute minimum
- each classification of reserve should have its own philosophy, purpose, and management principles
- management planning should provide for the best use of each reserve
- administering bodies should be enabled to implement the plans once approved.

Objectives

There was also another important principle driving the concept, namely that the Act should achieve the following objectives:

- emphasise retention of open space for outdoor recreation
- maximise freedom of access to reserves for all people rather than just a few
- encourage multiple use of reserve land and facilities when feasible and appropriate
- facilitate greater involvement of the public in reserves administration and decision-making.

Reserves Amendment Act 1979

This amendment to the 1977 Act was driven largely by local authority concern about:

- inadequate devolution of powers to local authorities
- insufficient integration with Town and Country Planning Act requirements
- delays caused by mandatory public notice.

The amendment gave seven new statutory powers to local authorities. That brought the statutory powers unique to territorial authorities under the principal Act to a total of 26 (see Chapter 2).

Some of the powers are conditional on management planning for reserves, and others on a reserve being vested in a local authority, rather than being held under an appointment to control and manage. (See Chapters 6 and 10.)
No other type of reserve administering body enjoys those powers, nor that same level of autonomy.

In 1999, under the provisions of s.10 Reserves Act 1977, some of the powers of the Minister of Conservation were delegated to territorial authorities (see Chapter 2).

The other concerns of local authorities (listed above) were also addressed in the 1979 Amendment Act. The differing roles of the Reserves Act and the Town and Country Planning Act (both passed in the same year) were however recognised as a barrier to greater integration. (See Chapter 3 in relation to the Resource Management Act 1991.)

Another important change was to require each government and local purpose reserve to be sub-classified to specify a particular purpose or purposes.

Reserves Amendment Act 1996

The main amendment was to the lease, licence, easement and permit regime under the Act (see Chapter 7).

The regime for reserves vested in the Crown (including any reserve controlled and managed by an administering body) changed. The concessions provisions of the Conservation Act 1987 now apply to those reserves, in addition to any residual provisions from the former regime (eg s.74(1)(b)(i)).

The regime for reserves vested in administering bodies remained the same.

Origins of Public Reserves in New Zealand

The concept of the Government of New Zealand granting land in trust to public or corporate bodies first appeared in the New Zealand Act 1840 (Imperial).

The term “reserve” was used in Royal instructions of 1840 to Governor Hobson.

There then followed a chain of legislation (see below) enabling the creation of reserves by the Crown, or local government, or as a result of the subdivision of land.

Legislative Background

Practitioners using the Reserves Act 1977 need to be aware of previous legislation when dealing with such actions under the 1977 Act as:

- disposal of land following the revocation of reserves (s.25)
- classification of reserves by local authorities (s.16(2A))
- classification of reserves by the Minister of Conservation (s.16(1))
- notification of a change of purpose of a local purpose reserve (s.24(7)).

It may also be significant to leasing actions, for example, as to whether or not a reserve is vested in the Crown or a local authority.
An Introduction to The Reserves Act 1977 and Its Origins

An outline of previous Acts has therefore been set out below. Chapter 5 provides further guidance on the significance of these repealed provisions.

Previous Acts – General

The first general legislation providing for the establishment and administration of public reserves was the Public Reserves Act 1854.

Among other things it allowed the Crown to grant public utility reserves to the Superintendent of the province concerned. The provincial era ended in 1876 and some of the reserves passed to municipalities under the Municipal Corporations Act 1876.

The Municipal Reserves Act 1874 had also authorised the making of municipal reserves and endowments.

The Public Reserves Act 1877 allowed for Crown grants or vestings of land for reserves, and provided for recreation reserves to be brought under the Public Domains Act 1860.

Vesting provisions continued to be provided for in the Public Reserves Act 1881, the Public Reserves and Domains Act 1908, and the Public Reserves, Domains and National Parks Act 1928. The latter Act was the first to introduce the concept of a vesting of control as an alternative to a vesting of land.

The Reserves and Domains Act 1953 replaced the 1928 Act. The 1953 Act provided for both vesting of land as reserve, and appointments to control and manage reserves – including the appointment of domain boards.

The 1953 Act was replaced by the Reserves Act 1977.

Previous Acts – Reserves on Subdivision

Previous Acts providing areas for public purposes on the subdivision of Crown or private land that became ‘reserves’ under the Reserves Act 1977 were:

- Plans of Towns Regulations Act 1875
- Land Acts 1885, 1892, 1908, 1924
- Land Laws Amendment Act 1920
- Land Subdivision in Counties Act 1946 (first to include commercial or industrial subdivisions with residential ones)
- Municipal Corporations Act 1954 (made the first provision for vesting reserves in local authorities on deposit of a plan of subdivision)
An Introduction to The Reserves Act 1977 and Its Origins

- Counties Amendment Act 1961 (included provision for vesting reserves in local authorities on deposit of a plan)


Conservation Act 1987

The Conservation Act 1987 established the present Department of Conservation, formed to integrate conservation management functions into one department. The Conservation Act 1987 sets out the majority of the Department’s responsibilities and roles.

The Conservation Act 1987 promotes the conservation of New Zealand’s natural and historic resources.

The Reserves Act 1977 is listed in the First Schedule of the Conservation Act 1987 as one of the enactments administered by the Department of Conservation.

S.4 of the Conservation Act applies to the interpretation and administration of the Reserves Act (see Chapter 4 regarding obligations under the Treaty of Waitangi and the Conservation Act). Part IIIB of the Conservation Act provides detailed provisions for concessions (see Chapter 7).

2 One of the consequences is that “Commissioner” in the Reserves Act is now defined as “an officer designated by the Director-General [of Conservation] for the purposes of the Act”. It no longer applies to the Commissioner of Crown Lands. This is relevant, for example, to the process in Chapter 9.
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.

[For example, where the Act requires “resolutions” of the administering body, for actions such as:

- declaration as reserve (s.14)
- exchange of land (s.15)
- classification (ss.16-23)
- revocation, change of purpose or classification (s.24)
- approval of management plans (prior to Ministerial approval where required) (s.41)

A resolution of “full” council is required.

Where the Act provides for the “administering body” to make decisions, such as:

- appointing honorary rangers
- initiating public consultation
- preparation, review and notification of management plans
- leases, licences and concessions for short term use of reserves (ss.53-61)
- easements (s.48 and 48A)

The local authority may delegate the decision to a committee or sub-committee of Council. However, note that where the “administering body” is used in the Act, decisions cannot be delegated to an officer of Council.]
Powers Under The Reserves Act

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”, 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.
Powers Under The Reserves Act

(3) Subject to any general or special directions given by the Minister, any such 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 such 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 ss.53 and 61 respectively.

**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:

- ensure that there is ongoing dialogue
- 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 a 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.
Under the Reserves Act 1977 as Reserve Administering Bodies From January 1980

Autonomous Powers of Local Authorities

(Discretionary powers held in common with other administering bodies are not listed. For some powers, the local authority must be a territorial authority as defined in the Act.)

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<thead>
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<th>Section</th>
<th>Subject</th>
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<td>16(2A)</td>
<td>Classify vested reserves created under Part XX Local Government Act 1974 etc</td>
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<td>16(10)</td>
<td>Name vested reserve</td>
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<td>24(1)(b)</td>
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<td>24A</td>
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<td>26A</td>
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<td>41(13)</td>
<td>Approve management plan for a recreation reserve for which Council is the administering body (unless specifically required)</td>
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<td>53(2)</td>
<td>Fix charges for admission (up to 40 days; no more than 6 consecutive) to a recreation reserve</td>
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<td>53(2)</td>
<td>Exceed 10 year period for an agreement for use of a recreation reserve</td>
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<td>53(2)</td>
<td>Erect building or structure not directly associated with outdoor recreation in a recreation reserve</td>
</tr>
<tr>
<td>53(2)</td>
<td>Set apart recreation reserves as sites for baths, camping grounds, parking places for vehicles and mooring places for boats, or compounds for animals for display and fix charges</td>
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<tr>
<td>53(2)</td>
<td>Set apart and use sites in recreation reserves for caretakers, residences etc</td>
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<td>53(2)</td>
<td>Erect or authorise huts in recreation reserves for use in eradication of introduced flora and fauna</td>
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<tr>
<td>Section</td>
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<td>54(1A)</td>
<td>Lease a vested recreation reserve (except farming, grazing or afforestation) if provided for in management plan</td>
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<td>79(2)</td>
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<td>79(4)</td>
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<td>111</td>
<td>Dedicate vested road reserve</td>
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### Key Statutory Powers of Minister of Conservation Which Affect The Administration of Reserves by Administering Bodies Under The Reserves Act 1977

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<td>15(1)</td>
<td>Authorise exchange</td>
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<td>16(1)</td>
<td>Classify reserves (other than those to which s.16(2) and (2A) apply)</td>
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<td>24(1)</td>
<td>Approve change of purpose (except where s.24A applies) or revocation of reservation initiated by local authority</td>
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<td>25(1)</td>
<td>Specify manner and purpose of disposal of reserves where title not derived from the Crown</td>
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<td>41(1)</td>
<td>Approve management plans for scenic or historic reserves (but not recreation or local purpose reserves) and nature and scientific reserves</td>
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<td>42(1)</td>
<td>Consent to cutting trees or bush (except recreation or local purpose reserve)</td>
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<td>44(1)</td>
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<td>45</td>
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<td>48(1)</td>
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<td>Consent to grant of licences for communication stations on reserves vested under s.26</td>
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<td>50(1)</td>
<td>Authorise taking or killing of fauna on scenic or historic reserve (but not recreation or local purpose reserves)</td>
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<td>51(1)</td>
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<td>51A</td>
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<td>55</td>
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<td>Consent to lease or licence of vested scenic reserve (not needed for temporary use of 6 consecutive days or less)</td>
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<td>58A</td>
<td>Consent to leasing of vested historic</td>
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<td>59A</td>
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<td>74</td>
<td>Consent to temporary occupation licence over vested scenic or historic reserves (grazing etc)</td>
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<tr>
<td>82</td>
<td>Apply proceeds from disposal (reserve derived from Crown only)</td>
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<tr>
<td>83</td>
<td>Apply proceeds from exchange (reserve derived from Crown only)</td>
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<tr>
<td>84</td>
<td>Authorise diversion of money with consent of administering body</td>
</tr>
<tr>
<td>85</td>
<td>Consent to administering body spending money on land that is not a reserve</td>
</tr>
<tr>
<td>85A</td>
<td>Authorise application of revenue from sale of trees on a recreation or local purpose reserve for any lawful territorial authority purpose</td>
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</table>
Since this guide was prepared the Minister of Conservation has forwarded to territorial authorities amended delegations.

Powers of the Minister of Conservation Under the Reserves Act 1977, Delegated to Territorial Authorities

1. PURSUANT to s.10 of the Reserves Act 1977 I, NICK SMITH, Minister of Conservation, DELEGATE to all territorial authorities (as defined in this Instrument of Delegation) such of my powers, functions and duties under the Reserves Act 1977 as are set out in the following Schedule subject to the Limitation of Powers in the Schedule and to the conditions in paragraph 2 of this Instrument.

2. The delegations in this Instrument apply only where the territorial authority is the administering body of the relevant reserve (i.e. affected by the decision to be made ) by virtue of a vesting or an appointment to control and manage.

Definitions:

"Administering body" – means an administering body under the Reserves Act 1977.

"Territorial authority" means –

(a) A District Council under s.37L(2) Local Government Act 1974,
(b) A City Council under s.37L(2) Local Government Act 1974,
(c) A Regional Council under s.37L(3) Local Government Act 1974,
(d) A Unitary Authority under s.37N Local Government Act 1974,
(e) Chatham Islands Council.

SCHEDULE

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<td>14(4)</td>
<td>Gazette resolution to declare vested land to be reserve.</td>
<td>Only to be exercised where the territorial authority did not derive title from the Crown.</td>
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<td>15(1)</td>
<td>Authorise or decline to authorise, by Gazette notice, the exchange of land in any reserve or any part(s) of a reserve for any other land to be held for purposes of that reserve.</td>
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| 16(1)  | Classify, by Gazette notice, according to their principal or primary purpose all reserves.  
[Note this delegation does not affect ss.16(2) and 16(2A) Reserves Act] | Only to be exercised where the classification confirms the existing purpose of the reserve. |
| 25(1)  | Upon revocation of the reservation of any public reserve (or part of one) pursuant to s.24 Reserves Act, dispose of that land in such manner and for such purpose as the Minister specifies. | The delegation only applies where the title to the reserve was not derived from the Crown, or is deemed not to be derived from the Crown in terms of s.25(4) or (5). |
| 42(1)  | Give or decline to give express written consent to the cutting or destruction of trees and bush on any historic, scenic, nature, or scientific reserve.  
Determine terms and conditions subject to which written consent is given. | The delegation applies only to exotic flora (include bushes and trees). |
| 45     | Give or decline to give prior approval to administering body to erect, or authorise any voluntary organisation or educational institution to erect shelters, huts, cabins, lodges etc., on any recreation or scenic reserve. | The delegation applies to a scenic reserve only where the use is provided for or contemplated in an approved management plan for the reserve. |
| 48(1)  | Consent or refuse consent to administering body granting rights of way and other easements over any part of a reserve for any of the purposes specified in s.48(1).  
Impose such conditions as it thinks fit in giving the consent. | Only exercisable where the activity is provided for or contemplated in an approved management plan for the reserve or the activity is an existing use and the effects of the use will be the same or similar in character, intensity and scale. |
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| 48A(1)  | Consent or refuse consent to administering body granting a licence to any person or department of State –  
(a) To erect, maintain and use buildings, dwellings, masts and other structures, and plant and machinery; and  
(b) To construct, maintain, and use tracks and engage in other works – for any of the purposes specified in s.48A(1). | Only exercisable where the activity is provided for or contemplated in an approved management plan for the reserve or the activity is an existing use and the effects of the use will be the same or similar in character, intensity and scale. |
| 48A(3)  | Approve terms and conditions determined by the administering body. | Only exercisable where the activity is provided for or contemplated in an approved management plan for the reserve or the activity is an existing use and the effects of the use will be the same or similar in character, intensity and scale. |
| 49      | Grant or decline to grant in writing any qualified person a right to take specified specimens of flora or fauna or rock mineral or soil from a reserve for scientific or educational purposes.  
Form opinion as to whether qualified person has the necessary credentials.  
Impose conditions on the grant in writing. | With regard to flora and fauna, the delegation is for exotic flora, and for exotic fauna which are not protected under the Wildlife Act 1953. |
| 50(1)   | Authorise or decline to authorise any person to take and kill any specified kind of fauna that may be found in any scenic or historic reserve.  
Authorise or decline to authorise the use of firearms, traps, nets or other like objects within reserve for the foregoing purposes. | The delegation is for non-protected exotic fauna only. |
| 51(1)   | Authorise or decline to authorise in writing an administering body to introduce indigenous flora or fauna or exotic flora into any scenic reserve for any of the purposes referred to in s.51(1).  
Impose conditions on the giving of the authorisation. | Authorisations can only be given if provided for or contemplated in an approved management plan for the reserve. |
### Section Summary Of Powers

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<td>52(1)</td>
<td>Declare by Gazette notice, that any 2 or more reserves, or parts of 2 or more reserves, or parts of one or more reserves and the whole of one or more other reserves, are to be united to form one reserve.</td>
<td>All affected reserves or parts of reserves must have the same administering body and must all either be vested in that body or all held under an appointment to control and manage.</td>
</tr>
<tr>
<td>54(1)</td>
<td>Give or decline to give prior consent to administering body, in the case of a recreation reserve vested in it, to grant leases for any of the purposes specified in paragraphs (a), (b), (c) and to grant a lease or licence for any of the purposes specified in paragraph (d) and to exercise all powers of the Minister referred to in the First Schedule that pertain to leases under s.54(1)(a), (b), (c) and (d).</td>
<td>Only exercisable where the activity is provided for or contemplated in an approved management plan for the reserve or the activity is an existing use and the effects of the use will be the same or similar in character, intensity and scale.</td>
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<td>Give or decline prior consent to administering body permitting, in a lease, the erection of buildings and structures for sports, games or public recreation not directly associated with outdoor recreation.</td>
<td>Only exercisable where the activity is provided for or contemplated in an approved management plan for the reserve or the activity is an existing use and the effects of the use will be the same or similar in character, intensity and scale.</td>
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<td></td>
<td>Consent or decline consent to variations or amendments to leases and consent to the carrying out of any other necessary actions arising out of the leases consistent with the First Schedule, Reserves Act.</td>
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<tr>
<td>54(2)</td>
<td>Give public notice in accordance with s.119 of the Reserves Act and give full consideration in accordance with s.120 to all objections and submissions.</td>
<td>Only exercisable where the activity is provided for or contemplated in an approved management plan for the reserve or the activity is an existing use and the effects of the use will be the same or similar in character, intensity and scale.</td>
</tr>
<tr>
<td>55(2)(d)</td>
<td>Give or decline to give prior consent to the setting apart of camping grounds and to their construction and development in scenic reserves.</td>
<td>Only exercisable where provided for or contemplated in an approved management plan for the reserve.</td>
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3  [There has been correspondence with LGNZ over having these delegations amended – check the Act as to how they apply.]

4  [The Minister probably did not intend to limit the delegation of this power just to camping grounds – needs an amendment to the delegation by the Minister.]
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<tr>
<td>56(1)</td>
<td>Give or decline prior consent to administering body, in the case of a scenic reserve vested in it, to grant leases or licences for the purposes set out in s.56(1) and to exercise all powers of the Minister referred to in the First Schedule that pertain to leases under s.56(1)(a) and (b). Consent or decline consent to variations or amendments to leases and licences, and consent to the carrying out of any other necessary actions arising out of the leases and licences consistent with the First Schedule, Reserves Act.</td>
<td>Only exercisable where the activity is provided for or contemplated in an approved management plan for the reserve or the activity is an existing use and the effects of the use will be the same or similar in character, intensity and scale.</td>
</tr>
<tr>
<td>56(2)</td>
<td>Give public notice in accordance with s.119 of the Reserves Act and give full consideration in accordance with s.120 to all objections and submissions.</td>
<td>Only exercisable where the activity is provided for or contemplated in an approved management plan for the reserve or the activity is an existing use and the effects of the use will be the same or similar in character, intensity and scale.</td>
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<tr>
<td>58A(1)</td>
<td>Give or decline prior consent to administering body, in the case of an historic reserve vested in it, to grant leases or licences for any of the purposes specified in that subsection. Consent or decline consent to variations or amendments to leases and licences and consent to the carrying out of any other necessary actions arising out of the leases and licences, consistent with the First Schedule, Reserves Act.</td>
<td>Only exercisable where the activity is provided for or contemplated in an approved management plan for the reserve or the activity is an existing use and the effects of the use will be the same or similar in character, intensity and scale.</td>
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<td>59A(1)</td>
<td>In accordance with Part III B Conservation Act 1987, grant or refuse a concession in respect of any reserve controlled or managed by an administering body under s.28 Reserves Act so that the administering body may apply Part III B as if references in that Part to a conservation area were references to such a reserve and references to the Minister of Conservation and to the Director-General of Conservation are references to an administering body.</td>
<td>Only exercisable where the activity is provided for or contemplated in an approved management plan for the reserve or the activity is an existing use and the effects of the use will be the same or similar in character, intensity and scale.</td>
</tr>
<tr>
<td>67(1)(b)</td>
<td>Consent or decline consent to lease of recreation reserve set apart for race course purposes, to a racing club.</td>
<td>Only exercisable where the activity is provided for or contemplated in an approved management plan for the reserve or the activity is an existing use and the effects of the use will be the same or similar in character, intensity and scale.</td>
</tr>
<tr>
<td>73(1)</td>
<td>Consent or decline prior consent to an administering body granting a lease of recreation reserve in the circumstances specified in s.73(1), where the reserve is vested in the administering body, and consent or decline prior consent to an administering body granting a lease in the circumstances specified in s.73(1) in all other cases. Exercise all powers of the Minister referred to in the First Schedule that pertain to leases under s.73(1).</td>
<td>Only exercisable where the activity is provided for or contemplated in an approved management plan for the reserve or the activity is an existing use and the effects of the use will be the same or similar in character, intensity and scale.</td>
</tr>
<tr>
<td>73(2)</td>
<td>Consent or decline prior consent to an administering body granting a lease of recreation reserve for afforestation where the reserve is vested in the administering body, and consent or decline prior consent to an administering body granting a lease of recreation reserve for afforestation purposes in all other cases. Exercise all powers of the Minister referred to in the First Schedule that pertain to leases under s.73(2).</td>
<td>Only exercisable where the activity is provided for or contemplated in an approved management plan for the reserve or the activity is an existing use and the effects of the use will be the same or similar in character, intensity and scale.</td>
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<tr>
<td>73(3)</td>
<td>Form opinion as to whether recreation reserve is not likely to be used for purposes of a recreation reserve.</td>
<td>Only exercisable where the activity is provided for or contemplated in an approved management plan for the reserve or the activity is an existing use and the effects of the use will be the same or similar in character, intensity and scale.</td>
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<td>Consent or decline consent to administering body granting leases of whole or part of reserve vested in administering body.</td>
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<tr>
<td></td>
<td>Grant or decline to grant leases of whole or part of reserve not vested in administering body where that administering body is the territorial authority holding delegated authority under this Instrument of Delegation.</td>
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<td></td>
<td>Exercise all powers of the Minister referred to in the First Schedule that pertain to leases under s.73(3).</td>
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<td>73(5)</td>
<td>Consent or decline consent in writing to a member of an administering body becoming the lessee of any land under the control of that body.</td>
<td>Only exercisable where the activity is provided for or contemplated in an approved management plan for the reserve or the activity is an existing use and the effects of the use will be the same or similar in character, intensity and scale.</td>
</tr>
<tr>
<td>73(6)</td>
<td>Consent or decline consent to surrender of lease.</td>
<td>Only exercisable where the original approval for the lease was given by the territorial authority under this delegation.</td>
</tr>
<tr>
<td>74(1)(b) (ii)</td>
<td>Consent or decline consent to granting of licence to occupy historic, scenic or scientific reserve.</td>
<td>Only exercisable where the activity is provided for or contemplated in an approved management plan for the reserve or the activity is an existing use and the effects of the use will be the same or similar in character, intensity and scale.</td>
</tr>
<tr>
<td>121</td>
<td>Where under the provisions of the Reserves Act consent or approval is required, give consent or approval subject to such conditions as are thought fit.</td>
<td>Only exercisable in respect of matters delegated under this Instrument of Delegation.</td>
</tr>
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Interrelationship Between the Reserves Act and Other Statutes

With particular regard to resource management, finance, local government responsibilities, and regional parks

This Chapter demonstrates the relationships between the Reserves Act and the two critical statutes that govern a local authority’s activities: the Local Government Act 1974 (LGA) \(^5\) and the Resource Management Act 1991 (RMA).

The Act, the LGA and the RMA set out the core regulatory functions of local authorities and generally impact on all aspects of reserve land management – from financial planning and funding of assets and services, to governing land use and planning matters.

In most cases the Act is administered by the operational and asset management parts of a local authority. The RMA is administered by a local authority’s regulatory units. There are activities and proposals that need to have the input of both operational and regulatory parts of a local authority. Therefore it is important to be aware of the applications of all three statutes and how they interrelate.

The first part of this Chapter looks at the Act and the LGA. The second deals with the Act’s relationship to the RMA.

The Local Government Act and the Reserves Act

The LGA and the Act are complimentary in their intentions and deal with the general powers and functions of regional Councils, unitary authorities, and territorial local authorities. The LGA enables and directs administrative processes. The Reserves Act provides specific powers for the administration of reserves.

Which Act Applies?

The question arises with the administration of a reserve vested in the Council (or over which the Council has an appointment to control and manage). The relevant statutory provisions under which decisions will be made about the reserve will most likely be found in the Reserves Act. The Reserves Act generally takes precedent in the case of administrative issues affecting reserves.

\(^5\) [Now the Local Government Act 2002.]
Refer to the LGA for the following matters:

- the general conduct of a council’s affairs in managing a portfolio of reserves (s.223C)
- annual planning for reserves (s.223D)
- annual reporting on fiscal aspects of reserves administration (s.223E)
- financial systems, reporting and record keeping procedures associated with council revenue from and expenditure on reserves (s.223F)
- acquisition of property by a council for a public reserve (s.225)
- transfer of council land to the Crown as a reserve (s.236)
- council documentation relating to reserves (Part XVII)
- transfer of land not required for a road to the Crown for a reserve or addition to a reserve (s.345(1)(d))
- creation of an esplanade reserve vested in a council on stopping of a road (s.345(3))
- management plans for forestry operations on reserves (s.578)
- recreation and community development (Part XXXVI)
- bylaws making procedure (s.681).1 & 2

Some other powers are specifically excluded as they apply to reserves (see below).

If you are in doubt over whether the Reserves Act or Local Government Act applies, or both Acts apply to a particular decision, you should seek legal advice.

Limited Application of Local Government Act

Note that the Local Government Act has a number of provisions that specifically exclude application of the Act to public reserves. It affects the following actions:

- sale or exchange of a reserve (s.230(8))
- lease of a reserve or a building on any reserve (s.231(1))
- grant of easements (s.235)
- undertaking farming on a reserve (s.576)
- establishment, tendering and utilisation of forests on reserves (s.577)
- operation of camping grounds, cabins, huts and motels in reserves (s.594)
- dealing with the interests of the Crown in any reserve vested in the Crown (s.724(2)).

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1 Bylaws made pursuant to s.106 of the Act are subject to the procedures set out in s.681 Local Government Act.
2 Most local authorities use as a basis for their bylaws the New Zealand Standard NZS9201 “Model General Bylaws”. In 1999 this Standard was revised. NZS9201 includes models for public places and cultural and recreational facilities.
These decisions can only be made under the corresponding provisions of the Reserves Act.

The lessee or licensee or other person claiming an interest in a reserve vested in the Crown is to be treated under the Local Government Act in the same way as the holder of any private property (s.724(3)).

An administering body, appointed under s.28 Reserves Act to control and manage a reserve vested in the Crown, is deemed to have an interest in the reserve by virtue of that appointment (s.724(4)).

Councils should bear in mind that their processes are not just subject to public scrutiny under the Reserves Act, but also under their general conduct under Local Government Act procedures and decision-making. A clear understanding of the outcomes sought through a proposal is needed by both the administering body and the public.

Practice Note: A Case Study on the Exchange of Part of a Public Reserve

Background
A North Island Conservancy received a request from a Council for approval to an exchange of part of a scenic reserve for other land under s.15 of the Reserves Act 1977. This reserve was purchased by the Council with contributions from Forest and Bird and the Forest Heritage Fund. A condition of the Crown funding was the requirement that the land be classified as a scenic reserve and vested in the Council as part of its parks and reserves network.

Actions Taken
In January 1996, a Committee of the Council considered an application from a local developer to exchange part of the reserve for an adjoining wetland, so the development on a proposed airfield on the adjoining private land could be facilitated. The Committee granted the application. It was only at that stage that the Council contacted the Conservancy office and was made aware of the correct status of the land as a scenic reserve and the requirement to comply with the terms of s.15 of the Reserves Act. The proposal was publicly notified, and there was a considerable amount of public interest in the application, with only two submissions in support.

Decision-making: Council Committee
When the matter came up for a public hearing of the public submissions under s.120 of the Reserves Act, the Committee resolved to appoint a Hearings Commissioner, and the Council endorsed this appointment. The Commissioner then proceeded to hear the many submissions in terms of s.15 of the Act. On completion of the hearings, his report was referred to the Committee accompanied by an independent botanical assessment of botanical issues raised at the hearings by the objectors. The Committee resolved to accept the recommendation of the Commissioner that the exchange not proceed.
All seemed to have been settled and most of the objectors were satisfied. Meantime, the Parks Manager commissioned a further botanical report on the values of the reserve, but this report was not referred back to the submitters. Two weeks later, a newly reconvened Committee which included members other than those who had accepted the Commissioner’s recommendations at the earlier meeting, resolved to revoke the earlier resolution of the Committee and approve the exchange of the park land.

DoC Process: Ministerial Consent

The second resolution of the Committee together with relevant supporting material was referred to the Conservancy for the authorisation of the Minister under s.15 of the Act. This request was carefully considered by the staff of the Conservancy, who were concerned at the process adopted by the Council, including the failure of the Council to provide a copy of the council resolution. A matter of great concern was that the Council only provided a resolution of the Parks Committee, not the full council, with no supporting reasons for the change of its initial resolution.

There was considerable public outrage at the reversal by the Committee of its initial recommendation, which was perceived as being for political reasons rather than for the purposes of the reserve.

At this stage the legal staff of the Conservancy and Head Office became involved, with the primary concern being whether the Council had complied with the terms of s.15 of the Act by submitting a resolution of the Committee rather than of the full council. Although further investigation of the council’s records showed that the committee resolution had been received by the full council, it had not been adopted, and was therefore not a resolution of the administering body.

Outcome

- The Department advised the Council that the specific words of s.15 of the Reserves Act overrides the more generic delegation powers of a council under s.114Q of the Local Government Act, and to remedy the defect it would be necessary for the Council to consider and if appropriate pass the s.15 (1) Reserves Act resolution. The Council was also advised that in light of the irregularities in the passing of the second committee resolution without apparent reasons, that the whole hearing process should be reviewed in the interest of natural justice to the objectors.

- The Council’s legal advice concurred with that of the Department. Therefore the Council proceeded to recommence the notification, consultation and hearing process for the proposal from the beginning.

Suggestions of Points to Watch

- **Delegation of Decision-Making: Which Act Applies?**
  S.114Q of the Local Government Act provides that a council may delegate certain functions, duties or powers to a committee or subcommittee of council. Every such committee may, without confirmation by the local authority, exercise or perform them in like manner and with the same effect as the local authority could itself have exercised or performed them. Not surprisingly, the Council interpreted this
section to mean that the resolution of the Parks Committee would be adequate to comply with the provisions of s.15 of the Reserves Act. However, this interpretation was not correct.

Section 15 states:

The Minister may, by notice in the Gazette, authorise the exchange of the land comprised in any reserve or any part or parts thereof for any other land to be held for the purposes of that reserve:

Provided that this power shall not be exercised with respect to any reserve vested in an administering body except pursuant to a resolution of that body requesting the exchange.

Therefore, a resolution of full Council is required by the Minister and overrides the s.114Q Local Government Act ability to delegate. The key aspect to note is the term “administering body” which means the council and not a committee or officer of the council.3

- Professional Advice
  Legal and other expert advice is often needed to confirm reserves status and the correct decision-making process to use (or that has been used) under the Act and other statutes. A council needs to be very clear what procedures the Act requires and be aware that generally, the Act takes precedence over the Local Government Act 1974.

- Effect of New Delegation
  Since the events reported in this case study occurred, the s.15(1) power of the Minister to authorise the exchange of land in any reserve for any other land has been delegated to councils (along with other powers described in Chapter 2 and Appendix 2c). This delegation only applies where a council has not derived title from the Crown. In addition, a council must consult with the Crown before making a decision under s.15(1) if the land it proposes to grant in exchange was purchased with funds provided either in whole or in part, by the Crown.

  If this delegation had been in effect in January 1999, then the Council would have had to consult with the Conservancy because Crown funds from the Nature Heritage Fund were used to help purchase the reserve.

- Consultation
  The process of public consultation under the Act is quite specific and requires careful consideration at each stage of the decision-making process.

Contributed by Isabel Field, Solicitor, Auckland Conservancy, Department of Conservation.

3 Refer to Chapter 2 “Administering Body” (page 2.2) for further information regarding delegations of powers under the Act.
Revenue from Reserves

Financial practices of councils are generally dictated by the Local Government Act and standard accounting procedures. The Reserves Act also has financial management requirements that administering bodies must take into account.

Part IV of the Act includes requirements to be met by reserve administering bodies in dealing with revenue derived from reserves.

S.78 directs that all money received “by way of rent, royalty, or otherwise in respect of dealing with any reserves... shall –

“a) Where the reserve is vested in an administering body or an administering body has been appointed to control and manage the reserve, be held by the administering body and applied for the purposes of this Act.”

Exceptions to the Part IV requirements (where a local authority is the administering body) allow the local authority:

- in relation to a portfolio of reserves, to pay the revenue into either:
  - a separate bank account to be called “The Reserves Account” (s.79(2))
  - its general bank account (s.79(4))

- to bank money in accordance with any regulations made under s.223 Local Government Act (s.79(2))

- to apply revenue derived from trees grown on a recreation or local purpose reserve (if the Minister of Conservation so authorises) to:
  - any purpose for which the territorial authority may apply its funds
  - any specific purposes that the Minister of Conservation, with the consent of the Minister of Local Government, may direct (s.85A).

Otherwise, revenue from reserves received by the council as administering body must generally be applied for the purposes of the Reserves Act (s.78(1)(a)). This includes money paid into the council’s general bank account under the provisions of s.79. These purposes are: purchasing, taking on leases, managing, administering, maintaining, protecting, improving, and developing reserves under its control (s.80). The exceptions are set out below.

The Minister of Conservation, with the consent of the council, may divert that revenue to a reserve with a different administering body. The Minister may also divert it to acquire or take on leases of land for the purpose of a reserve (other than by the Council) or as consideration for a conservation covenant (s.84).

With the consent of the Minister, the council may direct that revenue be applied in managing, administering, maintaining, improving, protecting, and developing any land that is not a reserve (including any Maori reservation). The owner, trustee, or controlling authority of the land must:
• consent to the money being applied for those purposes

• agree to either:
  – permit the land to be used for the purpose of a reserve on agreed terms and conditions
  – co-operate in a scheme for preserving or restoring the character or amenity of a district or an environment (s.85).

If the council is the administering body of a recreation reserve set apart for racecourse purposes then special provisions apply to revenue from the reserve (s.68).

When trees are planted for revenue producing purposes on a recreation or local purpose reserve, any monies received under s.42 of the Act from harvest are covered by ss.78, 79 and 85A of the Act (see above).

Since 1.4.78 afforestation by an administering body has required prior consent under s.75 of the Act by the Minister of Conservation (formerly Lands).

Other Accounting Practices

Part IV of the Reserves Act includes accounting practices to be followed by reserve administering bodies.

Exceptions to the requirements (where a local authority is the administering body) allow the local authority to:

• be exempt from submitting an annual report to the Minister of Conservation on its operations unless the terms of vesting or control and management require it (s.88(4))

• include a statement of annual accounts for its reserves portfolio in its overall annual accounts (s.88(5)).

Borrowing Moneys and Advances from General Fund

As a recreation reserve administering body a local authority may borrow money by way of special loan under the Local Authorities Loans Act 1956, as if for a public work for:

• improving or developing the reserve
• purchasing other land for addition to the reserve
• paying the consideration for any conservation covenant (s.90(1)).

Any local authority may also:

• apply or advance money from its general fund or account towards managing, improving, maintaining and protecting any reserve (s.89(1))

4 See s.16(11)(a)
Reserves Act.
make a contribution towards the cost of the Crown acquiring any land or interest as a reserve, or in payment for the consideration for any conservation covenant (s.89(2)).

Practice Note: Te Toto Gorge – A Partnership Between Council, Tainui and the Crown

For over 10 years, the Department of Conservation (DOC) had been negotiating with a landowner to purchase 193 hectares of their property as an addition to the adjoining Te Toto Gorge Scenic Reserve. Some Government funding was made available in 1998 but there was a shortfall. Several ‘creative’ ways to obtain the balance were investigated and as it turned out, the Waikato District Council (WDC) was able to make a very valuable contribution.

WDC’s involvement arose because of its interest in another reserve located within Hamilton City – the site of WDC’s former administration building that had become surplus to requirements when WDC moved to its new site in Ngaruawahia. The old administration building straddled the boundary between the reserve (local purpose) and adjoining WDC freehold land. WDC’s main objective was to regularise the building occupation. However, it should be noted that WDC could continue to use the reserve and was not required to purchase it from the Crown.

The proposal was complicated by the fact that title to the local purpose reserve would revert to Crown ownership when the reserve status was uplifted. There was also the need to consider requirements of Tainui’s first right of refusal as provided in the Tainui Raupatu Claims Settlement Act.

Following considerable negotiation, DOC was able to establish a means to meet all parties’ objectives while at the same time complying with legislative requirements. Tainui played a crucial role in the whole proposal. They supported acquisition of the Te Toto Gorge property and were prepared to relinquish their interest in the local purpose reserve to enable title to transfer from the Crown to WDC.

Rather than paying the Crown for the local purpose reserve (value $350,000), the parties agreed that WDC would make a cash contribution to the Crown of $160,000 to go towards the Te Toto Gorge scenic reserve addition. The balance of the value of the local purpose reserve (ie $190,000) was to be targeted by WDC for approved conservation projects including land purchase, funding for conservation covenants and priority environmental enhancement projects.

WDC extended the partnership approach by applying to Environment Waikato’s Environmental Initiatives Fund for a contribution towards their commitment to the Te Toto Gorge acquisition. Environment Waikato gave approximately 15% of WDC’s contribution to the Crown.

The addition to the Te Toto Gorge Scenic Reserve was finalised in mid 1999.

Contributed by Nadine Storm, Department of Conservation, Waikato Conservancy and Gary Allis, Waikato District Council.
Practice Note 2: Gibralter Farm, Native Forest Restoration Project, Port Hills, Canterbury

Background

Gibralter Farm (117 hectares) includes one of the Port Hills’ few remaining stands of “old growth” podocarp forest. The aim of the project was to achieve permanent protection of this forest and surrounding areas, including second growth gully bush.

The long term vision is to restore native forest to the upper, wetter part of the Southern Port Hills. This is a co-operative venture involving the Selwyn District and Christchurch City Councils, private land-owning conservation groups, and other interested parties such as the Wai Ora Trust.

Actions Taken

A landowner approached Christchurch City Council with a sale and purchase proposal. Because the land was outside the district/territorial boundary, the Council applied to the Nature Heritage Fund for a grant. Unfortunately the application was deferred and subsequently lapsed.

The Wai Ora Trust, independently, initiated a private application to the nature Heritage Fund for purchase of the land, which was approved. The Trust then appealed to both Selwyn District and Christchurch City Councils for assistance – the grant would only cover approximately a third of the purchase price.

Extensive consultation, negotiation and discussion was undertaken by both councils, who agreed to purchase the land, subject to the grant received by the Wai Ora Trust (from the Nature Heritage Fund) being transferred to the councils and the land being gazetted as scenic reserve under the Reserves Act. Selwyn District and Christchurch City Councils contributed the other two thirds of the purchase price (one third each).

The land is to be held in joint ownership by the two councils, and managed by Christchurch City Council.

Outcome

The proposal took three years to achieve. Although time consuming and difficult to achieve overall “buy-in” from all parties, the resulting purchase and management arrangements have proved more acceptable to all parties, and the community – the burden has been shared.

Suggestions of Points to Watch

- Presentation of a "wider" vision, that is not limited to "territorial" boundaries, is crucial.
- Users of the proposed reserve and community supporters of the proposal are not concerned which council controls, owns or manages which particular area of land – only that it is managed properly.
- Conservation and recreation issues often tend to go beyond territorial boundaries.

Contributed by Kelvin McMillan, Parks Unit, Christchurch City Council.
Regional Parks and Reserves – Wellington and Auckland

In 1992, s.619 Local Government Act 1974 was repealed and replaced by a provision that gave powers to the Auckland and Wellington Regional Councils in relation to regional parks and reserves.

The two councils can each acquire any piece of land for the purposes of a regional park or reserve (s.619(2)). Also, any public body with land vested in it may transfer land to either council, by agreement, for that purpose.

Any vested land transferred by a public body is held by the regional Council concerned subject to the trusts (if any) affecting the land at the time of transfer (s.619(4)).

This means that if a reserve administering body transfers a public reserve, vested in it, to one of the regional councils, the land remains subject to the Reserves Act 1977. The existing purpose of the reserve remains its primary purpose. The regional council concerned becomes the administering body of the reserve under the Reserves Act.

The regional council concerned has limited additional leasing and licensing powers over a regional park, including any public reserve in the park (s.619(6) or s.619A(3)).

Each regional park requires a management plan. The plan would include any reserves within the park (s.619D). Such reserves would not need to be covered by a management plan under the Reserves Act.

The regional council concerned only has the power to establish or maintain a botanical garden on any land in a regional park or reserve that is not subject to the Reserves Act (s.619(5)).

The Resource Management Act and the Reserves Act

The Resource Management Act (RMA) integrated two main functions from earlier legislation:

- the allocation of water, coastal space and geothermal energy
- the sustainable management of resources.

The purpose of the Act, as set out in s.5 RMA, is “to promote the sustainable management of natural and physical resources”.

Key Difference Between the Acts

There is a fundamental difference between the two Acts, which means councils have different roles under each.
Except in relation to water, coastal space and geothermal energy, the RMA is purely a regulatory tool. In contrast, the Reserves Act contains no regulatory provisions. Instead, it sets out how reserves are to be managed by their administering bodies. However, it should be noted that reserve management plans and other council policy has weight in consideration of RMA matters.

**Council Roles: Regulatory vs Reserves Administering Body**

The role of a council under the RMA is to promote sustainable management of resources. It affects the way people can behave, and controls the effects they (and their property) can have on other people and the environment. RMA functions are generally carried out by the regulatory sections of councils.

As an administering body of a reserve, under the Reserves Act, a council is concerned with acting on behalf of the owner (whether or not the council) and beneficiaries of the reserve (the public). The council exercises reasonable control for management purposes over the activity of its agents and the public on the land. The council must act in the interests of the owner and beneficiaries. Reserves Act functions are generally carried out by operational sections of councils.

The RMA may affect reserves in three ways as follows:

- The primary effect of the RMA is to prevent any activities on the reserve from having an adverse impact on adjacent land, the wider community, and the environment. For example, floodlights on a sports field might adversely affect nearby residents.
The RMA may also directly result in the creation of reserves, if that is required as a condition of a consent. In particular, esplanade reserves and other forms of reserves may be created on subdivision.

Planning under the RMA will also provide a context relevant to decisions by a council about service provision (including provision of reserves), by establishing overall policies on sustainable management. The creation and management of reserves may be one way for the local authority to ensure community outcomes for reserve planning and associated services are met.

Despite the latter effect, the rules in district and regional plans should not be directed to controlling the outcomes provided by reserves where such rules would be inappropriate if applied to adjacent private land. Equally, reserves should not be exempt from rules affecting adjacent private lands.

Although provisions in the two Acts have some similarities (e.g., covering vegetation, structures, activities), there are also significant differences. However, there will inevitably be a degree of overlap where a council has to deal with an activity under both Acts.

The way the council considers these matters, the purpose for which it is considering them, and the final decision, will be different in most cases. The criteria and weighting of criteria on decisions under both Acts will be different. The Reserves Act statutory framework gives emphasis on protection; the RMA emphasises sustainable management.

Application of the Reserves Act to Reserves

The administering body’s function is to manage a reserve for the purpose for which it is classified (s.40) (see Chapter 10 “Functions of an Administering Body”). Management duties are to ensure, as appropriate, the use, enjoyment, development, maintenance, protection and preservation of reserves.

Practice Note 3: Accepting Land for Reserve Through Subdivision – Dunedin City’s Experience – the Importance of Good Internal Systems

Background

Because the process for transfers of reserves to Council on subdivision crosses the boundaries of the RMA, and the Reserves Act, it also crosses the respective operational and regulatory responsibilities of Council departments who administer these Acts. Usually, once a subdivision resource consent is granted which has as a condition that land is to vest in Council as a reserve, the statutory processes are set and the land will autonomically vest on deposit of the survey plan with Land Information New Zealand.

This post consent processing was not widely known within Council with the result being land vested in Council without the agreed development/ground-work being completed. This occurred because the “Reserve” departments were unaware of where and how in the RMA process, they needed to become involved.
Practice Note Cont’d

A second issue was the need for statutory and legal clearances for land that is to vest or deposit of the survey plan. With implementation of the Ngai Tahu Settlement Act and s.40 of the Public Works Act in the Dunedin area for some types of land holdings the Council must obtain statutory clearances before the current owner can transfer such land. The “transfer” includes vestings in Council.

The impact of failure to ensure these clearances have been completed potentially involved Council (as the new land owner) in any claim or litigation that could have been taken for non-compliance with the Act.

Action Taken

- Checked with Council’s Solicitor regarding legality of imposing a condition of consent to cover necessary groundwork, development and that any statutory or legal clearances required to allow the land to vest had been completed by the applicant.
- As part of the resource consent process, Reserves staff now ensure that relevant conditions relating to land to vest are forwarded to the RM planner preparing the report for inclusion in the resource consent as a condition of such consent.

Outcome

- Land cannot vest in Council until the necessary works are completed. (Prohibited, as conditions of consent needed to be complied with prior to a certificate under s.224(c) RMA being issued.)
- Reserves staff are now aware of “when” the land ownership is to change. Previously no formal process was set up to advise of this between the two departments – Reserves and City Planning.

What Would You Do Differently Next Time?

- Continue to strengthen relevant resource consent conditions relating to the agreed works for the proposed reserve.
- Produce a standard set of conditions to cover the statutory legal clearances required for all land vesting situations.

Suggestions of Points to Watch

- Ensure that the planner/administrator processing the RMA ss.223 and 224 certificates is aware that the Reserves Department is the appropriate department to advise compliance regarding the conditions of consent in relation to reserves.

Contributed by Judy Milward, Community and Recreation Planning, Dunedin City Council.
The Treaty of Waitangi as it Applies to Reserves Administration

The Reserves Act 1977 is one of the Acts contained in the First Schedule to the Conservation Act 1987. S.4 of the Conservation Act requires that the Act should be interpreted and administered so as to give effect to the principles of the Treaty of Waitangi. The Court of Appeal in Ngai Tahu Maori Trust Board v Director-General of Conservation [1995] 3 NZLR 553 held that the obligation in s.4 applied to each of the Acts in the First Schedule insofar as it was not inconsistent with the specific Act.

Treaty Obligation

Administering bodies under the Reserves Act derive their authority over reserves from the Reserves Act. Accordingly, in performing functions and duties under the Reserves Act, the administering body has a duty similar to the Crown’s to interpret and administer the Reserves Act to give effect to the principles of the Treaty of Waitangi. It is important to note that the obligation relates to the principles of the Treaty (see below) rather than to its Articles.

As the obligation relates to the administration of the Act, all reserves administered under the Reserves Act – whether they derive from the Crown or otherwise – are subject to the s.4 of the Conservation Act obligation.

Principles of the Treaty

The Waitangi Tribunal and Courts have identified a number of principles. The first three principles are based on Articles I, II, and III of the Treaty:

(i) **Government (Kawanatanga)**

The authority to make laws for good order and security of the country subject to any duty imposed on the Crown by its responsibilities and obligations to Maori preserved under the Treaty.

(ii) **Iwi Authority and Control over Taonga (Tino Rangatiratanga)**

(a) **Exclusive and Undisturbed Possession (Mana Maori)**

These two concepts reflect the Maori and English versions of the Treaty. The former is understood to mean the right of Maori to exercise full iwi authority and control over their lands,
resources and taonga; the English version refers to the right of Maori to exclusive and undisturbed possession of their lands, forests and fisheries.

(iii) Equality and Privileges of Citizenship (Oritetanga)

The Courts and Waitangi Tribunal have also identified the following principles:

(iv) Partnership and Relationships (Whakawhanaungatanga)

Because the Treaty provides for a relationship described as “akin to partnership” between Maori and the Crown, this principle requires the parties to act towards each other reasonably and with utmost good faith in accordance with Treaty obligations.

(v) Guardianship/Custodianship/Stewardship (Kaitiakitanga)

The right of Maori to undertake their duty of tiakitanga over their own land, resources and taonga.

(vi) Active Protection (Tautiaki Ngangahau)

The Crown’s duty is to ensure active protection of taonga for as long as Maori wish.

(vii) Duty to be Informed (He Here Kia Mohio)

The duty to make informed decisions through consultation.

(viii) Redress of Treaty Claims and Avoid Future Breaches (Whakatika i Te Mea He)

The duty to remedy past breaches of the Treaty and to prevent further breaches.

Obligation to Consult with Maori

The council must consult with and have regard to the views of iwi or hapu before undertaking action and making decisions about reserves for which it is the administering body.

In some cases the council may be able to make an informed decision without consultation. It should ensure that it gives proper consideration to all relevant information within the council’s possession. Care is also needed in identifying whether there are gaps in information. If so, it should consider whether it could arrive at a better decision by undertaking consultation first.
Maori have the same rights to object or make submissions on a proposal under the Act as any other members of the public. This does not, however, substitute for consulting with iwi or hapu about a proposal.

**Nature of Consultation**

Consultation is not a mere informing, but a meaningful discussion between parties. The party consulting must ensure that the party consulted has all the relevant information. The council must be prepared to listen to the party being consulted and, if necessary, change its views.

Consultation is not a negotiation, nor does it necessarily imply that the council has to accept the views of the iwi or hapu.

**Dual Considerations**

In meeting its responsibilities under the principles of the Treaty of Waitangi, the council cannot undertake actions or make decisions which are contrary to the purposes of the Reserves Act (see Chapter 3 “Interrelationship Between the Reserves Act and Other Statutes”).

The council also cannot do anything contrary to the primary and secondary purposes for which the reserve in question is classified.

As far as possible, however, both s.4 Conservation Act and Reserves Act requirements should be accommodated.

**Dual Responsibility**

The Minister of Conservation, and the council as the reserve administering body, both have obligations under s.4 Conservation Act.

The dual responsibility is especially relevant in cases where, under the Act, the council is seeking a consent, approval or other action by the Minister. The council must fulfill its Treaty obligation and satisfy the Minister that it has done so.

The Minister may, however, have additional Treaty responsibilities because of the special relationship between the Crown and its Treaty partner. Those responsibilities pass to the council or other delegatee where a power is being exercised under delegated authority from the Minister (see Chapter 2).

**Treaty Claim Settlement**

Legislation giving effect to the settlement of claims under the Treaty of Waitangi Act 1975 may impact on the administration of land held under the Reserves Act within tribal areas.

Two examples are given below.
Waikato Raupatu Claims Settlement Act 1995

Under s.11 of this Act a right is given to the Tainui trust to acquire “residual Crown land” which is available for disposal, except in certain circumstances.

This provision will effect the sale of revoked reserves vested in the Crown or derived from the Crown (see Chapter 9) and the use of reserves (vested in or derived from the Crown) in exchanges within the Waikato claim area.

As the power of sale of these reserves rests with the Crown this will not affect Councils directly. It will, however, need to be taken into account in formulating Council exchange proposals on vested reserves that are derived from the Crown.¹

In effect it means that the area of reserve proposed to be exchanged must first be offered to the Tainui Trust in exchange for any other land held by the Tainui Trust which is suitable for the purposes of a reserve of the same classification.

Ngai Tahu Claims Settlement Act 1998

Under Part 9 of this Act, Te Runanga o Ngai Tahu is given a right of first refusal on the disposal of “relevant land” within its takiwa (tribal area).

The following lands are covered by the above phrase if they were, on commencement of the Act (1.10.98):

- vested in the Crown or held by the Crown under any Act
- vested in an administering body under s.26 or s.26A Reserves Act
- vested under any other Act to hold and administer as a reserve under the Reserves Act (if the land would revert to the Crown if its status as reserve were subsequently revoked).

The vesting of land under s.26 or s.26A Reserves Act (see Chapter 10) does not itself constitute a “disposal” for the purposes of the Ngai Tahu Claims Settlement Act.

“Disposal” includes:

- transfer of an estate in fee-simple
- grant of a lease if the terms (including rights of renewals or extensions, whether in the lease or granted separately) is or could be, for 50 years or longer.

As the power of sale of “relevant land” rests with the Crown, a disposal by way of sale will not directly affect Councils. The Crown is however, required to give a right of first refusal to any lease of relevant land which constitutes a “disposal” (as defined above) – see Chapters 7 and 9 – if the reserve is vested in the Crown. The administering body of a vested reserve is not required by the Act to give this right of refusal. It is, however, still required to make an informed decision under the Principles of the Treaty of Waitangi.

¹ Legal advice indicates that exchanges of Crown or Crown-derived reserves are included in the disposal of “residual Crown land”.

The right of first refusal does not apply to “relevant land” disposed of by way of exchange under s.15 Reserves Act. The administering body (if the reserve to be exchanged is not vested in the Crown) must, however, give notice in accordance with s.51 Ngai Tahu Claims Settlement Act, not later than 10 working days before the disposal of the land.
Checking the Status of Reserves and Recording Information

5.1 Recording of Information about Council Reserves

Knowing the portfolio of land that a local authority manages is a critical component of good reserve and property risk management. Part of building this knowledge is the sometimes onerous task of checking the status of the land held by the local authority for “reserve” purposes. For relatively recent acquisitions, this exercise may be fairly simple. However for land that has been held and managed for many years it may pose more problems – the local authority needs to accurately determine for every reserve it manages, who is the owner of the certificate of title.

This Chapter identifies the importance of determining the status of reserves, both legally and as a matter of good practice. Collating and holding information about reserves is then discussed.

The process of documenting, collating and gathering information about the areas of reserve that a local authority manages will assist with all aspects of administration and processing under the Act.

Three key tasks are necessary to establishing what a local authority manages, where the land is and what provisions of the Reserves Act, if any, apply – or should apply. These tasks are listed below.

What is the Portfolio of Land a Local Authority Administers?

The first task is to establish which areas, of the land that it holds, are subject to the Reserves Act 1977 (see Chapter 1) and the legal description of the land in each reserve.

By doing so, the council can determine whether or not it must deal with the land under the Reserves Act rather than, for example, the Local Government Act (see Chapter 3).

The council must also establish whether any of the land held by it under the Reserves Act is subject to the provisions of any:

- will or deed or other instrument creating the trusts on which the reserve is held
• Act (whether passed before or after 1 April 1978) or any Provincial Ordinance (in force at 1 April 1978) making any special provision for the reserve.

The Reserves Act, in its application to any reserve, must be read as subject to the above provisions, unless the Reserves Act\(^1\) specially provides for an exception (s.5).

Reserves established in the period 1853 to 1876 may be subject to Provincial Ordinances. There is no need to check reserves established after 1 November 1876 in relation to Provincial Ordinances only.

**Establishing Status of Each Piece of Land**

The second task of a council is to establish facts about the purpose for which each reserve is currently held.

These purposes may have been established by:

• automatic classification (s.16(7) or (11))
• specific classification by notification in the Gazette (s.16(1))
• specific classification by council resolution (s.16(2A))
• the original setting apart or a subsequent change before or after 1 April 1978 (s.16(6)).

It is useful to split reserves in the last category into two groups, namely those which in the future can be classified under s.16(1) and those which can be classified under s.16(2A).

For further information on classification and change of classification see Chapter 8.

**Vested or Crown Reserves?**

The third task of a council is to determine which reserves it holds under an appointment to control and manage and which ones are vested in the council (see Chapter 10).

With an appointment to control and manage it may be useful to the council to separately identify those to which s.26A will apply (if not already vested under that provision\(^2\) – see Chapter 10).

**Council Obligation**

There is an obligation on a council to undertake the three tasks in a comprehensive way so that it can properly exercise its functions and duties as an administering body under s.40 (see Chapter 10) and any delegations under s.10 (see Chapter 2 and Appendices 2a, 2b and 2c).

Before the council exercises a statutory power under the Act in relation to any reserve, it will require some or all of the above information about the land affected. This information need becomes evident, for example, from reading Chapters 6 to 9 of this Guide.

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1 An example of such an exception is the classification or change of classification of a reserve by the Minister of Conservation (s.5(2)(b)).

2 A reserve to which s.26A of the Act applies does not vest until the classification is approved and notified in the Gazette.
Information held in the databases of other agencies (even where accessible) will not necessarily provide the comprehensive records a council will require to meet its responsibilities.

**Existing Reserves Database Standards**

The standards of any existing reserves database maintained by the council will be deficient unless its compilation has involved carrying out the above three tasks.

Reliance on a database that is deficient could cause a council to make decisions which are *ultra vires* (that is, outside or beyond the terms of the proper authority). It could also lead a council or members of its staff to carry out or allow actions which are illegal.

It could also lead to difficulties in registering documents against the title to the land affected. A Registrar is prohibited (without special authority of law) from registering or otherwise giving effect under the Land Transfer Act 1952 to any dealing with any reserve except in conformity with the trusts upon which, for the time being, the reserve is held (s.112 Reserves Act).

**Updating Existing Databases**

A council needs good procedures to keep its basic reserves database current. The procedures will allow for the recording of:

- new reserves or land being added to reserves
- land going out of reserves or reservations being revoked
- classifications
- changes of classification
- appointments to control and manage which become vestings
- vestings which are cancelled
- appointments to control and manage which are revoked.

If the database is deficient (see above), the council also requires a procedure for remedying those deficiencies.

**Notification on the Title of Changes in the Reserves Trust** (see page 5)

If a reserve is vested in the council and not derived from the Crown, the council must notify the Registrar of any legal alteration, revocation, or substitution of any trust on which the reserve is held (s.112). For “trust” read “purpose” or “vesting”, as appropriate to the context.

The council must therefore notify (see also the table on page 5/5) all relevant:

- resolutions under s.14
- exchanges (s.15)
- classifications (s.16)
- reserve revocations (s.24)
- changes of purpose (s.24)
- cancellations of vestings (s.27)
- road dedications (s.111).

Failure to carry out this obligation may lead to problems when the council subsequently lodges other documents for registration against the title.
For actions put into effect by notice in the Gazette, notification to the Registrar is undertaken by lodging a copy of the Gazette notice for the Registrar to register.

A Council may contract out document registration to a commercial agency. If it undertakes registration itself, a legal officer would normally carry that out.

**Recording Other Interests Related to Council Reserves**

There are three categories of interests in land, namely those which:

- run with the land (eg an easement over private land providing access to a reserve)
- the land is subject to (eg concessions granted over the reserve)
- are held by the council as conservation covenants under s.77 Reserves Act.

Other interests which may need to be recorded if they come within the council’s responsibilities are:

- access arrangements over vested reserves to the holders of minerals permits under the Crown Minerals Act 1991
- arrangements with council (as administering body) to control and manage land that is not a reserve (s.38 Reserves Act)
- agreements by council (as administering body) with landowners under s.85 Reserves Act.

The above information, where applicable, will complete the Council’s Reserves Act database.

**Assistance from the Department of Conservation**

The Department’s land records will not necessarily cover all the information that a council will require. They are likely to be deficient in areas such as:

- reserves created on subdivision
- land acquired by Council as reserve
- classification changes undertaken by Council resolution
- reserves affected by local authority re-structuring
- reserves created before 1 April 1987 which were not recorded by the Department of Lands and Survey.

Council staff can gain access to the Department’s land records as public records.
The Department will charge for providing land information if:

- more than 1 hour of staff time will be spent actioning the request
- more than 20 A4 pages will need to be copied.

If the council wishes the Department to certify any information as correct, then the time taken to verify any record will also be included in assessing any charges.

In rare cases, a certificate of title for land in a reserve for which a council is the administering body might not state the purpose of the reserve. In those cases the Department will (at Council request) lodge a Commissioner’s certificate for registration by the Registrar (s.116(6) Reserves Act).

If the Crown has failed to notify the Registrar of any transaction to which s.112 Reserves Act applies, then the Department will (at Council request) give such a notification free of charge. Any request should be sent to the Department’s local conservancy office.

The respective responsibilities for notifying the Registrar are shown in this table:

<table>
<thead>
<tr>
<th>If the land was ...</th>
<th>then the responsibility to notify the Registrar rests with ...</th>
</tr>
</thead>
<tbody>
<tr>
<td>set apart or reserved by the Crown as reserve</td>
<td>Director-General of Conservation</td>
</tr>
<tr>
<td>set apart as reserve on subdivision and vested in local authority</td>
<td>local authority</td>
</tr>
<tr>
<td>Declared to be reserve under s.14 Reserves Act by the local authority</td>
<td>local authority</td>
</tr>
<tr>
<td>Otherwise acquired by the local authority as reserve eg Public Works Act 1981.</td>
<td>local authority.</td>
</tr>
</tbody>
</table>

Standards for Legal Description of Land

Land Information New Zealand is responsible for standards associated with the legal description of land.

The appellation of land needs to be in accordance with Land Information New Zealand’s official records, being the Survey Data Index (SDI) or its equivalent in the core record system (CRS) or the current title.

The Office of the Chief Crown Property Officer has produced a standard for undertaking legalisation actions. CCPO Standards and Guidelines 16 sets out the requirements for the legal description of land. In particular Appendix C of these standards has an overview and examples of descriptions from Gazette notices that can be adapted to any actions taken under the Reserves Act.
These standards can be found by going to Land Information New Zealand’s web site at www.linz.govt.nz and then going to “publications”, “Crown Property Standards and Guidelines”, “Volume 4, Standard 16, Legalisation”.

5.2 Checking the Status of Reserves

Primary Sources of Documentation

The primary sources of documentation about the status of reserves are:

- the Gazette
- certificates of title
- statutes.

These sources are described below.

Gazette

The Gazette is a weekly publication of the Department of Internal Affairs. It is the main source of notified land transactions of the Crown. It includes statutory notices by or on behalf of Ministers, Orders in Council and Proclamations. Each edition is numbered. A “Gazette reference” may include that number, but will always have the year of publication and the number(s) of the page(s) on which the particular transaction appears (eg 1991 page 237).

With a year and page reference for the reserve land concerned the Gazette can be used to find out:

- whether the reference is a correct one for the land
- the type of, and statutory authority for, the transaction covered by the notice
- the legal description of the land covered by the notice (but note that it may have subsequently been changed)
- who approved the transaction
- the date of approval
- the date of publication (ie the effective date of the transaction).

It may also be possible to find in the notice the then name of the reserve.

A Gazette reference or references for the land may be found in the records of the Council, the Department of Conservation (DOC) or Land Information New Zealand (LINZ). This reference may not always be complete, or necessarily totally accurate, because of human error. Verification, by searching the actual notice, is essential if errors are not to be compounded.
A single reference may not be a complete reference for a reserve. For example, there may be separate Gazette references for:

- different parcels of land forming part of the reserve
- classification of the reserve
- vesting of the reserve or appointment to control and manage (or cancellation or revocation thereof)
- change of purpose of the classification
- addition of land to a reserve
- partial revocations (land coming out of a reserve).

It is important to know all the references for the above (if they apply) for a complete status check of a reserve.

Bound copies of the weekly Gazette may be found in some LINZ and DOC offices. They go back to the 1800s. Copies will also be held in the General Assembly Library and probably in District Law Society libraries.

Relevant extracts from the Gazette may also be registered against the certificate of title for the land, if one exists.

**Certificate of Title**

Certificates of title are provided subject to the provisions of the Land Transfer Act 1952 (LTA). The certificates are held in the Land Titles Services branches of LINZ, for the registration districts concerned (s.3 LTA). Such titles include all land vested for an estate in fee simple in possession by virtue of any Act (s.10 LTA).

While all privately owned land and many vested reserves are held under certificates of title, that is not true of all land of the Crown or some land held in Maori ownership.

A right cannot be acquired, or deemed to be acquired, over any title to a reserve otherwise than as authorised by law (s.77 LTA). For example, a reserve may not be transferred (s.129(4) LTA) except where there are special legislative provisions (eg s.619 Local Government Act).

Registrars are prohibited from dealing with any reserve except in conformity with the trusts upon which a reserve is for the time being held (s.112(1) Reserves Act). The administering body which holds the certificate of title to a reserve must hold the land subject to the trusts expressed or declared in the title or instrument from which it is derived (s.129(1) LTA).

A process is provided in s.26A(3) Reserves Act for a territorial authority to have a certificate of title issued for a reserve vested under s.26A(1). This will enable documents to be registered against that title.
The registered copy of a title can be searched at the relevant Land Titles Office (LINZ). Each council (or its solicitors) will hold the duplicate copy of a certificate of title over a vested reserve if one exists in the council’s name. The duplicate copy is provided to the Registrar for cancellation when a vesting is cancelled.

A title may be issued for a reserve vested in the Crown (s.116(1) Reserves Act) but no duplicate title is issued (s.116(3)). The duplicate title is cancelled for any private land acquired by the Crown (s.116(4)). Such titles are to show the purpose of the reserve (s.116(6)). A title to a revoked Crown reserve can be cancelled (s.116(9)).

Each title has a “Volume” and “Folio” reference; cited together as the “C.T. reference” with a bar in between: eg 3C/1079. Gazette notices registered against the title will have their own registered number recorded on it and will not be recorded by year or page. The registered document can be searched for those details.

A certificate of title shows:

- whether the C.T. reference is the correct one for the land in the reserve (NB there may be more than one title) eg for different parcels of land within a reserve

- which person or body holds the title and how the vesting came about

- the legal description of the land in the title

- the purpose of the trust (ie of the reserve).

Note that the information in a title may be imperfect if there has been a failure to comply with notification of changes (see Chapter 5).

Also, the requirement of the title to be subject to the Reserves Act, or earlier Acts, may not have been brought down on to the latest title from the previous title(s) for the land. A proper title search will involve going back to the first title for the land — and even to the source document on which the first title was based — to find out if the land is a reserve or not subject to the Reserve Act 1977, and how it became a reserve (see Chapter 1).

Source document(s) for a title, or the title itself, and previous titles should reveal references to, and terms of, any will or deed or other instrument creating the trusts on which a reserve is held. They may also hold a reference to any Act or Provincial Ordinance making any special provision for the reserve (see Chapter 5).

**Statutes**

Both public and local Acts may affect the trusts upon which a reserve is held.

The primary public Act is the Reserves Act 1977 (see Chapter 1). Other public Acts may affect the trusts upon which a reserve is held. (Examples include the Reserves and Other Lands Disposal Acts.)

Local Acts are usually promoted by a local authority. An example is the Auckland City Endowments and Reserves Act 1875 or the Wellington City Townbelt Reserve Act 1908.
Practice Note: Section 5(2)(b) Reserves Act Trusts

Land status under the Act is not always clear cut. Various local Acts may affect the status of the land. In Wellington City, the prime example is the "Town Belt and Basin Reserve Deed 1873" which was made under the provisions of the Wellington City Reserves Act 1871. These instruments set up and established the Wellington Town Belt and the Basin Reserve as major public recreation resources for the new City of Wellington.

The Wellington Town Belt Deed demonstrates another layer of obligations over land which has been managed historically for public use for many years. The Deed stated that the Town Belt was to be used "as a public recreation ground for the inhabitants of the City of Wellington" and "for such purposes of public utility to the City of Wellington and the inhabitants thereof as shall be expressed and declared". The Deed further provided that:

a) the Council has no power to alienate or dispose of the land
b) no thoroughfare be created across the land
c) the Council has power to lease all or any part of the land for a term not exceeding 42 years, the best rent to be payable during this term.

The Deed has shaped the management of the Wellington Town Belt and the community has taken great pride in the foresight of the settlers of Wellington.

Originally, on settling Wellington in the 1840s, the Crown intended to reserve approximately 625 hectares of land as Town Belt. The amount granted to the Superintendent of Wellington in 1861 reduced the Town Belt to 500 hectares and by the time the Town Belt Deed was signed in 1873, the Town Belt was only 432 hectares.

Today there is approximately 425 hectares of land managed as part of the Wellington Town Belt. Most land is subject to the Deed and some 37 hectares is not – which includes the Botanic Gardens and Show Grounds. These latter areas also have their own Local Acts which guide aspects of management. However, while this 37 hectares is not legally held by the Council subject to the 1873 Town Belt Deed, the general intent and purposes of the Deed are generally applied to their management as part of the Wellington Town Belt.

The Wellington Town Belt is a reserve within the meaning of the Reserves Act 1977. The provisions of the Reserves Act apply subject to the provisions of the 1873 Deed which created the Trusts on which the Wellington Town Belt is held (s.5(2) Reserves Act).

In the preparation of the Wellington Town Belt Management Plan in 1994-5, many anomalies were "discovered" in respect to the legal status of parts of the land. These had to go through a full legal search of titles and discussions with bodies such as Land Information New Zealand to verify the actual status of each parcel of land and what "Trusts" existed, still exist, and have been extinguished.

Examples of anomalies included:

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3 The history of the Wellington Town Belt is summarised in Wellington City Council’s “Wellington Town Belt Management Plan”, 1995.
Practice Note Cont’d

- land that was regarded and managed as Town Belt but was not legally held subject to the 1873 Deed
- land that had previously been excluded from the Town Belt and/or developed in some other way (e.g., as roads) that had not formally been excluded from the Town Belt on Certificates of Title
- small "severance areas" left after other land was alienated for say, a road, still remained with the Town Belt. This land no longer looks as it is part of the Town Belt and should also have been removed from the Town Belt at the time the development took place.

To rectify these anomalies the Wellington City Council will have to pass special legislation and through it carry out a significant amount of boundary surveying to make adjustments to certificates of title.

As part of its Town Belt Management Plan, the Council has a policy to recover as much of the original land identified for Town Belt as is reasonably possible, that was allocated in 1841. Land identified for return includes land currently held by the Crown, or has been transferred to State Owned Enterprises or other entities by the Crown. This is a very long term project.

Contributed by Virginia Terpstra, Wellington City and compiled from extracts from the Wellington Town Belt Management Plan, courtesy of Wellington City Council.
Management Planning for Reserves

Management planning is intended to enable the administering body to establish the desired mix of uses and values for each reserve or group of reserves and set in place policy to guide day to day management. Determining community preferences, and establishing the best means to provide for them are essential ingredients for good management planning.

A management plan for a single reserve, a group of reserves or a whole portfolio should be viewed as a community document. A management plan provides the community with certainty about the function and management of each reserve or grouping. A management plan also provides the administering body with efficiency gains in management of the reserve, by not requiring public notification or ministerial consent for some routine matters.

The ability to forego some public consultation and approvals recognises that the compatibility of an activity with the overall purpose of a reserve has already been addressed in the management plan. The format of this Chapter is based on a series of questions and answers which aim to provide a ready reference about management planning. In addition, a practice notice provides an example of a strategic approach which has been developed by several councils. Appendices hold useful checklists and standard forms for the management plans process.

What are the Purposes of Management Plans?

The Act requires (s.41(3)) that a management plan "provide for and ensure" the following:

- the principles set out in ss.17 to 23 that apply to a reserve of the relevant classification
- compliance with those principles
- use, enjoyment, maintenance, protection, and preservation of the reserve(s) as the case may require
development (as appropriate) of the reserve(s) to the extent that the administering body’s resources permit, for the purpose for which each reserve is classified.

The Minister of Conservation has the discretion (s.41(14)) to require the council’s plan to be integrated with the plans of other administering bodies in a locality. This would only happen as an exception rather than the rule.

What Reserves Must be Covered by Management Plans?

All reserves (except local purpose reserves) for which the council is the administering body must be covered by an approved management plan, or plans, under s.41

In the case of local purpose reserves, the Minister of Conservation has a discretion to require a management plan. This decision is made at the time of vesting or appointment to control and manage in an administering body (s.41(16) Reserves Act). Exercise of the discretion would be the exception rather than the rule. Council records should reveal such conditions of appointment or vesting.

When Do Plans Have to be Completed?

The answer depends on when the council became the administering body of the reserve.

If that date was before 1 April 1978, the plan had to be completed by 31 March 1983.
If that date was after 1 April 1978, the plan had or has to be completed within 5 years of the date of appointment or vesting (s.41(1)).

Can the Council Apply for an Extension of Time?

A council can apply for an extension of time to the Department of Conservation if it has made reasonable progress. The extension can be authorised under s.41(2).

It is unnecessary to apply for an extension of time in relation to recreation reserves if the council was the administering body on 1 April 1978 as a decision was made in 1983 to give a blanket extension.

The Minister of Conservation may, however, require a council to submit a management plan for approval (s.41(15)) before the Minister gives consent or approval under the Reserves Act to an action the council wishes to take for such a reserve.

The Minister may also make such decisions (to give or decline consent or approval) in relation to any other class of reserve, or in relation to recreation reserves vested (or appointments made) after 1 April 1978.
Can the Council Approve a Management Plan?

The council can approve management plan(s) over recreation reserves for which it is the administering body (s.41(13)).

An exception is when the Minister of Conservation has specified (in the terms of the vesting or appointment) that the management plan for the reserve be submitted for approval by the Minister. Use of this discretion would be the exception rather than the rule, and has seldom been used in practice.

Council records should reveal such conditions of vesting or appointment.

All other mandatory management plans (eg all reserves except local or government purpose (s.41(16)) must be approved by the Minister of Conservation (s.41(1)). (The power is delegated to officers in the Department of Conservation.) The cost of approval may be recovered from the Council under the provisions of s.60B Conservation Act.

Can a Management Plan Cover More Than One Reserve?

Provided the requirements of s.41 of the Act are otherwise met, a management plan may cover more than one reserve.

Such a multiple-reserve management plan may cover all reserves of a single class (eg all recreation reserves) or cover reserves of different classes for which the Council is the administering body.

In the latter instance, the provisions in the plan relating to reserves of any particular class must be consistent with the statutory requirements related to that class of reserve (s.41(3)). For example, any goals or objectives in the plan which relate to recreation reserves must be consistent with the purposes defined in s.17. Those for scenic reserves must be consistent with s.19.

The reserves covered by the plan (and their boundaries) must be sufficiently described for a member of the public to recognise them individually. This can be done, for example, by mapping them in adequate detail in the plan. Legal descriptions and references to land status documentation (ie how the land became a reserve) should be included.

The plan must provide details of the classification of each reserve, and a reference to the authority for the classification (source document) is essential. The purposes for which a reserve must be managed derive from its classification (see Chapter 8).
Practice Note: Developing an Integrated Framework for Management Planning

Some councils have taken a strategic approach to management planning, which has had the benefits of providing a coherent overview of all reserves managed by the councils and reducing repetition and duplication of costs.

The Act does not preclude a local authority from:

- common or omnibus plans covering reserves of like type or in the same locality
- preparing a general reserve strategy or set of policies to streamline its decision-making and to cover day to day decisions about the management of reserves that are not covered by a formal management plan.

This approach is already used by a number of councils including Rotorua and Wanganui District Councils and Wellington City Council. A basic framework could be that as an administering body, a local authority has:

- an open space strategy that covers all reserves, including local purpose reserves and reserves administered outside the Act. The strategy could cover matters of general policy, allow priority setting for reserve acquisition, divesting and development. The strategy could also set policy for managing issues or reserves of a general type, and identify specific reserves or issues needing closer management
- management plans prepared for individual or groups of reserves only where greater planning detail is needed eg in Wellington for the Botanic Gardens of Wellington or for the Wellington Town Belt.

This “strategic” approach would enable:

- matching the form and degree of management to the different levels of public interest in, and use of, reserves, and the different threats involved
- the reduction of the costs of reserve management planning
- the setting of priorities for expenditure across a reserves portfolio and the development of clearer links to Local Government Act processes eg the better linking with other local authority strategic plans, policies and asset and operational/business plans
- the management of local purpose reserves and open-space land administered outside the Act to be factored into an overall reserves strategy for the district/region.

Points to watch…

- Management planning for reserves must still follow from the classification of each reserve. Classifications provide for different purposes, however subtle. An omnibus plan containing reserves with different purposes must not lose sight of the difference.
Practice Note Cont’d

- Clear references to the classification and purpose for each reserve are required. Where any requirements and powers for its management arise, these must, of necessity, be addressed in an omnibus or multi-reserve plan in a manner that will ensure that both general and specific policies in the plan for each reserve comply with the Act according to the classification of the reserves affected.

- A format that is easy to follow should be used. For example, having general policies “up front”, then dealing with each reserve in turn, by cross-referencing to the general policies that are to apply in each case, is a good approach. Accessibility of this information to the public and operational staff is a core reason for the plan.

- If Ministerial approval of the plan, for some reserves, is required then the application to the Minister should clearly state which reserves and what parts of the plan should be referenced. A schedule which lists each reserve and its classification is a useful addition. The Department should, of course, be consulted throughout the process to minimise the chances of not gaining approvals.

This approach is akin to ss.17D and 17E of the Conservation Act 1987 that are now incorporated into the Reserves Act (ss.40A and 40B) in regard to reserves management by the Department of Conservation.


Can the Council Prepare a Plan for Unclassified Reserves?

The council can prepare an advance draft of a plan covering unclassified reserve(s) for which it is the administering body, provided this does not pre-empt the classification process.

The council cannot, however, invite public submissions on the draft plan until all the reserves which it covers are classified and the draft plan is consistent with those classifications (s.41(3)).

Can Reserves be Classified by the Council as an Integrated Part of the Management Planning Process?

The council can exercise its statutory powers under s.16(2A) Reserves Act (see Chapter 8) or its delegated powers under s.16(1) (see Chapter 2) in an integrated way during the management planning process. Integration is built into the process set out on page 6/7 in this Chapter.

If the council does not have the power to classify any reserve affected by the plan, then a separate classification process by the Minister of Conservation is required (see Chapter 8).
Can the Council Include a Local Purpose Reserve in a Management Plan?

The council can include a local purpose reserve in any management plan for which it is the administering body if it chooses, including a plan for that reserve alone. However, it is not required by the Act to have a plan covering any local purpose reserve unless the Minister has specially required it.

Can the Council Include in a Management Plan Land Which is not a Reserve?

Any land of the council which is not subject to the Reserves Act 1977 can be included in a multi-reserve plan if the Council wishes. It will need to be distinguished from the reserves and appropriately provided for. (Council cannot be bound by the terms of the Act for those areas.)

Who Approves a Multi-Reserve Management Plan?

The Minister of Conservation and the Council will each approve the plan if it comes within the scope of both their statutory jurisdictions.

For example, if the plan includes a scenic reserve, the Minister will approve that part which relates to the reserve (s.41(1)). If the plan includes a recreation reserve, the Council will approve it for that reserve (s.41(13)). The approval certificate would be drafted accordingly.

The Council would also approve the plan for any Council (non-reserve) land or local purpose reserves included in it.

A plan requiring approval on behalf of the Minister should be sent to the Department of Conservation.

What Should a Management Plan Contain?

The Department of Lands and Survey issued guidelines in 1983 on the content of management plans for recreation reserves administered by local authorities. A second edition of these guidelines is attached as Appendix 6a.

The Guidelines also included a standard for public notices (see Appendix 6b).

The Guidelines in the Appendix are not binding. The council may itself determine how to meet the statutory responsibilities outlined earlier in this Chapter. Council may choose to take in-house advice from planners, legal advisors and other staff, or external advice. For example, advice on consultation may be sought from a Council’s in-house or external community liaison specialist; property/asset specialists; resource management and activity/land use planners; and recreation landscape and ecological assessment experts.
Is the Council Bound by a Management Plan Once it is Approved?

In exercising its functions as the administering body of a reserve under the Reserves Act, the council is required to comply with the management plan for the reserve and any approved amendments of it (s.41(11)). The plan cannot, however, regulate the behaviour of anyone other than the administering body.

Does Approval of the Management Plan Allow the Council to Exercise Additional Statutory Powers Over the Reserve?

Once the plan for the reserve is approved, the council may be able to exercise statutory powers that are expressed as being tied to a management plan.

For example, the council may exercise the power in s.54(1), in relation to leasing vested recreation reserves, without the consent of the Minister of Conservation if the lease or licence is in conformity with and contemplated by the management plan (s.54(2A)). The council may also be free to exercise delegated powers in such circumstances (see Chapter 2 and Appendix 2c).

Approval of a management plan by the Minister of Conservation is not itself an approval or a consent for any other purpose of the Act (s.41(12)).

Does the Council Have to Keep a Plan Under Continuous Review by the Council?

A council is required to keep the management plan(s) over reserves for which it is the administering body under continuous review (s.41(4)). The intention is that the plan be adapted to changing circumstances or increased knowledge.

Generally, plans should be reviewed at a minimum of 10 year intervals and need not involve a complete rewriting.

Can the Minister of Conservation Require a Plan to be Reviewed?

The Minister of Conservation has the power to require an administering body to review its management plan, whether or not the plan requires the approval of the Minister (s.41(4)).

What Process Does the Act Require?

The process which the Act requires is set out below. A council may wish to add other elements as well, to reflect its best practice. For example, focus groups could be used as part of the consultation process. An example is provided in the practice note in Appendix 6c which was contributed by Dunedin City Council.
<table>
<thead>
<tr>
<th>Stage</th>
<th>Who Does It</th>
<th>What Happens</th>
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</table>
| 1     | Officer¹   | • Makes a decision to begin the process.  
|       |             | • Determines the areas of land to be covered by the plan.  
|       |             | • Determines which areas are reserves subject to the Reserves Act 1977.  
|       |             | • Confirms that the council is the administering body for the reserve(s) or the owner of other area(s).  |
| 2     | Officer (see Chapter 8) | • Determines whether or not there are any unclassified reserves to be covered by the plan.  
|       |             | • Determines whether or not the council has the power to classify the unclassified reserves.  
|       |             | • If the council does not have the power then requests the Minister of Conservation² to classify any reserve.  
|       |             | • If the council does have the power then decides whether or not to integrate the classification with this process (see Stage 3).  
|       |             | (NB There may be reserves in both categories.) |
| 3     | Officer²   | • Decides whether or not to recommend exemption from public notice of the intention to prepare the plan.  
|       |             | • If the officer decides not to recommend such an exemption then deals only with classification before proceeding to Stage 5.  
|       |             | • Makes recommendations to council, including those relevant to reserve classification if appropriate to decision made at Stage 2. |
| 4     | Council³   | • On the recommendation of the officer, resolves (in terms of s.41(5A) whether to determine that written suggestions on the proposed plan would not materially assist in its preparation.  
|       |             | • Resolves (in terms of s.16(2A)) how to classify any unclassified reserve(s) of the types covered by that subsection. |

¹ “Officer” refers to the employee or contractor of the council authorised to undertake the action.  
² “Minister of Conservation” or “MOC” refers to the officer in DOC exercising the delegated authority on behalf of the Minister.  
³ “Council” refers to the full Council.
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<th>Stage</th>
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| 5     | Officer     | - If the council agrees to the exemption then proceeds to Stage 6.  
       |             | - If the council declines the exemption or exemption was not sought then prepares information for public release (see also Chapter 5).  
       |             | - Gives public notice of invitation in accordance with s.41(5) and (if appropriate) gives notice to the Commissioner under s.16(2B).  
       |             | - Records the council’s decision about the reserve classifications under s.16(2A). |
| 6     | Officer     | - Drafts management plan, giving full consideration to any comments received as a result of public invitation (s.41(5)(c)).  
       |             | - Awaits completion of the classification process by MOC, if still in train. |
| 7     | Officer     | - Finalises and submits draft plan to council for consideration (if required by council practice). |
| 8     | Council     | - On submission by officer approves draft plan for public release (refer Appendix 6c for practice example on use of focus group for consultation).  
       |             | - Determines hearing procedure (s.41(10)). |
| 9     | Officer     | - Acts on council decision if Stages 7 and 8 occur.  
       |             | - Gives public notice in accordance with s.41(6)(a) (see also Chapter 5).  
       |             | - Sends copy of the plan to the Commissioner (s.41(6)(aa)).  
       |             | - If a public invitation was given at Stage 5 then sends written notice in accordance with s.41(6)(b).  
       |             | - Arranges for the draft plan to be available in accordance with s.41(6)(c). |
| 10    | Officer     | - Arranges any hearing required in accordance with s.41(6)(d) (see also s.41(10)).  
       |             | - Arranges a report on any hearing. |

4 “Commissioner” – notices to the Commissioner are to be sent to the local conservancy office of DOC.
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<tr>
<th>Stage</th>
<th>Who Does It</th>
<th>What Happens</th>
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| 11    | Officer     | • Summarises objections and comments and prepares recommendations to council on extent to which they should be allowed or accepted or disallowed or not accepted.  
        |             | • Submits to council. |
| 12    | Council     | • Makes decision on extent to which the objections and comments will be allowed or accepted or disallowed or not accepted. |
| 13    | Officer     | • Makes alterations to plan in accordance with council decisions.  
        |             | • If council holds the power of approval then submits revised plan for approval by council.  
        |             | • If MOC holds the power of approval then submits revised plan to MOC with a copy of the council’s decision at Stage 12 (s.41(6)(e)).  
        |             | • If dual approval is required then submits revised plan to council, and afterwards to MOC with a copy of the council’s decision at Stage 12 (s.41(6)(e)). |
| 14    | Officer     | • Acts on council/MOC decision(s) on submitted plan. |
| 15    | Council     | • Makes a decision to amend the plan.  
        |             | • Decides whether or not to go through public process (s.41(9)). |
| 16    | Officer     | • Completes action in accordance with council decision and the relevant provisions of s.41. |
| 17    | Council     | • Makes decision to review the plan (s.41(8)). |
| 18    | Officer     | • Goes through or initiates action under Stages 2 to 14 (s.41(8)). |
### Practice Note: Case Example – Dunedin City Council’s Sports Ground Management Plan

#### Background

**Structure and Content of Management Plans**

The Dunedin City Council (the Council) has taken the approach of developing management plans that cover all reserves and fee simple land used as reserves, of a similar purpose, eg the hills, sports grounds, coastal areas. In the case of the Sports Ground Management Plan, approximately 50 reserves (that contain 147 sports fields) were amalgamated into one plan.

The time and expense in preparing management plans and the large number of small reserves with a similar purpose, meant that pooling reserves together made the management planning process more feasible. The review of these plans also became more effective as like issues were addressed at one time and the public were not “over-consulted” on the same reserve issues. Over consultation can often affect the degree of participation in a planning and policy review process.

Although groups of similar reserves are amalgamated into one plan, the Council has developed a “Reserves Management Plan – General Policies” document to address management policy common to all reserves covering issues such as car parking, signage and occupation of reserves. The general policies plan is reviewed each time an “amalgamated” reserve management plan is reviewed, such as the Town Belt Management Plan. This allows key policies to be continuously updated and evolve into a more responsive policy document.

The content of each plan is structured and formatted to meet the purpose and use of the plan as a management document and a catalogue of resource information on each reserve.

#### Actions Taken

- Amalgamating planning for reserves with a similar purpose into one plan, which is reviewed every ten years. Policy is site specific and strategic, providing an intention of not just how the reserves will be managed on a daily basis but the strategic direction for the reserves. The resource information section documents asset information that is required when making a policy decision about a particular reserve.

- The development of a General Policies document addressed management policy that related to all reserves. The “General Policies” document was of a medium to low level and relates closely to operational policy. The General Policies document is reviewed each year within the same process for reviewing an “amalgamated” plan.

- Format of plan:

  1. **Introduction** – Historical background, Aims and Objectives of the Plan, Summary of Council’s role in Management Planning.
  2. **Strategic Aims and Objectives** – Aims and Objectives as they relate to other Council policy (Annual Plan, Long Term Financial Strategy, Council’s Strategic Plan).
### Practice Note Cont’d

4. General and Specific Reserve Policies.
5. **Ground Specific Information** (Resource inventory/description of each reserve) – Location, Legal Description, Legal Status, History, Physical Description, Buildings and Structures, Access, Present Use, Adjacent land Issues, Specific Policies, Cadastral Map.
6. Appendices.

### Outcomes
- More efficient use of time and money as more reserves can be reviewed under one plan.
- Allows a direction for planning and development to be taken for smaller reserves, which are often left without a vision as to their use and purpose.
- Allows all reserves to be managed in response to Council’s Annual Plan, Strategic Plan, Long Term Financial Strategy and the Asset Management Plan.
- Collective focus on issues that are the same for all reserves. For example, a Coastal Management Plan allows Council to focus on coastal protection all at the one time. This also allows the community to focus on a few specific issues which makes the management planning process more relevant to special interest groups. Continually consulting the same groups each year on the same issues can cause the problems of inconsistent policy and lack of interest from stakeholders.
- Regular review of this type of policy caters for changes in legislation and political decision making. Modifying the General Policies on an annual basis allows a regular change or update of management policy which in turn updates all the ten year plans without taking them all through a public notification process and interrupting the ten year review cycle.

### What Would You Do Differently Next Time?
- Ensure that the format and content of each plan is consistent. This includes having a numbering system to allow cross-reference between plans and other Council policy documents. As each plan has been reviewed, often by different people, the format and approach has been different.
- Provide an electronic copy of all plans with an electronic index reference system to allow customers to access policy information, including making submissions on draft plans, through the Council’s web site.

### Suggestions of Points to Watch
- Ensure development proposals on a specific reserve do not drive the purpose of management planning for reserves.
- Inform Councillors of the requirements for management planning under the Reserves Act, particularly the public notification process and timeframes involved, in order to create realistic expectations for the management planning process.
Practice Note Cont’d

- Inform Councillors of the cycle or priority for which plans are reviewed before others.

Suggestions for a Check List in Using the Process or Dealing With Issues

- Place reserves of similar purpose into one management plan.
- Transfer policy that covers or is relevant to all management plans into one Reserve Management Plan which is reviewed on a regular basis and within the same process as each Omnibus plan.
- Focus on reserve plans that have a higher “issue” profile or “greater effects” if a management plan is not in place.

References


Contributed by Craig Grocke, Dunedin City Council.
Please note that as long as the fundamental aspects are included, administering bodies have flexibility and scope to be creative with the presentation and format of the management plan.

A management plan is a community’s document – it should be logical, readable and easily understood.

Format

Because it is a public document, which will need to be distributed, a reserve management plan should be regarded as a publication, and, accordingly, is part of a council’s public relations. Fostering a good image can encourage a helpful attitude in dealings by staff with the public. Because of the enduring nature of a publication, it should be pleasingly presented as well as absolutely factual. It must also be easy to use in day-to-day management and decision-making by Councillors and staff.

Contents

A basic plan consists of five elements: (a) Introduction; (b) Classification; (c) Objectives; (d) Policies; and (e) Implementation. It may also include: (i) Management concept; (ii) Development proposals; (iii) Planning proposals; and (iv) Development programme. Alternatively, a development programme can be part of a separate process or may be unnecessary. The main parts are described below.

Introduction

This part of a plan should include information about a reserve or reserves and its/their locality. As an introduction to the reader it should show that objectives and policies are well founded. It should help the reader to understand the reasoning behind the provisions of the plan. There should be adequate discussion of district plan provisions and of management issues which are difficult, controversial, or otherwise of special interest to the public.
This information can be provided under a number of headings. Details should not be included just for information’s sake but to assist communication with the public about the particular reserve or reserves.

Classification

This section should state the classification of the reserve or reserves (s.16) and outline the statutory function and management prescriptions (eg refer to s.17 for recreation reserves). This is the principal guide to the objectives of management (see pages 6/2 and 6/3 in this Chapter and Chapter 8).

Objectives

- Indicated by the classification and will conform with the statutory requirements.
- Succinct statements on the principal aims of management. These generally cover aspects such as preservation, conservation, function, character, use, development and integrity.
- Can be listed in some order of priority.
- Do not necessarily need to be mutually compatible.

Policies

- Statements of how it is intended to regulate decisions on specific topics to ensure they will lead towards the selected objectives (eg leasing).\(^5\)
- Must not fetter the discretions given to decision makers (eg cannot be a list of prohibitions or directives).
- May include considerations that will be weighed in decisions on particular management actions, taking into account the effects of activities.
- The basis for policies on many subjects is likely to exist already, consistent with the level of previous management.
- The effectiveness of policies can be judged by comparison with objectives and the problems applied to the policies.
- The management plan will achieve its purpose if all future developments and decisions are measured against the framework of policies.
- Policies should be grouped in a logical way such as based on significance (see objectives).
- Explanations sufficient to support or justify policies can be included in this section (ie factors considered in arriving at the policy, or an indication of what immediate implementation action is required).

\(^5\) Leasing proposals will have to be specifically provided for in the management plan to meet the statutory requirement of the lease being "in conformity with and contemplated by" the plan.
• It is necessary to check and review policies to ensure that they remain relevant to contemporary situations and are therefore effective. The method of adjustment to meet changing circumstances and trends should be built into the management planning process.

Implementation

Outcome statements in this part should demonstrate the effectiveness of provisions made in the plan to ensure, as appropriate, the matters required by s.41(3) Reserves Act relevant to the reserve(s) (see pages 6/4 and 6/5 of this Chapter).
First Notice (S.41(5))

"Intention to Prepare Management Plan

You are invited under s.41 Reserves Act 1977 to send to the undersigned by [closing date6] written suggestions on the proposal to prepare a management plan for the following reserve(s):

[reserve name]  [situation]

[optional] A resource statement about the reserve(s) is available on request.

[signed/address]"

Second Notice (S.41(6))

"Draft Management Plan Available for Inspection

You are invited under s.41 Reserves Act 1977 to lodge written objections to or suggestions on the draft management plan for the [name of the plan/reserve(s) name and situation] by [closing date7] at the address below. A draft management plan is available for inspection in terms of the Act at [address(s)]. Submitters should state whether or not they wish to be heard.

[signed/address]"

NB: The requirements of ss.119 and 120 Reserves Act must be fully observed.

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6 Council determines the closing date in each case.
7 Not less than 2 clear months after date of publication of the notice.
Practice Note: Case Example – use of Focus Groups in Consultation for Management Planning

Background

The Sports Ground Management Plan for Dunedin City is an Omnibus plan covering approximately 50 different reserves that have been developed and used as sports fields. The review of this plan involved a pre-plan consultation method that used focus groups to more effectively develop a “community directed” draft management plan. The process used in the pre-plan consultation method was based on the ideas of Benefits Based Management (BBM) developed by Dr Beverly Driver. BBM uses a process aimed at getting recreation users to identify the current and desired future benefits of accessing and using recreation resources such as sports fields and then identifying the issues and barriers towards improving the development and management of those fields. The recreation users are also given the opportunity to identify the best options and solutions for working towards what they desire for reserves.

The information gained from this process, as well as the process itself, was valuable in guiding the management planning process and the development of “community focused” policy, without having a long and complicated submission process after the draft plan was completed. More often management plans are drafted and then consulted which is a reactionary process. Through being pro-active and getting the community’s ideas on board before policy is developed, the community as well as the users of reserves are given the opportunity to participate, which engenders community ownership of the process as well as the outcomes. For Council staff, this results in fewer submissions on the draft plan and more agreement with policy makers, making the final notification process less political and easier to deal with.

Actions Taken

The pre-plan focus groups were structured so that no more than 16 people attended any one session. Details of the focus groups, the time, place and purpose, was advertised for one month and interested parties were asked to respond by leaving their contact details. This allowed the focus group organisers to pre-plan each focus group knowing how many people were attending and the interests of each group present.

The participants were then put into smaller sub-groups of three to four people and mixed to allow each participant to learn about each others’ needs and issues on reserve management and planning. A series of questions were structured around three steps outlined below. The questions within each step were addressed by each sub-group and then summarised onto a white board for the other groups to see.
Once all the sub-groups had given a response, then all groups were allowed to discuss the responses made.

**Step 1**
- Identify existing resources that recreation groups use and benefit from at an individual, club and community level.
- What do you enjoy about the sports grounds that you use?
- What don’t you enjoy about the sports grounds that you use and why?
- What are the sports grounds that work well and don’t work well?

**Step 2**
- Identify the desired future benefits from those resources, including the issues and barriers that may prevent you from effectively accessing and using those resources.
- Considering what you currently enjoy about sports grounds, what benefits do you want in the future from sports grounds and why? (Think of benefits on an individual level, club/association level and the wider community level.)
- What are the biggest issues facing sports ground management?
- What are the barriers and constraints to resolving these issues?

**Step 3**
- Negotiate options and solutions to gaining a “desired future” with recognition to the issues and barriers that are a result of competition for resources and the effect of controlling mechanisms such as government policy.
- What do you think are the options or possible solutions to achieving the future you want for sports grounds considering the issues and barriers?

**Outcomes**

Through the use of focus groups, users identify their desired future benefit outcomes, recognising the issues and barriers that exist. The result is a list of negotiated outcomes, prioritised on an individual, group and community level. This has proven to be a successful process for gaining community support and information in a pro-active way. The outcomes of this process for the Sports Ground Management Plan, has been the development of a strategic plan that has a community focus.

Participants are given ownership of the process and outcomes, while for local government it helps to effectively match supply of recreation opportunities with the community’s demand for recreation resources. A secondary result was that only 13 submissions were received on the draft plan after over 50 copies were sent to interest parties. Four submissions commented on draft policy and the remaining nine submissions covered information submitted to update the resource inventory. This resulted in saving time and staff resources during the post draft process of public notification and hearing of submissions.
What Would You Do Differently Next Time?

- Try to get more participation from casual recreationists, community groups and schools who also use sports fields or who are concerned for their amenity value and not just the direct use.

- Allow more time to conduct each focus group and summarise each session.

- Allow more time to disseminate information to senior management and politicians who need to see the responses that come from the focus group participants.

Suggestions of Points to Watch

- Structuring focus group to have at least 6 people but not more than 16 people. This allows two hours to complete the focus group questions.

- Two facilitators required, one to summarise suggestions and record comments, the other to facilitate the session and ask questions.

- Getting participants to understand what is meant by the “benefits of leisure” and “desired future outcomes” beyond their own personal “wish list for tomorrow”. To get participants to think of benefits at an individual level, club/association level, and the wider community level.

Suggestions for a check list in using the process or dealing with issues

- Allow one month to publicise the focus groups to allow interested parties to register their interest. Most sports clubs meet only once a month.

- Notify interested parties of the time and place for each focus group and provide information outlining the process and objectives of the focus group. The aim is to create the right level of expectation to provide satisfaction with the process and outcomes.

- Mix the small groups, from each focus group so participants have to discuss and learn about the needs and issues of other similar and different sports.

- Provide pens and paper for each participant and each small group to record their responses. This will provide more detail and context for what is summarised from each focus group onto the white board.

- Provide a summary of the results from the focus group and a copy of the draft plan to all participating groups as a feedback mechanism. The aim is to show how their input and ideas have translated into outcomes.

During the focus groups, never try to defend Council’s position but just listen and record information. Being reactive causes more volatility which can sidetrack the structure and purpose of the focus group. Similarly, do not have senior staff or Councillors attend as this draws focus to one individual and political issues only.

References

Contributed by Dunedin City Council.
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 Vested1 in the Council?

This table shows the relevant provisions:

<table>
<thead>
<tr>
<th>Section of Act</th>
<th>Class of vested Reserve</th>
<th>Type of Right</th>
<th>Purpose</th>
<th>Act Requires Consent of Minister</th>
</tr>
</thead>
<tbody>
<tr>
<td>48</td>
<td>All</td>
<td>Easement incl. an easement granted by the Council to itself</td>
<td>(i) Any public purpose</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(ii) distribution or transmission by pipeline of natural or manufactured gas, petroleum or geothermal energy</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(iii) an electrical installation or work as defined in s.2 Electricity Act 1992</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(iv) the provision of water systems; providing or facilitating the supply of water to or the drainage of</td>
<td></td>
</tr>
</tbody>
</table>

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 1998 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.
<table>
<thead>
<tr>
<th>Section of Act</th>
<th>Class of vested Reserve</th>
<th>Type of Right</th>
<th>Purpose</th>
<th>Act Requires Consent of Minister</th>
</tr>
</thead>
<tbody>
<tr>
<td>48A</td>
<td>All, if vested under s.26 Reserves Act</td>
<td>Licence</td>
<td>Use for radio, electric, or electronic communication station (associated buildings, dwellings, masts and other structures and tracks).</td>
<td>Yes</td>
</tr>
</tbody>
</table>
| 54             | Recreation² | Lease | (i) Baths, camping ground, parking or mooring place or other facilities for public recreation or enjoyment  
(ii) stands, pavilions, gymnasiums and (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. | 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 (s.54(1A)). See "What Consent is Required if Any?" on page 7/5.
<table>
<thead>
<tr>
<th>Section of Act</th>
<th>Class of vested Reserve</th>
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<th>Purpose</th>
<th>Act Requires Consent of Minister</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>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.</td>
<td></td>
</tr>
<tr>
<td>56</td>
<td>Scenic</td>
<td>Lease</td>
<td>Baths, picnic ground, camping ground, parking or mooring place or other facilities or amenities for public recreation and enjoyment.</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Lease or licence</td>
<td>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.</td>
<td>Yes</td>
</tr>
<tr>
<td>58A</td>
<td>Historic</td>
<td>Lease or licence</td>
<td>Domestic residential purposes or for carrying on any activity, trade or business, or occupation.</td>
<td>Yes</td>
</tr>
<tr>
<td>61(2)</td>
<td>Local purpose</td>
<td>Lease</td>
<td>Lease under Public Bodies Leases Act 1969.⁶</td>
<td>No</td>
</tr>
<tr>
<td>61(2A)</td>
<td></td>
<td></td>
<td>Community building, playcentre, kindergarten, plunket room or other like purpose; farming, grazing, cultivation, cropping or other like purpose.</td>
<td>No</td>
</tr>
<tr>
<td>61A</td>
<td>Aerodrome</td>
<td>Lease</td>
<td>Lease under Airport Authorities Act 1966.</td>
<td>No</td>
</tr>
</tbody>
</table>

⁶ [Note this provision is not affected by the Local Government Act 2002.]
<table>
<thead>
<tr>
<th>Section of Act</th>
<th>Class of vested Reserve</th>
<th>Type of Right</th>
<th>Purpose</th>
<th>Act Requires Consent of Minister</th>
</tr>
</thead>
<tbody>
<tr>
<td>67</td>
<td>Recreation (set apart for racecourse purposes)</td>
<td>Lease</td>
<td>Any purpose, not inconsistent with the purpose of the reserve, to a racing club.</td>
<td>No/Yes</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>If up to 7 years</td>
<td>No/Yes</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>If over 7 years</td>
<td>No/Yes</td>
</tr>
<tr>
<td>72</td>
<td>Recreation or local purpose</td>
<td>Lease or licence</td>
<td>[Provision not in use by the Minister of Conservation who would be the other party to the lease or licence.]</td>
<td>No</td>
</tr>
<tr>
<td>73</td>
<td>Recreation</td>
<td>Lease</td>
<td>Farming, grazing, or afforestation or other purpose where:</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(i) the land is not for the time being required for recreation purposes;</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>or (ii) it is in the public interest; or</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(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</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(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.</td>
<td></td>
</tr>
<tr>
<td>74</td>
<td>All, except nature reserve</td>
<td>Licence</td>
<td>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.</td>
<td>Yes/No</td>
</tr>
</tbody>
</table>

² 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:

<table>
<thead>
<tr>
<th>Stage</th>
<th>Who Does It</th>
<th>What Happens</th>
</tr>
</thead>
</table>
| 1     | Officer⁴   | - Makes a decision to begin the process (eg on receipt of application).  
       |             | - Confirms that the land involved is a reserve and that the reserve is vested in the council.  
       |             | - Identifies the authority for the vesting and any limitation of the authority.  
       |             | - Identifies the purpose of the reserve.  
       |             | - Determines the appropriate statutory power to grant the lease, licence or easement and any limitation of the power. |

⁴ “Officer” refers to the employee or contractor of the Council authorised to undertake the action.
<table>
<thead>
<tr>
<th>Stage</th>
<th>Who Does It</th>
<th>What Happens</th>
</tr>
</thead>
</table>
| 2 Officer | • Identifies any statutory requirements related to terms and conditions.  
• Identifies any relevant policy of the council (eg in a management plan – see Chapter 6).  
• Formulates a proposal (which complies with the Act) to grant a lease, licence or easement.  
• If public notification is required then arranges for public notice to be given in accordance with s.119.  
• If public notice is not required then records the reason for the exemption.  
• Arranges action to comply with s.4 Conservation Act (see Chapter 4). |
| 3 Officer | • Arranges any hearing required in accordance with s.120(1)(c) Reserves Act.  
• Arranges a report on any hearing. |
| 4 Officer | • Arranges for the council to give full consideration to every objection or submission (s.120(1)(d)). |
| 5 Council | • Determines the extent to which it will allow or accept or disallow or not accept every objection or submission.  
• Determines whether or not to approve the grant of a lease, licence or easement (subject to consent where needed). |
| 6 Officer | • Acts in accordance with the council’s decision.  
• If the lease, licence or easement is approved and the consent of the Minister of Conservation is required then applies for that consent, attaching a statement which meets the requirements of s.120(1)(e).  
• If consent is not required then proceeds to Stage 8. |
| 7 Officer | • Acts in accordance with the decision of the Minister.  
• If consent is given conditionally then meets the terms of the conditions.  
• If consent is given then proceeds to Stage 8. |
| 8 Officer | • Arranges for the lease, licence or easement document to be drafted in final form.  
• Meets any related policy requirements of the council.  
• Submits the offer of a lease, licence or easement to the applicant/applicant’s solicitor. |
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.

The 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 IIIIB 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): 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.

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

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

Reserves Act Guide 7/
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.

<table>
<thead>
<tr>
<th>Stage</th>
<th>Who Does It</th>
<th>What Happens</th>
</tr>
</thead>
</table>
| 1     | Officer     | • Receives application.  
         |             |   • Determines whether:  
         |             |     (a) the land is a reserve subject to the Reserves Act 1977  
         |             |         NB if it is not, then notifies the applicant.  
         |             |     (b) a concession is the best way to grant the right sought by the applicant  
         |             |         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.  
         |             |     (c) the council holds an appointment to control and manage the reserve  
         |             |         NB if the council holds a vesting of the reserve then goes to Section 7.1.  
         |             |     (d) the council holds the delegated authority to deal with the application (see above).  
         |             |         NB if the council holds the delegated authority then goes to Section 7.2. |
| 2     | Officer     | • Informs the applicant that the application will be dealt with under s.59A Reserves Act.  
         |             | • Sends the application to the Department of Conservation. |
| 3     | DOC         | • Assesses the application.  
         |             | • Obtains further information from the applicant if required and collects application fee.  
         |             | • Prepares an assessment and recommendation.  
         |             |     NB The application may at this stage be declined – see ss.17T or 17U Conservation Act. |
| 4     | DOC         | • Informs council of decision to decline; or  
         |             | • Invites the views of the council as administering body on the concession proposal. |
| 5     | Officer     | • Provides a report to the Council. |
| 6     | Council     | • Determines its views on the proposal. |

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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.
<table>
<thead>
<tr>
<th>Stage</th>
<th>Who Does It</th>
<th>What Happens</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>Officer</td>
<td>• Conveys council view to DOC.</td>
</tr>
</tbody>
</table>
| 8     | DOC         | • Having regard to council’s views, completes the process of considering the application.¹¹  
            • Notifies decision to:  
                – council  
                – applicant.  
            • If concession approved, provides copy of signed Document to council. |
| 9     | Officer     | • Records concession.  
            • Sets up arrangements for collection of rent and/or any other charges. |

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 a 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).
Examples of Information Requirements to Accompany Consent Applications Made Under the Reserves Act 1977

Leases and Licences (Vested Reserves)

- Copy of the draft lease or licence (including a plan) to be consented to (1).
- The authority for vesting of the reserve in the local authority (2).
- The current purpose and (if applicable) manner of classification of the reserve (3).
- Public notification information (4).
- Statement about how the proposal meets the requirements set in the Act (5).
- A physical description of the land.

Rights Of Way and Other Easements (Vested Reserves)

- Copy of the draft ROW or easement (including a plan) to be consented to (1).
- The authority for vesting of the reserve in the local authority (2).
- The current purpose and (if applicable) manner of classification of the reserve (3).
- Public notification information (4).
- Statement about how the proposal meets the requirements set in the Act (5).
- A physical description of the land.

(Numbers in brackets refer to the notes below.)
Notes:

1. Lease and licence terms and conditions must comply with the relevant parts of the First Schedule to the Reserves Act. If a document has not yet been drafted the main terms and conditions should be set out in the application for consent.

2. The authority for control/vesting may be a reference to a Gazette notice (either attach a copy, or refer to the publication year and page number) where this is the manner of vesting, or to a statutory authority (eg s.26A of the Act), or to a CT. A copy of the parent CT/s (if there is one) should be provided to supplement evidence of the authority.

3. State the purpose and (if applicable) manner of classification under the Act. A reserve may be unclassified and managed for an existing purpose, be automatically classified under a provision of s.16 of the Act, have been classified by Gazette notice (either attach a copy, or refer to the publication year and page number), or classified by way of a resolution under s.16(2A) of the Act (attach a copy).

4. If advertised, state whether or not any submissions or objections were received. If any were received, provide a summary of the submissions and objections and state the extent to which they were allowed/disallowed or accepted/not accepted, as required under s.120(1)(e) of the Act. If not advertised, state the statutory authority for the exemption (eg s.54(2A)(b) of the Act). To the extent that doing so would be consistent with the provisions of the Reserves Act, the Department will have regard to the principles of the Treaty of Waitangi in considering whether or not to give consent or approval. If the council has carried out consultation with Maori, the outcome should be documented and provided. If the council considered that consultation was not warranted, the reason/s should be stated.

5. The statement should explain how the proposal meets the standards set by the requirements of the Act, and why the proposed action is warranted. Some examples:

- If seeking approval for a lease or licence, show how the activities to be allowed are consistent with the purpose of the reserve and the management plan (if any), and show that the relevant statutory requirements have met eg for a lease under s.54(1)(b) show how the proposed buildings are necessary and associated with the use of the reserve for outdoor sports, games or other recreational activities, or alternatively how the proposal is in the public interest.

- If seeking approval for a ROW or other easement where public notice was not required to be given, by virtue of s.48(3) of the Act, show how the easement is unlikely to materially alter or permanently damage the reserve or permanently affect the rights of the public.
Your application for a lease/licence/permit/easement will be considered under the provisions of s.59A Reserves Act 1977.

S.59A of that Act provides:

“The Minister [of Conservation] may, in accordance with Part IIIB of the Conservation Act 1987, grant a concession in respect of any reserve vested in the Crown, including any reserve controlled or managed by an administering body under any of ss.28, 29, 30, 35 and 36 of this [Reserves] Act; and the said Part IIIB shall apply as if references in that part to a conservation area were references to such a reserve and with any other necessary modifications.”

The Council has delegated power from the Minister to grant certain concessions. That power cannot be exercised in this case.

The application has accordingly been referred for consideration to the Department of Conservation at [address]. You will shortly hear from that office. [If known, provide contact details of the person who will be dealing with the application.]

The Department will let you know what application fee you will be required to pay, what further information if any it will require, and how long the processing of the application is likely to take.

Please address any further enquiries to the Department.

Yours sincerely
Information to be Provided to the Department of Conservation on a Concession Application

The following information should be provided to the Department of Conservation:

- a copy of the application received by the council
- a plan of the proposed concession area
- the year and page reference of the notice in the Gazette by which the council was appointed to control and manage
- a physical description of the land affected by the applications, including existing use(s)
- a copy of any current or expired lease/licence/permit/easement over the area
- any other information the officer considers relevant.
Classification of Reserves and Changes of Classification or Purpose

This chapter provides key information about the classification and change of classification or purpose provisions of the Act. Using a question and answer format, the framework of the Act is explained and the details of the various classifications will assist officers develop suitable criteria and improve the choice of classification categories for reserves.

8.1 Classification – General

What is Classification?

"Classification" is a mandatory process under s.16 of the Reserves Act which involves assigning a reserve (or the parts of a reserve) to the appropriate class (and, if required, the type and overlay) within the framework shown in the diagram below.

The "class" determines the principal or primary purpose of the reserve. The determination of an appropriate classification category for a reserve is a matter that the community should have adequate input. Not only are the present values of the reserve important to consider, so too are the future "potential" values and the possible future uses and activities on the reserve. Therefore classification is a matter that is a crucial element in management planning. In considering classification to this Chapter reference should also be made to Chapter 2 "Powers Under the Reserves Act"; Appendix 2c "Instrument of Delegation" and Chapter 6 "Management Planning for Reserves".

Reserves are classified to ensure their control, management, development, use and preservation for appropriate purposes (s.16(1)).

What is the Framework for Classification?

The four-tier framework of reserve classification under the Reserves Act follows.
These are some examples of reserve classifications within the above framework:

<table>
<thead>
<tr>
<th>Class</th>
<th>Type</th>
<th>Overlay</th>
</tr>
</thead>
<tbody>
<tr>
<td>Government purpose</td>
<td>wildlife sanctuary</td>
<td>national (s.13)</td>
</tr>
<tr>
<td>Recreation</td>
<td>racecourse</td>
<td>N.A.</td>
</tr>
<tr>
<td>Recreation</td>
<td>N.A.</td>
<td>N.A.</td>
</tr>
<tr>
<td>Scenic</td>
<td>s.19(1)(a)</td>
<td>N.A.</td>
</tr>
<tr>
<td>Local purpose</td>
<td>public hall</td>
<td>N.A.</td>
</tr>
</tbody>
</table>

**What do the Classifications Mean?**

The following tables have been adapted from chapter six of the Department of Conservation (DOC) “Standard Operating Procedures Manual: Categorisation of Protected Areas, 1998” (Reference QD Code NH/1027(01)). The tables show the similarities or contrasts between the categories of protected areas under the Act that are relevant to the management of land held under the Reserves Act by local authorities.

A set of the other tables from chapter six of the DOC Procedures Manual, which cover other statutes under the jurisdiction of DOC, is contained in Appendix 8a.

The tables note the purpose and relevant section under the Reserves Act along with brief statements about the primary and secondary objectives of management; guidance for selection of the category for classification; and the typical organisation responsible for management of land in the category.
### Local Purpose Reserve

<table>
<thead>
<tr>
<th>Purpose (s.23)</th>
<th>An area of land (or land and water) suitable for a specified local educational or community purpose which does not duplicate any other reserve purpose</th>
</tr>
</thead>
</table>
| Objectives of Management (s.23) | Primary  
- Determined by the purpose  
- Prohibit access to the whole or any part of the reserve except by permit where appropriate  
Secondary  
- Manage and protect scenic, historic, archaeological, biological or natural features  
- Maintain value as a soil, water, and forest conservation area |
| Guidance for Selection | Depends on purpose (but generally very small, modified areas) |
| Organisational Responsibility | As for historic reserve |

### Government Purpose Reserve

<table>
<thead>
<tr>
<th>Purpose (s.22)</th>
<th>Area of land (or land and water) suitable for a specified government purpose</th>
</tr>
</thead>
</table>
| Objectives of Management (s.22) | Primary  
- Determined by purpose  
- May be administered also under another Act or Acts when another Minister is appointed to control and manage  
- Prohibit access to the whole or part of the reserve except by permit where appropriate  
Secondary  
- Manage and protect scenic, historic, archaeological, biological, cultural, scientific or natural features or wildlife  
- Maintain value as a soil, water and forest conservation area |
| Guidance for Selection | Depends on the purpose |

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1 Generally restricted in the case of new reserves to conservation-related purposes eg wildlife refuge. Lands for other Government purposes are set apart under the Public Works Act 1981.
### Organisational Responsibility
- Owned by the Crown
- Controlled and managed by DOC unless a Minister of the Crown (other than the Minister of Conservation) or another administering body would better carry out the purpose of the reserve

### Historic Reserve

<table>
<thead>
<tr>
<th>Purpose (s.18)</th>
<th>An area of land (or land and water) possessing places, objects and natural features as are of historic, archaeological, cultural, educational and other special interest</th>
</tr>
</thead>
</table>
| Objectives of Management (s.18) | **Primary**
- Manage structures, objects and sites to illustrate with integrity the history of New Zealand
- Allow the public freedom of entry and access subject to such conditions and restrictions as are necessary for the protection and general wellbeing of the reserve and for the protection and control of the public using it
- As appropriate, preserve the indigenous flora and fauna and natural environment as far as possible

**Secondary – if applicable**
- Manage and protect scenic, archaeological, geological, biological, or other scientific features, or indigenous flora and fauna, or wildlife
- Maintain value as a soil, water, and forest conservation area |
| Guidance for Selection | **Primary**
- Area should be sufficiently large to preserve all the significant historic or archaeological features associated with the place, object or natural feature
- Area should include sufficient additional land as a buffer against incompatible development or as unobtrusive sites for necessary services for management and public use
- The primary value should be traditional, historic or archaeological – through an association with major events, or Maori tradition
- Area should have immediate interest to the visitor, or be important as a key for continuing research and interpretation of New Zealand history |
| Organisational Responsibility | **Primary**
- Owned by the Crown or vested in an administering body
- Controlled and managed by DOC unless an administering body would better carry out the purpose of the reserve |
| Purpose (s.17) | An area of land (or land and water) possessing open space, and outdoor recreational values especially suitable for recreation and sporting activities and the physical welfare and enjoyment of the public, and for the protection of the natural environment and beauty of the countryside, including recreational tracks in the countryside |
| Objectives of Management (s.17) |  
| Primary |  
| - Allow the public freedom of entry and access subject to such conditions as are necessary for the protection and wellbeing of the reserve and for the protection and control of the public using it  
| - Conserve those qualities which contribute to the pleasantness, harmony and cohesion of the natural environment and to the better use and enjoyment of the reserve  
| Secondary |  
| - Manage and protect scenic, historic, archaeological, biological, geological or other scientific features or indigenous flora or fauna or wildlife  
| - Maintain value as a soil, water and forest conservation area |
| Guidance for Selection |  
| - Area may be totally modified eg suitable for sports fields  
| - Area may be in a partly natural conditions eg suitable for picnic or camp sites or like development  
| - Area may be lineal eg suitable for recreational walking and/or vehicle use |
| Organisational Responsibility |  
| - Owned by the Crown or vested in a territorial authority or other administering body  
| - Under the control and management of DOC unless an administering body would better carry out the purpose of the reserve |
### Scenic Reserve B (Modified s.19(1)(b))

<table>
<thead>
<tr>
<th>Purpose (s.19(1)(b))</th>
<th>A suitable area of land (or land and water) which by development and the introduction of flora, whether indigenous or exotic, will become of significant scenic interest or beauty</th>
</tr>
</thead>
</table>
| Objectives of Management (s.19)               | **Primary**  
|                                               |  - As appropriate to the purpose, preserve the indigenous flora and fauna, biological associations, and natural environment and beauty as far as possible  
|                                               |  - As appropriate, exterminate exotic fauna and (to be extent consistent with purpose) exotic flora as far as possible; allow the public freedom of entry and access subject to conditions and restrictions necessary for the protection and well-being of the reserve and for the protection and control of the public using it  
|                                               | **Secondary**  
|                                               |  - Develop open portions for amenities and facilities where these are necessary to enable the public to obtain benefit and enjoyment from the reserve  
|                                               |  - Manage and protect historic, archaeological, geological, biological or other scientific features  
|                                               |  - Maintain value as a soil, water and forest conservation area |
| Guidance for Selection                        | **Degraded natural or semi-natural areas where the public interest warrants restoration or conversion as a scenic attraction**  
|                                               | **Area will generally be small** |
| Organisational Responsibility                 | As for recreation reserve |

### National Reserve

<table>
<thead>
<tr>
<th>Purpose (s.13)</th>
<th>An area of land (or land and water) which protects values of national or international importance</th>
</tr>
</thead>
</table>
| Objectives of Management (s.13)         | **Provide for the application of management policies to protect the values of national or international significance and for the coordination of management with other national reserves**  
|                                          | **Apply other management objectives according to the underlying category of the reserve** |
### Classification of Reserves and Changes of Classification or Purpose

#### Guidance for Selection
- Area is the best example of particular national or international values\(^2\)
- Area may be large or small but of sufficient size to protect the integrity of the value for which it is selected
- May compromise a clustered group of areas without a single major contiguous area
- Area may contain only one or two outstanding features of specialised interest rather than a range of features of general interest

#### Organisational Responsibility (s.13)
- Owned by the Crown
- Administered by DOC, a reserve board or in such other manner as the Minister of Conservation directs (consistent with the objectives of management)

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### Esplanade Reserve

<table>
<thead>
<tr>
<th>Purpose</th>
<th>A fixed linear area of riverbank, lakeshore or seashore of at least three metres or greater width (usually 20m) either in a natural or modified state available primarily for conservation and public access</th>
</tr>
</thead>
</table>
| Objectives of Management | Primary (one or more; refer s.229 RMA)  
- Maintain or enhance the natural functioning of the adjacent sea, river or lake  
- Maintain or enhance aquatic habitats  
- Protect associated natural values  
- Mitigate natural hazards  
- Enable the public access to or along any sea, river or lake  
Secondary (s.23)  
- Manage and protect scenic, historic, archaeological, biological or natural features  
- Maintain value as a soil, water and forest conservation area |
| Guidance for Selection | Selected on subdivision of land, under the provisions of the RMA, as alternatives to “esplanade strips”. Apply to allotments of less than 4ha (or in some cases 4ha or more, s.237F RMA) adjoining: the sea (MHWM), along the bank of any river with a bed of average width of 3m or more; or the margin of any lake whose bed has an area of 8ha or more.  
- Otherwise selection is determined by the provisions of policy statements and district plans in accordance with Part II of the Second Schedule to the RMA |

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\(^2\) Values as identified by the National Parks and Reserves Authority (NPRA) in 1982 – refer to DOC Manual
| Organisational Responsibility | • Vested in the territorial authority for the district (s.231 RMA)  
• Administered by the territorial authority for the district (s.231 RMA) |

**Marginal Strip (Conservation Act 1987)**

| Purpose | Either a fixed or moving linear area of riverbank, lakeshore or seashore of at least 3m or greater width (usually 20m) either in a natural or modified state available primarily for conservation and public access |
| Objectives of Management | • Maintain adjacent watercourses or bodies of water  
• Maintain water quality  
• Maintain aquatic life and control harmful species of aquatic life  
• Protect other natural values  
• Enable the public access to adjacent water courses or water bodies  
• Allow public recreational use |
| Guidance for Selection | • Selected on disposal of Crown land abutting the landward margin of any foreshore or the bed of any lake, or the bed of any river, or stream with an average width of 3m or more (s.24 Conservation Act)  
• Area of less than 20m width may be selected adjoining the margin of the sea or a lake only if achievement of the above objectives will not be diminished (s.24A Conservation Act)  
• A marginal strip may not be selected adjoining a river or stream if the land has little or no value in terms of the objectives of management or if any value the land has in those terms can be protected effectively by another means (s.24B) |
| Organisational Responsibility | • Owned by the Crown (s.24 Conservation Act)  
• Can be placed under the control of a manager – presumption in favour or the owner of the adjoining land unless there is a more suitable manager (s.24H Conservation Act)  
• Otherwise under the control and management of DOC – especially areas of high natural value or adjoining or providing access to other areas under DOC control and management |

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3 Although marginal strips and watercourse areas are not Reserves Act categories, knowledge about their purpose is relevant to local authorities.
### Watercourse Area (Conservation Act 1987)

<table>
<thead>
<tr>
<th>Purpose</th>
<th>An area of land adjoining a river, lake or stream which together with the water body has outstanding wild, scenic or other natural or recreational characteristics</th>
</tr>
</thead>
</table>
| **Objectives of Management (s.23 Conservation Act)** | **Collective**  
- Protect the wild, scenic, and other natural or recreational characteristics  
- Coordinate its administration and management with other watercourse areas  
**Specific Parts**  
- The same objectives as the purposes for which the land is classified |
| **Guidance for Selection** |  
- The area adjoins a river, lake or stream for which a water conservation order has been made under the RMA, or that is otherwise protected (s.23 Conservation Act)  
- When considered with the river, lake or stream, has outstanding wild, scenic or other natural or recreational characteristics (s.23 Conservation Act)  
- May include any conservation area, public reserve or (by consent) a range of protected private land (s.23 Conservation Act) |
| **Organisational Responsibility (s.23 Conservation Act)** |  
- As an area may be a composite of different categories, it may contain parts which are privately-owned or owned by the Queen Elizabeth the Second National trust, or owned by the Crown  
- Control and management of the different parts will depend on their category or the conditions of covenants or agreements over private land |

### Nature Reserve

<table>
<thead>
<tr>
<th>Purpose (s.20)</th>
<th>An area of land (or land and water) possessing indigenous flora or fauna or natural features which are of special public interest in terms of rarity, scientific interest or importance, or uniqueness</th>
</tr>
</thead>
</table>
| **Objectives of Management (s.20)** | **Primary**  
- Preserve the area as far as possible in a natural state  
- Preserve indigenous flora and fauna, ecological association and the natural environment as far as possible  
- Exterminate exotic flora and fauna as far as possible  
- Permit entry under controls which protect and preserve the flora and fauna in a natural state |

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4 Watercourse areas can include any conservation area and any reserve under the Reserves Act (s.23).
### Scientific Reserve

<table>
<thead>
<tr>
<th>Purpose (s.21)</th>
<th>An area of land (or land and water) possessing ecological associations, plant or animal communities, types of soil, geomorphological phenomena, and like matters of special interest for scientific study, research, education and the benefit of the country</th>
</tr>
</thead>
</table>
| Objectives of Management (s.21) | Primary  
- Preserve the indigenous flora and fauna, as far as possible  
- Where appropriate manipulate the reserve (or part of it) for experimental purposes or to gain further scientific knowledge  
- Where appropriate prohibit general access to the whole of part of the area and permit persons with the necessary credentials or qualifications to enter for scientific study or for control and management purposes (s.59)

Secondary  
- Manage and protect scenic, historic, archaeological, biological or natural features  
- Maintain value as a soil, water, and forest conservation area |
| Guidance for Selection | Area should be at least two-thirds in a natural condition, although it may contain limited areas of modified ecosystems  
Area should be large enough to absorb sustainable scientific and related uses without detriment to its overall long term natural values  
Area should possess features of special interest for scientific study, research, education and like uses |
### Organisational Responsibility
- Owned by the Crown or vested in an administering body
- Under the control and management of DOC unless an administering body would better carry out the purposes of the reserve

### Scenic Reserve A (Natural s.19(1)(a))

<table>
<thead>
<tr>
<th>Purpose (s.19(1)(a))</th>
<th>Area of land (or land and water) possessing significant qualities of scenic interest or beauty or significant features or landscapes</th>
</tr>
</thead>
</table>
| Objectives of Management (s.19) | Primary
- Manage for their intrinsic worth and for the benefit, enjoyment and use of the public
- Preserve indigenous flora and fauna, biological associations and the natural environment as far as possible
- Exterminate exotic flora and fauna as far as possible
- Allow the public freedom of entry and access subject to conditions and restrictions necessary for the protection and wellbeing of the reserve and for the protection and control of the public using it

Secondary – if applicable
- Develop open portions for amenities and facilities where these are necessary to enable the public to obtain benefit and enjoyment from the reserve
- Manage and protect historic, archaeological, geological, biological, or other scientific features |

| Guidance for Selection | Area should contain one or more natural or associated cultural or heritage features of special significance, or natural landscape of high scenic quality
- Area should be large enough to protect the integrity of the features and its immediately related surroundings |

| Organisational Responsibility | Owned by the Crown or vested in an administering body
- Controlled and managed by DOC unless an administering body would better carry out the purposes of the reserve |
Wildlife Refuge or Reserve (Wildlife Act 1953; Reserves Act 1977)

<table>
<thead>
<tr>
<th>Purpose</th>
<th>Area of land (or land and water) which provides a haven for any classes of wildlife or possesses important wildlife habitat not otherwise protected</th>
</tr>
</thead>
</table>
| Objectives of Management | • Restrict and control entry and use as appropriate  
• Secure and maintain wildlife habitat conditions necessary to protect the specified classes of wildlife  
• Allow specific human manipulation for optimum management  
• Deliver such benefits to the public as are consistent with the other objectives of management  
• Facilitate scientific research and environmental monitoring associated with wildlife protection  

If subject to the Reserves Act and if applicable, the reserve will also have the following secondary objectives (s.22):  
• Manage and protect scenic, historic, archaeological, biological, cultural, scientific or natural features or wildlife  
• Maintain value as a soil, water and forest conservation area  
• Prohibit access to the whole or any part of the reserve except by permit |
| Guidance for Selection | • Area may be natural or have modified ecosystems  
• Size of area should depend on the wildlife protection requirements and may range from relatively small to extensive |
| Organisational Responsibility | Wildlife Act  
• Crown or privately owned  
• Controlled or managed by DOC or by another body under delegation of powers from the Minister of Conservation  

Reserves Act  
• Owned by Crown or vested in an administering body  
• Controlled and managed by DOC unless an administering body would better carry out the purpose of the reserve |
### Wildlife Management Area or Reserve (Wildlife Act 1953; Reserves Act 1977; Conservation Act 1987)

<table>
<thead>
<tr>
<th>Purpose</th>
<th>Area of land (or land and water) protected for the conservation and management and public appreciation of wildlife</th>
</tr>
</thead>
</table>
| **Objectives of Management** | - Restrict and control entry as appropriate but generally allow the taking of game  
- Develop limited areas for public education and appreciation of the wildlife and habitats concerned and of the work of wildlife management  
- Allow specific human manipulation for optimum management  
- Deliver such other benefits to the public as are consistent with the other objective of management  
- Facilitate scientific research and environmental monitoring associated with management of the wildlife resource |
| **If subject to the Reserves Act, and if applicable, the reserve will also have the following secondary objectives (s.22):** | - Manage and protect scenic, historic, archaeological, biological, cultural, scientific or natural features or wildlife  
- Maintain value as a soil, water and forest conservation area  
- Prohibit access to the whole or any part of the reserve except by permit |
| **If subject to the Conservation Act (s.23B)** | - Protect area’s wildlife and wildlife habitat values (including the capacity for the movement of wildlife, genetic material of indigenous plants and genetic material of wildlife)  
- Protect indigenous natural resources and historic resources |
| **Guidance for Selection** | - Area may be natural or have modified ecosystems  
- Size of area should depend on the wildlife protection requirements and may range from relatively small to extensive  
- Conservation of habitats and species may depend on active intervention by the management authority, if necessary |
| **Organisational Responsibility** | - As for Wildlife Refuge if Wildlife Act. As for Scenic Reserve if Reserves Act. As for Stewardship Area if Conservation Act |
## Wilderness Area

(Conservation Act 1987; National Parks Act 1980; Reserves Act 1977)

<table>
<thead>
<tr>
<th>Purpose</th>
<th>A large area of wild land (or land and water) which has a diversity in landscape, and recreational opportunity which requires physical endeavour, and is unaffected, except in minor ways by human influences [ex Wilderness Policy. Wilderness Advisory Group. 1985]</th>
</tr>
</thead>
</table>
| Objectives of Management (s.20 Conservation Act; s.14 National Parks Act; s.47 Reserves Act) | - Preserve indigenous natural resources  
- Exclude human development (ie buildings, roads, tracks or trails) or incompatible activity (involving machinery, livestock, vehicles, or motorised vessels or aircraft)  
- Allow scientific testing or study which is necessary or desirable for the preservation of indigenous natural resources  
- Provide for the recreational experience of remoteness and discovery, challenge, solitude, freedom, romance, self-reliance and empathy with wild nature [Wilderness Policy] |
| Guidance for Selection | - Area which is large enough to take at least two days to traverse on foot  
- Widely separated from other wilderness areas and remote enough not to be susceptible to over-use  
- Has clearly defined topographic boundaries  
- Is adequately buffered to be unaffected by human influences  
- Existing development or incompatible activity can be removed, ceased or no longer maintained |
| Organisational Responsibility | - Owned by Crown  
- Under the control and management of DOC, except areas under the Reserves Act can be under control and management of an administering body if that would better carry out the underlying purpose of the reserve |

---

8 In terms of the Reserves Act, a wilderness area is an overlay; the class purpose will also apply.
### Sanctuary Area or Reserve (Wildlife Act 1953; Conservation Act 1987; Reserves Act 1977)

<table>
<thead>
<tr>
<th>Purpose</th>
<th>An area of land (or land and water) possessing significant wildlife habitat which is especially susceptible to damage or disturbance by uncontrolled public entry or outstanding ecosystems, geological or physiological features and/or species available primarily for scientific or other similar purposes</th>
</tr>
</thead>
</table>
| Objectives of Management | • Protect all wildlife except those undesirable in terms of the purpose of the sanctuary (ss.10, 11 Wildlife Act)  
• Prohibit or restrict and control entry and use as appropriate (s.9 Wildlife Act)  
• Preserve indigenous plants and animals in their natural state (s.22 Conservation Act)  
• Manage the area for scientific and other similar purposes (s.22 Conservation Act)  
• Where appropriate prohibit access except by permit (s.22 Reserves Act)  
If the sanctuary is a reserve, it will also have secondary objectives (s.22) as follows:  
• Manage and protect scenic, historic, archaeological, biological, cultural, scientific or natural features or wildlife  
• Maintain value as a soil, water, and forest conservation area |
| Guidance for Selection | • As for nature reserve  
• Should also have very high intrinsic values |
| Organisational Responsibility | • Owned by the Crown, except sanctuaries under the Wildlife Act which may be over private land  
• Controlled and managed by DOC except an administering body can be appointed for a government purpose (sanctuary) reserve where the body would better carry out the purposes of the reserve |

### For What Purpose is a Reserve Awaiting Classification to be Managed?

Reserves which do not get automatically classified (see below) must be held and administered under the appropriate provisions of the Reserves Act 1977 for the purposes they had before 1 April 1978, until they are classified [s.16(6)].

### Which Reserves Have Been Automatically Classified?

This table shows how some classes/types of reserves existing before 1 April 1978 have been automatically classified under the Reserves Act.
Classification of Reserves and Changes of Classification or Purpose

<table>
<thead>
<tr>
<th>Old purpose @ 1.4.78</th>
<th>New class/type after 1.4.78</th>
</tr>
</thead>
<tbody>
<tr>
<td>racecourse</td>
<td>recreation s.16(11)(a)</td>
</tr>
<tr>
<td>reserve contribution on early subdivisions(^6)</td>
<td>recreation, historic, scenic, or local purpose as appropriate s.16(11)(b)</td>
</tr>
<tr>
<td>preservation of flora and fauna</td>
<td>nature s.16(11)(c)</td>
</tr>
<tr>
<td>Marlborough Sounds foreshore (Gazette 1978 p.8)</td>
<td>local purpose (sounds foreshore) s.16(11)(d)</td>
</tr>
<tr>
<td>railway purposes</td>
<td>Government purpose (railway) s.16(11)(e)</td>
</tr>
</tbody>
</table>

Also, in the following situations, reserves are automatically classified without going through a further process; namely when:

- local authority land is declared under s.14 Reserves Act to be a reserve (s.16(2))
- a conservation area is declared to be reserve (s.8(1A) Conservation Act 1987)
- harbour boards dry land is declared to be a reserve (s.4(1)(a)(ii) Harbour Boards Dry Land Endowment Revesting Act 1991).

The class of reserve is selected at the time the land is declared to be a reserve.

Other reserves have to be (or have been) classified through the processes set out in the following sections of this Chapter.

Is There a Deadline for Classifying Reserves?

The Act does not specify a deadline for classifying reserves which do not receive automatic classification. Certain land transactions cannot however be undertaken before a reserve is classified as follows:

- public notice of a proposal to establish a national reserve (s.13)
- change of classification or purpose (s.24)
- vesting of a reserve (ss.26 or 26A)
- appointment to control and manage (ss.28 to 30, 35 or 36)
- public notification of a draft management plan (s.41) – see Chapter 6
- union of reserves (s.52).

It is also desirable to classify a reserve before:

- an exchange of land (s.15(6)) so that the area acquired ends up being held for the most appropriate purpose
- prescribing bylaws (ss.106-108) so that they match the principal purpose(s) of the reserve(s) affected

• granting a major concession with significant protection/development implications (see Chapter 7) so that the appropriate principal purpose of the reserve is decided first

• authorising a major council work with significant protection/development implications so that the appropriate principal purpose of the reserve is decided first.

What Rules Apply to Reserve Classification?

The following rules (other than those of a procedural nature) apply to classifying reserves:

• the land must have the status of reserve subject to the Reserves Act 1977 (s.2)

• the reserve must be given a class according to its intended primary purpose

• if it is to be a reserve in the scenic (s.19), local purpose (s.23) or government purpose (s.22) class, it must be given a type according to its intended primary purpose

• it must not have more than one class applying to any one part, but different parts may have different classes (s.16(1))

• once classified, its class/type cannot be changed except by proper process (s.24 or s.24A as appropriate – see Section 8.4 of this Chapter).

Does the Resource Management Act Apply?

The action of classification may not itself be caught by the requirements of a district plan, and no RMA consent will be needed. However, a use or change of use of the reserve, which may result from the classification, could be caught and a RMA consent may be needed.

Advice from council specialists about relevant district plan designations and rules is desirable for classification, and essential if a change of use will follow.

Can a Reserve be Given a Name at the Point of Classification?

If appropriate, a reserve can be named at the point of classification (s.16(10)) or by a separate action at a later stage after further consultation with the community it is easier and more efficient to name the reserve at the time of classification eg when research has been completed on the history of the land. Note that under s.4, there are clear obligations to consult with Maori and consider their views over names.
8.2 Classification of Reserves by a Territorial Authority

What is the Background to Reserve classification?

Refer to Section 8.1 of this Chapter. As well as giving background, it sets out some classification rules which must be followed.

In What Circumstances Can a Territorial Authority Classify a Reserve?

A territorial authority can classify a reserve as long as the reserve is not already classified in any of the following circumstances:

- the reserve remains vested in the council and was either:
  - not derived from the Crown
  - or was created or purchased under any of the statutory provisions specified in s.16(2A) Reserves Act
- the Council has delegated authority under s.16(1)
- the classification is made by resolution under s.14(1) when the land is declared to be a reserve (s.16(2)).

The delegation under s.16(1) (see Chapter 2 of this Guide) applies only when the council is the administering body and the classification is to be for the same purpose as the reserve currently holds under s.16(6), whether created before or after 1 April 1978.

For example, if the current purpose is "recreation" then as a result the council could classify the reserve as a recreation reserve under s.17 of the Act.

If a reserve is not covered by the circumstances listed above then the Minister of Conservation will classify the reserve (refer to part 8.3 of this Chapter).

What Classification Can the Council Give to a Reserve?

The Council can, in the above circumstances, classify a reserve or group of reserves according to its/their principal or primary purpose(s), as defined in ss.17 to 23 of the Reserves Act (s.16(1) & (2A)). These sections of the Act deal with the following classes:

- s.17 – recreation
- s.18 – historic
- s.19 – scenic
- s.20 – nature
- s.21 – scientific
- s.22 – Government purpose
- s.23 – Local purpose.

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The Council must follow the rules set out in Section 8.1 of this Chapter when giving a classification.

In classifying a reserve the council may choose to consult with the Department of Conservation, or other external experts. The council must also consult with any party likely to be adversely affected, and with iwi unless it can otherwise make an informed decision (see Chapter 4).

What Types of Local Purpose Can a Council Use?

The Act does not specifically restrict the types of local purpose. In general they should be:

- consistent with the general purposes of the Act
- not duplicate any of the primary purposes in ss.17 to 21
- allow flexibility of community use as far as possible.

The following types are suggested as the ones a council would mainly use: aerodrome, environmental and landscape protection, cemetery, community buildings, esplanade, health, plantation, public hall, public utility, soil conservation and river control.

Proliferation of types should be avoided if at all possible.

What Pre-Check Should be Undertaken Before the Council Begins the Classification Process for a Reserve?

The responsible Council Officer(s) must undertake the following pre-check, namely that the reserve is:

- subject to the Reserves Act 1977 (s.2)
  NB If not, then classification under the Act is not required or appropriate.

- not automatically classified (see Chapter 8.1) or not previously classified by the Minister of Conservation (s.16(1))
  NB If it is, then classification is unnecessary.

- able to be classified under s.16(2A) or able to be classified for its existing purpose under s.16(1)
  NB If not, then classification will need to be arranged with the Department of Conservation (see Section 8.3).

Refer to Chapter 5 for status checking for reserves and recording of information.

What Process Should the Council Follow to Classify a Reserve?

There are three potential processes the council may follow to classify a reserve, as appropriate:
Classification of Reserves and Changes of Classification or Purpose

8.3 Classification of Reserves by the Minister of Conservation

When Will the Minister Classify Reserves?

The Minister will classify reserves held by the council as administering body when they are not covered by the situations listed in s.16(2A) Reserves Act and where either:

- a classification is outside the delegated authority of the council under s.16(1) Reserves Act – see Section 8.2 of this Chapter [this is the most common circumstance under which the Minister will do the classification] or
- the Minister has decided under s.10(6) Reserves Act to exercise the s.16(1) Reserves Act power himself in any particular case and has notified the council accordingly [this would happen rarely, if at all].

Can the Council Request the Minister of Conservation to Classify Reserves?

The council (as administering body) can request the Department of Conservation to classify a reserve or reserves in the circumstances listed in the first two bullet points above. Otherwise, the Department will take the action in due course.

The council might make such a request in order to allow any of the actions to be taken which are set out in Section 8.1 of this Chapter (where prior classification is mandatory). Such a request is allowed for, for example, in the management planning process in Chapter 6.

The decision on classification will generally be made by an officer of the Department holding delegated authority from the Minister.

Will the Council be Consulted About the Classification?

Whether the classification action is taken at the request of the council or initiated by the Department, the Department is required to consult the administering body before making a decision (s.16(1)).
The Department will propose the class (and type if required) to be assigned to the reserve. The council will be able to give its views before the Department gives any public notice (if required) (s.16(4)).

The council will be provided with a copy of the Gazette notice setting out the classification of the reserve. This notice will provide the basis for entry in the council’s records of the new legal trust under which the reserve is held (see Chapter 5).

Note that, under s.26A Reserves Act, certain reserves vest automatically at the point of classification (see Chapter 10).

Who Will Register the Gazette Notice?

If the reserve is vested in the council and not derived from the Crown then the council is responsible for registering the Gazette notice with the District Land Registrar.

If the reserve was set apart or reserved by the Crown, the Department will be responsible (see Chapter 5).

8.4 Changes of Purpose or Classification

What Reasons Are There For Changing the Classification or Purpose of a Reserve?

The classification or purpose of a reserve (or part of a reserve) can be changed for any reason considered advisable in terms of the purposes of the Reserves Act (s.24).

The most common reasons are to:

- emphasise one set of features of a reserve relative to another (eg to emphasise historic values instead of natural ones)
- allow a new activity or use which would not be consistent with the present class/type
- better specify or alter the statutory objectives of management
- make an existing, improper use consistent.

When Can the Classification or Purpose of a Reserve be Changed?

The Reserves Act sets out statutory limitations to changing the classification of a scenic, nature or scientific reserve (s.24(3)) or a historic reserve (s.24(5)).

The classification or purpose of a reserve (class/type) can only be changed (in whole or part) under s.24 Reserves Act after the reserve has first been classified.

That does not, however, prevent a reserve (or part of a reserve) being classified for the first time under s.16(1) by the Minister of Conservation or s.16(2A) by the council (as appropriate) for a different purpose from its existing one, provided it is being used for that different purpose at the time of classification.
If, instead, a change of use is proposed, then the reserve must first be classified in accordance with its existing use. A change of purpose action can be initiated afterwards.

Can a Council Approve the Change of Purpose of a Reserve?

A council (if a territorial authority) has a power under s.24A Reserves Act only over a reserve vested in it which has been classified in the local purpose class. That power is to subsequently change the type of the reserve within the local purpose class.

Councils do not hold any statutory or delegated power to approve the change of purpose of a reserve in any other circumstance.

Can a Council Initiate a Change of Classification or Purpose?

The council can initiate the process for a change of classification or purpose under the following provisions in the Reserves Act:

- S.24A – as a territorial authority in whom a classified local purpose reserve is vested (as above). The process is set out in the table on pages 8/24.

- S.24(1)(b) – as a local authority for any classified reserve in its district for which it is not the administering body. It would be unusual for a council to exercise this power. It may want to do so in association with its wider district planning responsibility.

- S.24(1)(b) – as the administering body of any classified reserve.

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

Note that this information only needs to be sent for a s.24(1) action. The above question does not apply to a s.24A action.

The council should send the following information to the Department at the appropriate stages of the processes illustrated in the Appendices:

- a copy of the council’s resolution, together with any supporting information (eg justification for the change)

- a photocopy of the instrument by which the reserve was classified (if not automatically classified); if automatically classified, then the legal description of the land

- if the council is the administering body, then a copy of the instrument of vesting or appointment to control and manage; if it is not, then evidence that the administering body has been notified (s.24(2)(d))
• a description of the current use of the reserve (or part) and a physical description of the land

• information about any action taken by the council under s.4 Conservation Act (Chapter 4) (eg consultation with iwi)

• a copy of any lease, licence, permit or easement current over the land affected.

On receipt of the information the Department will review and assess the proposal on its merits. The Department will also look at the public consultation and to see that the council is reflecting the views of the community in seeking to change the purpose of the reserve.

Will the Department Recover its Costs?

Note that this does not apply to an action under s.24A of the Act, as the Department is not involved.

In accordance with s.60B Conservation Act, the Department may recover from the council the cost of considering whether to approve the change of purpose proposed by the council. The Department’s standard operating procedure on cost recovery is available on request.

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

What Process Could be Followed by the Council Under S.24A Reserves Act?

The table below sets out a model process consistent with s.24A of the Act, for the change of purpose (type) of a vested local purpose reserve.

<table>
<thead>
<tr>
<th>Stage</th>
<th>Who Does It</th>
<th>What Happens</th>
</tr>
</thead>
</table>
| 1.    | Officer11   | • Makes a decision to begin the process (eg at the request of the council).
|       |             | • Determines the following:
|       |             | - That the land is a reserve subject to the Reserves Act  
|       |             | NB If it is not then this process is not Appropriate
|       |             | - Who the administering body of the reserve is  
|       |             | And whether it is held under a vesting or not  
|       |             | NB If council is not the administering body or the reserve is not vested then this is not the correct process
|       |             | - Whether or not the reserve has been classified as a local purpose reserve  
|       |             | NB If not, then this is not the correct process.

11 “Officer” refers to the employee or contractor of the council authorised to undertake the action (subject to whatever legal checks are required).
2. Officer
- Develops a proposal for change of purpose (type) of the local purpose reserve vested in the council.
- 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 5. Consultation with the Department of Conservation is not mandatory.
- If consultation takes place, determines how to have regard to views received from the consulted party(s).

3. Officer
- Makes a recommendation to the council on the change of purpose and public notice.\(^{12}\)

4. Council
- Makes a decision in principle about the change of purpose and authorises public notice where appropriate.\(^{13}\)

5. Council
- If the decision is to decline, then takes appropriate action.
- If the decision is to approve and publicly notify, then proceeds to Stage 6.
- If the decision is to approve in a situation where public notice does not apply (s.24A(3)) then proceed to Stage 8.

6. Officer
- Arranges public notice (s.24A(2)).
- Reports to the council on any objections.

7. Council
- Considers all objections (s.24A(2)).
- Makes a final decision on the change of purpose.

8. Officer
- Records the details of the change of purpose in council records.
- Notifies the Department of Conservation.
- Notifies the Registrar (see Chapter 5).
- Arranges publication of Council decision in the NZ Gazette.

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\(^{12}\) Public notice is mandatory except in the circumstances set out in s.24A(3) of the Act.

\(^{13}\) Public notice is mandatory except in the circumstances set out in s.24A(3) of the Act.
What Procedure is Followed by the Department of Conservation Under S.24(1) Reserves Act?

Appendices 8g and 8h are extracts from the Department’s standard operating procedure for considering the change of classification or purpose of a reserve. They also show the role the council has in the processes. [Appendix 8h is the one under which most council proposals will be dealt with by the Department.]

For an expansion of the council process under s.24, where the council initiates the action as administering body, refer to the process table in Chapter 9 under “What process should the council follow?” page 9/4. The statutory processes of revocation and change of classification or purpose are basically the same.
### National Parks Act 1980

<table>
<thead>
<tr>
<th>Purpose</th>
<th>Areas of land or land and water possessing indigenous plant or animal life, ecological, geological, archaeological or historical features of special significance (General Policy for National Parks. NPRA 1983)</th>
</tr>
</thead>
</table>
| Objectives of Management | • Preserve the specially protected features intact with the minimum of human interference  
• Permit entry only for activities compatible with the purpose for which the area was set aside  
(General Policy for National Parks NPRA, 1983) |
| Guidance for Selection | As for nature reserve in the case of natural values.  
For archaeological or historical features:  
• area has spiritual, cultural or scientific values of such significance or vulnerability that the basic public freedom of entry and access to parks cannot be appropriately managed under the normal conditions and restrictions |
| Organisational Responsibility | • Owned by the Crown  
• Under control and management of DOC |

### Ecological Area

<table>
<thead>
<tr>
<th>Purpose</th>
<th>As for scientific reserve, and in particular to protect representative areas of ecological importance</th>
</tr>
</thead>
</table>
| Objectives of Management | • Protect natural processes  
• Protect genetic pools for indigenous plants and animals  
• Maintain natural benchmarks for assessing changes associated with various forms of development within a region  
• When appropriate manipulate the area (or part of it) if necessary to maintain or restores ecological integrity  
• Increase public awareness and appreciation of natural ecosystems and species  
• Allow recreational uses appropriate to the setting. |
| Guidance for Selection | • As for scientific reserve |
### Organisational Responsibility
- Owned by Crown
- Under control and management of DOC

### Stewardship Area

**Purpose**
Area of land (or land and water) containing natural and/or historic resources. It may be subject to active intervention for management purposes so as to ensure the protection of historic or other features or habitats and/or to meet the requirements of specific species.

**Objectives of Management**
- Protect natural and historic resources

**Guidance for Selection**
- Area may be natural or have modified ecosystems
- Size of the area should depend on the protection requirements of the natural and/or historic resources and may range from relatively small to very extensive
- Area may play an important role in the protection of nature and well-being of species

### Marine Reserve

**Purpose (s.3)**
Area of seabed (or seabed and foreshore) and the water above it possessing distinctive, typical, beautiful or unique marine life of national interest

**Objectives of Management (s.3)**
- Manage for the scientific study of marine life
- Preserve the natural state as far as possible
- Preserve and protect the marine life as far as possible
- Allow the public freedom of access and entry subject to conditions and restrictions necessary for the preservation of marine life or the welfare in general of marine reserves so that the public may enjoy in full measure the opportunity to study, observe and record marine life in its natural habitat
- Maintain any right of access to or upon the foreshore or any right of navigation as far as possible (s.23)

**Guidance for Selection**
- Area to be suitable for scientific study of marine life and benefit of the public (s.5(9))
- Land of the Crown

14 A category of "Specially Protected Area" under part IV of the Act
### Marine Mammal Sanctuary

<table>
<thead>
<tr>
<th>Purpose&lt;sup&gt;16&lt;/sup&gt;</th>
<th>Area of land (or land and water, including foreshore, seabed, or waters of the sea) suitable to protect marine mammals against threat from human activities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Objectives of Management</td>
<td>• Defined and declared for each sanctuary when established (s.22)</td>
</tr>
</tbody>
</table>
| Guidance for Selection | • Where there is an established threat to marine mammals, particularly breeding areas for threatened or endangered species  
                        • Where the proposed sanctuary area is readily defined and is a vital habitat for the species  
                        • Where management objectives can be achieved through development and enforcement of regulations to address and mitigate the threat |
| Organisational Responsibility | • Owned or vested in or land of the Crown  
                                • Controlled and managed by DOC |

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<sup>15</sup> Refer to s.9A Foreshore and Seabed Endowment Act 1991  
<sup>16</sup> Any area held under the National Parks Act 1980 or the Reserves Act 1977 or the Marine Reserves Act 1971 is excluded from being classified in this category.
### Amenities/Amenity Area

| Purpose | National Park\(^7\)  
Small areas of land suitable for major development and operation of recreation and related amenities and services appropriate for public use and enjoyment of the park  
Conservation SPA  
A suitable area which contributes to and facilitates people’s appreciation of its indigenous natural resources and its historic resources (s.23A) |
|---|---|
| Objectives of Management | National Park  
- Apply principles applicable to national parks only so far as they are compatible with the development and operation of the amenities and services  
- Require a high quality of planning and design to ensure that any development and its future maintenance, does not have a deleterious effect on adjacent parts of the park  
- Discourage development of facilities and services which are or can be provided for outside of the park  
Conservation SPA  
- Protect indigenous natural, and historic resource  
- Foster the recreational attributes of the area (s.32A) |
| Guidance for Selection | National Parks  
- Sites where the scale, impact or concentration of development will involve substantial and permanent modification of the park  
Conservation SPA  
- High use or potential high use areas buffering natural or historic resources where only more limited public use is desirable |
| Organisational Responsibility | Owned by the Crown  
Controlled and managed by DOC  
Area may be leased in whole or part as a concession |

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### National Park

<table>
<thead>
<tr>
<th>Purpose (s.4)</th>
<th>An area of land (or land and water) containing scenery of such distinctive quality, ecological systems, or natural features so beautiful, unique, or scientifically important that they are of national interest</th>
</tr>
</thead>
</table>
| Objectives of Management | Preserve the scenery, ecological systems or natural features for their intrinsic worth and for the benefit, use and enjoyment of the public  
Preserve the natural state as far as possible  
Preserve the native plants and animals as far as possible  
Exterminate introduced plants and animals as far as possible |
| Guidance for Selection | Preserve sites and objects of archaeological and historical interest as far as possible  
|                        | Maintain value as soil, water and forest conservation area  
|                        | Allow the public freedom of entry and access subject to conditions and restrictions necessary for the preservation of the native plants and animals so for the welfare in general of the part so that the public may receive in full measure the inspiration, enjoyment, recreation and other benefits that may be derived  
|                        | Preserve sites and objects of archaeological and historical interest as far as possible  
|                        | Maintain value as soil, water and forest conservation area  
|                        | Allow the public freedom of entry and access subject to conditions and restrictions necessary for the preservation of the native plants and animals so for the welfare in general of the part so that the public may receive in full measure the inspiration, enjoyment, recreation and other benefits that may be derived  
| Area should be relatively large, preferably in terms of tens of thousands of hectares, and preferably comprising blocks | In general, area under consideration should be a natural area with nationally significant scenery, ecological systems or natural features  
| Predominantly natural areas will be considered if they: | - Contain modified areas which can be restored or are capable of regeneration, or  
| - Contain features of significant historical, cultural, archaeological or scientific values, or  
| - Contain features which have no equivalent in an unmodified area in a national part and which are so beautiful, unique or so scientifically important that they should be protected in a national park  
| In fixing the boundaries of new parks or additions to existing parks the following criteria will apply: | - Ecosystems within the park should be able to withstand pressures from possible environmental change on lands adjacent to the park  
| - Adjacent land uses should not detrimentally affect or dominate park values  
| - Boundaries should encompass complete landscape units  
| - Boundaries should allow the maximum possible right of access by the public consistent with the need to preserve park values  
| - Boundaries should be convenient for efficient management of the park and also for the occupier of adjacent land  
| - Boundaries should where possible follow physical features such as ridge lines and streams as they are natural and easily identifiable on the ground. Natural physical boundaries are normally preferable to vegetation boundaries, man-made features or straight line boundaries (General Policy for National Parks. NPRA 1983) |
### Organisational Responsibility
- Owned by the Crown
- Controlled and managed by DOC

<table>
<thead>
<tr>
<th>Conservation Park</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Purpose</strong></td>
</tr>
</tbody>
</table>
| **Objectives of Management (s.19)** | Primary  
  - Protect its natural and historic resources  
  Secondary  
  - Facilitate public recreation and enjoyment |
| **Guidance for Selection** |  
  - Area should possess a landscape of high scenic quality, with diverse associated habitats and flora and fauna  
  - Area should provide opportunities for public enjoyment through outdoor recreation and tourism  
  - Area should be at least two thirds in a natural condition although it may contain limited commercial or non-commercial plantations  
  - Area should be large enough to absorb sustainable and appropriate uses without detriment to its overall long-term natural values |
| **Organisational Responsibility** |  
  - Owned by Crown  
  - Controlled and managed by DOC |
### Classification Process Under s.16(2A) Reserves Act

<table>
<thead>
<tr>
<th>Stage</th>
<th>Who Does It</th>
<th>What Happens</th>
</tr>
</thead>
</table>
| 1.    | Officer     | - Makes a decision to begin the process.  
       |             | - Verifies the existing purpose of the reserve.  
       |             | - Clears action to proceed after completing pre-check.  
       |             | - Devises a proposed classification(s) for the reserve.  
       |             |   (NB different parts may be put in different classes/types or the whole reserve may be put in a single class/type.) |
| 2.    | Officer     | - Determines whether or not to undertake internal or external consultation on the proposal in accordance with council practice and the Guidelines in Chapters 5 and Section 8.2 of this Chapter.  
       |             |   - If consultation takes place then determines how to have regard to views received from the consulted parties. |
| 3.    | Officer     | - Makes a recommendation to the council on the classification of the reserve – Refer Appendix 8c. |
| 4.    | Council     | - Makes a decision about the classification of the reserve. |
| 5.    | Officer     | - Records the details of the classification in council records.  
       |             |   - Notifies the Department of Conservation\(^8\) (s.16(2B)).  
       |             |   - Notifies the Registrar (s.112).\(^9\) |

---

\(^8\) This notice should include the date of the council resolution, the class(es)/type(s) of reserve, and the legal description for each class or a suitable plan.

\(^9\) The land affected by the classification (whether in different parts or a single classification) will have to be sufficiently defined to meet the requirements of the Registrar (see Chapter 5).
The Classification Procedure Under s.16(1) Reserves Act

The procedure is adapted from a Department of Conservation Standard Operating Procedure.

Caution – do not use this procedure before you are familiar with the information in Sections 8.1 and 8.2 of this chapter.

Step

1. Complete pre-check

2. Develop tentative proposal

3. Should different parts of reserve be managed for different purposes?

   Yes → Choose a class appropriate for each part

   No → Choose an appropriate class.

4. Does the class chosen require a type?

   Yes → Choose the type.

   No → A

5. Does the class chosen require a type?

6. Does s.4 Cons. Act duty warrant consultation with iwi over proposal?

   Yes → Consult iwi on proposal

   No → Determine how iwi views will be considered

8. Does iwi agree with proposal?

   Yes → A

   No
10. Is public notice excepted? 
   Yes  
   No  

11. Is the proposed category nature or scientific? 
   Yes  
   No  

12. Give notice in accordance with s.119(1)(a) Res. Act  

13. Consider objections and submissions  

14. Prepare and draft Gazette Notice  

15. Submit to Council for a decision on recommended class/type  

16. Is decision to approve? 
   Yes  
   Action in accordance with decision  
   No  

17. Submit signed Gazette notice for publication  

18. Has notice been published? 
   No  
   Wait or follow-up publication  
   Yes  

19. Record and notify the Department  

STOP
1.0  Purpose of these Guidelines

These guidelines have been prepared to assist Council staff in choosing the most appropriate classification for land when it is reserved under the Reserves Act (1977). Council does not presently have any guidelines, except the legislation itself, to guide decision making in respect of classifying reserve land. The Reserves Act provides a broad guide to classifying reserve land but is open to individual interpretation when it comes to specifying the most appropriate reserve classification for a site. These guidelines provide a process which recommends the most appropriate classification for land with singular purpose and value, and by providing a checklist based on the provisions of the Reserves Act, to evaluate those sites with more complex and wider ranges of values.

The guidelines will assist Council in developing a reserve system:

- through the use of a consistent formula of classification, throughout the reserve portfolio and over time, and
- where all reserves are classified according to their primary purpose, be that the protection of recreational, scenic, historic, natural, or other community values, and
- which will ensure that Council protects future land in the most appropriate way under the provisions of the Reserves Act (1977)\(^\text{23}\)
- through these guidelines, the Reserves Policy Unit will also review the classification of existing reserve lands through the development of citywide reserve management policy.

2.0  Possible Reserve Classifications and Primary Purposes Under the Reserves Act (1977)

The Reserves Act (1977) provides for eight reserve classifications: Recreation, Historic, Scenic (1a) and (1b), Nature, Scientific, Government Purpose, and Local Purpose, each of which emphasises the protection of different primary values.
This paper considers five of these possible classifications: Government Purpose and Nature Reserves are outside the scope of the management role of the Wellington City Council, so are not considered. Another classification – Scientific Reserve is rarely used by local authorities but could possibly be applied to reserves of extraordinary value administered by Council. However, Council would seriously need to consider whether it was the best agency for managing land of that type. The Scientific Reserve classification has not been included in these guidelines but may be a possible alternative at some stage in the future.

It should be noted that it is possible to apply more than one classification to a particular site if the values requiring protection vary from one part of the site to another. To achieve this, the site would need to be surveyed to define the boundary between the lands requiring different classifications.

The five classifications, and their primary purposes, examined in this paper are:

Recreation Reserve
S17 “…for the purpose of providing areas for the recreation and sporting activities and the physical welfare and enjoyment of the public, and for the protection of the natural environment and beauty of the countryside, with emphasis on the retention of open spaces and on outdoor recreational activities, including recreational tracks in the countryside.”

Historic Reserve
S18 “…for the purpose of protecting and preserving in perpetuity such places, objects, and natural features, and such things thereon or therein contained as are of historic, archaeological, cultural, educational, and other special interest.”

Scenic Reserve (1a)
S19 “…(a) for the purpose of protecting and preserving in perpetuity for their intrinsic worth and for the benefit, enjoyment, and use of the public, suitable areas possessing such qualities of scenic interest, beauty, or natural features or landscape that their protection and preservation are desirable in the public interest.”

Scenic Reserve (1b)
S19 “…(b) for the purpose of providing in appropriate circumstances, suitable areas which by development and the introduction of flora, whether indigenous or exotic, will become of such scenic interest or beauty that their development, protection, and preservation are desirable in the public interest.”

Local Purpose Reserve
S23 “…for the purpose of providing and retaining areas for such local purpose or purposes as are specified in any classification of the reserve.”
3.0 Summary of classifications

Recreation Reserve

The primary purpose of Recreation Reserves can be summarised as providing areas for recreation with an emphasis on the retention of open spaces and on outdoor recreational activities. Other scenic, historic, archaeological, biological, geological, or other scientific features or indigenous flora or fauna or wildlife present on the reserve are managed to the extent compatible with that primary purpose. This means that other values inherent in the reserve, if they do not contribute to the primary purpose, are considered secondary and as such are vulnerable to degradation, unless they can be identified and protected in a management plan or similar regime.

Recreation Reserve has in the past been the most commonly used reserve classification in Wellington City. This is largely due to the flexibility of the classification in relation to the administering body’s powers and rights. The Recreation Reserve classification is most appropriate on sites that are, or will potentially be, relatively intensely developed for passive or active recreational use. Under this classification, Council has a high level of decision making authority without having to gain the approval from the Minister of Conservation. For example, the erection of buildings on a Recreation Reserve for outdoor recreation does not require ministerial consent. This is important when considering, for example, formal sport grounds, which will require toilet blocks, changing sheds and possibly clubrooms. Neither is ministerial consent required for cutting of trees and bush for proper management of the reserve. For example, if the reserve is covered in densely regenerating bush and there is an intention to develop a track network through this bush to enhance recreational opportunities, the bush will need to be cut to develop the tracks and will probably also need to be cut at regular intervals in the future to maintain the tracks. On a site requiring a high degree of development and management intervention, this is an important consideration, as obtaining ministerial consent is a time consuming and bureaucratic process. On the other hand, the Minister of Conservation has a progressively greater role to play in the proper management of sites with higher conservation value and less development potential. These sites are more appropriately classified as Scenic 1b, Scenic 1a, or Historic Reserves, according to their conservation values.

The only reserve classification that provides the administering body with greater decision making powers than Recreation Reserve is the Local Purpose Reserve classification.

Local Purpose Reserve

Local Purpose Reserve is the most flexible classification available under the Reserves Act. The administering body has the authority to develop and manage a Local Purpose Reserve almost as it sees fit (consistent with the primary purpose of the land) without referring to the Minister of Conservation for approval.

The primary purpose of a Local Purpose Reserve can be summarised as land reserved for the purpose of providing and retaining areas for such educational, community, social, or other local purposes as specified in the classification. For each Local Purpose Reserve, a subclassification is applied which specifies the primary purpose of the reserve. This subclassification may be anything of local purpose (access way, esplanade, reservoir, community hall, etc). The reserve is managed to provide and retain the value of that
local purpose. For example, a 20 metre wide public access and conservation strip alongside a river could be reserved under the Reserves Act as Local Purpose Reserve (Esplanade Purposes). This primary purpose of the reserve is for esplanade purposes, and the administering body has the authority, in most cases, to manage and develop the reserve as it sees fit, consistent with protecting the esplanade values. Any other values inherent in the reserve, such as scenic, historic, archaeological, biological, or natural features are managed to the extent compatible with the primary purpose of the reserve.

One of the main features of the Local Purpose Reserve classification is that the possible options for the subclassification (primary purpose) are almost endless within the bounds of educational, community, social, or other local values. This allows for a very high degree of flexibility in the range of values that can be addressed by the Local Purpose classification.

The Local Purpose Reserve classification, as noted earlier, allows the administering body the greatest level of authority of any Reserves Act classification. The most unique and possibly most important characteristic of the Local Purpose Reserve classification is that the administering body is the leasing authority. Under all other Reserves Act classifications, the leasing authority is the Minister of Conservation, from whom the administering body has to obtain approval to pursue any lease or licence over the reserve.

Local Purpose Reserve is a “catch all” category for those parcels of land that cannot practically be covered by other classifications. For example, sites with community halls, are not a compatible use of Recreation, Historic, or Scenic reserve land. It is an important classification in that it provides the administering body with high levels of flexibility for managing sites with widely varying management and development priorities.

However, because this classification does not involve the Minister of Conservation in the decision making process in most situations, it is not an appropriate classification for sites of high conservation, historic, scenic, or recreation value. These values can be much better protected through the use of alternative classifications which require more accountability to the Minister of Conservation from the administering body.

Historic Reserve

The primary purpose of Historic Reserves can be summarised as preserving in perpetuity places and things of historic, archaeological, educational, or cultural value.

There are not many Historic Reserves under the Council’s jurisdiction. This classification has generally only been used to preserve sites of particularly high historic value. This is largely due to the added responsibility the administering body has under this classification as opposed to Recreation Reserve, Scenic Reserve (1b), or Local Purpose Reserve. This is immediately clear in the primary purpose of the classification with the words “…preserving in perpetuity…”, denoting the administering body’s obligation to retain the historic value of the site as it is forever or as long as the reserve remains an Historic Reserve. Section 24(5) of the Act outlines the potential difficulty of reclassifying or revoking an Historic Reserve. The administering body does not have the same level of delegated authority as with Recreation, Scenic, or Local Purpose Reserves.
Other scenic, archaeological, geological, biological, or other scientific features, or indigenous flora or fauna are managed in an Historic Reserve to the extent compatible with the primary purpose of the reserve.

The Historic Reserve classification should only be used when the site’s historic, archaeological or cultural features are of paramount importance. These guidelines recommend that a site should not be classified as Historic Reserve unless there is obvious physical evidence of its history remaining on site. Otherwise it is more appropriate to classify the site as Local Purpose Reserve (Historic Site).

Scenic Reserve

There are two subclassifications of Scenic Reserve.

Scenic Reserve under Section 19(1a) of the Act can be summarised as preserving in perpetuity areas of natural scenic value for their intrinsic worth and for the benefit of the public. The benefit to the public is more through passive recreation such as walking and nature watching than the more active pursuits which would be more common on Recreation Reserves.

This subclassification is rarely used by local authorities as it denotes similar responsibilities and obligations as the Historic Reserve classification. That is “…preserving in perpetuity…” and the difficulty of revoking or reclassifying the Scenic Reserve classification. The administering body has limited delegated authority for management or development of the reserve.

The Scenic (1a) reserve classification is appropriate for sites with particularly significant natural features worthy of preservation in their natural state. These sites will have the lowest levels of development and management intensity of any reserve managed by Council. This is reflected in the provisions of the Reserves Act which requires the approval of the Minister of Conservation for many developments and activities which would not require approval if the land was Recreation Reserve.

This classification does require certain management commitments from the administering body. The most significant of these is that the reserve must be retained in its natural botanical state; that is, the administering body has a responsibility to remove any exotic vegetation. This is an important consideration, particularly over larger areas. A strong commitment towards preservation of natural communities is necessary under this classification.

Scenic Reserves under Section 19(1b) of the Act can be summarised as providing and developing areas of scenic value for public appreciation. Scenic vegetation may be exotic or indigenous as opposed to only natural for Scenic Reserves under S19(1a).

This classification is more commonly used than the Scenic Reserve classification under S19(1a) as it is less restrictive of the administering body. There is no requirement for maintaining the reserve free of exotic vegetation as there is under S19(1a). Both subclassifications of Scenic Reserve have the same limited delegated authority from the Minister.
There has, in the past, been some grey area between classifying sites as Scenic (1b) or Recreation Reserve. This grey area can be overcome by weighing the scenic and natural values of the site (prioritised under the Scenic Reserve classification) against the more active recreation values of the site (prioritised under the Recreation Reserve classification). Under the provisions of the Reserves Act, there are more restrictions on developments and activities on reserves classified as Scenic (1b) than on Recreation Reserves. The guidelines for classifying land as reserve included in this paper use the provisions of the Act to evaluate the most appropriate classification for sites to be reserved.

Under both Scenic (1a) and Scenic (1b), where other historic, archaeological, geological, biological, or other scientific features are present, they are managed to the extent compatible with the primary purpose of the reserve.

4.0 Establishing the Primary Purpose of Land to be Reserve

To classify land designated for reservation in the most appropriate way – Recreation, Scenic (1a or 1b), Local Purpose, or Historic – we first need to clearly establish our reason for owning the land. We need to ask why it was acquired in the first place, what its current value to Wellington is, and what potential the land has for enhancement and development; that is, what are the values of the site? These questions should be relatively simple to answer, particularly for recent acquisitions.

Once we have identified the values of the land, we can then apply the most appropriate reserve classification for the protection of these values.

If we acquired the land for a single purpose only or the land has only a single value, we can easily apply a reserve classification. For example, land developed as a sports field with buildings and facilities associated with the use of the ground for outdoor sporting activities, would most appropriately be classified as recreation reserve, the primary purpose of which includes “…providing areas for the recreation and sporting activities and the physical welfare and enjoyment of the public…”.

Listed below is a list of purposes for which Council might administer land for reserve and the most appropriate reserve classification for each example.

<table>
<thead>
<tr>
<th>Purpose/ Use/ Value</th>
<th>Description</th>
<th>Classification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Play areas</td>
<td></td>
<td>Recreation Reserve</td>
</tr>
<tr>
<td>Sports grounds</td>
<td>Fields and pitches, etc</td>
<td>Recreation Reserve</td>
</tr>
<tr>
<td>Sites for buildings and facilities necessary for the use of the land for outdoor recreation or sport</td>
<td>Club rooms, changing sheds, etc</td>
<td>Recreation Reserve</td>
</tr>
<tr>
<td>Neighbourhood kickabout areas</td>
<td>Open space suitable for playing of ball games, etc but not of a size and/or standard to be a formal sports ground</td>
<td>Recreation Reserve</td>
</tr>
</tbody>
</table>
### Passive recreation areas
Open space set aside for passive recreation (e.g., relaxation and appreciation of open space) – grassed areas, public seating, gardens, and specimen trees are likely to be present

<table>
<thead>
<tr>
<th>Purpose/ Use/ Value</th>
<th>Description</th>
<th>Classification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Naturally regenerating indigenous vegetation</td>
<td>Second or subsequent growth indigenous vegetation at any stage of succession</td>
<td>Scenic Reserve (Scenic 1b)</td>
</tr>
<tr>
<td>Mature indigenous bush including original forest cover remnants</td>
<td>Refers to self-sustaining indigenous bush remains with mature canopy species</td>
<td>Scenic Reserve (Scenic 1a)</td>
</tr>
<tr>
<td>Protection of skyline and other important landscapes</td>
<td></td>
<td>Scenic Reserve (Scenic 1a or Scenic 1b depending on vegetation)</td>
</tr>
<tr>
<td>Plant collections (exotic or mixed exotic/indigenous)</td>
<td>Refers to botanic gardens and other horticultural focus parks</td>
<td>Scenic Reserve (Scenic 1b)</td>
</tr>
<tr>
<td>Plant collections (indigenous)</td>
<td>Refers to botanic gardens and other horticultural focus parks</td>
<td>Scenic Reserve (Scenic 1a)</td>
</tr>
</tbody>
</table>

### Public walkways and tracks
Land set aside to provide walkways and tracks for the use of walkers, mountain bikers, joggers, horse riders, etc.

<table>
<thead>
<tr>
<th>Purpose/ Use/ Value</th>
<th>Description</th>
<th>Classification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public walkways and tracks</td>
<td>Land set aside to provide walkways and tracks for the use of walkers, mountain bikers, joggers, horse riders, etc</td>
<td>Recreation Reserve</td>
</tr>
</tbody>
</table>

### Sites for buildings and facilities for sport or recreation (excluding outside sport or recreation)
Eg squash courts, indoor swimming pools, etc

<table>
<thead>
<tr>
<th>Purpose/ Use/ Value</th>
<th>Description</th>
<th>Classification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sites for buildings and facilities for sport or recreation (excluding outside sport or recreation)</td>
<td>Eg squash courts, indoor swimming pools, etc</td>
<td>Recreation Reserve</td>
</tr>
</tbody>
</table>
### Land Acquired Or Used Primarily To Preserve Things And Places Of Historical Significance

<table>
<thead>
<tr>
<th>Purpose/ Use/ Value</th>
<th>Description</th>
<th>Classification</th>
</tr>
</thead>
<tbody>
<tr>
<td>The protection of a physical entity that still remains on the site</td>
<td>Eg, an historic Maori fortification or the last remaining house of its type in New Zealand</td>
<td>Historic Reserve</td>
</tr>
<tr>
<td>The protection of a place of historical significance but with no physical remains on site of the reason for its significance</td>
<td>Eg, the site of Cook’s first landing in New Zealand or the site of Lord Rutherford’s birth place</td>
<td>Local Purpose Reserve (Historic Site)</td>
</tr>
</tbody>
</table>

### Land Acquired Or Used Primarily For Community Purposes (As Opposed To Acquisition Or Use For Protection Of Recreation, Scenic, Natural Or Historic Values)

<table>
<thead>
<tr>
<th>Purpose/ Use/ Value</th>
<th>Description</th>
<th>Classification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beautification strips</td>
<td>Eg, planted strips alongside a road, but not being road reserve</td>
<td>Local Purpose Reserve (Beautification Strip)</td>
</tr>
<tr>
<td>Sites for community purpose buildings</td>
<td>Eg, kindergartens, scout halls, community halls, etc</td>
<td>Local Purpose Reserve (Community Purposes)</td>
</tr>
<tr>
<td>Access ways (connected to other reserves)</td>
<td>Eg, an access from a street onto a sports field</td>
<td>Reservation classification depends on the classification of the adjacent reserve, with which it will be consistent</td>
</tr>
<tr>
<td>Waterbody margins with conservation, recreation and access values</td>
<td></td>
<td>Local Purpose Reserve (Esplanade)</td>
</tr>
<tr>
<td>Closed cemeteries</td>
<td></td>
<td>Local Purpose Reserve (Historic Cemetery)</td>
</tr>
<tr>
<td>Active cemeteries</td>
<td></td>
<td>Local Purpose Reserve (Cemetery Purposes)</td>
</tr>
<tr>
<td>Water supply purposes</td>
<td>Reservoir tanks, etc</td>
<td>Local Purpose Reserve (Water Supply Purposes)</td>
</tr>
</tbody>
</table>
There will be difficulties in applying a classification when Council manages a site for a number of purposes or the land has multiple values. For example, we may wish to reserve a site with the following values:

- a reservoir tank
- an ecologically important stand of original native bush
- a promontory with an attractive view over the harbour.

Council will need to manage the land in a way that preserves all of these values. Considering all of these values in isolation of each other, the site could be classified as:

- Local Purpose Reserve (Water Supply Purposes) because of the presence of the reservoir
- Recreation Reserve because of the view and possible walkway to reach the view
- Scenic Reserve (1a or 1b) because of the stand of bush and the promontory’s skyline value.

Obviously, the site cannot be classified as all three. However, the most appropriate classification should be able to be applied by using the checklist in Section 5 of these guidelines (below).

5.0 A Method for Evaluating the Best Reserve Classification for Land With Multiple Values

The following checklist has been derived from the provisions of the Reserves Act relating to use of reserve land and consideration of developments and activities that could occur on Council managed land. It is intended to be used in the following way:

In Section 4 of these guidelines, you will have identified the main values inherent in the site you are considering for reservation. Consequently, from the table in Section 4 you will have identified the possible reserve classifications that best protect each of these values. You will likely have identified a number of values and, as a result, a number of possible reserve classifications.

Work through the following checklist. You will need to determine whether each development or activity is compatible with the values Council should be protecting, enhancing or providing on the site. Note a tick alongside each compatible activity or development and a cross beside each incompatible activity or development. For each activity, ask yourself “will this activity be encouraged and appropriate on this site?”
5.1 The Checklist

<table>
<thead>
<tr>
<th>Built environment</th>
<th>Relevant section/s of the Reserves Act (1977)</th>
<th>✓ or ✗</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gymnasiums, pavilions, etc</td>
<td>53(g), 54(b), 61(1)*</td>
<td></td>
</tr>
<tr>
<td>Sport club rooms</td>
<td>53(g), 54(b), 61(1)*</td>
<td></td>
</tr>
<tr>
<td>Toilet facilities</td>
<td>53(h), 54, 55(2d), 58(b), 61(1)</td>
<td></td>
</tr>
<tr>
<td>Interpretive and promotional displays</td>
<td>53(i), 54, 55(2d), 58(b), 61(1)*</td>
<td></td>
</tr>
<tr>
<td>Community purpose buildings and structures (halls, play centres, etc)</td>
<td>61(1)*</td>
<td></td>
</tr>
<tr>
<td>Recreation club rooms (non sporting)</td>
<td>53(g), 54(b), 55(2d, 2e), 61(1)*</td>
<td></td>
</tr>
<tr>
<td>Educational and training centres</td>
<td>53(g), 54(a), 55(2d, 2e), 61(1)*</td>
<td></td>
</tr>
<tr>
<td>Buildings required for maintenance of the reserve (staff sheds and equipment storage buildings)</td>
<td>53(m), 55(2g), 58(b), 61(1)*</td>
<td></td>
</tr>
<tr>
<td>Custodial residences</td>
<td>53(k), 55(2g), 58(b), 61(1)*</td>
<td></td>
</tr>
<tr>
<td>Private residences</td>
<td>58A, 61(1)*</td>
<td></td>
</tr>
<tr>
<td>Changing sheds</td>
<td>53(h), 54(a, b), 55(2d, 2e), 61(1)*</td>
<td></td>
</tr>
<tr>
<td>Swimming baths</td>
<td>53(h), 54(a), 55(2d, 2e), 61(1)*</td>
<td></td>
</tr>
<tr>
<td>Lodges, cabins, etc</td>
<td>45</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Growing environment</th>
<th>Relevant section/s of the Reserves Act (1977)</th>
<th>✓ or ✗</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction of exotic flora</td>
<td>51</td>
<td></td>
</tr>
<tr>
<td>Introduction of indigenous flora</td>
<td>51</td>
<td></td>
</tr>
<tr>
<td>Activity</td>
<td>Relevant section/s of the Reserves Act (1977)</td>
<td></td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>-----------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>Creation of formal garden areas (exotic or exotic/indigenous)</td>
<td>53(h), 55(2d), 61(1)*</td>
<td></td>
</tr>
<tr>
<td>Creation of formal garden areas (indigenous)</td>
<td>53(h), 55(2d), 61(1)*</td>
<td></td>
</tr>
<tr>
<td>Creation of lawns</td>
<td>53(h), 55(2d), 61(1)*</td>
<td></td>
</tr>
<tr>
<td>Waterway diversion and redevelopment</td>
<td>53(i), 55(2f), 61(1)*</td>
<td></td>
</tr>
<tr>
<td>Introduction of exotic fauna</td>
<td>51</td>
<td></td>
</tr>
<tr>
<td>Introduction of indigenous fauna</td>
<td>51</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Leases/ Licences/ Easements</th>
<th>Relevant section/s of the Reserves Act (1977)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Granting of short term exclusive rights over part or all of the reserve</td>
<td>53(e, f), 74, 61(1)*</td>
</tr>
<tr>
<td>Leasing of all or part of the reserve for grazing</td>
<td>73(1)</td>
</tr>
<tr>
<td>Leasing of all or part of the reserve for forestry</td>
<td>73(2)</td>
</tr>
<tr>
<td>Leasing of all or part of the reserve for gardening</td>
<td>73(3)</td>
</tr>
<tr>
<td>Leasing of all or part of the reserve for sporting use</td>
<td>54(c), 61(1)*</td>
</tr>
<tr>
<td>Leasing of all or part of the reserve for public enjoyment (other than sport)</td>
<td>54(d), 56(1a, 1b), 61(1)*</td>
</tr>
<tr>
<td>Granting of service easements</td>
<td>48(c, d, e, f)</td>
</tr>
<tr>
<td>Granting of access easements</td>
<td>48(b)</td>
</tr>
<tr>
<td>Granting licences to take specimens for scientific or educational study</td>
<td>49</td>
</tr>
</tbody>
</table>
Appendix 8d

Reserves Act Guide

PAGE 2

When you have completed the checklist, compare your results with the table on the following pages. This table provides a model for the ideal level of activity and development under each reserve classification. The classification which is most consistent with your checklist will be the most appropriate for the site. It will be rare that any of the models will be an exact reflection of the results for the site being considered, but the comparisons will usually provide a good indication of the most appropriate classification for protecting the site’s values.

However, there will be examples where no classification will protect all values on the site. Where the chosen classification does not protect particular values of significance, there may be a need for separate policy such as a provision in a reserve management plan or strategy. Alternatively, it may be appropriate to survey off areas of particular value and then reevaluate them as a new site with its own separate classification.

5.2 Developments and Activities on Reserves – a Model for Comparison

The following table is derived from the primary purpose of each reserve classification (Recreation, Scenic fa, Scenic fb, Historic, and Local Purpose). The primary purpose of each of these classifications is specified in Section 2 of these guidelines. In the left hand column of the table, activities and developments

<table>
<thead>
<tr>
<th>Miscellaneous</th>
<th>Relevant section/s of the Reserves Act (1977)</th>
<th>✔ or ✗</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tracks – permanent materials</td>
<td>53(h), 55(1c), 61(1)*</td>
<td></td>
</tr>
<tr>
<td>Tracks – natural constructions</td>
<td>53(h), 55(1c), 61(1)*</td>
<td></td>
</tr>
<tr>
<td>Campsites</td>
<td>53(h), 55(2d), 61(1)*</td>
<td></td>
</tr>
<tr>
<td>Carparking facilities</td>
<td>53(h), 55(2d), 61(1)*</td>
<td></td>
</tr>
<tr>
<td>Animal displays</td>
<td>53(h), 61(1)*</td>
<td></td>
</tr>
<tr>
<td>Telecommunications stations, etc</td>
<td>48A</td>
<td></td>
</tr>
<tr>
<td>Commercial afforestation</td>
<td>75</td>
<td></td>
</tr>
<tr>
<td>Grazing</td>
<td>71</td>
<td></td>
</tr>
<tr>
<td>Play equipment</td>
<td>53(h), 55(2d), 61(1)*</td>
<td></td>
</tr>
<tr>
<td>Lighting</td>
<td>53(h), 55(2d), 61(1)*</td>
<td></td>
</tr>
<tr>
<td>Sports fields and courts</td>
<td>53(g), 61(1)*</td>
<td></td>
</tr>
<tr>
<td>Park furniture</td>
<td>53(h), 55(2d), 61(1)*</td>
<td></td>
</tr>
</tbody>
</table>

* if compatible with the purpose specified in the Local Purpose Reserve classification
which could occur on reserve land are identified. For the purpose of comparison, this column is identical to the first column in the checklist in the previous pages. Each of the other columns refers to a particular reserve classification and the compatibility of each development or activity with the primary purpose of that classification. A ✓ indicates that the activity or development is compatible and a ✗ indicates incompatibility with the values that reserve classification is designed to protect.

<table>
<thead>
<tr>
<th>Built environment</th>
<th>Recreation</th>
<th>Scenic (1a)</th>
<th>Scenic (1b)</th>
<th>Historic</th>
<th>Local Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gymnasiuums, pavilions, etc</td>
<td>✓</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✓</td>
</tr>
<tr>
<td>Sport club rooms</td>
<td>✓</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✓</td>
</tr>
<tr>
<td>Toilet facilities</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Interpretive and promotional displays</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Community purpose buildings and structures (halls, play centres, etc)</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Recreation club rooms (non sporting)</td>
<td>✓</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✓</td>
</tr>
<tr>
<td>Educational and training centres</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Buildings required for maintenance of the reserve (staff sheds and equipment storage buildings)</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Custodial residences</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Private residences</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✓</td>
</tr>
<tr>
<td>Changing sheds</td>
<td>✓</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✓</td>
</tr>
<tr>
<td>Swimming baths</td>
<td>✓</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✓</td>
</tr>
<tr>
<td>Lodges/ cabins, etc</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✓</td>
</tr>
<tr>
<td>Growing environment</td>
<td>Recreation</td>
<td>Scenic (1a)</td>
<td>Scenic (1b)</td>
<td>Historic</td>
<td>Local Purpose</td>
</tr>
<tr>
<td>--------------------------------------------------------------</td>
<td>------------</td>
<td>-------------</td>
<td>-------------</td>
<td>----------</td>
<td>---------------</td>
</tr>
<tr>
<td>Introduction of exotic flora</td>
<td>✓</td>
<td>×</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Introduction of indigenous flora</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Creation of formal garden areas (exotic or exotic/indigenous)</td>
<td>✓</td>
<td>×</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Creation of formal garden areas (indigenous)</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Creation of lawns</td>
<td>✓</td>
<td>×</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Waterway diversion and redevelopment</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Introduction of exotic fauna</td>
<td>✓</td>
<td>×</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Introduction of indigenous fauna</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Leases/Licences/Easements</th>
<th>Recreation</th>
<th>Scenic (1a)</th>
<th>Scenic (1b)</th>
<th>Historic</th>
<th>Local Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>Granting of short term exclusive rights over part or all of the reserve</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Leasing or licencing of all or part of the reserve for grazing</td>
<td>✓</td>
<td>×</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Leasing of all or part of the reserve for forestry</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td>✓</td>
</tr>
<tr>
<td>Leasing of all or part of the reserve for gardening</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td>✓</td>
</tr>
<tr>
<td>Leasing of all or part of the reserve for sporting use</td>
<td>✓</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td>✓</td>
</tr>
<tr>
<td>Activity</td>
<td>Recreation</td>
<td>Scenic (1a)</td>
<td>Scenic (1b)</td>
<td>Historic</td>
<td>Local Purpose</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>------------</td>
<td>-------------</td>
<td>-------------</td>
<td>----------</td>
<td>---------------</td>
</tr>
<tr>
<td>Leasing of all or part of the reserve for recreational use (other than sport)</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Granting of service easements</td>
<td>✓</td>
<td>✗</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Granting of access easements</td>
<td>✓</td>
<td>✗</td>
<td>✗</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Granting licences to take specimens for scientific or educational study</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tracks – permanent materials</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Tracks – natural construction</td>
<td>✓</td>
<td>✗</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Campsites</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Carparking facilities</td>
<td>✓</td>
<td>✗</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Animal displays</td>
<td>✓</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✓</td>
</tr>
<tr>
<td>Telecommunications stations, etc</td>
<td>✓</td>
<td>✗</td>
<td>✗</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Commercial afforestation</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✓</td>
</tr>
<tr>
<td>Grazing</td>
<td>✓</td>
<td>✗</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Play equipment</td>
<td>✓</td>
<td>✗</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Lighting</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Sports fields and courts</td>
<td>✓</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✓</td>
</tr>
<tr>
<td>Park furniture</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>
6.0 Summarising the Evaluation Process

(1) Identify the values of the site

(2) Does the site have a single value or purpose only?
   - Yes
   - No

(3) Classify the site according to the provisions of Section 4 of these guidelines
   List the values of the site and, using the provisions of Section 4 of these guidelines, identify the range of possible classifications for the site

(4) Complete the checklist (Section 5.1 of the guidelines), indicating developments and activities which are and are not compatible with the values of the site

(5) Compare the results of your checklist with the model criteria table in Section 5.2 of these guidelines. Remember to consider only those possible classifications you identified in Section 4. Score the number of consistent results for each classification. The classification with the highest score for consistency with the results gained from the checklist will be the most appropriate classification for that site

**NOTE:** You may find that, although the best classification available has been identified, it does not adequately protect all of the values inherent in the site. In this situation, those values not covered by the classification will need to be protected by another method. For example, through policies in a management plan or strategy or alternatively, by surveying off part of the reserve with unique values and classifying that part differently to the remainder of the site to protect those values.

Prepared by the Reserves Policy Unit, Social and Cultural Commissioning, Wellington City Council.
Form of Notice in the Gazette for a Classification Under s.16(1) Reserves Act

There are several variations which may be used in the wording of the notice of classification as appropriate to the case. These are set out below. The wording of Gazette notices for naming reserves is also shown.

Each notice is to be signed by the Council’s Chief Executive or other authorised officer.

Each notice is to have a schedule or schedules properly describing the land in the reserve. A certified legal (cadastral) description of the affected land should be obtained from a qualified person and used in the schedule(s). Accuracy is essential, as for any land transaction which affects the trust under which land is held.

(a) Classification of Reserve

…….notifies that the following resolution was passed by the…Council on the…day of….20..:

“In exercise of the powers conferred on it by delegation under the Reserves Act 1977 the Council classifies the reserve described in the Schedule as a [state type of classification] reserve, subject to the provisions of the Act.”

[name]
[job title]

(c) Classification of Reserves

…….classifies the reserves, described in the Schedule, as ………. reserves, subject to the provisions of the Act.”
(d) **Classification of Reserves**

“……. classifies the reserves, described in the Schedule, as reserves for the purposes specified at the end of the respective descriptions of the reserves, subject to the provisions of the Act.”

(e) **Classification of Reserves**

“……. classifies the reserves, described in the Schedule, as local purpose reserves for the purposes specified at the end of the respective descriptions of the reserves, subject to the provisions of the Act.”

(f) **Classification of Parts of a Reserve**

“……. classifies that part of the reserve, described in the First Schedule, as a ………………… reserve, and further, classifies that part of the reserve, described in the Second Schedule, as a ………………… reserve subject to the provisions of the Act.”

9(a) **Naming of a Reserve**

“….. declares that the [describe the kind of classification eg "historic"] reserve, described in the Schedule, is to be known as the …………………. Reserve.”

NB cannot be used for a change of classification or purpose, note s.4 obligation to consult Maori.

(b) **Change of the Name of Reserve**

“….. declares that the …………………. reserve, described in the Schedule, and known as the …………………. Reserve shall hereafter be known as the …………….. Reserve.”

NB cannot be used for a change of classification or purpose.

For publication, the Gazette notice should be submitted to the Gazette Clerk using the form in Appendix 8f.
Form for Submitting Gazette Notice for Publication

Following approval of the classification by the Council and signing of the notice by the Chief Executive or authorised officer, retain the original in Council records and send a photo copy of it to the Gazette Clerk in the form below.

To: Gazette Clerk
Department of Internal Affairs
PO Box 805
WELLINGTON
(Fax 04 470-2932)

NAME: (Council)

ADDRESS: PO Box
(For sending invoice and extracts)

TITLE OF NOTICE:

AUTHORITY: Reserves Act 1977

PUBLICATION DATE REQUIRED: Next NZ Gazette

NO. OF EXTRACTS REQUIRED: 1 Cream Laid Copy25 Other:

NAME OF CONTACT PERSON: 
(Please print name)

CONTACT TELEPHONE NO:

CONTACT FAX NO:

25 This copy is suitable for registration by the Registrar.
DOC Procedure for a Change of Classification or Purpose Over a Reserve or Part of a Reserve Initiated by a Local Authority

(where it is not the administering body of a reserve)

Step

1. Receive notification of local authority resolution (s.24(2)(b))

2. Complete the pre-checks

3. Is local authority the administering body of the reserve? Yes STOP and Go to Appendix 8h

4. Has local authority consulted iwi on proposal? No

5. Can informed decision be made (s.4 Conservation Act)? Yes

6. Undertake consultation process with iwi

7. Is reserve of national or international importance? Yes Seek advice of Conservation Board

8. Is there an administering body? Yes

9. Has local authority notified administering body? Yes

10. Receive request from administering body for Commissioner view on proposal

Determine how advice of Conservation Board will be taken into account

B
11. Determine Commissioner view on proposal

12. Convey Commissioner view on proposal to administering body

13. Is public notice required?
   - Yes
   - No

14. Administering body responds to Commissioner view (Step 11)

15. Receive objections from administering body (s.24(2)(e)) or notice of no objections

16. Has administering body provided its resolution on objections (if any)?
   - Yes
   - No

17. Action by administering body (s.24(2)(b))

18. Consider objections (if any)

19. Prepare case and draft Gazette notice

20. Submit for a decision

21. Is decision to approve?
   - Yes
   - No

---

26 This step may involve further consultation with the local authority.
21. Submit Gazette notice for publication

22. Notify local authority/administering body

23. Has notice been published?
   - No: Wait for or follow-up publication
   - Yes: Record and notify\(^\text{27}\)

STOP

\(^{27}\) If the reserve is vested in the administering body, it may be responsible for lodging a copy of the Gazette notice with the Registrar for registration (see Chapter 10).
DOC Procedure for a Change of Classification or Purpose Over a Reserve or Part of a Reserve Initiated by a Council as the Administering Body of a Reserve

START

1. Receive (for Commissioner consultation) notification of administering body resolution s.24(2)(b))

2. Compete the pre-checks

3. Is reserve of national or international importance? No

4. Seek advice of Conservation Board *

5. Determine how advice of Conservation Board will be considered

6. Determine Commissioner view on proposal for response to administering body

7. Has administering body consulted iwi on proposal? No

8. Can informed decision be made (s.4 Conservation Act)? Yes

9. Undertake consultation process with iwi

A
Appendix B

Reserves Act Guide

10. Convey Commissioner view to **administering body** on proposal (s.24(2)(b))

11. **Administering body** considers Commissioner’s view and gives public notice if required (s.24(2), (6), (7))

12. Receive public objections from **administering body** (s.24(2)(c)) or request for approval

13. Has **administering body** provided its resolution on the objections (if any)?
   - Yes
   - No
   - Request resolution

14. Should other submissions be received or other enquiries made? (s.24(2)(f))
   - Yes
   - No

15. Consider how outcome is to be taken into account

16. Prepare case and draft **Gazette** notice

17. Submit for a decision

18. Is decision to approve?
   - Yes
   - No

---

28 This step may involve further consultation with the Council as the administering body.
19. Submit *Gazette* notice for publication

20. Notify *administering body*

21. Has notice been published?
   - No | Wait for or follow up publication
   - Yes | Record and notify

22. STOP

---

29 If the reserve is vested in the council, the council may be responsible for lodging a copy of the *Gazette* notice with the Registrar for registration (see Chapter 10).
Chapter Nine

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 reserve 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.

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.

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

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Vested in Crown (controlled by another administering body or the Commissioner)</td>
<td>Yes</td>
<td>MOC</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>(as local authority)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vested in council as administering body</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- title derived from Crown</td>
<td>Yes</td>
<td>MOC</td>
<td>No</td>
</tr>
<tr>
<td>- title not derived from Crown or deemed not derived</td>
<td>Yes</td>
<td>MOC</td>
<td>Yes</td>
</tr>
</tbody>
</table>
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 moneys 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.

<table>
<thead>
<tr>
<th>Stage</th>
<th>Who does it</th>
<th>What Happens</th>
</tr>
</thead>
</table>
| 1.    | Officer 2   | - Makes a decision to begin the process (eg in accordance with the council’s asset management strategy).  
|       |             | - Determines the following:  
|       |             |   - That the land is a reserve subject to the Reserves Act  
|       |             |     NB If it is not then this process is not appropriate.  
|       |             |   - That the council is the administering body of the reserve  
|       |             |     NB If it is not then this process is not appropriate.  
|       |             |   - whether, on revocation of the reservation, the land would become Crown land or not (s.25).  |
| 2.    | Officer     | - 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 5.  
|       |             | 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     | - Makes a recommendation to the council on the revocation and (if appropriate) public notice (s.24(2)) and the manner and purpose of disposal.  |
| 4.    | Council     | - 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 authority on the manner and purpose of disposal (s.25(1)).  |

2 “Officer” refers to the employee or contractor of the council authorised to undertake the action.
### Reserve Revocation and Disposal

<table>
<thead>
<tr>
<th>Stage</th>
<th>Who Does It</th>
<th>What Happens</th>
</tr>
</thead>
</table>
| 5.    | Officer     | - Arranges public notice if required.  
          - NB If not required, then goes to Stage 7.  
          - Reports to the Council on any objections. |
| 6.    | Council     | - Makes a resolution on the objections (s.24(2)(e)). |
| 7.    | Officer     | - As appropriate, provides the required information to the Department of Conservation. |
| 8.    | Officer     | - Receives Department’s decision.  
          - Notifies Council (if required by Council practice) and any other affected party.  
          - If revocation is approved, awaits receipt of Gazette notice from the Department.  
          - NB If not, the process ends. |
| 9.    | Officer     | On receipt of the Gazette notice:  
          - records revocation in council records\(^3\)  
          - 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 Gazette notice. |

### 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

\(^3\) 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.
• 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).

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.

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 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 moneys 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 hearing commissioners, 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 covenantsing 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)
Reserve Revocation and Disposal

- 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 Moneys Available Under the Policy?

The Council can access moneys 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 moneys under s.82 Reserves Act. Then the moneys 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.
Specifying the Manner and Purpose of Disposal in the Gazette

used if, on revocation of the reservation, the land will – under the provisions of s.25 Reserves Act – become Crown land.)

(i) May be disposed of by the ………………. Council at current market value, the proceeds of such sale to be paid into the Council’s Reserves Account, to be used and applied in or towards the improvement of other reserves under the control of the Council, or in or towards the purchase of other land for reserves.

(ii) May be leased or sold by the ………….. Council on such terms and conditions as the Council determines, the proceeds from leasing or sale to be paid into the Council’s Reserves Account, to be used and applied in or towards the improvement of other reserves under the control of the Council or in or towards the purchase of other land for reserves.

(iii) May be disposed of by the ………….. Council in such manner, at a price and on terms and conditions as the Council determines, the proceeds from a sale to be (include whichever applies):

- paid into the general funds of the Council
- paid into the Council’s Reserves Account, such money to be used and applied in or towards the improvement of other reserves under the control of the Council or in or towards the purchase of other land for reserves.

(iv) The land shall vest in the …………. Council in fee simple provided that a sum equal to the current market value of the land is paid by Council into its Reserves Account, to be used and applied in or towards the improvement of other reserves under the control of the Council or in or towards the purchase of other land for reserves.

(Note: To be used where the Council retains land for its own purposes.)

*The Council will need to have set up a Reserves Account pursuant to s.79(2) Reserves Act.*
(v) May be disposed of by the ……………… Council by transfer to Her Majesty the Queen as Crown land subject to the Land Act 1948, in exchange for …………. which is to be reserved and vested in the ……………… City/Borough/County as a reserve for ……………… under the Reserves Act 1977.

(Note: To be used when exchanging a reserve owned by a council for Crown land to be reserved and vested for a reserve purpose.)
Procedure for Determining the Sharing of Moneys Derived as a Result of a Disposal to which the Minister of Conservation’s Policy Applies

[Next edition check against SOP.]

Step

1. Does the reserve have an administering body? Yes → No → Crown retains all moneys → END

2. Is the administering body a territorial authority? Yes → No → Crown retains all monies → END

3. Is amount derived sufficient to meet all direct costs of both parties? Yes → No → Council is eligible to be reimbursed for its costs in proportion to total cost of both parties → END

4. Determine amount for which Council is eligible

5. Are there any Council improvements? Yes → No → Go to step 7

6. Is any sum left over more than the value of any Council improvements? Yes → No → Council is eligible to be reimbursed by the amount of the residual sum plus its costs (subject to approval) → END

7. This is the residual sum available to be shared

8. Council is eligible to be reimbursed for its total costs, value of Council improvements (if any) and the equal share of the residual (subject to approval)

END
Reserve Administering Bodies

General

The Department of Conservation administers the Reserves Act 1977 but does not have direct responsibility for every reserve. Many reserves have their own administering body.

There are three possible forms of administration by an administering body, as follows:

- a “vesting”
- an “appointment to control and manage”
- held in fee simple as reserve.

Where there is no administering body for a reserve (s.62(1)) the “Commissioner” (within the Department) has the powers, functions and duties of an administering body for the reserve.

These terms are described in turn below and the functions of an administering body are then set out.

Vesting

Vesting is a form of administration of reserves which dated back to 1877 (see Chapter 1). All vestings continue until they are (or were) cancelled under the provisions of the Reserves Act, or an earlier Act, or by specific legislation.

Reserves can, today, be vested in an administering body under a number of statutory provisions, as set out below.

If a reserve is land of or owned by the Crown, then the Minister of Conservation (s.26) can vest it (unless it is a Government purpose reserve) in any local authority, or in any trustees.
The vesting authorises the administering body to “hold and administer the land and expend money thereon for the particular purpose for which the reserve is classified” (s.26(1)). Classification must therefore take place before a vesting is notified in the Gazette (see Chapter 8).

The land must be held in trust for the particular purpose for which the reserve is classified and under such special conditions or restrictions as may be specified in the notification of the vesting in the Gazette (s.26(2)). It does not convey a right, interest or title in the land. A reserve cannot therefore be transferred or sold by its administering body (see Chapters 5 and 9).

The ministerial policy for using s.26 vestings is as follows:

(i) Vesting must be for the better carrying out of the purpose(s) of the reserve (s.26(1) of the Act).

(ii) Subject to the above, the decision to vest must give effect to the principles of the Treaty of Waitangi (s.4 Conservation Act 1987 – see Chapter 4).

(iii) The appropriateness of the current purpose of the reserve must be considered before vesting is pursued.

(iv) Vesting is limited to reserves classified for recreation or local purpose or cases where a reserve adjoins another reserve already vested in the same administering body.

(v) Subject to the above, the territorial authority is the preferred administering body for a vesting.

(iv) The relevant conservation board must be consulted.

Each case is considered on its merits. Vesting may not be favoured if the reserve is of more than local use and interest or if it has strategic conservation value in terms of protection of indigenous bio-diversity.

A proposal to vest a recreation reserve or a local purpose reserve in a local authority under s.26 does not have to be publicly notified for objections and submissions. Vestings under s.26 in other situations may require such a public notice by the Minister (see s.26(3) and (4)).

Any reserve which is held:

- by the council (only if it is a territorial authority) under an appointment to control and manage which pre-dates 1 January 1980; and:

- is classified as a recreation or local purpose reserve:

  - automatically vests in the council at the point of classification.

A council can apply for a title to such reserves (s.26A(3) of the Act) subject to the trust (but see Section 9.1 for disposal information).
Reserves may also be vested in territorial authorities or other administering bodies under the provisions of legislation other than the Reserves Act (eg reserves on subdivision under the provisions of the Resource Management Act).

Any vesting of a reserve which was previously the property of the Crown may be cancelled by the Minister of Conservation (s.27). This action may be taken in the following circumstances:

- by agreement with the administering body (the most common reason)
- in the event of a breach of trust, or a failure by the administering body to comply with the provisions of the Act
- in the period 5 years after a vesting if the land is not being used for the purpose for which it is vested.

In the latter two circumstances, the consultation process to be followed by the Minister is set out in ss.27(3) and (4) of the Act.

After cancellation, the land re-vests in the Crown.

Appointment to Control and Manage

Reserves which are held by an administering body under an appointment to control and manage remain vested in the Crown for the purpose of the Act.

Provisions in legislation for appointments to control and manage dated back to 1928 (see Chapter 1).

The current Reserves Act has different provisions for different types of reserve administering body. They are:

- s.28 local authority
- s.29 voluntary organisations
- s.30 boards (Reserves Board, Trust, Trust Board or other special Board)
- s.35 trustees
- s.36 Minister of the Crown.

All appointments (except boards) are made under the authority of the Minister of Conservation. Certain Reserves Boards are appointed by the Commissioner (s.30(1) of the Act).

The ministerial policy for making appointments to control and manage is as follows:

(i) the appointment must be for the better carrying out of the purpose(s) of the reserve
(ii) subject to the above, the decision to appoint must give effect to the principles of the Treaty of Waitangi.

(iii) the appropriateness of the current purpose of the reserve must be considered before the appointment is pursued.

Any appointment is subject to the reserve being controlled and managed for the purpose for which it is classified. The reserve must therefore be classified before the appointment takes place (see Chapter 8).

Any special conditions or restrictions on the appointment are specified in the notice of the appointment in the Gazette (see Chapter 5).

Any appointment can be revoked by the Minister of Conservation (eg s.28(2) of the Act).

Any special conditions on the appointment can also be revoked or amended by notice of the Minister in the Gazette.

Land Held in Fee Simple as Reserve

Councils may hold land in fee simple which is subject to the Act. This land may have been declared to be a reserve of a particular class/type under the provisions of s.14 of the Act, or been acquired by the council in trust as a reserve (see definition of “reserve” in s.2 of the Act). This land is, for the purposes of administration of the Act (s.54), treated as “vested” in the reserve’s administering body.

Commissioner

The Reserves Act provides (s.62) that where a reserve does not have an administering body, the “Commissioner” has the duties of an administering body for the reserve and may exercise all the powers of an administering body for the reserve.

The “Commissioner”, in relation to any reserve, means an officer in the Department of Conservation designated for that purpose by the Director-General of Conservation (s.2). [A “Commissioner” also has other duties under the Act – see Chapter 2.]

Functions of an Administering Body

The administering body’s function is directed at managing a reserve for the purpose for which it is classified (s.40). Management may provide, as appropriate, for:

- use
- enjoyment
- development
- maintenance
- protection
- preservation.

Chapter 2 deals with the powers of an administering body.