

# **A GUIDE FOR RESERVE ADMINISTERING BODIES:**

## **Powers, duties and functions of an administering body under the Reserves Act 1977 (other than a local authority)**

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## PREFACE

Reserve administering bodies are required to carry out their powers, duties and functions under the provisions of the Reserves Act 1977. They are also required to comply with other laws.

In 1999 the Department of Conservation and Local Government New Zealand jointly published a Reserves Act Guide for local authorities in their capacity as reserve administering bodies.

That Guide was specifically tailored to the local authority situation. It resulted in a need being identified to provide a guide for other types of administering body such as –

- boards
- trustees
- voluntary organisations (societies, associations)
- other persons or bodies of persons.

It is important that reserve administering bodies are made aware of the increasingly complex set of laws that affect the management of public land.

An administering body needs to take reasonable steps to ensure that it does not knowingly commit a breach of trust upon which the reserve is held or fail to comply with the relevant provisions of the Reserves Act or any other Act.

This Guide will assist administering bodies in meeting that responsibility but cannot of course free an administering body from its legal obligations.

An administering body and the Department have a shared interest in ensuring the best possible administration and management of a reserve for the purpose for which the reserve is set apart.

I hope that the production of this Guide will go some way towards making reserve administration easier for administering bodies.

Peter Lawless  
Regional General Manager (Northern)  
Department of Conservation

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# CHAPTER 1

## *What an administering body needs to know*

### **Introduction**

To begin with, an administering body<sup>1</sup> needs to know the following:

- the authority by which it exercises its responsibility for the reserve
- its functions, duties and powers
- the trust under which it holds the land
- the boundaries of the land under its jurisdiction
- all valid rights, easements, leases, licences and permits that have been granted over the land.
- whether or not there is an approved management plan for the reserve (if one is required).

These matters, and their relevance, are explained below, in turn.

### **Authority**

The administering body derives its authority to administer a reserve from either a “vesting” or “an appointment to control and manage”. For example, a District Health Board may have had a reserve vested in it under s.95 NZ Public Health and Disability Act 2000.

The powers the administering body has under the Reserves Act<sup>2</sup> will vary, depending on which form of authority it has.

If you are in doubt about the form of authority you should find out from the nearest office of the Department. All reserves boards have authority under an appointment to control and manage. A board’s appointment is for a fixed term (see Chapter 9).

Generally other types of administering body hold their appointment or vesting indefinitely.

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<sup>1</sup> In this Guide the term “administering body” is used in a way which excludes local authorities.

<sup>2</sup> In this Guide any reference to “the Act” is to the Reserves Act 1977.



## Functions

All reserve administering bodies have the same functions. They are defined as follows in s.40 of the Act:

- (1) *The administering body shall be charged with the duty of administering, managing, and controlling the reserve under its control and management<sup>3</sup> in accordance with the appropriate provisions of this Act and in terms of its appointment and the means at its disposal, so as to ensure the use, enjoyment, development, maintenance, protection, and preservation, as the case may require, of the reserve for the purpose for which it is classified.*
- (2) *Every administering body of a reserve that includes any part of the Wanganui River shall, in carrying out its functions have regard to the spiritual, historical, and cultural significance of the river to the Whanganui iwi.”*

## Duties

The duties of an administering body stem from these functions and the general duty of legal compliance. (A number of Chapters in this Guide are relevant).

## Powers

The powers of an administering body will depend on the authority by which it exercises its responsibility for the reserve and the trust under which it holds that authority.

More details are given in Chapter 2.

## Trust

The trust under which the administering body holds a reserve consists of:

- the purpose or classification of the reserve (e.g. historic reserve)
- the requirements of the Act relevant to that purpose or classification (e.g. s.17 relevant to recreation reserves)
- the provisions of any will, deed or other instrument creating the trusts upon which the reserve is held (e.g. special conditions or restrictions may have been placed on the vesting or appointment at the time it was made)
- any Act or Provincial Ordinance in force making any special provision with respect to the reserve (e.g. the Health Sector (Transfers) Act 1993 affecting health sector reserves).

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<sup>3</sup> Read this as including the alternative words “which is vested in it.”

The consequence of serious breach of trust may be that the vesting will be cancelled or the appointment revoked.

Matters to do with classification are dealt with in Chapter 13.

If you require information about the trust under which the administering body holds the reserve please contact your nearest Department of Conservation office.

## **Boundaries**

The Department will provide new administering bodies with a copy of a plan of the land in the reserve showing its boundaries and legal description.

Land Information New Zealand is the main government source of land information. Survey and other land information can also be obtained from private businesses who specialise in those services. The Department does not employ surveyors who can mark the boundaries on the ground.

## **Rights etc. over the reserve**

The Department will let a new administering body know of any valid rights, easements, leases, licences and permits that exist over the reserve.

After the vesting or appointment, the keeping of records on these and any new rights etc. is the responsibility of the administering body.

Chapter 12 deals with the grant of such of rights.

## **Management Plan**

Whether or not the administering body is required to have a management plan is dealt with in Chapter 11.

If the administering body has an approved management plan it is bound to comply with the plan in carrying out its functions. The plan must be consistent with the provisions of the Act and the classification of the reserve.



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## CHAPTER 2

# *Powers Under The Reserves Act*

### ***Division of Powers***

The Act gives statutory powers to:

- the Minister of Conservation
- the Administering Body
- the "Commissioner".

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

Before making a decision the administering body should be satisfied that it has the power to make it. The decision must also be consistent with the relevant provision(s) of the Act.

Chapter 6 of this Guide, regarding obligations under s.4 Conservation Act and the Treaty of Waitangi, is also relevant to the exercise of the powers of an administering body.

The key powers of the Minister to make decisions affecting the administration and management of reserves are the ones listed in Appendix A to this Chapter.

### **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
- trustees (e.g. Maori trustees)
- a local authority
- a society
- an association
- a voluntary organisation (i.e. one not formed for private profit)

- a person or body of persons whether incorporated or not (e.g. a marae committee)
- a Minister of the Crown other than the Minister of Conservation.

### **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 the officer whom the 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).

### **Minister of Conservation**

Certain powers of an administering body are expressed in the Act as being subject to the consent of the Minister. In other words, the administering body can make a decision but cannot act on it unless the Minister consents.

The Minister also has powers (see Appendix A) to make other decisions by way of approval, rather than consent. In other words, it is the Minister rather than the administering body who makes the decision. The affected administering body will always be consulted before these decisions are made.

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

Administering bodies will therefore deal directly with their nearest Department of Conservation area or conservancy office on actions that require the consent or approval of the Minister under the 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. These conditions are binding.

## ***Purposes of the Act***

All decisions must be consistent with the purposes of the Act as set out in s.3.

The following is a summary of those purposes:

- 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.



## **Decision-making and Reviews of Decisions**

A decision-maker's authority to review or reconsider a decision will be exercised sparingly. Generally this will be when substantive new relevant information becomes available.

An administering body that has not acted within the scope of the power conferred on it may have its decision challenged. A Court, by judicial review, may set aside the decision as unlawful.

If there is legal doubt about the exercise of a power an administering body should take legal advice before making a decision in any case. It is also good administrative practice for an administering body to:

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

An administering body should keep a written record of the process it follows for each significant decision. This is because records that are prepared well after a decision has been made may be perceived to be fabricated (eg in response to an information 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
- the process was fair.

The judicial review process and requirements relating to information reflect a desire for transparent decision-making. In reality this means that the administering body should prepare a written account of the decision-making process either at or near the time that a significant decision is made.

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

## **Ombudsman Complaint**

**Boards** appointed under s.30 of the Act (but not other administering bodies) are listed in Part III of the First Schedule to the Ombudsmen Act 1975. The Ombudsmen's function extends only to matters dealt with by a committee or subcommittee of the board or an officer, employee or member of a board.

An Ombudsman may investigate (relating to a matter of reserve administration):

- any decision made

- any recommendation made
- any act done or omitted to be done

An Ombudsman will usually act on the basis of a complaint from a member of the public but may also investigate without receiving a complaint.

An **administering body** may complain to an Ombudsman about any matter of administration under the Reserves Act by the Department of Conservation that affects the administering body.

This may be a complaint about any decision or recommendation made, or about any act done or omitted.

For further information you should contact the Office of the Ombudsman in Wellington. If you have Internet access you will find further information at: [www.ombudsmen.govt.nz](http://www.ombudsmen.govt.nz).

An oral complaint must be put in writing as soon as practicable.

See also Chapter 3 dealing with the Local Government Official Information and Meetings Act 1987.



## Appendix A to Chapter 2

### *Key Statutory Powers of Minister of Conservation Which Affect The Administration of Reserves by Administering Bodies Under The Reserves Act 1977*

NB. This is not a comprehensive list of the Minister's powers under the Act.

<b>Section of Act</b>	<b>Power</b>
15(1)	Authorise exchange
16(1)	Classify reserves
24(1)	Approve change of purpose or revocation of reservation initiated by an administering body
25(1)	Specify manner and purpose of disposal of reserves where title not derived from the Crown
41(1)	Approve management plans for scenic, historic, nature and scientific reserves (but not recreation or local purpose reserves)
42(1)	Consent to cutting trees or bush (except recreation or local purpose reserve)
44(1)	Use a reserve for accommodation purposes
45	Approve erection etc of shelters, huts, cabins, lodges
48(1)	Consent to grant of easements over vested reserves
48A(1)	Consent to grant of licences for communication stations on reserves vested under s.26
49	Grant right to take specimens of flora and fauna etc for scientific or educational purposes
50(1)	Authorise taking or killing of fauna (not required for any recreation, Government purpose or local purpose reserves with an administering body)
51(1)	Authorise introduction of indigenous flora and fauna or exotic flora into scenic reserves

Cont'd over

51A	Authorise introduction of biological control organism on request of administering body
52	Declare union of reserves with consent of administering body
54	Consent to lease of a vested recreation reserve
55	Consent to setting apart of camping grounds etc in scenic reserves
56	Consent to lease or licence of vested scenic reserve (not needed for temporary use of 6 consecutive days or less)
58A	Consent to leasing of vested historic reserve
59A	Grant concessions on non-vested reserves
73	Consent to leasing of vested recreation reserve for farming, grazing, afforestation or other purposes
74	Consent to temporary occupation licence over vested scenic or historic reserves (grazing etc)
75	Consent to afforestation of a recreation or local purpose reserve
82	Apply proceeds from disposal (reserve derived from Crown only)
83	Apply proceeds from exchange (reserve derived from Crown only)
84	Authorise diversion of money with consent of administering body
85	Consent to administering body spending money on land that is not a reserve

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## CHAPTER 3

# *Local Government Official Information & Meetings Act 1987*

### **The LGOIM Act**

This Act is administered by the Department of Internal Affairs.

It applies and is binding on all reserve administering bodies other than a Minister of the Crown.

The Act deals with information held by an administering body, the right of public access to that information, and the obligations of an administering body in relation to meetings.

An administering body is defined as a "local authority" for the purposes of the Act.

### **Guides to the LGOIM Act**

A Guide to Part VII of this Act (dealing with meetings) was published by the Department of Internal Affairs in 1993. It is now out of print but may be available in some libraries. Chapter 4 below summarises the requirements of Part VII.

A guide to the parts of this Act dealing with official information has been published by the Office of the Ombudsmen and is available on the Internet. The site can be directly accessed at:

<http://ombudsmen.govt.nz/downloads%20Guidelines/guide1.PDF>

or else through [www.ombudsmen.govt.nz](http://www.ombudsmen.govt.nz)

If you cannot access the site on a home, work or library computer you may obtain a paper photo-copy from your nearest conservancy office of the Department.

The subject of official information is dealt with in Chapter 5 below.



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## CHAPTER 4

# *Meetings of an Administering Body*

### **Introduction**

Parliament has established a set of statutory rules to promote the open and public transaction of business at meetings of public bodies. These rules apply to reserve administering bodies.

They extend to any sort of meeting of an administering body [and, in many cases, those of its committees] where resolutions are dealt with or decisions made.

### **Objectives**

The objectives of the statutory rules are to:

- enable more effective participation by the public in the actions and decisions of public bodies
- promote the accountability of members and officials of public bodies.

### **The general set of rules**

This is a simple summary of the provisions of Part VII of the Local Government Official Information and Meetings Act 1987 (see Chapter 3 of this Guide).

- meetings are to be publicly notified
- agendas, minutes, and reports are to be available to the public.
- every meeting shall be open to the public
- the public may be excluded from the whole or any part of a meeting on specified grounds only<sup>4</sup>.
- the person presiding at any meeting has the power to maintain order
- resolutions made at emergency public meetings are to be publicly notified
- oral statements at a meeting are generally privileged

The administering body should hold a copy of the principal Act and its amendments. The chairperson or president should be familiar with the detail of the requirements, in the Act, that apply to the rules summarised above.

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<sup>4</sup> A resolution to that effect must take the form specified in Schedule 2A of the Act.

## Additional rules for reserves boards

The Reserves Act makes additional requirements (to the above) only in relation to boards appointed under s.30 of the Act.

The following is a list of the rules in s.32 of the Reserves Act about reserves board meetings:

- the first meeting of a board is to be held within two months of notification of its appointment
- an annual meeting is to be held within 2 months of the end of the financial year
- other meetings are held as determined by the board from time to time
- a special meeting may be convened with not less than 7 days notice at the discretion of the chairperson
- the chairperson must convene a special meeting if requested in writing by two members of a board
- at a special meeting the only business that can be transacted is the business stated in the notice to members
- unless the chairperson is specified at the time of the board appointment the chairperson must be elected by the members from one of their number:
  - at the first meeting
  - as often as the office of chairperson becomes vacant
  - at every annual meeting
- the chairperson is to preside at each meeting at which s/he is present
- a member may be elected (in the absence of the chairperson) to act as chairperson at a meeting
- no business is to be transacted at any meeting unless at least a quorum of members is present<sup>5</sup>
- every question before a board is to be determined by a majority of votes of the members present and voting on the question
- a presiding member has a deliberative vote and also a casting vote
- subject to the above (and the provisions of the LAGOIM Act) a board may regulate its own proceedings.

The administering body (if it is a "board") should hold a copy of s.32 of the Act – which is binding on the board – and all members should be familiar with its provisions, as summarised above.

## Model standing orders for public bodies

Standards New Zealand (Paerewa Aotearoa) has available for sale a model set of standing orders (procedures) for public bodies (ref. 9204 : 1993).

Administering bodies are not required to meet the standards of that model but may choose to do so. The model does not substitute for the LGOIM Act or Reserves Act requirements.

The Internet address of Standards NZ is: [www.standards.co.nz](http://www.standards.co.nz)

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<sup>5</sup> A quorum shall consist of half of the whole number of the members of the board (irrespective of any vacancies) when that number is even and a majority of the members when that number is odd. There must be a quorum present during the whole time at which any business of the board is transacted.

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## CHAPTER 5

# *Information Held By An Administering Body*

### **Introduction**

With limited exceptions, all information held by an administering body is “official information” for the purposes of the Local Government Official Information and Meetings Act 1987 (see Chapter 3 of this Guide).

The Act is based on the principle that official information should be made available unless there is good reason for withholding it.

There have been no Regulations made under the Act.

### **Request for information**

Anyone can request official information from an administering body provided they specify the particular information required.

The administering body has a duty to give reasonable assistance to a person making a request.

The information requested must generally be provided within 20 working days after the day on which the request is received.

An administering body can only decline the request for a reason or reasons stated in the Act. The Act protects official information only to the extent consistent with the public interest and the preservation of personal privacy.

Specific requirements in the Act have to be met when an administering body declines a request for information.

You will find further guidance in the publication secondly referred to in Chapter 3.

### **Delegation**

An administering body can delegate its powers relating to information requests only in accordance with s.42 of the Local Government Official Information Meetings Act.

### **Duty to have an information publication**

Under Part III of the Act every administering body is required to publish and annually up-date a publication to meet the requirements of the Act.<sup>6</sup>

A model publication is attached as Appendix B. It may be used and adapted by any administering body to meet its duty under the Act.

The publication must be provided annually to libraries in the administering body's district and be available as of right to any person on request during normal office hours.

You may also choose to provide a copy to your local DOC offices.

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<sup>6</sup> The requirements of the Act are set out in Appendix A of this Chapter. For "local authority" read "administering body".

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## Chapter 6

# *The Treaty of Waitangi as it Applies to Reserve Administration*

### **Why the Treaty Applies**

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 required each of the Acts in the First Schedule to be interpreted and administered as to give effect to the principles of the Treaty of Waitangi, at least to the extent that the provisions of those Acts were clearly not inconsistent with those principles.

### **Treaty Obligation**

Administering bodies under the Reserves Act derive their authority over reserves from the Act. Accordingly, in performing functions and duties under the Act, the administering body has a duty similar to the Crown's to interpret and administer the Act to give effect to the principles of the Treaty of Waitangi.

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) *Governance (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) (a) *Iwi Authority and Control over Taonga (Tino Rangatiratanga)*

## (b) 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**

An administering body 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 administering body may be able to make an informed decision without consultation. It should ensure that it gives proper consideration to all relevant information within its 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.

You may obtain further advice from the Ministry of Maori Development (Te Puni Kokiri).

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 administering body 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 administering body has to accept the views of the iwi or hapu.

### ***Dual Considerations***

The administering body cannot undertake actions or make decisions that are contrary to the purposes of the Reserves Act (see Chapter 2) when meeting its responsibilities under the principles of the Treaty of Waitangi.

The administering body also cannot do anything contrary to the trust under which the reserve in question is classified (see Chapter 1).

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 administering body, both have obligations under s.4 Conservation Act.

The dual responsibility is especially relevant in cases where, under the Act, the administering body is seeking consent, approval or other action by the Minister. The administering body must fulfil 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.

### ***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 the area of the settlement.

You may obtain further advice from the Department of Conservation.



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## Chapter 7

# Other Legislation

### **Introduction**

An administering body, like any other occupier or owner of land, is required to comply with a range of legislation about land administration and management.

It is beyond the scope of this Guide to describe every relevant enactment. This chapter deals with provisions that are most likely to affect a reserve administering body.

### **Resource Management Act 1991 (RMA)**

Resource consents under the RMA may be necessary in addition to any consent or approval under the Reserves Act. The territorial council (city or district) will be able to guide the administering body on RMA requirements related to changes in use of the reserve. It will pay an administering body to check with the regional council before doing anything on the reserve which may affect natural water.

The lease of part of a parcel of land which, including renewals, is or could be for 20 years or longer involves a “subdivision” for the purposes of Part X RMA. The requirements of that part of the Act must be met, as well as the requirements in any district plan. Your territorial authority will be able to provide advice.

You can find out more about the RMA through your local territorial and regional councils or the Ministry for the Environment (Manatu Mo Te Taiao).

The Ministry’s Internet home page [[www.environment.govt.nz](http://www.environment.govt.nz)] will take you to a site designed to provide information on the RMA and to help people become more informed, and involved in, the planning process under the Act.

The site also lists a range of publications related to the RMA.

### **Building Act 1991**

For the purposes of this Act the administering body is the “owner” of any “building” on the reserve (i.e. any temporary or permanent movable or immovable structure, including any mechanical, electrical or other system, and any utility systems attached to and forming part of the structure) with some exceptions.

If, however, the “building” is leased, the current lessee becomes the “owner” for the purposes of the Act (s.2 and s.3 of that Act).

The primary purpose of the above Act is to control building work and the use of buildings and ensure that they are safe and sanitary and have means of escape from fire.

Your territorial local authority will be able to advise you on building consent and building code requirements.

Existing “buildings” cannot be altered or demolished without a building consent from the territorial authority (s.32). There are some exceptions.

Certain buildings require annual building warrants of fitness (s.45) although these sorts of buildings would rarely be found on reserves.

The owner is obliged to inform the territorial authority in writing of any change of use of a building that will require alterations. The territorial authority will let the administering body know if it has any requirements (s.46).

**Rating Powers Act 1988 (RPA)** [This Act is to be replaced by the Local Government (Rating) Act 2002 – see later entry]

If your administering body has received, or in future receives, a rates demand for the reserve this Act will be of interest to you.

You will need to know whether or not the reserve is “non-rateable” land for the purposes of the Act. However, even “non-rateable” land is liable for certain rates if there is a “separate rate, charge, or fee” for:

- water supply
- waste collection
- sewage disposal

Your council will be able to elaborate and advise you.

Any reserve land that is “non-rateable” becomes rateable if:

- covered by a lease, licence or other authority for a term of not less than 12 months certain; and
- the lessee, licensee, or holder of the authority has an exclusive right to occupy the land; or
- whether or not the right is exclusive, the grant of the right is for farming purposes.

**Excepting for the above circumstances, any reserve that is not vested in an administering body is “non-rateable” land**

In certain cases reserves that are vested in an administering body will also be non-rateable. The administering body must be one of the organisations listed in Part II of the First Schedule to the RPA or the land must be used for one of the purposes specified in that Part.

A local authority may postpone or remit rates on any reserve that is rateable.

Your councils will be able to tell you the rules that apply to their discretion to postpone or remit rates.

You should note that all rateable land vested in, or occupied by, any society or association is subject to a mandatory 50% rates remission if not used for the private pecuniary profit of any members of the society or association.

An administering body is classed as the “owner” of the land in the reserve for the purposes of the RPA. It is also classed as the “occupier” unless a lease, licence or other authority has been granted, as above. In the latter event, the lessee, licensee, or holder is the “occupier”.

The occupier is primarily liable for all rates becoming due.

### **Biosecurity Act 1993 (BA)**

An administering body is an “occupier” for the purposes of the BA. That places an onus on the administering body to comply with the obligations of an occupier as set out in the rules in the regional pest management strategy for the area.

For further information you should contact your regional council.

### **Health and Safety in Employment Act 1992 (HSEA)**

You can access information and publications about workplace safety and health on the Department of Labour Internet site.

The address is: [www.dol.govt.nz](http://www.dol.govt.nz)

You can also access a copy of the HSEA through a link from that site.

The HSEA is important to the administering body’s safety-related public liability as well as to its duties towards employees. Hazard management is the core duty.

The administering body should, on the reserve:

- Take all practicable steps to prevent personal injury and damage to property
- Protect everyone from foreseeable work hazards, including contractors, sub-contractors and the public when they come into contact with the work activities of the administering body.

### **Local Authorities (Members Interests) Act 1968**

This Act applies to reserve administering bodies.

Relevant questions are answered in Chapter 15 of this Guide in relation to paying members for services and the pecuniary interests of members.

## Ombudsmen Act 1975

See the heading "Ombudsmen Complaint" in Chapter 2 above.

## Historic Places Act 1993

This Act established a register of historic places, historic areas, wahi tapu and wahi tapu areas.

A place included in the register does not get automatic protection unless it is an "archaeological site" (see below). The register is the *New Zealand Historic Places Trust's* advocacy tool. The listings in the register indicate the important cultural heritage places in a region or area. Some of these will be in reserves.

You can find out from the Trust (which has *offices* in Kerkikeri, Auckland, Tauranga, Wellington and Christchurch and Dunedin) or from your local authority whether or not there is a registered place on the reserve for which your administering body is responsible. Your local DOC office might also be able to provide the information.

If there is a registered place, and your administering body wants to modify it, then your administering body should discuss the proposal with the Trust. Your administering body should aim at limiting works or modifications to those that are necessary and can be carried out with the minimum impact.

Technical advice may be available through your local DOC office (see Chapter 16).

Further information is available on the Internet at: [www.historic.org.nz](http://www.historic.org.nz)

The Act defines an "archaeological site" as a place associated with pre-1900 human activity where there may be evidence relating to the history of New Zealand, and includes shipwreck sites.

Some reserves contain archaeological sites.

To find out if there is a recorded archaeological site on the reserve for which your administering body is responsible you can contact the *Trust* (see above) or e-mail one of the following:

- [Archaeologist@historic.org.nz](mailto:Archaeologist@historic.org.nz)
- [twalton@doc.govt.nz](mailto:twalton@doc.govt.nz)

The Act provides for substantial penalties for unauthorised destruction, damage, or modification of archaeological sites. Only the *Trust* can give authorisation.

Further information can be viewed on the Trust's Internet site first referenced above.

[Information about the Act, used above, was obtained from the NZ Historic Places Trust site.]

## Archives Act 1957

This Act does not apply to the records held by an administering body but does apply to the records about the reserve and the administering body which DOC holds.

If the administering body has records which it considers are of an historical nature, which it does not want to retain, it can offer them to the National Archives.

The Chief Archivist has the discretion to accept the deposit of such records (s.11 of the above Act). If accepted, they become public records.

Further information can be obtained on the internet by e-mailing: [www.national.archives@dia.govt.nz](mailto:www.national.archives@dia.govt.nz)

### Privacy Act 1993

Twelve information privacy principles form the basis of this Act. The most relevant to an administering body are that:

- a person is entitled to obtain information held about them.
- the information held cannot be disclosed to another person or body unless authorised by person on whom the information is held.
- Information obtained in connection with one purpose should not be used for another purpose, subject to certain exceptions.

### Local Government (Rating) Act 2002

Between 30 March 2002 and 1 July 2003 this Act will come into force and replace the Rating Powers Act 1988 – see the earlier entry on that Act.

The new Act will affect your administering body.

The rating information database kept by a local authority will be changed after 30 April 2003 and may affect whether or not your organization is shown as the “ratepayer” or not

The “occupier” will cease to be the “ratepayer” from 1 July 2003.

The body in whom a reserve is vested will become the “ratepayer”.

Any administering body which is shown as the “ratepayer” in the amended rating information database may have to pay rates to the territorial authority and regional council.

**All land in a reserve that is held under a lease or licence or other agreement and used primarily or exclusively for private or commercial purposes is fully rateable (s.8).**

**All other land in a reserve is subject only to targeted rates where applicable (s.9).**

“Targeted rates” are those rates set solely for water supply, sewage disposal or waste collection. They are only payable if the service is provided, in relation to the land, by the local authority.

**Some administering bodies (e.g. societies or associations) in whom a reserve is vested may only be liable to pay 50% of the rates that would otherwise have been assessed (s.8(2) of the Act).**

**Recovery of rates paid by the administering body may be possible in some cases.**

For further advice follow the guidelines in Chapter 16 of the *Guide*.



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## Chapter 8

# Accounting and Finance

### Introduction

Part IV of the Reserves Act sets out the financial provisions with which administering bodies must comply. Note that there are some exceptions. For example, all administering bodies of health sector reserves are exempted from the provisions of Part IV (see s.11E(4) Health Sector (Transfers) Act 1993).

This Chapter summarises the key provisions of Part IV which apply to all reserve administering bodies, and outlines some of the special financial provisions which apply to Reserves Boards (see Chapter 9).

### Revenue from Reserves

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 ... be held by the administering body and applied for the purposes of this Act."

Exceptions to the s.78 direction apply:

- when the administering body is a Minister of the Crown
- to the NZ Historic Places Trust
- to racecourse trustees (s.68).

### Application of Fines

The administering body is entitled (s.105) to receive any fines where it lays an information (i.e. initiates action for a prosecution) under the provisions of s.101(1)(b) of the Act over an offence.

A sum of 10% is deducted and is payable to the Crown (s.73(2) Public Finance Act 1989). A **Reserves Board** (as an organization described in Schedule 4) is exempted from this deduction (s.73(1) PFA).

## Banking Receipts

All money received in any way by the administering body in respect of a reserve or reserves vested in it or under its control are “funds of the administering body” for the purposes of the Act. (s79(1)).

The administering body must have a bank account set up in its own name, and all “funds of the administering body” must be held in it (s.79(2)).

This means that if an administering body performs other functions it must keep the monies derived from the reserve(s) separately unless it has a statutory exemption.

The Treasurer or other officer authorised by the administering body must within 7 days bank receipts in the account

A **Reserves Board** must also comply with s.158 Crown Entities Act (s.45M PFA). This provision permits a Board to operate a bank account in New Zealand dollars with a registered bank or building society in New Zealand that meets a credit rating test specified in the Crown Entities (Financial Powers) Regulations 2005.<sup>7</sup>

## Investment of Funds

The funds of an administering body, unless there is authority under another Act, may be invested only in accordance with s.79(5) of the Act. That is:

- on deposit with the National Provident Fund
- in the manner prescribed in Part II Trustee Act 1956.

But note that the making of an investment by an administering body is subject to the “terms of any trust” applying to the money (e.g. the conditions on which a gift has been accepted).

In the case of a **Reserves Board**<sup>8</sup>, the provisions of s.161 of the Crown Entities Act 2004 apply (s.45M PFA).

A Reserves Board may therefore also invest in debt securities (e.g. a term deposit) in NZ dollars that satisfy a credit rating specified in the Regulations or in public securities issued by the Crown. Such investments can be made on the authority of the Board. [Effective 1.4.05]

If the Reserves Board wishes to invest in other types of securities it will need to seek the approval of the Ministers of Conservation and Finance.

You can purchase a copy of relevant Acts (and any amendment Acts) and the Regulations from a bookshop or see them on the Internet at:

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<sup>7</sup> A list of registered banks and credit ratings can be viewed at <http://www.rbnz.govt.nz/nzbanks/0091622.html>. The credit rating is specified in Regulation 7 as a rating by Standards & Poor’s rating of not less than A-, or Moody’s of not less than A3, for banking and debt securities. [Effective 25.7.05.] Approval of the Minister of Finance is required for accounts at banks not authorised by s.158(1) or denominated in a foreign currency.

<sup>8</sup> Reserves Boards are listed in the 4<sup>th</sup> Schedule of the Public Finance Act. While not themselves being “Crown entities” they are subject to certain provisions in the Crown Entities Act.

<http://www.knowledge-basket.co.nz>

Alternatively, you may want to seek legal advice (see Chapter 16).

### **Expenditure of funds**

The expenditure of the funds of racecourse trustees is governed by s.68 of the Act.

Except as detailed below, the funds of an administering body can only be applied in purchasing, taking on lease, managing, administering, improving, and developing the reserve(s) under its control or vested in it (s.80).

The Minister of Conservation, with the consent of the administering bodies, may divert 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 or as consideration for a conservation covenant (s.84).

With the consent of the Minister, the administering bodies may determine 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 :

- (a) consent to the application of the money for that purpose;
- (b) agree either to –
  - (i) permit the land to be used for the purposes of a particular class of reserve on agreed terms and conditions; or
  - (ii) co-operate in a scheme for the preservation or restoration of the character or amenity of a district or an environment. (s.85 of the Act refers).

Expenditure from the administering body's bank account must be authorised by the administering body (s.79).

The cheque or withdrawal must be signed by the Treasurer or other appointed officer of the administering body and counter-signed by a member or officer similarly authorised.

### **Accounting**

If the administering body is responsible for more than one reserve it is not required to keep separate books of accounts for each. It may keep combined accounts and a statement regarding them. (S.80(2) of the Act).

Receipts and payments for each reserve are, however, to be shown.

An administering body (except a **Reserves Board**) is required to provide a statement of accounts within one month of the close of each financial year. That is, within one month of 30 June (s.88).

A copy of the statement is to be submitted to both the:

- Audit Office
- Commissioner (at the local office of the Department of Conservation).

You should contact the Audit Office for further information about its requirements and the applicable provisions of the Public Finance Act 1989.

The Office of the Controller and Auditor-General has an Internet site at: [www.oag.govt.nz](http://www.oag.govt.nz)

**Reserves Boards** appointed under the Reserves Act have some separate accounting requirements to other administering bodies. These are dealt with in Chapter 9.

## Borrowing money

Some administering bodies may have borrowing powers in legislation under which they were created. A reserve may not however be used as security for a loan, as the lender will require a power of sale in the event of foreclosure. [The power to revoke a reservation to enable disposal is held solely by the Minister of Conservation (see Chapter 14)].

The making of loans through the Crown is rare, but is authorised in s.90 of the Act for improving or developing any reserve – subject to the availability of funding and the necessary approval by the Minister of Finance. Generally the opportunity is limited to **Reserves Boards**.

Overdraft facilities are a matter between the administering body and its bank.

A **Reserves Board** – see Chapter 9 – must, in relation to borrowing, comply with sections 160 and 162 of the Crown Entities Act 2004 (s.45N PFA) . The approval of the Ministers of Conservation and Finance to any borrowing is required [effective 1.4.05]

Under the provisions of s.89 Reserves Act an administering body can receive advances from a local authority on such terms and conditions as it thinks fit towards the management, improvement, maintenance and protection of the reserve(s) the administering body controls.

## Sources of financial assistance

The Department does not make grants to administering bodies but may provide technical assistance (see Chapter 16).

If you are seeking funding for environmental and conservation projects you will find the *Environfunz* website a useful resource. The Internet address is: [www.envirofunz.org.nz](http://www.envirofunz.org.nz). Access is available free of charge.

If you are seeking funding for any sort of community project *Fundview* is another website resource. You either subscribe or use it by accessing the free service provided at your nearest library or information centre. To find out where these free sites are in your district you need to access the Internet address: [www.fis.org.nz](http://www.fis.org.nz)

A local authority can apply money towards the management, improvement, maintenance and protection of a reserve controlled by another administering body that is generally used by the inhabitants of the local authority's district (s.89(1) of the Act).

## Provisions that do not apply

The following provisions in Part IV of the Act do not apply to the administering bodies for whom this Guide has been written:

Sections 78(1)(b); 79(4); the provisos to 79(2); 82 & 83; 85A; 86 & 87; 88(4) & (5); 90(1), & 91.

They apply either to local authorities or else are separate powers of the Minister.

You should, however, note that the administering body does not receive the proceeds of disposal of land in a reserve (s.82 & s.83 of the Act) if the reserve was derived from the Crown (see Chapter 14). Most, but not all reserves under the control of or vested in administering bodies for whom this guide was written, would be in that category.

If (as an officer or member of an administering body) you are uncertain about the extent to which the provisions of Part IV apply to your administering body then you should propose to the Chair or President that the administering body obtains legal advice (see Chapter 16).



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# CHAPTER 9

## Boards

### Introduction

This chapter deals with aspects of administration that are unique to boards appointed to control and manage reserves under s.30 of the Act.

Boards are the only type of administering body created under the Act. All other types of administering body already exist as organisations, generally having been created under the provisions of other Acts.

Some boards have almost all Maori members (e.g. Lake Rotoiti Reserves Board). Others have Maori and non-Maori members (e.g. Whitireia Park Reserves Board). Generally board membership is made up of the community of interest of the reserve.

### Board Appointments

Boards will be appointed, re-appointed or revoked either by:

- the Minister, through a notice in the *Gazette*; or
- the Commissioner, through a notice in one or more newspapers circulating in the locality.

The appointment notice gives the authority for the particular board to control and manage the reserve(s) specified in the notice.

The Minister will determine whether to appoint a reserves board or authorise the Commissioner to appoint it (s.30).

The term of office for a board appointment will be up to 7 years (s.31). A 3-5 year term has been customary.

The member filling a vacancy is appointed for the balance of the period for which his or her predecessor was appointed.

More detailed requirements about the term of office of boards and their members can be found in s.31 of the Act.

## Board nominations

The Commissioner, or the Minister, will decide the manner in which nominations for board appointments will be made. This may vary from board to board. In some cases it may be determined in accordance with another Act making special provision with respect to the reserve (s.5(2)).

The most common form of nomination process for board re-appointments by the Commissioner will be one where the Commissioner invites the outgoing board to solicit nominations at a public meeting.

The process and procedures are described in Appendix A to this chapter. The election of members is subject to the Commissioner approving the appointments.

Nominations for board **vacancies** will generally be carried out through the same process under which the board was appointed or re-appointed.

## Meetings and Appointment of Chairperson

These topics are covered in Chapter 4 of this Guide.

## Responsibilities of board members

The members of a board hold positions of trust and responsibility. They represent the community and must act in the public interest in helping the board carry out its functions.

All members of the board are jointly responsible for the management of a Crown asset.

A board member is not personally liable for:

- any act done or omitted to be done in good faith in the course of the operations of the Board;
- any debt or other liability lawfully incurred by the board (s.34)

Board members need to be familiar with this Guide.

## Form of contracts of board

Boards can enter into contracts either:

- orally; or
- in writing.

An oral contract will be enforceable against a Board if:

- it is made by a person on behalf of the Board; and
- that person is acting under the express or implied authority of the Board.

A written contract will be enforceable against a Board if:

- it is signed by a person on behalf of the Board; and
- that person is acting under the express or implied authority of the Board (s.33).

### **Board accounting and reporting responsibility [from 2006/7]<sup>9</sup>**

Reserves boards are part of the broader government financial reporting entity [see the 4<sup>th</sup> Schedule to the Public Finance Act 1989]. (s.88A Reserves Act & s.27(3) Public Finance Act 1989.)

The annual financial statements of the Crown [which must be completed for audit by 31 August each year] include the fiscal interests of the Crown in reserves boards.

This statutory deadline means that financial information required by The Treasury from a board must be provided by the due date. The board is obliged to provide it in terms of s.29A(4) of the Public Finance Act 1989.

**The information is to be provided annually by the end of July through the local conservancy office of the Department. It goes in the Department's annual report** (s.50 Public Finance Act 1989).

The details required from each board are as follows, the figures being those at the end of the preceding financial year:

- total value of net assets
- total income for the year
- total expenditure for the year

A board is also required, as soon as practicable after the end of each financial year (30 June) to prepare a series of financial statements for its operation in accordance with sections 150 (annual report) 153 (statement of service performance) and 154 (annual financial statements). A model for the annual report and financial statements required is shown in Appendix B

The Minister of Finance is able to consent to a reserves board dispensing with preparing a statement of service performance or any of the annual financial statements, but may set conditions on that consent including a requirement for alternative statements (s.39A Reserves Act)

If you require advice on completing these reports please contact Audit New Zealand or the local Conservancy office of the Department of Conservation.

The Auditor-General is responsible for the audit of every board's financial statements (see Chapter 8). They must be submitted in the required format (see above) to Audit New Zealand (as agent for the Auditor-General) within 3 months after the end of the financial year (s.156 Crown Entities Act 2004).

Note:

New Zealand entities will be required to apply new financial reporting standards, based on International Financial Reporting Standards, in the 2007/08 financial year. This may alter the form or the substance of the financial statements prepared by reserves boards but those changes should not materially affect the

<sup>9</sup> Dispensations granted will continue for 2005/06 given the transitional provisions of s.198 Crown Entities Act – see wgnho-80303.

information that is required to be disclosed.

### **Other financial requirements**

The Crown is not liable to contribute towards the payment of any debts or liabilities of a board (s.49(1)(a) Public Finance Act 1989).

For other financial requirements applicable to a reserves board under the Reserves Act refer to Chapter 8 of this Guide. Note, however, the following:

- Section 158 of the Crown Entities Act and s.79 Reserves Act apply and are compatible with respect to bank accounts, banking of receipts, withdrawals and payment – see also Chapter 8.
- Section 161 of the Crown Entities Act prevails over s.79(5) of the Reserves Act with respect to investments (acquisition of securities) and s.162 of the former Act prevails over s.92(2) of the latter Act.

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## CHAPTER 10

# Bylaws and Offences

### **Does the administering body need bylaws?**

The Reserves Act contains provisions listing actions and activities in reserves which, if carried out without authority, are offences. They apply to all reserves.

If the offence provisions (Part V of the Act) sufficiently cover the range of actions and activities that the administering body may wish to control or restrict on a reserve then the administering body does not need to consider adopting bylaws.

### **What are bylaws?**

A bylaw is described as follows in Butterworths *Words and Phrases*: *legally defined*:

*“... an ordinance affecting the public ... clothed with statutory powers, ordering something to be done or not to be done, and accompanied by some sanction or penalty for its non-observance ... it has the force of law within the sphere of its legitimate operation”*

A bylaw has to be validly made by the administering body to be enforceable.

### **What matters can bylaws deal with?**

The matters that bylaws can be prescribed for, are set out s.106 of the Act e.g. regulating times of admission to a reserve.

### **Are there model bylaws?**

A set of model bylaws has been published - see Appendix A to this Chapter.

The model set of bylaws to which s.106(1) of the Act refers does not have the force of bylaws. Bylaws must be validly made by each administering body.

The model bylaws can (in the process of bylaws being made) be varied or added to if the Minister of Conservation approves.

## How does the administering body go about adopting bylaws?

The process which the Act requires is set out in this table:

Stage	Who Does It	What Happens
1	Administering body (AB)	<ul style="list-style-type: none"> <li>Decides that it needs bylaws</li> <li>Decides whether or not to adopt variations of the model bylaws, or additions to the model.</li> </ul>
2	AB	<ul style="list-style-type: none"> <li>Formulates draft bylaws</li> <li>Authorises public notice</li> <li>Sets a date for the AB to meet to make the bylaws</li> </ul>
3	AB	Gives public notice in accordance with s.107 of the Act.
4	AB	<ul style="list-style-type: none"> <li>Meets to consider any objection or submission (s.120)</li> <li>Decides whether or not to make the bylaws</li> <li>If it decides to make the bylaws, passes a resolution to that effect.</li> </ul>
5	AB	<ul style="list-style-type: none"> <li>Affixes the seal of the administering body or arranges for signature (s.107)</li> <li>Sends the bylaws to the Department of Conservation (DOC) for the Minister's approval (s.108).</li> </ul>
6	Minister	<ul style="list-style-type: none"> <li>Decides whether or not to approve the bylaws</li> </ul>
7	DOC	<ul style="list-style-type: none"> <li>Notifies the AB of the decision</li> </ul>
8	AB	<ul style="list-style-type: none"> <li>Take such action as it sees fit to make visitors to the reserve aware of the bylaws if approved.</li> <li>Enforces the bylaws if approved.</li> </ul>

A form of public notice (Stage 3) is given in Appendix B to this Chapter.

At Stage 5 of the process, the administering body is to send the following information to the Department:

- details of when and in what newspaper notice was given
- three sealed/signed copies of the bylaws
- an explanation of any variation from the bylaws set out in Appendix A.
- a copy of any objections received
- details of the administering body's comments and recommendations on the objections (if any are received).

If the administering body proposes variations of the model bylaws (or additions) it would be sensible to obtain advice from the local office of the Department at Stage 2 of the above process. This will enhance the chances of the bylaws being approved at Stage 6.

### **How does the administering body go about dealing with an offence, or breach of bylaws?**

Constables, rangers, and other officers are given powers under s.93 of the Act.

The time within which an information must be laid (i.e. action initiated for a prosecution) is set out in s.99 of the Act.

The authority to enter into proceedings over offences is described in s.101 of the Act. In general, the authority is held by the principal administrative officer of the administering body.

The evidence required to support proceedings is described in s.102 of the Act.

Subject to s.73 Public Finance Act 1989 fines recovered become part of the funds of the administering body (Chapter 8) – but see s.105 Reserves Act.

An administering body can appoint any of its officers or servants to be rangers for the purposes of the Act (s.8(9)). The requirements are spelt out in that provision.

Any member of an administering body is deemed to be a ranger in an honorary capacity. The requirements are spelt out in s.8(10) of the Act.

## Appendix A to Chapter 10

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### Sample Bylaws

*A new model bylaws have been notified in the Gazette. They have been published in the Statutory Regulations as SR 2004/432. This is a scan.*



Scan0598.pdf

Amended 7.10.04

## Appendix B to Chapter 10

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### Standard Notice of Intention to Adopt Bylaws

..... Reserve  
Bylaws.

Notice is hereby given that at a meeting of the ..... to be held in .....(place)..... on the.....(date).....

the (board/society/association etc) proposes to make bylaws pursuant to Section 106 of the Reserves Act 1977 for the purpose of regulating the use of the reserve and providing for the preservation of order thereon.

A copy of the proposed bylaws may be perused on application to:

..... (Secretary)

..... (Address)

.....

[The notice must be published in a local newspaper once in each of the two weeks immediately preceding the day on which the bylaws are to be made.]



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## CHAPTER 11

# *Management Planning for Reserves*

Management planning is intended to enable the administering body to establish the desired mix of use and protection 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 allowing exemptions from public notification in certain cases.

The ability to forego some public notification 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. Appendices provide useful checklists and standard forms for the management plan process.

### ***What Reserves Must be Covered by Management Plans?***

All types of reserves (except local and Government purpose reserves) under the control of or vested in an administering body must be covered by an approved management plan, or plans, under s.41.

In the case of local and Government 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 (s.41(16) Reserves Act). Exercise of the discretion would be the exception rather than the rule. The administering body's records should reveal any conditions of appointment or vesting (see Chapter 1 of this Guide).

### ***What are the Purposes of a Reserve Management Plan?***

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 administering body'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.

### ***When Do Plans Have to be Completed?***

The answer depends on when the administering body became responsible for 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 Administering Body Apply for an Extension of Time?***

An administering body can apply to the Department of Conservation for the Minister to extend the deadline if it has made reasonable progress. The extension can be authorised under s.41(2).

The Minister of Conservation may, however, require an administering body 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 administering body wishes to take.

### ***Can the Administering Body Approve a Management Plan?***

The administering body can approve management plan(s) over any local or Government purpose reserves for which it is the administering body (s.41(13)). The preparation of a plan for these types of reserves is not, however, mandatory.

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.

All mandatory management plans 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 administering body 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 (e.g. all recreation reserves) or cover reserves of different classes for which the administering body is responsible.

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 (i.e. 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 13).

## ***Can the Administering Body Prepare a Plan for Unclassified Reserves?***

The administering body 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 administering body 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 the Administering Body Include a Local Purpose Reserve in a Management Plan?***

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

## ***Who Approves a Multi-Reserve Management Plan?***

The Minister of Conservation and the administering body 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 local purpose reserve, the administering body will approve it for that reserve (s.41(16)). The approval certificate would be drafted accordingly.

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 A to this Chapter.

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

The Guidelines in the Appendix are not binding. The administering body may itself determine how to meet the statutory responsibilities outlined earlier in this Chapter and in Chapter 6. The administering body may choose to take advice from planners, legal advisors and other staff, or seek external advice.

### ***Is the Administering Body Bound by a Management Plan Once it is Approved?***

In exercising its functions the administering body of a reserve under the Reserves Act, 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 Administering Body to Exercise Additional Statutory Powers Over the Reserve?***

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 Administering Body Have to Keep a Plan Under Continuous Review ?***

A administering body is required to keep the management plan(s) over reserve(s) for which it responsible 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 for Management Planning?***

The process which the Act requires is set out below. An administering body 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 C which was contributed by Dunedin City Council.

Stage	Who Does It	What Happens
1	Administering body	<ul style="list-style-type: none"> <li>• Makes a decision to begin the process.</li> <li>• Determines the areas of land to be covered by the plan.</li> <li>• Determines which areas are reserves subject to the Reserves Act 1977.</li> <li>• Confirms that the appointment or vesting is held (see Chapter 1).</li> </ul>
2	Administering body (see Chapter 12)	<ul style="list-style-type: none"> <li>• Determines whether or not there are any unclassified reserves to be covered by the plan.</li> <li>• <i>If so then</i> requests the Minister of Conservation<sup>10</sup> to classify the reserve(s).</li> </ul>
3	Administering body	<ul style="list-style-type: none"> <li>• Resolves (in terms of s.41(5A) whether or not written suggestions on the proposed plan would not materially assist in its preparation.</li> <li>• Decides who to consult with (e.g. see Chapter 6)</li> </ul>
4	Administering body officer or contractor <sup>11</sup>	<ul style="list-style-type: none"> <li>• <i>If the administering body agrees to the exemption then</i> proceeds to Stage 5.</li> <li>• <i>If the administering body declines the exemption then</i> prepares information for public release; and:</li> <li>• Gives public notice of invitation in accordance with s.41(5).</li> </ul>
5	Administering body officer or contractor or administering body	<ul style="list-style-type: none"> <li>• Drafts management plan, giving full consideration to any comments received as a result of public invitation (s.41(5)(c)) and/pr consultation.</li> <li>• Awaits completion of the classification process by MOC, if still in train.</li> </ul>
6	Administering body officer or contractor	Finalises and submits draft plan to the administering body for consideration
7	Administering body	<ul style="list-style-type: none"> <li>• Approves draft plan for public release.</li> <li>• Determines hearing procedure (s.41(10)).</li> </ul> <p>NB. The reserve must be classified by this Stage</p>

<sup>10</sup> The request is made to the Department of Conservation; an officer in DOC will make the decision under delegated authority. Classification must be completed before the draft plan is released for public comment (Stage 8).

<sup>11</sup> The administering body can let a contract for service if it does not have an officer who can do the task.

Stage	Who Does It	What Happens
8	Administering body officer or contractor	<ul style="list-style-type: none"> <li>Acts on administering body decision if Stages 6 and 7 occur.</li> <li>Gives public notice in accordance with s.41(6)(a).</li> <li>Sends copy of the plan to the Commissioner (s.41(6)(aa)).</li> <li>If a public invitation was given at Stage 4 then sends written notice in accordance with s.41(6)(b).</li> <li>Arranges for the draft plan to be available in accordance with s.41(6)(c).</li> </ul>
9	Administering body officer or contractor or administering body.	<ul style="list-style-type: none"> <li>Arranges any hearing required in accordance with s.41(6)(d) (see also s.41(10)).</li> <li>Arranges a report on any hearing.</li> </ul>
10	Administering body officer or contractor	<ul style="list-style-type: none"> <li>Summarises objections and comments and prepares recommendations to administering body on extent to which they should be allowed or accepted or disallowed or not accepted.</li> <li>Submits to administering body.</li> </ul>
11	Administering body	<ul style="list-style-type: none"> <li>Makes decision on extent to which the objections and comments will be allowed or accepted or disallowed or not accepted.</li> </ul>
12	Administering body officer or contractor	<ul style="list-style-type: none"> <li>Makes alterations to plan in accordance with administering body decisions.</li> <li>Submits revised plan to MOC with a copy of the administering body's decision at Stage 11 (s.41(6)(e)).</li> </ul>
13	Administering body	<ul style="list-style-type: none"> <li>Receives Minister's decision.</li> <li>Implements approved plan.</li> </ul>
14	Administering body	<ul style="list-style-type: none"> <li>Makes a decision to <b>amend the plan</b>.</li> <li>Decides whether or not to go through public process (s.41(9)).</li> </ul>
15	Administering body officer or contractor	<ul style="list-style-type: none"> <li>Completes action in accordance with administering body decision and the relevant provisions of s.41.</li> </ul>
16	Administering body	<ul style="list-style-type: none"> <li>Makes decision to <b>review the plan</b> (s.41(8)).</li> </ul>
17	Administering body officer or contractor	<ul style="list-style-type: none"> <li>Goes through or initiates action under Stages 2 to 13 above (s.41(8)).</li> </ul>

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## Appendix A to Chapter 11

### *Management Plan Scope (Guide for Planning Team or Author)*

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. 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 the administering body 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 (e.g. refer to s.17 for recreation reserves). This is the principal guide to the objectives of management (see Chapter 13).

### **Objectives**

The objectives will be:

- 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.
- Listed in some order of priority.

The objectives will not necessarily be mutually compatible. (The Plan will indicate how any incompatibility will be resolved).

### **Policies**

- Statements of how decisions will be made on specific topics to ensure they will lead towards the selected objectives (e.g. leasing).
- 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 to take into account the effects of activities.
- The basis for policies on many subjects is likely to exist already, (e.g. from decisions made on the previous level of management).
- The effectiveness of policies can be judged by comparison with the objectives and how well they give solutions to problems applied to them.
- The management plan will achieve its purpose if all future developments and decisions are measured by the administering body against the framework of policies.
- Policies should be grouped in a logical way (e.g. based on their order of significance).
- Explanations sufficient to support or justify policies can be included in this section (ie factors considered in arriving at the policy), An indication of what immediate implementation action is required may also be given.

- It is necessary to check and review policies to ensure that they remain relevant and effective in contemporary situations. How the plan should be adjusted to meet changing circumstances and trends should be built into the management planning process.

### **Implementation**

This section of the plan should state the outcomes the administering body wants to bring about in managing the reserve(s) relative to:

- use
- public enjoyment
- maintenance
- protection (e.g. the active protection of Maori taonga)
- preservation
- development

[See s.41(3) of the Act.]

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## Appendix B to Chapter 11

### Advertising – Standard Public Notices for Compliance with Reserves Act 1977

#### **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 date<sup>12</sup>] written suggestions on the proposal to prepare a management plan for the following reserve(s) :

[reserve name]

[situation]

[optional] A statement about the natural/historic/recreational/other resources of 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 date<sup>13</sup>] 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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<sup>12</sup> The administering body determines the closing date in each case.

<sup>13</sup> Not less than 2 clear months after date of publication of the notice

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## Appendix C to Chapter 11

### *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 a 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**

Booth, K and Grocke, C (1998) *The Application of Benefits Based Management to the Management of Sports Fields*. In the Proceedings of the New Zealand Recreation Association Annual Conference Proceedings, 1-4 December 1998.

*Contributed by Dunedin City Council.*



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## Chapter 12

# *Leases, Licences, and Easements Over Reserves*

This Chapter provides details of which part of the Act governs the granting of leases, licences and easements over reserves. It should be read subject to Chapter 6.

Section 12.1 summarises the provisions of the Act relating to a reserve vested in an administering body.

Section 12.2 explains the differences in administration of leases, licences and easements where an administering body has been appointed to control and manage a Crown reserve.

## 12.1 Vested Reserves

### *What Provisions of the Reserves Act Authorise the Administering Body to Grant Leases or Licences or Easements Over a Reserve Vested in the Administering Body?*

This table shows the relevant provisions:

Section of Act	Class of vested Reserve	Type of Right	Purpose	Act Requires Consent of Minister
48	All	Easement	<ul style="list-style-type: none"> <li>(i) Any public purpose</li> <li>(ii) distribution or transmission by pipeline of natural or manufactured gas, petroleum or geothermal energy</li> <li>(iii) an electrical installation or work as defined in s.2 Electricity Act 1992</li> <li>(iv) the provision of water systems; providing or facilitating the supply of water to or the drainage of any other land not forming part of the reserve or any other purpose connected with any such land</li> <li>(v) providing access to any area included in an agreement, lease or licence granted under the Act or facilitating access to any land not forming part of the reserve.</li> </ul>	Yes
48A	All, if vested under s.26 Reserves Act	Licence	Use for radio, electric, or electronic communication station (associated buildings, dwellings, masts and other structures and tracks).	Yes

Section of Act	Class of vested Reserve	Type of Right	Purpose	Act Requires Consent of Minister
54	Recreation	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.  [Note also that <i>agreements</i> – not a lease or licence – can be entered into under s.53(1)(f)]	Yes
		Lease or licence	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.	Yes
56	Scenic	Lease	Baths, picnic ground, camping ground, parking or mooring place or other facilities or amenities for public recreation and enjoyment.	Yes
		Lease or licence	Carrying on any trade, business or occupation necessary to enable the public to obtain the benefit and enjoyment of the reserve or for their convenience.	Yes
58A	Historic	Lease or licence	Domestic residential purposes or for carrying on any activity, trade or business, or occupation.	Yes
61(2)	Local purpose	Lease	Lease under Public Bodies Leases Act 1969.	No

Section of Act	Class of vested Reserve	Type of Right	Purpose	Act Requires Consent of Minister
61(2A)	Local purpose	lease	Community building, playcentre, kindergarten, plunket room or other like purpose; farming, grazing, cultivation, cropping or other like purpose.	No
61A	Aerodrome	Lease	Lease under Airport Authorities Act 1966.	No
67	Recreation (set apart for racecourse purposes)	Lease	Any purpose, not inconsistent with the purpose of the reserve, to a racing club. If up to 7 years If over 7 years	No Yes
72	Recreation or local purpose	Lease or licence	[Provision not in use by the Minister of Conservation who would be the other party to the lease or licence.]	No
73	Recreation	Lease	Farming, grazing, or afforestation or other purpose where: (i) the land is not for the time being required for recreation purposes; or (ii) it is in the public interest; or (iii) it is necessary or desirable to farm or graze or afforest the reserve as part of a development, improvement or management programme for the reserve; or (iv) the reserve is not being used for recreation purposes, and it is not likely to be used for that purpose, but it is inadvisable or inexpedient to revoke the reservation.	Yes

Section of Act	Class of vested Reserve	Type of Right	Purpose	Act Requires Consent of Minister
74	All, except nature reserve	Licence	Grazing, gardening, or other similar purposes or felling or removing timber or flax, or to win and remove timber or flax or kauri gum where that is necessary or desirable for managing the reserve for the purpose for which it is classified.	Yes/ No <sup>14</sup>

For some reserves there may be a valid power to grant a lease or licence under other legislation (e.g. a lease or licence over a health sector reserve under s.11E Health Sector (Transfers) Act 1993).

#### What Consent is Required if Any?

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

A consent may be given conditionally (s.121) or only after the approval of a management plan (see Chapter 11).

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

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 Administering Body Obtain Legal Advice?

The administering body 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, subject to consent [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].

<sup>14</sup> Consent is only required in the case of a licence over a vested historic, scenic, or scientific reserve.

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.

If referring in the Act to a section reference from the table above, the administering body should be careful to read the section as a whole, and any other statutory provisions cross-referenced within it. [The administering body may seek technical assistance from the nearest conservancy office of the Department of Conservation (s.39)]

### **Where the Consent of the Minister of Conservation is Required What Information Should the Administering Body 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 A to this Chapter.

### **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 under s.26. Both parties need to agree.

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

Refer to Chapter 6 in this Guide. Also note in particular the requirements of Part 9 Ngai Tahu Claims Settlement Act 1998 if a long-term lease is involved within the Ngai Tahu tribal area.

### **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 administering body powers are set out in s.115 for reserves vested under s.26.

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

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

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

Cont'd over

Stage	Who Does It	What Happens
1	cont'd	<ul style="list-style-type: none"> <li>Identifies any statutory requirements related to terms and conditions. (e.g. the First Schedule of the Act)</li> <li>Identifies any relevant policy of the administering body (eg in a management plan – see Chapter 11).</li> </ul>
2	Administering Body	<ul style="list-style-type: none"> <li>Formulates a proposal (which complies with the Act) to grant a lease, licence or easement.</li> <li>If public notification is required then arranges for public notice to be given in accordance with s.119.</li> <li>If public notice is not required then records the reason for the exemption.</li> <li>Arranges action to comply with s.4 Conservation Act (see Chapter 6).</li> </ul>
3	Administering Body Officer	<ul style="list-style-type: none"> <li>Arranges any hearing required in accordance with s.120(1)(c) Reserves Act.</li> <li>Arranges a report on any hearing.</li> </ul>
4	Administering Body Officer	<ul style="list-style-type: none"> <li>Arranges for the administering body to give full consideration to every objection or submission (s.120(1)(d)).</li> </ul>
5	Administering Body	<ul style="list-style-type: none"> <li>Determines the extent to which it will allow or accept or disallow or not accept every objection or submission.</li> <li>Determines whether or not to approve the grant of a lease, licence or easement (subject to consent where needed).</li> </ul>
6	Administering Body Officer or agent	<ul style="list-style-type: none"> <li>Acts in accordance with the administering body's decision.</li> <li>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).</li> <li>If consent is not required then proceeds to Stage 8.</li> </ul>
7	Administering Body Officer or agent or Administering Body	<ul style="list-style-type: none"> <li>Acts in accordance with the decision of the Minister.</li> <li>If consent is given conditionally <i>then</i> meets the terms of the conditions.</li> <li>If consent is given <i>then</i> proceeds to Stage 8.</li> </ul>
8	Administering Body Officer or agent	<ul style="list-style-type: none"> <li>Arranges for the lease, licence or easement document to be drafted in final form.</li> <li>Meets any related requirements of the administering body.</li> <li>Submits the offer of a lease, licence or easement to the applicant/applicant's solicitor.</li> </ul>

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

## **12.2 Concessions (Leases, Licences, Easements, Permits) Over Reserves Where an Administering Body Holds an Appointment to Control and Manage**

### **Which Statutory Provision Deals With Concessions?**

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

### **What is a Concession?**

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

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

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

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

Instead of a concession it may be appropriate for the administering body 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 an Application Dealt With by the Department of Conservation and Not the Administering Body?**

An application for lease, licence, easement or permit is dealt with by the Department of Conservation (DOC) when the reserve is vested in the Crown, and the administering body holds an appointment to control and manage. This part of Chapter 12 applies in such a situation. (But see the alternatives above).

### What Happens if the Administering Body 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 administering body.

Stage	Who Does It	What Happens
1	Administering Body Officer or Administering Body	<ul style="list-style-type: none"> <li>• Receives application.</li> <li>• Determines whether:               <ol style="list-style-type: none"> <li>(a) the land is a reserve subject to the Reserves Act 1977 <i>NB if it is not, then notifies the applicant.</i></li> <li>(b) a concession is the best and right way to grant the right sought by the applicant <i>NB see above as to alternatives. If the alternative is better then discusses withdrawing the concession proposal with the applicant.</i></li> <li>(c) the administering body holds an appointment to control and manage the reserve <i>NB if the administering body holds a vesting of the reserve then goes to Section 12.1.</i></li> </ol> </li> </ul>
2	Administering Body Officer	<ul style="list-style-type: none"> <li>• Informs the applicant that the application will be dealt with under s.59A Reserves Act.</li> <li>• Sends the application to the Department of Conservation.</li> </ul>
3	DOC <sup>15</sup>	<ul style="list-style-type: none"> <li>• Assesses the application.</li> <li>• Obtains further information from the applicant if required and collects application fee.</li> <li>• Prepares an assessment and recommendation. <i>NB The application may at this stage be declined – see ss.17T or 17U Conservation Act.</i></li> </ul>
4	DOC	<ul style="list-style-type: none"> <li>• Informs administering body of decision to decline; or</li> <li>• Invites the views of the administering body on the concession proposal.</li> </ul>
5	Administering Body Officer	<ul style="list-style-type: none"> <li>• Provides a report to the administering body.</li> </ul>
6	Administering Body	<ul style="list-style-type: none"> <li>• Determines its views on the proposal.</li> </ul>

<sup>15</sup> “DOC” refers to the employee in the Department of Conservation office authorised to deal with the application.

Stage	Who Does It	What Happens
7	Administering Body Officer	<ul style="list-style-type: none"> <li>Conveys administering body view to DOC.</li> </ul>
8	DOC	<ul style="list-style-type: none"> <li>Having regard to administering body's views, completes the process of considering the application.<sup>16</sup></li> <li>Notifies decision to: <ul style="list-style-type: none"> <li>– administering body</li> <li>– applicant.</li> </ul> </li> <li>If concession approved, provides copy of signed Document to administering body.</li> </ul>
9	Administering Body Officer	<ul style="list-style-type: none"> <li>Records concession.</li> <li>Sets up arrangements for collection of rent and/or any other charges.</li> </ul>

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

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

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 an administering body's powers 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 charge may be made by the Department for considering the application.

### 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 C.

### What Happens if DOC Receives the Application?

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

- consult with the administering body about jurisdiction
- take up the action from Stage 3 of the above.

<sup>16</sup> 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 administering body before a final decision is made.

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

**What Happens if the Administering Body Wants to Invite Applications for a Concession?**

If the administering body wants to invite applications for a concession, the administering body should first take up the matter with DOC.

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

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

**What Obligations Does the Administering Body Have Under the Treaty of Waitangi?**

Refer to Chapter 6 in this Guide.

## Appendix A to Chapter 12

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### *Examples of Information Requirements to Accompany Consent Applications Made Under the Reserves Act 1977*

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#### **Leases and Licences (Vested Reserves)**

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- Copy of the draft lease or licence (including a plan) to be consented to (1).
- The authority for vesting of the reserve in the administering body (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.

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#### **Rights Of Way and Other Easements (Vested Reserves)**

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- Copy of the draft ROW or easement (including a plan) to be consented to (1).
- The authority for vesting of the reserve in the administering body (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. If you have difficulty meeting any of these requirements please talk it over with your local DOC office, who may be able to help.

**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).
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 administering body has carried out consultation with Maori, the outcome should be documented and provided. If the administering body 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 been met e.g. 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.

## Appendix B to Chapter 12

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### *Standard Letter to Concession Applicant*

Date

Name  
Address

Dear

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 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

## **Appendix C to Chapter 12**

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### *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 administering body
- a plan of the proposed concession area
- the year and page reference of the notice in the *Gazette* by which the administering body 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 administering body considers relevant.

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## Chapter 13

# *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.

The Chapter is in three sections, as follows:

- 13.1 Classification – General
- 13.2 Classification of Reserves by the Minister of Conservation
- 13.3 Changes of Purpose or Classification

### 13.1 Classification – General

#### What is Classification?

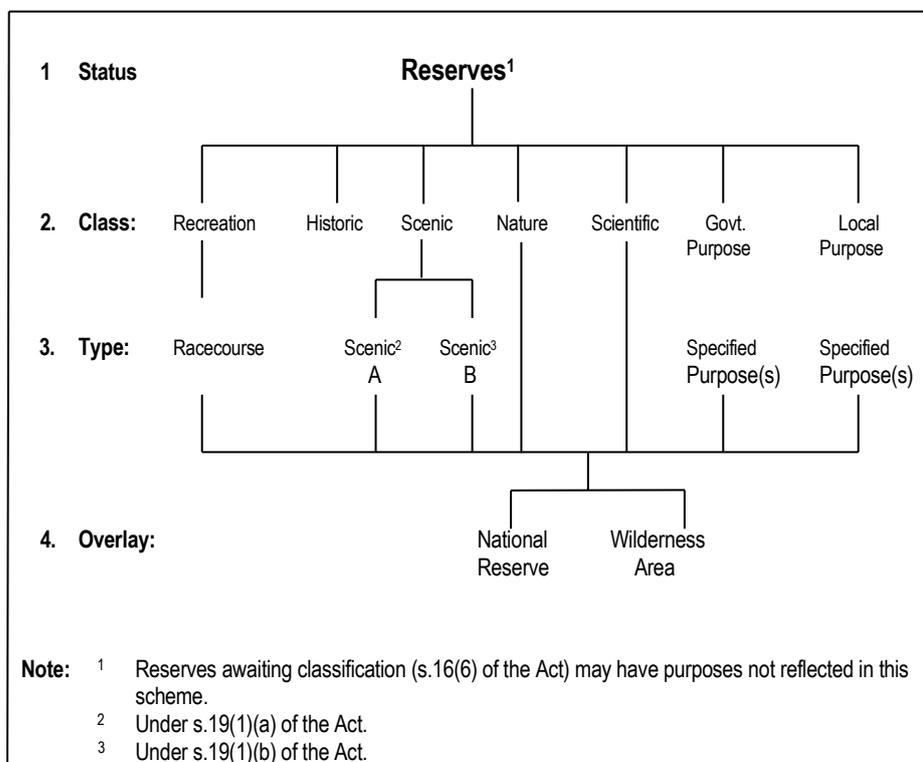
“Classification” is a mandatory process under s.16 of the Reserves Act which involves assigning a reserve (or the parts of a reserve) to the appropriate class or classes (and, if required, the type and overlay) within the framework shown in the diagram below.

The “class” determines the principal or primary purpose of the reserve. The determination of an appropriate class for a reserve is generally a matter into which 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 (see Chapter 11).

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 is shown in the diagram that follows.



These are some examples of reserve classifications within the above framework:

<b>Class</b>	<b>Type</b>	<b>Overlay</b>
Government purpose	wildlife sanctuary	national (s.13)
Recreation	racecourse	N.A.
Recreation	N.A.	N.A.
Scenic	s.19(1)(a)	N.A.
Local purpose	public hall	N.A.

### What do the Classifications Mean?

The following tables have been adapted from chapter seven 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.

The tables note the purpose 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

Purpose	An area of land (or land and water) suitable for specified local educational or community purpose(s) which does not duplicate any other reserve purpose(s).
Objectives of Management (s.23)	<p>Primary</p> <ul style="list-style-type: none"> <li>• Determined by the purpose</li> <li>• Prohibit access to the whole or any part of the reserve except by permit where appropriate</li> </ul> <p>Secondary</p> <ul style="list-style-type: none"> <li>• Manage and protect scenic, historic, archaeological, biological or natural features</li> <li>• Maintain value as a soil, water, and forest conservation area</li> </ul>
Guidance for Selection	Depends on purpose (but generally very small, modified areas)
Organisational Responsibility	As for historic reserve

**Government Purpose Reserve**

Purpose	Area of land (or land and water) suitable for specified government purpose <sup>17</sup> which does not duplicate any other reserve purpose(s).
Objectives of Management (s.22)	<p>Primary</p> <ul style="list-style-type: none"> <li>• Determined by purpose</li> <li>• May be administered also under another Act or Acts when another Minister is appointed to control and manage<sup>18</sup></li> <li>• Prohibit access to the whole or part of the reserve except by permit where appropriate</li> </ul> <p>Secondary</p> <ul style="list-style-type: none"> <li>• Manage and protect scenic, historic, archaeological, biological, cultural, scientific or natural features or wildlife</li> <li>• Maintain value as a soil, water and forest conservation area</li> </ul>
Guidance for Selection	Depends on the purpose
Organisational Responsibility	<ul style="list-style-type: none"> <li>• Owned by the Crown<sup>2A</sup></li> <li>• 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.</li> </ul>

**Historic Reserve**

Purpose	An area of land (or land and water) possessing places, objects and natural features of historic, archaeological, cultural, educational and other special interest
Objectives of Management (s.18)	<p>Primary</p> <ul style="list-style-type: none"> <li>• Manage structures, objects and sites to illustrate with integrity the history of New Zealand</li> <li>• 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</li> <li>• As appropriate, preserve the indigenous flora and fauna and natural environment as far as possible</li> </ul> <p>Secondary – if applicable</p> <ul style="list-style-type: none"> <li>• Manage and protect scenic, archaeological, geological, biological, or other scientific features, or indigenous flora and fauna, or wildlife</li> <li>• Maintain value as a soil, water, and forest conservation area</li> </ul> <p style="text-align: right;">Cont'd over</p>

<sup>17</sup> 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.  
 18 & 2A For health sector reserves see also the Health Sector (Transfers) Act 1993.

Guidance for Selection	<ul style="list-style-type: none"> <li>• Area should be sufficiently large to preserve all the significant historic or archaeological features associated with the place, object or natural feature</li> <li>• Area should include sufficient additional land as a buffer against incompatible development or as unobtrusive sites for necessary services for management and public use</li> <li>• The primary value should be traditional, historic or archaeological – through an association with major events, or Maori tradition</li> <li>• Area should have immediate interest to the visitor, or be important as a key for continuing research and interpretation of New Zealand history</li> </ul>
Organisational Responsibility	<ul style="list-style-type: none"> <li>• Owned by the Crown or vested in an administering body; or</li> <li>• Controlled and managed by DOC unless an administering body would better carry out the purposes of the reserve</li> </ul>

#### Recreation Reserve

Purpose	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)	<p>Primary</p> <ul style="list-style-type: none"> <li>• 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</li> <li>• 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</li> </ul> <p>Secondary</p> <ul style="list-style-type: none"> <li>• Manage and protect scenic, historic, archaeological, biological, geological or other scientific features or indigenous flora or fauna or wildlife</li> <li>• Maintain value as a soil, water and forest conservation area</li> </ul>
Guidance for Selection	<p>Area may be totally modified eg suitable for sports fields</p> <p>Area may be in a partly natural conditions eg suitable for picnic or camp sites or like development</p> <p>Area may be lineal eg suitable for recreational walking and/or vehicle use</p>
Organisational Responsibility	<p>Owned by the Crown or vested in a territorial authority or other administering body</p> <p>Under the control and management of DOC unless an administering body would better carry out the purpose of the reserve</p>

**Scenic Reserve B (Modified s.19(1)(b))**

Purpose	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
Objectives of Management (s.19(1)(b))	<p>Primary</p> <ul style="list-style-type: none"> <li>• As appropriate to the purpose, preserve the indigenous flora and fauna, biological associations, and natural environment and beauty as far as possible</li> <li>• As appropriate, exterminate exotic fauna and (to the extent consistent with purpose) exotic flora as far as possible</li> <li>• 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</li> </ul> <p>Secondary</p> <ul style="list-style-type: none"> <li>• Develop open portions for amenities and facilities where these are necessary to enable the public to obtain benefit and enjoyment from the reserve</li> <li>• Manage and protect historic, archaeological, geological, biological or other scientific features</li> <li>• Maintain value as a soil, water and forest conservation area</li> </ul>
Guidance for Selection	<p>Degraded natural or semi-natural areas where the public interest warrants restoration or conversion as a scenic attraction</p> <p>Area will generally be small</p>
Organisational Responsibility	As for recreation reserve

**Nature Reserve**

Purpose	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
Objectives of Management (s.20)	<p>Primary</p> <ul style="list-style-type: none"> <li>• Preserve the area as far as possible in a natural state</li> <li>• Preserve indigenous flora and fauna, ecological association and the natural environment as far as possible</li> <li>• Exterminate exotic flora and fauna as far as possible</li> <li>• Permit entry under controls which protect and preserve the flora and fauna in a natural state</li> </ul> <p>Secondary – if applicable</p> <ul style="list-style-type: none"> <li>• Manage and protect scenic historic, archaeological, biological, geological or other scientific features</li> <li>• Maintain value as a soil, water and forest conservation area</li> </ul> <p style="text-align: right;">Cont'd over</p>

Guidance for Selection	<p>Area should be large enough to ensure the integrity of its ecosystems and to accomplish the management objectives for which it is protected</p> <p>Area should be significantly free of direct human intervention and capable of remaining so</p> <p>Area's biodiversity should be achievable through protection and not require substantial active management or habitat manipulation</p>
Organisational Responsibility	<ul style="list-style-type: none"> <li>• Owned by the Crown</li> <li>• Controlled and managed by DOC unless an administering body would better carry out the purposes of the reserve</li> </ul>

**Scientific Reserve**

Purpose	<p>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</p>
Objectives of Management (s.21)	<p>Primary</p> <ul style="list-style-type: none"> <li>• Preserve the indigenous flora and fauna, as far as possible</li> <li>• Where appropriate manipulate the reserve (or part of it)</li> <li>• Exterminate the exotic flora and fauna as far as possible for experimental purposes or to gain further scientific knowledge</li> <li>• Where appropriate prohibit general access to the whole or 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)</li> </ul> <p>Secondary</p> <ul style="list-style-type: none"> <li>• Manage and protect scenic, historic, archaeological, biological or natural features</li> <li>• Maintain value as a soil, water, and forest conservation area</li> </ul>
Guidance for Selection	<ul style="list-style-type: none"> <li>• Area should be at least two-thirds in a natural condition, although it may contain limited areas of modified ecosystems</li> <li>• Area should be large enough to absorb sustainable scientific and related uses without detriment to its overall long term natural values</li> <li>• Area should possess features of special interest for scientific study, research, education and like uses</li> </ul>
Organisational Responsibility	<ul style="list-style-type: none"> <li>• Owned by the Crown or vested in an administering body</li> <li>• Under the control and management of DOC unless an administering body would better carry out the purposes of the reserve</li> </ul>

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

Purpose	Area of land (or land and water) possessing significant qualities of scenic interest or beauty or significant features or landscapes
Objectives of Management (s.19(1)(a))	<p>Primary</p> <ul style="list-style-type: none"> <li>• Manage for their intrinsic worth and for the benefit, enjoyment and use of the public</li> <li>• Preserve indigenous flora and fauna, biological associations and the natural environment as far as possible</li> <li>• Exterminate exotic flora and fauna as far as possible</li> <li>• 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</li> </ul> <p>Secondary – if applicable</p> <ul style="list-style-type: none"> <li>• Develop open portions for amenities and facilities where these are necessary to enable the public to obtain benefit and enjoyment from the reserve</li> <li>• Manage and protect historic, archaeological, geological, biological, or other scientific features</li> <li>• Maintain value as a soil, water, and forest conservation area.</li> </ul>
Guidance for Selection	<p>Area should contain one or more natural or associated cultural or heritage features of special significance, or natural landscape of high scenic quality</p> <p>Area should be large enough to protect the integrity of the features and its immediately related surroundings</p>
Organisational Responsibility	<p>Owned by the Crown or vested in an administering body</p> <p>Controlled and managed by DOC unless an administering body would better carry out the purposes of the reserve</p>

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

Reserves which do not get automatically classified 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)].

An example of automatic classification is health sector reserves which all, by s.10 Health Sector (Transfers) Amendment Act 2000, became Government purpose (health and disability sector and related purposes) reserves.

### **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 (s.26)
- 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 lease, licence or easement with significant protection/development implications (see Chapter 7) so that the appropriate principal purpose of the reserve is decided first
- authorising a major administering body work with significant protection/development implications so that the appropriate principal purpose of the reserve is decided first.

### **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. Note that under s.4, there are clear obligations to consult with Maori and consider their views over name (see Chapter 6).

## 13.2 Classification of Reserves by the Minister of Conservation

### Can the Administering Body Request the Minister of Conservation to Classify Reserves?

The administering body can request the Minister, through the Department of Conservation to classify a reserve or reserves. Otherwise, the Department will take the action in due course.

The administering body might make such a request in order to allow any of the actions to be taken which are set out in Section 13.1 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 Administering Body be Consulted About the Classification?

Whether the classification action is taken at the request of the administering body 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 administering body will be able to give its views before the Department gives any public notice (if required) (s.16(4)). The Department will also deal with the Crown's duty under the principles of the Treaty of Waitangi (see Chapter 6).

The administering body 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 administering body's records of the new legal trust under which the reserve is held (see Chapter 1).

### 13.3 Changes of Purpose or Classification

#### What Reasons Are There For Changing the Classification (class) or Purpose (type) of a Reserve?

The classification of a reserve or the purpose of a local or Government purpose 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<sup>19</sup>
- better specify or alter the statutory objectives of management
- make an existing, improper use consistent.<sup>3</sup>

#### 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 Minister of Conservation 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 an unclassified reserve must first be classified in accordance with its existing use. A change of purpose action can be initiated after the classification.

#### Can an Administering Body Approve the Change of Purpose of a Reserve?

Administering bodies do not hold any statutory power to approve the change of purpose of a reserve.

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<sup>19</sup> A use not consistent with the classification or purpose of a reserve, which is allowed by the administering body, is a breach of trust (s.27 and s.40 Reserves Act; s.129 Land Transfer Act 1952).

### **Can an Administering Body Initiate a Change of Classification or Purpose?**

The administering body can initiate the process for a change of classification or purpose of a reserve for which it is the administering body (s.24(1)(b)), subject to meeting the requirements in Chapter 6 of this Guide.

### **If the Administering Body Initiates the Action, what information should it send to the Department of Conservation?**

The administering body should send the following information to the Department:

- a copy of the administering body's resolution, together with any supporting information (eg justification for the change)
- information about any action taken by the administering body under s.4 Conservation Act (Chapter 6) (eg consultation with iwi)
- a photocopy of the instrument by which the reserve was classified
- a copy of the instrument of vesting or appointment to control and manage;
- a description of the current use of the reserve (or part) and a physical description of the land
- a copy of any lease, licence, permit or easement current over the land affected.

If you have difficulty providing this information then please discuss it with your local DOC office, which may be able to help.

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 to see that the administering body is reflecting the views of the community in seeking to change the purpose of the reserve.

### **Will the Department Recover its Costs?**

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

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

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## CHAPTER 14

# Reserve Revocation and Disposal

This Chapter discusses the uplifting of the “reserve” status from land. Generally, uplifting the status or “revocation” of the reserve is triggered by an administering body.

A summary of relevant powers under the Act is given along with practical advice over processes especially that relating to the interaction of an administering body with the Department of Conservation.

### Under What Circumstances can a Reserve be Disposed of?

A reserve<sup>20</sup> may be disposed of only after its reservation is revoked (s.25 Reserves Act). After revocation (s.24):

- The Crown will, under the provisions of the Land Act 1948, dispose of land vested in it, or in trustees deriving title from the Crown. [*After revocation the land becomes Crown land.*]
- The owner (in the case of other reserves including those referred to in s.25(4) and (5)) will dispose of the land 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)).

A health sector reserve can be “transferred” under the provisions of the Health Sector (Transfers) Act 1993 (see s.11E of that Act). The provisions of s.25(3) Reserves Act do not apply to a transfer under the 1993 Act. A transfer under that Act does not, however, revoke the reservation.

Health sector reserves do not become Crown land if they are revoked. They remain vested in the former administering body (see s.11E(6)(a) of the 1993 Act).

Similarly, other revoked reserves do not become Crown land if the administering body did not derive title from the Crown or s.24(4) or (5) Reserves Act applies.

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<sup>20</sup> Any reference to reserve revocation and disposal in this Chapter includes part of a reserve.

### **Does the Administering Body Hold any Relevant Statutory Powers?**

An administering body of a reserve can initiate the process to revoke the reservation of that reserve subject to meeting the requirements in Chapter 6 of the Guide. The process is set out in the table on the next page.

***The Minister of Conservation holds the power to approve the revocation in each case.***

The administering body of a health sector reserve has the obligation to initiate a change of classification or purpose or revocation if that administering body is outside the health and disability sector (see s.11E(5) Health Sector (Transfers) Act 1993.

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

Revocation (s.24) can take place for any reason considered advisable and consistent with the purposes of the Reserves Act. The outcome will be a disposal of the land (s.25) either by the Crown or the administering body (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 reason for revocation and disposal is that the land is surplus to Reserves Act requirements.

Each case must however be considered on its merits.

### **Who gets the proceeds of disposal of a reserve?**

If the land is sold by the Crown (see above) the proceeds are dealt with in accordance with s.82 Reserves Act. They will be paid into the Crown Bank Account.

In all other cases the Minister will determine how the proceeds will be used by the owner when specifying the manner and purpose of disposal (s.25(1) of the Act). The administering body will be consulted.

### What Process Should the Administering Body Follow?

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

Stage	Who does it	What Happens
1.	Administering Body	<ul style="list-style-type: none"> <li>• Makes a decision to begin the process.</li> <li>• Determines the following: <ul style="list-style-type: none"> <li>- That the land is a reserve subject to the Reserves Act <i>NB If it is not then this process is not appropriate.</i></li> <li>- That it is the administering body of the reserve <i>NB If it is not then this process is not appropriate.</i></li> <li>- whether, on revocation of the reservation, the land would become Crown land or not (s.25).</li> </ul> </li> </ul>
2.	Administering Body	<ul style="list-style-type: none"> <li>• Develops a proposal to revoke the reservation, to enable disposal.</li> <li>• Determines whether or not to undertake internal or external consultation on the proposal (before public notice, if required e.g. in accordance with the guidelines in Chapter 6). Consultation with the Commissioner is compulsory (s.24(2)(b)).</li> <li>• Determines how to have regard to views received from the consulted party(s).</li> </ul>
3.	Administering Body Officer	<ul style="list-style-type: none"> <li>• Makes a recommendation to administering body on the revocation and (if appropriate) public notice (s.24(2)) and S.119).</li> <li>• Seeks direction from administering body on what it wants to specify in the public notice about the proposal and reasons for the proposal (s.119(1)(b)).</li> </ul>
4.	Administering Body	<ul style="list-style-type: none"> <li>• Resolves that, for the reason stated in its resolution, the reservation of the reserve should be revoked (s.24(1)(b)).</li> <li>• Makes a decision on any recommendation about public notice.</li> </ul>
5.	Administering Body Officer	<ul style="list-style-type: none"> <li>• Arranges public notice if required. NB If not required, then goes to Stage 7.</li> <li>• Reports to the administering body on any objections.</li> </ul>
6.	Administering Body	<ul style="list-style-type: none"> <li>• Makes a resolution on the objections (s.24(2)(e)).</li> </ul>
7.	Administering Body Officer	<ul style="list-style-type: none"> <li>• As appropriate, provides the required information to the Department of Conservation.</li> </ul>

Stage	Who does it	What Happens
8.	Administering Body Officer	<ul style="list-style-type: none"> <li>• Receives decision.</li> <li>• Notifies the administering body and any other affected party.</li> <li>• If revocation is approved, awaits receipt of <i>Gazette</i> notice from the Department.</li> </ul> <p>NB If approval is not given the process ends.</p>
9.	Administering Body Officer	<p>On receipt of the <i>Gazette</i> notice:</p> <ul style="list-style-type: none"> <li>• records revocation in administering body records<sup>21</sup></li> <li>• if appropriate,<sup>22</sup> arranges disposal in compliance with the manner and purpose of disposal specified in the <i>Gazette</i> notice.</li> </ul>

### Is Public Notification Sometimes not Required?

The provisions of s.24 determine whether public notification is required or not. The administering body needs to follow these provisions in each case.

The requirement to publicly notify must be met unless there is an exemption under ss.24(6) or 24(7).

The administering body has the discretion (s.119(1)(b)(ii)) to decide whether or not to advertise in additional newspapers.

### If The Administering Body Initiates the Action What Information Should it Send to the Department of Conservation?

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

- a copy of the administering body's resolution (s.24(2)) together with any supporting information (eg justification for revocation)
- (if appropriate) the resolution of the administering body 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 part of a reserve is involved, a sketch plan of the part to be revoked
- a copy of any lease, licence, permit or easement current over the land affected by the revocation and a physical description of the land

<sup>21</sup> The land remains a reserve until the notice is published in the *Gazette*.

<sup>22</sup> If the reserve becomes Crown land on revocation, then DOC will arrange disposal through Land Information NZ under the Land Act 1948.

- information about any action taken by the administering body under s.4 Conservation Act (Chapter 6).

At Stage 2 of the process the administering body must provide sufficient information to allow consultation with the Commissioner (this may include all the above items except the administering body's resolutions).

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 generally apply to the **cost of revocation**:

- The administering body will meet its own costs.
- The Department will meet its own costs in any case where the land will become Crown land on revocation of the reservation.
- Costs may be recovered from the administering body in accordance with s.60B Conservation Act in any case where the land will **not** become Crown land on revocation of the reservation.

The administering body 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 generally be responsible for all **disposal costs**, including the costs of survey if required. If the land does not become Crown land then the administering body will meet its own disposal costs.



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## CHAPTER 15

### *Frequently asked questions*

This Chapter of the Guide deals in brief with questions on topics not covered in the earlier Chapters.

***Can a member be paid for services to an administering body (eg as secretary or treasurer)?***

Yes, as part of the cost or expense of administering the reserve (s.80 or, in the case of a recreation reserve for racecourse purposes, s.68).

However, all reserve administering bodies are a “local authority” for the purposes of the Local Authorities (Members Interests) Act 1968 and bound by that Act.

A person cannot remain a member of the administering body or a committee of it if all payments under the contract with that member exceed \$25,000 in any financial year. There are also requirements related to the interests of the spouse of a member or a company in which the member is a shareholder (s.3 of that Act).

The Audit Office may grant an exemption on application by the administering body. There are certain other exceptions in s.3. The administering body may need to obtain legal advice.

***Can a member discuss or vote on a question before an administering body if that member has a pecuniary interest?***

S.6 of the Local Authorities (Members Interests) Act 1968, which answers this question, is quite complex and the administering body would be wise to seek legal advice on any particular situation.

***Should an administering body have insurance?***

The administering body should insure buildings, plant and equipment to their full insurable value against fire and theft.

Cover should be reviewed periodically, and particularly when additions are made to the administering body's assets.

An administering body should also seek advice from insurance suppliers or brokers on any other forms of insurance it should take out according to its circumstances.

**What types of activity can an administering body allow on a reserve?**

The types of activity that an administering body can allow on a reserve will depend on the class/type of reserve (see Chapter 13). They may also be influenced by the management plan for the reserve (see Chapter 11).

Any activity must be consistent with primary purpose for which the reserve is classified or held (see Chapter 1).

Any specifications in the Act about particular activities must be complied with (e.g. s.53 of the Act relating to the use of recreation reserves).

There are also general specifications relating to activities that are common across all classes of reserves (eg s.44 dealing with unauthorised use; s.50 dealing with the taking or killing of animals).

Some activities can only be authorised by the grant of a lease, licence, permit or easement (see Chapter 12).

If you are uncertain about an activity you may want to obtain legal advice.

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## CHAPTER 16

# *Technical and related assistance from the Department of Conservation (DOC)*

Section 39 of the Act authorises the Department, with or without charge, to provide advice, guidance and technical and related assistance or services to an administering body relating to the administration, management or development of the reserve under its control or vested in it.

This Chapter of the Guide answers some commonly asked questions on the subject.

### ***Is the Department obliged to offer this form of assistance?***

No. The Act allows for it as a discretion of the Minister of Conservation. [The decision in each case is delegated to local officers of the Department.]

Generally the Department will not provide the service if it relates to a matter in which another government agency (central or local) has responsibility.

Also, it will not provide the service if that service can be obtained from competent private enterprise suppliers and the administering body has the resources to pay for that service.

### **When will the Department charge for the service?**

The Department will not charge for statutory consultation where the administering body is required under the Act to consult with the Commissioner nor for simple oral advice that requires no investigation.

Charges may be waived or reduced where a clear public good can be demonstrated.

You can ask your local DOC office in advance whether or not advice, guidance, technical or related assistance will be charged for or not in a particular case.

If it will be charged for the administering body will be given an advance estimate of cost.

There is a separate charging regime for official information requests to the Department (as opposed to charges for assistance) and a certain level of information service is available free of cost.

**How much will be charged?**

The Department's staff must always ensure that any charges are fair and reasonable and in proportion to the scale of the service provided.

The charge will be made on a cost recovery basis, but may be waived or reduced (see above).

**Want more details about charging?**

A copy of the Department's standard operating procedure on cost recovery can be obtained on request to your local DOC office.

There is a State Services Commission charging regime for official information requests to the Department (as opposed to assistance) and a certain level of information service is available free of cost.