

Submission

Proposal to Revoke Certain Delegations under the Reserves Act

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Introduction

1. Ashburton District Council (“Council”) welcomes the opportunity to provide comment on the Department of Conservation’s (“DOC”) proposal to revoke certain delegations to Territorial Authorities under the Reserves Act 1977 (“Reserves Act”). This submission is being made on behalf of the Council.
2. Located between Selwyn and Timaru Districts respectively, more than 34,100¹ residents live in the District, with the main town of Ashburton accounting for 19,280 or 56% of residents. The rest of residents live rurally or in smaller towns or villages.
3. Ashburton District is one of New Zealand’s fastest growing districts in New Zealand following the 2013 Census². Since 1996 the district has grown by 23% and this period of rapid but consistent growth follows an earlier period of little to moderate growth. Recent growth has occurred in both urban and rural parts of the district and is considered to have been driven primarily by strong growth in the local rural economy.
4. Within the Ashburton District, Council has responsibility for administering a significant number of reserves, including local purpose and recreation reserves. Local purpose reserves are utilised for a number of uses, including gravel pits, plantations and cemeteries. Further, a number of Ashburton’s parks, domains and other green spaces fall within recreation reserves.
5. Many of the District’s rural recreation reserves are under the day-to-day management of reserves boards, who operate as a sub-committee of Council. Council remains the administering body of these reserves. However, Council receives the benefit of the dedicated services of these reserves boards who attend to the care, maintenance and improvement of these reserves. The reserve boards operate under a constitution, which clearly sets out their responsibilities and their delegated powers, including a requirement for boards to make recommendations to Council on matters such as proposed leases and licences to occupy on the reserve and any other matters falling under section 53 of the Reserves Act.

¹ Source: Statistics New Zealand Population Estimates 30 June 2017

² Source: Statistics New Zealand 2013 Census

6. Council recognises the significant benefit these reserves boards bring to the District, particularly as the boards use their local knowledge and resources to efficiently and effectively manage their respective reserves.

Delegations

7. Delegations to local authorities under the Reserves Act have been in place, in some form, since 1999. These delegations have evolved over time, resulting in the Minister's 2013 decision to approve new, comprehensive delegations to local authorities.
8. Section 10(1) of the Reserves Act enables the Minister to delegate any of its powers and functions under this Act to any local authority. Therefore, the Reserves Act was specifically enacted to enable delegations of the type contained in the 2013 delegations. In doing so, it was clearly acknowledged by Parliament that some decisions could be more efficiently delegated from the Minister to other parties, such as local authorities. For the reasons discussed in this submission, Council does not support the revocation of the 2013 delegations, nor does Council consider removal of these delegations is necessary in light of the recent Court of Appeal *Opuia Coastal Preservation Incorporated v Far North District Council* [2018] NZCA 262 decision ("*Opuia Decision*").
9. Council is not aware of any successful legal challenge against the lawfulness of the Minister's 2013 delegations, other than the Court's *obiter dictum* comment in the *Opuia* decision that the delegations to local authorities were "*highly unusual*". This statement is not enough for DOC to undertake a wide-reaching revocation of the 2013 delegations. In any regard, the Supreme Court has granted leave to appeal the Court of Appeal's decision. As the Supreme Court hearing is yet to be held, it is premature for DOC to propose to revoke the 2013 delegations now.

Effect of the 2013 Delegations on Council Decision Making

10. Council considers the 2013 delegations have led to Council better performing its role as an administering body of the reserves in its District. In particular, these delegations have reduced the time in which decisions are made and has enabled cost effective and informed decisions to be made by Council at a local level.
11. Council acknowledges DOC's concern, highlighted by the *Opuia* decision, that the 2013 delegations have put Council in a position where it is undertaking dual roles, which could be perceived to be a conflict of interest. However, Council considers DOC's concern of a perceived conflict is misplaced. Local authorities are accustomed to undertaking dual functions and working under delegations. In doing so, Council has strived to maintain a distinction between Council's role as the administering body of a reserve and its role as a delegate of the Minister. As such, Council has implemented internal systems to ensure that the delegations are appropriately exercised, in a transparent and lawful manner, in accordance with the Reserves Act and the 2013 delegations.
12. Local authorities should also have the expertise to recognise that, in a contentious matter or a matter with significant public interest, it may be inappropriate for a local authority to elect to exercise the delegations available. Instead, in these circumstances, the local authority should be able to refer a decision back to the Minister (or the Minister's Departmental delegate). If the 2013 delegations were not revoked, it may be useful for DOC to provide guidance on this point.

General Concerns with Proposed Revocations of Delegations

13. Council has a number of general concerns with the proposed revocation of delegations, as follows:
 - Council staff have local knowledge of the District, which enables them to make informed decisions under the current delegations. If this decision making was moved back to DOC staff (who, respectfully, do not have this local knowledge), then there is a real risk of inconsistent, inequitable or incorrect decisions being made.
 - Revoking the 2013 delegations will generate significant additional work for DOC. There is a real concern that DOC will lack capacity and resources to handle this workload.
 - Consequential to the above, the large influx in work for DOC will lead to major delays in decision making.
 - There will inevitably be an increase in cost for applicants, particularly those that will need to go through a two stage approval and/or decision making process with Council and then DOC. Currently, Council absorbs much of the cost of decisions being made regarding proposed activities on reserve land.
 - There is a lack of clarity regarding when DOC will make the decision on whether to revoke these delegations and how this will affect current applications or proposals.
 - Council relies on a number of reserve boards to manage some of the recreation reserves in the District. Council is concerned about the ongoing viability of these reserves boards if these delegations are revoked.
 - Finally, if the delegations are revoked, Councils may decide to create fewer reserves and instead prefer to use other mechanisms (such as the Local Government Act) to hold land.
14. In general, Council considers revoking the 2013 delegations would result in slower, more expensive decision making processes under the Reserves Act.
15. A recent example of how Council and the public benefited from the use of the 2013 delegations was the granting of a right of way easement to the Order of St John ("St John") over Council land (being reserve land). St John had outgrown its current building and were about to undertake a rebuild of its premises. As part of its rebuild, St John requested formal access over this Council land (which was being used as a public car park) in order to provide a back entrance into its premises for its returning ambulances.
16. Council came under significant public pressure to make both a timely decision and a decision that would assist St John. Given the circumstances, St John were also seeking a quick and relatively inexpensive solution.
17. Council considered a number of options, including selling the property to St John, or granting a licence or lease. However, due to the status of the reserve, these options would either be protracted, expensive or unlikely to achieve the desired outcome. Council were ultimately able to use section 48(1) of the Reserves Act to grant a right of way easement and then act under the Minister's delegation to exercise the prior consent role of the Minister. This delegation enabled a final decision to be made in a timely, efficient and inexpensive manner.

Alternatives

18. Council manages reserve land that is non-Crown derived and is land vested in Council as reserve on subdivision, or fee simple land that Council has declared to be reserve. If DOC decides to revoke the

2013 delegations in their current form, Council considers there should be exceptions for these types of reserves.

19. It is Council's view that, at the very least, delegations must be retained for such non-Crown derived reserves. Further, delegations could also be retained where there has been a public notification process under the Reserves Act. In these situations, local authorities will have sufficient resources and knowledge to adequately exercise its delegations.

Legislative Reform

20. The current issues with the Reserves Act and the proposed revocation of the 2013 delegations highlights the need for legislative reform of the Reserves Act. Revoking the current delegations is a step backwards for local communities and will not resolve the known issues with the Reserves Act.
21. Council is aware the Local Authority Property Association ("LAPA") has been advocating to DOC for such legislative reform for several years. Council would support a review of the Reserves Act, particularly to remove dual approval / decision-making processes, where such decisions can be appropriately made by a local authority as an administering body.

Summary

22. Council does not support DOC's proposal to revoke the 2013 delegations. It is also considered the move is unnecessary in light of the *Opuia* decision and is premature, given the *Opuia* decision is currently on appeal to the Supreme Court.
23. At **Attachment 1**, Council has provided specific comments on each of the proposed delegations to be revoked.
24. Finally, Council has reviewed the joint submission prepared by LAPA and the Local Government New Zealand ("LGNZ"). Council supports the joint LAPA/LGNZ submission.
25. Council thanks DOC for the opportunity to submit on the proposed revocation of these Reserves Act delegations.



HAMISH RIACH

Chief Executive

Attachment 1 – Proposed Delegations for Revocation

Section Heading	Power Delegated	Reason	Ashburton District Council's Comment
<p>Section 14</p> <p>Local authority may declare land vested in it to be a reserve for certain purposes</p>	<p>Section 14(4)</p> <p>Minister must consider resolution and cause it to be gazetted or refuse to do so</p>	<p>The Council would be double dipping - i.e. making a resolution and then considering it again in the shoes of the Minister</p>	<p>Council does not support the revocation of this delegation. A decision under section 14(4) can be adequately made by a local authority, particularly if the decision is not contentious, where no objections have been received, or where the District Plan already makes provision for the use of the land as a reserve (or the land is already designated as a proposed reserve under the District Plan). In these situations, there is no benefit (particularly given the additional time and cost involved) of having the Minister decide whether or not to gazette the resolution.</p> <p>Further, the decision has already gone through a two-step process at the local authority level - as Council officers will first make a recommendation to Council on the matter, and then Council must pass the required resolution.</p> <p>Given the above, it is not clear how the Minister would add value to this decision.</p> <p>Council would support a clarification in the current delegation that a local authority may choose to refer any contentious decisions to the Minister (or its Departmental delegate) under section 14(4).</p>
<p>Section 15</p> <p>Minister may authorise exchange of reserves for other land</p>	<p>Section 15(1)</p> <p>Minister may authorise exchange provided that Minister not exercise power in respect of a reserve vested in an administering body except pursuant to a resolution of that body requesting exchange</p>	<p>The delegation enables the Council to control the outcome</p>	<p>Council does not support the revocation of this delegation. The 2013 delegations make it clear a local authority can only exercise this delegation in limited circumstances – that is, if the local authority did not derive title from the Crown, or title would be deemed not to be derived from the Crown if the reserve was going through a section 25 revocation process.</p> <p>Given the limited circumstances under which this delegation can be exercised, a decision under section 15(1) can be adequately made by a local authority, particularly if the decision is not contentious, where no objections have been received, or where a change has already been made to a District Plan in order to enable the exchange. In these situations, there is no benefit (particularly given the additional time and cost involved) of having the Minister decide whether or not the exchange should proceed.</p>

			<p>Further, before the exchange is Gazetted, the decision has already gone through a two-step process at the local authority level - as Council officers will first make a recommendation to Council on the matter, and then Council must pass the required resolution.</p> <p>Council would support a clarification in the current delegation that a local authority may choose to refer any contentious decisions to the Minister (or its Departmental delegate) under section 15(1).</p>
	<p>Section 15(3)</p> <p>The Minister or the administering body, as the case may require, may do all things necessary to effect any exchange, including the payment of money</p>	<p>This delegation is not necessary as s15(3) already authorises the administering body to do these things</p>	<p>Council agrees that this delegation is not necessary, given local authorities already have these power under section 15(3).</p>
<p>Section 24</p> <p>Change of classification or purpose or revocation of reserve</p>	<p>Section 24(1)</p> <p>If Minister considers the change of classification or purpose advisable, or if the local authority notifies Commissioner that pursuant to a resolution of the local authority of proposed changes, Minister may make changes.</p> <p>Section 24(2)(e)</p> <p>Before classification or purpose is changed or reservation revoked, the Minister must consider proposal and, in the case of objections made to an administering body, the administering body's resolution.</p>	<p>The delegation enables the local authority to make the resolution seeking the changes.</p> <p>It also enables it to exercise the Minister's powers to agree to the changes.</p> <p>The delegation to a Council is inappropriate.</p> <p>It would be exercising the Minister's powers to consider objections made to the administering body's own resolution.</p>	<p>Council does not support the revocation of this delegation (noting that this delegation is limited only to changing the classification or purpose of a reserve, and does not extend to revoking a reserve). A decision under section 24(1) can be adequately made by a local authority, particularly if the decision is not contentious, or where no objections have been received.</p> <p>Further, the Council's decision to change the classification or purpose of a reserve will have already gone through a two-step process at the local authority level - as Council officers will first make a recommendation to Council on the matter, and then Council must pass the required resolution. Therefore, there is little benefit in the Minister having an additional layer of decision making (section 24(1)) or consideration of objections (section 24(2)(e)).</p> <p>If the delegation is not revoked, Council would support a clarification in the current delegation that a local authority may choose to refer any contentious decisions under section 24 to the Minister (or its Departmental delegate).</p>
<p>Section 41</p> <p>Management Plans</p>	<p>Section 41(1)</p> <p>Administering body must prepare and submit to Minister a management plan for approval</p>	<p>The delegation seems inappropriate.</p> <p>The administering body ends up preparing the plan and approving it.</p>	<p>Council does not support the revocation of this delegation.</p> <p>Local authorities have the local knowledge and expertise to prepare and finalise management plans for their own reserves. Further, local authorities will administer the public consultation process for a proposed management plan and will take into account any public submissions when preparing the management plan. Therefore, a local authority is best placed to finalise the management plan.</p>

		The intention is that there be a separation of powers.	<p>This delegation is not considered “inappropriate”, as it is not uncommon for a local authority to prepare a plan, hear public comment on the plan and then make the final decision on the plan. Local authorities routinely undertake this process in the preparation of a new district plan. The preparation of a management plan is considered no different, as the Council must prepare the plan having regard to public consultation and the purpose for which the reserve is classified.</p> <p>For the above reasons, there is no discernible benefit in the Minister having a final approval of the management plan. This is particularly given the significant extra time and cost involved with the Minister (or its Departmental delegate) coming up to speed with the local issues with the reserve and the public comments received. The Minister/DOC are unlikely to have sufficient resources to undertake this review and approval process in a timely manner.</p> <p>In addition to the guidance given in section 41, local authorities may benefit from DOC preparing clear and robust guidelines on the form and content of a management plan.</p>
Section 42 Preservation of trees and bush	Section 42(1) The destruction of trees and bush on any historic, scenic, nature or scientific reserve may not occur without a permit granted under s 48A or with the express consent of the Minister	As noted below it would not be appropriate to delegate to administering bodies the Minister’s power under s 48A(3) to impose conditions	<p>Council does not support the revocation of this delegation.</p> <p>Under section 42(2), local authorities already have sole power to decide whether to cut or destroy trees or bushes on recreation or local purpose reserves. Therefore, to the extent this delegation would be exercised under section 42(1) for historic or scenic reserves, local authorities should already have the appropriate expertise to determine whether trees or bushes should be cut or destroyed, to provide consent and impose appropriate conditions.</p>
Section 45 Erection of shelters, cabins and lodges	Section 45(1) The administering body may with the Minister’s prior consent approve certain things	The delegation is inappropriate The administering body makes both the initial decision and the Minister’s decision	Council does not support the revocation of this delegation. Council has the necessary expertise to determine whether approval should be granted and the appropriate terms and conditions on which such approval can be given, without the need to defer to the Minister.
Section 48 Grants of rights of way and other easements	Section 48(1) Where reserve vested in administering body, it may with the consent of the Minister grant rights of ways and easements	The delegation is inappropriate The administering body makes both the initial decision and the Minister’s decision	<p>Council does not support the revocation of this delegation. Council exercises this delegation on a frequent basis and revoking this delegation would have a significant impact on Council and the community.</p> <p>A decision under section 48(1) can be adequately made by a local authority, particularly if the decision is not contentious, or where public notice has been given under section 48(2) and no objections</p>

			<p>have been received. In these situations, there is no benefit (particularly given the additional time and cost involved) in having the Minister decide whether or not the easement should be granted.</p> <p>If the delegation is not revoked, Council would support a clarification in the current delegation that a local authority may choose to refer any contentious decisions under section 48(1) to the Minister (or its Departmental delegate). Further, local authorities would benefit from additional clarification on the circumstances in which an easement can be granted over a reserve (under section 48(1)(a)-(f)).</p>
<p>Section 48A</p> <p>Use of reserve for communication station</p>	<p>Section 48A(1)</p> <p>The administering body of a reserve vested in it acting with the consent of the Minister may grant a licence for certain things</p> <p>Section 48A(3)</p> <p>A licence issued under s 48A(1) must be subject to such terms and conditions as the administering body imposes with the approval of the Minister</p>	<p>The delegation is inappropriate.</p> <p>The administering body can give itself consent by exercising the delegation</p> <p>The delegation is inappropriate.</p> <p>The administering body makes the initial decision on terms and conditions and can then ratify it by exercising the delegated power.</p>	<p>Council does not support the revocation of the delegations under section 48A(1) and 48A(3). Council has the necessary expertise to determine whether a licence should be granted (and the appropriate conditions on which it should be granted), without the need to defer to the Minister.</p>
<p>Section 51</p> <p>Introduction of flora and fauna</p>	<p>Section 51(1)</p> <p>For the purpose of restoring, promoting or developing certain reserves, the Minister may authorise the administering body to introduce flora or fauna</p>	<p>The delegation is inappropriate.</p> <p>In exercising the power of the Minister, the administering body is able to act in its own interests.</p>	<p>Council does not support the revocation of this delegation.</p>
<p>Section 53</p> <p>Powers (other than leasing) in respect of recreation reserves</p>	<p>Section 53(1)(d)</p> <p>Administering body may prescribe not more than 40 days in any year that the public shall not be entitled to have admission to reserve unless on payment of charges provided that with the Minister's prior consent the number of days may be increased.</p>	<p>The delegation is inappropriate.</p> <p>The administering body is able to increase the maximum number of days to exclude the public from a reserve unless they pay money; and then confirm the decision by exercising the delegated power.</p>	<p>Council does not support the revocation of either delegation. A local authority, (as the administering body of the recreation reserve), can adequately manage these reserves and make decisions regarding public exclusions and exclusive uses of the reserve. Such decisions would only be made with community support. Therefore, there is no benefit, particularly in terms of additional time and cost, in these decisions being referred to the Minister for his/her approval.</p>

	<p>Section 53(1)(e)</p> <p>The administering body may grant exclusive use of reserve but not for more than 6 consecutive days, with power for licensee to charge admission fees provided that the Minister may consent to an increase in the number of consecutive days.</p>	<p>The delegation is inappropriate. The administering body makes the initial decision on closure and can then increase the period by exercising the Minister's powers.</p>	
<p>Section 54</p> <p>Leasing powers in respect of recreation reserves (except farming, grazing, or afforestation leases)</p>	<p>Section 54(1)</p> <p>With the prior consent of the Minister the administering body in which a reserve is vested may lease parts of a reserve to a third party</p>	<p>The delegation is inappropriate.</p> <p>The administering body makes an initial decision to lease and then exercises the Minister's powers to grant prior consent.</p>	<p>Council does not support the revocation of this delegation. This delegation is also frequently exercised by Council. Therefore, revoking this delegation would have a significant impact on Council and the community.</p> <p>A local authority, as the administering body of the recreation reserve, has the necessary knowledge and expertise to determine if it is appropriate to grant a lease over all, or part of, the reserve, while having regard to the purposes of a recreation reserve, (as set out in section 17 of the Reserves Act). Unless exempt under section 54(2A), local authorities must also undertake a public notification process before granting the lease or licence and take into account any objections in making a decision. In addition, Schedule 1 of the Reserves Act provides local authorities with clear guidance on the basic provisions which must be included in such a lease.</p> <p>Given the above, there is no benefit, particularly in terms of additional time and cost, in the decision to lease a reserve also being deferred to the Minister for the Minister's prior consent.</p> <p>Retaining this delegation would be consistent with section 54(1A), as this section already exempts local authorities from having to obtain the Minister's prior consent before granting a lease or licence in limited circumstances.</p>
<p>Section 55</p> <p>Powers (other than leasing) in respect of reserves</p>	<p>Section 55(2)(a)</p> <p>The administering body of a scenic reserve may, with the prior consent of the Minister, enclose open parts of the reserve.</p>	<p>The delegation is inappropriate. The administering body makes both the initial decision and the Minister's decision.</p> <p>The delegation is inappropriate.</p>	<p>Council does not support the revocation of this delegation. A local authority, as the administering body of the scenic reserve, has the necessary knowledge and expertise to make decisions regarding the proper management of these reserves under sections 55(2)(a), (d), (e), (f), (g), without requiring the Minister's prior consent. Local authorities already have a number of powers with respect to management of</p>

	<p>Section 55(2)(d) The administering body of a scenic reserve may, with the prior consent of the Minister, set apart areas for gardens, baths, picnic grounds etc for the public.</p> <p>Section 55(2)(e) The administering body of the scenic reserve may, with the Minister's prior consent, erect buildings on the reserve</p> <p>Section 55(2)(f) The administering body of the scenic reserve may, with the prior consent of the Minister, do such things as it considers necessary, including the erection of buildings and structures for public use to obtain the enjoyment of the sea, lake, river or stream</p> <p>Section 55(2)(g) The administering body of a scenic reserve may, with the prior consent of the Minister, set apart and use part of the reserves as sites for residences etc for the proper and beneficial management and administration of the reserve</p>	<p>The administering body makes both the initial decision and the Minister's decision.</p> <p>The delegation is inappropriate. The administering body makes both the initial decision and the Minister's decision.</p> <p>The delegation is inappropriate. The administering body makes both the initial decision and the Minister's decision.</p> <p>The delegation is inappropriate. The administering body makes both the initial decision and the Minister's decision.</p>	<p>scenic reserves (under section 55(1)) which do not require the Minister's prior consent.</p> <p>Therefore, there is no benefit, particularly in terms of additional time and cost, in these decisions being referred to the Minister for the Minister's approval.</p>
<p>Section 56 Leasing powers in respect of scenic reserves</p>	<p>Section 56(1) With prior consent of the Minister, the administering body in the case of a scenic reserve may grant leases or licences</p> <p>Section 56(2)</p>	<p>The administering body makes both the initial decision and the Minister's decision.</p> <p>This delegation is not necessary.</p>	<p>Council does not support the revocation of this delegation, for the same reason as given above with respect to section 54 (leasing of recreation reserves).</p>

	Before granting a lease, the administering body must give public notice		
Section 58 Powers in respect of historic reserves	Section 58(b) With prior consent of the Minister, the administering body may set apart and use part of an historic reserve for residences for officers and staff	The administering body makes both the initial decision and the Minister's decision.	Council does not support the revocation of this delegation.
Section 58A Leasing powers in respect of historic reserves	Section 58A(1) With prior consent of the Minister, the administering body of an historic reserve may grant leases or licences	The administering body makes both the initial decision and the Minister's decision.	Council does not support the revocation of this delegation, for the same reason as given above with respect to section 54 (leasing of recreation reserves).
Section 59A Granting of concessions on reserves administered by Crown	Section 59A(1) The administering body may grant concessions	This seems inappropriate. If administering bodies of vested reserves need the prior consent to Minister to grant leases and licences, why should administering bodies of controlled and managed reserves be able to grant concessions?	Council does not support the revocation of this delegation
Section 67 Leasing	Section 67(1)(b) With prior consent of the Minister, the administering body may lease a recreation reserve set apart for racecourse purposes to a racing club	The administering body makes both the initial decision and the Minister's decision	Council does not support the revocation of this delegation.
Section 72 Farming by another person or body	Section 72(1) Where a recreation reserve or local purpose reserve is not required for purposes of classification the administering body may enter into an agreement or lease with the Minister to provide for a third party to carry out farming	The delegation is inappropriate as the administering body would end up entering into an agreement with itself	Council does not support the revocation of this delegation. It is not inappropriate for a local authority to enter into an agreement or lease with itself, when the purpose of the agreement or lease is for the benefit of the third party who will be farming or grazing the reserve.

<p>Section 73</p> <p>Leasing of recreation reserves for purposes of farming, grazing, afforestation or other purposes</p>	<p>Section 73(1)</p> <p>Where recreation reserve not currently required for purposes of its classification, the administering body may with the prior consent of the Minister if reserve vested in the administering body, grant a lease, otherwise only Minister can grant leases</p> <p>Section 73(2)</p> <p>Likewise, for afforestation</p> <p>Section 73(3)</p> <p>Leases of recreation reserves where inadvisable or inexpedient to revoke reservation of recreation reserve</p> <p>Section 73(5)</p> <p>Prior consent of Minister before any member of administering body becomes the lessee of land under control of administering body</p> <p>Section 73(6)</p> <p>Any lease under s 73 may with approval of administering body be surrendered.</p>	<p>The administering body makes both the initial decision and the Minister's decision.</p> <p>The administering body makes both the initial decision and the Minister's decision.</p> <p>The administering body makes both the initial decision and the Minister's decision.</p> <p>Delegation is inappropriate.</p> <p>Delegation is unnecessary</p>	<p>Council does not support the revocation of these delegations, for the same reason as given above with respect to section 54 (leasing of recreation reserves).</p>
<p>Section 74</p> <p>Licences to occupy reserves temporarily</p>	<p>Section 74(1)(b)(ii)</p> <p>Licences may be granted in the case of any reserve except a nature reserve by the Commissioner</p>	<p>This delegation is misconceived. This power relates to Crown vested reserves managed by the Department</p>	<p>Agree – this delegation does not appear to relate to local authorities.</p>

<p>Section 75</p> <p>Afforestation by administering body</p>	<p>Section 75(1)</p> <p>With prior consent of the Minister an administering body of a recreation reserve may afforest it.</p> <p>Section 75(2)</p> <p>Minister may refuse to give consent</p>	<p>The administering body makes both the initial decision and the Minister's decision</p> <p>The administering body makes both the initial decision and the Minister's decision</p>	<p>Council does not support the revocation of this delegation. This delegation also relates to an administering body's decision to afforest a local purpose reserve (section 75(1)(a)). Local authorities have sufficient expertise to determine whether it is appropriate to afforest a local purpose or recreation reserve, without having to also seek the approval of the Minister.</p> <p>Further, section 75(1) requires the administering body to undertake a public notification process and take into account any objections to the proposal. The administering body is therefore adequately informed to make the initial decision and the Minister's decision, under sections 75(1) and 75(2).</p>
<p>Section 16</p> <p>Classification or reserves</p>	<p>Section 16(1)</p> <p>Minister must by Gazette Notice classify reserves according to their primary purpose provided that where reserves are controlled or managed by a Council the Minister must not classify without consulting it</p> <p>Section 16(4)</p> <p>Before classifying a reserve, the Minister must give public notice</p>	<p>The delegation effectively means the Council consults with itself.</p> <p>If the previous delegation is revoked this will need to be revoked as well</p>	<p>Council does not support the revocation of this delegation. It is expected that this delegation under section 16(1) will only be used by Council where a reserve is controlled or managed by Council. In such circumstances, Council (who already manage or control the reserve) are the appropriate body to make decision on the appropriate classification of such a reserve.</p> <p>Without this delegation, the Minister must still consult with the Council before making a decision. It is expected that, in undertaking such consultation, the Minister would be strongly guided by Council's classification recommendation. Therefore there is little benefit (particularly in terms of the additional time and cost incurred) in the delegation being revoked and the Minister making the classification decision in consultation with the Council.</p> <p>Council does not support the revocation of this delegation for the reasons stated above in section 16(1).</p>
<p>Section 18</p> <p>Historic reserves</p>	<p>Section 18(2)(e)</p> <p>Except where the Minister otherwise determines, the indigenous flora and fauna and natural environment of an historic reserve shall as far as possible be preserved</p>	<p>The Minister may wish to maintain control of these decisions</p>	<p>Council does not support the revocation of this delegation. This delegation only applies where the local authority is the administering body of the historic reserve. Therefore, the local authority should either have the requisite local knowledge of the flora, fauna and natural environment to be able to make such a determination, or will work with an external party or agency with the relevant expertise. In any regard, local authorities can always seek the expertise of DOC if it is considered necessary.</p>

			If the delegation is not revoked, the Minister may wish to consider providing local authorities with clear and robust guidelines to enable consistent decision making under this section.
Section 19 Scenic reserves	<p>Section 19(2)(a) Except where the Minister otherwise determines, the indigenous flora and fauna and natural environment of a scenic reserve classified for its scenic values shall as far as possible be preserved and exotic fauna and flora shall be exterminated</p> <p>Section 19(3)(a) Except where the Minister otherwise determines, the flora and fauna, ecological associations and natural environment and beauty of a scenic reserve classified for the purpose of providing suitable areas to develop for purposes of generating scenic beauty or interest, shall as far as possible be preserved</p>	<p>The Minister may wish to maintain control of these decisions</p> <p>The Minister may wish to maintain control of these decisions</p>	Council does not support the revocation of these delegations for the same reasons given in relation to section 18(2)(e) above.
Section 24 Change of classification or purpose or revocation of reserve	<p>Section 24(3) No change of classification or purpose of a scenic, nature or scientific reserve to a recreation, historic, government purpose or local purpose should be made except where the Minister considers the purpose etc no longer appropriate because of destruction of bush or natural features</p> <p>Section 24(5) Minister may change the classification or purpose or revoke the reservation of an historic reserve by reason of destruction of historic features.</p>	<p>The Minister may wish to maintain control of these decisions given the importance of the type of reserve</p> <p>The Minister may wish to maintain control of these decisions given the relative importance of historic reserves</p>	<p>Council does not support the revocation of this delegation. Local authorities should have the requisite skill and knowledge to make an informed decision under its delegation.</p> <p>If the delegation is not revoked, the Minister may wish to consider providing local authorities with clear and robust guidelines to enable consistent decision making under this section.</p>

<p>Section 42</p> <p>Preservation of trees and bush</p>	<p>Section 42(1)</p> <p>Minister must consent to cutting or destruction of bush on any historic, scenic, nature or scientific reserve except in accordance with a permit under s 48A or with the express consent of the Minister and subject to any terms and conditions the Minister chooses to impose</p>	<p>The section 48A permit issue has been dealt with in the table above</p> <p>The Minister may wish to maintain control over the circumstances of providing express consent to destroying or cutting down bush.</p>	<p>Council does not support the revocation of this delegation. At a practical level, a local authority should be able to determine when vegetation should be cut or destroyed and what conditions to impose.</p>
<p>Section 50</p> <p>Taking or killing of fauna</p>	<p>Section 50(1)</p> <p>The Minister in the case of a scenic, historic, nature or scientific reserve and the administering body of any recreation, government purpose or local purpose reserve may grant any qualified person authorisation to take and kill any specified type of fauna and authorise the use of firearms etc.</p>	<p>The Minister may wish to maintain control over authorisations on the killing etc of fauna on scenic, historic, nature and scientific reserves</p>	<p>Council does not support the revocation of this delegation.</p>