

DEED OF TRANSFER OF BUILDING ACT FUNCTIONS

THIS DEED is made the **24th** day of **April 1996**

BETWEEN THE OTAGO REGIONAL COUNCIL a body corporate under the Local Government Act 1974 ("the ORC")

AND THE DUNEDIN CITY COUNCIL a body corporate under the Local Government Act 1974 ("the DCC")

WHEREAS:

1. The ORC is the Regional Council for the Otago region under the Local Government Act 1974 and the Local Government (Otago Region) Reorganisation Order 1989.
2. The DCC is the territorial authority for Dunedin City under the Local Government Act 1974 and the Local Government (Otago Region) Reorganisation Order 1989.
3. The Otago region under the Local Government (Otago Region) Reorganisation Order 1989 includes the whole of the district of the DCC and the DCC is a constituent authority of the Dunedin region.
4. The DCC has the functions, powers and duties of a territorial authority under the Building Act 1991 throughout its district which extends to the outer limit of the territorial sea of New Zealand, except within the coastal marine area.
5. The ORC has the functions, powers and duties of a territorial authority under the Building Act 1991 over structures fixed in, on, under, or over any foreshore or seabed within the coastal marine area in the Otago region.

6. Under Section 25 Building Act 1991 the functions, powers and duties of a territorial authority under the Building Act 1991 may be transferred by one territorial authority to another.
7. The ORC has agreed to transfer to the DCC and the DCC has agreed to accept transfer of all the functions, powers and duties, of the ORC as a territorial authority, under the Building Act 1991, over structures fixed in, on, under or over any foreshore or seabed within the coastal marine area which is within the district of the DCC.
8. Both the ORC and DCC agree that the transfer is desirable on the grounds of efficiency and of the technical and special capability and expertise of the DCC in carrying out the functions, powers and duties of a territorial authority under the Building Act 1991.
9. The proposed transfer has been approved by the ORC after using the special consultative procedure specified in Section 716A Local Government Act 1974.
10. Before using the special consultative procedure, the ORC gave notice of its proposal to transfer its functions, powers and duties to the Minister of Internal Affairs.

NOW THIS DEED RECORDS:

1. TRANSFER

- 1.1 The ORC transfers to the DCC all the functions, powers and duties of a territorial authority under the Building Act 1991 over structures fixed in, on, under or over any foreshore or seabed in the coastal marine area which is within the district of the DCC.
- 1.2 The DCC accepts the transfer effected by clause 1.1.
- 1.3 This transfer is on the terms and conditions set out in this Deed, and is subject to the provisions of Section 25 Building Act 1991 and any other enactment.

2. DUTIES OF THE DCC

In exercising the function, powers and duties transferred, the DCC shall:

- (a) observe the purposes and principles set out in Section 6 Building Act 1991
- (b) avoid unreasonable delay in accordance with the duties imposed by Section 9 Building Act 1991
- (c) have all the functions listed in Section 24 Building Act 1991
- (d) carry out the duty to gather information and monitor under Section 26 Building Act 1991
- (e) keep the records required by Section 27 Building Act 1991.

3. COSTS

- 3.1 The DCC shall have all the functions, powers and duties of a territorial authority under the Building Act 1991 and of a territorial authority under any other enactment to enable it to recover all costs incurred by it in carrying out the functions, powers and duties transferred.
- 3.2 The DCC shall have no right to call on the ORC for any contribution to costs incurred by it in carrying out the functions, powers and duties transferred.

4. REPORTING

- 4.1 The DCC shall report to the ORC at yearly intervals on the exercise of the functions, powers and duties transferred.
- 4.2 The ORC may, at any other time, request from the DCC information or reports it may reasonably require in the exercise of the functions, powers and duties transferred.

5. LIAISON

- 5.1 This clause applies only to coastal hazard areas as defined in the Regional Coastal Plan for Otago. In any other case, the DCC may consult with the ORC where it considers that in performing the functions, powers and duties transferred, it would be assisted by any technical or special expertise and capability of the ORC.
- 5.2 The DCC shall refer to the ORC immediately upon receipt, copies of each application relating to the functions, powers and duties transferred for:
- (a) a Project Information Memorandum under Section 30 Building Act 1991
 - (b) a Building consent under Section 33 Building Act 1991
 - (c) a Code compliance certification under Section 43 Building Act 1991, including the accompanying advice of completion of a building work
 - (d) an approval for change of use or extension of life under Section 46 Building Act 1991
- 5.3 The ORC may give to the DCC any information, advice or comment on any matter referred to under it under 5.2 within such time and such manner as will enable the DCC to comply with any statutory time limits for performance of the functions, powers and duties under the Building Act 1991 transferred by this Deed.
- 5.4 The DCC shall send, as soon as practicable, to the ORC, copies of:
- (a) all Project Information Memoranda issued under Section 31 Building Act 1991 in the exercise of the functions, powers and duties transferred
 - (b) all building consents issued under Section 35 Building Act 1991 in the exercise of the functions, powers and duties transferred

- (c) all code compliance certificates issued under Section 43(3) or received under Section 56(3) Building Act 1991 in the exercise of the functions, powers and duties transferred
- (d) all compliance schedules issued under Section 44(2) Building Act 1991 in the exercise of the functions, powers and duties transferred
- (e) all building statements of fitness under Section 44(4)(c) Building Act 1991 in the exercise of the functions, powers and duties transferred
- (f) all annual building warrant of fitness under Section 44(4)(c) Building Act 1991 in the exercise of the functions, powers and duties transferred
- (g) all authorisations for change of use or extension of life granted under Section 46 Building Act 1991 in the exercise of the functions, powers and duties transferred
- (h) all notices issues and proceedings taken under Sections 42, 45(4), 46(5) and under Part IX Building Act 1991 in the exercise of the functions, powers and duties transferred
- (i) all building certificates received under 56 Building Act 1991 in the exercise of the functions, powers and duties transferred
- (j) all building certificates notices of contravention issued under Regulation 8(2) Building Regulations 1992 in respect of the functions, powers and duties transferred.

5.6 The DCC shall inform the ORC of the outcome of any exercise of the functions, powers and duties transferred under Part IX Building Act 1991 transferred by this Deed.

6. RELINQUISHMENT

6.1 If the DCC considers it may relinquish the functions, powers and duties transferred, it shall first consult with the ORC.

6.2 If, following such consultation, the DCC decides to relinquish all or any of the functions, powers and duties transferred it shall give three months written notice of its decision to the ORC.

6.3 The period of three months shall run from the date of service of the notice on the office of the ORC at 70 Stafford Street, Dunedin.

7. VARIATION

The ORC may change the transfer effected by this Deed at any time by notice to the DCC.

8. REVOCATION OF TRANSFER

The ORC may, at any time, revoke the transfer effected by this Deed by notice to the DCC.

9. DURATION

This Deed and the transfer made under it shall remain in full force and effect until revoked by the ORC or relinquished by the DCC.

10. INTERPRETATION

"Building Act 1991" includes any Regulations made under that Act.

"Coastal marine area" has the same meaning as in Section 2(1) Resource Management Act 1991.

"District" means the district of the DUNEDIN CITY COUNCIL as constituted by the Local Government (Otago Region) Reorganisation Order 1989.

"Region" means the Otago region as constituted by the Local Government (Otago Region) Reorganisation Order 1989.

"Regional Coastal Plan" means:

- (a) the Proposed Regional Coastal Plan for Otago dated July 1994 including any variations to that Plan initiated under Clause 16A of the First Schedule Resource Management Act 1991, until such time as a Regional Coastal Plan for Otago is approved by the Minister of Conservation under the First Schedule, Resource Management Act 1991;
- (b) any operative Regional Coastal Plan for Otago approved after the date of this Deed by the Minister of Conservation under the First Schedule, Resource Management Act 1991 and includes all operative changes to that Plan.

This Deed was executed on the date appearing at its head.

THE COMMON SEAL of
THE OTAGO REGIONAL COUNCIL

was affixed

in the presence of:

_____ Chairperson

_____ Director Corporate Services

THE COMMON SEAL of
THE DUNEDIN CITY COUNCIL

was affixed

in the presence of:

_____ Mayor

_____ Administration Manager

DEED OF TRANSFER OF NOISE ENFORCEMENT FUNCTIONS

THIS DEED is made the **24th** day of **April 1996**

BETWEEN THE OTAGO REGIONAL COUNCIL a body corporate under the Local Government Act 1974 ("the ORC")

AND THE DUNEDIN CITY COUNCIL a body corporate under the Local Government Act 1974 ("the DCC")

WHEREAS:

1. The ORC is the Regional Council for the Otago region under the Local Government Act 1974 and the Local Government (Otago Region) Reorganisation Order 1989.
2. The DCC is the territorial authority for Dunedin City under the Local Government Act 1974 and the Local Government (Otago Region) Reorganisation Order 1989.
3. The Otago region under the Local Government (Otago Region) Reorganisation Order 1989 includes the whole of the district of the DCC and the DCC is a constituent authority of the Dunedin region.

4. Under Section 30(1)(d)(vi) of Resource Management Act 1991 the ORC has, in the coastal marine area of its region, the control, in conjunction with the Minister of Conservation, of the emission of noise and the mitigation of the effects of noise.
5. Section 33 Resource Management Act 1991 enables a local authority that has powers, functions or duties under the Resource Management Act 1991 to transfer any one or more of those functions, powers, duties to another public authority.
6. The ORC has agreed to transfer to the DCC and the DCC has agreed to accept transfer of those functions, powers and duties of the ORC referred to in the Schedule in the coastal marine area within the district of or adjoining the district of the DCC in respect of the emission of noise and the mitigation of the effects of noise under the provisions of the Resource Management Act 1991.
7. Both the ORC and the DCC agree the transfer is desirable on all of the following grounds:
 - (i) the DCC represents the appropriate community of interest relating to the exercise and performance of the functions, powers and duties transferred; and
 - (ii) efficiency; and
 - (iii) the technical and special capability and expertise of the DCC in matters relating to the emissions of noise and mitigation of the effects of noise.
8. The proposed transfer has been approved by the ORC after using the special consultative procedure specified in Section 716A Local Government Act 1974.
9. Before using the special consultative procedure the ORC gave notice of its proposal to transfer these functions, powers and duties to the Ministry for the Environment.

NOW THIS DEED RECORDS:

1. TRANSFER

- 1.1 The ORC transfers to the DCC all the functions, powers and duties of the Regional Council under Section 30(1)(d)(vi) in respect of the emission of noise and the mitigation of the effects of noise under the provisions of the Resource Management Act 1991 referred to in the schedule in the coastal marine area in or adjoining the district of the DCC.
- 1.2 The DCC accepts the transfer effected by clause 1.1.
- 1.3 This transfer is on the terms and conditions set out in this Deed, and is subject to the provisions of Section 33 Resource Management Act 1991 and any other enactment.

2. EXERCISE OF FUNCTIONS:

- 2.1 In the exercise of the functions, powers and duties transferred, the DCC shall have regard to and act in accordance with:
- (i) the Resource Management Act 1991
 - (ii) the New Zealand Coastal Policy Statement
 - (iii) any relevant National Policy Statement
 - (iv) any relevant National Environmental Statements
 - (v) any Regulations made under the Resource Management Act 1991
 - (vi) any Regional Policy Statement or proposed Regional Policy Statement
 - (vii) any Regional Coastal Plan or proposed Regional Coastal Plan
 - (viii) any other relevant Regional Plan or other relevant proposed Regional Plan
 - (ix) any relevant District Plan or proposed District Plan.
- 2.2 The DCC shall inform the ORC of any exercise of the functions, powers and duties under PART XII Resource Management Act 1991 transferred by this Deed.

3. COSTS

3.1 The DCC shall have all the functions, powers and duties of a local authority under the Resource Management Act 1991 and under any other enactment to enable it to recover all costs incurred by it in carrying out the functions, powers and duties transferred.

3.2 The DCC shall have no right to call on the ORC for any contribution to costs incurred by it in carrying out the functions, powers and duties transferred.

4. REPORTING

4.1 The DCC shall report to the ORC at yearly intervals on the exercise of the functions, powers and duties transferred.

4.2 The ORC may, at any other time, request from the DCC information or reports it may reasonably require in the exercise of the functions, powers and duties transferred.

5. RELINQUISHMENT

5.1 If the DCC considers it may relinquish the functions, powers and duties transferred, it shall first consult with the ORC.

5.2 If, following such consultation, the DCC decides to relinquish all or any of the functions, powers and duties transferred it shall give three months written notice of its decision to the ORC.

5.3 The period of three months shall run from the date of service of the notice on the office of the ORC at 70 Stafford Street, Dunedin.

6. VARIATION

The ORC may, at any time, change the transfer effected by this Deed at any time by notice to the DCC.

7. REVOCATION OF TRANSFER

The ORC may, at any time, revoke the transfer effected by this Deed by notice to the DCC.

8. DURATION

Unless revoked by the ORC or relinquished by the DCC this Deed and the transfer made under it shall remain in full force and effect.

9. INTERPRETATION

"*Coastal marine area*" has the same meaning as in Section 2(1) Resource Management Act 1991.

"*District*" means the district of the DCC.

"*Region*" means the Otago region as constituted by the Local Government (Otago Region) Reorganisation Order 1989.

SCHEDULE

This Deed transfers the following functions, powers and duties under the Resource Management Act relating to the emission of noise and mitigation of effects of noise in the coastal marine area within or adjoining the district of the DCC.

1. Section 16 Resource Management Act: Duty to avoid unreasonable noise: monitoring and enforcing through the provisions of the Resource Management Act the duty contained in Section 16.
2. Section 17 Resource Management Act: Duty to avoid, remedy or mitigate adverse effects: monitoring and enforcing through the provisions of the Act compliance with the duty created by Section 17.
3. Section 22 Resource Management Act: Duty to give certain information.

4. Section 35 Resource Management Act: Duty to gather information, monitor and keep records in respect of the emission of noise and in mitigation of the effects of noise within the coastal marine area.
5. Section 38 Resource Management Act: Authorisation and Responsibility of Enforcement Officers. Appointing enforcement officers to exercise the functions, powers and duties transferred in respect of the emission of noise and mitigation of the effects of noise within the coastal marine area.
6. Part XXI Resource Management Act: Declarations, Enforcement and Ancillary Powers. All functions, powers and duties held by the ORC under this part of the Act and necessary or incidental to the exercise of the other functions, powers and duties contained in this Schedule including without limitation the commencement, prosecution and cost recovery of proceedings to enforce any of the provisions of any of the documents referred to in clause 2.1 of this deed.

This Deed was executed on the date appearing at its head.

THE COMMON SEAL of
THE OTAGO REGIONAL COUNCIL

was affixed

in the presence of:

_____ Chairperson

_____ Director Corporate Services

THE COMMON SEAL of
THE DUNEDIN CITY COUNCIL

was affixed

in the presence of:

_____ Mayor

_____ Administration Manager