

## 11.4. Building Act Transfer

<b>Prepared for:</b>	Council
<b>Report No.</b>	GOV1843
<b>Activity:</b>	Regulatory: Consents and Compliance
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### PURPOSE

- [1] To consider the recommendation of the Regulatory Committee to agree to extend the transfer of Building Act functions from Environment Southland and the West Coast Regional Council.

### EXECUTIVE SUMMARY

- [2] Under item 11.2 of the Agenda of the meeting of the Regulatory Committee on 12 June 2019 it was resolved:  
*That the Committee:*
- 1). **Receives** the report.
  - 2). **Recommends** to Council to agree to extend the transfer of Building Act functions with the Southland Regional Council and the West Coast Regional Council for a period of 2 years.
- [3] This item brings to Council the recommendation of the Regulatory Committee.

### RECOMMENDATION

*That the Council:*

- 1) **Receives** this report.
- 2) **Approves** the Deeds and authorises the Chairman and any other Councillor to execute and witness the affixing of the Common Seal of the Otago Regional Council to the Deeds of Extension and Variation of Transfer of Building Act Functions for West Coast Regional Council and Southland Regional Council.

### BACKGROUND

#### BUILDING CONSENT AUTHORITY (BCA) TRANSFER OF FUNCTIONS

- [4] In 2008 Council accepted the transfer of some Building Act functions from both Environment Southland and West Coast Regional Council. On 1 November 2018 the transfer agreements were extended for a further seven months and are due to expire on 30 June 2019.
- [5] Discussions have been underway to find a more cost-effective delivery arrangement, ideally involving either a single regional council exercising Building Act functions

nationally, or only one South Island Council undertaking this work. At this stage no new arrangements have been agreed. It is likely that negotiations over the potential roles and detailed transfer arrangements may take some time. In large part this is because not all functions can be transferred and there are complex scope and liability issues to be addressed if the function was to be transferred to another Council.

## ISSUE

- [6] Before a regional council can transfer Building Act functions to another regional council it must formally consult its community using the Special Consultative Procedure (SCP) as set out in the Local Government Act 2002. Engagement using the SCP takes around three months to complete from the point at which the Council has a Statement of Proposal to consult on. Neither Environment Southland nor West Coast Regional Council would be able to complete engagement with their communities using the SPC before the current transfer arrangement comes to an end.
- [7] There is no realistic possibility of Environment Southland or West Coast Regional Council establishing alternative arrangements before the current transfer of functions expires on 30 June 2019. Not only would it be impossible to consult their communities in that time frame, it would be impossible for them to develop and implement the systems necessary for them to become accredited Building Consent Authorities in that time. If the current transfer was to expire both Councils would face considerable and costly issues.
- [8] A further complication is that changes to the national framework for managing dams have also been proposed. It is possible that the scope of regional council Building Act roles could change. It would be helpful to have some clarity on this before the decisions are made in relation to the transfer or responsibilities.

## DISCUSSION

- [9] Given the current situation it is considered that the best course of action would be to extend the current transfer arrangements so that orderly negotiations over possible replacements can continue. In the context of possible national level changes, it is recommended that the current transfer provisions be extended for a further two years (to 30 June 2021). The Deeds of Extension and Variation of Transfer provides for early termination, so if negotiations and consultation can be completed before 30 June 2021 the current arrangement can be terminated with 3 months' notice.
- [10] Extending the currently transfer of functions does not expose the Council to any new risks, legislative compliance issues or new costs.
- [11] The Regulatory Committee considered this issue at its meeting of 12 June 2019 and resolved:  
*That the Committee:*  
1). *Receives the report.*  
2). *Recommends to Council to agree to extend the transfer of Building Act functions with the Southland Regional Council and the West Coast Regional Council for a period of 2 years.*

## OPTIONS

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- [12] Extending the current transfer of functions does not expose the Council to any new risks, legislative compliance issues, or new costs.

## **CONSIDERATIONS**

### **Policy Considerations**

- [13] Extending the current transfer continues current policy and provides the opportunity for an orderly consideration of alternative delivery options with other Councils.

### **Financial Considerations**

- [14] Extending the current transfer exposes the Council to no new financial risks and the operation of the current transfer is reflected in the draft Annual Plan for 2019/20.

### **Significance and Engagement**

- [15] Extending the current arrangements is does not trigger the Council's significance policy and public consultation is not required.

### **Legislative Considerations**

- [16] Extending the current arrangements is consistent with the provisions of the Building Act 2004 and the Local Government Act 2002.

### **Risk Considerations**

- [17] Extending the current arrangements exposes the Council to no new risks, but there are risks associated with this activity.

## **NEXT STEPS**

- [18] The next steps are to execute the two Deeds of Extension and Variation of Transfer of Building Act Functions.

## **ATTACHMENTS**

1. Draft Deed of Extension of Transfer of Building Act Function Environment Southland - May 2019 **[11.4.1 - 4 pages]**
2. Draft Deed of Extension of Transfer of Building Act Function WEST COAST - May 2019 **[11.4.2 - 4 pages]**