

8. **TRANSFER OF BUILDING CONTROL FUNCTIONS FROM THE CHATHAM ISLANDS COUNCIL TO THE CHRISTCHURCH CITY COUNCIL**

General Manager responsible:	General Manager Regulation and Democracy Service, DDI 941-8462
Officer responsible:	Peter Mitchell
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PURPOSE OF REPORT

1. The purpose of this report is to seek the Council's approval to accept a transfer by the Chatham Islands Council of its building control functions that require accreditation under the Building Act 2004 to this Council.

FINANCIAL IMPLICATIONS

2. All costs will be recovered through the building consent process with no direct cost to the Christchurch City ratepayers.

Do the Recommendations of this Report Align with 2006-16 LTCCP budgets?

3. Not applicable.

LEGAL CONSIDERATIONS

4. Sections 233-236 of the Building Act 2004 empowers the Council to consider accepting a transfer of the building control function.

Have you considered the legal implications of the issue under consideration?

5. Yes - see below.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

6. This proposed transfer, because of its nature, is not contemplated in the LTCCP or Activity Management Plans.

Do the recommendations of this report support a level of service or project in the 2006-16 LTCCP?

7. Not applicable.

ALIGNMENT WITH STRATEGIES

8. Not applicable.

Do the recommendations align with the Council's strategies?

9. Not applicable.

CONSULTATION FULFILMENT

10. This proposed transfer is not significant for this Council due to the small number of Chatham Islands consents that may be processed.

STAFF RECOMMENDATION

It is recommended that the Council:

- (a) Agree to the transfer, under section 233 of the Building Act 2004, by the Chatham Islands Council of such building control functions, duties and powers, to be detailed in a transfer agreement, to the Christchurch City Council.
- (b) Authorise the General Manager Regulation and Democracy Services to negotiate and sign:
 - (i) a transfer agreement, with the Chatham Islands Council, and identify in detail the exact type of functions, duties and powers to be transferred under the agreement; and
 - (ii) any other agreement with the Chatham Islands Council to give practical effect to the transfer agreement.
- (c) Note that due to the very small number of consents granted by the Chatham Islands Council, in comparison to the number of consents granted by the Christchurch City Council that, there is no need for any specific consultation by this Council on this matter.
- (d) Agree that the transfer is desirable on the ground of efficiency in accordance with section 234 of the Building Act.

BACKGROUND

11. This Council has been approached jointly by the Department of Building and Housing and the Chatham Islands Council, with a request that this Council accept a transfer of the functions, duties and powers of the Chatham Islands Council that require accreditation under the Building Act 2004 to this Council.

STATUTORY POWER OF TRANSFER

12. The Building Act 2004 expressly provides for a transfer of functions and powers between one territorial authority and another.
13. In particular Section 233 provides:

Transfer of functions, duties, or powers of territorial authority

- *A territorial authority may transfer 1 or more of its functions, duties, or powers under this Act to another territorial authority, except the power of transfer conferred by this section.*

Section 234 provides:

Procedure for transfer

- *If a territorial authority proposes to transfer any of its functions, duties, or powers under section 233, the territorial authority must—*
 - (a) use the special consultative procedure in section 83 of the Local Government Act 2002; and*
 - (b) serve notice on the Minister of its proposal to transfer the function, duty, or power; and*
 - (c) agree with the other territorial authority to whom the function, duty, or power is to be transferred that the transfer is desirable on either or both of the following grounds:*
 - (i) efficiency;*
 - (ii) technical or special capability, or expertise.*
14. It will be noted from section 234 that the Chatham Islands Council is required to carry out a special consultative procedure before this transfer can take effect. There is no similar requirement on the Christchurch City Council and a resolution by this Council agreeing to the transfer would be sufficient.

Discussion

15. Regarding the reference in section 234 with regards to the requirements of efficiency and technical special capability or expertise the Department of Building and Housing has advised this Council that due to the very low number of building consents issued annually by the Chatham Islands Council (approximately 20-30 consents per calendar year) it would not be efficient for the Chatham Islands Council to go through the Building Act accreditation process that a territorial authority is otherwise required to do under the Building Act. The annual cost of maintaining that accreditation would exceed the revenue that the Chatham Islands Council would receive from building consent fees in any one year.
16. There is a requirement for the Chatham Islands Council and this Council (in section 235) to enter into an agreement in respect to the transfer, and agree on the terms and conditions of that transfer. If this Council was to agree to this transfer being made then it is recommended that the General Manager Regulation and Democracy Services be authorised to finalise the terms and conditions of the transfer to his satisfaction.
17. In preliminary discussions with the Chief Executive Officer of the Chatham Islands Council it is proposed that the agreement be on an ongoing basis, with the ability of either party to terminate the agreement upon six months notice in writing.

18. There will need to be negotiations on a number of detailed points and for practical purposes there will also be a need, in addition to an agreement to transfer certain powers of the Chatham Island Council to the Christchurch City Council, for this Council to contract back to the Chatham Islands Council some detailed operational aspects. Examples of these operational aspects would be for the Chatham Island Council to manage the physical receipt of building consent applications, the provision of Project Information Memorandum (PIM) and the detailed information held by Chatham Island Council that would go into the production of those memorandum and also the management of any enquiries that might arise during the building consent process. This contracting back is permitted by the Building Act.
19. Section 236 makes it clear that the legal liability for the granting of Chatham Islands building consents remains with this Council and that cannot be contracted out of. In other words in granting these consents this Council will step into the shoes of the Chatham Islands Council for liability purposes. This Council does not act on behalf of the Chatham Islands Council - it acts in the same way legally as it does when it grants building consents in Christchurch City. So this Council is wholly responsible at law for any liability arising through the negligent exercise by this Council of the functions, duties and powers that are transferred to it.
20. However this Council is entitled, in the transfer agreement with the Chatham Islands Council, to seek an indemnity from that Council for any liability that might arise from this Council carrying out building consent functions under the transfer agreement, including the payment of an excess on any such insurance claims and the process costs. The Council insurers, Risk Pool, insure both the Chatham Islands Council and this Council and this type of sharing arrangement is supported by Risk Pool. Preliminary discussions with Risk Pool to date indicate that they do not see any difficulty, nor any increase in premium for this Council with regards to this transfer agreement.
21. The cost to this Council of processing Chatham Island building consents, and also building inspections where City Council involvement is necessary, would be at the cost of the Chatham Islands' applicant. The Chatham Island Council has a part-time building inspector who inspects most of the structures that are erected each year which are typically kitset homes. Where there is work that is more complex than those types of homes, such as additions to commercial buildings, then there would be the need for an inspector from Christchurch to go to the Chatham Islands to physically inspect the work. The costs of that inspection would be a cost for the applicant. It is proposed that there be no direct cost to the Christchurch City ratepayers as a result of this transfer agreement.
22. The addition of this work is not seen as having any impact on the capacity of the Christchurch City Council to process building consent applications for Christchurch City residents. This Council processed 6,984 consents in 2008 and here it is proposed that an additional 20-30 applications per annum are added to that number.