



## chatham islands council

### CHATHAM ISLANDS COUNCIL STATEMENT OF PROPOSAL

#### TRANSFER OF REGIONAL AUTHORITY FUNCTIONS, DUTIES AND POWERS UNDER THE BUILDING ACT 2004 TO CANTERBURY REGIONAL COUNCIL

The Building Act 2004 requires the Council in its role as a regional council to become registered and accredited as a Building Consent Authority. Only registered and accredited building consent authorities may carry out "building control functions" from that date.

However, the Council may transfer all of its functions, duties, and powers as a regional authority under the Building Act 2004 to another regional authority. If the Council makes such a transfer, the Council will not need to be registered and accredited as a building consent authority.

The Statutes Amendment Act 2009 included legislation that made the Chatham Islands Council a recognised authority under the Building Act 2004 for regional functions.

The Council proposes transferring its functions, duties, and powers as a regional authority under the Building Act 2004 to the Canterbury Regional Council. The Canterbury Regional Council assists the Chatham Islands Council with compliance over other activities under contract.

In order to undertake this transfer under the Building Act 2004, the Council must consult with the community using the special consultative procedure. This document is the Statement of Proposal for the consultation process. It sets out –

- The background to and reasons for the proposal
- The details of the proposal
- An analysis of the reasonably practicable options.

A Summary of Information is included at the end of this Statement of Proposal.

#### **1. Background to and reasons for the proposal**

- 1.1** Under the Chatham Islands Council Act 1995, the Council has the functions, duties, and powers of a regional authority under the Building Act 2004. In its capacity as a regional authority under the Building Act, the Council must –

- Perform the functions of a building consent authority set out in section 12 of the Building Act to the extent that those functions relating to dams (including the issue of building consents subject to a waiver or modification of the building code); and
- Considers and approves dam classifications; and
- Considers and approves dam safety assurance programmes; and
- Administers the provisions of the Building Act relating to ---
  - dam classifications; and
  - dam safety assurance programmes; and
  - dam compliance certificates; and
- enforce the provisions of the building code and the Building Act and regulations that relate to dams; and
- adopts a policy on dangerous dams; and
- carries out any other functions and duties specified in the Building Act; and
- Carries out any functions that are incidental and related to or consequential on the functions set out above.

**1.2** In carrying out its role as a building consent authority, the Council must –

- Issue building consents; and
- Inspect building work for which it has granted a building consent; and
- Issue notices to fix; and
- Issue code compliance certificates; and
- Issue compliance schedules.

**1.3** Under the Building Act, there is new requirement for territorial and regional authorities to be accredited as building consent authorities. Essentially, building consent authorities must gain accreditation and become registered with the Department of Building and Housing before being able to perform building consent authority functions.

**1.4** In order to become accredited, the Council would need to meet the standards and criteria set out in the Building (Accreditation of Building Consent Authorities) Regulations 2006. The Council would need to have certain policies, procedures, and systems in place. For example, policies and procedures about –

- Consumer information; and
- How building consents are received, checked and dealt with; and
- Planning, performing and managing building inspections; and
- Issuing (or not) code compliance certificates.

**1.5** Similarly, it must have systems in place relating to employees and the use of contractors. For example, systems that –

- Ensure that the Council has enough contractors; and
- Allocate work to competent employees or contractors; and
- Regularly assess the competence of employees; and
- Provide for the training of the Council's employees; and
- Enable the Council to choose contractors to perform its building control functions.

**1.6** Because of the population of the Chatham Islands, the amount and type of building work on the Chathams, and the availability of appropriately skilled employees and contractors, the Council will not have in place the

required policies, procedures, and systems to achieve accreditation. There is not enough building work to justify the Council establishing an accredited building consent authority for the Chathams. It would not be an efficient use of resources. The Council does not have the technical or special capability to be able to carry out all of its duties, functions, and powers under the Building Act.

- 1.7 However, the Building Act allows regional authorities to transfer one or more of their functions, duties, and powers under the Building Act to another regional authority. This means that the Council can transfer its building control functions as well as its other functions under the Building Act to another regional authority.
- 1.8 Canterbury Regional Council is accredited as a building consent authority.
- 1.9 Given that Canterbury Regional Council is an accredited building consent authority, the Council considers that it would be an efficient course of action to transfer all of its functions, duties, and powers as a regional authority under the Building Act to Canterbury Regional Council. Canterbury Regional Council has the required technical and special capability to be able to carry out the functions, duties, and powers of the Chatham Islands Council under the Building Act.

## 2. Details of proposal

- 2.1 If the Council is going to transfer its functions, duties, and powers as a regional authority to Canterbury Regional Council, it must enter into a transfer agreement with Canterbury Regional Council.
- 2.2 The transfer agreement will set out the details of the transfer between the two Councils. However, broadly speaking, the details of the transfer will be as follows:
  - 2.2.1 **Term of agreement:** Canterbury Regional Council will officially take over responsibility on 01 May 2011 for an on going period. However, under section 236(2) of the Building Act, the Chatham Islands Council has the right to terminate or revoke the transfer agreement at any time by giving 6 months notice to Canterbury Regional Council.
  - 2.2.2 **Functions, duties, and powers to be transferred:** The Council will transfer all of its functions, duties, and powers as a regional authority under the Building Act to Canterbury Regional Council. For example, this means that Canterbury Regional Council will be responsible for issuing building consents, inspecting building sites, and issuing code compliance certificates. Canterbury Regional Council will also be responsible for setting fees and charges under the Building Act in relation to the Chatham Islands, such as fees for lodging a building consent application.
  - 2.2.3 **How transferred functions, duties, and powers are to be provided:** The transfer agreement will set out how Canterbury Regional Council will carry out the functions, duties, and powers. However, at this stage, it is envisaged that –

- Building consent applications will be lodged with the Chatham Islands Council and will be checked by an employee of the Chatham Islands Council for administrative purposes only (ie the Chatham Islands Council will be an address for service only).
- All documentation will then be transferred to Canterbury Regional Council and Canterbury Regional Council will determine whether to issue the building consent.
- Canterbury Regional Council will undertake site inspections and determine whether to issue code compliance certificates.
- Other queries/matters relating to the Building Act may be lodged with the Chatham Islands Council but these will be referred to the Canterbury Regional Council in accordance with agreed timeframes.

**2.2.4 Canterbury Regional Council will report to the Council:** In the transfer agreement, the Council will require Canterbury Regional Council to report to the Chatham Islands Council at regular intervals on how the functions have been carried out. (For example, number of building consent applications received, average time taken to deal with applications etc.)

**2.2.5 Review of transfer agreement:** It is envisaged that the transfer agreement will contain a review provision to provide a formal opportunity to review how the transfer is working in practice. However, under section 236(2) of the Building Act, the Chatham Islands Council has the unilateral right to change the transfer by written notice to Canterbury Regional Council.

**2.2.6 Payments to Canterbury Regional Council:** The Council and Canterbury Regional Council will need to determine whether any payments are to be made to Canterbury Regional Council for carrying out the functions, duties, and powers. However, it may be that Canterbury Regional Council will be able to meet all of its costs through fees and charges set under the Building Act.

**2.2.7 Liability:** Once the functions, duties, and powers have been transferred to Canterbury Regional Council, any liability associated with carrying out these functions, duties, and powers will rest with Canterbury Regional Council.

### **3. What are the reasonably practicable options?**

**3.1** In preparing this proposal, the Council must consider all reasonably practicable options in how the Council might deal with a requirement to become an accredited regional authority. The options are:

**3.1.1 Option one:** applying for and obtaining accreditation as a regional authority on its own merits; or

**3.1.2 Option two:** entering into an arrangement with another regional authority for the other regional authority to perform all of the Council's functions as a building consent authority; or

- 3.1.3 Option three:** transferring all of the Council's functions, duties, and powers as a regional authority under the Building Act to Canterbury Regional Council.

Option one: (Accreditation)

- 3.2** The Council does not consider it a reasonably practicable option to attempt to obtain accreditation as a regional authority. The Council will not have the policies, procedures and systems in place to achieve accreditation and it is not likely to in the future. Given the geographical location of the Chathams, the number of building consent applications for dams, and the availability of appropriately qualified employees or contractors, it is not reasonably practicable for the Council to consider achieving accreditation itself.

Option two: (Arrangement)

- 3.3** The benefit of entering into an arrangement with another regional authority for the provision of services is that the Council retains some functions under the Building Act and therefore some control. Decisions will still be made in Waitangi and the Council remains the ultimate decision-maker. However, the provisions of the Building Act indicate that even if the Council enters into an arrangement with another regional authority, the Council will still need to apply for accreditation. As stated above, the Council is not in a position to apply for accreditation and therefore this option is not seen as a viable option for the Council.

Option three: (Transfer)

- 3.4** The benefit of this option is that the Council will be able to rely on a regional authority that is accredited and registered under the Building Act. Canterbury Regional Council is familiar with the issues that have arisen on the Chathams. Therefore, the community will be able to deal with persons who have experience of the Chatham Islands and who know the types of issues that arise. This should provide an efficient and cost effective service to the community. However, one cost to the community is that it will lose control over where decisions under the Building Act are made. Effectively, decisions will be made in Christchurch and not Waitangi. To some extent, a degree of local autonomy will be lost. However, because of the effect of section 236(2) of the Building Act which enables the Council to terminate or revoke a transfer agreement at any time, the Council will be able to end the relationship with Canterbury Regional Council if the transfer is not operating to the satisfaction of the Council. There may also be a financial cost, because Canterbury Regional Council will be responsible for setting fees and charges under the Building Act rather than the Chatham Islands Council. It is possible that Canterbury Regional Council could increase the charges from those that currently apply.
- 3.5** Transferring the Council's functions, duties and powers under the Building Act to Canterbury Regional Council will enable the Council to promote the outcome set out in the Long Term Council Community Plan relating to a safe and secure community in an integrated and efficient manner. Although the Council may be responsible for receiving any building consent applications or queries, it is envisaged that these will be

immediately handed over to Canterbury Regional Council. This will enable decisions and queries to be dealt with in the most cost efficient way possible.

- 3.6** This option also enables the Council to meet the present and future needs of the community in relation to its statutory responsibilities under the Building Act. If the Council does not transfer its functions, duties, or powers it will not be in a position to comply with that Act.
- 3.7** Consequently, taking into account these options, the only reasonably practicable option is option three – transferring all of its regional authority functions, duties, and powers under the Building Act to Canterbury Regional Council.



## chatham islands council

### CHATHAM ISLANDS COUNCIL

### SUMMARY OF INFORMATION

## TRANSFER OF REGIONAL AUTHORITY FUNCTIONS, DUTIES AND POWERS UNDER THE BUILDING ACT 2004 TO CANTERBURY REGIONAL COUNCIL

The Building Act 2004 requires the Council to become registered and accredited as a Building Consent Authority. Only registered and accredited building consent authorities may carry out "building control functions".

However, the Council may transfer all of its functions, duties, and powers as a regional authority under the Building Act 2004 to another regional authority. If the Council makes such a transfer, the Council will not need to be registered and accredited as a building consent authority.

Because of the population of the Chatham Islands, the amount and type of building work on the Chathams, and the availability of appropriately skilled employees and contractors, the Council will not have in place the required policies, procedures, and systems to achieve accreditation. There is not enough building work to justify the Council establishing an accredited building consent authority for the Chathams. It would not be an efficient use of resources. The Council does not have the technical or special capability to be able to carry out all of its duties, functions, and powers under the Building Act.

The Council is now proposing to formally transfer all of its functions, duties, and powers as a regional authority under the Building Act to Canterbury Regional Council. The Council considers that this would be an efficient course of action to take. Canterbury Regional Council has the required technical and special capability to be able to carry out the functions, duties, and powers of the Chatham Islands Council under the Building Act.

In order to undertake this transfer, the Council must consult with the community using the special consultative procedure.

#### **Details of proposal**

The transfer agreement will set out the details of the transfer between the two Councils. Broadly speaking this will cover –

- ◆ **Term of agreement:** Canterbury Regional Council will officially take over responsibility on 01 May 2011 for an undefined period.

- ◆ **Functions, duties, and powers to be transferred:** The Council will transfer all of its functions, duties, and powers as a regional authority under the Building Act to Canterbury Regional Council. For example, this means that Canterbury Regional Council will be responsible for issuing building consents, inspecting building sites, and issuing code compliance certificates that relate to dams. Canterbury Regional Council will also be responsible for setting fees and charges under the Building Act in relation to the Chatham Islands, such as fees for lodging a building consent application.
- ◆ **How transferred functions, duties, and powers are to be provided:** The transfer agreement will set out how Canterbury Regional Council will carry out the functions, duties, and powers.
- ◆ **Canterbury Regional Council will report to the Council:** The Council will require Canterbury Regional Council to report to the Chatham Islands Council at regular intervals on how the functions have been carried out.
- ◆ **Review of transfer agreement:** It is envisaged that the transfer agreement will contain a review provision to provide a formal opportunity to review how the transfer is working in practice.
- ◆ **Payments to Canterbury Regional Council:** The Council and Canterbury Regional Council will need to determine whether any payments need to be made to Canterbury Regional Council for carrying out the functions, duties, and powers.
- ◆ **Liability:** It is anticipated that once the functions, duties, and powers have been transferred to Canterbury Regional Council, any liability associated with carrying out these functions, duties, and powers will rest with Canterbury Regional Council.

### **How to make a submission on this proposal**

This consultation requires the Council to give the public at least 1 month to make submissions. A copy of the full Statement of Proposal for this consultation may be inspected at the Council offices:

Chatham Islands Council  
Tuku Road  
Chatham Islands

The full Statement of Proposal may also be downloaded from the Council's website.

Submissions may be made between 20 December 2010 and 23 February 2011. You can make a submission on this proposal by giving, sending, or emailing a written submission to the Council at its offices:

Chatham Islands Council  
Tuku Road  
Chatham Islands

Chatham Islands Council  
PO Box 24  
Chatham Islands 8942

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