



Ministry for the
Environment
Manatū Mo Te Taiao

Section 33

Transfer of functions, powers or duties - a stocktake of council practice.

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Study background and scope

Section 33 of the Resource Management Act 1991 (RMA) enables a local authority to transfer any one or more of its functions, powers or duties under the RMA to another public authority, except the power of transfer.

Section 33 was part of the original scheme of the RMA. It was one of several tools contained in the RMA to assist with integrated management and to help councils in particular deal with overlapping functions. While councils' functions are set out under sections 30 and 31, section 33 enables councils by mutual agreement to rearrange functional responsibilities to correspond with community of interest, efficiency or expertise.

Duplicating consent requirements arising from overlapping functions between district and regional councils is an issue that can potentially be addressed through use of section 33. Transferring functions can also provide for better integrated management, address cross boundary issues and provide for more efficient plan and consent administration.

It is timely to look at how section 33 has been used by councils. The purpose of this study is to do a simple stocktake to establish what type of functions/powers/duties have been transferred and on what terms and conditions.¹ The stocktake also will look at what sort of monitoring takes place once functions have been transferred, and whether there has been any formal evaluation of transfers and any transfers rescinded. This study will also consider whether there are any statutory or non-statutory barriers to the use of section 33 of the RMA.

The focus of this stocktake is on councils that have transferred functions to another local authority. The question of transfers of functions from a local authority to an iwi authority is not within the scope of this study.

Delegations of functions and powers to another local authority under RMA section 34A(2) and authorisation of another local authority as an enforcement officer under RMA section 38(1)(b) are alternative approaches to councils to achieve efficiencies in the exercise of their functions, this stocktake has focused only on section 33 transfer of powers.

¹ While local authorities are required to notify the Minister for the Environment under section 33 before using the special consultative procedures, Ministry records on transfers are incomplete.

Methodology

The methodology used for this study was firstly a review of the background information in terms of the development and subsequent amendments to the statutory provision. A desk top study was undertaken of all regional council websites. References to section 33 transfers were found on most websites, however, in the majority of cases these were just general references to the option of section 33 transfers rather than indicating that actual section 33 transfers were in place.

Phone calls were then made to each regional council to follow up references and check whether the council had either transferred functions, powers or duties to a district council in its region or received a transfer from a district council in its region. Unitary councils were not included in the study, as they are not considered to be candidates for section 33 transfers. The relevant district councils were contacted where section 33 transfers to or from a regional council had affected their functions.

The councils were asked in follow up emails where transfers were put in place, background information about the transfers, copies of the deeds of transfer and any evaluation undertaken. Council staff were also asked whether investigations had been undertaken but a decision made not to transfer, and if so why. Councils were also asked if they felt there were any barriers to the use of section 33.

1 Overview of section 33

1.1 Legislative background

In 1988, the Government embarked on a substantial review of legislation governing the management of natural and physical resources known as the Resource Management Law Reform. As a basis for investigation and consultation the Government agreed to the assignment of primary functions to regional and territorial government but “noted that the law should provide for call-up and refer-down mechanisms, delegation by mutual agreement or joint hearings and directed the Core Group to report on ways in which these would operate.”²

The Resource Management Bill 1990 made provision for transfers of powers to another local authority. It was one of a suite of tools (which included delegations and combined plan making) aimed at providing flexibility and efficiency in how councils carried out their statutory responsibilities as well as providing for integrated management. The commentary for the Bill states that “Within the allocation of responsibilities, there will be opportunities to transfer and delegate resource management functions. Transfer between regional and territorial councils will be possible, where necessary to allow for more efficient decision making. Such transfers will be by mutual agreement and will require that the body that takes on the transfer represents the appropriate community of interest, and has the technical ability to perform the function”.³ Submissions on the Bill were mixed as to whether the power of transfer should be broadened further or restricted. However, the decision was made not to widen the power of transfer to health board or reserve boards on the grounds their functions had a different focus⁴.

The Resource Management Act 1991 (RMA) which came into force on 1 October 1991 provided in section 33 for local authorities to transfer functions, powers or duties to a public authority. Public authority was defined to include: any local authority, iwi authority, government department, statutory authority and joint committee set up for the purpose of section 80 of the RMA (combined planning). Specified functions could not be transferred. These were: the approval of a policy statement or plan (or changes to these), recommendations on notice of requirements for a designation or heritage order, or the power of transfer. The section provided that the local authority that transfers any function, duty or power shall continue to be responsible for the exercise thereof. Under section 35 (2)(c) of the RMA councils were responsible for monitoring any functions transferred by it.

² “*People, Environment, and Decision Making: the Government’s Proposals for Resource Management Law Reform*” (December 1988) page 25.

³ Explanatory Note Resource Management Bill 1990

⁴ Ministry for the Environment Departmental Report – 1 June 1990

1.2 Legislative changes to section 33

Section 33 was reviewed in a report of the Minister for the Environment's Reference Group in September 1998. The powers were discussed as one option for dealing with overlapping functions that were causing confusion. The report stated that transfers of functions were rare and one reason for this was residual accountability and the fact that the authority which transfers a function to another authority remains responsible for the exercise of the function, although it has no direct control over the other authority. The [Review] Group recommends transfer of powers be enhanced by sections 33(1)(a) and 33 (3) being deleted.”⁵ Section 33(1)(a) prevented the transfer of the approval of a policy statement or any changes to a policy statement or plan. Section 33(3) stated that “a local authority that transfers any function, power or duty under this section shall continue to be responsible for the exercise thereof”.

The Resource Management Amendment Bill 1999 incorporated the suggested changes to section 33 (1) but went further to enable any function, power or duty to be transferred except the power of transfer. The Bill also proposed the removal of section 33(3). The Departmental Report on the Bill dated 15 September 2000 noted that “to date very few transfers of powers have been undertaken by local authorities under the RMA. Part of the reason is that some public authorities have been reluctant to accept new functions when ultimate responsibility for the exercise of the function resides with the original authority. Likewise, local authorities have been reluctant to transfer powers when they ultimately remain responsible for the transfer”. It was hoped the amendment would make the power of transfer more attractive to use and “allow councils to better resolve overlaps of functions on a local scale”⁶.

The amendment was supported by most local authorities submitting on the Bill on the grounds that it simplified the provision, clarified the scope of the transfer power and provided more accountability after a transfer has occurred.

These changes were made in the Resource Management Amendment Act 2003. Relatively few other amendments have been made to section 33 since enactment. The changes that have been made, have been update references to the special consultative procedure under the Local Government Act and amendments as a result of the foreshore and sea bed legislation and Marine and Coastal Area (Takutai Moana) Act 2011.

However, in recognition that section 33 transfers (in particular to iwi) had not occurred, amendments were made to the RMA in 2005 to add provisions for joint management agreements under sections 36B-36E. This clause differs from section 33 in that it is not a complete devolution of power but rather allows responsibility for decision making to be shared by the Council and another body⁷.

The policy intent was to provide for joint management that enables cooperative arrangements when a community, especially between iwi and local authorities. However these sections also provide for joint agreements between two local authorities.

⁵ Report of the Minister for the Environment's Reference Group – 15 September 1998

⁶ MfE Report on Resource Management Amendment Bill – 15 September 2000

⁷ Departmental Report on the Resource Management and Electricity Legislation Amendment Bill 2005

While the requirement to consider a community of interest, efficiency and technical capability are similar to section 33, the definition of public authority is narrower and there is no requirement to follow the special consultative procedure under section 83 of the Local Government Act 2002 (LGA).

1.3 Overlapping functions, cross boundary issues and avoiding duplication of expertise

The RMA allocates specific functions to territorial authorities under section 31 and to regional councils under section 30 (see Appendix B). In some cases regional councils and territorial authorities have overlapping statutory responsibilities. For example, both regional councils and territorial authorities control the use of land for the purpose of the avoidance or mitigation of natural hazards; both control the use of land for the purpose of the prevention or mitigation of any adverse effects of the storage, use, disposal or transportation of hazardous substances.

Overlapping functions, cross boundary issues, the need for efficiencies in enforcement or technical expertise and integrated management of activities are all reasons why local authorities could consider transferring specific functions to another local authority under section 33.

Transfers of functions could potentially include the policy making function and the ability to write the relevant rules or could simply be a transfer of consenting, monitoring and enforcement functions. In the latter type of transfer, the existing plan provisions continue to apply they are just administered by a different local authority.

1.4 Process for section 33 transfers

Section 33 specifies that a local authority shall not transfer any functions, powers or duties unless it has used the special consultative procedure under section 83 of the LGA. Section 83 of the LGA requires the local authority to prepare a statement of the proposal, make it available for public inspection and enable public submissions and the opportunity to be heard on the proposal in public.

Before using the special consultative process, section 33 requires the local authority to serve notice on the Minister for the Environment. There is no requirement however to inform the Minister of the outcome of the consultation or the final decision made on the transfer proposal.

Transfers are made on such terms and conditions as agreed by the local authorities concerned and transfers can be changed or revoked at any time by notice to the transferee.

The statutory criteria reflects the government's RMA decision-making principles, namely that decision making should be efficient, technically robust and decisions should be taken closest to the community of interest (in other words by the communities most directly affected).

1.5 Use of section 33 - findings

The first finding of the stocktake is that there is relatively little information readily available about the use of section 33. While councils were generally able to provide the deeds of transfer, there was a lack of background information. In most cases the transfers had been put in place some years ago and had become an accepted part of the councils' functions. While basic monitoring information (eg, number of consents granted under a transfer of function) was available, formal monitoring or evaluation reports were not.

1.5.1 Number of councils using section 33

Appendix A sets out the section 33 transfers currently in place and types of terms and conditions attached to these. Table 1 summarises the functions transferred from Regional councils and Table 2 the functions transferred from District Councils.

The second key finding of the stocktake is that transfers of functions are not extensively used - with six out of 11 regional councils stating they have not transferred functions under section 33. Four regional councils transferred functions and one regional council received, rather than transferred, a function. While most regional councils mentioned transfers of functions in their plans as a potential tool for dealing with cross boundary issues, the number of actual transfers was few. The third key finding is that the transfers that are in place are limited in scope and, with one exception, were put in place more than ten years ago.

Table 1: Regional Council transfers under section 33 of RMA

Transfer from	Transfer to	Date	Function
Otago Regional Council	Queenstown Lakes District Council	23 March 1994	Determining applications for land use consent required under section 13 (1)(a) (structures on the beds of rivers) including administering and monitoring consents.
	Clutha District Council	24 April 1996	Functions, powers and duties under section 30 (1)(d)(vi) noise in the Coastal Marine Area (cma) within or adjoining the district.
	Dunedin City Council	24 April 1996	Functions, powers and duties under section 30 (1)(d)(vi) noise in the cma within or adjoining the district.
Northland Regional Council	Far North District Council	1 December 2001	Processing , administration and monitoring of consents for: <ul style="list-style-type: none"> • sale of liquor from premises in cma adjoining the district • onsite discharge of (contaminants) treated effluent from dwellings, commercial buildings and the like • minor structures straddling the cma. Administration and enforcement of the control of unauthorised noise originating in the cma adjoining the

			district. Control of contaminant discharges on foreshore of cma adjoining the district from live and dead stock, abandoned vehicles, rubbish and fires. Impounding dogs or stock in the CMA – cost recovery.
Taranaki Regional Council	New Plymouth District Council	23 December 1992	Administration and enforcement of noise in the cma adjacent to the coastal boundary of the district.
	Stratford District Council	25 July 2011	Function in relation to Rule 34 (residential waste disposal by combustion) of the Regional Air Quality Plan for Taranaki.
	New Plymouth District Council	25 July 2011	Function in relation to Rule 34 (residential waste disposal by combustion) of the Regional Air Quality Plan for Taranaki.
West Coast Regional Council	Westland District Council	11 February 2003	Implementing Rule 6 On site discharge of sewage effluent in the Regional Plan for Discharges to Land.
	Buller District Council	11 February 2003	Implementing Rule 6 On site discharge of sewage effluent in the Regional Plan for Discharges to Land.

The regional councils that do not have section 33 transfers in place were:

- Canterbury Regional Council
- Environment Southland
- Manawatu-Wanganui Regional Council
- Waikato Regional Council
- Greater Wellington Regional Council
- Hawkes Bay Regional Council.

The fourth key finding of the stocktake is that it is less common for district councils to transfer functions to regional councils rather than the other way around.

Table Two : Territorial Authority transfers

Transfer from	Transfer to	Date	Function
Rotorua District Council	Bay of Plenty Regional Council	13 September 2007	Functions, powers and duties of the territorial authority in relation to specified activities for water A and B (eg, moorings and ski lanes, jetties and boat sheds and structures, public ramps and slipways) and for lake structures, activities occurring within lakes A Zone and enforcement.
New Plymouth District Council	Taranaki Regional Council	22 July 2005	Coastal protection works and structures above mean high water springs in the New

			Plymouth District.
Far North District Council	Northland Regional Council	1 December 2001	<p>The processing, administration and enforcement of consents for :</p> <ul style="list-style-type: none"> land use consents for earthworks for earth dams land use consents for private jetties and boat ramps that straddle the cma boundary.

The tables above show the majority of transfers were put in place in the first decade of the RMA and there are relatively few recent examples. The earliest transfer deed was dated December 1992 and the most recent was dated July 2011.

The most recent investigation of a transfer we are aware of is one that took place in 2012 by Westland District Council for transferring functions related to processing and monitoring land use consents for mining to the regional council, although the transfer did not proceed.

1.5.2 Types of functions transferred

The tables above indicate that the types of functions transferred are:

- control of noise in the coastal marine area adjoining the district
- coastal protection works or minor structures straddling the coastal marine area and district council boundary
- enforcement and monitoring of backyard burning
- determining applications for structures on the beds of rivers and lakes (jetties, boat sheds, ramps and slipways)
- activities on the surface of rivers and lakes (controlling vessels and motor craft on lakes, moorings ski lanes)
- inspection of small scale on-site sewage effluent treatment and disposal systems.

The transfers focused on consent administration, monitoring and enforcement rather than a transfer of the policy making function itself.

There were two examples of councils which considered that transfers were in place but in fact found in subsequent years that the transfers were incomplete (eg, one party had transferred the function but the other party had not formally received the function, or the paper work had never been completed).

1.5.3 Reasons for transfers

The main reasons given for transfers were to move a function to where the expertise resided (eg, enforcement of noise or inspection of on-site sewage effluent and disposal systems).

The transfers were made to improve customer service and offer cost saving to applicants and consent holders. Rationalising who undertakes monitoring and enforcement has significant cost savings, bearing in mind the size of regional council boundaries, travelling times, the low rating basis in some local authorities and the stretched resources (including, resources for monitoring and enforcement). For example, costs for consent holders can be reduced if they need only be charged for one inspection visit.

Transfers were aimed at reducing complexity arising from functional overlaps and in some cases offer a one stop shop to applicants, who may be required to seek consent from both regional and district councils (including, where building consents would be required for structures). Transfers were also put in place to better provide for integrated management of activities, to ensure technical expertise and to promote more efficient administration of the plan.

For example, in the case of the transfer by Rotorua District Council (RDC) to Bay of Plenty Regional Council (BOPRC) of responsibility for lake bed structures, the Deed records that the transfer was desirable on the following grounds:

- BOPRC represents the appropriate community of interest relating to the functions and the conditions of transfer should ensure there is no conflict of interest. RDC has had and will continue to have contact with various users. The transfer will also allow integration between the activities affecting the bed of any lake or river, surface water activities and lake and river margin activities.
- To remove duplication and the need for RDC to allocate substantial resources in this area of activity.
- BOPRC is considered to hold the expertise to regulate structures and activities on the water surface which fit in with BOPRC navigation and safety functions.

Transfers recognise the expertise residing at district or regional council levels. For example, district councils have suitably qualified noise control experts and therefore some regional council have decided that it is more efficient for the district council to be given responsibility for enforcement of noise in the cma, rather than needing to duplicate that skill at a regional council level.

Another example is backyard burning. In the case of Taranaki Regional Council a rule was included in the Regional Air Quality Plan (Rule 34) prohibiting backyard burning in defined urban areas. At the same time it was agreed that it was desirable, on grounds of efficiency and technical capability to transfer functions to the district councils who respond, under the Health Act 1956 to smoke nuisances in the region and were seen as representing the appropriate community of interest.

The transfer request was agreed to by New Plymouth District Council and Stratford District Council but was declined by South Taranaki District Council (who did not agree with the nature of the rule and underlying policy).

1.5.4 Recovery of costs

Most of the Deeds cited as part of this stocktake address the issue of costs and ensure that the council taking on the new functions can recover the costs incurred.

Cost recovery provisions in deeds varied according to the type function, power or duty transferred. In some cases the council to who the function was transferred was explicitly given the power to recover costs in relation to the exercise of the functions, powers or duties transferred. These deeds made it clear that no additional contribution to costs could then be sought from the council that had transferred the function, power or duty.

Some Deeds referred to the power under section 36 to set administrative charges in relation to the functions, powers or duties transferred. Other Deeds referred to costs able to be recovered in the usual way on an actual and reasonable basis.

Where functions, powers and duties related to enforcement were transferred, those enforcement powers enabled cost recovery in cases of non-compliance.

The one exception was the transfer between West Coast Regional Council (WCRC) and Westland District Council which stated that “the district council shall at its own cost, on behalf of the WCRC, carry out the functions, powers and duties transferred.” However staff at Westland District Council indicated costs were recovered for this function through other means.

1.5.5 Monitoring of transferred functions

Section 35 (2) of the RMA requires the local authority to monitor the exercise of any functions, powers or duties delegated or transferred by it.

In nearly all cases the deeds of transfer required regular reporting by the authority exercising the transferred function, to the authority that had transferred the function. In some cases the reporting is annual; in other cases the Deeds specify 6 monthly reporting. Deeds also provided for information to be supplied to the council who had transferred the function, powers or duties if requested.

The stocktake found councils did monitor the number of consents issued under transferred functions as they would in other situations, however most councils were not able to supply formal section 33 monitoring or evaluation reports.

One council had formally reviewed and amended the deed of transfer and another referred to two yearly meetings to discuss the transfers in place.

In the case of the transfer exercised by Far North Regional Council, the Review of the Consent Processing Performance of the Far North District Council, did report that Northland Regional Council staff considered functions were generally exercised satisfactorily by Far North District Council but sought better reporting⁸.

1.5.6 Changes to transfer arrangements

All deeds enabled changes to be made to the transfer arrangement or a relinquishing of the transfers, but generally required prior consultation with the other council concerned and a written notice period, which reflect the statutory requirements.

⁸ Section 24A RMA Investigation of the Consent Processing Performance of the Far North District Council prepared for ministry for the Environment February 2010

1.5.7 Satisfaction with transfer arrangements

The council staff spoken to as part of this study stated there was generally satisfaction in how transferred functions were being exercised and the RMA. Benefits of transfers were seen to be providing greater administrative efficiency and simplicity in areas where issues cross council jurisdictional boundaries (eg, minor activities in district adjoining coastal marine area), and sharing technical expertise. Benefits were also offered to applicants in terms of offering a one stop shop under RMA for consenting an activity (eg, lakebed structures) or reducing the overall costs of consent administration.

Council staff interviewed said they were not aware of any problems with the transfers that had been put in place. In most cases, the transfers had been in place for a number of years and were seen to be working satisfactorily. We were not made aware of any transfers that had been revoked.

1.5.8 Councils' observations about the barriers to the use of section 33

Overall, the benefits of providing for the transfer must outweigh the costs of developing the proposal, undertaking the required consultation process, drawing up the deed, tracking the administration and monitoring the transferred functions once in place. Councils that were interviewed identified the following issues:

- council staff interviewed said they did not think there were any statutory barriers to greater use of section 33 powers however there were no drivers to extend transfers further
- the role of regional policy statements in providing greater direction and determining responsibilities where there are overlapping functions has also perhaps reduced the need for formal transfers
- the costs of transferred functions and the ability to recover costs or have an agreed policy of reimbursement is identified as a key factor in whether functions will be transferred
- transfers of functions takes two willing parties (while there may be sound reasons from one council's point of view for a transfer, the other party may not be convinced of the benefits)
- councils talked about the quality of the working relationship between councils as being a constraint on transfers, the need for confidence in the capability of other local authorities to get the job done and "patch protection" between councils stopping greater use of transfer powers
- one reason given for declining to receive transfer for the enforcement of a regional rule was that the district council did not agree with the rule, had made a submission against it and therefore did not want the responsibility for enforcement
- one potential constraint on the transfer of district council functions to regional councils was administrative and related to the fact that district councils keep property files, because of the rating requirements and wanted assurance that all the relevant information was recorded on those file (one outcome of a transfer may be a risk that all the relevant information may not be recorded).

Issues or concerns raised through the consultation process can mean a proposed transfer does not go ahead. Also, further investigation can reveal the perceived benefits of a proposed transfer are unlikely to be realised.

A recent example is Westland District Council and West Coast Regional Council, which in 2012 looked at the potential duplication related to consent applications for mining and the need for applicants to deal both with the district and the regional council of the powers.

Public consultation was undertaken and following feedback from submitters the Westland District Council concluded that the early assumptions of duplication and efficiency gains were not clear and that no further action be taken to transfer functions relating to mining resource consents be taken at this time.⁹

Manawatu-Wanganui Regional Council also referred to an evaluation it undertook using section 33 to deal with a cross-boundary issue between it and Stratford District Council. The decision was made that it would not resolve the issues as first thought so the transfer of function was not pursued further.

1.6 Alternatives to formal section 33 transfers – protocols and agreements, shared services and delegations

Although most regional plans had a section dealing with cross boundary issues which included reference to a willingness to investigate transfers, in practice few have occurred. Instead councils have adopted alternative and in some cases less formal arrangements to help with functional overlaps, address cross boundary issues and achieve efficiencies.

Plans referred to promoting and encouraging the use of protocols with territorial authorities and adjoining regional councils to resolve cross boundary issues, joint working groups, exchanging and sharing information, advocating and promoting a consistent approach for controlling activities where the effects of activities crossed administrative boundaries (for example, flooding and erosion). Regional and district councils are working together on strategies to deal with significant issues such as natural hazard management.

In some cases councils have developed memoranda of understanding to deal with particular areas of common policy or regulatory interest as an alternative to formal transfers of function (especially for odour, dust or on site domestic waste water).

For example, Northland Regional Council developed a proposed protocol in 2000 with the relevant territorial authorities for developments requiring consents from two or more local authorities in the Northland region, including the coastal marine area. The protocol sets out the areas of functional responsibilities and the procedure applying when receiving applications including scope for joint processing and joint hearing procedures.

There is an increasing expectation that councils will collaborate and cooperate. The requirement to establish Triennial Agreements under section 15(1) of the Local Government

⁹ Westland District Council Report Section 33 : Transfer of Functions 29 Augusts 2013

Act 2002 has helped to encourage communication and cooperation between local authorities. These agreements provide a framework for collaboration and mechanisms for sharing of resources and joint approaches to issues of common interest.

Councils use a number of forums to share information and initiatives such as Mayoral Forums and Chief Executive, Consent and Resource Manager Groups from regional councils, as well as territorial authority sector meetings and council groupings on geographic or issue basis.

As part of their Triennial Agreements, councils are looking at mechanisms to ensure coordination between regional councils and territorial authorities, sharing service delivery where possible and scarce technical resources.

For example, Environment Southland has shared services with all the district councils in its region and Clutha District Council. Shared Services include: the regional landfill and joining of solid waste services (WasteNet Southland), the formation of Emergency Management Southland to manage regional civil defence emergencies and Venture Southland sharing tourism, economic development and events resources, as well as amalgamated rural fire services, and a library consortium.

Taranaki Regional Council is another example of shared services, where territorial authorities were involved in joint initiatives and forums. For example the Civil Defence Emergency Management Group, Solid Waste Management Committee, Regional Transport Committee and Regional Transport Advisory Group, a Biodiversity Forum, as well as joint procurement.

As outlined previously, delegations are another alternative to section 33 transfers of powers. Under section 38 of the RMA a local authority can also appoint an officer of another local authority to carry out the functions and powers of an enforcement officer.

Such delegations and appointments can provide for efficiencies in enforcement and sharing of technical expertise, while the overall responsibility remains with the original local authority. For example, Greater Wellington has no section 33 transfers but has a delegation arrangement in place with Hutt City Council with respect to the enforcement of storm-water discharges in the region.

In addition, some regional councils noted that while they had not transferred functions under section 33 of the RMA, they had transferred function under other legislation. For example, Environment Southland noted the regional council had transferred its responsibilities for public transport to the Invercargill City Council and the transfer took place in 2001 made under the Transport Services Licensing Act 1989 and the Transit New Zealand Act 1989.

The Local Government Act 2004 enables transfers of functions between territorial authorities and transfers between regional authorities (regional councils and unitary authorities) as does the Building Act 2004.

For example, the agreement between Waikato Regional Council and all other North Island regional councils (with the exception of Gisborne District Council) to transfer under section 244 of the Building Act 2004, responsibility for the issuing of building consents for large

dams. The transfer is aimed at preventing duplication of specialist services and providing greater efficiencies.

In a similar way, Otago Regional Council is responsible for building controls for dams and structures in the West Coast, Southland as well as Otago regions.

1.7 Conclusions

Relatively few transfers of functions have occurred under section 33 of the RMA. Those that have been put in place are primarily for reasons of efficiency and avoiding the duplication of technical expertise, and in some cases, offering more of a one stop shop for applicants. Transfers of functions put in place are focused on administration of rules and enforcement, rather than being more broadly based and transferring the policy and rule-making function.

This stocktake did not reveal any barriers raised by the statutory provisions.

While the ability to recover costs associated with a transfer was seen as a key factor in determining whether a transfer would take place, in practice this does not seem to be a barrier, with nearly all deeds' terms and conditions providing for cost recovery.

Clearly council relationships remain a key factor in determining willingness to transfer responsibilities.

Over more than twenty years of RMA implementation, there has been council amalgamation, creation of unitary authorities and further council reorganisation is proposed under the new process set out in the Local Government Amendment Act 2012. This also alters the need for councils to consider formal transfers of functions, powers and duties between local authorities.

Use of section 33 transfers alone is not an accurate measure of the extent to which councils are collaborating or have achieved efficiencies in the delivery of their functions or in dealing with cross boundary issues. Councils are using alternatives to section 33 transfers, which may be able to be put in place more easily (for example, delegations, shared service arrangements as well as transfers under other legislation). These can provide benefits particularly in terms of sharing technical expertise or specialist services.

Initiatives such as strategic and smart growth or lake restoration all require regional council and territorial authority joint planning and response. Triennial agreements have also facilitated closer relationships between councils. There is now a growing interest in coordinating plan reviews between councils and consideration of the scope for common approaches to issues and common plan provisions.

Section 33 of the RMA, can be reconsidered in the context of councils having increasing complex environmental issues to manage and adopting new and more collaborative approaches. By providing examples of where section 33 transfers have been put in place between local authorities, it is hoped this stocktake will be helpful for councils who may be considering the potential benefits of transfers for achieving efficient plan and consent administration, as well as dealing with cross boundary issues and enabling integrated management.

Appendix A

Council transferring function	Council receiving function	Function transferred	Date of transfer and types of conditions from Deeds (where available)
Otago Regional Council	Queenstown-Lakes District Council	<p>Responsibilities under section 13 (1) (a):</p> <p>Determining applications for land use consent required under section 13 (1)(a) of the Act (structures on the beds of rivers, solid structures, those involving excavation of the bed or disturbance of shoreline or lake bed).</p> <p>Administering, monitoring and supervising consents.</p> <p>Issuing consents under bylaws promulgated under the Harbours Act 1950 in respect of any structures mentioned above.</p> <p>Enforcement under Part 12 of RMA and under the Harbours Act.</p>	<p>23 March 1994</p> <p>District advise region of receipt of applications.</p> <p>Region may at its discretion resume functions, powers and duties of processing, determining and administering any application and administering the consent prior to the commencement of hearing or determination of the consent (where there is no hearing).</p> <p>District has power to recover costs incurred by carrying out transferred function.</p> <p>District to report at 6 monthly on exercise of function.</p> <p>District may relinquish the transfer following consultation with the Region and giving one month written notice to the District.</p> <p>Region can change or revoke transfer at any time by notice in writing.</p> <p>The agreement may be modified or varied by agreement in writing.</p>
Otago Regional Council	Clutha District Council	<p>All the functions, powers and duties of the Regional Council under section 30(1)(d)(vi) in respect of the emission of noise and mitigation of the effects of noise in the coastal marine area within or adjoining the district.</p> <p>Also transferred in relation to this section the functions powers and duties under section 16, 17, 22, 35, 38 and Part 12.</p>	<p>24 April 1996</p> <p>District has the power to recover costs incurred by transfer but has no right to call on ORC for any contribution to the costs.</p> <p>District to report at yearly intervals.</p> <p>Region can request information related to the transfer at any other time .</p> <p>District must first consult and give 6 month notice to ORC if it decides to relinquish transferred functions.</p>

			Region can change or revoke transfer at any time by notice in writing to the District.
Otago Regional Council	Dunedin City Council	<p>All the functions, powers and duties of the Regional Council under section 30(1)(d)(vi) in respect of the emission of noise and mitigation of the effects of noise in the coastal marine area within or adjoining the district.</p> <p>Also transferred in relation to this section the functions powers and duties under section 16, 17, 22, 35, 38 and Part 12.</p>	<p>24 April 1996</p> <p>District to inform ORC of exercise of any functions under Part 12.</p> <p>District has the power to recover all costs from the transfer and has no right to call on ORC for any contribution to costs.</p> <p>District to report at yearly intervals.</p> <p>Region can request information related to the transfer.</p> <p>District must first consult and give 3 month notice to ORC if it decides to relinquish transferred functions.</p> <p>Region can change or revoke transfer at any time by notice in writing.</p>
Northland Regional Council	Far North District Council	<p>1. Processing, administration, monitoring and enforcement of resource consent for:</p> <p>(a) sale of liquor activity from premises in the coastal marine area adjoining the FNDC</p> <p>(b) on site discharge of (contaminants) treated effluent from dwellings, commercial buildings and the like</p> <p>(c) minor structures which straddle the coastal marine area boundary (eg, where small structures for which the major proportion of the proposal is above the CMA boundary and there are not other resource consents required from the Regional council – such as</p>	<p>1 December 2001</p> <p>The Deeds record commencement from 1 December 2001.</p> <p>Amended 2006</p> <p>Transfer is to the fullest extent authorised by law.</p> <p>The transferee Council indemnifies the transferor Council against specified matters.</p> <p>On written request from transferee council shall report to the transferor council on the performance of the functions, powers or duties transferred – reporting not less frequently than annually, coinciding with the local government financial year.</p> <p>Revocation – any of the transfers may be revoked by the transferor or relinquished by the transferee Council by giving note less than 3 months’ notice.</p> <p>Provision of information by the parties.</p> <p>Arbitration in the cases of disputes of differences arising out of the Deed.</p>

		<p>coastal board walks, boat sheds and small landings, less than 10m² that have no effects on physical coastal processes).</p> <p>Costs of the above to be recovered directly from the applicant</p> <p>2. Administration and enforcement of the control of unauthorised noise originating in the coastal marine area adjoining the Far North District Council, under Part II of the Act; costs of this service to be actual and reasonable, as set in Administrative charges fixed from time to time by the Council.</p> <p>3. The control of contaminant discharges on the foreshore of the coastal marine area adjoining the Far North District, being those from live and dead stock, abandoned vehicles, rubbish and fires. Costs of this service to be actual and reasonable, as set in Administrative charges fixed from time to time by the Council.</p> <p>4. In the case of impounding of dogs or stock in the CMA plus all actual costs incurred in the employment of a contractor to remove stock to the pound, advertising of stock for auction, and sustenance for the period dog/stock are held in the pound as set in administrative charges fixed from time to time by the council. All monies not recovered from the auction (stock) will be charged to the NRC.</p>	
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Far North District Council	Northland Regional Council	<p>(1) The processing, administration and enforcement of Resource consents for the following activities:</p> <p>(a) land use consents for construction earthworks for earth dams</p> <p>(b) land use consents for private jetties and boat ramps that straddle the cma boundary Costs of these services to be recovered directly from the applicant / exacerbator.</p>	<p>1 December 2001</p> <p>2006 revision resulted in no change.</p> <p>On the terms and conditions set out above.</p>
Rotorua District Council	Bay of Plenty Regional Council	<p>Rotorua District Council transfers to BPRC.</p> <p>(1) All the functions, duties and powers of the RDC as a territorial authority in relation to those activities described in Schedule A which are stated as permitted or require resource consent under its District Plan.</p> <p>Schedule A refers to the following activities listed in the Table to Rule 11.1.2 for Water A and B Zones in the District Plan :</p> <p>(i) moorings and ski lanes,</p> <p>(ii) jetties, boat sheds and structures for recreation purposes,</p> <p>(i) wharves and marinas</p>	<p>13 September 2007</p> <p>BPRC to supply an annual report to RDC by the end of July detailing the total number of consents, the consents issued in the last year, with the location and type, compliance with statutory requirements and enforcement actions undertaken last year.</p> <p>RDC may change or revoke transfer by giving one month's notice to BPRC.</p> <p>BPRC may relinquish this transfer by giving one month's notice to RDC.</p> <p>On the revocation or relinquishment of this transfer, BPRC must supply sufficient information to RDC to enable RDC to meet the requirements of the Act for administering those functions, duties and powers transferred under this Agreement.</p> <p>BPRC maintain a register of all transferred consents and shall at all times comply with the relevant provisions of s35 with respect to the gathering of information, monitoring and keeping records.</p> <p>BPRC shall include an advice notice with each consent issued to the effect that "a building consent may be required by RDC prior to commencement of constructions and that they are advised to make enquiries with the Building Services Section of RDC prior to construction commencing".</p>

		<ul style="list-style-type: none"> (iv) private ramps and slipways (v) public ramps and slipways (vi) any activity occurring outside Water A and B Zones and which is an integral component of any of the above and requires consent under the District Plan. <p>BPRC shall exercise all the functions, duties and powers of RDC as a territorial consent authority in respect of:</p> <ul style="list-style-type: none"> (i) lakes structures as defined in the Lakes A Zone that are permitted activities or require consent under Rule 10 in the District Plan Lakes A Zone (ii) any activity occurring within the Lakes A Zone and which is an integral component of the (i) above and requires consent under the District Plan (iii) the monitoring and enforcement of Rule 12 (except rule 12.1.1) in the District Plan controlling vessels and motor craft 	<p>BPRC shall forward to RDC for comment any applications received for new activities pursuant to Schedule A.</p>
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		<p>on the lakes within the Lakes A Zone.</p> <p>(2) The powers contained in s 38 of the RMA to appoint enforcement officers.</p> <p>(3) Powers in s314 –s 325 of the RMA to seek Enforcement Orders and serve Abatement Notices in relation to activities in the Schedule.</p> <p>(4) Powers and duties to take prosecution proceedings under s338-343 of the RMA against any person who contravenes the Act in relation to activities referred to in the Schedule.</p> <p>(5) Powers contained in section 36 to set administrative charges for carrying out the functions duties and powers of RDC as consent authority in relation to those activities referred to in the Schedule.</p>	
New Plymouth District Council	Taranaki Regional Council	Coastal protection works and structures above mhws in the New Plymouth District to better provide for integrated coastal planning.	<p>22 July 2005</p> <p>The following functions, powers and duties are transferred:</p> <p>(1) The power to administer and enforce the control of the Erection of Hard Protection Works where the works crossover the landward boundary of the Coastal Marine Area and are partially in the Coastal Hazard Zone and the Coastal Policy Area, as defined in the District Plan. This includes the enforcement of any control provisions of the New Plymouth District Plan as set out in OL7 and OL13 or conditions set for hard protection works or resource consents in the Coastal Hazard Zone and Coastal policy Area.</p>

			<p>(2) (a) The Taranaki Regional Council shall provide to the New Plymouth District Council a summary report of the exercise of the power at yearly intervals coinciding with the commencement of the local government financial year.</p> <p>(2) (b) These reports shall contain such information as agreed upon by the Chief Executives of the Taranaki Regional Council and the New Plymouth District Council.</p> <p>(2) (c) Notwithstanding 2(a) and 2(b) the Taranaki Regional Council shall make available to the New Plymouth District Councils such specific information relating to the functions, powers and duties under Part 1 of this Agreement as may be requested from time to time.</p> <p>(2) (d) actual and reasonable costs for providing such information may be charged to the New Plymouth District Council to the extent that this information is more than the Taranaki Regional Council needs to provide to its own community.</p>
Taranaki Regional Council	New Plymouth District Council	Noise control functions of the coastal marine area in the Taranaki region.	<p>23 December 1992</p> <p>The following functions, powers and duties are transferred:</p> <p>1 (a) The power to administer and enforce the control of noise, under Part XII of the Act, including the enforcement of any noise control provisions of the Taranaki Regional Coastal Plan or conditions set for noise control purposes on coastal permits, in that part of the coastal marine area of the Taranaki region that is adjacent to the coastal boundary of New Plymouth District.</p> <p>Monitoring</p> <p>(2) The District Council shall provide to the TRC a summary report of the exercise of the power at yearly intervals coinciding with the commencement of the local government financial year.</p> <p>These reports shall contain such information as agreed upon by the General Managers of New Plymouth District Council and TRC.</p> <p>Notwithstanding (a) and (b) above the District Council shall make available to the regional council such specific information as may be</p>

			<p>requested from time to time.</p> <p>actual and reasonable costs for providing such information may be charged to the Taranaki Regional Council to the extent that this information is more than the District Council needs to provide to its own community.</p> <p>Commencement</p> <p>The agreement shall commence on the day following the signing of the agreement by the TRC and the District Council.</p>
Taranaki Regional Council	<p>Stratford District Council</p> <p>New Plymouth District Council</p>	<p>Transfer functions, powers and duties in relation to Rule 34 (residential waste disposal by combustion) of Regional Air Quality Plan for Taranaki.</p>	<p>25 July 2011</p> <p>(1) The District Council accepts the power to administer and enforce Rule 34 of the Regional Air Quality Plan for Taranaki: Residential waste disposal by combustion. Rule 34 prohibits the burning of domestic waste products and green waste outdoors within defined urban areas on allotments less than 0.5 hectares and that are used primarily for residential purposes and are serviced by a weekly municipal refuse collect service.</p> <p>(2) Where non-compliance occurs the District Council has all the enforcement options under the RMA available with the concomitant cost recovery provisions. Prior to initiating a prosecution the District Council may liaise with the Taranaki Regional Council and may share costs of prosecution and any recoveries ordered by the Court.</p> <p>(3) (a) District council shall provide to TRC a summary report of the exercise of functions, powers and duties at yearly intervals coinciding along with the commencement of the local government financial year.</p> <p>(b) The report to contain such information as agreed by the chief executives and as a minimum the report shall include information on the number of backyard burning complaints received and the action taken.</p> <p>(c) Notwithstanding Parts 3(a) and (b) of the agreement, the District</p>

			<p>Council shall make available to the Taranaki Regional Council such specific information as may be reasonably requested from time to time.</p> <p>(d) Actual and reasonable costs for providing such information may be charged to the TRC to the extent that this information is more than the District Council needs to provide to its own community</p> <p>(4) This agreement shall be reviewed on an annual basis for the first two years. Thereafter it shall be reviewed every five years. The review will look at the appropriateness of the agreement and its conditions. The review will also provide the opportunity for the District Council to relinquish the transfer, if this is deemed appropriate in the circumstances.</p>
West Coast Regional Council	Westland District Council	Implementing Rule 6 On-site Discharge of Sewage Effluent in the Regional Plan for Discharges to Land.	<p>11 February 2003</p> <p>District Council shall on behalf of the WCRC :</p> <p>2.1 (a) Carry out site inspections of all new on-site sewage effluent treatment and disposal systems that are proposed to be installed as part of a new building or alteration to a building, to establish compliance with Rule 6 of the Regional Plan for Discharges to Land.</p> <p>2.1 (b) In response to an enquiry or complaint or as deemed necessary by the District Council, carry out site inspections of on-site sewage effluent treatment and disposal systems already installed, to establish compliance with Rule 6 of the Regional Plan for Discharges to Land.</p> <p>For all new or existing systems that have been inspected under clauses 2.1(a) and 2.1 (b) :</p> <p>(a) Gather information necessary to establish whether there is compliance with Rule 6</p> <p>(b) Provide advice to dischargers on why a system may not comply with the conditions of Rule 6</p> <p>(c) Advise non-complying dischargers to apply to the WCRC for resource consent, where a discharge does not comply with the</p>

			<p>conditions of the rule and no upgrade is proposed to comply</p> <p>(d) Advise the WCRC within two working days of confirming non-compliance, where any systems or parts of systems do not comply with Rule 6 of the Regional Plan for Discharges to Land and no upgrade is proposed to comply and provide details including owner/occupier's name and address, location, date of inspection, person carrying out inspection, points of non-compliance, priority based on likely adverse environmental effects and other relevant comments.</p> <p>WCRC retains responsibility for taking any enforcement action under the RMA where there is or is likely to be non-compliance with any of the provisions of Rule 6.</p> <p>District Council shall appoint suitable persons as enforcement officers and authorise them to exercise powers of an enforcement officer in sections 22 and 332 of the RMA.</p> <p>The District Council shall at its own cost, on behalf of the WCRC, carry out the functions, powers and duties transferred.</p> <p>The District Council may consult with the WCRC where it would be assisted by technical or special expertise and capability of WCRC.</p> <p>WCRC shall give the District Council any information, advice or comment on any matter referred to in clause 2.1 to assist the District Council carry out the function, powers and duties transferred.</p> <p>WCRC may request information for compliance monitoring purposes (total number of systems checked and the total number that comply).</p> <p>WCRC may request from the District Council information needed to issue a certificate of compliance under section 139 of the RMA.</p> <p>If the District Council considers relinquishing transferred functions, powers or duties it must consult first with WCRC and if it decides to relinquish must give one month's written notice to WCRC.</p> <p>WCRC may change the transfer at any time by notice to the District Council</p>
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			and may revoke the transfer at any time by notice to the District Council. The transfer remains in place until revoked by WCRC or relinquished by the District Council.
West Coast Regional Council	Buller District Council	Implementing Rule 6 On-site Discharge of Sewage Effluent in the Regional Plan for Discharges to Land.	11 February 2003 Deed on terms and conditions as set out above

Appendix B

30 Functions of regional councils under this Act

- (1) Every regional council shall have the following functions for the purpose of giving effect to this Act in its region:
- (a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region:
 - (b) the preparation of objectives and policies in relation to any actual or potential effects of the use, development, or protection of land which are of regional significance:
 - (c) the control of the use of land for the purpose of—
 - (i) soil conservation:
 - (ii) the maintenance and enhancement of the quality of water in water bodies and coastal water:
 - (iii) the maintenance of the quantity of water in water bodies and coastal water:
 - (iiia) the maintenance and enhancement of ecosystems in water bodies and coastal water:
 - (iv) the avoidance or mitigation of natural hazards:
 - (v) the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances:
 - (ca) the investigation of land for the purposes of identifying and monitoring contaminated land:
 - (d) in respect of any coastal marine area in the region, the control (in conjunction with the Minister of Conservation) of—
 - (i) land and associated natural and physical resources:
 - (ii) the occupation of space in, and the extraction of sand, shingle, shell, or other natural material from, the coastal marine area, to the extent that it is within the common marine and coastal area:
 - (iii) the taking, use, damming, and diversion of water:
 - (iv) discharges of contaminants into or onto land, air, or water and discharges of water into water:
 - (iva) the dumping and incineration of waste or other matter and the dumping of ships, aircraft, and offshore installations:
 - (v) any actual or potential effects of the use, development, or protection of land, including the avoidance or mitigation of natural hazards and the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances:
 - (vi) the emission of noise and the mitigation of the effects of noise:
 - (vii) activities in relation to the surface of water:
 - (e) the control of the taking, use, damming, and diversion of water, and the control of the quantity, level, and flow of water in any water body, including—
 - (i) the setting of any maximum or minimum levels or flows of water:

- (ii) the control of the range, or rate of change, of levels or flows of water:
 - (iii) the control of the taking or use of geothermal energy:
- (f) the control of discharges of contaminants into or onto land, air, or water and discharges of water into water:
- (fa) if appropriate, the establishment of rules in a regional plan to allocate any of the following:
 - (i) the taking or use of water (other than open coastal water):
 - (ii) the taking or use of heat or energy from water (other than open coastal water):
 - (iii) the taking or use of heat or energy from the material surrounding geothermal water:
 - (iv) the capacity of air or water to assimilate a discharge of a contaminant:
- (fb) if appropriate, and in conjunction with the Minister of Conservation,—
 - (i) the establishment of rules in a regional coastal plan to allocate the taking or use of heat or energy from open coastal water:
 - (ii) the establishment of a rule in a regional coastal plan to allocate space in a coastal marine area under [Part 7A](#):
- (g) in relation to any bed of a water body, the control of the introduction or planting of any plant in, on, or under that land, for the purpose of—
 - (i) soil conservation:
 - (ii) the maintenance and enhancement of the quality of water in that water body:
 - (iii) the maintenance of the quantity of water in that water body:
 - (iv) the avoidance or mitigation of natural hazards:
- (ga) the establishment, implementation, and review of objectives, policies, and methods for maintaining indigenous biological diversity:
- (gb) the strategic integration of infrastructure with land use through objectives, policies, and methods:
- (h) any other functions specified in this Act.

(2) A regional council and the Minister of Conservation must not perform the functions specified in subsection (1)(d)(i), (ii), and (vii) to control the taking, allocation or enhancement of fisheries resources for the purpose of managing fishing or fisheries resources controlled under the [Fisheries Act 1996](#).

(3) However, a regional council and the Minister of Conservation may perform the functions specified in subsection (1)(d) to control aquaculture activities for the purpose of avoiding, remedying, or mitigating the effects of aquaculture activities on fishing and fisheries resources.

(4) A rule to allocate a natural resource established by a regional council in a plan under subsection (1)(fa) or (fb) may allocate the resource in any way, subject to the following:

- (a) the rule may not, during the term of an existing resource consent, allocate the amount of a resource that has already been allocated to the consent; and
- (b) nothing in paragraph (a) affects [section 68\(7\)](#); and
- (c) the rule may allocate the resource in anticipation of the expiry of existing consents; and
- (d) in allocating the resource in anticipation of the expiry of existing consents, the rule may—

- (i) allocate all of the resource used for an activity to the same type of activity; or
- (ii) allocate some of the resource used for an activity to the same type of activity and the rest of the resource to any other type of activity or no type of activity; and
- (e) the rule may allocate the resource among competing types of activities; and
- (f) the rule may allocate water, or heat or energy from water, as long as the allocation does not affect the activities authorised by [section 14\(3\)\(b\) to \(e\)](#).

31 Functions of territorial authorities under this Act

- (1) Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:
 - (a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:
 - (b) the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of—
 - (i) the avoidance or mitigation of natural hazards; and
 - (ii) the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances; and
 - (iia) the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land:
 - (iii) the maintenance of indigenous biological diversity:
 - (c) *[Repealed]*
 - (d) the control of the emission of noise and the mitigation of the effects of noise:
 - (e) the control of any actual or potential effects of activities in relation to the surface of water in rivers and lakes:
 - (f) any other functions specified in this Act.
- (2) The methods used to carry out any functions under subsection (1) may include the control of subdivision.