

**TRANSFER AGREEMENT
UNDER SECTION 33
OF THE RESOURCE MANAGEMENT ACT 1991**

Between

BAY OF PLENTY REGIONAL COUNCIL (EBOP)

And

ROTORUA DISTRICT COUNCIL (RDC)



COONEY LEES MORGAN
BARRISTERS SOLICITORS NOTARY PUBLIC

AGREEMENT made this 13th day of *September* 2007

PARTIES:

1. **BAY OF PLENTY REGIONAL COUNCIL ("EBOP")**
2. **ROTORUA DISTRICT COUNCIL ("RDC")**

INTERPRETATION

"District Plan" means the operative Rotorua District Plan.

"The Act" means the Resource Management Act 1991.

"Consent Authority" has the meaning defined in s.2 of the Resource Management Act 1991.

"EBOP" means Environment Bay of Plenty, trade name for Bay of Plenty Regional Council.

"The Water A and B Zones" means those zones referred to in the District Plan and shown on the associated planning maps.

"The Lakes A Zone" means that zone referred to and shown in part 20 of the District Plan including the associated Lakes A Zone planning maps.

BACKGROUND

- A. EBOP has the functions, duties and powers under s.13(1)(a)(b)(d)(e) of the Act to control activities affecting the bed of any lake or river within the RDC district including controlling the use, erection, reconstruction, placement, alteration, removal or demolition of any structure in, on, under or over the bed of any lake or river.
- B. RDC has the functions, duties and powers under s.9 of the Act to control activities on the surface of any lake or river and on the margins of any lake or river within its district.
- C. Certain activities affecting the bed of any lake or river requiring a resource consent from EBOP under s.13 (1) (a) (b) (d)(e) of the Act may also require resource consent from RDC under s.9 of the Act.
- D. In order to provide for the integrated management of functions and to promote the efficient administration of its District Plan, RDC has agreed to transfer to EBOP its functions, duties and powers under the Act in relation to those activities described in this Agreement in accordance with the terms and conditions of this Agreement.

1. **AGREEMENT**

RDC, in a transfer made under the Special Consultative Procedure under s.83 of the Local Government Act 2002, and in accordance with the provisions of s.33 of the Act, and being satisfied that the transfer meets the requirements of s.33(4) of the Act, transfers to EBOP the following functions, duties and powers under the Act:

- (i) All the functions, duties and powers of RDC as a territorial consent authority in relation to those activities described in Schedule A hereto which are stated as permitted activities or require resource consent under its District Plan. The provisions of the District Plan shall apply and be given effect to by EBOP in the exercise of those transferred functions, duties and powers;
- (ii) The powers contained in s.38 of the Act to appoint enforcement officers for the purpose of ensuring compliance with the Act, the District Plan and any conditions of resource consent in relation to those activities referred to in the Schedule;
- (iii) The powers contained in s.314-s.325 of the Act to seek Enforcement Orders and serve Abatement Notices in relation to the activities referred to in the Schedule;
- (iv) The powers and duties to take prosecution proceedings under s.338-343 of the Act against any person who contravenes the Act in relation to those activities referred to in the Schedule;
- (v) The powers contained in s.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.

2. **TRANSFER OF RESPONSIBILITIES**

- I. EBOP shall be responsible for the proper exercise of the powers, duties and functions transferred to it under this Agreement and for all liabilities, obligations and contracts arising out of the exercise of those powers, duties or functions so transferred.
- II. EBOP indemnifies RDC against all actions, suits, proceedings, claims, demands, costs (including legal fees on a solicitor/client basis) and expenses whatsoever which may be taken or made against the transferor Council or incurred by it by reason or arising

out of any fault, neglect or sufferance of the transferee Council, its officers or servants, in exercising any discretion, imposing conditions, performing, exercising or fulfilling any function, power or duty transferred.

3. CONDITIONS

This Transfer is made subject to the following conditions:

- (i) That EBOP will supply an annual report to RDC by the end of July in each year, 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 in the last year.
- (ii) That RDC may change or revoke this transfer by giving one month's notice to EBOP;
- (iii) That EBOP may relinquish this transfer by giving one month's notice to RDC;
- (iv) On the revocation or relinquishment of this transfer, EBOP 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.
- (v) EBOP shall maintain a register of all transferred consents and shall at all times comply with the relevant provisions of s.35 with respect to the gathering of information, monitoring and keeping records.
- (vi) That EBOP shall include an advice note within each consent issued to the effect that:- " a building consent may be required by RDC prior to commencement of construction and that they are advised to make enquiries with the Building Services Section of RDC prior to construction commencing".
- (vii) EBOP shall forward to RDC for comment any applications received for new activities pursuant to Schedule A.

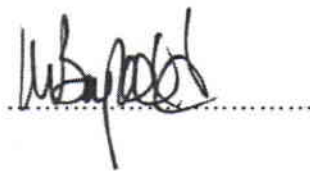
- (viii) RDC shall notify EBOP when any consents are issued within the Lakes A Zone that would influence their monitoring or enforcement duties pursuant to Rule 12 of the District Plan

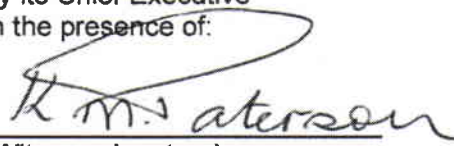
4. ACKNOWLEDGMENT

In accordance with s.33 (4) (c) EBOP and RDC hereby agree that this transfer is desirable on the following grounds:

- (a) That EBOP represents the appropriate community of interest relating to the exercise or performance of the functions, powers or duties transferred to it. The conditions of the transfer should ensure there is no conflict of interest. RDC has had and will continue to have contact with the various users. The transfer will also allow integration between activities affecting the bed of any lake or river, surface water activities and lake and river margin activities;
- (b) In terms of efficiency, the transfer will remove duplication, and the need for RDC to allocate substantial resources in this area of activity;
- (c) EBOP is considered to hold the expertise to regulate structures and activities on the water surface which fit in with EBOP Navigation and Safety functions within its region.

**SIGNED for and on behalf of the
BAY OF PLENTY REGIONAL COUNCIL**
by its Chief Executive
in the presence of:




(Witness signature)

(Full name of witness)

Kelly Paterson
3 Warbrick Terrace
MATATA

(Occupation)

Secretary

(Address)

7/9/07

**SIGNED for and on behalf of the
ROTORUA DISTRICT COUNCIL**
by its Chief Executive
in the presence of:



S. Newham
(Witness signature)

SUSAN NEWHAM
(Full name of witness)

PERSONAL ASSISTANT
(Occupation)

HAUPAPA ST. ROTORUA
(Address)

SCHEDULE A

1. EBOP shall exercise all the functions, duties and powers of RDC as a territorial consent authority in respect of the following activities listed in the Table to Rule 11.1.2 for the Water A and B zones in the District Plan:
 - (i) Moorings and ski lanes (activity 9)
 - (ii) Jetties, boat sheds and structures for recreation purposes (activity 10)
 - (iii) Wharves and marinas (activity 13)
 - (iv) Private ramps and slipways (activity 14)
 - (v) Public ramps and slipways (activity 15)
 - (vi) Any activity occurring outside the Water A and B Zones and which is an integral component of any of the above activities and for which consent is required under the District Plan.

2. EBOP shall exercise all the functions, duties and powers of RDC as a territorial consent authority in respect of the following activities listed:
 - (i) Lake structures as defined in the Lakes A Zone that are stated as permitted activities or requiring 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 activities referred to in (i) above and for which consent is required 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 on the lakes within the Lakes A Zone

