

(c) Which—

- (i) Is a reserve under the Reserves Act 1977; or
- (ii) Is principally used for recreational purposes, whether or not it is a reserve under the Reserves Act 1977; or
- (iii) Is a marina, wharf, jetty, boat ramp or other harbour facility principally used for recreational purposes; or
- (iv) Is an item of plant or equipment used principally in association with the maintenance, use or operation of the facilities referred to in subparagraphs (i), or (ii) or (iii) of this paragraph—

is hereby vested in the Napier City Council for the purpose for which it is so reserved, or, where there is no such purpose, for the purposes of any function transferred by this order to the Napier City Council.

(3) Subject to subclauses (6), (8), (9) and (10) of this clause all that property which is vested in the Hawke's Bay Harbour Board as at the 31st day of October 1989 and which is situated in the Napier City as constituted by this order and which is adjacent to any harbour or the sea is hereby vested in the Napier City Council.

(4) Where there is any dispute over whether any property comes within a category of property referred to in this clause, the matter shall be referred to the Local Government Commission for determination.

(5) Subject to subclauses (8) to (10) of this clause any property which is vested in the Hawke's Bay Harbour Board as at 31st day of October 1989 and which does not come within a category of property referred to in subclause (2) or subclause (3) of this clause is hereby vested in the Hawke's Bay Regional Council.

(6) Notwithstanding anything in subclauses (2) and (3) of this clause, but subject to subclauses (9) and (10) of this clause, any land which is vested in the Hawke's Bay Harbour Board as at 31st day of October 1989 and which is below the mean high water mark is hereby vested in the Hawke's Bay Regional Council.

(7) For the purposes of this clause, any property which is fixed to, or under or over, any land which is below the mean high water mark, and which is used for, or in conjunction with, any purpose referred to in subclause (2) of this clause and which is situated in the Napier City as constituted by this order is hereby transferred to the Napier City Council, whether or not any interest in the land is also transferred.

(8) Without limiting the provisions of subclauses (2), (3), (5) and (6) of this clause, but subject to subclauses (9) and (10) of this clause, the property described in the Fourth Schedule to this order and, in respect of the harbour facilities described in Part I of that Schedule:

- (a) Any cash balances; and
- (b) Any outstanding income and expenditure; and
- (c) Any stores, materials, plant and equipment,

relating to those facilities shall, subject to paragraphs (a) and (b) of this subclause, shall vest without cost in the Napier City Council.

(9) If any of the land specified in the Fourth Schedule to this order is, between the 9th day of June and the 31st day of October 1989, allocated to the Port of Napier Limited pursuant to an approved port company plan within the meaning of the Port Companies Act 1988 then, notwithstanding subclause (8) of this clause, that land shall not vest in the Napier City Council.

(10) Notwithstanding anything in this clause, if, after the 31st day of October 1989:

(a) The Minister of Transport approves a port company plan within the meaning of the Port Companies Act 1988 pursuant to which any of the property, real or personal, identified in this clause is liable to be transferred to the Port of

Napier Limited, the local authority which has received that property pursuant to this clause, shall transfer such property to Port of Napier Limited at the cost of that company, subject to any appropriate adjustment for incomings and outgoings in relation to such property for the period beginning on the 1st day of November 1989 and ending on the date of the transfer of the property to Port of Napier Limited; or

(b) Any approved port company plan is cancelled, withdrawn, re-issued, or in any way altered and, as a result, property is deemed to be returned to the ownership (notional or otherwise) of the Hawke's Bay Harbour Board, that property shall be allocated under this order as if the property had been owned by the Hawke's Bay Harbour Board on the 31st day of October 1989.

124 TITLE TO PROPERTY

Any reference, express or implied, to the Hawke's Bay Harbour Board in any instrument or other document whatsoever, or in any entry or record made in any register in relation to any land whatsoever vested in any local authority by this order shall, unless the context otherwise requires, be read as a reference to that local authority.

125 PORT OF NAPIER LIMITED

(1) All those shares in the Port of Napier Limited that are held by the Hawke's Bay Harbour Board as at the 31st day of October 1989 are hereby vested in the Hawke's Bay Regional Council and the Manawatu-Wanganui Regional Council as follows:

Eleven-twelfths of the number of those shares shall be vested in the Hawke's Bay Regional Council.

One twelfth of the number of those shares shall be vested in the Manawatu-Wanganui Regional Council.

(2) Fifty-one percent of the shares vested in each local authority by sub clause (1) of this clause shall be shares that belong to the class of shares referred to in section 7(1) of the Port Companies Act 1988.

(3) The other 49 percent of the shares vested in each local authority by subclause (1) of this clause shall be shares:

- (a) Which carry voting rights; but
- (b) Which do not belong to the class of shares referred to in section 7(1) of the Port Companies Act 1988.

126 LIABILITIES IN RESPECT OF PORT RELATED COMMERCIAL UNDERTAKINGS

(1) All those liabilities of the Hawke's Bay Harbour Board as determined under section 29 of the Port Companies Act 1988 shall become liabilities of the Hawke's Bay Regional Council.

(2) All those debt securities issued by the Port of Napier Limited to the Hawke's Bay Harbour Board under section 29 of the Port Companies Act 1988, is hereby transferred to the Hawke's Bay Regional Council.

127 RESIDUAL ASSETS AND LIABILITIES

All the assets and liabilities of the Hawke's Bay Harbour Board as at the close of the 31st day of October 1989 for which provision for vesting is not otherwise made in this order are declared to be assets and liabilities of the Hawke's Bay Regional Council.

PART VIII

General

128 TRANSFER OF RESPONSIBILITIES

(1) Except as otherwise provided in this order, a local authority constituted by this order shall, in respect of the district of that local authority:

(a) Have and may exercise and be responsible for all the powers, duties, acts of authority and functions which were previously exercised, or which could have been so exercised, by the former authorities had they not been dissolved; and