



ANALYSIS

Title	
1. Short Title	14. Authority for Council to transfer land
2. Interpretation	15. Authority for Council to make and levy a separate rate
3. Special Act	16. Powers of Council in respect of embankments
4. Authority to develop	17. Money expended by Council to be a charge on land
5. Board and Council may enter into deed to provide for the development	18. Authority to maintain waterways
6. Authority to reclaim	19. Restrictions on the erection of any structure on embankments
7. Application of the provisions of the Health Act 1956 and other Acts	20. Authority to require bonds
8. Power for Council to change the operative district scheme in respect of the development	21. Authority for Council to make bylaws
9. Authority to enter into contracts	22. Compensation
10. Authority for Board to subdivide the bed of the harbour	23. Cancellation of trusts and reservations
11. Authority to license	24. Powers of District Land Registrar
12. Authority to lease	25. Land to form part of Devonport Borough
13. Authority for Board to transfer land to the Council	26. Service of notices Schedules

1970, No. 14—*Local*

**An Act to authorise the Auckland Harbour Board and the Devonport Borough Council to develop certain land in the Waitemata Harbour for residential, commercial, boat harbour, and recreational purposes and to reclaim such land or any part or parts thereof for those purposes**

[29 October 1970]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

**1. Short Title**—This Act may be cited as the Auckland Harbour Board and Devonport Borough Council (Ngataringa Bay) Empowering Act 1970.

**2. Interpretation**—In this Act, unless the context otherwise requires,—

“Board” means the Auckland Harbour Board:

“Boat harbour” means a harbour or part of a harbour or an anchorage used for the purpose of mooring, sheltering, or servicing pleasure boats; and includes any land or building used in conjunction therewith and, without limiting the general import of that term, may include any slipway, launching ramp, dock, pier, marina pier, quay, wharf, jetty, landing place, hoist, hoist well, bridge, float, pontoon, boat-shed, club premises, breakwater, wave screen, embankment, marine service station or fuelling pier or facility, or any other boating or aquatic structure, service, or amenity for the use and convenience of the boating public; and reference to a boat harbour shall be deemed to be reference to any part of any facility, structure, service, amenity, or use included in a boat harbour:

“Council” means the Devonport Borough Council and, where the context so requires, includes the Corporation of the Borough of Devonport:

“Development” means the residential, commercial, boat harbour, and recreational purposes referred to in subsection (1) of section 4 of this Act; and includes a marine residential development combining residential development with such waterways and other amenities or works as may be necessary for the purpose of such a development:

“District” means the district of the Borough of Devonport:

“Embankment” means any bank, enclosing bank, retaining wall, or revetment wall enclosing, holding, or protecting any land, whether reclaimed land or not, from tidal or other waters; and includes all or any part of an embankment from the base thereof to the apex or coping of any such embankment, and any part below mean high-water mark or covered by reclamation material or reclaimed land or covered by any other land or any building or structure whatsoever:

“Waterway” means any channel, canal, dam, or lock used or intended to be used for navigational, ornamental, or recreational purposes; and includes any part of a waterway.

**3. Special Act**—This Act shall be deemed to be a special Act within the meaning of the Harbours Act 1950.

**4. Authority to develop**—(1) Subject to the provisions of this Act, the Board and the Council, or either of them, are hereby empowered to develop and redevelop from time to time the whole or any part or parts of the land described in the First Schedule to this Act, for such residential, commercial, boat harbour, and recreational purposes as the Board or the Council, as the case may be, may think fit:

Provided that any such development shall make provision for the matters set out in the Second Schedule to this Act.

(2) Without limiting the general power of development conferred on the Board and the Council by subsection (1) of this section the Board and the Council, or either of them, may in respect of any land described in the First Schedule to this Act, or any part or parts thereof for the time being vested in the Board or the Council, as the case may require,—

(a) Subdivide and resubdivide the whole or any part or parts of such land which is from time to time reclaimed from the sea into suitable allotments for the purpose of the development:

Provided that any such subdivision shall be subject to the appropriate provisions of the Town and Country Planning Act 1953 and the Municipal Corporations Act 1954:

Provided also that any plan of subdivision relating to the development shall be approved by the Minister of Works and the Minister of Lands before the subdivision is made.

(b) Construct or provide such works and amenities as may be deemed necessary or desirable for the use and enjoyment of such land for the purposes of the development, including—

(i) Streets, service lanes, access ways, waterways, and other means of communication or access:

(ii) Services for water supply, drainage, sewerage, electric lighting, power, gas, and all other works and amenities:

(iii) All works necessary to comply with any lawful requirement of any local or public authority.

(3) For the purpose of carrying out and executing the development and in addition to any powers contained in this Act the Board may exercise any of the powers conferred on it by the Harbours Act 1950 and any other Act, and the Council may exercise any of the powers conferred on it by the Municipal Corporations Act 1954 and any other Act.

**5. Board and Council may enter into deed to provide for the development—**(1) The Council may enter into a deed or deeds with the Board, together with any other person or persons or other local or public authority who may be made parties thereto, to provide for the carrying out and execution of the development or any part of the development.

(2) Without limiting the generality of subsection (1) of this section, any such deed may provide, on such terms and conditions as shall be agreed to by the Board and the Council, for—

- (a) The Board to grant a licence to use or occupy or to lease or transfer the fee simple of the whole or any part or parts of the land described in the First Schedule to this Act to the Council, whether such land is reclaimed or not:
- (b) The Council to undertake and construct the reclamation of the whole or any part or parts of the land described in the First Schedule to this Act, and to carry out and execute or otherwise provide for the subdivision and development of such land:
- (c) The Council to grant a licence to use or occupy or to lease or transfer the fee simple of any such land vested in it, or any part or parts thereof, whether such land is reclaimed or not, to any person or persons or other local or public authority, or to transfer the fee simple of the whole or any part or parts of such land transferred to the Council back to the Board:
- (d) The maintenance, repair, and reconstruction of embankments and other works and amenities and the maintenance and dredging of waterways which form part of the development or which are adjacent thereto:

(e) Such other matters as are within the objects of this Act or necessary or reasonably incidental to the carrying out and execution of the development.

(3) The agreement entered into between the Board and the Council, bearing date the 29th day of July 1969, relating to the reclamation and development of part of the land described in the First Schedule to this Act is hereby declared to have been lawfully made and the Board and the Council shall be deemed to have at all times been authorised and empowered to enter into and execute the agreement but the agreement shall be subject to the proviso to subsection (1) of section 4 of this Act.

**6. Authority to reclaim—**(1) Subject to the provisions of the Harbours Act 1950, and of this Act, the Board and the Council, or either of them, may from time to time reclaim from the sea the whole or any part or parts of the land described in the First Schedule to this Act:

Provided that the construction of any such reclamation shall not be commenced until such time as the Council has made provision for the development in the operative district scheme for the Borough of Devonport in accordance with the provisions of section 8 of this Act and the Town and Country Planning Act 1953.

(2) The Council shall not commence the construction of any reclamation authorised by subsection (1) of this section until such time as it has entered into a deed with the Board pursuant to section 5 of this Act and the deed provides that the Council is to be responsible for the construction of that reclamation.

(3) In the event of the Council being responsible for the construction of any reclamation in accordance with any such deed the Council shall, before commencing the construction of the reclamation, deposit at the office of the Board a duplicate copy of the plan or plans of the proposed reclamation deposited or to be deposited by it at the office of the Marine Department pursuant to section 178 of the Harbours Act 1950.

(4) On receiving such plan or plans the Board may make and notify the Council of such restrictions, conditions, or requirements relating to the construction, maintenance, or protection of the reclamation and embankments, or any part or parts thereof, as it may determine, and may thereafter

from time to time make and notify the Council of such further or other requirements relating to the construction of the reclamation while it is being carried out, and to the maintenance and protection of the reclamation or embankments, as it may determine, and the Council shall comply with such restrictions, conditions, or requirements in all respects to the satisfaction of the Board.

(5) Without limiting the generality of subsection (4) of this section the Council, in constructing any reclamation authorised by subsection (1) of this section, shall—

- (a) Construct and maintain such embankments as may be required by the Board in such a manner as to provide for the stability of the embankment and for the adequate protection against wave or tidal action of any embankment that may face the sea:
- (b) Provide suitable material (which shall not include organic material) for the reclamation, and take all such steps and measures as the Board may require to prevent the escape of any reclamation material into tidal waters:
- (c) Construct and maintain such stormwater, sewerage, and other drainage works as may be required by the Board so as to prevent or avoid any flooding or similar damage to any adjoining land.

(6) Nothing in subsections (2) to (5) of this section shall be construed as limiting the application of the provisions of the Harbours Act 1950 and in particular, sections 175 to 182 of that Act, to any such reclamation constructed by the Council or the duties and liabilities of the Council as the constructing authority in respect of the reclamation.

**7. Application of the provisions of the Health Act 1956 and other Acts—**Nothing in this Act shall be construed as limiting—

- (a) The powers of the Director-General of Health or other proper officer of the Department of Health to make and issue directions and requisitions relating to the materials to be used in any reclamation constructed under the authority of this Act and the method of construction, covering, protection, and maintenance of such reclamation, or in respect of any other matter authorised in the Health Act 1956, or in any other Act:

- (b) The application of the provisions of the Town and Country Planning Act 1953 except as expressly provided in section 8 of this Act:
- (c) The application of the provisions of Part XXV of the Municipal Corporations Act 1954.

**8. Power for Council to change the operative district scheme in respect of the development—**(1) For the purposes of this Act and of carrying out and executing the development the Council shall provide and maintain, in accordance with the provisions of the Town and Country Planning Act 1953, and this Act, an operative district scheme in respect of the land described in the First Schedule to this Act and may, notwithstanding the provisions of subsection (2) of section 29 of the Town and Country Planning Act 1953, change the existing operative district scheme of the Borough of Devonport in respect of any part of the land described in the First Schedule to this Act.

(2) The period within which the maker of any objection may appeal to the Town and Country Planning Appeal Board against any decision of the Council wholly or partly disallowing his objection to any provision for the development (including any change) made under subsection (1) of this section shall be 2 months after the disallowance.

(3) Notwithstanding anything contained in section 30 of the Town and Country Planning Act 1953, any provision made in the operative district scheme for the Borough of Devonport in respect of the land described in the First Schedule to this Act or any change in the operative district scheme made by the Council under subsection (1) of this section shall not be due for review as part of the review of the district scheme being undertaken by the Council at the date of the passing of this Act.

**9. Authority to enter into contracts—**Subject to the provisions of this Act the Board and the Council, or either of them, may grant any licence or licences or enter into any contract or contracts with any person or persons or any local or public authority for the purposes of this Act and of carrying out and executing the development, including any licence or any contract to carry out and construct any reclamation or to develop any land or to carry out, construct, and maintain all

or any works which may be necessary or expedient in connection with any such reclamation or development, upon such terms and conditions as the Board or the Council, as the case may be, may think fit.

**10. Authority for Board to subdivide the bed of the harbour**—The Board is hereby authorised for the purposes of this Act to divide and separate from its existing title and subdivide the whole or any part or parts of the land described in the First Schedule to this Act, irrespective that such land may not have been reclaimed from the sea, in such manner as it thinks fit and may do all things necessary for that purpose.

**11. Authority to license**—(1) In addition to all other licensing powers conferred on the Board and the Council under this Act, or any other Act, the Board and the Council, or either of them, may license or permit any part of the land described in the First Schedule to this Act, or any building or structure thereon, to be used or occupied for the purpose of this Act and for carrying out and executing the development for such period and upon such terms and conditions as the Board or the Council, as the case may be, may think fit.

(2) Every such licence shall be in writing under the seal of the Board or the Council, as the case may be, and may be for any period not exceeding 14 years from the date thereof and may prescribe a sum of money, whether as a rent or charge or fee, to be payable, either at stated periods or on or before the granting thereof, for the use of the land, building, or structure thereon, as the case may be, and may provide any other general or particular terms and conditions to be observed or performed by the licensee as the Board or the Council, as the case may be, may think fit.

(3) All money paid by any person to the Board or the Council for the grant of any such licence shall be received, dealt with, applied, and accounted for as part of the general funds of the Board or the Council, as the case may be.

(4) The provisions of sections 157 and 159 of the Harbours Act 1950 shall not apply to any licence or permit granted under this Act.

(5) The Board, or the Council with the approval of the Board, may grant a licence or permit to any person or persons under the authority of this section in respect of any land or

foreshore or bed of the harbour or sea vested in the Board and adjacent to or in the vicinity of the land described in the First Schedule to this Act in any case where, in the opinion of the Board or the Council, as the case may be, the grant of the licence or permit is necessary or reasonably incidental to the carrying out and execution of the development.

(6) In granting any licence or permit under this Act the Board or the Council, as the case may be, shall ensure, by the insertion in the licence or permit of appropriate terms and conditions, that the effect of the licence or permit is not to deny the public reasonable access over the whole or any part or parts of the land described in the First Schedule to this Act in any case where it is reasonable and practicable for the public to have such access.

**12. Authority to lease—**(1) In addition to all other leasing powers conferred on the Board or the Council under any other Act the Board and the Council, or either of them, may in respect of the whole or any part or parts of the land described in the First Schedule to this Act which is from time to time reclaimed from the sea and which is for the time being vested in the Board or the Council, as the case may require, lease the whole or any part or parts of such reclaimed land to any person or persons or any local or public authority for the purpose of this Act for any term with such right or rights of renewal and upon such rent and on such other terms and conditions as the Board or the Council, as the case may be, may think fit.

(2) The Board or the Council, as the case may be, may accept a surrender of any such lease, whether as to the whole or to any part of the land comprised therein, or may vary the terms and conditions of any lease granted pursuant to this section, upon such terms and conditions as the Board or Council, as the case may be, may think fit.

(3) Sections 7, 8, 18, and 19 of the Public Bodies Leases Act 1969, shall not apply to the leasing by the Board or the Council or to any lease granted by the Board or the Council pursuant to this section, and section 153 of the Municipal Corporations Act 1954 shall not apply to the leasing by the Council or to any lease granted by the Council pursuant to this section, and any other provisions of those Acts, or any other Act, which are inconsistent with the provisions of this

section shall be deemed to be modified to the extent of such inconsistency.

(4) Any local or public authority may take and execute any lease granted by the Board or the Council pursuant to this section or any surrender or variation thereof without further or other authority than this subsection.

**13. Authority for Board to transfer land to the Council—**

(1) For the purpose of carrying out and executing the development the Board may transfer the fee simple of the whole or any part or parts of the land described in the First Schedule to this Act to the Council for the purposes of this Act, with or without consideration, on such terms and conditions as shall be agreed to by the Board and the Council.

(2) Any consideration paid by the Council to the Board for the transfer of any land under subsection (1) of this section may be payable as an annual sum in perpetuity or may otherwise be for such amount or amounts and payable at such time or times and in such manner as may be agreed to by the Board and the Council.

**14. Authority for Council to transfer land—**(1) For the purposes of this Act and of carrying out and executing the development the Council may transfer the fee simple of any land transferred to and vested in it under section 13 of this Act to any person or persons, with or without consideration, on such terms and conditions as the Council shall think fit:

Provided that every such transfer shall contain a statement that the land is transferred pursuant to this Act and is subject to the provisions of this Act.

(2) Subject to the terms and conditions of any deed entered into by the Board and the Council under section 5 of this Act, the Council may transfer the fee simple of any such land vested in it back to the Board on such terms and conditions as shall be agreed to by the Board and the Council and the land shall upon registration of the transfer thereupon vest in the Board for an estate in fee simple for the purposes of this Act without further authority than this subsection.

(3) The District Land Registrar for the North Auckland Land Registration District is hereby authorised to register against the title to any land described in the First Schedule to this Act a memorandum under his hand that the land is subject to this Act and to endorse any certificate of title

relating to such land accordingly. Registration as aforesaid shall affect with notice of this Act all persons then having any estate or interest in the land and their successors in title.

**15. Authority for Council to make and levy a separate rate—**(1) The Council may from time to time for the purposes of this Act and of carrying out and executing the development, including purchasing or otherwise acquiring an interest in the whole or any part or parts of the land described in the First Schedule to this Act from the Board and constructing, maintaining, or repairing any embankments or other works in connection with the development or in maintaining or dredging any waterway, by special order make a separate rate and may levy that rate on any land described in the First Schedule to this Act which is from time to time reclaimed from the sea and which is within the district.

(2) The provisions of sections 93 and 93A of the Municipal Corporations Act 1954 shall not apply to this section and the power conferred on the Council under subsection (1) of this section may be exercised without a petition or the taking of a poll. The rate shall, for the purposes of the Municipal Corporations Act 1954, be deemed to be a particular separate rate, and the provisions of Part IX of that Act shall, so far as they are applicable and except to the extent that they are inconsistent with any provision of this Act, apply to the power conferred on the Council under that subsection.

(3) Without limiting the generality of subsection (1) of this section, the Council may expend and apply the proceeds of such separate rate for—

- (a) The purchase or other acquisition of an interest in the whole or any part or parts of the land described in the First Schedule to this Act from the Board, including the payment of an annual sum in perpetuity or such other amount or amounts payable at such time or times and in such manner as may be agreed to by the Board and the Council as provided for in subsection (2) of section 13 of this Act;
- (b) The cost of maintaining and dredging any waterway which forms part of the development or which is adjacent thereto;
- (c) The cost of the supervision and clerical work incurred in connection with the expenditure of the separate rate, including the salaries of officers who are not

employed generally in the business of the Council but whose services are utilised in the making or levying of the rate or in connection with its expenditure:

(d) Such other matters as are in the opinion of the Council for the benefit of that portion of the district which is at any time contained within the land described in the First Schedule to this Act.

(4) The Council may, by special order direct that the rate be an annually recurring rate, leviable without further proceeding on the part of the Council, for such time as the Council may think fit.

(5) Instead of making and levying any such rate the Council may levy a uniform annual fee.

(6) The Council may, if it thinks fit, instead of levying a separate rate or levying a uniform annual fee as aforesaid, or in addition to levying such separate rate or levying an annual fee, from time to time, make a reasonable charge of such amount as will in the opinion of the Council be sufficient to cover the actual expenditure incurred or the expenditure which it is estimated will be incurred by the Council in maintaining and dredging any waterway which forms part of the development or which is adjacent thereto.

(7) For the purpose of subsection (6) of this section the Council may serve a notice of any such charge or fee, whether a particular charge in any one year or an annual fee, on the owner or owners of the whole or any particular part or parts of the land described in the First Schedule to this Act requiring payment to be made within the time specified in the notice.

(8) If any owner of such land does not within the time specified in the notice pay the amount of the charge or fee to the Council that amount together with interest thereon at 6 percent per annum shall be recoverable by the Council from the owner as a debt due to it by the owner.

(9) In the event of the Board being responsible for maintaining and dredging any waterway which forms part of the development or which is adjacent thereto the Board may notify the Council of the amount which in its opinion will be sufficient to cover the actual expenditure incurred or the expenditure which it estimates will be incurred by it in carry-

ing out such work, and the Council shall include any such amount in the separate rate or annual fee, as the case may be, for payment to the Board.

**16. Powers of Council in respect of embankments—**(1) The owner for the time being of any allotment of land reclaimed from the sea under the authority of this Act shall be responsible for the cleaning, maintenance, repair, or reconstruction of any embankment on or abutting or adjacent to or bordering his land and facing the sea or tidal waters or water contained in any dam or lock and irrespective of whether the embankment is within the boundaries of his land or not or is situated below mean high-water mark or not.

(2) Except as provided for in subsection (1) of this section, no person shall alter, move, or interfere with any embankment or any part of an embankment without first obtaining the approval in writing of the Council.

(3) The Council at any time may, and if so required by the Board shall, give notice to the owner of the land responsible for such cleaning, maintenance, repair, or reconstruction pursuant to subsection (1) of this section requiring him to clean, maintain, repair, or reconstruct the embankment within the time specified in the notice, and shall send a copy of the notice to every person having a registered interest in the land under any mortgage or other encumbrance.

(4) If the owner of the land does not or fails within the time specified in any such notice to clean, maintain, repair, or reconstruct the embankment the Council may itself clean, maintain, repair, or reconstruct the embankment, and for that purpose may enter upon the land of the owner or on any land adjacent thereto which it is necessary to enter upon for the purpose of carrying out the work of cleaning, maintaining, repairing, or reconstructing the embankment.

(5) The cost of any such cleaning, maintenance, repair, or reconstruction of any embankment carried out by the Council under this section, together with all expenses incurred by it in connection therewith and interest thereon at 6 percent per annum, shall be payable to the Council by the owner and shall be recoverable by the Council from the owner as a debt due to it by the owner.

(6) Where the owner of any land fails or refuses to comply with any notice given by the Council under this section any

registered mortgagee or occupier of the land may, with the prior approval of the Council, do such work as is necessary to comply with the notice to clean, maintain, repair, or reconstruct the embankment.

**17. Money expended by Council to be a charge on land—**

(1) If at any time any money is due and unpaid under subsection (8) of section 15 or under section 16 or under subsection (4) of section 19 of this Act and is recoverable from the owner of the land by the Council, the Town Clerk or other responsible officer may deposit with the District Land Registrar for the North Auckland Land Registration District a certificate describing the owner's land and specifying the amount recoverable as aforesaid, and the Registrar shall thereupon register the certificate in respect of that land.

(2) The money specified in a certificate registered under this section in respect of any land shall, until payment thereof, be a charge on the land. The charge shall be deemed to have been created at the time of the registration of the certificate and that registration shall be deemed to be registration of the charge for the purposes of the Statutory Land Charges Registration Act 1928.

(3) For the purpose of enforcing any charge created by this section, the Supreme Court, on the application of the Council, may make such order as the Court thinks fit either for the sale of the land or for the appointment of a receiver or otherwise, and any order for sale shall be carried into effect by the Sheriff in the same manner as a writ of sale, with such modifications that may be necessary.

**18. Authority to maintain waterways—**The Board and the Council, or either of them, may maintain and dredge any waterway which forms part of the development or which is adjacent thereto:

Provided that nothing in this section shall be construed as limiting the owner's responsibility for the cleaning, maintenance, repair, and reconstruction of any embankment under subsection (1) of section 16 of this Act.

**19. Restrictions on the erection of any structure on embankments—**(1) No person shall erect, place, or connect any wharf, jetty, pier, marina pier, launching ramp, landing place, hoist float, pontoon, boat shed, or any other structure on or

adjacent to any embankment, irrespective of whether the structure is within the boundaries of that person's land or not, or is below mean high-water mark or not or otherwise on or in any waterway which forms part of the development or which is adjacent thereto, without a written permit from the Board or the Council.

(2) The Board or Council, or either of them, may grant a permit for any such structure on such terms and conditions as the Board or Council, as the case may be, may think fit, and without limiting the generality of the power hereinbefore conferred, any such term or condition may relate to the design, method of construction, or materials to be used in constructing such structure; the maintenance, repair, and reconstruction of any such structure; the requirement (if any) of a bond to secure the performance of any work connected therewith; and the payment of any fee or charge in respect of such permit.

(3) Any fee or charge payable in respect of any such permit, may, in addition to covering the cost to the Board or the Council, as the case may be, of issuing the permit and of inspecting and controlling such structures, include such further charge or sum as the Board or the Council, as the case may be, may from time to time determine.

(4) The Board or the Council may at any time in respect of any structure for which it granted a permit under this section and which is in its opinion in an unsound or unsafe condition, after giving not less than 4 weeks' notice to the person in whose name the permit was granted and (if he is not the same person) to the owner of the land or embankment on which the structure is erected, placed, or connected of its intention so to do, enter upon that land or embankment and demolish or remove the structure and may recover the expenses incurred in so doing, together with interest thereon at 6 percent per annum, from the person in whose name the permit was granted or from the owner of the land or embankment on which it was erected, placed, or connected as a debt due to the Board or the Council, as the case may be.

**20. Authority to require bonds—**(1) In addition to any deposit which the Board or the Council, as the case may be, may require to be paid to it under the terms of any licence or contract to or with any person or persons entered into for the purposes of this Act and of carrying out and executing the

development, the Board or the Council, or either of them, may require that person to enter into a bond with a sufficient penalty, and (if required) with sufficient sureties, for the fulfilment of the licence or contract according to the terms and conditions thereof and the provisions of this Act.

(2) In the case of any breach or default of any such terms and conditions of any licence or contract, the bond, together with any deposit as aforesaid, shall be absolutely forfeited to the Board or Council, as the case may be, as liquidated damages and recoverable as a debt due to the Board or Council without affecting any other rights and remedies which the Board or Council may have, whether under any Act or rule of law or the licence or contract or otherwise howsoever.

**21. Authority for Council to make bylaws—**(1) In addition to any other powers to make bylaws conferred on the Council by any other Act, the Council may from time to time, subject to and in accordance with the provisions of Part XXIX of the Municipal Corporations Act 1954, make such bylaws as it thinks necessary or expedient for the more effectual carrying out of the objects of this Act.

(2) Without limiting the generality of the power to make bylaws conferred by subsection (1) of this section the Council may make bylaws for and in respect of any waterway or boat harbour vested in or under the control of the Council which forms part of the development or which is adjacent thereto including bylaws—

- (a) Regulating and controlling the use of any such waterway or boat harbour:
- (b) Regulating and controlling the speed and navigation of any vessel using any such waterway or boat harbour:
- (c) Regulating, controlling, or prohibiting the mooring, anchoring, or placing of any vessel in any such waterway or boat harbour, or any part of any such waterway or boat harbour:
- (d) Regulating all matters relating to the protection of life or property in or on vessels using any such waterway or boat harbour:
- (e) Protecting and safeguarding any such waterway or boat harbour against damage, pollution, obstruction, disturbance, or misuse of any kind whatsoever:

- (f) Regulating, controlling, or prohibiting the discharge of stormwater into any such waterway or boat harbour:
- (g) Providing for the proper conduct of persons using, occupying, or frequenting any such waterway or boat harbour:
- (h) Fixing fees, charges, rents, or payments for the use of moorings, mooring sites, piers, marina piers, sheds, or any other structures included in a boat harbour and provided or erected by the Council.

(3) For the purposes of subsection (2) of this section the word "vessel" shall have the meaning ascribed to it in section 2 of the Harbours Act 1950.

(4) The Council shall not make any bylaw under the authority of this section which relates to any waterway or boat harbour or the use of any such waterway or boat harbour without first obtaining the approval in writing of the Minister of Marine and the Board to any such bylaw.

**22. Compensation**—(1) Nothing in this Act shall deprive any person of any right or remedy he would otherwise have in respect of any loss caused by any reclamation, development, or work constructed or carried out under the authority of this Act:

Provided that no action for damages or other right or remedy whatsoever (other than in respect of and arising out of the terms and conditions of any agreement or deed entered into between the Board and the Council or the Board or the Council and any other person) shall lie against the Board or the Council, or either of them, or any officer, employee, or agent of either of them, in respect of any loss or disturbance of the right of support of any land caused by the construction or the state and condition of any embankment or waterway or the bed of any waterway or in respect of the exercise by the Board or the Council of any of the powers conferred on them or either of them under subsection (4) of section 16, section 18, and subsection (4) of section 19 of this Act, unless any such powers are exercised without reasonable care, or in respect of any failure by the Board or the Council, or either of them, to exercise any of the functions or powers conferred on them under this Act.

(2) For the purposes of subsection (1) of this section the word "loss" includes loss of property and any detriment, damage, or injury to property or person, whether that loss, detriment, damage, or injury is due to deprivation of or interference with the rights of any riparian owner or otherwise howsoever.

**23. Cancellation of trusts and reservations**—All trusts, reservations, and restrictions upon or affecting the land described in the First Schedule to this Act, or any part or parts thereof, immediately before the commencement of this Act and whether pursuant to any Act (including the Auckland Foreshore Grant Act 1875) or any deed, trust, conveyance, or otherwise howsoever, are hereby cancelled.

**24. Powers of District Land Registrar**—The District Land Registrar for the North Auckland Land Registration District is hereby authorised to deposit all such plans, issue all such certificates of title, accept all such documents for registration, make all such entries in the Register and do all such things as may be necessary to give effect to the provisions of this Act.

**25. Land to form part of Devonport Borough**—(1) Upon the completion of the reclamation of any land under the authority of this Act, such reclaimed land, together with any waterway or boat harbour provided or constructed therewith and which forms part of the development, shall be included within the district of the Borough of Devonport, and upon the completion of the whole of any reclamation agreed to by the Board and the Council under the terms of any deed entered into by them pursuant to section 5 of this Act the land described in such deed which is not then already included in the district shall be included therein, whether reclaimed land or the bed of the harbour or any waterway, without further or other authority than this section, and any such alteration of the boundary or boundaries of the Borough shall be deemed to have been effected pursuant to the Municipal Corporations Act 1954:

Provided that no part of the land described in the First Schedule to this Act shall be deemed to be rateable property unless the land has been reclaimed from the sea and—

- (a) It is occupied by a person or persons other than the Board or the Council; or
- (b) It is occupied by the Board or the Council and has been developed for a purpose other than a boat harbour, recreational, or other public purpose.

(2) Without in any way limiting the effect of subsection (1) of this section, such altered boundary or boundaries shall from time to time on written application by the Town Clerk or other responsible officer on behalf of the Council and without further authority or procedure be formally recorded by notice in the *Gazette* under the hand of the Secretary for Internal Affairs.

**26. Service of notices—**(1) Any notice required or authorised by section 15 or section 16 of this Act to be served on or given to any person shall be delivered to that person and may be delivered to him either personally or by posting it by registered letter to that person at his last known place of abode or business in New Zealand. A notice so posted shall be deemed to have been served or given, as the case may require, at the time when the registered letter would in the ordinary course of post be delivered.

(2) If the person is absent from New Zealand, the notice may be delivered as aforesaid to his agent in New Zealand. If the person is deceased, the notice may be delivered as aforesaid to his personal representative.

(3) If—

- (a) The whereabouts or last known place of abode or business in New Zealand of the person on whom or to whom the notice is to be served or given (in this subsection hereinafter referred to as “the recipient”) is not known to the person issuing the notice; or
- (b) The recipient is absent from New Zealand and the person issuing the notice does not know of any agent in New Zealand of the recipient; or
- (c) The recipient is deceased and has no personal representative—

the notice may be delivered by publishing it at least twice in a newspaper circulating in the locality in which the land affected by the notice is situated.

(4) Where a notice is published in a newspaper in accordance with subsection (3) of this section it shall be deemed to be so served or given, as the case may require, at the time of the last publication of the notice.

## SCHEDULES

### FIRST SCHEDULE

#### LAND TO BE RECLAIMED AND DEVELOPED BY BOARD AND COUNCIL

ALL that area containing by admeasurement 244 acres, more or less, being land situated below mean high-water mark in the harbour of Auckland, bounded by a line commencing at a point being the south-eastern corner of Wesley Street where it meets the mean high-water mark; thence proceeding in a south-easterly direction firstly on a bearing of  $136^{\circ} 08' 20''$  for a distance of 2119.37 links, more or less, as shown on a plan marked and numbered M.D. 12569 and deposited in the office of the Marine Department, Wellington; secondly on a bearing of  $134^{\circ} 53' 40''$  for a distance of 501.79 links, more or less; thirdly on a bearing of  $153^{\circ} 12'$  to a point meeting the mean high-water mark at the northern end of Victoria Road, as shown on a plan marked and numbered M.D. 11953, and deposited in the office of the Marine Department, Wellington; thence proceeding in a westerly direction following the mean high-water mark to the north-east corner of Lytton Street; thence proceeding in generally a westerly direction on the northern boundaries of Survey Office plans 36655 and 40439, firstly on a bearing of  $244^{\circ} 50'$  for a distance of 863.62 links, more or less, secondly on a bearing of  $311^{\circ} 50' 50''$  for a distance of 2334.17 links, more or less, thirdly on a bearing of  $239^{\circ} 24' 40''$  for a distance of 1198.17 links, more or less, and fourthly on a bearing of  $236^{\circ} 10' 30''$  for a distance of 1630.90 links, more or less; thence in a southerly direction, firstly on a bearing of  $170^{\circ} 51' 30''$  for a distance of 812.43 links, more or less, secondly on a bearing of  $249^{\circ} 56'$  for a distance of 34.70 links, more or less, thirdly on a bearing of  $190^{\circ} 34' 30''$  for a distance of 237.86 links, more or less, to a point at the intersection of the western boundary of D.P. 15479 and the north-eastern boundary of Lot 4, D.P. 17483; thence proceeding in a north-westerly direction along mean high-water mark firstly on a bearing of  $333^{\circ} 09'$  for a distance of 142.00 links, more or less, secondly on a bearing of  $298^{\circ} 24'$  for a distance of 294.30 links, more or less, thirdly on a bearing of  $275^{\circ} 10'$  for a distance of 91.5 links, more or less, to the north-west corner of part Lot 4, D.P. 3310; thence generally in a westerly direction firstly on a bearing of  $294^{\circ} 20'$  for a distance of 1163 links, more or less, secondly on a bearing of  $254^{\circ} 30'$  for a distance of 1200 links, more or less, thirdly on a bearing of  $231^{\circ} 35'$  for a distance of 1585 links, more or less; thence north-westerly on a bearing of  $322^{\circ} 30'$  for a distance of 2720 links, more or less; thence generally in an easterly direction firstly on a bearing of  $61^{\circ} 45'$  for a distance of 1800 links, more or less, secondly on a bearing of  $61^{\circ} 10'$  for a distance of 1730 links, more or less, thirdly on a bearing of  $76^{\circ} 05'$  for a distance of 1335 links, more or less, fourthly on a bearing of  $97^{\circ} 30'$

FIRST SCHEDULE—*continued*

for a distance of 1265 links, more or less, fifthly on a bearing of 104° 30' for a distance of 730 links, more or less, and sixthly on a bearing of 79° 30' for a distance of 3530 links, more or less, to a point at the south-western corner of Wesley Street, thence following mean high-water mark to the point of commencement; and being part of the land situated below mean high-water mark in the harbour of Auckland as shown on S. O. Plan 46350, being part of the land in certificate of title, Volume, 335, folio 147 (limited as to parcels) North Auckland Registry, and being the area shown edged red on the plan marked and numbered M.D. 13467, and deposited in the office of the Marine Department, Wellington.

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SECOND SCHEDULE

Section 4 (1)

MATTERS TO BE PROVIDED FOR IN DEVELOPMENT

1. The development of a marine residential development associating channels and waterways with reclaimed land. The ratio of any internal channels and waterways or other water space to reclaimed land shall not be less than 2 acres of water space to 3 acres of land.

2. The provision of a public boat harbour or boat harbours. One such boat harbour shall comprise an area of not less than 8 acres of water space and 10 acres of reclaimed land to be used for the provision of parking and ancillary boat harbour and service activities and shall, unless the Board, the Council, the Minister of Works, the Minister of Marine, and the Minister of Lands otherwise consent, be situated at the outer or seaward end of the development.

3. The provision of a public reserve or reserves comprising, in relation to the whole development, a total area of not less than 3 acres. Any such reserve or reserves shall abut on to a part of the harbour or any channel or waterway forming part of the development so as to provide the reserve or reserves with access to the water.

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