



## ANALYSIS

Title	
1. Short Title	8. Council not authorised to create a nuisance
2. Interpretation	9. Council responsible for damage
3. Special Act	10. Authority for Board to subdivide
4. Council may enter into deed with Board for certain reclamation	11. Application of section 29 of the Counties Amendment Act 1961
5. Authority for Council to reclaim	12. Authority for Board to transfer reclaimed land to Council
6. Reclamation to comply with requirements of Board	13. Revocation of reservation
7. Council to comply with directions of Director-General of Health	14. Reclaimed land to form part of Waitemata County Schedules

1967, No. 9—*Local*

**An Act to authorise the Waitemata County Council to reclaim from the sea a certain area vested in the Auckland Harbour Board in the Whau River, Waitemata Harbour, for the purpose of a recreation reserve, and to empower the Board to transfer such reclaimed land to the Council**  
[25 August 1967]

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 Waitemata County Council Empowering Act 1967.

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

“Board” means the Auckland Harbour Board:

“Corporation” means the Chairman, Councillors, and Inhabitants of the County of Waitemata as constituted under the Counties Act 1956:

“Council” means the Waitemata County Council:

“Minister” means the Minister of Marine:

“Recreation reserve” means a reserve, subject to the Reserves and Domains Act 1953, for the passive and active use and enjoyment of the public.

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

**4. Council may enter into deed with Board for certain reclamation**—(1) The Council may, in the name and on behalf of the Corporation enter into a deed with the Board to provide for and enable the Council to undertake the reclamation of the area vested in the Board and described in the First Schedule to this Act, or any part or parts thereof, and to provide for the subdivision and development of the area described in the Second Schedule to this Act (comprising the area described in the First Schedule to this Act and certain areas authorised to be reclaimed by various Orders in Council made pursuant to section 175 of the Harbours Act 1950) or any part or parts thereof, on such terms and conditions as shall be agreed to by the Council and the Board.

(2) The Council may, in any such deed entered into with the Board as aforesaid, agree to provide access to the foreshore whether by road or otherwise on any such reclaimed land; to set aside, develop, and maintain any part or parts of such reclaimed land and the foreshore of such land for the purpose of facilities for pleasure boats; and to provide and maintain facilities for pleasure boats on such land or foreshore, and any such deed may specify and relate to such other matters as may be necessary to carry out the objects of this Act.

**5. Authority for Council to reclaim**—(1) Subject to the provisions of the Harbours Act 1950, and this Act, but notwithstanding anything contained in subsection (3) of section 175 of the Harbours Act 1950, the Council may, after it has entered into a deed with the Board pursuant to section 4 of this Act to provide for and enable it to undertake the reclamation of the area described in the First Schedule to this Act, or any part or parts thereof, reclaim that area or part or parts thereof referred to and described in the said deed for the purpose of a recreation reserve and for such other purpose or purposes as may be agreed to in the said deed.

(2) The Council may, in the name and behalf of the Corporation, enter into a contract or contracts with any person or persons for the execution of all or any of the works which may be necessary or expedient in or about the reclamation and development of such land as aforesaid.

(3) In the event of the Board reclaiming any land from the sea, whether under the authority of a special Act or of an Order in Council made pursuant to section 175 of the Harbours Act 1950, which is adjacent to or abutting upon any land reclaimed by the Council under the authority of this Act, no compensation shall be payable by the Board to the Council for or in respect of the loss of any riparian rights, rights of access by water, or otherwise howsoever, arising out of such further reclamation.

#### **6. Reclamation to comply with requirements of Board—**

(1) Notwithstanding the terms and conditions of any deed entered into by the Council with the Board as aforesaid and in addition to any obligations imposed on it thereunder, the Council shall, before commencing the construction of any reclamation under the authority of this Act, 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.

(2) 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, 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 reclamation as it may determine, and the Council shall comply with such restrictions, conditions, or requirements in all respects to the satisfaction of the Board.

(3) Without limiting the generality of subsection (2) of this section the Council shall:

- (a) Construct and maintain such enclosing banks as may be required by the Board and in such a manner as to:
  - (i) Provide for adequate protection against wave or tidal action of any enclosing banks that may at any time face the sea; and
  - (ii) Prevent the escape of organic or other material into tidal waters:

(b) 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 properties.

(4) Nothing in 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 or the duties and liabilities of the Council as the constructing authority in respect of such reclamation.

**7. Council to comply with directions of Director-General of Health**—The Council shall comply with all directions or requisitions of the Director-General of Health or other proper officer or employee of the Department of Health relating to the construction, maintenance, or protection of any reclamation under the authority of this Act, or any part or parts thereof, including directions or requisitions relating to:

- (a) The material to be used in the construction of any such reclamation; and
- (b) The protection or covering over of any material used in the construction of any such reclamation.

**8. Council not authorised to create a nuisance**—Nothing in this Act shall entitle the Council to create a nuisance or shall deprive any person of any right or remedy he would otherwise have against the Council or any other person in respect of any such nuisance, and no restriction or condition imposed by the Minister pursuant to section 178 of the Harbours Act 1950 or any restriction, condition, or requirement of the Board made pursuant to section 6 of this Act or under the terms and conditions of any deed entered into with the Board as aforesaid, or requisition or direction of the health authorities given pursuant to section 7 of this Act, whether or not the Council has complied with the same, shall restrict the liability of the Council for any such nuisance.

**9. Council responsible for damage**—The Council shall be responsible for all loss, detriment, damage, or injury caused by the construction or maintenance of the reclamation whether to any property or to any person and whether in respect of riparian rights, rights of access by water, or otherwise howsoever, and shall at all times save harmless and indemnify and keep indemnified the Board against all claims and expenses

of whatsoever kind arising out of the reclamation or the construction or maintenance thereof.

**10. Authority for Board to subdivide—**(1) The Board is hereby authorised, for the purpose of carrying out the objects of this Act, to divide and separate from its existing title and subdivide the whole or any part or parts of the area described in the Second Schedule to this Act which has been or will be reclaimed from the sea under the authority of this Act or of the Orders in Council referred to in section 4 of this Act, in such manner as it thinks fit, and may do all things necessary for that purpose.

(2) The District Land Registrar for the North Auckland Land Registration District is hereby authorised and directed to accept such plans for deposit, to accept such documents for registration, and to make such entries in the register, and do all such other things, as may be necessary to give effect to the provisions of this section.

**11. Application of section 29 of the Counties Amendment Act 1961—**(1) In the event of section 29 of the Counties Amendment Act 1961 being applicable to any scheme plan or plans submitted to the Council by the Board under section 10 of this Act, but for so long only as any such land reclaimed from the sea is transferred or proposed to be transferred for the purposes of a recreation reserve pursuant to section 12 of this Act, or is to be dedicated as a public road, it shall not be necessary in terms of the said section 29 to set aside as a reserve for public purposes a strip of land where the land adjoins the mean high water mark of the sea.

(2) Subsection (2) of section 29 of the Counties Amendment Act 1961 shall not apply to any scheme plan submitted to the Council by the Board under section 10 of this Act or to the setting aside of a strip of land as a reserve for public purposes pursuant to subsection (1) of this section.

**12. Authority for Board to transfer reclaimed land to Council—**(1) At such time as the area described in the Second Schedule to this Act has been reclaimed from the sea, or such part of the area as the Board may agree to, the Board shall transfer the fee simple of such land, or part thereof agreed to, as the case may be, to the Council without consideration for the purpose of a recreation reserve and for such other purpose or purposes as may be agreed to in the

deed referred to in section 4 of this Act and the land shall thereupon vest in the Corporation as an estate in fee simple for those purposes without further authority than this subsection.

(2) In the event of any land transferred to and vested in the Corporation for the purpose of a recreation reserve or any other purpose agreed to as aforesaid pursuant to subsection (1) of this section, not being used or held, or if used ceasing to be used or held, for the purpose of a recreation reserve or not being set aside or developed or maintained for such other purpose or purposes agreed to as aforesaid, as the case may be, or the reservation of the land or any part thereof being revoked, the Board may, on giving three months' notice in writing to the Council and the Council failing for a period of three months from the expiry of such notice to use or hold such land for the purpose of a recreation reserve or set aside or develop or maintain such land for such other purpose or purposes agreed to as aforesaid, as the case may be, enter upon and take possession of the whole of the land transferred to and vested in the Corporation as aforesaid and the Council shall thereupon transfer the fee simple of such land to the Board and the fee simple of such land shall vest in the Board absolutely freed and discharged from all trusts, reservations, and restrictions upon or affecting the same, and the Board shall pay to the Council such money as compensation as shall be agreed to by the Council and the Board and the provisions of subsection (8) of section 28 of the Counties Amendment Act 1961 shall apply to all such money:

Provided that, if the Council and the Board are unable to agree as to the amount of such compensation, the compensation payable shall be the amount which the Council has actually laid out upon the land as the cost of the construction of the reclamation and as the cost of the permanent improvements existing on the land at the time of such transfer to the Board as aforesaid:

Provided also that, in the event of any dispute between the Board and the Council as to whether the Board is entitled to give notice under this subsection or to enter upon and take possession of any land pursuant to this subsection or as to the amount actually laid out upon the land as the cost of the reclamation and the cost of the permanent improvements existing thereon as aforesaid, such dispute shall be referred to arbitration under the terms of the Arbitration Act 1908:

Provided further that this subsection shall not be applicable where the land or any part of the land transferred to and vested in the Corporation as aforesaid is taken under the Public Works Act 1928, or any other Act, by the Crown or any duly authorised public body (other than the Council).

(3) Notwithstanding anything to the contrary contained in this Act, in the event of any land vesting in the Board pursuant to subsection (2) of this section the Board shall, in respect of such land, set aside as reserved for public purposes such strip of land (if any) along the mean high-water mark of the sea as may be required to be set aside under section 29 of the Counties Amendment Act 1961 or would have been required to be set aside on any scheme plan submitted to the Council pursuant to section 10 of this Act but for the provisions of section 11 of this Act:

Provided that, with the consent of the Minister of Lands, it shall not be necessary for the Board to set aside a strip of land as aforesaid where the land and foreshore adjoining the mean high-water mark of the sea is dedicated, or to be dedicated, as a public road for the purpose of providing access to the foreshore or is developed or to be developed by the Board for the purpose of facilities for pleasure boats.

(4) The District Land Registrar for the North Auckland Land Registration District is hereby authorised and directed, on application by the Council or by the Board in that behalf, and on the deposit with him of such plans as he may require, to issue in the name of the Corporation a certificate or certificates of title of any land vested in the Corporation pursuant to subsection (1) of this section or issue in the name of the Board a certificate or certificates of title of the land vested in the Board pursuant to subsection (2) of this section, as the case may be, and to accept such documents for registration, and to make such entries in the register, and do all such other things as may be necessary to give effect to the provisions of this section.

(5) Nothing in this section shall be construed as limiting any other rights or powers of acquiring or taking land vested in the Board under section 140 of the Harbours Act 1950.

**13. Revocation of reservation—**(1) All trusts, reservations, and restrictions upon or affecting the area or any part of the area described in the Second Schedule to this

Act whether pursuant to the Auckland Harbour Development Act 1949, or any other Act, or any deed, trust, or conveyance or otherwise howsoever, are hereby deemed to be cancelled.

(2) Sections 5 to 10 of the Auckland Harbour Development Act 1949 shall not apply to the area or any part of the area described in the Second Schedule to this Act.

**14. Reclaimed land to form part of Waitemata County—**  
Any land which has been reclaimed under the authority of this Act or of any Order in Council referred to in section 4 of this Act shall for all purposes be deemed to be included within the Waitemata County and the boundaries of the County shall be deemed to be altered accordingly and such altered boundaries shall from time to time, without further authority or procedure, be defined by notice in the *Gazette* under the hand of the Secretary for Internal Affairs.

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## SCHEDULES

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Sections 4 and 5

### FIRST SCHEDULE

#### RECLAMATION AREA

ALL that area containing by admeasurement 9 acres 2 roods 22 perches, more or less, being land situated below mean high-water mark in the harbour of Auckland bounded by a line commencing at a point on mean high-water mark at the northernmost extremity of lot 22, Deposited Plan 49750 (Esplanade Reserve); thence following mean high-water mark in a north-westerly direction to the northernmost extremity of Lot 161, Deposited Plan 48920; thence proceeding on a bearing of  $58^{\circ} 30'$  for a distance of 680 links, more or less; thence proceeding on a right line in a south-easterly direction to meet the northernmost extremity of the area shown on a plan marked and numbered M.D. 12501 and deposited in the office of the Marine Department, Wellington; thence following the northern boundaries of the area firstly by proceeding on a bearing of  $219^{\circ} 00'$  for a distance of 360 links, more or less; secondly by proceeding on a bearing of  $262^{\circ} 00'$  for a distance of 190 links, more or less; and thirdly by proceeding on a bearing of  $229^{\circ} 00'$  to a point on mean high-water mark; thence following mean high-water mark in a south-westerly, north-easterly, and northerly direction to the point of commencement and being part of the land below mean high-water mark, Auckland Harbour, vested in the Auckland Harbour Board by the Auckland Harbour Board Development Act 1949, S.O. Plan 35625 and being an area shown edged green on a plan marked and numbered M.D. 12565 and deposited in the office of the Marine Department, Wellington.

Sections 4, 7, 10, 11,  
and 13

### SECOND SCHEDULE

#### DEVELOPMENT AREA

ALL that area containing by admeasurement 23 acres and 34 perches, more or less, being land situated below mean high-water mark in the harbour of Auckland and being, firstly, an area containing by admeasurement 9 acres 2 roods 22 perches, more or less, described in the First Schedule to this Act, together with, secondly, the areas on plans marked and numbered M.D. 9760, containing an area of 1 acre, more or less, edged green, M.D. 11461, containing an area of 4 acres 3 roods 39 perches, more or less, edged green, M.D. 11725, containing an area of 2 acres 1 rood 32 perches, more or less, coloured green, M.D. 12318, containing an area of 1 acre, more or less, edged green, and M.D. 12501, containing an area of 4 acres and 21 perches, more or less, edged green, all deposited in the office of the Marine Department, Wellington, and being part of the land below mean high-water mark Auckland Harbour vested in the Auckland Harbour Board by the Auckland Harbour Board Development Act 1949, S.O. Plan 35625.

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