



ANALYSIS

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1979, No. 17—*Local*

An Act to vest in the Auckland Harbour Board certain land in the Waitemata Harbour and to authorise the Waitemata City Council to develop such land for the purpose of a boat harbour and to reclaim part of the land for that purpose and to operate a boat harbour thereon

[14 December 1979]

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 Waitemata City Council (West Harbour) Empowering Act 1979.

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 constructing, fitting out, mooring, sheltering, or servicing boats; and includes any land or building used in conjunction therewith and, without limiting the general import of that term, includes—

(a) Any slipway, launching ramp, dock, pier, marina pier, quay, wharf, jetty, landing place, hoist, hoist-well, bridge, float, pontoon, boat shed, boat repair facilities, boat yard, breakwater, wave screen, embankment, marine service station or fuelling pier or facility, facilities for the hire, sale or dry storage of boats and for the sale of marine equipment and accessories including ship’s chandlery, or any other boating or aquatic structure, service, or amenity for the use and convenience of the boating public; and

(b) Any shop, restaurant, car park, club premises, or facility or any other commercial or recreational amenity for the use and convenience of the general public as well as that 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 Waitemata City Council constituted under section 52 of the Local Government Act 1974 or the body corporate of the same name constituted under section 53 of that Act:

“District” means the district of the City of Waitemata:

“Building” means not only any structure but also any defined parcel of land leased, let, or licensed on the basis of exclusive occupancy, whether or not there is any structure on that land.

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

4. Vesting—The land described in the Schedule to this Act is hereby vested in the Board as an estate in fee simple for the purposes of this Act and subject to the provisions of the Harbours Act 1950.

5. Council may enter into deed with Board for reclamation—The Council may enter into a deed with the Board to provide for and enable the Council to undertake the reclamation of not more than 12.5 hectares of the land described in the Schedule to this Act, or any part or parts thereof, on such terms and conditions as shall be agreed to by the Council and the Board.

6. Authority for Council to reclaim—(1) Subject to the provisions of the Harbours Act 1950 and of this Act, the Council may, after it has entered into a deed with the Board pursuant to section 5 of this Act, reclaim the land referred to and described in that deed (being not more than 12.5 hectares), or any part or parts of it, for the purpose of a boat harbour:

Provided that the construction of the reclamation shall not be commenced until such time as—

- (a) The boat harbour and any proposed reclamation in connection therewith has been included as a permitted use in the operative district scheme for the City of Waitemata in accordance with section 16 (2) of this Act; or
- (b) Provision has been made for the boat harbour or any proposed reclamation in connection therewith in a proposed change or review of the Council's district scheme, as the case may be, pursuant to section 16 (2) of this Act and either—
 - (i) The time for lodging objections has expired and no objection has been lodged; or
 - (ii) If an objection was lodged and it has been dismissed or withdrawn, the time for lodging appeals has expired without any appeal being lodged; or
 - (iii) If an objection was lodged and it has been wholly or partly allowed, the time for lodging appeals has expired without any appeal having been lodged; or
 - (iv) If an appeal was lodged, it has been dismissed or withdrawn; or
 - (v) If an appeal has been wholly or partly allowed, construction of at least part of the reclamation would not be in contravention of the decision.

(2) In addition to the requirements contained in the proviso to subsection (1) of this section, the construction of the reclamation shall not be commenced until the Council has by resolution certified that in its opinion steps towards the provision of reticulated water and sewage disposal facilities are by then so sufficiently advanced and programmed as to ensure that those facilities will be available to service the land described in the Schedule to this Act before it is occupied for any of the purposes authorised by this Act; and until all necessary rights have been acquired under the Water and Soil Conservation Act 1967 in respect of the discharge of the natural water or waste into natural water or for the taking or use of natural water for the purposes of the relevant services referred to in section 10 (1) (b) (ii) of this Act.

7. Reclamation to comply with the requirements of the Board—(1) Notwithstanding any terms and conditions of any deed entered into by the Council and the Board as aforesaid and in addition to any obligations imposed on it thereunder, the Council shall, before commencing 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 Ministry of Transport 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, and 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 in such 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 storm water, 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.

8. Authority for Board to transfer land to Council—Subject to the terms and conditions of any deed entered into by the Council and the Board as aforesaid being met and to any restrictions, conditions, or requirements made by the Board pursuant to section 7 of this Act having been complied with by the Council, the Board shall at such time as the land, authorised to be reclaimed, or any part or parts of it, has been reclaimed from the sea, transfer the fee simple of the land that has been so reclaimed to the Council without consideration for the purpose of a boat harbour, and the land shall thereupon vest in the Council as an estate in fee simple for that purpose without further authority than this section.

9. Authority for Board to subdivide the bed of harbour—The Board is hereby authorised, for the purpose of entering into any deed or lease with the Council which may be necessary for the purposes of this Act, to subdivide the whole or any part or parts of the land described in the Schedule to this Act (whether reclaimed or not) in such manner as it thinks fit, and may do all such things as may be necessary for that purpose:

Provided that the provisions of Parts XX and XXI of the Local Government Act 1974 shall not apply in respect of any subdivision authorised under this section.

10. Authority for Council to develop and operate a boat harbour—(1) Subject to the terms and conditions of any deed entered into by the Council and the Board as aforesaid under section 5 of this Act, the Council may develop and redevelop from time to time the whole or any part or parts of the land described in the Schedule to this Act for boat

harbour purposes and, without limiting the said general power of development, the Council may in respect of the whole or any part or parts of that land which is from time to time reclaimed from the sea—

- (a) Subdivide and resubdivide the whole or any part or parts of such reclaimed land into suitable allotments for boat harbour purposes or any of them:

Provided that any such subdivision shall be subject to the appropriate provisions of the Local Government Act 1974, and all other relevant statutory provisions, relating to subdivisions:

- (b) Construct or provide such public works or amenities as are necessary or desirable for the use and enjoyment of such reclaimed land for boat harbour purposes, including—

(i) Roads, service lanes, access ways, and other means of communication or access by land as well as by water;

(ii) Services for water supply, drainage, sewage, electric lighting, power, gas, and all other amenities;

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

(iv) Means of access and communication by land and by water; and

(v) Sheds or any other structures included in a boat harbour.

(2) Subject to the terms and conditions of any licence or permit which may be granted by the Board to the Council pursuant to section 12 of this Act, the Council may operate any boat harbour on the whole or any part or parts of the land (including any part of the foreshore or of the bed or of the waters of the sea) described in the Schedule to this Act, and may make and impose such charges and fees as it shall from time to time resolve or fix in respect of the use of such boat harbour or any of the facilities provided therein.

11. Council may permit other persons to carry out reclamation, development, and operation of boat harbour—For the purpose of carrying out and constructing the reclamation, or any part or parts of it, or of developing or redeveloping the said land or any part or parts of it, or for the purpose of ensuring the operation of the boat harbour including the

maintenance of the waterways as provided by section 15 of this Act, the Council may grant a licence to or contract with any person or persons or local or public authority to undertake and to carry out all or any of the activities relating to such reclamation or development or operation of a boat harbour as authorised by sections 6, 10, and 15 of this Act, or to carry out all or any works which may be necessary or expedient in connection with any such reclamation, development, work, or operation in every case upon such terms and conditions as the Council may think fit. In granting any such licence or entering into any such contract the Council shall require the insertion therein of a sufficient penalty or bond to ensure the fulfilment of such licence or contract according to the terms and conditions thereof.

12. Authority to licence foreshore and sea bed—(1) In addition to all other powers conferred on the Board and the Council under this Act, or any other Act, the Board may licence or permit any part of the foreshore or sea bed vested in it under this Act, or any berth or other marine structure or facility located thereon, and the Council may licence or permit any part of the foreshore or sea bed vested in it under this Act or held by it under licence granted under the authority of this Act, or any berth or other marine structure or facility located thereon, to be used or occupied for the purpose of a boat harbour for such period (not exceeding 21 years or such longer period not exceeding 50 years as the Minister of Transport approves) and upon such terms and conditions as the Board or the Council, as the case may be, thinks fit.

(2) Subject to the provisions of subsection (1) of this section, the provisions of the sections 157 to 160 of the Harbours Act 1950, so far as they are applicable, shall apply to any licence or permit granted under this Act.

13. Authority to lease reclaimed land—(1) In addition to all other leasing powers conferred on the Council under the Local Government Act 1974, the Public Bodies Leases Act 1969, or any other Act, the Council may, in respect of the whole or any part of the land which is reclaimed from the sea and which is vested in it under this Act—

(a) Lease the whole or any part or parts of such land to any person or persons for boat harbour purposes

for such term not exceeding 21 years with such right or rights of renewal and on such terms and conditions as the Council thinks fit:

- (b) Accept a surrender of any such lease, whether as to the whole or to any part of the land comprised therein, and grant to the lessee, or any person or persons with the consent of the lessee, a new lease or new leases of the whole or any part or parts of the land comprised in the surrendered lease for the remainder or any part of the remainder of the term of the surrendered lease, at such rent as may be predetermined for the new lease or new leases in the surrendered lease or, if no such rent is predetermined, at such rent as the Council may determine, with such right or rights of renewal and on such terms and conditions as are contained in the surrendered lease or as the Council may otherwise think fit, or, instead of granting a new lease in respect of any surrendered lease, the Council may itself carry on the operation of the boat harbour.

(2) Sections 7, 8, 17, 18, and 19 of the Public Bodies Leases Act 1969 shall not apply to the leasing by the Council or to any lease granted by the Council of the whole or any part or parts of such reclaimed land pursuant to this section.

14. Public's right of access—Notwithstanding the powers conferred on the Council under section 12 or section 13 of this Act or under any other enactment, the public shall have the right of access on to the whole of the land reclaimed from the sea under this Act (but not into any building as defined in section 2 of this Act) subject to the provisions of any bylaw restricting that right; and any licence or permit or lease granted in respect of any part of that land shall be read and construed accordingly.

15. Authority to maintain waterways, etc.—(1) Subject to the terms and conditions of any deed entered into by the Council and the Board as aforesaid, the Council may construct or provide on such part or parts of the land described in the Schedule to this Act as is not reclaimed (including any part of the bed or of the waters of the sea) such public works

or amenities as are necessary or desirable for the use and enjoyment of such land, bed of the sea, or waters of the sea, for boat harbour purposes including—

- (a) Waterways and means of access and communication by water as well as by land; and
- (b) Moorings, anchorages, mooring sites, piers, marina piers, sheds, or other structures included in a boat harbour.

(2) Notwithstanding anything in subsection (1) of this section, from the time a boat harbour has been constructed and is in operation and while it is in use, the Council shall maintain and dredge or contract for the maintenance and dredging of any waterway forming part of the boat harbour or within any adjacent area providing access thereto.

(3) The Board may stipulate in the said deed or may at any time thereafter notify the Council in writing of such reasonable restrictions, conditions, and requirements relating to the maintenance and dredging of any waterway, or any part or parts thereof, as it may determine, and the Council shall comply with such restrictions, conditions, and requirements in all respects to the satisfaction of the Board.

16. Provisions relating to planning—(1) Notwithstanding anything in the Town and Country Planning Act 1977 and subject to subsections (4) and (5) of this section, and notwithstanding the fact that the land described in the Schedule to this Act is included in the maritime planning area for the Waitemata Harbour, that land shall also form part of the district of the Council for the purposes of Parts II, III, and IV of that Act until the time or times referred to in subsection (5) of this section, and the provisions of the said Parts II, III, and IV shall apply accordingly.

(2) Any designation, zoning, definition or other provision contained or purporting to be contained in the district scheme of the Council which became operative on the 15th day of February 1973 relating to a boat harbour or marina in the locality of the land described in the Schedule to this Act is hereby validated and declared to be lawfully made and to be in full force and effect as part of the Council's operative district scheme.

(3) As soon as practicable after the passing of this Act, the Council shall, in compliance with the requirements of the Town and Country Planning Act 1977, either—

Empowering

- (a) Change its district scheme so as to make detailed and proper provision therein for the use of the land described in the Schedule to this Act for the purposes of a boat harbour; or
- (b) In the review of its district scheme, currently in the course of preparation in accordance with the provisions of the Town and Country Planning Act 1977, make like provision for the use of the land described in the Schedule to this Act:

Provided that any steps taken by the Council pursuant to or in compliance with the Town and Country Planning Act 1977 to make provision for the use of the land described in the Schedule to this Act, whether by way of a change to its district scheme or in the review of its district scheme, and any procedure followed or things done pursuant to that Act for that purpose before the passing of this Act are hereby validated and declared to have been lawfully carried out:

Provided also that no such provision in the district scheme shall extend beyond the land described in the Schedule in this Act.

(4) Notwithstanding the fact that by virtue of subsection (1) of this section the land described in the Schedule to this Act also forms part of the district of the Council for the purposes of Parts II, III, and IV of the Town and Country Planning Act 1977, the Board may prepare a maritime planning scheme in respect of that land, or part of it, pursuant to Part V of the Town and Country Planning Act 1977.

(5) The land described in the Schedule to this Act shall cease to be part of the district of the Council for the purposes of the Town and Country Planning Act 1977, and shall form part of the maritime planning area for the Waitemata Harbour in the following manner:

- (a) That part of the land which is not reclaimed shall cease to be part of the district and shall form part of the maritime planning area at such time as the maritime planning scheme becomes operative pursuant to section 107 of the Town and Country Planning Act 1977 in respect of that land:
- (b) That part of the land which is reclaimed shall cease to be part of the district and shall form part of the maritime planning area at such time as boat harbours generally are included within the maritime

planning area for the Waitemata Harbour or at such earlier time as may be agreed by the Board and the Council.

17. Other Acts not affected—Nothing in this Act shall be construed as—

- (a) Limiting 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) Limiting the application of the provisions of the Town and Country Planning Act 1977 (except as provided in section 16 of this Act), of the Water and Soil Conservation Act 1967, of the Local Government Act 1974 (except as provided in section 9 of this Act), of the Municipal Corporations Act 1954, or of the Reserves Act 1977:
- (c) Conferring any water right within the meaning of the Water and Soil Conservation Act 1967.

18. Council not authorised to create a nuisance, etc.—
(1) Nothing in sections 6, 10, or 11 of this Act shall entitle the Council or any other person 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 conditions imposed by the Minister of Transport pursuant to section 178 of the Harbours Act 1950 or restriction, condition or requirement imposed by the Board under section 7 of this Act or requisition or direction issued in accordance with section 17 (a) of this Act, whether or not the Council or any other person has complied with the same, shall restrict the liability of the Council or any other person for any such nuisance:

Provided that the construction of any reclamation or other necessary works in connection therewith as authorised by this Act shall not of itself constitute a nuisance.

(2) In granting any approval under section 178 of the Harbours Act 1950 to the carrying out of any work authorised by section 6 of this Act, the Minister of Transport shall impose such conditions as he considers necessary to ensure that waste water or silt or other debris is not discharged into the sea or allowed to enter it in circumstances that would detract from the amenities of the locality.

19. Compensation—Nothing in this Act shall deprive any person of any right or remedy he would otherwise have in respect of any loss, detriment, damage, or injury caused by any reclamation, development, or work constructed or carried out under the authority of this Act, whether to property or person and whether in respect of the deprivation of any water frontage or riparian rights or otherwise howsoever.

20. Powers of District Land Registrar—The District Land Registrar for the North Auckland Land Registration District is hereby authorised, on the deposit with him of such plans as he may require, such plans to be certified as to survey by the Chief Surveyor, to accept such documents for registration, to make such entries in the register, and to do all such other things as may be necessary to give effect to the provisions of this Act.

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, if at any time it is the licensee pursuant to a licence granted under section 12 of this Act or any part of the land described in the Schedule to this Act not reclaimed from the sea, and from time to time thereafter while it is the licensee, make such bylaws not inconsistent with or repugnant to the bylaws of the Board or any enactments relating to the use of the facilities and waters in respect of which it may hold such licence, make such bylaws as it thinks necessary or expedient for the more effectual carrying out of the objects of this Act:

Provided that either such bylaws shall be in force or the bylaws of the Board relating to boat harbours shall be made to apply to the area, before any facilities constructed on the land come into use.

(2) Without limiting the generality of the powers to make bylaws conferred by subsection (1) of this section and subject to the requirements of that subsection, the Council may make bylaws for and in respect of any boat harbour or waterway to which this Act applies and which are held under such licence by the Council for all or any of the following purposes:

- (a) Regulating and controlling the use of such boat harbour or waterway or the facilities in connection therewith and preventing or abating nuisances therein:
- (b) Regulating controlling or prohibiting the placing of any vessel on any part thereof:
- (c) Regulating all matters relating to the protection of life or property therein or thereon (including therein powers to limit or restrict the right of access of the public to certain parts or at certain times as the Council may consider desirable):
- (d) Protecting and safeguarding any such land or waterway or any facilities thereon against damage, pollution, obstruction, disturbance, or misuse of any kind whatsoever:
- (e) Regulating, controlling, or prohibiting the discharge of stormwater, effluent, or pollutants into any such boat harbour or waterway adjacent thereto:
- (f) Providing for the proper conduct of persons using, occupying, or frequenting any such boat harbour or the facilities associated therewith:
- (g) Fixing fees, charges, rents, or payments for the use, allocation, or re-allocation of moorings, mooring sites, piers, sheds, or any other structures or facilities included in the boat harbour:
- (h) Regulating, controlling, or prohibiting the trading in or the assignment of licences or other authorities conferring the right to use or occupy all or any of the facilities described in paragraph (g) of this subsection, and regulating and controlling the issue and re-issue and the term of such licences and other authorities and the right to obtain them.

(3) Bylaws made under this section shall apply only in respect of that part of the land described in the Schedule to this Act from time to time vested in the Council or held

by the Council under a licence granted under section 12 of this Act, and may be applied to all or any part or parts of such land.

(4) 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.

(5) Any such bylaw that relates to land held by the Council under licence shall not come into force until it has been approved by the Minister of Transport by notice in the *Gazette*, and by the Board.

(6) Any such bylaw that in any way limits or restricts that **right of access of the public to the land reclaimed under this Act** shall not come into force until it has been approved by the Minister of Lands by notice in the *Gazette*.

22. Transfer of licences—Every licence granted under this Act which confers the right to use or occupy a marina berth or mooring shall contain provisions regulating, controlling, or prohibiting the trading in or assignment of the licence.

SCHEDULE

LAND VESTED IN BOARD

ALL those parcels of land situated in the North Auckland Land District containing together an area of 39.6100 hectares, more or less, being—

- (a) Part of the bed of the Waitemata Harbour, situated in Block X, Waitemata Survey District: Area 18.6640 hectares, more or less, more particularly shown marked A on S.O. Plan 53338 (M.D. 15976) lodged in the office of the Chief Surveyor at Auckland:
 - (b) Part of the bed of the Waitemata Harbour, situated in Blocks X and XI, Waitemata Survey District: Area 20.9460 hectares, more or less, as more particularly shown marked B on S.O. Plan 53338 (M.D. 15976) lodged in the office of the Chief Surveyor at Auckland.
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