

[AS REPORTED FROM THE LOCAL BILLS COMMITTEE]

House of Representatives, 6 December 1979.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule or with double rule before first line and after last line.

Mr Prebble

**AUCKLAND HARBOUR BOARD (WESTHAVEN)
VESTING AND EMPOWERING**

[LOCAL]

ANALYSIS

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A BILL INTITULED

An Act to vest in the Auckland Harbour Board a certain part of the Waitemata Harbour, to define the limits of the Westhaven Boat Harbour, and to grant to the Board certain powers for the development and management thereof

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 (Westhaven) Vesting and Empowering Act 1979.

2. **Interpretation**—In this Act, unless the context otherwise requires,—
“Board” means the Auckland Harbour Board:

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“Boat harbour” means a harbour or part of a harbour used for the purpose of mooring, sheltering, or servicing pleasure boats; and includes any land or building used in conjunction therewith or required for access thereto and, without limiting the general import of that term, may include— 5

(a) Any slipway, launching ramp, dock, pier, swing or pile mooring, marina pier or berth, quay, wharf, jetty, cleaning grid, landing place, hoist, hoist well, bridge, float, pontoon, boatshed, boat repair or building facilities, boatyard, breakwater, wave screen, embankment, marine service station, or fuelling pier or facility, administration facilities, or any other boating or aquatic structure, service, or amenity for the use and convenience of the boating public; and 15

(b) Any shop, restaurant, car park, club premises, accommodation facilities or any other commercial or recreational service or amenity for the use and convenience of the general public as well as that of the boating public,— 20

and reference to a boat harbour or to boat harbour purposes shall be deemed to be a reference to all or part of any facility, structure, service, amenity, or use included in a boat harbour:

“Westhaven Boat Harbour” shall have the meaning given to those words in section 5 of this Act. 25

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

4. Vesting—(1) The land described in the Schedule to this Act and identified as area “Z” on Survey Office Plan 53761 (MD (N) 696) is hereby vested in the Board as an estate in fee simple for the purposes of this Act and otherwise subject to the provisions of the Harbours Act 1950. 30

(2) The vesting of the land described in the Schedule to this Act shall not prejudice or affect any easements, leases, licences, or other rights whatsoever heretofore granted over or in respect of that land or any part thereof and the same are hereby confirmed. 35

- 5. Definition of Westhaven Boat Harbour**—(1) For the purposes of this Act and subject to subsection (3) of this section, the expression “Westhaven Boat Harbour” shall mean and include those areas of land, foreshore, bed of the sea, and waterspace, described and identified as Area “A, B, C, D, E, F, G and H” on Survey Office Plan 54140 deposited with the Chief Surveyor at Auckland, a copy of which plan is also deposited with the Ministry of Transport at Auckland and additionally numbered M.D. (N) 679.
- 5
- 10 (2) With the prior consent of the Minister of Transport and upon such conditions, if any, as he thinks fit to impose, and subject to the provisions of subsection (3) of this section, the Board may from time to time alter the boundaries of the Westhaven Boat Harbour to include further areas required
- 15 for its proper use and development for boat harbour purposes, or to delete areas no longer required for those purposes.
- (3) Upon any change in the boundaries of the Westhaven Boat Harbour pursuant to subsection (2) of this section the Board shall deposit as aforesaid a new substituted plan defining the new boundaries and the Board shall publicly notify the
- 20 change in a newspaper circulating in the Auckland district, and the Minister of Transport shall give notice of the change by notice published in the *Gazette* and thereupon the expression “Westhaven Boat Harbour” shall refer to those areas
- 25 included in the substituted plan.
- (4) Nothing in this Act shall prevent or affect any present or future use of any part or parts of the Westhaven Boat Harbour for other than boat harbour purposes.

6. Authority to develop—The Board may develop and

30 redevelop from time to time the whole or any parts of the Westhaven Boat Harbour for the purposes of a boat harbour and may, subject to the Harbours Act 1950, carry out all works as may be necessary for that purpose and all such works shall be deemed to be harbour works for the purposes

35 of the Harbours Act 1950.

7. Authority to acquire land—(1) The Board may from time to time acquire by purchase, lease, exchange, or otherwise, or take under the provisions of the Public Works Act 1928, any land, buildings, or easements, or any lease or other

40 interest therein, which are within or are adjacent to the Westhaven Boat Harbour and which are required for the development or better utilisation or use of that land for boat harbour

purposes or for access to the boat harbour and any such acquisition shall, for the purposes of section 140 of the Harbours Act 1950, be deemed an undertaking the Board is authorised to carry out.

(2) The *(right)* rights of compensation conferred by section 141 of the Harbours Act 1950 on every person having an estate or interest in any land taken by the Board under the powers in subsection (1) of this section or being thereby injuriously affected or suffering any damage are hereby confirmed:

Provided that no person shall, by virtue of the exercise of those powers, have any right or be entitled to damages or recompense (other than such compensation as may be obtained under and determined in the manner provided by the Public Works Act 1928) by reason of any breach or alleged breach of any covenant for quiet enjoyment, express or implied, in any lease granted by the Board, or of the breach of any obligation, express or implied, not to derogate from the grant contained in any such lease.

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8. Subdivision—Notwithstanding the provisions of section 143B (3) (ii) and (v) of the Harbours Act 1950, in the event of the Board subdividing any part of the land in the Westhaven Boat Harbour—

- (a) Sections 284, 285, 286, 289, 292, 322, 325, 347 and 348 of the Local Government Act 1974 shall not apply to any such subdivision:
- (b) Sections 321 and 321A of the Local Government Act 1974 shall not apply in respect of any allotment on a scheme plan of such subdivision which does not have a frontage to any existing or proposed road as defined in that Act:

Provided that in any such case the Board shall provide and maintain such adequate vehicle or pedestrian access or both to such allotment as is required for its proper use and enjoyment but such obligation shall not continue if the access so provided becomes a road, access way, or service lane, as defined in the said Act.

New

5 **8. Leases not to constitute subdivision**—(1) A lease of any land within the Westhaven boat harbour shall be deemed not to be a sale within the meaning of that term as defined in section 270 (1) of the Local Government Act 1974.

(2) The District Land Registrar for the North Auckland Land Registration District is hereby authorised to register any such lease after compliance with such requirements as he may determine for the entry of the lease on the register.

10 **9. Authority to (licence) license**—(1) The Board may exercise the powers conferred on it by section 156 of the Harbours Act 1950 to (licence) license and permit any part or parts of the Westhaven Boat Harbour, or any building, structure, or facility therein, to be used or occupied for boat harbour
15 purposes and in respect of any such licence the provisions of that section shall be deemed enlarged accordingly and any provisions of that section or of any other section of the Harbours Act 1950 which are inconsistent shall be deemed modified to the extent necessary to give effect to this section.

20 (2) Any licence granted pursuant to (*the preceding subsection*) subsection (1) of this section—

(a) May be for any period not exceeding 21 years or for an initial period including a right or rights of renewal which will not in the aggregate exceed
25 21 years provided that the period may be extended beyond 21 years, but not exceeding 50 years, if the Board is satisfied that special circumstances exist requiring or justifying a longer term:

30 (b) May grant the right of exclusive use of the water space of any marina berth or pile mooring or the site of a swing mooring:

(c) Shall be construed as a licence, any rule of law to the contrary notwithstanding:

35 (d) May provide for payment of service fees and for rentals and for those charges to be payable in advance and shall not be deemed in contravention of anything contained in section 118 of the Harbours Act 1950:

40 (e) Shall contain provisions regulating, controlling or prohibiting the trading in or the assignment of licences or other authorities conferring the right to use or occupy marina berths or pile or swing moorings or the sites thereof:

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(f) May be granted notwithstanding that the licensed rights may interfere with or restrict any public right of navigation or the public convenience if it so appears to the Board that special circumstances exist justifying the grant of such a licence for boat harbour purposes. 5

(3) Should the Board, pursuant to section 161 of the Harbours Act 1950, revoke any licence in respect of the Westhaven Boat Harbour granted or agreed to before or after the passing of this Act and which provides for refund of rental or fee paid in advance in certain events, then notwithstanding the provisions of the said section 161, the Board shall make to the licensee such refund as is provided for in the licence, as if the revocation was such an event. 10

10. Authority to lease—(1) The Board may in respect of the whole or any part of the land now or hereafter comprised in the Westhaven Boat Harbour exercise all or any leasing powers conferred on the Board under the Harbours Act 1950, the Public Bodies Leases Act 1969, or any other Act and, notwithstanding anything to the contrary contained in those Acts or any of them,— 15 20

(a) The Board with the prior written approval of the Minister of Local Government may let such lands for boat harbour purposes on any tenancy or lease not specified in those Acts, whether as to the term granted, or any right or rights of renewal or the terms or aggregate duration thereof or as to the manner in which the rent is to be determined on the grant of the lease or on any renewal thereof or as to any other terms or conditions whatsoever: 25 30

(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 part or any 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 Board 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 Board may otherwise think fit. 35 40 45

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

5 **11. Other Acts not affected**—Nothing in this Act shall be construed as—

(a) Limiting the application of the provisions of the Health Act 1956, the Town and Country Planning Act 1977, the Water and Soil Conservation Act 1967, or (except as provided in section 8 of this Act) the Local Government Act 1974;

(b) Conferring any water right within the meaning of the Water and Soil Conservation Act 1967.

15 **12. Compensation**—Save as provided in section 7 (2) of this Act, 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 development or work constructed or carried out under the authority of this Act, whether to property or person and whether in
20 respect of the deprivation of any water frontage or riparian rights or otherwise howsoever.

13. Powers of District Land Registrar—The District Land Registrar for the North Auckland Land Registration District
25 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, and on request by the Board, to issue in the name of the Board a certificate or certificates of title for the land vested in the Board by section 4 (1) of this Act.

SCHEDULE

Section 4

LAND VESTED

North Auckland Land District

Land below mean high water mark in the Waitemata Harbour and reclaimed land situated in Block XVI, Waitemata Survey District: Area 37.2250 hectares, more or less: Identified as Area "Z" on Survey Office Plan 53761 (MD (N) 696).