

Mr Townshend

**BAY OF PLENTY HARBOUR BOARD (SULPHUR
POINT) VESTING AND EMPOWERING**

[LOCAL]

ANALYSIS

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A BILL INTITULED

An Act to vest in the Bay of Plenty Harbour Board a certain part of the Tauranga Harbour, to define the limits of the Tauranga Marina, 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 Bay of Plenty Harbour Board (Sulphur Point) Vesting and Empowering Act 1981.

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

“Board” means the Bay of Plenty Harbour Board:

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“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— 5

(a) Any slipway, launching ramp, dock, pier, marina pier, quay, wharf, jetty, landing place, hoist, hoist-well, bridge, float, pontoon, boatshed, boat repair facilities, boatyard, 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 10

(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— 20
and reference to a boat harbour shall be deemed to be a reference to any part of any facility, structure, service, amenity, or use included in a boat harbour:

“Council” means the Tauranga City Council:

“Tauranga Marina” shall have the meaning given to that term 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 which was heretofore vested in Her Majesty the Queen is hereby vested in the Board as an estate in fee simple for the purposes of the Harbours Act 1950 as regards the area marked E, and for the purposes of this Act for the balance, and otherwise subject to the provisions of the Harbours Act 1950. 30

(2) The vesting of the land first 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 of it and the same are hereby confirmed. 40

5 **5. Definition of Tauranga Marina**—(1) For the purpose of this Act and subject to subsection (3) of this section, the term “Tauranga Marina” means and includes those areas of land, foreshore, bed of the sea, and waterspace, first described in the Schedule to this Act.

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 Tauranga Marina to include further areas required for its proper use and development for boat harbour purposes, or to delete areas no longer required for those purposes.

15 (3) Upon any change in the boundaries of the Tauranga Marina pursuant to subsection (2) of this section the Board shall deposit with the Ministry of Transport at Wellington a new plan defining the new boundaries and the Board shall publicly notify the change in a newspaper circulating in the Tauranga district, and the Minister of Transport shall give notice of the change by notice published in the *Gazette*; and thereupon the term “Tauranga Marina” shall refer to those areas included in the substituted plan.

20 (4) Nothing in this Act shall prevent or affect any present or future use of any part or parts of the Tauranga Marina for other than boat harbour purposes.

25 **6. Authority to develop**—The Board may develop and re-develop from time to time the whole or any parts of the Tauranga Marina for the purposes of a boat harbour and may, subject to the Harbours Act 1950, carry out all such works as may be necessary for that purpose, and all such works shall be deemed to be harbour works for the purposes of the Harbours Act 1950.

30 **7. Leases not to constitute subdivision**—(1) A lease of any land within the Tauranga Marina 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 South 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.

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8. Authority to license—(1) The Board may exercise the powers conferred on it by section 156 of the Harbours Act 1950 to license and permit any part or parts of the Tauranga Marina or any building, structure, or facility therein, to be used or occupied for boat harbour purposes, and in respect of any such licence the provisions of that section shall be deemed to be enlarged accordingly and any provisions of that section or of any other section of the Harbours Act 1950 which are inconsistent shall be deemed to be modified to the extent necessary to give effect to this section. 5 10

(2) Any licence granted pursuant to 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 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: 15

(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: 20

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

(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: 25

(e) Shall contain provisions regulating, controlling, or prohibiting the trading 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: 30

(f) May be granted notwithstanding that the licensed rights may interfere with or restrict any public right of navigation or the public convenience. 35

(3) Should the Board, pursuant to section 161 of the Harbours Act 1950, revoke any licence in respect of the Tauranga Marina 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. 40

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

10 (a) The Board, with the prior written approval of the Minister of Transport, 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 or renewal, or the terms or aggregate duration thereof, or as to the
15 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:

20 (b) The Board may 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
25 may be pre-determined for the new lease or new leases in the surrendered lease, or, if no such rent is pre-determined, 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
30 the surrendered lease or as the Board may otherwise think fit.

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

10. **Board may vest reserve**—(1) Notwithstanding anything contained in any other enactment, the Board is hereby authorised to transfer to the Council and the Council is
40 authorised to accept, the land secondly and fourthly described in the Schedule to this Act to be vested in the Council as reserves for recreation purposes.

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(2) Notwithstanding anything contained in any other enactment, the land so transferred shall be in full satisfaction of all reserve or reserve fund contributions of all types required under the Local Government Act 1974 to which Her Majesty the Queen, the Council, or any other local authority may be entitled in respect of any subdivision, whether past, present, or future, carried out by the Board at any time within the area first, thirdly, and fifthly described in the Schedule to this Act. 5

(3) The Board is hereby authorised to transfer to the Council for dedication as road the area thirdly described in the Schedule to this Act, and upon the Council constructing such road the Board is authorised to pay to the Council such proportion of the cost of construction as the Board and the Council may agree. 10 15

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

- (a) Except as provided in sections 8 and 11 of this Act, 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 the Local Government Act 1974: 20
- (b) Conferring any water right within the meaning of the Water and Soil Conservation Act 1967. 25

12. 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 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. 30

13. Powers of District Land Registrar—The District Land Registrar for the South 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, 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. 35

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SCHEDULE

1. All that area in the South Auckland Land District, Tauranga County, situated in Block VI, Tauranga Survey District, containing 23.5240 hectares, more or less, being land below low water mark (part Tauranga Harbour Bed) vested in the Crown, and part Tauranga Harbour Foreshore vested in the Bay of Plenty Harbour Board, and proposed reclamation, as shown marked "A" on the plan numbered M.D. 16081 deposited in the office of the Ministry of Transport at Wellington (S.O. 51719).

2. All that area in the South Auckland Land District, Tauranga City and Tauranga County, situated in Blocks VI and X, Tauranga Survey District, containing 9.4090 hectares, more or less, being part Allotment 420, Section 1, Town of Tauranga, and part Tauranga Harbour Foreshore vested in the Bay of Plenty Harbour Board, and proposed reclamation, as shown marked "B" on the plan numbered M.D. 16081 deposited in the office of the Ministry of Transport at Wellington (S.O. 51719).

3. All that area in the South Auckland Land District, Tauranga County, situated in Block VI, Tauranga Survey District, containing 1.1208 hectares, more or less, being part Allotment 420, Section 1, Town of Tauranga and part Tauranga Harbour Foreshore vested in the Bay of Plenty Harbour Board, and proposed reclamation, as shown marked "C" on the plan numbered M.D. 16081 deposited in the office of the Ministry of Transport at Wellington (S.O. 51719).

4. All that area in the South Auckland Land District, Tauranga County, situated in Block VI, Tauranga Survey District, containing 1.3212 hectares, more or less, being part Allotment 420, Section 1, Town of Tauranga, and part Tauranga Harbour Foreshore vested in the Bay of Plenty Harbour Board, and proposed reclamation, as shown marked "D" on the plan numbered M.D. 16081 deposited in the office of the Ministry of Transport at Wellington (S.O. 51719).

5. All that area in the South Auckland Land District, Tauranga City and Tauranga County, situated in Blocks VI and X, Tauranga Survey District, containing 70.5178 hectares, more or less, being land below low water mark (part Tauranga Harbour Bed) vested in the Crown, and part Allotments 397, 401, 402, 418, and 420, Section 1, Town of Tauranga, and part Tauranga Harbour and Foreshore vested in the Bay of Plenty Harbour Board, and proposed reclamation, as shown marked "E" on the plan numbered M.D. 16081 deposited in the office of the Ministry of Transport at Wellington (S.O. 51719).