

Mr D. M. J. Jones

**WAITEMATA CITY COUNCIL (WEST HARBOUR)
VESTING AND EMPOWERING**

[LOCAL]

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A BILL INTITULED

An Act to vest in the Waitemata City Council a certain part of the Waitemata Harbour, to authorise it to reclaim a certain area thereof and to develop or authorise to be developed the part so vested (and whether reclaimed from the sea or not) for the purpose of a boat harbour

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

10 1. Short Title—This Act may be cited as the Waitemata City Council (West Harbour) Vesting and Empowering Act 1978.

No. 3—1

Price 30c

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

“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, may include—

(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 ships 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, motel, 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.

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 First Schedule to this Act is hereby vested in the Council as an estate in fee simple for the purposes of this Act and subject to the provisions of the Harbours Act 1950.

(2) The land described in the First Schedule to this Act is hereby included within the district of the Council without further or other authority than this section and any alteration to the boundary of the Council is deemed to have been effected pursuant to the Local Government Act 1974.

(3) Without in any way limiting the effect of subsection (2) of this section, such altered boundary shall on written application on behalf of the Council and without further authority or procedure be formally recorded by notice in the
5 *Gazette* under the hand of the Minister for Local Government.

(4) The land described in the First Schedule to this Act is hereby declared to be rateable property provided that:—

10 (a) No part of such land as is described in the Second Schedule to this Act shall be deemed to be rateable property until it has been reclaimed from the sea;

15 (b) Such of the land as is described in the First Schedule as is not intended to be reclaimed from the sea shall not be deemed rateable property until the Council shall certify in writing under its seal to the Valuer-General that it is to be deemed rateable property and the Council may defer the giving of any such
20 certificate until there have been constructed upon it such works and facilities of and incidental to its use as a boat harbour as in Council's opinion warrant the declaration of such land as rateable property.

5. **Authority to reclaim**—Subject to the provisions of the Harbours Act 1950 and of this Act, the Council may from
25 time to time reclaim from the sea the whole or any part or parts of the land described in the Second Schedule to this Act:

30 Provided that no work of reclamation shall be commenced until all necessary rights have been acquired under the Water and Soil Conservation Act 1967 in respect of the discharge of 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 6 (b) (ii) of this Act.

35 **6. Authority to develop**—The Council may 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 boat harbour purposes and, without limiting the general power of development as aforesaid, the Council may, in
40 respect of the whole or any part or parts of that land which is from time to time reclaimed from the sea:

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- (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 Municipal Corporations Act 1954, and all other relevant statutory provisions, relating to subdivisions: 5
- (b) Construct or provide such public works and amenities as may be deemed necessary or desirable for the use and enjoyment of such reclaimed land for boat harbour purposes, including— 10
- (i) Streets, service lanes, access ways, and other means of communication or access by land as well as by water;
 - (ii) Services for water supply, drainage, sewerage, electric lighting, power, gas, and all other amenities; 15
 - (iii) All works necessary to comply with any lawful requirement of any local or public authority.

7. Council may permit other persons to carry out reclamation and development—For the purpose of carrying out and constructing the said reclamation or any part or parts thereof, or of developing or redeveloping the said land or any part or parts thereof, the Council may grant a licence to or contract with any person or persons or local or public authority to undertake and carry out all or any of the activities relating to such reclamation or development as are authorised by sections 5 and 6 of this Act, or to carry out and construct all or any works which may be necessary or expedient in connection with any such reclamation or development 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. 20 25 30 35

8. Council not authorised to create a nuisance, etc.—
 (1) Nothing in section 5, section 6, or section 7 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 40

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 of Transport pursuant to section 178 of the Harbours Act 1950 or requisition or direction issued in accordance with section 15 (a) of this Act, whether or not the Council or any other persons 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, 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 5 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.

9. Authority to license—(1) In addition to all other powers conferred on the Council under the Harbours Act 1950, or any other Act, the Council may license or permit any part of the land vested in it under this Act (including any part of the foreshore or of the bed of the sea) or any building or structure thereon, to be used or occupied for boat harbour purposes for such period and upon such terms and conditions as the Council may think fit.

(2) The provisions of section 157 and 160 of the Harbours Act 1950, as far as they are applicable, shall apply to any licence or permit granted under this section as if the licence or permit had been granted under section 156 of that Act.

10. Authority to lease—(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 described in the Second Schedule to this Act which is from time to time reclaimed from the sea,—

(a) Lease the whole or any part or parts of such reclaimed land to any person or persons for boat harbour purposes for any term with such right or rights of renewal and on such terms and conditions as the Council may think 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.

(2) Sections 7, 8, 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.

11. Public's right of access—Notwithstanding the powers conferred on the Council under section 9 or section 10 of this Act or under any other enactment, the public shall have the right of access on to the whole of the land described in the Second Schedule to this Act (but not into any building erected on that land) subject to the provisions of any bylaw made under section 13 of this Act 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.

12. Authority for Council to maintain waterways—The Council is hereby empowered to undertake or contract for the efficient maintenance and dredging of all waterways within the area vested in it and within any adjacent area providing access thereto.

13. 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 shall, before any facilities constructed on the land described in the First Schedule to this Act come into use, and may from time to time thereafter, 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 powers to make bylaws conferred by subsection (1) of this section the Council shall make bylaws for and in respect of any boat harbour or waterway to which this Act applies for all or any of the
5 following purposes:

- (a) Regulating and controlling the use of any such boat harbour or waterway, and preventing or abating nuisances therein:
- 10 (b) Regulating and controlling the speed and navigation of any vessel using any such boat harbour or waterway:
- (c) Regulating, controlling, or prohibiting the mooring, anchoring, or placing of any vessel in any such boat harbour or waterway, or any part of such boat
15 harbour or waterway:
- (d) Regulating all matters relating to the protection of life or property in or on vessels using any such boat harbour or waterway (including therein powers to limit or restrict the right of access of the public to
20 certain parts or at certain times as the Council may consider desirable):
- (e) Protecting and safeguarding any such waterway or boat harbour against damage, pollution, obstruction, disturbance, or misuse of any kind whatsoever:
25
- (f) Regulating, controlling, or prohibiting the discharge of stormwater into any such boat harbour or waterway and the discharge of effluent from boats' toilets into the same:
- 30 (g) Providing for the proper conduct of persons using, occupying, or frequenting any such boat harbour or waterway:
- (h) Fixing fees, charges, rents, or payments for the use, allocation, or re-allocation of moorings, mooring
35 sites, piers, marina piers, sheds, or any other structures included in a boat harbour:
- (i) 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 (h) of this subsection, and regulating and controlling the issue and re-issue and the term of such licences and other
40 authorities and the right to obtain them.

Any such bylaw may be limited to apply to part only of the land described in the First Schedule and in particular may be limited so as to apply only to the land and the waters above it physically enclosed by the protective works of the boat harbour.

(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) Any bylaw made under this section which relates to a boat harbour or waterway or to the use thereof shall not come into force until it has been approved by the Minister of Transport by notice in the *Gazette*.

14. District planning scheme to be extended—For the purposes of the Town and Country Planning Act 1977 the area defined in the First Schedule to this Act is hereby declared to be included in the district of the Council and shall be deemed to have been included therein from the 15th day of February 1973 being the date when the Council's present district scheme became operative, and accordingly—

(a) All development to be undertaken within that area and all uses of any part or parts of that area shall be governed by and undertaken in accordance with the Operative District Scheme of the Council under the Town and Country Planning Act 1977 or such parts or ordinances or provisions thereof as shall apply to the land described in the First Schedule.

To the extent (if any) to which any such designation zoning or other definition or provision of the Operative District Scheme of the Council as the same applies to the provision of a marina or boat harbour generally in the locality of the land described in the First Schedule hereto may not have been authorised under the provisions of the Town and Country Planning Act 1953 (repealed) or is or may not be authorised under the provisions of the Town and Country Planning Act 1977 the same are (and they are by the authority of this section deemed to be) matters designations zonings definitions or ordinances made within the powers of the Council under the provisions of the Town and Country Planning Act 1953 (repealed) or the Town and Country Planning Act 1977 and the pro-

visions thereof shall apply to the land described in the First Schedule hereto as if the land described in the First Schedule hereto were the land affected by such designations zonings definitions or provisions:

- 5 (b) Such area shall be excluded from any maritime planning area which is now or may hereafter be constituted under section 96 of the Town and Country Planning Act 1977 and the provisions of Part V of that Act shall not apply to such area.
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15. Other Acts not affected—Nothing in this Act shall be construed as—

- 15 (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
- 20 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 14 of this Act), of the Water and
- 25 Soil Conservation Act 1967, of the Municipal Corporations Act 1954, or of the Local Government Act 1974;
- (c) Conferring any water right within the meaning of the Water and Soil Conservation Act 1967.

- 30 **16. 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
- 35 person and whether in respect of the deprivation of any water frontage or riparian rights or otherwise howsoever.

17. 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, and on request by the Council, to issue in the name of the Council a certificate or certificates of title for the land vested in the Council by section 4 of this Act. 5

SCHEDULES

Section 4

FIRST SCHEDULE

LAND VESTED

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

Section 5

SECOND SCHEDULE

LAND AUTHORISED TO BE RECLAIMED BY COUNCIL

ALL that parcel of land situated in the North Auckland Land District being Part Bed of Waitemata Harbour, situated in Block X Waitemata Survey District: Area: 18.6640 hectares more or less. As shown marked A on S.O. Plan 53338, lodged in the office of the Chief Surveyor at Auckland.