

Auckland Harbour Board and Takapuna Borough Council Empowering Act Amendment Bill

Local Bill

As reported from the Governance and Administration Committee

Commentary

Recommendation

The Governance and Administration Committee has examined the Auckland Harbour Board and Takapuna Borough Council Empowering Act Amendment Bill and recommends that it be passed. We recommend all amendments unanimously.

Introduction

This bill would amend the Auckland Harbour Board and Takapuna Borough Council Empowering Act 1923. The Act specifies the purposes that the land at 17 Sir Peter Blake Parade, Bayswater, Auckland can be used for. It sets out that the land, or any building on it, cannot be used for private gain.

The land is owned by the Takapuna Boating Club (the club). It was originally owned by the Auckland Harbour Board and later vested in the Takapuna Borough Council in 1923¹. The land was sold to the club in 1926.²

The bill would allow part of the land, and any buildings or other improvements on it, to be used for commercial purposes so long as the site was principally used for community purposes. This is intended to enable the club to secure commercial income to fund restoration and ongoing maintenance of the boating club building at the site. The bill would also update the description of the land in Schedule 1 of the Act to more accurately describe the land that is now owned by the club.

¹ References to Takapuna Borough Council are now references to Auckland Council.

² The title for the land (NA455/236) was issued in 1927.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

Consideration of local bills

This is a local bill. Local bills are promoted by a local authority. They deal with issues specific to a local area and must only affect a particular locality. Auckland Council is the promoter of this bill. The council provided us with advice on the policy intent of the bill to assist our consideration.

We considered whether an Act of Parliament was the best avenue for achieving the purpose of this bill. The consideration of local bills is time- and resource-intensive, both for select committees and the promoter of the bill. We wondered whether other mechanisms might offer greater flexibility and avoid the need to amend the Act again in future. On 4 December 2024, we wrote to the Department of Internal Affairs (DIA) to request advice on whether the intent of the bill could be achieved using a different mechanism, and what the advantages and disadvantages of an alternative approach could be.

DIA replied on 10 February 2025.³ It explained that the relevant land could be made subject to the Reserves Act 1977.⁴ However, under this arrangement the land would still be subject to the 1923 Act. To change this, the 1923 Act would have to be amended to remove the reference to the piece of land, or be repealed entirely.

In its oral submission, Auckland Council told us it had considered the option of repealing the Act. However, it considered that promoting this local bill was a more effective solution to enable the club to receive commercial revenue, while also requiring that the land must be principally used for community purposes.

On balance, we consider that this local bill is a suitable way to achieve the aim. However, we think that, in general, there should be a high threshold for introducing local bills. We think that local bills should be considered more as a last resort when what is intended would be impossible or impractical to achieve without primary legislation.

³ In its letter, DIA noted that it had also consulted with the Department of Conservation and Land Information New Zealand.

⁴ The land could be made subject to the Reserves Act in one of three ways: through a private protected land agreement, by the club selling the land to the Crown or Auckland Council for reserve purposes, or by Auckland Council acquiring the land under the Public Works Act 1981.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments, other than to note that we propose a slight change in the bill's title, for consistency with similar legislation.

Clarifying the meaning of “community purposes”

Clause 4 of the bill would replace section 5 of the Act to update the lawful uses of the land at 17 Sir Peter Blake Parade, Bayswater, Auckland.

Proposed new section 5(1) sets out that the Auckland Council, or a body or person claiming through or under it, must use the land for the principal purposes of providing “boat sheds, public swimming baths, a social hall, or any similar community purpose”. As the successor to the Takapuna Borough Council's title to the land, the club would be considered a body claiming through or under the Auckland Council.

Proposed new section 5(2) would allow part of the land, or any buildings or other improvements on it, to be used for commercial purposes as long as the land is principally used for “community purposes”. The policy intent of the bill is that this reference to community purposes means the purposes explicitly described in new section 5(1). We think this could be more clearly expressed. We recommend inserting new section 5(2)(a) to refer to the purposes set out in new section 5(1), rather than using the broad term “community purposes”.

Proposed new section 5(3) as introduced would require all money received from commercial uses of the land under a lease, licence, or other arrangement to be used on maintenance of the land and any building or other improvement on it, or for “community purposes”. This reference to community purposes is not intended to be restricted to the purposes described in new section 5(1). The policy intent is that proceeds could be used for broad community purposes. For example, the club could use proceeds towards providing community water sports, recreational activities such as yoga or mahjong sessions, or other community activities. This would also ensure that any potential future owner of the land, including Auckland Council, could use proceeds to fund a broad range of community purposes.

We recommend moving proposed section 5(3)(b) to become new section 5(2)(b), but do not propose any changes to the restrictions on what commercial proceeds could be used for.

Restrictions on what money earned can be used for

As introduced, proposed section 5(3) sets out restrictions on what money received from commercial uses of the land, or buildings or other improvements on it, would be able to be used for. Section 5(3)(b), as introduced, refers to money being received under a “lease, licence, or other arrangement” for use of the land. However, we think the intent is clear that the restrictions discussed above would apply to all commercial proceeds, not just proceeds received by these means. We think that the bill should be consistent and make this intent clear.

We recommend inserting renumbered section 5(2)(b) to specify that all money received from “use of the land, buildings, or other improvements for commercial purposes” is subject to the restrictions.

Appendix

Committee process

The Auckland Harbour Board and Takapuna Borough Council Empowering Act Amendment Bill was referred to us on 23 October 2024. The House instructed us to report the bill back no later than 24 February 2025. We invited the Member in charge of the bill, Hon Simon Watts, to provide an initial briefing on the bill. He did so on 13 November 2024.

We called for submissions on the bill with a closing date of 13 November 2024. We received and considered submissions from six interested groups and individuals. We heard oral evidence from three submitters, including the promoter of the bill, Auckland Council.

The Office of the Clerk provided advice on the bill's legislative quality. Auckland Council provided advice on the policy intent of the bill. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

Rachel Boyack (Chairperson)

Cameron Brewer (until 29 January 2025)

Tim Costley

Andy Foster

Hon Melissa Lee (from 29 January 2025)

Stuart Smith (from 29 January 2025)

Lemauga Lydia Sosene

Tom Rutherford (until 29 January 2025)

Celia Wade-Brown

Hon Jo Luxton also participated in our consideration of this bill.

Related resources

The documents we received as advice and evidence are available on the Parliament website.

**Auckland Harbour Board and Takapuna Borough
Council Empowering Act Amendment Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Simon Watts

Auckland Harbour Board and Takapuna Borough Council Empowering Act Amendment Bill

Local Bill

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The Parliament of New Zealand enacts as follows:

- Title**
This Act is the Auckland Harbour Board and Takapuna Borough Council Empowering Act Amendment Act **2024**.
- Commencement** 5
This Act comes into force on the day after Royal assent.
- Principal Act**
This Act amends the Auckland Harbour Board and Takapuna Borough Council Empowering Act 1923.
- Section 5 replaced (User of land in Schedule 1)** 10
Replace section 5 with:

5 Use of land in Schedule 1

- (1) The Auckland Council, or a body or person claiming through or under it, must use the land described in **Schedule 1** as a site of, and for the principal purposes of, boat sheds, public swimming baths, a social hall, or any similar community purpose. 5
- (2) However, part of the land described in **Schedule 1** and any buildings or other improvements on the land may be used for commercial purposes as long as ~~the land described in **Schedule 1** and any buildings on it~~ are principally used for community purposes. —
- (a) the land described in **Schedule 1** and any buildings or other improvements on the land are principally used for the purposes referred to in **subsection (1)**; and 10
- (b) all money received by the Auckland Council, or a body or person claiming through or under it, from use of the land, buildings, or other improvements for commercial purposes is spent on— 15
- (i) maintenance of the land;
- (ii) maintenance of any buildings or other improvements on the land;
- (iii) community purposes.
- (3) The Auckland Council, or a body or person claiming through or under it, ~~may grant a lease, licence, or other arrangement for use of land, buildings, or other improvements in accordance with **subsection (2)**.~~ 20
- (a) ~~may grant a lease, licence, or other arrangement for use of land in accordance with **subsection (2)**; and~~
- (b) ~~must spend all money received under the lease, licence, or other arrangement on—~~ 25
- (i) ~~maintenance of the land;~~
- (ii) ~~maintenance of any buildings or other improvements on the land;~~
- (iii) ~~community purposes.~~

5 Schedule 1 replaced

- Replace Schedule 1 with the **Schedule 1** set out in the **Schedule** of this Act. 30

Schedule
Schedule 1 replaced

s 5

Schedule 1

All that area of land in the North Auckland Land District containing 0.0463 hectares located at 17 Sir Peter Blake Parade, Bayswater, Auckland described as Lot 1 Deposited Plan 20033 as contained in Record of Title NA455/236. 5

Legislative history

17 October 2024
23 October 2024

Introduction (Bill 91–1)
First reading and referral to Governance and Administration
Committee