

5 November 2025

Submissions before the PFNDP in Hearing number 17

With respect, contrary to the views of the PFNDP planners 42A reports, that the scope of my submissions were in effect unclear, I reaffirm my further submissions for hearing number 8 and those of my expert witnesses in rebuttal and state again that the Boatyard is a commercial maritime facility and nothing else; accept for a new house on what was the southern yard rail spur.

Therefore the scope embodied within S21& S185 are three fold. That the PFNDP should not, let alone cannot, establish any form of estate predisposition through zoning of land or seabed in the CMA, where there is no jurisdiction for a Territorial Authority/ (Administrative Body) to do so that contradicts s30 of the RMA '91 or s6 of the Treaty of Waitangi Act 1975.

That on 20 November 2024, I submitted evidence supporting the above presumptions and now resubmit those documents and further submit references to the recent Supreme Court decision [2024] NZSC 164 and the MACA Amendment Act 2024.

Therefore, the FNDC is not and cannot be made a party to the MACA Act 2011 through any process of Zoning of the CMA on the one hand nor zone local purpose reserves, other than Open Space, on the other. This because of: (a) amendments to the MACA Act 2011 that reset the bar of proof for alleged claims in the CMA affected by substantial interruptions since 1840 and (b.) conversely by a Treaty claim over private land, which is held for a local and/or general public purpose over land that is indefeasibly owned by a District Council or Trust pursuant to the Reserves Act '77 or other enactment that created that title.

Doug Schmuck

For: Doug's Opua Boatyard and the people of New Zealand pursuant to sections 3(b) and 27 (1) of the Bill of Rights Act 1990.



DOUG'S OPUA BOATYARD
1 RICHARDSON STREET
OPUA 0200
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GST No. 051-243-021

With respect, I would like to share the five following observations.

1. That the FNDC Plan Team notified a proposed plan that has extensive zoning that is mapped well outside the boundaries of its jurisdiction. (This because the Natural Open Space Zone is not a term used in conjunction with the Radical Title of the CMA); Ref: sections 30 and 31 of the RMA'91).

2. That other Natural Open Space zoning the FNDC Plan Team applied within its boundary jurisdictions are likely contrary to and/or misrepresentative under the authority of the RMA'91 or for that matter, section 3 of the Treaty of Waitangi Amendment Act 1993. (This in effect, because the FNDC is legally a private person and not a government agency).

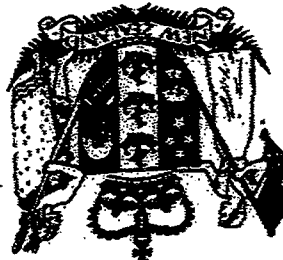
3. That the FNDC Plan Team either by mistake or deliberate disregard applied zoning contrary to the authorized rights of ratepayers through rules in the Operational District Plan that are not fit for purpose in regards to the use and resource consents that run with the land. (This because Natural Open Zoning does not at all fit well with the purposes of any reserve owned by the FNDC).

4. That the FNDC Plan Team has zoned land that is contrary to the purpose by which that specific land is held by legislation founded on a Deed of Trust enacted subject to sections 2,4,and 6 of the Public Reserves, Domains, and National Parks Act 1928. Therefore, that land should be recognized as Open Space zoning which was the sole purpose of the Deed in 1932. (This because only a small portion of all the Waitangi Trust land is zoned Open Space that is held and managed by the Waitangi Trust Board).

5. Conclusion: That these discrepancies in the Proposed District Plan should be re-evaluated and remedied pursuant to section 32 of the RMA'91, which is not in any way a duty and/or responsibility that can be delegated to the submitter by an independent hearing panel. (This because although these concerns are not at this point further submissions pursuant to sub-sections 8 (1),(b) of schedule 1, they do represent greater aspects of public interest in the CMA and/or regional policy statements that effect public access to and along the CMA and/or any maritime facilities that cross jurisdictional boundaries).

Doug Schmuck
S21.001 & .002; S185.001

20 November 2024



ANALYSIS

Title	1. Short Title
3. Jurisdiction of Tribunal to consider claims	
2. Interpretation of Tribunal to consider claims	

1993, No. 92

An Act to amend the Treaty of Waitangi Act 1975

[20 August 1993]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title—This Act may be cited as the Treaty of Waitangi Amendment Act 1993, and shall be read together with and deemed part of the Treaty of Waitangi Act 1975. (hereinafter referred to as the principal Act).

2. Interpretation—Section 2 of the principal Act is hereby amended by inserting, after the definition of the term "Maori", the following definition:
 "Private land" means any land, or interest in land, held by a person other than—
 "(a) The Crown; or
 "(b) A Crown entity within the meaning of the Public Finance Act 1989."

3. Jurisdiction of Tribunal to consider claims—Section 6 of the principal Act is hereby amended by inserting, after subsection (4), the following subsection:
 "(4A) Subject to sections 8A to 8I of this Act, the Tribunal shall not recommend under subsection (3) of this section, or—
 "(a) The return to Maori ownership of any private land; or
 "(b) The acquisition by the Crown of any private land."

This Act is administered in Te Puni Kōwhiri

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 121/2023
SC 123/2023
SC 124/2023
SC 125/2023
SC 126/2023
SC 128/2023
SC 129/2023
[2024] NZSC 164

BETWEEN

WHAKATŌHEA KOTAHITANGA WAKA
(EDWARDS)

NGĀTI MURIWAI

KUTARERE MARAE

TE UPOKOREHE TREATY CLAIMS
TRUST ON BEHALF OF TE
UPOKOREHE IWI

ATTORNEY-GENERAL

NGĀTI IRA O WAIOWEKA, NGĀTI
PATUMOANA, NGĀTI RUATĀKENGA
AND NGĀI TAMAHUA (TE KĀHUI
TAKUTAI MOANA O NGĀ WHĀNAU
ME NGĀ HAPU O TE WHAKATŌHEA)

NGĀTI RUATĀKENGA
Appellants

AND

NGĀTI IRA O WAIOWEKA, NGĀTI
PATUMOANA, NGĀTI RUATĀKENGA
AND NGĀI TAMAHUA (TE KĀHUI
TAKUTAI MOANA O NGĀ WHĀNAU
ME NGĀ HAPU O TE WHAKATŌHEA)
TE TĀWHARAU O TE WHAKATŌHEA
(FORMERLY WHAKATŌHEA MĀORI
TRUST BOARD)

NGĀI TAI AND RIRIWENUA

TE UPOKOREHE TREATY CLAIMS
TRUST ON BEHALF OF TE

WHAKATŌHEA KOTAHITANGA WAKA (EDWARDS) v NGĀTI IRA O WAIOWEKA, NGĀTI
PATUMOANA, NGĀTI RUATĀKENGA AND NGĀI TAMAHUA (TE KĀHUI TAKUTAI MOANA O NGĀ
WHĀNAU ME NGĀ HAPU O TE WHAKATŌHEA) [2024] NZSC 164 [2 December 2024]

UPOKOREHE IWI
TE RŪNANGA O NGĀTI AWA
WHAKATŌHEA KOTAHITANGA WAKA
(EDWARDS)
NGĀTI RUATĀKENGA
LANDOWNERS COALITION
INCORPORATED
NGĀTI MURIWAI
KUTARERE MARAE
Respondents
ATTORNEY-GENERAL
TE WHĀNAU-Ā-APĀNU
SEAFOOD INDUSTRY
REPRESENTATIVES
CROWN REGIONAL HOLDINGS
LIMITED
OPŌTIKI DISTRICT COUNCIL
BAY OF PLENTY REGIONAL COUNCIL
LANDOWNERS COALITION
INCORPORATED
WHAKATĀNE DISTRICT COUNCIL
TE RŪNANGA O NGĀTI AWA
Interested Parties
4-7 November 2024
12-15 November 2024

Hearing:
Court:
Counsel:

Glazebrook, Ellen France, Williams, Kōs and French JJ

R J B Fowler KC, A J Sinclair and B M Cunningham for

Whakatōhea Kotahitanga Waka (Edwards)

M J Sharp for Ngāti Muriwai and Kutarere Marae

J S Cooper KC, B R Lyall and H L B Swedlund for Te Upokorehe

Treaty Claims Trust on behalf of Te Upokorehe Iwi

A J Williams, R L Roff and Y Moirfar-Yong for Attorney-General

AND

A T I Sykes and S W H Fletcher for Ngāi Ira o Waioveka	
M S Smith and T H Bennion for Ngāti Patumoana	
K S Feint KC and N A T Udy for Ngāti Ruatākenge	
C M T Panohe-Navaja for Ngāti Tamahaua	
J M Pou for Te Tāwharau o Te Whakatōhea (formerly Whakatōhea Māori Trust Board)	
B R Arapere, A E Gordon and E K Rongo for Ngāti Tai and Ririwhenua	
D M Salmon KC, H K Irwin-Easthope and R K Douglas for Te Rūnanga o Ngāti Awa	
M K Mahuika and N R Coates for Te Whānau-ā-Apanui	
T D Smith and R J J Wales for Seafood Industry Representatives	
M H Hill and J L Hollis for Crown Regional Holdings Limited	
and Ōpōtiki District Council	
A M Green and E S Greensmith-West for Whakatāne District Council	
J E Hodder KC, B E Morten and S O H Coad for Landowners Coalition Inc	
M K Mahuika, T N Hauraki and H L P Ammunition for Ngā Hapu o Ngāti Porou as Intervener	
Judgment:	2 December 2024

JUDGMENT OF THE COURT

A	The appeal (by the Attorney-General in relation to s 58 of the Marine and Coastal Area (Takutai Moana) Act 2011) is allowed.
B	Costs are reserved.

REASONS OF THE COURT

Table of Contents

Para No	Introduction
[1]	History of rights and interests in the marine and coastal area
[7]	Ngāti Apa and Ninety-Mile Beach
[11]	Canada and Australia
[14]	Canada
[22]	Australia
[33]	Māori customary rights to land and the Native Land Court
[51]	The Native Land Court's approach to marine title specifically
[55]	Conclusions on the different New Zealand approach
[58]	From Ngāti Apa to the FSA

Appendix: Table summarising reconciliation in the statutory scheme

[229] The table below summarises how the Act's four baseline premises are reconciled at a general and fact-specific level—in particular, how customary rights³⁰³ are reconciled with the other three premises:

Premise	Reconciliation of competing rights and interests
Crown ownership: above at [106]	<i>General reconciliation rules</i> • Crown and local authorities divested of ownership: s 11(3). • No one owns the common marine and coastal area (CMCA): s 11(2). • But Crown retains limited ability to override CMTs: see, for example, s 74 for protection purposes and s 30 and following for reclamations. • No conflict with customary rights. <i>Effect</i>
Customary rights: above at [107]	• Interests (extinguished by FSA) restored and given legal expression under MACA: s 6. • Participation rights, PCRs and CMTs provided for.
Vested property rights and expressly authorised activities: above at [108]	<i>General reconciliation rules</i> • Freehold titles excluded from CMCA: s 9(1). • Structures excluded from CMCA; owners' rights unaffected: s 18. • Pre-MACA resource consents unaffected: s 20. • But activities under resource consents granted between MACA's commencement and the effective date not substantial interruption: s 58(2). • Activities that are otherwise lawful unaffected: s 20 • Certain proprietary interests unaffected: s 21 • Protections for accommodated activities: ss 63–65. • CMT rights more limited than freehold title: s 62. • Once application for CMT lodged, those seeking permissions within CMT area must consult with applicant group: s 62–62A. • But after effective date of CMT: ◦ permission of CMT group required to carry out any new activity ◦ under resource consent or to grant new conservation consent (unless accommodated activity): ss 62(1)(a)–(b) and 66–73;

Public access, navigation and fishing rights: above at [109]	<i>General reconciliation rules</i> • Public access, navigation and fishing rights guaranteed: ss 26–28. • Public and customary rights generally coexist: see s 59(3). • But public rights subject (only) to wahi tapu exclusions: ss 78–79. • International law rights and obligations unaffected: s 8. <i>Fact-specific reconciliation rules</i> • As above for vested property rights and expressly authorised activities, but note also: ◦ fishing and navigation do not “of [themselves]” preclude CMT, but could contribute to substantial interruption: see s 59(3).
	<i>Fact-specific reconciliation rules</i> • Applicant must show they hold the area in accordance with tikanga and have used and occupied it from 1840 to the present day: s 58. • Relationship with area must be integrated and holistic, demonstrating mana and ahi kā. • Occupation requires intention and some capacity (as far as the law permits) to control, not actual physical occupation in the nature of residence. • Burden shifts to contraditors to prove non-exclusivity or substantial interruption: s 106 and see s 98(2)(b). • Exclusive does not require exclusion of all others. ◦ Interruption must go beyond mere interference. ◦ Interruption must be substantial and lawful. • Broad participation rights: ss 102–104. <i>Effect</i> • Private rights prevail insofar as they conflict with customary rights—but strictly to the extent of the conflict. • Section 58 test must still be met.

	<i>Effect</i> • Customary rights generally coexist with public rights except in the case of wāhi tapu: ss 78–79. • Section 58 test must still be met.
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provisions changed the effect that Parliament intends them to have, and materially reduced those requirements (for example, that an applicant group must prove exclusive use and occupation of a specified area from the start to the end of the applicable period without substantial interruption). Amendments to those provisions are needed to ensure that they have the effect that Parliament intends. The enactment of this legislation makes those amendments:

The Parliament of New Zealand therefore enacts as follows:

1 Title
This Act is the Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Act 2024.
MAILED ITS FINAL REMOVAL DATE 05/2025
2 Commencement
This Act comes into force on the day after Royal assent.

Part 1

Amendments to Marine and Coastal Area (Takutai Moana) Act 2011: general

3 Principal Act

This Part amends the Marine and Coastal Area (Takutai Moana) Act 2011.

4 Preamble amended

(1) In the Preamble, before recital (1), insert:

Background to Act as enacted

(2) In the Preamble, after recital (4), insert:

Background to amendments made by CMT Amendment Act

(5) In 2023, in *Whakatōhea Kotahitanga Waka (Edwards) v Te Kahui and Whakatōhea Māori Trust Board* [2023] NZCA 504, [2023] 3 NZLR 252, the Court of Appeal interpreted provisions of this Act about the requirements for recognition of customary marine title. The Court's interpretation of those provisions changed the effect that Parliament intends them to have, and materially reduced those requirements (for example, that an applicant group must prove exclusive use and occupation of a specified area from the start to the end of the applicable period without substantial interruption). Amendments to those provisions are needed to ensure that they have the effect that Parliament intends. The enactment of the Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Act 2024 makes those amendments:

5 Section 9 amended (Interpretation)

In section 9(1), insert in their appropriate alphabetical order:

applicable period, for a determination of whether customary marine title exists in a specified area of the common marine and coastal area (see sections 57A, 57B, 58, 59, 95, 98, and 106), means the period specified (as applicable) —

(a) in section 58(1)(b)(i) (from 1840 to the present day); or

(b) in section 58(3)(c)(ii) and for the purposes of section 58(1)(b)(ii) (from 1840 to the time of a customary transfer); or

(c) in section 58(3)(d)(ii) and for the purposes of section 58(1)(b)(ii) (from the time of a customary transfer to the present day)

CMT Amendment Act means the Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Act 2024

CMT amendments means this Act's provisions as amended, inserted, or replaced by the CMT Amendment Act

exclusive use and occupation has the meaning given in section 57A

substantial interruption has the meaning given in section 57B

6 New sections 9A to 9C inserted

Before section 10, insert:

9A Customary marine title amendments: purposes, and application, and overriding effect



New Zealand Legislation

Treaty of Waitangi Act 1975

If you need more information about this Act, please contact the administering agency: **Ministry of Māori Development—Te Puni Kōkiri**

6 Jurisdiction of Tribunal to consider claims

- (1) Where any Māori claims that he or she, or any group of Māoris of which he or she is a member, is or is likely to be prejudicially affected—
- (a) by any ordinance of the General Legislative Council of New Zealand, or any ordinance of the Provincial Legislative Council of New Munster, or any provincial ordinance, or any Act (whether or not still in force), passed at any time on or after 6 February 1840; or
- (b) by any regulations, order, proclamation, notice, or other statutory instrument made, issued, or given at any time on or after 6 February 1840 under any ordinance or Act referred to in paragraph (a); or
- (c) by any policy or practice (whether or not still in force) adopted by, or on behalf of the Crown, or by any policy or practice proposed to be adopted by or on behalf of the Crown; or
- (d) by any act done or omitted at any time on or after 6 February 1840, or proposed to be done or omitted, by or on behalf of the Crown,—
- and that the ordinance or Act, or the regulations, order, proclamation, notice, or other statutory instrument, or the policy or practice, or the act or omission, was or is inconsistent with the principles of the Treaty, he or she may submit that claim to the Tribunal under this section.
- (2) The Tribunal must inquire into every claim submitted to it under subsection (1), unless—
- (a) the claim is submitted contrary to section 6AA(1); or
- (b) section 7 applies.
- (3) If the Tribunal finds that any claim submitted to it under this section is well-founded it may, if it thinks fit having regard to all the circumstances of the case, recommend to the Crown that action be taken to compensate for or remove the prejudice or to prevent other persons from being similarly affected in the future.
- (4) A recommendation under subsection (3) may be in general terms or may indicate in specific terms the action which, in the opinion of the Tribunal, the Crown should take.
- (4A) Subject to sections 8A to 8I, the Tribunal shall not recommend under subsection (3),—
- (a) the return to Māori ownership of any private land; or
- (b) the acquisition by the Crown of any private land.
- (5) The Tribunal shall cause a sealed copy of its findings and recommendation (if any) with regard to any claim to be served on—
- (a) the claimant;
- (b) the Minister of Māori Affairs and such other Ministers of the Crown as in the opinion of the Tribunal have an interest in the claim;
- (c) such other persons as the Tribunal thinks fit.
- (6) Nothing in this section shall confer any jurisdiction on the Tribunal in respect of any Bill that has been introduced into the House of Representatives unless the Bill has been referred to the Tribunal pursuant to section 8.
- (7) Notwithstanding anything in this Act or any other Act or rule of law, on and from the commencement of this subsection the Tribunal shall not have jurisdiction to inquire or further inquire into, or to make any finding or recommendation in

respect of,—

- (a) commercial fishing or commercial fisheries (within the meaning of the Fisheries Act 1983); or
- (b) the Deed of Settlement between the Crown and Maori dated 23 September 1992; or
- (c) any enactment, to the extent that it relates to such commercial fishing or commercial fisheries.

(8) Despite anything in this Act or in any other Act or rule of law,—

- (a) the jurisdiction of the Tribunal is subject to the enactments listed in Schedule 3; and
- (b) without limiting paragraph (a), the Tribunal does not have jurisdiction, in relation to licensed land (within the

meaning of the Crown Forest Assets Act 1989) in the takiwā of Ngāi Tahu Whānui, to make a recommendation for compensation or for the return of the land to Maori ownership.

- (9) [Repealed]
- (10) [Repealed]
- (11) [Repealed]
- (12) [Repealed]
- (13) [Repealed]
- (14) [Repealed]
- (15) [Repealed]
- (16) [Repealed]
- (17) [Repealed]
- (18) [Repealed]
- (19) [Repealed]
- (20) [Repealed]
- (21) [Repealed]
- (22) [Repealed]
- (23) [Repealed]
- (24) [Repealed]
- (25) [Repealed]
- (26) [Repealed]
- (27) [Repealed]
- (28) [Repealed]
- (29) [Repealed]
- (30) [Repealed]
- (31) [Repealed]
- (32) [Repealed]

Compare: 1998 No 97 s 462; 1999 No 118 s 10

Section 6(1): replaced, on 6 January 1986, by section 3(1) of the Treaty of Waitangi Amendment Act 1985 (1985 No 148).
Section 6(2): replaced, on 13 December 2006, by section 5 of the Treaty of Waitangi Amendment Act 2006 (2006 No 77).
Section 6(4A): inserted, on 20 August 1993, by section 3 of the Treaty of Waitangi Amendment Act 1993 (1993 No 92).
Section 6(6): replaced, on 6 January 1986, by section 3(2) of the Treaty of Waitangi Amendment Act 1985 (1985 No 148).
Section 6(7): inserted, on 23 December 1992, by section 40 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (1992 No 121).
Section 6(8): replaced, on 23 May 2008, by section 5 of the Treaty of Waitangi Amendment Act 2008 (2008 No 34).
Section 6(9): replaced, on 23 May 2008, by section 5 of the Treaty of Waitangi Amendment Act 2008 (2008 No 34).
Section 6(10): replaced, on 23 May 2008, by section 5 of the Treaty of Waitangi Amendment Act 2008 (2008 No 34).
Section 6(11): replaced, on 23 May 2008, by section 5 of the Treaty of Waitangi Amendment Act 2008 (2008 No 34).
Section 6(12): replaced, on 23 May 2008, by section 5 of the Treaty of Waitangi Amendment Act 2008 (2008 No 34).
Section 6(13): replaced, on 23 May 2008, by section 5 of the Treaty of Waitangi Amendment Act 2008 (2008 No 34).
Section 6(14): replaced, on 23 May 2008, by section 5 of the Treaty of Waitangi Amendment Act 2008 (2008 No 34).
Section 6(15): replaced, on 23 May 2008, by section 5 of the Treaty of Waitangi Amendment Act 2008 (2008 No 34).
Section 6(16): replaced, on 23 May 2008, by section 5 of the Treaty of Waitangi Amendment Act 2008 (2008 No 34).
Section 6(17): replaced, on 23 May 2008, by section 5 of the Treaty of Waitangi Amendment Act 2008 (2008 No 34).
Section 6(18): replaced, on 23 May 2008, by section 5 of the Treaty of Waitangi Amendment Act 2008 (2008 No 34).

Section 6(19): repealed, on 23 May 2008, by section 5 of the Treaty of Waitangi Amendment Act 2008 (2008 No 34).

Section 6(20): repealed, on 23 May 2008, by section 5 of the Treaty of Waitangi Amendment Act 2008 (2008 No 34).

Section 6(21): repealed, on 23 May 2008, by section 5 of the Treaty of Waitangi Amendment Act 2008 (2008 No 34).

Section 6(22): repealed, on 23 May 2008, by section 5 of the Treaty of Waitangi Amendment Act 2008 (2008 No 34).

Section 6(23): repealed, on 23 May 2008, by section 5 of the Treaty of Waitangi Amendment Act 2008 (2008 No 34).

Section 6(24): repealed, on 23 May 2008, by section 5 of the Treaty of Waitangi Amendment Act 2008 (2008 No 34).

Section 6(25): repealed, on 23 May 2008, by section 5 of the Treaty of Waitangi Amendment Act 2008 (2008 No 34).

Section 6(26): repealed, on 23 May 2008, by section 5 of the Treaty of Waitangi Amendment Act 2008 (2008 No 34).

Section 6(27): repealed, on 23 May 2008, by section 5 of the Treaty of Waitangi Amendment Act 2008 (2008 No 34).

Section 6(28): repealed, on 23 May 2008, by section 5 of the Treaty of Waitangi Amendment Act 2008 (2008 No 34).

Section 6(29): repealed, on 23 May 2008, by section 5 of the Treaty of Waitangi Amendment Act 2008 (2008 No 34).

Section 6(30): repealed, on 23 May 2008, by section 5 of the Treaty of Waitangi Amendment Act 2008 (2008 No 34).

Section 6(31): repealed, on 23 May 2008, by section 5 of the Treaty of Waitangi Amendment Act 2008 (2008 No 34).

Section 6(32): repealed, on 23 May 2008, by section 5 of the Treaty of Waitangi Amendment Act 2008 (2008 No 34).

Section 6 compare note: inserted, on 1 March 2001, by section 13 of the Poukani Claims Settlement Act 2000 (2000 No 90).

Ref: 37878.36

3 November 2025

Far North District Council

Attention: Alicia Taihia

1 We act on behalf of Doug Schmuck, who owns and operates Doug's Opua Boatyard which includes various occupational rights over the adjoining Local Purpose Esplanade Reserve and out into the CMA.

2 Under the Proposed Far North District Plan (PFNDP), we understand that the Far North District Council (FNDC) proposes to zone below the Mean high water springs within the coastal marine area (CMA) on a district wide scale.

3 Our client is also concerned that the Natural Open Space Zone under the FNDDP allows for future treaty claims to be made against areas marked as Reserves in accordance with the Reserves Act 1977. We comment on this further below.

District Council jurisdiction in relation to the CMA

4 Our client is particularly concerned that the FNDC proposes to establish zoning to the CMA without establishing the jurisdiction to allow for these changes.

5 Pursuant to section 1 of the Resource Management Act 1991, the CMA is defined as:

coastal marine area means the foreshore, seabed, and coastal water, and the air space above the water—

(a) of which the seaward boundary is the outer limits of the territorial sea;

(b) of which the landward boundary is the line of mean high water springs, except that line crosses a river, the landward boundary at that point shall be whichever is the lesser of—

(i) 1 kilometre upstream from the mouth of the river; or

(ii) the point upstream that is calculated by multiplying the width of the river mouth by 5

6 Jurisdiction over this area is specifically assigned to regional councils and the Minister of Conservation in accordance with s 30 of the RMA.

7 Pursuant to s 11 of the Marine and Coastal Area (Takutai Moana) Act 2011 (MACA) the common marine and coastal area has a special status and is incapable of ownership.

8 The definition of a district under the RMA explicitly excludes any area within the coastal marine area, except in limited circumstances under s 89. This is further supported by case law, which confirms that district councils do not have jurisdiction over the CMA for zoning purposes.

9 This is further supported by case law. For example, in *Whangarei District Council v Northland Regional Council*¹ it was held that regional councils have sole responsibility for the performance of RMA policies within the CMA. The district council does not have authority to zone or manage activities within the CMA, as this responsibility is allocated to regional councils.

10 Therefore, in accordance with the provisions under the RMA and MACA, FNDC does not have jurisdiction over the CMA and cannot create operative zoning within this area under the PFNDP.

District Council Jurisdiction in relation to Local Purpose Reserves

11 We also understand that FNDC wishes to zone some of the esplanade reserves across the district as Natural Open Space. One of our client's concerns with this is that the zoning would allow for Treaty claims to be made against the reserves.

12 In particular, the land adjoining his property which grants him operational and structural access to the Bay of Islands Harbour is a Local Purpose Reserve that is owned by FNDC. There is an easement registered over this allowing him legal access. The purpose of the land is recorded on the Title as a Local Purpose (Esplanade) Reserve (as per **attached** Record of Title NA121C/187).

13 In New Zealand, district councils have jurisdiction over reserves as administering bodies under the Reserves Act 1977. District councils have the power to declare land vested in them as reserves under section 14 of the Reserves Act 1977. The Act provides district councils with the authority to manage, administer, and control reserves within their jurisdiction. This includes ensuring the use, enjoyment, development, maintenance, protection, and preservation of reserves for the purposes for which they are classified.

14 Pursuant to section 23 (2)(a) of the Reserves Act, any esplanade reserve must be administered in a way that does not impede upon the public's right to freely pass and repass over the reserve on foot (unless determined that access should be limited to preserve the stability or biological values of the reserve).

15 The Reserves Act 1977 allows for the classification and reclassification of reserves, as well as the revocation of their status, under certain conditions and with ministerial approval.

16 The Local Government Act 2002 provides that local authorities have full capacity to undertake activities or manage land for the benefit of their district or region, subject to statutory and general law limitations. This includes the ability to manage land for public purposes, such as reserves or other community uses.

17 Treaty claims over land are generally addressed through the Treaty of Waitangi settlement process. The Treaty of Waitangi Act 1975 and subsequent settlement legislation provide mechanisms for addressing historical breaches of the Treaty, including the return of land or other forms of redress. In some cases, land classified as reserves under the Reserves

¹ *Whangarei District Council v Northland Regional Council* [1996] NZRMA 445.

Act 1977 has been included in Treaty settlements, with provisions for its continued administration as a local purpose reserve or other types of reserves.

18 Under s3 of the Treaty of Waitangi Amendment Act 1993, it states that the Tribunal shall not recommend the return of private land, or the acquisition of any private land by the Crown to satisfy Treaty claims. This is supported by *Te Rakato Marae Trustees v Hawkes Bay Regional Council* [2011] NZEnvC 231 where the land was purchased by Crown and vested in the Waitoa District Council as a Recreation Reserve. A Treaty claim was filed by Ngai Rakato in respect of the land, however the Court found that as the reserve was vested in the District Council it was in private ownership. With certain, limited exceptions, the Waitangi Tribunal has no ability to recommend the return of land in private ownership to Māori. If the reserve adjacent to our client's property was subject to a claim, this would require negotiations, with the relevant parties, including Crown, iwi groups, and Mr Schmuck or his assignee who remain the dominant tenant of record over the Local Purpose Reserve at Walls Bay.

19 Overall, Council still needs to administer and manage the reserves in their control in accordance with the Reserves Act. We note that the easement running over the reserve adjoining our client's property cannot be surrendered by Council alone – it would still be subject to the indefeasibility of those easements that run with the land of the reserve at Walls Bay which are in place for our client's benefit.

Please feel free to get in touch with any queries.

Yours faithfully

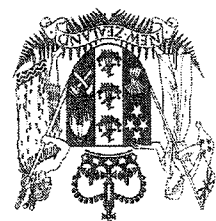
HENDERSON REEVES



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RECORD OF TITLE
UNDER LAND TRANSFER ACT 2017
FREEHOLD
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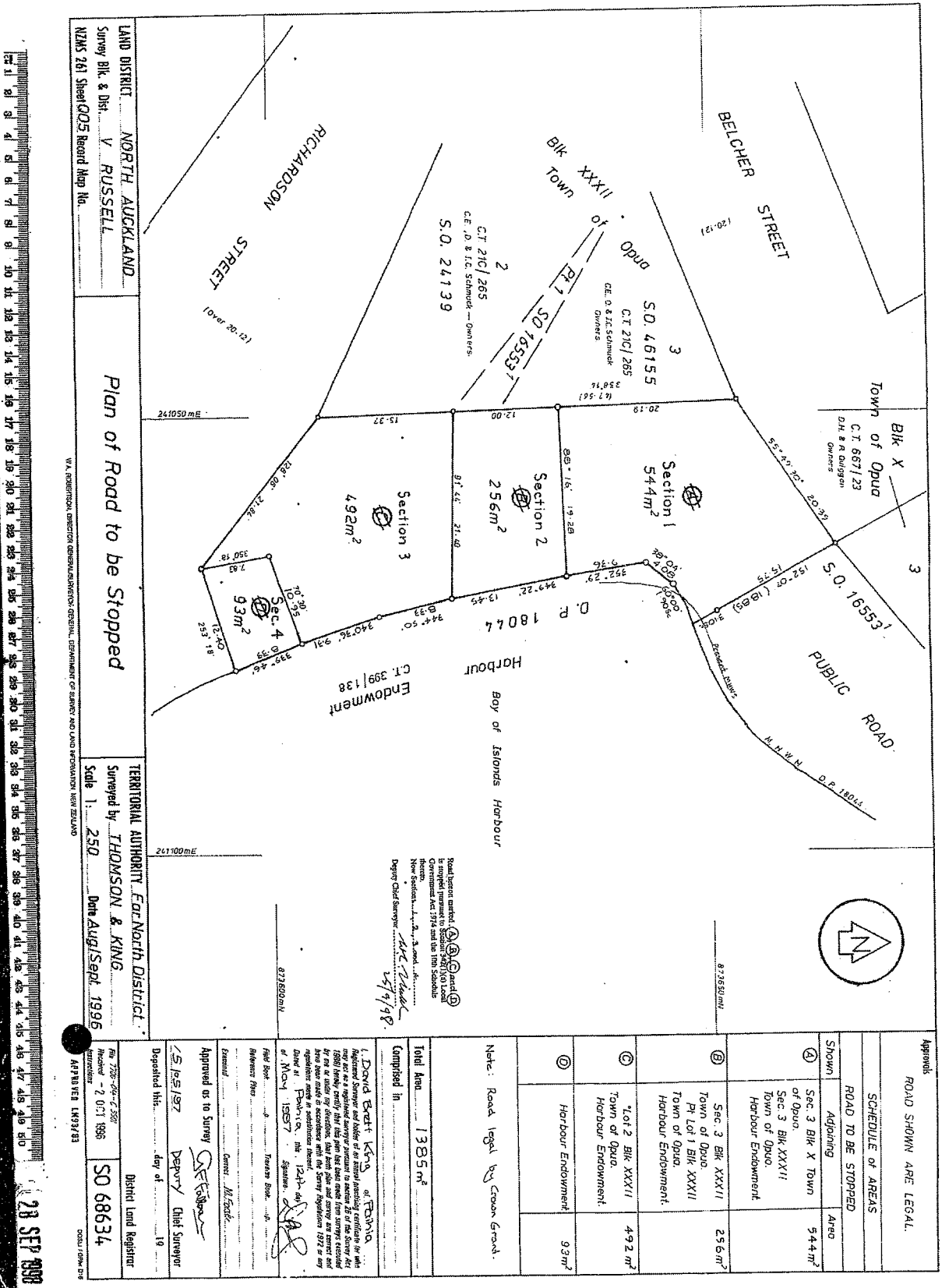
Identifier NA121C/187
Land Registration District North Auckland
Date Issued 01 October 1998

Estate	Area	Legal Description	Purpose	Registered Owners	Far North District Council
Fee Simple	1385 square metres more or less	Section 1-4 Survey Office Plan 68634	Local Purpose (Esplanade) Reserve		

Interests

Subject to Section 345(3) Local Government Act 1974

Subject to a right to access, construct, operate, and maintain a commercial marine slipway, turntable and associated facilities over part Section 2 SO 68634 marked X, Y and Z on DP 487568, right of access to and repair and maintenance of vessel on slipway and/or turntable over part Section 3 SO 68634 marked W on DP 487568 and over part Section 2 SO 68634 marked X on DP 487568, right of access to and reconstruction of a commercial marine slipway over part Section 1 SO 68634 marked T on DP 487568 and over part Section 3 SO 68634 marked U and W on DP 487568 and over part Section 2 SO 68634 marked X, Y and Z on DP 487568, right to maintain existing wooden and stone retaining walls over part Section 1 SO 68634 marked T on DP 487568 and over part Section 3 SO 68634 marked U on DP 487568 and over part Section 4 SO 68634 marked V and over part Section 2 SO 68634 marked Z on DP 487568, and right to discharge contaminants and to emit noise over part Section 1 SO 68634 marked T on DP 487568 and over part Section 4 SO 68634 marked V on DP 487568 and over part Section 3 SO 68634 marked W and U and over part Section 2 SO 68634 marked X, Y and Z on DP 487568 created by Easement Instrument 10100695.1 - 27.7.2015 at 3:00 pm





New Zealand Legislation New Zealand Bill of Rights Act 1990

If you need more information about this Act, please contact the administering agency: **Ministry of Justice**

27 Right to justice

- (1) Every person has the right to the observance of the principles of natural justice by any tribunal or other public authority which has the power to make a determination in respect of that person's rights, obligations, or interests protected or recognised by law.
- (2) Every person whose rights, obligations, or interests protected or recognised by law have been affected by a determination of any tribunal or other public authority has the right to apply, in accordance with law, for judicial review of that determination.
- (3) Every person has the right to bring civil proceedings against, and to defend civil proceedings brought by, the Crown, and to have those proceedings heard, according to law, in the same way as civil proceedings between individuals.



New Zealand Legislation

New Zealand Bill of Rights Act 1990

If you need more information about this Act, please contact the administering agency: **Ministry of Justice**

3 Application

This Bill of Rights applies only to acts done—

- (a) by the legislative, executive, or judicial branches of the Government of New Zealand; or
- (b) by any person or body in the performance of any public function, power, or duty conferred or imposed on that person or body by or pursuant to law.