

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 FNPDP 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 where 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 Wairoa 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
Search Copy




R.W. Muir
Registrar-General
of Land

Identifier **NA121C/187**
Land Registration District **North Auckland**
Date Issued 01 October 1998

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

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 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

