

New Zealand.

ANALYSIS.

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| <p>Title.</p> <p>1. Short Title.</p> <p>2. Interpretation.</p> <p>3. Repeal.</p> | <p>4. Acquisition of new school-site.</p> <p>5. Application of purchase-money Schedules.</p> |
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1918, No. 8.—*Local and Personal.*

AN ACT to provide for the Acquisition by the Napier High School Board of a Portion of a Harbour Reserve as a Site for a Boys' High School, and to ratify certain Agreements entered into for that Purpose. Title.
[10th December, 1918.]

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

1. This Act may be cited as the Napier Harbour Board and Napier High School Empowering Act, 1918. Short Title.
2. In this Act, if the context so admits,—
 - The expression "the Board" shall mean the Napier Harbour Board:
 - The expression "the Governors" shall mean the Napier High School Board incorporated under the Napier High School Act, 1882:
 - The expression "the parties hereto" shall include both the Board and the Governors as hereinbefore respectively defined.Interpretation.
3. Section three of the Napier High School Amendment Act, 1916, and the First Schedule to that Act, and subsection one of section ten of the Napier Harbour Board Empowering and Vesting Act, 1917, and the Third Schedule thereto, are hereby repealed. Repeal.
4. (1.) The Board shall be and it is hereby authorized and empowered to let on lease and sell to the Governors, and the Governors shall be and they are hereby authorized and empowered to take on lease and purchase from the Board, the parcel of land comprised and described in the schedule to the agreement set out in the First Acquisition of new school-site.

Schedule hereto (hereinafter called the principal agreement) upon the terms and conditions contained in the principal agreement as modified by the supplementary agreement set out in the Second Schedule hereto :

Provided that the parties hereto shall be at liberty, by any subsequent bargain or bargains *inter se*, to modify or vary the said terms and conditions or any of them, but so that no material variation or alteration shall be made in either the area of the parcel of land to which the principal agreement purports to relate, or the yearly rent to be paid therefor, or the purchase price thereof, as the same are respectively stated in the principal agreement.

(2.) The parties hereto may respectively do and perform all such acts and things, and make, sign, and execute all such deeds, documents, and writings, as in their opinion, or in the opinion of either of them, it may be necessary or expedient to do, perform, make, sign, or execute for the purpose of giving effect to the provisions of the principal agreement as modified by the said supplementary agreement set out in the Second Schedule hereto, or to the provisions of those agreements as modified or varied by any such subsequent bargain or bargains as aforesaid.

Application of
purchase-money.

5. Subsection two of section ten of the Napier Harbour Board Empowering and Vesting Act, 1917, shall be read and construed as if the sale therein referred to were the sale by the Board to the Governors which is authorized by this Act.

Schedules.

SCHEDULES.

FIRST SCHEDULE.

AN AGREEMENT made this first day of May one thousand nine hundred and sixteen between the Napier Harbour Board (hereinafter called "the Board") of the one part and the Napier High School Board incorporated under the Napier High School Act 1882 (hereinafter called "the Governors") of the other part Witnesseth that it is hereby mutually agreed by and between the parties hereto as follows that is to say:—

1. The Board shall lease and the Governors shall take upon lease all that piece of land more particularly described in the schedule hereto and delineated in the plan drawn hereon or annexed hereto bordered green.

2. Such lease shall be upon the following terms and conditions:—

(a.) The term shall be twenty-one years from the first day during the next ensuing session of the General Assembly of New Zealand on which both of the parties hereto shall be in possession of the legislative authority referred to in clause 3 hereof.

(b.) The rental shall be calculated for the first seven years of the said term at the rate of two pounds ten shillings per centum per annum on the value of the fee-simple of the said piece of land and for the remaining fourteen years of the said term at the rate of five pounds per centum per annum on the value of the fee-simple of the said piece of land. Such rental shall be payable half-yearly free of any deductions. The value of the fee-simple is hereby assessed for the purposes of this provision at the rate of three hundred pounds per acre.

- (c.) The Board may retain the sole possession and control of so much of the said piece of land as consists of the Channel Reserve (the area of which is separately stated in the said Schedule hereto and in the said plan drawn hereon or annexed hereto) or of any part of that reserve for so long during the said term as it thinks fit and so long as the Board shall retain possession and control of the said Channel Reserve or of any part thereof the rental to be reserved by the said lease shall abate to the extent to which the same is referable to the area of which for the time being possession and control is so retained. So soon however as the Board shall in writing notify the Governors that the Board is prepared to give up possession of the said Channel Reserve or any portion thereof the rental hereinbefore reserved in respect of the said Channel Reserve or the portion thereof so relinquished by the Board shall forthwith become payable. The area of any portion of the said reserve so relinquished shall be decided by two surveyors one to be appointed by each party hereto. The expression "shall retain the sole possession and control" where used in these presents with reference to the said Channel Reserve shall imply (but without prejudice to any other provisions herein contained with respect to the Channel Reserve or any part thereof) that the Board may use the Channel Reserve or any part thereof so retained for any legitimate purpose in connection with the reclamation of the lands to be included in the said proposed lease or of any adjacent lands belonging to the Board for which the same could have been used by the Board if the said proposed lease had not been entered into.
- (d.) The said Channel Reserve shall at all times both during the continuance of the term of the said lease and if and after the Governors shall have acquired the fee-simple of the demised premises or any part thereof under the provisions hereinafter referred to and whether or not the Board shall be retaining possession and control of the same as aforesaid be and remain subject to the right of the Board to use the same in perpetuity for natural drainage purposes that is for carrying off water from the lands of the Board contiguous to the demised premises. Any lease or transfer drawn up between the parties hereto to give effect to this contract or to vest in the Governors the fee-simple of the premises hereby agreed to be demised shall contain a reservation or grant to the Board of an easement of drainage in accordance with the foregoing provision and the Board shall have the right to maintain the said Channel Reserve for the purposes aforesaid in perpetuity and may from time to time and at all reasonable times by its servants agents and workmen enter upon the said Channel Reserve for the purpose of repairing and putting in order the drainage channel forming part of the same but in the execution of this work the Board shall be careful to do as little damage as possible to the service of the said reserve and shall immediately upon the execution of any such work restore the said surface to its former state and condition. Provided always and it is hereby declared and agreed that in the event of the Governors becoming the purchasers of the fee-simple of the premises hereby agreed to be demised in terms of the provisions in that behalf hereinafter contained and of the Board then determining in accordance with the provisions aforesaid that it will require the possession of such perpetual easement as aforesaid only in respect of a portion of the said Channel Reserve to be then defined then the perpetual easement in favour of the Board hereinbefore referred to shall extend and apply only to the portion of the said Channel Reserve so defined.
- (e.) The lease shall contain an optional right to the Governors to purchase from the Board at any time during the term (at least three calendar months' previous notice in writing of such their intention having been first given to the Board) the fee-simple of the demised lands at the price of three hundred pounds an acre but subject to the right

of the Board to retain the sole possession and control of the said Channel Reserve or any part thereof for so long as it thinks fit and subject also to the easement of drainage as aforesaid. The provisions of paragraph (c) hereof regarding abatement of rent shall be applicable (*mutatis mutandis*) to the purchase-money referable to the area of the said Channel Reserve of which possession and control is for the time being retained by the Board.

Provided always and it is hereby declared and agreed by and between the parties hereto as follows that is to say:—

- (i.) It shall be lawful for the Governors to complete the purchase from the Board at the price of three hundred pounds an acre of a portion (being one continuous block and not including any portion of the Channel Reserve and not being less than five acres in area) of the lands hereby agreed to be demised at any time during the term of the proposed demise (at least three calendar months' previous notice in writing conveying their intention so to do and defining with reasonable particularity the area so proposed to be dealt with having been first given to the Board). The Governors shall at their own expense have the area so proposed to be acquired surveyed by a licensed surveyor to be first approved of by the Board. Upon payment of the purchase-money for such area the Board will give to the Governors a title thereto in fee-simple free from encumbrances and the rent payable by the Governors to the Board in terms of the said proposed demise shall thereafter abate at the rate of two pounds ten shillings per centum per annum until the expiration of the first seven years of the term of the said proposed lease if such period shall not then have elapsed and if such period shall then have elapsed and in any case after the expiration of the same at the rate of five pounds per centum per annum on the amount of the purchase-money. Provided always that if such purchase shall be effected within the first seven years of the said term the Board will allow to the Governors in reduction of the purchase-money a sum of money equal to the (then) present value of the sum found by taking two pounds ten shillings per centum per annum of the purchase-money for the said area over the then unexpired portion of the said period of seven years.
- (ii.) If the Governors shall effect the purchase of the area referred to in the preceding subparagraph hereof as therein provided the right to purchase to be contained in the said proposed lease instead of being optional shall then become a compulsory obligation on the part of the Governors with respect to the remainder of the premises comprised in the said proposed lease and paragraph (e) of this clause shall be applicable *mutatis mutandis*. On the completion by the Governors of the purchase of the remainder of the premises aforesaid the Governors shall pay for the Channel Reserve at the rate of three hundred pounds an acre as aforesaid subject as follows that is to say the Board shall before the completion of the purchase declare and define to what extent of the Channel Reserve it requires that its perpetual drainage easement shall apply and the title given to the Governors shall be subject to such easement only to the extent so declared and defined. If the average width of the area so declared and defined shall exceed at the level of the land on either side of the channel 65 links the

Governors shall not pay for the area so declared and defined in so far as it is in excess of the area found by taking an average width of 65 links. The Board shall on giving title to the Governors leave and shall thereafter so far as may be reasonably practicable maintain the actual open channel of a uniform width throughout its whole length. Nothing herein contained shall be deemed to restrict the rights of the Board to make and maintain an open channel of any width within the limits of the Channel Reserve.

- (iii.) The Board shall at all times at its own expense keep in good order and free from obstructions the open channel aforesaid so that the natural flow of water therethrough (if any) may not at any time be checked or in anywise hindered and the Board shall not at any time knowingly permit or suffer any sewage or any decaying or putrefying or other noxious or offensive matter or thing whatsoever to remain in or pass through the said open channel. If the Board shall commit any breach of its obligations under this subparagraph the Governors may after having given reasonable notice to the Board to remedy such breach cause the said open channel to be thoroughly cleared or cleansed as occasion shall require and may charge the Board with the cost of the work but no action for damages or other claim shall lie against the Board in respect of such breach or the consequences thereof. It shall not be incumbent on the Governors to fence either side of the Channel Reserve or of the said open channel.
- (f.) It shall be lawful for the Governors to erect and use a bridge for foot-passenger traffic across the said Channel Reserve on plans to be first approved by the Board and it shall be lawful for the Board from time to time and as often as occasion shall require during such time as the said Channel Reserve or any portion of it shall remain in the possession and under the control of the Board to remove the said bridge so as to allow of the passage up and down the said channel of a dredge or any other vessel in use by the Board in connection with its reclamation operations and to facilitate such reclamation operations in or by means of the said Channel Reserve. Provided always that any such removal shall be effected by the Board at its own expense and that after the purpose for which such removal was effected has been satisfied the bridge shall be reinstated at the like expense.
- (g.) The Harbour Board shall at its own cost within six years from the date of possession under the said proposed demise fill up and reclaim all the low-lying portions of the said piece of land so that the same shall have a permanent level in accordance with the level fixed on the ground on the thirty-first day of March last by Messieurs W. J. McGrath on behalf of the High School Board and A. E. Jull on behalf of the Harbour Board in the presence of Messieurs C. D. Kennedy and J. P. Kenny that is to say a level nine feet six inches below the rail level at a point on the Napier-Wellington Railway due east from the north-eastern corner of the said piece of land.
- (h.) The said lease shall contain all other usual and proper conditions including powers of re-entry and distress and covenants by the Governors to repair and keep in good and substantial repair the demised premises inclusive of all buildings and improvements for the time being thereon to pay all rates and taxes whether by law or custom payable by landlord or tenant (including those made and levied by the Board) to insure all buildings to the full insurable value in the joint names of the parties not to assign sublet or part with the possession of the demised premises or use the same or any

part thereof for any purposes other than as a site for a high school and its accompanying buildings and playgrounds. Nothing herein shall be deemed to negative prejudice or in anywise affect the statutory right of the Governors to apply to the Supreme Court for relief in case the Board shall proceed to enforce any right of re-entry or forfeiture under the provisions of the lease.

3. This contract is entered into subject to the following condition that each of the parties hereto shall be able to obtain legislative authority to carry out its obligations hereunder. If such legislative authority shall be obtained during the next ensuing session of the General Assembly of New Zealand (and each of the parties hereto hereby undertakes that it will use its best endeavours to obtain such authority during the said session) then this contract shall *ipso facto* become a binding contract on the part of both parties hereto but otherwise it shall *ipso facto* become void and of no effect. In the meantime neither party shall have the right to withdraw from this contract.

4. The costs of and incidental to the preparation and passing of the necessary Act of Parliament to give the parties hereto legislative authority to enter into and carry out this contract shall be borne and paid by the High School Board.

In witness whereof these presents have been executed.

THE SCHEDULE.

All that piece of land containing by admeasurement twenty-eight acres and thirty-three perches more or less inclusive of the Channel Reserve intersecting it (which Channel Reserve contains three acres and thirty-three perches more or less) being portion of Te Whare-o-Maraenui Reserve. Bounded as follows commencing at a point on the western side of Hastings Street South one thousand four hundred and twenty-three decimal one links south of the intersection of that side of Hastings Street South with the southern side of Ellison Street. Thence southerly along Hastings Street South one thousand and nineteen decimal eight links and one thousand and ninety-nine decimal five links. Thence westerly nine hundred and thirty-four decimal six links. Thence north-westerly nine hundred and thirty-four decimal six links. Thence north-easterly one thousand nine hundred and sixty-four decimal two links. And thence easterly eight hundred and thirty-one decimal five links. And thence south-easterly twenty-eight decimal three links to the commencing-point. Be the same several measurements a little more or less.

Sealed with the seal of the Napier Harbour Board in the presence of—

A. E. JULL, Chairman.
JNO. P. KENNY, Treasurer.

(L.S.)

The common seal of the Napier High School Board was hereto affixed at a meeting of the said Board held on the 8th day of May, 1916, in the presence of—

T. C. MOORE, Chairman.
G. CRAWSHAW, Secretary.

(L.S.)

SECOND SCHEDULE.

THIS AGREEMENT made the eleventh day of March one thousand nine hundred and eighteen between the Napier Harbour Board (hereinafter called "the Board") of the one part and the Napier High School Board incorporated under the Napier High School Act 1882 (hereinafter called "the Governors") of the other part and supplemental to a certain agreement made between the same parties and bearing date the first day of May one thousand nine hundred and sixteen a copy whereof is set out in the First Schedule to the Napier High School Amendment Act 1916 (hereinafter called "the principal agreement") Witnesseth as follows that is to say:—

1. The principal agreement shall be deemed to be and to have always been a valid and subsisting agreement subject only to the condition expressed in the first

sentence of clause 3 thereof anything in the said clause 3 to the contrary notwithstanding.

2. The principal agreement shall be read and construed as though—

(a.) The words "the next ensuing session of the General Assembly of New Zealand" wherever those words occur therein, and the words "the said session" appearing within brackets in clause 3 thereof, had been intended to refer and did in fact refer to the session (if only one) or to any session (if more than one) of the General Assembly which is to be held in the present year:

(b.) The words "one thousand nine hundred and sixteen" had been originally written in paragraph (g) of clause 2 in lieu of the word "last" where that word appears in the said paragraph.

3. Subject to the modifications above mentioned the principal agreement and all and singular the provisions thereof is and are hereby confirmed.

In witness whereof these presents have been executed by the parties hereto.

Sealed with the seal of the Napier Harbour Board in the presence of—

A. E. JULL, Chairman.
JNO. P. KENNY, Treasurer.

(L.S.)

The common seal of the Napier High School Board was hereto affixed at a meeting of the said Board held on the eleventh day of March, 1918, in the presence of—

W. DINWIDDIE, Chairman.
G. CRAWSHAW, Secretary.

(L.S.)