

New Zealand.



ANALYSIS.

<p>Title.</p> <p>Preamble.</p> <p>1. Short Title.</p> <p>2. Interpretation.</p> <p>3. Act to be applied to leasing authorities by Order in Council.</p> <p>4. Powers inconsistent with Act to cease on its adoption.</p> <p>5. Leasing authority may let for twenty-one years.</p> <p>6. Leases to contain the provisions in Schedule.</p> <p>7. Leases to be sold by public auction after notice.</p> <p>8. Land offered and not sold may be again offered.</p> <p>9. Land may be let for short periods in certain cases.</p>	<p>10. Surrender of existing leases may be accepted and new leases granted.</p> <p>11. Other surrenders and reduction of rent in certain cases. Proviso.</p> <p>12. Leases may be granted to sub-tenants.</p> <p>13. Power to adopt certain parts of "The Land Act, 1885."</p> <p>14. Governor in Council may modify provisions as necessary.</p> <p>15. Resolution of leasing authority to be approved by Governor in Council.</p> <p>16. Power to Harbour Boards to permit occupation of the foreshore.</p> <p>17. May grant leases for fifty years in certain cases.</p> <p>18. Repeal of inconsistent provisions upon application of Act.</p> <p>Schedule.</p>
--	--

1886, No. 37.

AN ACT to provide for the Leasing of Lands vested in certain Public Bodies. Title.
[17th August, 1886.]

WHEREAS it is expedient to provide some uniform mode of leasing lands vested in certain public bodies, and to prescribe certain terms and conditions on which leases may be granted, surrendered, or otherwise dealt with by such bodies: Preamble.

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

1. The Short Title of this Act is "The Public Bodies' Leaseholds Act, 1886." Short Title.

2. In this Act, if not inconsistent with the context,—
 "Leasing authority" means the Council of a borough or county, a Road Board, Town Board, Harbour Board respectively, in whom the management or control of any lands are vested for or on behalf of any of the corporate bodies such Councils or Boards represent; and also any authority (howsoever named) in whom any lands are vested for general educational purposes or for the purposes of any public college or school, with power to dispose of such lands by way of lease. Interpretation.

3. The Governor, by Order in Council, may from time to time declare that any leasing authority in whom any lands are vested Act to be applied to leasing authorities by Order in Council.

for any public purpose as hereinbefore mentioned, with power to lease the same for any term of years, shall be subject to the provisions of this Act or any section or sections thereof; and any such Order in Council may be revoked, varied, or altered wholly or in part: Provided always that no such order shall have any effect unless it be issued at the request or upon the recommendation of the leasing authority on whose behalf such order is issued.

Powers inconsistent with Act to cease on its adoption.

4. Whenever this Act or any provision thereof is adopted as aforesaid, the powers of a leasing authority as to the mode and terms in and upon which it is empowered to lease lands under any Act of the General Assembly or other authority shall cease to be exercised so far as the same are inconsistent with this Act.

Leasing authority may let for twenty-one years.

5. A leasing authority may let any lands vested in it, or any part thereof, and which it is empowered to let on lease, for any term not exceeding twenty-one years, to take effect in possession or within six months from the making of such lease without any fine, premium, or foregift, with power to grant renewals from time to time for a similar period, or provide for payment of valuation in the manner hereinafter required.

Leases to contain the provisions in Schedule.

6. Except where express provision is made to the contrary, every lease so granted shall contain the provisions set forth in the Schedule to this Act, or provisions similar thereto; and the same, when so inserted, shall be binding on the leasing authority and on the tenant executing such lease.

Leases to be sold by public auction after notice.

7. Every lease made under this Act shall, except in the cases provided for in the next succeeding section, be sold by public auction, and at least twenty-one days' notice of such intended sale shall be given by advertising the same at least three times in some newspaper circulating in the district or part of the colony where such lands are situated.

Land offered and not sold may be again offered.

8. Any land which has been offered at auction as aforesaid and not sold may, at any time within twelve months thereafter, be sold by private contract, at a rent not less than the reserved rent when it was so offered; or it may, at any time either before or after the expiration of twelve months, be again offered by public auction, subject as hereinbefore provided; or it may be offered for sale by public tender, as the leasing authority thinks fit.

Land may be let for short periods in certain cases.

9. Notwithstanding anything hereinbefore contained it shall be lawful for a leasing authority to let any of its lands by public auction or public tender for a tenancy determinable, after the expiration of one year, by three months' notice in writing on either side; and in cases contemplated by this section it shall not be necessary for the leasing authority to issue any lease.

Surrender of existing leases may be accepted and new leases granted.

10. A leasing authority may, on such terms as it may think fit, accept a surrender of any lease existing at the date of the passing of this Act; but in such case the lessee shall accept a new lease, in accordance with the provisions of this Act, of the land the lease whereof has been so surrendered; and the rent to be payable in respect of such new lease shall in no case be less than that payable under the previous lease:

Provided that the rent to be payable under such new lease shall be fixed by two arbitrators, or their umpire, to be appointed pursuant

to and in accordance with the provisions of "The Supreme Court Practice and Procedure Amendment Act, 1866."

11. Notwithstanding the provisions hereinbefore contained a leasing authority may accept the surrender of a lease granted before the passing of this Act on such terms as such authority thinks fit, and may compromise with or make allowances to any tenant or tenants for any rent due or that may become due in respect of any lands leased:

Other surrenders and reduction of rent in certain cases.

Provided that nothing in this section contained shall authorize a leasing authority to exercise the powers hereby conferred—

Proviso.

(a.) In respect of any pastoral lands vested in or under the control of such leasing authority:

(b.) In respect of any reserve for primary or secondary education subject to the provisions of "The Education Reserves Act, 1877," or "The High School Reserves Act, 1880," or any amendments of those Acts respectively;

unless the consent of the Governor in Council shall be first obtained.

12. A leasing authority may, with the consent of any lessee, grant to a sub-lessee a lease direct from such authority of the whole or any part of the land comprised in any lease for the whole residue of the term created by the original lease, but so that the rent payable to the leasing authority is not thereby lessened, or that the term for which the original lease was granted is not extended.

Leases may be granted to sub-tenants.

The provisions of this section shall apply although no lease shall have been actually executed, but only an agreement for a lease entered into.

13. A leasing authority may, by resolution, adopt the provisions of Part IV. and Part VII. of "The Land Act, 1885," or either of them, and such other provisions thereof as are incorporated with those Parts, in respect of any lands of a class that can be dealt with under the provisions adopted and vested in or under the control of such authority.

Power to adopt certain parts of "The Land Act, 1885."

It shall be sufficient if any such resolution follows the terms of this Act without specifying the particular provisions to be adopted.

14. The Governor in Council may from time to time declare, either generally or in any particular case, in what manner such provisions shall be modified so as to enable the leasing authority to perform the duties and exercise the authorities thereby vested in the Commissioner of Crown Lands, the Land Board, or the Governor, as the case may be.

Governor in Council may modify provisions as necessary.

Provided that no person taking or acquiring any lease under the said provisions, or any estate or interest therein, shall by virtue of such adoption be entitled to acquire the fee-simple of the lands leased.

15. No resolution passed for the purposes mentioned in the last-preceding section shall be effectual unless the same be submitted to and approved by the Governor in Council; and, if approved by him, shall be gazetted and take effect from the date of such gazetting; and thereupon all the provisions of "The Land Act, 1885," so adopted and such other provisions as aforesaid so far as applicable, shall extend and be applied *mutatis mutandis* by the leasing authority in leasing the lands mentioned in any such resolution.

Resolution of leasing authority to be approved by Governor in Council.

Power to Harbour Boards to permit occupation of the foreshore.

16. Any Harbour Board may from time to time, subject to the provisions of the one hundred and fifty-sixth section of "The Harbours Act, 1878," license and permit any part of the foreshore vested in it to be used or occupied for all or any of the following purposes:—

- (1.) The building or repairing of vessels of any kind;
- (2.) The erection and use of any boat-shed, landing-place, or wharf;
- (3.) The erection of baths and bath-houses, and any enclosure or fence necessary for the protection and privacy of the same;
- (4.) Any other purpose relating to the convenience of shipping, or the public, or for any local enterprise or object of which the Governor in Council may approve.

May grant leases for fifty years in certain cases.

17. A Harbour Board may, with the consent of the Governor in Council, but without obtaining any special Act, lease for any period not exceeding fifty years any piece of land vested in it, being on the shore of the sea, or of any creek, bay, or arm of the sea, or navigable river communicating with the sea, and so that such lease may extend as far as low-water mark:

Provided that no lease shall be made or assented to by the Governor in Council if the Marine Engineer for the time being shall report that the granting of the same will in any way impede or disturb navigation in the harbour or the public convenience:

Provided also that at least twenty-one days' notice of the intention to apply for such consent of the Governor in Council shall be given by advertising the same at least three times in some newspaper circulating at the port or place where such lease is intended to take effect.

Repeal of inconsistent provisions upon application of Act.

18. Upon the provisions of this Act or any of them being applied to any leasing authority the provisions of any other Act inconsistent with such first-mentioned provisions shall be and the same are hereby repealed; but without prejudice to any lease, act, matter, or thing executed or done prior to the passing of this Act.

Schedule.

SCHEDULE.

1. WITHIN six calendar months previous to the expiration of the term hereby created (if such term shall not have been previously determined by forfeiture or otherwise), two separate valuations shall be made by two indifferent persons to be appointed in writing as follows: one by the lessor, and the other by the lessee; one of such valuations to be made of all the buildings and improvements then on the said lands hereby leased; and the other of the fair annual ground-rent of the said lands only, without any buildings or improvements, for a further term of [*the same term as in the original lease*] years from the expiration of the term hereby granted (such rent to be an even annual sum payable throughout the term, without increasing or decreasing during the said term). Such valuers shall, before entering upon the valuations, together appoint in writing under their respective hands a third valuer, who shall be an umpire as between them. The decision of such two first-appointed valuers if they agree, or in such respects as they agree, or of such third valuer or umpire if they do not agree, or in such respects as they do not agree, shall be binding on all parties. The duty of such third valuer or umpire, on reference to him of any question under these presents, shall be to analyse the respective valuations of the two first-appointed valuers in the matters in which their valuations shall not agree, and then to make an independent and substantive valuation; which last-mentioned valuation shall be the "decision" of the third valuer or umpire: Provided always that, in making such decision on any question referred to him,

the said third valuer or umpire shall in every case be bound to make a valuation not exceeding the higher, or less than the lower, of the valuations made by the other valuers respectively.

2. The lessor may, if he thinks fit, pay to the lessee the amount of such valuation of the buildings and improvements, in which case such buildings and improvements shall, upon such payment, become the exclusive property of the lessor upon the expiration of the time hereby granted.

3. But if the lessor shall not, before the expiration of the term hereby granted, pay to the lessee the amount of such valuation, then and in such case, before the expiration of the term hereby granted, a lease of the said land and premises for a further term of [*the same term as in the original lease*] years, containing the same covenants and provisions as are contained in these presents (including this present provision, and all clauses auxiliary or in relation thereto), shall be put up by the lessor to public auction, at the upset annual rent of the said land as valued without buildings and improvements, subject to the payment by the purchaser at such auction of the value of the said buildings and improvements fixed by the valuers or their umpire, as aforesaid. And in the event of any person or persons other than the lessee becoming the purchaser at such auction of the said lease for the said further term of [*twenty-one*] years, such person or persons shall forthwith pay in cash to the lessor for the benefit of the lessee the amount of the value of the buildings and improvements so fixed as aforesaid, and shall enter into a lease of the said premises for the said further term at the annual ground-rent at which the said premises shall have been so sold at such auction. And the lessor (all rent and outgoings having been previously paid) shall pay over to the lessee the amount of the value of the said buildings and improvements paid to the lessor by the purchaser, without any deduction whatsoever: Provided always, and it is hereby expressly declared, that nothing in these presents contained shall be deemed to render the lessor liable to pay to the lessee all or any part of the value of any buildings or improvements upon any valuation made under the foregoing provisions, save after having received the amount thereof for his or their benefit as aforesaid.

4. If the lessor on the one side, and the lessee on the other side, shall not appoint a valuer in writing, and also serve on the other side a notice in writing of such appointment having been made within twenty-one days after being served by the other side with a notice in writing of the appointment of a valuer by such other side, then the valuer appointed by the side giving such notice shall make the said two valuations of buildings, improvements, and annual ground-rent alone, and such valuations shall be final and conclusive on all parties, and a similar final valuation shall be made by either of the valuers in case the other valuer shall refuse or neglect to act.

5. Any such notice as aforesaid may be served upon the lessor by being left at the office of the secretary, clerk, or other like officer thereof, and may be served upon the lessee, by being given to him or them, or any of them, or left at his or their or any of their usual or last known place of abode or business within the provincial district where the land demised is situated, or sent addressed to him or them, or any of them, at such place as aforesaid through the post, or left at or affixed to the said land, or any building thereon.

6. Upon any sale as aforesaid of a lease by auction, the lessor may make usual and any other fair and reasonable conditions of sale, to duly and effectively carry out the intention of these presents, and in particular may provide for the payment by purchasers at the auction of a substantial deposit, and may also provide that, in the event of the purchaser refusing or neglecting to complete his purchase according to the terms and conditions thereof, he shall forfeit to the lessor such deposit, and pay to the lessor as liquidated damages a sum not exceeding one-half of the total deficiency (if any), during the term of years, of the rent agreed to be paid by the new purchaser at a subsequent sale by auction held in consequence of the default of the original purchaser, as compared with the rent that would have been reserved had such original purchaser not made default, together with all expenses attending the sale.

7. If, owing to the delay on the part of the valuers or otherwise, the new lease cannot be put up to auction before the expiration of the said term hereby granted,

or if, owing to the purchaser at any auction held before the expiration of the said term (whether the original auction or a subsequent one held on account of the default of the purchaser to complete as hereinafter mentioned) refusing or neglecting to complete his purchase according to the terms and conditions thereof, the said new lease shall not be purchased before the expiration of the said term, then and in either of the said cases the new lease shall be put up to auction as soon as conveniently can be after the expiration of the said term hereby granted; and, if the purchaser at such last-mentioned auction shall make default as aforesaid, the said lease shall again be put up as soon as conveniently can be after such default, and so on; but in every such case the new term shall run from the date of the expiration of the term hereby granted, though the rent shall not begin to run until the purchaser obtains possession.

8. If there shall be no bid of or over the upset price of the annual ground-rent as valued as aforesaid, then, at or (as the case may be) as from the expiration of the said term hereby granted, the said land hereby leased, with all buildings and improvements thereon, shall absolutely revert to the lessor, free from any payment or compensation whatever.

9. In the event of the term hereby created being determined by forfeiture, or otherwise than by the effluxion of time, the lessee shall not be entitled to any compensation whatever for buildings or improvements.

10. In the foregoing lease [*or memorandum of lease*] the words "buildings and improvements" shall be deemed to mean and include buildings and improvements constructed of durable material, and all fencing and, for agricultural land, substantial improvements of a permanent character as defined in section three of "The Land Act, 1885."