

*Mr N. V. Douglas*

## AUCKLAND IMPROVEMENT TRUST

[LOCAL]

### ANALYSIS

Title	6. General powers of Corporation in relation to land to which this Act applies
Preamble	7. Improvement Trust Account
1. Short Title	8. Application of income
2. Interpretation	9. Exemption from stamp duty
3. Land to which this Act applies	10. Registration
4. Albert Park	11. Validation
5. Alten Road Reserve	12. Repeals and savings Schedules

### A BILL INTITULED

#### **An Act to consolidate and amend the Auckland Improvement (Albert Barrack Reserves) Act 1872 and its amendments**

WHEREAS certain land in the City of Auckland (in this preamble referred to as the said land) is vested in the Corporation of the City of Auckland (in this preamble referred to as "the Corporation") subject to the provisions of the Auckland Improvement (Albert Barrack Reserves) Act 1872, the Auckland Improvement Act 1873 and the Auckland Improvement Commissioners' Transfer of Powers Act 1879: And whereas various difficulties have arisen in connection with the administration of the said land and special provision has been made by section 33 of the Local Legislation Act 1961, section 17 of the Local Legislation Act 1964, section 20 of the Local Legislation Act 1965, and section 22 of the Local Legislation Act 1967, with regard

No. 98—1

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to the said land: And whereas the part of the land firstly described in the First Schedule to this Act and known as Albert Park is reserved for recreation and amusement: And whereas the Corporation is empowered to lease other parts of the said land: And whereas section 7 of the Auckland Improvement Commissioners' Transfer of Powers Act 1879 provides that the residual purpose for which money received under that Act may be applied is in works of public utility or ornament, or in furtherance of education, science, and art in the City of Auckland, to be determined by the City Council, but not in any way in reduction or aid of rates, ordinary or special: And whereas since the year 1879 the powers of expenditure conferred upon municipal corporations generally have been considerably enlarged and expanded and it is now difficult to stipulate a purpose for the expenditure of the residue of the income arising from the said land, and it is expedient that the Corporation should be empowered to apply such income in its discretion for all or any of the purposes set out in section 9 of this Act: And whereas the land fourthly described in the First Schedule to this Act and known as Alten Road Reserve became vested in the Corporation pursuant to the provisions of the Auckland Reserves Exchange and Change of Trust Act 1881 which enacted that the Corporation might in its discretion enclose, lay out, and plant the same, or erect any building or buildings for ornamental purposes, but not for making a profit therefrom, but should not otherwise deal with the same: And whereas it is desirable that provision be made in this Act with regard to the Alten Road Reserve: And whereas part of the land vested in the Corporation by the Auckland Improvement Commissioners' Transfer of Powers Act 1879 was by subsection (1) of section 2 of the Courthouse Sites Exchange Act 1902 vested in His Majesty the King as part of the site of the Magistrate's Courthouse in the City of Auckland and the land received by the Corporation in exchange was vested in it for the purposes of a public street, part of which street was later duly stopped: And whereas part of the stopped street containing 0.5 of a perch, more or less, is included in the residue of the land comprised in certificate of title Volume 113, folio 13, which residue is part of the land sixthly described in the First Schedule to this Act: And whereas the Corporation, in the belief that the said part of the stopped street with an area of 0.5 of a perch was part of the said land included it in a lease of parts of the said land: And whereas it is expedient

that the part of stopped street be held by the Corporation subject to the provisions of this Act and that the leasing of it should be validated: And whereas in 1956 Her Majesty the Queen acquired for education purposes certain parts  
5 of the land vested in the Corporation by the Auckland Improvement Commissioner's Transfer of Powers Act 1879 and in exchange therefor caused certain other land to be vested in the Corporation free of any trusts: And whereas  
10 the Corporation in the belief it had power so to do, sold and exchanged portions of the land last referred to, and the land received by the Corporation in those latter exchanges was also vested in it free of any trust: And whereas it is expedient that the said exchanges and sales should be  
15 validated and that the balance of the land received by the Corporation in the said recited exchanges, being the land ninthly described in the First Schedule to this Act should be held by the Corporation subject to the provisions of this Act: And whereas it is desirable that the statutory  
20 provisions relating to the said land and to the money and investments comprising the capital and income of the Corporation's Improvement Trust Account should be consolidated:

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

**1. Short Title**—This Act may be cited as the Auckland Improvement Trust Act 1971.

**2. Interpretation**—In this Act, unless the context otherwise requires,—

30 "Corporation" means The Mayor, Councillors, and Citizens of the City of Auckland:  
"Council" means the Auckland City Council.

**3. Land to which this Act applies**—(1) The land to which this Act applies is—

- 35 (a) The land described in the First Schedule to this Act:  
(b) Any other land for the time being held by the Corporation and purchased by it with money held as capital in its Improvement Trust Account or exchanged by the Corporation for land so held.

(2) The land described in the First Schedule to this Act is hereby declared to be vested in the Corporation for an estate in fee simple subject to the provisions of this Act and to all leases, agreements to lease, and easements existing in respect of any part of that land at the commencement of this Act, but otherwise freed and discharged from all trusts and reservations affecting the same. 5

(3) On the registration of any transfer which completes the sale or exchange of any land to which this Act applies the land comprised in the transfer shall cease to be land to which this Act applies. 10

**4. Albert Park**—(1) The Corporation shall have no power to alienate the whole or any part of the piece of land firstly described in the First Schedule to this Act and known as Albert Park, or any interest therein, and that piece of land shall continue to be held by the Corporation as ground for recreation and amusement. 15

(2) The land secondly described in the First Schedule to this Act, being part of the land vested in the Corporation by the Auckland Improvement Commissioners' Transfer of Powers Act 1879 and being land duly leased in various parcels under leases which terminate on various dates between the years 1974 and 1977, shall become part of Albert Park as from the expiration of each such lease, and the land comprised in the lease shall thereupon become subject to the provisions of subsection (1) of this section as if it were part of the land firstly described in the First Schedule to this Act. 20 25

(3) Subject to subsection (4) of this section, the Corporation shall, as soon as reasonably possible after the termination of each such lease, remove or demolish any buildings, structures, or other erections on the land comprised in the lease and form, lay out, and develop the land as an addition to Albert Park with all cultivation, planting, ornamentation, structures, buildings, and facilities as the Corporation considers desirable or necessary for the full use of Albert Park. 30 35

(4) Notwithstanding the provisions of subsection (3) of this section, the Corporation may from time to time postpone the removal or demolition of any such buildings, structures, or erections, or part thereof which the Corporation, in its absolute discretion, considers should be retained for the time being as an example of Victorian architecture and as 40

a repository of Victorian decor and furnishings; and the Corporation may pay the cost of those furnishings out of the capital of its Improvement Trust Account.

(5) The Corporation may from time to time, by ordinary resolution, add the whole or any part of the land thirdly described in the First Schedule to this Act, being land vested in the Corporation and adjoining the land secondly described in the First Schedule to this Act, to Albert Park as from a date to be specified in the resolution; and as from that date the land to which the resolution relates shall become subject to the provisions of subsection (1) of this section as if it were part of the land firstly described in the First Schedule to this Act.

(6) Until the Corporation passes a resolution under subsection (5) of this section in respect of that part of the land thirdly described in the First Schedule to this Act on which the old Synagogue building stands, the Corporation may grant such tenancies and enter into such arrangements as it in its absolute discretion thinks fit for the use of the old Synagogue building for the purposes of encouraging, fostering, and promoting the practice and appreciation of, and public interest in, the arts and culture:

Provided that nothing in this subsection shall prevent the Corporation from using that building or any part thereof for any other purpose authorised by law until such time as it passes such a resolution.

(7) For the avoidance of doubt it is hereby declared that Albert Park as from time to time constituted is a public reserve within the meaning of the Reserves and Domains Act 1953.

Cf. 1872, No. 59, ss. 5, 13; 1873, No. 1 (Private), ss. 5, 7

**5. Alten Road Reserve**—(1) The Corporation may from time to time at its discretion, enclose, lay out, and plant the piece of land fourthly described in the First Schedule to this Act and known as Alten Road Reserve, or erect thereon any building or buildings for ornamental purposes, but shall not otherwise deal with the whole or any part of the said piece of land or any interest therein.

(2) For the avoidance of doubt it is hereby declared that the Alten Road Reserve is a public reserve within the meaning of the Reserves and Domains Act 1953.

Cf. 1881, No. 6 (Local), s. 4

**6. General powers of Corporation in relation to land to which this Act applies—**(1) The Corporation may, in respect of any land to which this Act applies (other than Albert Park and Alten Road Reserve), exercise all or any of the following powers: 5

(a) Widen or alter, either in direction or level, any street abutting or intersecting any such land, and to this end may legalise any part of such land as street, access way, or service lane or part of a street, access way, or service lane: 10

(b) Lease any part of such land in accordance with the Municipal Corporations Act 1954 or the Public Bodies' Leases Act 1969:

(c) Sell or exchange any part of such land on such terms and conditions as it thinks fit in accordance with section 150 of the Municipal Corporations Act 1954. 15

(2) The Corporation shall pay the net proceeds of the sale or taking of any land to which this Act applies into the capital of its Improvement Trust Account. 20

**7. Improvement Trust Account—**Notwithstanding anything to the contrary in any Act or rule of law, all money or securities held by the Corporation as capital in its Improvement Trust Account or as part thereof shall be applied— 25

(a) In purchasing or otherwise acquiring land in the City of Auckland for the purposes of this Act:

(b) For the development or improvement, for the purposes of this Act, of land to which this Act applies or of buildings on any such land: 30

(c) In paying the cost of the removal or demolition of any building or buildings on any land to which this Act applies:

(d) In paying the cost of furnishings pursuant to subsection (4) of section 4 of this Act: 35

(e) In erecting, for the purposes of this Act, a building or buildings on any land to which this Act applies:

(f) In paying the costs and expenses of preparing this Act and assisting its passage through Parliament:

(g) For investment in any investments for the time being authorised by law for the investment of trust funds. 40

**8. Application of income**—Notwithstanding that the expenditure may be in any way in reduction or aid of rates, ordinary or special, the Corporation is hereby empowered and authorised to expend in its discretion the rents and other  
5 income (if any) received from the leasing of any land to which this Act applies, and the interest and income arising from the money and investments which comprise the capital of the Improvement Trust Account, for all or any of the following purposes:

- 10 (a) In payment of all expenses for clerical, professional, or other assistance whatsoever in administering and in managing the Improvement Trust Account and its assets and carrying this Act into execution:
- 15 (b) In payment of all costs and expenses incurred in and for the maintenance and upkeep of any land and chattels to which this Act applies:
- (c) In works of public utility or ornament, or in furtherance of education, science, and art, in the City of Auckland, to be determined by the Council:
- 20 (d) The restoration or preservation of historical buildings or monuments in the City of Auckland designated as such in the scheme statement forming part of the Council's operative district scheme for the time being in force under the Town and Country Planning Act 1953:
- 25 (e) The acquisition by purchase, loan, or hire of works of art, including pictures, for exhibition in the Corporation's public art gallery:
- 30 (f) The acquisition by purchase, loan, or hire of works of reference for use in the Corporation's public library.
- Cf 1872, No. 59, s. 21; 1873, No. 1 (Private), s. 54; 1879, No. 5 (Private), s. 7.

**9. Exemption from stamp duty**—No stamp duty shall be payable on any conveyance, assignment, transfer, lease, or  
35 agreement whereby any land is conveyed, assigned, transferred, or leased or agreed to be conveyed, assigned, transferred, or leased to the Corporation pursuant to the powers vested in it by this Act.

**10. Registration**—The District Land Registrar for the  
40 Land Registration District of Auckland is hereby authorised to make such entries in his registers, to issue such titles, to register such instruments, to deposit such plans, and to do all such other things as may be necessary to give effect to the provisions of this Act.

**11. Validation**—(1) The exchanges and sales recited in the preamble to this Act are hereby validated and declared to have been lawfully made and effected.

(2) Notwithstanding anything contained in the Courthouse Sites Exchange Act 1902 or in any other Act, that part of the land comprised in certificate of title Volume 113, folio 13, having an area of 0.5 of a perch, more or less, referred to in the preamble to this Act, and being part of the land sixthly described in the First Schedule to this Act shall be deemed to have been lawfully leased by the Corporation before the commencement of this Act.

**12. Repeals and savings**—(1) The enactments specified in the Second Schedule to this Act are hereby repealed.

(2) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that—

- (a) Notwithstanding the repeal of section 17 of the Local Legislation Act 1964, the Corporation shall continue to make the payments required by subsections (4) and (5) of that section:
- (b) Notwithstanding the repeal of section 22 of the Local Legislation Act 1967, the Corporation shall continue to make the payments required by subsections (4) and (5) of that section:
- (c) Nothing in this Act shall affect the leases and agreements to lease existing at the commencement of this Act in respect of land to which this Act applies or the rights of lessees under any such leases and agreement to lease.

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## SCHEDULES

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### FIRST SCHEDULE

FIRSTLY, part Section 6 and part Section 13, City of Auckland, situated in Block VIII, Rangitoto Survey District: Area, 15 acres 3 roods 28.5 perches, more or less, as more particularly shown on S.O. Plan 46301 lodged in the office of the Chief Surveyor at Auckland, and thereon edged red (Albert Park) (Section 4 (1)).

Secondly, part Section 6 and 13, City of Auckland; Lots 3, 4, 10, 11, 12, 13, and 14, Section 1, Deeds Plan J (Red), being part Sections 6 and 13, City of Auckland; Lots 1 and 2, D.P. 15830, being part Section 6, City of Auckland; Lots 1 and 2, D.P. 25801 being part Section 6, City of Auckland; situated on Block VIII Rangitoto Survey District: Area, 1 acre 3 roods 24.4 perches, more or less. All provisional registers,

FIRST SCHEDULE—*continued*

Volume 5, folios 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14. As more particularly shown on S.O. Plan 46858 lodged in the office of the Chief Surveyor at Auckland and thereon edged red (Princes Street) (Section 4 (2), (3), and (4)).

Thirdly, all the land on D.P. 10249, being part Section 6, City of Auckland; situated in Block VIII Rangitoto Survey District: Area, 1 rood 4.5 perches, more or less. All certificate of title, Volume 246, folio 180. As more particularly shown on S.O. Plan 46858 lodged in the office of the Chief Surveyor at Auckland, and shown marked "Beth Israel Synagogue" (Old Synagogue site) (Section 4 (5) and (6)).

Fourthly, Allotment 22, Section 9, City of Auckland, situated in Block VIII, Rangitoto Survey District: Area, 1 rood 31 perches, more or less. As more particularly shown on S.O. Plan 2772 lodged in the office of the Chief Surveyor at Auckland and thereon edged red (Alten Road Reserve) (Section 5).

Fifthly, Lots 2, 3, 4, 5, 6, 7, 9, 10, and 32, Section 5, Deeds Plan J (Red), being part Section 13, City of Auckland, situated in Block VIII, Rangitoto Survey District. Area, 2 roods 33.4 perches, more or less. All provisional registers, Volume 5, folios 62, 63, 64, 65, 66, 67, 69, 70, and 92. As more particularly shown on S.O. Plan 46857 lodged in the office of the Chief Surveyor at Auckland, and thereon edged red (Rutland, Wellesley, and St. Paul Streets) (Section 6).

Sixthly, Lot 1, D.P. 40031, being part Allotment 25, Section 4, City of Auckland; Part of the land on D.P. 2789, being parts Allotments 25 and 26, Section 4, City of Auckland; Closed street in Proclamation 9417, all situated in Block VIII, Rangitoto Survey District; Area, 30.7 perches, more or less. All certificates of title, Volume 113, folio 13; Volume 1133, folio 132; Volume 2080, folio 8; Volume 2b, folio 511, and part certificate of title, Volume 1054, folio 296. As more particularly shown on S.O. Plan 47007 lodged in the office of the Chief Surveyor at Auckland, and thereon edged red (Courthouse Lane, Kitchener, and Warspite Streets) (Sections 6 and 11 (2)).

Seventhly, Lot 2, D.P. 18896, being part Allotment 24, Section 4, City of Auckland, situated in Block VIII, Rangitoto Survey District: Area, 12.3 perches, more or less. All certificate of title, Volume 426, folio 287 (Chancery Street and Bacons Lane) (Section 6).

Eighthly, all the land on D.P. 22795, being part Allotment 4, Section 4, City of Auckland, situated in Block VIII, Rangitoto Survey District: Area, 7.7 perches more or less. All certificate of title, Volume 606, folio 44 (High Street and Chancery Lane) (Section 6).

Ninthly, Allotment 69 and part Allotment 32, Section 28, City of Auckland; part of the land on D.P. 797, being part Allotments 33 and 34, Section 28, City of Auckland, part of the land on D.P. 1261, being part Allotment 31, Section 28, City of Auckland; Allotments 59, 62, 69 and part Allotments 60, 61, and 63, Section 29, City of Auckland, all

FIRST SCHEDULE—*continued*

situated in Block XVI, Waitemata Survey District: Area, 1 acre 1 rood 20.2 perches, more or less. Parts certificates of title, Volume 451, folio 287, Volume 1385, folio 37, and all certificates of title, Volume 3d, folio 938; Volume 506, folio 174; Volume 454, folio 93; Volume 1565, folio 10. As more particularly shown on S.O. Plan 46988 lodged in the office of the Chief Surveyor at Auckland, and thereon edged red (Greys Avenue and Vincent Street) (Sections 6 and 11 (1)).

Tenthly, Lot 1, D.P. 50184, being part Allotment 15, part Allotment 16 and part Allotment 17, Section 42, City of Auckland: Area, 1 rood 35.0 perches, more or less. All certificate of title, Volume 10d, folio 1454 (Union Street) (Section 6).

Section 12 (1)

## SECOND SCHEDULE

## ENACTMENTS REPEALED

- 1872, No. 59—The Auckland Improvement (Albert Barrack Reserves) Act 1872.  
 1873, No. 2 (Private)—The Auckland Improvement Act 1873.  
 1875, No. 1 (Private)—The Auckland Improvement Amendment Act 1875.  
 1877, No. 25—The Public Reserves Sale Act 1877.  
 1879, No. 5 (Local)—The Auckland Improvement Commissioners' Transfer of Powers Act 1879.  
 1882, No. 5 (Local)—The Auckland Improvement Acts Amendment Act 1882.  
 1883, No. 27 (Local)—The Special Powers and Contracts Act 1883; Paragraph 16 in the first column, and also in the second column, of the Schedule.  
 1939, No. 10 (Local)—The Auckland City Empowering Act 1939: Section 4 and the Schedule.  
 1961, No. 127—The Local Legislation Act 1961: Section 33.  
 1964, No. 117—The Local Legislation Act 1964: Section 17.  
 1965, No. 122—The Local Legislation Act 1965: Section 20.  
 1967, No. 148—The Local Legislation Act 1967: Section 22.