

Napier Harbour Board Amendment and Endowment Improvement Act 1912

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An Act to amend the Napier Harbour Board Amendment and Improvement Act 1887, the Napier Harbour Board Amendment and Further Empowering Act 1889, and the Napier Harbour Board Amendment and Endowment Improvement Act 1899, and to give Further Borrowing-powers to the Napier Harbour Board.

Preamble

WHEREAS by the Napier Harbour Board Amendment and Improvement Act 1887 (hereinafter called the said 1887 Act), the Napier Harbour Board was authorized to fill up and reclaim the whole or any part of the reserve known as Te Whare-o-Maraenui Reserve, being the land described in Schedule 3 to such Act, and such part of the Ahuriri Lagoon as lies to the east of the public road leading from Napier to Taradale, and for such purpose to construct and maintain such works as might be necessary: And whereas by section four of the Napier Harbour Board Amendment and Endowment Improvement Act 1899 (hereinafter called the said 1899 Act), the Napier Harbour Board was empowered to sell and dispose of the whole or any part of the land described in the Schedule thereto (which land is part of the land described in Schedules 3 and 4 to the said 1887 Act); and by the now-reciting Act provision was also made that the purchase-moneys to be received upon any such sale or sales should be applied in or towards the reclamation or improvement of the whole or any part of the lands described in Schedules 3 and 4 to the said 1887 Act, other than any part thereof so sold as aforesaid; and that in addition to, and not by way of substitution for, the leasing-powers already vested in the said Board by law, the said Board might from time to time let the whole or any part or parts of the lands described in Schedules 3 and 4 to the said 1887 Act, subject to the terms and conditions by the now-reciting Act provided; and that the said Board might combine a sale with a lease; and that the said Board might make such provisions as it thought fit in any such sale or lease for the taking-over by the said Board of part or parts of the land reclaimed or improved in lieu of the whole or any part of the purchase-money or rent; and that, in order to provide moneys for the purpose of paying to the lessee any sum for improvements in case of determination of any lease or otherwise, the said Board might borrow, on the security of the whole or any part of the lands described in Schedules 3 and 4 to the said 1887 Act, such sum or sums of money as it should think fit, not exceeding in the whole the sum of twenty-six thousand dollars: And whereas by deed of lease, bearing date the tenth day of December, nineteen hundred, made between the Napier Harbour Board of the one part and William Langlands and Charles Dugald Kennedy (therein called the lessees) of the other part, the said Board did demise

and lease unto the lessees, first, all that piece of land containing by admeasurement fourteen hundred and ninety acres, more or less, therein called Block A, and, secondly, all that piece of land containing three hundred acres, more or less, therein called Block B, which two pieces of land together constitute nearly the whole area described in Schedule 3 and in the second paragraph of Schedule 4 to the said 1887 Act, and which piece of land, called Block B, is the piece of land described in the Schedule to the said 1899 Act, to hold the said premises unto the lessees for the term of twenty-one years from the sixteenth day of February, nineteen hundred, at the rents and upon and subject to the terms and conditions therein set out; and in the now-reciting deed of lease the lessees were put under obligation to completely reclaim Block B as therein mentioned, and to undertake and complete reclamation works for reclaiming Block A by doing certain works therein specified: And whereas the said Block B has been completely reclaimed by the lessees, and has, in terms of the said recited deed of lease and in accordance with the powers conferred by the said 1899 Act, been vested in fee-simple as to part thereof in the lessees, the remainder thereof being vested in fee-simple in the Board, subject, as to an area of twenty acres or thereabouts, to the same being vested in the Mayor, Councillors, and Burgesses of the Borough of Napier, as authorized by section four of the said 1899 Act: And whereas the said Board and the lessees subdivided Block B into about seven hundred town allotments, and laid off, formed, and made numerous roads through and over Block B, giving access to such allotments, which roads have been dedicated to the public by the said Board: And whereas the portion of the said Block B now vested in the said Board for an estate in fee-simple is partly within the Borough of Napier and partly within the Town District of Napier South, and constitutes a valuable endowment of the said Board for revenue-producing purposes: And whereas the reclamation of the said Block A to the extent to which the lessees were compellable to perform the same in terms of the said recited deed of lease has been effected by the said lessees, but the said Block A has only thereby been partially reclaimed, and the said Board has been advised that if the reclamation of the said Block A and the remaining unreclaimed portion of the land described in Schedule 3 to the said 1887 Act be completed the said lands will become a valuable endowment of the said Board for

revenue-producing purposes: And whereas it is expedient, in the interests of the said Board, that the reclamation of such lands as last aforesaid should be completed as soon as possible: And whereas the land described in Schedule 1 hereto is the balance of the land described in Schedule 3 to the said 1887 Act and in the second paragraph of Schedule 4 to that Act, after deducting the portion of such lands which has been completely reclaimed by the said lessees as before recited: And whereas the said Board, in exercise of its legal powers in that behalf, and after having had proper valuations and estimates made by persons qualified to make the same, has agreed to accept from the said lessees a surrender of the said recited deed of lease and to pay to the said lessees a consideration therefor of thirty-four thousand dollars, whereof the sum of eight thousand dollars is to be paid in cash within the period of one year from the first day of March, nineteen hundred and twelve, and the balance of twenty-six thousand dollars is to be secured by mortgage debentures issued upon the security authorized by section ten of the said 1899 Act, with the exception of the land described in the Schedule to such last-mentioned Act (being the said Block B): And whereas it is also expedient that reclamation and improvement works should be effected in and upon the lands described in Schedule 2 hereto (being the land described in the first paragraph of the said Schedule 4 to the said 1887 Act), and also in and upon the lands described in Schedule 3 hereto (being the unreclaimed portions of the Port Ahuriri Lagoon, situate in the immediate neighbourhood of that part of the Borough of Napier known as Port Ahuriri), in order that by such reclamation and improvement works the said lands respectively may be rendered valuable as revenue-producing endowments of the said Board: And whereas it is necessary and expedient that in order to enable or assist the said Board to carry out reclamation and improvement works as aforesaid, and for the other purposes hereinafter mentioned, the said Board should have increased borrowing-powers; and also that the powers of the said Board in other respects should be enlarged or more particularly defined as hereinafter appearing:

The words "twenty-six thousand dollars", "thirty-four thousand dollars" and the words "eight thousand dollars" were substituted, as from 10 July 1967, for the words "thirteen thousand pounds", "seventeen thousand pounds" and the words "four thousand pounds" pursuant to section 7(1) Decimal Currency Act 1964 (1964 No 27).

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

1 Short Title

This Act may be cited as the Napier Harbour Board Amendment and Endowment Improvement Act 1912.

2 Special Act

This Act shall be deemed to be a special Act within the meaning of the Harbours Act 1950, which Act is hereby incorporated with this Act in so far as it is not repugnant to or inconsistent with this Act.

A reference to the Harbours Act 1924 was substituted, as from 1 January 1924, for a reference to the Harbours Act 1908 pursuant to section 259(1) Harbours Act 1923 (1923 No 40). That reference was in turn substituted, as from 15 October 1950, by a reference to the Harbours Act 1950 pursuant to section 269(1) Harbours Act 1950 (1950 No 34).

3 Interpretation

In this Act—

The Board means the Napier Harbour Board

The Chairman means the Chairman of the Board for the time being

The district means the Napier Harbour Rating District as constituted and defined by the Napier Harbour Board Empowering and Loan Act 1884, and shall include all boroughs and town districts now or hereafter for the time being existing which at the time of the passing of such Act may have formed part of any of the ridings set out in Schedule 4 thereto.

4 Power to reclaim areas

Without prejudice to any powers already possessed by the Board under or by virtue of any other Act, the Board is hereby authorized and empowered to fill up and reclaim all or any of the respective areas of land described in the said Schedules 1, 2, and 3 hereto, or any part or respective parts thereof respectively; and for such purpose to purchase such

machinery and plant, and construct and maintain such works, as may, in its opinion, be necessary or expedient: including amongst the powers hereby conferred (but without prejudice to the generality of the foregoing provisions or to the powers already possessed by the Board under or by virtue of any other Act) the power, without any further authority than this Act, to lead waters from any river, creek, or watercourse having its course through or bounding any areas hereby authorized to be reclaimed into and upon such areas, and there to temporarily retain such waters for the purpose of impounding any silt, mud, or deposit carried by such river, creek, or watercourse:

Provided that the power to lead and retain any such waters as aforesaid shall not be exercised without the consent and concurrence of the Hawke's Bay Rivers Board appointed under the Hawke's Bay Rivers Act 1910. But such consent and concurrence shall not be unreasonably or arbitrarily withheld, and in the event of the Hawke's Bay Rivers Board (hereinafter referred to as the Rivers Board) refusing such consent, and of such refusal being, in the opinion of the Harbour Board, unreasonable or arbitrary, that Board may request the Minister of Marine to decide the matters in dispute; and the said Minister shall, after taking such evidence or making such inspection as he may think fit, either authorize or forbid the Board to carry out and maintain either wholly or partially, or for such limited time as he may think fit, the works to which the Rivers Board has refused its consent, and the said Minister may make such other conditions in the premises as he may think proper, and the decision of the said Minister in the premises shall be final and conclusive, and shall be binding on the Board and the Rivers Board, but (if unfavourable to the Board) shall not preclude the Board from reasonably requiring the consent of the Rivers Board to the execution and maintenance of the same or any similar works at any future time or respective times. And in case the Board makes any such requisition as last aforesaid and the Rivers Board refuses to give the consent required, then such refusal shall be subject to review by the said Minister in manner aforesaid.

5 Power to borrow \$60,000

In addition to, and not by way of substitution for, the power to borrow contained in the said 1899 Act and in any other Acts

enabling the Board to borrow moneys, it shall be lawful for the Board to borrow, subject to the provisions of the Harbours Act 1908, and the amendments thereof, and to the provisions of this Act, upon the security of the areas of land referred to in the last preceding section hereof, or any of them, or any part or parts thereof respectively, and the present and future rents thereof (but subject to all prior charges thereon), any sum or sums of money not exceeding in the whole the sum of sixty thousand dollars, at any rate of interest (not exceeding five dollars fifty cents per centum per annum), payable half-yearly, to be applied in payment to the lessees under the hereinbefore-recited deed of lease, on the surrender of such lease, of the sum of eight thousand dollars agreed to be paid to them in cash as hereinbefore recited, and in and about the filling-up and reclaiming as aforesaid of the areas of land referred to in the last preceding section hereof (including the purchase of the necessary machinery and plant), or wholly for the last-mentioned object:

Provided always that in the event-of the before-mentioned sum of eight thousand dollars or any part thereof having been at the time of the raising of any such loan already paid out of the general revenue of the Board, or from any source other than the loan hereby authorized, or of the Board having expended moneys out of its general revenue or any such other source as aforesaid in and about the reclamation and improvement works or the purchase of machinery and plant hereby authorized, the Board may, if it thinks proper, recoup its general revenue or such other source as aforesaid, out of any loan or loans raised under the authority of this Act, the moneys so already paid in respect of the said sum of eight thousand dollars or otherwise expended by the Board as aforesaid.

This section was amended, as from 10 December 1918, by section 4 Napier Harbour Board Loans Enabling Act 1918 (1918 No 3) by substituting the words “not exceeding five pounds ten shillings per centum per annum” for the words “not exceeding five pounds per centum per annum”.

The words “sixty thousand dollars”, “five dollars fifty cents” and “eight thousand dollars” were substituted, as from 10 July 1967, for the words “thirty thousand pounds”, “five pounds ten shillings” and “four thousand pounds” pursuant to section 7(1) and (2) Decimal Currency Act 1964 (1964 No 27).

6 Local Bodies Loans Act to apply

All moneys hereby authorized to be raised may be raised in the manner prescribed by the Local Bodies Loans Act 1908; and the provisions of such Act shall, where not inconsistent with this Act, apply as if the Board were a local authority within the meaning of Part 1 of that Act, subject, however, to the modification that where anything is required to be done by special order it may be done by the Board by resolution, and subject, also, to the provisions contained in the next following section hereof.

7 Poll of ratepayers, how taken

The poll of ratepayers of the district required to be taken by the Local Bodies Loans Act 1908, shall be taken in manner following:—

- (a.) A roll for the district shall be prepared and delivered to the Returning Officer in manner provided by paragraphs (3) and (4) of Schedule 1 to the Napier Harbour Board Loan Act 1909, and the said paragraphs (3) and (4) of the said Schedule 1 to that Act are hereby incorporated herein.
- (b.) The poll of the ratepayers of the district shall be taken in manner provided by paragraph (5) of the said Schedule 1 to the Napier Harbour Board Loan Act 1909, and the said paragraph (5) of the said Schedule 1 to that Act and also Schedule 2 to that Act are hereby incorporated herein, subject to the following variations, that is to say: Subclause (a) of the said paragraph (5) shall be altered by eliminating the words “of the said meetings”, and substituting therefor the words “publication of the notice mentioned in section eight of the Local Bodies Loans Act 1908” and the words Returning Officer are substituted for the words Presiding Officer wherever the latter words occur in the said paragraph (5).

Paragraph (c) was amended, as from 7 November 1912, by section 16(1) Napier Harbour Board Empowering and Loan Act 1914 (1914 No 14(L)) by inserting the words “and the words ‘Returning Officer’ are substituted for the words ‘Presiding Officer’ wherever the latter words occur in the said paragraph (5).”

8 Sinking fund to be provided

For the purpose of providing for the repayment of the moneys hereby authorized to be borrowed the Board shall permanently appropriate and set apart as a sinking fund a sum equal to one dollar per centum per annum on the aggregate amount of debentures which shall for the time being be issued under this Act, and the same shall be paid to Commissioners to be appointed for the purpose in accordance with the provisions in that behalf contained in the Harbours Act 1908; and the provisions of that Act in relation to the appointment, powers, and duties of Sinking Fund Commissioners shall apply to this Act. All vacancies occurring in the office of Sinking Fund Commissioners owing to death, mental incapacity, absence from the Dominion of New Zealand, refusal to act, or otherwise, shall be filled up as they arise by new appointments to be made by the Board, and a resolution of the Board declaring the office of Sinking Fund Commissioner held by any person to be vacant shall be conclusive proof of such vacancy having occurred.

The words "one dollar" were substituted, as from 10 July 1967, for the words "one pound" pursuant to section 7(2) Decimal Currency Act 1964 (1964 No 27).

Schedule 1

ALL that area in the Hawke's Bay Land District, containing by ad-measurement 1,484 acres 2 roods, more or less, being part of the land known as Te Whare-o-Maraenui Block, the boundaries being as follows: commencing at the mouth of the Tutaekuri River on the east bank; bounded towards the north-west by a portion of the Ahuriri Lagoon, following a line bearing 234° 59', to the south-west boundary of the Town District of Napier South; thence towards the north-east by the said Town District of Napier South; towards the east by the Tutae-o-Mahu Block to Tareha's Bridge; thence towards the south generally by the said bridge, and by the east and north boundaries of the Pukeroa Block to the Meanee Road, by that road a distance of 2234 links to a public road, and by the said public road to the Tutaekuri River; towards the west generally by the Tutaekuri River to Tareha's Reserve, by the south, east, and north boundaries of that

reserve again to the Tutaekuri River, and by that river to the starting-point at its mouth.

And also all that area, containing by admeasurement 13 acres, more or less, being part of the said Ahuriri Lagoon, situated to the eastward of the Napier-Taradale Road: commencing at the north-east corner of the Napier-Taradale Road at its intersection with the railway reserve, and bounded on the north-west by the Napier-Taradale Road to its intersection with the Te Whare-o-Maraenui Block; thence on the south-east by the Te Whare-o-Maraenui Block to the south-western boundary of the Town District of Napier South; thence on the north-east by the said Town District of Napier South to its junction with the railway reserve; thence on the north by the railway reserve to the starting-point at the north-east corner of the Napier-Taradale Road.

Schedule 2
Portion of Ahuriri Lagoon.

ALL that area, containing 543 acres, more or less, being part of the harbour reserve known as the Ahuriri Lagoon, situated to the eastward of the Napier-Taradale Road, commencing at the northernmost corner of Block CXXIV, as shown on the plan of the Meanee suburban sections, and bounded southerly by Blocks CXXIV and CXXII on the said plan; thence generally westerly by Blocks CXXII and XLVII on the said plan; thence generally southerly by Block CXXIII, a public road, and Blocks LXVIII and LXIX on the said plan; thence generally easterly by Blocks C and CI on the said plan; thence southerly by Block CI to the bank of the Tutaekuri River; thence across that river by a line due east to the boundary of Te Whare-o-Maraenui Block; thence north-easterly by the Te Whare-o-Maraenui Block to the Napier-Taradale Road; thence north-westerly by that road to the starting-point.

**Schedule 3
Port Ahuriri Lagoon.**

FIRSTLY, that part of the Port Ahuriri Lagoon, containing 23 acres, which is bounded by the Hyderabad and Battery Roads, and on the north by reclaimed land formerly part of the Port Ahuriri Lagoon; secondly, that part of the Port Ahuriri Lagoon, containing 1 acre 3 rods, lying between Campbell Street and an unnamed public road to connect Lucknow Street with Battery Road; and, thirdly, all that part of the Port Ahuriri Lagoon, containing 38 acres, bounded on the north by the Harbour Board Breakwater Railway line, on the south-east by Battery Road, and on the south-west by the unnamed road before mentioned, and on the north-east by reclaimed land formerly part of the Port Ahuriri Lagoon.