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as at 12 November 2018



## Auckland Improvement Trust Act 1971

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#### Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

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

Whereas certain land in the City of Auckland (in this Preamble referred to as the **said land**) is vested in the Council of the City of Auckland (in this Preamble referred to as **the Council**) 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 to the said land:

And whereas the part of the land firstly described in Schedule 1 and known as Albert Park is reserved for recreation and amusement:

And whereas the Council 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 Council should be empowered to apply such income in its discretion for all or any of the purposes set out in section 8:

And whereas the land fourthly described in Schedule 1 and known as Alten Road Reserve became vested in the Council pursuant to the provisions of the Auckland Reserves Exchange and Change of Trust Act 1881 which enacted that the Council 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 Council 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 Council 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 Schedule 1:

And whereas the Council, 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 Council 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 of the land vested in the Council by the Auckland Improvement Commissioners' Transfer of Powers Act 1879 and in exchange therefor caused certain other land to be vested in the Council free of any trusts:

And whereas the Council 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 Council 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 validated and that the balance of the land received by the Council in the said recited exchanges, being the land ninthly described in Schedule 1 should be held by the Council subject to the provisions of this Act:

And whereas it is desirable that the statutory provisions relating to the said land and to the money and investments comprising the capital and income of the Council's Improvement Trust Account should be consolidated.

Preamble: amended, on 8 July 1986, by section 2(2) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

## 1 Short Title

This Act may be cited as the Auckland Improvement Trust Act 1971.

## 2 Interpretation

(1) In this Act, unless the context otherwise requires,—

**Albert Park** means the land firstly described in Schedule 1

**Albert Park subsoil** means those parts of the subsoil beneath Albert Park and areas immediately adjacent to that subsoil that are eleventhly described in Schedule 1

**Alten Road Reserve** means the land fourthly described in Schedule 1

**Alten Road Reserve subsoil** means those parts of the subsoil beneath Alten Road Reserve and areas immediately adjacent to that subsoil that are twelfthly described in Schedule 1

**Council** means the Auckland City Council and, in sections 4 to 9, includes the Auckland Council established by section 6(1) of the Local Government (Auckland Council) Act 2009

**public passenger transport** includes road-borne and rail-borne passenger transport; but does not include private motor vehicles or taxis

**tunnel complex** means the air-raid tunnel shelter complex that lies partly within the Albert Park subsoil and the Alten Road Reserve subsoil and, if that complex is enlarged or extended, includes all enlargements and extensions to it.

(2) In sections 4(1A) and (1B) and 5(1A) and (1B),—

**lease** includes a licence to occupy

**tenant** includes a licensee.

Section 2(1) **Albert Park**: inserted, on 9 October 2001, by section 4(1) of the Auckland Improvement Trust Amendment Act 2001 (2001 No 5 (L)).

Section 2(1) **Albert Park subsoil**: inserted, on 9 October 2001, by section 4(1) of the Auckland Improvement Trust Amendment Act 2001 (2001 No 5 (L)).

Section 2(1) **Alten Road Reserve**: inserted, on 9 October 2001, by section 4(1) of the Auckland Improvement Trust Amendment Act 2001 (2001 No 5 (L)).

Section 2(1) **Alten Road Reserve subsoil**: inserted, on 9 October 2001, by section 4(1) of the Auckland Improvement Trust Amendment Act 2001 (2001 No 5 (L)).

Section 2(1) **Corporation**: repealed, on 8 July 1986, by section 2(1) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

Section 2(1) **Council**: amended, on 1 November 2010, by section 113(1) of the Local Government (Auckland Transitional Provisions) Act 2010 (2010 No 37).

Section 2(1) **public passenger transport**: inserted, on 9 October 2001, by section 4(1) of the Auckland Improvement Trust Amendment Act 2001 (2001 No 5 (L)).

Section 2(1) **tunnel complex**: inserted, on 9 October 2001, by section 4(1) of the Auckland Improvement Trust Amendment Act 2001 (2001 No 5 (L)).

Section 2(2): inserted, on 9 October 2001, by section 4(2) of the Auckland Improvement Trust Amendment Act 2001 (2001 No 5 (L)).

### 3 Land to which this Act applies

(1) The land to which this Act applies is—

- (a) the land described in Schedule 1:
- (b) any other land for the time being held by the Council and purchased by it with money held as capital in its Improvement Trust Account or exchanged by the Council for land so held.

(2) The land described in Schedule 1 is hereby declared to be vested in the Council 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.

- (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.

Section 3(1)(b): amended, on 8 July 1986, by section 2(2) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

Section 3(2): amended, on 8 July 1986, by section 2(2) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

#### **4 Albert Park**

- (1) Except as permitted by subsection (1A), the Council shall have no power to alienate the whole or any part of the piece of land firstly described in Schedule 1 and known as Albert Park, or any interest therein, and that piece of land shall continue to be held by the Council as ground for recreation and amusement.
- (1A) Despite any other provisions of this Act, the Council may explore and investigate those parts of the tunnel complex that lie beneath Albert Park, and—
- (a) develop, reconstruct, enlarge, excavate, and use all or any part of the tunnel complex and adjacent areas of the Albert Park subsoil for any activities, whether commercial or non-commercial, including—
    - (i) a museum that recognises the historic character of the tunnel complex; and
    - (ii) other tourist-related purposes that are permitted under the District Plan or any designation or resource consent:
  - (b) develop, reconstruct, enlarge, and modify the alignment of the main tunnel and parts of the smaller tunnels of the tunnel complex, and create a new tunnel or tunnels, for a public passenger transport route that passes through the Albert Park subsoil:
  - (c) construct and instal entrance portals, ventilation ducts, and all other services and improvements that may be required in order to allow for the safe and efficient use of the tunnel complex for any purpose specified in paragraph (a) or paragraph (b).
- (1B) The Council may grant a lease of all or any part or parts of the Albert Park subsoil to any person or organisation as if the Albert Park subsoil were vested in the Council in fee simple and not as a public reserve under the Reserves Act 1977, but the following provisions apply to any such lease:
- (a) the term, including rights of renewal, may not exceed 63 years:
  - (b) the rent for the original or any renewed term of the lease, which must be reviewed at intervals of not less than 3 years, must be a rent that is fair and reasonable, having regard to—
    - (i) the purpose for which the premises are to be used:
    - (ii) the extent of the benefit that is conferred on the community by the activities of the tenant:

- (iii) the financial benefit that is derived by the tenant:
  - (iv) any other relevant matters:
  - (c) the net proceeds of the lease must be applied in the manner described in section 8:
  - (d) the permitted use is for those activities permitted by subsection (1A)(a) that are approved by the Council, in its sole discretion:
  - (e) the lease may allow for the extension or enlargement of existing tunnels or the creation of new tunnels by the tenant if it has the prior written approval of the Council:
  - (f) the lease may allow for the use by the tenant of entrance portals, ventilation shafts, and other services constructed or installed for the benefit of the tunnel complex:
  - (g) the lessee may, with the prior written consent of the Council, sublet part of the tunnel complex for a term and subject to such conditions and restrictions as the Council considers appropriate:
  - (h) the Council may include any other conditions in the lease that are not inconsistent with the provisions of this section and that it considers appropriate in the circumstances.
- (1C) The fee simple of the Albert Park subsoil may not be alienated by the Council.
- (1D) Nothing in subsection (1A) or subsection (1B) affects the application of the Resource Management Act 1991 or the Building Act 2004 to any work proposed to be carried out or any activities proposed to be conducted under those provisions, except that any lease or sublease authorised by subsection (1B) is not a subdivision for the purposes of Part 10 of the Resource Management Act 1991.
- (2) The land secondly described in Schedule 1, being part of the land vested in the Council 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) as if it were part of the land firstly described in Schedule 1.
- (3) Subject to subsection (4), the Council 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 Council considers desirable or necessary for the full use of Albert Park:
- provided that the Council may postpone, for so long as it in its absolute discretion shall think fit, the removal or demolition of any such building and may permit the same to remain on Albert Park if such building, in the opinion of the

Council, is capable of being used, and is used, as an amenity for the public in accordance with the provisions of paragraph (j) of subsection (1) of section 32 of the Reserves and Domains Act 1953 and with the provisions of subsection (2) of this section; and any money required to be expended on such building may be provided by the Council out of the funds, capital or income, that are subject to the provisions of this Act, or out of funds available to the Council by virtue of the provisions of the Reserves and Domains Act 1953.

- (4) Notwithstanding the provisions of subsections (2) and (3), the Council may from time to time, in its absolute discretion, postpone the removal or demolition of any other such building or part thereof to which the proviso to subsection (3) has not been applied, and the same and the curtilages thereof shall not become part of Albert Park until the Council later so resolves in the same manner as is provided in subsection (5), and in the meantime the Council may use that building or buildings or any part thereof for any 1 or more of the following purposes:
- (a) as an example of Victorian architecture and as a repository of Victorian decor and furnishings; and the Council may pay the cost of such furnishings out of the capital of its Improvement Trust Account; or
  - (b) for the holding of civic functions by the Council; and the Council is hereby empowered to provide suitable furnishings and fittings for that purpose, and to spend money out of its general account on the provision and maintenance of such furnishings and fittings; or
  - (c) to use or permit the same to be used as a public tearoom or refreshment room or similar amenity upon such terms and conditions as the Council thinks fit; and the Council is hereby empowered to pay the cost of establishing and maintaining any such amenity out of the capital or income of its Improvement Trust Account; or
  - (d) to let or lease the same and the curtilages thereof, subject to the conditions set out in section 4A, for such professional, commercial, cultural, or community purposes as the Council shall consider most in keeping with the character of the particular building or part thereof:

provided that the Council shall so far as is practicable ensure that, in the case of a building or part thereof used for any of the foregoing purposes, its original design and decoration, both exterior and interior as existing on the commencement of this Act will be preserved; and the Council may pay any cost incurred by it in the repair or maintenance of any such building or part thereof out of the capital or income of its Improvement Trust Account.

- (5) The Council may from time to time, by ordinary resolution, add the whole or any part of the land thirdly described in Schedule 1, being land vested in the Council and adjoining the land secondly described in Schedule 1, 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) as if it were part of the land firstly described in Schedule 1.

- (6) Until the Council passes a resolution under subsection (5) in respect of that part of the land thirdly described in Schedule 1 (old Synagogue site), or in respect of any part of it, the Council may let or lease the same or any remaining part to which such a resolution has not been applied, for such professional, commercial, cultural, or community purposes as the Council considers will be likely to require minimum interference with the external appearance of the old Synagogue building, yet will ensure that the building is kept in constant use.
- (6A) Any such letting or leasing may permit the tenant or lessee, subject to the Council's supervision, to make alterations or additions to that building, within the foregoing limitations, but the Council may nevertheless permit the demolition or replacement of any other building on the said land if, in the Council's opinion, such demolition or replacement would enhance the appearance or impact of the old Synagogue building and will assist with the financial viability of the use to which the property is to be put.
- (6B) Any use of the said land and of any building on it, and any proposed alteration to the old Synagogue building, shall comply with the provisions of the Town and Country Planning Act 1977 and of the Historic Places Act 1980.
- (6C) Notwithstanding anything to the contrary in this Act, any lease granted pursuant to subsection (6) may be for such term, either less or more than 21 years, as the Council thinks fit, but any lease for a total term in excess of the period authorised by section 4A(1)(b) shall contain a provision that it may be terminated by the Council at any time after the expiration of the maximum period stated in that section (which shall run from the date of commencement of that lease or any earlier lease granted pursuant to this Act) after having given not less than 12 months' notice in writing of intention so to do, if in the Council's opinion it is in the public interest that the lease should be terminated so as to make the property available for the public in general.
- (6D) Any termination of a lease under subsection (6C) shall be subject to the payment of compensation by the Council to the lessee for the fair market value of the undertaking as a going concern and, in determining the fair market value, regard shall be had to such matters as may be appropriate including, but not by way of limitation, the following matters:
- (a) the value of the lessee's improvements (as defined in section 2 of the Valuation of Land Act 1951) at the time of termination:
  - (b) the value of the chattels, fixtures, and fittings:
  - (c) the value of goodwill.
- (6E) In case of disagreement, the fair market value shall be determined by arbitration in accordance with the Arbitration Act 1908.
- (6F) Section 4A(1)(g) shall be read subject to the provisions of subsections (6A) and (6C).

- (6G) Any tenant or lessee of the said land or any part of it may, with the prior written consent of the Council, sublet or sublease a portion of the land for such term and subject to such conditions and restrictions as the Council may stipulate.
- (6H) Any resolution passed pursuant to subsection (5), and any letting or leasing or subletting or subleasing as authorised by this section, shall be deemed not to be a subdivision of the land thirdly described in Schedule 1 for the purposes of Part 20 of the Local Government Act 1974 or for any other purpose.
- (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.

Compare: 1872 No 59 ss 5, 13; 1873 No 1 (P) ss 5, 7

Section 4(1): amended, on 9 October 2001, by section 5(1) of the Auckland Improvement Trust Amendment Act 2001 (2001 No 5 (L)).

Section 4(1): amended, on 8 July 1986, by section 2(2) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

Section 4(1A): inserted, on 9 October 2001, by section 5(2) of the Auckland Improvement Trust Amendment Act 2001 (2001 No 5 (L)).

Section 4(1B): inserted, on 9 October 2001, by section 5(2) of the Auckland Improvement Trust Amendment Act 2001 (2001 No 5 (L)).

Section 4(1C): inserted, on 9 October 2001, by section 5(2) of the Auckland Improvement Trust Amendment Act 2001 (2001 No 5 (L)).

Section 4(1D): inserted, on 9 October 2001, by section 5(2) of the Auckland Improvement Trust Amendment Act 2001 (2001 No 5 (L)).

Section 4(1D): amended, on 31 March 2005, by section 414 of the Building Act 2004 (2004 No 72).

Section 4(2): amended, on 8 July 1986, by section 2(2) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

Section 4(3): amended, on 8 July 1986, by section 2(2) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

Section 4(3) proviso: inserted, on 23 November 1973, by section 2(1) of the Auckland Improvement Trust Amendment Act 1973 (1973 No 10 (L)).

Section 4(3) proviso: amended, on 8 July 1986, by section 2(2) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

Section 4(4): replaced, on 23 November 1973, by section 2(2) of the Auckland Improvement Trust Amendment Act 1973 (1973 No 10 (L)).

Section 4(4): amended, on 8 July 1986, by section 2(2) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

Section 4(4)(a): amended, on 8 July 1986, by section 2(2) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

Section 4(4)(b): amended, on 8 July 1986, by section 2(2) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

Section 4(4)(c): amended, on 8 July 1986, by section 2(2) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

Section 4(4) proviso: amended, on 8 July 1986, section 2(2) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

Section 4(5): amended, on 8 July 1986, by section 2(2) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

Section 4(6): replaced, on 8 July 1986, by section 3(1) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

Section 4(6A): inserted, on 8 July 1986, by section 3(1) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

Section 4(6B): inserted, on 8 July 1986, by section 3(1) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

Section 4(6C): inserted, on 8 July 1986, by section 3(1) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

Section 4(6D): inserted, on 8 July 1986, by section 3(1) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

Section 4(6E): inserted, on 8 July 1986, by section 3(1) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

Section 4(6F): inserted, on 8 July 1986, by section 3(1) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

Section 4(6G): inserted, on 8 July 1986, by section 3(1) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

Section 4(6H): inserted, on 8 July 1986, by section 3(1) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

#### **4A Special provisions in respect of leasing buildings**

- (1) Where under this Act any building or part of a building and its curtilage may be let or leased, the following provisions shall apply:
  - (a) the letting may be made for short periods by private contract as provided for by section 155 of the Municipal Corporations Act 1954:
  - (b) the lease may be for a term not exceeding 21 years, without a right of renewal, or for a shorter term with a right of renewal for 1 or more terms but so that the aggregate duration of the original and of the renewed term or terms shall not exceed 21 years, and every such lease may be sold by private contract:
  - (c) the Council may fix for any tenancy or for the original or renewed term of any lease such rent as it thinks fair and reasonable, having regard to the purpose for which the premises are to be used, the extent of the benefit that may be conferred upon the community by the activities of the tenant or lessee thereof, the financial standing of the tenant or lessee, and any other relevant matters:
  - (d) the Council may at any time during the currency of a lease reduce the rent to be paid thereunder during the remainder or any part of the remainder of the term, and the Council may at any time or times during the currency or after the determination of a lease, compromise with the lessee for any rent due to the Council:
  - (e) the net proceeds of any such lease or of any letting shall be applied in the manner described in section 8:

- (f) the fee simple shall be inalienable by the Council:
  - (g) the lease shall prohibit the erection by the lessee of any further building or buildings on the demised land or the making of any extensions to an existing building:
  - (h) the lease may, with the approval of the Council, be surrendered on such terms as may be agreed upon between the lessee and the Council:
  - (i) the Council may impose such further or other conditions in any letting or lease not inconsistent with the provisions of this section which it considers to be appropriate to the circumstances.
- (2) Nothing in the Public Bodies Leases Act 1969 shall apply to a lease granted under this Act.
- (3) The Council is hereby empowered to acquire by private treaty or to take in the manner provided by the Public Works Act 1928 any leasehold interest previously created pursuant to the provisions of this section for the purpose of adding the property to Albert Park; and such addition shall be effected by means of an ordinary resolution whereupon the provisions of subsection (2) of section 4 shall apply to that property, and the lessee thereof shall be entitled to compensation in respect of such acquisition or taking in accordance with the provisions of the Public Works Act 1928.

Section 4A: inserted, on 23 November 1973, by section 3 of the Auckland Improvement Trust Amendment Act 1973 (1973 No 10 (L)).

Section 4A(1)(c): amended, on 8 July 1986, by section 2(2) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

Section 4A(1)(d): amended, on 8 July 1986, by section 2(2) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

Section 4A(1)(f): amended, on 8 July 1986, by section 2(2) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

Section 4A(1)(h): amended, on 8 July 1986, by section 2(2) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

Section 4A(1)(i): amended, on 8 July 1986, by section 2(2) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

Section 4A(3): amended, on 8 July 1986, by section 2(2) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

## **5 Alten Road Reserve**

- (1) The Council may from time to time at its discretion, enclose, lay out, and plant the piece of land fourthly described in Schedule 1 and known as Alten Road Reserve, or erect thereon any building or buildings for ornamental purposes, but, except as permitted by subsection (1A), shall not otherwise deal with the whole or any part of the said piece of land or any interest therein.
- (1A) Despite any other provisions of this Act, the Council may explore and investigate those parts of the tunnel complex that lie beneath Alten Road Reserve and—

- (a) develop, reconstruct, enlarge, excavate, and use all or any part of the tunnel complex and adjacent areas of the Alten Road Reserve subsoil for any activities, whether commercial or non-commercial, including—
    - (i) a museum that recognises the historic character of the tunnel complex; and
    - (ii) other tourist-related purposes that are permitted under the District Plan or any designation or resource consent:
  - (b) develop, reconstruct, enlarge, and modify the alignment of the main tunnel and parts of the smaller tunnels of the tunnel complex, and create a new tunnel or tunnels, for a public passenger transport route that passes through the Alten Road Reserve subsoil:
  - (c) construct and instal entrance portals, ventilation ducts, and all other services and improvements that may be required in order to allow for the safe and efficient use of the tunnel complex for any purpose specified in paragraph (a) or paragraph (b).
- (1B) The Council may grant a lease of all or any part or parts of the Alten Road Reserve subsoil to any person or organisation as if the Alten Road Reserve subsoil were vested in the Council in fee simple and not as a public reserve under the Reserves Act 1977, but the following provisions apply to any such lease:
- (a) the term, including rights of renewal, may not exceed 63 years:
  - (b) the rent for the original or any renewed term of the lease, which must be reviewed at intervals of not less than 3 years, must be a rent that is fair and reasonable, having regard to—
    - (i) the purpose for which the premises are to be used:
    - (ii) the extent of the benefit that is conferred on the community by the activities of the tenant:
    - (iii) the financial benefit that is derived by the tenant:
    - (iv) any other relevant matters:
  - (c) the net proceeds of the lease must be applied in the manner described in section 8:
  - (d) the permitted use is for those activities permitted by subsection (1A)(a) that are approved by the Council, in its sole discretion:
  - (e) the lease may allow for the extension or enlargement of existing tunnels or the creation of new tunnels by the tenant if it has the prior written approval of the Council:
  - (f) the lease may allow for the use by the tenant of entrance portals, ventilation shafts, and other services constructed or installed for the benefit of the tunnel complex:

- (g) the lessee may, with the prior written consent of the Council, sublet part of the tunnel complex for a term and subject to such conditions and restrictions as the Council considers appropriate:
  - (h) the Council may include any other conditions in the lease that are not inconsistent with the provisions of this section and that it considers appropriate in the circumstances.
- (1C) The fee simple of the Alten Road Reserve subsoil may not be alienated by the Council.
- (1D) Nothing in subsection (1A) or subsection (1B) affects the application of the Resource Management Act 1991 or the Building Act 2004 to any work proposed to be carried out or any activities proposed to be conducted under those provisions, except that any lease or sublease authorised by subsection (1B) is not a subdivision for the purposes of Part 10 of the Resource Management Act 1991.
- (2) For the avoidance of doubt it is hereby declared that Alten Road Reserve is a public reserve within the meaning of the Reserves and Domains Act 1953.

Compare: 1881 No 6 (L) s 4

Section 5(1): amended, on 9 October 2001, by section 6(1) of the Auckland Improvement Trust Amendment Act 2001 (2001 No 5 (L)).

Section 5(1): amended, on 8 July 1986, by section 2(2) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

Section 5(1A): inserted, on 9 October 2001, by section 6(2) of the Auckland Improvement Trust Amendment Act 2001 (2001 No 5 (L)).

Section 5(1B): inserted, on 9 October 2001, by section 6(2) of the Auckland Improvement Trust Amendment Act 2001 (2001 No 5 (L)).

Section 5(1C): inserted, on 9 October 2001, by section 6(2) of the Auckland Improvement Trust Amendment Act 2001 (2001 No 5 (L)).

Section 5(1D): inserted, on 9 October 2001, by section 6(2) of the Auckland Improvement Trust Amendment Act 2001 (2001 No 5 (L)).

Section 5(1D): amended, on 31 March 2005, by section 414 of the Building Act 2004 (2004 No 72).

## **6 General powers of Council in relation to land to which this Act applies**

- (1) Except as provided in subsection (1A), the Council may, in respect of any land to which this Act applies, exercise all or any of the following powers:
- (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:
  - (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.

- (1A) With the exception of the Albert Park subsoil and Alten Road Reserve subsoil, the powers referred to in subsection (1) do not apply to Albert Park or Alten Road Reserve, or the buildings on the Park or Reserve or their curtilages, or the land thirdly described in Schedule 1.
- (2) The Council 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.

Section 6 heading: amended, on 8 July 1986, by section 2(2) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

Section 6(1): amended, on 9 October 2001, by section 7(1)(a) of the Auckland Improvement Trust Amendment Act 2001 (2001 No 5 (L)).

Section 6(1): amended, on 9 October 2001, by section 7(1)(b) of the Auckland Improvement Trust Amendment Act 2001 (2001 No 5 (L)).

Section 6(1): amended, on 8 July 1986, by section 2(2) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

Section 6(1A): inserted, on 9 October 2001, by section 7(2) of the Auckland Improvement Trust Amendment Act 2001 (2001 No 5 (L)).

Section 6(2): amended, on 8 July 1986, by section 2(2) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

## 7 Improvement Trust Account

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

- (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:
- (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:
- (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.

Section 7: amended, on 8 July 1986, by section 2(2) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

## 8 Application of income

Notwithstanding that the expenditure may be in any way in reduction or aid of rates, ordinary or special, the Council is hereby empowered and authorised to expend in its discretion the rents and other 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:

- (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:
- (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 in the City of Auckland, or in furtherance of recreation, education, science, and art, or for the improvement of any form of culture, or for the improvement or development of amenities for the public:
- (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:
- (e) the acquisition by purchase, loan, or hire of works of art, including pictures, for exhibition in the Council's public art gallery:
- (f) the acquisition by purchase, loan, or hire of works of reference for use in the Council's public library.

Compare: 1872 No 59 s 21; 1873 No 1 (P) s 54; 1879 No 5 (P) s 7

Section 8: amended, on 8 July 1986, by section 2(2) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

Section 8(c): replaced, on 8 July 1986, by section 5 of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

Section 8(e): amended, on 8 July 1986, by section 2(2) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

Section 8(f): amended, on 8 July 1986, by section 2(2) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

## **9 Exemption from stamp duty**

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

Section 9: amended, on 8 July 1986, by section 2(2) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

## **10 Registration**

The Registrar-General of Land 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.

Section 10: amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

## **11 Validation**

- (1) The exchanges and sales recited in the Preamble 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, and being part of the land sixthly described in Schedule 1 shall be deemed to have been lawfully leased by the Council before the commencement of this Act.

Section 11(2): amended, on 8 July 1986, by section 2(2) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

## **12 Repeals and savings**

- (1) The enactments specified in Schedule 2 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 Council 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 Council 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 agreements to lease.

Section 12(2)(a): amended, on 8 July 1986, by section 2(2) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

Section 12(2)(b): amended, on 8 July 1986, by section 2(2) of the Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L)).

## Schedule 1

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 SO Plan 46301 lodged in the office of the Chief Surveyor at Auckland, and thereon edged red (Albert Park) (including the land eleventhly described in this schedule) but excluding any land described in this paragraph or the eleventh paragraph that is included as sections 2 and 3 on SO Plan 374931 (sections 2 and 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, DP 15830, being part Section 6, City of Auckland; Lots 1 and 2, DP 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, Volume 5, folios 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14. As more particularly shown on SO 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 DP 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 SO 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 SO Plan 2772 lodged in the office of the Chief Surveyor at Auckland and thereon edged red (Alten Road Reserve) (including the land twelfthly described in this schedule) (sections 2 and 4(1)).

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 SO 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, DP 40031, being part Allotment 25, Section 4, City of Auckland; Part of the land on DP 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 2D, folio 511, and part certificate of title, Volume 1054, folio 296. As more particularly shown on SO 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, DP 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 DP 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 DP 797, being part Allotments 33 and 34, Section 28, City of Auckland; part of the land on DP 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 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 SO 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, DP 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).

Eleventhly, that part of the land firstly described in this schedule that is also described as Areas A, B, C, D, E, F, G, H, I, J, Q, and R on SO Plan 69920 lodged in the office of the Chief Surveyor, Auckland.

Twelfthly, that part of the land secondly described in this schedule that is also described as Areas K, L, M, N, O, P, and S on SO Plan 69920 lodged in the office of the Chief Surveyor, Auckland.

Schedule 1: amended, on 23 September 2015, by section 7 of the Reserves and Other Lands Disposal Act 2015 (2015 No 84).

Schedule 1: amended, on 9 October 2001, by section 8(1) of the Auckland Improvement Trust Amendment Act 2001 (2001 No 5 (L)).

Schedule 1: amended, on 9 October 2001, by section 8(2) of the Auckland Improvement Trust Amendment Act 2001 (2001 No 5 (L)).

Schedule 1: amended, on 9 October 2001, by section 8(3) of the Auckland Improvement Trust Amendment Act 2001 (2001 No 5 (L)).

## Schedule 2 Enactments repealed

s 12(1)

**Auckland City Empowering Act 1939 (1939 No 10 (L))**

*Amendment(s) incorporated in the Act(s).*

**Auckland Improvement Act 1873 (1873 No 2 (P))**

**Auckland Improvement (Albert Barrack Reserves) Act 1872 (1872 No 59)**

**Auckland Improvement Amendment Act 1875 (1875 No 1 (P))**

**Auckland Improvement Commissioners' Transfer of Powers Act 1879 (1879 No 5 (L))**

**Auckland Improvement Acts Amendment Act 1882 (1882 No 5 (L))**

**Local Legislation Act 1961 (1961 No 127)**

*Amendment(s) incorporated in the Act(s).*

**Local Legislation Act 1964 (1964 No 117)**

*Amendment(s) incorporated in the Act(s).*

**Local Legislation Act 1965 (1965 No 122)**

*Amendment(s) incorporated in the Act(s).*

**Local Legislation Act 1967 (1967 No 148)**

*Amendment(s) incorporated in the Act(s).*

**Public Reserves Sale Act 1877 (1877 No 25)**

**Special Powers and Contracts Act 1883 (1883 No 27 (L))**

*Amendment(s) incorporated in the Act(s).*

## Reprints notes

### 1 *General*

This is a reprint of the Auckland Improvement Trust Act 1971 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### 2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### 3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### 4 *Amendments incorporated in this reprint*

Land Transfer Act 2017 (2017 No 30): section 250

Reserves and Other Lands Disposal Act 2015 (2015 No 84): section 7

Local Government (Auckland Transitional Provisions) Act 2010 (2010 No 37): section 113(1)

Building Act 2004 (2004 No 72): section 414

Auckland Improvement Trust Amendment Act 2001 (2001 No 5 (L))

Auckland Improvement Trust Amendment Act 1986 (1986 No 3 (L))

Auckland Improvement Trust Amendment Act 1973 (1973 No 10 (L))