

Auckland Improvement Act 1873

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An Act for enabling the Auckland Improvement Commissioners to acquire certain Lands and Houses for the formation of New Streets in the City of Auckland, and for other Purposes.

Preamble.

WHEREAS by “The Auckland Improvement (Albert Barracks Reserve) Act, 1872,” a large estate in the City of Auckland was made subject to the control and management of the Auckland Improvement Commissioners, for the formation of new streets and approaches in the said city, and for making or altering streets, and for planting laying out and fencing parts of the said estate for recreation, and generally for improving the said city; and the said Act contained a provision for the disposal of the surplus profits of the said estate for such educational purposes as may from time to time be directed by Act of the Provincial Legislature of Auckland:

And whereas a considerable portion of the said estate is of comparatively small value because no available means of access exist from it to the harbour or wharves or proposed railway station or the business part of the said city, nor can such access be made by the said Commissioners without the authority of Parliament:

And whereas, for the purpose of obtaining such access as aforesaid, it will be necessary that a new street should be formed from Victoria Quadrant, in the vicinity of the Wesleyan Chapel, into Shortland Street, and thence into Fort Street near its junction with Commerce Street, and that Victoria Street should be extended into Victoria Quadrant over allotment thirty-one of section four of the City of Auckland:

And whereas it is expedient that several lanes and private alleys in the vicinity of Chancery Street (over which the said firstly described street will extend) should be abolished, and that several houses and huts there should be removed, and that Chancery Street should be widened:

And whereas it is expedient that the said Commissioners should obtain compulsory powers for the purchase of the estate interest and rights of all persons in the land and houses required for the formation of such streets and works, and for the abolition of such lanes and private alleys as aforesaid, and for the acquisition of lands and houses adjacent to such streets lanes and alleys, for re-sale by the Commissioners after such new streets shall have been formed and old streets widened as aforesaid:

And whereas the increase in value of the said estate caused by such works and operations, together with the profit arising from the re-sale of the surplus lands so to be acquired as aforesaid, would more than repay the cost of such works and operations and the price of the lands and houses to be purchased, and the City of Auckland would be permanently improved, with advantage also to the ultimate disposition for educational purposes provided as before recited by the said “Auckland Improvement (Albert Barrack Reserve) Act, 1872:”

And whereas the several lands houses and huts required to be taken for the purposes aforesaid are described in a plan and a book of reference thereto which has been deposited for public inspection at the office of the Commissioner of Crown Lands in Auckland:

And whereas it is expedient that certain other powers should be conferred upon the said Commissioners, and that the said Act should be amended:

Be it therefore enacted by the General Assembly of New Zealand in Parliament assembled as follows:—

1 Short Title.

The Short Title of this Act shall be “The Auckland Improvement Act, 1873.”

**I
PRELIMINARY**

2 Interpretation.

In the construction of this Act, the following words and expressions, if not inconsistent with the context, shall have the meaning hereafter assigned to them: that is to say, the word “Commissioners” shall mean the Auckland Improvement Commissioners; “lands” shall mean and include grounds houses tenements messuages and hereditaments, and any estate or interest therein, and the ground and soil of such streets courts alleys ways paths or passages as are authorized to be stopped up or enclosed under the provisions of this Act, and all public and private rights and privileges in over or upon the same; “Promoters of the undertaking” and “Company,” in the Act herewith incorporated, shall respectively mean “the Commissioners;” the “Act of 1872” shall mean “The Auckland Improvement (Albert Barrack Reserves) Act, 1872.”

3 Land Clauses Consolidation Act incorporated.

The provisions of “The Lands Clauses Consolidation Act, 1863,” as amended by “The Lands Clauses Consolidation Act Amendment Act, 1866,” except clauses sixty-seven, sixty-eight, sixty-nine, with respect to conveyances, and the clauses respecting rights of pre-emption, namely, ninety-nine, one hundred, one hundred and one, one hundred and two, one hundred and three, and one hundred and four of the first-named Act, shall, so far as the same may be applicable to and are not inconsistent with or modified by the provisions of this Act, be incorporated with and form part of this Act, and shall be applicable to the purposes thereof; and in the construction of this Act and the said Act incorporated herewith, this Act shall be deemed to be the “special Act:” Provided always that the bond required by the said “Land Clauses Consolidation Act, 1863,” shall be made by the Commissioners under the hand of any two Commissioners, and shall be sufficient without the addition of the sureties in the said section mentioned.

4 Period of compulsory purchase.

The powers of the Commissioners for the compulsory purchase or taking of lands shall not be exercised after the expiration of seven years from the passing of this Act.

II.**ALTERATIONS OF PREVIOUS ACTS****5 Alterations of previous Acts.**

The Act of one thousand eight hundred and seventy-two shall be altered in the following particulars, and shall have the same effect and shall be read and construed as if the following alterations formed part thereof at the date of its passing:—

The street from Coburg Street near its junction with Victoria Street to Princes Street need not exceed sixty-six feet in width.

Instead of the Militia Store reserved by the Act of one thousand eight hundred and seventy-two, the Commissioners shall provide and fit up for the purpose of a Militia Store that stone building situated in the Albert Barracks and known as the Hospital, such building and fittings to be satisfactory to the Governor; and such Militia Store so reserved as aforesaid, together with the soil thereof, shall become vested in the Governor.

Section three of the Act of one thousand eight hundred and seventy-two is hereby repealed; and it is enacted that the land described in the First Schedule thereto, or acquired or to be acquired under the authority of any Act incorporated therewith shall henceforth be vested in the persons who for the time being shall be the Auckland Improvement Commissioners, who for this purpose, and for the purposes of this Act, shall be and they are hereby constituted a corporation, by the name and style of “The Auckland Improvement Commissioners,” and by that name shall have perpetual succession and a common seal, and the usual powers and liabilities of a corporation.

Section twenty is hereby repealed, and the following clause shall be hereby inserted in lieu thereof:—

All leases under this Act shall be made in the name of “The Auckland Improvement Commissioners.”

In section five, after the word “Governor,” shall be inserted the words “or his delegates.”

The quorum of Commissioners shall henceforth be four.

If any vacancy shall occur in the office of Commissioners whilst the Provincial Council is not sitting, the Commissioners may by resolution

at an ordinary meeting appoint a person to fill the vacancy, and such appointment shall be valid until an appointment is made under clause eight of the Act of one thousand eight hundred and seventy-two; and so *toties quoties*.

And whereas doubts have arisen whether the fifteen acres of land provided as a reserve for recreation and amusement by the Act of one thousand eight hundred and seventy-two must be necessarily in one parcel: Be it enacted that the land so to be set out and reserved may be in two or more parcels, one of which shall not be less than twelve acres in extent.

Sections twenty-four to forty-seven inclusive are hereby repealed save as to keeping up and protecting, any debentures made thereunder, until the same are paid off under the power contained in this Act.

5A Volunteer Drill Shed vested in Governor.

Nothing in this Act shall be construed as giving power to the Commissioners to deal in any way with the building and site thereof in Princes Street known as the Volunteer Drill Shed, but the said building and ground on which it stands shall be vested in the Governor, and shall continue under his management and at his disposal.

6 Special provision for Princes Street frontages.

Notwithstanding anything contained in the Act of one thousand eight hundred and seventy-two, the Commissioners may, if they think fit, sell by way of demise for ninety-nine years at a nominal rent for a premium, the land abutting on the westerly side of the continuation of Princes Street, to a depth of not more than one hundred and fifty feet, so far as such street shall run along the Government House grounds, in such lots and subject to such conditions as the Governor shall approve: Provided always that any such sale shall be by public auction, after not less than thirty days' notice thereof in the Provincial Government *Gazette* and in one or more newspaper or newspapers circulating in the City of Auckland; and provided further that the proceeds thereof shall be applied in the redemption of debentures or mortgages issued under the Act of one thousand eight hundred and seventy-two, if any of the holders thereof shall be willing to be paid off; and if none or not sufficient in value shall be so willing, or if such debentures shall have been otherwise extinguished, such proceeds or the balance thereof shall be applied for the purposes of this Act in diminution of the amount hereby authorized to be borrowed.

7 Publication of by-laws.

In lieu of the provision contained in "The Public Domains Act, 1865," with reference to the posting of by-laws, it shall be sufficient to give perfect validity and publicity to any such by-laws if they are published with the signature of the Secretary or any Commissioner in the Provincial Government *Gazette*.

III. POWERS, DUTIES, ETC., OF COMMISSIONERS

8 General powers.

The Commissioners out of any moneys in their hands under the Act of one thousand eight hundred and seventy-two, or coming into their hands under the authority of this Act, shall pay the expenses of obtaining this Act and preparatory thereto, and shall carry this Act into execution, and, in addition to the powers conferred upon them by this Act, shall with reference to the lands to be affected by this Act have all the powers conferred upon them by the Act of 1872 with respect to lands referred to therein.

9 Books to be kept.

All orders resolutions and proceedings of the Commissioners in the execution of this Act or the Act incorporated herewith, which shall be entered in a book to be kept for the purpose, shall when so entered, and signed by any one of the Commissioners, be deemed to be originals, and such books shall be admitted as evidence in all Courts whatsoever.

10 Plan to be deposited.

A copy of the said plan shall be deposited at the office of the Commissioners, and shall remain at the said office to the end that all persons may at all seasonable times, on payment of a fee of one shilling, have liberty to inspect the same.

11 Power of compulsory purchase.

The Commissioners may out of any moneys raised under the authority of this Act, or coming into their hands under this Act or the Act of 1872, or in any other way, from time to time, and at such times as they think fit, purchase, compulsorily or by agreement, enter on and hold the whole or any part of the lands delineated on the plan deposited as aforesaid, and described in the said book of reference: And after the completion of any such purchase all rights in over or affecting the lands so purchased shall be extinguished, and such lands shall be vested in the Commissioners and their successors, and shall be subject to the Control and administration of the Commissioners for the purposes of this Act.

12 Error in book of reference.

If any omission mis-statement or erroneous description shall have been made of any lands, or of the owners lessees or occupiers of any lands mentioned in the said book of reference, the Commissioners, after giving ten days' notice to the owners lessees and occupiers of the lands affected by such proposed correction, may apply to a Resident Magistrate or two Justices of the Peace for the correction thereof; and if it shall appear to such Justices that such omission

mis-statement or erroneous description arose from mistake, they shall certify the same accordingly, and they shall in such certificate state the particulars of any such omission misstatement or erroneous description, and such certificate shall be deposited with the Registrar of the Supreme Court in Auckland, and such certificate shall be kept by such Registrar; and thereupon such Schedule shall be deemed to be corrected according to such certificate, and the Commissioners may take any lands in accordance with such certificate, as if such omission misstatement or erroneous description had not been made.

13 Notice may be abandoned.

If in any case after notice has been given by the Commissioners for the taking of any lands under this Act it appears to them, from a change of circumstances or other reasons, unnecessary or inexpedient to complete the taking of such lands or any part thereof, it shall be lawful for them to give a further notice to the effect that they thereby withdraw the notice for the taking of the lands comprised in the first notice, or such part thereof as they may think fit, and thereupon the lands comprised in the notice of withdrawal shall be wholly discharged from the effect of the first notice, and may be dealt with as if the first notice had not been given, and the Commissioners shall be wholly discharged from any obligation to take such lands, without prejudice nevertheless to any claim of the owners of such lands for compensation for such damage (if any) as he may have sustained in consequence of the giving of the first notice: Provided that every such notice of withdrawal be given within three months after the giving of the first notice: Provided also that nothing in this enactment contained shall be construed to give to any person receiving from the Commissioners a notice for the taking of lands any further or other right as against the Commissioners than he would otherwise have had if this enactment had not been contained in this Act.

14 Price of land not to be increased by operation of Commissioners.

The compensation in land or purchase money to be made or paid to any owner or lessee or occupier for his lands taken under this Act or any Act to be hereafter passed in amendment of this Act or of the Act of 1872 shall not be increased in consequence of the operations of the Commissioners under this Act or under the Act of 1872, but shall be estimated and determined as if neither of those Acts had been passed.

15 If portion of a property taken, Commissioners may purchase the whole.

If part only of any property or curtilage be included within the limits marked on the said plan, the Commissioners may if they think fit purchase and take the whole of such property or curtilage, or they may require the surveyor or other authority determining the value to be paid for the part taken to deduct therefrom the increased value (if any) of the part not taken, and the amount so

determined, minus such deduction, shall be the purchase price to be paid by the Commissioners.

16 Commissioners may make arrangements.

The Commissioners may make any agreement or arrangement with the owner or lessee of any lands within or without the limits aforesaid, for the purpose of satisfying his claim for compensation for lands taken or purchased, by allotting to him frontages or land on the streets to be formed under this Act, or by conveying to him other land subject to their control by virtue of the Act of 1872 or of this Act, in exchange for the lands taken or purchased under this Act, or they may make any other agreement which they may deem advantageous to the carrying out of the objects of this Act; and all lands so acquired by exchange shall be vested in the Commissioners and their successors for the same purposes and with the like powers in all respects as hereby declared as to lands acquired by purchase with money; and for the purposes of any such arrangement. the Commissioners may sell by way of lease for ninety-nine years for a premium at a nominal rent, but for no longer period, any of the lands contained in the First Schedule to the Act of 1872.

17 Increased value of lands may be deducted from compensation.

In any case in which any owner or person interested in lands shall claim compensation for land taken, or for frontage shut off, or for injury sustained by operations under this Act or the Act of 1872, it shall be lawful for the Commissioners to cause the amount which the abutting lands of such owner or other person shall have been or shall be increased in value by reason of the operations of the Commissioners, or by reason of any enactment in this Act or the Act of 1872, to be ascertained in any of the manners provided by "The Lands Clauses Consolidation Act, 1863," and all the provisions of that Act shall apply to any such proceedings as fully and effectually, *mutatis mutandis*, as they apply to proceedings for determining the value of lands taken by the Commissioners under the authority of this Act; and the Commissioners may then set off the amount so determined against the compensation to be made to such owner or other person.

18 Parties under disability.

If it appears to the Commissioners that the party making any such claim as aforesaid is not absolutely entitled to the estate right or interest in respect of which his claim is made, or is under any disability, or if the title to such land estate right or interest as aforesaid be not adduced to the satisfaction of the Commissioners if required by them, then and in every such case the amount to be paid by the Commissioners in respect of such land estate right or interest as aforesaid shall be paid and applied as provided by "The Lands Clauses Consolidation Act, 1863," amended as aforesaid with respect to the

purchase money or compensation coming to parties having limited interests, or prevented from treating or not making title.

19 Abstract of title.

The Commissioners may require any abstract or evidence of title respecting any lands authorized to be taken, so as the same be obtained at the cost of the Commissioners.

20 Yearly tenants.

Every person in possession of any lands authorized by this Act to be purchased, who shall have no greater interest in the premises than as lessee or tenant for a year or from year to year, shall at the time stated in a notice in writing by the Commissioners, and served upon him or left on the premises which are the subject of such notice, quit and relinquish the said premises unto the Commissioners; and in case any such person shall be compelled to quit before the expiration of his term or interest in any such premises, the Commissioners shall give compensation for the loss or damage which he shall sustain thereby; and in case of difference as to the amount thereof, the same shall be settled as provided by the ninety-third section of "The Lands Clauses Consolidation Act, 1863."

21 Entry of surveyors, &c.

It shall be lawful for the Commissioners, and for their surveyors officers and workmen, at all seasonable times in the daytime, after giving for the first time twenty-four hours' notice in writing, to enter in and upon all or any of the lands authorized to be taken as aforesaid, for the purpose of surveying or valuing the said premises.

Alternative Method of determining Value.

In order to acquire the said lands without delay and at the least possible expense, the Commissioners may if they think fit adopt the method for ascertaining compensation contained in the eight clauses following:—

22 Deposit of plans and schedules in Supreme Court.

They may from time to time cause to be made out and to be signed by their Secretary plans and schedules of the lands authorized by the Act to be acquired, for the purchase of which or of all the several interests in which the Commissioners shall not have contracted, together with the names of the owners or reputed owners, lessees or reputed lessees and occupiers, of the said land respectively, so far as the same can be reasonably ascertained, and the Commissioners shall deposit such plans and schedules at the office of the Registrar of the Supreme Court in Auckland.

23 Appointment of Valuator.

And after such deposit the said Registrar, with the approval of the Governor in Council, shall appoint a fit person to be Valuator under this Act; and if any such Valuator shall die or refuse or neglect or become incapable to Act, the Registrar shall as often as the same may happen appoint a Valuator in his place, who shall have the same power and authority as the Valuator first appointed; and upon the appointment of any Valuator in the place of a Valuator dying or refusing neglecting or becoming incapable to act, all the documents relating to the matter of the valuation in the possession of such Valuator shall be delivered to the Valuator appointed in his place.

24 Power of Valuator.

The Valuator may call for the production of any document in the possession or power of the Commissioners, or of any party making a claim under the provisions of this Act, and may examine any such party and his witnesses and the witnesses for the Commissioners on oath, and administer the oath necessary for that purpose.

25 His declaration.

Before any Valuator shall enter upon any inquiry, he shall in the presence of a Justice of the Peace make and subscribe the following declaration:—

I, A.B., do solemnly and sincerely declare that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of “The Auckland Improvement Act, 1873.”

Made and subscribed in the presence of—

J.P.

And such declaration, when made, shall be lodged with the Commissioners; and if any Valuator, having made such declaration, shall wilfully act contrary thereto, he shall be guilty of a misdemeanour.

26 Notice of appointment of Valuator.

Upon the appointment of a Valuator as aforesaid, the said Registrar shall publish forthwith in the Provincial Government *Gazette*, and in one or more newspapers published in the district, a notice of such appointment, and of the deposits of plans and schedules as hereinbefore directed, and shall require all persons claiming to have any right to or interest in the lands specified in such plans to deliver to the Valuator, within fourteen days from the publication of such notice, a short statement in writing of the nature of such claim.

27 Proceedings of Valuator.

The Valuator shall at the expiration of the said period of fourteen days proceed to inquire into the value of the several rights to or interests in such lands, and

shall frame a draft award or draft awards setting forth the amount to be paid for the purchase of any such rights or interests, and shall give notice thereof to all persons interested therein respectively where such persons are known to him and in the Colony, or to their agents if out of the Colony, and shall also cause to be published notice of such draft award in the *Provincial Government Gazette*, and in one or more newspapers published in the district, and shall in such notice appoint a time and place for hearing objections against any such draft award, and shall there hear and determine any objection which may then and there be made to any such draft award by any person interested therein, or adjourn the further hearing thereof if the Valuator shall think fit, and may take any measures which he may deem proper for ascertaining the value of any such rights or interests as aforesaid or the justice or propriety of any other matters of such draft award, and may from time to time appoint and hold further meetings for hearing and determining objections to any such draft award; and when the Valuator has heard and determined all such objections, and made such inquiries as he may think necessary in relation thereto, and made such alteration (if any) as he may deem proper in the draft award, he shall make his award under his hand and seal accordingly, and any such award shall be binding and conclusive, subject to the provisions hereinafter contained, upon all persons whomsoever, and no such award shall be set aside for irregularity in matter of form; and a copy of such award shall be deposited with the said Registrar, who is required to retain the documents to be deposited with him under this Act in his custody, and to permit all persons interested to inspect them, and to make copies and extracts of and from the same; and the Commissioners shall thereupon give notice in the said *Gazette*, and in one or more newspapers published in the district, of the deposit of such award as aforesaid.

28 Right of appeal.

Where the party claiming compensation or the Commissioners shall be dissatisfied with the award made by the Valuator as hereinbefore mentioned, it shall be lawful for such party or the Commissioners respectively, at any time within fourteen days after the deposit of such award with the said Registrar as hereinbefore mentioned, to have the question of compensation settled in manner provided by the said "Lands Clauses Consolidation Act, 1863," upon either party signifying such desire by notice in writing to such other party; and the amount of compensation so claimed shall in such case be settled accordingly, in any of the manners provided by "The Lands Clauses Consolidation Act, 1863," amended as aforesaid.

29 Salary, &c., of Valuator.

The salary or remuneration, travelling and other reasonable expenses of the Valuator, incurred in carrying this Act into execution, shall be paid by the Commissioners; and on the deposit of the award with the Registrar as aforesaid, all papers plans and documents in his possession or relating to the award,

or received by him in relation to his said office, shall be immediately delivered to the Commissioners: Provided always that nothing contained in the foregoing clauses shall prevent the Commissioners from using any powers for obtaining immediate possession of lands conferred upon promoters of undertakings by the said "Lands Clauses Consolidation Act, 1863," amended as aforesaid.

30 Formation of streets, &c.

On the lands so purchased and taken as aforesaid, or on any part thereof, the Commissioners may make the several streets and extensions of streets hereinbefore referred to, with all proper works approaches and conveniences connected therewith, subject to the same conditions as to formation sewerage and handing over to the City Council as are contained in the Act of 1872 with respect to streets formed thereunder: Provided always that the street from Victoria Quadrant into Fort Street shall be sixty-six feet wide, and that the level of Shortland Street shall not be altered except at the sides thereof, and so far only as may be necessary to form a junction with the said new street: Provided also that the plans and sections of such streets and extensions shall be submitted to the City Council previously to the formation thereof.

31 Line of deviation.

It shall be lawful for the Commissioners to deviate from the line or level of any such street delineated on the plan deposited as aforesaid, provided that no such deviation shall extend beyond the limits described upon the said plan.

32 Stoppage of alleys, &c.

Subject as before mentioned with respect to Shortland Street, the Commissioners may stop up widen alter or otherwise vary all streets courts alleys ways or passages included within the said limits as they shall deem necessary for the purposes of this Act; and the ground and soil of such streets courts alleys ways or passages, or of such parts thereof respectively as shall be stopped up, shall be and the same are hereby vested in the Commissioners and their successors for the purposes of this Act.

33 Stoppage of drains, &c.

The Commissioners may stop up any sewer drain or pipe on or near to, under through or over, any of the lands contained within the said limits, they the Commissioners making opening or laying down another sufficient sewer drain or pipe when requisite in lieu of the one stopped up.

34 Old materials of houses.

The Commissioners may pull down all houses buildings and other erections acquired under this Act, or such of them or such parts thereof as they shall deem expedient to be pulled down, and may level and clear the ground whereon the same shall stand, and all other ground to be acquired under this

Act, in. such manner as they shall think proper, and if they shall see fit may sell the materials of the houses and other buildings so to be taken down and removed; and the moneys produced by the sale thereof (after deducting the expenses of pulling down such houses and buildings respectively, and of such sale or sales), and also the rents and profits of such lands as may be acquired by virtue of this Act until the same shall be pulled down or cleared, shall be received and applied by the Commissioners for the purposes of this Act.

35 Property therein.

The right and property of all the materials implements utensils and things whatsoever which may be provided by the Commissioners or by their order, or under any contract or contracts to be entered into by them, or which may otherwise belong to and be used by them for the purposes of this Act, and also any materials which formed part of any buildings which may be pulled down by the direction of the Commissioners in pursuance of the powers of this Act, shall be vested in the Commissioners; and they are hereby empowered to bring any action and to prosecute any person who shall steal secrete injure damage or dispose of the same or any of them respectively without the consent of the Commissioners, or shall disturb them the Commissioners, or their officers or other persons acting under them, in the possession thereof.

36 Disposal of surplus land.

The Commissioners may from time to time, in such manner as they deem most advantageous, sell or lease, or in any other manner dispose of, all or any of the lands purchased or acquired by them under the authority of this Act, and which may not be required for the purposes aforesaid: Provided always that subject to the power hereinbefore and hereinafter contained of making any agreement or arrangement by way of exchange with any owner or lessee, no such land shall be sold or otherwise disposed of except by public auction after at least thirty days' notice thereof in the Provincial Government *Gazette* and in one or more newspapers circulating in the town of Auckland: Provided also that this enactment shall not extend to enable the Commissioners to convey any of the lands comprised in the Act of 1872 for a greater interest than a lease for ninety-nine years.

IV

LEGAL PROVISIONS

**37 Conveyances, &c.
Commissioners.**

All deeds or instruments of conveyance or exchange, either absolute or by way of lease or partial interest, by which any interest in lands shall be parted with by the Commissioners, shall be valid and effectual if made and executed under the common seal of the Commissioners; and on execution of any such deed or

instrument, the purchaser grantee or lessee therein named shall stand possessed of the lands so purchased by or leased to him according to the terms of his deed or instrument, freed and disburdened of and from all prior rights interests charges encumbrances and demands whatsoever, save and except such rights interests charges encumbrances or demands as in any such deed or instrument conveyance or lease may be specially excepted or reserved.

38 Conveyance to Commissioners.

In every case in which moneys are paid by the Commissioners under the provisions of this Act for such price or compensation as aforesaid, the party receiving such moneys may give to the Commissioners a receipt for the same, and such receipt shall have the effect of a conveyance and release to the Commissioners of all the estate right and interest of such party, and of all parties claiming under or through him, in the lands in respect of which such moneys are paid, so as such receipts shall have an *ad valorem* stamp of the same amount impressed thereon in respect of the purchase moneys mentioned therein as would have been necessary if such receipt had been an actual conveyance of such estate right or interest; and every such receipt shall be prepared by and at the cost of the Commissioners, and any such receipt may be registered in the Registry of Deeds.

39 Bonds to Commissioners.

All bonds by which any person is bound either as principal or surety for the performance of any work, or for any other object under this Act, or the Act incorporated herewith, or the Act of 1872, may be made to the Commissioners by the name of "The Auckland Improvement Commissioners;" and all bonds heretofore made to the Commissioners under that style shall be valid, and may be sued upon and enforced by them under that name.

40 Contracts.

All contracts executed by any two Commissioners authorized for the purpose by a resolution of the Commissioners in the execution of any of the powers given to them by this Act shall be valid and binding on the Commissioners.

41 Notices.

All notices which under this Act or the Act incorporated herewith are to be given by the Commissioners may be given under the hand of their Secretary for the time being; and all notices writs processes and other proceedings which under this Act or the Act incorporated herewith, or in consequence of anything done thereunder respectively, are to be served on or given to the Commissioners, may be served by the same being transmitted through the post directed to the Commissioners at their office, or given to their Secretary.

42 Application to a Judge in Chambers.

All orders which under this Act or "The Lands Clauses Consolidation Act, 1863," the Supreme Court is empowered to make on motion or petition in relation to any money paid into the Colonial Treasury, or the securities in or upon which the same may be invested, or the dividends or interest on such money and securities, may be made by any Judge of the said Court upon application to him while sitting in Chambers.

43 Action.

Any action or other proceeding in any Court in the Colony may be brought sustained and carried on by or against Commissioners in the name of the Auckland Improvement Commissioners.

44 Penalties by way of liquidated damages.

In case any contract to be entered into with the Commissioners in pursuance of this Act or of the Act of 1872, or in case all or any of the works to be done in pursuance of this Act or the Act of 1872 shall not be well and sufficiently performed according to the intent and meaning of any contract to be entered into by the Commissioners for any of the purposes of this Act or of the Act of 1872, or shall not be completed within the time specified in such contract, then in every such case the Commissioners may bring an action against any such contractor or his sureties, or both, for any penalty contained in the contract; and on proof of the non-performance thereof at the time for that purpose therein mentioned, the Commissioners shall be entitled to and shall recover the full penalty contained in any such contract, any law custom or usage to the contrary notwithstanding, which penalty, when recovered, shall be applied to the purposes of this Act or of the Act of 1872 respectively: Provided always that it shall be lawful for the Commissioners, if they think fit, to compound and agree with any such contractor for any penalty incurred by him or his sureties for the breach or non-performance of any such contract for such sum of money as the Commissioners shall think proper.

45 False evidence.

All persons who, upon any examination to be taken by virtue of this Act or any Act incorporated herewith, shall wilfully give false evidence or otherwise forswear themselves before a Valuator or other authority acting judicially in the execution of this Act, shall be guilty of wilful and corrupt perjury.

46 Obstructing Commissioners' servants.

If any person wilfully obstruct any person acting under the authority of the Commissioners in the lawful exercise of the powers vested in them under this Act or the Act of 1872, he shall forfeit a sum not exceeding five pounds for every such offence, to be recovered in a summary manner.

47 Saving personal liability of Commissioners.

Nothing contained in this Act, and nothing done under or in pursuance thereof, shall extend to charge the Commissioners or any of them with the payment of any penalty, or to charge affect or make liable the person of the Commissioners or any of them, or their heirs executors or administrators, or their proper lands goods chattels or property, in under or by reason of any action arbitration or other proceedings whatsoever instituted agreed made or taken under or in pursuance of this Act; nor shall the Commissioners or any of them be personally liable, nor shall the property of the Commissioners or any of them be liable, to any legal process or execution in any such action arbitration or other proceedings as aforesaid.

V.**MISCELLANEOUS PROVISIONS****48 Continuation of Princes Street.**

The piece of land (part of Government House grounds) to the westward of the fence erected by the Commissioners through Government House grounds, where the continuation of Princes Street is proposed to be carried through such grounds, shall henceforth be vested in the Commissioners and their successors for the purposes of the Act of 1872, as if the same had been included in the Schedule thereto.

49 Ancient wall between Government House grounds.

It shall be lawful for the Commissioners to pull down the wall between Government House grounds and the land under the control of the Commissioners, and to erect a new fence in lieu thereof, in a straight line: Provided that the quantity of ground so taken by the Commissioners shall be equal to that given; and provided further that such fence shall be ornamental to the satisfaction of the Governor.

50 Land left by diversion of ground.

That portion of Coburg Street which abuts on the north-easterly side of the property of Mr. Thomas Moore Philson, and thence in a south-easterly direction to Wellesley Street East, shall be closed, and the ground thereof, and all that triangular piece of land, part of Wellesley Street, now left by the diversion thereof between that street and Coburg Street and the property of the said Thomas Moore Philson, shall vest in the Commissioners and their successors for the purposes of the Act of 1872, and shall be subject to the control and administration of the Commissioners in the same manner as if the same had been included in the Schedule to the Act of 1872; and it shall be lawful for the Commissioners to convey absolutely to the said Thomas Moore Philson the said triangular piece of land as compensation for the loss of his frontage in

Coburg Street, if the said Thomas Moore Philson shall agree to accept the same as such compensation.

51 Grammar School Reserve.

It shall be lawful for the Commissioners to exchange with the Board of Education any piece of land subject to their control for the Grammar School Reserve authorized by the Provincial Council in Symonds Street; and on the execution of any conveyance by them of such portion of the estate of the Commissioners as a site for a Grammar School, the said reserve shall by virtue of this Act vest absolutely in the Commissioners and their successors for the purposes of and be subject to the Act of 1872.

52 Coburg Place.

It is hereby declared that the street called Coburg Place is and shall be a public street.

VI. MONEY

53 Receipt and payment of money.

All moneys payable to the Commissioners under the provisions of the Act of 1872 or this Act shall be paid into a bank to be fixed by the Commissioners, the receipt of whose local manager shall be a sufficient discharge for the same to the person or persons paying the same; and such moneys so paid as aforesaid shall from time to time be by such bank paid over and applied as the Commissioners shall by cheque signed by any two of them and by their Secretary direct, and in the meantime shall be invested in the purchase of debentures under this Act, if the Commissioners shall so direct.

54 Application of money.

The objects for the application of such moneys shall be, in the first place, the paying off of any money borrowed under the Act of 1872, with all interest and charges thereon; and then the payment of interest on the money borrowed, the formation of a sinking fund, payment for clerical professional and other assistance, the formation of the said streets approaches and works, the purchase of lands and all other things necessary or incidental to the carrying this Act into execution; and the surplus shall be applied as directed by the Act of 1872 with respect to the surplus money arising thereunder.

55 Audit.

The accounts of the Commissioners shall be audited annually by the Provincial Auditor, who shall publish the same in the Auckland Provincial Government *Gazette*.

*Raising Money by Mortgage***56 Debentures.**

In order to raise money for the purposes of carrying this Act into execution, it shall be lawful for the Commissioners from time to time to issue debentures for any sums of money not exceeding in the aggregate the sum of fifty thousand pounds, bearing interest after a rate to be therein fixed, not exceeding six per cent. per annum, payable half-yearly.

57 Form of debenture.

Every debenture shall be in the form or to the effect set forth in the Schedule to this Act, and shall be valid and effectual if signed by three Commissioners.

58 How numbered.

The debentures shall be numbered consecutively, commencing with number one, and shall have coupons attached thereto for every half-year's interest payable to bearer.

59 Places of payment.

The Commissioners may from time to time make such arrangements as they may think fit for the payment of any of the debentures or coupons at any office or bank in Auckland or elsewhere.

60 Places of sale.

Debentures issued under this Act may be sold in New Zealand or elsewhere as the Commissioners may think fit, and shall be sold by public tender at a price not being less than a minimum to be from time to time fixed by the Commissioners.

61 No preference.

The holder of any debentures shall not have any preference over any other holder by reason of any priority of date or otherwise, but all debenture holders shall rank alike, and be entitled to equal rights.

62 Hypothecation of debentures.

Prior to the sale of any debentures it shall be lawful for the Commissioners from time to time to borrow and raise money by the hypothecation or mortgage of such debentures, upon such terms and conditions as the Commissioners may think fit.

*Security***63 Security.**

The debentures, together with interest and sinking fund, shall be a first charge on the lands and rents of the land and hereditaments specified in the First Schedule of the Act of 1872 or required thereunder, and on all lands acquired under this Act and the rents and proceeds thereof.

*Sinking Fund***64 Sinking Fund.**

For the purpose of providing a sinking fund for the liquidation of the principal, there shall on the tenth day of January in such year as shall be fixed by the Commissioners, not being later than the tenth day of January next after the expiration of two years after the date of the first debentures issued, be set apart out of the said rents and proceeds a sum equal to one per centum on all debentures issued at that time.

65 Application of sinking fund.

Such sum shall be applied in taking up so many debentures as the sum so set apart will cover, and the balance (if any) shall be deposited at interest at some bank, and added, together with the interest, to the amount set apart for the same purpose in the next succeeding year.

66 Order of payment.

The order in which the debentures shall be taken up shall be determined by lot, in a convenient manner, on a day and at a place to be from time to time fixed by the Commissioners.

67 Further provision as to application of sinking fund.

On the tenth day of January in every subsequent year a sum equal to one per centum on the total amount for which debentures have then been issued, with the addition of a sum equal to the interest on all debentures already paid off, shall be applied in taking up so many debentures, to be determined by lot as aforesaid, as such two sums, with any balance from the preceding year, and interest thereon, added together, will cover; and the balance (if any) shall be deposited at interest in some bank, and added, together with the interest thereon, to the amount to be set apart for the same purpose in the next succeeding year.

68 Limit of interest.

When it shall be decided by lot that any debenture shall be paid off, interest thereon shall be paid up to the tenth day of January following, but no longer: Provided that the full amount of the debentures, with interest thereon to that

date, be paid on presentation; and such debentures, with the coupons belonging thereto and not then due, shall be given up to some person authorized by the Commissioners to receive the same.

69 General power of extinguishing debentures.

Provided always that the Commissioners may in addition at any time pay off any debentures the owner of which shall consent to surrender the same.

Receiver

70 Application for appointment of Receiver.

In case any interest due in respect of any debentures shall be in arrear, or any sum due in respect of the sinking fund shall not be applied as hereinbefore provided for six calendar months, it shall be lawful for the holder of any debenture to apply by petition to the Governor praying that a Receiver may be appointed.

71 Power of such appointment.

On being satisfied that such default as alleged has been made, the Governor shall by writing under his hand and seal appoint some fit and proper person to be Receiver, with the powers hereinafter mentioned.

72 Powers of Receiver.

Upon his appointment, the Receiver shall enter into possession of the land and hereditaments specified in the said Schedule, and thenceforth all rents arising therefrom shall be paid to the Receiver or some person appointed by him in writing, and all books papers accounts muniments of title and other documents relating to the matters aforesaid shall be handed over to the Receiver by the person in whose possession the same may be.

73 Application of his collections.

The money so received shall be applied, first, in payment of the expenses incurred in the execution of the powers hereby vested in the Receiver; secondly, in or towards payment rateably amongst the several debenture holders of arrears of interest and future interest from time to time accruing; thirdly, in discharge of any sums due and accruing in respect of the sinking fund; and if there be any surplus, the same may be expended in improving any portion of the property held in security, and the balance (if any) shall be temporarily deposited at interest at some bank in New Zealand, so as to be available when required for any of the purposes aforesaid.

74 Petition for restoration of Commissioners.

At any time when the arrears of interest and sinking fund have been fully paid and discharged, it shall be lawful for the Commissioners to apply to

the Governor by petition praying that the Receiver may be withdrawn and possession given to the Commissioners.

75 Governor may comply.

It shall be lawful for but not compulsory on the Governor, on being satisfied that all arrears of interest and sinking fund have been paid and discharged, and that there is a reasonable probability that the same will not again be allowed to run into arrear, to comply with the prayer of the petition.

76 Subsequent petitions.

Provided that whenever at any future time any interest or sinking fund is again permitted to get into arrear for three calendar months, it shall be lawful for the Governor from time to time, upon a like petition and in like manner, to appoint a Receiver with the same powers as are by this Act given to the first appointed Receiver.

77 General powers of Receiver.

During the time any Receiver is in possession, he may, in the name of the Commissioners, exercise all the powers and perform all the functions and duties given to and imposed on the Commissioners by this Act, and may employ and pay all such persons as may be necessary or proper to assist in the discharge of the duties imposed by this Act: Provided that no lease shall be granted without being first approved of by the Governor.

78 Receiver's remuneration.

The Receiver shall be paid remuneration out of the money received under this Act, by way of salary or commission or otherwise, as shall be from time to time fixed by the Governor in that behalf.

79 Penalty for obstructing Receiver.

Any person who shall in any way obstruct or interfere with the Receiver or with any person appointed by him, while in the exercise of the powers or performance of the duties given or imposed by this Act, or who after being applied to shall neglect or refuse to give up to the Receiver any books papers accounts muniments of title or other documents directed to be handed over to him by this Act, shall for every such offence forfeit and pay any sum not exceeding one hundred pounds, to be recovered in a summary way.

Security limited

80 Debentures chargeable on lands and rents.

No debenture holder shall have any claim whatever in respect of any debenture issued under this Act on the revenue of the Colony of New Zealand or of the Province of Auckland; but every such debenture shall be chargeable on the

lands specified in the Schedule hereto, and on the rents charged therewith by this Act.

81 Security not to include reserve or public street.

No mortgage effected or security given under this Act shall in any way pledge the soil of any public street, or of any land appropriated as a public reserve for the purposes of recreation and amusement, or authorize the diversion of any such land to any other purpose than that to which the same is by law appropriated.

Form of Debenture

Auckland Improvement Loan.—£50,000..

Authorized by an Act of the General Assembly, and thereby charged upon the Auckland Military Reserves and other lands, and not upon the Ordinary or other Revenue of New Zealand, or of the Province of Auckland.

The principal to be repaid at par by the application to annual drawings of a one per centum accumulative sinking fund.

The bearer of this Debenture will be entitled to receive from the Auckland Improvement Commissioners pounds sterling on the tenth day of the month of January following that on which this bond shall have been drawn for payment.

The bearer will further be entitled to receive interest thereon half-yearly at the rate of per centum per annum from the day of 18 , inclusive, to the day on which the above principal shall have become due and payable by reason of this bond having been drawn.

The drawing will take place in the month of , commencing in 18 , and will be conducted in the presence of such of the Debenture holders as may be pleased to attend, and of a Notary Public.

The Debentures drawn will be paid off at par on the tenth day of January following, together with interest up to that day, inclusive, and no longer.

A. B.,

C. D.,

E. F.,

Improvement Commissioners.