

# **Auckland Education Reserves Act 1912**

Local Act 1912 No 5  
Date of assent 15 October 1912

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**An Act to provide for the Administration of certain Lands in the City of Auckland, and for the Distribution of the Rents and Profits thereof for Educational Purposes.**

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

**1 Short Title**

This Act may be cited as the Auckland Education Reserves Act 1912.

## **2 Certain land in Auckland vested in Public Trust for education purposes**

- (1) The land described in Schedule 1 hereto, and hitherto known as the Auckland High Court site, is hereby vested in the Public Trust as a reserve for education purposes in the Education District of Auckland in the manner hereinafter described.
- (2) The Public Trust shall have power to let the said land or any part thereof in accordance with paragraphs (e), (f), (g), or (h) of section five of the Public Bodies Leases Act, 1908, but not otherwise; and for the purposes of this section the Public Trust shall be a leasing authority within the meaning of that Act.
- (3) Leases already made of any part of the said land may be surrendered with a view to new leases being granted under this section, and preliminary contracts (not inconsistent with the provisions of this section) may be made for effecting any such surrender and new lease.
- (4) The rents and profits of the said land, including the accumulated rents and profits thereof now in the hands of the Public Trust, shall be applied by it in the manner hereinafter described.

The words "High Court" in subsection (1.) were substituted, as from 1 April 1980, for the words "Supreme Court" pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

The heading to section 2 was amended, as from 1 March 2002, by section 170(2) Public Trust Act 2001 (2001 No 100) by substituting the words "Public Trust" for the words "Public Trustee". *See* clause 2 Public Trust Act Commencement Order 2002 (SR 2002/11).

Section 2 was amended, as from 1 March 2002, by section 170(2) Public Trust Act 2001 (2001 No 100) by substituting the words "Public Trust" for the words "Public Trustee", wherever they occur. *See* clause 2 Public Trust Act Commencement Order 2002 (SR 2002/11).

Subsection (4) was amended, as from 1 March 2002, by section 170(2) Public Trust Act 2001 (2001 No 100) by substituting the word "it" for the word "him". *See* clause 2 Public Trust Act Commencement Order 2002 (SR 2002/11).

## **3 Auckland Hospital and Charitable Aid Board authorized to sell land to Auckland Education Board**

- (1) The Auckland Hospital and Charitable Aid Board may sell and the Auckland Education Board may purchase in fee-simple the land described in Schedule 2 hereto.

- (2) The price to be paid on such sale and purchase shall be agreed on between the said Boards with the consent in writing of the Minister.
- (3) The price so agreed on shall be paid to the Auckland Hospital and Charitable Aid Board by the Public Trust out of the rents and profits derived from the land referred to in section two hereof. The proceeds of such sale shall be reinvested in other lands to be held in trust for the same purposes as the original trust.
- (4) The Auckland Education Board shall, on completion of the purchase, hold the said land in trust as a playground for the public schools of Auckland:

Provided that it shall be lawful for the said Board to set apart a portion of the land, not exceeding an area of two acres, for the purposes of agricultural instruction.

Subsection (3) was amended, as from 1 March 2002, by section 170(2) Public Trust Act 2001 (2001 No 100) by substituting the words "Public Trust" for the words "Public Trustee". See clause 2 Public Trust Act Commencement Order 2002 (SR 2002/11).

#### **4 How Public Trust to dispose of profits vested in it by section 2**

Subject to the provisions of subsection three of section sixteen of the Reserves and Other Lands Disposal Act, 1940, the Public Trust shall each quarter pay over the rents and profits of the lands described in Schedule 1 hereto to the Council of the University of Auckland, and the Council shall apply the amount so paid as follows:—

- (a) One-third shall be expended on the maintenance of any hostel for students established by the Council or for such other purpose in connection with the said College as the Council from time to time decides:
- (b) Two-thirds shall be paid into a fund which shall be used for all or any of the following purposes:
  - (i) The establishment, building, maintenance, repair, renovation, extension, rebuilding, alteration, management, decorating, and furnishing of hostels for students of the said University; or

- (ii) With the consent of the Minister of Education (given either specifically in relation to any particular matter, or generally) for such other purposes in connection with the said University as shall from time to time be determined by the Council.

Section 4 was substituted, as from 21 October 1949, by section 19 Reserves and other Lands Disposal Act 1949 (1949 No 34).

The words “Council of the University of Auckland” were substituted, as from 16 October 1957, for the words “Auckland University College Council” pursuant to section 5(2) University of Auckland Amendment Act 1957 (1957 No 25).

The heading to section 4 was amended, as from 1 March 2002, by section 170(2) Public Trust Act 2001 (2001 No 100) by substituting the words “Public Trust” for the words “Public Trustee”. The heading was further amended, as from 1 March 2002, by section 170(2) Public Trust Act 2001 (2001 No 100) by substituting the word “it” for the word “him”. *See* clause 2 Public Trust Act Commencement Order 2002 (SR 2002/11).

Paragraph (b) was substituted, as from 20 October 1966, by section 2 Reserves and other Lands Disposal Act 1966 (1966 No 102).

Section 4 was amended, as from 1 March 2002, by section 170(2) Public Trust Act 2001 (2001 No 100) by substituting the words “Public Trust” for the words “Public Trustee”. *See* clause 2 Public Trust Act Commencement Order 2002 (SR 2002/11).

## 5 Memorandum of lease

- (1) The memorandum of lease, copy of which is contained in Schedule 3 hereto, shall henceforth be deemed to have been validly and effectually granted by the Public Trust in exercise of the powers vested in it by the Auckland Hospitals Act Amendment Act, 1905, and of all other powers in any way enabling him in that behalf, and the said memorandum of lease is hereby ratified and confirmed, and shall be registered by the District Land Registrar when presented for that purpose.
- (2) The Public Trust is hereby expressly authorized to accept proper registrable surrenders of the existing lease and grant of bridge-way as provided by paragraph 12 of the said memorandum of lease.
- (3) Notwithstanding anything in the said memorandum of lease, the Public Trust is hereby authorized in the meantime, while the construction of the buildings to be erected by the lessees in terms of the second paragraph of the said memorandum

of lease is with all reasonable expedition proceeded with and until such date as the said buildings are completely finished (of all of which facts the Public Trust shall be the sole and final judge), to accept in lieu of the yearly rent of seventeen hundred dollars, reserved by the said memorandum of lease, the lower yearly rent of seven hundred and forty dollars, being the aggregate yearly sum payable by the lessees as rent under the existing leases and grant of bridge-way at the date of execution of the said memorandum of lease.

- (4) Nothing in subsection three of section two of this Act shall apply to the memorandum of lease referred to in this section.

The words “seventeen hundred dollars” and “seven hundred and forty dollars” were substituted, as from 10 July 1967, for the words “eight hundred and fifty pounds” and “three hundred and seventy pounds” pursuant to section 7(1) Decimal Currency Act 1964 (1964 No 27).

Section 5 was amended, as from 1 March 2002, by section 170(2) Public Trust Act 2001 (2001 No 100) by substituting the words “Public Trust” for the words “Public Trustee” wherever they occur. *See* clause 2 Public Trust Act Commencement Order 2002 (SR 2002/11).

Subsection (1) was amended, as from 1 March 2002, by section 170(2) Public Trust Act 2001 (2001 No 100) by substituting the word “it” for the word “him”. *See* clause 2 Public Trust Act Commencement Order 2002 (SR 2002/11).

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## Schedule 1

ALL that area in the Auckland Land District, being Lots 1, 2, 3, and part of Lot 4 of Section 15, City of Auckland, and containing by admeasurement 3 roods and 28 perches, more or less: bounded towards the north-east by Victoria Street, 328 links; towards the south-east by Queen Street, 283.4 links; towards the south-west by Darby Street, 328 links; and towards the north-west by Elliott Street, 283.4 links: be all the aforesaid linkages more or less: as the same is delineated on the plan marked L 1351, deposited in the Head Office, Department of Lands, at Wellington.

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## Schedule 2

ALL that area in the Auckland Land District, being parts of Sections 98 and 99, Suburbs of Auckland, and containing by admeas-

urement 6 acres and 32 perches, more or less: bounded, commencing at the southernmost angle of Section 97A, Suburbs of Auckland; towards the north by the abutment of a road, 115.9 links; towards the north-east generally by the North Island Main Trunk Railway, 125.6, 328, 424, and 402.1 links; towards the south generally by the Auckland Domain, as described in the Schedule to the Auckland Domain Vesting Act, 1893, 214.4, 430, 50, 115, 180, 90, 170, 297, 66, and 78 links; and towards the north-west by Section 96, Suburbs of Auckland aforesaid, 1125 links, to the point of commencement: be all the aforesaid linkages more or less: as the same is delineated on the plan marked L 1351, deposited in the Head Office, Department of Lands, at Wellington.

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### Schedule 3

#### Memorandum of lease

##### Preamble

WHEREAS His Majesty the King is registered as proprietor of an estate in fee-simple subject however to such incumbrances liens and interests as are notified by memorandum underwritten or indorsed hereon in those pieces of land situated in the Parish of Waitemata and County of Eden containing altogether one rood twenty-one decimal eight perches (1 r 21.8 p) be the same a little more or less and being lots six (6) nine (9) ten (10) eleven (11) twelve (12) thirteen (13) and fourteen (14) of a subdivision into lots of allotments numbers one (1) two (2) three (3) and part of allotment number four (4) of section number fifteen (15) of the City of Auckland as the said pieces of land are delineated on the plan drawn hereon and therein edged red part of the land comprised and described in certificate of title volume 6 folio 179 Subject to certain leases granted thereover now transferred to and held by Joseph Cochrane Macky and David Robert Caldwell both of the City of Auckland merchants (hereinafter with their executors administrators and assigns referred to as "the lessees") that is to be memoranda of lease registered respectively as numbers 109 124 127 294 and 457 And whereas His said Majesty is also registered as proprietor of an estate in fee-simple subject however to such incum-

Memorandum of lease—*continued*

branches liens and interests as are notified by memorandum underwritten or indorsed hereon in that piece of land situated in the said Parish of Waitemata containing two decimal twenty-seven perches (2.27 p) be the same a little more or less and being further part of said allotments three (3) and four (4) of section fifteen (15) of the said City of Auckland bounded on the east by lot six (6) aforesaid thirty-one feet (31 ft) towards the south by Darby Street twenty feet (20 ft) towards the west by lot fourteen (14) aforesaid thirty-one feet (31 ft) and towards the north by other part of said allotment three (3) twenty-feet (20 ft) as the said piece of land is delineated on the plan drawn hereon and therein edged green further part of the land comprised and described in said certificate of title volume 6 folio 179.

Subject to the grant of a bridge-way thereover granted by transfer dated the 21st day of February 1908 and being appendant to and expiring concurrently with said memorandum of lease registered number 109.

(Stamp—

Macky Logan Caldwell Limited Auckland New Zealand.)

And whereas by virtue of section 3 of the Auckland Hospital Reserves Act 1883 the said pieces of land were placed in the Public Trust Office and under the administration of the Public Trustee for the purposes of the Acts recited in the said Act And whereas by section 4 of the said Act it was enacted that the Public Trustee might grant in manner and subject to the provisions of all Acts relating to the Public Trust Office leases of (*inter alia*) the pieces of land aforesaid for building purposes for any term of years not exceeding sixty-three years and for other than building purposes for any term not exceeding twenty-one years with the right of renewal for a second period not exceeding twenty-one years subject to a new assessment of rent every such lease to be disposed of at public auction after public notice given of such sale by advertisement once a week during four consecutive weeks in some newspaper having general circulation in the Provincial District of Auckland And whereas the term of the lessees in the said pieces of land under the said leases and grant by way of transfer will expire by effluxion of time on various days in the year one thousand nine hundred and forty-one. And whereas a warehouse and other premises were erected upon the

Memorandum of lease—*continued*

said pieces of land first before described the buildings on lot six (6) having been connected with the building on lot fourteen (14) by a bridge-way in accordance with the said grant by way of transfer And whereas the annual ground or other rentals payable by the lessees in terms of the said leases and grant amount in the aggregate to the yearly sum of seven hundred and forty-six dollars (\$746) And whereas the said warehouse and premises have been occupied by Macky Logan Caldwell Limited a company duly registered as a private company under the Companies Act 1908 hereinafter with their successors and assigns referred to as “the company” who have used the same for the purposes of carrying on their business of warehousemen and importers And whereas the said warehouse and premises have been destroyed by fire and insurance-moneys to the amount of twenty-six thousand dollars (\$26,000) have been paid to the Public Trustee in respect of such loss or destruction by fire by the fire-insurance offices that had accepted the risk and such moneys are held by him pending the reinstatement of the said warehouse and premises by the lessees and are to be applied in or towards reinstating the same accordingly And whereas the lessees are desirous of reinstating the said warehouse and premises by re-erecting upon the said pieces of land more commodious premises at an estimated cost of sixty thousand dollars (\$60,000) and have applied to the Public Trustee to grant to them a new lease of the said pieces of land first above described with relative bridge-way for the term of sixty-three years at the increased yearly rent and otherwise upon and subject to the terms and conditions hereinafter appearing And whereas the company in consideration of the premises have agreed to join in these presents in manner hereinafter appearing And whereas the Public Trustee considers that the proposed new lease will be advantageous to the trusts upon which he holds the said lands and has submitted the same to the Government and the Government has approved thereof subject to ratification by Parliament And whereas the Public Trustee has accordingly agreed to grant and the lessees have agreed to accept such lease forthwith conditionally upon the same being ratified by Parliament Now these presents witness that the Public Trustee so far as he lawfully can (but no further) and subject to ratification by Parliament doth hereby lease to the lessees all those the said pieces of land first before described together with



Memorandum of lease—*continued*

full and free license liberty and authority to connect the buildings and premises about to be re-erected upon lots six (6) and fourteen (14) aforesaid by building and constructing at a height of not less than fifteen feet (15 ft) from the ground and so as not to obstruct traffic along the land or passage below a floor-way or bridge-way across and over the piece of land secondly above described and to re-erect and construct thereon such structure (approved by the local authority having jurisdiction thereover) as the lessees may consider necessary or advisable in order to make the new warehouse and other buildings complete as one structure all the said pieces of land first before described together with the said right of bridge-way over the piece of land secondly before described to be held by the lessees as tenants in common in equal shares for the space of sixty-three (63) years to be computed from the day upon which this lease is ratified by Parliament at the yearly rent of seventeen hundred dollars (\$1,700) payable to the Public Trustee quarterly in advance during the said term the first quarterly payment in advance being due and payable on the day on which this lease is ratified by Parliament subject to the following covenants conditions and restrictions all of which shall be binding jointly and severally on the lessees and the company as fully and effectively as if the company were the lessees:—

The words “seven hundred and forty-six dollars”, “twenty-six thousand dollars”, “sixty thousand dollars” and “seventeen hundred dollars” were substituted, as from 10 July 1967, for the words “three hundred and seventy-three pounds”, “thirteen thousand pounds”, “thirty thousand pounds” and “eight hundred and fifty pounds” pursuant to section 7(1) Decimal Currency Act 1964 (1964 No 27).

1

That the lessees will pay and discharge all rates taxes charges assessments and other outgoings whatsoever now payable or hereafter to become payable in respect of the demised premises.

2

That the lessees will forthwith proceed to erect build and completely finish and will with all reasonable expedition erect build and completely finish in a good substantial and workmanlike manner fit for occupation and use upon the said

Memorandum of lease—*continued*

pieces of land first before described buildings of the estimated cost value of sixty thousand dollars (\$60,000) suitable for use partly as a warehouse for the purpose of the business of the company and partly as shops and offices together with all necessary and convenient drains sewers lifts gas and electric fixtures and fittings and other works in accordance with plans elevations specifications and conditions of contract to be prepared by the architect of the lessees and submitted to and approved by the Public Trustee and also will forthwith after such architect has given his certificate that the said buildings have been completely finished produce such certificate to the Public Trustee and also will by reasonable evidence if required satisfy the Public Trustee that the said buildings will cost (including the value of existing foundations) when finally completed the sum of sixty thousand dollars (\$60,000).

The words “sixty thousand dollars” were substituted, as from 10 July 1967, for the words “thirty thousand pounds” pursuant to section 7(1) Decimal Currency Act 1964 (1964 No 27).

3

That the lessees will during the term hereby granted as often as need requires bear pay and allow a reasonable share and proportion for and towards forming supporting repairing and amending the road or passage of twenty feet (20 ft) wide dividing lots one to six (1 to 6) from lots seven (7) and fourteen (14) and all or any pavements channels fences gates and party walls sewers or drains belonging or which at any time during the said term may belong to the said demised premises or any part thereof near or adjoining and that such proportion shall be fixed and ascertained by the surveyor of the Public Trustee as near as may be in proportion of the rent of the respective tenants or contributors and to their respective frontages to the said road or passage and shall be recoverable as rent in arrear.

4

That the lessees will during the said term insure and keep insured from loss or damage by fire in some responsible fire-insurance office or offices to be approved by the Public Trustee in the joint names of the Public Trustee and the lessees all build-

Memorandum of lease—*continued*

ings situate on the demised land at the commencement of the said term or which may from time to time be erected upon the demised premises during the said term in a sum equivalent to their full insurable value and will for that purpose pay or cause to be paid the premium for every such insurance as and whenever the same becomes due and payable and will on demand produce to the Public Trustee the receipt for every such premium And that in case default is made in keeping the premises so insured as aforesaid or in producing any receipt as aforesaid it shall be lawful for the Public Trustee to effect and keep on foot any such insurance and the cost thereof shall be paid by the lessees and shall be recoverable from them respectively as and for rent in arrear Provided always and it is hereby agreed and declared that all moneys received under any such insurance shall be expended in or towards rebuilding or repairing the said business premises in accordance with plans and specifications to be approved by the Public Trustee And if the amount so received as aforesaid is insufficient to properly reinstate the premises then the lessees shall under the covenant to repair implied herein make up the deficiency out of their own proper moneys.

5

That if and so often as the buildings and premises for the time being belonging to and forming part of the lands hereby leased are destroyed or damaged by fire tempest or other inevitable accident then a fair and just proportion of the yearly rent shall be suspended and cease to be payable so long as the said premises are unfit for occupation or use by reason of such destruction or damage and in case any dispute arises as to the amount of the abatement to be so made or the period for which such abatement is to continue the same shall be referred to arbitration under the Arbitration Act 1996 the reference being to two arbitrators Provided always that at no time shall the rate of the yearly rent be reduced under this clause to less than three hundred and seven hundred and forty-six dollars (\$746).

The words “seven hundred and forty-six dollars” were substituted, as from 10 July 1967, for the words “three hundred and seventy-three pounds” pursuant to section 7(1) Decimal Currency Act 1964 (1964 No 27).

Memorandum of lease—*continued*

The reference to the Arbitration Act 1908 was substituted, as from 4 August 1908, for a reference to the Arbitration Act 1890 pursuant to section 2(1) Arbitration Act 1908 (1908 No 8). That reference was further substituted, as from 1 July 1997, by a reference to the Arbitration Act 1996 pursuant to section 18 Arbitration Act 1996 (1996 No 99).

6

That the lessees will not at any time during the said term carry on or permit or suffer to be carried on upon the premises hereby demised any noisome or offensive trade or business or do or permit or suffer to be done upon the said premises any act or thing which may prove an annoyance to the neighbours.

7

That the bridge-way or structure to be erected by the lessees connecting the said buildings as aforesaid shall be such as not to obstruct or in any way interfere with the traffic along the road or passage thereunder and shall be erected at a height of at least fifteen feet (15 ft) from the ground.

8

That the lessees will keep the said bridge-way or structure in good and tenantable repair during the said term and will deliver the same over at the end or sooner determination of the said term in such repair Provided always that should such structure be destroyed by fire or be so damaged as to be rendered useless during the said term the lessees shall have the option either to rebuild and to hold such rebuilding under and subject to the terms of the grant in that behalf hereinbefore contained or to thoroughly clear away and remove such structure in which case such grant shall cease and determine without prejudice however to the right of the Public Trustee in respect of any past breach of any covenant condition or agreement on the part of the lessees herein contained or implied relating to the said bridge-way or structure.

9

That the Public Trustee his agents servants and workmen may from time to time and at all times during the said term enter upon the said demised premises or any part thereof and view the drains sewers and watercourses running through or under

Memorandum of lease—*continued*

the said demised premises and make keep and maintain the same drains sewers and watercourses at the costs of the lessees and that the lessor shall at all times have power and authority to enter repair close up and alter the said drains sewers and watercourses at the like expense if the lessees neglect or refuse to do so within a reasonable time to be prescribed in a notice requiring them to repair close up or alter the same as aforesaid and all such expenses may be recoverable by the Public Trustee as rent in arrear.

10

That if and whenever the rent hereby reserved or any part thereof is in arrear for sixty days after any of the days hereinbefore appointed for payment thereof and whether the same has been legally demanded or not or in the case of the breach or non-performance of any of the covenants conditions or agreements herein contained or implied and on the part of the lessees to be paid observed and performed then and in any such case and immediately thereupon or at any time thereafter and notwithstanding any omission to take advantage of any previous default of the same or any other nature it shall be lawful for the Public Trustee to enter into or upon and take possession of the lands bridge-way and premises hereby demised and the lessees and all persons then claiming under them for ever to expel and remove therefrom without any legal process whatsoever and the said premises to have again repossess and enjoy as in his former estate and as if these presents had not been made Provided always that such entry and expulsion shall not relieve the lessees from their or any of their liability in respect of any then existing breach of any of the covenants provisions or agreements herein contained or applied.

11

That for the purpose of obtaining the ratification by Parliament of this lease the Public Trustee shall submit a Bill to Parliament at the first available opportunity conferring upon the Public Trustee all the powers purporting and intended to be exercised by him according to these presents and expressly ratifying and confirming these presents and the Public Trustee shall use his

Memorandum of lease—*continued*

best endeavours to have such Bill passed and made law with all reasonable expedition.

12

That upon the ratification by Parliament of this lease the lessees and all other necessary parties shall at their own costs and charges make and execute in favour of the Public Trustee and the Public Trustee shall accept proper registrable surrenders of the said existing leases numbers 109 124 127 294 and 457 and grant of bridge-way.

13

That if this lease is not ratified by Parliament within twelve months from the date hereof or such extended period as is agreed on in writing by the Public Trustee and the lessees then these presents shall be deemed to be void but without affecting any past payments made or any liability incurred by the lessees or the company and without giving to the lessees or the company any right claim or demand against the Public Trustee.

We the before named Joseph Cochrane Macky and David Robert Caldwell do hereby accept this lease of the above-described lands to be held by us as tenants and subject to the conditions restrictions and covenants above set forth.

Dated this twenty-sixth day of February one thousand nine hundred and twelve.

Signed by Frederick Fitchett the Public Trustee and sealed with the seal of the Public Trust Office in the presence of—Ernest P Hay, Solicitor, Wellington.

(Seal Public Trust  
Office, New  
Zealand.)

Signed by the said Joseph Cochrane Macky and David Robert Caldwell in the presence of—W R Goudie, Secretary, Auckland.

J C MACKY.  
D R CALDWELL.

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Memorandum of lease—*continued*

The common seal of Macky Logan  
Caldwell (Limited) was hereto affixed in  
the presence of—T H Macky, Director; C  
A Brown, Director.

(Seal)  
MACKY LOGAN  
CALDWELL  
(LIMITED),  
Auckland, New  
Zealand.