

**Reprint
as at 23 September 1939**



**Otago Harbour Board Empowering
Act 1939**

Local Act 1939 No 9
Date of assent 22 September 1939
Commencement 22 September 1939

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

An Act to vest further powers in the Otago Harbour Board

1 Short Title

This Act may be cited as the Otago Harbour Board Empowering Act 1939.

2 Interpretation

In this Act, if not inconsistent with the context, **Board** means the Otago Harbour Board.

3 Special Act

This Act shall be deemed to be a special Act within the meaning of the Harbours Act 1923.

4 Authorising sale of land to His Majesty the King

Whereas all that piece of land comprising Section 25, Block LXIV, Dunedin, on the plan deposited in the Lands Registry Office at Dunedin as Number 863, and being part of the land included in certificate of title, Register book Volume 186, folio 100, Otago Lands Registry, is vested in the Board subject to the provisions of the Otago Harbour Board Empowering Act 1875:

And whereas the said land is required by His Majesty the King as a site for the headquarters at Dunedin of the Royal Naval Volunteer Reserve:

Be it therefore enacted as follows:

Notwithstanding the provisions of the Otago Harbour Board Empowering Act 1875, or any other Act, it shall be lawful for the Board to sell and transfer to the Crown the said Section 25, Block LXIV, Dunedin, for such consideration and with, upon, and subject to such terms and conditions as may be agreed upon between the Crown and the Board, and the moneys received by the Board as the price of the said land shall be paid into and form part of the sinking fund in connection with the Otago Harbour Board Redemption Loan, 1934.

5 Authorising sale of land to Dunedin Drainage Board

Whereas all those lands comprising Sections 18 and 19, Block LXXIII, Dunedin, on the plan deposited in the Lands Registry Office at Dunedin as Number 2086, and being part of the land included in certificate of title, Register book Volume 177, folio 97, Otago Lands Registry, are vested in the Otago Harbour Board (in this section called the **Harbour Board**) subject to the provisions of the Otago Harbour Board Empowering Act 1875:

And whereas the said lands are required by the Dunedin Drainage and Sewerage Board (in this section called the **Drainage Board**) in connection with the operations of that Board:

Be it therefore enacted as follows:

Notwithstanding the provisions of the Otago Harbour Board Empowering Act 1875, or any other Act, it shall be lawful for the Harbour Board to sell and transfer to the Drainage Board and for the Drainage Board to purchase the said Sections 18 and 19, Block LXXIII, Dunedin, for such consideration and with, upon, and subject to such terms and conditions as the said Board shall agree on, and the moneys received by the Harbour Board as the price of the lands sold and purchased as aforesaid shall be paid into and form part of the sinking fund in connection with the Otago Harbour Board Redemption Loan, 1934.

6 Authorising acceptance of surrender of lease

Whereas the Board is seized of an estate in fee simple in all those parcels of land containing together 2 acres and 10.9 perches, more or less, being Allotments 1, 2, and 3, situated partly in the City of Dunedin and partly in the Upper Harbour of Otago, on plan deposited in the Lands Registry Office at Dunedin as Number 5045:

And whereas by memorandum of lease bearing date 30 June 1939 the Board leased the said land to Donald Reid and Company, Limited:

And whereas the said Allotments 2 and 3 will be required for a public road or street:

And whereas the said company has agreed with the Board that the said company will, when requested by the Board so to do, surrender to the Board the lease of the said Allotments 2 and 3 without requiring compensation therefor either by way of reduction of rent or otherwise:

And whereas the Board has no power to accept surrenders of leases:

And whereas it is necessary that the Board should be empowered to accept a surrender of the said lease as to the said Allotments 2 and 3 for the purpose of enabling such allotments to be formed into a public road or street:

Be it therefore enacted as follows:

- (1) The Board is hereby empowered to accept a surrender of the said lease in so far as it affects the said Allotments 2 and 3 on the said plan Number 5045, and the District Land Registrar for the Land Registration District of Otago is authorised and directed to note such surrender on the Register and on the outstanding certificate of title.
- (2) The said lease shall take effect in all respects as if the land remaining subject thereto had been the only land originally leased thereby.

7 **Application of unexpended portion of loan**

Whereas by the Otago Harbour Board Empowering Act 1926 (hereinafter in this section referred to as the **Empowering Act of 1926**), the Board was authorised to borrow any sums of money not exceeding in the whole 350,000 pounds, and it was provided that the moneys borrowed under such authority should be applied for the general improvement of the Otago Harbour in carrying out the works specified in the Schedule of that Act:

And whereas the objects upon which the said loan moneys were to be expended were partly altered by the Otago Harbour Board Empowering Act 1929 (hereinafter in this section referred to as the **Empowering Act of 1929**), and the Otago Harbour Board Empowering Act 1932–33 (hereinafter in this section referred to as the **Empowering Act of 1932–33**):

And whereas under the provisions of section 2 of the Empowering Act of 1929 the Board was authorised to expend the sum of 1,200 pounds on the erection of a bridge for and in connection with the school site to be vested in the Education Board of the District of Otago pursuant to section 71 of the Local Legislation Act 1928:

And whereas the erection of such bridge is not now required and the said sum of 1,200 pounds has therefore not been expended:

And whereas under the provisions of section 5 of the Empowering Act of 1932–33 the Board was empowered to apply 10,000 pounds of the moneys borrowed or to be borrowed under the authority of the Empowering Act of 1926 towards the cost of the works mentioned in sections 2 and 4 of the Empowering Act of 1932–33, including works in connection with the widening of the Leith Canal:

And whereas it is deemed expedient to empower the Board to apply the said sum of 1,200 pounds in addition to the said sum of 10,000 pounds towards the cost of the said works in connection with the widening of the Leith Canal, being the works mentioned in section 4 of the Empowering Act of 1932–33:

Be it therefore enacted as follows:

The Board is hereby empowered, subject to the approval of the Local Government Loans Board, to apply the said sum of 1,200 pounds towards the cost of the works mentioned in section 4 of the Empowering Act of 1932–33 in lieu of expending such sum on the erection of the said bridge.

8 Authorising exchange of land with Port Chalmers Borough Council

Whereas the Board is seized of an estate in fee simple in all those parcels of land containing 19 acres 3 roods and 29.5 perches, more or less, situated in Mussel Bay, in the Upper Harbour of Otago, being part of the Otago Harbour Board endowment, the said land being the land comprised in certificate of title, Register book Volume 144, folio 278, Otago Lands Registry:

And whereas the Corporation of the Mayor, Councillors, and Burgesses of the Borough of Port Chalmers (hereinafter in this section called the **Corporation**) is seized of an estate in fee simple in all those parcels of land containing 5 acres 1 rood and 29 perches, more or less, situated in Mussel Bay aforesaid, and being all the land comprised in certificate of title, Register book Volume 144, folio 276, Otago Lands Registry:

And whereas by memorandum of lease bearing date 5 September 1889, the Otago Dock Trust, in which body the said land of the Board was then vested, leased to the Port Chalmers Gas Company, Limited, part of the said land of the Board containing 1 rood 13.3 perches for the term of 50 years computed from 28 February 1889:

And whereas the said land of the Board became vested in the Board by virtue of the Otago Dock Trust Merger Act 1908, subject to the said lease:

And whereas by memorandum of transfer bearing date 7 September 1918, the said Port Chalmers Gas Company, Limited, transferred to the Corporation its estate and interest in the said lease and the land described therein:

And whereas the Corporation has from time to time spent considerable amounts in improvements to the buildings and plant erected on the said land comprised in the said lease:

And whereas the said lease contained no provisions for renewal or payment of valuation for improvements:

And whereas the Board has agreed with the Corporation, subject to the necessary power being conferred by legislation, to exchange the said land described in the said lease with all buildings and improvements thereon and also certain other parts of the said land of the Board not exceeding in all 2 acres for a similar area of the said land of the Corporation and for certain other valuable consideration:

Be it therefore enacted as follows:

- (1) The Board is hereby empowered to transfer to the Corporation the said land described in the said lease and also certain other parts of the said land of the Board not exceeding in all 2 acres in area in exchange for part of the said land of the Corpor-

ation of a similar area and for the other valuable consideration agreed upon between the Board and the Corporation.

- (2) The District Land Registrar for the Land Registration District of Otago is hereby authorised and directed to accept for registration the transfers of the said lands notwithstanding anything contained in sections 125 and 128 of the Public Works Act 1928.

9 Authorising lease of lands to Otago Education Board, and acceptance of surrenders of leases

Whereas by section 188 of the Reserves and other Lands Disposal and Public Bodies Empowering Act 1924, the Otago Harbour Board (in this section called the **Harbour Board**) was empowered to transfer or lease to the Education Board of the District of Otago (in this section called the **Education Board**) and the Education Board was empowered to accept a transfer or lease of any part of the endowment of the Harbour Board in the City of Dunedin not exceeding 4 acres in area subject to a proviso that in the event of a lease the term should be for a period of 50 years, at such rent, and with, upon, and subject to such terms, conditions, and provisions as might be agreed upon between the Education Board and the Harbour Board, including provisions for payment of valuation for improvements and for renewal for 1 or more recurring periods:

And whereas the Harbour Board has agreed, subject to the necessary power being conferred by legislation, to lease to the Education Board an area of land comprising a part of its endowments and also other land of the Harbour Board contiguous thereto but not forming part of its endowment:

And whereas the Harbour Board is desirous of being empowered if and whenever the Education Board requires the Harbour Board so to do to determine the leases or any of them granted by the Harbour Board of Sections 5, 6, 8, 9, and 10, Block LXIX, Dunedin, which sections are contiguous to the lands of the Otago Harbour Board already agreed to be leased by the Harbour Board to the Education Board as aforesaid:

Be it therefore enacted as follows:

- (1) The Harbour Board is hereby empowered to lease to the Education Board and the Education Board is hereby empowered to accept a lease or leases of any part or parts of the land of the Harbour Board in the City of Dunedin, whether endowment or otherwise, not exceeding in all 4 acres in area, provided that the term of the said lease or leases shall be for a period of 50 years or such less period as shall be agreed upon between the Harbour Board and the Education Board, and such lease or leases shall be at such rent or rents and with, upon, and subject to such terms, conditions, and provisions as may be agreed upon between the Harbour Board and the Education Board, including provisions for payment of valuation for improvements and for renewal for 1 or more recurring periods.
- (2) It shall be lawful for the Harbour Board, for the purpose of granting a lease or leases to the Education Board pursuant to subsection (1), to determine any lease of any of the said Sections 5, 6, 8, 9, and 10, or of any part thereof, as to the whole or any part of the land included in such lease by giving to the lessee 3 months' notice of such determination, and upon the expiration of 3 months from the service of such notice the term of such lease shall cease and come to an end as to the land comprised in such notice, but without prejudice to the rights or remedies of either lessor or lessee as to any breach of the provisions of such lease occurring prior to such determination. A memorandum under the seal of the Harbour Board setting out that any lease has been determined in whole or in part in terms of this section shall be conclusive evidence of the fact and be registrable under the Land Transfer Act 1915.
- (3) If any such lease is determined as to part only of the land comprised therein, the lease shall (subject to subsection (5)) thenceforth be construed and take effect as if the land comprised in the notice had never been contained in such lease.
- (4) Upon the determination of any lease as aforesaid as to whole or part of the land comprised therein the Harbour Board shall, subject to the provisions of the Fair Rents Act 1936, be entitled to enter into possession of the land comprised in the notice as if such lease had never been granted.

- (5) Every person having any estate or interest in any lease determined in whole or in part as aforesaid shall be entitled to full compensation for the same from the Harbour Board.
- (6) The compensation referred to in the last preceding subsection may be claimed and shall be determined in the manner provided by Part 3 of the Public Works Act 1928:
provided that no claim for compensation shall be made in respect of the determination of any particular lease in whole or in part after a period of 12 months after the date of the service of the notice determining such lease; and all right and title to any compensation in respect of any lease so determined shall, after such period, absolutely cease.
- (7) It shall be lawful for the Harbour Board, in lieu of paying in money the whole or part of the compensation mentioned in subsection (5), to enter into an agreement with any lessee whose lease has been determined in part for the reduction of the rent payable under such lease for the remainder of the term granted thereby, and every such agreement shall be evidenced by a memorandum executed by the lessee for the time being thereunder and the Harbour Board, and such memorandum shall be conclusive evidence of the fact and be registrable under the Land Transfer Act 1915.
- (8) Any notice required or authorised by this Act to be served shall be in writing signed by the Secretary or Acting Secretary of the Harbour Board, and shall be sufficiently served if served in the manner provided by the Property Law Act 1908 for the service of notices.
- (9) For the purposes of this section **lease** includes an agreement to lease or other tenancy, and **lessee** includes an equitable lessee and also a tenant.

10 Bylaws prohibiting trespass on Board's lands

The Board may from time to time, by bylaws made under and in accordance with the Harbours Act 1923, prohibit the entry of any person without the authority of the Board upon any specified portion or portions of the Harbour of Otago or of any

other land vested in or subject to the control or jurisdiction of the Board, and may alter or revoke any such bylaws.

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Notes

1 *General*

This is a reprint of the Otago Harbour Board Empowering Act 1939. The reprint incorporates all the amendments to the Act as at 23 September 1939, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, *see* <http://www.pco.parliament.govt.nz/reprints/>.

2 *Status of reprints*

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 *How reprints are prepared*

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and

provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint
(most recent first)*
