

Wellington Harbour Board Leasing Act 1886

Local Act 1886 No 4
Date of assent 30 July 1886

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An Act to provide for the Leasing of Lands vested in the Wellington Harbour Board.

Preamble

WHEREAS it is expedient that the powers of leasing hereinafter conferred should be vested in the Wellington Harbour Board:

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

1 Short Title

The Short Title of this Act is The Wellington Harbour Board Leasing Act 1886.

2 Interpretation

Where used in this Act, the word **Board** shall mean the Wellington Harbour Board, and **the said Act** means The Harbours Act 1878.

3 Leases by the Board to be submitted to public auction or public tender

The provisions of section one hundred and thirty-eight of the said Act shall not apply to leases hereafter to be made by the Board. Every lease made by the Board shall be submitted to public auction or public tender, and at least twenty-one days' notice of any intended letting shall be publicly notified by advertising the same in a newspaper circulating in the City of Wellington once at least in each of three successive weeks prior to the letting: Provided nevertheless that any land which has been offered by public auction or tender as aforesaid and not let may at any time within twelve months thereafter be let by private contract, notice thereof being given in manner hereinbefore mentioned, at a rent not less than the rent reserved at such auction or tender, or it may at any time, and from time to time, either before or after the expiration of twelve months, be again offered by public auction or tender.

4 Board to continue to have all powers of leasing

The Board shall continue to have the powers of leasing vested in it by virtue of section one hundred and thirty-seven of the said Act, and by any other Act now or hereafter to be in force in the colony; but the words "subject to this Act", in the first line of the said section one hundred and thirty-seven of the said Act, shall be read when applied to the Board as not referring to section one hundred and thirty-eight of the said Act.

5 Board may insert in any lease, the term whereof does not exceed 21 years, clauses set out in Schedule

In any lease hereafter to be granted by the Board, the term whereof does not exceed twenty-one years in possession, it shall be lawful for the Board, if it think fit so to do, to insert the provisions set forth in the Schedule to this Act, or provisions similar thereto, and the same when so inserted shall be binding on the Board and on the tenant executing such lease. But in any case where, by reason of a previous forfeiture or otherwise howsoever, there shall be buildings the exclusive property of the Board upon the land demised at the time of the granting of any lease, such buildings may be excluded by special provisions in that behalf from any such valuation as by the provisions in the Schedule is provided to be made: Provided that this section shall not apply to leases granted under the sixth section of this Act.

6 Board may, with permission of Governor in Council, let foreshore, to be used for purpose of building or repairing vessels

The Board, in addition to the powers conferred on it by sections nine, ten, and eleven of The Harbours Act Amendment Act 1883, shall have power, with the consent of the Governor in Council, but without obtaining any special Act, to lease for any period not exceeding fifty years, to be used or occupied for the purpose of building or repairing vessels of any kind, any piece of land vested in it being on the shore of the sea, or of any creek, bay, or arm of the sea, or navigable river communicating with the sea, and so that such lease may extend as far as lowwater mark: Provided always that no lease shall be made or consented to by the Governor in Council if the Marine Engineer for the time being shall report that the granting of the same will in any way impede or disturb the navigation of the harbour or the public convenience: Provided also that at least twenty-one days' notice of the intention to apply for such consent of the Governor in Council shall be given by advertising the same in a newspaper circulating in the City of Wellington once at

least in each of three consecutive weeks prior to the date of such application.

Schedule

1

AND it is hereby agreed and declared that, within six calendar months previous to the expiration of the term hereby created (if such term shall not have been previously determined by forfeiture or otherwise), two separate valuations shall be made by two indifferent persons to be appointed in writing as follows: one by the Board or its assigns, and the other by the tenant, his executors, administrators, or assigns; one of such valuations to be made of all the buildings and improvements then on the said lands hereby leased; and the other of the fair annual ground-rent of the said lands only, without any buildings or improvements, for a further term of *the same term as in the original lease* years from the expiration of the term hereby granted (such rent to be an even annual sum payable throughout the term without increasing or decreasing during the said term). Such valuers shall, before entering upon the valuations, together appoint in writing under their respective hands a third valuer, who shall be an umpire as between them. The decision of such two first-appointed valuers if they agree, or in such respects as they agree, or of such third valuer or umpire if they do not agree, or in such respects as they do not agree, shall be binding on all parties. The duty of such third valuer or umpire, on reference to him of any question under these presents, shall be to analyse the respective valuations of the two first-appointed valuers in the matters in which their valuations shall not agree, and then to make an independent and substantive valuation, which last-mentioned valuation shall be the **decision** of the third valuer or umpire: Provided always that, in making such decision on any question referred to him, the said third valuer or umpire shall in every case be bound to make a valuation not exceeding the higher, or less than the lower, of the valuations made by the other valuers respectively—

2

The Board or its assigns may, if it or they think fit, pay to the tenant, his executors, administrators, or assigns, the amount of such valuation of the buildings and improvements, in which case such buildings and improvements shall, upon such payment, become the exclusive property of the Board, upon the expiration of the term hereby granted—

3

But if the Board or its assigns shall not, before the expiration of the term hereby granted, pay to the tenant, his executors, administrators, or assigns, the amount of such valuation, then and in such case, before the expiration of the term hereby granted, a lease of the said land and premises for a further term of *the same term as in the original lease* years, containing the same covenants and provisions as are contained in these presents (including this present provision, and all clauses auxiliary or in relation thereto), shall be put up by the Board or its assigns to public auction, at the upset annual rent of the said land as valued without buildings and improvements, subject to the payment by the purchaser at such auction of the value of the said buildings and improvements fixed by the valuers or their umpire, as aforesaid. And in the event of any person or persons other than the said tenant, his executors, administrators, or assigns, becoming the purchaser at such auction of the said lease for the said further term of twenty-one years, such person or persons shall forthwith pay in cash to the Board or its assigns, for the benefit of the tenant, his executors, administrators, or assigns, the amount of the value of the buildings and improvements so fixed as aforesaid, and shall enter into a lease of the said premises for the said further term at the annual ground-rent at which the said premises shall have been so sold at such auction. And the Board or its assigns (all rent and outgoings having been previously paid) shall pay over to the tenant, his executors, administrators, or assigns, the amount of the value of the said buildings and improvements paid to the Board or its assigns by the purchaser, without any deduction whatsoever: Provided always, and it is hereby expressly declared, that nothing in these presents contained shall be deemed to render the Board or its assigns liable to pay to the

tenant, his executors, administrators, or assigns, all or any part of the value of any buildings or improvements upon any valuation made under the foregoing provisions, save after having received the amount thereof for his or their benefit as aforesaid—

4

If the Board or its assigns on the one side, and the tenant, his executors, administrators, or assigns, on the other side, shall not appoint a valuer in writing, and also serve on the other side a notice in writing of such appointment having been made within twenty-one days after being served by the other side with a notice in writing of the appointment of a valuer by such other side, then the valuer appointed by the side giving such notice shall make the said two valuations of buildings, improvements, and annual ground-rent alone, and such valuations shall be final and conclusive on all parties, and a similar final valuation shall be made by either of the valuers in case the other valuer shall refuse or neglect to act—

5

Any such notice as aforesaid may be served upon the Board by being left at the office of the Secretary thereof, and may be served upon the tenant, his executors, administrators, or assigns, by being given to him or them, or any of them, or left at his or their or any of their usual or last known place of abode or business within the Provincial District of Wellington, or sent addressed to him or them, or any of them, at such place as aforesaid through the Post, or left at or affixed to the said land hereby demised, or any building thereon—

6

Upon any sale as aforesaid of a lease by auction, the Board or its assigns may make usual and any other fair and reasonable conditions of sale, to duly and effectively carry out the intention of these presents, and in particular may provide for the payment by purchasers at the auction of a substantial deposit, and may also provide that, in the event of the purchaser refusing or neglecting to complete his purchase according to the terms and conditions thereof, he shall forfeit to the Board or its assigns such deposit, and pay to the Board or its assigns,

as liquidated damages, a sum not exceeding one-half of the total deficiency (if any), during the term of years, of the rent agreed to be paid by the new purchaser at a subsequent sale by auction held in consequence of the default of the original purchaser, as compared with the rent that would have been reserved had such original purchaser not made default, together with all expenses attending the sale—

7

If, owing to the delay on the part of the valuers or otherwise, the new lease cannot be put up to auction before the expiration of the said term hereby granted, or if, owing to the purchaser at any auction held before the expiration of the said term (whether the original auction or a subsequent one held on account of the default of the purchaser to complete as hereinafter mentioned) refusing or neglecting to complete his purchase according to the terms and conditions thereof, the said new lease shall not be purchased before the expiration of the said term, then and in either of the said cases the new lease shall be put up to auction as soon as conveniently can be after the expiration of the said term hereby granted; and, if the purchaser at such last-mentioned auction shall make default as aforesaid, the said lease shall again be put up as soon as conveniently can be after such default, and so on; but in every such case the new term shall run from the date of the expiration of the term hereby granted, though the rent shall not begin to run until the purchaser obtains possession—

8

If there shall be no bid of or over the upset price of the annual ground-rent as valued as aforesaid, then, at or (as the case may be) as from the expiration of the said term hereby granted, the said land hereby leased, with all buildings and improvements thereon, shall absolutely revert to the Board or its assigns, free from any payment or compensation whatever—

9

In the event of the term hereby created being determined by forfeiture, or otherwise than by the effluxion of time, the tenant, his executors, administrators, or assigns, shall not be en-

titled to any compensation whatever for buildings or improvements—

10

In the foregoing memorandum of lease, the words **buildings and improvements** shall be deemed to mean and include buildings and improvements constructed of brick, stone, concrete, or some other equally durable material, and none other.