

This PUBLIC BILL originated in the HOUSE OF REPRESENTATIVES, and, having this day passed as now printed, is transmitted to the LEGISLATIVE COUNCIL for its concurrence.

House of Representatives,
18th September, 1912.

[AS AMENDED BY THE LEGISLATIVE COUNCIL.]

Hon. Mr. Allen.

AUCKLAND EDUCATION RESERVES.

ANALYSIS.

<p>Title.</p> <p>1. Short Title.</p> <p>2. Certain land in Auckland vested in Public Trustee for education purposes.</p>	<p>3. Auckland Hospital and Charitable Aid Board authorized to sell land to Auckland Education Board.</p> <p>4. How Public Trustee to dispose of profits from land vested in him by section 2.</p> <p>5. Memorandum of lease. Schedules.</p>
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A BILL INTITULED

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. Title.

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

1. This Act may be cited as the Auckland Education Reserves Act, 1912. Short Title.

10 2. (1.) The land described in the *First* Schedule hereto, and hitherto known as the Auckland Supreme Court site, is hereby vested in the Public Trustee as a reserve for education purposes in the Education District of Auckland in the manner hereinafter described. Certain land in Auckland vested in Public Trustee for education purposes.

15 (2.) The Public Trustee 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 Trustee shall be a leasing authority within the meaning of that Act.

20 (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.

25 (4.) The rents and profits of the said land, including the accumulated rents and profits thereof now in the hands of the Public Trustee, shall be applied by him in the manner hereinafter described.

30 3. (1.) The Auckland Hospital and Charitable Aid Board may sell and the Auckland Education Board may purchase in fee-simple the land described in the *Second* Schedule hereto.

Auckland Hospital and Charitable Aid Board authorized to sell land to Auckland Education Board.

(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 Trustee 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. 5

(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 : 10

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.

How Public Trustee to dispose of profits from land vested in him by section 2.

4. (1.) Subject to the provisions of the *last preceding* section, the Public Trustee shall each quarter pay over the rents and profits of the lands described in the *First Schedule* hereto in the manner hereinafter described, namely :— 15

(a.) One-third shall be paid to the Auckland University College for the purposes of higher education : 20

Provided that it shall be lawful for the Council of the said College out of such sum to pay for the establishment and maintenance of a hostel or hostels for the board and lodging of students attending the said college or attending any training college for teachers approved by the Minister of Education, and the Council may charge reasonable fees for such board and lodging. 25

(b.) One-third shall be paid to the governing bodies of the several secondary schools, as defined by section eighty-nine of the Education Act, 1908, in the Education District of Auckland, in proportion to the number of pupils in average attendance during the year ending on the thirty-first day of December immediately preceding the date of payment, exclusive of the pupils in any lower department of any such secondary school. 30 35

(c.) One-third shall be paid to the controlling authorities of recognized special, associated, or college classes, as defined by section one hundred and seventy-nine of the Education Act, 1908, for the establishment, equipment, and maintenance of those classes, in proportion to the capitation payable on account thereof for the year ending on the thirty-first day of December immediately preceding the date of such payment : 40

Provided that in computing the proportion payable in respect of the said classes there shall not be taken into account any capitation payable on account of any pupil who was during the period aforesaid also on the roll of any university college, training college, secondary school; or public school, or on the roll of any private school : 45 50

Provided also that not less than half of the sum mentioned in this paragraph shall be paid on account of recognized classes for agricultural purposes.

(2.) As soon as practicable after the thirty-first day of December in each year the Inspector-General of Schools shall determine the proportions in which the several governing bodies of secondary schools and the several controlling authorities of special, associated, and college classes are respectively entitled to receive payments under paragraphs (b) and (c) of subsection *one* hereof during the then current year, and shall forward to the Public Trustee a certificate under his hand setting forth those proportions, and the Public Trustee shall accept that certificate as conclusive as to the proportions in which payments are to be made as aforesaid.

(3.) In the case of associated classes other than the Elam School of Art, the controlling authorities thereof shall pay over all moneys received by them under this section to the managers of those classes respectively.

5 5. (1.) The memorandum of lease, copy of which is contained in the *Third* Schedule hereto, shall henceforth be deemed to have been validly and effectually granted by the Public Trustee in exercise of the powers vested in him 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.

Memorandum of lease.

(2.) The Public Trustee is hereby expressly authorized to accept proper registerable surrenders of the existing lease and grant of bridge-way as provided by paragraph 12 of the said memorandum of lease.

New.

(3.) Notwithstanding anything in the said memorandum of lease the Public Trustee 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 Trustee shall be the sole and final judge), to accept in lieu of the yearly rent of eight hundred and fifty pounds, reserved by the said memorandum of lease, the lower yearly rent of three hundred and seventy pounds, 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.

Until completion of buildings Public Trustee authorized to accept a reduced rent.

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

SCHEDULES.

Schedules.

FIRST SCHEDULE.

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.

SECOND SCHEDULE.

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

THIRD SCHEDULE.

MEMORANDUM OF LEASE.

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 incumbrances 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 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 three hundred and seventy-three pounds (£373) 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 thirteen thousand pounds (£13,000) 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 thirty thousand pounds (£30,000) 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 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 eight hundred and fifty pounds (£850) 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 :—

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 pieces of land first before described buildings of the estimated cost value of thirty thousand pounds (£30,000) 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 thirty thousand pounds (£30,000).

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 buildings 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 1908 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 seventy-three pounds (£373).

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 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 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 registerable 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 Cockrane 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.

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.