

Hon. Mr Scott

MANGAWAI LANDS EMPOWERING

[LOCAL]

ANALYSIS

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A BILL INTITULED

An Act to cancel certain trusts relating to endowment lands previously vested in the dissolved Mangawai Harbour Board, to enable the Otamatea County Council to sell the fee simple of such lands, and to validate the leasing of such lands

WHEREAS all endowment lands of the dissolved Mangawai Harbour Board were, by the provisions of the Northland Harbour Board Act 1965, vested in the Otamatea County Council: And whereas endowment lands so vested in the Otamatea County Council are held for the improvement of the Mangawai Harbour: And whereas the control of the Mangawai Harbour is now vested in the Northland Harbour Board: And whereas the Council desires to give lessees of the said endowments the right to acquire the fee simple of the said endowments: And whereas the Council desires to hold and expend accumulated and future income derived

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from such endowment lands and the proceeds of the sale of such lands for county purposes in and around and for the benefit of the Mangawai endowment area: And whereas, on a surrender of a lease of the said endowment lands, the Council is desirous of granting a new lease or leases to the lessee or any other person for any term up to twenty-one years without public tender or auction or calling for public application: And whereas the council has no authority to grant such leases and it is desirable that the Council be authorised to do so: And whereas the Mangawai Harbour Board (now dissolved) has granted such leases without authority: And whereas it is desirable that any lease so granted by the said Mangawai Harbour Board be validated: And whereas the said Mangawai Harbour Board has granted certain leases purporting to fix the rental in respect of any renewed term of such lease otherwise than in conformity with the provisions set out in the First and Second Schedules to the Public Bodies' Leases Act 1908: And whereas it is also desirable to validate such leases provided such rental is so assessed in conformity with the provisions of the Public Bodies' Leases Act 1908:

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—This Act may be cited as the Mangawai Lands Empowering Act 1966.

2. Interpretation—In this Act, unless the context otherwise requires, —

“Board” means the Mangawai Harbour Board now dissolved:

“Council” means the body corporate called the Chairman, Councillors, and Inhabitants of the County of Otamatea:

“District” means the area of and adjacent to the endowment lands previously vested in the Board and now vested in the Council pursuant to section 14 of the Northland Harbour Board Act 1965 and any area adjoining the Mangawai Harbour:

“Lands” means the endowment lands previously vested in the Board and now vested in the Council pursuant to the provisions of section 14 of the Northland Harbour Board Act 1965;

“Lease” means a lease for a term of two years or more given by the Board or the Council in respect of any part of the lands; and

“Lessee” has a corresponding meaning.

5 **3. Cancellation of trusts**—All trusts and reservations affecting the lands are hereby cancelled and the lands are hereby declared to be held by the Council for county purposes that benefit or tend to benefit the district.

10 **4. Expenditure of accumulated income**—All accumulated income from the lands may be expended firstly, to meet the costs of promoting this Bill and secondly for county purposes that benefit or tend to benefit the district.

15 **5. Right of acquisition of fee simple**—(1) Every lessee of any part of the lands who has complied with all the conditions of his lease may at any time during the currency of his lease acquire the fee simple of the land comprised therein upon the terms and subject to the conditions defined and at a price ascertained and determined in the manner provided by this section.

20 (2) The right of purchase hereby conferred may be exercised by giving notice to the Council and at the same time paying the prescribed valuation fee.

25 (3) The delivery of the notice to the Council shall constitute a contract between the lessee and the Council for the purchase and sale of the land.

 (4) As soon as possible after the receipt of the notice the Council shall cause the unimproved value of the land included in the lease to be ascertained.

30 (5) For the purposes of subsection (4) of this section, the expression “unimproved value” means the sum which the land, exclusive of all improvements thereon, might be expected to realise at the time of valuation if offered for sale, unencumbered by any mortgage or other charge thereon, on such reasonable terms and conditions as a bona fide seller might
35 be expected to require.

 (6) Subject to the rights of the lessee under subsection (9) of this section, the unimproved value ascertained under subsection (4) of this section shall be the purchase price of the land.

(7) As soon as practicable after the unimproved value has been ascertained under subsection (4) of this section, the Council shall deliver to the lessee a notice in writing informing him of the purchase price of the land.

(8) If the Council omits to cause the said value to be ascertained, or the Council omits to deliver the said notice to the lessee within such time as may be reasonable, the lessee may require the purchase price to be ascertained and notice to be given at any time thereafter, so long as he remains in possession of the land, whether the term of his lease has or has not expired, and his right to acquire the fee simple shall not be affected by any such omission or delay. 5 10

(9) Within one month after the receipt of the notice referred to in subsection (7) of this section, the lessee shall elect by notice in writing to the Council whether to purchase the land for cash or on deferred payments and shall state in the notice whether he agrees to the purchase price set out in the notice given him by the Council or whether he requires the purchase price to be determined by arbitration as hereinafter provided. If the lessee omits to give to the Council within the time limited therefor notice of his election as aforesaid, he shall be deemed to have agreed to the purchase price set out in the notice given him by the Council and to have elected to purchase the fee simple for cash at the purchase price as set out herein. 15 20 25

6. Arbitration of purchase price—(1) Where the lessee requires the unimproved value set out in subsection (4) of section 5 of this Act to be determined by arbitration, the said value shall be determined by two independent persons as arbitrators, one of whom shall be appointed by the Council and the other by the lessee. 30

(2) The arbitrators, before commencing to determine the said valuation, shall together appoint a third person who shall be an umpire as between them.

(3) The decision of the two arbitrators if they agree or in such respects as they agree or of the umpire, if the arbitrators do not agree or in such respects as they do not agree, shall be binding on all parties. 35

(4) The duty of the umpire, on reference to him of any question, shall be to consider the respective valuations of the two arbitrators and then to make an independent valuation, and the last-mentioned valuation shall be the decision of the umpire; but, in giving his decision on any question so referred 40

to him, the umpire shall in every case be bound to make a valuation not exceeding the higher and not less than the lower of the valuations made by the arbitrators respectively.

5 (5) The provisions contained in this section for the making of valuations shall be deemed to be a submission to arbitration under and within the meaning of the Arbitration Act 1908 and all the provisions of that Act shall, so far as applicable, apply accordingly.

7. **Payment of purchase money**—(1) If the lessee elects to
10 purchase for cash, he shall within three months after the delivery of the notice required to be given to him by subsection (7) of section 5 of this Act, or, as the case may be, within three months after the date of the award (where the lessee has required the unimproved value to be determined
15 by arbitration) pay the purchase price, together with all rent accrued and accruing due under the lease up to the date of receipt of that payment by the Council and any costs payable pursuant to subsection (4) of this section and, upon those payments being made in full, the purchase shall be deemed
20 to have been completed and the lessee shall be entitled to a registerable transfer in respect of the land purchased.

(2) On completion of any cash sale and transfer the land affected thereby shall be freed from the trusts imposed by section 3 of this Act.

25 (3) If the lessee elects to purchase upon deferred payment, the following provisions shall apply:

(a) He shall within three months after the delivery of the notice required to be given to him pursuant to subsection (7) of section 5 of this Act, or as the
30 case may be within three months after the date of the award, (where the lessee has required the unimproved value to be determined by arbitration) pay a deposit of such amount as may be fixed by the Council together with all rent accrued and accruing due under the lease up to the date of receipt of that deposit by the Council and any costs payable pursuant to subsection (4) of this section:
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(b) Upon such payment the lease shall determine and the lessee shall hold the land under agreement from the date of payment of the deposit upon such terms and conditions (including the length of term of such agreement and the payment of interest) as the Council may in its absolute discretion from time
40 to time determine:

(c) Upon payment being made in full of all purchase money, interest, and any other payments as provided in such agreement, the purchase shall be deemed to have been completed and the purchaser shall be entitled to a registerable transfer in respect of the land purchased. 5

(4) In addition to such sum or sums as shall be payable under subsections (1) and (3) of this section, the purchaser shall also pay to the Council all costs of and incidental to any subdivision or survey that may be required or necessary to enable the purchaser to obtain a registerable transfer of the land so purchased. 10

(5) If the lessee makes default in any payment required by the foregoing provisions of this section within the times aforesaid, the Council may, in its discretion, cancel and determine the contract of purchase, and the lessee shall continue to hold the land under his lease; and in any such case the lessee shall not, without the approval of the Council, be entitled again to give notice exercising his right of purchase until the expiry of five years after the delivery to him of the notice under subsection (7) of section 5 of this Act. 15 20

8. Expenditure of proceeds of sale—(1) Notwithstanding the provisions of any Act, the proceeds of the sale of any of the lands, after deduction of all expenses incurred in or relating to such sale, shall be expended by the Council for county purposes that benefit or tend to benefit the district. 25

(2) The proceeds of the sale or rentals of any of the lands shall be paid by the Council to a special account to be known as the Mangawai Endowment Lands Account and the money, together with interest accruing thereon from the investment thereof, or any part thereof, shall be expended by the Council in accordance with the provisions of subsection (1) of this section. 30

9. Powers to lease lands—Notwithstanding the provisions of section 12 of the Public Bodies' Leases Act 1908 and of any other Act, the Council is hereby authorised and empowered on the surrender of a lease of any of the lands (whether with respect to the whole or to any part of the land comprised therein) to grant to the lessee, or to any other person with the consent of the lessee (without offering the same for sale by auction or tender or without calling for public 35 40

application) a new lease or new leases of the whole or any part or parts of the land comprised in the surrendered lease for a term not exceeding twenty-one years, at such rent as the Council determines and with such provisions as are authorised
5 by the Public Bodies' Leases Act 1908 or by the Counties Act 1956 and as the Council thinks fit, including therein if the Council thinks fit, such right of renewal as is consistent with the provisions of the aforesaid Acts.

10. Subdivision of lands—(1) Any lessee may, with the
10 approval of the Council and subject to the provisions of any Act then in force relating to such subdivision subdivide his holding and transfer any subdivision thereof to any person who is otherwise qualified to acquire the same and who is approved by the Council as a transferee.

15 (2) The cost of all surveys and plans necessary to give effect to the subdivision shall be paid by the lessee.

(3) The lessee may, with the approval of the Council, dedicate any land as roads or streets which may be necessary for the subdivision of the holding. That approval may be
20 given subject to the condition that the lessee shall pay to the Council the value as determined by the Council of the land so dedicated.

(4) On the approval of the plan of the subdivision and on the payment of such fees as may be prescribed by the Council
25 for each new lease, the Council may cancel the original lease or issue new leases over the several lots in the subdivision in accordance with the provisions contained in section 9 of this Act.

11. Validating existing leases—Any lease of any part of the
30 lands, whether granted by the Council or by the Board before the passing of this Act, which contravenes the provisions of the Public Bodies' Leases Act 1908 is hereby validated and shall take effect according to its terms save that where the provisions of any such lease fixes the rental payable for a
35 renewed term of the lease otherwise than in accordance with the provisions of the Public Bodies' Leases Act 1908, such rental shall be deemed to be fixed in accordance with the provisions of that Act and not otherwise.

12. Authority to District Land Registrar—The District
40 Land Registrar for the Land Registration District of North Auckland is hereby authorised and directed, on the deposit

with him of such plans and documents as he may require, to issue such titles and to make such entries in the register book and do all such things as may be necessary to give effect to the provisions of this Act.

13. Repeal—The Mangawai Harbour Board Endowment Reserve Act 1893 is hereby repealed. 5