

[AS REPORTED FROM THE LOCAL BILLS COMMITTEE]

Words struck out by the Local Bills Committee are shown in italics within bold round brackets, or with black rule at beginning and after last line of struck out matter; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line of new matter.

*Mr Dick*

## TIMARU HARBOUR BOARD AND TIMARU CITY COUNCIL EMPOWERING

[LOCAL]

### ANALYSIS

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### A BILL INTITULED

5 **An Act to validate a deed between the Timaru Harbour Board and the Corporation of the City of Timaru entered into for the purpose of settling differences between the said bodies and to empower the Timaru Harbour Board to transfer certain of its lands to the said Corporation and to empower the said Corporation to accept dedication of any part of the lands of the Board as streets with railway sidings thereon and pipeline easements through the same**

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

15 **1. Short Title**—This Act may be cited as the Timaru Harbour Board and Timaru City Council Empowering Act 1962.

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

“The Board” means the Timaru Harbour Board:

“The City Council” means the Timaru City Council.

**3. Special Act**—This Act shall be deemed to be a special Act within the meaning of the Harbours Act 1950. 5

**4. Validation of deed relating to settlement of matters in dispute between the Board and the Council**—The deed, a copy of which is set out in the Schedule to this Act (hereinafter referred to as “the said deed”), is hereby declared to be and always to have been effective, valid, and binding in all respects according to its tenor; and the Board and the City Council are hereby authorised and empowered to carry out the terms and conditions of the said deed and to do all things necessary to give effect to it. 10 15

*New*

**4A. Clause 3 of deed amended**—Clause 3 of the said deed is hereby amended by omitting from the first proviso the words “or make payments of any sum in lieu thereof under subsection (c) of the said section in respect of any future plans of subdivision of any part of the said lands submitted to the Corporation for its approval under the said section”, and substituting the words “under paragraph (c) of subsection (1) of section 351A of the said Act or to make payments of any sum in lieu thereof under section 351c of the said Act in respect of any future plans of subdivision of any part of the said lands submitted to the Corporation for its approval under the said section 351. 20 25

**5. Clause 4 of deed amended**—Clause 4 of the said deed is hereby amended by deleting the words “cause to be made” and the words thereafter to the end of the said clause, and substituting therefor the following words: “transfer to the Corporation the freehold of all that piece of land situated in the City of Timaru containing 24 acres 0 roods 7 perches, be the same a little more or less, being Lot 1 (on plan lodged for deposit in the Land Transfer Office in Christchurch as No. 22231, and being part of the land comprised and described in certificate of title, Volume 142, folio 71 (Canterbury Registry)).” 30 35

*New*

on Deposit Plan 22231 (part Reserve 384 and part Timaru Harbour Board Endowment), and being part of the land comprised and described in certificates of title, Volume 142, folio 71, and 5 Volume 417, folio 189 (Canterbury Registry)".

**5A. Power for Board to transfer land to City Corporation—**

Notwithstanding anything contained in any Act, and for the purpose of fully carrying into effect the provisions of clause 10 4 of the said deed (as amended by section 5 of this Act), the Board is hereby empowered to transfer to the Corporation of the City of Timaru for an estate in fee simple the land referred to in the said clause (as so amended), and thereupon 15 from all trusts, reservations, and restrictions theretofore affecting the same.

**6. Clause 5 of deed amended—**Clause 5 of the said deed is hereby amended by deleting the words "the land shown in the said plan annexed hereto and marked 'B' and therein in 20 outline coloured green", and substituting therefor the following words: "all that piece of land (*situated in the City of Timaru containing 74 acres 2 roods 15 perches, be the same a little more or less, being Lot 2 on plan lodged for deposit in the Land Transfer Office in Christchurch as No. 22231, and*)

*New*

part of which is situated in the City of Timaru, containing 74 acres 2 roods 15 perches, be the same a little more or less, being Lot 2 on Deposit Plan 22231 (part Timaru Harbour Board Endowment), and

30 being part of the land comprised and described in certificate of title, Volume 142, folio 71 (Canterbury Registry)".

*Struck Out*

**7. Clause 6 of deed amended—**Clause 6 of the said deed is hereby amended by deleting the words and figure "a survey 35 plan of that part of the said lands shown as Lot 1 on the said plan annexed hereto and marked 'A'", and substituting the words "survey plans of Lot 1 on Deposit Plan 22097 and Lot 1 on Deposit Plan 22098 (Canterbury Registry)".

**8. Clause 8 of deed amended—**Clause 8 of the said deed is 40 hereby amended by adding thereto the words "which section is also referred to as Section 75 on Timaru Harbour Board Plan No. 971".

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9. **Railway or railway sidings validated**—The Board shall be deemed to have and always to have had power to lay, construct, maintain, and operate railways and railway sidings on any land now or hereafter to be vested in the Board and on any streets that may be laid off on land now or hereafter to be vested in the Board and to alter the position of the same. 5

10. **Power for City Council to accept dedication of streets and to grant easements**—The City Council shall, notwithstanding any statute or law to the contrary, have power to accept dedication of streets on the said lands described as Lot 1 on *(the said)* Deposit Plan 22097 and Lot 1 on *(the said)* Deposit Plan 22098, and the land in Deposit Plan 22391 subject to the railways and railway sidings now constructed thereon and subject also to any existing combustible fuel pipeline easements and other pipeline easements over the same, and shall also have power to permit the laying, construction, maintenance, and operation of railways and railway sidings over any street on the said lands dedicated as street after the passing of this Act, and also to grant combustible fuel pipeline easements and other pipeline easements on such terms and conditions as it shall think fit over any street on the said lands dedicated as street after the passing of this Act. 10  
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*New*

10A. **Power for Board to dedicate land for streets**—Notwithstanding anything contained in any Act, the Board is hereby empowered to transfer and dedicate as and for a public road or street any endowment or other land vested in the Board. 25

11. **Power for Board to grant easements**—The Board shall, notwithstanding any statute or law to the contrary, have power to grant easements in as full and free a manner as it would be entitled to do if it were a private person. 30

12. **Validation of leases**—All deeds of lease, agreements to lease, or tenancies hitherto granted by the Board over any portion of the land comprised in Lot 1 on Deposit Plan 22097 (Canterbury Registry) are hereby validated and are hereby declared to be and always to have been effective valid and binding in all respects between the Board and the respective lessees and tenants. 35  
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SCHEDULE

Section 4

COPY OF DEED

THIS deed made the 16th day of November one thousand nine hundred and fifty-nine: Between the Timaru Harbour Board incorporated under "the Timaru Harbour Board Act 1876" and duly constituted under "the Harbours Act 1950" (hereinafter called "the Board") of the one part: And the Mayor Councillors and Citizens of the City of Timaru a municipal corporation duly constituted under "the Municipal Corporations Act 1954" (hereinafter called "the Corporation") of the other part: Whereas the Board is the owner of certain freehold lands situated within the City of Timaru being part of the land vested in it (*inter alia*) by "the Timaru Harbour Board Act 1876 Amendment Act 1881" and shown more particularly as Lots 1, 2 and 3 on the plan annexed hereto and marked "A" the said Lots 1, 2 and 3 being therein in outline coloured brown green and yellow respectively (which said Lots 1, 2 and 3 are hereinafter called "the said lands"): And whereas the Board has for many years past leased portions of the said lands and for the purpose of giving to the respective lessees access thereto has formed certain streets through and over the said lands which streets are shown on the said plan and are coloured red thereon: And whereas from time to time questions have arisen between the Board and the Corporation as to the said streets and other matters relating to the said lands: And whereas by deeds dated respectively the 29th day of April 1929 and the 20th day of December 1930 certain of the above questions were resolved upon the terms and conditions therein set out: And whereas further questions have arisen between the Board and the Corporation in connection with the said lands which have now been settled between the parties hereto subject as hereinafter set out: And whereas it is intended that these presents shall supersede and cancel the said deeds of the 29th day of April 1929 and the 20th day of December 1930 which shall as from the date of these presents becoming effective be of no force and effect: Now this deed witnesseth that in consideration of the premises and of the respective covenants and agreements herein entered into: It is covenanted by and between the parties hereto as follows:

1. The said deeds of the 29th day of April 1929 and the 20th day of December 1930 shall as from the date of these presents becoming effective be of no force and effect.

2. The Municipal Corporations Act 1954, the Timaru City Bylaws and all other Acts and regulations which apply to privately owned land within the boundaries of the City of Timaru shall (subject as herein provided and to the provisions of the Harbours Act 1950) apply to the said lands and the buildings thereon.

3. All future subdivisions of the said lands or any part thereof shall be submitted to the Corporation under section 351 of the Municipal Corporations Act 1954 if the approval of the Corporation thereto is required under the said section: Provided however that if the provisions of the next succeeding clause shall be carried into effect the Corporation shall not require the Board to make provision for the making of reserves or make payments of any sum in lieu thereof under subsection (c) of the said section in respect of any future plans of subdivision of any

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SCHEDULE—*continued*

part of the said lands submitted to the Corporation for its approval under the said section: Provided also and it is hereby declared that until the survey plan provided for under clause 6 hereof shall be deposited the plans now held by the Corporation showing land leased by the Board from time to time shall be deemed sufficient compliance by the Board with the said section 351 of the Municipal Corporations Act 1954.

4. In consideration of the covenant by the Corporation not to require provision to be made for the making of reserves or the payment of any sum in lieu thereof as aforesaid the Board will cause to be made and deposited in the Land Transfer Office at Christchurch a survey plan of approximately twenty-seven (27) acres three (3) roods twenty-seven (27) perches being part of Caroline Bay as shown on the plan hereto annexed and marked "B" and therein in outline coloured red and on the said plan being deposited as aforesaid the Board will transfer to the Corporation the freehold of the said 27 acres 3 roods 27 perches approximately and the parties hereto will as hereinafter provided take the necessary steps to obtain legislative authority to carry into effect the transfer of the said land to the Corporation.

5. The memorandum of lease dated the 1st day of December 1939 between the Board and the Corporation affecting an area of ninety-nine (99) acres one (1) rood seven and five-tenths (7.5) perches more or less comprising part of Caroline Bay shall as from the date of the transfer of the land pursuant to the last preceding clause be surrendered, but the Board will contemporaneously with the said surrender grant to the Corporation a lease of the land shown in the said plan annexed hereto and marked "B" and therein in outline coloured green on the same terms as the said memorandum of lease dated the 1st day of December 1939 *mutatis mutandis*: Provided nevertheless that the Council shall use and maintain as part of Caroline Bay such part or parts of that portion of Caroline Bay which lies between the eastern boundary of the land coloured green in outline as aforesaid and the western side of the north mole as shall not be required by the Board from time to time for any purpose.

6. That immediately upon these presents becoming effective the parties hereto will cause to be made and deposited in the Land Transfer Office at Christchurch a survey plan of that part of the said lands shown as Lot 1 on the said plan annexed hereto and marked "A" for the purpose of defining and determining the boundaries of each and every section of the land leased or agreed to be leased by the Board or occupied by the Board and each and every street giving frontage to the said sections on the said Lot 1 which shall conform as nearly as possible to the streets and sections shown on the said Lot 1.

7. That the cost of the survey plans mentioned in the last preceding clause and clause 4 hereof shall be borne by the Corporation and the Board in the proportions of three quarters and one quarter respectively.

8. That upon the survey plan mentioned in clause 6 hereof being deposited the Corporation will accept dedication of the streets shown thereon such dedication to be effected by a transfer of dedication if the Board shall have power to execute such transfer or by Proclamation vesting the said streets in the Corporation or in such other manner as may be agreed upon between the parties hereto and the parties hereby covenant to execute all documents which shall be necessary to effect

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SCHEDULE—*continued*

such dedication or vesting as aforesaid and such dedication or vesting shall be subject to the retention of the railways or railway sidings then on the said streets at the time of such dedication or vesting as the case may be and also to any pipe line easements in favour of the lessee of Section 75 on the said plan marked "A".

9. It is hereby covenanted and declared that as railways or railway sidings are not permitted on public streets, the parties hereto will as hereinafter provided take all necessary steps to obtain legislative authority to legalise the railways or railway sidings already laid or constructed or hereafter to be laid or constructed on any of the streets already constructed or hereafter to be constructed on the said lands and to permit or authorise the Board to lay construct maintain operate and alter the position of railways and railway sidings on the said lands: Provided however that the levels of the said railway or railway sidings shall be determined as agreed between the Board the Corporation and the New Zealand Government Railway Department.

10. Notwithstanding anything herein contained or implied the Corporation hereby covenants not to interfere in any manner whatsoever with the railways or railway sidings already laid or constructed or hereafter to be laid or constructed by the Board by agreement with the New Zealand Government Railway Department on streets already constructed or hereafter to be constructed on the said land or with the maintenance or operation thereof and the Corporation hereby expressly consents to the Board laying constructing maintaining and operating in the future such railways or railway sidings as shall be necessary for the convenience of the said Board or its tenants from time to time under agreement with the said Department or otherwise: And that the Board will at its own expense co-operate with the Corporation in lifting the rails and doing all things necessary to enable underground services to be installed: And the Board shall do nothing in the laying construction maintenance or operation of any railway or railway siding that would increase the cost or difficulty of the maintenance or repair of any of the said streets and shall not omit to do anything whereby such omission would increase such cost or difficulty: And further that the Board will maintain the said railways or railway sidings in accordance with the requirements of the New Zealand Government Railway Department: And will also repair and make good any damage which may be done to any of the streets in laying down or lifting the said rails or in the construction maintenance or operation of any such railway or railway siding.

11. The Board shall and will save harmless and keep fully indemnified the Corporation from and against all damage or loss suffered and expenses incurred by the Corporation as a result of any derailment of any railway vehicle on the said railways or railway sidings except to the extent that such damage or loss may have been caused or contributed to by the negligence of an employee of the Corporation and from and against all claims costs petitions suits actions proceedings and demands whatsoever which may be made for or on account of any loss of life or accident or injury to any person or damage to or loss of any property arising out of or caused or contributed to either directly or indirectly by the use or existence of the said railways or railway sidings upon or across any street on the said lands and anything connected therewith

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SCHEDULE—*continued*

or by any defect in the construction or maintenance of the said railways or railway sidings or by reason of the fact that any structure machinery or object erected placed or maintained by the Board in the vicinity of the said railways or railway sidings may afford from the adjoining railways or railway sidings clearances less than those standard on the New Zealand Government Railways except to the extent that such loss of life accident injury damage or loss may have arisen from or been attributable to the default or negligence of any employee of the Corporation.

12. The Corporation will as soon as finance shall become available complete to the usual standards observed by the Corporation (including tar-sealing) the streets mentioned in clause 8 hereof: Provided however that the Corporation shall not be liable or responsible for the formation or maintenance of that part of any street on the said lands occupied or to be occupied or used or to be used in connection with any railway or railway siding.

13. The Corporation will maintain to the usual standard observed by the Corporation all dedicated streets on the said lands (including such streets as have not been tar-sealed) but the Board will contribute to the cost of the maintenance of any street a sum in the proportion which the length of the frontage of land not leased in any street bears to the length of frontage of land leased in such street.

14. The Board will in future subdivisions made by the Board bear the cost of formation of all streets thereon up to the usual standard observed by the Corporation (excepting tar-sealing) including the provision for drainage and water services and kerbing and channelling where foot-paths are required by the Corporation: Provided however that the Corporation will within two years of the date of dedication of all streets in future subdivisions as aforesaid tar-seal the same at its own expense.

15. The Corporation will permit the Board to operate its plant over the streets on the said lands subject to the Board meeting the cost of any damage directly attributable to such operations.

16. Where a sewer stormwater drain and water main or any one or more of such services have not been laid in any street, then upon request by the Corporation at any time after dedication of such street, the Board shall arrange for and shall lay those services or such of them as may be required and reinstate the street to its former standard immediately prior to the laying of the said service or services and the Board shall pay the cost of the laying of such services and reinstatement of the said street in default whereof the Corporation may lay such service or services and reinstate such street as aforesaid and recover the cost thereof from the Board: And it is hereby declared that nothing in this clause shall impose any obligation upon the Board in respect of connections from any such sewer stormwater drain or water main to any land owned or leased by the Board.

17. The Board shall maintain in good order and condition to the satisfaction of the Corporation the open natural drains on the Board's southern foreshore where the said drains cross part of the said lands and when the land through which the said drains run shall be subdivided, the Board shall install covered drains to the satisfaction of the Corporation which covered drains shall thereafter become public drains: Provided nevertheless that the Corporation shall be responsible for the outlet to the sea of the drains referred to in this clause whether open or covered.



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SCHEDULE—*continued*

18. The Board shall meet the cost of any extension to the southern outfall sewer necessitated through accretion of land brought about by harbour works.

19. The Corporation agrees to maintain at its own cost up to the standard required for dedicated streets under this agreement the strip of land already formed by the Board running from Ritchie Street giving access to Caroline Bay the approximate position of which is shown in blue in the plan annexed hereto and marked "A" the width of such strip of land to be maintained as aforesaid to be decided upon from time to time by agreement between the Board and Corporation: Provided however that the Board shall be responsible for any damage caused to the said strip of land arising out of the operation of any railway or railway siding thereon: And provided further that in the event of the alignment of the said strip of land being altered by agreement between the Board and Corporation the cost of such realignment shall be borne as may be agreed on between the parties.

20. The Board shall not be liable to the Corporation for rates on any land vested in the Board until the same shall be leased by the Board and if payment of rates shall be demanded from the Board by the Corporation in respect of any land shown on any plan of subdivision approved under clause 3 hereof before such land shall have been leased by the Board then the Corporation shall remit the payment of rates on such unleased land until such time as the same shall be leased by the Board.

21. If any question dispute or difference whatsoever shall arise between the parties to these presents or any of them touching these presents or any clause or thing herein contained or the construction hereof or as to any matter in any way connected with or arising out of these presents or the operation thereof or the rights duties or liabilities of either party in connection with the premises then and in every such case unless the parties concur in the appointment of a single arbitrator the matter in difference shall be referred to two arbitrators one to be appointed by each party to the difference or to an umpire to be appointed by the arbitrators pursuant to and so as with regard to the mode and consequence of the reference and in all other respects to conform to the provisions in that behalf contained in the Arbitration Act 1908 or any then subsisting statutory modification thereof.

22. The costs of the preparation and completion of this deed and all legal charges incidental thereto including the costs in connection with the application or applications for legislative authority hereunder shall be borne by the parties hereto in equal shares.

23. It is hereby expressly covenanted and declared that the parties hereto will as soon as possible take the necessary steps to obtain the legal or legislative authority required under clauses 4 and 9 hereof and any further legal or legislative authority necessary to give effect to these presents and in the event of either party hereto unduly refusing or neglecting to take such steps the other party hereto may itself proceed to obtain such authority.

24. And lastly it is hereby expressly covenanted and declared that these presents shall become effective when all legal or legislative authority as aforesaid shall have been obtained.

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SCHEDULE—*continued*

In witness whereof these presents have been executed the day and year first before written.

The Common Seal of the Timaru Harbour Board was hereunto affixed in the presence of the undersigned by whom this agreement was also executed on the Board's behalf:

W. H. HALL, Chairman.

W. TUBB, Member.

N. DE V. LAWRENCE, Secretary.

The Common Seal of the Mayor Councillors and Citizens of the City of Timaru was hereunto affixed pursuant to a resolution of the Timaru City Council passed on the sixteenth day of November 1959 in the presence of:

R. E. WHITE, Mayor.

J. A. GOODWIN, Town Clerk.