

*Approved by Ed. H. ...
1933. 10. 10.*

New Zealand.



ANALYSIS.

- Title.
Preamble.
1. Short Title.
2. Interpretation.

3. Validating agreement between the Board and the Corporation with respect to the supply of water and matters incidental thereto.
4. Authorizing the Board to borrow £12,000.
5. Act deemed a special Act. Schedule.

1933, No. 10.—*Local and Personal.*

AN ACT to validate a certain Memorandum of Agreement entered into between the Bluff Harbour Board and the Corporation of the Mayor, Councillors, and Burgesses of the Borough of Bluff; to empower the said Board and Corporation to carry out the Provisions of the said Memorandum of Agreement; and to authorize the said Board to borrow certain Moneys. Title.

[20th December, 1933.]

WHEREAS the Board in or about the year eighteen hundred and eighty-four, under an arrangement with the Campbelltown Borough Council, constructed a reservoir for water on Bluff Hill: And whereas the Board has for many years been supplying water from such reservoir Preamble.

not only for shipping and harbour purposes, but to residents within the Borough of Bluff: And whereas there have been in the past disputes between the Board and the Bluff Borough Council in regard to the control of the supply of water at Bluff: And whereas, in order to settle such disputes, it has been arranged by the Board and the Corporation that the Corporation will take over the supplying of water to residents and others within the Borough of Bluff and on certain reclaimed lands, and that the Board, retaining the ownership and control of the catchment area for water and the reservoirs and continuing to supply water for shipping and harbour purposes, will provide a supply of water in bulk to the Corporation: And whereas, to define the terms of the arrangement and to provide for matters incidental thereto, a memorandum of agreement, a copy of which is set out in the Schedule hereto, has been executed by the Board and the Corporation: And whereas the Board and the Corporation are desirous of obtaining legislative authority to validate and confirm such memorandum of agreement, and to authorize and empower the Board and the Corporation to carry out and perform the terms and conditions thereof:

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

Short Title.

1. This Act may be cited as the Bluff Harbour Board and Bluff Borough Council Empowering Act, 1933.

Interpretation.

2. In this Act—

“Board” means the Bluff Harbour Board:

“Corporation” means the Corporation of the Mayor, Councillors, and Burgesses of the Borough of Bluff.

Validating agreement between the Board and the Corporation with respect to the supply of water and matters incidental thereto.

3. (1) The memorandum of agreement made between the Board and the Corporation, and dated the seventh day of November, nineteen hundred and thirty-three, a copy of which is set out in the Schedule hereto, is hereby validated and confirmed, and the Board and the Corporation respectively shall always be deemed to have had authority and power to enter into and execute the same, and the same is hereby declared to be binding on the Board and the Corporation according to the tenor thereof.

(2) The Board and the Corporation are hereby respectively authorized and empowered to carry out, perform, fulfil, and keep each and all and every of the terms, conditions, and provisions in such memorandum of agreement specifically set forth, anything in any Act to the contrary notwithstanding.

4. The Board may from time to time, for the purpose of providing the money required by it for or in connection with the works and things which under the provisions of the hereinbefore mentioned memorandum of agreement are to be carried out or done by it and generally for the construction, extension, and improvement of the waterworks controlled by the Board, borrow any sum or sums of money, not exceeding in the whole twelve thousand pounds, in addition to any moneys heretofore authorized to be borrowed by it.

Authorizing the Board to borrow £12,000.

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

Act deemed a special Act.

SCHEDULE.

Schedule.

MEMORANDUM of agreement made this seventh day of November one thousand nine hundred and thirty-three between the Bluff Harbour Board of the Dominion of New Zealand a Harbour Board mentioned in the First Schedule to the Harbours Act 1923 (hereinafter called "the Board") of the one part and the Mayor, Councillors and Burgesses of the Borough of Bluff of the said Dominion a Corporation under the Municipal Corporations Act 1920 (hereinafter called "the Corporation") of the other part Whereas the Board having constructed water-works in the vicinity of the Borough of Bluff has for some time past been supplying water from such water-works both for shipping purposes at Bluff Harbour and to residents within the Borough of Bluff for domestic purposes And whereas the Board is the owner of pipes and other things forming part of the reticulation for the supply of water within the said Borough And whereas it

has been agreed as hereinafter appears that the Board will sell such reticulation to the Corporation and will sell water to the Corporation all as hereinafter set forth And whereas it is necessary that the terms of the sale of the said part of such reticulation and of water and other matters incidental thereto should be embodied in a written agreement Now this agreement witnesseth and it is hereby agreed and declared by and between the parties hereto as follows :—

I. The Board shall sell and the Corporation shall purchase for the sum of one thousand pounds (£1,000) all those the mains pipes appliances accessories and things for the conveying of water at present owned by the Board within the Borough of Bluff and on land outside the boundaries of the Borough of Bluff reclaimed by the Board under the authority of the Bluff Harbour Reclamation and Leasing and Empowering Act 1929 with the exception of the cast-iron main which runs from the Board's reservoir on Section 8, Block 1, Campbelltown Hundred along Slaney Street to Gore Street together with the meter, air-valves, appliances, accessories and things fitted to such main (hereinafter referred to as "the said main in Slaney Street") the things agreed to be sold under this clause being hereinafter referred to as "the said water reticulation system".

II. (1) The Corporation shall sell and transfer to the Board and the Board shall purchase the unencumbered fee-simple of all those pieces of land containing together 59 acres 3 roods and 7 poles a little more or less being parts of Section 7, Block 1, Campbelltown Hundred, the said pieces of land being more particularly shown on plan a copy of which is deposited in the Land Registry Office at Invercargill with copy of Proclamation No. 1485 excepting thereout such parts of the mines of coal and other minerals (if any) under the surface thereof as are not taken by the said Proclamation but are exempted thereout by law and being all the land comprised in certificate of title Volume 130 folio 127 Southland Register at or for the sum of seven hundred and fifty pounds (£750).

(2) The registration of the memorandum of transfer of such land, the handing over of the said water reticulation system, and the payment of the respective amounts of purchase-money shall be contemporaneous and shall take place on a day to be mutually agreed upon by the parties hereto or failing agreement at the expiration of two calendar months after the legislation hereinafter referred to shall have come into force, the carrying out of the matters mentioned in this subclause being hereinafter referred to as "completion".

III. From and after completion the Board shall supply to the Corporation and the Corporation shall take from the Board such filtered water from the Board's water-works as shall from time to time be required by the Corporation for all purposes within the Borough of Bluff upon the following terms and conditions :

(1) Such water shall be delivered by the Board into the said water reticulation system from the said main in Slaney Street or any main substituted therefor through the connections thereon mentioned in clause IV hereof.

(2) The quantity of water supplied by the Board to the Corporation shall be measured by the following means :

- (a) The Board shall supply, fit, and shall from time to time remove and re-fit, and shall maintain a water-meter (hereinafter referred to as "the main meter") on the said main in Slaney Street at a point on the said main on the southern side of that street within the Borough of Bluff which is for the time being the most southerly street intersecting Slaney Street.
- (b) The Board shall in order to obtain the water required by it for shipping purposes and for such other purposes as the Board is by this memorandum authorised to supply water, lay a five inch main (hereinafter, with any main substituted therefor, referred to as "the harbour main") and connect up the same with the said main in Slaney Street at or near the junction of Slaney Street and Gore Street and shall on the harbour main supply, fit and maintain a water-meter (hereinafter referred to as "the harbour meter").
- (c) If and when by reason of lands having been reclaimed from the sea by the Board it becomes necessary to extend the said main in Slaney Street across Gore Street, the Railway Reserve and such reclaimed lands, the Board shall at its own cost extend such main to the water front and shall fit and maintain the harbour meter in a position thereon beyond all connections used for the purpose of delivering water to the Corporation.
- (d) The quantity of water to be paid for by the Corporation shall be that arrived at by deducting from the quantity shown by the reading of the main meter the quantity shown by the reading of the harbour meter.
- (e) The said water-meters shall be read jointly by an officer of the Board and an officer of the Corporation on the first days of March, June, September and December in each year or on such further or other days as the parties hereto shall mutually agree upon or as shall be decided by the Committee of Supply hereinafter mentioned if the question be referred to it by either party.
- (3) The water shall forthwith on the meters being from time to time read as aforesaid be paid for by the Corporation at the rate of one shilling for every one thousand gallons (or such other rate as may hereafter be mutually agreed upon by the Board and the Corporation) less a discount of five per centum of each amount paid within fourteen days of the respective reading of the meters.
- (4) In the event of either of the said meters ceasing to function or having to be removed for renewal, repairs or cleaning, the amount of water delivered by the Board to the Corporation during the period such meter is not functioning or is not in position shall be the amount so delivered during a similar period in the preceding year plus five per centum thereof.
- (5) In the event of the Corporation using water for the purpose of fighting any fire for any period exceeding five hours and making application to the Board with respect to the water so used for a reduction in the usual rate the application shall be referred to the Committee of Supply hereinafter mentioned for its decision.

(6) In the event of water being lost by reason of a break occurring in the said main in Slaney Street or the extension thereof or in any main substituted therefor by the Board the quantity of water so lost shall be computed by the Board's Engineer (whose computation shall be final) and the quantity so computed shall be deducted from the quantity which measured by the method hereinbefore set forth would otherwise be charged to the Corporation for the period during which such break occurred.

(7) The Board shall in fitting a by-pass valve on the harbour main fit such valve in such a position that the discharge of water through the same will be metered by the harbour meter.

IV. (1) After completion the Board shall as and when required by the Corporation fit on the said main in Slaney Street or the extension thereof the following connections and the Corporation shall in each of its financial years in which any of such connections are fitted pay to the Board one half of the cost of such connections and of the fitting of the same namely :

- (a) At the intersection of any street within the Borough of Bluff intersecting Slaney Street to the south of Boyd Street a four inch connection on the eastern and on the western side of the said main.
 - (b) At the intersection of Boyd Street and Slaney Street a four inch connection on the eastern and on the western side of the said main.
 - (c) At the intersection of Theodore and Slaney Streets a four inch connection on the eastern and on the western side of the said main.
 - (d) At the junction of McDougall and Slaney Streets a four inch connection on the western side of the said main.
 - (e) At the intersection of Bann and Slaney Streets a four inch connection on the eastern and on the western side of the said main.
 - (f) At the intersection of Foyle and Slaney Streets a five inch connection on the eastern and on the western side of the said main.
 - (g) At the intersection of Barrow and Slaney Streets a four inch connection on the eastern and on the western side of the said main.
 - (h) At the junction of Gore and Slaney Streets a five inch connection on the eastern and on the western side of the said main.
 - (i) On the extension of the said main in Slaney Street provided for in paragraph (c) of sub-clause (2) of clause III hereof such four inch connections as may be required by the Corporation.
- (2) The foregoing connections shall be fitted by the Board as and when required by the Council.
- (3) The Corporation shall when each of the foregoing connections is being fitted instal a valve in each connection between the Slaney Street main or extension and the Corporation's main.
- (4) No connections other than those mentioned in this clause and the connection for the harbour main shall be made on the said main in Slaney Street or any extension thereof or on any main substituted therefor.

V. (1) Should the Board's Engineer certify in writing at any time after completion that the said main in Slaney Street is unfit for further use the Board shall lay a new main in Slaney Street of seven inch pipes to replace the existing main and the Corporation shall at the time of the purchase of such pipes pay to the Board an amount equal to the then difference between the prices of five inch pipes and seven inch pipes of the quality purchased by the Board for the length of the said main between the main meter and Gore Street. Provided however that the Board shall before laying the said new main give to the Corporation three calendar months' notice in writing of its intention so to do.

(2) When laying the said new main the Board shall supply and fit connections thereon free of cost to the Corporation corresponding with such of the connections mentioned in paragraphs (a) (b) (c) (d) (e) (f) (g) and (h) of sub-clause (1) of clause IV hereof as are on the old main when the same is lifted.

(3) If at any time after the seven inch main shall have been laid in Slaney Street either party is of opinion that the said main is incapable owing to its size of supplying sufficient water for the requirements of both parties then if both parties are unable to agree on any of the following questions, namely :

(a) The adequacy or inadequacy of the said main or

(b) The size of pipes required for a new main or

(c) The proportion of the cost of laying the new main to be paid by either party,

such of the foregoing questions as they shall be unable to agree upon shall be referred to the Committee of Supply mentioned which shall if it is called upon to consider question (c) above take into account the respective increase in the use of water by each party.

VI. The said main in Slaney Street and any extension thereof and any main laid in the place thereof as hereinbefore provided and all connections thereon and all mains and water-pipes hereafter laid by the Board within the Borough of Bluff or on lands vested in the Corporation shall remain and be the property of the Board and the said main and extension and all mains and water-pipes hereafter laid by the Board as aforesaid shall (subject as to the said main in Slaney Street or any main laid in the place thereof to the foregoing provisions) be under the control of and maintained and renewed by the Board.

VII. (1) When the new main in Slaney Street or any extension of the said main on reclaimed land is being laid the Corporation shall supply free of cost to the Board and the Board shall free of cost to the Corporation fit on the said main at the junction with McDougall Street and the intersections of Boyd, Theodore, Bann, Foyle and Barrow Streets and any future streets south of Boyd Street and on the said extension of the said main at the points where it intersects streets on such reclaimed lands, pipe sections, collars or flanges, reducing tees, distance pieces, ball hydrant fittings, surface boxes and all other fittings necessary for the complete installation of fire plugs at the places mentioned.

(2) The Corporation shall at its own cost and expense maintain such fire plug installations.

VIII. (1) The Corporation shall at the cost of the Board by deed or instrument as the case may require grant to the Board an easement to construct, lay and maintain in under and along Slaney Street a line of mains or pipes for carrying or conducting water (with such valves, manholes and surface boxes as may be necessary) of such sizes and in such position (both however to be fixed by the deed or instrument) as may be required by the Board and also at the request and cost of the Board will so grant a similar easement in and under and along or across any other street or any public reserve within the Borough of Bluff as it now is or as hereafter extended.

(2) Each of such mains or lines of pipes shall be or be laid at a depth of not less than two feet and along a line to be shown in the deed or instrument granting such easement.

(3) Every such grant of easement shall include the right at all times to enter upon the street or public reserve affected by such grant and to open up the soil thereof for the purpose of inspecting, removing, replacing, maintaining, cleansing, repairing, conducting, connecting, managing and obtaining access to such mains or pipes, valves, manholes and surface boxes doing no damage and restoring the surface as soon as possible thereafter.

(4) The Board shall join in and become a party to any deed or other document granting any such easement in respect of any street and shall therein covenant to indemnify the Corporation from and against all actions, claims, demands and proceedings taken or made against it by reason of or in any way arising out of the existence of such mains or pipes or the construction, laying, maintenance or replacement thereof.

(5) The Board shall pay to the Corporation the sum of five pounds (£5) for each year or part of a year during which the said main in Slaney Street or any main laid in place thereof remains in such street and the sum of two pounds (£2) for each year or part of a year during which any main or line of pipes (with the exception of the pipe-line or pipe-lines in Flagstaff Road hereinafter mentioned) laid by the Board remains in any other street in the Borough of Bluff.

(6) With respect to Flagstaff Road the Corporation shall at the request and cost of the Board grant to the Board an easement or easements (as hereinbefore set forth, but without payment of any annual or other sum in respect thereof) for one or more than one main or line of pipes leading to or from any reservoir or reservoirs of the Board.

(7) The Corporation shall at the request of the Board grant to the Board by deed or instrument as the case shall require a pipe-line easement of the nature hereinbefore mentioned but without payment of any annual or other sum in respect thereof in and under such part of Section 24, Block 1, Campbelltown Hundred as the Board may desire and shall in like manner grant to the Board the right without payment as aforesaid to construct maintain and use for such period as the Board may think fit a race or channel for carrying or conducting water of such size and in such position (to be fixed however by such deed or instrument) on such land as the Board shall think fit.

IX. From and after completion the Board shall not supply water otherwise than to the Corporation under this memorandum of agreement except for the following purposes or to the following persons :

- (a) For shipping and harbour use.
- (b) For the Board's workshops.
- (c) For or in connection with the construction of any harbour work or works whether the same are being carried out by the Board's servants or by contract.
- (d) To any persons, firms or corporations desiring a supply of water outside the boundaries of the Borough of Bluff other than on reclaimed land Provided however that before agreeing to supply any such person, firm or corporation the Board shall refer the matter to the Committee of Supply hereinafter mentioned for its decision on the question of whether there is sufficient water available to permit of such agreement to supply being made.

X. (1) On completion all existing agreements between the Board and the Corporation for the supply of water by the former to the latter shall be deemed to have been rescinded by mutual consent and the Board will so far as it is able so to do assign to the Corporation its rights under all existing contracts for the supply of water within the Borough of Bluff to others than the Corporation and the Corporation shall take over all the Board's liabilities under the contracts so assigned.

(2) The amounts payable for the supply of water under such contracts shall if necessary be apportioned between the Corporation and the Board as at the date of completion.

XI. The Board shall take all reasonable steps by way of increasing the size or number of its reservoirs and/or the catchment areas therefor and/or the water races or pipes leading into such reservoir or reservoirs to ensure an adequate supply of water for both the Board's and the Corporation's requirements.

XII. (1) There shall be a permanent committee to be known as the Committee of Supply consisting of the Chairman and Secretary for the time being of the Board and the Mayor and Town Clerk for the time being of the Borough of Bluff.

(2) In the event of the Chairman of the Board or the Mayor of the Borough, or the Secretary of the Board or the Town Clerk of the Borough being unable to attend any meetings of such Committee the Deputy-Chairman or Deputy-Mayor, or Assistant Secretary or Assistant Town Clerk shall be entitled to attend such meeting in the place of and to exercise all the powers and rights of the Chairman, Mayor, Secretary or Town Clerk as the case may be.

(3) A meeting of such committee may be called by any of the members thereof for some place either at Bluff or Invercargill by giving at least three hours' notice of the time and place of the meeting to the other members.

(4) A quorum at any meeting of such committee shall be three.

(5) Each member of such committee shall be entitled to one vote.

(6) The Chairman or Deputy-Chairman of the Board shall be entitled to be the Chairman at all meetings of the committee.

(7) The Chairman of the Committee shall have a deliberative but not a casting vote.

(8) (a) In the event of there being an equality of votes on any question or matter coming before the committee for decision such question or matter shall unless the members unanimously agree otherwise, be submitted to the Resident Engineer of the Public Works Department at Invercargill or other the officer holding any office in the said Department at Invercargill substituted for such office of Resident Engineer or failing him to the City Engineer of the City of Invercargill the decision of either of whom shall be final.

(b) All members of the committee shall be entitled to be present when such question or matter is submitted to either of such persons for his decision and to place such facts in respect to the question or matter to be decided before him as he may consider relevant.

XIII. All questions and matters which by the provisions of this memorandum of agreement are to be referred to the Committee of Supply shall be decided under the provisions of the preceding clause and such decisions shall be binding on the parties.

XIV. In addition to the questions and matters which are by the previous provisions of this memorandum of agreement to be referred to the Committee of Supply, there shall be referred to such committee the following questions arising out of any temporary deficiency in the supply of water from whatever cause arising, namely

(a) Whether the necessity has arisen to limit the supply of water to either of the parties hereto or to any other person, firm or corporation, and if so

(b) The extent to which such supply shall in any case be limited and for what period or periods.

XV. (a) Both parties hereto shall take all the steps necessary and shall use their best endeavours to have enacted as soon as possible the legislation necessary to validate this memorandum of agreement and to make the same binding on the Board and the Corporation and to empower the Board and the Corporation to enter into and to implement the same.

(b) Such legislation shall if the Board so desires include a provision whereby the Board is empowered to borrow a sum not exceeding twelve thousand pounds (£12,000) for the purpose of providing the money required to be paid by the Board under this memorandum of agreement and such further moneys as may from time to time be required by it for or in connection with works which under the provisions of this memorandum of agreement are to be carried out by it and generally for the construction extension and improvement of the water-works controlled by the Board.

(c) Such legislation shall be prepared by the Board's solicitors and the legal costs and other expenses of and incidental to the preparation and promoting of the same shall be borne by the parties hereto in equal shares.

XVI. This memorandum of agreement shall not with the exception of clause XV hereof have any force or effect unless and until the legislation mentioned in the said clause XV is enacted whereupon the other provisions hereof shall bind the parties hereto according to the tenor hereof with such alterations or additions thereto (if any) as may

be mutually agreed upon by the parties hereto reduced into writing under the seals of both before such legislation is enacted and referred to in such legislation.

In witness whereof this memorandum of agreement has been executed the day and year first hereinbefore written.

The common seal of the Bluff Harbour Board was hereunto affixed in the presence of—

WILLIAM A. OTT, Chairman.

W. HINCHEY, Member.

H. C. GIMBLETT, Secretary.

[SEAL.]

The common seal of the Mayor, Councillors and Burgesses of the Borough of Bluff was hereunto affixed in the presence of—

T. F. DOYLE, Mayor.

N. W. MCGORLICK, Councillor.

H. A. FERGUSON, Town Clerk.

[SEAL.]