

New Zealand.



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1933, No. 16.—*Local and Personal.*

Title.

AN ACT to provide for the Sale by the Napier Harbour Board to the Roman Catholic Archbishop of Wellington of a Portion of a Harbour Reserve, and to ratify a certain Agreement entered into for that Purpose.

[20th December, 1933.]

BE IT 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 Napier Harbour Board Empowering Act, 1933.

Interpretation.

2. In this Act, unless the context otherwise requires,—
“The Board” shall mean the Napier Harbour Board:

“The Purchaser” shall mean the Roman Catholic Archbishop of Wellington, a corporation sole:

“The parties hereto” shall mean and include both the Board and the purchaser as hereinbefore respectively defined.

3. (1) The Board is hereby authorized and empowered to sell to the purchaser the parcel of land comprised and described in the agreement set out in the Schedule hereto, upon the terms and conditions contained in the said agreement :

Power to sell
parcel of land.

Provided that the parties hereto shall be at liberty, by any subsequent bargain or bargains *inter se*, to modify or vary the said terms and conditions or any of them, but so that no material alteration or variation shall be made in either the parcel of land to which the said agreement purports to relate, or the purchase price, or mode of ascertaining the purchase price thereof, as the same are respectively provided for in the said agreement.

(2) The parties hereto may respectively do and perform all such acts and things, and make, sign, and execute all such deeds, instruments, and writings, as in their opinion, or in the opinion of either of them, it may be necessary or expedient to do, perform, make, sign, or execute, for the purpose of giving effect to the provisions of the said agreement, or any modification or variation thereof as aforesaid.

4. The District Land Registrar of Hawke's Bay shall register a transfer of the said parcel of land from the Board to the purchaser, expressed to be made in pursuance of this Act, without being concerned to see or inquire as to whether or not the purchase price therein stated is the correct consideration, or otherwise as to the compliance by the parties hereto with the terms of the said agreement or any modification or variation thereof as aforesaid.

District Land
Registrar to
register transfer.

SCHEDULE.

Schedule.

THIS AGREEMENT made this twentieth day of September one thousand nine hundred and thirty-three between the Napier Harbour Board (hereinafter called "the Board") of the one part and the Roman Catholic Archbishop of Wellington a corporation sole (hereinafter called "the purchaser") of the other part Witnesseth as follows :—

1. Subject to the provisions of clause numbered eight (8) hereof the Board will sell and the purchaser will purchase all that piece of land more particularly described in the schedule hereto and delineated in the plan drawn hereon or annexed hereto bordered red.

2. The said piece of land is at present leased by the purchaser from the Board under memorandum of lease bearing date the tenth day of June one thousand nine hundred and thirty-three and registered under number 8298 Hawke's Bay Registry and is held by the purchaser upon

the conditions set out in the said memorandum of lease which upon completion of the sale evidenced hereby will merge in the fee-simple of the said piece of land.

3. The purchase money shall be the value of the said piece of land without taking into account any improvements thereon and shall be fixed by arbitration by two arbitrators one to be appointed by the Board and one to be appointed by the purchaser or in the event of such arbitrators being unable to agree by their umpire in manner provided for by the Arbitration Act 1908 and these presents shall be deemed to be a submission under that Act. If such arbitrators are unable to agree the umpire shall be bound to make a valuation not exceeding the higher or less than the lower of the valuations made by the two arbitrators respectively. Such arbitration shall not be made until legislative authority enabling the Board to carry out this agreement is obtained as set out in clause numbered eight (8) hereof but shall be made within fourteen (14) days thereafter.

4. Possession of the said piece of land shall be given and taken not later than one calendar month after the legislative authority hereinbefore mentioned has been obtained and in the meantime the said memorandum of lease shall subsist and rent thereunder shall be duly apportioned for any current period as at the date of such possession.

5. On the said date of possession the purchaser will pay to the Board the purchase money as set out in clause numbered three (3) hereof in cash and contemporaneously therewith the Board will hand to the purchaser a registrable memorandum of transfer or other assurance of the fee-simple of the said piece of land free of all encumbrances. If there shall be any delay in payment of the purchase money interest shall be paid to the Board thereon at the rate of five pounds (£5) per centum per annum from the said date of possession until the purchase money is paid but without prejudice to the next following clause hereof.

6. If default shall be made by the purchaser in payment of the purchase money and interest (if any) thereon or any part thereof for the space of three calendar months after the time hereinbefore appointed for giving and taking possession then the Board may but without prejudice to its right of action for the recovery of the purchase moneys and interest and all expenses incurred owing to such default)—

(a) Enforce specific performance of this contract

(b) By notice in writing to the purchaser or parish priest for the time being of St. Patrick's Roman Catholic Church in Napier determine this contract

and the purchaser shall not have the right to direct or control the Board as to the adoption of any of its remedies to the exclusion of any other or others.

7. The memorandum of transfer referred to in clause numbered five (5) hereof shall contain a provision that it shall not be lawful for the purchaser by virtue of any Fencing Act then or thereafter to be in force in New Zealand or otherwise to require or compel the Board to aid in or contribute in any way towards the cost of erecting or maintaining any dividing fence between the said piece of land or any part thereof and any land adjacent thereto being the property of the Board with this proviso that nevertheless such

provision is intended for the benefit and protection of the Board and its successors and shall not enure for the benefit of any other person or persons whomsoever.

8. This agreement is entered into subject to the following condition that the Board shall be able to obtain legislative authority to carry out the same. If such legislative authority shall be obtained during the next ensuing session of the General Assembly of New Zealand or at any later session (and the Board hereby undertakes that it will use its best endeavours to obtain such authority during the next ensuing session) then this agreement shall *ipso facto* become a binding agreement on the part of both parties hereto but if the General Assembly of New Zealand shall definitely and conclusively refuse to pass any Bill promoted and placed before Parliament at the next ensuing or any later session for the purpose of obtaining the legislative authority aforesaid it shall become *ipso facto* void and of no effect. In the meantime neither party shall have the right to withdraw from this agreement.

9. The costs of and incidental to the preparation and passing of the necessary Act of Parliament to give the Board legislative authority to enter into and carry out this agreement including all legal advertising survey and/or other costs involved in the preparation of such Act and the preparation and completion of this agreement and incidental to the above matters shall be borne and paid by the purchaser it being the true intent and meaning of this provision that the Board shall not be put to any expense whatever in and about the matters hereby provided for or contemplated.

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

THE SCHEDULE.

All that piece of land situate in the Provincial District of Hawke's Bay containing by admeasurement three (3) roods be the same a little more or less being part of the Port Ahuriri Lagoon Reserve comprising lot one hundred and twenty-two (122) on Deeds Plan Number 579 and being all the land in certificate of title H.B. Volume 55, folio 240, Hawke's Bay Registry.

Sealed with the seal of the Napier Harbour Board in the presence of— } [SEAL.]

TREVOR M. GEDDIS, Chairman.
JNO. P. KENNY, Treasurer.

Signed by the Roman Catholic Archbishop of Wellington by his attorney Thomas O'Shea in the presence of— } THE ROMAN CATHOLIC ARCHBISHOP OF WELLINGTON by his attorney THOMAS O'SHEA.

B. Cahill, Solicitor, Wellington.

[STAMP]

I the Most Reverend Thomas O'Shea of the City of Wellington Coadjutor Archbishop do solemnly and sincerely declare as follows:—

1. That I and the Right Reverend Thomas Frederick Connolly of Wellington Monsignor are jointly and severally the Attorneys of the

Most Reverend Francis Redwood of Wellington Archbishop of the Roman Catholic Archdiocese of Wellington.

2. That I have executed the foregoing agreement for sale and purchase in the name and on behalf of the Roman Catholic Archbishop of Wellington the said Most Reverend Francis Redwood named therein under and by virtue of a power of attorney dated the fifteenth day of May one thousand nine hundred and thirty-one under the hand and seal of the said Most Reverend Francis Redwood a copy of which power of attorney is deposited in the Land Registry Office at Wellington under number 6877 and at Napier under number 2554.

3. That I have not received any notice or information of the revocation of such power of attorney by death or otherwise.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Justices of the Peace Act 1927.

Declared by the said Thomas O'Shea at }
Wellington this 20th day of September } THOMAS O'SHEA.
1933 before me—

B. Cahill, a Solicitor of the Supreme Court of New Zealand.