



# AUCKLAND PROVINCIAL GOVERNMENT GAZETTE.

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## HARBOUR ENDOWMENTS.

Superintendent's Office, Auckland,  
12th May, 1855.

**T**HE opinion of the Provincial Law Officer on the subject of the Harbour Endowments is published for general information.  
Wm. BROWN,  
Superintendent.

Princes-street, Auckland,  
May 28, 1855.

**S**IR,—I have the honour to transmit the following Report, relative to the application of the Committee of the Auckland Harbour Commissioners, under the Auckland Harbour Land Act, for the consent of your Honor and the Executive Council of the Province to the sale of a portion of certain lands forming part of the sea-shore in the harbour of this town, with the view of applying the proceeds to rendering such Harbour more secure for shipping, by the construction of a Breakwater.

It appears that the Commissioners were incorporated by an Act of the local Legislature of the Province, and that those lands were conveyed to them as a body politic, in the month of January last, under certain provisions contained in the Public Reserves Act of the General Assembly.

At Common Law, the Sovereign might, in general, during his reign, dispose of the demesne lands of the Crown as he pleased,

and of the proceeds, rents, and profits thence arising, which, at one time, formed the most important branch of the ordinary revenue. Such power has been from time to time exercised in nearly all the colonies, and chiefly through the medium of Royal Instructions.

Several codes of Regulations for the disposal of such lands in these islands have at various times been in force; but it does not appear that lands dedicated and set apart for public purposes could, under any of them, or sold to private persons for their own use and benefit.

The *First* of them was that introduced by Captain Hobson, immediately after the Treaty of Waitangi, and which then obtained in New South Wales, of which colony these islands formed an integral part for some 16 months. It seems that none of its provisions allowed the alienating of public reserved lands to the use of private persons.

The *Second* is contained in the Royal Instructions accompanying the Charter of November 16th, 1840. The 43rd section of those Instructions required the Surveyor-General to reserve, previous to selling the Crown lands in any district, such parts thereof as might be suitable for public purposes, *inter alia*, as the "sites" of quays and landing places; and then strictly inhibited the Governor from disposing of the same for the uses of private persons.

"And it is our will and pleasure, and we do strictly enjoin and require you, that you do not on any account, or on any pretence

whatever, grant, convey, or demise, to any person or persons, any of the lands so specified as fit to be reserved as aforesaid, nor permit or suffer any such lands to be occupied by any private person for any private purposes."

According to the 62nd section, these instructions are to be understood as addressed to the Governor or acting Governor of the Colony, for the time being, although addressed in terms to Captain Hobson.

The *Third* is to be found in the Australian Waste Lands Act, the 5 & 6 Vict. c. 36, which was repealed, so far as applicable to this Colony, by the 9 & 10 Vict. c. 104. It did not apply to the lands previously reserved for public purposes, nor did it restrict the power of making such reserves for the future. It authorised the reserves of waste lands for *inter alia* the "sites" of public quays and landing places.

The *Fourth* is contained in the Royal Instructions accompanying the Charter of December 23, 1846. Under these (Chapter 13, S. 17), certain reserves were to be made for public purposes, and amongst others, for quays and landing places; which lands the Governor of the Province was empowered by the 14th section of the Charter and the 18th section of the Chapter just mentioned, to convey gratuitously to any persons or bodies corporate in trust "for the public uses for which the same were so reserved, and for none other."

This power (*but no other*) of alienating the lands reserved for public purposes, is now vested in the acting Governor, under certain provisions contained in the Queen's Letters patent of September 13, 1852. His Excellency has no authority whatever to convey such lands to any persons or public bodies for the purpose of having the same subsequently sold to private individuals, even though the object thereof should be, as in the present case, to apply the proceeds to the construction of public works.

The transfer of the Reserved lands in question to the Harbour Commissioners, purports to be made under an Act of the General Assembly; but it does not appear that that body has any power over lands of that description. By the 72nd Section of the Constitution Act, it is authorized to regulate the Sale, &c., of the *waste lands* of the Crown in this Colony;—terms which do not, as used in law, include lands reserved for specific purposes, whether of a public or private nature;—and it does not appear that they have any but their ordinary or primary signification in this Act. Thus the provincial legislatures are inhibited by S. 19, from making laws "affecting the lands of the Crown," while the Assembly is empowered to make laws for regulating the sale, &c., of the *Waste Lands* of the Crown, that is, of a portion of those first named—and by S. 74, it is authorised to reserve portions of the *Waste Lands* for public purposes, *inter alia* "as the sites of public quays or landing places on the sea coast, or shores of navigable streams."

The Waste Lands Act already mentioned,

the 5 & 6 Vic., c. 36, which was in force in this Colony for several years, and in the Australian Colonies, at the time of the passing of our Constitution Act, contains a definition of the words "Waste Lands" in its 23rd section:—

"And that by the words "Waste Lands" of the Crown as used in the present Act, are intended and described any lands situate therein, and which now are, or hereafter shall be, vested in her Majesty, her heirs, and successors, and which have not been already granted or lawfully contracted to be granted to any person or persons in fee simple, or for an estate of freehold, or for a term of years, and which have not been dedicated and set apart for some public use."

It is quite evident from S. 74 of the Constitution Act, that the clear intent of the Imperial Parliament was, as respects the Waste Lands of the Crown in this Colony, that none of them, except by way of reserves for public uses, and, *perhaps*, by way of licenses for pastoral purposes, should be sold or in any other way alienated, but for a money consideration, and that the fourth part of all sums of money so realised should be remitted to the New Zealand Company. Whatever obscurity may pervade other parts of the Act, none is to be found in this section.

- 1.—I am of opinion that the General Assembly is not empowered to make laws regulating the alienation of lands of the Crown reserved for public uses, and that no conveyance of any portion of such lands, under any of its Acts, can be valid.
- 2.—His Excellency the Acting Governor may, under the Queen's letters patent of September 13, 1852, already mentioned, convey such lands gratuitously to any persons or bodies politic, *in trust*; but only for the purposes for which the same were so reserved.
- 3.—If the lands claimed by the Harbour Commissioners formed a part of the Waste Lands of the Crown, it was a breach of the Constitution Act to have alienated them without a money consideration; and the conveyance is, in consequence, invalid.
- 4.—I am of opinion that the Harbour Commissioners are not a legally constituted Corporation, and that they are, as such, incapable in law of taking lands by a corporate name, and that they can give no valid title to the lands in question, even though the Superintendent and the Executive Council of the Province should assent to the sale or other alienation thereof.

I have the honor to be,

Sir,

Your Honor's obedient servant,

SINGLETON ROCHFORD,  
Law Officer of the Province of  
Auckland.

To His Honor  
The Superintendent  
of the Province of Auckland.

## INSPECTOR OF SLAUGHTER-HOUSES.

RETURN of Cattle Slaughtered in the Auckland District for the week ending 19th May, 1855.

Time of Slaughter	By whom slaughtered.	Place of Slaughter.	Colour.	Marks.	Brands.	Sex.	Apparent Age.
1855							
May 14	Cole	Public Slaughter-house	Black	White back and belly, snail horns . . . . .	No brand . . . . .	Ox	3 years
"	Finlay	"	Strawberry	Poley, red ears . . . . .	No brand . . . . .	Cow	5 years
"	Cole	"	Red and white	Spotted, cocked horns . . . . .	No brand . . . . .	Heif	3 years
"	Cole	"	Red and white	Spotted, open horns . . . . .	No brand . . . . .	Ox	3 years
May 15	Finlay	"	Strawberry	Open horns, red ears . . . . .	AB (let. I underneath) off rump	Cow	6 years
"	E. George	"	Red	White belly and back, cocked horns . . . . .	□ near shoulder, [ ] near ribs, GI near rump	Cow	Aged
May 16	Wells	"	Black	White belly—poley . . . . .	37 (scald under) off ribs, HH (S underneath) off rump	Heif.	3 years
"	Rice	"	Red and white	Spotted, open horns . . . . .	JO off rump, N near ribs . . . . .	Ox	3 years
"	Wells	"	Red	White back, belly, and face, open horns . . . . .	23 off ribs, B off rump . . . . .	Heif.	3 years
May 17	Chisholm	"	Yellow	White belly, stag horns . . . . .	No brand . . . . .	Stag	3 years
"	do.	"	White		AC near ribs . . . . .	Heif.	1 year
"	R. George	"	Dark strawberry	Cocked horns, white belly . . . . .	JD (conjoined) near rump . . . . .	Cow	Aged
May 18	Wells	"	Red	White back, belly, and hind legs, strawberry face, cocked horns, off ear side cut . . . . .	67 (scald) off ribs QC (conjoined) off shoulder	Cow	5 years
"	do.	"	Strawberry	Short horns, off ear side cut . . . . .	20 (G inside circle underneath) off rump	Cow	4 years
"	Rice	"	Red	Strawberry back and face, red ears, white back, belly, and tail, cocked horns . . . . .	TH off rump, O off thigh, O <sub>2</sub> (within diamond) } FO off shoulder, 2 near shoulder, R near rump	Cow	Aged
"	E. George	"	Red and white	Spotted red ears straight horns . . . . .	No brand . . . . .	Ox	3 years
"	Cole	"	Black	White back, tail, belly, and hocks, strawberry face, cocked horns . . . . .	No brand . . . . .	Ox	3 years
"	Day	"	Red	White udder, star in forehead, curly horns . . . . .	GS near rump, G— off rump . . . . .	Cow	6 years

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DAVID G. SMALE,  
Inspector of Slaughterhouses.

## INSPECTOR OF SLAUGHTER HOUSES.

Return of Cattle Slaughtered within the Auckland Country District for the week ending 19th May, 1855.

Time of slaughter.	By whom Slaughtered.	Place where slaughtered.	Colour.	Marks.	Brands.	Sex.	Apparent age.
1855							
May 14	W. Walters	Ellerslie	White	Poley, off ear cut	M off ribs	Ox	4 years
"	"	"	Black	White udder, short curly horns	SM (conjoined) near rump	Cow	Aged
"	"	"	Red	White flanks, curly horns	No brand	Cow	4 years
"	"	"	Strawberry	Poley	do.	Ox	4 years
"	"	"	Red & white	Spotted ekd. horns, nr. ear swallow, off ear side cut	TO near rump, JW (conjoined) near ribs	Ox	4 years
"	"	"	Strawberry	Red ears and nose, cocked horns	No brand	Ox	3 years
"	"	"	White	Open horns	do.	Ox	3 years
"	"	"	Brindle	Curly horns, star in forehead	do.	Ox	3 years
"	"	"	Strawberry	Near ear swallow, off side cut	JN (JW underneath) near ribs	Ox	4 years
"	"	"	Strawberry	Red ears, wide horns	TJ (conj.) off rump	Ox	4 years
"	"	"	Strawberry	Red head and ears, down horns	No brand	Ox	4 years
"	"	"	Red	White rump, shoulder, and face, near horn bent down, off up	do.	Ox	4 years
May 18	"	"	Red	White face, back, flank, and shoulder, poley, both ears slit	HW near rump	Ox	6 years
"	"	"	Strawberry	Red spots, cocked horns, nr ear swallow, off side cut	JW near ribs	Ox	4 years
"	"	"	Red	White back & shoulder, open horns, nr ear. swallow, off side cut	JW (conjoined) near ribs, JR (do.) both rumps	Ox	4 years
"	"	"	Yellow	White belly wide horns	JF (do.) off ribs	Ox	5 years
"	"	"	Black	White flank and belly, wide horns	JF (do.) off ribs	Ox	5 years
"	"	"	Red & white	Spotted snail horns, bent back	JF (do.) off ribs	Ox	4 years
May 19	"	"	Black	White belly, and spot on rump	No brand	Ox	3 years
"	"	"	Red & white	Spotted white face, stag horns	do.	Ox	4 years
"	"	"	White	Curly horns, red ears	do.	Ox	3 years
"	"	"	Red	Strawberry flanks, open horns near ear swallow, off side cut	JW near ribs	Ox	4 years
"	"	"	Red	White back, cocked horns	No brand	Ox	3 years
May 18	Donnelly	Onehunga	Dark red	White brush to tail	do.	Stag	Aged

DAVID G. SMALE,  
Inspector of Slaughterhouses,

**AUCKLAND HARBOUR.**

**BYE-LAWS.**

**PIERAGE OF VESSELS.**

1. All vessels coming alongside the Queen-street Wharf shall pay the following dues and charges as set forth in Schedule B.

2. All vessels not under thirty tons burden coming alongside such Wharf, or on the tidal bank under eight feet water, shall have and keep down a bower anchor, to be at least thirty-five fathoms distant from the said Wharf, under penalty of twenty shillings each day or part of a day so neglecting or being without such anchor properly attached to the said vessel unless properly attached to moorings laid down by order of the Harbour Committee for that purpose.

3. Any vessel requiring to be moved, or which shall be moved by order of the Harbour Committee, may be supplied with anchors and warps in addition to the ship's furniture, if deemed needful by the Pilot, or other duly authorised person moving such vessel, and the same shall be paid, as well as the aid supplied to her of boats and men, at the cost and risk of the said vessel, according to Schedule C.

**SCHEDULE B.**

**PIERAGE DUES.**

Wharfage chargeable on all Vessels herein described on coming to the Queen-street Wharf.

Tonnage of Vessels.	If to discharge, No. of days free.	Charge per day after days free.
All vessels under 50 tons	2	s. d. 3 0
From 50 tons to 100 "	3	5 0
" 100 " 150 "	4	7 6
" 150 " 200 "	5	10 0
" 200 " 250 "	6	14 0
" 250 " 300 "	7	17 6
" 300 " 400 "	8	20 0
" 400 and upwards	10	25 0

N.B.—If coming alongside to load, the charge will commence the day after coming alongside.

NOTE.—When vessels are discharged and are waiting to commence loading, they may remain alongside until the time of commencing to load, at half charge, at the discretion of the Committee. It being understood that all vessels, whether discharging or otherwise, must heave off to their anchors when required by the person authorised therein to direct the same (Bye-law No. 21) for the proper care, regulation, or management of the Wharf, and all such vessel or vessels must

move or remove as may be required for the berthing of vessels, and to allow the precedence to discharging vessels on the East side of the Wharf, or the transport of goods over their decks, as may be required.

**SCHEDULE C.**

**CHARGES FOR AID IN MOORING VESSELS.**

For use of every kedge or Pilot anchor, under 3 cwt.	5s. each tide
Ditto - ditto, stream or bower, 15 cwt. ....	20s. " "
Ditto ditto, bower over 15 cwt .....	100s. " "
Ditto ditto, warp or tow rope .....	5s. " "
Ditto ditto, hawser or cable over 5 inches .....	10s. " "
Ditto ditto, cable over 7 inches, or iron chain, according to salvage estimated by Harbour Master and Chairman of Committee, or by valuator appointed on each part ....	Extra
For use of every boat, not over 4 oars .....	10s. each tide
For use of every man with oar .....	7s. 6d. "
For use of every man without an oar, or every additional man required on board .....	5s.

Signed and sealed according to the Auckland Harbour Act, in the presence and by order of the Committee of the Auckland Harbour Commissioners, on the twenty-third day of May, one thousand eight hundred and fifty-five.

WM. POWDITCH.

Chairman Harbour Committee.

I hereby assent to the Bye-Laws hereinbefore written, this twenty-fifth day of May, 1855 (five).

WM. BROWN,

Superintendent of the Province of Auckland.

**BYE-LAWS**

**REGULATING THE LICENSING OF PERSONS TO ACT AS WATERMEN WITHIN THE HARBOUR OF AUCKLAND.**

1. No person shall for hire, or in expectation of reward, ply any boat for the conveyance of passengers within the Harbour of Auckland unless he shall be thereunto duly licensed by the Committee of the Auckland Harbour Commissioners.

2. The fee for such license shall be at the rate of twenty shillings for the year, and in like proportion for each quarter thereof, or part of such quarter, which shall be remaining at the time of obtaining such license.

3. Any person plying such boat as afore-

said without such license as aforesaid, shall forfeit and pay for every such offence any sum not exceeding five pounds.

4. No person licensed as aforesaid shall ply any boat for the purpose aforesaid within the said harbour unless such boat shall have been approved by the said Committee as being safe and fit for such purpose, and unless there shall be painted on some conspicuous part of such boat in legible letters not less than one inch in length the name of such person and the number of his license, and the highest number of passengers which the said Committee shall have authorised him to convey in such boat.

5. Every application for such license as aforesaid shall be made in writing, and shall contain a description of the boat which the applicant may wish to ply, and shall be accompanied by a certificate from the Harbour Master of the said Harbour and the Engineer of the said Committee testifying as to the condition and capability of such boat.

6. No person so licensed as aforesaid shall charge a higher rate of fare than two shillings for the conveying between the hours of sunrise and sunset of any passenger in such boat as aforesaid from that part of the south side of the said harbour situate between Resolution Point and Acheron Point, to any vessel within the said limits, nor a higher rate than one shilling for the conveying of such passenger back from such vessel to the said south side, if such passenger shall not detain the person so licensed for more than fifteen minutes.

7. Any such passenger as aforesaid who shall detain any such licensed person as aforesaid more than fifteen minutes alongside such vessel, shall pay unto the person so detained for every hour or part thereof after the expiration of the said fifteen minutes during which such person may be detained at the rate of two shillings and sixpence for every such hour, provided always that such waterman shall not be compelled to remain under such detention longer than one hour.

8. The rate of fare for the conveying of any non-adult in any such boat as aforesaid, wherein there shall be one or more adults as passengers, from the said part of the said harbour to any such vessel as aforesaid, shall be the sum of one shilling, and the rate of fare for the conveying of such non-adult back from such vessel to the said part of the said harbour shall be the sum of six pence.

9. No person licensed as aforesaid shall, when conveying passengers in such boat as aforesaid, take any luggage therein if any of the said passengers should object to his doing so: provided that any of the said passengers may take in his hand or rest on his lap in such boat, free of all charge, any packages or parcels that may not inconvenience any of the other passengers in such boat.

10. Any person licensed as aforesaid who shall between the hours hereinafter mentioned, refuse to convey in such boat as afore-

said from that part of the south side aforesaid to any vessel within the limits aforesaid any person who may request him to do so, shall forfeit and pay for such refusal any sum not exceeding five pounds, unless he shall give to such person a satisfactory reason for such refusal.

11. The places at which, and the hours during which, the person so licensed shall be in attendance with such boats as aforesaid for the purpose of conveying passengers to and fro within the limits aforesaid shall be fixed from time to time by the said Committee.

12. Every person so licensed as aforesaid shall be in attendance with his boat from sunrise to sunset every day, excepting Sunday, at some one of the places to be fixed as aforesaid for the purpose of conveying passengers to and fro within the limits aforesaid, unless such person shall be ill or indisposed or engaged in conveying such passengers as aforesaid.

13. From the time of sunset to 10 p.m. any such licensed person as aforesaid may charge three shillings, and one shilling and sixpence respectively for the conveying, and the conveying back of any passenger, from the part aforesaid of the said south side to any vessel within the limits aforesaid.

14. Every person so licensed as aforesaid shall, when requested so to do by the said Committee, attend with his boat at any place within the said harbour appointed by the said Committee, and give his services to the said Committee or their agents in order to protect the wharves, piers, and other works within the said harbour, or to regulate vessels on the tidal banks; and every such person shall be paid for his services by the said Committee such charges as are hereinafter set forth—that is to say, for every boat so required, each tide, 10s.; for every such person and his oar, 7s. 6d.; for every such person without his oar, 5s., together with indemnification for any damage accruing from any accident to any boat in such service.

15. Every person so licensed is hereby declared a duly authorised person to prefer charges to the said Committee, or to the Resident Magistrate of Auckland, or other magistrates thereof, against any person who shall without the license of the said Committee remove any stone, sand, or ballast from any part of the said harbour, or who shall, without such license, throw into such harbour or deposit therein any rubbish or other matter likely to injure or obstruct the said harbour, or any ship, boat, or other thing therein.

16. Any person who shall prevent any boat from proper and convenient landing at the landing stairs of Queen-street Wharf in the said harbour, by fastening to such stairs any boat or other description of vessel, or by allowing such boat or vessel to ground at or near to such stairs, shall forfeit and pay for every such offence any sum not exceeding twenty shillings; and every such boat or vessel may be removed by any person autho-

raised by the said Committee to prevent such obstructions, provided that no such boat or vessel shall be cast loose so as to cause her drifting away during the absence of the person in charge thereof.

Signed by the Chairman of the Committee, and sealed according to "The Auckland Harbour Act," in the presence and by order of the Committee of the Auckland Harbour Commissioners, on the 31st day of January, one thousand eight hundred and fifty-five.

(Signed) Wm. POWDITCH,  
Chairman of Harbour Committee.

I hereby assent to the Bye-laws hereinbefore written, this 22nd day of May, 1855 (five).

Wm. BROWN,  
Superintendent  
of the Province of Auckland.

#### NOTICE.

NOTICE is hereby given that a Special Meeting of the Justices of the Peace for the District of Howick will be holden at the Resident Magistrate's Court, Howick, on Wednesday, the 20th day of June next, at the hour of (12) twelve o'clock noon, for the purpose of granting Slaughter House Licenses in accordance with the provisions of the 6th clause of the "Slaughter House Ordinance," Sess. 8, No. 5.

Persons desirous of obtaining Licenses as aforesaid must, ten days before such Meeting, give to the Clerk of the Bench a notice in writing of their intention to apply for such License, and must describe in the said notice the house or place intended to be licensed.

ALEX. MACDONALD,  
Resident Magistrate.  
Resident Magistrate's Court,  
Howick, 21th May, 1855.

