

1877.

NEW ZEALAND.

WASTE LANDS COMMITTEE.

SOUTH DUNEDIN RESERVE BILL,

(REPORT ON, TOGETHER WITH MINUTES OF PROCEEDINGS AND EVIDENCE.)

Report brought up and ordered to be printed, 23rd November, 1877.

ORDERS OF REFERENCE.

Extracts from the Journals of the House of Representatives.

FRIDAY, THE 20TH DAY OF JULY, 1877.

Ordered, That a Select Committee be appointed to consider all Bills and petitions that may be introduced into this House affecting the waste lands of the Crown, and to report generally upon the principles and provisions which they contain; with power to confer or sit together with any similar Committee which may be appointed by the Legislative Council, and to agree to a joint or separate report. That such Committee do consist of seventeen members, and that five be a quorum. The Committee to consist of Mr. Ballance, Mr. Beetham, Mr. J. E. Brown, Mr. Bunny, Mr. Curtis, Sir R. Douglas, the Hon. Mr. Fox, Mr. Harper, Mr. Kennedy, Mr. Lumsden, the Hon. Mr. Ormond, Mr. Pyke, Mr. Rolleston, Mr. Sharp, Mr. Stout, Mr. Thomson, and the Mover.—(*Hon. Mr. Reid.*)

MEMORANDUM for the CHAIRMAN, Waste Lands Committee.

THE Bill intituled the South Dunedin Reserve Bill was read a second time in the House of Representatives on the 14th day of November, and, by order of the House of the 20th July, stands referred to the Waste Lands Committee for report.

House of Representatives,

15th November, 1877.

F. E. CAMPBELL,

Clerk of House of Representatives.

REPORT.

THE Select Committee on Waste Lands, to whom was referred a Bill intituled "The South Dunedin Reserve Act, 1877," have the honor to report,—

That the land proposed to be dealt with by this Bill was included in the plan of land for harbour works and reclamation, submitted to and approved of by His Excellency the Governor before the existence of the South Dunedin Municipality, and has been granted by the Crown to the Otago Harbour Board accordingly.

The Committee therefore recommend that the Bill be not passed.

23rd November, 1877.

OSWALD CURTIS,
Chairman.

MINUTES OF PROCEEDINGS.

FRIDAY, 16TH NOVEMBER, 1877.

The Committee met pursuant to notice at 11 o'clock a.m.

PRESENT :

Mr. Curtis in the chair.

Mr. Beetham,
Mr. Bunny,
Sir R. Douglas,
Mr. Hamlin,
Mr. Harper,

Mr. Lumsden,
Mr. Lusk,
Hon. Mr. Reid,
Mr. Teschemaker.

The minutes of the previous meeting were read and confirmed.

The memorandum for the Chairman, dated 15th November (The South Dunedin Reserve Bill), was read.

Resolved, on motion of the Hon. Mr. Reid, That the Bill intituled "The South Dunedin Reserve Act, 1877," be considered.

Preamble read and postponed.

Clause 1 read.

Resolved, on motion of Mr. Bunny, That further consideration of this Bill be postponed until Monday, at 11 o'clock, and that Mr. J. McKerrow, Assistant Surveyor-General, be summoned to attend the Committee, with all information possible to be procured respecting the block of land referred to in the Schedule.

Mr. Seaton, M.H.R., and Mr. J. McKerrow were present during the consideration of the Bill by the Committee.

MONDAY, 19TH NOVEMBER, 1877.

The Committee met pursuant to adjournment at 11 o'clock.

PRESENT :

Mr. Curtis in the chair.

Mr. Ballance,
Mr. Beetham,
Mr. Bunny,
Mr. J. E. Brown,
Sir R. Douglas,

Mr. Hamlin,
Mr. Harper,
Mr. Kennedy,
Mr. Lumsden,
Hon. Mr. Reid.

The minutes of the previous meeting were read and confirmed.

The Committee resumed consideration of the Bill intituled "The South Dunedin Reserve Act, 1877."

The Hon. Mr. Macandrew, being in attendance, gave evidence, which was taken down by the reporter present.

Telegram to the Chairman was read as follows:—

"Dunedin, 16th November, 1877.

"Respecting the ten acres of Dunedin foreshore applied for by Mr. Seaton to be vested in South Dunedin Municipality, I am directed to inform you that the ten acres in question were included in this Board's Endowment Act, 1875, two months before the Municipality existed. By request of the Board, I shall send you by first post a *précis* of the circumstances, to show that this Board have become openly and legally possessed of the land which forms part of the security given to debenture-holders.

"JOHN L. GILLIES,

"Secretary Otago Harbour Board."

Memorandum to the Chairman from Assistant Surveyor-General was read as follows:—

"I have Mr. Maunsell's letter of 17th instant, requesting my attendance before the Waste Lands Committee at 11 a.m. to-day. I have also been summoned to appear before a Committee of the Legislative Council at 10.30 a.m.; and as my attendance there may prevent me from appearing precisely at 11 a.m. before your Committee, I send the papers *re* "South Dunedin Reserve," with the explanation that Mr. Lakeman (the officer in charge of Otago documents) informs me that the papers relating to the application of the Municipality of South Dunedin and the action of Provincial Executive thereon are with the Commissioner of Crown Lands, Dunedin. But from his index book, supplemented by a telegram which I had from Chief Surveyor, Dunedin, on Saturday, Mr. Lakeman has been able to give a *précis* of the subject, which may suffice. (Enclosure No. 1.)

"Please also find papers beginning with request (4th August, 1876) of J. L. Gillies, Secretary of Otago Harbour Board, to Colonial Secretary, for Crown grant, and ending 11th July, 1877, with issue of same from office of Secretary of Crown Lands in favour of Harbour Board. On looking over these papers, I noted what appeared to me the main points in the correspondence. (Enclosure No. 2.)

"J. McKERROW,

"Assistant Surveyor-General."

Enclosure No. 1.

Proposed Endowment, South Dunedin Municipality.

25th September, 1876.—Clerk to South Dunedin Municipality.—Applied for an extension of the boundary of the municipality to include a certain area indicated.

2nd October, 1876.—Under Secretary.—Instructed the Chief Surveyor to furnish a description.

18th October, 1876.—Chief Surveyor.—Furnished description of proposed extension; also of proposed endowment of ten acres of Crown land between Anderson's Bay Road and the Peninsula and Ocean Bay Railway.

Executive Council, 24th October, 1876.—Resolved to recommend the Waste Lands Board to reserve temporarily from sale the area shown on attached description of proposed endowment, with a view to its being legally vested in the Municipality for public purposes.

30th October, 1876.—Acting Under Secretary.—Forwarded to the Waste Lands Board for its information and guidance.

On the 1st November, 1876, the Waste Lands Board complied with the recommendation of the Government, and temporarily reserved the area, as per description, from sale.

On the 8th November, 1876, the Waste Lands Board rescinded their resolution to temporarily reserve the area from sale.

On the 19th March, 1877, the Waste Lands Department received instructions from the Hon. the Colonial Secretary to prepare Crown grant for the Harbour Board.

On the 27th August, 1877, the Crown grant was issued to the Harbour Board.

Enclosure No. 2.

4th August, 1876.—J. L. Gillies, Secretary for Dunedin Harbour Board, requests the Colonial Secretary to issue Crown grant of land under clause 5 of "Otago Harbour Board Regulation Act, 1875."

18th August, 1876.—Mr. Seed states that application is for 140 acres, that conditions of law not complied with.

21st August, 1876.—Hon. E. Richardson states that grant cannot issue until reclamation is made.

29th August, 1876.—J. L. Gillies gives reasons to Hon. the Commissioner of Customs showing that issue of grant is not contrary to law.

7th September, 1876.—Mr. Seed reiterates objections to issue of grant, and advises reference to Solicitor-General.

21st September, 1876.—Opinion of Solicitor-General is that land should be reclaimed before grant is issued.

22nd September, 1876.—Letter from J. L. Gillies to Hon. G. McLean.

25th September, 1876.—The Commissioner of Customs (G. McLean) advises that grant should issue for that portion between Ocean Beach Railway and Anderson's Bay Road.

14th October, 1876.—Hon. Mr. McLean's minute approved in Cabinet.

17th October, 1876.—Commissioner of Crown Lands, Dunedin, instructed to send plan and description.

14th November, 1876.—J. L. Gillies supplies information to Chief Commissioner of Crown Lands, Dunedin, and sends copies of correspondence with Railway Company. This correspondence refers to a proposal for shifting the site of the railway line, and the relations subsisting between the Harbour Board and the Railway Company.

15th November, 1876.—Deputy Commissioner of Crown Lands, Dunedin, forwards to Wellington plan and description of land, in compliance with instructions of 17th October, 1876.

27th November, 1876.—Major Atkinson refers paper to Hon. G. McLean, who instructs survey for accurate description of grant.

1st March, 1877.—Chief Surveyor (Mr. Arthur) forwards tracing of land surveyed, by order of Hon. G. McLean.

19th March, 1877.—J. Giles, by direction of Hon. Secretary for Crown Lands, instructs Commissioner of Crown Lands to prepare grant for 21 acres 3 roods 8 perches, situate between Anderson's Bay Road and Ocean Beach Railway.

26th March, 1877.—J. Giles notes that grant is under "The Otago Harbour Board Empowering Act, 1875," section 5. Correspondence and telegrams as to numbering of grants.

10th May, 1877.—Commissioner of Crown Lands, Dunedin, forwards Crown grant No. 17805 for the signature of Governor.

11th July, 1877.—Grant issued from Crown Lands Office, Wellington.

27th August, 1877.—Grant issued from Land Office, Dunedin, to Harbour Board.

Resolved, on motion of Mr. Harper, that the consideration of this Bill be postponed.

THURSDAY, 22ND NOVEMBER, 1877.

The Committee met pursuant to notice at 11.30 o'clock.

PRESENT:

Mr. Curtis in the chair.

Mr. Beetham,
Mr. J. E. Brown,
Mr. Bunny,
Sir R. Douglas,

Mr. Kennedy,
Mr. Lumsden,
Hon. Mr. Reid.

The minutes of the previous meeting were read and confirmed.

Letter, dated Dunedin, 17th November, and enclosure, to the Chairman, were read as follows:—

"Otago Harbour Board Office, Dunedin, 17th November, 1877.

"SIR,—In accordance with instructions, and as intimated to you by telegram yesterday afternoon, I have now the honor to enclose *précis* of facts relating to the ten acres of the Board endowment sought to be alienated by the Bill introduced by Mr. Seaton, M.H.R., in favour of South Dunedin Municipality, and now before your honourable Committee, and have to request that you will be pleased to lay the same before the Committee; and, if consistent with rule and practice, the same be embodied or accompany your report to the House.

"The Chairman of the Waste Lands Committee of the
"House of Representatives.

"I have, &c.,
"JOHN L. GILLIES, Secretary."

"Enclosure for Waste Lands Committee of House of Representatives.

"STATEMENT of facts by Otago Harbour Board relating to ten acres of land at present vested in it as part of its endowment, and sought to be alienated to the South Dunedin Municipality by a Bill introduced by Mr. Seaton, and now before the Waste Lands Committee of the House of Representatives.

"1st. The land in question formed part of the foreshore of the Harbour at Dunedin, and was included in the plan of harbour improvements sanctioned by *His Excellency the Governor on 29th October, 1875*. By "The Otago Harbour Board Empowering Act, 1875," clause 5, the Governor was empowered to vest the land reclaimed of the foreshore according to the plans sanctioned, this being agreed to chiefly as a *quid pro quo* for the right reserved in clause 6 for the Government to take, for purposes of public utility, such portions of the Board's endowment as it required. Already all requisite for Port Chalmers, Dunedin, and Clutha Railway line, and stations at Pelichet Bay, Dunedin, and South Dunedin Recreation Ground, have been so taken. Further land will be wanted for enlarging Dunedin Station, &c., and these demands have so encroached on the most available portions of the Board's endowment that up to the present time no revenue has been obtained from that source, although the Board paid to the late Provincial Government over £12,000 for reclamation done by it.

"2nd. When the Government referred the Dunedin, Peninsula, and Ocean Beach Railway Bill of last session to the Harbour Board for consent for the line to pass through the Board's endowment, such consent was given, and the Board made application for the portion of its endowment lying between the Anderson's Bay Road and the railway embankment to be Crown-granted, with a view to leasing the same. In forming the line of railway the material has been taken from the surface, and will have to be replaced by the Board; and, as the embankment was considered practically a reclaiming of the portion referred to, the Crown grant was issued in accordance with clause 5 of the Act already referred to.

"3rd. The plans of harbour improvements sanctioned by the Governor, Provincial Ordinance, 1874, Act of 1875, and plan showing land Crown-granted and to be Crown-granted under Act of 1875, were submitted to the London Stock Exchange as the security for the Board's loan of £250,000. The Board would call special attention to the rights of bondholders under clauses 38, 39, and 44 of the Provincial Ordinance of 1874.

"4th. South Dunedin Municipality was *only proclaimed in Gazette of 15th December, 1875*, so that any promise made as referred to by the Hon. Mr. Macandrew must have been subsequent to the arrangements made by the General Government with the Harbour Board, and the passing of the Act of 1875, as it was gazetted on 30th October of that year.

"5th. Provincial authorities had no power over the foreshore below high watermark, and when the matter was brought before the local Waste Lands Board it was decided that the Board had no power to interfere.

"6th. Leave has already been granted, on an application made to the Board, for liberty to construct storm-water channels through the Board's property. The land referred to is in no way adapted for, nor could it be used as a reservoir for storm water.

"JOHN L. GILLIES, Secretary.

"Otago Harbour Board Office, Dunedin, 17th November, 1877."

The consideration of the South Dunedin Reserve Bill was further postponed.

FRIDAY, 23RD NOVEMBER, 1877.

The Committee met pursuant to adjournment at 10.30 o'clock.

PRESENT:

Mr. Curtis in the chair.

Mr. Ballance,
Mr. Beetham,
Mr. Harper,
Mr. Kennedy,

Mr. Lumsden.
Hon. Mr. Reid,
Mr. Teschemaker,
Mr. Thomson.

The minutes of the previous meeting were read and confirmed.

The consideration of the Bill intituled "The South Dunedin Reserve Act" was resumed.

An officer from the Public Works Department attended, and produced the record map signed by His Excellency the Governor.

The Hon. Mr. Reynolds, M.H.R., Mr. Seaton, M.H.R., and Mr. James McKerrow, Assistant Surveyor-General, were present.

Resolved, on motion of Mr. Harper, "That the land proposed to be dealt with by this Bill was included in the plan of land for harbour works and reclamation submitted to and approved by His Excellency the Governor before the existence of the South Dunedin Municipality, and has been granted by the Crown to the Otago Harbour Board accordingly.

That the Committee, therefore, recommend that the Bill be not passed.

That these resolutions be reported to the House at its next sitting."

Read and confirmed.

MINUTES OF EVIDENCE.

MONDAY, 19TH NOVEMBER, 1877.

The Hon. Mr. MACANDREW, being in attendance, was examined.

1. *The Chairman.*] The Committee are met to take into consideration the Bill before the House, proposing to vest ten acres of land, situated in the Municipality of South Dunedin, in the Corporation of that borough. Probably you are acquainted with the circumstances connected with this particular piece of land, and you would oblige by stating them. I may mention that the following telegram has been received from Mr. J. L. Gillies, Secretary to the Otago Harbour Board: "Respecting the ten acres of Dunedin foreshore applied for by Mr. Seaton to be vested in the South Dunedin Municipality, I am directed to inform you that the ten acres in question were included in the Board's Endowment Act, 1875, two months before the Municipality existed. I shall send you by first boat a *précis* of the circumstances"—I may mention that the question of reserving this piece of land, with a view to its being granted to that Municipality, was mooted a considerable time ago—very shortly after the Municipality came into existence. I find, however, that nothing was done officially in the matter by communicating with the Waste Lands Board until October, 1876. As you are aware, on the 31st October the Provincial Government ceased to exist, and that month was devoted to some extent to clearing up all arrears and putting matters square. The question of this reserve came before the Government, along with many other matters which had been standing over some time in October, and a resolution was passed by the Executive, and communicated to the Waste Lands Board, in terms of the then Land Act, requesting that this piece of land might be reserved as an endowment for the South Dunedin Municipality. Of course, had the Provincial Council met, it would have been vested in the Municipality by Ordinance. The Provincial Council not having assembled is the reason why this Bill is brought in by Mr. Seaton. What I wish the Committee mainly to observe is this: that up to the time of the 31st October, 1876, this land was within the jurisdiction of the Provincial Government. The General Government had no doubt the right, but practically the General Government did not interfere with the administration of the waste lands of the Crown until after the date of Abolition. I find, on referring to papers in the Crown Lands Office on the subject, the first application from the Harbour Board appears, as you have stated, to be dated on the 4th of August.

2. 1876?—Yes; that is the date of the first application from the Harbour Board. I see that is corroborated by Mr. McKerrow, the date being three months before the abolition of the provinces. I would call special attention to the fact that the ground on which the application was made is contained in section 5 of "The Otago Harbour Board Empowering Act, 1875." That section provides as follows: "All lands which the Board may from time to time reclaim from the sea, under any lawful authority, may, in the name and on behalf of Her Majesty, be granted by the Governor to the said Board, and when so granted to the said Board shall be held and may be dealt with subject to the provisions of this Act, in like manner as the Board is authorized to deal with lands hereby vested in them: Provided that no such lands shall be so reclaimed from the sea or be granted to the Board under this Act unless the plans and specifications of such reclamation shall first have been submitted to and approved of by the Governor in Council, in the manner prescribed by the thirty-third section of 'The Marine Act, 1867,' as amended by 'The Harbour Works Act, 1874.'" By the 4th clause of the Act of 1875, provision is made whereby 400 acres of the foreshore, and what was termed the Wharves and Quays Reserves, which were Crown-granted to the Superintendent, should be transferred to the Harbour Board; and these have been so transferred accordingly. The land now in question, however, had not been Crown-granted; it was Crown land, and did not require to be reclaimed from the sea; so that I think it will be found that the grant has been issued in contravention both of the letter and spirit of the law. Not one spadeful of earth has been placed on this land by way of reclamation, in as much as the land is *terra firma* already. I may say, in looking over the papers, I find that the Solicitor-General, when the matter was referred to him, called attention to the fact that the land must be reclaimed before it could be Crown-granted, in terms of section 5 of the Act above referred to, he not knowing that it was above water at the time. However, his opinion seems to have been ignored, and the grant was issued on the 11th July, 1877. Those are the facts of the case as far as I am aware. The reserve was granted in terms of the Otago Waste Lands Act. Being Crown lands, it was subject to be dealt with by the Provincial Government and Waste Lands Board in terms of that Act. Mr. Gillies appears to have communicated with the Colonial Secretary in August; that was three months before the abolition of provinces. I knew nothing of this application, and, as I was Chairman *ex officio* of the Harbour Board at the time, if I had known of the matter I should have called attention to it.

3. Then the Crown grant has been newly issued in favour of the Harbour Board for themselves?—On the 11th July last, for land which had previously been dealt with by the Provincial Government.

4. Is this below high watermark?—No; the land below high watermark is disposed of under section 4. These ten acres the Superintendent did not hold under any Crown grant. They are above high watermark, and were Crown lands.

5. In October, did not the Provincial Government recommend to the Waste Lands Board the reserving of this land?—Yes.

6. For what purpose?—For the endowment of the South Dunedin Municipality.

7. In the Abolition of Provinces Act the Governor in Council stands in the position of the Provincial Council as well as of the Provincial Government. Would it be in the power, therefore, of the Governor in Council to assent to reserve, after being vested within the South Dunedin Municipality?—No; it has been done in terms of an Act of the Assembly which did not apply to it, it having been previously set aside as an endowment for the Municipality.

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8. Do you mean an endowment in the ordinary sense of the term?—Yes. I believe one of the purposes the reserve is intended to be devoted to is for a reservoir to hold flood water. An excellent recreation-ground could also be made there.

9. Then are you of opinion that the Crown grant has been illegally issued?—Decidedly.

10. Is Mr. Gillies's letter here?—No; but I can get it.

11. What is the date?—The 4th August, 1876. The Crown grant was not issued for nearly twelve months thereafter.

12. Have we any power to interfere with what has already been Crown-granted?—Yes, certainly, if issued in error.

13. How far is this reserve from Dunedin City?—It is close to the Anderson's Bay Road, between the gasworks and cricket-ground.

14. Where is the South Dunedin municipality?—It extends from the cricket-ground to the Ocean Beach.

[The Chairman read a memorandum from the Assistant Surveyor-General, forwarding papers on the subject.]

15. *Mr. Reid.*] Who are the holders of the Crown grant?—The Harbour Board.

16. Was this reserve included in the reserves granted to the Harbour Board in 1875?—No. All the lands vested in the Superintendent are set forth in the 4th section. This has been applied for in terms of the 5th section, which you will see does not apply at all.

17. In "The Harbour Board Act, 1875," there was a plan showing all the reserves that belonged to the harbour. Is this one of them?—No.

18. A telegram states that this land forms part of security issued to debenture-holders?—I do not suppose they have issued debentures since.

19. Do you state this is within the boundaries of the municipality?—It is within the extended boundary.

20. Do you know if the object of that application to extend the boundary was simply with a view of getting this land included in it?—I am not aware.

21. When the boundary was extended, did it include anything but this land?—It included the frontage down to high watermark.

22. Then you say that this might be used as a recreation-ground?—Yes.

23. Do you think the municipality there requires any land of this character as a recreation-ground, seeing it is in close proximity to the sand-hills and Ocean Beach, which are reserved there?—I think it may come to be densely populated, but confess that if I was the Municipality, I would do with it as the Harbour Board proposes to do—lease it.

24. Do you remember the works of the Peninsula and Ocean Beach Railway Company being stopped on the ground that they passed over land the province could not give them any control over?—Yes; I recollect that.

25. If that had been Crown land, would it not have been in the power of the Provincial Government to have allowed them to construct a railway across it?—I think it was in the power of the Provincial Government, and they did give permission; and the dispute which arose between the Provincial and General Governments had reference to the line further on.

26. Is it not a fact that there is no vegetation on this particular reserve other than that which grows in salt-water?—I could not say.

27. Are you aware whether this plan had been submitted to and approved by the Governor?—I am not aware; but no doubt it was.

28. Then this plan legally conferred on the Board power to reclaim and improve this land?—I do not think the Governor knew that this was Crown land at the time, and that it required no reclamation.

29. Then, the fact of this plan having been submitted in accordance with this proviso, and approved by the Governor, the Board were at full liberty then to proceed to improve this land and reclaim it?—I cannot understand how the Board can reclaim land already reclaimed. I think the plan had reference to the harbour works. Sections 4 and 5 are the two sections which deal with the question of endowment. It is a remarkable thing that the Solicitor-General, when the matter was submitted to him, called attention to this very point, and said these ten acres could not be granted until reclaimed from the sea. It has not been reclaimed from the sea, and nevertheless the land has been granted. The Waste Lands Board had no voice in it; their business was to reserve it from sale temporarily, when directed to do so by the Superintendent of Otago, under the powers vested in him.

30. Did they not reserve it?—Yes, they reserved it, assuming it was Crown land. I may state, if you have any doubt as to the position of the land, you ought to have Mr. McKerrow, who made the survey, here.

31. Was the first action that was taken in reference to this land by the Harbour Board the letter of Mr. Gillies's, of the 4th August?—That is the first record that appears among the papers in the Crown Lands Office.

32. Which is the first action on the part of the Municipality?—I do not know, but there used to be deputations waiting on the Superintendent every other week. No action was taken until October.

By Authority: GEORGE DIDSBUXY, Government Printer, Wellington.—1877.