

to £300,000, to be applied in and about the construction, execution, and carrying-out of the works above described. The Act referred to—No. 14, Local, of 1914—was a special Act within the meaning of the Harbours Act, 1908, and the Harbour Board, when applying for such Act, complied with the provisions of the Harbours Act (now section 168, referred to above) by depositing a plan, prepared by a licensed surveyor, showing all tidal waters coloured blue, and the extent of the land sought to be obtained for the purpose of the said special Act. A copy of that plan, described as M.D. No. 4057, was produced to us as Exhibit No. 124.

The Harbour Board has, since the passing of its 1914 Empowering and Loan Act, undertaken certain works that fall within the general description of “harbour-works” in and about the construction, completion, development, and improvement of its Inner Harbour scheme—viz., the building of a boundary embankment, a deepening of the entrance of the inner entrance channel, and a rebuilding in concrete of certain piers and quays. The Marine Department contends that before commencing any of this work, as a part of the Inner Harbour construction authorized by the Act of 1914, the Board should, in compliance with section 171, have deposited with the Department a plan of the whole work, showing all the details of the proposed work and the mode in which it is proposed the same shall be carried out. It is common ground that the Harbour Board has not deposited such a plan. The Harbour Board submits, in reply, that, as to parts of the work in question, it has acted under special sanctions, and with the full knowledge and approval of the Executive of the Dominion; and as to the remainder that it has from time to time submitted plans of the portions of work it proposed to immediately embark on, and has obtained Orders in Council approving of such works. It further submits that this method of procuring from time to time piecemeal permits only of portions of a whole harbour scheme accords with the Department’s interpretation and administration of the Act in the past, and that such practice is a sufficient compliance with the Harbours Act, 1923.

The application of the law to the Acts of the Napier Harbour Board since 1914 is complicated by the peculiar circumstances governing those actions and the nature of the works undertaken. We shall refer later to the position thus created, but for the present we propose to deal with the general principle raised by the respective contentions of the Marine Department and the Harbour Board. We are of opinion that when a special Act empowers a Harbour Board to carry out a certain work, that work is in its entirety a “whole work” within the meaning of section 171, and before the Harbour Board, pursuant to its empowering Act, commences the making or construction of the work it must, to comply with its statutory duties, deposit a plan in duplicate of the whole work, showing all the details of the proposed work and the mode in which it is proposed the same shall be carried out. We are of opinion that it commences the making or construction of the work when it commences the making or construction of any portion of the whole work. It is a question of fact, to be decided fairly and reasonably on a consideration of all the circumstances, whether any particular work commenced by a Harbour Board is a “harbour-work” complete in itself, or a portion of a general scheme which is, on a view of the Board’s policy and authorities, a “whole work” within the meaning of section 171 of the Harbours Act. It is, we think, quite clear that the plan deposited under section 168 with the application for a special Act cannot be viewed as a plan that also meets the requirements of section 171. The first plan (section 168) is a surveyor’s plan, indicating the position of tidal works in relation to the proposed harbour-works, and showing the areas affected. The second plan (section 171) is an engineer’s plan, showing details of the proposed work and the mode in which it is proposed to construct the work. Furthermore, we think that it is equally clear that the work *as a whole* must be laid before and considered by the Department and be submitted for the approval of the Governor-General in Council, and that the Governor-General in Council is entitled and expected, when the plan is submitted for approval, to see each portion not as a separate work, but in its true setting as a part of a whole work. If any object-lesson is necessary to point to the wisdom and necessity of such a provision in the Harbours Act, we think that it will be found in the methods, actions, and expenditures of the Napier Harbour Board. If, in the opinion of the legal advisers of the Governor-General in Council, there should be any doubt as to our interpretation of the law on this present point, we strongly recommend that the doubt should be removed by legislation, so that the policy and practice of piecemeal construction of a harbour be made impossible for the future.

We come now to a consideration of the problem raised by the application of the law to the actions since 1914 of the Napier Harbour Board. We wish briefly to refer again to the Act (No. 14, Local) of 1914. By section 7 the Board was empowered to carry out “harbour-works” in the construction of its Inner Harbour, and this includes, *inter alia* (*vide* interpretation clause, section 5, Harbours Act), the building of an embankment, and the undertaking of dredging to deepen a channel.

By section 8, the Board is entitled, out of the loan-money thereby authorized, to repair and renew its quays and structures appertaining thereto, and to purchase the necessary material and a new reclamation dredger. By section 14, the Board was empowered to fill up and reclaim certain lands.

The Board’s harbour scheme, based on Cullen and Keele’s 1912 report and plans, required the building of an embankment to define and enclose the Inner Harbour, and also to connect Port Ahuriri with the West Shore. It was quite apparent that this embankment could, and should, be constructed so that it would serve to carry the East Coast Road and Railway north of Napier, and by conference between Cullen and Keele, the Harbour Board, the Public Works Department, and the Hawke’s Bay County Council it was agreed that it should be so constructed. Agreements were entered into between, firstly, the Harbour Board and the Minister of Public Works, and, secondly, the Harbour Board and the Hawke’s Bay County Council. These agreements were validated by and incorporated into the Port Ahuriri—West Shore Road and Railway Act, 1914, an Act which authorized the three parties to the agreements “to construct and use a combined road and railway embankment and bridge across the Inner Harbour at Port Ahuriri from Port Ahuriri to West Shore.” It was under the authority and provisions of this Act that the Board constructed the embankment in question in accordance with