

Accordingly in 1866 the Provincial Council passed the Harbour Trust Ordinance, diverting a portion of the lands conveyed by the grants from Education to Harbour purposes; and in 1867 the Council passed "The Town Board Endowment Ordinance" (enclosed), diverting another portion of the lands, both of these Ordinances receiving the sanction of the Governor.

By reference to plans No. 1 and 2 (enclosed), it will be perceived that only the sections in No. 2, coloured green, are included in the Schedule to the Ordinance of 1867. The intention of the Provincial Government was to divert the whole of the sections included in this plot of ground, known as "The Racecourse," from the purposes of the grants to the endowment of the Town Board; but the title to the sections coloured purple, in plan No. 1, not being completed, in consequence of the operation of "The Town of New Plymouth Compensation Ordinance, 1859 and 1860," this was not feasible at the time. The whole plot of land was leased to the same person, and the rents handed over to the Town Board; but only the revenue derived from sections included in the 1867 Ordinance was paid directly to the Treasurer of that body, the rent of the remainder of the sections being paid first to the Provincial Treasurer, and by him handed over to the Treasurer of the Town Board. I feel confident that a glance at the plans will prove the original intention of the Provincial Government. It could never have been in contemplation that a plot of ground should be cut up in chequers like the squares on a chess-board, all the black squares to be held by one trust and all the white by another.

The titles to the whole of the sections being now completed under "The New Plymouth Exchanges Commission Act, 1865," and "The New Plymouth Exchanges Commission Amendment Act, 1866," passed by the General Assembly to carry out the above recited Town Compensation and Town Consolidation Ordinances, the Provincial Government finds itself in a position to fully carry out its original purposes in passing the Ordinance of 1867; and the Ordinance submitted to you is, in effect, a completion of the endowment then sanctioned, as is shown by plan No. 3.

The second objection is, that the spirit, if not the letter, of "The Public Reserves Act, 1862," forbids the changing of trusts when the land has been reserved for recreation grounds.

In answer to this I assert—1. That the lands have never been "reserved for recreation grounds." 2. That had they been so reserved, the Ordinance, as shown above, involves no change of trust diverting them from such purpose; and also, that—3. The lease contemplated by the Ordinance is "in furtherance of the object for which they shall have been so reserved."

1. The grants quoted handed over the whole of the public reserves to the Superintendent for educational purposes. By "The Public Reserves Act, 1854," the specific purpose may be changed to other purposes of public utility, but only with the authority of an Ordinance of the Provincial Council. Only two such Ordinances (with the exception of the one in dispute) have been passed, viz., "The Harbour Trust Ordinance, 1866," and "The Town Board Endowment Ordinance, 1867," the titles of which fully show the services to which the lands were diverted from the purposes specified in the original grants. No reserve has been made in the town of New Plymouth for recreation grounds, although such is evidently assumed to be the case by His Excellency's legal advisers.

2. Although no such reserve has been made, yet, the Provincial Government, feeling the importance of setting apart lands in the vicinity of the town for recreation purposes, inserted a clause in "The Town Board Endowment Ordinance, 1867," repeated in that under consideration, authorizing the renting of the sections only on condition that the public shall be entitled to the use of the land, at stated periods, for cricketing and horse-racing. Reference to the plan will again show that the scattered sections leased under that Ordinance could certainly not be made available for horse racing, and that the lease of the whole plot of ground must be implied. The present Ordinance involves no change of trust. Half the land is already in the hands of the Superintendent, in trust for the Town Board. The Ordinance submitted does not remove it from that trust. The remaining half, though nominally held by the Education Trust (simply because in 1867 the titles to the sections so held were not completed, and could not, therefore, be described in the Schedule to the 1867 Ordinance), is yet an appanage of the Town Board, and all that is contemplated is to confirm by enactment the original intention of the Legislature, as confirmed by the lease under which the whole of the land shown in plans 1 and 2, and comprised in plan 3, is held by the same lessee and subject to the same conditions as to the rights of the public reserves over the land for recreation purposes.

3rd. Clause 3 of "The Public Reserves Act Amendment Act, 1862," referred to in your letter only bars the *sale* of land reserved for public gardens or recreation grounds, and not the *lease* of such lands when it is "in furtherance of the purposes for which they shall have been so reserved." Now, supposing the piece of land described as the racecourse (though it has never been reserved for such purposes) to be cut up as shown in plans 1 and 2, and held by separate trusts, it is very evident that the intentions of the Legislature would be frustrated. The Education Trust leases the sections on plan 1 to A, and the Town Board leases those on plan 2 to B. Each would fence around his separate little lots, if indeed, which is very improbable, any person could be found willing to lease land which required such an amount of fencing and subdivision into small patches, the ground would be rendered utterly useless as a racecourse, and the conditions of lease nugatory.

To render the ground available for the purposes contemplated, the sections must be consolidated under one trust, and leased to one person, who by his lease will be bound to keep the land in grass, and open to the public, as provided by the Ordinance submitted.

I trust that on reconsideration His Excellency will be advised to sanction the Ordinance submitted, otherwise serious inconvenience will be experienced both by the Provincial Government and by the Town Board.

With reference to "The Beach Road Stoppage Ordinance, 1871," you inform me that "the Government is advised that the Ordinance in question is *ultra vires*, for the same reasons as those pointed out in the correspondence relating to 'The Roads Diversion Ordinance, 1870,' which, however, was not disallowed, on the understanding that the *ultra vires* provisions should not be acted upon;" and you request me to point out reasons why this Ordinance should not be disallowed. In reply, I have the honor to submit—