1878.

NEW ZEALAND.

OTAGO HARBOUR BOARD AND SOUTH DUNEDIN CORPORATION

(CORRESPONDENCE BETWEEN).

Laid on the Table by the Hon. Sir George Grey, with the leave of the House.

LETTER of the SECRETARY of the OTAGO HARBOUR BOARD to the CHAIRMAN of the BOARD (Hon. W. H. Reynolds), and published by his Instructions.

SIR,— Wellington, 14th October, 1878.

I have the honor to report that, in accordance with instructions of the Board, and with your approval and direction this morning, I tendered to lay before the Waste Lands Committee of the House of Representatives documentary evidence of the Board's right and title to the land sought to be taken from it by Mr. Seaton's Bill, now before Parliament. The Committee, I was informed, had, on Friday, reported (although made aware beforehand that I was deputed by the Board to produce evidence), and therefore declined to receive it. It is not for me to criticise the mode of procedure which has so far precluded the Board's side of the question being heard, but I deem it my duty to the Board to furnish you with copies of some of the documentary evidence I have with me, and would respectfully suggest that the same should be published for the information of members of the Assembly and of the public generally. I may say that the original documents, together with others that I have thought it unnecessary at present to add, I have with me, also original minute books and letter books, which in a Court of justice would be held to be evidence, before which no verbal statements (which are too often mere opinions or wishes of the individual) would stand for one moment. I only regret an opportunity has not been afforded for their production. Before copying the documents I refer to, allow me to fix the date of the first gazetting of the South Dunedin Municipality—its embryo birth—for its full growth to include the land sought to be taken from the Board did not take place till some twelve months ago. Its first original birth was 15th December, 1875 (see *Gazette*). On 18th August, 1875, the Engineer of the Otago Harbour Board submitted his plans of the survey of the Upper Harbour and proposed improvements, John Davie, Esq., a member of the Provincial Executive, being in the chair. On the 19th August, 1875, His Honor the Deputy-Superintendent being in the chair, it was resolved that a deputation of the Board wait upon His Honor in his capacity as Superintendent in relation to the provisions of section 31 of "The Otago Harbour Board Ordinance, 1874," which provided as follows: "The Superintendent is hereby authorized, by deed under his hand, and sealed with the seal of the province, to convey to and invest in the Board the lands described in the First Schedule hereto (for the improvement of the Dunedin Harbour, &c., 421 acres 3 roods and 13 perches), and also all other lands which already have been or may hereafter be granted to the Superintendent in trust for the endowment of or for purposes of public utility for the said Harbour of Otago," &c.

On the 21st August the deputation waited on His Honor, and, as reported in the public newspapers, he stated—"He might say, without any breach of confidence, that he expressed his opinion that the transfer was a desirable thing to do in the present state of affairs." Mr. Cargill, a member of the Board, then stated "that the Minister for Works had expressed himself in favour of a comprehensive plan for the Board as now provided by their Engineer, and that the whole of the reclaimed lands should be vested in the Board."

As Mr. Cargill was proceeding North, he was requested to interview the Government; and on the 25th August the following telegram from Mr. Cargill was sent to me from Wellington: "Had a meeting this morning, with very successful result so far. Will you please to come yourself to Wellington without delay, bringing plan and all needful papers." Accordingly I proceeded to Wellington, arranged all details of plans and Bill to be laid before Parliament. As a few slight alterations were required to be made on the plans requiring the assent of the Board, I returned and laid before the Board the result of my mission on the 5th October, 1875, when I was instructed to forward the following letter:—

"Otago Harbour Board Office, Dunedin, 6th October, 1875.

"SIR,—I have the honor to transmit, for the assent of His Excellency the Governor in Council,

as required by 'The Harbour Works Act, 1874,' the plan of improvements for Dunedin Harbour, as adopted by the Otago Harbour Board at its meeting yesterday. I also enclose a memorandum of the Board's Engineer, with a certificate from the chief surveyor of the province as to the correctness of laying off upon the plan the record survey of sections along Anderson's Bay Road. Mr. Blair, General Government Resident Engineer, informs me that he has telegraphed his inspection of the plan and his certificate that the railway lines are correctly laid down. Hoping that they will now meet with the approval of the Government, and that they may receive the assent of His Excellency as early as possible, as the Board is anxious to issue as early as possible some part of the work by contract.—I have, &c., "J. L. GILLIES,

"The Hon. the Commissioner of Customs." "Secretary.

His Excellency the Governor's assent was given, and "The Otago Harbour Board Empowering Act, 1875," passed both Houses of Parliament, and was gazetted as assented to by His Excellency on 30th October, 1875. By this Act the land now sought to be diverted from the Board was vested in it, and at this time the South Dunedin Municipality did not even exist. Prior to this, £150,000 of the Board's debentures had been prepared and sent Home, with instructions not to be placed on the market until the fate of the foregoing proceedings would be determined. On 22nd October, 1875, by instructions of the Board, I wrote as follows to the Manager of the Colonial Bank:—"I have just received the enclosed copies of the Otago Harbour Board Empowering Act, passed both Houses of Parliament. It now only waits His Excellency's assent to become law, and of which there can be no doubt." I then proceeded to enumerate the advantages "to the purchasers of the Board's debentures," for the guidance of the Bank's London Agent; and I may here quote one numbered "Fifth," "Lands to be reclaimed under authorized plans to become the property of the Board, subject to the Government having the right to take any portion that may be required for a public purpose, on payment of cost to the Board. Under present plans this will be equal to 150 acres additional, making a total of about 450 acres available, when reclaimed, for leasing." The 150 acres here referred to included the ten acres now sought to be diverted.

On the 14th July, 1876, an application from the Peninsula and Ocean Beach Railway Company was received, of which the following is a copy:—

"Peninsula and Ocean Beach Railway Company (Limited),
"Dunedin, 14th February, 1876.

"GENTLEMEN,—I am instructed by my directors to ask your opinion in reference to the proposed line of railway through the Harbour Board's property adjoining the Anderson's Bay Road, which this Company is arranging to construct to the Ocean Beach and Portobello.

"In an interview the directors had with the Hon. the Minister for Public Works a few days ago, that gentleman expressed his belief that it would be better that the line should be moved from its present position to close alongside the Anderson's Bay Road, on the ground, it has been assumed, that the alteration would be approved of by the Harbour Board and the public.

"As it is believed that the Harbour Board will consider its property much more enhanced in value if the proposed railway is retained in the position where it has already been partly formed, I am directed, if such should be the case, to ask if the Board will be good enough to state so in writing, as it would no doubt tend to modify the Hon. Mr. Richardson's opinion, and be the means of saving the Company the loss of the cost it has already incurred on the present line, which was approved of and sanctioned by the Provincial Government.

"An early reply will much oblige, Gentlemen,—Your most obedient servant,
"GEORGE L. ASHER,

"The Chairman and Members, Otago Harbour Board." "Interim Secretary.

The application was considered on the 17th February: Present, His Honor the Superintendent (Mr. Macandrew), chairman, Messrs. McKinnon, Turnbull, Towsley, Davie, McNeil, Reeves, and Richie, when the following resolution was arrived at: "That, provided the line cannot be removed more seaward, the Board is of opinion that its present position is preferable to running it alongside the public road."

On the 22nd April another application from the Dunedin, Peninsula, and Ocean Beach Railway Company was received, as follows:—

"Dunedin and Peninsula Railway Company (Limited),
"Dunedin, 22nd April, 1876.

"SIR,—The Colonial Government has intimated that it will not offer any objection to the 'proposed course of the line along the site of the swamp road leading to Anderson's Bay, as shown in the plans forwarded,' subject to its being satisfied that the Harbour Board is willing that the line should be constructed as proposed, and also that any arrangements which may be entered into between the Harbour Board and the Company shall not prejudice any rights of the Crown, whether under 'The Otago Harbour Board Empowering Act, 1875,' or otherwise.

"I am therefore directed to bring the subject before the Board, with the view of obtaining its sanction and support in the carrying out of the scheme, and arranging such terms and conditions as might be approved of.

"The following, in the opinion of the directors, would be fair and reasonable:—

"1. That the Company be allowed the right to construct the line through the Board's endowment, as shown on plan.

"2. That the Company make and maintain all necessary culverts and crossings through its embankment as may from time to time be required by the Harbour Board, when reclaiming their land, forming streets, &c.

"3. That the Board have power, should it think fit, after or before the reclamation of its lands along the Anderson's Bay Road, to move the line either more seaward or otherwise, should the Board's arrangements as to streets, &c., require this to be done.

"4. That the Company allow sidings to be attached at any portion of the line on the Board's property when and where the Board wishes to place them.

"5. That the rights of the Crown shall not be prejudiced.

"I may further add that the Company intend, if the City Corporation desires it, and the latter gets the necessary permission from your Board, to put a siding from the line to the gasworks, and to carry the coal there on such terms as may be authorized by the Government.

"Waiting the favour of a reply,—I have, &c.,

"G. L. Asher,
"Interim Secretary.

"The Chairman, Otago Harbour Board."

On the 26th April I was instructed to request the Company to furnish the Board with a copy of the plan, and on the 2nd of May, His Honor the Superintendent (Mr. Macandrew) being in the chair, the following resolution was agreed to: "That, in terms of the letter of the 22nd April, a tracing of the portion of the line passing throught the Board's endowment should be furnished; and that, should the line be altered at any time, the Company will have to bear the expense."

On the 3rd May the Secretary to the Company intimated the acceptance of the terms imposed by the Board, and on the 10th May I was instructed by the Chairman to forward to the Company a certified copy of the plan of line of railway, and on the 11th May I forwarded, through the Chairman of the Board (His Honor the Superintendent, Mr. Macandrew), the tracing required.

On the 6th July, 1876, a letter was received from the Town Clerk of the South Dunedin Corporation, requesting permission of the Board to construct a sewer, or storm-water channel, through the lands referred to.

In reply, a plan of the proposed works was requested to be furnished to the Board's Engineer for his report thereon; and on his report the Board resolved, "That the consent of the Board be given, in terms of the Engineer's recommendations; sewers to be approved by Engineer, and to be covered in when required by the Board, and maintained at the Corporation expense."

Members present at that meeting were: Messrs. Turnbull, Davie, McKinnon, McNeil, and Tewsley.

The following is a copy of the letter transmitting the Board's consent:—

"24th July, 1876.

"Gentlemen,—I have now the honor and pleasure of forwarding you the Harbour Board's consent to the construction of sewers to carry off storm-water through their property, on the following conditions:—

"1. Extension, when necessary to keep up with the work of reclamation, to be undertaken by and at the expense of the South Dunedin Corporation.

"2. No sewage or solid matter of any kind to be discharged into the harbour.

"3. Detailed plans of sewers, with in-let and out-let levels, to be furnished to the Board, and the works to be carried out to the satisfaction of the Board's Engineer.

"4. The maintenance and further repairs, as well as extensions through the Board's property to the sea, to be carried out when required at the Corporation's expense.—I have, &c.,

"John L. Gillies,
"Secretary.

"His Worship the Mayor and Councillors,
South Dunedin Corporation."

Abolition having been carried and the last days of Provincialism drawing near negotiations were suggested by executive members of the Government to members of the Board, with a view to the completion of the Board's titles. The following extract from a letter dated 7th July, 1876, sent to the Board by direction of the Executive by the Under Secretary, Mr. Willis, shows that the Board had a distinct promise that the Executive would render every assistance to the Board in its endeavour to obtain titles to its endowments, the Executive then having "The Otago Harbour Board Empowering Act, 1875," before it:—

"Provincial Secretary's Office, Dunedin, 7th July, 1876.

"Sir,—I am directed to acknowledge the receipt of your letter of the 1st instant, forwarding copy report of a committee of your Board, recommending that the Board should pay over to the Government the sum of £9,769 16s., as the amount expended by the Government in reclaiming the block between Rattray and Jetty Streets, on condition that the Superintendent and Executive will give every facility for the transfer, and that they will undertake to refund such portion of the amount so paid as is applicable to what is taken for railway purposes should the Board be unable to get it back from the General Government; and in reply I am to inform you that it has been ascertained that the estimate of the cost of the reclamation referred to has not been correctly stated in consequence of an error in the measurement, which, in place of being 95,700 yards, as supposed, is nearer 123,000.

"I am further directed to state that, previous to the passing of 'The Otago Harbour Board Empowering Act, 1875,' the Provincial Government had been in negotiation with the Dunedin School Committee and the Corporation with the view of getting sufficient playground for the Albany Street and Normal Schools, and that the Corporation had been offered for these an area of equivalent value of the land adjoining the railway, near Castle Street, on which the Government had spent a large sum filling up.

"It is understood that the Corporation is now willing to accept the exchange as offered, and the Provincial Government expects that the Harbour Board will not throw any obstacles in the way of enabling the Government to conclude an arrangement which it feels bound to respect, and which is of such importance to the schools of the city. The Government will, of course, see that the land given in exchange adjoining the railway will be of such a shape as will not injure the remainder.

"I am therefore directed to propose, as a settlement of the matter,—

"1. That re-measurement of the reclamation between Rattray and Jetty Streets be made by the Provincial Engineer and the Engineer to the Board, with the view of ascertaining the exact cost to a given date; and that the amount be paid to the Provincial Government, it giving the undertaking

required by the Harbour Board that, should the Board not be able to recover from the General Government the value of the land taken for railway purposes, the Provincial Government will refund to such extent.

"2. That the work of reclamation go on as at present, the Harbour Board undertaking to pay the additional cost from time to time as the work proceeds.

"3. That the Harbour Board offers no objections to the exchange with the Corporation of land adjoining the railway near Castle Street equivalent in value to the playgrounds to be given for the Albany Street schools.

"On the above being agreed to, the Government will make no further claims on account of the large sums expended in reclamation at Castle Street and elsewhere, which the Board will now reap the advantage of, and the Superintendent and Executive will render every facility and assistance in their power in completing the Board's title to its endowments.—I have, &c.,

"ALEX. WILLIS,
"Under Secretary."

The terms of this letter were agreed to, and £12,375 paid to the provincial authorities; and it will be noted that up to this date not one word had been said in reference to the South Dunedin Municipality—in fact, all previous efforts had been directed towards the obtaining of the land referred to for the Dunedin, Peninsula, and Ocean Beach Railway, the final hopes in regard to which had been dissipated by the Provincial Council in June refusing to indorse the Executive, or rather Superintendental, promises to that company of this and other lands held by him in *trust* for harbour improvements. The terms of this letter alone, carried out in the honorable, fair, and, I may say, sympathetic spirit in which the Board met the Provincial Executive, should have prevented the attempt made, some four months later, to deprive it, by a sidewind, of part of its legitimate endowment; and influenced the late Superintendent, the Hon. Mr. Macandrew, in seeing to it that the agreement of his late Executive was implemented, and not broken.

On the 3rd August, 1876, His Honor the Deputy-Superintendent (Mr. Turnbull) in the chair, and Messrs. Ritchie, McKinnon, Tewsley, McNeill, and Davie being present, the following recommendation was brought up in a report from the Finance Committee, and adopted by the Board: "That immediate application be made to the General Government for the issue of a Crown Grant for that portion of land included in the plans of harbour improvement approved by the Governor in Council, and to which the Board is entitled under clause 5 of 'The Otago Harbour Board Empowering Act, 1875.'"

On the 4th August, a letter in accordance therewith was forwarded to the Colonial Secretary, and at the Board's usual fortnightly meeting, on the 17th, the letter was approved:—

"4th August, 1876.

"SIR,—I have the honor, by direction of the Otago Harbour Board, to request that instructions may be issued as soon as practicable for the preparation and issue of a Crown grant for that portion of land included in the plans of the harbour improvement approved by his Excellency the Governor in Council, and to which the Board is entitled under clause 5 of 'The Otago Harbour Board Empowering Act, 1875.' The Board's solicitors advise that leases cannot be legally issued until the Crown grant is issued. I enclose tracing of ground above referred to.—I have, &c.,

"J. L. GILLIES,
"Secretary.

"The Hon. the Colonial Secretary."

Objection was taken to the issuing of the grant for the whole amount, viz., 150 acres, on the ground that the provisions of the Act implied that it should be first reclaimed; but ultimately it was agreed that the embankment constructed by the Dunedin, Peninsula, and Ocean Beach Railway out of material taken from the Board's adjoining lands should be held as a reclamation of some 21 acres; and accordingly a Crown grant was ordered to be prepared and issued for that quantity after going through the usual departmental routine.

On the 24th October, 1876, an application was made, for the first time, by the Provincial Government for the reserve of ten acres of this land for the South Dunedin Municipality, which was considered at a meeting of the Waste Lands Board upon the 1st November, when the Board passed a resolution complying with the request.

On the 2nd November, at the usual fortnightly meeting of the Harbour Board, I drew its attention to the published report of proceedings that had taken place at the Waste Lands Board the previous day, and to a letter from the Waste Lands Office, with a request for certain information with regard to the Board's endowment, this letter, however, not having been delivered till after the Waste Lands Board meeting. It was resolved that the secretary take immediate steps to protect the Board's interest. I accordingly wrote the following letters to the Chief Commissioner of Crown Lands and to the Hon. the Commissioner of Customs:—

"Dunedin, 3rd November, 1876.

"SIR,—I have the honor to furnish you with a tracing and description of the land lying between the Ocean Beach Railway and Anderson's Bay Road promised to be Crown-granted to the Otago Harbour Board, and included within the plans submitted to and sanctioned by the Governor in Council under the provisions of 'The Harbour Works Act, 1874.' As I understand a portion of this same block has been recommended by the Provincial Government to be reserved for the Municipality of South Dunedin, and that, in ignorance of the true position of the matter, the Waste Lands Board at its last meeting agreed to make the reserve, I have the honor to request that further consideration be given this mattre before anything is done further in it.

"By a reference to the record map of the province and to the Crown grants issued for the sections along Anderson's Bay Road it will be seen that the boundary or high-water mark of the harbour of Otago or Dunedin lies close up to said road and sections.

"Owing to the dispute between the General and Provincial Governments in connection with the construction of the Dunedin, Peninsula, and Ocean Beach Railway, it would appear that in March last

a survey was made, and high-water mark was placed much further out than formerly, and much further out than actually it should be, and marked off as Crown lands. Whether there is any legal authority to take lands out within the declared and recorded foreshore of the harbour otherwise than under the provisions of 'The Harbour Works Act, 1874,' I am not aware, and on behalf of the Harbour Board respectfully request a reconsideration of the whole matter.—I have, &c.,

"J. L. GILLIES,
"Secretary."

"Dunedin, 3rd November, 1876."

"SIR,—I have the honor to draw the attention of the General Government to certain actions of the late provincial authorities calculated to defeat the ends of justice. It will be in the recollection of the Hon. the Minister for Public Works that when the Otago Harbour Board first submitted their plans of improvement of the harbour for the Governor's approval under 'The Public Works Act, 1874,' it only claimed up to the line of the Dunedin, Peninsula, and Ocean Beach Railway; but that he required the obliteration of that line, and also that the Board include within its scheme the foreshore of the harbour up to the line of recorded high-water mark, or again to Anderson's Bay Road. It would appear now that, although the provincial authorities were fully cognizant of all that was going on and that the Governor had given his consent to the Board's plan, they kept it hid that, in March, 1875, while the plans were being prepared, they had caused the Chief Surveyor to make a new survey of the foreshore, and fixed the line of high-water mark much further out than laid down previously, and so as to include mostly the whole of the railway referred to; this, it is acknowledged, was done to provide a justification for the Provincial Executive having given authority for the construction of the said railway. I have also to call to your recollection that the Board some time ago applied to your Government for the issue of a Crown grant, but owing to a technical difficulty it was found impossible to issue a grant for the whole; but that it was agreed that the Government would be justified in issuing a grant for the portion lying between the railway and Anderson's Bay Road, or, in other words, to high water-mark, as laid down on the record map of the province. It now appears that on the 17th ultimo a letter was sent to the Commissioner of Crown Lands here asking for a plan and description of the block, which was immediately forwarded to the Provincial Chief Surveyor for the information required. This letter was not returned until late in the afternoon of the 1st instant, and was brought to me with the information that the Commissioner was requested to apply to me. In the meantime, that very day, in the forenoon, a recommendation from the Provincial Government was received, recommending ten acres of this block to be set apart as a reserve for South Dunedin, based upon the artificially-constructed map showing part of the Harbour of Otago under high-water mark as Crown lands. The Waste Lands Board consented to temporarily reserving the same, but I respectfully submit that no power exists, excepting under the provisions of 'The Harbour Works Act, 1874,' to reclaim land from the harbour. If the map recently constructed in 1875 is acknowledged, then the Dunedin, Peninsula, and Ocean Beach Railway Company has a claim to the land through which it is constructed, as the company had a right given to it by the provincial authorities. It is essential, in the protection of public interests, especially in view of the possibility of Government purchasing the line at some future time, that no colour even should be given to such a claim; and this, I respectfully submit, can only be done by your Government maintaining the position it has hitherto done, that the foreshore of the harbour is as recorded on the record map of the province, and by at once issuing the Crown grant to the Harbour Board, as has always been contemplated. I have notified to the Acting Chief Commissioner the position of the question at issue.—I have, &c.,

"J. L. GILLIES,
"Secretary.

"The Hon. the Commissioner of Customs."

On the 8th November I appeared at a meeting of the Waste Lands Board. The Provincial Secretary, a member of the Board, being present, the whole circumstances of the case and plans were considered, and the Waste Lands Board rescinded its former resolution. Mr. Seaton, M.H.R., last session, you are aware, introduced a measure with a similar object to that of the Bill now before Parliament. when the following report was brought up by the chairman of the Waste Lands Committee: "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."

I await your further instructions in regard to this matter.—I have, &c.,

JOHN L. GILLIES,
Secretary.

The Hon. W. H. Reynolds, Chairman O.H.B.

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