



ANALYSIS

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1992, No. 12

An Act to provide for the leasing of land on Penrhyn and to provide for payment of adequate compensation in relation thereto

(21 December 1992)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same as follows:

WHEREAS by order of the Land Court of the Cook Islands made on the 16th day of August 1976 the owners of the land NAHARAKURA situated at Omoka on the island of Penrhyn were determined to be the descendants of REVAHUA for that half of the land being the Motu Koiti or southern portion, and the descendants of PANGERUA for that half of the land being the Omoka or northern portion, the Court observing that those descendants be determined in accordance with the provisions of Section 446 of the Cook Islands Act 1915.

AND WHEREAS the Cook Islands Government Property Corporation occupies a part of the land and wishes to occupy further parts, in each case for purposes which are for the welfare and benefit of the people of the island of Penrhyn.

AND WHEREAS it is desired that valid leases be granted to the Cook Islands Government Property Corporation.

AND WHEREAS the successors of the said Revahua and Pangerua have not yet been determined by the High Court of the Cook Islands and it is not practicable to have the owners of the land grant valid leases to the Cook Islands Government Property Corporation in the normal way.

AND WHEREAS the Island Council of Penrhyn has sought and ascertained the wishes of those that it believes to be the owners of the land and has now, on their behalf, requested the Crown to make special arrangements to enable the Cook Islands Government Property Corporation to obtain valid leases in respect of the part of the land occupied by the Corporation, without the need for the High Court of the Cook Islands to travel to the island of Penrhyn for that purpose.

NOW THEREFORE BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same as follows:

1. Short Title - This Act may be cited as the Penrhyn (Naharakura Lease) Facilitation Act 1992.

2. Interpretation - In this Act, unless the context otherwise requires -

"Island Council" means the island council of the island of Penrhyn as constituted under the provisions of the Outer Islands Local Government Act 1987;

"The Leases" means those leases created by operation of this Act and in the form set out in the Schedule;

"The Land" means all that parcel of land comprising 11 acres: 1 rood: 25 perches being all of the land named by the Land Court Naharakura Section 19, Omoka on the island of Penrhyn;

"The Leased Lands" means, collectively, those parcels of the land which are the subject of the leases;

"Trust" means the Naharakura Development Trust constituted by Section 7 of this Act.

3. Validation of leases - Each of the leased lands shall be deemed by operation of this Act to be validly and effectually leased by the owners thereof for themselves, their heirs and successors to the Cook Islands Government Property Corporation upon and subject to the terms of the leases.

4. Preservation of rights of owners - (1) Nothing in this Act shall preclude any owner of the leased lands (determined as being such by the Land Division of the High Court) from making an application to the Land Division of the High Court for the purposes of determining the adequacy of the consideration payable by the Cook Islands Government Property Corporation in respect of the alienation effected by this Act, it being the wish and intention of the Cook Islands Government Property Corporation to pay adequate compensation for the leased lands, and in this regard the Court shall have regard to the terms and conditions of the leases and also to market rentals payable on the island of Penrhyn (or if the Court is satisfied that there are no such comparable market rentals then in any other of the outer islands) as at the date of the coming into force of this Act. The Court may, upon the making of any such application, either confirm the adequacy of the compensation or make any order increasing the compensation payable in such respects as it thinks fit and proper, having regard to the rights of the owners under Article 40 of the Constitution.

(2) The rights accruing under subsection (1) of this section shall be deemed to be a cause of action entitling the applicant to adequate compensation in accordance with Article 40 of the Constitution and such cause shall be deemed to have accrued as at the date of the coming into force of this Act and shall accordingly be subject to the provisions of section 4(1)(d) of the Limitation Act 1950 of New Zealand as applied in the Cook Islands.

(3) Any determination made by the Court pursuant to subsection (1) of this section shall (subject to the usual rights of appeal) be binding on all other landowners and the Court shall, in determining appropriate steps to be taken in the proceedings by way of service and notice, have regard to the provisions of this section and to the consequences of those provisions.

5. Powers of High Court unaffected - Nothing in this Act shall affect the jurisdiction of the High Court in respect of the land, or the remaining land, to determine the descendants of Revahua and Pangerua or to determine the relative interests to which each such successor is entitled in each of the leased lands.

6. Application of proceeds of leasing - (1) The proceeds of leasing of each of the leased lands shall be paid and dealt with in accordance with the provisions of this Act and the provisions of the Cook Islands Act 1915 shall have no application in this respect.

(2) The proceeds of leasing of each of the leased lands shall be paid to the Naharakura Development Trust.

7. Naharakura Development Trust constituted - (1) There is hereby constituted a body corporate to be known as the Naharakura Development Trust, the trustees of which shall be the members from time to time of the Island Council of Penrhyn.

(2) The beneficiaries of the trust shall be the successors of Revahua and Pangerua.

(3) The Island Council is authorised to apply both the capital and the income of the trust for the benefit of the beneficiaries of the trust as the trustees in their sole discretion think fit. The application of the capital and income of the trust for such charitable purposes beneficial to the people of the island of Penrhyn (and whether on the island of Penrhyn or elsewhere) as the Island Council thinks fit shall be deemed to be a proper application of the capital and income of the trust for the benefit of the beneficiaries in any case where the trustees, acting in good faith, are satisfied that the capital and/or income so applied is for the benefit (in whole or in part) of the descendants of Revahua and Pangerua.

(4) Any person who has been determined by the Land Division of the High Court to be an owner in the leased lands and who has had his relative interest in each of the leased lands determined by the Court may -

(a) by notice in writing to the trust assign all his rights and interests in the capital and income of the trust to the trustees to hold on trust for charitable purposes beneficial to the people of the island of Penrhyn (wherever resident); or

(b) require the trust to account to him for his share of the proceeds of leasing of each of the leased lands.

(5) Any person who, in accordance with subsection (4) assigns and sets over his rights and interests in the capital and income of the trust shall be noted by the trustees as having made a donation for charitable purposes to the trust and the trustees shall cause, if that person so wishes, details of that donation to be published on the island of Penrhyn, and shall thereafter hold those rights and interests on trust for charitable purposes beneficial to the people of the island of Penrhyn (wherever resident).

(6) Any person who requires the trust to account to him for his share of the proceeds of leasing of each of the leased lands shall receive from the trust such sum as the trust calculates as being due and owing to that person, after deducting therefrom an amount calculated by reference to the use and enjoyment (past and prospective) by that person and his or her dependants of the assets to which the capital and income have been invested. Any person dissatisfied with the determination of the Island Council in this regard shall have a right of appeal to the High Court which may, on appeal, confirm, increase or reduce the determination.

This Act is administered in the Justice Department

Section 2

SCHEDULE

DEED OF LEASE made this 18th day of December 1992

BETWEEN THE LANDOWNERS of the land hereinafter described (hereinafter with their respective successors called "the Lessors") of the one part

AND COOK ISLANDS GOVERNMENT PROPERTY CORPORATION a statutory body incorporated under the provisions of the Cook Islands Government Property Corporation Act 1969 (hereinafter with its successors and assigns called "the Lessee") of the other part

WHEREAS the Lessors although unascertained and not recognised as being owners in terms of the Cook Islands Act 1915 are the owners of ALL THOSE PARCELS OF LAND referred to in the Schedule hereto more or less situated in the District of Omoka, Island of Penrhyn in the Cook Islands and being PART of the land named by the Native Land Court NAHARAKURA SECTION 19, OMOKA, PENRHYN and being PART of the land contained in a Freehold Order made by the said Court on the 16th day of August 1976 (hereinafter referred to as "the said land")

AND WHEREAS the said land is to be leased pursuant to the provisions of the Penrhyn (Naharakura Lease) Facilitation Act 1992 (hereinafter referred to as the "said Act")

NOW THEREFORE in consideration of the sum of FIFTY THOUSAND DOLLARS (\$50,000.00) paid to the Naharakura Development Trust pursuant to the said Act and of the rent hereby reserved and of the covenants and conditions on the part of the Lessee herein contained and by law implied the Lessors by operation of the said Act HEREBY LEASE unto the Lessee the said land TO HOLD the same unto the Lessee for a term of SIXTY (60) YEARS computed from the 18th day of December 1992, on the following terms and conditions:

IN RESPECT OF BLOCK 1:

1. YIELDING and paying therefor:
 - (a) For and during the first five (5) years of the said term an annual rental of FIVE HUNDRED DOLLARS (\$500.00) per annum.
 - (b) For and during each succeeding period of five (5) years of the said term annual rentals as shall be agreed upon by the Lessors and the Lessee or failing agreement at such rentals as shall be fixed by arbitration in accordance with the Arbitration Act 1908 such rentals to be based upon then current market rentals for comparable unimproved land of a similar value to Block 1 in its unimproved condition and the terms conditions and provisions of this Deed but to be not less than the annual rental payable for the preceding five (5) years.

SUCH RENTAL to be payable in advance on the 18th day of December in each and every year of the said term.

2. THAT Block 1 shall be used for public purposes within the meaning of Section 364 of the Cook Islands Act 1915 and subject always to the provisions and conditions contained in Section 13 of the Statutes Amendment Act 1945 and by way of clarification Block 1 shall be specifically used for the purposes of establishing a marine research station for the purposes of aquaculture research and training ("the specified purpose") PROVIDED HOWEVER that should Block 1 cease to be used for the specified purpose then this lease shall in respect of Block 1 be deemed to have been surrendered to the Lessors but without affecting the validity or operation of this lease in respect of the remaining blocks.

IN RESPECT OF BLOCK 2:

3. YIELDING and paying therefor:
- (a) For and during the first five (5) years of the said term an annual rental of TWO HUNDRED DOLLARS (\$200.00) per annum.
 - (b) For and during each succeeding period of five (5) years of the said term annual rentals as shall be agreed upon by the Lessors and the Lessee or failing agreement at such rentals as shall be fixed by arbitration in accordance with the Arbitration Act 1908 such rentals to be based upon then current market rentals for comparable unimproved land of a similar value to Block 2 in its unimproved condition and the terms conditions and provisions of this Deed but to be not less than the annual rental payable for the preceding five (5) years.

SUCH RENTAL to be payable in advance on the 18th day of December in each and every year of the said term.

4. THAT Block 2 shall be used for public purposes within the meaning of Section 364 of the Cook Islands Act 1915 and subject always to the provisions and conditions contained in Section 13 of the Statutes Amendment Act 1945 and by way of clarification Block 2 shall be specifically used for the purposes of establishing beacons for the Island of Penrhyn ("the specified purpose") PROVIDED HOWEVER that should Block 2 cease to be used for the specified purpose then this lease shall in respect of Block 2 be deemed to have been surrendered to the Lessors but without affecting the validity or operation of this lease in respect of the remaining blocks.

IN RESPECT OF BLOCK 3:

5. YIELDING and paying therefor:
- (a) For and during the first ten (10) years of the said term an annual rental of ONE HUNDRED DOLLARS (\$100.00) per annum.
 - (b) For and during the remainder of the term of this lease the Lessee shall pay to the Lessor in lieu of ground rental an amount by way of royalty calculated at the rate of 2.5% of the gross income derived directly or indirectly by the Lessee from Block 3 and if any dispute or difference shall arise between the Lessors and the Lessee as to the meaning and construction of this clause or the appropriate method or basis of calculation of gross income that dispute or difference shall be referred to the Land Division of the High Court for determination.

SUCH RENTAL to be payable in advance on the 18th day of December in each and every year of the said term, and thereafter each annual royalty payment shall be made annually in arrears not later than the 31st day of March (and the Lessee may, if it wishes adopt and operate a lease year of 1 January to 31 December for this purpose).

6. THAT Block 3 shall be used for public purposes within the meaning of Section 364 of the Cook Islands Act 1915 and subject always to the provisions and conditions contained in Section 13 of the Statutes Amendment Act 1945 and by way of clarification Block 3 shall be specifically used for the purposes of installing television, telecommunication and postal services for the Island of Penrhyn ("the specified purpose") PROVIDED HOWEVER that should Block 3 cease to be used for the specified purpose then this lease shall in respect of Block 3 be deemed to have been surrendered to the Lessors but without affecting the validity or operation of this lease in respect of the remaining blocks.

AND THIS LEASE SHALL BE SUBJECT TO THE FOLLOWING FURTHER TERMS AND CONDITIONS:

7. THE Lessee shall pay all rates and taxes which may during the said term be levied and payable in respect of the said land.
8. THE Lessee shall during the said term keep the said land in a neat and tidy condition and free from all noxious weeds and growths and shall comply with the laws for the time being in force in Penrhyn relating thereto.
9. THE Lessee shall have the right or power to transfer or assign by way of mortgage or otherwise charge its interest under this lease as security for loans to the Lessee.
10. THE Lessee shall not transfer assign sublet or otherwise part with the possession of the said land or any part thereto (except by way of mortgage as security for advances).
11. THE Lessee performing all and singular the covenants conditions and restrictions on its part herein expressed or implied shall quietly enjoy and hold the said land throughout the said term without any interruption by the Lessors or any person lawfully claiming under them.
12. THE Lessee shall be entitled at any time during the term hereof to demolish or remove any building erected on the said land without the payment of any sum of money to the Lessors by way of compensation or otherwise if the Lessee shall erect or build on the said land a replacement building to at least the value of the building so demolished or removed and the Lessee shall be entitled at any time during the term hereof to alter any building erected on the said land provided such alteration do not diminish the value of the said building.
13. IF the rental hereby reserved or any part thereof shall be in arrear and unpaid for the space of three calendar months after the same shall become due or if the Lessee for a like period fails to observe or perform any of the covenants or conditions on its part herein contained or implied it shall be lawful for the Lessors thereupon or at any time thereafter to re-enter upon the said land and terminate this lease but without prejudice to the rights of the Lessors to recover any rent which may be in arrear or unpaid at the date of such termination.

SCHEDULEBLOCK 1

ALL THAT PARCEL OF LAND containing ONE DECIMAL TWO NOUGHT NOUGHT ONE HECTARES (1.2001 ha) more or less situated in the District of Omoka, Island of Penrhyn and being part of the land named by the Land court NAHARAKURA SECTION 19, OMOKA, PENRHYN and being PART of the land contained in a Freehold Order made by the said Court on the 16th day of August 1976 as the said parcel of land is more particularly delineated and described in a plan deposited in the Office of the Chief Surveyor under S.O. 1470 and the plan drawn hereon (herein referred to as "Block 1")

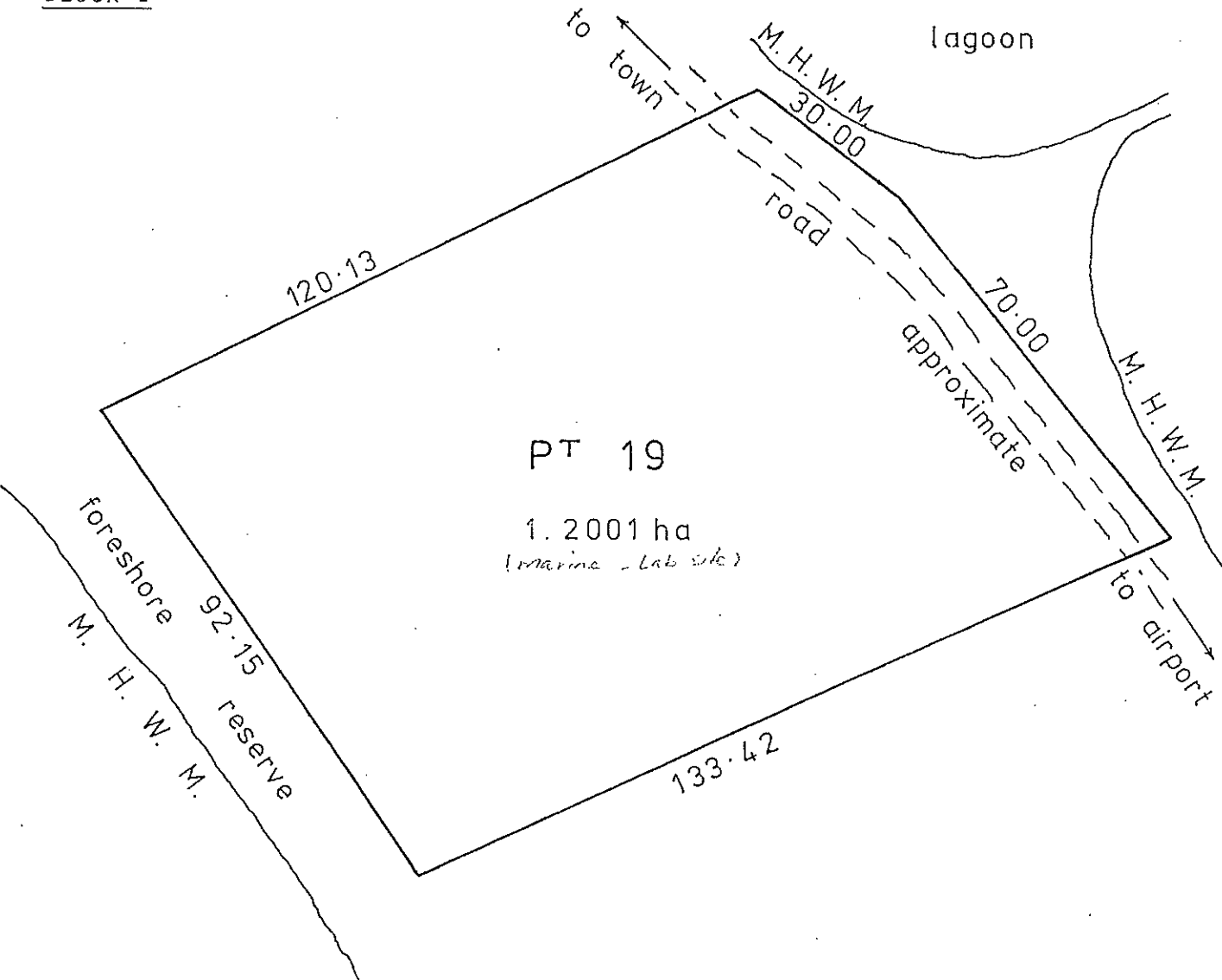
BLOCK 2

ALL THAT PARCEL OF LAND containing ONE DECIMAL TWO FIVE FIVE THREE HECTARES (1.2553 ha) more or less situated in the District of Omoka, Island of Penrhyn and being part of the land named by the Land court NAHARAKURA SECTION 19, OMOKA, PENRHYN and being PART of the land contained in a Freehold Order made by the said Court on the 16th day of August 1976 as the said parcel of land is more particularly delineated and described in a plan deposited in the Office of the Chief Surveyor under S.O. 1494 and the plan drawn hereon (herein referred to as "Block 2")

BLOCK 3

ALL THAT PARCEL OF LAND containing THREE THOUSAND FOUR HUNDRED AND EIGHTY ONE SQUARE METRES (3,481m²) more or less situated in the District of Omoka, Island of Penrhyn and being part of the land named by the Land court NAHARAKURA SECTION 19, OMOKA, PENRHYN and being PART of the land contained in a Freehold Order made by the said Court on the 16th day of August 1976 as the said parcel of land is more particularly delineated and described in a plan deposited in the Office of the Chief Surveyor under S.O. 1470 and the plan drawn hereon (herein referred to as "Block 3")

BLOCK 1



PT 19

OMOKA DISTRICT PENRHYN ISLAND

SCALE 1:1000

Certified Correct and Conforms to S.O. 1470

[Signature]
 Chief Surveyor 16.12.92

BLOCK 2

LAGOON

PT 19
1.2553 ha
(Bancora)

124.41

122.88

85.00

120.13

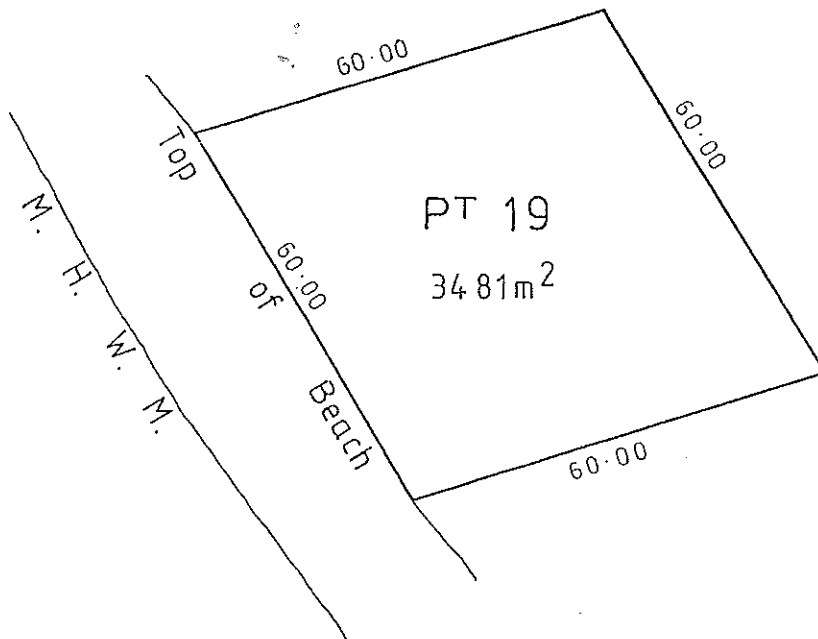
M.
H.
W.
M.

PT 19
OMOKA DISTRICT
PENRHYN ISLAND
SCALE - 1:1000

Certified Correct and Conforms to
SO 1494

[Signature]
Chief Surveyor
16/12/92

BLOCK 3



PART SEC 19

OMOKA DISTRICT

PENRHYN ISLAND

SCALE 1:1000

Certified Correct and Conforms to S.O. 1470

A. H. S. King
.....
for Chief Surveyor 11. 11. 1992