

Chronology

1924 Meeting of NZAFA Council representatives with Rt Hon Wm Massey, who raised government subsidy offer for a National Art Gallery from £75,000 to £100,000 and gave agreement that “provision should be made for the accommodation of the New Zealand Academy of Fine Arts in the new building, in consideration of which the Academy would hand over the proceeds of sale of its existing premises, valued at £10,000, to the building fund.”

1928 Meeting of G. Troup CMG (Mayor of Wellington) with Rt Hon J. G. Coates confirmed the subsidy of £100,000 and on 15 May 1928 Troup publicly announced the Academy had promised £15,000 (not £10,000) towards a National Art Gallery. NZAFA seeks permission to sell its property in Whitmore St, writing in a letter to the Minister of Internal Affairs:

“The whole of the present National Collection, valued at about £7,000, and the Academy’s Permanent Collection, valued at £7,300, are now housed in the Academy’s building in Whitmore Street. In the event of the permission now sought being granted both collections will be transferred to the new Dominion Art Gallery where they will form a most worthy nucleus for New Zealand’s future National Art Collection.”

1928 Reserves and other Lands Disposal Act (19 GEO. V 1928 No 46)

10.

- (1) Notwithstanding any trust or condition affecting the land comprised in certificate of title, Volume 55, folio 182, Wellington Registry, the New Zealand Academy of Fine Arts (Incorporated) shall, subject to the provisions of this section, be entitled to sell the said land and all buildings thereon in such manner, upon such terms, and subject to such conditions as the Council of the New Zealand Academy of Fine Arts shall think fit.
- (2) The net proceeds of such sale, after payment of any commission and of any legal or other costs incidental thereto, shall be paid over to the trustees in whom for the time being any funds obtained by public subscription or otherwise for the erection of a Dominion Art Gallery upon the site set aside therefor by the Government of New Zealand upon Mount Cook, in the City of Wellington, are vested, and shall be applied by the said trustees towards the cost of the erection of such Dominion Art Gallery.
- (3) Prior to the said sale the Council of the New Zealand Academy of Fine Arts shall satisfy itself that adequate accommodation in the building of the Dominion Art Gallery has been or will be provided and will thereafter be permanently available for the carrying-on of the objects and purposes of the New Zealand Academy of Fine Arts.

1930 National Art Gallery and Dominion Museum Act (21 GEO. V 1930 No. 22)

14. For the purpose of enabling the New Zealand Academy of Fine Arts to sell its land and to pay the net proceeds of such sale to the Board pursuant to section ten of the Reserves and other Lands Disposal Act, 1928, the Board is hereby expressly empowered to provide and make permanently available for the carrying-on of the objects and purposes of the New Zealand Academy of Fine Arts such accommodation in the building of the National Art Gallery as the Board thinks fit.

1933 Deed made 27 February between Council of New Zealand Academy of Fine Arts and Board of Trustees of National Art Gallery and Dominion Museum

(1) The Academy shall with due diligence endeavour to find a purchaser for its said land and buildings.

(2) Upon a sale of the said land and buildings the Academy shall pursuant to the said Section 10 of the Reserves and Other lands Disposal Act, 1928 pay to the Board the net proceeds of such sale after payment of any commission and of any legal or other costs incidental thereto.

(3) The Academy shall upon the execution of this Deed pay to the Board the said Building Fund together with all interest thereon accrued to date of payment.

(4) In consideration of the payment by the Academy to the Board of the net proceeds of the sale of its said land and buildings and of the said Building Fund the Board covenants with the Academy that the Academy shall have the right in perpetuity the right to occupy solely those portions of the National Art Gallery and Dominion Museum Building more particularly described in the First Schedule hereto together with the right in perpetuity to the use in common with the Dominion Art Gallery of those portions of the said building more particularly described in the Second Schedule hereto together with the right in perpetuity to use the means of access to the said portions of the said building including such passenger and goods elevators as serve the said portions.

(5) The Board covenants with the Academy that if at any time in the future the said National Art Gallery and Dominion Museum Building is wholly or partly destroyed by fire or earthquake so as to deprive the Academy of the use and occupation of the portions of the said building herein agreed to be provided for the Academy in perpetuity the Board will upon restoration of the said building (in case of partial destruction) or in any building erected in substitution therefor (in case of total destruction) make available to the Academy in perpetuity accommodation in such buildings at least as adequate in relation to those buildings as the accommodation in the said National art Gallery and Dominion Museum Building which is hereby covenanted to be made available to the Academy in perpetuity together with all proper means of access thereto.

(6) The Board covenants with the Academy that it will with expedition promote and endeavour to have passed an Act of Parliament ratifying the terms of this Deed or an Act of Parliament making such provisions as will ensure to the Academy the occupation and use in perpetuity of those portions of the National Art Gallery and Dominion Museum Building which are hereby covenanted to be provided for the occupation and use of the Academy in perpetuity and authorising or approving the payment by the Academy to the Board of the said Building Fund.

Local Legislation Act 1932 (23 GEO V 1932-33 No 47)

65. Whereas for the purpose of enabling the Council of the New Zealand Academy of Fine Arts (hereinafter called the Academy) to comply with the requirements of section ten of the Reserves and other Lands Disposal Act, 1928, the Board of Trustees of the National Art Gallery and Dominion Museum (hereinafter called the Board) and the Academy, by deed made the twenty-seventh day of February, nineteen hundred and thirty-three, a copy whereof is recorded in the Department of Internal Affairs at Wellington as I.A. 1933/216/2, entered into an agreement with respect to the provision and permanent availability of adequate accommodation in the building of the National Art Gallery for the carrying-on of the objects and purposes of the Academy: And whereas it is expedient to confirm the said agreement: Be it therefore enacted as follows:-

The Board and the Academy shall be deemed to have had power to enter into the agreement aforesaid, and the said deed shall be binding on the parties thereto and for all purposes have effect according to its tenor.

1936 National Art Gallery and Dominion Museum Amendment Act (1 Edw. VIII. 1936, No. 20)

5. The Council of the New Zealand Academy of Fine Arts is hereby empowered and directed to transfer to the Board the permanent collection of pictures and other works of art belonging to the Academy on the passing of this Act and all pictures or other works of art that may hereafter be purchased or otherwise acquired by the Academy for the purpose of permanent exhibition in the National Art Gallery:

Provided that if any such picture or other work of art was heretofore or is hereafter acquired by the Academy subject to any condition the Board shall hold it subject to the same condition.

1972 National Art Gallery, Museum, and War Memorial Act 1972 (1972 No 11)

16 New Zealand Academy of Fine Arts-

- (1) The Board shall provide and make permanently available for the carrying on of the objects and purposes of the New Zealand Academy of Fine Arts (in this section referred to as the Academy) accommodation in the building of the National Art Gallery.
- (2) The Board and the Academy may from time to time enter into any agreement in respect of such accommodation as aforesaid.
- (3) The Board and the Academy shall give effect to the agreement set out in the deed made between the Board of Trustees of the National Art Gallery and the Dominion Museum and the Academy on the 27th day of February 1933, a copy of which is recorded in the Department of Internal Affairs at Wellington as LA. 1933/216/2, with respect to the provision of such accommodation as aforesaid, and to any other agreement made between either Board and the Academy in substitution for or in variation of the first-mentioned agreement.
- (4) The Council of the Academy is hereby empowered and directed to offer and, if the offer is accepted, to transfer to the Board all pictures or other works of art that may at any time be purchased or otherwise acquired by the Academy for the purpose of permanent exhibition in the National Art Gallery: Provided that

where any such picture or work of art is acquired by the Academy subject to any condition, the Board shall hold it subject to the same condition.

Cf. 1930, No. 22, s. 14; 1932-33, No. 47, s. 65; 1936, No. 20, s. 5

1990 Museum of New Zealand Bill (57-1)

Subsequently Struck Out

28. New Zealand Academy of Fine Arts-

- (1) Subject to 15 subsection (2) of this section, the Board constituted by section 6 of this Act shall continue to make available to the New Zealand Academy of Fine Arts (in this section called the Academy) accommodation in the Buckle Street building vested in that Board by section 26 of this Act.
- (2) The accommodation made available to the Academy under subsection (1) of this section shall consist of the areas occupied by the Academy immediately before the commencement of this Act.
- (3) If, at any time, the Board constituted by section 6 of this Act considers that it requires the areas occupied by the Academy under this section, that Board shall notify the Academy to that effect, and the Academy shall vacate those areas on a date to be agreed by that Board and the Academy.
- (4) Until the Academy vacates the accommodation in accordance with subsection (3) of this section, the Board constituted by section 6 of this Act and the Academy shall continue to give effect to the deed made between the Board of Trustees of the National Art Gallery and the Dominion Museum and the Academy on the 27th day of February 1933 (in this section called the deed), a copy of which is recorded in the Department of Internal Affairs at Wellington as IA 1933/216/2.
- (5) The deed shall cease to have effect on the date on which the Academy vacates the accommodation.

1992 Museum of New Zealand Te Papa Tongarewa Act 1992 (1992 No 19)

28 New Zealand Academy of Fine Arts

- (1) The Board and the New Zealand Academy of Fine Arts (in this section called the Academy) shall give effect—
 - (a) to the agreement set out in the deed made between the Board of Trustees of the National Art Gallery and the Dominion Museum and the Academy on 27 February 1933, a copy of which is recorded in the Department of Internal Affairs at Wellington as IA1933/216/2, with respect to the provision of accommodation; and
 - (b) to any other agreement made between the Academy and either the Board of Trustees of the National Art Gallery and the Dominion Museum or the Board of Trustees of the National Art Gallery, the National Museum, and the National War Memorial in substitution for, or in variation of, the agreement specified in paragraph (a).
- (2) The Board and the Academy may, at any time, agree to vary or cancel the agreement specified in subsection (1)(a) or any agreement referred to in subsection (1)(b).

Money and art works transferred to Board of National Art Gallery
(Year, value at transfer and value at Q1 2024)

1933	£1,369 13/- 8 ^d	\$209,169	Building Fund and interest
1936	£8,871 3/- £13,619 12/-	\$1,284,642 \$1,904,173	Net proceeds of sale Permanent collection
1937-62	£4,786 4/- 4 ^d	\$226,845	Subsequent works of art

Works Given to National Art Gallery by NZAFA post 1936 where price known

	£ /- ^d	Q1 2024 \$ value
1937	469.2.0	31,641.89
1938	179.16.0	11,733.23
1939	33.15.4	2,068.37
1940	652.16.0	39,296.71
1941	147.0.0	8,528.86
1942	10.10.0	561.86
1943	182.14.0	10,037.58
1944	89.5.0	4,798.17
1945	11.11.0	585.05
1946	121.16.0	6,439.25
1947	113.13.0	5,825.61
1948	99.15.0	4,739.62
1949	206.17.0	9,651.17
1950	1027.7.6	45,300.05
1951	103.19.0	4,131.91
1952	0	
1953	80.17.0	2,857.20
1954	300.13.6	10,149.24
1955	157.10.0	5,164.17
1956	0	
1957	265.11.0	8,243.66
1958	68.5.0	2,025.30
1959	79.0.0	2,266.20
1960	194.10.0	5,526.52
1961	131.5.0	3,665.92
1962	58.16.0	1,607.95
	<hr/> 4786.4.4	<hr/> 226,845.48

COMMENTARY ON INTERACTIONS BETWEEN NZAFA AND NAG

1. The correspondence files suggest that the presence of the NZAFA within the National Art Gallery and Dominion Museum building was queried by the management or Board of the National Gallery for some time. It prompted reviews by Internal Affairs of the right of NZAFA to be in the building with increasing frequency, in 1960, 1968 and 1974.
2. The incidence of references to obtaining legal advice on matters relating to the presence and tenure of the NZAFA, and area occupied by it, also increases within the correspondence.
3. By 1989 this correspondence concerned an area within the NZAFA galleries occupied by the National Gallery under a 1980 Deed of Arrangement. This occupation was supposedly temporary, but had continued for the full decade. NZAFA formally terminated the right of the National Gallery to occupy the area in February 1990.
4. The renewed legal reviews of the 1933 Deed and 1972 Act at this time led to an opinion that the two taken together indicated that the obligation on the National Art Gallery to provide and make permanently available accommodation within the building of the National Art Gallery would not necessarily be confined to the Buckle Street site, but could be read as applying to any building in which the National Art Gallery was housed.
5. The Museum of New Zealand Bill 1990 was subsequently introduced to repeal the 1972 Act. Clause 28 of the Bill proposed to make permanent the transfer of space under the 1980 Deed of Arrangement and create a right of the National Gallery to give notice to the NZAFA to vacate. Clause 28 was subsequently struck out and replaced when the Bill was returned to the House.
6. Legal advice to the NZAFA in 1995 recommended that a caveat be placed on the title to the Buckle Street property as the effect of the 1933 Deed meant the Board of Museum of New Zealand was a constructive trustee over the property and not able to act as a free agent. This advice was not acted on.
7. Correspondence from Cheryll Sotheran began in the second half of 1996. On 24 October she defined the effect of the 1933 Deed as no more than a lease and uncertain at law. On 30 October she advised NZAFA that MNZ required a "satisfactory resolution" by 20 December 1996 and suggested that the building would be closed to the public for refurbishment from March 1997 to November 1999, effectively threatening NZAFA with financial ruin if it sought to remain.
8. NZAFA responded that it wished to retain the rights to occupancy and access guaranteed by the 1933 Deed, or it should be paid \$45,000 for 50 years to cover the need to rent new premises. A response from Cheryll Sotheran rejected any continuation of the arrangement

given statutory protection by section 28 (1) of the 1992 Act and also of any subsidy payment, and gave NZAFA to 18 December 1996 to vacate.

9. NZAFA sought \$1,800,000 for relinquishing its rights. The Board of MNZ indicated that they would offer no more than \$1,000,000.
10. NZAFA obtained a preliminary opinion from Raine & Horne in early December 1996 that it was due compensation on the basis of the loss of present value of the right to occupy in perpetuity rent free. In January 1997 Raine & Horne valued the 900m² held by NZAFA at \$1,588,235 based on a standard commercial capitalisation rate of 8.5%.
11. NZAFA prepared a case for compensation and noted that the 1996 value of its contribution to the National Art Gallery and Dominion Museum building in 1936, including the value of the art adjusted only for inflation, was \$1,735,000. An internal valuation of 119 works given to the National Gallery under the terms of the 1936 Act between 1937 and 1962 noted that 36 of those works alone had a conservative valuation of \$350,000.
12. The NZAFA business case noted that the breakeven settlement sum required to move into new and rented space would be \$1,495,000, but offered to accept a settlement of \$1,350,000 (anticipating an annual loss of \$10,000) in order to reach agreement.
13. On 10 February 1997, at a meeting between representatives of MNZ and NZAFA, MNZ rejected the Raine & Horne valuation and offered their own valuation of \$1,220,000 based on a capitalisation rate of 11%. The Board of MNZ would offer no more than \$1,100,000. This was rejected and Cheryl Sotheran raised the offer to \$1,150,000. This was also rejected and a final offer of \$1,200,000 was presented and accepted.
14. A SGM of NZAFA members approved the sale terms on 18 March 1997 and on 9 May 1997 MNZ and NZAFA signed a new Deed cancelling the 1933 Deed and agreeing to MNZ paying to NZAFA \$500,000 +GST immediately, \$500,000 +GST on 1 July 1997 and \$200,000 +GST on 30 November 1998, and to NZAFA vacating its Buckle Street premises on 30 June 1997.
15. NZAFA members at the SGM queried the valuation of the NZAFA contribution to the National Art Gallery and Dominion Museum given to the meeting as \$20,000 (and worth only \$750,000 in 1997). They were advised that the art works formed no part of the value of the contribution under the 1933 Deed.
16. While this was correct, the art works were specifically included by the 1936 and 1972 Acts, while correspondence from 1928 to 1930 refers repeatedly to making provision for accommodation in perpetuity for the NZAFA “which had donated its property, works of art and building fund” to the National Gallery.
17. A total of 528 art works have been listed as presented to the National Gallery by NZAFA from 1936 to 1970.