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Municipal Corporations Waterworks.

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A BILL INTITULED

AN ACT to authorise the Governing Bodies of Municipal Corporations in New Zealand to construct Waterworks for the supply of Water and to raise the Moneys necessary for the Works.

Title.

Preamble.

WHEREAS it is expedient to empower the governing bodies of Municipal Corporations in New Zealand to construct Waterworks for the supply of Boroughs with water and to raise money for defraying the cost thereof.

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled and by the authority of the same as follows—

1. The Short Title of this Act shall be “The Municipal Corporations Waterworks Act 1872.”

Short Title.

2. The following words and expressions shall have the meanings hereby assigned to them unless such meanings be repugnant to the context or subject (that is to say)—

Interpretation.

The expression “the Borough” shall include any City or Borough.

The expression “the Council” shall mean the governing body of any Municipal Corporation established under the provisions of “The Municipal Corporations Act 1867” or any Acts supplemental thereto.

The expression “the Waterworks” shall mean the Waterworks and works connected therewith by this Act authorised to be constructed.

The expression “the undertaking” shall mean the Waterworks and works connected therewith and all other works by this Act authorised to be constructed or done.

The word “lands” shall include messuages lands tenements and hereditaments of any tenure.

The word “stream” shall include springs brooks and all other running waters.

The word “street” shall include any wharf quay jetty bridge square court alley highway lane road thoroughfare or public passage or place within the city as hereinafter defined or projecting from any part thereof into the sea or harbour or within the district as hereinafter defined.

The expression “the district” shall mean any lands intended to be taken for the purposes of the undertaking and the locality from which the supply of water is to be obtained for the purposes of the Waterworks as set forth and described in the plans mentioned in Section 4 of this Act.

The expression “water rate” shall mean and include any rent reward or payment to be made for a supply of water for any purpose within the Borough.

The word “building” shall include places of public worship and public amusement public institutions offices houses shops stores factories livery and other stables and all other public or private buildings within the Borough but shall not unless expressly included by special provision

in this Act comprise buildings belonging to the Crown or vested in trust for any general public object nor any buildings used as public school libraries or museums.

3. The Council may make construct complete and maintain such Waterworks as they may deem necessary for the purpose of supplying the Borough with water from any stream within the district or the city from which they may consider it expedient to derive such supply or any part thereof. Power to construct waterworks.

4. Not less than three calendar months before any water works shall be undertaken under the provisions of this Act the Council by whom the same are intended to be constructed shall cause plans shewing by metes and bounds all lands intended to be taken or used for the purposes of the undertaking and the locality from which any supply of water is intended to be derived together with a book of reference to be deposited in the office of the Council to be there kept open to public inspection at all reasonable hours for not less than three calendar months after the same have been deposited. Plans to be deposited.

5. Immediately after such deposit as aforesaid the Council shall cause notice in writing stating the fact of such deposit to be sent through the Post Office by registered letter to all persons named in the book of reference as owners or occupiers of any lands mentioned therein or of any water intended to be taken for the purposes of the undertaking and the production of the Post Office receipt for such letter duly stamped shall be sufficient evidence of the due delivery of such letter. Notice of deposit to be given.

6. The Council shall also immediately after such deposit as aforesaid cause a notice stating the fact of such deposit and the intention of the Council to carry out the undertaking to be published in the *New Zealand Gazette* and once in each week for four successive weeks in some newspaper published and current within the Borough. Notice of deposit to be published.

7. Subject to the provisions restrictions and conditions contained in this Act the Council may for the purposes of the undertaking exercise the following powers or any of them and may execute or cause to be executed any of the following works (that is to say)— Powers of Council in connection with undertaking.

35 They may without any previous agreement with the owner or occupier enter upon any lands within the Borough or the district and survey and take levels of the same.

40 They may take purchase and hold any lands within the Borough or the district which may in their opinion be required for the purposes of the undertaking.

45 They may from time to time sink such wells or shafts and make maintain alter or discontinue such dams tunnels drives reservoirs cisterns waterworks tanks aqueducts drains cuts sluices pipes culverts engines and other works of any other kind or description and erect such buildings and machinery within the Borough or the district as they may think proper for the purposes of the undertaking.

50 They may from time to time impound divert and take water from any stream within the Borough or the district as shall in their opinion be required for the purposes of the Waterworks and may for any purpose connected with the undertaking alter the course of any stream within the Borough or the district.

55 They may without previous payment tender or deposit enter upon and use any land within the Borough or the district for the purpose of taking any earth stone or clay therefrom and may enter upon and use any lands adjacent for making temporary roads or approaches to any works connected with the undertaking But before they shall make such temporary use of any such lands they shall

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give five days' previous notice of such their intention to the occupiers of any such lands except in the case of accident to any part of the works requiring immediate reparation. And provided also that until any land so taken for temporary use be given up they shall pay to the owner or occupier thereof reasonable compensation for the use of such land or otherwise and such compensation if the parties cannot agree shall be settled by arbitration in manner hereinafter provided. 5

Council to do no damage.

8. In the exercise of the powers given to the Council by this Act they shall do as little damage as can be and in all cases when it can be done they shall provide watering-places drains ways and channels for the use of adjoining lands in place of any such as shall be taken away or interrupted in carrying out the undertaking. 10

Compensation to be made.

9. The Council shall make to the owners of and to all other persons having any less estate or interest in any land or water taken or used for the purposes of the undertaking or which may be damaged by the construction or maintenance of the waterworks or otherwise by the carrying out of the undertaking full compensation for the same. 15

Claims to be made within six months.

10. All claims for compensation shall be made in writing to the Council within six calendar months from the time when such claims shall have arisen where the claimant shall reside within the Borough and within twelve calendar months where the claimant shall reside elsewhere and no claims for compensation shall be allowed unless made within such respective periods. 20

Amounts how ascertained.

11. The amount of compensation shall unless the parties can agree thereon be ascertained in the manner pointed out and set forth in "The Land Clauses Consolidation Act 1863" which Act for that and other purposes is so far as the same may be applicable to and not inconsistent with the provisions of this Act incorporated with and shall be deemed to form part of this Act. 25

Infant claimants.

12. In the case of any infant claimant having no legal guardian resident within the Colony the word "guardian" when used in "The Lands Clauses Consolidation Act 1863" shall for the purpose of this Act be held to mean the Curator of Intestate Estates for the District of Auckland acting under the provisions of "The Intestate Estates Act 1865." 30

Council may break up streets, &c.

13. The Council may for the purpose of the undertaking from time to time open and break the soil and pavement of any street and may open and break up any sewers drains tunnels or other works of any kind within or under any street and lay down and place conduit service or other pipes works and engines and may from time to time repair alter and remove the same and for the purposes aforesaid may remove and use all earth and material in and under such streets and do all other acts which they may from time to time deem necessary for supplying water to the inhabitants of the Borough and to the shipping in any harbour or port connected with the Borough or adjacent thereto doing as little damage as can be in the execution of the powers hereby granted and making compensation in manner provided by this Act for any damages which may be sustained by any person or persons by reason of the execution by them of the powers hereby given to them provided always that nothing herein contained shall authorise or empower the Council to lay down or place any pipe conduit or service pipe or other works on any land not dedicated to public use without the consent of the owners and occupiers thereof except that the Council at any time may enter upon and lay or place any new pipe in the place of an existing pipe on any land wherein any pipe shall have been lawfully laid down or placed in pursuance of this Act and may repair or alter any pipe so laid down. 40 45 50 55 60

14. After any stream hereby authorised to be taken by the Council shall have been taken as authorised by this Act every person who shall unlawfully divert or take any of the water supplying or flowing into the stream so taken or any part thereof or who shall do any unlawful act whereby the said stream or supply of water may be drawn off or diminished in quantity or who shall not immediately upon notice in that behalf repair the injury done by him so as to restore the said waters to the state in which they were before the doing of any such unlawful act shall be liable to a penalty not exceeding one hundred pounds for every day during which such unlawful act shall continue but the imposition of any such penalty shall not preclude the Council from recovering from such person by way of damages in an action in any Court of competent jurisdiction full reparation for any damage which may be sustained by reason of any such unlawful act.
15. Every person who shall wilfully obstruct any person acting under the authority of the Council in carrying out the undertaking or who shall pull up or remove any pole or stake driven into the ground for the purpose of setting out the line of such works or deface or destroy any works made for the same purpose shall be liable to a penalty not exceeding twenty pounds for every such offence.
16. For the purpose of carrying out the undertaking the Council may borrow and take up at interest any sum of money not exceeding in the whole such sum as shall be authorized by any special Act for that purpose and the money which the Council shall be expressly authorised to borrow shall be in addition to any moneys which it is authorised to raise or borrow for any purpose other than Waterworks under "The Municipal Corporations Act 1867" or any other Act relating to Municipal Corporations in New Zealand.
17. In respect of the principal moneys to be raised as aforesaid and of the interest for the same the Council may either issue debentures for sums of not less than fifty pounds each or grant mortgages for sums of not less than five hundred pounds each or may secure the said principal and interest moneys respectively partly by debenture and partly by mortgage in each case charged upon all rates and sums of money to be receivable and payable under the provisions of this Act as hereinafter mentioned.
18. The principal and interest moneys to be secured as aforesaid shall be payable in New Zealand and the debentures and mortgages respectively may be made redeemable in such manner and at such time or times not exceeding _____ years from the issuing or making of the same respectively as the Council may determine.
19. In case the moneys to be raised as aforesaid or any part thereof shall be secured by debentures such debentures shall be in the form prescribed in Schedule A. to this Act or as near thereto as may be and shall be sealed with the common seal of the Council and be signed on behalf of the Council by the Mayor and countersigned by one Councillor and separate coupons for each payment of interest in the form in the said Schedule A. shall be attached to each debenture and shall be signed and countersigned in like manner.
20. Every debenture and coupon to be issued as aforesaid shall pass by delivery only and all rights and remedies in respect of such debenture shall be vested in and belong to the several holders thereof for the time being as though they were expressly named therein.
21. No debenture coupon or mortgage to be issued or made as aforesaid shall be liable to stamp duty under any laws for the time being in force in New Zealand.
22. The Council may offer such debentures or any of them for sale in such manner and at such time or times as it shall think fit.

Penalty for diverting water.

Obstructing works.

Power to borrow money for purposes of undertaking.

Debentures or mortgages may be given.

Moneys how payable.

Form of debenture.

Debentures to pass by delivery.

No stamp duty to attach.

Council may sell debentures.

- Debentures and mortgages to be prior charge on moneys receivable under Act
23. All debentures and mortgages which may be issued or made under the authority of this Act shall so far as regards the rates and moneys accruing under this Act have priority over all mortgages or charges subsisting at the time of the passing of this Act and granted by the Council under the authority of "The Municipal Corporations Act 1867" or any Act supplemental thereto or otherwise relating to Municipal Corporations in New Zealand and over all mortgages or charges to be hereafter granted by the Council under the like authority not expressly charged upon the rates and moneys accruing under this Act. 5
- Power to borrow at lower interest to redeem existing loan.
24. If the Council can at any time borrow at a lower rate of interest than that secured by any debenture or mortgage previously made by them and then outstanding and in force they may if they shall think fit so borrow accordingly in order to pay off and discharge any of the securities bearing a higher rate of interest and may charge the rates and moneys accruing under this Act with the payment of the sum so borrowed together with the interest thereon in manner aforesaid. 10
- Power to borrow to redeem loan at date fixed for re-payment.
25. If at the time appointed by any debenture or mortgage for the payment of the principal money secured thereby the Council are unable to pay off the same they may if they shall think fit borrow such sum of money as may be necessary for the purpose of paying off the whole or any part of such principal money and may charge the repayment of the same and the interest to be paid thereon in manner hereinbefore authorised in regard to the moneys to be borrowed under the provisions of this Act. 15
- Mortgages to be by deed.
26. Every mortgage authorised to be made under this Act shall be by deed truly stating the date consideration and the time and place of payment and shall be sealed with the common seal of the Council. 20
- Registry of debentures and mortgages to be kept.
27. There shall be kept at the office of the Council a register of all debentures and mortgages issued and made under the authority of this Act and within fourteen days after the date of any debenture or mortgage an entry shall be made in the register of the number and date thereof and of the names and descriptions of the parties thereto as stated in the debenture or mortgage as the case may be and every such register shall be open to public inspection during office hours at the said office without fee or reward. And any clerk or other person having the custody of the same refusing to allow such inspection shall be liable to a penalty not exceeding twenty pounds. 25
- Power to transfer mortgages.
28. Any mortgagee or other person entitled to any such mortgage may transfer his estate and interest therein to any other person by deed truly stating its date and the consideration for the transfer and there shall be kept at the office of the Council a register of the transfers of mortgages and within thirty days after the date of such deed of transfer if executed within the Colony of New Zealand or within thirty days after its arrival in the Colony of New Zealand it executed elsewhere the same shall be produced to the Council or to the person having charge of the register who shall upon payment of two shillings and sixpence cause an entry to be made in such register of its date and of the names and description of the parties thereto as stated in the transfer and upon any transfer being so registered the transferee his executors administrators or assigns shall be entitled to the full benefit of the original mortgage and the principal and interest secured thereby and every such transferee may in like manner transfer his estate and interest in any such mortgage and no person except the person to whom the same shall have been last transferred and whose transfer shall have been registered his executors administrators or assigns shall be entitled to release or discharge any such mortgage or any money secured thereby. 30
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29. The interest secured by any debenture or mortgage authorised to be issued or made under this Act shall unless otherwise provided be paid half-yearly. Interest to be paid half-yearly.

30. For the purpose of securing the payment of the principal and interest of any loan which may be contracted by the Council as aforesaid the Council may make a special rate upon all rateable property within the city not exceeding in any one year the sum of two shillings in the pound of the annual value of such property and such special rate shall as near as practicable be in the form contained in the Seventeenth Schedule to "The Municipal Corporations Act 1867." Power to levy special rate.

31. Every such special rate shall be payable by the ratepayers after the issue of any debentures or mortgages as aforesaid at such intervals not exceeding half-a-year as the Council shall in and by the special order for making such rate appoint and every such special rate shall without any further proceeding by the Council or otherwise be and continue to be an annual recurring rate upon every rateable tenement at any time situated within the area composing the Borough at the time of the making of such special rate according to the annual value of each such tenement as appearing by the valuation last made affecting such tenement until all moneys due in respect of the moneys hereby authorised to be raised shall have been satisfied. Special rate to be paid half-yearly.

32. Save where it is herein otherwise expressly provided or there is something in the context repugnant thereto all the provisions contained in "The Municipal Corporations Act 1867" relating to rates shall apply to every such special rate as aforesaid and every such special rate shall be deemed for the purposes of the said provisions to have been made in each year upon each such rateable tenement as aforesaid at and upon the expiration of each successive period of twelve months from the date of the special order by which such rate shall have been first made. Provisions of Municipal Corporations Act 1867 to apply to rates under this Act.

33. The Council shall and they are hereby required once and at least in every successive period of twelve months after the date of the special order for making such rate cause to be made for the Borough such valuation as is authorised by the provisions contained in "The Municipal Corporations Act 1867." Valuation to be made annually.

34. At and upon the expiration of each such successive period of twelve months the special rate made under the provisions of this Act shall be amended by the Council or if not and so far as not then amended shall be and take effect as if amended so as to conform as regards every separate rateable tenement for the time being within the Borough and affected by such rate to the valuation affecting such property which shall have been made by the Council. Amendment of rate.

35. Notwithstanding anything in "The Municipal Corporations Act 1867" to the contrary the limit of rates to be made and levied within the Borough as fixed by the two hundred and forty-eighth section of the said Act may be exceeded by the Council for the purposes of this Act. Limit of rate.

36. Subject as hereinafter mentioned the Council may levy and take within the Borough any water rates not exceeding the following rates (that is to say)— Water rate to be made.

In respect of all buildings used as dwelling houses to which water shall be laid on pursuant to the undertaking where the assessed annual value of such buildings shall not exceed twelve pounds ten shillings a rate of ten shillings per annum. 55

And where such assessed annual value shall exceed twelve pounds ten shillings but shall not exceed one hundred pounds a rate per centum on such value not exceeding seven pounds. 60

And where such assessed annual value shall exceed one hundred pounds but shall not exceed two hundred pounds a rate per centum on such value not exceeding six pounds.

And where such assessed value shall exceed two hundred pounds but shall not exceed three hundred pounds a rate per centum on such value of five pounds.

And where such assessed value shall exceed three hundred pounds a rate per centum on such value of four pounds.

And in respect of all such buildings to which water can be but is not laid on pursuant to the undertaking and situated within the distance of one hundred yards from any water pipes laid down under the authority of this Act a rate per centum upon the assessed annual value equal to half of the rate which would be payable in respect thereof if water were laid on.

And in respect of all buildings used as stores or warehouses or for any other purposes except as dwelling houses a rate per centum of two pounds ten shillings on the assessed annual value.

But it is hereby declared that any building used as a dwelling house which shall remain actually unoccupied for not less than six calendar months in any year shall be rated for that year at two pounds ten shillings per centum on the assessed annual value Provided the owner or person for the time being liable to the payment of rates shall forthwith give to the Council notice in writing of the date on which such building shall become vacant and of the date on which the same shall again be occupied.

Water supply how regulated.

37. In respect of such water rates as aforesaid the quantity of water to be supplied to any building within the Borough or to the inhabitants thereof shall be from time to time regulated and prescribed by the Council and for any water supplied beyond such regulated and prescribed quantity the Council shall be entitled to charge and recover from the person taking the same after such rate as the Council shall from time to time fix and agree in that behalf which additional charge shall in all cases be recoverable by the Council in like manner as the water rates payable for and in respect of ordinary supply.

Penalty for supplying water to unrated persons.

38. Any person within the Borough supplied with water under this Act who shall supply to any other person or wilfully permit him to take any water unless he be a person supplied with water by the Council and the pipes belonging to him be (without his default) out of repair shall be guilty of an offence and shall for every such offence be liable to a penalty not exceeding twenty pounds.

Rates when payable.

39. All water rates payable within the Borough shall be payable at such intervals not exceeding half-a-year as the Council shall determine and the dates fixed for the payment of the same shall be the same dates as those fixed for the payment of the special rate to be levied under this Act and such water rates shall be paid by the persons liable to the payment thereof on such days as shall be so appointed in that behalf Provided always that if any person supplied with water shall neglect to pay any such water rates at any of the appointed times of payment thereof the Council may without prejudice to any other remedy against such person for the recovery of such water rates stop the water flowing into the premises in respect of which such water rates are payable by cutting off the pipe to such premises or by such other means as the Council shall think fit and the person liable to pay such water rates shall also on demand pay all expenses of cutting off the water which in default of payment may be recovered by the Council in any Court of competent jurisdiction.

Recovery of water rates.

40. Save where it is herein otherwise provided or there is

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something in the context or subject matter repugnant thereto all the provisions contained in "The Municipal Corporations Act 1867" or any Acts supplemented thereto relating to the recovery of rates shall apply to the special rate and also to all water rates within the

5 Borough payable and recoverable under the provisions of this Act.

41. It shall be the duty of the Council on the application of the owner or occupier of any building within the Borough who shall be desirous of being supplied with water from any water pipe available for the purpose of such supply to lay on at the expense of the person

Supply of water to be given on application.

10 requiring the same all necessary service-pipes for affording such supply and every person shall when such service-pipes shall have been laid on and paid for be entitled to demand and receive from the Council a supply of water proportionate to the amount of water rates payable by him under the provisions of this Act.

15 42. The Council may supply any person or body politic or corporate outside of the boundaries of the Borough with water for domestic or other purposes at such rent and upon such terms and conditions as shall from time to time be agreed upon between the Council and the persons desirous of having such supply and may

20 for that purpose cause pipes to be laid down and water delivered to every place to which the water will gravitate not being more than one thousand seven hundred and sixty yards from any of the reservoirs or dams or from any of the main pipes used for the delivery of water to the Borough Provided always that in every

25 agreement to be made for any such water supply as is authorised by this section there shall be a clause empowering the Council at any time at their absolute discretion on giving three calendar month's previous notice to discontinue such supply without being liable to make any compensation in respect of the same or of the discontinuance thereof or in any wise relating thereto.

Power to supply water outside city.

30 43. All the powers given to the Council by this Act to carry out works for the supply of water within the Borough shall so far as they can be applied and used for such purpose apply and may be used by the Council for the purpose of supplying water outside of the

35 boundaries of the Borough and all moneys received by the Council in respect of such last-mentioned supply shall be deemed to be moneys applicable to the purposes of this Act.

Power to construct works for carrying out such supply.

40 44. Every application for water supply whether within or outside of the Borough shall be accompanied by a deposit of a sum reasonably sufficient to cover the cost of laying on such service and other pipes as may be necessary for that purpose and any surplus or deficiency shall when the actual expense of laying on the same has been ascertained be repaid by or made good to the Council as the case may require.

Applicant to deposit cost of pipes.

45 45. Every person supplied with water under the provisions of this Act shall when required by the Council provide and affix such proper tap stopcock or other apparatus to the pipe conducting the water used by him as the Council shall direct and such tap stopcock or apparatus shall be kept in good repair so as effectually to prevent

50 the water from running to waste and in case any person shall neglect to provide when required by the Council such tap stopcock or other apparatus or to keep the same in good repair it shall be lawful for the Council or for any person acting under their authority to cut off the pipe or turn off the water from the premises of such person

55 until such tap stopcock or other apparatus shall be provided or repaired or the cost thereof paid as the case may require.

Persons supplied to provide taps &c.

60 46. If any person supplied with water shall wilfully or negligently permit or suffer any pipe or apparatus to be out of repair or do or suffer any act so that the water shall be wasted or the supply thereof improperly increased he shall be guilty of an offence and shall

Penalty for wasting water.

be liable for every such offence to a penalty not exceeding twenty pounds and shall also be liable to pay to the Council on demand the value of the water so wasted or improperly increased.

Power to enter houses.

47. Any person acting under the authority of the Council may between the hours of ten of the clock in the forenoon and four of the clock in the afternoon enter into any building or place supplied with water by virtue of this Act in order to examine if there be any waste or misuse of such water and if such person at any time be refused admittance into such building or place for the purpose aforesaid or be prevented from making such examinations as aforesaid the Council may cause the water supplied by them to be cut off from such building or place. 5
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Persons laying down pipes may remove same.

48. Any person who shall have laid down or have caused to be laid down any pipe or other works for the supply of water or who shall have become the proprietor thereof may remove the same after having first given fourteen days' notice in writing of his intention so to do and of the time of such proposed removal and every such person shall make compensation to the Council for any injury or damage to their pipes or works which may be caused by such removal and every person who shall remove any such pipe or other works without giving such notice as aforesaid shall be guilty of an offence and shall be liable for every such offence to a penalty not exceeding fifty pounds and shall also be liable to pay or make good to the Council on demand the cost of repairing any damage done to their pipes or works by such removal. 15
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Fire plugs to be provided.

49. The Council shall fix proper fire-plugs in the main pipes belonging to them in the Borough at such convenient distances not being more than two hundred yards from each other and at such places as may be most proper and convenient for the supply of water for extinguishing any fire that may break out. 30

Same to be renewed when needful.

50. The Council shall from time to time renew and keep in effective order every such fire-plug and as soon as any such fire-plug is completed they shall deposit a key thereof at each place within the Borough where any public fire-engine is kept and also shall put up a public notice in some conspicuous place in each street in which such fire-plug is situated showing its situation which notice the Council may put up on any building in such street. 35

Cost.

51. The cost of such fire-plugs and the expense of placing and maintaining the same in repair and providing such keys as aforesaid shall be defrayed by the Council out of the general Municipal rates. 40

Payment for salvage

52. When any water belonging to the Council and supplied by means of such fire-plugs as aforesaid shall have been used for extinguishing fire in any building or premises insured against loss or damage by fire the Council shall be entitled to demand and recover from every Insurance Company with which such insurance shall have been effected a sum equivalent to five pounds per centum upon the full value of all salvage effected by the use of the water the amount of such salvage in case of difference to be settled by arbitration in manner hereinafter described. 45

Pipes to be kept charged.

53. The Council shall at all times keep charged with water all their pipes to which fire-plugs shall be placed unless prevented by unusual drought or other unavoidable cause or accident or during necessary repairs and shall allow all persons at all times to take and use such water for extinguishing fire without making compensation for the same except as hereinbefore mentioned. 50
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Penalty for fouling water by gasworks.

54. Whosoever being proprietor of any gasworks or being engaged or employed in the manufacture or supply of gas shall cause or suffer to be brought or to flow into any reservoir aqueduct race or waterworks constructed under this Act or otherwise belonging to or under the management or control of the Council or into any drain or 60

pipe communicating therewith any washing or other substance produced in the manufacture or supply of gas whereby the water in any such reservoir aqueduct race or waterworks is fouled shall be guilty of an offence and shall be liable for every such offence to a penalty not exceeding one hundred pounds and after the expiration of twenty-four hours' notice in writing from the Council in this behalf to a further penalty not exceeding a sum of fifty pounds for every day during which the offence is continued or during the continuance of the act whereby the water is fouled and if any water supplied by belonging to or under the management or control of the Council be fouled in any manner by the gas of any such proprietor or person as last aforesaid he shall be guilty of an offence and shall for every such offence be liable to a penalty not exceeding twenty pounds and a further penalty not exceeding ten pounds for every day whilst the offence is continued after the expiration of twenty-four hours' notice in writing from the Council in that behalf.

55. For the purpose of ascertaining whether such water is fouled by the gas of any such proprietor or person the Council may lay open and examine any pipes conduits and works from which the gas is supposed to escape. Provided that before beginning to do so twenty-four hours' notice in writing be given to the person to whom such pipes conduits or works belong or under whose management or control they may be at the time at which the examination is intended to be made and if upon such examination it appear that the water has been fouled by the gas proceeding from or contained in the pipes conduits or works examined the expenses of the examination and repair of the place disturbed shall be paid and borne by the person to whom such pipes conduits or works belong or under whose management or control they may be but if it appear that the water has not been so fouled then such expenses and all damages occasioned by the examination shall be paid out of the water rates and other moneys to be received under this Act.

How to be ascertained.

56. In all cases where any person liable to the payment of the special rate authorised to be made and levied under the provisions of this Act shall also be liable to the payment of a water rate such person shall be required to pay only the larger of the two amounts and shall be entitled to a remission of the smaller of the two amounts but this provision is not to prejudice the rights of debenture holders or mortgagees under the provisions of this Act.

Balance of rates only to be fixed by ratepayer.

57. The principal moneys borrowed by the Council under the authority of this Act shall be applied in the construction of the Waterworks and otherwise in defraying the cost of the undertaking and of all works and conveniences connected with the supply of water under the provisions of this Act.

Accumulated funds of Benefit Societies may be invested under this Act.

58. Notwithstanding anything contained in any Act relating to Building or any other Benefit Societies in New Zealand or in the rules of any such society to the contrary it shall be lawful for the governing body of any such society to invest in any debenture or mortgage to be made under the provisions of this Act any accumulated funds which under the provisions of any Act relating to Building or other Benefit Societies or any rules thereof may be invested in real or Government securities.

Building Societies &c. may advance money.

59. The Council shall cause a separate account to be kept of all moneys borrowed and expended by them for the purposes of the undertaking and of the matters and things for which such moneys shall have been disbursed and paid and such account shall be balanced once in every year at least and a balance sheet in respect of the Waterworks exhibiting a true statement of the credits and property of every description belonging to and of the debts due by the Council relating thereto at the date of making such balance sheet together

Account to be kept of all moneys borrowed and spent.

with distinct separate statement of the profit or loss which shall have arisen in respect of the Waterworks during the period to which such account shall extend or relate shall also at least once in every year be prepared and made out and both of such accounts shall be examined by the Council and signed by the Chairman for the time being thereof. 5

Waterworks accounts.

60. The Council shall also keep a separate account to be called "The Waterworks Account" and all moneys which shall be received from payments made in respect of water supplied or from any source whatever connected with or relating to the Waterworks shall be carried to such account and shall be applied and disposed of as follows (that is to say)— 10

First. In paying the interest of all moneys borrowed or which shall from time to time be due and owing on the credit of such account or the undertaking. 15

Secondly. In setting apart and appropriating the sum required by this Act to be set apart as a sinking fund for paying off the principal moneys which have been borrowed under this Act. 20

Thirdly. In paying the costs and expenses of maintaining the Water Works and in maintaining repairing removing and altering the mains pipes engines reservoirs dams races sluices and other works and conveniences connected therewith and in any way incidental thereto. 25

Fourthly. In paying off all moneys due on the credit of the aforesaid account on the undertaking. 30

Lastly. Any surplus which may remain shall be carried to the credit of the sinking fund for paying off the principal moneys which have been borrowed under this Act 35

Part XI. of Municipal Act to apply.

61. All the provisions of Part IX. of "The Municipal Corporations Act 1867" relating to accounts shall so far as the same are not repugnant to or inconsistent with the provisions of this Act apply to all accounts to be kept by the Council under the provisions of this Act. 40

Council to appoint officers.

62. The Council may by any instrument under the seal of the Council appoint any officers or persons whom they shall think necessary for the purpose of carrying out or conducting the undertaken and every person so appointed shall have and possess and may exercise as far as may be necessary for the purposes of the undertaking all the powers and authorities by this Act given to the Council. 45

Suits against Council.

63. No writ or process shall be sued out against the Council or any member thereof or any officer or person whomsoever appointed as aforesaid and acting under the direction of the Council for anything done or intended to be done under the provisions of this Act until the expiration of one month next after notice in writing shall have been delivered to him or left at their or his office or usual place of abode clearly and explicitly stating the cause of action and the name and place of abode of the intended plaintiff and of his attorney or agent in the action and upon the trial of any such action the plaintiff shall not be permitted to go into evidence of any cause of action which is not stated in the last mentioned notice and unless such notice be proved the jury shall find for the defendant and every such action shall be brought or commenced within six calendar months next after the accrual of the cause of action and not afterwards and shall be tried in the jurisdiction where the cause of action occurred and not elsewhere and the defendant shall be at liberty to plead a general denial of the material allegations in the declaration (hereinafter called the general issue) and give this Act and all special matter in evidence thereunder and any person to whom any such notice of action is given as aforesaid may tender amends to the 50 55 60

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plaintiff his attorney or agent at any time within one month after service of such notice and in case the same be not accepted may plead such tender in bar (by leave of the Court) with the general issue or other plea or pleas and if upon issue joined upon any plea pleaded to the whole action the jury find generally for the defendant or if the plaintiff be non suited or discontinued or if judgment be given for the defendant then the defendant shall be entitled to the full amount of costs of defence and have judgment accordingly and in case amends may not have been tendered as aforesaid or in case the amount tendered be insufficient the defendant by leave of the Court at any time before trial pay into Court under plea such sum of money as he may think proper and by the like leave may plead the general issue or other plea or pleas any rule of Court or practice to the contrary notwithstanding.

64. Every person who upon any examination on oath under the provisions of this Act shall wilfully and corruptly give false evidence shall be liable to the penalties inflicted upon any persons guilty of wilful and corrupt perjury. False oath perjury.

65. Any demand requisition summons notice writ or proceeding of any kind whatsoever to be served upon the Council may be so served by being left or sent through any post office directed to the Council at their office or by being delivered there and except where otherwise by this Act directed any demand requisition or notice or other document signed by the Mayor for the time being or by the Town Clerk if any and purporting to be made by the Council shall for the purpose of this Act be deemed to have been made by the Council. Notices how to be served.

66. In case of any matter which by this Act is authorised or directed to be settled by arbitration then unless both parties concur in the appointment of a single arbitrator each party on the request of the other shall appoint an arbitrator to whom the matter shall be referred and every such appointment when made on behalf of the Council shall be under the common seal thereof and such appointment shall be delivered to the arbitrator or arbitrators and shall be deemed a submission to arbitration by the parties making the same and after the making of any such appointment the same shall not be revoked without the consent of both parties nor shall the death of any person making such submission operate as a revocation and if for the space of fourteen days after any such matter shall have arisen and notice in writing by one party who was duly appointed an arbitrator to the other party stating the matter to be referred and accompanied by a copy of such appointment the party to whom notice is given fail to appoint an arbitrator the arbitrator appointed by the party giving the notice shall be deemed to be appointed by and shall act on behalf of both parties. Arbitration.

67. If before the determination of any matter so referred to any arbitrator appointed by either of the parties die or refuse or become incapable or for seven days neglect to act the party by whom such arbitrator was appointed may appoint in writing another person in his stead and if he fail so to do for the space of seven days after notice in writing from the other party in that behalf the arbitrator appointed by the other party may appoint such other person and every arbitrator so appointed shall have the same powers and authorities as were vested in the arbitrator in whose stead the appointment is made and in case a single arbitrator die or become incapable to act before the making of his award or fail to make his award within twenty-one days after his appointment or within such extended time if any as shall have been duly appointed by him for that purpose the matters referred to him shall be again referred to arbitration under the provisions of this Act as if no former reference had been made. Death of arbitrator.

- Third arbitrator. 68. In case each party shall have appointed an arbitrator the arbitrators shall before they enter upon the reference appoint by writing under their hands a third person to be a third arbitrator and if the person so appointed die or refuse or become incapable or for seven days neglect to act the arbitrator first appointed shall forthwith appoint another person in his stead and in case the arbitrators neglect or refuse to appoint such third arbitrator within seven days after being requested so to do by any party to the arbitration any Resident Magistrate acting in and for the city shall on the application of any such party appoint such third arbitrator. 5
- Awards. 69. The award of any single arbitrator or if more than one then of a majority of the arbitrators acting under this Act shall be binding and conclusive upon all persons to all intents and purposes whatsoever. 10
- Time for making award. 70. In no case shall the time for making an award under this Act be extended beyond the period of three months from the date of the submission or from the day on which the last arbitrator if more than one shall have been appointed as the case may be. 15
- Powers of arbitrators. 71. Every arbitrator appointed by virtue of this Act shall have the same powers in all respects as arbitrators appointed by order of the Supreme Court of New Zealand under the provisions of "The Supreme Court Practice and Procedure Amendment Act 1866." 20
- Declaration by arbitrator. 72. Before any arbitrator shall enter upon any such reference as aforesaid he shall make and subscribe the following declaration before a Justice of the Peace (that is so say)— 25
 "I A.B. do solemnly and sincerely declare that I will faithfully and honestly and to the best of my skill and ability hear and determine the matters referred to me under 'The Municipal Corporations Waterworks Act 1872.'
 "A.B." 30
- And such declaration shall be annexed to the award when made and if any arbitrator shall wilfully act contrary to such declaration he shall be guilty of a misdemeanour.
- Offences. 73. The following shall be deemed to be offences against this Act in addition to any other offences therein specified— 35
- Wilfully or carelessly breaking open or injuring any of the property or works belonging to or under the management or control of the Council under this Act.
 - Unlawfully drawing off taking or diverting any water belonging to the Council or under their control or management under the provisions of this Act. 40
 - Bathing in any reservoir aqueduct race or other waterworks constructed under this Act or otherwise belonging to or under the management or control of the Council.
 - Washing cleaning throwing or causing to enter therein any animal rubbish filth stuff or noisome thing of any kind whatsoever. 45
 - Causing or permitting or suffering to run or be brought therein the water of any sink sewer drain engine or boiler or other filthy unwholesome or improper water or any sludge or tailing. 50
 - Generally the doing or permitting or suffering to be done any act or thing whatsoever whereby any water belonging to the Council or under their management or control or whereby any water of or contained in any such reservoir aqueduct race or other water works so constructed as aforesaid shall be fouled. 55
- And every person guilty of any such offence shall for every such offence be liable to a penalty not exceeding ten pounds and a further penalty not exceeding five pounds for each day whilst the offence is continued after written notice in that behalf. 60

74. In all cases in which any damages or other moneys are by this Act directed to be paid and no specific method of recovering the same is provided by this Act the same may at the election of the party entitled to sue for the same be ascertained and recovered under the provisions of "The Resident Magistrate's Act 1867" notwithstanding the amount to be recovered shall exceed the ordinary jurisdiction of the Resident Magistrate's Court in which the proceedings shall be taken. Damages how to be recovered.
75. All penalties imposed by this Act may be sued for and recovered in manner for the time being provided by law for the recovery of penalties imposed under the provisions of any Act of the General Assembly of New Zealand but no such penalty shall be recovered at the suit of any person other than a party aggrieved or the Council without the consent in writing of the Attorney-General of New Zealand first had and obtained. Penalties how to be recovered.
76. No proceedings under or in pursuance of this Act shall be quashed or vacated for want of form nor shall the same be removed by *certiorari* or otherwise into the Supreme Court. Certiorari taken away.
77. No penalty imposed by this Act shall be recovered unless proceedings for the recovery thereof shall have been commenced within six months after the commission or occurrence of the offence upon which the penalty attaches. Limitation of proceedings.
78. The Court by which any penalty shall be imposed under this Act on any person other than the Council shall in all cases award one half of the same to be paid to the Council to be by them placed to the Water Works Account hereinbefore mentioned and the other half shall be paid to Her Majesty and be applied in manner provided by law for the application of penalties of the like nature. Application of penalties.
79. Notwithstanding the liability of any person to any penalty under the provisions of this Act he shall not be relieved from any other liability to which he would have been subject if this Act had not been passed. Offender not exonerated.
80. The Council may from time to time make bye-laws for securing the due carrying out of the purposes of this Act and may by some other bye-law repeal alter or vary any bye-law so to be made and the Council may by any bye-law to be made under this section impose reasonable penalties not exceeding Five pounds for any one offence and every such bye-law shall be so framed as to allow the Court or the Justice or Justices as the case may be before whom any such penalty may be sought to be recovered to order a part only of such penalty to be paid Provided always that no bye-law shall be of any force or effect until after the expiration of fourteen days after the publication thereof in the *New Zealand Gazette* and in some newspaper published and current in the city. Bye-laws.
81. Nothing herein contained shall be deemed or construed to exempt the Waterworks by this Act authorised to be constructed from the provisions of any general Act relating to Waterworks in this Colony which may hereafter pass during the present or any future Session of the Legislature. Act not to interfere with General Water Works Act to be afterwards passed.
82. Before any Council shall take or adopt any proceedings for or towards the construction of Waterworks under the provisions of this Act and not less than three calendar months before the commencement of the three calendar months mentioned in the fourth section of this Act such Council shall cause a notice in the form or to the effect mentioned in Schedule B to this Act to be published at least once in each week for four successive weeks in some newspaper published and current within the Borough if any newspaper be published within the Borough but if no newspaper be published within the Borough then in some newspaper current within the same. Notice of intention to carry out works to be published.

Ratepayers may
object to undertaking.

83. In case a number of ratepayers for the time being qualified and entitled to vote in the election of Councillors within the Borough representing not less than two-fifths of the whole number of votes for the Borough shall before the expiration of two calendar months next after the first publication of such notice as last aforesaid deliver to the Council a notice in writing signed by them in the form or to the effect in Schedule C to this Act then the Council shall not take or adopt any proceedings for or towards the construction of the proposed Waterworks without the authority of the General Assembly of New Zealand to be embodied in an Act for that purpose. 5 10

SCHEDULES.

SCHEDULE A.

BOROUGH OF WATERWORKS LOAN OF £

Number £ Debenture for £

Payable at the office of the Municipal Council in the Borough of

on

Issued by the Corporation of the Borough of New Zealand under an Act of the General Assembly of New Zealand intituled "The Municipal Corporations Waterworks Act 1872."

N.B.—The holder of this Debenture has no claim in respect thereof upon the Government of the Colony of New Zealand or upon the Provincial Government of the Province of or on the Revenue thereof.

On presentation of this Debenture at the office of the Municipal Council in the Borough of on or after the day of 187 the bearer thereof will be entitled to receive £

Interest on this Debenture will cease after the day when the payment falls due unless default is made in payment.

Issued under the Seal of the Corporation the day of 187 .

Signed Mayor.

Countersigned Councillor.

(COUPON.)

Debenture No. of the Corporation of the Borough of
New Zealand issued under "The Municipal Corporations Waterworks Act 1872."
Due

On presentation of this Coupon at the office of the Municipal Council in the Borough of Auckland on or after the day of 187 the bearer hereof will be entitled to receive £

Signed Mayor.

Countersigned Councillor.

SCHEDULE B.

NOTICE is hereby given that pursuant to the powers contained in "The Municipal Corporations Waterworks Act 1872" the Council of the Borough [*or City* as the case may be] of intend to construct waterworks for supplying the Borough [*or City*] with water and that the amount to be raised by way of loan for that purpose is £

And that in case their intention is objected to within two calendar months from the first publication of this notice application will be made to the General Assembly of New Zealand at its next session for authority to construct the said works.

Dated this day of 18

(Signed) A.B.
Mayor.

SCHEDULE C.

TO THE MAYOR OF THE CITY OF

SIR,—

WE the undersigned ratepayers within the Borough [*or City* as the case may be] of now qualified and entitled to vote in the election of Councillors for the said Borough [*or City*] hereby give notice that we object to the construction of the waterworks mentioned in the notice dated the day of one thousand eight hundred and published in the newspaper.

Dated this day of 18