

[AS REPORTED FROM THE INTERNAL AFFAIRS AND LOCAL
GOVERNMENT COMMITTEE]

House of Representatives, 1 December 1987.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

Dr Peter Simpson

**MOUNT HERBERT COUNTY COUNCIL (LUMP SUM
CONTRIBUTIONS) EMPOWERING**

[LOCAL]

ANALYSIS

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A BILL INTITULED

**An Act to enable ratepayers of the Mount Herbert
County Council to make lump sum contributions to
the capital cost of water supply and drainage works
and to apportion such costs among all ratepayers
affected thereby**

BE IT ENACTED by the Parliament of New Zealand as follows:

No. 4—2

Price
incl. GST \$1.90

1. Short Title—This Act may be cited as the Mount Herbert County Council (Lump Sum Contributions) Empowering Act 1987.

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

“Council” means the Mount Herbert County Council: 5

“County” means the Mount Herbert County:

“Loan” includes any renewal of a loan and any loan raised to repay a loan:

“Lump sum capital contribution” means *(the)* a lump sum capital contribution as determined in accordance with this Act: 10

“Uniform annual charges” means uniform annual charges as determined in accordance with the Local Government Act 1974: 15

“Works” and “proposed works” mean *(water works)* waterworks as defined in section 376 of the Local Government Act 1974 *(and)* or drainage works as defined in section 441 of that Act.

3. Power to give right of election to make lump sum payment—(1) If the Council proposes to raise a special loan under the Local Authorities Loans Act 1956 for the purpose of financing, either in whole or in part, any works within any water supply area constituted within the county under section 377 of the Local Government Act 1974 or any works within an urban drainage area constituted within the county under section 443 of that Act, the Council may by resolution apply the provisions of this Act to those works. 20 25

(2) If the Council applies the provisions of this Act to any such works, it shall give every ratepayer in respect of each separately *(rated)* rateable property in the water supply area or urban drainage area, as the case may be, affected the right either— 30

(a) To pay a share of the total costs of the works by means of a lump sum capital contribution assessed in accordance with **sections 4, 5, 9, and 10** of this Act; or 35

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(b) As the Council determines, to pay an equal share of the total costs of the works and any loan charges by way

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5 of uniform annual charges, or to pay a proportionate share of that cost and those charges by way of a special or separate rate, in respect of each separately rated property of the ratepayer, made and levied under section 47 of the Local Authorities Loans Act 1956 or section 143 or section 158 or section 162 of the Local Government Act 1974.

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- 10 (b) As the Council determines—
- (i) To pay an equal share of the total cost of the works and any loan charges by way of uniform annual charges; or
 - 15 (ii) To pay a proportionate share of that cost and those charges by way of a special or separate rate— in respect of each separately rateable property of the ratepayer, made and levied under section 47 of the Local Authorities Loans Act 1956 or section 143 or section 158 or section 162 of the Local Government Act 1974.
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4. Estimates to be prepared before Act applied to works—Before the Council applies the provisions of this Act to any works it shall—

- 25 (a) Cause to be prepared an estimate of the costs of the works proposed and deduct the amount (if any) of any subsidies estimated as payable to the Council in respect thereof, and the balance shall be the estimated net capital costs of the works; and
- 30 (b) Divide the estimated net capital costs of the works by the number of separately *(rated)* rateable properties within the area to benefit from the proposed works, and the amount so calculated shall be the estimated lump sum capital contribution in respect of each property; and
- 35 (c) Cause an assessment to be made as to the estimated *(amount of the annual amount in the dollar)* special or separate rate or the uniform annual charge required to be levied to pay the annual charges payable by the

Council on a special loan for an amount equal to the estimated net capital costs of the proposed works.

5. Ratepayers to be notified and make an election—The Council, within 14 days after the passing of a resolution under **section 3** of this Act, shall cause notice in **form 1** in the Schedule to this Act to be served on each ratepayer in respect of each separately (*rated*) rateable property in the water supply area or urban drainage area, as the case may be, affected requiring every such ratepayer, within 2 months after the date of service of the notice, to advise whether, in respect of each separately (*rated*) rateable property, the ratepayer elects to pay a lump sum capital contribution to the costs of the proposed works or to be liable in respect of those costs for a special or separate rate or uniform annual charge made and levied as set out in **section 3** of this Act.

6. Annual rate payable in default of election and election irrevocable—(1) Where a ratepayer fails to notify the Council within the prescribed time of the ratepayer's election in accordance with **section 5** of this Act, that ratepayer shall in respect of each separately (*rated*) rateable property in respect of which no election is made be deemed to have elected to be liable to pay the special or separate rates or any uniform annual charge that may be made and levied to repay any such loan and interest thereon required to be raised in relation to the works.

(2) Subject to **subsection (3)** of this section, every election made under **section 5** of this Act or election deemed to have been made under **subsection (1)** of this section shall be irrevocable.

(3) A ratepayer who has elected or who (*has*) is deemed to have elected to pay by way of a special or separate rate or a uniform annual charge, as the case may be, may with the consent of the Council change that election to a lump sum capital contribution at any time before the Council invokes the provisions of section 52 of the Local Authorities Loans Act 1956 to raise all of the first issue of the special loan for the works to which the election relates.

7. Power to raise loan as to balance of costs—After the expiration of the period of 2 months in which the ratepayer may make an election as provided in **section 5** of this Act, the Council shall deduct the total amount of all lump sum capital contributions which ratepayers have elected to pay in respect

of each separately (*rated*) rateable property from the estimated net capital costs of the works; and the Council may thereafter raise a special loan in accordance with the provisions of the Local Authorities Loans Act 1956 for the residual amount
5 calculated as remaining.

8. Consequences of electing lump sum capital contributions—(1) Any separately (*rated*) rateable property in respect of which the ratepayer has elected to pay a lump sum capital contribution under this Act shall—

10 (a) Be included on the special roll prepared under section 27 (3) of the Local Authorities Loans Act 1956 for the special loan required to be raised to finance the works; and

15 (b) Not be liable for the special rate deemed to be made and levied pursuant to section 47 of the Local Authorities Loans Act 1956 as security for repayment of the loan raised to finance those works; and

20 (c) Not be liable for any portion of any separate rate or uniform annual charge made and levied under section 143, section 158, or section 162 of the Local Government Act 1974 for the purpose of paying the annual charges on the loan raised to finance those works; and

25 (d) Be liable for that portion of any separate rate or uniform annual charge made (*or*) and levied under section (~~43~~) 143, section 158, or section 162 of the Local Government Act 1974 for the purpose of meeting maintenance and operating costs in respect of those works.

30 (2) If any property to which subsection (1) of this section applies was separately rated as at the date of any resolution passed pursuant to **section 3** of this Act and is subsequently subdivided, the provisions of **subsection (1) (b) and (c)** of this section shall apply in respect of only 1 of the allotments so created.

35 (3) Upon the lodging of a scheme plan for the subdivision of any separately rateable property within the water supply area or urban drainage area affected by a resolution passed pursuant to **section 3** of this Act, the owner shall, prior to the approval by the Council of the subdivision, elect which allotment shall
40 continue to be subject to the provisions of **subsection (1) (b) and (c)** of this section, and, notwithstanding any provision contained in any other Act, the Council shall not be required to approve any such subdivision until that election has been made.

(4) Any election made pursuant to **subsection (3)** of this section shall be irrevocable.

(5) If, notwithstanding the provisions of **subsection ((2)) (3)** of this section, a subdivision in respect of a separately (*rated*) rateable property within a water supply area or urban drainage area within the county affected by a resolution passed pursuant to **section 3** of this Act is approved without an election having first been made under **subsection ((2)) (3)** of this section, the principal administrative officer of the Council may at any time, after giving notice of his intention to do so to the owners of all allotments created by the said subdivision and after giving them an opportunity to be heard, determine which of the allotments shall continue to be subject to the provisions of **subsection (1) (b) and (c)** of this section.

(6) The provisions of this section, with the necessary modifications, shall apply in respect of any subsequent subdivision or subdivisions of any allotment to which the provisions of **subsection (1) (b) and (c)** of this section applies (*pursuant to*) by virtue of **subsection (3) or subsection (5)** of this section.

9. Payment of lump sum capital contributions—When the Council invokes the provisions of section 52 of the Local Authorities Loans Act 1956 to raise all or the first issue of any special loan required to finance the works it shall thereupon serve a notice in **form 2** in the Schedule to this Act on the ratepayer of each separately (*rated*) rateable property in respect of which an election has been made to pay a lump sum capital contribution requiring that ratepayer to pay, within 3 months after the date of the notice, the estimated lump sum capital contribution(s) referred to in the said notice as assessed in accordance with **section 4 (b)** of this Act.

10. Reassessment on completion of works—After the completion (*of construction*) of any works to which this Act has been applied, the Council shall ascertain the actual cost of the works, the actual subsidies received in respect thereof, and the actual number of separately rateable properties within the area as at the date of the passing of the resolution pursuant to **section 3** of this Act; and shall then redetermine the actual lump sum capital contribution(s) payable in respect of each separately (*rated*) rateable property for which an election to make such contribution was made pursuant to **sections 5 and 6 (3)** of this Act.

11. Refund of overpayment or payment to meet deficiency—As soon as practicable, but not later than 3 months, after making the assessment of the actual lump sum capital contribution in accordance with **section 10** of this Act, the
5 Council shall—

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10 (a) If that amount is less than the amount of the estimated lump sum capital contributions already paid, refund the amount of any overpayment to the ratepayers who made those payments; or

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15 (a) If the amount is less than the estimated lump sum contribution already paid in respect of that property, refund the amount of any overpayment to the ratepayer for the time being in respect of that property:

20 (b) If the amount is more than the estimated amount of the lump sum capital contribution, serve a further notice in **form 2** in the Schedule to this Act on the ratepayer for the time being of each separately *(rated)* rateable property in respect of which an election has been made to pay a lump sum capital contribution requiring that ratepayer, in respect of that property, to pay the balance owing within 1 month after the
25 date of service of the notice:

30 Provided that, in the case of any property separately rated as at the date of service of the notice on the owner thereof in accordance with **section 5** of this Act which has, as at the date of reassessment, been subdivided, the requirement to pay the excess shall apply in respect of the owner of the allotment in respect of which the provisions of **section 8 (1) ((a) to (c)) (b) and (c)** of this Act applies.

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35 **12. Subsequent elections to make lump sum payments**—(1) Where—

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- (a) The Council has, pursuant to **section 3** of this Act, by resolution applied the provisions of this Act to proposed works; and
- (b) A special loan has been raised in relation thereto pursuant to section 52 of the Local Authorities Loans Act 1956; and
- (c) The works in respect of which the said loan has been raised have been completed—
- the Council may, in its discretion, accept lump sum contributions in respect of separately rated properties to which the provisions of **section 8(1)(a) to (c)** of this Act do not then apply; and in determining whether or not to accept any such lump sum contributions, the Council may fix the date at which any such lump sum contributions are to be paid.
- (2) Any such lump sum contributions shall be calculated by dividing the principal outstanding in respect of the special loan as at the date the lump sum contribution is to be paid by the number of separately rated properties subject to the uniform annual charge or special or separate rates in respect of the loan.
- (3) If a lump sum contribution so assessed is paid on or before the date fixed for payment pursuant to **subsection (1)** of this section, the provisions of **section 8(1)(a) to (c)** of this Act shall, from that date, apply to the separately rated property in respect of which the said lump sum contribution is paid.

13. Additional charge on unpaid capital contributions—An additional charge not exceeding 10 percent may be made by resolution of the Council to be added to any lump sum capital contribution or balance thereof which has not been paid on or before the date on which it fell due under this Act, and such additional charge may be credited to the general revenues of the county.

14. Power to recover capital contributions—Every lump sum capital contribution and balance thereof payable under this Act, and every additional charge payable under **section 13** of this Act, shall constitute a charge on the separately rateable property in respect of which it is payable, and in default of payment may be recovered by the Council in the same manner as if it were a rate payable under the Rating Act 1967.

15. Service of notices—(1) Any notice required to be served on the Council under this Act shall be sufficiently served if it is posted to or delivered to or left at the office of the Council.

5 (2) Any notice required to be served on a ratepayer under this Act shall be delivered in accordance with section 65 of the Rating Act 1967, and the provisions of that section shall apply as if the notice were a rates assessment.

10 (3) If a notice is sent by post it shall be deemed to have been served at the time when it would have been delivered in the ordinary course of post.

SCHEDULE

FORM 1

TO [Name and address of ratepayer] being the ratepayer for the property included in valuation assessment No. and described therein [insert legal description].

PURSUANT to the provisions of the Mount Herbert County Council (Lump Sum Contributions) Empowering Act 1987, the Mount Herbert County Council hereby notifies you that it proposes to install a (water or sewerage) scheme in the [insert name of area] area, which will be available to service the above described property. Further, it notifies you that you must within 2 months after the date of service of this notice elect to pay the said property's share of the capital cost of the scheme (if it proceeds) by either—

1. Paying a lump sum capital contribution, which at this stage is estimated to be, but which will be finally assessed after the work is completed and actual costs are known; or

2. The property being made liable for the payment of an annual rate (or charge) to meet the annual charges on a loan which the Council would raise to finance the scheme or that part of the scheme not paid for by lump sum capital contributions. At this stage it is estimated that the amount of the rate (or charge) payable in respect of your property would be [insert amount] per annum for the [insert number] year term of the loan.

NOTE—Any payment under clause 1 or clause 2 above would be for the capital cost of the work only and would not cover maintenance and operating costs.

Further, you are notified as follows:

- (a) That the attached duplicate copy of this form must be completed and returned to the undersigned so as to be received not later than 5.00 p.m. on [insert date].
- (b) That if the attached form is not returned within the prescribed time, or if it does not clearly indicate your wishes, it will be assumed that you do not wish to make a lump sum capital contribution and your property will be rated annually if the scheme proceeds.
- (c) If you elect to pay a lump sum contribution, you may not change your decision, and if you do not pay it on or before the due date you may be charged a penalty of up to 10 percent.

