

Mr Eyre

NORTH SHORE DRAINAGE AMENDMENT

[LOCAL BILL]

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A BILL INTITULED

AN ACT to amend the North Shore Drainage Act 1951. Title.

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

1. This Act may be cited as the North Shore Drainage Amendment Act 1954, and shall be read together with and deemed part of the North Shore Drainage Act 1951 (hereinafter referred to as the principal Act). Short Title.

No. 71—1

- Interpretation. 2. Section two of the principal Act is hereby amended by omitting from the definition of "trunk sewer" the words "point of disposal", and substituting the words "final point of discharge".
- The district. 3. (1) Section three of the principal Act is hereby amended by inserting in subsection one, between the word "Devonport" and the word "Northcote", the words "East Coast Bays".
- (2) The said section three is hereby further amended by repealing subsection two, and substituting the following subsection:
- "(2) Where provision is made in any scheme of sewerage works adopted by the Board under the provisions of section thirty of this Act for the construction of common treatment works and a common outfall for the immediate service of the local districts or portions of the local districts of any two or more contributing authorities, the Board shall forthwith upon the adoption of the said scheme, by special order, determine the boundaries of the areas to be served by such proposed common treatment works and outfall, and the areas so defined taken together shall, for the purposes of this Act, constitute and be known and hereinafter referred to as a combined area, having a name or number to be determined by the Board."
- (3) The said section three is hereby further amended as follows:
- (a) By adding to subsection three, after the words "special area", the words "having a name or number to be determined by the Board":
- (b) By inserting in subsection four, after the word "declare", the words "by Order in Council":
- (c) By omitting from subsection five the word "resolution" wherever the same occurs, and substituting in each case the words "special order", and by omitting therefrom the word "passing", and substituting the word "making":
- (d) By omitting from subsection six the word "resolution", and substituting the words "special order":

(e) By omitting from subsection seven the word "resolution" and the words "treatment works", and substituting for the word "resolution" the words "special order".

5 (4) The said section three is hereby further amended by adding the following subsection:

10 "(8) The Board may from time to time by special order declare that any future development area shall, as from a date to be specified in the special order in that behalf (being not earlier than the date at which the Board is of the opinion that the connection hereinafter referred to can be made), be incorporated in the combined area or in any one particular combined area of the district, and the Board shall, as soon as practicable
15 after the making of the special order, cause such future development area to be connected by trunk sewer to and with the treatment or disposal works and outfall of such combined area, whereupon the future development area shall thenceforth cease to be a future development area
20 and shall be included in and become part of such combined area."

4. Section five of the principal Act is hereby amended as follows:

Members of Board.

25 (a) By omitting from subsection one the word "nine", and substituting the word "ten"; and also by inserting in the said subsection one, after the words "Devonport Borough Council", the words "one by the East Coast Bays Borough Council":

30 (b) By adding to subsection three the following proviso:

35 "Provided that in lieu of appointing any such person or persons to be a Commission of Inquiry in the manner and for the purposes aforesaid, the Governor-General may direct the Local Government Commission constituted under the Local Government Commission Act 1953 so to inquire into and report on the allocation of seats on the Board."

40 5. Section six of the principal Act is hereby amended by adding the following proviso:

Election of Board.

"Provided, and it is hereby declared, that notwithstanding anything to the contrary expressed or implied in the foregoing provisions of this section the first election

by the East Coast Bays Borough Council of its member of the Board shall be made within one month after the coming into force of this proviso."

Vacancies.

6. (1) Section eight of the principal Act is hereby amended by adding to subsection one the following additional paragraphs: 5

1933, No. 30,
s. 37 (e)

"(d) Becomes bankrupt or compounds with his creditors or becomes of unsound mind; or
"(e) Is convicted of any offence punishable by imprisonment, unless he has received a free pardon, or has served his sentence or has otherwise suffered the penalty imposed on him." 10

(2) The said section eight is hereby further amended by adding the following subsection: 15

1951 (Local),
No. 21, s. 11

"(4) During any vacancy in the Board, the continuing members may act, and no act of the Board shall be invalid on account of the vacancy being unfilled."

Quorum of
Board.

7. Section sixteen of the principal Act is hereby amended by omitting from subsection one the word "five", and substituting the word "six". 20

Proceedings not
invalidated by
irregularities.

1951 (Local),
No. 21, s. 14

8. Section nineteen of the principal Act is hereby repealed, and the following substituted therefor:

"19. All acts and proceedings of the Board, or of any committee of the Board, or of any person acting as a member of the Board, shall, notwithstanding that it may afterwards be discovered that there was some defect in the election or appointment of the Board, committee, or person acting as aforesaid, or that they were or any of them was disqualified or incapable of being members or a member of the Board, be as valid as if every such person had been duly elected or appointed and was qualified to be a member as aforesaid." 25 30

Board may
provide offices.

1951 (Local),
No. 21,
s. 23 (2)

9. Section twenty-three of the principal Act is hereby amended by adding the following subsection: 35

"(2) The Board may, in addition to the powers hereby conferred or in lieu thereof, as it may determine, enter into such arrangements as it may deem necessary with any contributing authority for the use, on such terms as may be agreed upon, of portion of the offices of that contributing authority and of furniture and office equipment for the same for the purpose of transacting the business of the Board or holding its meetings." 40

10. (1) Section twenty-six of the principal Act is hereby amended by omitting from subsection two the word "twenty", and substituting the word "fifty".

By-laws.

5 (2) The said section twenty-six is hereby further amended by adding the following subsections:

"(5) The Board may at any time apply to the Supreme Court or to a Magistrate's Court for an injunction to restrain the breach of any of its by-laws.

1933, No. 30,
s. 370

10 "(6) The continued existence of any work or thing in a state contrary to any by-law shall be deemed a continuing offence.

1933, No. 30,
s. 370

15 "(7) A by-law may authorize the Board, or any officer thereof, to give notice in writing to any person by whom any work shall have been begun or done in contravention of any by-law of the Board to remove, alter, or pull down such work to such extent as may be required by the Board or by any such officer as aforesaid within such time as may be specified in that behalf by the said notice. Any person who fails to comply with any such

20 notice shall be guilty of a continuing offence against the by-law under which such notice is given as aforesaid.

"(8) A by-law may also authorize the Board, or any officer thereof, to pull down, remove, or alter any building, work, material, or thing erected or being in

1933, No. 30,
s. 371

25 contravention of any by-law, and to recover from the person committing the breach all expenses incurred by the Board in connection with such pulling down, removal, or alteration.

"(9) The exercise of the authority conferred by the

1933, No. 30,
s. 371

30 *last preceding* subsection shall not relieve any such person from liability to any penalty incurred by reason of such breach.

"(10) All by-laws, rules, and regulations in force in the district or any part thereof on the coming into operation of this Act shall, so far as not inconsistent with this Act, be and continue in force within the district, or any part thereof as aforesaid, until superseded by by-laws made under this Act, and shall be as valid and effectual as if made under this Act, and may be proved and

1933, No. 30,
s. 376

40 enforced in the manner hereinafter provided."

11. Section twenty-seven of the principal Act is hereby amended by adding the following subsections:

Proof of
by-laws.

1933, No. 30,
s. 372

“(2) The production of any document purporting to be a copy of any by-law made by the Board in whole or in part under the authority of this Act, and to be sealed with the common seal of the Board, shall, until the contrary is shown, be sufficient evidence of such by-law having been duly made, and that the same duly came into force on the day mentioned in that behalf in such copy of the by-law. 5

1933, No. 30,
s. 374

“(3) The Board shall cause copies of all by-laws to be kept at the office of the Board, and to be supplied to any person applying for the same at such price as may be fixed by the Board from time to time. 10

1933, No. 30,
s. 375

“(4) Nothing in this Act or in any by-law made thereunder shall be deemed to relieve any person from any penalty, action, or other liability to which he would otherwise be liable or subject in respect of anything done by him in breach of any such by-law.” 15

Powers of Board.

12. Section thirty of the principal Act is hereby amended by repealing subsection eleven, and substituting the following subsection: 20

“(11) Where any trunk sewer which is serving or which is intended to serve two or more local districts, or where any storage tank, storage culvert, storage tunnel, outfall, or sewage treatment plant, has already been constructed within the district by some local authority, it shall be taken over by and vested in the Board at such price and upon such terms and conditions as may be agreed upon between the Board and the local authority or, in the event of their being unable to agree, as may be settled by arbitration under the provisions of the Arbitration Act 1908.” 25 30

Construction of treatment works.

13. Section thirty-two of the principal Act is hereby amended by inserting in paragraph (a) of subsection one, before the word “Common” at the beginning of that paragraph, the words “One or more”. 35

Powers of Board.

14. Section thirty-three of the principal Act is hereby amended by adding the following subsection:

1951 (Local),
No. 21,
ss. 28 (e), 30

“(3) The Board may purchase and hold any land within or without the district which, in the Board’s opinion, may be required for the purposes of this Act; and the Board also may take, in the manner and subject to the provisions of the Public Works Act 1928, and hold any lands within the district which, in its opinion, are required for the purposes aforesaid.” 40

15. Section forty-five of the principal Act is hereby amended by inserting, after subsection one, the following subsection:

Accounts to be kept in accordance with requirements of Audit Office. 1951 (Local), No. 18, s. 18

“(1A) Without limiting in any way the provisions of subsection one of this section, separate accounts shall be kept by the Board in respect of the design, construction, and operation of main sewerage works for—

“(a) Any combined area or combined areas:

“(b) Any special area or special areas:

10 “(c) Any future development area or future development areas:

“(d) Any separate part or parts of the district for the benefit of which a loan is raised and which is defined in subsection three of section fifty-two of this Act.”

15 16. Section fifty-two of the principal Act is hereby amended by inserting in subsection three, after the words “in any such case”, the words “the portion of”.

Borrowing powers. 1949 (Local), No. 8, s. 2

17. Section fifty-four of the principal Act is hereby amended by inserting in subsection one, after paragraph (b), the following paragraph:

Annual estimate of Board's proposed expenditure. 1949 (Local), No. 8, s. 3

“(bb) The sum or sums that may be required for the administrative costs of the Board, which shall be deemed to include the cost of engineering investigations of the Board and of engineering and general administration:”.

18. Section fifty-six of the principal Act is hereby amended by repealing paragraphs (a), (b), and (e) of subsection one, and substituting the following paragraphs:

Calculation of assessments.

30 “(a) The amount payable in respect of any special area for the service of that area, including the amounts required to cover investigations, design, and supervision of construction of works, legal fees, interest and sinking fund, depreciation, operating and maintenance costs of both new works (including land) and also works (including land) acquired by the Board under the provisions of subsection eleven of section thirty of this Act, shall be charged and assessed to the local authority of the local district or portion thereof comprising that special area:

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“(b) The amount payable in respect of any combined area, including the amounts required to cover investigations, design, and supervision of construction of works, legal fees, interest, sinking fund, depreciation, operating and maintenance costs of both new works (including land) for the service of such combined area and also works (including land) acquired by the Board under the provisions of subsection eleven of section thirty of this Act, shall be charged and assessed to the local authorities of the local districts or portions thereof comprising that combined area in the manner following:

“(i) In the case of trunk sewers and other works (including land), and also in the case of works (including land) acquired by the Board under the provisions of subsection eleven of section thirty of this Act, which (in either case) are serving or are intended to serve one local district or portion thereof within such combined area, wholly to such local district:

“(ii) In the case of trunk sewers, treatment works, and outfalls (including land) which are serving or are intended to serve two or more local districts or portions thereof, and in the case of works (including land) which are within the combined area and which are taken over by the Board under the provisions of subsection eleven of section thirty of this Act (whether or not such works are intended to be used as part of the scheme of works for the combined area), in the proportion of the mean percentage of the rateable capital value and population of the respective local districts or portions thereof, as the case may be:”

“(e) Where trunk sewers or outfalls are designed and installed anywhere in the district of sufficient capacity to serve not only the immediate drainage requirements of any special or combined areas but also the estimated population of a future development area, the

appropriate share, payable in respect of that future development area, of the interest and sinking fund on the cost of such trunk sewers and outfalls shall be charged and assessed to the local authority or local authorities of those local districts which comprise, or such portions only of any local districts as may comprise, such future development area in the proportion of the mean percentage of the rateable capital value and population of the respective local districts or such portions thereof as aforesaid which will be served by such trunk sewers and outfalls:

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“(f) Where land of sufficient area to meet not only the immediate requirements of any special or combined areas but also the essential requirements of the estimated population of a future development area is at any time hereafter acquired by the Board, the appropriate share, payable in respect of that future development area, of the net amount required to cover interest and sinking funds and all other outgoings payable in respect of any such land, after making due allowance for any revenue derived from such land pending the use thereof by the Board, shall be charged and assessed to the local authority or the local authorities of those local districts which comprise, or such portions only of any local districts as may comprise, such future development area in the proportion of the mean percentage of the rateable capital value and population of the respective local districts or portions thereof as aforesaid:

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“(g) For the purpose of ensuring, in either of the cases provided for in paragraphs (e) and (f) of this subsection, that the cost therein referred to is apportioned in the most equitable manner amongst all portions of any such future development area, having regard to the successive stages at and to which it is intended that the scheme of sewerage

works proposed for the district should be developed in such future development area, the Board may, if it thinks fit so to do, classify any such future development area according to the stages at or to which it is intended that the said scheme of sewerage works should be developed in different parts of such future development area; and the Board may levy the amounts payable under either paragraph (e) or paragraph (f) of this subsection on a sliding scale according to such classification. The provisions of the Land Drainage Act 1908 shall, as far as they are applicable and with the necessary modifications, apply to the classification and levy mentioned in this paragraph as if expressly set out therein.”

Commencement of action not to stop works of Board. 1951 (Local), No. 21, s. 78

19. Section sixty-three of the principal Act is hereby repealed, and the following substituted therefor:

“63. If any action or claim is commenced or prosecuted touching or concerning the right, title, or interest of any person of or in any lands taken or injuriously affected by anything done in pursuance of this Act, or in the execution of the powers or authorities herein contained, or as to the amount of compensation to be paid to such person in respect of any such lands, such action or claim shall not of itself impede, delay, or hinder the Board from proceeding in the execution of the powers vested in it by this Act, and the works or the exercise of the powers and authorities may be proceeded with notwithstanding such action or claim.”

Board may enter premises for purpose of inspection.

20. Section sixty-four of the principal Act is hereby amended as follows:

- (a) By inserting in subsection two, after the words “last preceding subsection”, the words “or in the performance of anything which it or he is empowered or required to do by this Act”:
- (b) By omitting from the said subsection two the word “twenty”, and substituting the word “fifty”.

21. Section sixty-five of the principal Act is hereby amended as follows:

Recovery of fines and penalties.

(a) By inserting, before the word "All" at the beginning of that section, the words "Every offence hereby made punishable by a fine may be prosecuted, and":

(b) By adding the following proviso:

"Provided that section fifty of the Justices of the Peace Act 1927 shall not apply in respect of any prosecution or proceeding for an offence against this Act or against any by-law made in pursuance of or remaining operative under this Act."

22. (1) The Board may from time to time set aside, out of its General Account, any moneys to form a fund or funds to meet claims for accidents arising in connection with any undertaking of the Board, but no greater sum shall be set aside in any one year than the amount that at current rates would have been payable for that year in respect of the insurance of workers employed by the Board and in respect of insurances against public risk.

Accident fund. 1951 (Local), No. 21, s. 53

(2) The Board may from time to time invest any moneys so set aside and pay the proceeds either into the General Account or into a Special Accident Fund Account.

23. The payment of or liability to be rated or to pay rates levied by any contributing authority for the purposes of the principal Act shall not disqualify any Judge, Magistrate, or Justice from dealing with any appeal, prosecution, action, claim, or proceeding instituted under or in pursuance of this Act.

Judges, etc., not disqualified by payment of rates. 1951 (Local), No. 21, s. 87

24. Any summons, writ, notice, or other legal proceeding requiring to be served on the Board may be served by being left at the public office for the time being of the Board or by delivering the same personally to the Chairman or Secretary for the time being of the Board.

Service of legal proceedings on Board. 1933, No. 30, s. 357

25. Every order, notice, or other document requiring authentication by the Board may, unless otherwise provided, be signed by any two members or by the Secretary, and need not be under the common seal of the Board.

Authentication of documents by Board. 1933, No. 30, s. 380

Service of
notices, etc.
1933, No. 30,
s. 381
1952, No. 51,
s. 152

26. (1) In any case in which it is provided by the principal Act than an order may be made upon or notice given to any person requiring him to do or abstain from doing anything, or any notice is required by the principal Act to be given or sent to any person, such order or notice shall be delivered to such person either personally or by posting it by registered letter addressed to that person at his last known place of abode or business in New Zealand. A notice so posted shall be deemed to have been served at the time when the registered letter would in the ordinary course of post be delivered.

(2) If such person is absent from New Zealand, the order or notice may be delivered as aforesaid to his agent in New Zealand. If he is deceased, the notice may be delivered as aforesaid to his personal representative.

(3) If such person is not known, or is absent from New Zealand and has no known agent in New Zealand, or is deceased and has no personal representative, and the order or notice relates to any land, work, material, or building, the order or notice, addressed to the owner or occupier of such land, work, material, or building, as the case may require, may be served on the occupier thereof, or left with some inmate of his abode; or, if there is no occupier, may be put up on some conspicuous part of such land, work, material, or building. It shall not be necessary in any such notice to name the occupier or owner of such land, work, material, or building.

(4) In all cases other than those provided for in the *last preceding* subsection, if the person is not known, or is absent from New Zealand and has no known agent in New Zealand, or is deceased and has no personal representative, the order or notice shall be delivered in such manner as may be directed by an order of the Court.

(5) Notwithstanding anything in the foregoing provisions of this section, the Court may in any case make an order directing the manner in which any order or notice is to be delivered, or dispensing with the delivery thereof.

(6) This section does not apply to orders or notices served in proceedings in the Court.

(7) In this section the expression "the Court" means—

5 (a) In any case where any order or notice relates to any sum of money not exceeding two thousand pounds, or to any property the value of which does not exceed the sum of two thousand pounds, a Magistrate's Court:

(b) In any other case, the Supreme Court.

10 (8) Every order or notice required to be sent by the Board shall be signed as provided in the *last preceding* section.

(9) In all cases in which any matter or thing is required to be published, advertised, or inserted by the Board in a newspaper generally circulating in the district, 15 the said newspaper shall be such newspaper as the Board from time to time appoints in that behalf, or, if there is no Board at the time when that matter or thing ought to be advertised, the said newspaper shall be such as the Secretary appoints in that behalf.

20 27. The Schedule to the principal Act is hereby amended as follows: 1951 (Local),
No. 21, s. 77

(a) By inserting, after the word "Devonport" in the second line thereof, the words "East Coast Bays":

25 (b) By adding to the description of that part of the County of Waitemata, as set out in the said Schedule, after the concluding word "red", the words "excepting thereout the East Coast Bays Borough aforesaid".

Schedule to
principal Act
amended.