

Wellington City Drainage Empowering Act 1894

Local Act 1894 No 6
Date of assent 8 September 1894

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An Act to confer Additional Drainage-Powers upon the Mayor, Councillors, and Citizens of the City of Wellington.

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

1 Short Title

The Short Title of this Act is The Wellington City Drainage Empowering Act 1894.

2 Interpretation

In this Act, if not inconsistent with the context,—

City means the City of Wellington, and includes all future additions to the same, and also the parts of the Boroughs of Melrose and Karori referred to in section 3 of The Wellington (City) Suburbs Sanitation Act 1893, and all other areas that may at any time hereafter be declared by any Act of the General Assembly to be deemed included within the City of Wellington for any purpose connected with the drainage of such city

Council means the Council of the City of Wellington

Corporation means the Mayor, Councillors, and Citizens of the City of Wellington

Public drain means a public drain within the meaning of The Municipal Corporations Act 1886, now or hereafter to be vested in the Corporation within the meaning of that Act

Private drain means any drain, not being a public drain, whereby any land or building, or lands or buildings, is or are

drained into a public drain, covered or other watercourse, or street-channel

Sewage means all sewage and drainage, not being surface-water, arising from any building

Surface-water includes rain-water from any roof

Owner of any land or building means the person named in the valuation-roll for the time being in force in the district in which such land or building is situate

Covered watercourse means any stream or watercourse into which any sewage or surface-water is led, and that, for any portion of its length, is enclosed or partly enclosed by timber-work, brick-work, iron-work, or otherwise; but no portion of the length that is neither wholly nor partly enclosed shall be included in the term

Public notice has the meaning assigned to these words in The Municipal Corporations Act 1886

Drainage Engineer means the officer of the Council for the time being in charge of the main drainage works of the city.

3 Council can compel private drains and appliances to be constructed or altered

It shall be lawful for the Council, notwithstanding anything contained in any public Act of the General Assembly, or in any by-law heretofore made by the Council under any such Act, by notice in writing, to require the owner of any premises situate within the city to do all or any of the following things, that is,—

- (1) Provide, construct, and lay any new private drains from any part or parts of such premises, and connect such new private drains with such public drain or covered water-course or street-channel as the Council shall direct:
- (2) Cleanse and repair, and relay and alter the course and direction and outfall of, or take up and disconnect any existing private drain of or belonging to such premises:
- (3) Connect any such existing private drain with any public drain or covered watercourse or street-channel other than the public drain, covered watercourse, or street-channel with which the same shall previously have been connected:

- (4) Provide and affix in or to any such existing private drain, and in and to any such new private drain, all such traps, methods of ventilation, and other sanitary appliances whatever, as the Council shall direct:
- (5) Connect or disconnect any existing or new private drain with or from any water-closet, urinal, bath, sink, grease trap, or other sanitary appliance:
- (6) Execute, provide, and do generally any works, materials, and things which, in the opinion of the Council, shall be necessary or expedient for the efficient drainage of such premises, and every part thereof.

Every such notice as aforesaid shall specify the works, materials, and things to be executed, provided, or done thereunder, and the public drain, or covered watercourse, or street-channel with which any private drain shall be required to be connected, and shall limit a time within which the same works, materials, and things shall be so executed, provided, and done.

The foregoing powers shall, amongst other things, enable the Council to require any owner of premises to cause the sewage and surface-water respectively arising therefrom to be drained by separate drains to separate outfalls:

Provided always that the Council shall not in any such notice require any sewage to be connected with any street-channel.

4 Case of several separately-owned premises

In any case in which any such existing private drain passes through or serves several separately-owned premises, or any such new private drain is to pass or serve, the Council may notify the respective owners of such premises to execute, provide, and do such parts of the works, materials, and things under section three hereof as the Council shall in and by the respective notices served on such owners direct. The Council may, in any such case, elect to do the whole of the work without notifying such respective owners as aforesaid, such election to be signified by notice in writing served on each such owner. The Council may, by any such notice as last aforesaid, declare that any existing or new drain in question

shall, as from the time to be mentioned in that behalf in the notice, become a public drain, and the same shall without any other proceeding become a public drain accordingly. Neither such election nor such declaration as aforesaid shall prevent the Council from imposing upon the said owners all or any part of the cost of such work under the provisions hereinafter contained.

5 The Council may cover in water-courses

The Council may enclose and cover in any stream or water-course within the city which, by reason of sewage or other offensive matter therein, or from any other cause whatever, has, or in the opinion of the Council may, become a nuisance or dangerous to the public health, and for such purpose may make, construct, and lay down such drains, or do such other works as may in the opinion of the Council be necessary for the covering in of such stream or watercourse, and the removal therefrom of any sewage or other matter which in the opinion of the Council it may be advisable to exclude therefrom, and in connection with such works may straighten or otherwise alter the course and direction of such stream or watercourse, and take up, disconnect, alter, relay, or otherwise deal with any private drains communicating with such stream or watercourse; and the Council shall not be liable to pay compensation in respect of any one being deprived of the water flowing in such stream or watercourse, or of the right to such water, nor for any damage or inconvenience occasioned to the owners or occupiers of such lands or premises, but shall nevertheless make good any damage or injury caused during the construction of the works.

6 Moneys payable by owners to be collected in instalments as rates

Every sum of money payable by an owner of any premises under or by virtue of any provision of this Act hereinbefore or hereinafter contained, for or in respect of any work, materials, or things executed, provided, or done by the Council in pursuance of this Act, or of any by-law made hereunder, may be divided into instalments extending over ten years, with interest at the rate of five per centum per annum

added, and each such instalment shall be recoverable in like manner in every respect as if it were a general rate of the city duly made in respect of the premises in question under the statutory provisions under which the general rate of the city should for the time being be made, subject nevertheless to the following conditions:—

- (1) The owner for the time being of the premises in question shall in all cases be deemed the person primarily liable for payment:
- (2) The first instalment shall become due on the first half-yearly day for payment of such general rate happening at least three calendar months after the date, to be certified in writing by the Drainage Engineer, of the completion of the work in respect whereof the payment is to be made. The remaining instalments shall respectively become due on the nineteen succeeding half-yearly days for payment of the general rates:
- (3) A separate book shall be kept by the Collector of Rates to the Council, in which particulars of all such instalments, and of the works in respect whereof they are payable, and of the dates for payment thereof, and of the names of persons paying the same, shall be entered, which book shall be *prima facie* evidence of the correctness of its contents:
- (4) The owner for the time being may at any time, on giving to the Council one calendar month's previous written notice, pay to the Corporation, and the Corporation may receive, the whole of the unpaid parts of such sum of money, and such owner shall be entitled to a rebate representing the future interest.

7 By-laws

The Council may, in manner provided by The Municipal Corporations Act 1886, from time to time make, alter, and repeal, and bring into force, all such by-laws as it shall think proper and reasonable for the purpose of carrying out or giving further effect to the provisions of sections three, four, five, and six hereof, and in particular, but not so as to limit the foregoing general power, the Council may by any such by-law—

- (1) Prescribe the forms of any notices and direct by whom the same shall or may be signed, and the manner of service thereof:
- (2) Direct in what cases the expense of the works described in all or any of such sections shall be borne by the Council, and in

what cases by the owner or owners of the premises, and in what cases, if any, partly by the Council and partly by such owner or owners:

- (3) Provide for the conclusive ascertainment of the expense of such works, and of the portion payable by any owner or owners, and of the proportions payable by the respective owners of separately-owned premises:
- (4) Direct the mode of calculating and conclusively ascertaining the amount of the said instalments of principal and interest in respect of sums payable by owners, and the interest to be allowed on payment off of the unpaid parts of any sum as aforesaid:
- (5) Prescribe the form and mode of demand for such instalments, and direct by whom the same shall or may be signed and the mode of service thereof:

Provided always that nothing herein contained shall authorise the Council to charge any owner with the cost of constructing and laying any new drain in place of, or making any alteration or addition to, any drain which, in or subsequently to the month of July, one thousand eight hundred and ninety, was laid in accordance with the by-laws of the city for the time being in force:

8 General by-laws as to drainage

The Council may, in manner provided by The Municipal Corporations Act 1886, make, alter, repeal, and bring into force, all such by-laws as they shall think proper and reasonable with respect to the subject of drainage and sanitation, and in particular, but without limiting the generality of this section, the Council may by any such by-law provide as to all or any of the following matters:—

- (1) For prescribing the size, materials, construction, grade, ventilation, and other particulars of all private drains laid or to be laid within the city, and compelling the providing and laying of private drains by the owners or occupiers of private premises:
- (2) For issuing licenses for the erection of water-closets and urinals in private premises, and for the connection thereof with the Corporation waterworks and public drains respectively:

- (3) For prescribing the materials, construction, and ventilation of water-closets and urinals and cisterns connected therewith respectively, and compelling the providing and affixing thereof by the owners or occupiers of private premises and the removal or disuse of privies or earth or other closets:
- (4) For prescribing the traps, ventilation pipes and shafts, and any other sanitary appliances to be provided and affixed in such premises in connection with private drains, water-closets, urinals, or otherwise, and for compelling the providing and affixing thereof by the owner or occupiers:
- (5) For prescribing the times, modes, and conditions of connecting and disconnecting private drains with or from public drains, and of connecting or disconnecting closets, urinals, drains, baths, sinks, rain-water pipes, and other sanitary conveniences and appliances, and stables, manufactories, and other buildings, with or from private drains, and for compelling such connection and disconnection by the owners or occupiers of private premises:
- (6) For compelling the maintenance, repairs, cleansing and renewal of all private drains, water-closets, urinals, and other sanitary conveniences now or hereafter to be laid, erected, or affixed, and the appliances thereof respectively:
- (7) For providing that any work to be done by any owners or occupiers of private premises in connection with the drainage or sanitation thereof shall be done subject to the direction of some officer of the Council:
- (8) For requiring owners or occupiers of private premises to alter the existing drainage and sanitation works of or connected with such premises:
- (9) To provide for any injury to any part of a public drain, or any displacement of the ground in which the same is laid, being made good by or at the expense of the person doing or causing such injury or displacement:
- (10) For protecting the public drains and covered watercourses, and pumping-stations and machinery, and all ventilating-shafts, traps, manholes, gratings, and other appurtenances thereof respectively from trespass or injury:

- (11) For preventing the sweeping, raking, or placing of dust, earth, or rubbish into public drains and covered watercourses, and water-closets, urinals, drains, and other appliances directly or indirectly connected therewith respectively.
- (12) For directing in what manner and under what conditions private streets and rights-of-way shall be drained into the public drains and covered or other watercourses:
- (13) For prescribing the lowest levels, either for the city generally or as to certain parts or streets of the city, and either with or without leaving such levels to be ascertained in particular cases by the Council or any officer of the Council or other person, at which any part of any building, erection, cellar, or structure may, with regard to interference with public or private drains or covered watercourses, be erected within the city:
- (14) For qualifying and authorising qualified persons to do work comprised in any of the foregoing subsections, and any other work connected with drainage or sanitation, and for preventing unqualified persons from doing any such work:
- (15) For appointing fees payable to the Borough Fund for any inspection, superintendence, or other service performed by the City Surveyor, Drainage Engineer, or other officer of the Council, under any by-law, and for the licenses of qualified persons, and any other matter or thing specified in such by-law.

9 By-laws may require works, etc, to be done to approval

Any by-law made under this Act may require any works or things to be done of materials, or within a time, or in a manner, to be directed or approved of by the Council, or any officer of the Council, or other person nominated in that behalf in such by-law, and may authorise any matter or thing to be determined, applied, or regulated by the Council by resolution in that behalf. Every by-law made under this Act shall take effect as part of this Act.

10 Proof of by-laws

The production of any document purporting to be a copy of any by-law, made in whole or in part under the authority of this Act, and to be sealed with the common seal of the Corporation, shall, in so far as the by-law of which the same purports to be a copy is authorised to be made by this Act, be conclusive 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 by-law.

11 Municipal Corporations Act to apply to by-laws

Subject to the special provisions of this Act, all the provisions of The Municipal Corporations Act 1886, relative to the making, bringing into force, and enforcing of by-laws, and providing penalties and continuing penalties for the breach thereof, and to application for an injunction to restrain the further continuance of such breach, shall so far as applicable extend and apply to the case of all by-laws made under the authority of this Act.

12 Owner may recover percentage of instalment from three years tenant

If an owner shall by the direction of the Council execute any work under this Act, or under any by-law made in pursuance thereof, or shall pay any instalment under section six hereof, and at the time (to be certified under the hand of the Drainage Engineer) of the completion of such work the premises whereon or for which such work has been executed shall be held by a tenant under him having a term of at least three years then unexpired, such owner may recover from such tenant, in like manner as if the same were rent reserved under the tenancy, five per centum per annum during the unexpired term of such tenancy on the cost of the work so executed by him, or, as the case may be, on each such instalment paid by him, such percentage to be computed from the date of the payment of such cost or instalment and to be payable at the end of each year during the residue of the said term. If the tenant paying such percentage shall, at the time of such payment, have a tenant under him with at least three years'

unexpired tenancy, he may recover the amount so paid by him from such last mentioned tenant.

13 Council may erect structures on or under public places

The Council may also, without liability to compensation, erect any buildings, structures, machinery, or manholes, manhole and other entrances, light- and lamp-holes, ventilating-grids, and other works and things of every description in connection with drainage in, upon, or under any public or private street or public place in the city.

14 As to private streets and rights-of-way

Section 264 of The Municipal Corporations Act 1886, shall, so far as regards the Corporation and the Council and the city, extend and apply to all rights-of-way, as defined in that Act, used or intended to be used as an access to three or more buildings. The Council, in exercising the powers conferred by the said section two hundred and sixty-four, may require any works that are to be done thereunder to be constructed at such levels and generally in such manner as to avoid interference or possible interference with any public or private drain or any covered watercourse or street-channel.

15 Council may execute works on owner's default

Whenever under this or any other Act, or any by-law of the city, any owner or occupier of private premises in the city shall be liable to execute, provide, or do any works, materials, or things, on or in connection with such premises with respect to the drainage or sanitation thereof, and shall make default in commencing so to do for seven days after the expiration of the notice requiring him to do the work, or, if the work shall be certified in writing by any duly qualified medical practitioner, or any officer of the Council, to be of an urgent nature, and the contents of such certificate shall have been communicated to such owner or occupier, then, if such default shall be made for twenty-four hours from the time of such communication, and if, in either case, such owner or occupier shall not thenceforth proceed with such work with all reasonable expedition, then the Council may, if it shall think fit, itself execute, provide,

or do such works, materials, and things, and recover the cost thereof, to be conclusively certified in writing under the hand of the Drainage Engineer, with interest thereon at six per centum per annum, from such owner or occupier in any Court of competent jurisdiction. Such cost and interest shall, until payment thereof, be a charge upon the said premises. The Council may, if the work comes within sections three to seven hereof, both inclusive, elect to recover such cost and interest under section six hereof.

16 Council may agree with owners to do works

It shall be lawful for the Council, if it shall think fit, by agreement with and at the expense of the owner or occupier of any premises within the city, to execute on or in connection with such premises any works in connection with the drainage or sanitation thereof which such owner or occupier may be desirous of having executed, or may be liable under this or any other Act or under any by-law of the city to execute, and in the case of such an agreement with an owner, the same may stipulate that the expense of the work shall come within the operation of section 6 hereof.

17 Council may cause owners to treat sewage before admitting it to the sewers

The Council may in its discretion require any person whose premises are, or are intended to be, connected with any public drain or covered watercourse to construct such work, or to do such things as may be by the said Council deemed necessary for deodorising or rendering as innocuous as possible any sewage or other matter, other than ordinary household sewage or drainage, before it enters the same.

18 Council may refuse to admit matters into the sewers

The Council may refuse to admit into any public drain or covered watercourse any solid or liquid matter (other than ordinary household sewage or drainage) which would, in the opinion of the Council, prejudicially affect the same, or which would, from its temperature or nature or otherwise, be, in the like opinion, injurious. For the purposes of this section, the

Council may direct any private drains to be disconnected or closed by the owners or occupiers thereof without being liable to pay any compensation therefor. Every person who, after being notified in writing by the Council of its objection to receive any such matter as aforesaid into any public drain or covered watercourse, shall lead or cause or suffer any such matter to be led into the same, shall, for each such offence, be liable to a penalty not exceeding ten dollars, and to a further penalty not exceeding ten dollars for every day or part of a day during which such offence shall continue.

The words “ten dollars” were substituted, as from 10 July 1967, for the words “five pounds” pursuant to section 7(1) Decimal Currency Act 1964 (1964 No 27).

19 Council may make dams, etc, in streams

The Council, without being liable to pay any compensation in respect of so doing, may make and erect such dams, tanks, reservoirs, and other appliances as it may think fit, across and in the bed of any stream or watercourse within the city or contiguous thereto for the purpose of retaining water to flush and cleanse any public drain or covered or open watercourse, and may lay pipes therefrom for the purpose of conducting water to any of the said drains and watercourses.

20 Penalty for interfering with public drains

If any person wilfully or negligently destroys or injures any public or private drain or covered watercourse, or any building, erection, structure, method of ventilation, machinery, dam, tank, reservoir, or other work or thing being part of or connected with any drainage works vested in or under the control of the Council, or, not having the written authority of the Council in that behalf, makes any private drain connected with a public or private drain or covered watercourse, or in any way stops or obstructs or otherwise interferes with the same, he shall be liable to a penalty of not more than twenty pounds; and the Council may replace or repair the property so destroyed or injured, or remove or alter, as it thinks fit, such private drain, and may recover from such person, in any Court of competent jurisdiction,

the full cost of any such work, or of removing any stoppage or obstruction effected by him, and of all damage done or caused by such person, the amount of such cost and damage to be conclusively ascertained by writing under the hand of the Drainage Engineer.

21 Surface-water may be led into watercourses

The Council may lead any surface-water into any stream or watercourse, whether covered or open.

22 Penalty on occupiers obstructing works

If the occupier of any premises shall refuse or neglect to allow the owner thereof to carry into effect with respect to such premises any of the provisions of this Act, or of any by-law made hereunder, he shall be liable to a penalty not exceeding ten dollars for every day during the continuance of such refusal or neglect; and if the occupier of any premises, when requested by any officer of the Council to state the name and address of the owner thereof, shall refuse or wilfully omit to disclose, or wilfully misstate the same, he shall be liable to a penalty not exceeding ten dollars.

The words "ten dollars" were substituted, as from 10 July 1967, for the words "five pounds" pursuant to section 7(1) Decimal Currency Act 1964 (1964 No 27).

23 Cost of supervision of works to be added

Whenever the Council shall, under the authority of this or any other Act or any by-law heretofore or hereafter to be made by such Council, execute any drainage or sanitation works by agreement with any person, or by reason of any default or offence by any person, there shall be added to the actual cost of such work, in respect of the supervision thereof by the Council or its officers, a sum equal to five per centum of such actual cost, such sum, for all purposes of this Act, to be deemed part of such cost, and to be recoverable accordingly.

24 Council may borrow on security of moneys payable by owners

The Council, for the purpose of the immediate payment for work the cost whereof the owner or occupier is by this Act required to repay by instalments, may from time to time borrow at interest not exceeding the rate of seven per centum per annum, and upon such terms and conditions as it shall think fit, any sums of money not exceeding in the whole fifty thousand dollars, and shall apply any moneys and interest payable to the Corporation by owners or occupiers under the provisions of this Act, or of any by-law made hereunder, to the repayment of the moneys so borrowed, and may execute and do such instruments and things for securing the sums so borrowed and the interest thereon as such Council shall think fit, and may by any such instrument covenant for the repayment thereof respectively. The resolution to so borrow shall be passed by way of special order within the meaning of The Municipal Corporations Act 1886, but the provisions of that Act shall not otherwise apply to such borrowing. No lender shall be concerned to inquire as to the purposes for which the money is raised, nor as to the proposed expenditure thereof; and the receipt by the Corporation for such money shall effectually discharge the lender therefrom and from being concerned to see to the application thereof.

The words "fifty thousand dollars" were substituted, as from 10 July 1967, for the words "twenty-five thousand pounds" pursuant to section 7(1) Decimal Currency Act 1964 (1964 No 27).

25 Recovery of penalties

All the fines and penalties imposed by this Act or by any by-law made under the authority thereof may be recovered in a summary manner under The Justices of the Peace Act 1882.

26 Existing by-laws validated

All by-laws of the Council in force on the coming into operation of this Act, and which would have been valid if made under this Act, shall be, and, as from the original coming into force thereof, be deemed to have been valid and may be proved under section ten hereof.

27 Powers of Municipal Corporations Act saved and extended

This Act shall not be construed to divest or deprive the Corporation or the Council, or any officer of the Council, of or to diminish any power, right, remedy, authority, or discretion vested in or given to it or him by The Municipal Corporations Act 1886, or any other Act, or under any by-law heretofore made by the Council under the same respectively. Unless otherwise provided, all notices under this Act, or any by-law made hereunder, may be served in manner provided by section seven of The Municipal Corporations Act 1886. The provisions of sections 220 and 221 of such Act shall apply to all contracts made under the authority of this Act. The provisions of sections 279 and 282 of the said Act shall, as regards the Council, extend to authorise the construction of ventilating-shafts and other methods of ventilation, manholes, manhole and other entrances, light- and lamp-holes, and other appurtenances in, upon, or under any lands and roads outside the city.

28 Application of sections 33 to 36 of The Public Works Act 1887.

The provisions of sections 33 to 36, both inclusive, of The Public Works Acts Amendment Act 1887, shall extend and apply to any case in which any compensation may become payable by the Corporation in respect of any land, situate within or without the city, taken by it for any purpose in connection with drainage or sanitation, or in respect of any damage done by reason of the construction or use of any work, either within or without the city, constructed by it for any such purpose, the Corporation being deemed substituted for the Minister, the Governor, and the Government respectively, and the provisoes at the end of sections 33 and 36 being deemed omitted.

29 As to conflicting public Acts

Wherever there shall be any provision of any public Act contrary to any provision of this Act such latter provision shall prevail.