

**Reprint**  
**as at 1 July 2013**

**Timaru Borough Drainage,  
Sewerage, and Loans Act 1905**

Local Act 1905 No 5  
Date of assent 7 September 1905

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**Note**

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together with other explanatory material about this eprint.

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**An Act to make Provision for the Drainage and Sewerage of the Borough of Timaru, and for other Purposes.**

**1 Short Title**

The Short Title of this Act is the Timaru Borough Drainage, Sewerage, and Loans Act 1905.

**2 Interpretation**

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

**Borough** means the Borough of Timaru, and includes all future additions to the same, and all other areas that may at any time hereafter be declared by any Act of the General Assembly or by Order in Council or Proclamation to be deemed included within the Borough of Timaru for any purpose connected with the drainage of such borough

**Council** means the Council of the Borough of Timaru

**Corporation** means the Mayor, Councillors, and Burgesses of the Borough of Timaru

**district** means the district as defined by this Act, and includes the borough as above defined; and includes any area added thereto under section 39 of this Act

**the Corporation waterworks** shall mean the waterworks belonging to the Borough of Timaru

**public drain** means a public drain heretofore or hereafter vested in the Corporation of the Borough of Timaru, but does not include a side channel

**private drain** means any drain not being a public drain whereby drainage or sewage of any land or building or lands or buildings is or are drained into a public drain, covered or other watercourse, or street channel

**right-of-way** shall include any land over which any right of way exists, or by which access is given from any street or private street to any house or houses, and any lane or place popularly or usually called a right-of-way

**sewage** means all sewage and drainage not being surface water arising from any building

**surface water** includes any rain-water from any roof

**owner** of any land or building means the person for the time being entitled to the rack-rent thereof; and the entry of any person's name as owner in the valuation roll for the time being in force in the borough or ward in which such land or building is situate, or in the valuation roll of the district, shall, as against such person, be *prima facie* evidence of ownership

**covered watercourse** means any stream or watercourse into which any sewage or surface water is led, and which for any portion of its length is enclosed or partly enclosed in any drive, tunnel or piping, or by timber-work, brickwork, ironwork, or otherwise; but no portion of the length that is neither wholly nor partly enclosed shall be included in the term

**public notice**, or **published**, or **publicly notified**, means a notice published in some newspaper in general circulation in the district

**writing** includes printing and anything partly written and partly printed

References in this Act to the Municipal Corporations Act 1900, the Rating Act 1894, the Public Works Act 1894, or any other Act, or to any section thereof respectively, shall also be read as references to any amendment or amendments of the said Acts or sections or any substituted enactment.

### *Vesting of works and powers*

#### **3 Existing drainage works to vest in Council**

All public drains within the district, and all appliances for carrying drainage or sewerage in or from the district or for dealing with the same, and other appliances used in connection therewith, including all things constructed in the borough which might have been constructed by the Council under the provisions of this Act, shall be vested in the Council under the provisions of this Act.

#### **4 Existing powers to vest in Council**

All the powers respecting drainage and sewerage conferred on Municipal Corporations or the Councils thereof by virtue of the Municipal Corporations Act 1900, or by any amendment thereof, or by any other Act or Acts, and all powers by the said Act or by the Rating Powers Act 1988, or any amendment thereof, or by any other Act, vested in Municipal Corporations shall be vested in the Council, and shall be deemed to extend to the said district and to any other area outside the boundaries of the borough which by any Act of the General Assembly or by any Order in Council or Proclamation shall be deemed included within the Borough of Timaru for any purpose connected with the drainage of such borough, and the said Acts shall be deemed to be incorporated herewith.

A reference to the Rating Act 1908 was substituted, as from 4 August 1908, for a reference to the Rating Act 1894, pursuant to section 1(2) Rating Act 1908 (1908 No 163). That reference was in turn substituted, as from 1 October 1925, by a reference to the Rating Act 1925, pursuant to section 120 Rating Act 1925 (1925 No 30). That reference was in turn substituted, as from 1 April 1968, by a reference to the Rating Act 1967 pursuant to section 177(1) Rating Act 1967 (1967 No 123). That reference was in turn substituted, as from 28 June 1988, by a reference to the Rating Powers Act 1988 pursuant to section 209(1) Rating Powers Act 1988 (1988 No 97).

#### **5 Existing drains and appliances deemed vested under this Act**

All public and other drains and appliances belonging to the Council and heretofore constructed by or vested in the Corporation shall be deemed to be constructed, maintained, and used under the authority of this Act.

#### *Powers of Council*

#### **6 Powers vested in Council**

- (1.) It shall be lawful for the Council, notwithstanding anything contained in any public Act of the General Assembly or in any by-law now in force, by notice in writing to require the owner of any premises situate within the district to do all or any of the following things, that is,—
- (a.) provide, construct, and lay new private drains from any part or parts of such premises, and connect such new

- private drains with such public drain or covered watercourse or street channel as the Council shall direct:
- (b.) 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:
  - (c.) connect any existing private drain with any public drain or with any covered watercourse or street channel, other than the public drain, covered watercourse, or street channel with which the same shall previously have been connected:
  - (d.) provide and affix in or to any such existing private drain, or in and to any such new private drain, all such traps, methods of ventilation, and other sanitary appliances whatever as the Council shall direct:
  - (e.) connect or disconnect any existing or other new private drain with or from any bath, water-closet, urinal, sink, grease-trap, or other sanitary appliance:
  - (f.) 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.
- (2.) 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.
- (3.) 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 carried into a street channel.
- (4.) Any notice, order, or direction purporting to be given or made by or with the authority of the Council, or any officer thereof, shall be deemed to be a notice within the meaning of this Act, or of any by-law under this Act, without proof of such authority, and the issue thereof by any officer of the Council shall be conclusive of the authority of such officer to issue the same

unless the same shall be proved to have been issued contrary to the directions of the Council.

**7 Provision as to existing private drains**

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 through or serve several such separately owned premises, 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 6 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 real owners all or any part of the cost of such work under the provisions herein contained.

**8 Watercourse or channel dangerous to health may be covered in**

The Council may enclose and cover in or alter any stream, watercourse, or channel within the district 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 become offensive 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 of such stream, watercourse, or channel, 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, watercourse, or channel, and take

up, disconnect, alter, relay, or otherwise deal with any private drains communicating with such stream, watercourse, or channel; and the Council shall not be liable to pay compensation in respect of any one being deprived of the water flowing in such stream, watercourse, or channel, or of the right to such water, nor of 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:

Provided that this section shall not confer upon the Council any further powers in respect of a stream, watercourse, or channel which after leaving the district enters a county than the Council now has by law independently of this Act.

**9 Cost of work may be paid by owner by instalments**

Every sum of money payable by any 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, or any agreement with the Council, may be divided into instalments extending over 5, 10, or 15 years, as the Council may determine, with interest on any such instalment or balance not exceeding the rate of 6 per centum per annum added; and each such instalment and any such interest shall be recoverable in like manner in every respect as if it were a general rate of the borough duly made in respect of the premises in question under the statutory provisions under which the general rate of the borough should or might for the time being be made, and shall generally be deemed to be a general rate within such statutory provisions, subject nevertheless to the following conditions:

- (a.) the owner for the time being of the premises in question shall in all cases be deemed the person primarily liable for payment of all instalments and interest already due or falling due during his ownership:
- (b.) the first instalment shall become due on the first day for payment of such general rate after the date to be certified in writing by the Drainage Engineer or Foreman

of Works of the Council of the completion of the work in respect whereof the payment is to be made the remaining instalments shall respectively become due on the succeeding days for payment of the general rates until the whole sum with interest is paid:

- (c.) a separate book shall be kept by 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:
- (d.) the instalments shall be recoverable as a debt in any court wherein debts are recoverable by action in the name of the Corporation:  
Provided that no action shall be brought in respect of any instalment after the expiry of 4 years from the date when the same became recoverable.
- (e.) the owner for the time being may at any time, on giving to the Council 1 calendar month's previous written notice, pay to the Council, and the Council 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:
- (f.) every such instalment or sum, together with the interest thereon, shall, upon the registration of a memorandum thereof, be a charge on the land to which the same relates, whether the same has been sued for or not.

#### **10 By-laws for certain purposes**

In particular, but not so as to limit the general power hereinbefore conferred thereon, the Council may, in manner provided by the Municipal Corporations Act 1900, and its amendments, make, alter, and repeal all such by-laws as it shall think proper for the purpose of carrying out or giving further effect to the provisions of sections 6, 8, and 9 hereof, or any power vested in the Council by virtue of this Act or any law for the time being in force, and the Council may by such by-laws—

- (a.) prescribe the forms of any notices, orders, and directions required or contemplated by this Act or by The

Municipal Corporations Act 1900, or by any other Act, touching matters connected with the subject of this Act, and direct by whom the same shall or may be signed and the manner of service thereof:

- (b.) 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:
- (c.) provide for the conclusive ascertainment of the expenses 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:
- (d.) 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:
- (e.) 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.

#### **11 By-laws as to drainage, &c**

The Council may, in manner provided by the Municipal Corporations Act 1900, and its amendments, make, alter, and repeal all such by-laws as they shall think proper and reasonable with respect to the subject of drainage, sewerage, and sanitation, and otherwise for the purposes of this Act, and in particular, but without limiting the generality of this section, and without restrictively affecting any power now or at any time possessed by it, the Council may by any such by-law provide as to all or any of the following matters:

- (a.) for prescribing the size, materials, construction, grade, ventilation, and other particulars of all private drains laid or to be laid within the district, and compelling the providing and laying of private drains by the owners or occupiers of private premises, and compelling the connecting thereof with any public drains:

- (b.) for issuing licenses for the erection of water-closets and urinals in private premises, and for the connection thereof with the Corporation waterworks and the public drains respectively at such rates as the Corporation owning such waterworks shall lawfully fix for making such connections, and for the supply of water to such water-closets and urinals:
- (c.) 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:
- (d.) 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 owners or occupiers:
- (e.) 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, rainwater-pipes, and other sanitary conveniences and appliances, and stables, factories, workshops, workrooms, and other buildings, with or from private drains, and for compelling such connection and disconnection by the owners or occupiers of private premises:
- (f.) 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:
- (g.) 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 only be done subject to the direction of some officer of the Council:
- (h.) for requiring owners or occupiers of private premises to alter the existing drainage and sanitation works of

or connected with such premises in such manner as the Council may determine, and also in such manner as may be necessary to bring any private drain, water-closet, urinal, cistern, or other work into conformity with such requirements as to size, material, construction, grade, or ventilation as may be required for any new appliance or work of a similar character:

- (i.) 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:
- (j.) for protecting the public drains and covered watercourses and machinery (if any), and all ventilating-shafts, traps, manholes, gratings, and other appliances and works respectively, from trespass or injury:
- (k.) for preventing the sweeping, raking, or placing of dust, earth, or rubbish into or in public drains, covered watercourses, water-closets, urinals, drains, or any other appliances directly or indirectly connected therewith respectively:
- (l.) 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:
- (m.) for prescribing the lowest levels, either for the district generally or as to certain parts or streets of the district, 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 private drains or covered watercourses may be erected within the district:
- (n.) 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 persons not possessed of such qualification or authority as may be prescribed from doing any such work:
- (o.) for appointing fees payable to the Council for any inspection, superintendence, or other service performed by the Drainage Engineer or other officer of the Coun-

cil under any by-law, and for the licenses of qualified persons, and any other matter or thing specified in such by-law:

- (p.) for regulating the proceedings of the Council, and the conduct of the officers and servants, and the powers and duties of committees.

## **12 By-laws may specify materials, &c**

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 or designated 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; and for any failure to comply with any such by-law or with any such direction the Council may, in addition to any other remedy, obtain a writ of mandamus to compel any person in default to comply with such by-law or direction. Every by-law made under this Act shall take effect and be construed as if the same were part of this Act.

## **13 Evidence 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 or in any certificate or memorandum attached thereto; and any court sitting within the district shall take judicial notice of all by-laws of the Council.

## **14 Owner may recover from occupier**

If an owner shall, by the order or direction of the Council, execute any work under this Act or under any by-law made in pursuance hereof, or shall pay any instalment under section 9 hereof, and at the time (to be certified under the hand of the Drainage Engineer or Foreman of Works of the Council) 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 3 years then unexpired, such owner may recover from such tenant in like manner as if the same were rent reserved under the tenancy 6 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 3 years' unexpired tenancy, he may recover the amount so paid by him from such last-mentioned tenant.

#### *Special powers*

#### **15 Special powers of Council**

The Council may, without liability to compensation, erect and use any buildings, structures, machinery, manholes, and other entrances, light and lamp holes, ventilating-grids, furnaces, destructors, and other works and things of every description in connection with drainage, sewerage, and sanitation in, upon, or under any public or private street or public place and other place within the district, and may in like manner treat and deal with, in such manner as to it shall seem best, all sewage, refuse, and other matter, whether for the purpose of deodorising, or disinfecting, or destroying such sewage, refuse, or other matter, or of disposing of the same, and shall not be liable for any nuisance or injury necessarily created or caused in so doing, and in particular and without restricting the general powers herein given it shall have power to treat sewage, refuse, and other matter by the precipitation process or by electricity.

#### **16 Provisions as to drains**

The Council shall have full power and authority, in addition to all other powers conferred by this Act or any other Act, to construct and lay under the streets, roads, private streets, public places, gardens, parks, squares, recreation and other reserves in the district all such main and other drains and other

works as it shall think fit, and to use and manage the same and all drains and works vested in or belonging to it.

**17 Powers to Council with regard to laying drains beyond district**

In addition to the powers in that behalf conferred by section 16 hereof, and to all other powers in that behalf vested in or conferred on it by this Act, or any other Act, the Council shall have power to construct and lay under all streets, roads, private streets, public places, gardens, parks, squares, recreation and other reserves beyond the district such main and other drains and other works as it shall deem necessary:

Provided that before exercising the powers conferred by the said section, or by this section, or by section 15, so far as the same relates to acts in streets, or under any public or private street, road, public place, park, square, or recreation or other reserve outside of the boundaries of the said borough, it shall give 1 month's written notice to the local authority having control of such road, street, place, or reserve of its intention to construct or execute any such works; and shall, after having constructed and executed the same, restore any such street, private street, road, place, or reserve to its former condition, so far as is consistent with the existence or maintenance of such work, and shall, during the progress of such works and of such restoration, relieve and indemnify such local body from and against any loss or cost it may suffer in consequence of the construction or execution of such works; and the Council shall, in like manner, have power to construct and execute such works through, under, and upon the foreshore of the sea or any harbour or estuary, or any other Crown lands, or through or under any stream or water:

Provided also that this section shall in no case entitle it to commit any offensive nuisance; and in exercising the aforesaid powers, or any of the powers by this Act conferred on it, the Council shall have full power to take possession of any such road, street, private street, place, or reserve, or Crown land it shall deem necessary, and to open up the same, and to temporarily close the same, and to fence in such portion thereof as it shall deem necessary:

Provided that the powers hereinbefore given shall be subject to the provisions of sections 283 284 of the Municipal Corporations Act 1900:

Provided also that no greater rights or powers shall by this section be conferred upon the Council in respect of streets, roads, private streets, public places, gardens, parks, squares, recreation and other reserves within any county than the Council at present possesses or hereafter may possess under any statute passed prior to or subsequent to this Act and not including this Act.

## **18 Crown property**

When any works authorised by this or any other Act and contemplated by the Council interfere with or affect any railway or other work the property of His Majesty the King, the Council shall, before commencing the same, give notice of its intention so to do to the Minister for Railways, together with a plan and section showing the nature of such interference. Unless the Minister, within 1 month after the service of such notice, deliver to the Council a notice of any objections he may have to the proposed works, the said Minister shall be taken to have approved thereof. In the event of the Minister requiring a modification of such work to which the Council does not agree, the question in difference shall, on the application of either party, be referred to and determined by a District Court Judge in a summary way, after such notice in writing to either party as such District Court Judge shall deem sufficient. The provisions of the Criminal Procedure Act 2011 shall, so far as applicable, apply to every such application.

Section 18: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

The words “District Court Judge” were substituted, as from 1 April 1980, for the words “Stipendiary Magistrate” and “Magistrate” pursuant to section 18(2) District Courts Amendment Act 1979 (1979 No 125).

## **19 Notice to be given where existing services interfered with**

If the Council at any time deems it necessary for the purpose of its work, or to enable it properly to exercise its functions, to raise or lower or otherwise alter the position of any gaspipes or gasworks, or of any water, hydraulic, or steam pipes, elec-

tric or telegraph wires, works, or appliances, or now existing tramways laid in or under any street, road, place, or land, the Council may, by notice in writing to the person, company, or corporation owning or having control thereof, or in case of property belonging to His Majesty the King or the Minister for Public Works, to raise, lower, or otherwise alter the position of the same at the cost of the Council, in the manner and within such reasonable time as is specified in such notice, and if such notice shall not be complied with the Council may make the alterations required without incurring any responsibility to such owner or person having the control thereof. Unless the local body or the said Minister, as the case may be, shall, within 1 month after service of such notice, deliver to the Council a notice of any objections it or he may have to the proposed works, the said local body or Minister shall be taken to have approved thereof. In the event of the said local body or Minister requiring a modification of such work to which the Council does not agree, the questions in difference shall be decided in manner provided by section 18 hereof or, in the case of the Timaru Harbour Board, in the manner provided by section 284 of the Municipal Corporations Act 1900.

**20 Ventilating-shafts, &c**

The Council shall have power within the district to carry any ventilating shaft, pipe, or tube up or upon any external wall of any building, whether private or public, and affix the same thereto, provided that the mouth of every such shaft, pipe, or tube shall be at least 6 feet higher than any window situated within a distance of 30 feet therefrom, and where attached to a house shall be higher than the eaves and parapet thereof; and also to pierce and use as a ventilating shaft or tube the chimney of any factory; and in like manner may, during the construction of its works, use any private drain or watercourse within the district to carry water from such works.

**21 Claim for compensation**

Any person whose property is used or injuriously affected in or by the exercise of the powers conferred by sections 17, 19, 20,

and 28 hereof shall have a claim for compensation in respect thereof under the provisions of the Public Works Act 1981.

A reference to the Public Works Act 1894 was substituted, as from 31 October 1905, for a reference to the Public Works Compilation Act 1905 pursuant to section 2 Public Works Compilation Act 1905 (1905 No 53). That reference was in turn substituted, as from 4 August 1908, by a reference to the Public Works Act 1908 pursuant to section 1(2) Public Works Act 1908 (1908 No 160). That reference was in turn substituted, as from 6 October 1928, by a reference to the Public Works Act 1928 pursuant to section 346 Public Works Act 1928 (1928 No 21). That reference was in turn substituted, as from 1 February 1982, by a reference to the Public Works Act 1981 pursuant to section 248(1) Public Works Act 1981 (1981 No 35).

**22 Owner may be required to drain land abutting on private street or right-of-way**

The Council may, by notice in writing, from time to time require the owners of land or buildings abutting on any private street or right-of-way within the district to construct, or repair, or provide for the proper drainage of the same, within a time named in such notice, with materials and in a manner satisfactory to the Council. Every such owner shall be liable for the construction, repair, and drainage of so much of such private street as lies between his land and the middle of the street. Every person failing to comply with such notice shall be liable to a penalty of not more than \$40 for the first offence, and of not more than \$80 for any subsequent offence.

The words “forty dollars” and “eighty dollars” substituted, as from 10 July 1967, for the words “twenty pounds” and “forty pounds”, respectively pursuant to section 7(1) Decimal Currency Act 1964 (1964 No 27).

**23 On default of owner Council may execute work**

Whenever, under this or any other Act, or any by-law, any owner or occupier of private premises in the district 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, sewerage, 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 24 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, and do such works, materials, and things, and recover the cost thereof, to be conclusively certified in writing under the hand of the Drainage Engineer or Foreman of Works, with interest thereon at \$8 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 as from the registration of a memorandum thereof. the Council may, if the work comes within sections 6 to 9 hereof, both inclusive, elect to recover such cost and interest under section 9 hereof.

The words “eight dollars” were substituted, as from 10 July 1967, for the words “eight pounds” pursuant to section 7(2) Decimal Currency Act 1964 (1964 No 27).

**24 Owner may agree with Council as to execution of work**

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 district, 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 Council to execute, and in the case of such an agreement with an owner the Council may stipulate that the expense of the work shall come within the operation of section 9 hereof, and the same shall come within the operation thereof accordingly.

**25 Advances to owners of property to facilitate connection**

The Council may from time to time make advances out of any funds at its disposal, including moneys raised under the authority of this Act, to the owner or owners of any property rateable under the authority of this Act for the purpose of enabling such owners to connect any building or premises with any sewer or sewers of the Council, subject to the following conditions:

- (a.) such advances shall not exceed the sum of \$40 in respect of any one property:
- (b.) such advances shall bear interest until repayment at a rate not exceeding 6 per centum per annum:
- (c.) such advances, with interest as aforesaid, shall be repayable by monthly or quarterly instalments, at the option of the Council, within 5 years of the date of such advances being made:
- (d.) any sum or sums of money so advanced and unpaid, together with interest as aforesaid, or any instalment thereof, may be recovered in the same way and with the like remedies as rates overdue in respect of any premises may be recovered.

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

**26 On connecting premises with public drains**

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 works or to do such things as may be by the said Council deemed necessary for deodorising, disinfecting, or rendering as innocuous as possible any sewage, refuse, or other matter other than ordinary household sewage or drainage, before it enters the same.

**27 Council may refuse to admit matter into public drain**

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 connected or closed by the owners or occupiers of the premises for which the same are used without being liable to pay any compensation therefor. Every person who, after being notified in writing by the Council or the Drainage Engineer or Foreman of Works of 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 \$10 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).

**28 Council may make dams, &c, in streams**

The Council may make and erect such dams, tanks, reservoirs, and other works and appliances as it may think fit across and in the bed of any stream, watercourse, or channel, within or without the district, 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 or channels, and may also construct septic tanks and other necessary works in connection therewith at the outfall into the sea of any main drain which the Council is authorised under this Act to construct:

Provided that no offensive nuisance shall be created thereby; and provided also that this section shall not confer upon the Council any further power in respect of any stream, watercourse, or channel wholly or partly within any county than the Council now has by law independently of this Act.

**29 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, appliance, or thing, being part of or connected with any drainage, sewerage, or sanitation 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, shall be liable to a penalty of not more than \$40; 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 or Foreman of Works.

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

**30 Power to drain surface water**

The Council may lead any surface water into any stream, watercourse, or channel, whether covered or not.

**31 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 \$10 for every day during the continuance of such refusal or neglect; and if the occupier of the 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 \$10.

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).

**32 Cost of supervision of works to be added**

Whenever the Council shall, under the authority of this or any other Act, or of any by-law, execute any drainage, sewerage, or sanitation works by agreement with any person, or in consequence 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 such a percentage as the Council shall by any by-law fix, not exceeding 10 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:

Provided that the percentage in case of default may be higher and in case of agreement may be lower than in other cases.

### **33 Charges, how recoverable**

Any sum of money recoverable under this Act or any by-law shall, unless any special provision shall be made for the recovery thereof, be recoverable as a debt by action at the suit of the Council, and every judgment obtained in any such action shall, on the registration of the memorandum hereinafter mentioned, be a charge on the land of the debtor in connection with which the indebtedness arose; and when any sum is by this Act made a charge on any land, such charge may be registered by the Council in the Deeds Register Office or the Lands Registry Office at Christchurch, as the case may be. A memorandum under the seal of the Corporation, stating the amount of such charge and describing generally the land, shall be presented to the Registrar of Deeds or the District Land Registrar, as the case may be, and there shall be payable by the Council to the Registrar the sum of 25 cents in respect of each such charge, which sum shall be added to the amount of such charge; and when it is desired to discharge any land from such or any part thereof, the receipt of the Council under its seal for any such sum shall be a discharge or a *pro tanto* discharge thereof, and may be similarly registered by delivering the same to such Registrar, and in respect of every such discharge there shall likewise be payable by the party registering the same the sum of 25 cents.

The words “twenty-five cents” were substituted, as from 10 July 1967, for the words “two shillings and sixpence” pursuant to section 7(1) Decimal Currency Act 1964 (1964 No 27).

### **34 Memorial of charge**

Upon receipt of any such memorandum of charge or receipt, the Registrar of Deeds, if the land shall not be under the provisions of the Land Transfer Act 1952 shall register the same against the section or allotment to which the same relates; and the District Land Registrar, if the land shall be under the pro-

visions of the Land Transfer Acts, shall register the memorandum of charge or receipt by making a memorandum thereof upon the folium of the register-book relating to the said land.

A reference to the Land Transfer Act 1908 was substituted, as from 4 August 1908, for a reference to the Land Transfer Act 1885 pursuant to section 1(2) Land Transfer Act 1908 (1908 No 99). That reference was in turn substituted, as from 1 October 1915, by a reference to the Land Transfer Acts Compilation Act 1915 pursuant to section 2 Land Transfer Acts Compilation Act 1915 (1915 No 35). That reference was in turn substituted, as from 1 January 1953, by a reference to the Land Transfer Act 1952 pursuant to section 245(1) Land Transfer Act 1952 (1952 No 52).

### **35 Recovery of penalties**

*[Repealed]*

Section 35: repealed, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### *Special orders*

### **36 Special orders**

The power hereby given to do anything by special order shall be exercised in the manner provided by the Local Government Act 1974 and subject to the provisions thereof.

A reference to the Municipal Corporations Act 1900 was substituted, as from 1 January 1901, for a reference to the Municipal Corporations Act 1886 pursuant to section 433 Municipal Corporations Act 1900 (1900 No 50). That reference was in turn substituted, as from 4 August 1908, by a reference to the Municipal Corporations Act 1908 pursuant to section 1(2) Municipal Corporations Act 1908 (1908 No 124). That reference was in turn substituted, as from 1 April 1921, by a reference to the Municipal Corporations Act 1920 pursuant to section 385(1) Municipal Corporations Act 1920 (1920 No 48). That reference was in turn substituted, as from 20 December 1933, by a reference to the Municipal Corporations Act 1933 pursuant to section 393(1) Municipal Corporations Act 1933 (1933 No 30). That reference was in turn substituted, as from 1 April 1955, by a reference to the Municipal Corporations Act 1954 pursuant to section 413 Municipal Corporations Act 1954 (1954 No 76). That reference was in turn substituted, as from 1 April 1980, by a reference to the Local Government Act 1974 pursuant to section 9(1) Local Government Amendment Act 1979 (1979 No 59).

#### *Contracts and powers*

### **37 Form of contract**

Any contract made by the Council shall be made in manner provided by the Local Government Act 1974.

A reference to the Municipal Corporations Act 1900 was substituted, as from 1 January 1901, for a reference to the Municipal Corporations Act 1886 pursuant to section 433 Municipal Corporations Act 1900 (1900 No 50). That reference was in turn substituted, as from 4 August 1908, by a reference to the Municipal Corporations Act 1908 pursuant to section 1(2) Municipal Corporations Act 1908 (1908 No 124). That reference was in turn substituted, as from 1 April 1921, by a reference to the Municipal Corporations Act 1920 pursuant to section 385(1) Municipal Corporations Act 1920 (1920 No 48). That reference was in turn substituted, as from 20 December 1933, by a reference to the Municipal Corporations Act 1933 pursuant to section 393(1) Municipal Corporations Act 1933 (1933 No 30). That reference was in turn substituted, as from 1 April 1955, by a reference to the Municipal Corporations Act 1954 pursuant to section 413 Municipal Corporations Act 1954 (1954 No 76). That reference was in turn substituted, as from 1 April 1980, by a reference to the Local Government Act 1974 pursuant to section 9(1) Local Government Amendment Act 1979 (1979 No 59).

**38 Council may enter into contracts with any local authority, &c**

The Council may join with in doing, or enter into contracts in respect of doing, any act, matter, or thing relating to the scheme of sanitation established by this Act or authorised hereunder with any local authority, corporation, or person, and such local authority, corporation, or person, so far as is consistent with the scope of its or his duties, or so far as it is in furtherance of the interests of the inhabitants of the district over which such local authority exercises jurisdiction, shall have power to join in doing any such act, matter, or thing, or to enter into any such contract.

*Extension of district*

**39 Extension of district**

- (1.) The Governor shall have power, upon the requisition of not less than one-half of the ratepayers within any area, and with the approval of the Council, by Proclamation, to declare that such area described in the Proclamation not now included within the district shall form part thereof:

Provided that no such Proclamation shall issue until the Governor is satisfied that the inclusion of such area within the district will prove beneficial to the inhabitants and owners of the property therein.

- (2.) Whenever any addition shall have been made to the borough, or any area shall have been so included within the district, the following consequences shall ensue:

All the powers of the Council shall apply to such area, subject to such terms and conditions as may be determined by Order in Council. And as a term or condition of such Order the Governor in Council may prescribe that the ratepayers of such area shall be entitled to representation upon the Council:

Provided that any representative or representatives of such area shall be entitled to vote on and take part in the proceedings of the Council so far only as relates to the matters arising under this Act or connected therewith:

Provided further that the number of representatives of such area shall not bear a greater proportion to the number of members of the Council than the rateable value of such area bears to the rateable value of the borough.

#### *Rating-powers*

#### **40 Power to levy sewage rate**

- (1.) For the purpose of carrying on the operations of the Council and paying interest charges and expenses on and if thought fit providing a sinking fund for the repayment of any moneys borrowed by it, the Council may by special order make and levy a special rate, called the sewage rate, to such amount as it shall determine, not exceeding the following amounts:
- (a.) upon every rateable property in the district, not exceeding five-twelfths of a cent in the dollar of the annual rateable value of such property; and
  - (b.) upon every rateable property in the inner drainage-area, as hereinafter mentioned, not exceeding 2 and eleven-twelfths of a cent in the dollar of the annual rateable value of such property, or such larger sum as may suffice for all requirements and may be sanctioned at the poll authorising the loan hereinafter mentioned, in addition to the before-mentioned rate of five-twelfths of a cent in the dollar.
- (2.) All the provisions of the Local Bodies Loans Act 1901, relating to special rates shall apply to such rates *mutatis mutandis*:

Provided that in making rates of less amount than the maximum the Council shall not necessarily make them bear the same ratio towards each other as the above-mentioned maxima:

Provided also that the above limits as to amount shall not apply to any rate ordered by the court or a Judge to be made in case of default in payment of interest on or principal of any debentures.

The words “five-twelfths of a cent in the dollar” and “two and eleven-twelfths of a cent in the dollar” were substituted, as from 10 July 1967, for the words “one penny in the pound” and “sevenpence in the pound” pursuant to section 7(1) Decimal Currency Act 1964 (1964 No 27).

The Local Bodies Loans Act 1901 was consolidated, as from 4 August 1908, by section 1(2) Local Bodies Loans Act 1908 (1908 No 106). That Act was in turn repealed, as from 11 December 1913, by section 115(1) Local Bodies Loans Act 1913 (1913 No 30). That Act was in turn repealed, as from 1 October 1926, by section 126(1) Local Bodies Loans Act 1926 (1926 No 14). That Act was in turn repealed, as from 1 April 1957, by section 135(1) Local Authorities Loans Act 1956 (1956 No 63).

**41 Powers of rating to be additional to existing powers**

The power of rating by this Act conferred on the Council shall be in addition to the powers of rating possessed by it under any other Act.

**42 Special order for rate need not be repeated**

After a rate shall have been made by special order it shall not be necessary in subsequent years to repeat such special order, but such rate shall be an annually recurring rate, and shall be payable at intervals as specified in such special order, and shall be levied year by year without any further proceeding by the Council until the loan in respect of which such special rate was made is paid off, save when it is intended to increase or diminish the rate or rates for the year or to levy a further rate in any year.

**43 Rates to carry interest**

Where any rates remain unpaid after 6 months from the date on which the same first became recoverable from some person, such rates shall, together with an additional charge of 10 per

centum of the amount thereof, be recoverable from any person liable to pay the same.

#### **44 Drainage-areas**

It shall be lawful for the Council to define and from time to time to alter and redefine the inner drainage-area, which shall include within its limits such rateable property as in the opinion of the Council is directly benefited by the construction and maintenance of public drains. All the remainder of the district shall constitute the outer drainage-area:

Provided that from any determination of the Council so defining, altering, or redefining the inner drainage-area any owner or occupier of property in the district, or any judgment creditor of the Council, or any Receiver appointed under the Local Authorities Loans Act 1956, may appeal within 1 month after such determination to a Judge of the High Court, whose decision on such appeal shall be final and shall take the place and have the effect of a decision of the Council:

Provided further that in defining such inner area the Council shall not include any lands which are not capable of being benefited by such drainage system.

A reference to the Local Bodies Loans Act 1908 was substituted, as from 4 August 1908, by a reference to the Local Bodies Loans Act 1901 pursuant to section 1(2) Local Bodies Loans Act 1908 (1908 No 106). That reference was in turn substituted, as from 11 December 1913, by a reference to the Local Bodies Loans Act 1913 pursuant to section 115(1) Local Bodies Loans Act 1913 (1913 No 30). That reference was in turn substituted, as from 1 October 1926, by a reference to the Local Bodies Loans Act 1926 pursuant to section 126(1) Local Bodies Loans Act 1926 (1926 No 14). That reference was in turn substituted, as from 1 April 1957, by a reference to the Local Authorities Loans Act 1956 pursuant to section 135(1) Local Authorities Loans Act 1956 (1956 No 63).

The words "High Court" were substituted, as from 1 April 1980, for the words "Supreme Court" pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

#### **45 Appeal**

Such appeal shall be by summons, which shall be served on such parties or publicly notified in such manner as the Judge shall direct, and before the hearing thereof such Judge shall fix a sum to be lodged by the appellant as security for such costs thereof as may be awarded by any such Judge, and upon such

appeal the Judge hearing the same may receive such evidence and hear such parties as he shall think fit.

### *Finance*

#### **46 Finance**

Subject to the opinion and decision of the Auditor-General, the Council shall determine what items or proportion of its expenditure are or is properly payable out of loan-moneys, and what items or proportion are or is properly chargeable against annual revenue:

Provided that it shall be entitled to pay out of loan-moneys all the cost of drainage or sewerage works and other permanent works, and of the purchase of land and all preliminary and other expenditure incident to the construction of such works, including the cost of experiments; such part of the salaries of officers and servants as it shall consider applicable to such works, and such legal and other expenses as are incurred in connection therewith or with matters incidental thereto, including legislation; such rents and other expenses connected with land as relate to temporary occupation thereof for the purpose of such works, and also the first year's interest on the cost of all works, together with such further interest as the Auditor-General shall in his discretion on the representation of the Council allow to be so charged. And the Council shall pay out of annual revenue all expenditure on account of the annual work and operations of the Council and its officers, including repairs and maintenance of works and interest not chargeable against loan-money:

Provided further that the Council shall have power to charge against loan-moneys that it may expend in supervising the construction and laying-out of its sewers and drains to an extent of not exceeding \$5 per centum of such expenditure, and to transfer or pay such percentage to the District Fund or General Account of the borough.

The words "five dollars" were substituted, as from 10 July 1967, for the words "five pounds" pursuant to section 7(2) Decimal Currency Act 1964 (1964 No 27).

**47 Opinion of Auditor-General to be obtained**

It shall be lawful for the Council to obtain, in anticipation, the opinion of the Auditor-General on any question as to the incidence of any expenditure, and to act on such opinion.

*Borrowing*

**48 Borrowing-powers to the extent of \$50,000 by way of special loan**

In addition to any powers of borrowing for drainage purposes already possessed by the Council, the Council may, for the purposes of this Act, from time to time borrow, under the provisions of the Local Authorities Loans Act 1956, such moneys not exceeding in the whole the sum of \$50,000, in 1 or more sums, as shall at any time or from time to time be determined by a poll taken in manner provided by that Act, or such further sum or sums of money, to be determined by poll in manner hereinbefore provided, as may from time to time be found necessary for the purposes of this Act:

Provided that if any of the said proposals shall be rejected on a poll, the proposal in its original or some modified form may be again from time to time submitted to the ratepayers for their approval in manner hereinbefore provided.

A reference to the Local Bodies Loans Act 1908 was substituted, as from 4 August 1908, by a reference to the Local Bodies Loans Act 1901 pursuant to section 1(2) Local Bodies Loans Act 1908 (1908 No 106). That reference was in turn substituted, as from 11 December 1913, by a reference to the Local Bodies Loans Act 1913 pursuant to section 115(1) Local Bodies Loans Act 1913 (1913 No 30). That reference was in turn substituted, as from 1 October 1926, by a reference to the Local Bodies Loans Act 1926 pursuant to section 126(1) Local Bodies Loans Act 1926 (1926 No 14). That reference was in turn substituted, as from 1 April 1957, by a reference to the Local Authorities Loans Act 1956 pursuant to section 135(1) Local Authorities Loans Act 1956 (1956 No 63).

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).

**49 Provisions as to loans**

The provisions of the Local Authorities Loans Act 1956, which apply to any loan raised under the provisions hereof shall be subject to the provisions of this Act, including the following:

- (a.) the loan or loans may be authorised for a period or periods to be in the discretion of the Council, but not exceeding fifty years from the issue of the debentures:
- (b.) the interest to be paid on such loan or loans may be left to the discretion of the Council, provided that it do not exceed \$5 per centum per annum.

A reference to the Local Bodies Loans Act 1908 was substituted, as from 4 August 1908, by a reference to the Local Bodies Loans Act 1901 pursuant to section 1(2) Local Bodies Loans Act 1908 (1908 No 106). That reference was in turn substituted, as from 11 December 1913, by a reference to the Local Bodies Loans Act 1913 pursuant to section 115(1) Local Bodies Loans Act 1913 (1913 No 30). That reference was in turn substituted, as from 1 October 1926, by a reference to the Local Bodies Loans Act 1926 pursuant to section 126(1) Local Bodies Loans Act 1926 (1926 No 14). That reference was in turn substituted, as from 1 April 1957, by a reference to the Local Authorities Loans Act 1956 pursuant to section 135(1) Local Authorities Loans Act 1956 (1956 No 63).

The words “five dollars” were substituted, as from 10 July 1967, for the words “five pounds” pursuant to section 7(2) Decimal Currency Act 1964 (1964 No 27).

## **50 Overdraft on ordinary revenue**

In addition to the powers of borrowing under the Local Authorities Loans Act 1956, and otherwise, the Council may, in anticipation of its ordinary revenue, from time to time borrow from any bank by way of overdraft any amount not exceeding the amount of the rate for the time being outstanding.

A reference to the Local Bodies Loans Act 1908 was substituted, as from 4 August 1908, by a reference to the Local Bodies Loans Act 1901 pursuant to section 1(2) Local Bodies Loans Act 1908 (1908 No 106). That reference was in turn substituted, as from 11 December 1913, by a reference to the Local Bodies Loans Act 1913 pursuant to section 115(1) Local Bodies Loans Act 1913 (1913 No 30). That reference was in turn substituted, as from 1 October 1926, by a reference to the Local Bodies Loans Act 1926 pursuant to section 126(1) Local Bodies Loans Act 1926 (1926 No 14). That reference was in turn substituted, as from 1 April 1957, by a reference to the Local Authorities Loans Act 1956 pursuant to section 135(1) Local Authorities Loans Act 1956 (1956 No 63).

## **51 Recovery of overdraft**

In the event of any bank making any advance to the Council by way of overdraft and failing to obtain payment thereof, such bank may, after obtaining a judgment for the amount owing to it, make a demand in writing for the amount of such judgment, and thereafter it shall have the same rights and remedies for the

recovery thereof as is by this Act given to debenture-holders in case of default:

Provided that the provisions of this section shall not prejudice the priorities of any secured creditors.

**52 Appropriation of loan-moneys**

The moneys borrowed under this Act shall be appropriated as follows:

(a.) in providing, in exercise of the powers given to the Council by this Act and of all other powers enabling it in that behalf, an efficient system of drainage whereby the sewage and drainage may be conveyed away, treated, destroyed, or otherwise dealt with:

(b.) in providing, in the discretion of the Council, either an outfall into the Pacific Ocean or a system or series of septic tanks or other appliances for the treatment thereof, or such other means or appliances for dealing therewith as to the Council shall seem best:

Provided that any outfall into the Pacific Ocean shall be subject to the provisions of sections 283 and 284 of the Municipal Corporations Act 1900:

(c.) in the acquisition by purchase, lease, or taking of land and of any interest on land within or, so far as by law thereunto authorised, without the district convenient for the collecting, treating, destroying, or otherwise dealing with and of utilising and selling sewage and other matter conveyed thereto, or for fertilising or improving the land so acquired:

(d.) in providing the cost of the connection on private premises situate within the district with new sewers and drains in cases where existing connections made by private owners or occupiers at their own expense will be interfered with, and in providing the cost of the works and for the advances and other matters mentioned in sections 23, 24, 25, and 27 hereof:

(e.) in the acquisition in connection with such system of drainage of lands situate within or, so far as by law thereunto authorised, without the district, and of rights, easements, or appurtenances in respect of any lands

situate within or, subject as aforesaid, without the district, and of any buildings, engines, machinery, appliances, and other things:

- (f.) in the payment of compensation to any person legally entitled thereto for land taken or injuriously affected under or by the operation of this Act:
- (g.) in the establishment within or, so far as by law thereunto authorised, without the district of furnaces or destructors for the purpose of destroying refuse matter:
- (h.) in reimbursing to the borough the cost of competitive designs, and the premiums paid therefor, and the cost of obtaining this Act, and all other expenses incurred by it in connection with the drainage and sewerage of the district:
- (i.) in providing for the expenditure mentioned in section 47 hereof, and for any other purposes herein defined.

**53 Lender not concerned as to legality of loan**

No lender of any money borrowed under the provisions of this Act, whether by the issue of debentures or otherwise, shall be concerned to inquire as to the purpose for which the same is raised nor as to the proposed expenditure thereof, and the issue of a debenture or the receipt of the Council therefor shall effectually discharge the lender from being concerned to see to the application thereof.

**54 When Judge not interested**

No Judge or District Court Judge shall solely on account of his liability to pay rates be deemed to be interested in any proceedings in which he is judicially concerned.

The words “or Magistrate” were omitted, as from 1 April 1980, pursuant to section 18(2) District Courts Amendment Act 1979 (1979 No 125).

**55 Rate not invalid for irregularity**

No objection shall be allowed in any court to any rate which the Council or a Receiver shall purport to strike, make, or levy under the provisions of this Act or the Local Authorities Loans Act 1956; and no informality or irregularity, whether in form or in substance, in the making, striking, or levying of such

rate, or in the election or appointment of any body or person acting in connection therewith, shall be allowed by any court as a defence to any action or proceeding for the recovery of such rate, or be entertained as a ground for quashing such rate or restraining the recovery thereof.

A reference to the Local Bodies Loans Act 1908 was substituted, as from 4 August 1908, by a reference to the Local Bodies Loans Act 1901 pursuant to section 1(2) Local Bodies Loans Act 1908 (1908 No 106). That reference was in turn substituted, as from 11 December 1913, by a reference to the Local Bodies Loans Act 1913 pursuant to section 115(1) Local Bodies Loans Act 1913 (1913 No 30). That reference was in turn substituted, as from 1 October 1926, by a reference to the Local Bodies Loans Act 1926 pursuant to section 126(1) Local Bodies Loans Act 1926 (1926 No 14). That reference was in turn substituted, as from 1 April 1957, by a reference to the Local Authorities Loans Act 1956 pursuant to section 135(1) Local Authorities Loans Act 1956 (1956 No 63).

### *Miscellaneous*

#### **56 Notice of action**

The provisions of section 402 of The Municipal Corporations Act 1900, shall extend and apply to the Corporation, the Council, and its committee of members, and to every officer, servant, or workman thereof, or any person acting under its or his directions or in its or his aid, for anything done or intended to be done or omitted to be done after the passing of this Act under the provisions of this or any other Act, or of any by-law or regulation made or in force hereunder or thereunder. In any case arising out of injury to property, the property injured and the accounts and vouchers in respect of the injury may be examined by any person appointed by the Council, and all proceedings shall be stayed until any order for such examination has been complied with.

#### **57 Enforcement of provisions of Act**

The provisions of this Act, and of all by-laws made by the Council, shall be enforced by the Council or its officers.

#### **58 Council's property not liable to be rated**

No property of the Council within the district owned or used by it for the purposes of this Act shall be liable to be rated by any local body.

**59 Disputes may be referred to a Stipendiary Magistrate**

Any dispute which may from time to time arise between the Council and any local authority within or without the district with respect to carrying into effect the provisions of this Act or incidental thereto may, at the instance of either party, be referred to a District Court Judge, who shall hear and determine such dispute, and whose decision shall be final and conclusive subject to an appeal by either party by summons to the Judge of the High Court, whose decision shall be final:

Provided that such appeal shall be commenced within 1 month from the date of the decision appealed from.

The words "District Court Judge" were substituted, as from 1 April 1980, for the words "Stipendiary Magistrate" pursuant to section 18(2) District Courts Amendment Act 1979 (1979 No 125).

The words "High Court" were substituted, as from 1 April 1980, for the words "Supreme Court" pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

**60 Investment of sinking funds**

Notwithstanding anything contained in any other Act, the Council may invest its sinking funds in such securities as defined in the Trustee Act 1956 or any amendment thereof.

A reference to the Trustee Act 1908 was substituted, as from 4 August 1908, for a reference to the Trustee Act 1883 pursuant to section 1(2) Trustee Act 1908 (1908 No 200). That reference was in turn substituted, as from 1 January 1957, by a reference to the Trustee Act 1956 pursuant to section 89(1) Trustee Act 1956. (1956 No 61)

**61 Provisions where interest of Council and any local body affected**

As between the Council and any local authority in the district, the following arrangement is instituted:

- (a.) the Council is responsible for the state of the sewers and public drains vested in it, and will cleanse, repair, and manage them, and will construct and maintain all inlet appliances:
- (b.) the local body is responsible for the road (including the channels), and will cleanse, repair, and manage them:
- (c.) the Council shall have power by by-law to regulate the management and use of inlet-appliances giving access to the sewers and public drains (including grids), and

to prevent the putting of anything into the sewers or public drains, or allowing anything to enter such sewers or public drains by means of such appliances, save such matter as may be carried in with water entering in the course of the legitimate use of such appliances:

- (d.) This section shall not be deemed to impose on the Council or any local body any greater liability than otherwise arises under this Act or The Municipal Corporations Act 1900, or any amendment thereof.

**62 Power to take land**

The Council shall have power from time to time to take all such lands, hereditaments, and easements within and without the district, including Crown lands, as it shall think requisite or desirable for the purpose of carrying out the objects of this Act:

Provided that the powers hereby given shall be subject to the provisions of sections 283 and 284 of the Municipal Corporations Act 1900.

**63 Certain provisions of The Public Works Act 1894, to apply**

The provisions of The Public Works Act 1894, so far as the same are consistent with this Act, shall be deemed to be incorporated herewith; and sections 83, 84, 85, and 86 thereof so incorporated shall extend and apply to any case in which any compensation may become payable by the Council in respect of any land (situate within or without the district) taken by it for any purpose in connection with drainage, sewerage, or sanitation, or in respect of any damage done by reason of the construction or use of any work either within or without the district constructed by it for any such purpose which may properly form the subject of compensation, “the Council” being substituted for “the Minister”, “the Governor”, and “the Government” respectively, and the provisoes at the end of sections 83, 85, and 86 being deemed to be omitted.

**64 Lands may be leased**

The power to acquire land given by section 62 hereof shall include the power to acquire by license permission to use the

same for the purposes for which land may be acquired, and any land so acquired may be let or leased by the Council by public auction, or public tender, or private contract, as it shall deem proper, for such term or terms, and at such rent or rents, upon and subject to such terms and conditions in every respect as the Council shall think fit.

**65 Conditions in lease as to sewerage**

In any lease of any lands acquired as last aforesaid, or any part thereof, the Council may stipulate that the lessee shall, on such terms and subject to such conditions in every respect as the Council shall think fit, receive all or any part of the sewage matter discharged at such lands, or at any part thereof, and dispose of the same upon all or any part of such lands for fertilisation or other purposes.

**66 Penalty**

Any person doing anything contrary to the provisions of this Act, or of any by-law or regulation made hereunder or thereunder, or omitting or failing to perform any duty imposed on him by or arising under this Act or any such by-law or regulation, shall be guilty of an offence, and in cases where no other penalty is provided shall be liable to a penalty not exceeding \$40; and whenever such act or omission is of a continuous nature a further offence shall be deemed to be committed on each day on which it is continued, and a further penalty not exceeding \$10 per day incurred therefor; and whenever power is given by any Act, by-law, or regulation to order anything to be done or omitted an offence shall be deemed to be committed on each day on which any person disobeys or fails to comply with any such order; and in all cases in which property is damaged, destroyed, or lost, or pecuniary loss is suffered by reason of an offence, the court may add to the penalty compensation for any loss the Council may have sustained:

Provided that such compensation, unless awarded at the express request of the Council, shall not, excepting to the amount thereof, relieve such person of any civil liability in respect of his act or omission.

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

**67 Existing by-laws to be by-laws under this Act**

All by-laws 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 shall be deemed to have been valid, and may be proved under section 13 hereof, or in any manner now allowable by law.

**68 Application of Act to future loans, &c**

The provisions of this Act shall apply to all future drainage loans, works, or undertakings for drainage purposes raised or undertaken by the Council.

**69 This Act to supersede other Acts**

Except where otherwise by this Act provided, wherever there shall be any provision of any public Act at variance with any provision of this Act, such latter provision shall prevail; but nothing contained in this Act, or to be implied therefrom, shall diminish or curtail the powers or rights now or hereafter by law exercisable by the Council or the Corporation independently of this Act within or without the district defined by this Act, whether such powers or rights are now or may hereafter be conferred on the Council or the Corporation by The Municipal Corporations Act 1900, or the Local Authorities Loans Act 1956, or their respective amendments, or otherwise howsoever independently of this Act.

A reference to the Local Bodies Loans Act 1908 was substituted, as from 4 August 1908, by a reference to the Local Bodies Loans Act 1901 pursuant to section 1(2) Local Bodies Loans Act 1908 (1908 No 106). That reference was in turn substituted, as from 11 December 1913, by a reference to the Local Bodies Loans Act 1913 pursuant to section 115(1) Local Bodies Loans Act 1913 (1913 No 30). That reference was in turn substituted, as from 1 October 1926, by a reference to the Local Bodies Loans Act 1926 pursuant to section 126(1) Local Bodies Loans Act 1926 (1926 No 14). That reference was in turn substituted, as from 1 April 1957, by a reference to the Local Authorities Loans Act 1956 pursuant to section 135(1) Local Authorities Loans Act 1956 (1956 No 63).

**70 Validation provision**

In any case in which anything is omitted to be done or cannot be done at the time required by this Act or any Act deemed to be incorporated herewith, or is done after such time, or is or has heretofore been otherwise irregularly or erroneously done by the said Corporation or Council or its officers in matter of form or substance, or sufficient provision is not made therefor, or in case anything has heretofore purported or may hereafter purport to be done by the said Corporation or Council or any of its officers by or in respect of raising loans or otherwise howsoever under any repealed Act or provision or otherwise, the Governor may, by Order in Council gazetted, at any time extend such time or validate anything so done or purported to be done, or make other provision for such case, including the continuance of all necessary Acts and proceedings under such repealed Act or provision, or any other Act or provision, or otherwise as he shall think fit.

**71 How new drain is to be deemed a public drain**

Where the owners or occupiers of any premises situate within the district shall previously to the coming into operation of this Act have by agreement with the Council provided, constructed, and laid a new drain from the boundary of any part or parts of such premises as the Council shall have directed, and in accordance with plans prepared at the expense of the applicant by a surveyor authorised by the Council, which said plans shall have been submitted to the Council for its approval before the commencement of such work, and the said applicant shall have carried out such works in accordance with the requirements of the Council and to the satisfaction of the Council's overseer, and the Council shall have agreed to refund to such owner or occupier the money expended by him in so providing, constructing, and laying down such drain, the Council shall refund the same accordingly out of any moneys available for the purposes of this Act in accordance with and subject to the schedule of rates of refunds to be adopted by the Council for that purpose, and thereupon such drain shall become and be deemed to be a public drain within the meaning of this Act:

Provided, however, that the Council shall not be liable to make any refunds for moneys expended by any such owner or occupier unless and until the proposed drainage scheme has been adopted by the ratepayers by the authorisation of a loan at a poll in accordance with the provisions of this Act, and until the said scheme has been carried out by the Council.

**72 Plan of works to be exhibited**

At the meeting of ratepayers held under the provisions of section nine of the Local Bodies Loans Act 1901, a plan of the proposed works, including the position of the outfalls and form of construction thereof, shall be exhibited.

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**Notes****1 General**

This is an eprint of the Timaru Borough Drainage, Sewerage, and Loans Act 1905. The eprint incorporates all the amendments to the Act as at 1 July 2013. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the eprint are also included, after the principal enactment, in chronological order.

**2 About this eprint**

This eprint has not been officialised. For more information about eprints and officialisation, please see <http://www.pco.parliament.govt.nz/eprints/>.

**3 List of amendments incorporated in this eprint  
(most recent first)**

Criminal Procedure Act 2011 (2011 No 81): section 413

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