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Wellington Waterworks Act 1871

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Note

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An Act to make provision for the Construction and Maintenance of Waterworks for supplying the City of Wellington with Water and for defraying the Cost thereof.

Preamble

WHEREAS it is expedient that Waterworks should be constructed and maintained for the purpose of supplying the City of Wellington with a supply of water and that power should be given to the Municipal Corporation for the said City lately established under the provisions of the Municipal Corporations Act 1867 to construct and maintain the said works and to make provision for defraying the cost thereof:

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

1 Short Title

The Short Title of this Act shall be the Wellington Waterworks Act 1871.

2 Interpretation

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

The expression **the Council** shall mean the Municipal Corporation for the City of Wellington established under the provisions of the Municipal Corporations Act 1867.

The expression **the Waterworks** shall mean the Waterworks and works connected therewith by this Act authorized to be constructed.

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

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

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

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

The expression **the city** shall mean the City of Wellington as defined in Schedule 1 to the Municipal Corporations Act 1867.

The expression **the district** shall mean the lands comprised within the boundaries set forth in the Schedule to this Act.

The expression **water rate** shall include any rent reward or payment to be made for a supply of water for any purpose.

The word **building** shall include places of public worship and public amusement public institutions offices houses shops stores factories livery and other stables and all other public or private buildings within the city but shall not unless expressly included by special provision in this Act comprise buildings belonging to the Crown or vested in trust for any general public object nor any buildings used as public schools libraries or museums.

3 Power to construct Waterworks

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

4 Powers of Council in connection with undertaking

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

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

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

They may from time to time sink such wells or shafts and make maintain alter or discontinue such dams tunnels drives reservoirs cisterns waterworks tanks aqueducts drains cuts sluices pipes culverts engines and other works of any

other kind or description and erect such buildings and machinery within the city or the district as they may think proper for the purposes of the undertaking.

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

They may without previous payment tender or deposit enter upon and use any land within the city or the district for the purpose of taking any earth stone or clay therefrom and may enter upon and use any lands adjacent for making temporary roads or approaches to any works connected with the undertaking But before they shall make such temporary use of any such lands they shall give five days' previous notice of such their intention to the occupiers of any such lands except in the case of accident to any part of the works requiring immediate reparation And provided also that until any land so taken for temporary use be given up they shall pay to the owner or occupier thereof reasonable compensation for the use of such land or otherwise and such compensation if the parties cannot agree shall be settled by arbitration in manner hereinafter provided.

But no dam for the purposes of the undertaking or the Waterworks shall be erected for the period of two years from the passing of this Act upon the land in the Schedule to this Act so as in any manner to interfere with or prejudicially affect the drives or tunnels now made in connection with any gold-mining leases within the district aforesaid except with the previous consent of the persons for the time being interested in such drives or tunnels.

5 Council to do no damage

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

6 Compensation to be made

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

7 Claims to be made within six months

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

8 Amount how ascertained

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

9 Infant claimants

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

10 Council may break up streets &c

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

11 Penalty for diverting water

After any stream or supply of water hereby authorized to be taken by the Council shall have been taken as authorized by this Act every person who shall unlawfully divert or take any of the water supplying or flowing into the stream so taken or any part thereof or who shall do any unlawful act whereby the said stream or supply of water may be drawn off or diminished in quantity or who shall not immediately upon notice in that behalf repair the injury done by him so as to restore the said waters to the state in which they were before the doing of any such unlawful act shall be liable to a penalty not exceeding two hundred

dollars for every day during which such unlawful act shall continue but the imposition of any such penalty shall not preclude the Council from recovering from such person by way of damages in an action in any Court of competent jurisdiction full reparation for any damage which may be sustained by reason of any such unlawful act.

The expression “two hundred dollars” was substituted, as from 10 July 1967, for the expression “one hundred pounds” pursuant to section 7(1) Decimal Currency Act 1964 (1964 No 27).

12 Obstructing works

Every person who shall wilfully obstruct any person acting under the authority of the Council in carrying out the undertaking or who shall pull up or remove any pole or stake driven into the ground for the purpose of setting out the line of such works or deface or destroy any works made for the same purpose shall be liable to a penalty not exceeding forty dollars for every such offence.

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

13 Assessment to be made

The Council shall in the month of December in the year one thousand eight hundred and seventy-one and in the month of December in every succeeding year cause an assessment to be made of the annual value of all buildings situated within one hundred yards of any water pipes intended to be laid down or which shall hereafter have been laid down under the authority of this Act and to which water could or might be supplied from any such water pipes when so laid down Provided always that it shall be lawful for the Council to use for the purposes of the assessment to be made under the provisions of this section any assessment made for other municipal purposes under the provisions of the Municipal Corporations Act 1867 so far as the same can be applied thereto.

14 Appeals

Save where it is herein otherwise provided or there is something in the context or subject-matter repugnant thereto all the provisions of the Municipal Corporations Act 1867 relating to appeals against assessments shall apply to any assessment to be made under the authority of this Act.

15 Rates to be made

For the purpose of raising the necessary funds for carrying into effect the purposes of this Act and for providing for the repayment of any money which may be borrowed for the purposes of the undertaking and interest upon the same there shall be levied and paid annually the following rates (that is to say)—

In respect of all buildings used as dwelling-houses to which water shall be laid on where the assessed annual value of such buildings shall not exceed twenty-five dollars a rate of one dollar per annum.

And where such assessed annual value shall exceed twenty-five dollars but shall not exceed one hundred dollars a rate per centum on such value not exceeding seven dollars.

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

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

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

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

And in respect of all buildings used as stores or warehouses or for any other purpose except as dwelling-houses a rate per centum of two dollars fifty cents on the assessed annual value.

But it is hereby declared that any building used as a dwelling-house which shall remain actually unoccupied for not less than six calendar months in any year shall be rated for that year at two dollars fifty cents per centum on the assessed annual value Provided the owner or person for the time being liable to the payment of rates shall forthwith give to the Council notice in writing of the date on which such building shall become vacant and of the date on which the same shall again be occupied Provided also that such net revenues of the undertaking shall not exceed twenty dollars per centum per annum on the sum expended on the same and if it shall appear at any time that the net revenues have exceeded such twenty dollars per centum per annum for the whole time since the passing of this Act a rateable reduction shall be made by the Council in the price of the water supplied so that such rates when reduced shall produce a net revenue not exceeding that hereinabove prescribed.

The expressions "twenty-five dollars", "one dollar", "two hundred dollars", and "four hundred dollars" were substituted, as from 10 July 1967, for the expressions "twelve pounds ten shillings", "ten shillings", "one hundred pounds", and "two hundred pounds", pursuant to section 7(1) Decimal Currency Act 1964 (1964 No 27).

The expressions "one hundred dollars", "seven dollars", "two hundred dollars", "six dollars", "three hundred dollars", "five dollars", "four dollars", "two dollars fifty cents" and "twenty dollars" were substituted, as from 10 July 1967, for the expressions "one hundred pounds", "seven pounds", "two hundred pounds", "six pounds", "three hundred pounds", "five pounds", "four pounds", "two pounds ten shillings" and "twenty pounds", pursuant to section 7(2) Decimal Currency Act 1964 (1964 No 27).

16 Water supply how regulated

In respect of such rates as aforesaid the quantity of water to be supplied to any building or to the inhabitants thereof shall be from time to time regulated and

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

17 Rates when payable

Water rates payable under the provisions of this Act shall be payable either yearly or half-yearly as the Council shall determine and shall be paid by the persons liable to the payment thereof on such yearly or half-yearly day or days as the Council shall fix on that behalf Provided always that if any person supplied with water shall neglect to pay such water rate at any of the appointed times of payment thereof the Council may without prejudice to any other remedy against such person for the recovery of such water rate stop the water flowing into the premises in respect of which such rate is payable by cutting off the pipe to such premises or by such other means as the Council shall think fit and the person liable to pay such water rate shall also on demand pay all expenses of cutting off the water which in default of payment may be recovered by the Council in any Court of competent jurisdiction.

18 Recovery of rates

Save where it is herein otherwise provided or there is something in the context or subject-matter repugnant thereto all the provisions contained in the Municipal Corporations Act 1867 relating to the recovery of rates shall apply to water rates payable and recoverable under the provisions of this Act.

19 Supply of water to be given on application

It shall be the duty of the Council on the application of the owner or occupier of any building who shall be desirous of being supplied with water from any water pipe available for the purpose of such supply to lay on at the expense of the person requiring the same all necessary service-pipes for affording such supply and every person shall when such service-pipes shall have been laid on and paid for be entitled to demand and receive from the Council a supply of water proportionate to the amount of rates payable by him under the provisions of this Act.

20 Applicant to deposit cost of pipes

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

21 Persons supplied to provide taps &c

Every person supplied with water under the provisions of this Act shall when required by the Council provide and affix such proper tap stopcock or other apparatus to the pipe conducting the water used by him as the Council shall direct and such tap stopcock or apparatus shall be kept in good repair so as effectually to prevent the water from running to waste and in case any such person shall neglect to provide when required by the Council such tap stopcock or other apparatus or to keep the same in good repair it shall be lawful for the Council or for any person acting under their authority to cut off the pipe or turn off the water from the premises of such person until such tap stopcock or other apparatus shall be provided or repaired or the cost thereof paid as the case may require.

22 Penalty for wasting water

If any person supplied with water shall wilfully or negligently permit or suffer any pipe or apparatus to be out of repair or do or suffer any other act so that the water shall be wasted or the supply thereof improperly increased he shall be guilty of an offence and shall be liable for every such offence to a penalty not exceeding forty dollars and shall also be liable to pay to the Council on demand the value of the water so wasted or improperly increased.

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

23 Power to enter houses

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

24 Penalty for supplying water to unrated persons

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

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

25 Persons laying down pipes may remove same

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

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

26 Fire plugs to be provided

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

27 Same to be renewed when needful

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

28 Cost

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

29 Pipes to be kept charged

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

30 Payment for salvage

[Repealed]

Section 30 was repealed, as from 31 August 1874, by section 4 Wellington Waterworks Loan Act 1874 (1874 No 47).

31 Penalty for fouling water by gasworks

Whosoever being proprietor of any gasworks or being engaged or employed in the manufacture or supply of gas shall cause or suffer to be brought or to flow into any reservoir aqueduct race or waterworks constructed under this Act or otherwise belonging to or under the management or control of the Council or into any drain or pipe communicating therewith any washing or other substance produced in the manufacture or supply of gas or shall wilfully do any act connected with the manufacture or supply of gas whereby the water in any such reservoir aqueduct race or waterworks is fouled shall be guilty of an offence and shall be liable for every such offence to a penalty not exceeding two hundred dollars and after the expiration of twenty-four hours' notice in writing from the Council in this behalf to a further penalty not exceeding the sum of ten dollars for every day during which the offence is continued or during the continuance of the act whereby the water is fouled and if any water supplied by belonging to or under the management or control of the Council be fouled in any manner by the gas of any such proprietor or person as last aforesaid he shall be guilty of an offence and shall for every such offence be liable to a penalty not exceeding twenty dollars and a further penalty not exceeding twenty dollars for every day whilst the offence is continued after the expiration of twenty-four hours' notice in writing from the Council in that behalf.

The expressions "two hundred dollars", "ten dollars", "forty dollars" and "twenty dollars" were substituted, as from 10 July 1967, for the expressions "one hundred pounds", "five pounds", "twenty pounds" and "ten pounds" pursuant to section 7(1) Decimal Currency Act 1964 (1964 No 27).

32 How to be ascertained

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

33 Power to borrow money for undertaking

The Council may for the purpose of defraying the cost of the undertaking from time to time borrow and take up at interest on mortgage any sum or sums not exceeding altogether the sum of fifty thousand dollars and for the purpose of securing the repayment of any sums borrowed together with interest thereon the Council may mortgage to the person by or on behalf of whom such sums are advanced the undertaking and the water rates and other moneys owing or accruing under or by virtue of this Act and each mortgagee shall be repaid the sums so advanced with the interest agreed upon without any preference over the others of them by reason of any priority of advance or the date of his mortgage and the money which the Council are hereby expressly authorized to borrow shall be in addition to any moneys which they are authorized to raise or to borrow for any other purpose by the Municipal Corporations Act 1867 or any Act supplemental thereto or otherwise relating to Municipal Corporations in New Zealand.

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

34 Mortgages to have priority

All mortgages which may be granted under the authority of this Act shall so far as regards the water rates and other moneys accruing under this Act have priority over all mortgages or charges subsisting at the time of the passing of this Act and granted by the Council under the authority of the Municipal Corporations Act 1867 or any Act supplemental thereto or otherwise relating to Municipal Corporations in New Zealand and over all mortgages or charges to be hereafter granted by the Council under the like authority.

35 Power to borrow at lower rates

[Repealed]

Section 35 was repealed, as from 31 August 1874, by section 4 Wellington Waterworks Loan Act 1874 (1874 No 47).

36 Further power to borrow in certain events

If at the time appointed by any mortgage deed for the payment of the principal money secured thereby the Council are unable to pay off the same they may if they shall think fit borrow such sum of money as may be necessary for the purpose of paying off the whole or any part of the said principal moneys and may secure the repayment of the same and the interest to be paid thereon in manner aforesaid.

37 Mortgages how to be made

Every mortgage authorized to be made under this Act shall be by deed truly stating the date consideration and the time and place of payment and shall be sealed with the Common Seal of the Council and there shall be kept at the

office of the Council a register of the mortgages and within fourteen days after the date of any mortgage an entry shall be made in the register of the number and the date thereof and of the names and descriptions of the parties thereto as stated in the deed and every such register shall be open to public inspection during office hours at the said office without fee or reward And any clerk or other person having the custody of the same refusing to allow such inspection shall be liable to a penalty not exceeding forty dollars.

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

38 Transfers

Any mortgagee or other person entitled to any such mortgage may transfer his estate and interest therein to any other person by deed truly stating its date and the consideration for the transfer and there shall be kept at the office of the Council a register of the transfers of mortgages and within thirty days after the date of such deed of transfer if executed within the Colony of New Zealand or within thirty days after its arrival in the Colony of New Zealand if executed elsewhere the same shall be produced to the Council or to the person having charge of the register who shall upon payment of twenty-five cents cause any entry to be made in such register of its date and of the names and description of the parties thereto as stated in the transfer and upon any transfer being so registered the transferee his executors administrators or assigns shall be entitled to the full benefit of the original mortgage and the principal and interest secured thereby and every such transferee may in like manner transfer his estate and interest in any such mortgage and no person except the person to whom the same shall have been last transferred and whose transfer shall have been registered his executors administrators or assigns shall be entitled to release or discharge any such mortgage or any money secured thereby.

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

39 Interest how paid

The interest secured by any mortgage authorized to be made under this Act shall unless otherwise provided be paid half-yearly and in order to pay off any moneys borrowed and secured by any such mortgage the Council shall in every year until the same be paid off appropriate and set apart one-half of the water rates and other moneys to be received under or by virtue of this Act which shall remain after first paying out of the entirety of such rates and moneys the interest of all moneys borrowed or which shall from time to time be due and owing on the credit of the undertaking as a sinking fund for the purpose of repaying the money borrowed and secured by any such mortgage and the Council shall from time to time cause such sinking fund and the interest thereon to be invested on Government securities and to be increased by accumulation in the way of compound interest or otherwise and whenever the Council are enabled to pay off one or more of the mortgages and are not able to pay off the whole of

the mortgages they may in default of arrangement with the mortgagees decide by lot the order in which the same shall be paid off.

40 Power of mortgagees on default in payment of interest

If at the expiration of six months from the time when any principal money or interest has become due upon any mortgage made under this Act and after demand in writing the same be not paid the mortgagee or other person entitled thereto may without prejudice to any other mode of recovery apply to the High Court of New Zealand for the appointment of a Receiver and the said Court is hereby empowered after hearing the parties to appoint some person to collect and receive the whole or a competent part of the water rates until such principal or interest or both as the case may be together with the costs of the application and the costs of the collection are fully paid and upon such appointment being made all such rates or such competent part thereof as aforesaid shall be paid to the person appointed and when so paid shall be so much money received by or to the use of the mortgagee or mortgagees of such rates and shall be rateably apportioned between them Provided always that no such application shall be entertained unless the sum or sums due amount to two thousand dollars or unless a joint application be made by two or more mortgagees or other persons to whom there may be due after such lapse of time and demand as last aforesaid moneys collectively amounting to that sum.

The expression “two thousand dollars” was substituted, as from 10 July 1967, for the expression “one thousand pounds” pursuant to section 7(1) Decimal Currency Act 1964 (1964 No 27).

Section 40 was amended, as from 1 January 2004, by section 48(1) Supreme Court Act 2003 (2003 No 53) by substituting the word “High” for the word “Supreme”. See sections 50 to 55 of that Act for the transitional and savings provisions.

41 Council may raise money by debentures in lieu of mortgage subject to regulations

The Council may in lieu of raising and taking up the whole or any part of the moneys authorized to be raised by this Act by means of a mortgage or mortgages as hereinbefore provided raise and take up the same by means of debentures to be issued in such manner and form as the Council shall think fit but subject nevertheless to the regulations hereinafter set forth such debentures to be secured on the credit of the revenues arising or to arise from the Waterworks Provided always—

- (1) That the debentures shall be for sums not exceeding one thousand dollars each.
- (2) That the principal and interest moneys secured by the debentures shall be payable at the offices of the Council in the City of Wellington and the principal moneys of any such debentures shall be payable at such time as is mentioned therein not being later than ten years from the issue thereof.
- (3) That such debentures may be made payable in such manner and at such times that a proportion thereof to be fixed by the Council and the payment thereof to

be determined by lot shall be redeemable at intervals after the first advance of money.

The expression “one thousand dollars” was substituted, as from 10 July 1967, for the expression “five hundred pounds” pursuant to section 7(1) Decimal Currency Act 1964 (1964 No 27).

42 Council may cause securities to be sold in order to liquidate debentures become due

As often as any moneys shall become due and payable as principal money secured by any debentures as aforesaid the Council shall cause so much of the securities in which the accumulated fund applicable to the payment of the securities granted under the provisions of this Act is invested as may be required for the purpose to be sold or otherwise converted into money and shall apply the moneys arising from such sale or conversion and any other moneys for the time being in their hands available for that purpose under the provisions of this Act to the payment of the debentures upon which such principal money shall have so become due and payable.

43 Provisions of section forty to extend to debenture holders

The provisions of section forty of this Act shall be deemed to extend and apply to debenture holders in like manner as if the same had been specifically mentioned in the Act.

44 Application of mortgage moneys

All moneys from time to time borrowed by the Council on mortgage under the authority of this Act shall be applied as follows (that is to say)—

First. In payment of the costs charges and expenses attending or incident to the obtaining and passing of this Act.

Secondly. In the construction of the Waterworks and otherwise in defraying the cost of the undertaking and of all works and conveniences connected with the supply of water and the provisions of this Act.

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

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

46 Account to be kept of moneys borrowed and spent

The Council shall cause a separate account to be kept of all sums of money borrowed and expended by them for the purposes of the undertaking and of the matters and things for which such sums of money shall have been disbursed

and paid and such account shall be balanced once in every year at least and a statement of financial position in respect of the Waterworks exhibiting a true statement of the credits and property of every description belonging to and of the debts due by the Council relating thereto at the date of making such statement of financial position together with a distinct separate statement of financial performance which shall have arisen in respect of the Waterworks during the period to which such account shall extend or relate shall also at least once in every year be prepared and made out and both of such accounts shall be examined by the Council and signed by the Chairman for the time being thereof.

The references to “statement of financial position” and “statement of financial performance” were substituted, as from 1 October 1997, for the references to “balance sheet” and “statement of the profit or loss”, pursuant to section 6(1) and (2) Financial Reporting Amendment Act 1997 (1997 No 17).

47 Waterworks Account

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

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

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

Thirdly. In paying the costs and expenses of maintaining the Waterworks and in maintaining repairing renewing and altering the mains pipes engines reservoirs dams races sluices and other works and conveniences connected therewith and in otherwise carrying into effect the purposes of this Act or in any way incidental thereto.

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

Lastly. Any surplus which may remain shall be carried to the credit of and be applicable to the same purposes as the general Municipal rates.

48 Part 11 of Municipal Act to apply

All the provisions of Part 11 of the Municipal Corporations Act 1867 relating to accounts shall so far as the same are not repugnant to or inconsistent with the provisions of this Act apply to all accounts to be kept by the Council under the provisions of this Act.

49 Council to appoint officers

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

50 Suits against Council

No writ or process shall be sued out against the Council or any member thereof or any officer or person whomsoever appointed as aforesaid and acting under the direction of the Council for anything done or intended to be done under the provisions of this Act until the expiration of one month next after notice in writing shall have been delivered to him or left at their or his office or usual place of abode clearly and explicitly stating the cause of action and the name and place of abode of the intended plaintiff and of his attorney or agent in the action and upon the trial of any such action the plaintiff shall not be permitted to go into evidence of any cause of action which is not stated in the last-mentioned notice and unless such notice be proved the jury shall find for the defendant and every such action shall be brought or commenced within six months next after the accrual of the cause of action and not afterwards and shall be tried in the jurisdiction where the cause of action occurred and not elsewhere and the defendant shall be at liberty to plead a general denial of the material allegations in the declaration (hereafter called the general issue) and give this Act and all special matter in evidence thereunder and any person to whom any such notice of action is given as aforesaid may tender amends to the plaintiff his attorney or agent at any time within one month after service of such notice and in case the same be not accepted may plead such tender in bar (by leave of the Court) with the general issue or other plea or pleas and if upon issue joined upon any plea pleaded to the whole action the jury find generally for the defendant or if the plaintiff be nonsuited or discontinued or if judgment be given for the defendant then the defendant shall be entitled to the full amount of costs of defence and have judgment accordingly and in case amends have not been tendered as aforesaid or in case the amount tendered be insufficient the defendant may by leave of the Court at any time before trial pay into Court under plea such sum of money as he may think proper and by the like leave may plead the general issue or other plea or pleas any rule of Court or practice to the contrary notwithstanding.

51 False oath perjury

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

52 Notices how to be served

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

53 Arbitrations

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

54 Death of arbitrator

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

55 Third arbitrator

In case each party shall have appointed an arbitrator the arbitrators shall before they enter upon the reference appoint by writing under their hands a third person to be a third arbitrator and if the person so appointed die or refuse or become incapable or for seven days neglect to act the arbitrators first appointed shall forthwith appoint another person in his stead and in case the arbitrators neglect or refuse to appoint such third arbitrator within seven days after being requested so to do by any party to the arbitration any District Court Judge acting in and for the city shall on the application of any such party appoint such third arbitrator.

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

56 Award

The award of any single arbitrator or if more than one then of a majority of the arbitrators acting under this Act shall be binding and conclusive upon all persons and to all intents and purposes whatsoever.

57 Time for making award

In no case shall the time for making an award under this Act be extended beyond the period of three months from the date of the submission or from the day on which the last arbitrator if more than one shall have been appointed as the case may be.

58 Powers of arbitrators

Every arbitrator appointed by virtue of this Act shall have the same powers in all respects as arbitrators appointed by order of the High Court of New Zealand under the provisions of the Arbitration Act 1996.

The Supreme Court Practice and Procedure Amendment Act 1866 was repealed and substituted by section 28(1) Arbitration Act 1890 (1890 No 10). That Act was in turn substituted, as from 4 August 1908, by section 5 Arbitration Act 1908 (1908 No 8). That Act was in turn substituted, as from 1 July 1997, by the Arbitration Act 1996 (1996 No 99).

Section 58 was amended, as from 1 January 2004, by section 48(1) Supreme Court Act 2003 (2003 No 53) by substituting the word “High” for the word “Supreme”. See sections 50 to 55 of that Act for the transitional and savings provisions.

59 Declaration by arbitrator

Before any arbitrator shall enter upon any such reference as aforesaid he shall make and subscribe the following declaration before a Justice of the Peace (that is to say)—

“I A.B. do solemnly and sincerely declare that I will faithfully and honestly and to the best of my skill and ability hear and determine the matters referred to me under “the Wellington Waterworks Act 1871.””

“A.B.”

And such declaration shall be annexed to the award when made and if any arbitrator shall wilfully act contrary to such declaration he shall be guilty of a misdemeanour.

60 Offences

The following shall be deemed to be offences against this Act in addition to any other offences therein specified:—

Wilfully or carelessly breaking open or injuring any of the property or works belonging to or under the management or control of the Council under this Act.

Unlawfully drawing off taking or diverting any water belonging to the Council or under their control or management under the provisions of this Act.

Bathing in any reservoir aqueduct race or other waterworks constructed under this Act or otherwise belonging to or under the management or control of the Council.

Washing cleaning throwing or causing to enter therein any animal rubbish filth stuff or noisome thing of any kind whatsoever.

Causing or permitting or suffering to run or be brought therein the water of any sink sewer drain engine or boiler or other filthy unwholesome or improper water or any sludge or tailing.

Generally the doing or permitting or suffering to be done any act or thing whatsoever whereby any water belonging to the Council or under their management or control or whereby any water of or contained in any such reservoir aqueduct race or other waterworks so constructed as aforesaid shall be fouled.

And every person guilty of any such offence shall for every such offence be liable to a penalty not exceeding twenty dollars and a further penalty not exceeding ten dollars for each day whilst the offence is continued after written notice in that behalf.

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

61 Damages how to be recovered

In all cases in which any damages or other moneys are by this Act directed to be paid and no specific method of recovering the same is provided by this Act the same may at the election of the party entitled to sue for the same be ascertained and recovered under the provisions of the District Court Act 2016 notwithstanding amount to be recovered shall exceed the ordinary jurisdiction of the District Court in which the proceedings shall be taken.

Section 61: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

The reference to the District Court was substituted, as from 1 April 1980, pursuant to section 18(1) District Courts Amendment Act 1979 (1979 No 125). The original reference to the “Resident Magistrate’s Court” was replaced in turn by the Magistrates Courts Acts 1893, 1908, 1928 and 1947.

62 Penalties how to be recovered

All penalties imposed by this Act may be sued for and recovered in manner for the time being provided by law for the recovery of penalties imposed under the provisions of any Act of the General Assembly of New Zealand but no such penalty shall be recovered at the suit of any person other than a party aggrieved or the Council without the consent in writing of the Attorney-General of New Zealand first had and obtained.

63 *Certiorari* taken away

No proceeding under or in pursuance of this Act shall be quashed or vacated for want of form nor shall the same be removed by *certiorari* or otherwise into the High Court.

Section 63 was amended, as from 1 January 2004, by section 48(1) Supreme Court Act 2003 (2003 No 53) by substituting the word “High” for the word “Supreme”. See sections 50 to 55 of that Act for the transitional and savings provisions.

64 Limitation of proceedings

No penalty imposed by this Act shall be recovered unless proceedings for the recovery thereof shall have been commenced within six months after the commission or occurrence of the offence upon which the penalty attaches.

65 Application of penalties

The Court by which any penalty shall be imposed under this Act on any person other than the Council shall in all cases award one half of the same to be paid to the Council to be by them placed to the Waterworks Account hereinbefore mentioned and the other half shall be paid to Her Majesty and be applied in manner provided by law for the application of penalties of the like nature.

66 Offender not exonerated

Notwithstanding the liability of any person to any penalty under the provisions of this Act he shall not be relieved from any other liability to which he would have been subject if this Act had not been passed.

67 By-laws

The Council may from time to time make by-laws for securing the due carrying out of the purposes of this Act and may by some other by-law repeal alter or vary any by-law so to be made and the Council may by any by-law to be made under this section impose reasonable penalties not exceeding ten dollars for any one offence and every such by-law shall be so framed as to allow the Justice or Justices before whom any such penalty may be sought to be recovered to order a part only of such penalty to be paid Provided always that no by-law shall be of any force or effect until after the expiration of fourteen days after the publication thereof in the New Zealand Gazette and in some newspaper published and current in the city.

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

68 Right of Crown saved

Nothing in this Act contained shall prejudice or be deemed to prejudice or affect any right title or interest of Her Majesty her heirs and successors.

69 Act not to interfere with General Waterworks Act to be afterwards passed

Nothing herein contained shall be deemed or construed to exempt the waterworks by this Act authorized to be constructed from the provisions of any general Act relating to this Act or to waterworks in this Colony which may hereafter pass during the present or any future Session of the Legislature.

Schedule

THE boundary of the district commences at the south-west corner of town acre numbered 2 on the plan of the city thence in a straight line to its north-east corner from thence along the production of the north-east boundary of town acre numbered 2 until it meets the southern boundary of section numbered 28 on the plan of the Karori District thence in a straight line to the south-west corner of section numbered 29 on the plan of the Karori District from thence along the west boundary of section numbered 29 for a distance of ten hundred and forty (1040) links thence on a magnetic bearing of $269^{\circ} 45'$ until it meets the north-east boundary of section numbered 34 on the plan of the Karori District thence on a magnetic bearing of $202^{\circ} 50'$ until it meets the south-west boundary of section numbered 2 on the plan of the Upper Kaiwara-wara District thence along the said boundary to the Kaiwara-wara Stream thence on a magnetic bearing of $291^{\circ} 50'$ and for a distance of seventeen hundred and seventy (1770) links thence on a magnetic bearing of $202^{\circ} 50'$ until it meets the west boundary of section numbered 10 on the plan of the Ohiro District thence on a magnetic bearing of $293^{\circ} 15'$ and for a distance of twenty (20) chains crossing the Te Aro Stream thence on a magnetic bearing of $205^{\circ} 20'$ until it meets the western boundary of the Town Belt thence in a straight line to the south-west corner of town acre numbered 1 on the plan of the City of Wellington thence along its western boundary to its north-west corner and from thence across Aro Street to the starting point.

Eprint notes

1 *General*

This is an eprint of the Wellington Waterworks Act 1871 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *About this eprint*

This eprint is not an official version of the legislation under section 18 of the Legislation Act 2012.

3 *Amendments incorporated in this eprint*

District Court Act 2016 (2016 No 49): section 261

Supreme Court Act 2003 (2003 No 53): section 48(1)

Financial Reporting Amendment Act 1997 (1997 No 17): section 6(1), (2)

District Courts Amendment Act 1979 (1979 No 125): section 18(1)

Decimal Currency Act 1964 (1964 No 27): section 7(1), (2)

Wellington Waterworks Loan Act 1874 (1874 No 47): section 4