

New Zealand.



ANALYSIS

<p style="text-align: center;">Title.</p> <p>1. Short Title.</p> <p>2. Tramways Act amended, and read as part of this Act.</p> <p>3. Municipal Corporations Act to be read with this Act.</p> <p>4. Interpretation.</p> <p>5. Corporation empowered to purchase tramways.</p> <p>6. The company empowered to contract for sale of tramways.</p> <p>7. Power to acquire land.</p> <p>8. Power to make agreements with the City of Dunedin.</p> <p>9. Council deemed promoter of tramways.</p> <p>10. Power to Council when using electricity as a motive power.</p>	<p>11. Power to Council to renew agreements.</p> <p>12. Power to borrow.</p> <p>13. Debenture security.</p> <p>14. Notice of raising loan to be published.</p> <p>15. Provisions relating to loan.</p> <p>16. Power to levy special rate.</p> <p>17. Sinking fund.</p> <p>18. Power to alter special rate.</p> <p>19. Provisions in case of default of principal or interest of loan.</p> <p>20. Disposal of moneys by Receiver.</p> <p>21. After payment of overdue moneys rates - revert to Corporation.</p> <p>22. Judge not deemed interested because of liability for rates.</p> <p>23. No objection to rate allowed.</p> <p>24. Sinking fund may be invested in debentures. Schedule.</p>
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1901, No. 6.—*Local.*

<p>Title.</p> <p style="margin-top: 100px;">Short Title.</p> <p style="margin-top: 20px;">Tramways Act amended, and read as part of this Act.</p> <p style="margin-top: 20px;">Municipal Corporations Act to be read with this Act.</p> <p style="margin-top: 20px;">Interpretation.</p>	<p>AN ACT to enable the Borough of Mornington to acquire and construct Tramways. [2nd November, 1901.]</p> <p>BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—</p> <p>1. The Short Title of this Act is “The Borough of Mornington Tramways Act, 1901.”</p> <p>2. This Act shall be deemed to amend and extend “The Tramways Act, 1894,” and this Act and the said Act shall be deemed to incorporate each other, and shall be read as one Act.</p> <p>3. “The Municipal Corporations Act, 1900,” is, together with its amendments, incorporated herewith, and is to be read as part of this Act; but in case of conflict the provisions of this Act shall prevail.</p> <p>4. In the interpretation hereof the following words and expressions shall respectively have the meanings herein assigned to them:—</p> <p>“The borough,” and “the Borough of Mornington,” and “the Corporation” mean the Mayor, Councillors, and Burgesses of the Borough of Mornington as incorporated by law, and the district under the jurisdiction of the said Council:</p>
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- “ The Council ” means the Mornington Borough Council :
- “ Promoters,” in addition to the meaning given thereto by the said Act, includes the Council and the said Corporation :
- “ City Council ” means the governing body of the City of Dunedin :
- “ Local authority ” means the governing body of any city, borough, or county :
- “ Tramway ” and “ undertaking,” in addition to the meaning assigned to them by the said Act, are deemed to extend to the whole of the tramways from time to time acquired or constructed by the Corporation, and the whole of the undertaking owned by it :
- “ The company ” means the Mornington Tramway Company (Limited), and includes any liquidator or liquidators thereof :
- “ Revenues ” means all revenues of the Borough of Mornington, from whatsoever source derivable.

5. The Corporation is hereby empowered to purchase and acquire all or any part of the tramways presently owned by the company situate in the Borough of Mornington or in the City of Dunedin, together with such of the plant and other property of the said company as may be agreed upon by the said Corporation and the said company.

Corporation empowered to purchase tramways.

6. The said company, notwithstanding anything in its memorandum and articles of association, is hereby empowered, without going into liquidation, to make any such contracts as its directors shall think fit, or to confirm any such contract as it may have made, for the sale of the said tramways or any part thereof, and all or any of its property, notwithstanding any defect in the power of either the said company or the Corporation to enter into such contract; and similarly, in the event of the said company going into liquidation, the liquidators shall have the same powers; and any conveyance or transfer of any property of the said company to the said Corporation shall be valid and effectual to vest in the said Corporation all the right, title, and interest of the said company in the said tramways or any of them, and any other property of the said company, under whatsoever title, legal or equitable, the same shall be held or enjoyed. And, further, it shall be lawful for the Supreme Court, on the application by summons made by either party to any such contract, to make a vesting order vesting in the said Corporation all the right, title, and interest of the company and any other person or Corporation in and to any land or other property affected by such contract; and any such summons may be served upon such parties, in addition to the parties to the sale or purchase, as a Judge of the Supreme Court shall direct.

The company empowered to contract for sale of tramways.

7. The said Corporation shall further have power to take, purchase, lease, acquire, under the provisions of “ The Public Works Act, 1894,” or any amendments thereof, or otherwise, for the purpose of the said tramways and of any other tramways which it may acquire or construct, and for any purpose connected with or incidental to the ownership or use of tramways, all such land or other property, within or without the borough, for any estate which the Council shall consider beneficial, as the Council shall think fit.

Power to acquire land.

Power to make agreements with the City of Dunedin.

8. It shall be lawful for the said Corporation to make agreements with the City Council for the acquisition and construction of tramways therein upon such terms as may be agreed upon with the City Council and as may be sanctioned by any order or orders in that behalf, and to acquire, accept, and enjoy the position of promoter in respect of any such tramways.

Council deemed promoter of tramways.

9. In respect of the said tramways, and of all tramways acquired or constructed under the provisions of this Act, the Council shall be deemed to be a promoter thereof, and shall have the power conferred on promoters by the said Act; and, in particular, shall have and may exercise in respect of the said tramways, and generally of all tramways owned by it, wheresoever situated, all the same powers with respect to working the same and with respect to making by-laws, and all the other powers and immunities of any kind which are by the said Act conferred upon the local authority of any borough with respect to tramways owned by any borough, within the limits of such borough: Provided that such powers shall cease in respect of any tramway, or any part thereof, whenever the same ceases to be the property of the Corporation: Provided also that in making any by-law to regulate the ordinary traffic in the roads on which a tramway is laid in the City of Dunedin the Council shall be subject to the provisions of section thirty-four of the Second Schedule to "The Tramways Act, 1894."

Power to Council when using electricity as a motive power.

10. For the purpose of using electricity as a motive power, where authorised by any authorising order, the Council may, in addition to any powers conferred on it by or in virtue of section eighteen of the Second Schedule to "The Tramways Act, 1894," do any of the following things:—

- (1.) May do all or any of the things in the said section eighteen specified, without as well as within the borough.
- (2.) May, subject to liability to pay compensation to any person or company whose land or any right therein is taken or injuriously affected, do all or any of the things in the said section eighteen mentioned, in or over the land of any person or Corporation, or, with the permission of the Minister for Public Works, in or over any Crown lands: Provided that such compensation shall be assessed in manner provided by "The Public Works Act, 1894."

Power to Council to renew agreements.

11. In respect of the said tramways, and of all tramways acquired or constructed under the provisions of this Act, the Council shall have power to negotiate and conclude agreements for the renewal, extension, or modification of the grants thereof, or orders relating thereto, or otherwise of the contracts or delegations under which the same, or the right to construct or use the same, are held of the respective local authorities as the same from time to time expire, or as from time to time it appears advantageous to the Council to renew, extend, or modify the same, and may for this purpose apply for and obtain all such authorisations and delegated powers as may appear to it necessary: Provided that the City Council or Corporation of Dunedin shall not be entitled to purchase the tramways belonging to the Borough of Mornington under or by virtue of the provisions of section twenty-nine of the Second Schedule to "The Tramways Act, 1894," without purchasing the

whole of the undertaking both within and without the City of Dunedin: Provided also that, except to the extent to which the rights and powers of the City of Dunedin are by this Act expressly modified, the same shall remain unaffected.

12. For the purpose of purchasing, extending, altering, renewing, and of repairing the said tramways, and introducing such system of traction, including the use of electricity as a motive power, as it may think best and as it may lawfully be allowed to be used, and for the purpose of acquiring or constructing other tramways, and for any purpose connected with the execution of the powers conferred by this Act, but not for the purpose of maintaining such tramways, the Council may borrow at interest under the provisions of "The Municipal Corporations Act, 1900," such sum or sums of money, not exceeding in the whole the sum of forty thousand pounds, as may from time to time be required and may be authorised, in manner required by the said Act, and may give such security for the principal and interest of any such loan as may similarly be authorised; and the authorisation of any loan shall for all purposes be deemed an authorisation of the acquisition or construction of any tramway property or work for the purpose of acquiring, constructing, or undertaking which such loan is raised.

Power to borrow.

13. Subject to any prior charges, the debentures and coupons issued under the provisions hereof shall be secured and be a charge upon such of the rates, rents, and revenues of the said borough as shall be authorised by the ratepayers, including the profits of the said tramways, or of any property or undertaking acquired or constructed under the provisions hereof, or generally upon the rates, rents, and revenues of the said borough so authorised as aforesaid.

Debenture security.

14. Before authorising any such loan the Council shall publish in a newspaper or newspapers circulating in the borough once in each week for four successive weeks a notice setting forth,—

Notice of raising loan to be published.

- (1.) The purchase proposed to be made or the particular work to be undertaken;
- (2.) The sum proposed to be borrowed for the purpose of such purchase or work;
- (3.) Any special rate or tolls, or the rents and profits of any property or undertaking which it is proposed to pledge as security for such loan, not being moneys received by way of grant from the Government or moneys heretofore pledged as security for any special loan or appropriated for any special purpose.

15. The following provisions shall apply to any loan raised under the powers herein contained:—

Provisions relating to loan.

- (1.) No debenture issued under this Act shall be sold at a price that will produce to the purchaser a greater interest than five per centum per annum.
- (2.) The debentures issued under this Act shall rank *pari passu*, and have no preference or priority the one over the other by reason of the date of issue, consecutive numbers, or otherwise. They shall be payable to bearer, and shall be transferable by delivery. No stamp duty shall be payable

in respect of such debenture or coupon. They shall have currency as the Council shall determine.

- (3.) Such debentures shall have the corporate seal attached thereto, and may be signed either by the Mayor and Treasurer or by their agents, and the signatures to any coupon may be made by lithography or any other process, and they shall state a place or places for the payment of principal and interest, and the place for the payment of coupons need not be the same as for the payment of the principal sum of the debenture.
- (4.) The debentures and coupons shall, subject to the provisions hereof, be in such form as the Council shall approve, and may be in the form in the Schedule hereto set forth, and, when executed, shall be deemed to have been approved by the Council, notwithstanding any departure from the form, terms, and conditions required by 'The Municipal Corporations Act, 1900,' or from the said form in the Schedule hereto set forth.
- (5.) The production of a copy of the resolution of the Council authorising any such loan under the authority hereof, purporting to be authenticated by the seal of the Corporation, shall be conclusive evidence that such loan has been duly authorised and may be raised; and a certificate of the Council, similarly authenticated, shall be conclusive evidence of the appointment of any agent or agents.

Power to levy special rate.

16. For the purpose of providing the interest and sinking fund upon the debentures issued under the provisions of this Act the Council shall have power, notwithstanding the provisions of any existing or future general Act, by special order or special orders, to make and levy a special rate or rates upon all lands, buildings, and other rateable property within the said borough according to the annual rateable value thereof. Every such special rate shall be an annual-recurring rate, and shall be payable at such intervals as the order making the same directs, and shall be levied year by year without further proceedings by the Council until the debt created by such debentures is paid off. It shall be lawful, notwithstanding the foregoing provisions, for the Council to pay the interest and sinking fund of any such loan out of its ordinary and general revenue; and every such loan, and the amount of every such debenture and coupon representing the same, shall be a debt of the Corporation.

Sinking fund.

17. There shall be created a sinking fund of ten shillings per centum per annum for the redemption of any loan raised under the provisions hereof, which shall be under the control of the Sinking Fund Commissioners.

Power to alter special rate.

18. The Council shall have power from time to time to amend any special rate made by it under the provisions hereof by increasing or diminishing the same; but no special rate shall be diminished by the Council under the powers hereby contained unless the Controller and Auditor-General shall, previously to any such reduction, in writing approve thereof, and such reduction shall only continue for so long a period as he shall approve.

19. In every case in which default shall be made in the payment of any interest on any of the debentures issued under the provisions hereof, and in every case in which default shall be made in the payment of any principal secured by any of the debentures, the following provisions shall have effect:—

Provisions in case
of default of
principal or
interest of loan.

- (1.) The Court, or any Judge thereof, shall have power by order to direct the Council to make and levy a special rate or special rates upon all lands, buildings, and other rateable property within the said borough, according to the annual rateable value thereof, for the purpose of meeting such interest or repaying such principal, as the case may be, and in so doing to determine the amount required to be levied for the purpose of repaying such principal: Provided that, if there shall happen to be no valuation of such rateable property applicable to the order hereby given, the Court or Judge may order one to be made.
- (2.) Every such order for the making of a rate shall take the place and have the effect of a special order under section sixteen hereof.
- (3.) The Court, or any Judge thereof, shall have power by order to vest such rate in any Receiver who may be appointed under the powers hereof.
- (4.) Any person to whom such principal or interest is overdue may apply *ex parte* by petition, or similarly by motion or summons, in any action to the Court, or any Judge thereof, for relief under this Act; and the Court or Judge may, if satisfied of the truth of the matters alleged in support of such application, appoint, upon such terms as to security and remuneration as it or he shall think fit, a Receiver of the rates, rents, and revenues liable for the payment of such principal or interest; and the said Court or Judge shall have full power and jurisdiction to make such orders from time to time that complete justice shall be done to all parties interested, and to determine in what manner the revenues of the Council shall be collected and received, and what sums are properly available out of such revenues for the payment of the principal and interest secured by the debentures issued hereunder.
- (5.) Subject to the foregoing provisions, such rates, rents, and revenues shall, from the date of the appointment of a Receiver, and upon its being publicly notified by the Receiver, vest in the Receiver and cease to be vested in the Corporation; and the Receiver shall have all such powers as shall from time to time be specified in any order of the Court or any Judge thereof.
- (6.) All powers and remedies for the recovery of such rates, rents, and revenues shall, after the appointment of a Receiver, and upon its being publicly notified, cease to be exercised by the Council, and shall be exercisable by the Receiver.
- (7.) The remedies hereinbefore provided shall be in addition and without prejudice to any other lawful remedy com-

petent for the recovery of the overdue principal and interest.

Disposal of moneys
by Receiver.

20. All moneys received by the Receiver in respect of rates and rents, and all moneys received in respect of other revenues, and declared by the Court or a Judge to be properly available for the payment of the indebtedness in respect of which he is appointed and acting, shall be applied,—

- (1.) In payment of the expenses of the application order;
- (2.) In payment of the Receiver's remuneration, fixed as aforesaid, and all reasonable and necessary expenses;
- (3.) In payment of the sums then overdue which are secured by such rates, rents, and revenue;
- (4.) The residue, after payment of the above, to the Corporation;

and the Receiver shall account for all such moneys in such manner as the Court or Judge directs.

After payment of
overdue moneys,
rates revert to
Corporation.

21. When all sums then overdue are paid, or at any time by order of the Court or a Judge thereof, on the application of the Corporation, if it shall appear to the said Court or Judge thereof that such order should be made, the rates, rents, and revenue vested in the Receiver shall revert in the Corporation, and the powers of the Receiver shall cease, and he shall forthwith pay any money in his hands to the Council, who shall again be capable of exercising the powers and remedies of which his appointment had deprived them; without prejudice, however, to any appointment of a Receiver subsequently if occasion should arise.

Judge not deemed
interested because
of liability for rates.

22. No Judge shall, solely on account of his liability to pay rates, be deemed to be interested in any proceeding in which he is judicially concerned.

No objection to
rate allowed.

23. 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 which shall or may form the security for the debentures or coupons issued hereunder; 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.

Sinking fund may
be invested in
debentures.

24. It shall be lawful for the Sinking Fund Commissioners, acting under the directions of the Council given pursuant to section one hundred and forty-eight of "The Municipal Corporations Act, 1900," to invest the funds in their hands in the purchase of debentures issued under the provisions of this Act, and at such price or premium as they shall think fit: Provided that this section shall only apply in case such debentures are secured, in case of default, both upon the net profits of the tramways acquired or constructed under the provisions hereof and upon such special rate as is herein provided; but the said Commissioners shall not be bound to act on any such direction, but may use their own discretion in the matter.

SCHEDULE.

Schedule.

FORM OF DEBENTURE.

Loan of £ No. Loan of £

Borough of Mornington, New Zealand.

Mornington Loan, 19

DEBENTURE issued pursuant to "The Borough of Mornington Tramways Act, 1901," and "The Municipal Corporations Act, 1900."—Mornington Borough Council Tramway Loan secured on, and being a debt payable by the borough as provided by the said Acts.

DEBENTURE for £, payable at on the day of, 19, issued by the Corporation of the Borough of Mornington, New Zealand, under the aforesaid Acts.

(N.B.—The holder of this debenture has no claim in respect thereof upon the Government of the Colony of New Zealand or the revenue of the said colony.)

ON presentation of this debenture at, on or after the day of, 19, the bearer will be entitled to receive £ Interest on this debenture will cease after the date when payment falls due unless default is made in payment.

Issued by the authority of the Corporation of the Borough of Mornington under the common seal of the said Corporation, this day of, 19

C. D., Treasurer.

[Or, A. B., Mayor.
E. F., } Agents.]
G. H., }

FORM OF COUPON.

Mornington Tramway Loan, 19

DEBENTURE No., of the Borough of Mornington, New Zealand, issued under "The Borough of Mornington Tramways Act, 1901," and "The Municipal Corporations Act, 1900."

ON presentation of this coupon at, on or after the day of, 19, the bearer hereof will be entitled to receive £

C. D., Treasurer.

[Or, A. B., Mayor.
C. D., } Agents.]
E. F., }