

New Zealand.



ANALYSIS.

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1895, No. 15.—*Local.*

Title.

AN ACT to authorise the Conversion and Consolidation by the City of Dunedin of its Outstanding Loans into a Consolidated Loan.

[26th October, 1895.]

Preamble.

WHEREAS the several loans in the First Schedule hereto specified have, at the times in the said Schedule appearing, been issued under the authority of the several enactments in the said Schedule respectively referred to, and are to the extent in each case in the said Schedule appearing still outstanding: And whereas in certain cases sums have accrued by way of sinking fund in connection with the said several loans: And whereas such sums have been, and the accumulated interest thereof has been, from time to time invested at interest by the Sinking Fund Commissioners, and now amount, as nearly as can be estimated, to the sum of one hundred and fifty-five thousand pounds: And whereas it is expedient that the said several loans should be converted into a consolidated debt, bearing a lower rate of interest: And whereas certain portions of the loans in the First Schedule hereto specified have been converted, pursuant to the provisions of "The Dunedin Loans Conversion Act, 1894," and it is desirable to make provision therefor:

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

1. The Short Title of this Act is “The Dunedin Loans Consolidation Act, 1895.” Short Title.

2. In the interpretation of this Act the following expressions shall have the meanings hereby assigned to them:— Interpretation and incorporation.

“The Corporation” shall mean the Corporation by the name of the Mayor, Councillors, and Citizens of the City of Dunedin, as incorporated by law:

“The Council” shall mean the Council of the said city, and, for carrying out the provisions of this Act, it shall have and exercise all the powers of the Corporation:

“The scheduled loans” shall mean the several loans in the Schedule hereto specified:

“Debentures,” in reference to instruments representing the scheduled loans, shall include mortgages issued under “The Otago Municipal Corporations Ordinance, 1865,” or any other enactment:

“The Sinking Fund Commissioners” shall mean the Dunedin City Sinking Fund Commissioners, incorporated by “The Municipal Corporations Act, 1886”:

“The Agents” shall mean the Agents appointed under the provisions of this Act:

“The Court” means the Supreme Court of New Zealand:

The debentures authorised by this Act to be issued shall be termed “Consolidated Debentures, 1895,” and the loan or indebtedness hereby authorised shall be termed “The Dunedin Consolidated Loan, 1895”:

“Public notice” and “publicly notify” means published in some newspaper in general circulation in the City of Dunedin:

“The said Act” means “The Municipal Corporations Act, 1886”:

The provisions of “The Rating Act, 1894,” shall be deemed to be incorporated herewith:

“Revenues” shall include every class of revenue which the Corporation is entitled to receive.

3. It shall be lawful for the Corporation, as soon as it shall be found convenient, to redeem and convert the scheduled loans, notwithstanding that the same are not yet due and payable, and for that purpose to create and issue consolidated debentures, to be disposed of in exchange for the debentures representing the scheduled loans; and such debentures may be created and issued to the amount of the said loans, and such further amount as may be found necessary to redeem and convert the said loans, in manner hereinafter set forth: Provided that debentures shall not be created to a greater amount than seven hundred thousand pounds, and shall not be issued to a greater amount than shall be found necessary as aforesaid. Nothing in this Act shall be deemed to entitle the Corporation to compel the holder of any existing debenture to exchange or accept payment of the same before the due date thereof. The Corporation empowered to convert and issue debentures.

Debenture-holders may exchange same for other debentures created under this Act.

4. The holders of debentures representing the scheduled loans shall be entitled to surrender the same, in exchange for debentures created under the provisions hereof, on such terms with reference to the difference in value as shall be agreed upon between the Corporation or the Agents and such holders.

Terms of conversion.

5. For adjusting the terms of such conversion with any holder, the Corporation shall pay to such holders the agreed difference in value between the debentures so surrendered and the debentures issued in exchange therefor, and such payment shall be made either in cash or by delivery of debentures for a further amount issued under the provisions hereof: Provided that no debenture shall be issued for a smaller sum than twenty-five pounds, and any payment to a smaller amount shall be made in cash.

Form of receipt.

6. Upon the surrender to the Council or the Agents of any instrument of mortgage connected with or representing indebtedness under any of the scheduled loans, for the purpose of redemption or exchange, such mortgage shall be well and sufficiently discharged if a receipt indorsed on the instrument, or sufficiently identifying it, be executed by the registered holder thereof, in or to the effect of the form set forth in the Second Schedule hereto. No such receipt shall be liable to stamp duty.

Sinking fund, how dealt with.

7. When and as from time to time any part of any of the scheduled loans is converted, the sinking fund accrued and accruing on such part shall be held to be set free, and it shall be the duty of the Sinking Fund Commissioners, *pari passu* with such conversion, to pay over to the Corporation the portion so set free; and for this purpose the said Commissioners are hereby empowered from time to time to sell such of the securities held by them as they shall think fit, and to obtain advances either against specific securities or generally, and to apply the proceeds of such sales or advances in making such payments; and the said Commissioners are further hereby empowered to decide how much of the funds in their hands is applicable to each of the scheduled loans, and how much thereof is from time to time set free and subject to be paid over to the Corporation: Provided that from their decision there shall be an appeal to a Judge of the Court, to be brought by way of summons, but no further appeal, and in any such appeal the Public Trustee, or such other person as such Judge shall appoint in that behalf, shall sufficiently represent all interests other than those of the Corporation.

Difference between converted debentures and debentures under this Act paid out of proceeds of debentures.

8. All sums which may be necessary for the purpose of paying in cash to holders of converted debentures the agreed difference in value between such debentures and the debentures issued in exchange therefor shall be paid out of the proceeds of debentures to be created and sold under the provisions of this Act.

Council may pay cash for debentures.

9. In any case in which the holder of any debentures representing any part of any of the scheduled loans shall prefer to accept an immediate cash price therefor, the Corporation shall pay in cash the price agreed on with him, and sell such of the debentures created under the provisions hereof as may be necessary to provide for such case.

Cost of issuing debentures, how paid.

10. The cost of creating and issuing the debentures authorised by this Act, and all charges connected with the conversion and other

operations contemplated by this Act, shall be paid out of the sinking funds set free by the operation hereof.

11. Pending the conversion of the scheduled loans, and the getting-in of the moneys which, under the provisions hereof, the Sinking Fund Commissioners are directed to pay over to the Corporation, the Corporation or the Agents may, for the purpose of carrying out the provisions hereof, obtain advances from any bank, company, or person against the moneys to be so got in.

Pending operations for conversion, advances may be obtained.

12. So much of the sinking fund so set free as aforesaid as shall not be required for the purpose of paying the cost and charges before provided for shall be paid into the Borough Fund to a separate account, and shall be applied as follows:—

Portion of sinking fund set free to be applied in reduction of bank overdraft, &c.

- (1.) In payment of a sum not exceeding forty-eight thousand pounds towards the extinction of the overdraft of the Corporation, owing to the General Account :
- (2.) In creating a fund to be applied to or towards the completion of an efficient system of drainage and sewerage for the City of Dunedin, and the expenses and charges incident thereto :
- (3.) As to any surplus, after providing for the aforesaid objects, to the creation of a sinking fund for the redemption of the consolidated debentures :

Provided that no portion of the sinking funds released under this Act shall be applied to defray the costs and expenses of any drainage and sewerage scheme for the City of Dunedin until the poll provided by "The Dunedin Drainage and Sewerage Act, 1895," has been taken and the proposal declared carried :

Provided further that, if such proposal shall not be carried, a second poll may be taken within two years thereafter, and all the provisions relating to or arising from the original poll and otherwise shall, *mutatis mutandis*, apply to the taking of such second poll.

13. Whereas by "The Dunedin Drainage and Sewerage Act, 1895," the Council is empowered to borrow for the purposes in the said Act set forth such moneys, not exceeding in the whole the sum of one hundred thousand pounds, as may be authorised in manner required by "The Municipal Corporations Act, 1886:" Be it further enacted that, notwithstanding such authorisation or successive authorisations, the power of borrowing conferred by "The Dunedin Drainage and Sewerage Act, 1895," shall be deemed to be diminished to the extent to which, after providing for the extinction of the said overdraft, moneys arising from the sinking fund set free become available for drainage and sewerage purposes as aforesaid: Provided that purchasers of debentures purported to be issued, or subscribers to any loan or loans purporting to be raised, under the powers contained in the said Act shall not be concerned to inquire whether the restriction or diminution in this section contained has been observed so long as the maximum of one hundred thousand pounds provided by the said Act is not exceeded.

Limitation of borrowing powers.

14. In addition to the limits prescribed by section two hundred and one of the said Act, it is hereby further enacted:—

Limitation of overdraft.

- (1.) After the payment into the Borough Fund of the moneys referred to in section twelve, it shall not be lawful for the Council to owe to its bankers on overdraft at the end of any

financial year any sum exceeding the amount of ordinary revenue of that year then outstanding and uncollected.

Appointment of Agents.

15. The Council may, by resolution, to be evidenced by an instrument under the common seal, appoint any bank, company, or any person or persons in England, and in such other place or places as may be found necessary, to be an Agent or Agents for the purpose of managing the conversion and other operations contemplated by this Act; and each such Agent may exercise all such authority as is hereby conferred on the Corporation or the Council, unless the Council shall limit the authority of such Agents, and each such Agent shall also be the Agent of the Sinking Fund Commissioners for all purposes connected with the administration of this Act, and shall have full power to act generally in connection with the operations contemplated by this Act.

Interest on and form of debentures.

16. The debentures and coupons issued under the provisions of this Act shall be in or to the effect of the form of debenture and coupon in the Second Schedule hereto. They need not be under the seal of the Corporation, but shall be signed either by the Mayor and Treasurer of the said city or by the Agents; and the debentures shall be numbered consecutively, so that no two debentures shall at any time bear the same number, and each debenture shall be for a sum of not less than twenty-five pounds, and shall have attached thereto coupons for interest payable half-yearly, at a rate not exceeding four pounds ten shillings per centum per annum on the amount of such debenture, and the coupons shall be numbered consecutively for each debenture; and no debenture or coupon shall be liable to stamp duty. The signature of any person to any coupon may be lithographed or impressed thereon.

Place of payment and currency of debentures.

17. The principal and interest represented by each debenture and coupon shall be payable at a place or places within or without the colony named in the debenture, and shall have such currency as shall appear therein, computed from the first day of January, one thousand eight hundred and ninety-six, and may state alternative places for payment, and the place or places for payment of principal need not be the same as for payment of interest: Provided also that no debenture shall be sold by the Council at a price that will produce to the purchaser a greater interest than four pounds ten shillings per centum per annum.

Debentures to bearer.

18. The debentures shall rank *pari passu*, and have no preference or priority the one over the other by reason of date of issue or otherwise. They shall be payable to bearer, and shall be transferable by delivery.

Poll of citizens not necessary.

19. It shall not be necessary for any meeting of the citizens of Dunedin to be called or held, or for any poll to be taken, for the purpose of consenting to or in respect of the issue of any debentures under the authority of this Act, or the incurring of the indebtedness thereby created.

Debentures a debt of Corporation.

20. The sum of money named in any debenture and in any coupon shall be a debt of the Corporation to the holder of such debenture or coupon for the amount named therein.

Power to re-borrow to pay debentures.

21. When the principal money secured by the debentures issued hereunder becomes payable, the Corporation shall have power to re-borrow moneys under the provisions of this Act for the purpose of paying the same.

22. The several rates, rents, and revenues forming the securities for the scheduled loans respectively, and generally all existing powers, remedies, and securities in respect to the scheduled loans, including in such securities so much of the sinking fund as is applicable thereto and is not set free, shall remain unimpaired as the securities for so much of the scheduled loans as shall for the time being remain unredeemed or unconverted, and, subject to the foregoing provisions in this section, the debentures and coupons issued under the provisions hereof shall be secured and be a charge upon the rates, rents, and revenues now forming the security for the said scheduled loans, and all other the rates, rents, and revenues of the City of Dunedin, except such special rates (not being the special rate or rates mentioned in the next-succeeding section) as may hereafter be struck or levied as a security for any special loan hereafter to be raised.

Security for scheduled loans and consolidated debentures.

23. For the purpose of providing the interest upon the debentures issued under the provisions of this Act, the Council shall have power, by special order or special orders, to make and levy a special rate or special rates upon all lands, buildings, and other rateable property within the said city, according to the annual rateable value thereof. Every such special rate shall be annually recurring, 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.

Power to levy special rate.

24. 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 herein 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.

Powers to amend special rate.

25. 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 such debentures, the following provisions shall have effect:—

Powers in case of default.

- (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 city, according to the rateable annual 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 to provide such interest, and the amount which shall annually 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 power 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 twenty-three 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, further, if so ordered, as well for the benefit of holders of debentures issued under this Act as of holders of any outstanding debentures representing any of the scheduled loans, have the powers of a Receiver under any of the enactments authorising the scheduled loans.
- (6.) All powers and remedies for the recovery of such rates, rents, and revenues shall, after the appointment of the 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 competent for the recovery of the overdue principal and interest.

26. 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 and order;
- (2.) In payment of the Receiver's remuneration, fixed as aforesaid, and his reasonable and necessary expenses;
- (3.) In payment of the sums then overdue which are secured by such rates, rents, and revenues;
- (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.

27. When all sums then overdue are paid, or at any time by an 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 revenues vested in the

Disposal of sum received.

Securities to be re-vested on payment.

Receiver shall re-vest 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 shall arise.

28. 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.

Judge not disqualified because a rate-payer.

29. 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.

No objections allowed to rates struck under this Act.

30. And whereas, under the provisions of "The Dunedin Loans Conversion Act, 1894," Richard Henry Leary, the Agent appointed by the Council in that behalf, effected the conversion of or made agreements to convert certain mortgage debentures or other debentures in terms of that Act, and in so doing purchased or agreed to purchase certain debentures, and sold or agreed to sell certain "Conversion Loan Debentures, 1894," in excess of the amount of his purchases to the extent of one thousand seven hundred and fifty pounds, or thereabouts: Be it therefore enacted as follows:—

"Conversion Loan Debentures, 1894."

The Council shall be at liberty to issue debentures, created under this Act, to the amount of such excess, and generally to adjust all matters left unadjusted or incomplete by the said Richard Henry Leary.

31. Whenever the Council shall pass a resolution to the effect that no further operations shall take place under "The Dunedin Loans Conversion Act, 1894," such Act shall cease to have any operation save as to debentures already issued thereunder; but until such resolution shall be passed such Act shall have full force.

Council may render "Dunedin Loans Conversion Act, 1894," inoperative.

32. No claim of any holders of debentures or coupons issued under the authority hereof, or of any creditor of the Corporation, shall attach to or be paid out of the public revenues of New Zealand, or the Government thereof.

Debenture-holders to have no claim on the public revenues.

33. Whenever there shall be any provision of any public Act, whether incorporated herewith or not, which shall conflict with the securities established or maintained in favour of debenture-holders by this Act, or which shall be in any way contrary to any provision of this Act, the provisions of this Act shall prevail.

Act to prevail over conflicting public Acts.

34. There shall be a sinking fund created for the redemption of the converted loan under this Act, which shall be under the control of the Sinking Fund Commissioners, and shall consist of,—

Creation of sinking fund.

- (1.) Any surplus of sinking funds set free as provided by subsection three of section twelve of this Act;
- (2.) Such amount as shall be equivalent to ten shillings per centum per annum on the amount of the converted loan.

Schedules.

SCHEDULES.

FIRST SCHEDULE.

Date of Issue.	Date of Maturity.	Amount of Loan.	Rate of Interest.	Act or Ordinance authorising Loan.
1868	1898	25,300	7	"The Otago Municipal Corporations Ordinance, 1865," authorising borrowing on mortgage of rates up to £100,000.
1871	1901	12,500	7	"The Otago Municipal Corporations Ordinance, 1865."
1872	1902	13,100	7	"The Otago Municipal Corporations Ordinance, 1865."
1873	1903	9,800	6	"The Otago Municipal Corporations Ordinance, 1865."
1875	1905	18,400	6	"The Otago Municipal Corporations Ordinance, 1865," and "The Dunedin City Council Borrowing Powers Extension Ordinance, 1874."
1876	1906	91,600	6	The above-mentioned Ordinances, and "The Dunedin Corporation Borrowing Powers Extension and Debentures Act, 1875."
1876	1906	8,000	6	"The City of Dunedin Borrowing Act, 1871," reduced, "The Dunedin Gas and Waterworks Loan Act, 1872," and "The Dunedin Gasworks Act, 1874."
1878	1908	312,200	5	"The City of Dunedin Loans Consolidation Act, 1877;" empowering the Corporation to borrow up to £600,000 for the purpose of discharging all existing loans and raising the balances of such loans.
1875	1925	109,100	6	"The Municipal Corporations Waterworks Act, 1872," "The Municipal Corporations Waterworks Amendment Act, 1873," and "The Dunedin Waterworks Act, 1874."
...	1925	3,300	6	"The Massey Frauds Indemnity Act, 1883."
1895	1925	12,250	4½	"The Dunedin Loans Conversion Act, 1894." NOTE.—The amount £12,250 is included in the amounts of the above loans.
1895	1925	6,000	4½	"The Abattoirs and Slaughterhouses Act, 1894."

SECOND SCHEDULE.

FORM OF DEBENTURE.

Loan of £700,000.

Loan of £700,000.

No. _____, City of Dunedin, New Zealand,
Consolidated Debenture, 1895, issued pursuant to "The Dunedin Loans Consolidation Act, 1895."

Dunedin Consolidated Loan, secured on rates, rents, and revenues of the City of Dunedin, as provided by the above Act.

Consolidated Debenture for £ _____, payable at _____, on the 1st day of January, _____, issued by the Corporation of the City of Dunedin, New Zealand, under the aforesaid Act.

N.B.—The holder of this debenture has no claim in respect thereof upon the Government of the Colony of New Zealand, or the revenues of such colony.

ON presentation of this debenture at _____, on or after the 1st day of January, _____, the bearer thereof 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 under the corporate seal of the City of Dunedin, the _____ day of _____, 189 _____.

C.D., Treasurer.

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

FORM OF COUPON.

CONSOLIDATED LOAN DEBENTURE, 1895. No. _____, of the City of Dunedin, New Zealand, issued under "The Dunedin Loans Consolidation Act, 1895," secured on rates, rents, and revenues of the City, as provided by that Act.

ON presentation of this coupon at _____ on or after the _____ day of _____ 18 [or 19 _____], the bearer hereof will be entitled to receive £ _____

C.D., Treasurer.

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

FORM OF RECEIPT.

I [or We] the holder [or holders] of the within written instrument [or, if the receipt is not indorsed, then sufficiently identify the instrument by reference thereto], do hereby acknowledge having received value therefor, pursuant to "The Dunedin Loans Consolidation Act, 1895," and surrender and discharge the contract thereby evidenced and the same accordingly.

A.B.

Signed in the presence of E.F.