

[AS READ THE SECOND TIME]

House of Representatives, ~~29~~ September 1954

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Mr Eyre

NORTH SHORE DRAINAGE AMENDMENT

[LOCAL BILL]

ANALYSIS

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A BILL INTITULED

AN ACT to amend the North Shore Drainage Act 1951. Title.

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

1. This Act may be cited as the North Shore Drainage Amendment Act 1954, and shall be read together with and deemed part of the North Shore Drainage Act 1951 (hereinafter referred to as the principal Act). Short Title.

No. 71—3

Interpretation.

2. Section two of the principal Act is hereby amended by omitting from the definition of "trunk sewer" the words "point of disposal", and substituting the words "final point of discharge".

Section 2 of principal Act amended.

3. Section two of the principal Act is hereby further amended by repealing subsection two, and substituting the following subsections:

"(2) For the purposes of this Act—

"(a) 'Population' means the population as certified to the Board in accordance with the provisions of subsection three of this section.

"(b) 'Rateable capital value' means the capital value as certified to the Board in accordance with the provisions of subsection four of this section.

"(3) It shall be the duty of the Government Statistician from time to time to certify in writing to the Board in respect of any local district or part of a local district his estimate of the population thereof as at the first day of April preceding the date of the application made to him by the Board for that purpose, and the population stated in such certificate shall for the purposes of this Act be deemed to be the population of such local district or part as aforesaid until altered by a subsequent certificate. The cost of preparing the estimate and supplying the certificate shall be paid by the Board.

"(4) It shall be the duty of the Valuer-General, not later than the twentieth day of May in every year, to certify in writing to the Board the total capital value of all rateable property in every local district or part of a local district as may be required by the Board, as shown on the valuation rolls under the Valuation of Land Act 1951, on the preceding thirty-first day of March, and where in respect of any rateable property in any such area there is no separate capital value shown on such rolls, the capital value thereof shall be determined and included at such figure as the Valuer-General deems fair and reasonable. The capital value as shown in such certificate shall for the purposes of this Act be deemed to be the rateable capital value of the area referred to in such certificate. The cost of preparing and supplying the certificate and making any such determination as aforesaid shall be paid by the Board."

4. (1) Section three of the principal Act is hereby amended by inserting in subsection one, between the word "Devonport" and the word "Northcote", the words "East Coast Bays". The district.

(2) The said section three is hereby further amended by repealing subsection two, and substituting the following subsections:

"(2) Where provision is made or is intended to be made in any scheme of sewerage works adopted by the Board under the provisions of section thirty of this Act for the construction of common treatment works and a common outfall for the immediate or future service of the local districts or portions of the local districts of any one or more of the contributing authorities, the Board shall forthwith, upon the adoption of the said scheme, by special order, determine the ultimate boundaries of the areas to be served by such proposed common treatment works and outfall, and the areas so defined taken together shall, for the purposes of this Act, constitute and be known and hereinafter referred to as a drainage area, having a name or number to be determined by the Board.

"(2A) At any time after the constitution of a drainage area, the Board shall, by special order, determine that the whole or portion of that drainage area (comprising two or more local districts or portions thereof) shall be connected to and with a common treatment works and common outfall and the total area so determined shall, as from the date of the execution of a contract binding upon the Board and its contractor for the construction of trunk sewers, pumping stations, rising mains and such common treatment works and common outfall or any part thereof for the service of that area be known and hereinafter referred to as a combined area, having a name or number to be determined by the Board.

"(2B) Any portion of a drainage area which is not for the time being a combined area or a special area shall be known and hereinafter referred to as a future development area having a name or number to be determined by the Board; and the Board shall be entitled, either in and by the scheme of sewerage works for the whole of the district prepared and adopted by the Board in accordance with and pursuant to the provisions of section thirty of this Act, or by any amendment of such scheme, or otherwise at such time as the Board shall think fit, to provide, construct, and install trunk sewers treatment

works and outfalls of such capacity and dimensions as it may deem necessary to provide not only for the immediate drainage requirements of any special area or combined area as hereinbefore defined, but also for the ultimate drainage requirements of such future development area as aforesaid."

(3) The said section three is hereby further amended as follows:

- (a) By adding to subsection three, after the words "special area", the words "having a name or number to be determined by the Board":
- (b) By inserting in subsection four, after the word "declare", the words "by Order in Council":
- (c) By omitting from subsection five the word "resolution" wherever the same occurs, and substituting in each case the words "special order", and by omitting therefrom the word "passing", and substituting the word "making":
- (d) By omitting from subsection six the word "resolution", and substituting the words "special order":

(4) The said section three is hereby further amended by repealing subsection seven, and substituting the following subsection:

"(7) The Board may from time to time by special order declare that any future development area shall, as from a date to be specified in the special order in that behalf (being not earlier than the date at which the Board is of the opinion that the connection hereinafter referred to can be made), be incorporated in the combined area or in any one particular combined area of the district, and the Board shall, as soon as practicable after the making of the special order, cause such future development area to be connected by trunk sewer to and with the treatment or disposal works and outfall of such combined area, whereupon the future development area shall thenceforth cease to be a future development area and shall be included in and become part of such combined area."

5. Section five of the principal Act is hereby amended as follows: Members of Board.

(a) By omitting from subsection one the word "nine", and substituting the word "ten"; and also by inserting in the said subsection one, after the words "Devonport Borough Council", the words "one by the East Coast Bays Borough Council":

(b) By inserting in subsection three, before the word "allocation", the words "number of seats or":

(c) By adding to subsection three the following proviso:

"Provided that in lieu of appointing any such person or persons to be a Commission of Inquiry in the manner and for the purposes aforesaid, the Governor-General may direct the Local Government Commission constituted under the Local Government Commission Act 1953 so to inquire into and report on the number of seats or allocation of seats on the Board."

6. Section six of the principal Act is hereby amended by adding the following proviso: Election of Board.

"Provided, and it is hereby declared, that notwithstanding anything to the contrary expressed or implied in the foregoing provisions of this section the first election by the East Coast Bays Borough Council of its member of the Board shall be made within one month after the coming into force of this proviso."

7. (1) Section eight of the principal Act is hereby amended by adding to subsection one the following additional paragraphs: Vacancies.

"(d) Is adjudged a bankrupt; or

"(e) Becomes a mentally defective person within the meaning of the *Mental Defectives Act 1911*; or

"(f) Is convicted of any offence punishable by imprisonment."

(2) The said section eight is hereby further amended by adding the following subsection:

"(4) During any vacancy in the Board, the continuing members may act, and no act of the Board shall be invalid on account of the vacancy being unfilled." Cf. 1951 (Local), No. 21, s. 11

Quorum of Board.

8. Section sixteen of the principal Act is hereby amended by omitting from subsection one the word "five", and substituting the word "six".

Member not to vote on question in which he has pecuniary interest.

9. Section eighteen of the principal Act is hereby repealed, and the following substituted therefor:

"18. (1) A member of the Board or of any committee shall not vote or take part in the discussion of any matter before the Board or committee in which he has, directly or indirectly, any pecuniary interest apart from any interest in common with the public.

"(2) A member who knowingly offends against this section commits an offence against the principal Act, and upon conviction his seat on the Board and in any committee shall become vacant. Any vacancy under this section shall be deemed to be an extraordinary vacancy."

Proceedings not invalidated by irregularities. Cf. 1951 (Local), No. 21, s. 14

10. Section nineteen of the principal Act is hereby repealed, and the following substituted therefor:

"19. All acts and proceedings of the Board, or of any committee of the Board, or of any person acting as a member of the Board, shall, notwithstanding that it may afterwards be discovered that there was some defect in the election or appointment of the Board, committee, or person acting as aforesaid, or that they were or any of them was disqualified or incapable of being members or a member of the Board, be as valid as if every such person had been duly elected or appointed and was qualified to be a member as aforesaid."

Annual meeting.

11. Section twenty of the principal Act is hereby amended by omitting from subsection three the word "July", and substituting the word "June".

Board may provide offices.

12. Section twenty-three of the principal Act is hereby amended by adding the following subsection:

Cf. 1951 (Local), No. 21, s. 23 (2)

"(2) The Board may, in addition to the powers hereby conferred or in lieu thereof, as it may determine, enter into such arrangements as it may deem necessary with any contributing authority for the use, on such terms as may be agreed upon, of portion of the offices of that contributing authority and of furniture and office equipment for the same for the purpose of transacting the business of the Board or holding its meetings."

By-laws.

13. (1) Section twenty-six of the principal Act is hereby amended by omitting from subsection two the word "twenty", and substituting the word "fifty".

(2) The said section twenty-six is hereby further amended by adding the following subsections:

“(5) The Board may, after any person is convicted of a continuing breach of any by-law, apply to any Court of competent jurisdiction for an injunction to restrain the further continuance of the breach by the person so convicted.

“(6) The continued existence of any work or thing in a state contrary to any by-law shall be deemed a continuing offence. Cf. 1933, No. 30, s. 370

“(7) A by-law may authorize the Board, or any officer thereof, to give notice in writing to any person by whom any work shall have been begun or done in contravention of any by-law of the Board to remove, alter, or pull down such work, to such extent as may be required by the Board or by any such officer as aforesaid to ensure compliance with the by-law, within such time as may be specified in that behalf by the said notice. Any person who fails to comply with any such notice commits a continuing offence against the by-law under which such notice is given as aforesaid.

“(8) A by-law may also authorize the Board, or any officer thereof, to pull down, remove, or alter any building, work, material, or thing erected or being in contravention of any by-law, and to recover from the person committing the breach all expenses incurred by the Board in connection with such pulling down, removal, or alteration. Cf. 1933, No. 30, s. 371

“(9) The exercise of the authority conferred by the last preceding subsection shall not relieve any such person from liability to any penalty incurred by reason of such breach. Cf. 1933, No. 30, s. 371

“(10) All by-laws, rules, and regulations in force in the district or any part thereof on the commencement of this subsection shall, so far as not inconsistent with this Act, be and continue in force within the district, or any part thereof as aforesaid, until superseded by by-laws made under this Act, and shall be as valid and effectual as if made under this Act, and may be proved and enforced in the manner hereinafter provided.” Cf. 1933, No. 30, s. 376

14. Section twenty-seven of the principal Act is hereby amended by adding the following subsections: Proof of by-laws.

“(2) The production of any document purporting to be a copy of any by-law made by the Board in whole or in part under the authority of this Act, and to be sealed with the common seal of the Board, shall, until the con- Cf. 1933, No. 30, s. 372

trary is shown, be sufficient evidence of such by-law having been duly made, and that the same duly came into force on the day mentioned in that behalf in such copy of the by-law.

Cf. 1933,
No. 30, s. 374

“(3) The Board shall cause copies of all by-laws to be kept at the office of the Board, and to be supplied to any person applying for the same at such price as may be fixed by the Board from time to time.

Cf. 1933,
No. 30, s. 375

“(4) Nothing in this Act or in any by-law made thereunder shall be deemed to relieve any person from any penalty, action, or other liability to which he would otherwise be liable or subject in respect of anything done by him in breach of any such by-law.”

Powers of
Board.

15. Section thirty of the principal Act is hereby amended by repealing subsection eleven, and substituting the following subsection:

“(11) Where any trunk sewer which is serving or which is intended to serve two or more local districts, or where any storage tank, storage culvert, storage tunnel, outfall, or sewage treatment plant, has already been constructed within the district by some local authority, it shall be taken over by and vested in the Board at such price and upon such terms and conditions as may be agreed upon between the Board and the local authority or, in the event of their being unable to agree, as may be settled by arbitration under the provisions of the Arbitration Act 1908.”

Construction of
treatment
works.

16. Section thirty-two of the principal Act is hereby amended by inserting in paragraph (a) of subsection one, before the word “Common” at the beginning of that paragraph, the words “One or more”.

General powers
of Board.

17. Section thirty-three of the principal Act is hereby amended by adding the following subsection:

Cf. 1951
(Local),
No. 21,
ss. 28 (e), 30

“(3) The Board may purchase and hold any land within or without the district which, in the Board’s opinion, may be required for the purposes of this Act; and the Board also may take, in the manner and subject to the provisions of the Public Works Act 1928, and hold any lands within the district which, in its opinion, are required for the purposes aforesaid.”

18. Section forty-five of the principal Act is hereby amended by inserting, after subsection one, the following subsection:

Accounts to be kept in accordance with requirements of Audit Office. Cf. 1951 (Local), No. 18, s. 18

“(1A) Without limiting in any way the provisions of subsection one of this section, separate accounts shall be kept by the Board in respect of the design, construction, and operation of main sewerage works for—

- “(a) Any combined area or combined areas:
- “(b) Any special area or special areas:
- “(c) Any future development area or future development areas:
- “(d) Any separate part or parts of the district for the benefit of which a loan is raised and which is defined under subsection three of section fifty-two of this Act.”

19. Section fifty-two of the principal Act is hereby amended by inserting in subsection three, after the words “in any such case”, the words “the portion of”.

Borrowing Powers. Cf. 1949 (Local), No. 8, s. 2

20. Section fifty-four of the principal Act is hereby amended by inserting in subsection one, after paragraph (b), the following paragraph:

Annual estimate of Board's proposed expenditure. Cf. 1949 (Local), No. 8, s. 3

“(bb) The sum or sums that may be required for the administrative costs of the Board, which shall be deemed to include the cost of engineering investigations of the Board and of engineering and general administration:”.

21. Section fifty-five of the principal Act is hereby amended by omitting the word “May”, and substituting the word “June”.

Annual assessments.

22. Section fifty-six of the principal Act is hereby amended by repealing paragraphs (a), (b), and (e) of subsection one, and substituting the following paragraphs:

Calculation of assessments.

“(a) The cost of servicing any special area including the amounts required to cover investigations, design and supervision of construction of works, legal fees, interest and sinking fund, depreciation, operating and maintenance costs of new works (including land) shall be charged and assessed to the local authority of the local district or portion thereof comprising that special area:

“(b) The costs of servicing any combined area, including the amounts required to cover investigations, design and supervision of construction of works, legal fees, interest, sinking fund, depreciation, operating and maintenance cost of new works (including land), shall be charged and assessed to the local authorities of the local districts or portions thereof comprising that combined area in the manner following:

“(i) In the case of trunk sewers and other works (including land) which are serving or which are designed to serve only one local district or portion thereof within such combined area, wholly to such local district:

“(ii) In the case of trunk sewers, treatment works, outfalls and other works (including land) which are serving or which are designed to serve two or more local districts or portions thereof within such combined area, in the proportion of the mean percentage of the rateable capital value and population of the respective local districts or portions thereof, as the case may be:

“(bb) The cost of works, including the amounts required to cover interest and sinking fund in respect of trunk sewers, outfalls and other works (including land) acquired by the Board within any drainage area under the provisions of subsection eleven of section thirty of this Act, after the sale by the Board of all realizable assets (if any), shall be charged and assessed to the local authorities of all the local districts or portions thereof comprising that drainage area in the proportion of the mean percentage of the rateable capital value and population of the respective local districts, or portions thereof, as the case may be:

“Provided that the amount required to cover interest, sinking fund, depreciation, operating and maintenance costs in respect of any trunk sewers, storage culverts, treatment works and outfalls which, for the time being, are retained and operated as part of the sewerage works of any one local dis-

trict or portion thereof, shall be charged and assessed by the Board to the local authority of that local district or portion thereof, as the case may be:

“ Provided also that the amount required to cover interest, sinking fund, depreciation, operating and maintenance costs in respect of any trunk sewers, storage culverts, treatment works and outfalls which for the time being are retained and operated as part of the sewerage works of any two or more local districts or portions thereof shall be charged and assessed to the local authorities of such local districts or portions thereof in the proportion of the mean percentage of the rateable capital value and population of the respective local districts or portions thereof, as the case may be:”

“(e) Where works of any kind are designed and installed anywhere in a drainage area of sufficient capacity to serve not only the immediate drainage requirements of any combined area but also the future drainage requirements of a future development area or of a special area, the amount required to cover interest, sinking fund, and depreciation in respect of such works shall be charged and assessed to the local authorities of the local districts or portions thereof to be ultimately served by such works in the proportion of the mean percentage of the rateable capital value and population of the respective local districts or portions thereof as aforesaid:

“(f) Where land of sufficient area to meet not only the immediate drainage requirements of any combined area but also the future drainage requirements of a future development area or of a special area is at any time acquired by the Board, the net amount required to cover interest and sinking fund and all other outgoings payable in respect of any such land, after making due allowance for any revenue derived from such land pending the use thereof by the Board, shall be charged and assessed to the local authorities of the local

districts or portions thereof for whose ultimate requirements such land shall have been acquired in the proportion of the mean percentage of the rateable capital value and population of the respective local districts or portions thereof as aforesaid:

“(g) For the purpose of ensuring, in either of the cases provided for in paragraphs (e) and (f) of this subsection, that the cost therein referred to is apportioned in the most equitable manner amongst all portions of any future development area, having regard to the successive stages at and to which it is intended that the scheme of sewerage works proposed for a drainage area shall be developed, the Board may, if it thinks fit to do so, classify any such future development area according to the stages at or to which it is intended that the said scheme of sewerage works shall be developed in different parts thereof; and the Board may apportion the total amount payable in respect of such future development area under either paragraph (e) or paragraph (f) of this subsection on a sliding scale according to such classification. The provisions of the Land Drainage Act 1908 shall, as far as they are applicable, and with the necessary modifications, apply to the classification and apportionment mentioned in this paragraph as if expressly set out therein:

“Provided that no interest, sinking fund, depreciation, maintenance or operating costs payable in respect of any common treatment works or common outfall shall be charged or assessed to any local authority whose local district or part of whose local district comprises a future development area unless—

“(i) Such common treatment works or common outfall have been designed to serve the future drainage requirements of that particular future development area; and

“(ii) Such local authority has, by special order, consented to the said common treatment works or common outfall being so designed as aforesaid, or a Magistrate’s Court has, in the manner prescribed by paragraph (h) of this subsection, given its consent to the said design:

“(h) If within three months after notice in writing has been given to it by the Board of any such design of common treatment works or common outfall as is referred to in the proviso to paragraph (g) of this subsection any local authority fails or refuses to give its consent to that design, the Board may, at any time within one month after the expiration of the said three months, make application to the Magistrate’s Court in the place nearest to the office of the Board for the approval of the said design. Any such application shall be heard and determined before a Magistrate, and the Court for the purpose of hearing and determining the application shall have all the powers vested in it in its ordinary civil jurisdiction. The procedure for the hearing and determination in the Magistrate’s Court of an application under this paragraph shall be in accordance with the ordinary procedure of that Court with respect to originating applications; and the decision of the said Court shall be final and binding on the Board and on all contributing authorities for the drainage requirements of whose local districts or portions of whose local districts such common treatment works or common outfall shall have been designed as aforesaid.”

23. Section sixty-three of the principal Act is hereby repealed, and the following substituted therefor:

“63. If any action or claim is commenced or prosecuted touching or concerning the right, title, or interest of any person of or in any lands taken or injuriously affected by anything done in pursuance of this Act, or in the execution of the powers or authorities

Commencement
of action not
to stop works
of Board.
Cf. 1951
(Local),
No. 21, s. 78

herein contained, or as to the amount of compensation to be paid to such person in respect of any such lands, such action or claim shall not of itself impede, delay, or hinder the Board from proceeding in the execution of the powers vested in it by this Act, and the works or the exercise of the powers and authorities may be proceeded with notwithstanding such action or claim."

Board may enter premises for purpose of inspection.

24. Section sixty-four of the principal Act is hereby amended as follows:

- (a) By inserting in subsection two, after the words "last preceding subsection", the words "or in the performance of anything which it or he is empowered or required to do by this Act":
- (b) By omitting from the said subsection two the word "twenty", and substituting the word "fifty".

Recovery of fines and penalties.

25. Section sixty-five of the principal Act is hereby amended as follows:

- (a) By inserting, before the word "All" at the beginning of that section, the words "Every offence hereby made punishable by a fine may be prosecuted, and":
- (b) By adding the following proviso:

"Provided that any information in respect of an offence against this Act or against any by-law made in pursuance of or remaining operative under this Act may be laid at any time within twelve months from the time when the matter of the information arose."

Accident fund.
Cf. 1951
(Local),
No. 21, s. 53

26. (1) The Board may from time to time set aside, out of its General Account, any moneys to form a fund or funds to meet claims for accidents arising in connection with any undertaking of the Board, but no greater sum shall be set aside in any one year than the amount that at current rates would have been payable for that year in respect of the insurance of workers employed by or vehicles belonging to the Board and in respect of insurances against public risk.

(2) The Board may from time to time invest any moneys so set aside and pay the proceeds into the said fund or funds.

27. The payment of or liability to be rated or to pay rates levied by any contributing authority for the purposes of the principal Act shall not disqualify any Judge, Magistrate, or Justice from dealing with any appeal, prosecution, action, claim, or proceeding instituted under or in pursuance of this Act.

Judges, etc., not disqualified by payment of rates.
Cf. 1951 (Local), No. 21, s. 87

28. Any summons, writ, notice, or other legal proceeding requiring to be served on the Board may be served by being left at the public office for the time being of the Board or by delivering the same personally to the Chairman or Secretary for the time being of the Board.

Service of legal proceedings on Board.
Cf. 1933, No. 30, s. 357

29. Every order, notice, or other document requiring authentication by the Board may, unless otherwise provided, be signed by any two members or by the Secretary, and need not be under the common seal of the Board.

Authentication of documents by Board.
Cf. 1933, No. 30, s. 380

30. (1) In any case in which it is provided by the principal Act that an order may be made upon or notice given to any person requiring him to do or abstain from doing anything, or any notice is required by the principal Act to be given or sent to any person, such order or notice shall be delivered to such person either personally or by posting it by registered letter addressed to that person at his last known place of abode or business in New Zealand. A notice so posted shall be deemed to have been served at the time when the registered letter would in the ordinary course of post be delivered.

Service of notices, etc.
Cf. 1933, No. 30, s. 381
Cf. 1952, No. 51, s. 152

(2) If such person is absent from New Zealand, the order or notice may be delivered as aforesaid to his agent in New Zealand. If he is deceased, the notice may be delivered as aforesaid to his personal representative.

(3) If such person is not known, or is absent from New Zealand and has no known agent in New Zealand, or is deceased and has no personal representative, and the order or notice relates to any land, work, material, or building, the order or notice, addressed to the owner or occupier of such land, work, material, or building, as the case may require, may be served on the occupier thereof, or left with some inmate of his abode; or, if there is no occupier, may be put up on some conspicuous part of such land, work, material, or building. It shall not be necessary in any such notice to name the occupier or owner of such land, work, material, or building.

(4) In all cases other than those provided for in the last preceding subsection, if the person is not known, or is absent from New Zealand and has no known agent in New Zealand, or is deceased and has no personal representative, the order or notice shall be delivered in such manner as may be directed by an order of the Court.

(5) Notwithstanding anything in the foregoing provisions of this section, the Court may in any case make an order directing the manner in which any order or notice is to be delivered, or dispensing with the delivery thereof.

(6) This section does not apply to orders or notices served in proceedings in the Court.

(7) In this section the expression "the Court" means—

(a) In any case where any order or notice relates to any sum of money not exceeding two thousand pounds, or to any property the value of which does not exceed the sum of two thousand pounds, a Magistrate's Court:

(b) In any other case, the Supreme Court.

(8) Every order or notice required to be sent by the Board shall be signed as provided in the last preceding section.

(9) In all cases in which any matter or thing is required to be published, advertised, or inserted by the Board in a newspaper generally circulating in the district, the said newspaper shall be such newspaper as the Board from time to time appoints in that behalf, or, if there is no Board at the time when that matter or thing ought to be advertised, the said newspaper shall be such as the Secretary appoints in that behalf.

31. The Schedule to the principal Act is hereby amended by inserting, after the word "Devonport" in the second line thereof, the words "East Coast Bays".

Cf. 1951
(Local),
No. 21, s. 77

Schedule to
principal Act
amended.