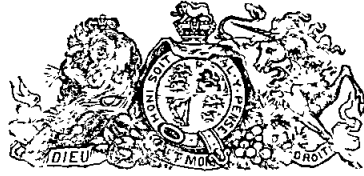


VICTORIA.



ANNO DECIMO SEXTO

VICTORIÆ REGINÆ.

By His Excellency CHARLES JOSEPH LA TROBE, ESQUIRE, Lieutenant Governor of the Colony of Victoria and its Dependencies, with the advice and consent of the Legislative Council.

No. XXXIX.

An Act to Establish a Board of Commissioners for the better Sewerage and Drainage of the City of Melbourne and for Supplying Water thereto and to the Suburbs thereof. [Assented to 8th February, 1853.]

WHEREAS it is expedient to make provision for the better and more effectual Sewerage and Draining of the City of Melbourne and the supplying water thereto and to the Suburbs thereof and to repeal the several parts of the Acts of the Governor and Legislative Council of the Colony of New South Wales hereinafter mentioned Be it therefore enacted by His Excellency the Lieutenant Governor of the Colony of Victoria by and with the advice and consent of the Legislative Council thereof as follows:

Preamble.

I. So much of an Act of the Governor and Legislative Council of the Colony of New South Wales passed in the sixth year of the Reign of Her Majesty Queen Victoria intituled "*An Act to incorporate the inhabitants of the Town of Melbourne*" and also so much of an Act of the said Governor and Council of New South Wales passed in the eighth year of the Reign of Her said Majesty Queen Victoria intituled "*An Act to amend an Act passed in the sixth year of the Reign of Her present Majesty intituled 'An Act to incorporate the Inhabitants of the Town of Melbourne'*" as invests the Council of the said Town or City of Melbourne with power to construct make and continue common sewers drains water-courses public wells and pumps in along or across any of the streets lanes roads highways passages or other places within the said Town and also to adopt any of the common sewers drains or water courses wells or pumps which then were or thereafter should be made within the same and to hold construct and maintain such works as might be necessary for supplying the inhabitants of the said Town with an abundant supply of fresh water and to levy a rate to be charged by such Council for the supply of water shall be and the same are hereby repealed.

Repeal of parts of
6 Vic. No. 7.
8 Vic. No. 12.

II. A Board to consist of four members three to be nominated by the Lieutenant Governor with the advice of the Executive Council at any time within three months from the passing hereof and the other to be the Mayor of the said City of Melbourne for the time being who shall be an *ex officio* Member of the said Board is hereby established and such Board shall be styled "*The Commissioners of Sewers and Water Supply*" and the names of the said members shall be published in the Government Gazette as they may from time to time be nominated and the said Board shall have and execute all the powers and duties vested in or imposed upon such Board by this Act And the said Lieutenant Governor may from

Lieutenant Governor may appoint a Board of Commissioners.

from time to time with the like advice as aforesaid remove all or any of the persons so nominated by him and as often as any vacancy shall occur by the removal resignation or death of any of the members of the said Board it shall be lawful for the Lieutenant Governor with the advice aforesaid to nominate and appoint some fit and proper person as successor to the member so removed resigning or dying and such member of the said Board as shall be named for the purpose by the said Lieutenant Governor shall be President thereof And the President of the said Board shall receive a salary not exceeding one thousand pounds and the other members not being *ex officio* members of the said Board a salary not exceeding three hundred pounds each And the powers and duties vested in or imposed upon the said Board may be exercised and executed by any two members and at all meetings of such Board the President thereof shall have a vote and in case of an equality of votes shall also have a casting vote Provided that the death of any Mayor of the said City or his resignation of office as member of the said Board or refusal to act as such member shall not impair or invalidate the said Board or the appointment or constitution thereof or any of its powers or authorities or the exercise thereof.

Board Incorporated.

III. The said Board shall be and is hereby constituted a body politic and corporate under the name and style aforesaid and as such shall have perpetual succession and be able and capable to sue and be sued and to prosecute and inform in all Courts of Law as well criminal as civil and in Courts of Equity and to accept purchase and hold to them and their successors for ever as members of the said Corporation to and for the uses thereof real estate of every kind nature and description and to sell assign exchange demise grant alienate release acquit and convey the same and also to procure receive and take acquire have and possess to and for the same uses all goods chattels and personal property whatsoever And the said Board shall have and use a Common Seal bearing the impression of the Royal Arms of England and having inscribed on the margin the words "Sewerage and Water Commission."

Lieutenant Governor empowered to make an advance of £200,000.

IV. It shall be lawful for the said Lieutenant Governor by warrant under his hand addressed to the Public Treasurer of the said Colony to direct to be issued and paid out of the General Revenue of the said Colony the sum of two hundred thousand pounds to be expended by the said Board for the purpose of supplying the City of Melbourne and its Suburbs with Water as hereafter mentioned And such sum shall be paid to the said Board in such Sums and at such times as the Lieutenant Governor may direct, and shall be by way of loan to be repaid into the Treasury of the said Colony by equal annual instalments within the period of twenty-five years Provided that no instalment shall be paid by the said Board during the first three years of the said period and such loan shall be a charge upon all property whether real or personal at Law or in Equity which the said Commissioners may at any time acquire or be possessed of by virtue of their office under this Act or any other Act in this behalf.

Power for Board to appoint Officers, &c.

V. The said Board may subject to the approval of the Lieutenant Governor appoint a Secretary and such officers clerks and servants as they may deem necessary for the purposes of this Act and may fix their several Salaries and every such person shall be removable at pleasure and the said Board may require from such officers such security as may be deemed necessary for the due performance of their several duties.

Grants and loans to be paid to Board.

VI. All grants or loans of money from the public and general revenue of the Colony which shall hereafter be made for the purposes of this Act and all monies derived from such rates or charges as are hereinafter provided for shall be paid to and applied by the Board of Commissioners aforesaid under the provisions and for the purposes of this Act.

Members of Board not to participate in Contract.

VII. Any member of the said Board who shall accept or be in any way concerned in any contract with the said Board for the performance of any work or in any way participate in the profits of any such contract shall thereupon cease to be a member of the same.

VIII. The

VIII The several clauses and provisions of an Act of the Governor and Council of the Colony of New South Wales passed in the fourteenth year of the reign of Her Majesty Queen Victoria intituled "*An Act for the better Sewerage Cleansing and Draining of the City of Sydney and to promote the health of the Inhabitants thereof*" relating to the survey of the area of the said last mentioned City the construction of sewers the making sewers on private grounds the altering and cleansing of sewers the fencing works in progress replacing pavements repair of sewers notice of private sewers cleansing private sewers opening sewers to main sewer removing nuisances by drains and recovering the costs thereof notice of building or rebuilding entry to view premises interrupting the Council and injuring works giving use of drain without permission inspecting for communicating drains purchase or lease of lands not requiring sale of lands summons being sufficient enforcement recovery and application of penalties the saving rights of Her Majesty distress not to be unlawful for want of form appeal tender of amends limitation of actions curing of want of form and the apprehension of transient offenders shall be applicable to the said Board of Commissioners and the sewerage of the City of Melbourne in the same way as if the words "Board of Commissioners" were used and inserted therein in lieu of the words "Council of the Corporation of the said City" and the words "City of Melbourne" in lieu of the words "City of Sydney" and it shall be lawful for the said Board of Commissioners their officers or servants and they are hereby authorised and empowered to do perform and exercise within the said City of Melbourne all the acts powers and authorities which by the said Act the Council of the Corporation of the said City of Sydney are authorised and empowered to do perform and exercise relating to any of the matters aforesaid.

Board of Commissioners to exercise similar authority to Corporation of Sydney, under 14 Vic., No. 33.

IX. With respect to the construction of the Waterworks for supplying water to the said City of Melbourne and the Suburbs thereof be it enacted as follows subject to the provisions and restrictions in this Act contained the said Commissioners may execute any of the following works for constructing the Waterworks (that is to say)

Commissioners may execute the works herein named.

They may enter upon any lands or other places in the said Colony and take the levels of the same and set out such parts thereof as they shall think necessary and dig and break up the soil of such lands and trench and sough the same and remove or use all earth stones trees or other things dug or gotten out of the same.

They may enter upon take and hold such land as shall be necessary for carrying this Act into execution.

They may from time to time sink such wells or shafts and make maintain alter or discontinue such reservoirs waterworks cisterns tanks aqueducts drains cuts sluices pipes culverts engines and other works and erect such buildings upon the lands and streams authorised to be taken by them as they shall think proper for supplying the inhabitants of the said City of Melbourne and its Suburbs with water.

They may from time to time divert and impound the water from any such streams as they may deem necessary and alter the course of any streams and also take such water as may be found in under or on the lands to be taken for constructing the works.

Provided always that in the exercise of the said powers the said Commissioners shall do as little damage as can be and in all cases where it can be done shall provide other watering places drains and channels for the use of adjoining lands in place of any such as shall be taken away or interrupted by them and shall make full compensation to all parties interested for all damage sustained by them through the exercise of such powers.

X. The following sections and clauses of the statute of the Imperial Parliament being "*The Waterworks Clauses Act 1847*" as applicable to England shall be and the same are hereby incorporated with this Act (that is to say)

Certain Clauses of the Waterworks Clauses Act, 1847, incorporated herewith.

With

With respect to the construction of the Waterworks sections numbered XIII and XIV.

With respect to the breaking up of streets for the purpose of laying pipes section XXVIII. and sections numbered respectively from XXX. to XXXIV. both inclusive.

With respect to the supply of water to be furnished by the undertakers sections numbered respectively from XXXV. to XLIII both inclusive.

With respect to the communication pipes to be laid by the undertakers sections numbered respectively from XLIV. to XLVII. both inclusive.

With respect to the communication pipes to be laid by the inhabitants sections numbered respectively from XLVIII. to LIII. both inclusive

With respect to the provisions for guarding against fouling the water of the undertakers section numbered LXI. and sections numbered respectively from LXIII. to LXVI. both inclusive.

With respect to the payment and recovery of the water rates sections numbered respectively from LXVIII. to LXXIV. both inclusive.

Certain Clauses of Land Clauses consolidation Act, incorporated.

XI. The following clauses of the statute of the Imperial Parliament being "*The Lands Clauses Consolidation Act 1845*" as applicable to England shall be adopted and incorporated in this Act (that is to say)

With respect to the purchases of lands by agreement clauses numbered respectively from VI. to IX. both inclusive and clauses numbered respectively from XII. to XIV. both inclusive.

With respect to the purchase and taking of lauds otherwise than by agreement clauses numbered respectively from XVIII. to LXVIII. both inclusive.

With respect to the purchase-money or compensation coming to parties having limited interests or prevented from treating or making title clauses numbered respectively from LXIX. to LXXX. both inclusive.

With respect to the conveyances of lands clauses numbered LXXXI. LXXXII. and LXXXIII.

With respect to the entry upon lands by the promoters of the undertaking clauses numbered respectively from LXXXIV. to LXXXVII. both inclusive and LXXXIX. to XCII. both inclusive.

With respect to small portions of intersected land clauses XCIII. and XCIV.

With respect to lands subject to mortgage clauses numbered respectively from CVIII. to CXIV. both inclusive.

With respect to lands subject to leases clauses numbered respectively from CXIX. to CXXIII. both inclusive.

With respect to interests omitted to be purchased clauses numbered CXXIV. CXXV. and CXXVI.

With respect to lands acquired by the promoters of the undertaking under the provisions of the said statute which shall not be required for the purposes thereof clauses numbered respectively from CXXVII. to CXXXII. both inclusive and clauses CXXXIV. and CXXXV.

Payment into Savings' Bank.

XII. The Supreme Court of the said Colony shall have and exercise the same jurisdiction as the Court of Chancery in England is empowered or directed to have or exercise in any Clause of the Statutes herewith incorporated and whenever any sum of money shall be payable by the said Board of Commissioners under this Act in virtue of any purchase or other transaction for the purposes hereof and the same is directed by any of the statutes herewith incorporated to be paid into the Bank of England with the privity or consent of the Accountant General of the Court

Court of Chancery it shall be lawful in every such case for the Commissioners with the privity and consent of the Master in Equity of the Supreme Court of the said Colony to pay such sum of money into the Savings' Bank in the City of Melbourne in the name of such Board and the receipt of the proper officer of such Savings' Bank shall be of the same validity as the receipt of the Cashier of the Bank of England and the words "United Kingdom" and the word "England" whensoever either may occur in any such clause shall be taken to mean and apply to the said Colony of Victoria.

XIII. The said Board of Commissioners may from time to time make alter and repeal bye-laws for all or any of the purposes following (that is to say) for regulating the business and proceedings of the said Board the appointment and removal of officers and servants of the Commissioners and their duties conduct and remuneration for regulating the drainage of roads and streets into their sewers for regulating the dimensions form and mode of construction and the keeping cleansing and repairing of the pipes drains and other means of communicating with sewers and the traps and apparatus connected therewith for such works of cleansing and of removing and disposing of refuse as the Commissioners are authorised to perform or require for regulating the amount of assessment and collection of rates charges and contributions the periods for the repayment of the expenses of works by the persons or rates chargeable with the repayment thereof the forms of rates and the mode and period of and for appeals from rates and charges for default for regulating the form of contracts with Commissioners and generally for carrying into effect the purposes of this Act, and the Commissioners may thereby impose such reasonable penalties as they think fit not exceeding twenty pounds for each breach of such bye-laws, and in case of a continuing offence a further penalty not exceeding five pounds for each day after notice of the offence from the Commissioners every such penalty to be recovered in a Summary way before any two Justices and shall be paid and applied to such public charitable uses as His Excellency the Lieutenant Governor may direct Provided always that under every such bye-law it shall be lawful for the Justices before whom any penalty imposed thereby is sought to be recovered to order the whole or part only of such penalty to be paid or to remit the whole penalty Provided also that no bye-laws shall be repugnant to law or to the provisions of this Act and that no bye-law shall be of any force or effect unless and until the same be submitted to and approved of by His Excellency the Lieutenant Governor and published in three consecutive numbers of the *Government Gazette*.

Power to Board of Commissioners to make Bye-laws.

XIV. The said Commissioners shall upon the first day of February in each year render a full and true account of all monies expended or received by them under the provisions of this Act and such account shall be audited by such persons as the Lieutenant Governor shall appoint for that purpose and shall be forthwith laid before the Legislative Council of the said Colony.

Annual Accounts to be rendered.

XV. Nothing in this Act contained shall be taken to revoke or alter any powers or authorities vested in the Council of the City of Melbourne by an Act of the Lieutenant Governor and Legislative Council of the said Colony passed in the present session intituled "*An Act to amend in certain respects an Act intituled an Act to incorporate the inhabitants of the Town of Melbourne, and to make further provision for the cleansing and improvement of the City of Melbourne.*"

Powers of the Corporation of City of Melbourne not to be affected.

XVI. At any time after completion of the Works by this Act authorised to be performed it shall be lawful for His Excellency the Lieutenant Governor with the advice and consent of the Legislative Council of the said Colony to transfer to the Mayor Aldermen Councillors and Citizens of the City of Melbourne all the property and powers vested in and conferred upon the aforesaid Board of Commissioners by this Act upon such conditions and subject to such restrictions and limitations as to the

Power for Lieutenant Governor with consent of Legislative Council to transfer Works &c.

the said Lieutenant Governor and Legislative Council may seem fit and thereupon the said Board of Commissioners and all powers and authorities in them vested shall cease and determine,

Interpretation Clause.

XVII The following words and expressions in this Act shall have the meanings hereby assigned to them (that is to say)—

The word "street" shall include any square court or alley highway lane road thoroughfare or public passage or place within the limits of this Act.

The word "sewer" shall mean and include sewers and drains of every description whereby any liquid refuse or any water shall be carried off.

"Owner."

The word "owner" shall mean and include any person who shall be in receipt of the rents and profits of any house or land and in the clauses and sections herewith incorporated the expression "Special Act" shall mean this Act and the word "prescribed" shall be construed to refer to any matter prescribed or provided for in this Act and the expression "the Lands and Streams" shall mean the Lands and Streams of Water which by this Act are authorised to be taken or used for the purposes hereof and the expression "The Works" or "the Undertaking" shall mean the water works and the works connected therewith, and any other works or undertaking by this Act authorised to be constructed or executed and the expression "The Promoters of the Undertaking" or "The Undertakers" shall mean the said Board of Commissioners.