

BOROUGH
OF NEWCASTLE
ELECTRIC LIGHTING.

An Act to give powers to the Council of the Borough of Newcastle to light the streets and public places of the said Borough with the Electric Light, and to supply Electricity within or without the limits of the said Borough ; and to levy rates and make charges in respect of such lighting and supply ; and for the purposes aforesaid to acquire land, and the right to use patents, and acquire or construct works and break open streets, remove obstructions and lay down electric lines ; and to borrow money, enter into contracts, sell or lease fittings, and do other matters incidental to such lighting and supply ; and to enable Boroughs and Municipal Districts without the limits of the said Borough of Newcastle to participate in the benefits of such supply ; and to empower the Municipal Councils of such Boroughs and Municipal Districts to give consents, enter into contracts, and levy rates in respect of such supply ; and to amend the one hundred and fifty-third, one hundred and sixty-fifth, and one hundred and ninetieth, and other sections of the “Municipalities Act of 1867,” so far as may be necessary for the purposes aforesaid ; and to impose certain penalties, and otherwise protect the Council from being defrauded, impeded, or harassed in the exercise of the aforesaid powers ; and to make provision for the safety of the public ; and to amend the law in other respects. [31st March, 1892.]

Preamble

WHEREAS it is expedient that the streets and public places of the Borough of Newcastle should be lighted with the electric light, and that electricity should be supplied for lighting or otherwise within the limits of the said Borough, and also within such Boroughs, Municipal Districts, and places as may desire to be supplied from

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from the works for the said Borough of Newcastle, and can conveniently be so supplied: And whereas the Council of the Borough of Newcastle is willing to undertake the carrying out the objects of this Act if powers in that behalf are conferred upon it in manner hereinafter appearing: And whereas it is expedient that powers as aforesaid should be conferred upon the said Council of the Borough of Newcastle, and that other provision should be made as hereinafter set forth: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Borough of Newcastle Short title. Electric Lighting Act."

2. In this Act, unless the context otherwise requires, the Interpretation. expression

"Borough" means the Borough of Newcastle as constituted in pursuance of the "Municipalities Act of 1858" and of the "Municipalities Act of 1867," or as the same may hereafter be constituted.

"Council" means the Council of the Borough.

"Electricity" means electricity, electric current, or any like agency.

"Electric line" means a wire or wires, conductor, or other means used for the purpose of conveying, transmitting, or distributing electricity with any casing, coating, tube, pipe, or insulator enclosing, surrounding, or supporting the same or any part thereof, or any apparatus connected therewith, for the purpose of conveying, transmitting, or distributing electricity.

"Private purposes" means any purposes whatever to which electricity may for the time being be applicable (not being public purposes), except the transmission of any telegram or telephonic message.

"Public purposes" means lighting any place or building belonging to or subject to the control of the Council, or any street.

"Street" means any square, court, alley, highway, lane, road, thoroughfare, or public passage or place.

"Works" means and includes electric lines, meters, accumulators, fittings, and apparatus for the supply of electricity, also any buildings, machinery, engines, matters or things of whatever description required to generate or supply electricity, and to carry into effect the purposes of this Act.

3. It shall be lawful for the Council to generate and supply, Council may supply electricity. under such regulations and conditions as may be approved of by the Governor, electricity for any public or private purposes, or for any public purposes and any private purposes within the limits of the Borough: Provided that electricity may be supplied for private and public purposes outside the said limits in manner hereinafter set forth.

4. The Council may, for the purpose of generating and supply- General powers of Council. ing electricity, acquire such lands, construct or acquire such works, acquire such interests in, and licenses for the use of any patented or protected processes, inventions, machinery, apparatus, methods, or other things, enter into such contracts, and generally do such acts and things as may be necessary and incidental to such generation and supply.

5. The Council may use the ordinary corporate funds for the purpose of obtaining plans, estimates or reports as to the cost of acquiring or constructing works for the generation and supply of electricity, and for the purpose of defraying the expenses incurred in connection with the preparation and introduction of the Bill for this Corporate funds may be used for preliminary expenses.

Act:

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Act: Provided that in the event of such works being proceeded with, such preliminary expenditure shall be charged to the electric light account.

Special loans for
lands and works.

6. The Council may for the purpose of constructing or acquiring works for the generation and supply of electricity borrow moneys by way of special loan in manner provided by the "Municipalities Act of 1867," notwithstanding that such purpose may not be a purpose incidental to the making, carrying on, or completing of any permanent improvements within the Borough, or that the security for the repayment of such loan may be other than is provided in the said section:—

(I) The security for such loan may be all or any general or special rates or rate which the Council is authorized to levy with or without any security expressly referred to in the said one hundred and ninetieth section of the "Municipalities Act of 1867," and any works to be constructed or acquired out of the proceeds of such loan, and any lands to be acquired out of the proceeds of such loan, or otherwise.

(II) A separate account shall be kept of all moneys received and expended on account of such loan, and it shall not be lawful to expend any such moneys in the maintenance or repair of, or for current expenses connected with such works, or for any purpose other than the construction or acquisition thereof, and the acquisition, in pursuance of this Act, of any lands upon which the same, or any part thereof, are constructed or are to be constructed: Provided always that such loan may be lawfully charged with the payment of interest due thereon during the course of construction of such works.

(III) All lands or works to be acquired or constructed out of the proceeds of such loan shall be vested in the body corporate of the Borough.

Electric light rate.

7. The Council may make and levy an annual rate in manner provided in the one hundred and sixty-fifth section of the "Municipalities Act of 1867," upon all ratepayers in the Borough for the purpose of supplying electricity for public purposes within the Borough, and for the construction and maintenance of works in connection with the supply of electricity for public or private purposes in pursuance of this Act: Provided that such rate shall not exceed sixpence in the pound in any one year.

Separate account to
be kept.

8. A separate account, to be called the "electric light account," shall be kept of all moneys received from electric light rates, and in respect of the supply of electricity and otherwise in pursuance of this Act, all which money shall be charged as follows:—

(I) With such sums (to be transferred to an interest and sinking fund account) as shall be sufficient to satisfy the interest and principal sums payable on any loan raised under the authority of this Act.

(II) With the cost of maintaining the works in good repair, and all the expenses connected with generating and supplying electricity, as herein provided.

(III) With any surplus remaining thereafter, which surplus the Council is hereby empowered to transfer to the credit of the electric light account.

Power to break up
streets and to open
drains.

9. The Council may open and break up the soil and pavement of any street, and may open and break up any sewers, drains, or tunnels within or under such streets, and may construct proper subways and drains, and may lay down and place under or over any street any electric lines, and from time to time repair, alter, or remove the same, and for the purposes aforesaid may remove and use all earth and materials in and under such streets, and may in any such streets erect
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any pillars, standards, lamps, and other works, and do all other acts which it may from time to time reasonably deem necessary for supplying electricity, and may lay any electric line, branch, or other apparatus from any main or branch electric line into, through, or against any place, building, or mine for the purpose of lighting the same, and provide and set up any apparatus necessary for securing thereto a complete supply of electricity, and for measuring and ascertaining the extent of such supply: Provided that nothing herein shall authorize or empower the Council to lay down or place any electric line or other works into, through, against, or in any place, building, mine, or land not dedicated to public use without the consent of the owners and occupiers thereof, except that the Council may at any time make entry and lay or place any new electric line or fittings instead of an existing electric line or of existing fittings in any position wherein any electric line or fittings shall have been lawfully laid down or placed, and may repair or alter any electric line or fittings so laid down or placed.

10. Subject to the provisions of this Act—

- (i) The Council may alter the position of any pipes, wires, sewers, drains, or tunnels, being under any street or place authorized to be broken up by it, which may interfere with the exercise of its powers under this Act, on previously making or securing such compensation to the owners of such pipes, wires, sewers, drains, or tunnels, and on complying with such conditions, as to the mode of making such alterations, as may before the commencement of such alterations be agreed upon between the Council and such owners, or in case of difference as may be determined by arbitration.
- (ii) Any person or public authority lawfully competent so to do, may in like manner alter the position of any electric line or works of the Council, being under or over any such street or place as aforesaid, which may interfere with the lawful exercise of any powers vested in such person or authority, in relation to such street or place, subject to the like provisions, conditions, and restrictions as are in the first subsection of this section contained.

Power to alter position of pipes, wires, &c.

11. When the Council opens or breaks up the road or pavement of any street, or any sewer, drain, or tunnel, it shall with all possible speed complete the work for which the same shall have been opened or broken up, and fill in the ground, and reinstate and make good the road or pavement, or the sewer, drain, or tunnel so opened or broken up, and carry away the rubbish occasioned thereby, and shall at all times whilst any such road or pavement shall be so opened or broken up cause the same to be fenced and guarded, and shall at night time cause a light sufficient for the warning of passengers to be set up and maintained against or near such road or pavement where the same shall be open or broken up.

Streets, &c., to be reinstated.

12. The Council shall not in the exercise of the powers conferred by this Act lay down or place any electric line or do any other work for the supply of electricity whereby any public telegraph or telephone line is or may be injuriously affected. And the Council and its agents shall conform with such reasonable requirements, either general or special, as may from time to time be made by the Superintendent of Telegraphs for the purpose of preventing any such telegraph or telephone line from being injuriously affected by the said line or work. Any difference which arises between the Superintendent of Telegraphs and the Council or its agents with respect to any requirements so made shall be determined by arbitration. In the event of any contravention of this section by the Council or its agents the Council shall be liable to a fine not exceeding ten pounds for every day

Protection of telegraph and telephone lines.

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during which such contravention continues, or if the telegraphic or telephonic communication is wilfully interrupted not exceeding ten pounds for every day on which such interruption continues. For the purposes of this section a telegraph or telephone line shall be deemed to be injuriously affected if telegraphic or telephonic communication by means of such line, whether through induction or otherwise, is affected by any electric line or work of the Council, or by any use made of such electric line or work.

Compensation for damage.

13. In the exercise of its powers under this Act the Council shall cause as little detriment and inconvenience, and do as little damage as possible, and shall make full compensation to all persons interested for all damage sustained by them by reason or in consequence of the exercise of such powers, the amount and application of such compensation in case of difference to be determined by arbitration.

Removal of dangerous wires, &c.

14. Where any electric line has been placed above or below ground by the Council in any position, any District Court Judge or Stipendiary Magistrate or Police Magistrate may, upon complaint made by any person, if he is of opinion that such line is or is likely to become dangerous to the public safety, make an order directing and authorizing the removal thereof by any such person and upon any such terms as he may think fit at the cost of the Council: Provided that if the person complaining has consented to the placing of such line as aforesaid he may be ordered to pay to the Council for costs and expenses such sum as the District Court Judge or Stipendiary Magistrate or Police Magistrate may award, not exceeding in the whole ten pounds.

Power to contract for the supply of electricity and fittings.

15. The Council may from time to time enter into any contract with any person for supplying with electricity any place, building, or mine, or for providing any person with electric lines, burners, meters, lamps, or other fittings and things, and for the repair thereof in such manner and upon such terms as shall be agreed upon. And the amount due on any such contract, not exceeding thirty pounds, shall be recoverable by the said Council in the same manner as is provided in section thirty-five of this Act for the recovery of any rate, fine, penalty, or forfeiture.

Council may let meter.

16. The Council may let any meter for ascertaining the quantity of electricity consumed or supplied and any fittings thereto for such remuneration and on such terms in respect of the repair of such meter and fittings, and for securing the safety and return thereof to the Council as may be agreed upon between the hirer and the Council, and such remuneration shall be recoverable in the same manner as charges due to the Council for electricity.

Council to keep meters in repair.

17. The Council shall at all times keep all meters on hire to any consumer in proper order for correctly registering the quantity of electricity supplied, and in default of the Council so doing the consumer shall not be liable to pay remuneration for the use of the same during such time as such default continues.

Meter not to be interfered with and connections not to be made by unauthorized persons.

18. Every meter used for ascertaining the quantity of electricity supplied by the Council shall during the continuance of such supply, and until all charges in respect thereof have been paid, be under the sole control of the Council, whether such meter be the property of the Council or not, and no person shall be at liberty to cut, connect, tap, fix, alter, or remove any electric line, lamp, meter, or fittings used in connection with the supply of electricity by the Council unless authorized in writing by the Council or its agents duly authorized in that behalf: Provided that nothing in this section shall affect the lawful exercise of any power in that behalf vested in any competent person or public authority.

Register of meter to be *prima facie* evidence.

19. The register of the meter used for ascertaining the quantity of electricity supplied by the Council shall be *prima facie* evidence of such quantity.

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20. The Council shall not be entitled to prescribe any special form of lamp or burner to be used by any person, or in any way to control or interfere with the manner in which electricity supplied by it in pursuance of this Act is used: Provided always that no person shall be at liberty to use any form of lamp or burner, or to use the electricity supplied to him for any purposes, or to deal with it in any manner so as to unduly or improperly interfere with the supply of electricity to any other person; and if any dispute or difference as to the matters aforesaid arises between the Council and any person entitled to be supplied with electricity in pursuance of this Act, such dispute or difference shall be determined by arbitration.

Council not to prescribe manner of using electricity.

21. Where a supply of electricity is provided in any locality for private purposes, all persons within such locality shall, on application, be entitled to a supply on the same terms as the terms on which any other person in such locality is under similar circumstances entitled to a corresponding supply.

Obligation to supply electricity.

22. The Council shall not, in making any agreements for a supply of electricity, show any undue preference to any person; but, save as aforesaid, it may make such charges for the supply of electricity as may be agreed upon.

Charges for electricity.

23. If any person neglect to pay any electric light rate or any charge for electricity, or any other sum due to the Council in respect of or incidental to the supply of electricity to such person, the Council may cut off his supply of electricity, and for that purpose may cut or disconnect any electric line or other work through which electricity may be supplied, and may, until such charge or other sum, together with any expenses incurred by the Council in cutting off such supply of electricity as aforesaid is fully paid, but no longer, discontinue the supply of electricity to such person.

Power to cut off supply.

24. Any person who unlawfully and maliciously cuts or injures any electric line or work erected in pursuance of this Act with intent to cut off any supply of electricity shall be guilty of felony and be liable to be kept in penal servitude for any term not exceeding three years, or to be imprisoned with or without hard labour for any term not exceeding one year, but nothing in this section shall exempt a person from any proceeding for any offence which is punishable under any other provision of this Act, or under any other Act, or at common law, so that no person be punished twice for the same offence.

Injuring works with intent to cut off supply.

25. Any person who maliciously or fraudulently abstracts, causes to be wasted or diverted, consumes, or uses any electricity provided in pursuance of this Act shall be guilty of simple larceny and punishable accordingly.

Stealing electricity.

26. Any person who wilfully and unlawfully removes, destroys, or damages any electric line, or any pillar, post, lamp, meter, or other work connected with or relating to the supply of electricity by the Council in pursuance of this Act, or who wilfully and unlawfully extinguishes any of the public lamps or lights maintained by the Council in pursuance of this Act, or wastes or wilfully and wrongfully uses any of the electricity supplied by the Council in pursuance of this Act shall for each such offence forfeit to the Council a sum not exceeding five pounds in addition to the amount of damage done.

Penalty for removing electric line, &c.

27. Any person who carelessly or accidentally breaks, throws down, or damages any electric line, or any pillar, post, lamp, or other work belonging to the Council or under its control shall forfeit and pay such sum of money by way of satisfaction to the Council for the damage done, not exceeding five pounds, as two Justices of the Peace sitting in Petty Sessions shall think reasonable: Provided that this section shall not affect any other remedy.

Penalty for breaking electric line, &c.

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Penalty for tampering with meter, &c.

28. Any person who wilfully, or fraudulently, or by culpable negligence injures or suffers to be injured any electric line or any meter or fittings belonging to the Council, or alters the index to any meter, or prevents any meter from duly registering the quantity of electricity supplied, or fraudulently abstracts, consumes, or uses electricity supplied by the Council shall, without prejudice to any other right or remedy for the protection of the Council or the punishment of the offender, for every such offence forfeit to the Council a sum not exceeding twenty-five pounds in addition to the amount of damage.

Supply of electricity may also be cut off.

29. In any case in which any person has wilfully or fraudulently injured or suffered to be injured any electric line, or any meter or fittings belonging to the Council, or altered the index to any meter, or prevented any meter from duly registering the quantity of electricity supplied, the Council may also until the matter complained of has been remedied, but no longer, discontinue the supply of electricity to the person so offending, notwithstanding any contract previously existing.

Evidence that meter has been tampered with.

30. The existence of artificial means for causing such alteration or prevention, or for abstracting, consuming, or using electricity supplied by the Council when the meter is under the custody or control of the consumer, shall be *primâ facie* evidence that such alteration, prevention, abstraction, or consumption, as the case may be, has been fraudulently, knowingly, and wilfully caused by the consumer using such meter.

Power to enter premises and inspect or remove fittings, &c.

31. Any officer appointed by the Council in that behalf may at all reasonable times enter any place, building, or mine to which electricity is or has been supplied by the Council in pursuance of this Act for the purpose of inspecting and testing the electric lines, meters, accumulators, fittings, works, and apparatus for the supply of electricity belonging to the Council, and of ascertaining the quantity of electricity consumed or supplied, or (where a supply of electricity is no longer required, or where the Council is authorized to take away and cut off the supply of electricity from any premises) for the purpose of removing any electric lines, accumulators, fittings, works, or apparatus belonging to the Council, repairing all damage caused by such entry, inspection, or removal.

Councils fittings not to be subject to distress, execution, &c.

32. Where any electric lines, meters, accumulators, fittings, works, or apparatus belonging to the Council are placed in or upon any place, building, or mine (not being in the possession of the Council) for the purpose of supplying electricity in pursuance of this Act, such electric lines, meters, accumulators, fittings, works, or apparatus shall not be subject to distress or to the landlords remedy for rent of the premises where the same may be, nor to be taken in execution under any process of a Court of law or equity, or any proceedings in bankruptcy against the person in whose possession the same may be: Provided that nothing in this section shall affect any distress or execution lawfully made or issued upon or against the Council.

Limitation of action against the Council.

33. All actions or other proceedings against the Council, its officers, agents, or servants for anything done or reasonably supposed to have been done in pursuance of this Act shall be commenced within twelve months after the matter complained of was committed and not otherwise; and notice in writing of any such action or proceedings, and of the cause thereof, shall be given to the defendant one month at least before the commencement of the proceeding; and in every such proceeding the defendant may plead the general issue and give this Act and the special matter in evidence at any trial to be had thereupon; and no plaintiff shall recover in any such proceeding if tender of sufficient amends shall have been made before the same was commenced, or if a sufficient sum of money shall have been paid into a Court after such commencement by or on behalf of the defendant, together

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together with costs incurred up to that time. And if a verdict shall pass for the defendant, or the plaintiff shall become non-suit or discontinue such proceeding, or if upon demurrer or otherwise judgment shall be given against the plaintiff the defendant shall recover his costs and have the like remedy for the same as any defendant has by law in other cases.

34. Any arbitration in pursuance of this Act shall be by a single arbitrator and shall be conducted in accordance with and subject to the provisions of the Act thirty-first Victoria number fifteen, intituled "*An Act to make Arbitrations more effectual*," and for the purposes of reference to arbitration thereunder this Act shall be deemed to be an instrument or document between the parties within the meaning of the same. The arbitrator shall in every case have power to direct how and by whom the cost of the reference and award shall be paid. Arbitrations.

35. Whenever by any section of this Act any person is made or becomes liable to any rate, fine, or forfeiture or to pay any sum of money, whether as compensation or in any other way, and the mode of recovering such rate, fine, forfeiture, or sum is not specified, the same may be recovered before any two or more Justices of the Peace sitting in Petty Sessions, in accordance with the Acts in force for the time being regulating summary proceedings before Justices. And all sums of money ordered by any such Court to be paid, and all costs and expenses awarded by such Court may be recovered and enforced by distress and sale of the goods and chattels of the person ordered to pay the same, and in default of sufficient distress such person shall be liable to be imprisoned with or without hard labour for any term not exceeding three months, unless such money, costs, or expenses be sooner paid: Provided that nothing in this section shall prevent proceedings for the recovery of any fine, forfeiture, or sum as aforesaid being taken in any other Court of competent jurisdiction when the amount sought to be recovered exceeds ten pounds. Procedure for recovery of penalties, &c.

36. All fines, forfeitures, or other sums recovered by the Council in pursuance of this Act shall be carried to the credit of the electric light account. Sums recovered to go to electric light account.

37. In any case in which any summary conviction has been had, or any order for the payment of money has been made in pursuance of this Act before or by two or more Justices sitting in Petty Sessions, the defendant may appeal to the Court of Quarter Sessions. The provisions of the "Criminal Law Amendment Act of 1883" in respect of appeals from summary convictions thereunder shall apply and extend to all appeals under this section, and shall be observed in the making of every such appeal and all proceedings thereupon. Appeals from summary convictions, &c.

38. The Council may for the purposes of this Act, make all such by-laws, appoint and pay all such officers and do all such other necessary matters and things as it may now be entitled to make, appoint, pay, or do in connection with a lighting of the Borough by means of gas or a supply of gas within the limits thereof. Council may make by-laws, appoint officers, &c.

39. It shall be lawful for the Council to supply electricity outside the limits of the Borough, and for such purpose to exercise any power conferred upon it by this Act (other than the power to make and levy an electric light rate) within or without the limits of any Borough or Municipal District near or adjoining the Borough of Newcastle, or near or adjoining any other Borough or Municipal District within the limits of which the Council shall at the time be lawfully exercising such powers, subject however to the following provisions:— Council may extend operations into other Municipalities with consent.

- (I) The aforesaid powers shall not be exercised within the limits of any such Borough or Municipal District except with the consent of the Council thereof (which consent it is hereby empowered to give), and upon such terms and conditions as may be mutually agreed upon.

(II)

Tarrawingee Tramway Act Amendment.

- (II) The supply of electricity for the purpose of lighting any place, building, or street belonging to or subject to the control of the Council of such Borough or Municipal District shall, for the purposes of this Act, be deemed to be a supply for private purposes or use, and all provisions of this Act in such behalf shall extend and apply thereto.
- (III) The Council of such Borough or Municipal District shall, for the purposes of this section, have power to enter into all such contracts and to levy all such rates as it is by law empowered to enter into or levy in respect of a supply of gas.

Savings.

40. Nothing in this Act—

- (I) Shall limit or interfere with the rights of any owner, lessee, or occupier of any mines or minerals lying under or adjacent to any street along or across which any electric line shall be laid to work such mines and minerals.
 - (II) Shall authorize or enable the Council, its officers, agents, or servants to transmit any telegram or telephonic message, or to perform any of the incidental services of receiving, collecting, or delivering telegrams or telephonic messages, or give to the Council, its officers, agents, or servants any power, authority, or facility of any kind whatever in connection with such transmission or performance as aforesaid.
 - (III) Shall exempt the Council or its operations in pursuance of this Act from the provisions of any general Act relating to the supply of electricity which may be passed in this or any future Session of Parliament, or entitle the Council to compensation from the public revenue by reason of the provisions of such general Act being made applicable to and binding upon the Council.
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