

# PORT MORESBY WATER SUPPLY ORDINANCE, 1941. <sup>(1)(2)</sup>

## No. 9 of 1941.

### An Ordinance relating to Water Supply.

**B**E it ordained by the Legislative Council for the Territory of Papua, in pursuance of the powers conferred by the *Papua Act, 1905-1940*, as follows:—

#### PART I.—PRELIMINARY.

1. This Ordinance may be cited as the *Port Moresby Water Supply Ordinance, 1941*,<sup>(2)</sup> and shall come into operation from a date to be fixed by the Administrator by Proclamation in the *Gazette*.<sup>(2)</sup> Short title and commencement.

2. The provisions of this Ordinance are arranged as follows:— Divisions.

Part 1.—Preliminary.

Part 2.—Constitution of Water Areas.

Part 3.—Constitution of Board and Administration.

Part 4.—Powers of the Board.

Part 5.—Supply of Water and Protection of Works.

Part 6.—Assessment Rating and Recovery of Rates.

Part 7.—Financial.

Part 8.—Miscellaneous.

3. The *Port Moresby Water Supply (Survey) Ordinance, 1940*, and the *Port Moresby Water Supply (Preliminary Works) Ordinance, 1940*, are repealed. Repeal.

(1) An Order in Council relating to conditions of Port Moresby Water Supply dated 13.8.1941 was published in *Papua Govt. Gaz.* of 21.8.1941. This Order-in-Council, which did not purport to be made under any Ordinance, provided:

1. That all previous conditions of Port Moresby Water Supply be cancelled.
2. That from the date of this Order the conditions of water supply be as follows:—
  - (a) Delivery of water to be in the exclusive control of the Works Director, Department of the Interior.
  - (b) Applications for water may be lodged in writing at the Department of Public Works of the Territory and shall be accompanied by a fee of Five shillings for each 1,000 gallons or part thereof.
  - (c) Water supplied for ships may be delivered at a fee of Two shillings and sixpence a 1,000 gallons or part thereof.
  - (d) Free delivery of water may be made to the Crown in any quantity."

(2) Particulars of this Ordinance are as follows:—

Date of reservation by Administrator.	Date on which assent of Gov.:Gen. in Council published in Papua <i>Govt. Gaz.</i>	Date on which came into operation.
24.7.1941	16.10.1941	The whole except Sec. 18 on 23.10.1941 ( <i>Papua Govt. Gaz.</i> of 16.10.1941); Sec. 18 not yet notified to come into operation.

## WATER SUPPLY—

Interpretation.

4. In this Ordinance unless the context otherwise indicates:—
- “Agent” includes any person authorized in writing by the Board;
  - “Allotment” includes any subdivision thereof as well as any portion and any resubdivision thereof;
  - “Board” means the Water Board constituted under this Ordinance;
  - “Consumer” means any person to whom water is supplied under this Ordinance;
  - “Crown land” includes all land vested in His Majesty which has not been granted in fee or lawfully contracted to be so granted or which has not been leased by the Crown or lawfully contracted to be so leased;
  - “Director” or “Director of Public Works” means the Director of Public Works of the Territory;
  - “Domestic purposes” shall not include a supply of water for stables for manufacturing trade or business purposes for fountains for watering cattle or horses for watering gardens or for washing motors or other vehicles;
  - “Fittings” means a pipe meter or other apparatus so used;
  - “Land” includes allotment;
  - “Main-pipe” means any principal pipe of the Board from which it is prepared to supply consumers;
  - “Minister” means the Commonwealth Minister of State charged with Papuan affairs;
  - “Occupied allotment” means any improved allotment;
  - “Occupier” means a person in actual possession of any allotment or land or if there is no person in actual occupation the person entitled to possession thereof;
  - “Owned” and similar expressions have a meaning corresponding to that of “Owner”;
  - “Owner” in relation to land includes every person who jointly or severally whether at law or in equity—
    - (a) is entitled to the land for any estate of freehold in possession;
    - (b) is a person to whom the Crown has lawfully contracted to grant the fee;
    - (c) is entitled to receive or is in receipt of or if the land were let to a tenant would be entitled to receive the rents and profits thereof whether as beneficial owner trustee mortgagee in possession or otherwise

and includes every person who by virtue of this Ordinance is deemed the owner;

The Crown shall be deemed the owner of all allotments occupied and used by the Crown;

“Pipe” includes a main main-pipe stock-cock water-cock syphon plug branch or other apparatus used for or in connection with the supply of water under this Ordinance;

“Premises” includes any house and any public or private building whatsoever and any part thereof;

“Public road” means any road which the public are entitled to use and includes any road dedicated as a highway by the Crown or by any person or a road declared a main road pursuant to the provisions of the *Main Roads Ordinance, 1916*;

“Rateable land” includes all land upon which any rate or charge is leviable or levied under this Ordinance;

“Rate-payer” means the owner of any rateable allotment or land;

“Street” includes any way public or private;

“Town of Port Moresby” means the Town of Port Moresby as defined<sup>(3)</sup> for the purposes of the *Police Offences Ordinance, 1912-1939*;

“Treasurer” means the Treasurer for the Territory;

“Vacant allotment” means any unimproved allotment;

“Water” includes water both raw and treated;

“Water area” means any area the Board with the approval of the Administrator from time to time declares an area to which water may be supplied pursuant to the provisions of this Ordinance;

“Water Board” means the Water Board constituted under this Ordinance;

“Water rate” includes every rent payable and every reward or payment to be made whether under agreement or otherwise to the Board for a supply of water from its waterworks for any purpose whatsoever;

“Water works” or “Works” means any reservoir well bore tank aqueduct tunnel building engine pipe or other works constructed or erected before the passing of this Ordinance and vesting in the Board or by this Ordinance authorized to be constructed or erected with the appurtenances.

---

(3) See Proclamation dated 18.2.1921, published in *Papua Govt. Gaz.* of 2.3.1921, and printed on p. 1468; and the consequent notice dated 23.2.1921, published in *Papua Govt. Gaz.* of 2.3.1921, and printed on p. 1470.

## WATER SUPPLY—

### PART 2.—CONSTITUTION OF WATER AREAS.

Constitution of  
water areas.

5. The Board may from time to time with the approval of the Administrator declare any district place or town to be a water area<sup>(4)</sup> for the purposes of this Ordinance and may define the boundaries thereof.

The Board may in like manner alter add to or abolish any area constituted as aforesaid.

### PART 3.—CONSTITUTION OF BOARD AND ADMINISTRATION.

The Board a  
body  
corporate.

6.—(1.) For the purposes of this Ordinance there shall be a Water Board which shall be charged with the general administration of this Ordinance.

(2.) The Board shall be a body corporate with perpetual succession and a common seal and may acquire hold and dispose of real and personal property and shall be capable of suing and being sued.

(3.) All Courts judges and persons acting judicially shall take judicial notice of the seal of the Board affixed to any document or notice and shall deem that it was duly affixed.

Constitution  
and meetings  
of Board.

7.—(1.) The Board shall consist of the Director of Public Works and not less than three members nor more than five members who shall be appointed by the Administrator.

(2.) The Director shall be *ex officio* Chairman of the Board.

(3.) In the case of illness or absence from the Territory of the Director the officer acting in that position shall be *ex officio* Chairman of the Board.

(4.) At the first meeting of the Board in each year the members may elect one of their number to be Deputy Chairman until the first meeting in the next calendar year.

(5.) In the absence of the Chairman from any meeting the Deputy Chairman shall preside and whilst so presiding shall and may exercise all the powers of the Chairman.

(6.) A quorum of the Board shall consist of the Chairman or Deputy Chairman and two members.

(7.) At any meeting of the Board at which the Chairman is present he shall have a deliberative vote and in the event of equality of voting a second or casting vote.

(8.)—

(a) As soon as practicable after the commencement of this

---

(4) No water areas have been declared by any instrument published in Papua Govt. Gaz.

Ordinance the Administrator may appoint a member to the Board to represent the rate-payers but such member shall notwithstanding anything elsewhere contained in this Ordinance only continue a member of the Board until a member is appointed in his stead as hereinafter set forth;

- (b) As soon as practicable after the thirty-first day of December following the commencement of this Ordinance the rate-payers may select in a manner to be prescribed by by-laws a person as their representative and the Administrator may thereupon appoint such person a member of the Board;
- (c) When any member appointed in pursuance of this subsection shall cease to be or become incapable of acting as a member of the Board a person may be selected and appointed as the rate-payers' representative in his stead in the manner set forth in the preceding sub-paragraph of this subsection.

8. Meetings of the Board shall be convened by the Chairman by notice in writing to the members: Provided that the Administrator may at any time direct a meeting of the Board at such time and place as he shall specify. Convening meetings.

9.—(1.) Members of the Board shall be appointed for a period of three years but shall be eligible for reappointment. Period of appointment.

(2.) The Chairman and members of the Board may be paid such remuneration as the Minister may determine. Such remuneration may be paid from the moneys at the credit of the Water Board Account. Remuneration of Board.

10. The Administrator may at any time cancel the appointment of any member of the Board. Cancellation of appointment.

11. Any member may resign his office by writing under his hand addressed to the Chairman and the resignation shall be complete from the time it is received by the Chairman. Resignation.

#### PART 4.—POWERS OF THE BOARD.

12.—(1.) The Board may from time to time subject to the approval of the Administrator in Council make alter and repeal by-laws<sup>(5)</sup>—

- (1) for regulating the time for holding meetings of the Board the summoning adjournment and conduct of the business thereof; Meetings.

---

(5) No by-laws have been made.

WATER SUPPLY—

- Conduct, etc., of officers. (2) for regulating the conduct of officers and servants appointed or employed under or for the purposes of this Ordinance and their remuneration;
- Form of contracts. (3) for regulating the form of contracts to be entered into with the Board and generally for carrying into effect the purposes of this Ordinance;
- Levying water rates. (4) for determining making levying and collecting water rates to be paid in each water area in respect of land and premises liable to be rated under this Ordinance;
- Exemptions from rates. (5) for exempting allotments or land from the payment of any water rates;
- Conditions of supply. (6) for fixing the terms and conditions upon which the Board will supply water including when it will be supplied free;
- Charges for water by measure. (7) for fixing a scale of charges for water supplied in each water area by measure and the minimum quantity of water to be charged for where water is so supplied;
- Times of payment. (8) for determining the times at which any charge for water supplied under agreement or otherwise shall be payable whether in advance or otherwise;
- Extra charges for water supplied at distance from main. (9) for imposing extra charges for water supplied for special purposes or in places distant more than a distance determined by the Board from the main-pipe;
- Materials and work. (10) for regulating the number form material dimensions construction and arrangement of pipes fittings and other works supplying water from the pipes of the Board to adjacent land or premises the time of execution and the notices to be given for such works the superintendence thereof the making good and replacement of ground which may be displaced in the course of such works and for inspecting at reasonable times pipes and fittings whether situate within buildings or otherwise;
- Meters. (11) for regulating the construction disposition and inspection of meters and for requiring that for the purposes of permitting the reading of the meters meters shall be kept free from obstruction;
- Maximum quantity of water. (12) for regulating the quantity of water each consumer is in each year entitled to use in respect of his rates;
- Waste. (13) for preventing the waste or misuse of water whether supplied by meter or otherwise;

*Port Moresby Water Supply Ordinance, 1941.*

- |   |                              |
|---|------------------------------|
| (14) for preventing unauthorized persons using directly or indirectly water supplied by the Board;  | Unauthorized use.            |
| (15) for compelling persons using water supplied by the Board to keep their pipes fittings and other appliances in proper repair for preventing any alteration of or interference with such pipes or fittings without the consent or <sup>(5A)</sup> notice to the Board for repairing such pipes fittings or appliances so as to prevent waste of water and for recovering the cost of such repairs; | Proper repair of pipes, etc. |
| (16) for licensing competent plumbers and regulating their charges and also for preventing unlicensed plumbers or other persons from fixing altering or repairing any pipes fittings or meters connected with the pipes or works of the Board and for imposing penalties on licensed plumbers for breaches of the by-laws;  | Licensing of plumbers.       |
| (17) for preventing persons from wilfully or negligently injuring or interfering with any pipe lock cock valve engine or work of the Board and from doing any other wilful act whereby the water supplied by the Board may be wasted;   | Wilful damage.               |
| (18) for preventing and regulating the use in connection with the supply of water by the Board of any pipe tap cock or other fitting unless tested and stamped in a manner approved by the Board;   | Untested fittings.           |
| (19) for prescribing the fee to be charged for licences issued pursuant to this Ordinance and other fees in connection with this Ordinance;   | Licence fees.                |
| (20) for prescribing the conditions upon which the Board will undertake to do plumbing for consumers or intending consumers;  | Plumbing by Board.           |
| (21) for defining catchment areas and providing for their protection from pollution;  | Catchment areas.             |
| (22) for prescribing the conditions upon which water may be supplied to ships.  | Supply of water to ships.    |

(2.) The Board may by such by-laws impose such reasonable penalties as it may think fit not exceeding Twenty pounds for any breach of the by-laws and in case of a continuing offence a further penalty not exceeding Five pounds for each day after notice of such offence shall have been given by the Board to the offender. Penalties.

(3.) Every such by-law after it has been approved by the Administrator in Council shall be published in the *Gazette* and shall thereupon have the force of law. Publication of by-laws.

(5A) The words "the consent or" appeared in the original Ordinance. *Semble*, "the consent of or" was intended.

WATER SUPPLY—

Evidence of making of by-law.

(4.) The production of the *Gazette* containing such by-law shall be in any Court sufficient evidence that it has been duly made.

Power of Board to enter into contracts.

13.—(1.) The Board may make and enter into contracts and agreements for the purchase of any lands or easements in and over land or for any materials and for construction of any works which are authorized to be made under and in pursuance of this Ordinance. All such contracts or agreements shall be in the name of the Board.

Power of Board to borrow.

(2.) For the purposes of this section the Board may borrow from the Government of the Territory upon such terms as may be agreed between such Government and the Board.

Power of Board to do certain acts and works.

14.—(1.) For the purpose of constructing completing extending or maintaining any waterworks or for supplying water to or in any water area or for the purpose of ascertaining whether land is suitable for the construction of waterworks thereon or for any incidental purpose or otherwise for the purpose of carrying into effect the provisions of this Ordinance the Board may exercise any of the following powers that is to say:—

Entry upon lands.

(a) May enter upon any lands and take levels of the same and set out such parts thereof as it shall think necessary and dig break and trench soil of such lands and remove or use all earth stone minerals trees or other things dug obtained or taken out of or from the same;

Occupation of land.

(b) May enter upon take and hold either temporarily or permanently such lands as it may think necessary for the construction maintenance repair and improvement of any waterworks authorized or to be authorized under this Ordinance or for obtaining or enlarging the supply of water or improving the quality thereof or otherwise for the purposes of this Ordinance: Provided however that when land is taken permanently for the purposes of this Ordinance as far as practicable it shall be acquired in the manner prescribed by the *Land Ordinance, 1911-1940*, or the *Lands Acquisition Ordinance, 1914*;

Construct works on land.

(c) 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 upon the lands streams and watercourses authorized to be taken by the Board for supplying the inhabitants of any water area with water;

Divert water.

(d) May from time to time divert and impound water from any streams or springs as it may think fit and alter



*Port Moresby Water Supply Ordinance, 1941.*

the course of the same and also take the water from such streams or springs and also any water as may be found in or under or on any lands so to be taken for the purposes of this Ordinance;

- (e) May enter upon any Crown or private lands streets roads or thoroughfares and lay or place therein any pipes and may repair alter cut off or remove the same and may enter upon such lands streets roads or thoroughfares for the purpose of repairing any watercourse pipes or other works being the property of the Board.
- Entry upon lands, &c., to lay pipes, &c.

(2.) In the exercise of the powers conferred by this section the Board shall inflict as little damage as may be and in all cases shall make full compensation to all parties interested for all damage sustained by them through the exercise of such powers.

**15. The Board may—**

- (a) open and break up the soil and pavement of the several streets within or beyond the limits of a water area;
- (b) open and break up any sewers drains or tunnels within or under such streets;
- (c) lay down and place within such streets any pipes conduits and other works necessary for the supply of water pursuant to this Ordinance.
- Further powers of Board to break up streets, &c.

**16. The Board shall with all practicable speed and without undue delay cause streets pavements and drains broken up pursuant to the powers conferred upon the Board under this Ordinance to be reinstated.**

Reinstatement of streets.

**17.—(1.) The Board may authorize such persons as it thinks proper to do all or any acts matters and things which the Board is by this Ordinance empowered or required to do.**

Power to delegate.

(2.) Every person so authorized shall have and enjoy all such and the like powers as are hereby conferred upon the Board to enable him to do all such acts matters and things respectively.

(3.) All such acts matters and things when done under such authority shall be as valid and effectual as if they had been done by the Board and every person so authorized shall have and enjoy in respect of each such act matter or thing so done by him all such immunities from personal liability as the Board would have had or enjoyed if it had done such act matter or thing.

**18.—(1.) The whole of the waterworks known as the Port Moresby Water Supply Undertaking shall from the coming into**

Vesting of property in Board.

## WATER SUPPLY—

operation of this section as hereinafter provided together with all the lands goods materials and things forming part of it vest in the Board and shall be and be deemed the property thereof and shall be held by the Board for the purposes of this Ordinance.

(2.) Notwithstanding anything elsewhere contained in this Ordinance the provisions of this section shall only come into operation from a date to be fixed by the Administrator by notice<sup>(6)</sup> in the *Gazette*.

Judgment  
against Board.

19.—(1.) When in any proceedings against the Board judgment is recovered against it upon production of a certificate of such judgment and upon being satisfied that no appeal is pending the Treasurer may satisfy the judgment out of the moneys held to the credit of the Board.

(2.) No member of the Board shall be personally liable to pay or make good any sum of money which shall at any time be recoverable from the Board as damages or otherwise in respect of any act done or omitted to be done by the Board in the bona fide belief that it was acting within the authority conferred by this Ordinance or the by-laws thereunder.

### PART 5.—SUPPLY OF WATER AND PROTECTION OF WORKS.

Port Moresby  
streets.

20. The Board shall supply water free of charge and in sufficient quantities for the watering of the streets of the Town of Port Moresby and in such other places as it shall deem necessary.

Fire-plugs.

21. The Board shall in every water area fix proper hydrants in the main and other pipes which it considers proper and convenient for the extinguishment of fire. The Board may fix a special rate to defray the cost in respect of such premises as are served by the hydrants.

Water for fire  
extinguishing.

22. The Board shall at all times unless prevented by drought or unavoidable accident keep charged with water all pipes to which hydrants are attached and shall at all times allow persons to use such water for the purpose only of extinguishing fire.

General supply  
of water.

23.—(1.) The Board shall in each water area unless prevented by drought or other unavoidable cause or accident distribute to all persons entitled thereto under this Ordinance a constant supply of water in the manner prescribed by this Ordinance and the by-laws thereunder.

(2.) The Board shall not be liable to supply any person in a

---

(6) Section 18 has not yet been notified to come into operation.

street water area with water until such time as a main-pipe has been laid down in the street.

24. The Board may cut off the water supply from any land or premises when the same has been unoccupied for three months and whenever the land is again occupied the water supply shall be restored upon application in writing by the owner together with the cost of cutting off and restoration. Cutting off the water shall not relieve the owner or occupier of any such land or premises from any liability to pay water rates.

Power to cut off water to unoccupied land.

25. Whenever the quantity of water available has diminished to such an extent that it is expedient in the opinion of the Board to diminish the supply of water the Board with the approval of the Administrator and after giving public notice of its intention so to do may—

Power to discontinue supply.

- (a) lessen the supply of water throughout the whole or part of a water area to such extent for such time and in such manner as it thinks proper; or
- (b) lessen the supply to any particular class or classes of consumers; or
- (c) for such time as it thinks fit discontinue the supply for any particular purpose:

Provided that in the execution of the powers conferred by this section the Board shall as far as practicable maintain a constant and undiminished supply of water for domestic purposes.

26.—(1.) When an owner or occupier gives notice of his desire to lay a pipe to connect with and tap any main-pipe of the Board such owner or occupier shall provide and bear the cost of all labour and materials necessary for such connection and for the restoration of the ground to the satisfaction of the Board and shall be liable for the consequences of failure in so doing and shall pay in advance to the Board the expense of tapping the main-pipe at such rates as are from time to time determined by the Board.

Duty of Board on request to lay communication pipe to main.

(2.) The owner of the land to which the communication pipe connects shall upon receiving notice from the Board that such pipe requires repairing immediately proceed to repair it and he shall be liable for any loss of water or other damage occasioned by such pipe being leaky or otherwise out of repair or broken and the Board may stop the flow of water to the land until the necessary repairs have been effected.

(3.) The Board may on receiving from the owner or occupier of lands or premises in any street in which a main-pipe has been laid down a written request that the Board connect his lands or

## WATER SUPPLY—

premises with such main-pipe provide and lay down to the edge of the same street nearest to such land or premises and fix in readiness for use and thereafter at the like request on receiving due notice in that behalf keep in repair communication pipes and other fittings and do all such acts and construct such works as it shall deem proper for complying with and carrying out such request.

(4.) The Board may in like manner and under like circumstances provide lay down and fix pipes for supplying water by measure to any person entitled thereto under any agreement.

(5.) The cost of any work carried out by the Board pursuant to this section and the cost of the materials used in connection therewith shall be borne by the applicant.

Power to erect  
standpipes  
and sell water.

27. The Board may erect standpipes at any place and may from any such standpipe sell water by measure to any person at such price and at such times and upon such conditions as it may think fit.

Supply  
through meter.

28.—(1.) The Board may by notice in writing direct that any person being a consumer supplied with water or desiring to be supplied with water whether for domestic purposes solely or otherwise shall be supplied under agreement through a meter.

Sale by  
measure.

(2.) The Board may enter into agreements with the owners or occupiers of any lands or premises to supply them in such lands or premises with water by measure at such rates upon such terms and subject to such conditions as may from time to time be fixed by the Board.

(3.) The Board and every other party to such agreement shall be deemed to have entered into and signed it subject to the provisions of this Ordinance and the by-laws thereunder and which may from time to time be in force.

The owner or occupier of the land shall be bound by the agreement and every subsequent owner or occupier of the said land or premises.

(4.) The moneys payable under any such agreement shall be deemed and be recoverable as water rates.

Power of  
Board to let  
meters.

29.—(1.) The Board may let for hire to any consumer of water supplied under agreement any meter or instrument for measuring the quantity of water supplied and consumed and any pipes and apparatus for the conveyance reception and storage of water for such remuneration and upon such terms and conditions as the Board and the consumer may agree upon and all money due in respect of such hiring shall be recoverable from the consumer.

*Port Moresby Water Supply Ordinance, 1941.*

(2.) The said meters instruments pipes and apparatus shall not be subject to distress for rent or in execution under any process of law.

30. No person other than the Board shall provide any meter for the supply of water under this Ordinance and no person other than a person authorized by the Board shall fix refix remove alter repair or interfere with any such meter.

Meters not to be interfered with.

31. The Board may prescribe in its by-laws the annual fee to be charged for the use of a meter for measuring water supplied under this Ordinance.

Charges for meters.

32. If any meter in use ceases to register or is reported as out of repair or registering inaccurately the Board shall in cases where the consumer pays for water upon the quantity disclosed by the meter estimate and charge for the water consumed during the period for which the meter is not in working order and until it is repaired and reaffixed—

Fair average.

(a) if a reading of the meter was recorded for a corresponding period of the previous year the quantity of water supplied shall be calculated upon the basis of a daily consumption equal to the average daily consumption during such corresponding period of the previous year; or

(b) if no reading was recorded for the corresponding period of the previous year the quantity of water supplied shall be calculated upon a basis of a daily consumption equal to the average daily consumption during the period covered by the first reading after the meter has been adjusted or another meter fixed in its place.

33. If any person other than a person authorized by the Board fixes refixes opens tampers with breaks removes alters repairs or in any manner interferes with a meter for measuring water supplied under this Ordinance such person shall be liable to a penalty not exceeding Twenty pounds and shall in addition pay to the Board the cost of all necessary repairs alterations and replacements of such meter and fittings.

Penalty for interfering with meter.

34. Every person supplied with water by the Board shall keep such part of the communication pipe and stop-cock drains and other works and fittings as shall be within his own premises in good repair so as effectually to prevent waste of water. In case any such person fails to keep the same in good repair the Board may

Fittings to be left in good repair.

## WATER SUPPLY—

in addition to any other remedy it may possess cut off the pipe or turn the water from the premises of such person until such repairs are placed in good repair.

Penalty for interference with pipes, etc.

35.—(1.) The owner or occupier of any land or premises supplied with water by the Board or any consumer of water supplied by the Director or any other person shall not affix or cause to be affixed any pipe fitting or apparatus to a pipe belonging to or used by such owner or occupier consumer or any other person or make any alteration or addition to any such communication or service pipe fitting or apparatus connected therewith without the consent in every such case of the Board.

(2.) If any person acts in any respect in contravention of the provisions of this section he shall for each such offence be liable to a penalty not exceeding Five pounds without prejudice to the right of the Board to recover damages from him in respect of any injury done to its property.

Use of fittings.

36. No person shall use or place in or upon or affix or attach to or permit to be used or placed in or upon or affixed or attached to any lands or premises supplied or to be supplied with water under this Ordinance for the purpose or with the intent of thereby using taking conveying or delivering such water any bath water-closet receptacle or fitting other than such as are by any by-law prescribed or permitted by the Board. Penalty Five pounds.

Board may refuse supply.

37. The Water Board may refuse to supply water to any person by whom any money is due to the Board in respect of rates or water supplied under this Ordinance if such money is unpaid for thirty days after it becomes due and payable.

Power of entry.

38. Any person duly authorized by the Board may at all reasonable times enter upon any land and premises to which water is or is intended to be supplied under this Ordinance and may place and fix thereon and attach thereto whichever the Board thinks proper such fittings as it thinks expedient for the purpose of supplying water and may there do all other acts and execute all other works as the Board thinks proper for that purpose.

Penalty for diverting water without authority.

39. Any person who without proper authority under this Ordinance takes uses diverts or does any act whereby the water the property of the Board is diminished except as authorized in this Ordinance is guilty of an offence and shall be liable to a penalty not exceeding Twenty pounds and shall be in addition to the aforesaid penalty liable to pay to the Board the damages sustained by reason of the supply of water being diminished.

40. Any person entitled to receive water from the Board who uses it for some purpose other than the purpose for which it was supplied shall be guilty of an offence and liable upon conviction to a penalty not exceeding Five pounds and shall also be liable to pay for the water misused.

Wrongful use  
of water.

PART 6.—ASSESSMENT RATING AND RECOVERY OF RATES.

41. The Water Board may make and levy water rates.

Water rates.

42. Except as hereinafter provided water rates may be made and levied in respect of both occupied and vacant allotments or land and which allotments or land are at any point within three hundred feet of a main-pipe from which the Board is prepared to supply water to such allotments or land.

Water rates  
when payable.

The Board shall upon laying down a main-pipe by notice published in a local newspaper notify the allotments or land to which it is prepared to supply water as aforesaid and the rate shall become payable at the expiration of seven days from such publication or from any other time not being less than seven days specified in the said notice.

43. All land in a water area including Crown land shall be rateable except—

Rateable land.

- (a) commons public parks and public reserves not held under lease or licence;
- (b) sites of cemeteries public hospitals benevolent institutions and buildings used exclusively for charitable purposes;
- (c) sites of churches and other buildings used exclusively for public worship;
- (d) Crown lands which are unoccupied and not leased;
- (e) lands held by the Crown in the right of the Commonwealth whether occupied or not;
- (f) land exempt pursuant to any by-law.

44. The Water Board shall define by by-laws<sup>(7)</sup> the principle upon which the amount of water rates shall be assessed which principle may be in proportion to the improved or unimproved value of the allotment or land or upon the superficial area of the allotment or the superficial area of the floors of the buildings thereon or upon any other basis and may be upon one basis with respect

Principle of  
assessment.

(7) No by-laws have been made.

## WATER SUPPLY—

to some allotments and upon another basis with respect to other allotments.

Value how  
ascertained.

45. When the water rates are based upon the value of the allotment whether it be upon the improved or unimproved value such value shall be ascertained by the Board.

Rate book.

46. The Board shall as soon as practicable after the commencement of this Ordinance and thereafter annually prepare a rate book showing the value of all rateable allotments or land and a notice of the making of the list shall be forthwith published in a local newspaper.

Assessment  
on values.

47. When water rates are assessed in proportion to the value of an allotment or land whether improved or unimproved the value for the purposes of this Ordinance shall be the value as set out in the rate book.

When values  
to take effect.

48. Immediately upon the publication of the notice of the making of the valuations those valuations shall be deemed to have been in force from the first day of January of the year in which they were made.

Inspection.

49. Any person shall as of right at any reasonable time be entitled to inspect the rate book free of charge.

Notice of rate.

50. Immediately after the water rate has been made the Board shall cause to be delivered or transmitted by post to each owner or occupier who is liable to pay such rate or where there is no inhabitant occupier of any allotment and the owner's address is unknown shall post in some conspicuous place on the allotment and shall publish in a local newspaper particulars in writing of the rate made and to be collected in respect of such allotment the time allowed for paying the same and the consequence of failing to do so within such time.

Appeal.

51. Any person feeling himself aggrieved by the amount of the water rate payable in respect of his property may within one month of receipt of the rate notice appeal against the same to the nearest Court of Petty Sessions but no such appeal shall be entertained unless seven days' notice thereof is given to the Water Board.

Amendment of  
rate.

52. The Court of Petty Sessions shall hear and determine the objection and shall have power to amend the amount of the rate and the decision of such Court shall be final.

Liability for  
water rate.

53. The owner of the allotment or land which is rateable shall be liable for the rates payable in respect of such allotment or land



*Port Moresby Water Supply Ordinance, 1941.*

unless it is otherwise provided by the by-laws under this Ordinance or by agreement with the Board. Such rates shall constitute a first charge upon the allotment or land.

54. Where land is rateable for portion only of a year the amount of the rates payable in respect of such portion of that year shall be such amount as bears the same proportion to the amount of the rate payable for the whole year as the portion of the year during which the land is rateable bears to a period of twelve months.

Land rateable  
for portion of  
year.

55. When rates have become due and payable and remain unpaid there shall be added thereto a penalty computed at the rate of five per centum per annum on the amount from the time it became due and payable until payment.

Penalty for  
non-payment of  
rates.

56.—(1.) Whenever any rates and the penalty due thereon are not paid at the expiration of three months after the date on which the rates first became due and payable the Board with the approval of the Administrator may cause a notice to be published in the *Gazette* or in a newspaper circulating within the Territory specifying the land the owner and the amount of rates and penalty thereon.

Levy and  
distress.

(2.) If the rates and penalty are not paid at the expiration of thirty days from the publication of such notification in pursuance of the preceding subsection of this section the amount of the rates and the penalty thereon may be recovered by distress and sale of any goods and chattels belonging to the person liable to pay the rates found on the land in respect of which the rates are due together with the costs and expenses of the distress and sale and for that purpose the Board may issue a warrant in accordance with the form in the Schedule hereto.

(3.) The proceeds of the sale of any distrained goods and chattels shall be applied—

(a) in payment of the costs and expenses of the distress and sale; and

(b) in payment of the amount of the rates and the penalty due thereon

and the balance if any shall be paid to the owner of the goods.

(4.) The costs and expenses of the distress and sale shall not exceed:—

For each warrant—One shilling;

For man in possession—each day or part of a day Fifteen shillings;

For inventory sale commission and delivery of goods—five per centum of the proceeds of the sale.

WATER SUPPLY—

(5.) A Bailiff of any Court of inferior jurisdiction in the Territory shall upon the request of the Board execute a warrant of distress issued under the provisions of this section.

Publication of  
overdue rates.

57. When the rates due in respect of any rateable land have been unpaid and in arrear for a period of one year the Board may with the approval of the Administrator give notice by registered letter addressed to the owner at his last known place of abode that the rates are due and are unpaid and in arrear and may at any time after the giving of that notice publish in the *Gazette* a notice setting out the land in respect of which the rates are due and unpaid and in arrear.

Power to take  
possession, etc.

58.—(1.) If the rates and penalty due thereon are not paid at the expiration of thirty days of the publication of the notice in the *Gazette* in pursuance of the preceding section the Board may with the approval of the Administrator if the land is unoccupied—

- (a) take possession of the land;
- (b) hold the land against any person; and
- (c) lease the land from time to time for any term not exceeding five years.

(2.) The Board after so taking possession shall cause accounts to be kept—

- (a) of the rents and other moneys derived by the Board in respect of the land and the expenses of and incidental to the letting and collection thereof;
- (b) of the rates and penalty due thereon and other sums due to the Board in respect of the land.

(3.) The rents and moneys so received shall be applied in defraying the expenses necessarily incurred by the Board in executing the lease in collecting the rents and moneys and in payment of the rates and penalty and the balance if any shall belong to the person who would have been entitled to receive the rents and profits if the Board had not taken possession.

(4.) Within ten years after the land has been taken possession of by the Board in accordance with the provisions of this section any person who but for the provisions of this Ordinance would be entitled to the land may inspect the accounts and may require the Board on payment of the balance due if any to put him in possession whereupon the Board shall comply with such requirements. Any balance in favour of the claimant shall be paid to him forthwith.

(5.) Unless some person claims the land in the manner set forth in the preceding subsection of this section and unless the land is

sooner sold the land and all the rents and moneys in respect thereof shall at the expiration of the said period of ten years become the property of the Board absolutely.

59.—(1.) When rates remain due and payable and in arrears for a period of one year after the publication of the notice referred to in Subsection One of Section Fifty-six of this Ordinance the Board may with the approval of the Administrator apply to the Supreme Court for an order for sale of all or any part of the rateable land.

Sale of rateable land.

(2.) On the hearing of the application the Court may upon being satisfied that the requirements of the preceding subsection of this section have been observed order the sale of the property in such manner as the Court may direct.

(3.) The Court may order payment out of the proceeds of the sale of the amount due to the Board and the balance shall remain for the person entitled thereto.

(4.) Notwithstanding any such order for sale if the owner at any time pays the rates penalty thereon and costs and expenses incurred up to the time of such payment the application and order thereon shall without any order of the Court be abandoned so far as regards the lands in respect of which the rates penalty costs and expenses are paid.

60. Any owner whose land has been sold for arrears of rates or if the land was mortgaged the mortgagee thereof shall without any order of the Court upon handing over to the Registrar of the Supreme Court the instruments of title of the land sold be entitled to and shall be paid the surplus moneys in Court.

Sale of rateable land, application of proceeds.

61. Where rates are due and unpaid in respect of any rateable land within the Territory the Board may sue for and recover from the owner or any other person liable for the payment thereof the amount of the rates together with the penalty due thereon in any Court of the Territory of competent jurisdiction.

Recovery of rates, legal proceedings.

62. When an owner of rateable land sells or otherwise disposes of such land he shall give notice thereof to the Board and until such notice is given he shall continue liable for the rates and penalty thereon in respect of the land as if he were still the owner.

Liability of owner for rates.

63. Joint owners shall be jointly and severally liable for the whole amount of the rates due in respect of the land but as between themselves each shall only be liable for his share.

Joint owners.

## WATER SUPPLY—

Refund of  
rates, etc.

64. The Board may refund any rates or penalties overpaid and may remit the penalty imposed by Section Fifty-five of this Ordinance when its imposition would in the circumstances of the particular penalty be in the opinion of the Board inequitable.

### PART 7.—FINANCIAL.

Water Board  
Account.

65. All moneys received by the Board shall be paid to the Treasurer who shall place them to the credit of an account to be known as the Water Board Account.

Books and  
accounts.

66.—(1.) The Board shall cause books to be provided and kept and regular accounts to be entered therein in respect of moneys under its control so as to show—

(a) assets liabilities income and expenditure;

(b) sources of income and purposes of expenditure.

(2.) Such accounts shall be kept in the manner prescribed for the keeping of accounts of the Government of the Territory.

Expenditure  
how charged.

67. Expenditure by the Board shall be charged against income and capital as nearly as may be in accordance with commercial principles.

Annual Report.

68. The Board shall cause an annual report of its operations and an annual statement of its accounts to be prepared and forwarded to the Administrator as soon as practicable after the thirty-first day of December in each year.

Such annual report and statement shall be published in the *Gazette* within the period of three months of its receipt by the Administrator.

Audit.

69. All accounts kept by the Board shall be subject to audit in the same manner as accounts of the Government of the Territory.

### PART 8.—MISCELLANEOUS.

Summary  
procedure.

70. All proceedings for offences against this Ordinance shall unless otherwise indicated be taken summarily.

Appropriation  
of moneys.

71. All fines penalties and other moneys levied or recovered by the Board under this Ordinance shall so far as it is not otherwise appropriated be paid to the Treasurer and carried by him to the Water Board Account.

Meter register  
prima facie  
evidence.

72.—(1.) The register of every meter provided by the Board or a copy thereof certified to be a true copy by an agent of the Board under this Ordinance shall be prima facie evidence of the quantity of water consumed.

*Port Moresby Water Supply Ordinance, 1941.*

(2.) If the accuracy of the meter is questioned by the consumer and notice in writing thereof is given to the Board accompanied by a fee of Ten shillings the meter shall be tested by the proper officer of the Board.

(3.) If the meter is found upon such test to register correctly or less than the amount of water passing through the meter the fee of Ten shillings shall be paid into the Water Board Account.

(4.) If however the meter is found upon such test to register more than two per cent. in excess of the amount of water passing through the meter shall be repaired and replaced or renewed without charge to the consumer and the fee of Ten shillings returned to the consumer.

73. Every penalty imposed by this Ordinance or by any by-law made thereunder may be proceeded for and enforced either against the person actually committing the same or the person in whose employment he is or on whose behalf he is acting.

Persons liable  
for penalties.

74.—(1.) All proceedings other than proceedings for an offence against this Ordinance to be commenced against any person for anything done or omitted to be done in pursuance of this Ordinance shall be commenced within three months after the act was committed or omitted as the case may be and not otherwise. Notice in writing of the action and the cause thereof shall be given to the defendant one month at least before the commencement of the action.

Proceedings  
against person  
acting under  
Ordinance.

(2.) In any such action the defendant may plead the general issue and give this Ordinance and the special matter in evidence at the trial.

(3.) No plaintiff shall recover in any such action if tender of sufficient amends as hereinafter mentioned has been made before such action brought or if a sufficient sum has been paid into Court together with the costs incurred up to that time after action brought.

(4.) If a verdict is given for the defendant or the plaintiff in any such action becomes non-suited or discontinues or if otherwise judgment is given against the plaintiff the defendant shall recover his full costs as between solicitor and client and have the like remedy for the same as any defendant has by law in other cases.

(5.) Notwithstanding that a verdict is given for the plaintiff in any such action the plaintiff shall not have costs against the defendant unless the Court certifies in writing at the conclusion of the trial its approbation of the action and verdict obtained thereon.

WATER SUPPLY—

Evidence.

75. In all proceedings for recovery of rates the allegation by the Board that a person is the owner or occupier of any rateable land shall be prima facie evidence of the fact.

Existence of communication pipe evidence.

76. The existence of a communication pipe or pipes between a main-pipe of the Board and any land or premises shall in any legal proceedings be conclusive evidence that the owner and the occupier of the land or premises for the time being have severally contracted with the Board for the supply of water to them respectively in accordance with this Ordinance.

Non-supply of water, Board not liable for.

77. The Board shall not be liable to an action for damages by reason of non-supply of water caused by any defect in pipes or otherwise or by reason of stopping water for purposes of repairs or alterations to any pipe or part of the waterworks or for any other act done in the execution of this Ordinance.

SCHEDULE.

Schedule.

TERRITORY OF PAPUA.

Port Moresby Water Supply Ordinance, 1941.

WARRANT OF DISTRESS.

To

WHEREAS the rates and penalty due thereon set forth in the Schedule hereunder are due and unpaid and are recoverable in the manner prescribed by Section 56 of the above Ordinance. Now therefore you are hereby required and authorized forthwith to make distress of any goods and chattels found by you on the land hereunder described in respect of which the rates are due and to sell the goods and chattels belonging to the person liable for the said rates and penalty distrained and to apply the proceeds of sale as follows:—

Firstly—In payment of the costs and expenses of distress and sale.

Secondly—In payment of the rates and penalty due thereon.

Thirdly—In payment to the owner of any balance then remaining.

And you are further required to certify to the Water Board on or before the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, what you do by virtue of this Warrant.

SCHEDULE.

Name of Owner  
Description of land  
Amount of rates and penalty thereon  
Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

By order of the Board,  
Chairman.