

[3 EDW. 7.] *Auchterarder Town Council Order* [Ch. ccxxix.]
Confirmation Act, 1903.



CHAPTER ccxxix.

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act 1899 relating to the Burgh of Auchterarder. [14th August 1903.] A.D. 1903.

WHEREAS His Majesty's Secretary for Scotland has made the Provisional Order set forth in the schedule hereunto annexed under the provisions of the Private Legislation Procedure (Scotland) Act 1899 and it is requisite that the said Order should be confirmed by Parliament: 62 & 63 Vict. c. 47.

Be it therefore enacted by the King's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same as follows:—

1. The Provisional Order contained in the schedule hereunto annexed shall be and the same is hereby confirmed. Confirmation of Order in schedule.

2. This Act may be cited as the Auchterarder Town Council Order Confirmation Act 1903. Short title.

A.D. 1903.

SCHEDULE.

AUCHTERARDER TOWN COUNCIL.

Provisional Order to vest in the Provost Magistrates and Councillors of the Burgh of Auchterarder the Rights and Interests of the Auchterarder Water Committee in the Crook of the Moss Water Supply the Common Muir of Auchterarder the Giral House and Steelyard Trust Properties and the Aytoun Memorial Hall and for other purposes.

WHEREAS by bond of servitude dated 29th and recorded in the New Particular Register of Sasines Reversions &c. kept at Perth for Perthshire 30th August 1833 the late James Johnston Esquire of Kincardine granted and disposed to and in favour of certain persons who came to be known as the Auchterarder Water Committee (hereinafter called "the water committee") as trustees for behoof of themselves and the whole other proprietors and householders of the town of Auchterarder and the proprietors and householders of the said town for the time being in all time coming and to the successors of the said water committee to be chosen in manner thereafter mentioned such a supply of water from the springs at the Crook of the Moss on his the said James Johnston's farm of Middle Greenwells in the parish of Blackford as the water committee might choose to conduct to the town of Auchterarder in pipes of certain dimensions with liberty to the water committee to grant to Captain Hunter of Auchterarder and his successors in said estate such a supply of water as might be sufficient for his mansion-house and offices and garden he taking the water at his own expense from the main pipe in Auchterarder and paying for the said water at the same rate as the householders of the said town of Auchterarder and also with the powers and liberties and under the provisions and declarations mentioned in said bond of servitude and subject to the burden of payment to the said James Johnston and his heirs and successors whomsoever of an annual sum of 10*l.* sterling at Martinmas yearly :

And whereas the water committee has managed the said water supply in terms of the said bond of servitude to the present time :

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And whereas the provost magistrates and councillors of the burgh of Auchterarder (hereinafter called "the Town Council" and "the burgh" respectively) in the year 1901 in order to carry out as directed by the Local Government Board an underground system of drainage for the burgh introduced an auxiliary water supply by gravitation for which supply the inhabitants thereof fell to be assessed in terms of statute : A.D. 1903.

And whereas it has been found inexpedient to have the two water supplies under separate management :

And whereas the present proprietrix of said estate of Kincardine and the water committee have consented to the management of the said water supply from the Crook of the Moss and to the works and other properties connected therewith being transferred to the Town Council and it is expedient that such transfer should be carried out accordingly :

And whereas on 3rd July 1860 the Auchterarder Muir Improvement Act 1860 was passed "to authorise the improvement of the " Common Muir of Auchterarder in the county of Perth and to " regulate the management thereof and the application of the " revenues arising therefrom for the benefit of that burgh or town" :

And whereas by the said Act the lands known as the Common Muir of Auchterarder were vested in the Auchterarder Muir Commissioners (hereinafter called "the commissioners") and the necessary powers of management were conferred upon them including power to improve and cultivate the lands to grant leases to feu such portions as might be suitable for buildings and to work or let the stone quarry on the muir :

And whereas the commissioners were by the said Act directed and empowered to set apart and appropriate a portion of the lands for public recreation and other purposes and to maintain a curling pond at the south-west extremity of the muir and were also empowered to grant to any burial board or other constituted body a portion of the muir for the purpose of a burial ground and were also empowered to borrow for the purposes of the said Act on the security of the lands vested in them to an extent not exceeding 3,000*l.* :

And whereas the commissioners have since the passing of the said Act managed the said Common Muir and the funds and revenues arising therefrom and three acres having been given to the parish council of Auchterarder for a burial ground the remaining lands are held and administered by the commissioners for the

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A.D. 1903. — purposes of the said Act a portion being set apart and appropriated as a public park :

And whereas it was provided by the said Act that the funds and revenues coming into the hands of the commissioners in virtue thereof should after meeting certain outlays including the expenses of management and the payment of interest on borrowed money and of contributions to sinking fund be applied in maintaining and if necessary extending the supply of water already introduced into the burgh in paving and draining the said burgh or town in erecting and maintaining a town hall in erecting or rebuilding and maintaining other public buildings including accommodation for a public library and reading-room and in otherwise improving the said burgh or town :

And whereas no part of the revenues derived by the commissioners from the Common Muir has hitherto been applied to paving or draining the said burgh or town or to the erection of a town hall or other public building with accommodation for a library and reading-room :

And whereas many parts of the streets within the burgh being unpaved were upon requisition by the Town Council in virtue of the Burgh Police (Scotland) Act 1892 payed by the respective owners of properties abutting on the streets :

And whereas the gross annual revenues of the commissioners conform to Statement of Accounts made up by them for the year ending 6th December 1902 amounted to 210*l.* or thereby whereof 160*l.* or thereby was derived from rents and 50*l.* or thereby from feu-duties :

And whereas the debt on the said lands owing by the commissioners is 450*l.* which is being liquidated by means of a sinking fund amounting at said 6th December to 162*l.* 8*s.* 11*d.* and at said date there was a balance in the hands of the commissioners of 195*l.* 11*s.* 9*d.* in addition to said sinking fund :

And whereas the said Muir Improvement Act provided that a commissioner for the estate and barony of Auchterarder should be one of the commissioners and the present proprietors of that estate and barony are the trustees of the late James Reid Esquire of Auchterarder :

And whereas the purposes for which the funds and revenues of the said commissioners are directed to be applied have been largely superseded by the town of Auchterarder being in the year 1894 created a burgh under the Burgh Police (Scotland) Act 1892 :

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And whereas it is expedient and in the interests of the burgh that the property and funds of the said commissioners should be vested in the said Town Council in order that the funds and revenues thereof may be applied towards the purposes of the said Muir Improvement Act 1860 in so far as the said Act is not repealed by this Order and towards the reduction of the rates and assessments payable by the inhabitants of said burgh or otherwise for the purposes of the Burgh Police (Scotland) Act 1892: A.D. 1903.

And whereas by feu charter dated 30th and 31st May and 13th 16th and 30th June 1831 the trustees of the deceased Honourable Basil Cochrane of Auchterarder and of Portman Square Middlesex feued to John Sommerville seedsman Auchterarder and others as trustees for behoof of themselves and the whole other then proprietors of houses in the said town of Auchterarder and the proprietors of houses therein for the time being in all time coming and to the successors of the said trustees to be chosen in manner hereinafter mentioned the tenement or building in the town of Auchterarder denominated the Giral House and Guard House lying adjacent to the cross or market place of the said town and also the area in front thereof on which a steelyard had been placed the profits of which were thereby directed to be appropriated to the public benefit as hereinafter provided But the said subjects were so feued under the conditions provisions and declarations contained in the said feu charter and for payment to the granters thereof and their successors of the sum of one shilling sterling of feu duty at the term of Martinmas yearly and freeing and relieving them and their successors of all cess taxations ministers' stipends schoolmasters' salaries and all other public and parochial burdens imposed or to be imposed upon the foresaid subjects And it was thereby inter alia specially provided and declared that the rents and profits of the said subjects after deduction of annual public burdens and necessary current repairs and outgoings of every kind should be applied in the first instance to the liquidation of the debt or burden affecting the subjects and when the whole of the said debt or burden had been discharged the free yearly rents and profits might either be accumulated as a fund for further ameliorating and improving the said subjects or for any public purpose connected with the town of Auchterarder as should be determined at a general meeting of the proprietors In which subjects the said John Sommerville and others as trustees foresaid were duly infeft conform to instrument of sasine expedite in their favour dated

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A.D. 1903. 1st July and recorded in the New General Register of Sasines Reversions &c. at Edinburgh 29th August 1831 :

And whereas by disposition dated 18th and 20th October 1873 granted by William Hally manufacturer Auchterarder and others as trustees for the subscribers to the Aytoun Memorial Hall in Auchterarder the trustees of the Giral House and Steelyard foresaid acquired by purchase the ground situated at the back of the said hall and adjoining to the said Giral House and Steelyard as described in the said disposition :

And whereas the said whole subjects now known as the Giral House and Steelyard have been administered and managed by the trustees thereof and their successors in office in terms of the provisions of the said feu charter :

And whereas the said subjects were formerly let out as an hotel and are presently let to the Auchterarder Institute Committee for an institute public library and reading-room at an annual rent of 40% on lease which expires at the term of Whitsunday 1906 :

And whereas the debt on the said subjects has been liquidated and there remains a balance in hand as at 26th November 1902 of 51*l.* 1*s.* :

And whereas it is expedient that the said Giral House and Steelyard and the trust funds connected therewith and the management thereof should be vested in the said Town Council for behoof of the burgh to be administered by them under the provisions of the Burgh Police (Scotland) Act 1892 :

And whereas the trustees of the said Giral House and Steelyard have consented to the said property and funds being vested in the Town Council accordingly :

And whereas in the year 1866 it was resolved by some of the leading inhabitants of Auchterarder to erect a memorial to Captain Aytoun of Glendevon in recognition of the services rendered by him in connection with the introduction of the water supply from the Crook of the Moss :

And whereas it was resolved that the memorial should take the form of a public hall and fountain to be erected by voluntary subscription for the use and benefit of the public of Auchterarder and neighbourhood :

And whereas by disposition dated 17th January 1872 granted by William Thomson sometime engineer then game dealer residing in Dundee in favour of the said William Hally and others and the survivors or survivor of them and the heirs of the last survivor as

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trustees for the subscribers of the said Aytoun Hall Memorial and for the uses ends and purposes to be declared by the said subscribers or a majority of them at a meeting or meetings called for the purpose the ground immediately to the west of the Giral House and Steelyard as described in the said disposition was acquired for the erection of the said public hall and fountain : A.D. 1903.

And whereas upon part of the said ground there were erected the said public hall and fountain at a cost of 3,000*l.* or thereby inclusive of the price of the said ground :

And whereas at a general meeting of the said subscribers called for the purpose held on the 12th day of March 1873 a constitution for the regulation of the said hall and fountain was adjusted and approved of :

And whereas the said committee of subscribers and their successors in office have continued to manage the said hall in terms of the said constitution to the present time :

And whereas the said fountain which was erected in front of the said hall was taken down and removed many years ago in consequence of the scarcity of water :

And whereas at the present time the debt affecting the said hall amounts to the sum of 400*l.* for which amount the present members of the said committee have in terms of the said constitution granted a bill or promissory note :

And whereas the present members of committee have consented to the said hall being vested in the said Town Council and it is expedient so to vest it :

And whereas the purposes aforesaid cannot be effected without an Order of the Secretary for Scotland confirmed by Parliament under the provisions of the Private Legislation Procedure (Scotland) Act 1899 :

Now therefore in pursuance of the powers contained in the last-mentioned Act the Secretary for Scotland orders as follows :—

1. This Order may be cited for all purposes as the Auchterarder Town Council Order 1903. Short title.

2. In this Order unless the context otherwise requires—

The expression “the Town Council” means the provost magistrates and councillors of the burgh of Auchterarder:

The expression “the bond of servitude” means the bond of servitude granted by the late James Johnston Esquire of Kincardine in favour of the late Peter Clerk writer in

Interpreta-
tion.

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Auchterarder and others as trustees therein mentioned dated 29th and recorded in the New Particular Register of Sasines Reversions &c. kept at Perth for Perthshire 30th August 1833 and also recorded in the sheriff court books of the county of Perth 20th December 1849 :

The expression "the water committee" means the committee mentioned in the bond of servitude :

The expression "the Giral House and Steelyard" means the heritable properties situated on the north side of the High Street of Auchterarder being the subjects contained in instrument of sasine in favour of John Sommerville seedsman in Auchterarder and others as trustees therein mentioned dated 1st July and recorded in the New General Register of Sasines Reversions &c. at Edinburgh 29th August 1831 and in disposition in favour of Robert Mailer spirit merchant Auchterarder and others as trustees therein mentioned dated 18th and 20th October 1873 :

The expression "the Aytoun Hall property" means the heritable property situated on the north side of the High Street of Auchterarder being the subjects contained in disposition by William Thomson sometime engineer afterwards game dealer residing in Dundee in favour of William Hally manufacturer Auchterarder and others as trustees therein mentioned dated 17th January 1872 :

The expression "the Crook of the Moss water supply" means the supply of water obtained from the Crook of the Moss under and by virtue of the bond of servitude :

The expression "the Muir Improvement Act" means the Auchterarder Muir Improvement Act 1860 :

The expression "the commissioners" means the commissioners appointed in terms of the Muir Improvement Act :

The expression "the Common Muir" means the lands vested in the commissioners under and by virtue of the Muir Improvement Act :

The expression "the burgh assessments" means the assessments that fall to be levied from time to time by the Town Council :

The expression "the burgh" means the burgh of Auchterarder.

an sfer en ce
of Crook of
the Moss
water supply.

3. From and after the passing of the Act confirming this Order the rights and interests and duties and liabilities of the water committee under and by virtue of the bond of servitude

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together with the whole pipes reservoirs tanks wells and whole plant in connection with the Crook of the Moss water supply shall be transferred to and vested in the Town Council and thereupon the whole rights and interests and duties and liabilities of the said water committee shall cease and determine.

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4. The Town Council shall subject to the terms conditions provisions declarations and others specified in the bond of servitude and subject to the provisions of the immediately succeeding section manage and administer the Crook of the Moss water supply in the same manner and with the same powers as if the said supply had been introduced by the Town Council under and by virtue of the provisions of the Burgh Police (Scotland) Act 1892 and shall from time to time have power to borrow moneys for the renewal of the pipes and other works in connection with the said water supply or for the improvement thereof.

Managemen
and adminis-
tration of
Crook of the
Moss water
supply.

5. For the protection of the said trustees of the late James Reid Esquire of Auchterarder and their heirs and successors (in this section called "the Auchterarder proprietors") the following provisions shall unless otherwise agreed between the Town Council and the Auchterarder proprietors apply and have effect (that is to say) :—

For protec-
tion of Auch-
terarder
proprietors.

(1) The Town Council shall within three months after the date of confirmation of this Order lay for the sole use of the Auchterarder proprietors a branch water pipe of not less than 1½ inches in bore from and connected with their main water pipe in High Street Auchterarder along Hunter Street to a point opposite the gate leading to the old quarry on Auchterarder estate and the Auchterarder proprietors shall repay to the Town Council the cost of the said pipe The Town Council shall maintain and when necessary from time to time renew the said pipe in all time coming and the Auchterarder proprietors shall repay to them the cost of such maintenance or renewal Provided that if the said pipe is damaged by the operations or fault of the Town Council there shall be no claim on the Auchterarder proprietors for the cost of repairing such damage :

(2) The Auchterarder proprietors shall be entitled to connect with the said branch pipe one or more supply pipes for the purpose of supplying water to the mansion house of Auchterarder and offices and other houses and gardens and

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lawns in connection therewith and for the dwelling-house steading and offices of the Home Farm on the said estate and the Town Council shall subject to the provisions of the next subsection in all time coming furnish a supply of water from the waterworks vested in them by this Order through the said branch pipe so as to be available for the use of the owners or occupiers of the said subjects :

- (3) The total supply to be furnished from the said waterworks shall be limited to lands and premises presently supplied therefrom and to lands and premises situated within the area defined in section 28 of the Muir Improvement Act and to the estate of Auchterarder to the extent to which the said estate falls to be supplied under this section or may be further supplied under any future agreement with the Town Council and in the event of there being at any time a deficiency in said water supply rendering a restriction necessary any diminution thereof shall be distributed pro rata among the whole lands and premises in said area and the estate of Auchterarder to the extent foresaid Provided that the Town Council shall have with regard to the waterworks on the estate of Auchterarder the powers of inspection contained in the sections of the Waterworks Clauses Acts 1847 and 1863 with respect to the waste or misuse of water :
- (4) The Auchterarder proprietors shall pay to the Town Council in respect of the said supply an annual sum of 4*l.* 13*s.* in lieu of water assessment and in addition thereto shall within three months after the confirmation of this Order pay to the Town Council the sum of 300*l.* and the Town Council shall within three months thereafter expend the money in improving the Crook of the Moss water supply :
- (5) In the event of the Auchterarder proprietors at any time desiring a supply of water to their lands of Upper Borland Park or any part thereof they shall be entitled to lay one or more branch pipes of a suitable size and to connect the same with the Crook of the Moss water system and they shall thereafter be entitled to obtain a supply of water thereby on payment in respect of the premises supplied of an annual water assessment at a rate equivalent to the rate from time to time charged by the Town Council for supplies of water outside the area of the burgh If the Town Council shall

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resolve they may substitute for a supply from the Crook of the Moss system to Upper Borland Park a supply thereto from their Duchally system and in that case they shall be entitled to connect the said branch water pipes to the latter system and disconnect the same from the Crook of the Moss system:

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- (6) In the event of any difference arising between the Town Council and the Auchterarder proprietors with regard to the carrying out of the operations referred to in subsections (1) (2) (4) and (5) or as to the maintenance or renewal of the pipes therein referred to or the payment of the cost thereof or as to the mode of distribution of any deficiency in the water supply under subsection (3) such difference shall be referred to an arbiter to be appointed failing agreement on the application of either party by the sheriff-depute of the county of Perth.

6. From and after the passing of the Act confirming this Order the lands known as the Common Muir of Auchterarder vested in the commissioners under and by virtue of the Muir Improvement Act together with the said commissioners' whole right title and interest therein and their duties and liabilities in connection therewith and all sums of money held by them in name of sinking fund or otherwise shall be transferred to and vested in the Town Council and thereupon the whole rights and interests and duties and liabilities of the commissioners shall cease and determine.

Transference of Common Muir of Auchterarder and rights of commissioners.

7. The Town Council shall hold manage and administer the Common Muir and all sums transferred from the commissioners for behoof of the inhabitants of the burgh and shall apply the free annual income or produce to be derived therefrom towards the purposes of the Muir Improvement Act in so far as the said Act is not repealed by this Order and towards the reduction of the burgh assessments or otherwise for the purposes of the Burgh Police (Scotland) Act 1892.

Management and administration of Common Muir of Auchterarder and application of revenues thereof.

8. From and after the passing of the Act confirming this Order the Girnall House and Steelyard together with the said trustees' whole right title and interest therein and duties and liabilities in connection therewith and sums of money in their hands shall be transferred to and vested in the Town Council and thereupon the whole rights and interests and duties and liabilities of the said trustees shall cease and determine.

Transference of Girnall House and Steelyard.

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Management
and adminis-
tration of
Girnal
House and
Steelyard.

9. The Town Council shall hold maintain manage and administer the said Girnal House and Steelyard and sums of money transferred under the immediately preceding section and apply the free annual income or produce to be derived therefrom towards the reduction of the burgh assessments or otherwise for the purposes of the Burgh Police (Scotland) Act 1892 power being hereby conferred on the Town Council to let out the said Girnal House and Steelyard as they may think proper and generally to exercise all the rights and powers of an owner of property therein.

Power to
borrow
money for
repair &c.
of Girnal
House and
Steelyard.

10. The Town Council are hereby empowered to borrow money for the repair maintenance improvement enlargement renewal or reconstruction of the said Girnal House and Steelyard and to pay the interest thereof and the contributions to the sinking fund for the liquidation of such sums as may be borrowed either out of the free annual income or produce to be derived from the letting out of said subjects or out of the general improvement assessment of the burgh.

Transference
of Aytoun
Hall pro-
perty.

11. From and after the passing of the Act confirming this Order the Aytoun Hall property together with the whole right title and interest of the trustees for the subscribers to the Aytoun Memorial Hall therein and their duties and liabilities in connection therewith shall with all funds held by such trustees be transferred to and vested in the Town Council subject always to the debt of 400*l.* presently affecting the said hall property and thereupon the whole rights and interests and duties and liabilities of the said trustees shall cease and determine.

Management
and adminis-
tration of
Aytoun Hall
property.

12. The Town Council shall hold maintain manage and administer the Aytoun Hall property and the funds transferred under the immediately preceding section and apply the free annual income or produce to be derived therefrom towards the reduction of the burgh assessments or otherwise for the purposes of the Burgh Police (Scotland) Act 1892 the Town Council being hereby empowered to let out the said hall property as they may think proper and generally to exercise all the rights and powers of an owner of property therein.

Power to
borrow
money to
alter &c.
Aytoun Hall
property.

13. The Town Council shall have power to alter or enlarge the said Aytoun Hall property in order to make it or a part thereof suitable for a court hall or council chambers and offices with all public conveniences connected therewith as they may consider necessary in the same manner as if the said property had been

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acquired under and by virtue of section 315 of the Burgh Police (Scotland) Act 1892 with power to borrow in terms of said section. A.D. 1903. —

14. The following sections and parts of sections of the Muir Improvement Act are hereby repealed (that is to say):— Repeal of sections of Muir Improvement Act.

- Section 2 Incorporation of Commissioners Clauses Act ;
- Section 3 Commissioners appointed ;
- Section 4 First commissioners ;
- Section 5 Annual election of commissioners ;
- Section 6 Rotation of commissioners ;
- Section 7 Retiring commissioners to be re-eligible ;
- Section 8 Occasional vacancy how to be supplied ;
- Section 9 Commissioners not incapable of acting as justices ;
- Section 10 Qualification of electors ;
- Section 11 Mode of election ;
- Section 12 Chairman of commissioners ;
- Section 13 Annual meeting of commissioners ;
- Section 14 Auditor of accounts ;
- Section 24 Power to borrow money on mortgage or bond and disposition in security or by way of terminable rentcharge ;
- Section 25 Or on cash account ;
- Section 27 Application of monies ; but only from the word "sixthly" inclusive to the end of the section ;
- Section 28 District defined ; but only the words "for the benefit of which the commissioners shall apply the funds and revenues under their charge by virtue of this Act after fulfilling the other purposes thereof."

15. Section 22 (Power to feu out or let on long leases portion of land not exceeding thirty acres) of the Muir Improvement Act shall be read as if the total quantity of land which the Town Council may feu out or let on long leases had been thereby restricted to one hundred imperial acres instead of thirty imperial acres. Amendment of section 22 of Muir Improvement Act.

16. The Act confirming this Order shall be a full and sufficient warrant to the Town Council to expedite infeftment and to complete its title to the several heritable properties vested in the Town Council by this Order. Warrant to Town Council to expedite infeftment.

17. This Order shall operate as a transfer to the Town Council of the whole debts liabilities and obligations due or undertaken by the trustees commissioners or other custodiers of the said several Order to operate as a transfer and discharge.

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A.D. 1903. properties so transferred and as a full and complete discharge and ratification to the several bodies of trustees and commissioners or other custodiers hereinbefore mentioned past and present of their whole actings and intromissions respectively in connection with the several subjects foresaid and with the funds administered by them respectively and shall free and relieve them respectively of all liability past present or future with regard thereto.

Expenses of
Order.

18. All costs charges and expenses of and incident to the preparing for obtaining and confirming this Order or otherwise in relation thereto shall be paid by the Town Council either out of the funds to be transferred to them in virtue of this Order or out of the general improvement rate of the burgh.

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