THE WATER AND SOIL CONSERVATION ACT 1967 AND ITS APPLICATION: AN ATTEMPTED GUIDE FOR THE PRACTITIONER

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The Water and Soil Conservation Act 1967, which came into force on 1 April 1968, has made far-reaching reforms to the law of waters, of which there has already been some discussion in the pages of the *New Zealand Law Journal*. There have appeared B. H. Davis's general introduction to the Act[1] and his later detailed observations on the effect of the Act on statutory rights,[2] a pseudonymous letter in the correspondence columns of the *Journal*[3] and the present writer's article on the effect of the Act upon water rights generally.[4]

As this discussion has partly shown, there is no unanimity as to the effects of the Act. In the present article the writer adheres generally to the views he has already expressed but necessary reference will be made to differing views. The present purpose is primarily that of assisting the practitioner in the day to day application of the Act, but some discussion of the principles and obscurities of the Act, and of the law affected by it, is necessary.

The purpose of the Act as stated in the title is "to promote a national policy in respect of natural water, and to make better provision for the conservation, allocation, use, and quality of natural water, and for promoting soil conservation and preventing damage by flood and erosion, and for promoting and controlling multiple uses of natural water and the drainage of land, and for ensuring that adequate account is taken of the needs of primary and secondary industry, water supplies of local authorities, fisheries, wildlife habitats, and all recreational uses of natural water." The Act achieves its purpose chiefly (1) by providing for (a) a National Water and Soil Conservation Organisation, comprising a National Water and Soil Conservation Authority (the members of which have been appointed) and other Councils with national responsibilities for the furtherance of the objects of the Act, and (b) Regional Water Boards with local responsibilities and with which the profession will be chiefly dealing; (2) by taking and vesting in the Crown certain rights relating to natural water and giving to Regional Water Boards the power to grant the rights so taken and vested. This article is concerned primarily with (2) and only incidentally with the administrative organisation of the Act.

Regional Water Boards

Some acount must, however, be given of the Boards which are provided for by sections 19 and 20 of the Act. Catchment Boards, Catchment Commissions and the Waikato Valley Authority are to be Boards under the Act. Otherwise, the Boards and the water regions for which they are responsible are to be constituted in accordance with

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local schemes, submitted by the National Water and Soil Conservation Authority to the Local Government Commission in accordance with the Local Government Commission Act 1967. The final date for submission of local schemes was 1 October 1968 but provision was made (in s. 19 (4)) for later dates to be fixed by the Minister of Works. The effect of this procedure is that, in respect of any area not within the district of a Catchment Board, Catchment Commission or the Waikato Valley Authority, there will be no local Regional Water Board to which application can be made for water rights under the present Act until a Board has been set up by Order in Council under the Local Government Commission Act giving effect to a scheme under the present Act. Until a Board for such an area is constituted, all notifications and applications under the Act that would be made to that Board should be made to the National Water and Soil Conservation Authority which has among its powers and functions those of a Board (under s. 14 (2)), or to the Water Allocation Council[4a] constituted by s. 8 of the Act.

The Vesting in the Crown of Rights to Natural Water

"Natural water" is defined in s. 2 as follows:

> . . . all forms of water, including fresh water, ground water, artesian water, sea water, geothermal steam, water vapour, ice, and snow that are within the outer limits of the territorial sea of New Zealand; but does not include water in any form while in any reservoir (not being an aquifer) used for the water supply purposes of any public authority, or in any pipe, tank, or cistern.

Section 21 (1), as amended by the Water and Soil Conservation Amendment Act 1968,[5] provides as follows:

> Except as expressly authorised by or under this Act [, or as expressly authorised under the Mining Act 1926 by a mining privilege in respect of water granted after the ninth day of September, nineteen hundred and sixty-six, or as expressly authorised under any other Act by any right granted during the period commencing after the ninth day of September, nineteen hundred and sixty-six, and ending not later than the thirty-first day of December, nineteen hundred and sixty-eight, or as expressly authorised by any other Act (whether before or after the passing of this Act) in respect of any specified natural water], the sole right to dam any river or stream, or to divert or take natural water, or discharge natural water or waste into any natural water, or to use natural water, is hereby vested in the Crown subject to the provisions of this Act:
>
> Provided that nothing in this section shall restrict the right to divert, take, or use sea water:
>
> Provided also that it shall be lawful for any person to take or use any natural water that is reasonably required for his domestic needs and the needs of animals for which he has any responsibility and for or in connection with fire-fighting purposes.

The rights taken by s. 21 (conveniently called "the affected rights") may be classified, as to the most common of them, thus:

(1) An owner's natural rights as a riparian owner[6] to take or use water from rivers and streams, i.e. natural watercourses having "bed, banks and water",[7] for purposes other than domestic or fire-fighting or the needs of animals.

(2) An owner's natural rights to take or use surface water, i.e. water not flowing in a natural watercourse having "bed, banks and water".

(3) A higher owner's natural drainage servitude over lower land[8] where this takes the form of permitting him to concentrate surface water into natural water on the lower land;[9] e.g. into an open boundary drain on the lower land. The natural servitude does of course more often take the form of simply *permitting* water from the higher land to descend naturally to the lower. It is suggested that this passive exercise of the natural right cannot amount to a discharge of natural water for the purpose of s. 21. It is further suggested that the natural right to concentrate surface water on lower land is taken by s. 21 (1) only where there is a recipient body of natural water *at the time when the right is first exercised*.[9]

(4) A person's rights to dam any river or stream, or to divert or take or to use natural water, or to discharge natural water or waste[10] into natural water, where those rights have been granted to him as easements, but with the exception of the statutory rights described, and possibly also excepting easements limited to the reasonable taking of water for domestic, fire-fighting or animals' needs.

As will be seen from the following discussion of some of the affected rights, s. 21 (1) is not without difficulties.

The Right to take Natural Water. This right may at its widest be argued to include the right to convey natural water by a continuous course as well as the initial act of abstracting natural water from a stream or bore. It is to be remembered of course from the definition in s. 2 that water when confined to pipes is not natural water, so that while the act of abstracting the water is clearly affected by the Act the right then to convey the same water by pipes will not be affected. Greater difficulty arises where the water is conveyed by an open artificial watercourse, for the water not being piped remains natural water. Is the conveying of natural water by this means a taking of natural water for the purpose of the Act? The question is important because there may be cases where water has to be so conveyed through several properties before reaching its ultimate destination. If the wider meaning is the correct one, X, the person wishing to convey the water in such a case, will have to apply to the Regional Water Board for the right to take the water from its source in A's property, then through that property and through the adjoining properties belonging respectively to B and C, to X's property. On the other hand, if the right to take water affected by s. 21 (1) extends only to the initial abstraction of the water, X's application to the Regional Water Board will relate only to that: the right to convey the water will be a matter of negotiation between him and the respective owners, A, B and C, and will be granted to him as an easement. It is suggested that the narrow meaning is intended by the Legislature. The purposes of the Act would seem to require the Board's approval only of the original abstracting of the water and not of the conveyance of the water by an open artificial watercourse from the source. The right to convey water by an artificial watercourse is then to be distinguished from the right to take the water, the latter right only being taken by the Act.

There is another difficulty. The right to take water could itself be granted as an easement at common law, and would carry with it the

ancillary licence to enter upon the land for the purpose of the easement: see *Race* v. *Ward*[11] and *Polden* v. *Bastard*.[12] There would not be included the right to lay pipes or to construct an artificial watercourse—for these are separate easements—but the grant would include the ancillary licence to enter upon the land to take the water. The right to take water may now be granted by the Regional Water Board under s. 21 (3), but will it follow that the Board in granting the right in respect of the land of a person other than the applicant, may grant also the ancillary licence to enter upon the land to take the water? The question would arise in very few cases since the applicant would nearly always wish to convey the water by pipes or open watercourse, for which, as has been suggested, he must apply to the owner concerned for an easement. However, in some few cases, the applicant may seek merely the right to take water, looking to the Board to fix the terms upon which he is permitted to enter upon the land for the purpose of taking it. Serious difficulties arise here. If the Board, in granting the right to take water, may grant also the licence to enter that would have been ancillary to a grant of easement to take water at common law, it may be objected that the owner is in a much weaker position than if the applicant desired to convey the water by pipes or by an open artificial watercourse, since in those latter cases separate easements would have to be negotiated with the owner, and the grant by the Board would relate merely to the initial taking of the water. Moreover, the mere right to take water being an easement in itself and being capable of grant only by the Board, its existence and that of the ancillary licence to enter upon the land will appear only in the records of the Board and not upon the Land Transfer Register. On the other hand, if the right to take water in such a case when granted by the Board does not include the ancillary licence to enter upon the land for the purpose, the person to whom the Board grants the right should presumably negotiate a grant of easement of right of way from the owner of the land so that upon registration of the grant his right of entry may be secured for the purpose of drawing the water. It is tentatively suggested that the better view, and the view more limited to the purposes of the Act, is the second—that is to say that the right to take water, granted by the Board, will not carry with it the licence to enter. The point is however a doubtful one.[13]

The Right to Divert Natural Water. The meaning of 'divert' in the context of s. 21 is not clear. It is to be noted that the right affected is not merely the right to divert a stream (i.e. a riparian watercourse) though this is included, but the wider right to divert natural water. It might seem that 'divert' is here synonymous with 'convey' but it is unnecessary to give so wide a meaning. Clearly the right to divert is in respect only of such natural water as flows in a watercourse of some degree of definition (though this degree may not be sufficient to make it a stream or watercourse carrying riparian rights). Suppose a case where water flows through A's property. X wishes to divert it to his own property through the respective properties of B, C and D which lie between. The right to do this could at common law have been granted to him as an easement by the riparian owners affected and by those (in this case B, C and D) through whose properties the stream is diverted. It would seem that X may apply to the Regional Water Board for this right which can, by virtue of s. 21 (1), no longer be granted to him as an easement. This conclusion is not a convenient

one. If it is correct the possibilities of conflict with the Land Transfer Register, discussed below, are increased. There is difficulty, however, in giving to 'divert' a narrow meaning corresponding to that which may legitimately be given to 'take'.

The Discharge of Natural Water into Natural Water. The following points are summarized from the writer's fuller discussion in the *New Zealand Law Journal*.[14] (1) As already pointed out, water confined to pipes is not "natural water": see the definition of that term in s. 2. Thus it will follow that the Act will have no application to any discharge of water through pipes into another pipeline or a public reservoir (not being an aquifer) or a tank or cistern, but there can be no doubt that, in the case of piped water discharged into an open watercourse, the water will acquire or re-acquire the character of natural water at the point of discharge, so that the right so to discharge it will be an affected right. (2) The bare right to discharge natural water is not affected by the Act: there must be a recipient body of natural water, e.g. a lake, stream, or artificial open watercourse or drain into which discharge takes place. More particularly, in order for the Act to apply—

(a) In the case of an easement, either the grant must provide expressly for discharge into a body of natural water or there must in fact be a body of natural water into which discharge can take place at the commencement of the grant:

(b) In the case of a natural servitude to concentrate water on the lower land of another, or in the case of the natural right to discharge water on one's own land, there must be a recipient body of natural water which, at least in the former case, must be in existence when the right is first exercised.

(3) Again a distinction is to be drawn between the right to discharge and the right to convey, the latter not being an affected right.

Take the case of X who wishes to discharge surface water into a stream on the land of A, it being necessary for the purpose to convey the water from the property of X through the property of B that lies between the respective properties of X and A, and also some distance into A's property before the stream is reached. If the water is piped to the point of discharge it ceases to be natural water while in the pipes. If it is conveyed by an open drain it remains natural water, but only at the point of discharge is (in the view here suggested) the Act applicable. X therefore negotiates his easements to convey the water across the respective properties of B and A, and applies to the Regional Water Board for the right to discharge into the stream.

Section 21 and the Land Transfer Act: the Necessity to Search the Board's Records. The view which is given above of the effect of s. 21 may be described as a moderate view. It assumes that the applicant for the right to take natural water from the land of another, or for the right to discharge natural water into natural water on the land of another, must negotiate outside the Act to obtain grants of easements for the conveyance of the water by an artificial watercourse from its source or to the point of discharge, where he wishes to convey it in this way. The easements will of course be registrable, whereas the actual right of taking or discharging the water, granted by the Board, will be recorded in the records provided for in s. 21 (4). Searches of both the

Land Transfer title (to ascertain the easements for the conveyance of water) and of the Board's records (to ascertain the terms and extent of the rights to take or discharge the water) will be necessary. In some cases, e.g. where the right of discharge is into a boundary drain on the servient land, no conveyance of the water across the servient land will be necessary and the only right which the applicant needs will be the right to discharge for which he applies to the Board. There seems to be no doubt that the intention of the Legislature is that rights to take or discharge natural water and other rights granted by the Board under s. 21 (3) in respect of Land Transfer land not owned by the applicant, are intended to enure over that land despite changes in the registered proprietorship of it, and despite ss. 62 and 182 of the Land Transfer Act 1952 that would generally protect a *bona fide* registered proprietor.[15]

If this view is correct the land will in such cases be subject to rights granted by a Regional Water Board and not registered under the Land Transfer Act, without there being any necessity for the granting and registering of an easement for conveyance of the water that would point to the existence of rights under the Water and Soil Conservation Act. The dangers of not searching the records of the Regional Water Board are therefore obvious. In theory at least, *no* search of title to land will be complete without a search of the Board's records.

Other views of Section 21. There are two other possible views of the effect of s. 21, one less and the other more radical than that set out above. First, it has been suggested by a correspondent of the Editor of the *New Zealand Law Journal*[16] that the granting of a right under the Act in no way removes the necessity of obtaining by grant of easement *the same right* from the owner. It would be convenient if this view were correct, for it it were, searching the Board's records would be unnecessary, the whole extent of the applicant's rights being revealed in the grant of easement.

But this view gives insufficient force to the plain words of s. 21 (1) by which "the sole right to dam any river or stream, or to divert or take natural water, or discharge natural water or waste into any natural water, or to use natural water" is "vested in the Crown". In face of this provision it surely cannot be maintained that the rights so vested can any longer be granted by an owner of land, and it would seem that any purported grant should not be registered under the Land Transfer Act.

The second and more radical view of s. 21 (1) is to treat "taking" and "discharging" of natural water as including in all cases the conveying of the water. In this view, where the Board has granted to an applicant the right to take or discharge natural water, the right granted by the Board cannot be rendered valueless by the refusal of an owner to grant to the applicant a drainage easement to convey the water from the source from which it is taken or to the point of discharge, as the case may be. The strength of this argument is however much weakened by the terms of s. 24 which, providing the procedure for "[a]pplications in respect of natural water, and objections thereto", makes no special mention of persons through whose land the water is to be conveyed. Thus the section, while providing for public notification of applications to the Regional Water Board, does not provide for the service of the applications on persons through whose land the water is to be brought that one would expect.[17] Further, it gives a right of objection (subs.

(4)) to any "Council, Board, public authority, or person" without mentioning in particular persons through whose land the water is to be brought. This omission is understandable, it is suggested, only if the rights taken by s. 21 (1) do not include (except possibly in the case of diverting natural water) the right to convey by a continuous open course (the right to convey by pipes being not included, because piped water is not natural water).

It is suggested that the key to the interpretation of s. 21 and the following sections is the distinction between conveying water by a continuous open course, and taking or discharging it. (As already pointed out, difficulty does arise in the case of the diverting of natural water since the word "divert" seems necessarily to include the notion of conveying the water.)

The Exceptions to Section 21 (1). Since Mr Davis's discussion of the effect of the Act on statutory rights[18] the scope of the statutory rights excepted from s. 21 (1) has now been made clearer (?) by the Water and Soil Conservation Amendment Act 1968. The amendment is clear so far as it excepts mining privileges granted under the Mining Act 1926 after 9 September 1966 and any rights granted under any other Act (e.g. under Part IV of the Land Drainage Act 1908) after that date but not later than 31 December 1968. (Thus apparently rights under Part IV of the Land Drainage Act have been unobtainable since the latter date.) But the scope of the exception "as expressly authorised by any other Act (whether before or after the passing of this Act) in respect of any specified natural water" is somewhat vague. Is the general right of a borough council within its district or of a county council within an urban drainage area to "lead any [storm or surface] water into any stream or watercourse, whether covered or open . . . "[19] outside the exception, because in any particular case the natural water affected is nowhere "specified"? If so the effect of s. 21 on local authorities may be very serious indeed.

The Act and Compensation. The Act makes no provision for payment of compensation for the rights taken by the Crown under s. 21 (1). Further, the inclusion of the provision in subs. (2) saving rights exercised during the three years ending on 9 September 1966 provided due notice is given seems to show an intention on the part of the Legislature that in the case of rights not so saved no compensation is to be paid. However, the rights taken are property rights of subjects, and the intention to take them without giving a legal right to compensation for the loss "is not to be imputed to the Legislature unless that intention is expressed in unequivocal terms".[20] Whether such an intention is expressed unequivocally in the present statute is very doubtful.

It is perhaps less doubtful that when the Board grants to an applicant a water right under s. 21 (3) over the land of another, the "terms" upon which the Board may grant the right may include the making of payments to the owner of the servient land. In those cases where the applicant for the right must also negotiate for an easement for the conveyance of water by pipes or by open drain or watercourse, the fixing of any such payment by the Board will be unnecessary since the whole matter will be dependent upon the negotiating of the easement. However, where it is unnecessary for the applicant to negotiate any such easement, e.g. where the source of the natural water to be taken, or the point of discharge for water to be discharged, is upon the boundary of the servient land, it will often be inequitable if the

owner of the servient land is paid nothing by the applicant. It is suggested that under s. 21 (3) the Board may impose as a term or condition of any right granted the making of payment to the owner of the servient land where that is appropriate.

The Practical Application of the Act

This will relate both to existing water rights (those already granted or exercised before 1 April 1968) and to rights sought to be acquired since that date. The application of the Act to these classes is now considered. A. *Existing Rights.* Suppose a case where it is concluded that a water right existing immediately before 1 April 1968, whether natural or granted as an easement, is not within the exceptions and provisos to s. 21 (1) and is *prima facie* affected by that subsection and vested in the Crown. One must then ask whether the substance of that right has been preserved

(a) by notification under s. 21 (2) of the Act and under the Water and Soil Conservation Regulations 1968 to the Regional Water Board (or the National Water and Soil Conservation Authority or the Water Allocation Council), or

(b) in the case of a discharge of natural water or waste into natural water, by the Authority having given public notice before 1 October 1968 that notice to the Board under s. 21 (2) is dispensed with, or

(c) by the Board (or the Authority or the Water Allocation Council) giving a sufficient general authorisation under s. 22.

If the answer in the particular case to questions (a), (b) and (c) above is "no", or if the right was first exercised after 9 September 1966, application to the Regional Water Board will have to be made for it. B. *Acquisition of affected rights since 1 April 1968.* Since that date it has been necessary to make application for any affected right (whether in respect of one's own land or the land of another) to the Regional Water Board. The procedure for application is not dealt with fully here.[21] However, some of the important matters relating to the Board's granting of rights under the Act are these:

(1) In the case of applications by persons other than the Crown:—

(a) The bodies and persons who may apply are local authorities and government departments, certain councils controlling water, any Regional Water Board (including that to which application is made), "or any person whatsoever".[22]

(b) The application must be publicly notified under s. 24 (3) but note that the subsection requires public notification once only and that there is no requirement that an owner of land affected by the application (e.g. where the application is to discharge natural water into an existing open drain on a man's land) is to have notice of the application served on him. In practice no doubt the Regional Water Board will direct service on such a person under the Water and Soil Conservation Regulations 1968.[23]

(c) Bodies and persons who may object: Generally they are the same as those who may apply.[24]

(d) Time for objection: 28 days from public notification.

(e) The forms of application, and of declaration supporting an application or objection, are prescribed in the Regulations.

(f) Board's determination of application: The Board itself determines each application with or without obtaining a recommendation from a tribunal appointed by it and with or without a formal hearing. Every applicant and every objector may require a formal hearing as of right. The Board's decision is to be publicly notified, and notified (with reasons stated, in the event of rejection or disallowance) to the applicant and each objector.[25]

(g) Right of appeal: This lies, under s. 25, to the Town and County Planning Appeal Board whose decision is final and conclusive.

(h) A general authority under s. 22 of the Act, already granted by the Board, may make it unnecessary as long as the authority enures, to apply for a specific right to the Board. The general authority will appear in the records of the Board under s. 21 (4).

(i) It would appear that rights granted by the Board under s. 21 (3) are personal licences exercisable only by the grantee and possibly his personal representatives. The Act contains no provision for transfer of the rights, so that any successor in title to the grantee wishing to have the same rights must apparently apply afresh to the Board.

(2) In the case of applications by the Crown: It will be recalled that the affected rights are vested in the Crown. The exercise by the Crown of the rights so vested is, however, controlled under s. 23 which provides for application by the Minister of the Crown concerned to the Minister of Works who refers the application to the National Water and Soil Conservation Authority for decision. The decision must be publicly notified and against it any Board, public authority, or person who claims to be detrimentally affected by the decision, may appeal to the Town and Country Planning Appeal Board. There is again a lack of any provision requiring service of the proceedings on owners of land chiefly affected.

The Drafting of Grants of Easements. It is of course not possible to circumvent the provisions of the Act by a verbal device such as that of purporting to create an easement to "drain" surface water into a stream if one hopes thereby to evade the necessity of application to the Board for the right to discharge natural water into the stream. On the other hand, as has been suggested, the granting of an easement to convey natural water by watercourse, either from a source or to a point of discharge into natural water, will apparently always be possible and indeed necessary, except where the source or point of discharge is a boundary stream or watercourse to which no conveyance is necessary across servient land.

Clarity at least will be served if grants of water easements are in the future drawn with the provisions of the Act as clearly in the draftsman's mind as the obscurities discussed in this article allow, so that the grantor

does not purport to do more than the Act leaves him able to do. It is unwise now to rely on the implied rights and powers under s. 90D of the Land Transfer Act 1952: why it is so will be immediately apparent on a study of the rights and powers implied under that section and the Seventh Schedule to the Land Transfer Act, in an easement "to convey water" or "to drain water". In the case of the former easement, the right to "take" water can of course be no longer implied, and the reference in the Seventh Schedule to the taking of water in any quantity consistent with the rights of others is no longer appropriate since the quantity conveyed will be such as, or at least cannot exceed that which, the Regional Water Board approves in granting the right to take. In the case of the right "to drain" the implied right set forth in the Seventh Schedule is to "drain and discharge water . . . in any quantities along the stipulated course (where a course is stipulated) across the land over which the easement is granted or created . . . . " Here the coupling of the draining and discharging of water may in a particular case blur the essential distinction between the conveyance of surface water which may still be the subject of a grant and the discharge of it into natural water which cannot be. It will be necessary in every case to enquire whether the right sought or proposed to be granted *is* one of discharge into *natural water,* that is to say, whether there is in the particular case a recipient body of natural water such as an existing open drain or watercourse.

1 "New Control over Natural Water" [1968] N.Z.L.J. 105.
2 [1968] N.Z.L.J. 357. As to this, see now the Water and Soil Conservation Amendment Act 1968 amending s. 21 (1).
3 Letter from "Easement" [1968] N.Z.L.J. 212.
4 F. M. Brookfield, "Water Rights and the Water and Soil Conservation Act", [1968] N.Z.L.J. 441.
4a The Council is, "in relation to any area for which no Board has been constituted", within the definition of "Regional Water Board" in s. 2. The members have been appointed.
5 This substituted the words in square brackets for the words "or any other Act".
6 The riparian owner's natural rights at common law existed only for purposes connected with the riparian land and varied according to the purpose of the use, ordinary or extraordinary as the case might be. See the passage from *Attwood* v. *Llay Main Collieries* [1926] 1 Ch. 444, 458, quoted by Davis, [1968] N.Z.L.J. 105, 107.
7 Within the definition in *Angell on Watercourses* 5th ed. (1854) 3, cited by Windeyer J. in *Gartner* v. *Kidman* (1962) 108 C.L.R. 12, 26.
8 See *Gibbons* v. *Lenfestey* (1915) 84 L.J.P.C. 158 and *Bailey* v. *Vile* [1930] N.Z.L.R. 829; and also F. M. Brookfield, "Surface Waters: the Natural Rights of Drainage and Disposal", (1965) 1 N.Z.U.L.R. 440.
9 Brookfield, [1968] N.Z.L.J. 441, 442. For a wider view, see Davis, [1968] N.Z.L.J. 105, 107.
10 See also the Waters Pollution Act 1953.
11 (1855) 4 E. & B. 702; 119 E.R. 259.
12 (1865) L.R. 1 Q.B. 156.
13 The writer previously inclined to the first view, as implied in [1968] N.Z.L.J. 441, 444-445.
14 [1968] N.Z.L.J. 441. Some of what is said there and in the present article is applicable to the discharge of waste into natural water which is also an affected right, but as to this reference may also have to be made to the Waters Pollution Act 1953.
15 See further, Brookfield, [1968] N.Z.L.J. 441, 443-445.

16 [1968] N.Z.L.J. 212.
17 Note, however, that the applicant may under Regulation 5 of the Water and Soil Conservation Regulations 1968 be required to "notify such persons of the application as the Regional Water Board may direct". This requirement cannot of course affect the construction of the statute.
18 [1968] N.Z.L.J. 357.
19 Municipal Corporations Act 1954, s. 221; Counties Act 1956, s. 248. The former section speaks of "surface water" and the latter of "stormwater".
20 *Central Control Board (Liquor Traffic)* v. *Cannon Brewery Co. Ltd.* [1919] A.C. 744, 752, per Lord Atkinson.
21 See ss. 24 and 25 and the Water and Soil Conservation Regulations 1968, and also B. H. Davis "New Control over Natural Water" [1968] N.Z.L.J. 105, 108-109.
22 s. 24 (1).
23 S.R. 1968/181.
24 s. 24 (4).
25 s. 24 (6), (7) and (10).