

New Zealand.

ANALYSIS.

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1935, No. 14.—*Local and Personal.*

AN ACT to empower the Hamilton Borough Council to acquire certain Lands adjacent to Garden Place in the Borough of Hamilton, and to authorize the Hamilton Borough Council to afterwards sell or lease such Lands and enabling the Hamilton Borough Council to claim and receive Betterment from the Owners or other Persons having any Estate or Interest in Lands improved by the Formation and Levelling of Garden Place. [26th October, 1935.]

Title.

WHEREAS the Hamilton Borough Council (hereinafter referred to as the Council) proposes to execute a certain public work, to wit: the levelling and formation of the street known as Garden Place in the Borough of Hamilton (hereinafter referred to as the said street): And whereas certain lands adjacent to the said street will be injuriously affected by the proposed work: And whereas it is desirable that the Council should be empowered to acquire such lands for the purpose of levelling and improving them and afterwards selling or leasing the same: And whereas certain lands adjacent to the said street will be greatly improved and the value thereof increased by the proposed work: And whereas it is desirable that the amount of such increase in value (hereinafter called the betterment increase) should be ascertained and one-half of the same paid to the Council:

Preamble.

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Hamilton Borough Council Empowering Act, 1935.

Short Title.

2. The Council, if authorized in that behalf by a poll of ratepayers taken under the Local Bodies' Loans Act, 1926, is hereby empowered and authorized (at any time within two years from the passing of this Act) to acquire in manner prescribed by the Public Works Act, 1928, such parts of Allotments ninety-six, ninety-seven, ninety-eight, ninety-nine, one hundred, one hundred and one, fifty-eight, one hundred and three,

Council
empowered to
acquire lands.

one hundred and four, one hundred and five, four hundred and seventy-seven, four hundred and eighty, four hundred and seventy-nine, and four hundred and seventy-eight of the Town of Hamilton West as the Council may consider necessary or desirable in connection with the proposed work of levelling and forming the said street (hereinafter referred to as the proposed work).

Council
authorized to
sell or lease
lands acquired.

3. The Council is hereby authorized to sell or lease the lands acquired as provided by section two hereof at any time after the same have been so acquired in the manner provided by the Municipal Corporations Act, 1933, or the Public Bodies' Leases Act, 1908.

Council entitled
to recover
betterment
increase.

4. The Council shall be entitled to recover and receive one-half of all the betterment increase in respect of any portions of Allotments ninety-six, ninety-seven, one hundred and three, one hundred and six, and four hundred and seventy-six of the Town of Hamilton West that may be attributable to the carrying-out of the proposed work.

Persons liable
for betterment
increase.

5. The amount recoverable by the Council as provided by the last preceding section shall be payable by all persons owning any estate or interest in those portions of the said Allotments ninety-six, ninety-seven, one hundred and three, one hundred and six, and four hundred and seventy-six of the Town of Hamilton West that shall be improved or increased in value by the carrying-out of the proposed work in the proportions and in manner hereinafter provided.

Notice of
intention
to claim
betterment
increase to
be given by
Council.

6. When the Council proposes to claim betterment increase in respect of any of the lands mentioned in section four hereof it shall cause notice of its intention to make such claim to be served upon the owners and occupiers and any other person having any estate or interest in such land as far as they can be ascertained within three months after the commencement of the proposed work. Such notice shall describe the proposed work in general terms, but it shall not be necessary in any such notice to state the amount which it is proposed to claim. A copy of such notice signed by the Town Clerk of the Borough of Hamilton shall forthwith be delivered to the District Land Registrar at Auckland,

who shall register the same against the title to the land mentioned in such notice.

7. The Council may at any time after such notice has been served institute proceedings for recovery by way of betterment increase of such amount as it thinks proper; but no such proceedings shall be instituted against any person after the expiration of five years from the date of service of such notice upon that person.

Council may institute proceedings to recover betterment increase.

8. The amount of any claim for betterment increase shall be decided by a Compensation Court under the Public Works Act, 1928 (hereinafter referred to as the Court), in the same manner as nearly as may be as the amount of compensation is ascertained in claims for compensation under that Act, and the Court shall have jurisdiction to determine who are the owners of any land or the owners of any estate or interest in any land and to apportion amongst the respective owners of any estate or interest in such land the liability to pay the shares of any betterment increase awarded, having regard to the proportionate values of the respective estates and interests of such owners to the degree to which such values have been or are likely to be increased by the betterment increase, and to any other relevant considerations.

Amount of betterment increase to be decided by Compensation Court under the Public Works Act, 1928.

9. In any proceedings before the Court under this Act the Council shall be the claimant and the person from whom the betterment increase is claimed shall be the respondent.

Council to be claimant.

10. Any person having an interest in land in respect of which the Council has served a notice of its intention to claim betterment increase may at any time, in lieu of waiting for proceedings to be instituted by the Council, serve upon the Council a notice requiring that such claim and the existence of any right in the Council to make a claim for betterment increase be decided by the Court; and unless the Council shall within three months from the giving of such notice institute proceedings for the recovery of betterment increase in respect of the land referred to in the notice the Council shall have no right to claim for or obtain such betterment increase.

Person on whom notice served may require claim to be decided.

Owner in fee-simple primarily liable or Court may declare person primarily liable.

11. Every person being an owner in fee-simple of land in respect of which any betterment increase is awarded by the Court, and any other person having any estate or interest in the land whom the Court may in its discretion declare to be primarily liable, shall be primarily liable for payment thereof to the Council; and the amount of such betterment increase or any part thereof for the time being due and payable, with any interest accrued and payable, may from time to time be recovered by the Council as a debt in any Court of competent jurisdiction from any person primarily liable; and such primary liability shall not be affected by any apportionment of liability among the respective owners of any estate or interest in such land, but any person paying the same shall be entitled to contribution from such respective owners according to the Court's apportionment.

Amount of betterment increase payable forthwith or by annual payments not exceeding twenty years.

12. The amount of any betterment increase awarded by the Court shall, as the Court in its discretion may order, be payable either (a) forthwith, or (b) together with interest at such rate as the Court may order by equal annual sums payable on an annual date and over a period not exceeding twenty years, to be fixed by the Court.

Court may state case for opinion of Supreme Court.

13. The Court shall have power, at its discretion, on the application of any party, to state a case for the opinion of the Supreme Court on any question of law arising in the course of its proceedings, and to fix the costs of proceedings as between party and party, and give directions as to the payment of such costs, either as part of an award or by separate order.

Court may order claims to be heard at the same time.

14. The Council or any person instituting or served with a claim or other proceedings may at any time within ten days after service of such proceedings apply to the Court, upon notice to all parties affected, for an order that any other claim or proceedings be dealt with by the Court together with and at the same time as the first-mentioned claim or proceedings, and on the hearing of such application the Court may make such order as in its discretion it thinks fit.

Court may order claims to be dealt with separately.

15. The Court may, on the application of any party and at any stage of the proceedings, nevertheless order that any one or more of such claims or other proceedings

be dealt with separately, and may make such further orders as it thinks necessary for that purpose:

Provided that the Court shall not, except on special grounds, so order in any case—

- (a) Where claims or proceedings relate to different interests in the same land or parts thereof:
- (b) Where claims or proceedings relate to adjoining or neighbouring lands and are based on substantially similar grounds.

16. Although notice has not been given within the time hereinbefore prescribed desiring that two or more claims or proceedings be dealt with by the Court together and at the same time, nevertheless any party to any claim or proceedings may at any time apply to the Court for an order that such claims or proceedings be so dealt with, and the Court, if it thinks fit, may order accordingly, and may make such further orders as it deems necessary for that purpose.

Any party may apply to have claims dealt with together.

17. Any claims or proceedings referred to the Court to be dealt with together as hereinbefore provided shall be heard together or wholly or partly in succession as the Court thinks most convenient, and one decision may be given relating to two or more claims or proceedings.

One decision may be given relating to two or more claims.

18. Any claim that might be the subject of an award of the Court under this Act may be settled, compromised, abandoned, adjusted, and agreed upon, whether as to amount, terms of payment, or other terms or conditions, by mutual agreement of the parties concerned.

Any claim may be settled, compromised, abandoned, adjusted, or agreed upon between parties.

19. The Government Actuary shall, on payment of a reasonable fee, furnish to the Council such tables as may be necessary, showing the fixed annual sum required to discharge the amount in the period fixed by the Court, with interest at the rate ordered by the Court, and the amount required to redeem any annual instalment of such fixed sum prior to its due date, or the method of ascertaining the amount so required.

Government Actuary to furnish to Council tables showing annual sums required or amount required to redeem annual instalment.

20. Any person primarily liable for the same may pay any instalment prior to its due date, and interest payable to the Council on the sum so paid shall abate accordingly; but the person making such payment shall remain entitled to interest from any person from whom he is entitled to contribution according to the Court's apportionment.

Person primarily liable may pay instalment prior to due date.

Where Court orders payment by annual sums same to be deemed special rate.

21. Where the Court orders that the amount of any betterment increase be payable by equal annual sums over a period of years, the annual sum so fixed shall for all purposes be deemed to be a special rate duly made and levied by the Council on the land affected, and the provisions of the Rating Act, 1925, shall, *mutatis mutandis*, apply accordingly, but it shall not be necessary for the Council to provide any valuation roll or rate-book in respect of each annual payment.

In case where last preceding section applies amount not registrable as a charge.

22. In any case where the provisions of the last preceding section hereof apply the amount of betterment increase shall not be registrable as a charge against the land affected:

Provided that nothing herein shall affect the priority of such sum as a special rate duly made and levied by the Council.

On subdivision of land subject to annual sum such sum may be apportioned by agreement, and in default of agreement by Valuer-General at expense of Council.

23. On the subdivision of any land subject to payment of an annual sum under this section of this Act, such sum may be apportioned among the several subdivisions by agreement in writing made between the Council and the owner or owners thereof, or, in default of such agreement, by a certificate of the Valuer-General acting at the request of the Council and at its expense.

Operation of section 196 of the Municipal Corporations Act, 1933, not limited.

24. Nothing in this Act shall limit the operation of section one hundred and ninety-six of the Municipal Corporations Act, 1933, but any amounts paid or payable to the Council pursuant to that section may be taken into account in determining the amount of any betterment increase for the purposes of this Act.

Moneys received by Council to be applied in defraying expenses of the work.

25. All moneys received by the Council under this Act shall be applied in defraying the expenses of the Council in carrying out the proposed work.