



## ANALYSIS

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1967, No. 2—*Local*

**An Act to enable the Rotorua City Council to make provisions for the control of the tapping and use of geothermal energy in the City of Rotorua** [30 June 1967]

WHEREAS it is expedient to enable the Rotorua City Council to utilise and control geothermal energy in the City of Rotorua for the benefit of the inhabitants of the city and accordingly to grant authority for the reticulation, licensing, and control of geothermal energy in the city or in any specified part of the city and to control the sinking of bores for the purpose of obtaining geothermal energy in the city:

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

**1. Short Title**—This Act may be cited as the Rotorua City Geothermal Energy Empowering Act 1967.

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

“Bore” means any well, hole, pipe, or excavation of any kind which is bored, drilled, sunk, or made in the ground for the purpose of investigating, prospecting, obtaining, or producing geothermal energy, or which taps or is likely to tap geothermal energy; and includes any hole in the ground which taps geothermal energy:

“City” means the area comprising the City of Rotorua as now and hereafter from time to time existing:

“Council” means the Rotorua City Council:

“Geothermal energy” means energy derived or derivable from and produced within the earth by natural heat phenomenon; and includes all steam, water, and water vapour, and every mixture of all or any of them that has been heated by geothermal energy, and every kind of matter derived from a bore and for the time being with or in any such steam, water, water vapour, or mixture:

“Geothermal works” means and includes any work or works established or constructed, whether finally completed or not, for the investigation, development, supply, and utilisation of geothermal energy, the prevention or disposal of waste, the disposal of water, steam or any other product arising from the development, reticulation, supply, or utilisation of geothermal energy, and any work or works from time to time deemed necessary by the Council for the safe and efficient control of the supply and utilisation of geothermal energy; and also includes all plant, apparatus, appliances, and materials comprising part of any geothermal work or works:

“Licence” means a licence granted under section 9 of the Geothermal Energy Act 1953:

“Licensee” means the holder of a licence granted under this Act or any bylaw made thereunder:

“Owner”, in relation to any land, means the person who for the time being is entitled to the rack rent thereof or would be so entitled if the land were let at a rack rent; and includes any public or local authority which for the time being has control of the land.

**3. Powers as to geothermal works**—(1) Notwithstanding anything contained in section 15 of the Rotorua Town Lands Act 1920 or in section 89 of the Statutes Amendment Act

1945 or any Proclamation issued under the said section 89 or in any other enactment, but subject to the provisions of the Geothermal Energy Act 1953 and this Act, the Council may construct geothermal works for the supply of geothermal energy for the use of the inhabitants of or occupiers of property in the city or any defined part or parts of the city for private or domestic use or purposes and for industrial or commercial use or purposes or for such other use or purposes as the Council may from time to time determine, and may keep the same in good repair and may from time to time do all things necessary thereto, and therein especially may do the following things:

- (a) Sink any number of bores and take, tap, or use geothermal energy from the same or from any other source whatsoever:
- (b) Break up or dig into the surface of any street, private street, service lane or access way, reserve or domain, or public place within the city:
- (c) Alter any drain, sewer, or pipeline:
- (d) Prospect for geothermal energy by boring or any other method.

(2) The powers granted by this Act in respect of geothermal works shall be deemed to include the power of extending, enlarging, altering, or modifying any such geothermal works.

(3) All such geothermal works shall be vested in the Corporation of the city.

(4) Nothing in this Act shall authorise the entering upon any private land without the consent of the owner except for the purpose of making surveys; but if any pipe or any other part of the geothermal works is at any time with such consent put on or under any private land, the Council may thereafter enter thereon to inspect or repair such pipe or other part of the geothermal works when required if and when such entry is deemed by the Council to be necessary or expedient.

(5) The exercise by the Council on any public reserve within the meaning of the Reserves and Domains Act 1953 of the powers authorised by this section shall be subject to the consent of the Minister of Lands being first had and obtained.

#### **4. Provision, inspection, and removal of appliances—**

(1) Every person supplied with geothermal energy from the geothermal works shall provide such proper taps, valves, stop cocks, meters, and other apparatus or appliances as the Council requires and shall keep the same in good repair so

as to prevent geothermal energy being wasted and, in default of his providing or keeping in repair any such apparatus or appliances or in case of his wilfully or negligently allowing geothermal energy to run to waste, the Council may stop the supply of geothermal energy to such person in any manner it thinks fit.

(2) Any person acting under the authority of the Council may, for the purpose of ascertaining whether geothermal energy supplied from the geothermal works to any land or building is being wasted or misused, enter on such land at any hour of the day or night, or into such building at any time between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of any day; and if such person is refused admittance or obstructed in such examination, the Council may stop the supply of geothermal energy to any such land or building in any manner it thinks fit.

(3) Any person may remove any pipe or other apparatus or appliance belonging to him connected with the geothermal works after giving to the Council fourteen days' notice in writing of his intention so to do and of the time of such removal, but shall be liable for all damage done to any part of the geothermal works caused thereby, and if any person removes any such pipe or apparatus or appliance without giving such notice he commits an offence and shall be liable on summary conviction to a fine not exceeding fifty pounds, and to pay to the Council for all damage done to the geothermal works by such removal.

**5. Council may purchase geothermal works**—The Council may, out of any moneys applicable to or appropriated for or towards the construction of geothermal works under this Act, purchase any geothermal works theretofore constructed in the city and such geothermal works when purchased shall be deemed to be geothermal works constructed under this Act.

**6. Council may contract for geothermal energy**—The Council may contract, for any period not exceeding twenty-one years at one time, with the owners of any geothermal works whether situated in the city or subject to the consent of the territorial local authority concerned beyond the boundaries thereof or any other person, for such supply of geothermal energy as the Council thinks necessary for the purposes of this Act.

**7. Offences—**(1) Every person commits an offence against this Act who does any of the following things namely:

- (a) Wilfully or negligently injures or destroys any part of the geothermal works; or
- (b) Unlawfully draws off or diverts any geothermal energy belonging to geothermal works; or
- (c) Wilfully or negligently allows any pipe or apparatus on his premises to be out of repair so that geothermal energy is wasted, or alters any meter, or does or suffers any act whereby his supply of geothermal energy is improperly increased; or
- (d) Not having agreed to be supplied with geothermal energy from the geothermal works, takes any such geothermal energy from the supply furnished to another person; or
- (e) Being supplied with geothermal energy from the geothermal works, supplies another person who has not agreed to be so supplied with, or permits him to take, any such geothermal energy; or
- (f) Obstructs any person acting under the authority of the Council in doing anything which the Council is by this Act empowered to do; or
- (g) Opens the ground or the surface of any land so as to uncover any pipe or apparatus belonging to or comprising part of the geothermal works or connects any pipe with such pipe or apparatus without giving the Council seven days' notice in writing of his intention to do so; or
- (h) Alters the adjustment of any valve or other apparatus designed to regulate the quantity of geothermal energy delivered to any person; or
- (i) Connects any pipe with a pipe belonging to the geothermal works without giving the Council two days' notice in writing of the day and hour he proposes to do so, or without having obtained the written permission of some person acting under the authority of the Council in that behalf; or
- (j) Connects any pipe with a pipe of the geothermal works except in the presence of and pursuant to the direction of the officer appointed by the Council to superintend the same; unless such officer fails to attend at the time named in the notice referred to in paragraph (i) of this subsection; or

- (k) Connects with a pipe of the geothermal works any pipe of a strength or material not approved by the Council; or
- (l) Sinks any bore or taps, takes, uses, or applies any geothermal energy in contravention of this Act; or
- (m) Fails to perform, observe, or comply with any term, condition, or obligation contained in any authority or licence granted to him under this Act or with any requirement of the Council under this Act;
- (n) Removes, damages, destroys, or otherwise interferes with any survey pegs placed in the ground in connection with any survey lawfully carried on under this Act or any valve or instrument being used in connection with any such survey or any bore.

(2) Every person who commits an offence against this section shall be liable on summary conviction to a fine not exceeding fifty pounds for each such offence and shall pay to the Council, whether any such fine be imposed or not, a sum equal to the cost incurred by the Council in repairing the injury done to any part of the geothermal works by any such act.

**8. Bylaws**—(1) The Council may, in addition to the powers conferred upon it by any other Act, from time to time make such bylaws as it thinks fit for all or any of the following purposes:

- (a) Regulating and controlling the supply and use of geothermal works, including the reticulation thereof:
- (b) Regulating, controlling, or prohibiting—
  - (i) The sinking of any new bore or bores by private persons in the city after the passing of this Act:
  - (ii) The disposal of waste products, water or steam from new and existing bores and all works connected with or utilised therefrom:
  - (iii) The use of gaseous or unstable land for building purposes where in the opinion of the Council there is danger to health or safety of persons, animals, or property of every kind or description:
- (c) Providing for the registration and licensing of new and existing bores:
- (d) Providing for a charge for the supply by the Council of any geothermal energy either by way of a flat rate or an annual charge or a meter charge payable at such periods as may be prescribed or otherwise as the Council may from time to time determine.

(2) Without limiting the general power hereinbefore conferred by this Act or any other Act thereunto enabling, bylaws may be made under this section for all or any of the following purposes:

- (a) Prescribing any forms that may be required for the purposes of this Act:
- (b) Prescribing conditions upon or subject to which licences and authorities may be applied for, granted or renewed:
- (c) Providing for the keeping of records and the furnishing of information and returns by persons authorised by or under this Act to sink bores, and by licensees for any purpose under this Act, and prescribing the nature of the records, information, and returns, and the form, manner, and times in or at which they shall be kept or furnished:
- (d) Prescribing matters in respect of which fees are payable under this Act and under bylaws made under this section or otherwise, the amount of the fees and the persons liable to pay them:
- (e) Authorising the refund or remission, in such circumstances as in accordance with the bylaws the Council thinks fit, of any fees payable under this Act or under bylaws made under this section:
- (f) Prescribing the duties of licensees and persons to whom authorities are granted by or under this Act, and the operations to be carried out under licences and authorities:
- (g) Prescribing the qualifications of persons in charge of the making and closing of bores or any class thereof, and, in particular, of persons employed as bore manager, and providing for the examination of and grant of certificates to qualified persons:
- (h) Preventing or abating nuisances in or about bores and the premises of all persons using geothermal energy:
- (i) Prescribing safety precautions in the making and after the completion of bores, and the treatment of the ground about any bore and of water above and below the ground, and preventing waste or loss of geothermal energy:
- (j) Prescribing drilling machinery, materials, and casing to be used in the making of bores and to be available to cope with any emergency in connection with any bore; and prohibiting the use of other classes thereof:

- (k) Prohibiting or regulating the making of bores near other bores;
- (l) Regulating the cessation of boring operations and the abandonment and closing of bores; and prescribing precautions against loosening the earth in the vicinity of any bore;
- (m) Providing for bores to be made with due diligence and by safe and satisfactory methods;
- (n) Generally regulating the making of bores;
- (o) Providing for the exemption of licensees and persons to whom authorities have been granted under this Act, either wholly or partially, and either absolutely or conditionally, from any of the requirements of their licences or authorities;
- (p) Prescribing the powers and duties of inspectors, and requiring compliance by all persons with any directions lawfully given by them;
- (q) Prescribing penalties not exceeding a fine of fifty pounds for the breach of any bylaw made under this section.

**9. Municipal Corporations Act to apply**—The powers conferred by this Act on the Rotorua City Council are additional to those conferred by the Municipal Corporations Act 1954, and the provisions of that Act shall, so far as the same are applicable, apply to the exercise by the Council of the powers hereby conferred as if the powers hereby conferred had been conferred by that Act.

**10. Savings**—(1) Except as expressly provided in this Act, nothing in this Act or in any bylaw under this Act shall in any way affect the interest of the Crown in any property of any kind belonging to or vested in the Crown;

Provided that this Act and the bylaws thereunder shall apply to the interest of any lessee, licensee, or other person claiming an interest in any property of the Crown in the same manner as they apply to property owned by private persons.

(2) Nothing in this Act shall be construed to limit or affect in any way the provisions of section 16 of the Rotorua Borough Act 1922.

**11. Right of appeal**—Any person aggrieved at any decision of the Council in respect of the operation of this Act or of any bylaw thereunder may within twenty-one days after

receiving the decision of the Council appeal to the Magistrate's Court held at Rotorua and the decision of the presiding Magistrate shall be final and binding on all parties. Written notice of such appeal shall be given to the Council within twenty-one days of the filing of notice of the appeal in such Court.

**12. General power to take land**—The Council may take under the Public Works Act 1928 as for a public work within the meaning of that Act any land or estate or interest in land necessary for the tapping, taking, use, or application of geothermal energy for any purpose in connection with the construction of any geothermal works.

**13. Council may require bore to be closed**—(1) The Council may at any time by notice to any person to whom the notice may be given in accordance with subsection 2 of this section require that person to close any bore on the grounds specified in the notice being all or any of the following grounds:

- (a) That the bore is a source of danger to persons or property in the vicinity:
- (b) That the bore is, in the opinion of the Council, affecting detrimentally other specified bores, or the supplies of geothermal energy for other specified purposes, or a specified tourist attraction:
- (c) That the bore causes a nuisance in law or that it is otherwise in the public interest that the bore should be closed:
- (d) That the bore has been abandoned or discontinued.

(2) Notice to close a bore may be given under this section by the Council to the last licensee entitled to use or apply geothermal energy from the bore for any purpose and, if there has been no such licensee, the notice may be given to any of the following persons:

- (a) The person authorised by the Council to make the bore:
- (b) The owner of the land, if he permitted the bore to be made without authority from the Council.

(3) Compensation in respect of the closing of a bore shall be payable by the Council to a licensee in respect of any loss which he may suffer in consequence of the bore being closed during any period specified in the licence during which he was entitled to use or apply geothermal energy for any purpose if the grounds for closing the bore include all or any of those specified in paragraphs (b) and (c) of

subsection (1) of this section. Compensation shall not be payable to any other person or in any other case. Any claims for such compensation shall be made and determined as a claim for compensation under the Public Works Act 1928 and the provisions of that Act shall, so far as they are applicable and with any necessary modifications, apply with respect to claims under this section.

**14. No compensation in respect of geothermal energy—**Notwithstanding anything in this Act or any other Act, compensation shall not be payable in respect of any geothermal energy on or below the surface of any land except so far as, at the commencement of this Act, the existence of the geothermal energy on or below the surface of the land is of actual benefit to the owners or occupiers of the land.

**15. Certain provisions of Geothermal Energy Act 1953 not to apply—**In respect of any land which is within the city and in respect of geothermal energy on or under any such land, while any delegation made to the Council under section 9A of the Geothermal Energy Act 1953 (as inserted by section 3 of the Geothermal Energy Amendment Act 1966) continues in force—

- (a) Sections 4, 5, 8, 12, and 16 and subsections (1) to (4) of section 11 of the Geothermal Energy Act 1953, and the provisions of any regulations for the time being in force under that Act, shall not apply; and
- (b) Section 9 of that Act shall apply as though subsection (1) thereof were omitted and the following subsection substituted therefor:

(1) Notwithstanding anything to the contrary in any Act, instrument of title, or rule of law no person shall sink any bore or tap, take or use or apply geothermal energy within the city of Rotorua for any purpose unless he has first obtained a licence granted by the Rotorua City Council under this section:

Provided that where geothermal energy on or under any land is being used for any purpose at the commencement of the Rotorua City Geothermal Energy Empowering Act 1967, the person using that energy shall within a period of three calendar months from the date of such commencement apply in writing to the Council for a licence and he shall

be deemed not to have contravened the provisions of this section if within that period he applies in writing to the council for such licence; and

- (c) Every reference in section 9 of that Act to the Crown shall be read as a reference to the Mayor, Councillors, and Citizens of the City of Rotorua, and every reference in that section and in subsection (2) of section 15 of that Act to the Minister shall be read as a reference to the Council.
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