

New Zealand.



ANALYSIS.

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1935, No. 13.—*Local and Personal.*

Title. AN ACT to make Better Provision for Land Drainage within the Counties of Southland and Wallace.

[25th October, 1935.]

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

Short Title. 1. This Act may be cited as the Southland Land Drainage Act, 1935.

Interpretation. 2. In this Act, if not inconsistent with the context,—
 “Council” means the Southland County Council or the Wallace County Council;
 “District” means the County of Southland or the County of Wallace:

“ Drain ” includes every passage, natural water-course, or channel on or under ground through which water flows continually or otherwise except a navigable river, but does not include water-race as defined in section fifty-eight of the Land Drainage Act, 1908 :

“ Drainage Committee ” means a committee appointed under section seven of this Act :

“ Obstructions ” includes all obstructions of any kind calculated to impede the free flow of water in a drain, including earth, stone, timber, and material of all kinds, and trees, plants, weeds, and growths of all kinds :

“ Occupier ” means the person whose name appears on the valuation-roll of the district as the occupier of the land :

“ Owner ” means the person whose name appears on the valuation-roll of the district as the owner of the land.

3. The Council, in addition to any powers it has under any other Act, may, within the district of the Council and for the purposes of this Act, from time to time exercise the following powers or any of them, and may execute, do, or cause to be executed or done any of the following matters, works, or acts :—

Council
empowered
to make drains
and carry out
other drainage
works.

(a) Cleanse and remove obstructions from and repair or otherwise maintain in a due state of efficiency any drain or outfall for water :

(b) Deepen, widen, straighten, divert, or otherwise improve any drain or outfall for water :

(c) Make any new drain or new outfall for water :

(d) In relation to the foregoing works,—

(i) Fill up or obstruct any drain, provided that the Council shall first make in lieu thereof a drain or drains equally efficient :

(ii) With or without any previous agreement with the owner or occupier of any land within the district upon giving twenty-four hours' notice enter upon such land for the purpose of taking levels or making surveys :

(iii) In the making, widening, or deepening of any drain, remove the soil thereof, and, in the cleansing or repairing of any drain or outfall for water, remove all obstructions therefrom

and place such soil or obstructions on the bank on either side or both sides of such drain or outfall.

Owner or occupier may apply to Council to exercise powers under this Act.

4. (1) Any owner or occupier of land who desires to prevent the overflow of water thereon or to drain the same (hereinafter referred to as the applicant) and in order thereto deems it necessary that new drains should be made through or between other lands, or that existing drains on or between other lands should be cleansed, repaired, widened, deepened, straightened, or otherwise improved, may apply in writing to the Council to exercise its powers in that behalf under this Act.

(2) An application for the carrying-out of any of the works described in paragraph (a) of the last preceding section shall describe generally the nature of the work required, and shall be accompanied by a sketch-plan showing the course of the drain and the lands through which the same runs.

(3) An application for the carrying-out of any of the works described in paragraph (b) or (c) of the last preceding section shall be in the form numbered 1 in the Schedule to this Act, and shall state—

(a) The nature of the drains or improvements proposed to be made :

(b) The length, depth, and width of the same :

(c) The estimated cost of construction :

(d) The compensation (if any) which the applicant proposes to pay,—

and shall be accompanied by a sketch-plan showing the course of the proposed drain or of the drain proposed to be improved, and the lands of the applicant and the lands other than the applicant's through or between which it is proposed that a new drain should be made or the drain to be improved runs, as the case may be.

Powers of Council after receipt of application to cleanse or repair drain.

5. (1) After an application under subsection two of the last preceding section has been made the Council may either—

(a) Resolve to treat the application as one made under subsection three of the last preceding section, whereupon the said application shall be deemed for all purposes to have been properly made under that subsection ; or

(b) Cause to be served upon the occupier, or, if there is no occupier, then the owner of any land

shown on the plan accompanying the application (other than the land of the applicant) a notice in the form numbered 2 in the Schedule to this Act requiring him to carry out and do the work applied for with or without modification.

(2) If the occupier or the owner, as the case may be, of any land served with a notice under paragraph (b) of the last preceding subsection fails to carry out and complete to the satisfaction of the Council the work specified in the notice within the period fixed by the Council and mentioned in the notice (not being less than fourteen days from the service thereof upon him) the Council may carry out or complete the carrying-out of such work as the case may require, and the cost of the carrying-out of any work by the Council under this subsection and all incidental expenses incurred in connection therewith shall constitute a debt forthwith due and payable to the Council by the occupier or owner served with such notice, and shall become and be a charge on the land with respect to which such person was served with the notice, and may be recovered as rates which have been validly demanded are recoverable under the Rating Act, 1925:

Provided that any such occupier or owner may appeal to a Magistrate against such notice within ten days after the service thereof, and such Magistrate shall have jurisdiction to determine whether such notice shall have effect, having regard to all the circumstances of the case, and pending the determination of such appeal the notice shall be suspended.

6. (1) The Council may, after receiving an application under subsection three of section four of this Act, appoint a time and place for the hearing of such application, and in such case shall, not less than seven days before the time so appointed, cause to be served a notice in the form numbered 3 in the Schedule hereto, together with copies of the application and sketch-plan, on the following persons:—

(a) The applicant, the owner if the applicant is the occupier only, and the occupier if the applicant is the owner only, and all other persons having any registered interest in the lands of the applicant:

Powers of Council after receipt of application to make new drains or improve drains.

- (b) The owners and the occupiers of and all other persons having any registered interest in the lands (other than those of the applicant) shown on the plan accompanying the application :
 - (c) Any other persons being the owners or occupiers of or having any registered interest in lands which in the opinion of the Council are likely to be affected by the proposed works.
- (2) At the time and place so appointed the Council shall, after hearing such of the persons served with notice under subsection one of this section as shall be present and desire to be heard, decide to exercise or to refuse to exercise the powers of the Council under this Act and to carry out the works applied for or any modification thereof.

Drainage
Committee may
be constituted.

7. (1) The Council may by resolution appoint from its members a Drainage Committee for the purposes of this Act.

(2) The Drainage Committee may, on behalf of the Council, exercise, perform, and do all the powers, functions, and things which the Council may exercise, perform, and do under this Act.

(3) The Councillor representing the riding of the County within which the lands of the applicant are situated shall *ex officio* be a member of the Drainage Committee for all purposes in connection with the application, and in the event of such lands being within more than one riding, then the Councillor representing each of such ridings shall be a member of the Committee as aforesaid.

(4) The Council may from time to time by resolution—

(a) Fix the number of the members of the Drainage Committee :

(b) Remove any of the members of the Committee :

(c) Appoint new members of the Committee :

(d) Fix the quorum of the Committee :

Provided that no application shall be heard by less than three members of the Committee.

(5) The decision of the majority of the members of the Drainage Committee who have heard any application shall be deemed to be a decision of the Committee.

(6) The hearing of an application may be from time to time adjourned by the Council or by the Drainage Committee, or by such members of either as shall be present at the time and place appointed for the hearing.

8. The Council may exercise all such powers conferred upon it by this Act as are necessary to give effect to a decision of the Council or of the Drainage Committee duly given in accordance with the foregoing provisions of this Act.

Council may give effect to decisions.

9. Every person having any estate or interest in any lands injuriously affected by any works carried out hereunder shall be entitled to compensation for the same from the Council, and the amount of such compensation shall in the event of dispute be determined under the provisions of the Public Works Act, 1928.

Compensation.

10. (1) The cost of the carrying-out by the Council of any works under this Act (other than works carried out under subsection two of section five) and all incidental expenses incurred in connection therewith and all compensation which may be paid to any person in respect of such works shall be apportioned by the Council between the owners at the time of such apportionment of the lands with respect to which notices shall have been given under section six of this Act as the Council shall think fit, having regard to the amount of the benefit directly or indirectly derived or likely to be derived from the works by the lands with respect to which any person has been served with notice as aforesaid.

Apportionment and recovery of cost of works.

(2) In the event of compensation being paid by the Council after an apportionment has been made by it under the last preceding subsection, the Council may apportion such compensation separately under such subsection.

(3) Any amount fixed by the Council under subsection one or subsection two of this section in relation to any land shall constitute a debt forthwith due and payable to the Council by the owners of such land, and such amount or such part thereof as shall remain unpaid, together with any interest payable under the next succeeding subsection, shall become and be a charge on such land, and may be recovered as rates which have been validly demanded are recovered under the Rating Act, 1925.

(4) The Council may decide that any sum payable to it under the foregoing provisions shall, with interest thereon not exceeding the ruling overdraft rate then being charged by the trading banks in New Zealand, be payable by such instalments falling due on such days as the Council shall think fit.

Application to be open to inspection.

11. Any application made to the Council under this Act and the plan accompanying the same shall, until the application has been heard and determined, be open for inspection at the office of the Council during office hours without fee by all persons claiming to have any interest in the same.

Council may declare drainage districts for repair of drains without petition.

12. (1) The Council may from time to time by a special order, without petition, declare any part of its district described and given a name in the order to be a drainage district for the purpose of the maintenance and repair of such drains therein as may be described in the special order; and by any subsequent special order may alter the name or boundaries of any such district.

(2) The special order shall fix the day from and after which such district shall be constituted.

(3) Before making such special order the Council shall cause a plan of the proposed drainage district to be deposited at the office of the Council and at the office of each Town Board (if any) within such proposed district.

(4) Every such plan shall be open for inspection by the public without fee for at least one month before the passing of the resolution making the special order, and public notice of the time when and the place or places where such inspection can be made shall be given by the Council.

(5) The Council may from time to time by special order divide any drainage district constituted under this section into subdivisions, and may define the boundaries of any such subdivisions and assign names thereto.

(6) Within any drainage district defined by a special order under this section the Council may exercise such of the powers conferred by section three of this Act as are from time to time required for the purpose of maintaining or repairing the drains described in such special order, and generally may do all things necessary for the repair, maintenance, and use of such drains, and of banks and defences against water, and of other works constructed in relation thereto.

(7) For the purpose of providing the cost of any works carried out by the Council under this section the Council may by special order in one or more years impose and levy on all lands in the drainage district, or in any subdivision thereof, separate rates, but so that the proceeds derivable from any such rate shall not exceed the proceeds

which would be derivable from a rate on a uniform scale of three-farthings in the pound on the capital value of all the rateable property in the drainage district or subdivision (or its equivalent on the unimproved value or the annual value as the case may require).

(8) From the proceeds of any rate made under this section there may be deducted such sum as, in the opinion of the Council, is necessary to defray the cost of making and levying the rate and of the supervision and clerical work necessary in connection with the carrying-out of the work, and the amount so deducted shall form part of the ordinary revenue of the county.

(9) Sections one hundred and seventy-two and one hundred and seventy-three of the Counties Act, 1920, shall apply with respect to any drainage district constituted under this section.

13. When any notice is required by this Act to be served on any person, such service may be effected by delivering such notice personally, or by leaving it at or posting it by registered letter to the last known place of abode or business of any such person, or, if the whereabouts of such person is then unknown, such notice may be posted on some conspicuous place on the land to which the notice relates. Notices, how given.

14. Every person who at any time obstructs the Council or the Drainage Committee or any person appointed by either to carry out or do, or carrying out or doing, or about to carry out or do any work or thing authorized by or under this Act in the performance of anything that the Council or the Drainage Committee is empowered or required by this Act to do, is liable to a fine not exceeding fifty pounds. Offences.

15. Part IV of the Land Drainage Act, 1908, shall not apply with respect to the Counties of Southland and Wallace. Parts of Land Drainage Act, 1908, not to apply.

16. The Southland Land Drainage Act, 1914, is hereby repealed. Repeal.

Schedule.

SCHEDULE.

[Form 1.

Under the Southland Land Drainage Act, 1935.

APPLICATION TO MAKE DRAIN OR IMPROVEMENTS TO DRAIN.

PURSUANT to the above-named Act the undersigned [Name], [Address and occupation], being the owner [occupier] of the lands described in the first schedule hereto, and being desirous of draining the same, and deeming it necessary that the works described in the second schedule hereto should be made on, through, or between the lands described in the third schedule hereto whereof the persons whose names and addresses appear in such third schedule are the owners and occupiers, hereby applies to the County Council to exercise its powers under the said Act and to carry out such works, and is willing to pay the sum of £ as compensation.

A sketch-plan of the locality is attached hereto.

FIRST SCHEDULE.

[Describe lands of applicant.]

SECOND SCHEDULE.

Nature of drain or improvements to drain :
Length, width, and depth of drain or particulars of other works :
Estimated cost of the work :

THIRD SCHEDULE.

[Describe the other lands by section and block numbers, and set out names and addresses of occupiers and owners opposite the description of each property.]

Lands. Owners and Occupiers.
Dated this day of , 19 .

[Form 2.

Under the Southland Land Drainage Act, 1935.

NOTICE TO CLEANSE, REPAIR, AND REMOVE OBSTRUCTIONS FROM DRAIN.

To THE County Council requires you to cleanse, repair, and remove obstructions (as set out below) from the drain (described below) upon Section , Block .

If you fail to carry out and complete to the satisfaction of the Council the work specified in this notice within the period of [Fill in time] from the service thereof upon you, the Council may do so and recover from you the cost and all incidental expenses. (See section 5, Southland Land Drainage Act, 1935.)

Repairs to be carried out and obstructions to be removed :
Description of drain :

Dated this day of , 19 .

County Clerk.

[Form 3.]

Under the Southland Land Drainage Act, 1935.

NOTICE OF APPLICATION.

To

NOTICE is hereby given that an application has been made to the County Council by [*Name of applicant*] to exercise its powers under the Southland Land Drainage Act, 1935, and to make a drain (or improvements to a drain) on or which may affect your land. A copy of the said application and a copy of the sketch-plan are attached hereto.

The Council or the Drainage Committee will consider the application at a meeting to be held at _____ on _____ the _____ day of _____, 19____, at _____ a.m. [p.m.].

If you desire to be heard in regard to the application you must appear in person or by your agent at the said meeting. If you do not so appear the Council or the Drainage Committee may deal with the application notwithstanding your absence.

Dated this _____ day of _____, 19____.

County Clerk.