

**Reprint
as at 26 October 1935**



Southland Land Drainage Act 1935

Local Act 1935 No 13
Date of assent 25 October 1935
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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

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An Act to make better provision for land drainage within the Counties of Southland and Wallace

1 Short Title

This Act may be cited as the Southland Land Drainage Act 1935.

2 Interpretation

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 watercourse, 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 58 of the Land Drainage Act 1908

Drainage Committee means a committee appointed under section 7

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 Council empowered to make drains and carry out other drainage works

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:

- (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 24 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.

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

- (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 form 1 in the Schedule, 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.

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

- (1) After an application under subsection (2) of the last preceding section has been made the Council may either—
- (a) resolve to treat the application as one made under subsection (3) 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 form 2 in the Schedule 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 14 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 10 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 Powers of Council after receipt of application to make new drains or improve drains

- (1) The Council may, after receiving an application under subsection (3) of section 4, appoint a time and place for the hearing of such application, and in such case shall, not less than 7 days before the time so appointed, cause to be served a notice in form 3 in the Schedule, 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:
 - (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 (1) 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.

7 Drainage Committee may be constituted

- (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 1 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 3 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 Council may give effect to decisions

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.

9 Compensation

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.

10 Apportionment and recovery of cost of works

- (1) The cost of the carrying out by the Council of any works under this Act (other than works carried out under subsection (2) of section 5) 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 6 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.
- (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 (1) or subsection (2) 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 exceed-

ing 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.

11 Application to be open to inspection

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.

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

- (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 1 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 3 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 1 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 3 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 172 and 173 of the Counties Act 1920 shall apply with respect to any drainage district constituted under this section.

13 Notices, how given

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.

14 Offences

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 authorised 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 50 pounds.

15 Parts of Land Drainage Act 1908 not to apply

Part 4 of the Land Drainage Act 1908 shall not apply with respect to the Counties of Southland and Wallace.

16 Repeal

The Southland Land Drainage Act 1914 is hereby repealed.

Schedule

Form 1

Application to make drain or improvements to drain

Under the Southland Land Drainage Act 1935

Pursuant to the above-named Act the undersigned [*name, address, occupation*], being the owner (occupier) of the lands described in Schedule 1, and being desirous of draining the same, and deeming it necessary that the works described in Schedule 2 should be made on, through, or between the lands described in Schedule 3 whereof the persons whose names and addresses appear in such Schedule 3 are the owners and occupiers, hereby applies to the [*name*] County Council to exercise its powers under the said Act and to carry out such works, and is willing to pay the sum of £[*amount*] as compensation.

A sketch plan of the locality is attached hereto.

Schedule 1

[*Describe lands of applicant.*]

Schedule 2

Nature of drain or improvements to drain:

Length, width, and depth of drain or particulars of other works:

Estimated cost of the work:

Schedule 3

[*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

Date:

Form 2

Notice to cleanse, repair, and remove
obstructions from drain*Under the Southland Land Drainage Act 1935***To**

The [*name*] County Council requires you to cleanse, repair, and remove obstructions (as set out below) from the drain (described below) upon Section [*number*], Block [*number*].

If you fail to carry out and complete to the satisfaction of the Council the work specified in this notice within the period of [*length of 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:

Date:

County Clerk.

Form 3
Notice of application

Under the Southland Land Drainage Act 1935

To

Notice is hereby given that an application has been made to the [name] County Council by [applicant's name] 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 [place] on [date], at [time].

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.

Date:

County Clerk.

Southland Land Drainage Amendment Act 1938

Local Act 1938 No 14
Date of assent 16 September 1938
Commencement 16 September 1938

An Act to amend the Southland Land Drainage Act 1935

1 Short Title

This Act may be cited as the Southland Land Drainage Amendment Act 1938, and shall be read together with and deemed part of the Southland Land Drainage Act 1935 (hereinafter referred to as “the principal Act”).

2 Interpretation

In this Act, if not inconsistent with the context,—

farm means any continuous area of land occupied and used as one holding for agricultural or pastoral purposes, or for both of such purposes. An area of land shall be deemed to be continuous, notwithstanding that it is severed by a public road or by a railway or river, if it is in fact occupied and used as one holding as aforesaid

farm drain means as to any farm that part of any drain which, being on the farm, or between the farm and any adjoining farm, or along the side of a road fronting the farm, is used for land drainage purposes in relation to more than 1 farm, but does not include that part of any drain which, by reason of the natural fall of the land or by means of artificial drains, is used for land drainage purposes in relation to an area of land in excess of 2 000 acres.

3 Council empowered to require cleaning out of farm drains within the district and to recover the cost and expenses of work done by the Council on farm drains

- (1) In addition to the powers conferred upon the Council by the principal Act, the Council may from time to time, by public notice in the form in the Schedule, require the occupiers, or

in cases where there are no occupiers, then the owners, of all farms within the district to cleanse and remove obstructions from all farm drains thereon within 3 months from the first publication of such notice.

- (2) Such notice shall be published on 2 days, the second publication being not less than 1 month and not more than 2 months after the first publication of the notice. On each day of publication the notice shall be published in 2 newspapers circulating in the district.
- (3) If, with respect to any farm drain within the district, the work required to be done by such notice is not, at the expiration of the period mentioned in subsection (1), carried out and completed, the Council may carry out or complete such work on such farm drain, and the cost of the carrying out of any work by the Council under this section and all incidental expenses incurred in connection therewith shall—
 - (a) constitute a debt forthwith due and payable by the occupier, or if there is no occupier, then by the owner, of the farm upon which is situated the farm drain or the part of the farm drain on which such work has been carried out, and shall become and be a charge on the land and may be recovered as rates which have been validly demanded are recoverable under the Rating Act 1925; and
 - (b) in any case where the farm drain is situated between 2 adjoining farms, be payable in equal shares by the occupiers or (as aforesaid) the owners of the farms between which such farm drain runs, so that one-half of such cost and expenses shall as to each of such farms constitute a debt forthwith due and payable by the occupier, or if there is no occupier, then by the owner thereof, and be a charge on the land and may be recovered as rates which have been validly demanded are recoverable under the Rating Act 1925.
- (4) For the purposes of this section a farm drain along the side of a road fronting a farm shall be deemed to be situated on such farm.

4 Certificate of engineer as to farm drain to be conclusive evidence

In any proceedings brought by the Council under this Act for the recovery of any moneys or brought against the Council in relation to the exercise or purported exercise of any of its powers thereunder, a certificate in writing under the hand of any engineer employed by the Council that a drain or part of a drain is, or was at any time mentioned in such certificate, a farm drain, shall be conclusive evidence of that fact.

5 Power of entry on lands for inspections or investigations and for purpose of carrying out works authorised

For the purposes of any inspection, investigation, or inquiry directed by the Council in relation to any power conferred on the Council by this Act or the principal Act, and for the purpose of carrying out any work authorised by this Act or by the principal Act, the Council, or its surveyors, agents, officers, and workmen, may, upon giving the occupier or owner 24 hours' notice, enter upon any lands in the district and may do all things necessary or advisable in the opinion of the Council for the purpose of the exercise of such powers.

6 Prohibiting execution of work upon railway land without authority of Minister of Railways

Nothing in this Act shall authorise the Council to enter into or upon or to execute any work upon or affecting any railway work or railway land except with the previous consent and approval of the Minister of Railways, who, in giving his consent and approval as aforesaid, may impose such conditions as he thinks fit for the protection and safety and generally in the interests of the railway.

7 Right to recover preliminary expenses where work not done

Expenses incurred by the Council under this Act or the principal Act in relation to any drain shall, notwithstanding that no work has been carried out on such drain by the Council, be recoverable by the Council as moneys are recoverable under subsection (3) of section 3 in the following cases, namely:

- (a) where in the case of any drain a written request has been received from the owner or occupier of any land for the exercise by the Council of any of its powers with respect to such drain, in which case such expenses shall constitute a debt forthwith due and payable to the Council by such owner or occupier and be recoverable as hereinbefore provided:
- (b) where such expenses have been incurred owing to the failure of any owner or occupier to cleanse or remove obstructions from a drain in accordance with any notice given under this Act or the principal Act, in which case such expenses shall constitute a debt forthwith due and payable to the Council by such owner or occupier and be recoverable as hereinbefore provided.

8 Right to require payment of expenses in advance

The Council may require any person who shall have requested or applied to the Council to exercise any of its powers under this Act or the principal Act as a condition of its considering the request or application to pay to the Council a reasonable sum for engineering, surveying, and other expenses incurred or likely to be incurred in respect of the request or application.

Schedule
Southland (*or* Wallace) County

Notice to cleanse and remove obstructions
from drains

The occupiers, or where there are no occupiers, then the owners, of all farms within the County of Southland (*or* Wallace) are hereby required to cleanse and remove obstructions from farm drains upon their farms or on roads adjoining their farms within 3 calendar months from the date of this notice, being the date of the first publication thereof.

The County Council may carry out the work required by this notice in respect to any farm drain upon which the work has not been done within the period specified, and may recover as rates the cost thereof and all incidental expenses incurred in connection therewith from the occupier or owner of the farm.

Farm means any continuous area of land occupied and used as one holding for agricultural or pastoral purposes, or for both of such purposes. An area of land shall be deemed to be continuous, notwithstanding that it is severed by a public road or by a railway or river, if it is in fact occupied and used as one holding as aforesaid.

Farm drain means as to any farm that part of any drain which, being on the farm, or between the farm and any adjoining farm, or along the side of a road fronting the farm, is used for land drainage purposes in relation to more than one farm, but does not include that part of any drain which, by reason of the natural fall of the land or by means of artificial drains, is used for land drainage purposes in relation to an area of land in excess of 2 000 acres.

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.

By order of the Southland (*or* Wallace) County Council.

Date:

County Clerk.

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Notes

1 *General*

This is a reprint of the Southland Land Drainage Act 1935. The reprint incorporates all the amendments to the Act as at 26 October 1935 as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, *see* <http://www.pco.parliament.govt.nz/reprints/>.

2 *Status of reprints*

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 *How reprints are prepared*

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and

provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint
(most recent first)*
