

Version
as at 23 December 2023



Whakatane Paper Mills, Limited, Water-supply Empowering Act 1936

Private Act 1936 No 7
Date of assent 29 October 1936
Commencement 29 October 1936

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

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An Act to confer powers of taking water from the Whakatane River and other incidental powers upon the Whakatane Paper Mills, Limited

Preamble

Whereas the Whakatane Paper Mills, Limited, a company incorporated in the State of New South Wales (hereinafter referred to as the **company**), is the owner of certain lands situate in the County of Whakatane on the left bank of the Whakatane River (hereinafter referred to as the **river**), near the Borough of Whakatane:

And whereas the company proposes to erect and operate upon such lands a mill (hereinafter referred to as the **mill**) for the manufacture of wood pulp and products of wood pulp:

And whereas for the operation of the said mill a supply of water will be required, a portion of which will require to be fresh water and the balance of which can, if necessary, be salt water:

And whereas the only convenient supply of fresh water is in the river at a point upstream from the mill site—namely, where the river is bounded on its right bank by Allotment 235A of the Parish of Waimana—and the most convenient supply of salt water is in the river at the mill site:

And whereas it is desirable to empower the company to take water from the river at the said points and to grant to the company such incidental powers as are hereinafter contained.

1 Short Title

This Act may be cited as the Whakatane Paper Mills, Limited, Water-supply Empowering Act 1936.

2 Interpretation

In this Act, unless the context otherwise requires,—

public drain means a public drain within the meaning of section 260 of the Public Works Act 1928 and includes a government drain within the meaning of section 262 of the said Act; and also includes any drainage works or stop bank connected with any such drain

tidal lands and **tidal waters** have the same meaning as in the Harbours Act 1923

works includes all excavations, fillings, reservoirs, dams, tanks, aqueducts, bridges, filters, conduits, mains, pipes, pipelines, buildings, erections, pumps, plant, machinery, fittings, chattels, and appliances of every kind belonging to, used, acquired, constructed, or carried out by the company for the purpose of obtaining and conveying water or exercising any of its powers under this Act.

3 Limitation of area within which powers may be exercised

Nothing in this Act shall be deemed to authorise the company to exercise any of the rights, powers, authorities, and privileges by this Act conferred upon it at any place or places beyond the area defined in the Schedule.

*Power to take water***4 Company may take water upstream from mill site***[Repealed]*

Section 4: repealed, on 1 October 1991, by section 362 of the Resource Management Act 1991 (1991 No 69).

5 Company may take water at mill site*[Repealed]*

Section 5: repealed, on 1 October 1991, by section 362 of the Resource Management Act 1991 (1991 No 69).

6 Whakatane Borough Waterworks not to be interfered with

Nothing in this Act contained shall authorise the company—

- (a) to interfere with nor prejudicially affect the wells, reservoirs, pumping plant, and other apparatus of the Whakatane Borough Council or the supply of water to such wells, reservoirs, pumping plant, and other apparatus; or
- (b) to construct any works so as to divert the river away from the pumping station of the said Whakatane Borough Council, or to cause erosion of the river banks adjacent thereto, or to impede the free flow of the river past the said pumping station; or
- (c) to take water from the river at any point less than 1.5 chains downstream from the intake of the said Borough Council.

*General power to carry out works***7 Company may carry out works**

For the purposes aforesaid, and subject to the provisions hereinafter contained, the company may—

- (a) construct, erect, place, lay, renew, repair, enlarge, maintain, and use in, upon, or across the river or the banks or bed thereof, or any public drains, tidal lands, and tidal waters, such intakes, filters, abutments, tanks, reservoirs, pumps, mains, pipes, bridges, viaducts, and other works and appliances as may be necessary or convenient:
- (b) lay, place, construct, renew, repair, enlarge, maintain, and use in, upon, across, or along any roads such pipes, pipelines, and mains, valves, man-holes, surface boxes, and other appliances as may be necessary or convenient:

provided that no water pipes or mains to be laid under the powers conferred upon the company by this Act shall be of greater diameter (internal measurement) than 2 feet 6 inches:

provided also that no tanks, filtration plants, or reservoirs shall be constructed or set up, in, under, or upon any road.

8 Pipes, etc, to remain property of company

All pipes, mains, filters, tanks, pumps, bridges, plant, machinery, and appliances constructed, erected, laid, or placed in, upon, or under any public road, public drain, river, tidal land, or tidal water under the authority of this Act shall be and remain the property of the company, and the company may, subject to the provisions hereinafter contained, at any time remove and take the same away.

Powers in respect of roads, public drains, tidal lands, and tidal waters

9 Particular rights and restrictions in respect of roads, public drains, tidal lands, etc

- (1) Subject to the provisions hereinafter contained, the company shall have such right of entry, with such workmen, horses, carts, vehicles, and appliances as may be necessary or expedient, into and upon any roads, public drains, tidal lands, and tidal waters so as to enable the company to exercise in respect thereof all or any of its powers under this Act, and the company shall also have the following rights in respect of any such roads, public drains, tidal lands, and tidal waters:
 - (a) to dig into and open up the ground:
 - (b) to cut down or remove any trees, hedges, fences, gates, or mounds:
 - (c) and generally to do all acts, matters, and things required for making, constructing, extending, altering, repairing, maintaining, using, or removing any works in, upon, across, or from any such roads, public drains, tidal lands, or tidal waters.
- (2) In respect of any such works the following provisions and conditions shall apply, and shall bind the company as if it had entered into a covenant with His Majesty the King to observe the same:
 - (a) the company shall with all convenient speed and in a proper and workmanlike manner carry out and complete any such works undertaken by it:
 - (b) the company in the execution of such works shall do as little damage as possible, and on completion of the works shall with all reasonable speed restore to the satisfaction of the controlling authority any road, public drain, tidal land, or tidal water that may have been damaged or interfered with to its original condition or as near thereto as shall be possible:
 - (c) in default of such restoration by the company, the controlling authority in respect of any road or public drain, and the Minister of Marine in respect of any tidal land or tidal water, may effect such restoration and recover the cost thereof from the company.

10 Company may conduct water through pipes, etc

In respect of all water pipes or mains laid by the company under the powers conferred on it by this Act in, upon, or across the river, and any roads, public drains, tidal lands, and tidal waters, the company shall have the right of conducting water through such pipes or mains from the river to the mill, either directly or by way of any tanks, filtration plants, or reservoirs constructed or set up by the company.

*Special provisions as to roads***11 Power to open up roads, etc, under superintendence**

- (1) For the purpose of laying any mains, pipes, pipelines, or other works, and of thereafter using, repairing, maintaining, inspecting, altering, replacing, or removing the same, the company, under such superintendence as is hereinafter specified, and subject to the provisions hereinafter contained, may open and break up the soil, pavement, and flooring of any road, and may also cut through, lift, alter, or disturb any tramway, sewer, drain, water pipe, gas pipe, or electric main on, within, or under any such road.
- (2) Nothing in this Act contained shall authorise the company to close any road to traffic.

12 Before opening roads, company to notify persons having control

- (1) Before the company proceeds to exercise any of the powers conferred by the last preceding section it shall—
 - (a) give to the persons having the control or management of the road 1 month's notice in writing of its intention to exercise such powers, accompanied by plans and specifications of the work proposed to be done. Such persons may object to such work or may require alterations or amendments to such plans and specifications; but if the company is of the opinion that such objection is unreasonable, or if it is unwilling to carry out any such alterations or amendments, the matter in dispute shall be referred to the Minister of Public Works, whose decision shall be final:
 - (b) give not less than 1 month's notice in writing to the persons having the control or management of the tramway, sewer, drain, water pipe, gas pipe, or electric main affected, accompanied by plans and specifications showing how such tramway, sewer, drain, water pipe, gas pipe, or electric main will be affected. Such persons may object or may require alterations or amendments to such plans and specifications; but if the company is of the opinion that such objection is unreasonable, or if it is unwilling to carry out any such alterations or amendments, the matter in dispute shall be referred to a Magistrate, whose decision shall be final.

- (2) In cases of emergency or danger to its works the company may, without previous notice, carry out any maintenance or repair work, but shall, as soon as practicable thereafter, inform the persons having such control or management as aforesaid.

13 Roads not to be opened except under superintendence of persons having control

Except in cases of emergency, the company shall carry out such work under the superintendence of the persons having such control or management as aforesaid, and not otherwise, and the reasonable cost of such superintendence shall constitute a debt due by the company to any person exercising the same, and shall be recoverable accordingly:

provided always that if the persons having such control or management as aforesaid, or their responsible officers, fail to attend at the time and place mentioned in such notice, or shall refuse or neglect to superintend the operation of the work, the company may perform the work specified in such notice without the superintendence of such persons or their responsible officers.

14 Roads, etc, broken up to be reinstated without delay

Whenever the company exercises any of the powers conferred by section 11 it shall with all convenient speed and in a proper and workmanlike manner carry out the works undertaken by it, and shall—

- (a) fill in the ground, and reinstate and make good the soil, pavement, or flooring of any road opened or broken up to the satisfaction of the controlling authority;
- (b) keep that portion of the road which has been opened or broken up in good repair for 3 months after replacing and making good the same, and for such further time, if any, as the road or soil, so opened or broken up shall continue to subside;
- (c) reinstate and make good any tramway, sewer, drain, water pipe, gas pipe, or electric main cut through, lifted, altered, or disturbed so as to afford to the public and to every person entitled to use the same an equal use and convenience as before, and generally carry out any such work of cutting through, lifting, altering, or disturbing so as to interfere as little as possible with the use of the same by the public and such persons;
- (d) remove and carry away all surplus materials, rubbish, and debris occasioned by the operations of the company;
- (e) fence in and guard, and keep fenced in and guarded, at all hours of day and night, any excavation, obstruction to traffic, or other source of danger, and cause to be displayed during such hours sufficient flags, lamps, or other efficient warnings of the existence of any such excavation, obstruction, or other source of danger; and

- (f) indemnify the controlling authority concerned in respect of all expenses, claims, and damages incurred by such authority as a result of any accident to any person or property arising out of or caused by or through the company's operations or works on any road.

15 Penalty for non-compliance by company

If the company exercises any of the powers aforesaid without (save in cases of emergency) giving such notice as aforesaid, or in a manner not in accordance with such notice, or shall make default in complying with any of the provisions of the last preceding section after receipt of notice from the persons having such control or management as aforesaid calling on the company to comply with such provisions, then the company shall forfeit to such persons a sum not exceeding 5 pounds for each day or part of a day during which any such default or delay shall continue, and such additional sum, if any, as may be necessary to make good to such persons any loss arising out of such default or delay.

16 In case of delay other parties may carry out work and recover expenses

If any such default or delay on the part of the company takes place after receipt of notice as aforesaid, the persons having such control or management as aforesaid may cause the work, matter, or thing delayed or omitted by the company to be executed, and may recover from the company the costs and expenses occasioned by the execution thereof in the same manner as damages are recoverable by action in any court of competent jurisdiction.

17 Company to alter mains, etc, on notice

The persons having the control or management of any road as aforesaid may, if deemed necessary, raise, sink, or otherwise alter the situation of any main, pipe, or pipeline laid by the company in any such road, and may from time to time, by notice in writing, require the company to cause forthwith, or as soon as conveniently may be, any such main, pipe, or pipeline to be raised, sunk, or otherwise altered in position in such manner as such persons as aforesaid may direct:

provided that such raising, sinking, or alteration in position be not such as to permanently injure such main, pipe, or pipeline, or to prevent the water from flowing as freely and conveniently as before.

18 If company neglects to alter mains, persons giving notice may do so

If the company does not proceed forthwith, or as soon as conveniently may be, after receipt of such notice to comply with the same, the persons giving such notice may themselves cause such mains, pipes, or pipelines to be so raised, sunk, or altered in position, and may recover from the company the cost of doing so:

provided that the said main, pipes, or pipelines be not permanently injured thereby, or the water prevented from flowing as freely and conveniently as before.

Special provisions as to tidal lands and tidal waters

[Repealed]

Heading: repealed, on 1 October 1991, pursuant to section 362 of the Resource Management Act 1991 (1991 No 69).

19 Company to comply with Harbours Act

[Repealed]

Section 19: repealed, on 1 October 1991, by section 362 of the Resource Management Act 1991 (1991 No 69).

Special provisions as to public drains

20 Controlling authority to direct works over public drains

Before executing any works in, upon, or across any public drain, the company shall submit plans and specifications of such works to the controlling authority, who may give such directions as to the manner of carrying out such works, and may order such alterations therein as it may think necessary for the preservation of any public right.

21 Company to keep works over public drains in good repair

The company shall from time to time and at all times keep and maintain any works executed by it in, upon, or across any public drain in good condition and repair, and so as not to cause damage to such public drain or otherwise to impair any public right; and in default thereof the controlling authority may carry out such repairs and other works as may be necessary to prevent or remedy any damage to such public drain or any impairment to any public right as aforesaid, and may recover the cost thereof in the same manner as damages are recoverable by action in any court of competent jurisdiction.

Compensation

22 Company to pay compensation

Any person suffering any damage from the exercise of any of the powers conferred upon the company by this Act shall be entitled to compensation for the same, and such compensation shall be recoverable from the company as damages by action in any court of competent jurisdiction.

*General***23 Private lands not to be entered upon without consent of owners**

Nothing in this Act shall authorise the company to enter or carry out any works upon any private lands without the consent of the owner.

24 Restrictions of other Acts not to apply

Notwithstanding anything contained in any other Act, the rights, powers, and privileges conferred upon the company by this Act may be exercised by the company in manner hereinbefore provided and subject only to the provisions, conditions, and restrictions in this Act contained.

24A Exercise of ancillary rights following repeal of sections 4 and 5

Every right, power or privilege conferred by sections 7, 9, or 10 shall continue to be exercisable by the company in connection with the exercise of the water permits that are, by virtue of section 386 of the Resource Management Act 1991, deemed to replace the rights in relation to the river conferred by sections 4 and 5,—

- (a) in the same manner, and to the same extent, as those rights, powers, and privileges were exercisable before the repeal of sections 4 and 5; and
- (b) subject to the requirement that the company shall, in exercising those rights, powers, and privileges, comply in all respects with the Resource Management Act 1991.

Section 24A: inserted, on 1 October 1991, by section 362 of the Resource Management Act 1991 (1991 No 69).

Section 24A(b): amended, on 23 December 2023, by section 6 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).

25 Interference with public works

Subject to the foregoing provisions, nothing in this Act shall authorise the company to interfere with any government work without the prior consent in writing of the Minister of Public Works. Such consent may be either withheld or given subject to such terms and conditions as the Minister thinks fit.

26 Director-General of Health may impose on company conditions as to disposal of waste products

- (1) The consent of the Medical Officer of Health under section 54 of the Health Act 1920 to the establishment by the company of an offensive trade may be given subject to such conditions as, for the purpose of safeguarding the public health or of preventing or abating any nuisance, may then or at any time thereafter be imposed by the Director-General of Health with respect to the disposal of effluent or waste products from any works established for the purposes of such trade.

- (2) If such conditions are not complied with to the satisfaction of the Director-General of Health, he may, by notice in writing to the company, suspend the operation of such consent, and, in the event of the failure of the company to comply with such conditions continuing for a longer period than 6 months, the Director-General may revoke such consent.
- (3) If at any time while the consent of the Medical Officer of Health is suspended in accordance with this section or if at any time after the revocation of such consent the company carries on any offensive trade in connection with its business, it shall be liable to the penalties prescribed by section 56 of the Health Act 1920 as if it were carrying on an offensive trade established in breach of the provisions of that Act.

27 Act to be a private Act

This Act is hereby declared to be a private Act.

Schedule

All that area in the Auckland Land District, Whakatane County: bounded, commencing at a point on the right bank of the Whakatane River, being the south-western corner of Allotment 13, Parish of Waimana, in an easterly direction along the southern boundary of Allotment 13 aforesaid and its production across and beyond a public road to a point within Lot 2 on Deposited Plan 10438, being part Allotment 245, Parish of Waimana, distant $14\frac{1}{2}$ chains from the south-eastern corner of Allotment 13 aforesaid; thence along a right line bearing 180° to a point in line with the northern boundary of Allotment 23, Parish of Waimana; thence in a westerly direction to and along the northern boundary of Allotment 23 aforesaid and its production to a point in line with the south-western boundary of Rangitaiki Lot 38B 3K No 2; thence in a north-westerly direction to and along the south-western boundary of Rangitaiki Lot 38B 3K No 2 aforesaid, and along the south-western boundary of Rangitaiki Lot 38B 3K No 1 to and along the south-western side of a 50-link road line adjoining Rangitaiki Lot (part) 38B 3J, and along the last-mentioned line produced to its intersection with the south-eastern boundary of Rangitaiki Lot 38B 3H No 3; thence again in a north-westerly direction by a right line to a point on the western side of the Rotorua–Whakatane Road, distant 100 links from the south-eastern corner of Rangitaiki Lot 30C No 5B; thence in a northerly direction along the western side of Rotorua–Whakatane Road aforesaid to the north-eastern corner of Rangitaiki Lot 30C No 1B; thence in a north-westerly direction by a right line parallel with the Tauranga–Whakatane Road to a point in line with the north-western boundary of Rangitaiki Lot 29F No 2; thence in a north-easterly direction to and along the north-western boundary of Rangitaiki Lot 29F No 2 aforesaid, and by this line produced to a point within Rangitaiki Lot (part) 29S No 2, distant 10 chains from the north-western corner of Rangitaiki Lot 29F No 2 aforesaid; thence in a north-easterly direction by a right line to the north-western corner of Rangitaiki Lot 29V No 1; thence along part of the northern and north-western boundaries of the last-mentioned Lot and the production in a north-easterly direction of the last-mentioned boundary to a point on the northern side of Stock Road; thence in an easterly direction along the northern side of Stock Road aforesaid to a point in line with the eastern boundary of Lot 1 on Deposited Plan 21268; thence in a southerly direction across Stock Road, to and along the eastern boundaries of Lot 1 on Deposited Plan 21268, to and along the eastern boundary of part Lot 3 on Deposited Plan 25358, and along this boundary produced to a point in the Whakatane River, distant 100 links from the mean high-water mark of the left bank of Whakatane River; thence in a westerly direction along a line parallel with and distant 100 links from the mean high-water mark aforesaid to a point in line with the western boundary of Lot 2 on Deposited Plan 25604; thence by a right line to a point on the left bank of the Whakatane River, being the south-western corner of the last-mentioned Lot; thence westerly, southerly, and south-easterly generally along the left bank of Whakatane River to the easternmost corner of Rangitaiki Lot (part) 29L comprised in certificate of title, Volume 230, folio 21, Auckland Register; thence again in a south-easterly direction along a right line to a point on the left bank of Whakatane River, being the northern extremity of Rangitaiki Lot 38B 3W No 1; thence in a

south-easterly direction generally along the left bank of Whakatane River to a point in line with the southern boundary of Allotment 13, Parish of Waimana; thence by a right line across Whakatane River to the south-western corner of the last-mentioned Allotment, the point of commencement. As the same is more particularly delineated in a plan marked L and S 13/1/13, deposited at the Head Office, Department of Lands and Survey at Wellington, and thereon bordered red: Auckland Plan 28442, blue.

Whakatane Board Mills Limited Water Supply Act 1961

Private Act	1961 No 1
Date of assent	18 October 1961
Commencement	18 October 1961

1 Short Title

This Act may be cited as the Whakatane Board Mills Limited Water Supply Act 1961, and shall be read together with and deemed part of the principal Act.

2 Transfer of powers, etc

All rights, powers, privileges, and authorities conferred upon the old company by the principal Act are hereby transferred to and vested in the new company subject to all conditions, provisions, and restrictions under which the old company held them.

3 Interpretation

Except in the Preamble of the principal Act the words **the company** wherever used therein shall mean the new company.

4 Private Act

This Act is hereby declared to be a private Act.

Notes

1 *General*

This is a consolidation of the Whakatane Paper Mills, Limited, Water-supply Empowering Act 1936 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 *Amendments incorporated in this consolidation*

Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68): section 6

Resource Management Act 1991 (1991 No 69): section 362