

Perth Drain Act and Rating

WESTERN AUSTRALIA

ANNO TRIGESIMO OCTAVO

VICTORIÆ REGINÆ

No. 14

An Act to extend the Powers of the Perth City Council.

[Assented to 6th August, 1874.]

Preamble

WHEREAS the Council and Burgesses of the City of Perth, hereinafter called 'The Council,' are desirous of constructing a drain, or conduit from Lake Kingsford to Claisebrook, in the City of Perth, and for such purpose it is expedient to give the Council the powers hereinafter contained: Be it therefore enacted by his Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof, as follows:—

Power to make a drain from Lake Kingsford to Claisebrook

1. The Council are hereby empowered to make a drain or conduit from Lake Kingsford to Claisebrook aforesaid; and for such purpose it shall be lawful for them or any person acting under their authority, with their or his servants and workmen, and with or without horses and carts, at any time, and from time to time hereafter, to enter upon any land which shall be required for the purpose aforesaid, and take from thence any timber, earth, stone, sand, gravel, or other material, and from time to time to remove and use the same in order to make or construct in, upon, across, under, through, or over any land, and to view, inspect and repair, or alter the drain or conduit aforesaid, as the Council shall think proper.

And to enter on lands

Remove soil

Compensation to be made to owner

2. In all cases in which any land is taken or anything is done in or upon any land in pursuance of the powers by the preceding section conferred, all proper compensation shall be made to the owner of such land.

Power to purchase land by mutual agreement

3. Where any land is required for the purposes of this Act the Council are hereby empowered to agree with the owner or owners of such land for the absolute purchase thereof for such consideration as the parties shall think proper.

In default of mutual agreement arbitration by two arbitrators

4. If no agreement can be come to between the Council and the owner or owners of any land required for the purposes of this Act, as to the compensation to be made in respect thereof, the same shall be settled by arbitration; and each party, the Council on the one hand and the owner or owners collectively of the said land on the other, shall nominate and appoint an arbitrator, to whom such dispute shall be referred; and every appointment of an arbitrator shall be made on the part of the Council under the hand of the then Chairman, and on the part of the said owner or owners under his or her or their hand or hands; and the same shall be deemed a submission to arbitration; and the award of such arbitrators shall be final and conclusive between the parties.

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5. If, for the space of fourteen days after any such dispute shall have arisen, and after a request in writing in which shall be stated the matter so required to be referred to arbitration shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party shall fail to appoint such arbitrator, then, upon such failure, the party making the request and having himself appointed an arbitrator may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matter in dispute; and in such case the award or determination of such single arbitrator shall be final and conclusive. All requests and notices required by this Act shall be deemed to be served by the delivery thereof personally to any owner, tenant, or occupier of any land intended to be purchased, if within the Colony of Western Australia, but otherwise by posting such request or notice in a conspicuous place and manner on the said land.

Or one if either party refuse to appoint

6. When more than one arbitrator shall have been appointed such arbitrators shall, before they enter upon the matter referred to them, nominate and appoint, by writing under their hands, an umpire to decide on any matter on which they shall differ or upon which from any cause whatsoever they shall be unable to make their joint award, and which shall be referred to them under the provisions of this Act. And if the said arbitrators shall refuse or shall for seven days after the request of either party to such arbitration neglect to appoint an umpire, the Governor of the said Colony for the time being shall on the application of either party to such arbitration, appoint an umpire, and the decision of such umpire on the matters on which the arbitrators differ shall be final and conclusive.

Umpire to be appointed

7. If the arbitrators so appointed as aforesaid shall fail to make their awards within twenty-one days after the day on which the last of such arbitrators shall have been appointed, the matters referred to them shall be determined by the umpire to be appointed as aforesaid; and the award of such umpire shall be final and conclusive.

If arbitrators fail to make an award umpire to do so

8. In case the owner of any land required by the Council for the purposes of this Act shall wilfully refuse to name an amount as a compensation, the Council may treat such refusal in the same way as the refusal to appoint an arbitrator, and the Council may proceed in the manner in such last case directed.

Compulsory arbitration

9. All the costs of any such arbitration and incident thereto, and the costs of the arbitrators and umpire, shall in the absence of any contrary direction in the award of the arbitrators or umpire, be borne by the parties in equal proportions.

Costs of the arbitration

10. The arbitrators or umpire shall deliver their or his award in writing to the Chairman for the time being of the Council, who shall, on demand, after payment of their fees or charges, furnish a copy thereof to the other party to the arbitration, and shall at all times, on demand, produce the said award and allow the same to be inspected and examined by such party or any person appointed by him for that purpose.

Delivery of award

11. The submission to any such arbitration may be made a rule of the Supreme Court, on the application of either of the parties.

Submission made a rule of Court

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Application of
purchase or
compensation
money

12. In case any dispute or difference shall arise as to the application of the purchase money for any land purchased or of money awarded as compensation under this Act, the Council may pay such purchase money or compensation to the Colonial Treasurer, whose receipt shall be a good discharge for the same; and thereupon the said Treasurer shall be deemed to be a trustee within the meaning of the Act of the Imperial Parliament 22nd and 23rd Victoria, cap. 35, s. 30, and of the Ordinance 31st Victoria, No. 8, s. 1.

Definition of the
word 'owner'

13. The word 'owner' shall mean any person or corporation having a freehold or leasehold interest in land.

FRED. A. WELD,
GOVERNOR.
