

New Zealand.

## ANALYSIS.

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1938, No. 17.—*Local and Personal.*

AN ACT to make Better Provision for the Improvement Title.  
of the Waterway of the Lower Clutha River and  
the Protection and Drainage of certain Land  
adjacent thereto. [16th September, 1938.]

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

Short Title  
and  
commencement.

1. This Act may be cited as the Lower Clutha River Improvement Act, 1938, and shall come into force on a date to be specified in that behalf by the Governor-General by Proclamation (being not earlier than the date of the first election of Commissioners to be held under this Act).

Lower Clutha  
River Trust  
District  
constituted.

2. (1) The areas described in the First Schedule hereto are hereby together constituted and declared to be a special river district, to be called the Lower Clutha River Trust District (hereinafter referred to as the Trust District).

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(2) The Trust District is hereby divided into five subdivisions having the names and being described in the First Schedule.

Lower Clutha  
River Trust  
constituted.

3. (1) There shall be for the Trust District a trust under the name of the Lower Clutha River Trust (hereinafter called the Trust) consisting of eight Commissioners, one of whom shall be elected by the ratepayers of each of the Otanomomo, Inch-Clutha, and Matau Subdivisions, one of whom shall be appointed by each of the Balclutha and Kaitangata Borough Councils, and three of whom shall from time to time be appointed by the Minister of Public Works.

(2) The Trust is hereby declared to be a body corporate under the name of the Lower Clutha River Trust, with perpetual succession and a common seal and, subject to the provisions hereof, to be capable of doing and suffering all such acts and things as bodies corporate may lawfully do and suffer.

(3) The Trust shall from time to time establish and maintain and publicly notify an office at which notices and other documents may be served on the Trust.

Provisions of  
River Boards  
Act, 1908,  
and Land  
Drainage  
Act, 1908,  
incorporated

4. The Trust shall be deemed to be a River Board under the River Boards Act, 1908, and shall have all the powers conferred on a River Board by that Act, and, subject to the provisions of this Act, all the provisions of that Act shall apply accordingly. The Trust shall also have all the powers conferred on a Drainage Board under the Land Drainage Act, 1908, and all the provisions of that Act shall apply as though the Trust were a Drainage Board except

in so far as any of such provisions are inconsistent with the provisions of the River Boards Act, 1908, or of this Act.

5. (1) The first Commissioners of the Trust shall come into office on the day fixed for the election of such Commissioners as require to be elected as hereinafter provided.

Term of  
office of  
Commissioners.

(2) Unless his office sooner becomes vacant, every Commissioner shall hold office until the election or appointment of his successor, but shall be capable of re-election or re-appointment.

(3) Subject to the provisions of this section, every non-elective Commissioner shall be appointed for a term of three years from the fifteenth day of June, nineteen hundred and thirty-eight, or from the same day in any subsequent third year.

6. (1) The Governor-General may appoint such person as he thinks fit to be the returning officer to hold the first election of such Commissioners as require to be elected, and appoint the day for such first election, and do all such other things as are necessary for the holding of such election.

First  
election of  
Commissioners.

(2) Such returning officer shall for the purposes of the first election as aforesaid prepare a list of all persons whose names appear on the valuation roll of any county in respect of lands included in the Otanomomo, Inch-Clutha, and Matau Subdivisions.

(3) For the purpose of such first election each person whose name appears on such list shall be entitled to one vote.

7. Except as provided in the last preceding section in respect of such first election, no occupier who in accordance with any classification of lands made as hereinafter provided is so classed as to pay no rates to the Trust shall, so long as such classification is in force, be entitled to any vote.

Voting.

8. (1) The Trust is hereby authorized and empowered to levy and collect the same special rates as were made as security for loans raised by the following Boards or local authorities hereinafter abolished by this Act, that is to say:—

Rating-powers  
in respect  
of existing  
loans.

The Inch-Clutha River and Drainage Board:

The Otanomomo River Board:

The Matau River Board.

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(2) The Trust shall levy and collect the said special rates until the loans in respect of which such special rates were made are fully paid off.

(3) Such rates shall be levied and collected on the basis of the classification in force in respect of such rates at the coming into operation of this Act.

Additional  
rating-powers.

9. The Trust is hereby empowered to make and levy the following additional rates:—

(a) An administrative rate to provide for the whole of the general administrative charges of the Trust:

(b) A drainage rate to provide for the maintenance of any drainage work or works taken over by the Trust from any other Board or body, or for the construction of any drainage-works by the Trust, or for the maintenance of any drainage works constructed by the Trust:

(c) A river rate to provide for the maintenance of any embankments or other river-works taken over by the Trust from any other Board or body, or for the construction or carrying-out of any works by the Trust for the purpose of protecting any lands within its district from flooding or from erosion, or for the maintenance of any such works constructed by it or by any such Board or body as shall require maintenance.

Classification  
of land.

10. Subject to the provisions hereinafter contained as to the administrative rate, the Board shall, before making and levying any of the rates referred to in the last preceding section, effect a classification of all lands included in the Trust District into three classes, namely:—

(a) Class one, being lands receiving or likely to receive a benefit from the maintenance, improvement, or construction of any of the said drainage-works;

(b) Class two, being lands receiving or likely to receive a benefit from the maintenance, improvement, or construction of any of the said river-works; and

(c) Class three, being all other lands,—

and it is hereby declared that such other lands shall not be rateable for any of the purposes of the Trust.

11. (1) The said administrative rate shall be levied uniformly on the land included in classes one and two aforesaid on a capital value basis. Incidence  
of rates.

(2) The said drainage rate shall be levied on the lands included in class one aforesaid in accordance with the provisions of the Land Drainage Act, 1908, and this Act.

(3) The said river rate shall be levied on the lands included in class three aforesaid in accordance with the provisions of the River Boards Act, 1908, and this Act. AMD. 19  
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(4) It is hereby expressly declared that any land may appear in both classes one and two and be rateable in respect of both drainage and river rates.

12. For the purpose of providing the interest and other charges on any loan or loans authorized by the ratepayers to be raised for any work or works the Trust shall by resolution, which shall be published in the *Gazette*, describe the boundaries of the area to be benefited by such work or works, and shall declare the area so described to be a special area and shall cause to be made a classification of the benefits to be derived by each property within such special areas. In such classification there shall be specified the amount to be paid by the owner or occupier of each property, and such amount shall be deemed to be a special annual recurring rate within the meaning of the Local Bodies' Loans Act, 1926, and shall be payable at such intervals as the Trust by resolution determines, and shall be levied year by year without further proceeding by the Trust until the loan in respect of which the classification is made is fully paid off. Such rates on each property shall be made in the ratio of the individual benefit to the total estimated benefits in such special area. After adoption by the Trust and before entering upon any scheme of improvement in or for the benefit of any district as defined in this section, the lands shall be classified as herein provided. Classification  
of land  
in respect  
of loans.

Further provisions as to classification.

**13.** (1) Every classification shall be dealt with by the Trust, and every person who thinks himself aggrieved thereby may appeal against the same in the manner provided by the River Boards Act, 1908.

(2) All appeals against any classification shall be decided by a Stipendiary Magistrate sitting with two assessors, one of whom shall be appointed by the Trust and the other by the Minister of Public Works.

(3) Every classification list when signed by the Trust in case there is no appeal, and when signed by the Magistrate and assessors after an appeal, shall for the purpose of any proceedings for the recovery of rates payable under this Act be conclusive evidence of the liability of the owner or occupier for the time being of the property described therein; and every such list shall remain in force until another is made under the provisions of this Act.

Separate accounts to be kept.

**14.** The Trust shall cause separate accounts to be kept for all administrative, drainage, river, and special rates made and levied.

Provision as to administrative rate pending classification.

**15.** Pending the making of a classification as hereinbefore set out, the Trust is empowered to make and levy an administrative rate on all lands in the Trust District, which rate shall be computed on a capital value basis.

Special provisions as to Balclutha and Kaitangata Boroughs.

**16.** The following provisions shall apply in relation to the Boroughs of Balclutha and Kaitangata:—

(a) The Trust shall have no jurisdiction in regard to any matters of drainage over the land comprised in either of the said boroughs:

(b) It is expressly declared that the land within the said boroughs shall be classified in manner hereinbefore set out with reference, however, to the river rate only, and the occupiers thereof shall be liable in respect of administrative and river rates accordingly:

(c) The Trust shall direct that any rates to be levied upon ratepayers within either of the said boroughs be made, levied, and collected by the Borough Councils of such boroughs respectively, and the said Councils shall pay the same to the Trust.

17. The Trust shall have full power to do all such things as may in its opinion be necessary effectively to cope with the possible flooding of the Trust District or any part thereof and with the drainage of the whole district or any part thereof (excluding as to drainage only the Boroughs of Balclutha and Kaitangata), whether such flooding or the necessity of such drainage shall or may arise either from surface water or by floods and freshes in the Clutha River or any of its tributaries.

General powers  
of Trust.

18. In particular and without restricting the general powers hereby given, the Trust may—

Particular  
powers of  
Trust.

(a) Enter upon any land within the Trust District, divert any drains, stream, or river, and close up any outlet or inlet to or from the same provided adequate compensation is paid for loss of riparian or other water rights:

(b) Divert, raise, lower, or alter roads, bridges, and culverts where in the opinion of the Trust they interfere with the proper discharge of flood-waters:

(c) Carry out dredging operations on the Clutha River and purchase or construct any dredges or equipment which may be necessary for such purpose.

19. All proposals by any person or body for any drain or drains to empty into the rivers or streams or into any drain or drains under the control of the Trust, and all plans for locks, tide-gates, bridges, ferries, or wharves, shall be submitted to and approved by the Trust before being carried out.

Trust to  
approve of  
proposed  
works.

20. It shall not be competent for any person to do or erect anything that will obstruct or will be likely to obstruct the free flow of flood-waters over any land within the Trust District unless with the written consent of the Trust.

Obstruction  
of flow of  
flood-waters.

21. Every drain, tidal, or flood-gate, or box or valve or levee or other appliance constructed or maintained by the Trust, shall be deemed to be the property of the Trust; and any person doing any act whereby any such

Penalty for  
damage of  
Trust  
property.

drain, gate, box, levee, or appliance may be damaged or its efficiency impaired, or doing any work or thing in contravention of this Act, shall be liable to a penalty not exceeding five hundred pounds.

Power to  
compel  
erection of  
fences.

**22.** The Trust is hereby empowered to call on and compel the occupier of any land through which any drain is constructed to erect along either or both sides thereof a fence in such position and of such a nature as to prevent cattle, sheep, or other animals from damaging the sides of such drain, and in the event of such occupier not erecting such a fence within three months of being so called upon to do so, the Trust may erect the same and the cost thereof shall be a debt recoverable by the Trust from such occupier.

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By-laws.

**23.** The Trust may from time to time make by-laws concerning the taking or diverting of waters from any drain within the district, and may by any such by-law prescribe a fine not exceeding fifty pounds for any breach thereof.

Approval of  
Minister of  
Public Works  
required  
before  
certain work  
commenced.

**24.** It shall not be lawful for any local authority or other public body or any person to construct in or about the beds of the Clutha River or its tributaries within the Trust District any protective works of such a nature as are likely to interfere with or affect the flow of the water in such river or tributary without the consent of the Minister of Public Works.

Railway lands  
safeguarded.

**25.** It shall not be lawful for the Trust or any local authority or other public body or any person to execute any work upon or affecting any railway land in any part of the district except with the previous consent and approval in writing of the Minister of Railways, who may impose such conditions for the protection and safety of the railways as he may think fit.

Hydrological  
records.

**26.** It shall be the duty of the Trust to take all necessary observations and keep records that will assist in the study of the hydrology of the Clutha River or any of its tributaries, changes in their regimen, heights and duration of floods, rainfalls, or any other information that will be of service to the Trust.



**27.** (1) In lieu of paying compensation to the owner or occupier of any land that may be damaged or injuriously affected by any work carried out under the provisions of this Act, the Trust is hereby empowered to purchase any such land. Power to purchase land.

(2) If the owner of any such land and the Trust cannot agree as to the price to be paid for such land, the dispute shall be referred to the determination and award of two arbitrators or their umpire pursuant to and so as to have all the incidents and consequences of an arbitration under the Arbitration Act, 1908.

**28.** The Trust shall have the power to lease or to sell, convey, and transfer any lands (other than endowments) belonging to it. Power to sell and lease lands.

**29.** The following Boards are hereby dissolved and the Districts in respect thereof are hereby abolished as from the date of the commencement of this Act:— Certain Boards abolished.

The Clutha River Board:

The Otanomomo River Board:

The Inch-Clutha River and Drainage Board:

The Matau River Board.

**30.** (1) All loans heretofore raised by any of the aforesaid Boards are hereby declared to have been legally raised and all rates made as security for such loans are declared to have been legally made. On the dissolution of the said Boards all their property, real and personal, shall become the property of the Trust, and all liabilities and engagements of the said Boards shall become liabilities and engagements of the Trust, and all actions and proceedings pending by or against any of the aforesaid Boards may be carried on and prosecuted by or against the Trust, and all rates payable to any of the said Boards shall be paid to the Trust. Vesting of property of abolished Boards.

(2) All notices and acts of authority given or done by any of the said Boards shall be deemed to have been given and done by the Trust so far as is necessary to enable the Trust to claim from any person or body any of the property of the said Boards or to recover any moneys due to the said Boards, or which would have been due to them but for their dissolution, or to enforce any right now vested in the Trust by virtue of the last preceding subsection.

Special  
provisions as  
to Clutha  
River Board.

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**31.** The following special provisions shall apply as to the Clutha River Board:—

(a) The endowments of the said Clutha River Board shall as from the commencement of this Act be vested in the Trust and the income thereof shall be applied as follows—

(i) In payment of the interest and sinking fund and other charges on any loan or loans raised by the said Clutha River Board;

(ii) Towards the payment of the cost of carrying on the steamer service hereinafter referred to;

(iii) Towards the payment of interest, sinking fund, and other charges on any loan raised by the Trust for river works only; and

(iv) In such other manner as the Trust may think fit for the carrying-out or maintenance of any drainage or river works by the Trust or towards its general administrative expenses:

(b) The Trust shall be in respect of such endowments a leasing authority within the meaning of the Public Bodies' Leases Act, 1908:

(c) All leases granted by the Clutha River Board in respect of such endowments and subsisting at the commencement of this Act shall be deemed to have been granted by the Trust:

(d) The motor-transport license of the said Clutha River Board and its motor-transport business shall become vested in the Trust as at the commencement of this Act, and the Trust is hereby empowered to carry on the motor-transport service heretofore carried on by the said Clutha River Board:

(e) The steamer service carried on by the said Clutha River Board shall be continued in operation by the Trust until the Minister of Public Works, after inquiry, determines that the service shall be discontinued.

**32.** The Trust is hereby empowered to pay out of its funds all costs, charges, and expenses reasonably incurred by any of the Boards hereby abolished in connection with the promotion of this Act. Expenses of promoting Act.

**33.** The enactments specified in the Second Schedule hereto are hereby repealed. Repeals.

## SCHEDULES.

Schedules.

### FIRST SCHEDULE.

1. *Balclutha Subdivision.*—All that area in the Otago Land District, being the Borough of Balclutha, as described in the *New Zealand Gazette* of 17th March, 1938, No. 19, page 489, including that portion of the Clutha River, the bed thereof, and the islands therein contained within the said borough.

Also all that area in the Clutha County, being the Clutha River, the bed thereof, and the islands therein, bounded on the north by a line across the said river in prolongation of the northern boundary of Section 11, Block XXXVI, Clutha Survey District, on the east generally by the left bank of the said river, and by the western boundary of the Borough of Balclutha hereinbefore described, on the south and west generally by the right bank of the said river.

2. *Kaitangata Subdivision.*—All that area in the Otago Land District, being the Borough of Kaitangata, as described in the *New Zealand Gazette* of 4th August, 1887, No. 51, page 1038.

3. *Inch-Clutha Subdivision.*—All that area in the Otago Land District situated in Bruce County, being the area described in the Schedule to the Inch-Clutha Road, River, and Drainage Amendment Act, 1921–22.

Also all that area in the Otago Land District situated in the counties of Bruce and Clutha, being the Clutha River, the Matau and Koau branches of the said river, the bed thereof, and the islands therein; from the southern boundary of the Borough of Balclutha to the Pacific Ocean.

Also all that area in the Otago Land District situated in Bruce County, being Sections 1, 2, and 3, Block XVII, Coast Survey District, and public roads adjoining the said Sections 1, 2, and 3.

4. *Matau Subdivision.*—All that area in the Otago Land District situated in Bruce County, being the Matau River District, as defined in the *New Zealand Gazette* of 5th February, 1920, No. 19, page 428, excepting thereout such portion of the Borough of Kaitangata, hereinbefore described, as is included in the description of the aforesaid Matau River District.

Also all that area in the Otago Land District situated in Bruce County, being parts of Blocks I and II, North Molyneux Survey District, and bounded as follows: Commencing at a point on the left bank of the Matau Branch of the Clutha River in prolongation of the northern boundary of Allotment No. 2 on a plan deposited in the Lands and Deeds Registry Office, at Dunedin, under No. 2344, and proceeding thence in an easterly direction along the southern side of a public road forming the northern boundary of Allotment No. 2 aforesaid, to the north-eastern corner thereof; thence generally in a southerly direction along a public road forming the eastern boundary of Allotment No. 2 aforesaid, intersecting Allotment No. 1 on the said plan, and forming the eastern boundary of Allotment No. 3 on the said plan, to the eastern corner thereof; thence in a southerly direction, across a public road, and along the western side of a public road intersecting Sections 3 and 2, Block I, in the aforesaid District, to the north-eastern boundary of the last-mentioned Section 2; thence in a southerly direction along the north-eastern boundary of Section 2 aforesaid, and Section 1, Block I, in the aforesaid district to the south-eastern corner of Section 1, last mentioned; thence across a public road to a point on the high-water mark of the Pacific Ocean, in prolongation of the north-eastern boundary of Section 1 aforesaid; thence in a westerly direction along the high-water mark of the Pacific Ocean to a point thereon in prolongation of the western boundary of the last-mentioned Section 1; thence generally in a northerly direction across a public road, and along the left bank of the Matau Branch of the Clutha River to the point of commencement.

5. *Otanomomo Subdivision*.—All that area in the Otago Land District situated in the Clutha County, being the Otanomomo River District, as described in the *New Zealand Gazette* of 29th January, 1914, No. 19, page 294.

Also all that area in the Otago Land District situated in Clutha County, being public roads and parts of Sections 14, 15, 17, 18, and 19, Block XXXIII, Clutha Survey District, bounded on the south by the Otanomomo River District hereinbefore described, on the west by a railway reserve, on the north by a railway reserve, and on the east by the right bank of the Koau Branch of the Clutha River.

Also all that area in the Otago Land District situated in the Clutha County, being parts of Sections 9, 10, and 11, Block XXXV, Clutha Survey District, bounded on the north by the Clutha River, on the east by the eastern boundary of Section 9 aforesaid, which said boundary forms in part the western boundary of the Borough of Balclutha herewith described, on the south by public roads, and on the west by the western boundary of Section 11 aforesaid.

## SECOND SCHEDULE.

- CLUTHA River Trust Reserves Act, 1874, No. 40.  
Clutha River Conservators Board Act, 1875, No. 55.  
River Boards Act, 1884, No. 49, sections 135 to 140.  
River Boards Act 1884 Amendment Act, 1885, No. 28,  
section 12.  
River Boards Act Amendment Act, 1888, No. 24, section 6  
and Second Schedule.  
Clutha River Board Empowering Act, 1898, No. 15 (Local).  
Clutha River Board Empowering Act 1898 Amendment Act,  
1900, No. 10 (Local).  
Clutha River Board Empowering Act, 1923, No. 6 (Local).  
Clutha River Board Empowering Act, 1930, No. 9 (Local).  
Inch-Clutha Road, River, and Drainage Act, 1901, No. 14  
(Local).  
Inch-Clutha Road, River, and Drainage Act 1901 Amendment  
Act, 1903, No. 33 (Local).  
River Boards Act, 1908, No. 165, section 128 and Second  
Schedule.  
Inch-Clutha Road, River, and Drainage Amendment Act,  
1921-22, No. 15 (Local).