

4 GEO. VI. No. 5, 1940. *Burdekin River Trust Act.*

EROSION, CONTROL OF.

An Act to Provide for the Control of Erosion in Relation to Part of the Burdekin River ; to Make Financial Provision to Repair Damage Occasioned by Cyclone and Flood to the Banks of that River ; to Constitute a Trust Charged with Guarding against the Future Occurrence of any such Damage ; to Provide for the Constitution of a Trust under this Act in Relation to any other River ; and for other purposes.

4 GEO. VI.
NO. 5.
THE
BURDEKIN
RIVER TRUST
ACT OF
1940.

[ASSENTED TO 16TH OCTOBER, 1940.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as "*The Burdekin River Trust Act of 1940*," and shall be in force in and with respect to all benefited areas. Short title.

2. (1.) In this Act, unless the context otherwise indicates or requires, the following terms shall have the meanings respectively assigned to them, that is to say :— Meanings of terms.

"Banks"—When used in relation to any river, the term includes all elevations or slopes confining or tending to confine waters flowing in, into, or out of that river during the period of any flood or cyclone to the bed thereof ; Banks.

"Benefited area"—A benefited area constituted under this Act ; Benefited area.

"Co-ordinator-General"—The Co-ordinator-General of Public Works ; Co-ordinator-General.

"Land"—Includes (but without limiting its ordinary meaning or the meaning assigned to it by *"*The Public Works Land Resumption Acts, 1906 to 1938*") any land the fee-simple Land.

of which is subject to any trust or which is held from the Crown upon any tenure or subject to any trust under any Act relating to the alienation of Crown lands :

The term also includes any estate or interest in land (legal or equitable) and any easement, right, power, or privilege over, in, or in connection with land ;

Minister.

“ Minister ”—The Secretary for Agriculture and Stock or other Minister of the Crown charged for the time being with the administration of this Act ;

Prescribed.

“ Prescribed ”—Prescribed by this Act ;

This Act.

“ This Act ”—This Act and all Orders in Council and regulations hereunder ;

Trust.

“ Trust ”—A Trust constituted under this Act ;

Works.

“ Works ”—The term includes the whole or any part of any works, project, undertaking, or other matter or thing whatsoever undertaken and/or maintained under this Act for the purposes of repairing as far as may be damage occasioned to the banks of any river within a benefited area prior to or after the passing of this Act by flood or cyclone and/or of preventing as far as may be the future occurrence of such damage :

The term also includes any trees, grass, or other plants planted and/or maintained for any of the aforesaid purposes ;

Year.

“ Year ”—The period of time from and including the first day of July in one calendar year to and including the thirtieth day of June in the next following calendar year :

Provided that the period of time from and including the date of the constitution of a Trust to and including the thirtieth day of June next ensuing shall in relation to such Trust, constitute a year.

**References
to other
Acts.**

(2.) Where any other Act is referred to herein, such reference shall include any Act amending or substituted for such other Act.

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3. (1.) The Governor in Council shall by Order in Council constitute a benefited area to be called "The Burdekin River Benefited Area."

Constitution
of the
Burdekin
River
Benefited
Area.

The Burdekin River Benefited Area shall comprise all such areas and/or parts of areas of Local Authorities as are included therein by the Order in Council constituting same :

Provided that the Burdekin River Benefited Area may be constituted by the area or part of the area of any one Local Authority.

(2.) Any two or more Local Authorities may make a joint application to the Minister for the constitution of a benefited area comprised of their areas and/or parts of their areas and the Governor in Council may, upon the recommendation of the Minister, by Order in Council constitute a benefited area (under such name as shall be set forth in such Order in Council) comprising the areas and/or parts of areas of Local Authorities in respect of which the application was made :

Constitution
of other
benefited
areas.

Provided that upon the application as aforesaid of a Local Authority a benefited area may be constituted hereunder comprising its area or any part thereof if the Governor in Council is satisfied that the extension of this Act thereto will benefit such area or part.

(3.) The Governor in Council may at any time by Order in Council include in the Burdekin River Benefited Area or in another benefited area any area or part of an area of a Local Authority which is not already included in some benefited area :

Provided that this power shall not be exercised in relation to a benefited area other than the Burdekin River Benefited Area except upon the recommendation of the Co-ordinator-General or the application of the Local Authority concerned.

(4.) The Governor in Council may by Order in Council exclude from the Burdekin River Benefited Area or any other benefited area the whole or portion of the area or part of the area of a Local Authority which is for the time being included therein.

4. (1.) A Trust to be called "The Burdekin River Trust" is hereby constituted for the Burdekin River Benefited Area, which Trust shall, notwithstanding anything in this Act, be and be deemed to be so constituted on such date as the Governor in Council shall by Order in Council determine.

Constitution
of the
Burdekin
River Trust.

(2.) The Governor in Council shall, by the Order in Council constituting any benefited area other than the Burdekin River Benefited Area, or a later Order in Council, constitute a Trust for such benefited area.

Membership
of Trust.

5. (1.) Every Trust shall consist of the following members, namely :—

- (i.) A representative of the Government who shall be appointed by the Governor in Council and be the chairman of the Trust ; and
- (ii.) The chairman of each Local Authority the area or any part of the area of which is included in the benefited area for which such Trust is constituted :

Provided that if the benefited area is comprised wholly of the area or part of the area of any one Local Authority, such Local Authority shall appoint another one of its members to be a member of the Trust in addition to its chairman.

Tenure of
office of
members.

(2.) The representative of the Government shall hold office as member and chairman of the Trust during the pleasure of the Governor in Council.

Any member of the Trust who holds office by virtue of being the chairman of a Local Authority shall vacate his office as member forthwith upon ceasing to be such chairman.

Any member of the Trust appointed under the proviso to subsection one hereof shall continue in office as member while he is a member of the Local Authority concerned unless such Local Authority sooner revokes his appointment and appoints another of its members in his place.

Failure or
refusal to
act as
member.

(3.) If the chairman of, or any other member appointed by, a Local Authority fails or refuses to act as a member of or is absent without leave from three consecutive ordinary meetings of the Trust he shall be deemed to have vacated his office as such member.

If the office of a member of the Trust becomes vacant under this subsection or for any other reason whatsoever then—

- (a) If the member whose office upon the Trust is so vacant is the chairman of a Local Authority, the Governor in Council may appoint some person to such vacant office ; or

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- (b) If such member whose office upon the Trust is so vacant is a member but not the chairman of a Local Authority, such Local Authority may appoint another of its members to such vacant office, or, if it fails so to do for a period of seven days after being so required in writing by the Minister, the Governor in Council may appoint some person to such vacant office.

Every person appointed under this subsection shall be and be deemed to be a duly appointed member of the Trust and shall hold office at the pleasure of the Governor in Council.

- (4.) At any meeting of the Trust not less than one-half of the full number of members thereof for the time being shall constitute a quorum. Quorum at meetings.

- (5.) The Trust shall meet at such times and places and conduct its business in such manner as may be prescribed or, in so far as not prescribed, as it may from time to time determine: Times of meetings and procedure thereat.

Provided that the Minister shall fix the time and place for the holding of the first meeting thereof.

- (6.) The Trust shall at its first meeting, and thereafter when and so often as a vacancy occurs in such office, appoint one of its members to be deputy chairman. Deputy chairman.

The deputy chairman may act in the office of chairman at all times when the chairman is prevented by absence, illness, or otherwise from performing his duties as such.

- (7.) At all meetings of the Trust every member present shall, save as otherwise provided by this Act, vote. Voting.

If a member refuses to vote his vote shall be counted for the negative.

In the event of an equality of votes the chairman or (when he is acting as chairman) the deputy chairman shall have a casting as well as a deliberative vote.

- (8.) Subsection four of section fourteen of **"The Local Government Act of 1936"* shall, *mutatis mutandis*, apply and extend to and with respect to members of the Trust. Interest disqualifies member from voting.

* 1 Geo. VI. No. 1, *supra*, page 16035.

**Adjourn-
ments.**

(9.) The members present at a meeting may from time to time adjourn the meeting.

If a quorum is not present within half-an-hour after the time appointed for a meeting, the members present or the majority of them or any one member if only one is present, or the secretary if no member is present, may adjourn such meeting to any time not later than seven days from the date of such adjournment :

Provided that nothing herein contained shall be construed to prevent the adjournment of any meeting to a later hour of the same day on which such meeting was appointed to be held.

**Notice of
meetings.**

(10.) All notices of any meeting or adjourned meeting (other than of a meeting adjourned to a later hour of the same day on which such meeting was appointed to be held) shall be in writing, and shall be delivered or sent by post or otherwise to the address of each of the members previous to the meeting.

Every such notice shall specify the time of meeting and, in the case of a special meeting, shall specify the object thereof.

No business shall be transacted at any special meeting except such as is stated in the notice thereof.

**Validation of
proceedings.**

(11.) If any member refuses or neglects to act or to attend any duly convened meeting of the Trust, all lawful acts and proceedings of the Trust shall be as valid and effectual as if they had been done or authorised by the full Trust.

No proceedings of the Trust or of any person acting as chairman or member shall be invalidated by reason of any defect in his appointment or of any disqualification of any such person or by reason of there being any vacancy in the number of members at the time of such proceedings, provided that the number of members is not reduced below two.

**Secretary,
officers, and
employees.**

6. (1.) The Clerk of the Shire of Ayr shall be, *ex officio*, the secretary to the Burdekin River Trust.

If the benefited area of any other Trust comprises the area or part of the area of only one Local Authority, the clerk of that Local Authority shall be the secretary to such Trust, otherwise such Trust shall appoint the clerk of one of the component Local Authorities to be secretary thereof.

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The Trust may appoint such officers other than the secretary as may be necessary.

(2.) The secretary shall, subject to the Trust, have power to execute documents on behalf of the Trust and to affix the official seal thereto and shall also have such other powers and perform such other duties as may from time to time be prescribed or, in so far as not prescribed, appointed or directed by the Trust.

(3.) The Trust may retain or obtain the advice or services of such technical advisers and experts as it shall from time to time consider necessary.

(4.) The Trust may employ such employees as it shall deem necessary.

7. (1.) The Burdekin River Trust is hereby constituted a body corporate under the name and style of "The Burdekin River Trust," and every other trust is hereby constituted a body corporate under the name and style set forth in the Order in Council constituting it.

(2.) The Trust shall, by its corporate name, have perpetual succession and an official seal and shall be capable in law of suing and being sued and, subject to this Act, shall have power to take, purchase, sell, exchange, lease, transfer, surrender to the Crown, and hold lands, goods, chattels and other property.

(3.) All courts, judges, justices, and persons acting judicially shall take judicial notice of the appointment of the chairman and other members of and of the secretary to the Trust and of their respective signatures and of the seal of the Trust affixed to any document or notice or other writing, and until the contrary is proved shall presume that any such signature or such seal, as the case may be, was duly affixed to any document or notice concerned.

(4.) Every document, notice, or other writing shall be sufficiently authenticated if it is signed by the chairman or any two members of the Trust or if it is sealed with the seal of the Trust and signed by the chairman or secretary of the Trust.

The chairman shall be the executive officer of the Trust.

Application
of "*The
Local
Bodies'
Loans
Guarantee
Acts, 1923
to 1936,*"
and
borrowing
power of
Trust.

8. (1.) The Trust shall be and be deemed to be a "local body" under and within the meaning of *"*The Local Bodies' Loans Guarantee Acts, 1923 to 1936,*" and is hereby empowered to borrow money from the Governor in Council or the Treasurer and, with the consent of the Treasurer first had and obtained, to borrow money or to obtain advances or to make financial arrangements otherwise than from or with the Governor in Council or the Treasurer for the purposes of exercising any powers or discharging any functions or duties conferred or imposed by this Act.

(2.) The Governor in Council may at any time and from time to time by Order in Council approve of the issue by the Trust, and thereupon the Trust may issue, debentures in such amounts, at such times, and in such manner, and subject to such terms and conditions as are prescribed by the Order in Council concerned.

(3.) Section four of †"*The Trustees and Executors Act of 1897*" shall be deemed to authorise a trustee to invest trust funds in any such debentures.

Application
of the Act
6 Edw. VII.
No. 14 and
amending
Acts.

9. (1.) The Trust shall, in relation to land as defined therein, be and be deemed to be a constructing authority within the meaning of ‡"*The Public Works Land Resumption Acts, 1906 to 1938,*" and the purposes for which land as defined in such last-mentioned Acts may be taken by the Trust thereunder shall include any works or purpose with respect or in relation to which any right, power, or authority is conferred or duty or obligation imposed upon the Trust under this Act.

(2.) The Secretary for Public Lands may resume for any works or purpose mentioned in subsection one of this section or in section fifteen hereof any land other than land as defined in ‡"*The Public Works Land Resumption Acts, 1906 to 1938,*" and all of the provisions of §"*The Land Acts, 1910 to 1937,*" relating to resumptions thereunder shall, *mutatis mutandis*, apply and extend accordingly.

All such works or purposes shall be and be deemed to be "public purposes" within the meaning of that term as it occurs in §"*The Land Acts, 1910 to 1937,*" except in the definition of the term "Crown land."

* 14 Geo. V. No. 8 and amending Act, *supra*, pages 10693 *et seq.*

† 61 Vic. No. 10 and amending Acts, *supra*, pages 3507 *et seq.*

‡ 6 Edw. VII. No. 14 and amending Acts, *supra*, pages 8211 *et seq.*

§ 1 Geo. V. No. 15 and amending Acts, *supra*, pages 8775 *et seq.*

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(3.) The claim for compensation of the trustee or trustees of any land in respect of the taking of same under this Act shall be limited to the amount of actual damage caused to the Trust by reason of the taking, and no such trustee shall have any other right, remedy, or claim whatsoever in respect of such taking against the Crown, or any Minister of the Crown, or the Co-ordinator-General, or the Trust or any member thereof, or any other person whomsoever, and this Act, **"The Public Works Land Resumption Acts, 1906 to 1938,"* and every other relevant Act or law or rule, practice, or process of law, or judgment of any court of competent jurisdiction, shall be read, construed and applied subject to this subsection.

Amount of compensation payable to trustees.

(4.) When the whole or any part of land proposed to be taken hereunder by the Secretary for Public Lands, or by the Co-ordinator-General, or by the Trust is assigned to a sugar mill the owner of such land may make application to the Central Sugar Cane Prices Board to determine the compensation payable for such land, and thereupon all claims for compensation in respect of such land shall be heard and determined by that Board.

When Central Sugar Cane Prices Board may determine compensation.

For the purposes of the making, hearing, and determination of any such application and of all such claims for compensation the Central Sugar Cane Prices Board shall be the court having jurisdiction under †*"The Land Acts, 1910 to 1937,"* or **"The Public Works Land Resumption Acts, 1906 to 1938,"* in lieu of the court prescribed by whichever of such last-mentioned Acts is applicable to the case :

Provided that the determination of such Board shall be final and conclusive, and shall not be appealed against, quashed, or otherwise dealt with in any other court or tribunal whatsoever.

(5.) The Central Sugar Cane Prices Board shall have power to grant an assignment of land to the same or another mill in lieu of any assigned land taken hereunder by the Secretary for Public Lands, or by the Co-ordinator-General, or by the Trust, and the value of any such assignment or proposed assignment shall in any event be set off against the compensation payable.

Assignment in lieu of assigned land taken.

* 6 Edw. VII. No. 14 and amending Acts, *supra*, pages 8211 *et seq.*

† 1 Geo. V. No. 15 and amending Acts, *supra*, pages 8775 *et seq.*

Procedure as
to taking of
land
modified.

(6.) (a) Neither section six nor paragraph (i.) of section seven of **"The Public Works Land Resumption Acts, 1906 to 1938,"* shall apply or extend to or with respect to land required to be taken by the Trust but, in lieu of the said section six, the following provision shall apply, namely :—

When the Trust requires to take any land it shall, not less than thirty clear days before the Proclamation in respect of such land prescribed by paragraph (ii.) of section seven of **"The Public Works Land Resumption Acts, 1906 to 1938,"* is made, serve upon each person who to its knowledge is entitled pursuant to section fifteen of such last-mentioned Acts to make a claim for compensation a notice stating that it requires to take such land and containing the particulars hereinafter prescribed.

Such notice shall—

- (i.) Contain a description of the land to be taken sufficient to identify same ;
- (ii.) State that the Trust is willing to treat as to the compensation to be paid in respect of the land taken and all consequential matters.

(b) The Trust may at any time after the service of any notice or notices pursuant to paragraph (a) of this subsection, but before the making of the Proclamation in respect of the land concerned prescribed by paragraph (ii.) of section seven of **"The Public Works Land Resumption Acts, 1906 to 1938,"* serve upon every person who has been served with such first-mentioned notice a further notice stating that it is discontinuing the resumption of the land concerned. Service of the further notice or notices prescribed by this paragraph shall discontinue the resumption concerned, and no person shall have any claim for compensation or any other right or remedy whatsoever against the Trust or any member thereof or any other person whomsoever for any loss or damage alleged to have been occasioned (directly or indirectly) by the service of a notice or further notice as aforesaid except a claim for the amount of any actual damage done to the land concerned by the Trust.

* 6 Edw. VII. No. 14 and amending Acts, *supra*, pages 8211 *et seq.*

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(c) Any such notice or further notice may be served personally or by post, and for the purpose of service by post any such notice shall be properly addressed if it is addressed to the place of abode or business address of the person to be served therewith last known to the Trust.

(d) The omission by the Trust to serve upon any person entitled thereto a notice as prescribed by this subsection shall not prejudice any Proclamation made under paragraph (ii.) of section seven of **"The Public Works Land Resumption Acts, 1906 to 1938,"* with respect to any land, and any land included in any such Proclamation shall be deemed to be taken in terms of the Proclamation concerned notwithstanding any such omission, and the omission by the Trust to serve upon any person entitled thereto a further notice as prescribed by this subsection shall not prejudice the discontinuance of any resumption by the Trust.

(e) Subsection three of section eight of **"The Public Works Land Resumption Acts, 1906 to 1938,"* shall, *mutatis mutandis*, apply and extend to and with respect to any notice or further notice referred to in this subsection as well as to any Proclamation taking land.

(f) It shall not be necessary to mention the works or purpose for which any land is proposed to be or is taken by the Trust in a notice under this subsection or Proclamation under **"The Public Works Land Resumption Acts, 1906 to 1938,"* with respect to the taking of such land by the Trust, but it shall be sufficient to state that such land is proposed to be or is taken by the Trust.

(g) Subsection one of section eighteen of **"The Public Works Land Resumption Acts, 1906 to 1938,"* shall not apply or extend to or with respect to land taken by the Trust, but the time limited for making a claim for compensation under such last-mentioned Acts shall be three months from the date of the Proclamation taking the land, except in the case of a claimant not notified by the Trust of its intention to take the land concerned who may claim compensation within three months after the making of such Proclamation comes to his knowledge.

* 6 Edw. VII. No. 14 and amending Acts, *supra*, pages 8211 *et seq.*

Costs.

(7.) Notwithstanding anything contained in any other Act or law or rule or process of law, the court or arbitrator who or which determines the compensation payable for any land taken by the Trust may at his or its discretion order payment of the costs of the proceedings :

Provided that if the amount of compensation as finally determined is the amount claimed by the claimant or is nearer to such amount than to the amount offered by the Trust, costs (if any) shall be awarded to the claimant ; otherwise costs (if any) shall be awarded to the Trust.

Construc-
tion of
section.

(8.) To the extent necessary to give same full operation and effect this section shall be read and construed with and as modifying **"The Public Works Land Resumption Acts, 1906 to 1938."*

Works which
Trust shall
undertake
and/or
maintain.

10. (1.) The Trust shall undertake and/or maintain the following works, namely :—

- (a) All such works as the Co-ordinator-General, with the consent of the Minister, from time to time directs or approves ; and
- (b) All such works as the Co-ordinator-General, with the consent of the Minister, directs the Trust to maintain.

(2.) Moreover, the Trust shall before the expiration of each year plan a programme of works for the following year and shall submit such plan to the Co-ordinator-General who, subject to the consent of the Minister, may approve of same either with or without modification.

This subsection shall not prejudice or limit the power of the Co-ordinator-General to direct the Trust to undertake and/or maintain any works.

(3.) The power of the Trust to undertake works includes, but without limiting the ordinary meaning of that term, power, subject to the direction or approval of the Co-ordinator-General in that behalf given with the consent of the Minister, to construct, establish, carry out, manage, and/or control the works concerned.

(4.) The Trust may enter into contracts for or with respect to the undertaking and/or maintenance of any works.

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(5.) The Trust may agree with any owner or, where Contracts. the owner is not the occupier, with the owner and occupier of any land for or with respect to the undertaking and/or maintenance by the Trust of works in or upon such land or any part thereof and/or for or with respect to the use by the Trust of any land or any part thereof for the purposes of ingress, egress, and regress to and from such land or any other land upon or in which the Trust is undertaking and/or maintaining any works.

Upon production to the Registrar of Titles or, if some other authority is charged with registering instruments of title to the land concerned, then to such other authority, of any such agreement and the lodgment with him of a copy thereof the Registrar of Titles or such other authority shall register same upon all instruments of title to the land concerned, and thereafter such agreement shall, while it remains in force, be binding upon every person who had at the time of the making thereof, or who, at any time after the making thereof, becomes possessed of any estate or interest (legal or equitable) or any easement, right, power, or privilege over, in, or in connection with such land.

(6.) All contracts or agreements made by the Trust under subsection four or, as the case may be, subsection five of this section shall be effectual in law and shall be binding on the Trust and all other parties thereto, their successors, executors, administrators, and permitted assigns, as the case may be, and in the case of default in the execution of any such contract or agreement, either by the Trust or by any other party thereto, such actions may be maintained thereon and such damages and costs recovered by or against the Trust or the other parties failing in the execution thereof as might have been maintained and recovered if the same contracts or agreements had been made between private persons only.

11. (1.) The Trust may, by notice in writing Power of Trust to require or prohibit certain actions, &c. prohibit the owner or, if the owner is not the occupier, the occupier of any land within the benefited area for which it is constituted, from cutting down, destroying, and/or ringbarking any trees thereon, or from doing and executing or continuing to do and execute any other act, matter, or thing whatsoever which was the cause of or contributed to any damage already done to any bank of

any river within the benefited area by flood or cyclone and/or would, in the opinion of the Trust, cause or contribute to the future occurrence of any such damage.

The power to prohibit conferred upon the Trust hereby shall include power to control and regulate.

(2.) Any owner or occupier of any land who contravenes or fails to comply with any term, provision, or condition of a notice under this section shall be guilty of an offence, and liable, upon his conviction for the first such offence to a penalty of not more than one hundred pounds, or, upon his conviction for a second or subsequent such offence (whether against the same or another term, provision, or condition of the notice concerned) to a penalty of not more than five hundred pounds.

Any such owner or occupier who continues any such contravention or failure to comply after he has been convicted thereof shall be deemed to commit a fresh offence and shall be liable accordingly.

(3.) When compliance by any owner or occupier with any such notice results in the loss of or damage to any cultivated crop the Trust shall pay compensation for such loss or damage.

If the amount of such compensation is not agreed upon it shall be determined by the court or tribunal which would be authorised under this Act to determine the compensation payable in the event of the Trust taking the land concerned.

Power of
Supreme
Court.

(4.) For the better enforcement of any notice under this section, and in addition to and notwithstanding any other provision in this Act in that behalf contained, the Supreme Court may on application of the Trust make such order as it deems just or necessary in the nature of a mandamus or injunction to compel compliance with or restrain a contravention or continuance of a contravention of any term, provision, or condition of a notice under this section, and all necessary powers and authorities and jurisdiction of the Supreme Court shall apply and extend herein and are vested in the Supreme Court accordingly.

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12. (1.) The Burdekin River Trust shall establish ^{Fund of the} in some bank carrying on business at Ayr, and every ^{Trust.} other Trust shall establish in such bank as the Minister may approve the following funds, namely—

- (a) A general fund to be called “The [*Name of Trust*] Fund”; and
- (b) A loan fund in respect of each loan borrowed.

(2.) The general fund shall consist of all revenues of the Trust and of all penalties recovered under this Act in respect of offences relating to the benefited area for which the Trust is constituted, committed by persons other than the Trust, or a member, officer, or employee thereof, and shall be applied to expenditure properly incurred by the Trust except in relation to works in respect of which the Trust is duly authorised to expend loan moneys:

Moreover, all debts and other liabilities legally payable by the Trust shall be payable from the general fund except in any case where the Trust is duly authorised to discharge same from loan moneys.

(3.) Each loan fund shall consist of the moneys received by way of such loan and shall be applied to expenditure for the purposes of which the loan was obtained or otherwise authorised under this Act to be incurred therefrom.

When any loan fund is closed any balance therein shall be credited to the general fund.

13. (1.) The Trust shall frame and adopt a budget ^{Budget.} for each year.

In framing the budget the Trust shall estimate for the year concerned—

- (a) The amount of revenue;
- (b) The expenditure from revenue upon and with respect to the undertaking and/or maintenance of works;
- (c) All other expenditure from revenue;
- (d) The expenditure from loan funds upon and with respect to the undertaking and/or maintenance of works;
- (e) The amount payable for interest and/or redemption of loans.

In framing the budget all expenditure not approved by the Treasurer to be met from loans shall be allocated to revenue, and the estimate of revenue shall be sufficient in amount to meet all such expenditure so allocated.

(2.) The provisions of the budget in relation to expenditure upon the undertaking and/or maintenance of works and the other items provided for therein shall be observed by the Trust, which shall as far as possible balance such expenditure with the budget.

(3.) Except as provided in subsection four hereof, the Trust shall not expend moneys not budgeted for.

(4.) Except as herein provided, nothing in this section shall prevent or be deemed to prevent the Trust from expending loan and/or revenue funds upon the undertaking, maintenance, and/or repair of any works rendered necessary by the occurrence of any flood or cyclone during any year :

Provided that the Co-ordinator-General shall, with the consent of the Governor in Council, approve of the undertaking, maintenance, and/or repair of the works concerned before the Trust incurs any such expenditure thereon :

Provided further, that loan moneys already allocated shall not be diverted under this subsection without the approval of the Treasurer.

(5.) The Trust shall not adopt the annual budget unless and until the Minister approves thereof :

Provided that the Trust shall submit its annual budget for the approval of the Minister on or before such date as may be prescribed.

Liability of
Local
Authority to
contribute to
Trust.

14. (1.) Every Local Authority the area or any part of the area of which is included in a benefited area shall be liable to contribute to the Trust constituted for such benefited area in each year the sum hereinafter prescribed.

If the benefited area is comprised of the area or part of the area of any one Local Authority the sum to be so contributed shall be the amount of revenue estimated by the Trust in the budget adopted by it for such year.

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If the benefited area comprises areas or parts of areas of more than one Local Authority the sum to be so contributed by each such Local Authority shall be a sum which bears the same proportion to such estimated revenue as the rateable value of the lands within the area or part of the area of such Local Authority included in the benefited area bears to the total rateable value of all lands within the benefited area.

(2.) For the purpose of obtaining payment from a Local Authority of the amount payable by it hereunder to the Trust in any year, the Trust shall have full power and authority to issue a precept signed by the chairman or any two members sealed with its seal and in the form hereunder set out or to the like effect to such Local Authority stating therein the sum to be contributed by such Local Authority and requiring such Local Authority within a time limited by the precept to pay the sum mentioned to the credit of the general fund of the Trust.

PRECEPT.

*“ *The Burdekin River Trust Act of 1940.*”

To the Council of the Shire [or City or Town] of

These are to require you, the Council of the Shire [or City or Town] of _____ from and out of your General Fund to pay on or before the _____ day of _____ 19____, into the credit of the [name of Trust] Account in the [name of bank] at [address of bank] the sum of _____ pounds, being the amount of the estimated revenue of the Trust for the year [date of year] payable by your Local Authority.

Dated this _____ day of _____, 19____.

L.S.

Chairman of the [name of Trust.]

For the purpose of recovering the amount of any such precept the Trust shall have and may exercise all or any of the powers, functions, and rights of a Joint Local Authority under †“ *The Local Government Act of 1936,*” and a Local Authority upon which such precept is issued shall be subject to all such duties, responsibilities, and obligations and have all such powers and authorities in respect of the payment of the sum mentioned and the raising of such amount as if such precept were a precept duly issued to such Local Authority

* This Act.

† 1 Geo. VI. No. 1 *supra*, page 16035.

by a Joint Local Authority, and all the relative provisions of **"The Local Government Act of 1936"* shall, *mutatis mutandis*, apply and extend accordingly.

(3.) A Local Authority is hereby authorised to pay from its General Fund the amount of any precept payable by it hereunder :

Provided that the Local Authority is hereby authorised and empowered to make and levy and shall in each year make and levy a separate rate under **"The Local Government Act of 1936"* upon all rateable lands within so much of its area as is comprised in the benefited area sufficient in amount to repay to the General Fund the amount of the precept paid or payable therefrom during such year.

For the purposes of the making and levying of such separate rate so much of the area of the Local Authority concerned as is included in the benefited area shall be and be deemed to be a duly defined benefited area under **"The Local Government Act of 1936."*

Notwithstanding anything contained in **"The Local Government Act of 1936,"* the Local Authority may frame and adopt a separate budget in respect of the separate rate prescribed by this subsection not later than two months after it has notice of the amount of the precept payable by it to the Trust.

Power of Co-ordinator-General to undertake and/or maintain works.

15. (1.) The Governor in Council may at any time and from time to time authorise the Co-ordinator-General to undertake and/or maintain any works for the purposes of repairing as far as may be damage occasioned by cyclone and flood to the banks of any river within a benefited area prior to or after the passing of this Act and/or of preventing as far as may be the occurrence of any such damage after the passing of this Act.

(2.) Notwithstanding anything contained in any other Act, or in any law, or rule, practice, or process of law, or in any judgment of any court of competent jurisdiction, the Co-ordinator-General shall have power, authority, and jurisdiction—

(i.) Subject to the authority given to him in that behalf by the Governor in Council, to construct, undertake, carry out, establish,

* 1 Geo. VI. No. 1, *supra*, page 16035.

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manage, maintain and/or control any works authorised by the Governor in Council under subsection one of this section to be carried out by him ;

- (ii.) To enter into contracts for or with respect to the construction, undertaking, carrying-out, establishment, management, maintenance and/or control of any such works.

(3.) All contracts made by the Co-ordinator-General under paragraph (ii.) of subsection two hereof shall be effectual in law and shall be binding on the Co-ordinator-General and all other parties thereto, their successors, executors, administrators, and permitted assigns, as the case may be, and in the case of default in the execution of any such contract, either by the Co-ordinator-General or by any other party thereto, such actions may be maintained thereon and such damages and costs recovered by or against the Co-ordinator-General or the other parties failing in the execution thereof as might have been maintained and recovered if the same contracts had been made between private persons only :

Provided that the due performance by the Co-ordinator-General of any such contract made by him shall be and be deemed to be guaranteed by the Crown.

(4.) The Co-ordinator-General may, with the consent of the Chief Secretary, delegate to any Crown corporation, instrumentality representing the Crown, local body within the meaning of **"The Local Bodies' Loans Guarantee Acts, 1923 to 1934,"* or other body corporate or person all or any of the powers, authorities, functions, and/or jurisdiction conferred upon him by this section for the purposes of or in relation to the construction, undertaking, carrying-out, establishment, maintenance, management, and/or control of any works, or any part of any works, authorised hereunder to be undertaken and/or maintained by him.

Delegation
of authority
to construct,
&c., works.

Any power, authority, function, or jurisdiction so delegated by the Co-ordinator-General shall be had and exercised by the Crown corporation, instrumentality representing the Crown, local body, or other body corporate or person concerned under and subject to such orders and directions as may be given by the Co-ordinator-General from time to time.

* 14 Geo. V. No. 8 and amending Act, *supra*, pages 10693 *et seq.*

The Co-ordinator-General may at any time, and shall if thereunto directed by the Chief Secretary, revoke any delegation made by him hereunder, but no such revocation shall prejudice any right, liability, contract, or engagement existing at the date thereof, and to the intent that any such right, liability, contract, or engagement (including any action or proceeding pending at the date of such revocation) shall continue to be vested in or to attach to and may be enforced by or against the Crown corporation, instrumentality representing the Crown, local body concerned, or other body corporate or persons concerned.

No delegation hereunder shall prevent or be deemed to prevent the Co-ordinator-General from himself doing or exercising the delegated power, authority, function, or jurisdiction.

(5.) The Co-ordinator-General is hereby authorised to take land as defined in **"The Public Works Land Resumption Acts, 1906 to 1938,"* for the purposes of any such works, and such last-mentioned Acts as modified by this Act shall, *mutatis mutandis*, apply and extend accordingly.

Moreover, all such works shall be and be deemed to be "public purposes" within the meaning of that term as it occurs in †*"The Land Acts, 1910 to 1937,"* except in the definition "Crown land."

(6.) All costs, charges, and expenses incurred by the Co-ordinator-General or his delegated authority in relation or with respect to works authorised under this section to be undertaken and/or maintained by the Co-ordinator-General shall be paid by the Trust to or as directed by the Co-ordinator-General, except in any case where same are met by a grant made under this Act by the Governor in Council.

(7.) The whole or any part of any moneys directed to be paid by the Trust under this section may, if not paid upon demand made by the Co-ordinator-General, be recovered as a debt by action in the name of the Co-ordinator-General or any person authorised by him in any court of competent jurisdiction.

* 6 Edw. VII. No. 14 and amending Acts, *supra*, pages 8211 *et seq.*† 1 Geo. V. No. 15 and amending Acts, *supra*, pages 8775 *et seq.*

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(8.) This section shall extend and apply retrospectively to and with respect to all works authorised by the Governor in Council prior to the passing of this Act to be undertaken and/or maintained by the Co-ordinator-General which are of such a nature that this section would have applied thereto had this Act been in force when such authority was given.

16. At any time after the completion of any works authorised under this Act or any other Act or law to be undertaken by him the Co-ordinator-General may, by a notice in writing, direct the Trust constituted for the benefited area in which such works are situated to maintain such works.

Power of Co-ordinator-General to direct Trust to maintain works.

17 (1.) If the Governor in Council is satisfied upon the report of the Co-ordinator-General that the Trust has failed to undertake and/or maintain any works directed or approved under this Act to be undertaken and/or maintained by it, the Governor in Council may authorise the Co-ordinator-General to undertake and/or maintain such works.

Remedy against Trust for failing to undertake and/or maintain work.

Thereupon, the Co-ordinator-General shall have and may exercise in relation or with respect to such works all of the powers, authorities, and jurisdiction (including the power to delegate) conferred or imposed upon him by subsections one to six, both inclusive, of section fifteen of this Act.

(2.) All costs, charges, and expenses incurred by the Co-ordinator-General or his delegated authority in relation or with respect to any such works shall be paid by the Trust to or as directed by the Co-ordinator-General.

(3.) The whole or any part of any moneys directed to be paid by the Trust under this section may, if not paid upon demand made by the Co-ordinator-General, be recovered as a debt by action in the name of the Co-ordinator-General or any person authorised by him in any court of competent jurisdiction.

18. Subject to any necessary appropriation by Parliament, the Governor in Council may from time to time make grants, loans, and/or subsidies for the purposes of works undertaken and/or maintained under this Act.

Crown grants, loans, and subsidies.

Entry and
inspection
of land.

19. The Co-ordinator-General or any person authorised by him in that behalf, or any member of the Trust, or any of its officers or employees authorised in that behalf by the Trust, may enter any land within the benefited area for the purpose of inspecting same.

Offences.

20. (1.) Every person shall be guilty of an offence against this Act who—

- (a) In any manner obstructs or impedes the Co-ordinator-General or his delegated authority, or any of his or its officers or employees, or the Trust or any of its members, officers, or employees, or any other person in the execution of any of the powers conferred by this Act ; or
- (b) Contravenes or fails to comply with any provision of this Act, or with any term, condition, or provision of any notice under this Act ; or
- (c) Fails to comply with any term, condition, or provision of an agreement made by him under this Act ; or
- (d) Damages or destroys or attempts to damage or destroy any works.

Penalty.

(2.) If any person is guilty of an offence against this Act for which no specific penalty is prescribed he shall be liable to a penalty not exceeding one hundred pounds and in addition liable, in the case of an individual person, to a penalty of not more than twenty pounds or, in the case of a corporate body, to a penalty of not more than fifty pounds for each and every day during which such offence is continued after a conviction therefor.

Recovery
of penalties.

(3.) All penalties incurred for any offence against this Act may be recovered in a summary way under **" The Justices Acts, 1886 to 1932."*

Proceedings for an offence against this Act may be instituted at any time within six months after the commission of the offence or within four months after the discovery thereof by the complainant, whichever is the later period.

* 50 Vic. No. 17 and amending Acts, *supra*, pages 1132 *et seq.*

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21. The Trust shall make an annual report to the Minister concerning its operations during each year. Annual report by Trust.

The report for a year shall be so made not later than six weeks after the end of such year or not later than such extended period as the Minister may allow in any particular case.

Such report shall include particulars of the receipts and expenditure during the year to which it relates, and such other information and statistics as will clearly reveal the manner in which the Trust discharged its powers, duties, authorities, and functions under this Act during such year.

22. (1.) The Governor in Council may from time to time make regulations providing for all or any purposes, whether general or to meet particular cases, that may be convenient for the administration of this Act or that may be necessary or expedient to carry out the objects and purposes of the Act. Regulations and Orders in Council.

Without limiting the power to make regulations hereunder, regulations may be made for or in respect of all or any of the following matters and things, namely :—

- (a) The form and manner in which the books of account of the Trust shall be kept and the annual budget shall be framed ;
- (b) The audit by the Auditor-General or a qualified accountant approved by him of the books and accounts of the Trust, the powers and duties of the auditor, the obligations, duties, and responsibilities of the members, secretary, and employees of the Trust, and other persons in relation to the audit ;
- (c) The banking of moneys received by or on behalf of the Trust, and the authorisation of deposits made therein by or on behalf of or to the credit of the Trust ;
- (d) Forms of notices and other documents under and for the purposes of this Act ;
- (e) The fees and/or allowances of the chairman, other members, and secretary of the Trust ;

- (f) Returns and statistics to be furnished by the Trust to the Minister and/or the Co-ordinator-General, the information to be disclosed therein, and the time and manner of furnishing same, and the verification thereof ;
- (g) The periodical inspection by a person authorised in that behalf by the Minister of the affairs of the Trust, the powers, duties, and obligations of such person, and the obligations, duties, and responsibilities of the members, secretary, officers, and employees of the Trust in relation to such person ;
- (h) Where no provision or no sufficient provision is made by this Act in relation thereto, regulating and controlling the conduct by the Trust of its business and proceedings and/or the exercise by it of its powers, authorities, duties, and functions under this Act ;
- (i) All matters required or permitted by this Act to be prescribed in so far as same are not required to be otherwise prescribed ;
- (j) Penalties not exceeding in any case fifty pounds for breaches of the regulations.

(2.) Regulations hereunder may differ with respect to different benefited areas and/or Trusts.

**Proclama-
tions, Orders
in Council,
&c., to form
part of this
Act.** (3.) All Orders in Council and regulations made or purporting to have been made under this Act shall be published in the *Gazette*, and thereupon shall be of the same effect as if they were enacted in this Act and shall be judicially noticed, and shall not be questioned in any proceedings whatsoever.

The publication in the *Gazette* of any such Order in Council or regulation shall be conclusive evidence of the matters contained therein, and of the power and authority to make such Order in Council or regulation.

(4.) The Governor in Council may amend or rescind any Order in Council by a subsequent Order in Council.

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(5.) No misnomer or inaccurate description or omission in or from any Order in Council shall in any wise prevent or abridge the operation of this Act and the Order in Council with respect to the subject-matter, provided the same is designated so as to be understood.

(6.) All Orders in Council and regulations shall be laid before the Legislative Assembly within fourteen days after such publication, if Parliament is in session ; or, if not, then within fourteen days after the commencement of the next session.

To be laid
before
Parliament.

If Parliament passes a resolution disallowing any such Order in Council or regulation, of which resolution notice has been given at any time within fourteen sitting days of such House after such Order in Council or regulation has been laid before it, such Order in Council or regulation shall thereupon cease to have effect, but without prejudice to the validity of anything done in the meantime, or to the power to make any fresh Order in Council or regulation.

For the purposes of this subsection the term "sitting days" shall mean days on which the House actually sits for the despatch of business.

23. Nothing in this Act shall prejudice or limit any power, authority, function, or jurisdiction conferred upon the Co-ordinator-General by any other Act.

Saving of
power &c. of
Co-ordinator-
General.

FILMS.

See CINEMATOGRAPH FILMS.

FRIENDLY SOCIETIES.

See SOCIETIES.

FRUIT MARKETING ORGANISATION.

See PRIMARY PRODUCE.