

RECLAMATION ACT.

Act No. 37, 1930.

George V.
No. 37, 1930.

An Act to make provision for the reclamation and improvement of submerged and low-lying lands and the carrying out of reclamation schemes; to constitute a Reclamation Trust and to define its powers, functions, and duties; to provide for the vesting in the trust of certain lands and for the disposal of lands by the trust; to make provision for the borrowing of moneys by the trust and the guarantee of the repayment thereof out of the Consolidated Revenue Fund; to amend the Local Government Act, 1919, and certain other Acts; and for purposes connected therewith. [Assented to, 25th June, 1930.]

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

PRELIMINARY.

Short title.

1. (1) This Act may be cited as the "Reclamation Act, 1930," and shall commence upon a date to be appointed by the Governor and notified by proclamation published in the Gazette.

Division
into Parts.

(2) This Act is divided into Parts, as follows:—

PART I.—PRELIMINARY—*ss.* 1-2.

PART II.—CONSTITUTION, OFFICERS, &c.—*ss.* 3-7.

PART III.—ADMINISTRATION—*ss.* 8-18.

PART IV.—FINANCIAL—*ss.* 19-22.

PART V.—SUPPLEMENTAL—*ss.* 23-30.

2.

2. (1) In this Act, unless the context or subject-matter otherwise indicates or requires,—

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Interpretation.

“Capital value”—

“Unimproved capital value” of land means the capital sum which the fee-simple of the land might be expected to realise if offered for sale on such reasonable terms and conditions as a bona-fide seller would require, and including the value attributable to any work of the trust, but assuming that any other improvement thereon or appertaining thereto, and made or acquired by the owner or his predecessor in title had not been made:

Provided that there shall be a reasonable deduction for profitable expenditure by the owner or occupier on visible and effective improvements (if any) which, although not upon the land, have been constructed for its drainage, for its protection from inundation, or otherwise for its more beneficial use.

“Improved capital value” of land shall be the capital sum which the fee-simple of the land might be expected to realise if offered for sale on such reasonable terms and conditions as a bona-fide seller would require.

“Council” means council of a municipality or shire within which land comprised in a proposal for reclamation is situated.

“Crown lands” means lands vested in His Majesty and not permanently dedicated to any public purpose or granted or lawfully contracted to be granted in fee-simple under the Crown Lands Acts.

“Owner,” in relation to land, includes every person who jointly or severally, whether at law or in equity,—

(a) is entitled to the land for any estate of freehold in possession; or

(b) is a person to whom the Crown has lawfully contracted to grant the fee-simple under the Crown Lands Act; or

(c)

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(c) is entitled to receive, or is in receipt of, or if the land were let to a tenant would be entitled to receive, the rents and profits thereof, whether as beneficial owner, trustee, mortgagee in possession, or otherwise;

and includes every person who by virtue of this Act is deemed to be the owner.

The trustees for the time being of lands permanently dedicated to a public purpose shall, for the purposes of this Act, be deemed to be the owner of such lands.

“Prescribed” means prescribed by this Act or by regulations made thereunder.

“Ratable person,” “person ratable,” and similar expressions include the Crown and mean the owner of land included in a reclamation zone.

“Reclamation” means the reclamation of land beyond or below high-water mark in any tidal waters and land adjoining thereto included in a reclamation area or the reclamation of the bed of a bay, river, watercourse, swamp, or inland water, tidal or non-tidal, and land adjoining thereto included in a reclamation area.

“Reclamation area” means the land beyond or below high-water mark in any tidal water, or the bed of a bay, river, watercourse, swamp, or inland water, tidal or non-tidal, and land adjoining thereto proposed to be reclaimed under a reclamation scheme.

“Reclamation scheme” or “scheme” means a reclamation scheme under this Act, approved by the Governor, or any amendment of such scheme also approved by the Governor.

“Reclamation zone” or “zone” means and includes the lands the capital value of which are deemed, under this Act, to be depreciated or enhanced by reason of the land to be reclaimed having been reclaimed.

“Statutory body” includes the Metropolitan Water, Sewerage, and Drainage Board, the Hunter District Water Supply and Sewerage Board, the

the Sydney Harbour Trust Commissioners, the Board of Fire Commissioners of New South Wales, the Railway Commissioners for New South Wales, the Metropolitan Meat Industry Board, and any public body proclaimed under the Local Government Act, 1919 as a statutory body representing the Crown.

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“Trust” means the Reclamation Trust established under this Act.

(2) Nothing in this Act shall be construed to affect or restrict the powers for the reclamation of land contained in any other Act.

PART II.

THE TRUST.—CONSTITUTION, OFFICERS, &C.

3. (1) For the purpose of carrying this Act into execution there shall be a Reclamation Trust consisting of the following members, namely:—

Constitution of trust.

- (a) the holder for the time being of the office of Surveyor-General of New South Wales who shall be chairman of the trust;
- (b) the permanent head for the time being of the Department of Public Works;
- (c) the holder for the time being of the office of President of the Sydney Harbour Trust Commissioners.

(2) The trust shall be charged with the administration of this Act and shall have the powers and authorities and exercise the duties and functions vested in or imposed upon the trust by or under this Act.

4. (1) The trust shall be a body corporate, with perpetual succession and a common seal, and may sue and be sued in its corporate name; and shall, for the purposes and subject to the provisions of this Act, be capable of purchasing, holding, granting, demising, disposing of, or otherwise dealing with real and personal property, and of doing and suffering all such other acts and things as bodies corporate may by law do and suffer.

Trust a body corporate.

The

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The corporate name of the trust shall be "The Reclamation Trust of New South Wales."

Meetings.

(2) At any meeting of the trust at which all three members are present, the decision of the majority of the members shall be the decision of the trust.

Quorum.

(3) Any two members of the trust shall be a quorum, and shall have all the powers and authorities by this Act conferred upon the trust.

Differences of opinion.

(4) If at any meeting of the trust at which two members only are present such members differ in opinion upon any matter, the determination of such matter shall be postponed until all the members are present.

Acts not invalidated by vacancy on trust.

(5) No act or proceeding of the trust shall be invalidated or prejudiced by reason only of the fact that at the time when such act or proceeding was taken, done, or commenced, there was a vacancy in the office of any one member of the trust.

No action or suit against members.

(6) No action or suit shall be brought or maintained against any person who is, or at any time has been, a member of the trust for anything done or omitted by him pursuant to the duties imposed upon him by this Act.

Officers.

Staff.

5. (1) The staff of the trust shall be appointed under and be subject to the provisions of the Public Service Act, 1902.

Casual employees.

(2) The trust may appoint, employ, and dismiss such casual employees as it deems necessary for the purposes of this Act, and may fix wages and conditions of employment where these are not fixed in accordance with the provisions of other Acts.

Use of other services.

6. (1) For the purpose of carrying out the powers, authorities, duties, and functions vested in or imposed upon the trust by this Act, the trust, with the approval of the Minister of the department concerned, on such terms as may be arranged, may make use of the services of any of the officers, employees, or plant of any department of the Public Service.

(2) The trust, for the like purpose, with the approval of any statutory body or council, on such terms as may be arranged, may make use of the services of any of the officers, employees, or plant of such statutory body or council.

7.

7. The trust may apportion the salaries and expenses of the trust and its staff, and any other administrative expenses of any nature, in an equitable manner between and charge the amounts so apportioned to the respective reclamation schemes or to councils concerned where a reclamation proposal does not become a reclamation scheme.

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Division of
administra-
tive
expenses.

PART III.

ADMINISTRATION.

8. (1) Any council may make a recommendation to the trust for the investigation of a proposal for the reclamation of land.

Council may
recommend
reclamation.

The recommendation shall be accompanied by a report of the council suggesting appropriate boundaries of a reclamation zone together with a plan of the zone.

(2) A council which has recommended the investigation of a proposal may, at any time before the date of the proclamation notifying the authorisation and confirmation by the Governor of the scheme comprised in such proposal, withdraw the recommendation by notice to the trust.

The notice shall be given in the manner prescribed.

Where a council has withdrawn a recommendation under this subsection—

- (a) no further steps shall be taken under this Act in relation to the proposal recommended, unless a further recommendation in respect thereof is made under subsection one of this section ;
- (b) the trust may recover from the council as a debt in any court of competent jurisdiction the costs and expenses incurred by the trust in connection with the proposal.

9. The trust—

- (a) shall investigate the proposal and determine the proper method of effecting the reclamation ;
- (b) shall compile a detailed estimate of the cost involved in effecting the reclamation ;

Action by
trust.

(c)

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- (c) shall define the boundaries of the reclamation zone so as to include therein the properties, the values of which are deemed by the trust to be depreciated or enhanced by the reclamation ;
- (d) shall assess the amount by which the improved capital value of each property within the reclamation zone is deemed to be depreciated, or enhanced by the reclamation.

In assessing the amounts for the purposes of this paragraph regard shall be had to the position of every such property and the degree of depreciation or enhancement of its improved capital value which the reclamation may reasonably be expected to produce.

- (e) shall prepare a reclamation plan.

Such plan shall show the boundaries of the proposed reclamation zone and reclamation area and shall indicate thereon the lands to be set apart for disposal and those to be reserved for parks or public purposes.

Deposit of
plan, &c.

10. (1) The trust shall, as soon as practicable, cause to be deposited with the council—

- (a) the reclamation plan ;
- (b) a schedule which shall specify the amounts to be paid to the owners of lands deemed to be depreciated ; and
- (c) an assessment roll, which shall specify the amount assessed as the enhancement of the improved capital value of each parcel of land within the reclamation zone.

Notices.

(2) The trust shall cause notices in the prescribed form to be published by advertisement in the Gazette and in a local newspaper circulating in the reclamation zone, and to be given in the manner prescribed to all persons appearing by the books of the council to be (a) the owners of lands in the schedule, and (b) the persons to be rated in respect of lands on the assessment roll.

The notices shall state—

- (i) that the boundaries of the reclamation area and reclamation zone have been provisionally defined by the trust ;

(ii)

- (ii) that the reclamation plan, the schedule of payments to be made, and the assessment roll may be inspected at the office of the council;
- (iii) that objections may be lodged with the council as in the manner and form prescribed.

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11. On expiration of the prescribed period the council shall forward to the trust—

Certificate of inspection, &c.

- (a) a certificate in the prescribed form that the reclamation plan, the schedule, and the assessment roll have been available for inspection as provided by section ten; and
- (b) the objections received thereto (if any).

12. The trust shall notify each objector of the time and place at which he, either personally or by agent authorised in writing, may appear before the trust and be heard in support of his objection.

Hearing of objections.

The trust may vary the reclamation plan, schedule, and/or assessment roll, and shall notify the council and each respective owner of any such variation.

Any council or person aggrieved by any determination of the trust relating to any objection or variation of the plan, schedule, and/or assessment roll may appeal therefrom to the Land and Valuation Court in the manner prescribed by rules of that court, whose decision shall be final.

13. The amount estimated in pursuance of section nine as the cost involved in effecting the reclamation reduced by the amount, if any, the trust may contribute, shall become due and payable by the council to the trust on terms and conditions to be agreed upon between the council and the trust, and approved by the Governor.

Payment of cost of reclamation.

14. (1) The council shall determine—

- (a) the proportion, if any, of the amount so payable which shall be paid out of its General Fund; and
- (b) the proportion which shall be raised by a reclamation rate payable to the council by each ratable person in respect of his land in the reclamation zone; but the proportion under this paragraph shall not exceed the total amount of the enhanced values of all ratable lands in the reclamation zone.

Council may levy reclamation rate, &c.

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(2) The amount payable by each ratable person shall be in the ratio to the total sum to be raised by the reclamation rate that the enhanced value of the land of such ratable person bears to the total enhanced values of all ratable lands in the reclamation zone.

The council shall forthwith make a reclamation rate, and shall levy such rate in each year on the improved or unimproved capital value of all properties in the reclamation zone until the aggregate amount payable by all such ratable persons has been paid. But each ratable person shall only be liable to pay such rate until the amount payable in respect of his property has been paid.

The procedure prescribed by or under the Local Government Act, 1919, with respect to the making and levying of a local rate, and the proceedings for the recovery of any such rate, and the provisions of such Act with respect to the charge of such rate on the land on which it is levied shall apply, *mutatis mutandis*, to and in respect of a reclamation rate made and levied under this Act.

(3) Notwithstanding any provision of the Local Government Act, 1919, the council may apply the General Fund of its area towards payment of any deficiency between the amounts paid or to be paid in pursuance of the council's determination under subsection one of this section and the amount due and payable by the council under section thirteen of this Act, or may levy a local or special rate in accordance with the provisions of that Act for the payment of such deficiency.

Recommendation to Governor.

15. The trust shall submit the reclamation plan, the schedule, and the assessment roll, together with the determinations of the council under section fourteen, to the Minister with a recommendation as to whether the reclamation shall be proceeded with, and, if so, on what terms and conditions.

Governor may authorise scheme, &c.

The Governor may authorise the scheme and confirm the plan and schedule and assessment roll and the determinations of the council with or without variations, and shall by proclamation published in the Gazette notify such authorization and confirmation and fix the date from which the scheme and determinations shall operate.

16.

16. (1) The trust shall cause a copy of the proclamation and of the plan, schedule, and assessment rolls, and the determinations of the council, as confirmed by the Governor, to be deposited in the office of the Registrar-General, who shall register same in the manner prescribed by regulations made under the Conveyancing Act, 1919.

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Lands vested
in the trust.

(2) Upon such registration, any Crown lands within the reclamation zone, and all lands within the reclamation area whether vested in any other statutory body or not, shall be vested absolutely in the trust for an estate in fee-simple for the purpose of this Act as from the date fixed by the Governor as the date of the authorization of the reclamation scheme.

(3) The Governor may in the proclamation made in pursuance of section fifteen or by a subsequent proclamation notified in like manner divest from the trust any Crown lands vested in them under this section, and may vest the same in such statutory body or person on behalf of the Crown as may in the public interest seem expedient.

Any such proclamation shall be registered in the office of the Registrar-General in manner prescribed by regulations made under the Conveyancing Act, 1919.

17. (1) Where any land within a reclamation zone is leased the owner and the lessee thereof shall as between one another be entitled to have the rent and the terms and conditions of the lease reviewed and adjusted, having regard to the enhancement or depreciation of the land or leasehold interest therein by reason of the reclamation scheme.

Owner and
lessee.

(2) This section shall apply notwithstanding any stipulation in the lease or in any other document, and notwithstanding any determination of the fair rent in force.

(3) If the owner and lessee of any such land do not agree to the adjustment of the rent or the terms and conditions of lease, having regard to the enhancement or depreciation in the value of the land by reason of a reclamation under this Act, the dispute shall be referred to arbitration under the Arbitration Act, 1902.

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(4) "Lessee" in this section includes an original as well as a derivative lessee, also an under-lessee, and any person deriving title under or through a lessee or under-lessee, and in relation to land held on an under-lease "owner" includes the immediate lessor.

Payment to
owners.

18. (1) The amounts specified in the schedule as payable in respect of depreciation shall be paid by the trust, upon the certificate of the Crown Solicitor, to the respective owners out of the moneys paid to it by the council, or in a case where the owner is a partial or qualified owner or is under any disability, or where the owner neglects or refuses to deduce or verify his title within one month after being requested in writing so to do, into the Treasury in trust for the person entitled thereto.

(2) The payment of any such amount into the Treasury shall be deemed to be a payment thereof to the owner.

(3) An application for payment out of the amount paid into the Treasury under this section may be made by summons in chambers in the Supreme Court in its equitable jurisdiction by the person making the claim, or the person named in the notice, or by any person claiming to be entitled thereto, and such court may make such order in relation thereto, and with regard to the costs of the application, as is just.

(4) The expression "partial or qualified owner," as used in this section, includes any tenant for life or in tail, or married woman restrained from alienation or anticipation, or lunatic, or idiot infant, trustee without power of sale, or feoffee in trust for charitable or other purposes, and any other person not entitled to sell the land in respect of which the payment is made.

PART IV.

FINANCIAL.

Trust may
borrow
money.

19. (1) To provide funds for the purposes of carrying out the provisions of this Act, or for the redemption or renewal of any loan, the trust, subject to the concurrence of the Australian Loan Council and with the approval

approval of the Governor, may borrow money on such terms and conditions as the Governor may authorise from the Government or from any person, but so that the amount borrowed and then owing does not at any time exceed the sum fixed by the Governor. No. 37, 1930.

All moneys borrowed by the trust shall be a charge upon the properties and income of the trust, and are hereby guaranteed by the Government. Charge on properties and income.

Any liability arising from such guarantee shall be payable out of the Consolidated Revenue Fund, but shall be recouped by the trust.

(2) The Colonial Treasurer may from time to time advance to the trust such sums as the Governor may approve upon such terms and conditions as to repayment and interest as the Governor may direct.

Except as provided in this section the trust shall not borrow any moneys.

(3) There shall be paid into a Reclamation Fund the proceeds of all loans raised, all income received from whatever source arising, and any sums advanced by the Colonial Treasurer in pursuance of this Act. Reclamation Fund.

Any claim or demand under this Act shall be defrayed from the fund out of such moneys therein as are available for that purpose, and save as provided in subsection one of this section the Consolidated Revenue Fund shall not be liable for any such claim or demand.

20. The trust shall each year set apart and carry to the credit of a sinking fund a sum not less than that fixed by the Governor when authorising the loan. Sinking Fund.

Such sum shall be invested in the prescribed securities, and such securities together with the interest or profits realised on such investments shall be applied in the prescribed manner to the repayment of the amount borrowed by the trust.

21. Where after such sum has been so set apart, and all expenditure necessary for maintenance and renewals has been provided for, and all payments directed by or under this Act have been made, there remains any surplus, the trust shall place such surplus to the credit of a Reserve Account, which shall be available only— Reserves.

- (a) to meet any losses incurred in any year by the trust;
- (b)

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(b) to provide such contribution as the trust may determine towards the cost of reclamation schemes.

Accounts to be kept, &c.

22. (1) The trust shall cause to be kept in the form prescribed true accounts of its income and expenditure and of its assets and liabilities.

Audited.

(2) The accounts of the trust shall be audited by the Auditor-General, who shall have in respect thereof all the powers conferred on the Auditor-General by any law now or hereafter to be in force relating to the audit of the public accounts.

Cost of audit.

(3) Towards defraying the cost and expenses of such audit, the trust shall pay to the Colonial Treasurer such sums at such periods as the Governor may decide.

PART V.
SUPPLEMENTAL.

Resumption of land.

23. (1) The Governor may, on the application of the trust, resume or appropriate land for the purpose of this Act, and may by proclamation vest the whole or part of such land in the trust.

Such resumption or appropriation may be made in accordance with the provisions of the Public Works Act, 1912, and any Acts amending that Act, mutatis mutandis, and for that purpose the trust shall be the "Constructing Authority" and shall take the place of the Minister for Public Works.

Provided that it shall not be compulsory for the trust to take the whole of any parcels of vacant land in a case where the trust requires a portion only, except where the residue so left would be less in area than is required by the council for a building allotment and the owner so desires.

Trust a Constructing Authority.

(2) For the purposes of carrying out any work under this Act, the trust shall be deemed to be a Constructing Authority within the meaning of the Public Works Act, 1912.

Contracts and other acts.

24. The trust may enter into contracts and do all other acts which may be necessary or advisable for the purposes of this Act.

25.

25. (1) The whole or any portion of the land vested in the trust may be sold in one or more lots, by public auction or public tender, and on such terms and subject to such conditions, covenants, and restrictions as the trust thinks fit, including power to take such securities for the payment of any balance of purchase money and interest thereon or to allow such period for the payment of the same as the trust thinks fit :

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Sale of land.

Provided that no sale of land on and within one hundred feet of mean high-water mark shall have any force or effect until the same has been approved by the Governor.

Protection of foreshores.

(2) The trust may demise the whole or any portion of the land or any buildings thereon for such periods and on such terms and subject to such covenants and conditions as are prescribed or as the trust thinks fit.

Demise of land.

26. The Governor, on the recommendation of the trust, may on completion vest, by proclamation published in the Gazette, in the Sydney Harbour Trust or other statutory body or a council or other person, such drainage channels, retaining walls, revetments, or the like, together with a strip of land of sufficient width to include such channels, walls, revetments, or the like, and the care, control, and maintenance thereof shall upon such vesting devolve upon the Sydney Harbour Trust or other statutory body or council, or person.

Vesting of drainage channels, &c.

27. Any dispute between the trust and the council, or between the trust and any Government department or statutory body, shall be referred to the Minister.

Disputes.

The Minister may refer the matter in dispute for inquiry to some person appointed by him or may himself make such inquiry.

The Minister may thereupon make such order as may seem to him to be just and equitable in the circumstances, and in such order may direct the payment of any costs and expenses incidental to the conduct of the inquiry.

The order of the Minister shall be final and binding on all parties concerned, and effect shall be given thereto.

28.

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Exemption
from rating.

28. Land which is the property of the trust and is not occupied or is occupied only by works which are in course of construction by or for the trust shall not be ratable under the Local Government Act, 1919, or any other Act.

Provision as
to raising
amounts
payable by
trustees of
lands
permanently
dedicated.

29. The Governor may authorise the trustees of any land permanently dedicated for a public purpose to sell such portion of the land so dedicated as may be necessary to defray any payment to be made by the trustees under this Act together with the reasonable expenses of such sale.

Any such sale shall be by public auction, and the Governor may grant any land so sold to the purchaser free of any trust or dedication affecting the same.

Regulations.

30. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or authorised to be prescribed, or which are necessary or convenient to be prescribed, for giving effect to this Act, and for prescribing penalties of not more than twenty pounds for any breach of the regulations.

(2) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date specified in the regulations;
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, or if not, then within fourteen sitting days after the commencement of the next session.

If either House passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.