

Hon. Mr. Mason

INVERCARGILL LICENSING TRUST

ANALYSIS

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A BILL INTITULED

AN ACT to set up a Body Corporate for the Purpose Title.
of Providing for the Establishment of Model Hotels
in the Invercargill Licensing District to be conducted
5 in Conformity with the Provisions of the Licensing
Act, 1908, and in the Interests of the Public Well-
being, and of Providing for the Sale of Intoxicating
Liquor in the District; and to provide for the
Distribution of the Profits for Public Purposes.

	BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—	
Short Title.	1. (1) This Act may be cited as the Invercargill Licensing Trust Act, 1944.	5
Commencement.	(2) This Act shall come into force on a day to be appointed for the commencement thereof by the Governor-General by Proclamation.	
Interpretation.	2. In this Act, unless the context otherwise requires,—	10
See Reprint of Statutes, Vol. IV, p. 234	“ Intoxicating liquor ” and “ liquor ” have the same meaning as in the Licensing Act, 1908: “ Invercargill Licensing District ”, or “ district ”, means the Invercargill Licensing District for the time being constituted under the Licensing Act, 1908:	15
	“ Minister ” means the Minister of Justice: “ Trust ” means the Invercargill Licensing Trust constituted under this Act.	
Establishment of Invercargill Licensing Trust.	3. (1) There is hereby established for the purposes of this Act a Trust, to be called the Invercargill Licensing Trust.	20
	(2) The Trust shall be a body corporate, having perpetual succession and a common seal, with power to make, alter, and renew the same, and with power to purchase, take, hold, transfer, and lease property, real and personal, to sue and be sued in any Court, and to do and suffer all other acts and things which a body corporate may lawfully do and suffer.	25
Constitution of Trust.	4. (1) The Trust shall consist of <i>six</i> persons, to be appointed from time to time by the Governor-General, either by name or as the holder or the respective holders for the time being of any office or offices, of whom—	30
	(a) <i>Two</i> shall be nominated by the Invercargill City Council;	35
	(b) <i>One</i> shall be nominated by the South Invercargill Borough Council; and	
	(c) <i>Three</i> shall be nominated by the Minister.	
	(2) One of the members shall be appointed by the Governor-General to be the Chairman of the Trust.	40
	(3) Except as provided in the <i>next succeeding</i> subsection, every member shall be appointed for a term of <i>four</i> years, but may from time to time be reappointed, or may be at any time removed from office by the	45

Governor-General, or may at any time resign his office by writing addressed to the Minister.

5 (4) If any member of the Trust dies, is removed from office, or resigns, the vacancy so created shall be filled in the manner in which the appointment to the vacant office was originally made. Every person so appointed shall be appointed for the residue of the term for which his predecessor was appointed.

10 (5) Unless he sooner vacates his office as provided in the *last preceding* subsection, every member of the Trust shall continue in office until his successor comes into office, notwithstanding that the term for which he was appointed may have expired.

15 (6) If any local authority fails to nominate a person for appointment to the Trust for a space of two months after being requested by the Minister so to do, the Minister may on behalf of the local authority nominate a person for appointment and that person shall, on appointment, be deemed to have been appointed on the nomination of the local authority.

(7) The powers of the Trust shall not be affected by any vacancy in the membership of the Trust.

25 5. (1) In the absence from any meeting of the Trust of any member appointed on the nomination of a local authority, any other person appointed by the local authority for that purpose may attend the meeting in his stead.

Representation
of absent
members.

30 (2) In the absence from any meeting of the Trust of any member being an officer of the Public Service, any officer of his Department having authority to act in his place during his absence from office may attend the meeting in his stead.

35 (3) Except as provided in the foregoing provisions of this section, the Governor-General may from time to time appoint any person to act for any member of the Trust at any meeting thereof in the event of his absence therefrom from whatever cause arising.

40 (4) While any person is attending any meeting of the Trust pursuant to this section he shall be deemed for all purposes to be a member of the Trust.

6. (1) There shall be paid to the Chairman and to the other members of the Trust such remuneration by way of salaries, fees, or allowances as the Minister shall from time to time approve:

Remuneration
and expenses
of members
of Trust.

Provided that any moneys received by an officer of the Public Service pursuant to this subsection shall be subject to the provisions of the Public Service Act, 1912.

See Reprint
of Statutes,
Vol. VII,
p. 522

(2) The members of the Trust shall be paid such travelling expenses and allowances as may from time to time be prescribed by regulations under this Act. 5

(3) All payments made pursuant to this section shall be paid out of the funds of the Trust.

Local
Authorities
(Members'
Contracts)
Act to apply.
1934, No. 17
Meetings
of Trust.

7. The Trust is hereby declared to be a local authority for the purposes of the Local Authorities (Members' Contracts) Act, 1934. 10

8. (1) The first meeting of the Trust shall be held at a time and place to be fixed in that behalf by the Minister. 15

(2) Thereafter meetings of the Trust shall be held at such times and places as the Trust determines.

(3) At any meeting of the Trust three members shall form a quorum.

(4) The Chairman shall preside at all meetings of the Trust at which he is present. 20

(5) In the event of the absence of the Chairman from any meeting of the Trust the members present at the meeting shall appoint one of their number to be the chairman of the meeting. 25

(6) At any meeting of the Trust the Chairman shall have a deliberative vote, and in the case of an equality of votes shall also have a casting vote.

(7) All questions before the Trust shall be decided by a majority of the valid votes recorded thereon. 30

Regulating the
conduct of
business.

9. Subject to the provisions of this Act and of any regulations under this Act, the Trust may from time to time regulate the meetings, proceedings, and general conduct of the business of the Trust in such manner as it thinks fit. 35

Trust may
appoint
officers
and servants.

10. (1) The Trust may from time to time appoint a Secretary, a Treasurer, and all such other officers and servants as it thinks necessary; and may from time to time remove any of the officers or servants; and may pay such salaries and allowances to the officers and servants respectively as it thinks reasonable. 40

(2) One person may hold two or more offices under the Trust.

(3) No member of the Trust shall be capable of holding any such office, unless without remuneration. 45

(4) During the absence from duty of any officer of the Trust by reason of illness, leave of absence, or other cause, his duties and powers may be performed and exercised by an acting officer appointed by resolution of the Trust, and any such appointment may be either general or for some occasion only.

(5) The Trust shall forthwith after any manager or acting-manager is appointed notify the chief officer of police in the district of the appointment and of the premises in respect of which the appointment has been made, and the notification shall in any proceedings for an offence against any of the provisions of the Licensing Act, 1908, be sufficient evidence until the contrary is proved that the person named therein as manager or acting-manager is for the time being charged with the management of the premises therein referred to.

See Reprint of Statutes, Vol. IV, p. 234

11. (1) Notwithstanding anything to the contrary in this Act or in any rule of law, the Trust may enter into an agreement in writing with any person whom it proposes to appoint, or who has been appointed, an officer or servant of the Trust to the effect that such person shall not be removed from office save as provided in the agreement or except for conduct justifying summary dismissal—

Trust may contract as to tenure of office of employees.

(a) During such period (not exceeding *three* years from the date of his appointment or the date of the agreement, as the case may be) as is specified in the agreement; or

(b) Except after such notice, not exceeding *three* months, as may be specified in the agreement in that behalf.

(2) Any agreement to which paragraph (a) of the *last preceding* subsection relates may from time to time be renewed for any period not exceeding *three* years at any one time from the date of such renewal.

12. (1) Any contract which if made between private persons must be by deed shall, if made by the Trust, be in writing under the seal of the Trust.

Contracts of Trust.

(2) Any contract which if made between private persons must be in writing signed by the parties to be charged therewith shall, if made by the Trust, be either in writing under the seal of the Trust or in writing signed by two members of the Trust on behalf of and by direction of the Trust.

(3) Any contract which if made between private persons may be made orally may be similarly made by or on behalf of the Trust by any member or duly authorized agent of the Trust acting by direction of the Trust, but no oral contract shall be made involving the payment by the Trust of a sum exceeding twenty pounds. 5

(4) Notwithstanding anything in the foregoing provisions of this section, no contract made by or on behalf of the Trust shall be invalid by reason only that it is not made in the manner prescribed by this section if it is made pursuant to a resolution of the Trust or to give effect to a resolution of the Trust. 10

Functions
of Trust.

13. (1) The functions of the Trust shall be to provide accommodation and other facilities for the travelling public within the Invercargill Licensing District, to establish and maintain hotels and suitable places within the district for the sale or supply of refreshments, to sell and supply intoxicating liquor within the district and establish and maintain premises for that purpose, and to do all such other acts and things as may in the opinion of the Trust be necessary or desirable having regard to the general purposes of this Act. 15 20

(2) Except as otherwise expressly provided in this Act the Licensing Act, 1908, shall apply in the district. 25

General powers
of Trust.

14. (1) The Trust shall have all such powers, rights, and privileges as may reasonably be necessary or expedient to enable it to carry out its functions.

(2) Except as expressly provided in this Act or in regulations under this Act, nothing hereinafter contained shall be held to derogate from or prejudice the generality of the provisions of this section and the powers, rights, and privileges conferred by this section. 30

Establishment
and
maintenance
of hotels, &c.

15. (1) The Trust may within the district establish and maintain hotels and suitable places for the sale or supply of refreshments. 35

(2) The Trust may establish and maintain in such hotels facilities for the accommodation of the travelling public, and dining and refreshment rooms for the sale or supply of meals and refreshments to the general public, including, if the Trust thinks fit, the sale or supply of intoxicating liquor. 40

(3) The Trust may purchase such stocks of liquor, foodstuffs, and goods of any other kind whatsoever as are required for the purpose of any business being carried on by the Trust.

5 (4) The Trust may establish and maintain, either within or outside the district, premises for the storage of liquor, foodstuffs, and other goods as aforesaid.

(5) The Trust may establish and maintain bonded warehouses and stores from which it may deliver liquor
10 sold by or on behalf of the Trust.

(6) The Trust may carry on any business which in the opinion of the Trust may suitably and conveniently be carried on in conjunction with any business which the Trust is specifically authorized to carry on.

15 **16.** (1) The Trust may purchase or otherwise acquire, or take on lease or bailment, land, plant, and equipment and may construct, alter, and maintain any buildings or works necessary or convenient for the purpose of carrying out its functions. Acquisition of premises, &c.

20 (2) For the purpose of facilitating the acquisition of land for the purposes of this Act the Governor-General may, on the application of the Trust and at its expense in all things, take under the Public Works Act, 1928, any land, or any particular estate or interest in
25 land (whether for the time being subsisting separately or not), or any easement over any land (whether for the time being subsisting or not). See Reprint of Statutes, Vol. VII, p. 622

(3) Notwithstanding anything to the contrary in the Public Works Act, 1928, the effect of a Proclamation
30 issued for the purposes of this section shall be to vest the land, estate, interest, or easement, as the case may be, in the Trust instead of His Majesty; and all proceedings subsequent to the issue of the Proclamation in respect of compensation, or otherwise for the purpose
35 of complying with the said Act, shall be taken against the Trust, which shall be deemed to be the respondent and shall be liable in respect of the taking to the same extent as His Majesty or the Minister of Works would have been liable if the taking had been for the purposes
40 of a Government work.

17. Intoxicating liquor may be sold in the district by or on behalf of the Trust in such premises as the Trust may determine, and it shall not be necessary for
Premises in which liquor may be sold.

any license under the Licensing Act, 1908, to be issued to the Trust or to any person selling liquor on behalf of the Trust:

Provided that except in the case of premises established temporarily pursuant to the *next succeeding* section liquor shall not be sold for consumption on the premises where it is sold unless the premises are of a standard at least equal to the standard required of premises in respect of which a license under the Licensing Act, 1908, is in force.

Temporary provision pending acquisition of hotel premises.

18. (1) The Trust shall as soon as practicable after the first meeting thereof establish premises for the sale or supply of liquor in the district.

(2) If owing to war conditions the Trust is not able to arrange for suitable permanent premises, premises may be established temporarily until sufficient suitable permanent premises are available.

(3) The Minister may at any time, if he thinks fit, and if any premises established temporarily under the *last preceding* subsection are not in his opinion equal to the standard required of a publichouse under the Licensing Act, 1908, require that the premises be closed, and thereupon the Trust shall close the premises.

Number and situation of hotels.

19. (1) Subject to any regulations that may be made under this Act, the Trust may establish and maintain such number of hotels as it thinks fit, and may establish them in such localities as it determines.

(2) In determining from time to time the number of hotels to be established and maintained and the type and location of each hotel regard shall be had to the requirements of the travelling public and of the residents within the district.

(3) The Trust shall give not less than fourteen days' notice by advertisement in a newspaper circulating in the district of its intention to establish any hotel, and if any resident in the neighbourhood objects to the establishment of the hotel on the ground that it is not required in the neighbourhood, or that it will be in the immediate vicinity of a place of public worship, hospital, or school, or that the quiet of the neighbourhood will be disturbed, he may within the said fourteen days give notice of his objection to the Trust and apply to a Judge of the Supreme Court, whose decision shall be final, for an order determining whether or not the hotel may be established.

20. (1) Such of the provisions of the Licensing Act, 1908, and its amendments, as are referred to in the Schedule to this Act, shall not apply in or in respect of the Invercargill Licensing District.

Application of Licensing Act, 1908, within the district.

See Reprint of Statutes, Vol. IV, p. 234

5 (2) Subsection one of section two hundred and one of the Licensing Act, 1908, shall not apply in respect of any servant of the Trust who, in any place referred to in paragraph (a) of that subsection, is selling or exposing for sale any liquor in the course of his employ-
10 ment and not in contravention of any orders or instructions of the Trust.

(3) For the purposes of the Licensing Act, 1908, premises maintained by the Trust in which liquor is sold or supplied by or on behalf of the Trust shall be
15 deemed to be licensed premises within the meaning of that Act, and the person for the time being charged with the management of any such premises shall be deemed to be a licensed person and to be the licensee of the premises within the meaning of that Act, and
20 all the provisions of that Act shall, with the necessary modifications, apply accordingly except so far as they are inconsistent with any of the provisions of this Act.

(4) In the application of the provisions of the Licensing Act, 1908, pursuant to the *last preceding* sub-
25 section, any premises of the Trust in which lodging is provided shall be deemed to be an inn and the person for the time being charged with the management thereof shall be deemed to be the innkeeper.

(5) The Licensing Act Emergency Regulations
30 1942 (No. 2) shall for the purposes of this section be deemed to be part of the Licensing Act, 1908:

Serial number 1942/186

Provided that for the purposes of regulation two A of those regulations the Trust and every person acting as a manager for the Trust shall be deemed to be the holder of a wholesale license.

See Serial number 1943/122

35 21. (1) The Trust shall pay in respect of premises in which liquor is sold by or on behalf of the Trust an annual fee as follows:—

License fees payable to local authority.

(a) If lodging is provided in the premises the sum of *forty* pounds:

40 (b) If lodging is not provided in the premises the sum of *twenty* pounds.

(2) The fees shall be paid within fourteen days after the commencement of each financial year of the Trust, or, in the case of premises first used during any financial year for the sale of liquor, within fourteen days after the premises are so first used. 5.

(3) The fees payable under this section shall be paid to the treasurer of the local authority within whose district the premises are situated.

Borrowing-
powers of
Trust.
See Reprint
of Statutes,
Vol. V, p. 354

22. (1) The Trust may borrow by way of overdraft in manner prescribed by section three of the Local Bodies' Finance Act, 1921-22, and the provisions of that section shall, with the necessary modifications, apply to the Trust in all respects as if it were a local authority within the meaning of that Act. 10

(2) In addition to the power conferred by the *last preceding* subsection the Trust shall have power, with the consent of the Minister of Finance and upon and subject to such conditions as that Minister thinks fit, to borrow moneys and mortgage or charge any of its real or personal property. 15
20

(3) For the purpose of enabling the Trust to commence to exercise its functions without delay, the Minister of Finance may from time to time, upon and subject to such terms and conditions as he thinks fit, advance to the Trust out of the Consolidated Fund without further appropriation than this Act any moneys required for the acquisition of any property or the payment of any preliminary or general expenses (including salaries) payable by the Trust before it has sufficient revenue for the payment thereof. 25
30

Bank accounts
of Trust.

23. The Trust may establish at such branch or branches of the Bank of New Zealand as it thinks fit, in the name of the Trust, such accounts as it deems necessary or convenient for the exercise of its powers under this Act, and may authorize the accounts to be operated on respectively by such person or persons as the Trust from time to time appoints for that purpose. 35

Unauthorized
expenditure.

24. The Trust may in every financial year expend for purposes not authorized by this Act or by any other Act or law for the time being in force any sum or sums not amounting in the whole to more than *one hundred* pounds. 40

25. (1) The Trust shall cause books to be provided and kept, and true and regular accounts to be entered therein of all sums of money received and paid, and of the several purposes for which such sums of money
5 have been received and paid. Proper books of account to be kept.
- (2) The Trust shall keep such accounts of moneys and stores, and keep them in such manner, as may be required by the Audit Office.
- 10 26. (1) The Trust shall establish a depreciation reserve, to which may be charged any depreciation in the value of the Trust's assets, and any loss involved in the destruction of or injury to any such assets, and any expenditure involved in the replacement of assets. Power to establish depreciation and other reserves.
- (2) The Trust may also from time to time, with the
15 consent of the Minister of Finance, establish such other reserves as it deems necessary or expedient.
- (3) The Trust may invest any of the moneys to the credit of any reserve account either in the business of the Trust or as provided in the *next succeeding* section.
- 20 27. Any moneys belonging to the Trust and available for investment may be invested in the manner following:— Investment of moneys belonging to Trust.
- (a) In New Zealand Government securities; or
- 25 (b) On deposit in the Bank of New Zealand or in the Post Office Savings-bank; or
- (c) In any other securities that may from time to time be authorized by the Minister of Finance.
- 30 28. (1) On or before the thirtieth day of April in each year the Treasurer of the Trust shall prepare and send to the Audit Office a yearly balance-sheet and a profit and loss account together with such other statements of accounts as may be necessary to show fully the financial position of the Trust and the financial results of its operations during the preceding financial year
35 ended the thirty-first day of March then last past. Yearly balance-sheet and statements.
- (2) The yearly balance-sheet, account, and statements shall be audited by the Audit Office, which for that purpose shall have and may exercise all such powers as it has under the Public Revenues Act, 1926,
40 in respect of public moneys and public stores and the audit of local authorities' accounts. See Reprint of Statutes, Vol. VII, p. 10.
- (3) A copy of the yearly balance-sheet, profit and loss account, and statements shall, when duly audited, be submitted by the Trust to the Minister accompanied

by a report as to the operations of the Trust for the year; and a copy of the balance-sheet, account, statements, and report shall be laid before Parliament.

Distribution
of profits
arising from
operations
of Trust.

29. (1) The net profits arising from the operations of the Trust, or so much thereof as the Trust shall determine, may be expended or distributed by the Trust within the Southland Land District in such manner as the Trust thinks fit for the promotion, advancement, or encouragement of education, science, literature, art, physical welfare, and other cultural and recreational purposes; for the erection, laying out, maintenance, or repair of buildings or places intended to further any of those purposes; for any philanthropic purpose; or for any other purpose for the benefit of the Southland Land District or the residents therein as the Minister may approve. 5 10 15

(2) Notwithstanding anything contained in this section the Trust shall be liable to income-tax and to rates and to all other taxes and duties as if it were a body corporate formed for private pecuniary profit. 20

Regulations.

30. The Governor-General may from time to time, by Order in Council, make regulations for any purpose for which regulations are contemplated by this Act, and may make all such other regulations as may in his opinion be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof. 25

Repeal.
1944, No. 1

31. The Invercargill Licensing Committee Act, 1944, is hereby repealed.

Schedule.

SCHEDULE

Section 20

PROVISIONS OF THE LICENSING ACT, 1908, NOT APPLICABLE IN THE INVERCARGILL LICENSING DISTRICT

PART III, Part IV (except section 143), sections 148 to 160, 166, 171, 180, 200, 234 to 236, 246 to 251, 253 to 258, 291 to 296, 299 to 301.

PROVISIONS OF THE LICENSING AMENDMENT ACT, 1910, NOT APPLICABLE IN THE INVERCARGILL LICENSING DISTRICT

Sections 8 to 12.