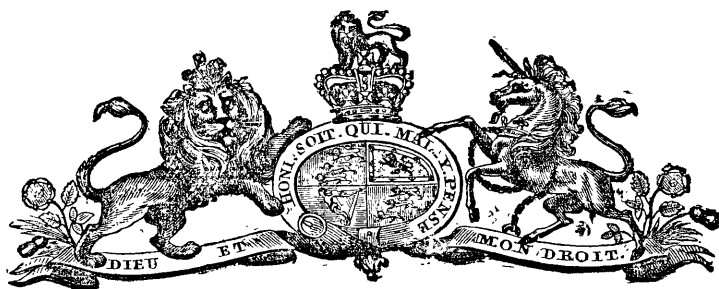


OTAGO, N. Z.



DUNEDIN AND PENINSULA RAILWAY ORDINANCE, 1875.

IN THE THIRTY-EIGHTH YEAR OF THE REIGN OF HER MAJESTY
QUEEN VICTORIA.

SESSION XXXIV. No. 471.

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An Ordinance intituled the "Dunedin and Peninsula Railway Ordinance, 1875." Title.

[RESERVED FOR THE SIGNIFICATION OF THE GOVERNOR'S PLEASURE THEREON 19TH JUNE, 1875.]

WHEREAS a Public Company has been formed and duly incorporated ^{Preamble.} under the "Joint Stock Company's Act, 1860" by the name or style of the Dunedin Peninsula and Ocean Beach Railway Company (Limited) hereinafter referred to as the said Company for the purpose amongst other things of constructing a line or lines of railway connecting the City of Dunedin with the Ocean Beach Anderson's Bay and the Peninsula Districts in the Province of Otago: And whereas the said Company intends to work the said line or lines of Railway with locomotive or other engines passenger and goods carriages waggons trucks and other rolling stock and to provide the necessary station and warehouse accommodation which may be required for the convenience of the public in Dunedin at the Ocean Beach Anderson's Bay Macandrew's Bay and Portobello in the said Peninsula District: And

whereas the objects and intentions of the said Company as expressed in its Memorandum and Articles of Association have been published and circulated throughout the Province and are such as ought to meet with encouragement and support :

BE IT THEREFORE ENACTED by the Superintendent of the Province of Otago by and with the advice and consent of the Provincial Council of the said Province as follows :—

Short Title.

1. The short title of this Ordinance shall be the “Dunedin and Peninsula Railway Ordinance, 1875.”

Dunedin Peninsula and Ocean Beach Railway Company Limited empowered to construct and maintain railway &c.

2. Subject to the conditions and restrictions hereinafter imposed it shall be lawful for the said Company to make construct and maintain a line or lines of Railway connecting Dunedin the Ocean Beach Anderson's Bay Macandrew's Bay and Portobello in the said Province and to erect at each or any of the said places stations warehouses sheds and all necessary erections appliances and conveniences for the accommodation of passengers and the receipt transit and delivery of goods and merchandise and to use and work upon the said Railway locomotive and other steam engines carriages trucks and all other rolling stock necessary for the conduct of Railway traffic either of goods or passengers.

Railway to be confined within limits of deviation shown on deposited plans.

3. The said Railway shall be constructed and maintained within the limits of deviation set forth in the plans of the said Company which have been deposited with the Clerk of the said Provincial Council and such plans shall be deemed to be incorporated with and form part of this Ordinance.

Railway to be constructed through lands in Schedule.

4. The said Railway shall be constructed and maintained in through or over the lands tenements and hereditaments particularised in the Schedule hereto and in accordance with the said plans and not otherwise.

Lands not to be taken compulsorily.

5. Nothing herein contained shall be deemed to authorise the acquisition compulsorily of any of the lands tenements or hereditaments enumerated and particularised in the said Schedule: And in the event of the said Company or any officer servant or workman of the said Company or any contractor or sub-contractor engaged in executing any of the Company's works on the said Railway entering upon any lands tenements or hereditaments without the consent of the owner or owners thereof and before the said Company shall have acquired from such owner or owners the right to enter and take possession of his or their lands tenements or hereditaments and to use the same for the purposes of the said Railway the said Company or the person or persons so offending shall irrespective of its his her or their liability to be sued in trespass or otherwise be liable to a penalty not exceeding twenty pounds for every such offence.

Contracts and promises of concessions &c. to the Company declared void.

6. All contracts agreements promises and concessions heretofore made or agreed to be made to the said Company by or on behalf of the Superintendent or any member of the Executive Council of the Province of Otago shall be and are hereby declared to be void and of none effect and any similar contract or agreement made or entered into without the previous recommendation of the Provincial Council shall also be void.

Nature of Company's works defined.

7. The said Company may upon any lands tenements and hereditaments to be acquired from the owner or owners thereof as aforesaid but upon no other lands tenements or hereditaments execute and carry out in connection with and for the purposes of the said Railway the Works hereinafter mentioned throughout this Ordinance :

- (a) Temporary or permanent inclined planes tunnels embankments aqueducts bridges roads ways passages conduits arches sidings cuttings approaches and fences may be made constructed or erected : Provided that every bridge to be erected for the purpose of carrying the said Railway over any road and every bridge erected for carrying any road over the said railway shall be built and constructed to the approval and satisfaction of the said Superintendent or any Engineer or other person appointed by him.
- (b) The course of any public street road highway or thoroughfare or any drain for the outfall of water or which is the bed of any creek stream river pond or lake may be temporarily or permanently altered raised or sunk for the purpose of constructing and maintaining tunnels bridges passages or other works over or under the same.
- (c) Drains or conduits may be made and constructed for the purpose of receiving conveying or discharging water.
- (d) Rails sleepers and ballast may be laid and such stations offices warehouses buildings yards cranes machinery appliances works and conveniences may be erected supported constructed and maintained for the efficient working of the said Railway.

8. The said Company shall make and at all times thereafter maintain the following works for the accommodation of the owners and occupiers of lands adjoining the Railway (that is to say)— Company to supply accommodation works.

Such and so many convenient gates bridges arches culverts and passages over under or by the sides of or leading to or from the Railway as shall be necessary for the purpose of making good any interruptions caused by the Railway to the use of the lands through which the Railway shall be made and such works shall be made forthwith after the part of the Railway passing over such lands shall have been laid out or formed or during the formation thereof.

Also sufficient posts rails hedges ditches mounds or other fences for separating the land used for the Railway from the adjoining lands and protecting such lands from trespass or the cattle of the owners or the occupiers thereof from straying thereout by reason of the Railway together with all necessary gates made to open towards such adjoining lands and not towards the Railway and all necessary stiles and such posts rails and other fences shall be made as soon as conveniently may be.

Also all necessary arches tunnels culverts drains or other passages either over or under or by the sides of the Railway of such dimensions as will be sufficient at all times to convey the water as clearly from the lands lying near or affected by the Railway as before the making of the Railway or as nearly so as may be and such works shall be made from time to time as the Railway works proceed :

Provided always that the said Company shall not be required to make such accommodation works in such a manner as would prevent or obstruct the working or using of the Railway nor to make any accommodation works with respect to which the owners and occupiers of the lands shall have agreed to receive and shall have been paid compensation instead of the making them.

Accommodation works not required after three months.

9. The said Company shall not be compelled to make any further or additional accommodation works for the use of owners and occupiers of land adjoining the Railway after the expiration of six months from the time of the opening for public traffic of any complete portion of the Railway which shall include or comprise the said accommodation works : Provided nevertheless that the said limit of six months shall be applicable only to the owners and occupiers of land adjoining the Railway from and after the time of the completion of the particular portion of the Railway adjoining which the said land shall be situate.

Crossings allowed until accommodation works completed.

10. Until the said Company shall have made the bridges or other proper communications which under the provisions herein contained it has been required to make between lands intersected by the Railway and no longer the owners and occupiers of such lands and any other persons whose right-of-way shall be affected by the want of such communication and their respective servants may at all times freely pass and repass with carriages horses and other animals directly (but not otherwise) across the part of the Railway made in or through their respective lands solely for the purpose of occupying the same lands or for the exercise of such right-of-way and so as not to obstruct the passage along the Railway or to damage the same nevertheless if the owner or occupier of any such lands have in his arrangements with the said Company received or agreed to receive compensation for or on account of any such communications instead of the same being formed such owner or occupier or those claiming under him shall not be entitled so to cross the Railway.

Penalty on persons omitting to fasten gates.

11. If any person omit to shut and fasten any gate set up at either side of the Railway for the accommodation of the owners or occupiers of the adjoining lands as soon as he and the carriage cattle or other animals under his care have passed through the same he shall forfeit for every such offence any sum not exceeding forty shillings.

Superintendent to possess powers of inspection over Company's works.

12. During the construction of the said Railway and the execution of the works connected therewith and after the completion thereof the said Superintendent shall be at liberty at all reasonable times to direct any Engineer or other proper officer of the Provincial Government to inspect the works the rolling-stock and buildings of the said Company and any requisition which the said Superintendent shall thereafter upon the recommendation of the said Engineer or other officer as aforesaid make requiring the said Company to effect any necessary alterations or repair into or upon the works rolling-stock or buildings of the said Company shall immediately thereafter be obeyed and carried out.

When Company to commence works.

13. The said Company shall without delay commence the construction of the said Railway Works and shall prosecute the same to completion without delay or intermission unless hindered or prevented by some unforeseen cause or impediment And the said Company shall also in like manner and as the state of the said Railway Works shall permit and require proceed with the erection of all buildings and supply the necessary accommodation for the safe proper and convenient conduct of passengers and goods traffic on the said Railway : Provided that the said Company shall not be required to complete and render fit for passenger and goods traffic its said Railway Works from Dunedin aforesaid beyond the place shewn and named on the said plans as the Ocean Beach Station before the expiration of twelve calendar months from and after the time of the coming into operation of this Ordinance or beyond the place named and shewn on the said plans as the Andersons Bay Station before the expiration of eighteen calendar months from and after the time aforesaid or beyond the place named and shewn on the said plans as Macandrews Bay Station before the expiration of

thirty calendar months from and after the time aforesaid or to the place named and shown on the said plans as the Portobello Terminus before the expiration of five years from and after the time aforesaid.

14. The said Superintendent acting by and with the advice and consent of his Executive Council may should he think it expedient so to do from time to time by proclamation to be published in the Provincial *Gazette* make alter and revoke regulations fixing rates fares and rent to be charged by the Company for the carriage of goods and passengers and the storage of goods in any of the Company's sheds or warehouses the number of trains to run each day the time of their arrival and departure from the terminal and intermediate stations and generally imposing such restrictions upon the conduct of the business and traffic of the Company as may in the opinion of the said Superintendent be most conducive to the public interest and welfare and may affix a penalty of not exceeding £100 to the breach of any of the regulations so to be proclaimed as aforesaid and the said Superintendent may also from time to time with the consent and advice aforesaid by proclamation to be published as aforesaid authorise and empower any trains or rolling stock the property of the Province to be run upon the said Railway after the completion thereof and to stop at the terminal and other stations aforesaid and may also from time to time by any such proclamation authorise and empower any Company or persons upon payment to "the said Company" of such rates of charges as may be fixed in that behalf in and by any such proclamation to run trains or rolling stock upon the said Railway and to stop at the said terminal and other stations: Provided always that a copy of all regulations to be made by the said Superintendent as aforesaid shall be laid upon the table of the Provincial Council within fourteen days after the commencement of each Session and any alteration or amendment in such regulations which the said Provincial Council shall by address to be forwarded to the said Superintendent recommend the said Superintendent shall immediately thereafter carry into effect if he shall approve of the same.

Superintendent may regulate Company's tariff of fares and charges.

15. The said Superintendent shall be entitled after full completion of the works upon giving six calendar months notice in writing to the said Company to purchase the Railway works of the said Company together with its rolling stock plant implements and all its rights powers and privileges at a price to be determined by arbitration the award being that of three arbitrators or any two of them one arbitrator being chosen by the said Superintendent another by the said Company and the third arbitrator by the two other arbitrators: Provided always that no notice as aforesaid shall be given by the Superintendent except upon the previous recommendation of the Provincial Council: Provided also that in determining the price to be paid to the said Company the said arbitrators shall not award any compensation to the said Company in respect of any lands tenements and hereditaments the use of which shall have been acquired from the Superintendent but the said Company shall receive in respect of such lands tenements and hereditaments the fair value of all improvements made on such lands and upon payment of the compensation so to be awarded the said Company shall assign and transfer to the said Superintendent all its estate property and interest in the said Railway plant rolling stock and everything appurtenant thereto: Provided also that no compensation whatever shall be paid for any goodwill of the said Railway nor for anything save and except the actual value of the land owned by the said Company and the improvements effected thereon and for the improvements effected on land belonging to the Superintendent as stated in this section.

Superintendent entitled to purchase on giving six months' notice.

16. In case the Colonial Government should at any time desire to construct a line or lines of telegraph posts and wires along the line of the said Railway and within the fences enclosing the same the said Company shall

Company to permit erection of telegraph posts &c, if required by Superintendent.

upon the request of the said Superintendent permit any person or persons appointed in that behalf or any contractors or workmen employed for the purpose to have access to the lands tenements and hereditaments in the use and occupation of the said Company in order that the said posts and wires may be erected but subject however to such conditions being imposed to guard against any unnecessary injury to the works or property of the said Company and for making good any injury or disturbance to the said lands tenements and hereditaments or the Company's said works as may be just and expedient.

Company not to assign or part with railway without written consent of Superintendent.

17. The said Company shall not assign or part with its beneficial interest in its said Railway without the consent in writing of the said Superintendent first had and obtained: Provided always that such consent shall not be necessary if the said Company shall at any time give twelve calendar months' notice in writing to the said Superintendent intimating its intention to dispose of its interest in the said Railway and the said Superintendent shall not within such period of twelve calendar months give notice of his intention to purchase the said Railway in exercise of the power in that behalf hereinbefore contained.

Superintendent may take possession of railway works if Company guilty of unreasonable delay.

18. In the event of any unreasonable or inexcusable delay in the prosecution of the said Railway Works or in the event of the said Company after the completion of the said works in whole or in part so that the whole or any complete part or section of the line may be used for the purposes of traffic not running for the space of three clear days without reasonable excuse trains at the times and in manner fixed and determined by the said Superintendent the said Superintendent may take possession and assume the management of the said Railway and Works and complete the same and conduct the traffic thereon charging the said Company with all outlay and expenditure which may be entailed and crediting the said Company with all earnings and receipts: And in such event there shall be paid by the said Company to the said Superintendent and by the said Superintendent to the said Company the balance which shall thereafter be found to be due from the one to the other of them from time to time the accounts being computed and rendered at intervals of not less than six calendar months.

Provision in cases where roads are crossed on a level.

19. Wherever the Railway shall cross any public road or highway on a level the said Company shall erect and at all times maintain good and sufficient gates across such road or highway on each side of the Railway where the same shall communicate therewith and shall employ proper persons to open and shut such gates and such gates shall be kept constantly closed across such road or highway on both sides of the Railway except during the time when horses cattle carts or carriages passing along the same shall have to cross such Railway and such gates shall be of such dimensions and so constructed as when closed to fence in the Railway and prevent cattle or horses passing along the road or highway from entering upon the Railway and the persons entrusted with the care of such gates shall cause the same to be closed as soon as such horses cattle carts or carriages shall have passed through the same under a penalty of forty shillings for every default therein: Provided always that the gates on any level crossing over any such road may be kept closed across the railway instead of across the road and in such case such gates shall be kept constantly closed across the Railway except when engines or carriages passing along the Railway shall have occasion to cross such road in the same manner and under the like penalty as above directed with respect to the gates being kept closed across the road.

Width of bridge need not exceed width of road in certain cases.

20. In all cases where the average available width for the passing of carriages of any existing road within fifty yards of the points of crossing the same is less than the width which may be prescribed for bridges under or over the Railway the width of such bridges need not be greater than such

average available width of such road but so nevertheless that such bridges be not of less width in the case of a public road or highway than twenty feet : Provided also that if at any time after the construction of the Railway the average available width of any such road shall be increased beyond the width of such bridge on either side thereof the said Company shall be bound at its own expense to increase the width of the said bridge to such extent as it may be required by the Superintendent not exceeding the width of such road as so widened or the maximum width which may be prescribed as aforesaid for a bridge in the like case over or under the Railway.

21. If the mesne inclination of any road within two hundred and fifty yards of the point of crossing the same or the inclination of such portion of any road as may require to be altered or for which another road shall be substituted shall be steeper than the inclination which may be so required to be preserved by the said Company then the said Company may carry any such road over or under the Railway or may construct such altered or substituted road at an inclination not steeper than the said mesne inclination of the road so to be crossed or of the road so requiring to be altered or for which another road shall be substituted.

Existing inclinations of roads crossed or diverted need not be improved.

22. If in the exercise of the powers by this Ordinance granted it be found necessary to cross-cut through raise sink or use any part of any road whether carriage-road horse-road or tram-road either public or private so as to render it impassable for or dangerous or extraordinarily inconvenient to passengers or carriages or to the persons entitled to the use thereof the said Company shall before the commencement of any such operations cause a sufficient road to be made instead of the road to be interfered with and shall for twelve months from the time of the completion of such substituted road at its own expense maintain the same in a state as convenient for passengers and carriages as the road so interfered with or as nearly so as may be : Provided always that in any case in which it shall be made to appear to the Superintendent before the commencement of any such operations as before mentioned to be impossible or extraordinarily inconvenient to cause such substituted road to be made before the commencement of the operations interfering with such existing road it shall be lawful for the Superintendent by writing under his hand to dispense with compliance with the provisions of this section for such period as shall be named in such writing not exceeding one month from the time of commencement of such operations.

Before roads interfered with others to be substituted.

23. If the said Company does not cause another sufficient road to be so made before it interferes with any such existing road as aforesaid or within the time which may be so limited by the Superintendent as aforesaid it shall forfeit twenty pounds for every day during which such substituted road shall not be made after the existing road shall have been interrupted.

Penalty for not substituting a road.

24. If the road so interfered with can be restored compatibly with the formation and use of the Railway the same shall be restored to as good a condition as the same was in at the time when the same was first interfered with by the said Company or as near thereto as may be and if such road cannot be restored compatibly with the formation and use of the Railway the said Company shall cause the new or substituted road to be put into a permanently substantial condition equally convenient as the former road or as near thereto as circumstances will allow and the former road shall be restored or the substituted road put into such condition as aforesaid as the case may be within the period of six months after the first operation on the former road shall have been commenced unless the Local Board of the District in which such road is situate shall by writing under the hand of the chairman of the said Board consent to an extension of the period and in such case within such extended period.

Period of restoration of roads interfered with.

Penalty for failing to restore road.

25. If any such road be not restored or the substituted road so completed as aforesaid within the said period of six months or within such extended period as aforesaid the said Company shall forfeit and pay the sum of five pounds for every day after the expiration of such periods respectively during which such road shall not be so restored or the substituted road completed.

Company to repair road used by it.

26. If in the course of making the Railway the said Company shall use or interfere with any road it shall from time to time make good all damage done by it to such road under a penalty not exceeding fifty pounds.

Company to make sufficient approaches fences &c.

27. If the Railway shall cross any road or highway on the level the said Company shall at its own expense make and at all times maintain convenient ascents and descents and other convenient approaches with hand-rails or other fences and shall if such road or highway be a bridle way erect and at all times maintain good and sufficient gates and if the same shall be a footway good and sufficient gates or stiles on each side of the railway where the road or highway shall communicate therewith under a penalty of five pounds for every day it fails to do so.

Screens for roads to be made if required by Superintendent.

28. If the Local Board of Road Trustees or other the governing body of any Road District through which the railway shall pass shall apprehend danger to the passengers on any street or road in consequence of horses being frightened by the sight of the engines or carriages travelling upon the railway it shall be lawful for such Trustees or other governing body respectively after giving fourteen days' notice to the said Company to apply to the Superintendent that such danger may be obviated or lessened by the construction of any works in the nature of a screen near to or adjoining the side of such road or street it shall be lawful for him if he shall think fit to certify the works necessary or proper to be executed by the said Company for the purpose of obviating or lessening such danger and by writing under his hand to require the said Company to execute such works within a time to be named in such writing.

Penalty for breach of last section.

29. Where by any such writing as aforesaid the said Company shall have been required to execute any such work in the nature of a screen it shall execute and complete the same within the period appointed for that purpose in such writing under a penalty of five pounds for every day during which such works shall remain uncompleted beyond the period so appointed for their completion.

Superintendent to have power to order repair of bridges &c.

30. Where under the provisions of this Ordinance the said Company is required to maintain or keep in repair any bridge fence approach gates or other work executed by it it shall be lawful for the Superintendent on the application of the Trustees of the Local Road Board or other the governing body of the district where such work may be situate complaining that any such work is out of repair after not less than ten days' notice to the said Company to order the said Company to put such work into complete repair within a period to be limited for that purpose by such Superintendent and if the said Company fails to comply with such order it shall forfeit and pay the sum of five pounds for every day it fails so to do.

Superintendent empowered to modify the construction of roads bridges &c.

31. In case any difference in regard to the construction alteration or restoration of any road or bridge or other public work of an engineering nature required by the provisions of this Ordinance shall arise between the said Company and the Local Board of Road Trustees or other governing body of any district or place through which the Railway shall pass it shall be lawful for either party after giving fourteen days' notice in writing of its or their intention so to do to the other party to apply to the Superintendent to decide upon the proper manner of constructing altering or restoring such

road bridge or other work and it shall be lawful for the Superintendent if he shall think fit to decide the same accordingly and to authorise by certificate in writing any arrangement or mode of construction in regard to such road bridge or other work which shall appear to him either to be in substantial compliance with the provisions of this Ordinance or to be calculated to afford equal or greater accommodation to the public using such road bridge or other work and after any such certificate shall have been given by the Superintendent the road bridge or other work therein mentioned shall be constructed by the said Company in conformity with the terms of such certificate and being so constructed shall be deemed to be constructed in conformity with the provisions of this Ordinance: Provided always that no such certificate shall be granted by the Superintendent unless he shall be satisfied that existing private rights or interests will not be injuriously affected thereby.

32. Nothing in this Ordinance contained shall be taken or deemed to sanction any interference with the rights of the Crown to any lands tenements or hereditaments or to give to the said Company any title to the soil of any district or other road or in any way to affect the title to any lands or hereditaments. Crown rights to foreshore and tilled lands not to be affected.

33. This Ordinance shall cease to have force and shall expire at the expiration of five years from the time the same shall receive the Governor's assent unless the said Railway shall be completed within such period of five years. Ordinance to lapse in five years.

34. The Ordinance of the Superintendent and Provincial Council of the Province of Otago shortly intituled the "Interpretation Ordinance 1865" so far as the same shall not be varied by or be inconsistent with the provisions of this Ordinance shall be and the same is incorporated with this Ordinance and shall form part of this Ordinance. Interpretation Ordinance 1865 incorporated.

35. All proceedings for offences against the provisions of this Ordinance shall be had and taken in a summary way and all penalties hereby imposed shall be recovered in manner provided by the Act of the General Assembly of New Zealand intituled the "Justices of the Peace Act 1866." Penalties to be recovered in a summary way.

36. No penalty to be imposed on any one conviction under the provisions of this Ordinance shall exceed the sum of one hundred pounds. Maximum penalty.

37. This Ordinance shall not come into operation nor have any effect until the time within which by law the same may be disallowed by the Governor shall have expired. When Ordinance to come into operation.

SCHEDULE.

Portobello District.

Sections 37, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 38, 18, 19, 20, 21, 22, 23, 24, 25, and 26, block VII.

Otago Peninsula District.

Section 77, block II. Applications 150 and 318, block VII.

Upper Harbour East District.

Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, and 58.

Anderson's Bay District.

Sections 13, 14, 15, and 16, block VIII. Sections 1, 2, 3, 4, 5, 6, and 7, block IV. Sections 13, 14, 15, and 16, block V. Sections 9, 10, 11, and 12, block III.

Town District.

Sections 75, 74, 73, 72, 71, 69, 70, 76, 77, 78, 79, 80, 81, 82, and 83, block VII.

Dunedin and East Taieri District.

Section 12, block XII.

Crown Lands.

Otago Harbour below high water mark, that is to say:—Portion in front of sections 37, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 38, 18, 19, 20, 21, 22, 23, 24, 25, and 26, block VII, Portobello District; portion in front of section 77, block II, Otago Peninsula District; portion in front of sections 1 to 58 (both inclusive); Upper Harbour East District; portion in front of sections 14, 15, and 16, block VIII, Anderson's Bay District; portion in front of sections 7, 6, 5, 4, 3, 2, and 1, block IV, of same district; portion in front of sections 16, 15, 14, and 13, block V, of same district; portion in front of sections 9, 10, 11, and 12, block III, of same district; portion in front of sections 75, 74, 73, 72, 71, and 70, block VII, Town District.

DUNEDIN, NEW ZEALAND :

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