

KING'S CROSS TUNNEL ACT.

Act No. 30, 1941.

George VI.
No. 30, 1941.

An Act to sanction the construction of a by-pass roadway from the intersection of Forbes Street and Cathedral Street, in the City of Sydney, to the intersection of New South Head Road and Reddy Street, in the Municipalities of Paddington and Woollahra, and for the regrading of part of New South Head Road; to amend the Public Works Act, 1912, and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 10th April, 1941.]

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:—

Short title.

1. This Act may be cited as the "King's Cross Tunnel Act, 1941."

Work sanctioned.

2. (1) The carrying out of the work described in the Schedule to this Act hereinafter referred to as "the said work" is hereby sanctioned.

(2) The said work shall be deemed to be an authorised work within the meaning of the Public Works Act, 1912, as amended by subsequent Acts.

(3) The Minister for Public Works is empowered to carry out the said work and shall be the Constructing Authority for the same within the meaning of the said Act as so amended and shall enter into such contracts and shall take all such necessary steps for the proper execution thereof as such authority may think proper.

(4) Subject to the provisions of this Act the provisions of the Public Works Act, 1912, as amended by subsequent

subsequent Acts, sections thirty-four, thirty-five, thirty-six and thirty-seven excepted, shall apply to and in respect of the said work. No. 30, 1941.

(5) Without prejudice to the generality of subsection four of this section the provisions of section thirty-eight of the Public Works Act, 1912, as amended by subsequent Acts, shall apply to and with respect to any contracts referred to in subsection three of this section.

3. The plan of the said work is the plan marked "City of Sydney-Eastern Suburbs New Arterial Roadway" signed by the Minister for Public Works and countersigned by the Town Clerk of the Municipal Council of Sydney and the Assistant Commissioner for Main Roads, and deposited in the public office of the said Minister. The plan.

4. The cost of carrying out the said work (exclusive of acquisitions of land) is estimated at three hundred and thirty-eight thousand pounds and such estimated cost shall not under any circumstances be exceeded by more than ten per centum. Cost.

5. (1) Without prejudice to the generality of subsection three of section two of this Act the Minister for Public Works may arrange— Minister may arrange for construction of work.

- (a) by agreement (which agreement may be varied, altered or modified from time to time by a subsequent agreement) with the Municipal Council of Sydney, for the construction by that Council of so much of the said work as is within the boundaries of the City of Sydney;
- (b) by agreement (which agreement may be varied, altered or modified from time to time by a subsequent agreement) with the Commissioner for Main Roads, for the construction by such Commissioner of so much of the said work as is outside the boundaries of the City of Sydney.

(2) The Municipal Council of Sydney shall, notwithstanding anything contained in the Sydney Corporation Act, 1932-1940, have authority to enter into any such agreement and to carry out any work to which the agreement relates.

(3) The Commissioner for Main Roads shall, notwithstanding anything contained in the Main Roads Act, 1924-1939,

No. 30, 1941. 1924-1939, have authority to enter into any such agreement and to carry out any work to which the agreement relates.

Vesting
of work.

6. (1) Upon completion of the said work or any part thereof the Governor may, by notification published in the Gazette—

- (a) vest in the Municipal Council of Sydney as a public way so much of the said work or any part thereof as is within the boundaries of the City of Sydney;
- (b) vest in the municipal council within whose area the same is situated, as a main road, so much of the said work or any part thereof as is outside the boundaries of the City of Sydney.

(2) Where any part of the said work is so vested in the Municipal Council of Sydney the same shall become and be a public way for all purposes of the Sydney Corporation Act, 1932-1940, and the provisions of that Act shall apply accordingly: Provided that the provisions of paragraph (b) of subsection one of section 76B of the Sydney Corporation Act, 1932-1940, shall not apply to or in respect of so much of the part of the said work so vested in the Municipal Council of Sydney as consists of a strata or part below the surface of any land.

Council
may agree
to bear
part cost.

7. (1) It shall be lawful for the Municipal Council of Sydney to undertake the liability to meet one quarter of the net cost of constructing so much of the said work as is within the boundaries of the City of Sydney or the sum of eighty-seven thousand five hundred pounds whichever is the less.

Such net cost shall be the cost of constructing so much of the said work as is within the boundaries of the said City (including the cost of the acquisition of land within the said boundaries) after giving credit for the proceeds realised by the disposal of superfluous lands within the said boundaries, spoil from so much of the said work as is within the said boundaries and surplus plant and materials obtained for the purposes of constructing so much of the said work as is within the said boundaries.

The Minister for Public Works and the Council shall agree upon the net cost and in default of agreement the net

net cost shall be ascertained in accordance with this sub-section and certified by the Auditor-General whose certificate shall be binding upon the Minister for Public Works and the Council. No. 30, 1941.

(2) The Municipal Council of Sydney may borrow under and in accordance with the provisions of the Sydney Corporation Act, 1932-1940, such moneys as may be necessary for the purpose of discharging the liability undertaken by it under this section.

Any such loan shall for the purposes of section 262E of the said Act be deemed to be a loan for essential services.

8. (1) Where in pursuance of an arrangement entered into under section five of this Act the Commissioner for Main Roads constructs so much of the said work as is outside the boundaries of the City of Sydney the cost of that part of the said work shall be charged upon the County of Cumberland Main Roads Fund. Cost of part of work outside City boundaries.

(2) Any amount so charged may be paid out of that fund in all respects as if the Commissioner were required or authorised by this Act to carry out that part of the said work.

(3) Nothing contained in this section shall preclude the Commissioner from requiring a council to pay a contribution in accordance with section fifteen of the Main Roads Act, 1924-1939, in respect of any works referred to in that section.

9. For the purpose of this Act and of any arrangement entered into under section five of this Act, but not otherwise the Public Works Act, 1912, as amended by subsequent Acts, shall be deemed to be amended as follows:— Amendment of Act No. 45, 1912.

(a) by inserting next after section 4A the following new section:— New sec. 4B.

4B. (1) The provisions of this Act relating to the acquisition of land shall extend to the acquisition of any strata or part below the surface of any land whether such strata or part is divided horizontally, vertically or otherwise. Acquisition of strata or part below the surface.

(2)

No. 30, 1941.

(2) Where any such strata or part is acquired in pursuance of this section no compensation shall be allowed or awarded except in respect of—

(a) the disturbance of the surface of the overlying soil;

(b) the destruction or injuriously affecting of the support to such surface by the construction of any work within the strata or part so acquired.

Sec. 39.
(Taking of land for authorised works.)

(b) by inserting in section thirty-nine after the word "work" where firstly occurring the words "or all land of which the land required for such work forms part";

Sec. 42.
(Gazette notice.)

(c) by inserting in section forty-two after the word "work" where secondly occurring the words "or all land of which the land acquired for such work forms part";

Sec. 82.
(Power to take temporary possession of land.)

(d) (i) by omitting from subsection one of section eighty-two the words "and

(b) not being a garden, orchard, or plantation attached or belonging to a house, nor a park, planted walk, avenue, or ground ornamentally planted; and

(c) not being nearer to the dwelling-house of the owner of any such lands than a distance of five hundred yards."

(ii) by omitting subsection three of the same section;

Sec. 98.
(Lands not wanted for authorised works to be sold.)

(e) (i) by inserting at the end of subsection one of section ninety-eight the following words:—

"Land may be superfluous within the meaning of this section although the subsoil or undersurface of the land or any strata or part below the surface of the land is used or required for the purposes of the work.

In

In any sale of superfluous land the Constructing Authority may reserve an easement or a right of using any part of the land or any strata or part below the surface of the land." No. 30, 1941.

(ii) by inserting in subsection three of the same section before the words "public works" the words "authorised works or";

(f) by omitting from section one hundred and twenty-four the words "at the time notice was given, or notification published, as the case may be" and by inserting in lieu thereof the words "at the date of the commencement of the King's Cross Tunnel Act, 1941"; Sec. 124.
(General provisions as to compensation for land howsoever taken or acquired.)

(g) by inserting at the end of subsection two of section one hundred and twenty-six the words "but in all cases where a claim is not served within the ninety days aforesaid the compensation money shall only bear interest from the date of service of notice of claim:" Sec. 126 (2).
(Interest.)

Provided that interest shall not be paid for any period during which delay in fixing the amount of compensation or in completing title has been caused by the act or default of the person to whom such compensation is payable."

(h) by omitting sections eighty-six, eighty-seven, eighty-eight, eighty-nine, ninety, ninety-one, ninety-two, ninety-five, ninety-seven, and one hundred and thirty-eight. Secs. 86, 87, 88, 89, 90, 91, 92, 95, 97 and 138.

10. The Constructing Authority shall not be required to make any accommodation works for the convenience of persons of whose lands he may have taken possession, nor for the convenience of persons using any road, street, or lane under or over which the said work may be carried, or which may be closed or partly closed for the purpose of constructing the said work or any works to be carried out in connection therewith. But the Constructing Authority may carry out such accommodation works as he may think reasonable or desirable under the circumstances, and shall in constructing the said work cause as little inconvenience as may reasonably be, having regard to the circumstances. Accommodation works not required. cf. Act No. 29, 1915, s. 10.

11.

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Notice of
intention
to blast not
necessary.
cf. Act No.
29, 1915,
s. 11.

11. Notwithstanding any provision in any Act to the contrary it shall not be necessary for the Constructing Authority, or the Municipal Council of Sydney or the Commissioner for Main Roads to give notice of his or its intention to blast any rock.

No injunction shall be issued to restrain the Constructing Authority or the Municipal Council of Sydney or the Commissioner for Main Roads from causing or continuing to cause any nuisance by blasting any rock or by any other operation necessary or proper in connection with the construction of the said work.

Certain
actions to
be determined
by judge
without jury.
cf. *Ibid.*
s. 12.

12. Notwithstanding anything contained in any Act to the contrary, any action for damage or injury caused by the carrying out of the said work (not being an action for compensation in respect of any land taken under the authority of this Act) shall be heard and determined, when the amount claimed in such action exceeds one thousand pounds, by a judge of the Supreme Court without a jury and when such amount does not exceed one thousand pounds by a judge of the said court or a judge of a District Court without a jury.

This section shall not extend to or in respect of an action arising out of the death of or personal injury to a person engaged in or in connection with the carrying out of the said work.

Power to
enter land,
building,
etc.
cf. *Ibid.*
s. 13.

13. Any person authorised in writing in that behalf by the Constructing Authority, the Municipal Council of Sydney or the Commissioner for Main Roads, may at any reasonable hour in the daytime enter any land or building along or near to the line of the said work and inspect the same and make measurements and drawings and take photographs thereof and take such other measures as he may think necessary to ascertain the construction and condition of any such building.

Provided that notice shall be given to the person in occupation of such land or building at least twenty-four hours before such entry.

SCHEDULE.

The work will consist of the construction of a new by-pass roadway, partly in open cut, partly in tunnel and partly on the existing surface, extending from the intersection of Forbes Street and Cathedral Street, Woolloomooloo,

Woolloomooloo, in the City of Sydney, to the intersection of New South Head Road and Reddy Street in the Municipalities of Paddington and Woollahra, including the regrading of New South Head Road up to Bayswater Road, the portion in tunnel lying between McElhone Street and Amos Lane in the City of Sydney, in which provision will be made for artificial lighting, ventilation and drainage.

The new roadway will accommodate two lanes of vehicular traffic in each direction and will be approximately four thousand five hundred (4,500) feet in length.

Provision will be made for grade separation of traffic where the new by-pass roadway connects with New South Head Road, Woollahra.

The whole is subject to such modification as may be considered desirable by the Minister.
