

MOUNT KEIRA
TRAMROAD.

An Act to authorize the completion of a Tramroad from the Mount Keira Coal Mines to Wollongong Harbour. [23rd May, 1860.]

Preamble.

WHEREAS William Robson Thomas William Jackson John Nixon and Andrew Tulip carrying on business together as coal miners and proprietors at Wollongong in this Colony under the style and firm of Robson and Co. hereinafter designated "the said company" are joint lessees of certain coal mines near Wollongong aforesaid called and known by the name of "The Mount Keira Wallsend Coal Mines" hereinafter designated "the said mines" And whereas the said company have commenced and made considerable progress in the construction of a Tramroad for conveying coals from the said mines to the Harbour of Wollongong aforesaid for shipment there And whereas the completion of the said Tramroad will be of great public benefit in promoting the supply of coal for local and general consumption And whereas it is essential to such completion that the said company should be empowered to carry the line of the said Tramroad through certain lands being private property hereinafter also described upon terms and conditions to be determined by Parliament Be it therefore enacted by the Queen'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—

Robson and Co. may
complete Mount
Keira Tramroad.

1. It shall be lawful for the said company upon the terms and conditions and subject to the proviso and other enactments hereinafter contained to complete the construction of a Tramroad from the eastern boundary of the lands whereon the said mines are situated along the whole line commencing continuing and terminating at the eastern boundary of lands belonging to the said Robson and Co. as described in the Schedule hereto marked A Provided that such Tramroad shall not occupy in any part thereof a greater space in breadth than one chain including the supports abutments and foundations thereof and that the gauge thereof shall be three feet eight inches

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inches Provided also that as to so much of the said Tramroad as shall pass along any road street or other public way the rails shall not be raised above the level thereof and that sufficient fencing shall be provided for securing the public safety.

2. The ground and soil of so much of the site of the said Tramroad as passes over the lands described in the said Schedule A together with such right of ingress egress and regress upon the adjacent lands as shall be necessary for the making and repair of the said Tramroad shall by virtue of this Act and without other assurance in the law become and be vested in the said company and the members thereof for the purposes of the said Tramroad Provided that the said Tramroad shall be constructed and brought into use within one year after the passing of this Act and that in default thereof or if after its completion the said Tramroad shall cease to be used by the said company for one year continuously all the said lands and all their estate and interest therein shall revert to the respective owners thereof and all the rights and powers hereby conferred on the said company shall cease and determine Provided also that at the expiration or sooner determination of the term of lease or renewal of lease which is now held by the company as lessees of the said mines the Tramway shall become the property of the owners of the mines upon their paying to the lessees a sum not exceeding the amount of the original cost of construction of the said Tramway or any less sum to be determined by arbitration the arbitrators and umpire to be appointed in like manner and to have all the like powers and authorities as under the sixteenth section of this Act and their decision to be in like manner final Provided also that all sums which have been already paid or which may hereafter be paid by the owners of the said mine towards the amount of the original cost of construction of the said Tramway shall be taken into account and allowed for by the said arbitrators or their umpire And it is further provided that if in the exercise of the powers hereby granted it be found necessary to cross cut through raise sink or use any part of any carriage-road or horse-road so as to render it impassable for or dangerous or inconvenient 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 so interfered with and shall at their own expense maintain such substituted road in a state as convenient as the road interfered with or as nearly so as may be practicable and the said company before they use the said lands respectively for any of the purposes aforesaid shall if required separate the same by a sufficient fence from the land adjoining thereto with such gates as may be required for the convenient occupation of such land and shall also to all private roads used by them as aforesaid put up fences and gates in like manner in all cases where the same may be necessary to prevent the straying of cattle from or upon the lands traversed by such roads and in case of any difference between the owners or occupiers of such roads and lands and the said company as to the necessity for such fences and gates such fences and gates shall be put up by the said company as any two Justices of the Peace shall deem necessary for the purposes aforesaid on application being made to them.

3. The said Tramway shall be open to public use upon payment of a toll to the said company of any sum not exceeding two-pence per ton per mile the persons seeking transit supplying their own traction power and loading their own trucks or wagons.

4. For the purposes and subject to the provisions of this Act it shall be lawful for the said company to divert or alter the course of any road or way crossing the said Tramroad or to raise or sink any road

Ground and soil of
Tramway site vested
in company.

Limit of time for
completion.

Tramway open to
the public.

Power to divert or
alter roads.

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road or way in order the more conveniently to carry the same over or under or by the side of the Tramroad. Provided that if the said company do not cause another sufficient road or way to be made before they interfere with any such existing road or way they shall forfeit twenty pounds for every day during which such substituted road shall not be made after the existing road shall have been interrupted and such penalty shall be paid to the surveyor or other person having the management of such road if a public road and shall be applied for the purposes thereof or in case of a private road or way the same shall be paid to the owners thereof and every such penalty shall be recoverable with costs in the District Court of the district.

Road repairs.

5. If in the course of making the said Tramroad the said company shall use or interfere with any road they shall from time to time make good all damage done by them to such road and if any question shall arise as to the damage done to any such road by the said company or as to the repair thereof by them such question shall be referred to the determination of two Justices who may direct such repairs to be made within such period as they may think reasonable and may impose on the said company for not carrying into effect such repairs any penalty not exceeding ten pounds per day as to such Justices shall seem fit and any such penalty shall be paid to the surveyor or other person having the management of the road interfered with if a public road and be applied for the purposes of such road or if a private road the same shall be paid to the owner thereof. Provided that the said Justices shall have regard to and shall make full allowance for any tolls that may have been paid by the said company on such road in the course of the using thereof.

Bridges to be constructed where Railway crosses highway.

6. Whenever the said Tramroad crosses any public highway or parish road either such road shall be carried over the Tramroad or the same shall be carried over such road by a bridge of the height and width and with the ascent or descent hereinafter provided and such bridge with the immediate approaches and all other necessary works connected therewith shall be executed by and be at all times thereafter maintained at the expense of the said company. Provided that with the consent of the Governor with the advice of the Executive Council it shall be lawful for the said company to carry the said Tramroad across any highway on the level.

Owners crossing.

7. Until the bridges or other proper communications hereby required between lands intersected by the said Tramroad shall have been made 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 communications and their respective servants may at all times freely pass and repass with carriages horses and other animals directly but not otherwise across any part of the said Tramroad solely for the purpose of occupying such lands or for the exercise of such right of way and so as not to obstruct the passage along the said Tramroad or damage the same. Provided that 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 said Tramroad.

Provisions in cases where roads are crossed on a level.

8. Wherever the said Tramroad crosses any public highway or parish road on a level the said company shall erect and at all times maintain good and sufficient gates across such road on each side of the Tramroad 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 roads on both sides of the Tramroad except during the time when horses cattle carts or carriages

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carriages passing along the same shall have to cross such Tramroad and such gates shall be of such dimensions and so constructed as when closed to fence in the said Tramroad and prevent cattle or horses passing along the road from entering upon the Tramroad and the person intrusted 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 that it shall be lawful for the Secretary for Public Works in any case in which he shall be satisfied that it will be more conducive to the public safety that the gates on any level crossing over any such road shall be kept closed across the Tramroad to order that such gates shall be kept so closed instead of across the road and in such case such gates shall be kept constantly closed across the Tramroad except when locomotives or carriages passing along the same 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.

9. In case of accidents or slips happening or being apprehended to the cuttings embankments or other works of the said Tramroad the said company and their workmen and servants may enter upon the land adjoining thereto at any time for the purpose of repairing or preventing such accidents and may do such works as may be necessary for the purpose but in every such case the said company shall within forty-eight hours after such entry make a report to the Secretary for Public Works specifying the nature of such accident or apprehended accident and of the works necessary to be done and such powers shall cease and determine if the said secretary shall after considering the said report certify that their exercise is not necessary for the public safety. Provided that such works shall be as little injurious to the said adjoining lands as the nature of the accident or apprehended accident will admit of and shall be executed with all possible dispatch and full compensation shall be made to the owners and occupiers of such lands for any loss injury or inconvenience sustained by them respectively by reason of such works. Provided also that no land shall be taken permanently for any such works otherwise than is herein provided with respect to the lands originally taken for the purpose of making the said Tramroad.

10. Every bridge to be erected for the purpose of carrying the Tramroad over any road shall be built in manner following—

Construction of bridges over roads.

The width of the arch shall be such as to leave thereunder a clear space of not less than thirty feet if the arch be over a public highway and of twenty feet if over a parish road and of twelve feet if over a private road.

The clear height of the arch from the surface of the road shall not be less than sixteen feet for a space of twelve feet if the arch be over a turnpike road and fifteen feet for a space of ten feet if over a public carriage road and in each of such cases the clear height at the springing of the arch shall not be less than twelve feet and the clear height of the arch for a space of nine feet shall not be less than fourteen feet over a private road.

The descent made in the road in order to carry the same under the bridge shall not be more than one foot in thirty feet if the bridge be over a public highway one foot in twenty feet if over a parish road and one foot in sixteen if over a private road not being a Tramroad or Railroad or if the same be a Tramroad or Railroad the descent shall not be greater than the ruling gradient of such Tramroad or Railroad.

Power to enter upon adjoining lands to repair accidents subject to certain restrictions.

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Construction of
bridges over Rail-
road.

11. Every bridge erected for carrying any road over the Tramroad shall be built in manner following—

There shall be a good and sufficient fence on each side of the bridge of not less height than four feet and on each side of the immediate approaches of such bridge of not less than three feet.

The road over the bridge shall have a clear space between the fences thereof of thirty-five feet if the road be a public highway and twenty-five feet if a parish road and twelve feet if a private road.

The ascent shall not be more than one foot in thirty feet if the road be a turnpike road one foot in twenty feet if a parish road and one foot in sixteen feet if a private road not being a Tramroad or Railroad or if the same be a Tramroad or Railroad the ascent shall not be greater than the ruling gradient of such Tramroad or Railroad.

Bridges need not
exceed width of road
in certain cases nor
existing inclination
of roads crossed
or diverted be
improved.

12. 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 hereinbefore prescribed for bridges over or under the railway the width of such bridges need not be greater than such average available width of such roads but so nevertheless that such bridges be not of less width in case of a public highway or parish road than twenty feet Provided also that if at any time after the construction of the said Tramroad 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 at their own expense increase the width of the said bridge to such extent as may be required by the surveyor or other manager of such road not exceeding the width of such road as so widened or the maximum width herein prescribed for a bridge in the like case over or under the Tramroad And 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 be required to be altered or for which another road shall be substituted shall be steeper than the inclination hereinbefore required to be preserved the said company may carry any such road over or under the Tramroad or construct such altered or substituted road or 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 shall be substituted.

Works for benefit of
owners.

13. The said company shall make and at all times thereafter maintain the following works for the accommodation of owners and occupiers of lands adjoining the said Tramroad—

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

Fences.

All sufficient posts rails bridges ditches mounds or other fences for separating the land taken for the use of the Tramroad from the adjoining lands not taken and protecting such lands from trespass or the cattle of the owners or occupiers thereof from straying thereon by reason of the Tramroad together with all necessary gates made to open towards such adjoining lands and not towards the Tramroad and all necessary stiles and such posts rails and other fences shall

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shall be made forthwith after the taking of any such lands if the owners thereof shall so require and the said other works as soon as conveniently may be.

Also all necessary arches tunnels culverts drains or other ^{Drains.} passages either over or under or by the sides of the Tramroad 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 Tramroad as before the making thereof or as nearly so as may be and such works shall be made from time to time as the works proceed.

Also proper watering places for cattle or compensation in lieu ^{Watering places.} thereof where by reason of the Tramroad the cattle of any person occupying any lands lying near thereto shall be deprived of access to their former watering places and such watering places shall be so made as to be at all times sufficiently supplied with water as theretofore and as if the said Tramroad had not been made or as nearly so as may be and the said company shall make all necessary water-courses and drains for the purpose of conveying water to the said watering places.

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 Tramroad 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 their being made.

14. If any person omit to shut and fasten any gate set up at either side of the Tramroad for the accommodation of the owners or ^{Penalty on persons omitting to fasten gates.} occupiers of the adjoining lands so 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 two pounds to be recovered before any two Justices of the Peace.

15. The said company shall not be entitled to any mines of ^{Minerals not to pass.} coal iron stone slate or other minerals under any land whereof the surface is vested in them by this Act except only such parts thereof as shall be necessary to be dug or carried away in the construction of the works hereby authorized and such mines shall not be deemed to vest in the said company.

16. If within twenty-eight days after the passing of this Act ^{Arbitration.} the said persons through whose lands the Tramroad shall pass or any of them and the promoters shall not agree as to the amount of compensation to be paid by them for the said lands belonging to the said parties or any of them or for any damage that may be sustained by them or him by reason of the execution of the works the amount of such compensation shall be settled by arbitrators in manner hereinafter mentioned (that is to say)—Each disputant shall name an arbitrator and such arbitrators shall before proceeding to arbitrate name an umpire to act in case of their disagreement and such arbitrators and umpire shall have all the usual powers and authorities as to examining parties and witnesses and all other usual powers incident to arbitrations generally and their decisions shall be final.

17. This Act shall be deemed to be a public Act and shall be ^{Act to be deemed a public Act.} styled and may be cited as "The Mount Keira Tramroad Act of 1860."

SCHEDELE A.

A PIECE or parcel of land one chain in width commencing at the Osborne Wallsend Coal Mines at Mount Keira Illawarra in the county of Camden and Colony of New South Wales and extending in over and through lands of the late Henry Osborne Esquire also passing under a reserved road leading through the Mount Keira Estate also in over and through lands of Andrew Thompson Esquire also extending through lands known as "Bustle Farm" formerly granted to Charles Thresby Smith Esquire and now vested in Michael Hindmarsh and David Johnstone as Trustees and hereinafter styled "the said trust lands" commencing on the west side of Bulli Road to a point on the east side of the said road four chains and fifty-five links from the north-west corner of the said Bulli Road at its junction with Keira-street thence with a slight curve northward through the said trust lands to a point on the west side of Keira-street aforesaid three chains and forty-five links north of its junction with the Bulli Road thence also through the said trust lands in a direct line to a point on the east side of Corrimal-street four chains and ten links north of its junction with Smith-street with a slight curve to the north to the south-east corner of Campbell-street and thence in an almost direct line through the aforesaid trust lands to a point on the eastern boundary of the said trust lands abutting on the lands belonging to Robson and Company and terminating at a point four chains and fifty links north-west of the north-west corner of Harbor-street.
