

**An Act to enable the Borough of Newcastle  
to extend Hunter-street from its present  
termination to the sea-shore, and for that  
purpose to acquire and re-sell certain  
lands and to raise certain loans. [10th  
January, 1889.]**

HUNTER-  
STREET NEWCASTLE  
EXTENSION.

**W**HEREAS the Council of the Borough of Newcastle are desirous of extending Hunter-street in the said Borough from its present termination to the sea beach. And whereas the proposed extension will cross Pacific-street, Telford-street, and Zaara-street. And whereas for the purpose of paying the expenses of such construction it is expedient that the said Council should have power to raise money by loans. And whereas it will be necessary to take up the gas and water pipes in the said Pacific-street, Telford-street, and Zaara-street during the construction of the proposed extension. And whereas the proposed extension will add greatly to the convenience of the public for purposes of traffic and locomotion. It is therefore desirable to authorize by Legislative enactment the construction of the proposed extension upon payment of compensation to the several private owners and occupiers whose lands may be taken under the powers hereinafter given; and to authorize the payment of such compensation and other the costs of construction out of moneys to be raised by loans and by re-sale of lands as hereinafter provided, and to give certain other powers. 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:—

1. It shall be lawful for the Council of the said Borough to make and construct an extension of Hunter-street aforesaid with pavements or sidepaths from the present termination of Hunter-street, and

Power to construct  
new street.

of

*Hunter-street Newcastle Extension.*

of the same width as said street, and in the same line therewith from its present termination to the sea beach, and for that purpose to resume, enter upon, and take possession of all lands necessary for the purpose, which lands shall by virtue of this Act, without the necessity of any conveyance, be vested in the said Council and their successors in office, in fee simple, from the passing of this Act.

Power to take up pavements, gutters, gas and water pipes.

2. It shall be lawful for the said Council to take up and remove the pavements and gutters in such portions of Watt-street, Pacific-street, Telford-street, and Zaara-street as are crossed by the new proposed street, and to stop all or any part of the traffic in such streets during such construction as aforesaid, and to remove and displace the gas and water pipes and mains in such street. Provided always that the said Council shall, at their own expense, replace and restore the said pavements, gutters, pipes, and mains within twelve months after such taking-up and removal or immediately after the construction of the said extension, if such construction shall be completed within a less period than twelve months after such taking-up and removal.

Lands vested in the Borough without conveyance.

3. The said Council shall have such right of ingress, egress, and regress upon the adjacent lands as may be necessary for the making and repair of the said extension.

Dedication.

4. The said extension shall be open and dedicated to the public upon its completion or within twelve months after the passing of this Act, whichever shall first happen.

Compensation clause.

5. Notice of resumption of any lands required by the said Council for the said extension shall be given to the owner or owners thereof within three months after the passing of this Act, and if within twenty-eight days after such notice the said Council shall not agree with the persons whose lands are resumed or any of them as to the amount of compensation to be paid by the said Council 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 severance or of the execution of the works, or if any other question as to compensation shall arise under this Act the amount of such compensation shall be settled by arbitrators in manner hereinafter provided, and the provisions of the "Arbitration Act," thirty-one Victoria number fifteen, shall, when not inconsistent with any of the provisions of this Act be deemed to be incorporated in this Act. Provided that if after giving such notice it becomes unnecessary in the opinion of the said Council to resume the lands comprised in such notice, such notice shall impose no obligation on the said Council beyond the obligation of paying to the owner or owners of such lands such reasonable costs and expenses as he or they may have incurred in order to comply with the provisions of this Act.

Appointment of arbitrators.

6. Unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall nominate and appoint an arbitrator to whom such dispute or other matter shall be referred, and every appointment shall be delivered to the arbitrator or arbitrators, and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made. And after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation. And if for the space of fourteen days after any such dispute or other matter shall have arisen, and after a request in writing shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party who has himself appointed an arbitrator may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed

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proceed to hear and determine the matters which shall be in dispute, and in such case the award of determination of such single arbitrator shall be final and conclusive.

7. If before the matter so referred shall be determined any arbitrator appointed by either party shall die, or become incapable, or refuse, or for fourteen days neglect to act as arbitrator, the party by whom such arbitrator was appointed may nominate and appoint, in writing, some other person to act in his place; and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so, the remaining or other arbitrator may proceed alone; and every arbitrator so to be substituted as aforesaid shall have the same power and authorities as were vested in the former arbitration, at the time of such his death, refusal, neglect, or disability as aforesaid.

Vacancy in arbitration to be supplied.

8. When more than one arbitrator shall have been appointed, such arbitrators shall, before they enter into the matters referred to them, nominate and appoint, by writing under their hands, an umpire to decide any matters on which they shall differ, or which shall be referred to them under the provisions of this Act, and if such umpire shall die or refuse or for seven days neglect to act, after being called upon to do so by the arbitrators, they shall forthwith after such death, refusal, or neglect, appoint another umpire in his place, and the decision of every such umpire on the matters so referred to him shall be final.

Appointment of umpire.

9. If in either of the cases aforesaid the arbitrators shall refuse or for seven days after request of either party to such arbitration neglect to appoint an umpire, it shall be lawful for the Attorney-General for the time being, on the application of either party to such arbitration, to appoint an umpire, and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this Act, shall be final.

Attorney-General to appoint umpire on neglect.

10. If when a single arbitrator shall have been appointed such arbitrator shall die or become incapable, or shall refuse, or for fourteen days neglect to act, before he shall have made his award, the matter referred to him shall be determined by arbitration under the provisions of this Act, in the same manner as if such arbitrator had not been appointed.

In case of death of single arbitrator the matter to begin *de novo*.

11. If where more than one arbitrator shall have been appointed either of the arbitrators shall refuse, or for seven days neglect to act, the other arbitrator may proceed alone, and the decision of such other arbitrator shall be as effectual as if he had been a single arbitrator appointed by both parties.

If either arbitrator refuse to act the other to proceed *ex parte*.

12. If where more than one arbitrator shall have been appointed, such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed, or within such extended time (if any) as shall have been appointed for that purpose by both of such arbitrators under their hands, the matters referred to them shall be determined by the umpire to be appointed as aforesaid.

If arbitrators fail to make their award within twenty-one days the matter to go to the umpire.

13. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath and administer the oaths necessary for that purpose.

Powers of arbitrators to call for books.

14. Before any arbitrator or umpire shall enter into the consideration of any matters referred to him he shall in the presence of a Justice of the Peace, notary public, or commissioner for affidavits, make and subscribe the following declaration (that is to say),—

Arbitrator or umpire to make a declaration for faithful discharge of duty.

I, A.B., do solemnly and sincerely declare that I will faithfully and honestly, and to the best of my skill and ability, hear  
d and

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and determine the matters referred to me under the provisions of the "Hunter-street Newcastle Extension Act of 1888," and will not receive any communication thereon from either party, save in the presence of the other party or at a duly appointed sitting of the arbitration.

Made and subscribed in the presence of

A.B.

Penalty for misconduct.

And such declaration shall be annexed to the award when made, and if any arbitrator or umpire having made such declaration shall wilfully act contrary he shall be guilty of a misdemeanour.

Cost of arbitration how to be borne.

15. All costs of any such arbitration and incidental thereto to be settled by the arbitrators shall be borne by the said Council unless the arbitrator shall award the same or a less sum than shall have been offered by the said Council, in which case each party shall bear his own costs incident to the arbitration, provided that if either party shall be dissatisfied with the costs allowed by the arbitrators as aforesaid, the costs may be taxed by the Prothonotary or other proper officer of the Supreme Court, and the amount allowed by such officer shall be the amount of costs to be paid.

Award to be delivered to the Borough.

16. The arbitrators shall deliver their award in writing to the said Council who shall retain the same, and forthwith on demand at their own expense furnish a copy thereof to the other party, and shall at all times on demand produce the said award and allow the same to be inspected or examined by such party or any person appointed by him for that purpose. The amount awarded shall be paid within sixty days after the publication of such award; but in every such case the party claiming payment shall be bound to make out a good title to the said lands, or to the interest claimed by him therein to the satisfaction of the said Council.

Payment.

How compensation to be paid when any of the parties under any disability.

17. If the person or persons through whose lands shall be thus taken shall be under any disability or incapacity, or shall be entitled only to a partial or qualified interest in the said lands, or not entitled to dispose of the same absolutely for his or their own benefit, or shall be absent from the Colony, the amount of compensation to be paid by the said Council as aforesaid shall be ascertained, and when so ascertained shall be paid and applied in the same manner in all respects as the amount of compensation to be paid by the Commissioner for Railways in like cases under the provisions of the Act made and passed in the twenty-second year of the reign of Her present Majesty, number nineteen, is to be ascertained, paid, and applied.

Submission may be made a rule of Court.

18. The submission to any such arbitration may be made a rule of the Supreme Court on the application of either of the parties.

Award not void through error in form.

19. No award made with respect to any question referred to arbitration under the provisions of this Act shall be set aside for irregularity or error in form.

Compensation for temporary or recurring injuries.

20. The said Council shall make compensation and satisfaction to be ascertained and recovered in case of difference in manner hereinbefore provided for temporary, permanent, or recurring injury, and all other damage, loss, cost, charges, and inconvenience which may in anywise be occasioned to the said owners or occupiers, by the non-performance by the said Council of any of the matters and things hereby required to be performed by them or otherwise, and shall account to the said owners or occupiers for any rents and profits received by the said Council in respect of lands taken under this Act up to the day when payment of compensation money for the taking of the same is made to the said owners or occupiers. And no occupier or tenant of any house or land resumed under this Act shall have any right of action or claim against his landlord for any disturbance of his possession of

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of the said house or land in consequence of the exercise by the said Council of the powers conferred by this Act, notwithstanding any existing covenant or agreement to the contrary.

21. If in any case in which, according to the provisions of this Act, the said Council is authorized to resume, enter upon, and take possession of any lands required for the purpose of the undertaking, the owner or occupier of any such lands, or any other person, refuse to give up the possession thereof, or hinder the said Council from entering upon or taking possession of the same, it shall be lawful for the said Council to issue its warrant to the Sheriff to deliver possession of the same, and upon the receipt of such warrant the Sheriff shall deliver possession of any such lands accordingly; and the costs accruing by reason of the issuing of such execution of such warrant to be settled by the Sheriff shall be paid by the person refusing to give such possession, and the amount of such costs shall be deducted and retained by the said Council from the compensation (if any) then payable to such person; or if no such compensation shall be payable to such person, or if the same be less than the amount of such costs, then such costs, or the excess thereof beyond such compensation, if not paid on demand, shall be levied by distress, and upon application to any Justice of the Peace for that purpose he shall issue his warrant accordingly.

*Sheriff authorized to give possession of certain land.*

22. It shall be lawful for the said Council to purchase any lands adjacent to the lands resumed under this Act.

*Power to buy other lands.*

23. It shall be lawful for the said Council to borrow by debentures, mortgage bonds, or otherwise on the security of any land (including all or any of the lands purchased under this Act), personal estate, or annual revenues, active or prospective, belonging to body corporate of the said Borough, for or towards or incidental to the expense of the construction of the proposed extension, and the compensation moneys and the cost of the passing of this Act, any moneys not exceeding in the whole thirty-three thousand pounds.

*Power to borrow money.*

24. For the purpose of securing the payment of the principal and interest of any loan contracted under the preceding section the said Council shall have all the powers and be enabled to give to the mortgagees, debenture holders, or other lenders all the privileges and remedies set forth in the one hundred and ninety-first section of the "Municipalities Act of 1867."

*Nature of securities.*

25. Notwithstanding the issue of any loan under the two next preceding sections, but subject to the rights of the borrower thereunder, it shall be lawful for the said Council to apply the general funds of the said Borough to the purposes of constructing the said extension and paying the said compensation moneys.

*Power to use general Borough funds.*

26. The said Council shall keep a separate account, entitled the "Hunter-street Extension Account," in which shall be shown all sums received, whether from the said general fund or otherwise, and of all payments made under or for the purposes of this Act. And any debentures or other securities raised under this Act shall be intituled "Hunter-street Extension."

*Separate accounts.*

27. It shall be lawful for the said Council to sell any of the lands they may have purchased under this Act, and which they do not need for the said extension, in such manner, at such times, and upon such terms and conditions as to payment of purchase moneys or subsequent uses of the land as to them in their absolute discretion shall seem fit.

*Power of sale.*

28. It shall be lawful for the said Council to grant and convey in fee, or to demise for any number of years not exceeding sixty years, any part of the lands purchased under this Act and which they do not need for the said extension for the purpose of building houses or other erections

*Building leases for years or in fee farm.*

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*Grafton School of Arts Trustees Enabling.*

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erections or otherwise improving the same for such rents and upon and with such conditions, provisos, and covenants as to the said Council in their absolute discretion shall seem fit.

Sale of ground rents.

29. The powers of sale given in the twenty-seventh section shall extend to the sale of the ground or other rents and reversions created under the next preceding section.

Moneys to be paid  
to special account.

30. The moneys received by the said Council from sales and demises, under the said section, shall be paid into the said separate account, and shall be applied to repaying the general fund any advances that may have been made from it, and to repaying the said loans, and any surplus shall form part of the general fund of the said Borough.

Evidence and  
conveyance.

31. The receipt of the Treasurer for the time being of the said Council shall be a complete discharge to any purchaser or tenant for any payment made by him under this Act. And the attestation to any conveyance or lease, by the Mayor and one Alderman for the time being of the said Borough, shall, after three months shall have elapsed since such deed was registered in the registry of deeds or the real property registry be conclusive evidence that the discretion of the said Council had been duly exercised in reference thereto, and that the Treasurer, Mayor, and Aldermen therein named were duly appointed and then in office. The conveyance or lease by the said Council shall be duly and effectually executed by affixing the corporate seal of the said Borough to such deed.

Short title.

32. This Act shall be called the "Hunter-street Newcastle Extension Act of 1888."

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