

# Moore-street Improvement Act of 1890 No 30

[1890-30]



New South Wales

## Status Information

### Currency of version

Repealed version for 7 December 2007 to 7 July 2011 (accessed 26 November 2024 at 7:48)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Repeal**

The Act was repealed by Sch 4 to the *Statute Law (Miscellaneous Provisions) Act 2011 No 27* with effect from 8.7.2011.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Moore-street Improvement Act of 1890 No 30



New South Wales

An Act to authorize and enable the Municipal Council of Sydney to carry out the improvement of Moore-street within the said city upon an equitable system; to acquire lands and to raise money for carrying out such improvement; to provide for the repayment of the cost of such improvement and the exchange and sale of superfluous lands in connection with the said improvement; and for other purposes.

## 1 Name of Act

This Act may be cited as the *Moore-street Improvement Act of 1890*.

## 2 Interpretation of terms

In the construction and for the purposes of this Act, the expression:

**Council** means the Municipal Council of Sydney.

**Governor** means Governor, with the advice of the Executive Council.

**The Improvement** means any work or undertaking to be carried out for the purpose of increasing the width, or altering the direction, or for raising or lowering the level, of Moore-street in the City of Sydney, or of the approaches thereto; including the carriage and footway, and all necessary and proper metalling or paving, kerbing, guttering, draining, lighting and all other works appurtenant to a public way.

## 3 Authority to acquire lands

The Council is hereby authorized to purchase or resume all lands and do all acts necessary for the purpose of widening Moore-street to a total width not exceeding one hundred feet, and otherwise carrying out the said improvement.

## 4 Publication of notification of improvement and contents thereof &c

Before the Council shall commence to carry out such improvement, or shall resume any land for that purpose under the authority of this Act, the Council shall publish in the Gazette, and in two daily newspapers, published in Sydney, during four successive weeks, a notification, in which shall be stated the nature of the said improvement, and that a plan showing the extent and position of the improvement area within which the owners of property liable to the City Rate will be contributors to the special improvement rate

hereinafter mentioned, together with a list of the names of such owners, so far as the same can be ascertained, have been deposited at the Town Hall with the Town Clerk for inspection, free of charge, by any person interested therein; and such notification shall also give a detailed estimate of the cost of the said improvement, including the cost of the acquisition of land necessary for carrying out the same, the amounts of, and dates of making, the repayments necessary to defray the whole cost thereof, together with interest at a rate not exceeding four pounds per centum per annum, and the period (not to exceed one hundred years nor to be less than fifty years in any case) over which such repayments will be spread, and the respective proportions, subject to the provisions hereinafter contained, in which the owners of property within the said improvement area, and the City Fund shall defray such cost, as aforesaid, shall also be specified in such notification. Provided that any owner may within such period make any repayment for which he is liable with interest at four pounds per centum per annum to the date of repayment.

**5 Provisions as to proportion of contribution to improvements between property owners, within improvement area and City Fund**

The proportion in which the owners of property, situated within the said improvement area shall, subject to the provisions for appeal hereinafter contained, contribute to the cost of such improvement, together with interest as aforesaid, shall not in any case be determined by the Council at less than one-half of such cost and interest, and the balance shall be a charge upon and be paid out of the City Fund: Provided always that it shall be lawful for the Supreme Court, upon any such appeal, to order that the proportion which owners of property shall be liable to contribute be reduced to not less than one-fourth of such cost and interest; and that the proportion thereof to be charged to the said City Fund be correspondingly increased.

**6 Council to prepare assessment book showing quotas of contributions by property owners**

Within thirty days after the publication of such notification, the Council shall cause to be made and deposited at the Town Hall with the Town Clerk an assessment book, in which shall be specified the amount which every owner of property situate within the said improvement area will be required to pay in respect of his property, as his share of the aggregate amount of the contributions of all such owners. And in determining such share, regard shall be had by the Council to the position of every such property, and the degree of permanent enhancement in its capital or annual value which the said improvement may reasonably be expected to produce. And the Council shall, during three successive weeks, publish in the Gazette, and in two newspapers as aforesaid, a notice stating that such assessment book has been so deposited, and is open to the inspection, without fee, of all persons interested therein.

**7 Appeal by owner aggrieved at assessment &c**

Within thirty days after the last publication of such notice as aforesaid, any owner of

property assessed in such assessment book, or his attorney or agent, may give notice in writing to the Town Clerk of his intention to appeal to the Supreme Court against:

- (I) The inclusion of his property within the said improvement area, or
- (II) The proportions in which the cost of such improvement with interest thereon as aforesaid, have been notified as chargeable on the property owners within the said area and the City Fund respectively, or
- (III) The amount or share of the contribution at which such owner has been assessed towards the aggregate contributions of the whole of such owners.

Provided that no such owner as aforesaid may appeal against the inclusion of his property within the improvement area, if such property abuts on or has a frontage to Moore-street, as authorized to be widened by this Act. The Supreme Court shall hear and determine every such appeal, and may make such order in respect to the matter, and to the costs to be paid by the appellant or the respondent, as to such Court shall seem just, and every such order may be enforced in the same way as a judgment of the said Court, and shall be absolutely final and conclusive. And such Court shall be lawfully constituted by the sitting of any Judge of the said Court, with or without two assessors, to be appointed by such Judge, but without a jury. And the Judge by whom any such appeal shall be heard shall not have power to direct a reference to arbitration of any matter or question raised by such appeal. The giving of notice of appeal as herein provided shall not discharge any appellant from his liability under this Act until the appeal shall be determined, but the Council shall refund together with interest thereon at five pounds per centum per annum to the appellant any sum which the Court shall declare to have been paid to the Council without authority or in excess of the proper amount.

## **8 Power to resume lands**

It shall be lawful in order to carry out such resumption as aforesaid for the Council by notification to be published in the Gazette, and in one or more newspapers published as aforesaid, to declare that the land described in such notification has been resumed for the purposes therein expressed.

## **9 Vesting &c of land upon publication of notification in Gazette**

Upon the publication of the notification in the Gazette declaring that the land therein described has been resumed under this Act, such land shall forthwith be vested in the Council for the purposes of this Act for an estate of inheritance in fee simple in possession, freed and discharged from all trusts, obligations, estates, interests, contracts, charges, rates, rights-of-way, or other easements whatsoever, and to the intent that the legal estate therein, together with all powers incident thereto or conferred by this Act shall be vested in the Council for the purposes of this Act.

## **10 Compensation for lands taken under this Act**

All persons having any estate or interest in the land described in such notification shall be entitled to receive such sum of money by way of compensation for the land or the estate or interest therein of which they have been deprived under this Act, as shall be agreed upon or otherwise ascertained under the provisions hereinafter contained.

## **11 Conversion of estate of proprietor of resumed land into a claim**

The estate and interest of every person entitled to lands resumed under this Act or any portion thereof, and whether to the legal or the equitable estate therein, shall by virtue of this Act be deemed to have been as fully and effectually conveyed to the said Council as if the same had been conveyed by the persons legally or equitably entitled thereto by means of the most perfect assurances in the law. And every such estate and interest shall upon the publication of such notification as aforesaid be taken to have been converted into a claim for compensation in pursuance of the provisions hereinafter contained. And every person shall, upon asserting his claim as hereinafter provided and making out his title in respect of any portion of the said resumed lands, be entitled to compensation on account of such resumption in manner hereinafter provided.

## **12 Notice of claim for compensation**

Every person claiming compensation in respect of any land so resumed under the authority of this Act shall within ninety days from the publication of such notification, or afterwards, if a Judge of the Supreme Court shall upon the application and at the cost of the claimant so direct, serve a notice in writing upon the Town Clerk of Sydney, which notice shall set forth the nature of the estate or interest of the claimant in such land, together with an abstract of his title, and if he claims in respect of damage the nature of the damage which he has sustained or will sustain by reason of such resumption as aforesaid.

## **13 Claim and report thereon**

Within forty days after the receipt of every such notice of claim by the Town Clerk he shall report the same to the said Council, who shall thereupon (unless no primâ facie case for compensation shall have been disclosed) cause a valuation of the land, or of the estate or interest of the claimant therein, to be made in accordance with the provisions of this Act, and shall inform the claimant as soon as practicable of the amount of such valuation.

## **14 Compensation by action in Supreme Court**

If within ninety days after the service of notice of claim the claimant and the Council shall not agree as to the amount of compensation the claimant shall be at liberty to institute proceedings in the Supreme Court in the form of an action for compensation against the Council. Provided also that with the consent in writing of the Council and the claimant any such action may be tried at anytime [to be mentioned in such consent] before the expiration of ninety days from service of the notice of claim for compensation, but not

within fourteen days from service of the notice of valuation on such claimant.

### **15 Jury to determine absolutely the amount of compensation**

In every action of compensation the jury or Judge shall determine the amount of compensation to which the claimant is entitled, and without being bound in any way by the amount of the valuation notified to such claimant. If the verdict be for a sum equal to or less than the amount of such valuation, the costs of the action shall be borne by the claimant, but if for a greater sum than the amount of such valuation, the costs shall be borne by the Council. The Judge before whom an action of compensation shall be tried shall in no case have power to direct a reference of the claim to arbitration. Provided always that if either party be dissatisfied with the verdict it shall be open to such party to move for a new trial, in accordance with the practice of the Supreme Court.

### **16 As to payment of compensation**

All moneys payable under this Act by way of compensation to any claimant, whether under the verdict of a jury or otherwise, shall be paid, together with interest at the rate of five per centum per annum, from the time of the publication in the Gazette as aforesaid, and costs (if any), out of the City Fund of the said Council, within one month after the determination of such compensation, to the person lawfully entitled thereto, or to his agent duly authorized in that behalf in writing, but the claimant shall be bound to make out his title to the estate, or interest claimed by him, in all cases where the claim is in respect of the deprivation of some estate or interest in land.

### **17 Where claim may be prosecuted in a District Court**

The District Court holden at Sydney shall, notwithstanding anything contained in the [District Courts Act of 1858](#) have jurisdiction to try any such action of compensation in any case where the whole amount of the claim in respect to any land resumed in pursuance of this Act does not exceed two hundred pounds, or if exceeding that amount, in any case where the said Council and the claimant, by a memorandum signed by them, or by such claimant's attorney and the Council's solicitor agree thereto. For the purposes of this section the provisions of the said District Courts Act, and of any Act amending the same, together with all rules made or to be made thereunder, shall be deemed to apply to all proceedings taken in any District Court hereunder.

### **18 Compensation how to be estimated**

In estimating or assessing the compensation to be paid under this Act, regard shall be had by the valuers and by the Judge or jury (on any issue) not only to the value of the land taken by the Council and to the provisions of the tenth section of this Act, where the same shall be applicable, but also to the damage (if any) to be sustained by the claimant by reason of the severing of the lands taken from other lands, or other injuries suffered by him by reason of the exercise of the powers expressed or incorporated in this Act, and they shall assess the same according to what they shall find to have been the value of



such lands, estate, or interest at the time of the resumption thereof, or the extent of the damage or injury sustained.

### **19 General power of entry**

Subject to the provisions of this Act it shall be lawful for the Council, and for any officer thereof, and for any persons authorized by the Council to enter upon the lands of any person whomsoever which the Council may resume, and to take possession and appropriate the same for the purposes of this Act. Provided always that entry shall not be necessary in any case to perfect the title of the Council to any lands acquired under this Act.

### **20 Parties under disability enabled to sell and convey and exercise other powers**

It shall be lawful for all parties being seized, possessed of, or entitled to any such lands or any estate or interest therein to sell and convey or release the same to the Council, and to enter into all necessary agreements for that purpose, and particularly it shall be lawful for all or any of the following parties so seized, possessed, or entitled as aforesaid, so to sell, convey, or release, that is to say,—all corporations, tenants in tail or for life, married women seized in their own right or entitled to dower, guardians, committees of lunatics, and idiots' trustees, or feoffees in trust for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession or subject to any estate in dower, or to any lease for life or for lives and years or for years, or any less interest, and the power so to sell and convey or release as aforesaid may lawfully be exercised by all such parties other than married women entitled to dower or lessees for life or for lives and years or for years, or for any less interest, not only on behalf of themselves and their respective heirs, executors, administrators, and successors, but also for and on behalf of every person entitled in reversion, remainder, or expectancy after them or in defeasance of the estates of such parties, and as to such married women, whether they be of full age or not, as if they were sole and of full age, and as to such guardians on behalf of their wards, and as to such committees on behalf of the lunatics and idiots of whom they are the committees, respectively, and that to the same extent as such wives, wards, lunatics, and idiots, respectively, could have exercised the same power under the authority of this Act if they had respectively been under no disability; and, as to such trustees, executors, or administrators, on behalf of their cestuique trusts, whether infants, issue unborn, lunatics, femmes covert, or other persons, and that to the same extent as such cestuique trusts, respectively, could have exercised the same powers under the authority of this Act, if they had respectively been under no disability, and the power hereinafter given to release lands from any rent-charge or incumbrance and to agree for the appointment of any such rent-charge or incumbrance shall extend to and may lawfully be exercised by every party hereinbefore enabled to sell and convey or release land to the Council.

### **21 Authority to sell or lease superfluous lands**

In case any of the lands purchased, exchanged, or resumed for any of the purposes

aforesaid, or any part of such lands shall not be required for the said purposes, or any of them, it shall be lawful for the Council to cause the same to be sold or leased by public auction, at such times, for such prices, and subject to such terms, conditions, covenants, and provisions for buildings, and for the occupation thereof as the Council may determine, and the proceeds of all such sales or rentals shall be paid to the City Treasurer, and by him carried to the credit of the city fund of the Council.

## **22 Incorporation of provisions of Public Works Act**

The several sections of the *Public Works Act of 1888* hereinafter specified, together with the respective powers, authorities, duties, liabilities, obligations, and other the provisions therein contained, are hereby declared to be incorporated with an embodied in this Act to the intent that the same may be applied as fully and effectually to the lands resumed under the authority of this Act as if the said sections had been specifically enacted herein. Provided that wheresoever in any section so incorporated the words “constructing authority” occur, there shall, for the purposes of this Act, be substituted in lieu of such words the expression “Municipal Council of Sydney”; the expression “authorized work,” wheresoever occurring in any such section, shall be held to refer to the purpose authorized by this Act, and the words “this Act” shall similarly be held to refer to “this present Act”. The following are the sections of the said Public Works Act so declared to be incorporated herewith:

- (I) As to the deposit of compensation money in certain cases with the Master in Equity, and the application and investment thereof. As to payment of such money in certain cases to trustees or to the parties themselves, and the exoneration of the Council in respect thereof after payment, the presumption of ownership, and the payment of costs. Sections sixty-two to seventy-two, both inclusive.
- (II) As to the procedure by the Council in case the owner or occupier of any lands resumed under this Act shall refuse to give up possession thereof, or hinder the Council from entering upon or taking possession of the same. Sections seventy-seven.
- (III) As to the purchase or redemption of the interests of mortgagees and the deposit of principal and interest due on mortgages with the Master in Equity, the procedure to be observed when the mortgaged lands are of less value than the mortgage debt and when part only of lands in mortgage is taken. Sections eighty-one to eighty-six, both inclusive.
- (IV) As to the release of lands from rent charges and other incumbrances and procedure thereon. Sections eighty-seven to ninety, both inclusive.
- (V) As to the apportionment of rent where lands resumed are under lease, and as to compensation to tenants. Sections ninety-one to ninety-four, both inclusive.

## **23 Provision as to registration and transfer in certain cases**

Whenever under this Act lands shall be resumed for the improvement, a copy of the

Gazette notification declaring such land to be so resumed certified under the hand of the Mayor of Sydney and the seal of the Council shall in every case be lodged with the Registrar-General, and be registered by him in the general register of deeds unless the land so resumed be wholly or in part comprised in a grant or certificate of title under the Real Property Acts in which case upon production of such notification so certified as aforesaid, it shall be the duty of the Registrar-General to deal with and give effect to such notification as if the same were a memorandum of transfer duly executed under the said Acts. A conveyance upon sale of any land authorized by the twenty-fourth section of this Act to be offered for sale by public auction may if the same shall be comprised in any memorandum of transfer under the said Acts be made by a like memorandum of transfer to be executed by the Mayor and under the seal of the said Council, and the purchaser as transferee which shall have the like effect for all purposes of the said Acts as a memorandum of transfer thereunder.

#### **24 Power to borrow on debentures**

The Council may from time to time borrow by debentures, having a currency not exceeding twenty-one years, and carrying interest at a rate not exceeding four per centum per annum on the security of any rates, revenues, or other property, real or personal, belonging to them, and not held in trust for any specific purpose any money required to carry out the provisions of this Act.

#### **25 (Repealed)**

#### **26 Application of powers &c under Corporation Act, to enforce payment of contribution under this Act**

All powers and provisions for enforcing the payment of rates and other sums of money due to the Council contained in the [Sydney Corporation Act of 1879](#), or in any other Act relating to the said Corporation, shall be applicable, and may be exercised and carried out by the Council, and all other persons, for the purpose of enforcing payment of any sum payable, by way of contribution, from any owner of property within an improvement area under this Act.

#### **27 Repeal of Act does not affect operation of savings and transitional provisions**

- (1) Despite the repeal of the [Moore-street Improvement Act Amendment Act of 1892](#), sections 1, 3 and 4 of that Act continue to have effect and are taken to have been transferred to this Act.
- (2) Sections 1, 3 and 4 of the [Moore-street Improvement Act Amendment Act of 1892](#) are transferred provisions to which section 30A of the [Interpretation Act 1987](#) applies.