



ANNO QUINTO

GEORGI VI REGIS.

A.D. 1941.

No. 17 of 1941.

An Act to amend the Local Government Act, 1934-1939, so as to confer upon the council of the City of Adelaide certain powers relating to the opening, diverting, altering, or increasing the width of streets and roads.

[Assented to 30th October, 1941.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

Short titles.

1. (1) This Act may be cited as the "Local Government Act Amendment Act, 1941".

(2) The Local Government Act, 1934-1939, as amended by this Act, may be cited as the "Local Government Act, 1934-1941".

(3) The Local Government Act, 1934-1939, is hereinafter referred to as "the principal Act".

Incorporation.

2. This Act is incorporated with the principal Act, and that Act and this Act shall be read as one Act.

Amendment of principal Act, Part XLV.

3. Part XLV. of the principal Act is amended by inserting at the end thereof the following Division :—

DIVISION IV.—POWERS RELATING TO STREETS AND ROADS.

Power to take land.

Cf. W.A. 11, 1925, s. 2.

871a. (1) Without limitation of any other power conferred upon the council, the council of the City of Adelaide may acquire by agreement or compulsorily any land in the said city which in the opinion of the council is required for the construction of new streets or roads or for the widening, altering, diverting, or extension of existing public streets or roads.

(2) In deciding the land to be so acquired, the council shall not be restricted to the acquisition of the land actually required for the said purposes, but the council may acquire such additional land on either side or on both sides or at either or both ends of the proposed new street or road or of the street or road to be widened, altered, diverted, or extended for such depth as the council may deem expedient.

871b. For the purposes of this Division the council, by its officers, servants, or agents, may enter upon and survey any lands within the said city.

Power to enter lands.

871c. The council may, in respect of any land acquired by it under this Division, do all or any of the following things :—

Dealing with land when required.
Cf. W.A. 11, 1925, s. 3.

- I. Demolish or repair any buildings or works thereon :
- II. Construct new buildings or erections thereon :
- III. Close, alter, widen, extend, or divert any existing street or road thereon :
- IV. Construct and open any new street or road thereon :
- v. Alter the levels of the said land, and alter existing drains, and construct new drains and storm-water sewers thereon :
- VI. Generally alter, remodel, and improve the said land and buildings in such manner as the council may think fit :
- VII. Sell the whole or any portion of the said land, in one or more lots, on such terms and conditions (including power to take securities for any balance of purchase money) as the council may think fit :
- VIII. Lease the whole or any portion of the said land for such periods, and on such terms and conditions, as the council may think fit.

871d. (1) Without limitation of any other power conferred upon the council, the council may widen any public street or road by including in the carriageway the whole or a part of the footway, and acquiring by agreement or compulsorily from any owner of abutting land any land required for the whole or a part of a new footway, subject to a reservation of specified rights in favour of the owner.

Colonnading of streets and roads.
Cf. N.S.W. 58, 1932, s. 77.

(2) Any land required for widening a public street or road in accordance with this section may be acquired, subject to a reservation of such of the following rights in

favour of the owner as the council may at or before the time of acquisition determine, that is to say :—

- I. A right to the ownership, possession, occupation, and use of any existing building, room, or cellar, so far as the same is at a specified height or depth above or below the level of the new footway, and subject to the right of the council to make such structural alterations as may be required :
- II. A right to erect any building in accordance with the provisions of any Act relating to the erection of buildings in the said city at a specified height above the level of the new footway, and to own, possess, occupy, and use the same :
- III. A right of support for any building coming within paragraph I. or II. of this subsection.

Re-alignment
of streets or
road.
Cf. N.S.W. 58,
1932, s. 78.
Cf. N.S.W.
9, 1934, s. 14

871e. (1) The council may cause any aligned public street or road to be re-aligned under this section in order to widen the street or road.

(2) Any re-alignment under this section may be carried into effect by the acquisition under this Division of the necessary land, or under the succeeding provisions of this section relating to the re-alignment method of acquiring land, or by a combination of those methods.

(3) Where the council proposes to apply the re-alignment method of acquisition to any lands affected by a re-alignment it shall serve notice accordingly upon the owners of lands affected ; and until such notice is served the interests of the said owners shall not be affected by the re-alignment.

(4) A plan showing the re-alignment shall be lodged by the council in the office of the Registrar-General and in the office of the Surveyor-General. The provisions of Division III. of Part XVII. shall not apply to a re-alignment under this section.

(5) Under the re-alignment method compensation for any injurious effects suffered by reason of the re-alignment may be claimed, but shall be limited to payment of the value of the land taken from any owner by reason of the re-alignment, together with the damage, if any, caused by the severing of the land from other land of the owner.

The said value and damage shall be ascertained and the said compensation shall be payable—

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- (a) in the case of vacant land, as at the date when the notice referred to in subsection (3) is served on the owner of the land ; and
- (b) in all other cases as at the date when the land is cleared of buildings and obstructions by the owner or lessee, whether for the purpose of building to the new alignment or not.

Subject to the provisions of this section, from the date upon which the said compensation is payable, the land shall vest in the council for a public street or road. For the purpose of ascertaining the said compensation the land shall be deemed to have been acquired compulsorily by the council and the value of the land shall be taken to be its value as vacant land at the date the said compensation is payable as aforesaid.

(6) Where any public street or road is re-aligned, and where the re-alignment method is applied, the owner of any land or building or work affected by the re-alignment shall not, except in the circumstances provided for in subsection (10), construct, build, place, reconstruct, rebuild, replace, or repair any building or work, or portion of a building or work, standing upon the land between the old alignment and the new : Provided that the council may approve the execution of minor and not substantial repairs in order to permit of the reasonable preservation of any existing building or work. but not so as to violate the intention of this section.

(7) Whether or not the council has elected to apply the re-alignment method it may at any time, and notwithstanding any such election, decide to acquire any or all of the lands affected by the re-alignment.

(8) Notwithstanding the provisions of any Act, the land between the old alignment and the new shall not form part of the street or road until the council has acquired title to the land, and has notified the fact in the *Gazette*, or a dedication thereof as a public street or road has been effected.

(9) Where land is acquired by the re-alignment method the council may, notwithstanding anything contained in this Act, lease the whole or any part of such land to any owner of land from whom the land is acquired or his successors in title, for not more than ten years at any one time and subject to such terms, conditions, and reservations as the council may decide.

(10) The lessee of any such land may erect thereon at his own expense a building not exceeding one storey in height, or other improvements of such materials and to such design as are approved by the council.

The council shall not be bound to require any such structure to be erected of brick, stone, concrete, or other like materials of a permanent nature, notwithstanding the provisions of any Act, regulation, or by-law relating to building for the time being in force.

(11) All buildings or other improvements so erected by the lessee shall remain the property of the lessee and shall be removed by him immediately upon or prior to the determination of the lease.

(12) No compensation shall be paid in respect of any injury, damage, or disturbance arising from the re-entry by the council into possession of the land upon the expiration or determination of any such lease.

Wires, etc.
above new or
widened streets
and roads.

871f. (1) If any new street or road is opened pursuant to this Division or if any street or road is widened, altered, diverted, or extended pursuant to this Division, then notwithstanding the provisions of any other Act to the contrary, no person shall construct or place or cause to be constructed or placed any wires, cables, pipes, conduits, poles, feeder-pillars, or any other works of any kind whatsoever (all of which shall hereinafter in this section be deemed to be included in the term "works") so that any part thereof is above the surface of the street or road unless the consent of the council is obtained thereto and unless the works are constructed and placed in such appropriate manner and place and subject to such reasonable conditions as the council may require.

(2) If—

(a) the council refuses or neglects to give its consent as aforesaid to any person who apart from this section is by law entitled to construct or place such works above the surface of the street or road ; or

(b) consent as aforesaid is given by the council but the person to whom the consent is given is dissatisfied with any requirement of the council in connection with the construction or placing of the works,

the said person may apply to the local court of full jurisdiction at Adelaide for an order under this subsection. Upon such application the local court may by order direct that such person may construct or place or cause to be constructed or placed such works above the surface of the street or road and may give any directions as to the manner in and place where and conditions upon which the works shall be constructed or placed. Every such order shall be final and conclusive.

(3) If any works are constructed or placed contrary to the provisions of this section, the council may remove the same and re-instate the street or road and recover the costs of so doing from the person who constructed or placed or caused to be constructed or placed the same as aforesaid.

(4) This section shall not apply to anything done pursuant to any of the provisions of the Sewerage Act, 1929-1936, or the Waterworks Act, 1932-1936.

(5) Subject to compliance with the provisions of sections 871h and 871i of this Act, this section shall not apply to anything done by the Municipal Tramways Trust pursuant to the provisions of the Municipal Tramways Trust Act, 1935-1940.

871g. (1) If by reason of the widening, altering, diverting or extending of any street or road pursuant to this Division, it becomes necessary or expedient to remove any wire, cable, pipe, conduit, pole, feeder-pillar, inspection pit, drain or other works of whatsoever kind (all of which shall hereinafter in this subsection be deemed to be included in the term "works") constructed, erected or laid above, upon, in, or under the said street or road, the owner of such works may, and upon receiving notice from the council requiring him so to do, shall remove such works and may, subject to compliance with section 871f, construct, erect, or lay down the same or other similar works in the street or road. Any such owner may in any court of competent jurisdiction recover from the council any costs reasonably incurred by such owner by reason of or incidental to the removal, or construction, erection, or laying down of such works.

Removal of
wires, mains,
etc.

(2) If by reason of the widening, altering, diverting or extending of any street or road pursuant to this Division, it becomes necessary or expedient, in the opinion of the Commissioner of Waterworks or the Commissioner of Sewers or the Municipal Tramways Trust, to remove any wire, cable, pipe, conduit, pole, feeder-pillar, inspection pit, drain, sewer, main, hydrant or other works of whatsoever kind (all of which shall hereinafter in this subsection be deemed to be included in the term "works") of the Commissioner of Waterworks, Commissioner of Sewers, or Municipal Tramways Trust, as the case may be, which is constructed above, upon, in or under the said street or road, the Commissioner of Waterworks, or Commissioner of Sewers, or Municipal Tramways Trust, as the case may be, may remove such works and may construct, erect or lay down the same or similar works in the street or road and may,

in any court of competent jurisdiction, recover from the council any costs reasonably incurred by reason of or incidental to the removal or construction, erection or laying down of such works.

Restriction on use of streets for tramways.

871h. If any new street or road is opened pursuant to this Division, or if any street or road is widened, altered, diverted or extended pursuant to this Division, then notwithstanding the provisions of any other Act to the contrary, no person shall lay down any tramway in the street or road unless the consent of the council thereto is first obtained: Provided that nothing in this subsection shall be deemed to apply to the repair, renewal, or alteration of any tramway which is in any street or road at the time of the widening, alteration, diversion, or extension thereof.

Use of streets and roads for omnibus services.

871i. (1) At least one month before any new street or road is opened pursuant to this Division or any street or road is widened, altered, diverted or extended pursuant to this Division, the council may give to the Municipal Tramways Trust notice in writing of the intention of the council to open the new street or road or to widen, alter, divert or extend the street or road, as the case may be. The Municipal Tramways Trust may within one month of the giving of notice as aforesaid, by notice in writing inform the council that it is the intention of the Municipal Tramways Trust to use or to permit the use of the new street or road or the widened, altered, diverted or extended street or road, as the case may be, as a route for motor or other omnibuses of the Municipal Tramways Trust or for motor omnibuses licensed by the Municipal Tramways Trust pursuant to the Municipal Tramways Trust Act, 1935-1940.

(2) If notice is given by the council as aforesaid and the Municipal Tramways Trust does not inform the council as aforesaid, then, notwithstanding the provisions of any other Act to the contrary, the new street or road so opened or, as the case may be, the street or road so widened, altered, diverted or extended shall not be used as the route of any motor or other omnibus of the Municipal Tramways Trust or of any motor omnibus licensed pursuant to the Municipal Tramways Trust Act, 1935-1940, unless the council consents to such use.

Power to borrow money.

871j. (1) The council may, without obtaining the consent of the ratepayers, borrow upon the security of the general rates and revenue of the council, from whatever source arising, such sums of money as from time to time may be required for any of the purposes of this Division or for the carrying out of any of the works

authorized by this Division: Provided that no such sum of money shall be borrowed except with the consent of the Governor.

(2) The total for the time being unrepaid of the amounts borrowed by the council pursuant to the powers conferred by this Division shall not at any time exceed an amount which is equal to two-thirds of the assessed annual value for the time being of the ratable property in the City of Adelaide.

(3) Money borrowed as aforesaid shall not be taken into account in calculating the amount the council may borrow under any other provisions of this Act.

871k. All moneys borrowed under the provisions of this Division shall be raised by the sale of debentures to be issued by the council in such series at such times and in such manner as the council may think fit. The council may on the maturity of any debentures issue new debentures to retire or repay the same. All such original or substituted debentures shall have a currency not exceeding in the aggregate fifty years and shall be in the form of form No. 1 or form No. 2 in the twentieth schedule or in a form to the like effect, as the council may determine, and the council may fix the price either at above or below par at which the debentures may be sold.

Sale of debentures.

871l. Money borrowed under the provisions of this Division shall be repaid within a period of fifty years and the council shall establish a sinking fund to provide for such repayment: Provided it shall not be necessary to provide or invest any separate sinking fund in respect of debentures issued by the council in form No. 1 in the twentieth schedule or in a form to the like effect if the moneys which would otherwise constitute the sinking fund are paid to the holders of the coupons issued with the said debentures on account or in satisfaction (as the case may be) of both principal and interest in terms of the said debentures.

Repayment of money borrowed.

871m. (1) The sinking fund in respect of debentures issued by the council in form No. 2 in the twentieth schedule or in a form to the like effect shall be invested in the purchase of Government securities or such other securities as may be approved by the Minister in writing and the produce of all such investments shall be re-invested in like manner.

Investment of sinking fund.

(2) The council may at any time apply the whole or any part of the sinking fund in or towards the discharge of any moneys borrowed under this Act or in the purchase

or redemption of any current or overdue debenture of the council; but the council shall, in every such case, recoup the fund by paying into it every half-year a sum equal to the interest which any sum so applied would have produced if left invested.

(3) If in any year after the year following that in which a loan is raised in respect of which a sinking fund is to be established the council does not within seven days after notice in that behalf signed by the Minister has been given to the clerk show to the satisfaction of the Minister or an officer to be appointed by him that the annual payments and investments required by this Division for the formation of the said sinking fund have been duly made, the Minister may apply to the Supreme Court for the appointment of a receiver of the rates and other revenue of the council. And the said court and the receiver so to be appointed shall have all such powers *mutatis mutandis* as are provided by this Act for the benefit of the holders of unpaid debentures.

Repayment of
debentures.

871n. (1) The debentures issued under the provisions of this Division and the interest payable thereon shall be paid by the council out of the general rates and revenue of the council or out of a special rate or partly out of general rates and revenue and partly out of a special rate as the council think fit: Provided that if the general rates and revenue of the council are insufficient for that purpose the council, without obtaining the consent of the ratepayers and notwithstanding anything to the contrary contained in this Act, is hereby authorized and required to declare, levy, and get in a sufficient special rate and to apply the proceeds, or so much thereof as may be required, for that purpose, and shall hold any surplus to answer any future liability in respect of the said debentures.

(2) In anticipation of the declaration or getting in of any special rate the council may discharge all or any portion of the liability of the council in respect of the said debentures out of any funds for the time being belonging to it or may borrow such money as may be required for the purpose of meeting the said liability.

Provisions as
to rates.

871o. All the provisions of this Act shall, subject to this Division, apply to a rate declared, or to be declared, under this Division.

871p. Upon default being made by the council in making any payment whether of principal and interest or principal or interest to the holder of any debenture or coupon the holder thereof shall in addition to all other rights and remedies conferred by law have all the rights and remedies of a holder of a debenture or coupon thereof conferred by Part XXI.

Powers of
debenture
holders.

871q. The provisions of this Division shall be read and construed cumulatively with, and not in exclusion of or derogation from, any provisions of Part XXI. relating to the borrowing powers of the council.

Provisions of
this Division.

871r. The council may use the general rates and general revenue of the council for the purpose of obtaining plans, estimates, and reports as to the cost or desirableness of acquiring land and carrying out works under the provisions of this Division: Provided that in the event of the land being acquired or the works carried out any such preliminary expenditure shall be charged to the special account to which the cost of the acquisition or works shall be charged.

Power to
obtain plans,
etc.

871s. (1) The council shall not exercise any of the powers given to the council by section 871a, 871d, 871e or 871j or by paragraph II. or VI. of section 871c, unless at least two-thirds of the members of the council then in office vote in favour of a resolution for the exercise of such power.

Exercise of
certain powers
by council.

(2) If two-thirds of the number of the members of the council at the relevant time is not an integer, then, for the purposes of this section, two-thirds of the members of the council shall be deemed to be the integer nearest to but more than two-thirds of the number of members then in office.

4. Section 3 of the principal Act is amended by inserting after the line "Division III.—River Torrens Improvement" the line "Division IV.—Powers relating to Streets and Roads".

Amendment of
principal Act,
s. 3—
Arrangement.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

C. M. BARCLAY-HARVEY, Governor.