



# Allan and Stark Burnett Lane Subway Authorisation Act 1926

**Current as at 29 November 1926—revised version**

## **Reprint note**

Powers under the *Reprints Act 1992* have been used in this reprint to bring the legislation into line with current drafting practice.

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Queensland

# Allan and Stark Burnett Lane Subway Authorisation Act 1926

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# **Allan and Stark Burnett Lane Subway Authorisation Act 1926**

**An Act to authorise Allan and Stark Limited to construct and thereafter maintain a subway in and below Burnett Lane, within the City of Brisbane, and for other consequential purposes**

## **Preamble**

WHEREAS Allan and Stark Limited, of Brisbane, in the State, a company duly incorporated under the *Companies Act 1863* (with its successors and assigns called “the company”), is the owner in fee simple of the land situated in the county of Stanley, parish of North Brisbane, in the City of Brisbane, being allotments 8, 8A, 9, 9A, and 10 of section 12, and being the whole of the land described in certificate of title no. 293184, volume 1609, folio 174, and which land is situated on the eastern side of and has a frontage to Burnett Lane (a roadway within the said city), and is also the owner in fee simple of the land immediately opposite and having a frontage to the said lane and running back to Adelaide Street, in the said city being subdivision 2 of allotment 20 and the south-western moiety of allotment 19 of section 12, and being the whole of the land described in certificate of title no. 93121, volume 619, folio 111.

And whereas the company is desirous of constructing and thereafter maintaining a private subway under the surface of the said lane so as to afford by means thereof direct communication between the 2 parcels of land of the company hereinbefore mentioned.

And whereas the company has obtained from the Brisbane City Council the consent of the said council to the construction and maintenance of the said subway (so far as the said council is empowered to so consent) and an agreement in that behalf was on 2 November 1926, made and entered into by and between the said

council and the company (a copy of which agreement and of the sketch therein referred to is set forth in the schedule).

And whereas the company has procured the consents to the construction and maintenance of the said subway of the Postmaster-General of the Commonwealth of Australia, the Metropolitan Water Supply and Sewerage Board, the Brisbane Gas Company, and the City Electric Light Company Limited.

And whereas the company is ready and willing in the construction and maintenance of the said subway to carry into effect and to conform in all respects with the covenants, conditions, stipulations, and provisoes set forth in the agreement between the said council and the company hereinbefore mentioned.

And whereas the construction and maintenance of the said subway will be of great advantage to the company in carrying on its business, and if the terms and conditions in the said agreement set forth are at all times observed and conformed with by the company the said subway may be constructed and maintained without disadvantage to the public or to the said council or any other persons or corporations possessing any powers, rights or authorities in respect of or in relation to the said lane and the surface of the same and the subsoil lying thereunder.

And whereas it is expedient that the company be granted authority to construct and maintain the said subway subject to the provisions in this Act contained, and also subject to the terms and conditions in the said agreement set forth.

## 1 Short title

This Act may be cited as the *Allan and Stark Burnett Lane Subway Authorisation Act 1926*.

## 2 Authority to construct and maintain subway under Burnett Lane

- (1) Allan and Stark Limited (with its successors and assigns called *the company*) is hereby authorised and empowered to construct and thereafter at all times maintain, continue, repair, renew, and use a subway under Burnett Lane (a roadway

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within the City of Brisbane), as shown on the sketch attached to the agreement in the schedule set forth to afford communication between the said parcels of land of the company hereinbefore mentioned.

- (2) The company in the construction, maintenance, continuance, repair, renewal, and use of the said subway and in the carrying out of all subsidiary works (including all works in connection with or in relation to the roadway, footways, roadway surface, watertables, conduits, mains, cables, pipes, sewers, drains, buildings, and structures of the said council and of the Postmaster-General of the Commonwealth and of the Metropolitan Water Supply and Sewerage Board and of the Brisbane Gas Company and of the City Electric Light Company Limited and of all other persons) shall at all times and in all respects observe and conform with the provisions of this Act and the terms and conditions in the said agreement set forth.
- (3) For any of the purposes aforesaid the temporary closing or partial closing of Burnett Lane during the carrying out of any works herein referred to is authorised.
- (4) If the company at any time ceases to be the owner or occupier of each of the aforesaid parcels of land having a frontage to the said lane, all the property and interest of the company in the said subway shall forthwith (without any transfer, assignment, or notice other than this Act) be divested from the company and shall vest absolutely in the Brisbane City Council, and the said council is hereby authorised in that event to continue the said subway or to close or otherwise deal with the same in any manner it thinks fit, and make any rearrangement of any pipes or sewers affected by the said subway at the expense of the company (which the company hereby undertakes to pay to the said council); and no payment shall be made by the said council to the company on account of such divesting and vesting.
- (5) Subject to this Act and to the terms and conditions in the said agreement set forth, but without limitation of or prejudice to the rights or remedies of the said council or any person or corporation against the company under the said agreement, no action or other proceeding shall be commenced, prosecuted,

or maintained against the company or any contractor with the same or any person acting under the authority of the same for or in respect of the construction, maintenance, continuance, repair, renewal, or use of the said subway, or the carrying out of any subsidiary works in connection therewith or in relation thereto or for or in respect of the temporary closing or partial closing of the said lane to traffic during such time as may be necessary for the carrying out of any works or subsidiary works in connection with or in relation to the said subway or for or in respect of any damages, loss, or expense occasioned or alleged to be occasioned by reason of any such works or subsidiary works, or of any obstruction or alleged obstruction of the said lane or in any wise whatever arising from the construction, maintenance, continuance, repair, renewal, or use of the said subway or any such works or subsidiary works.



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## Schedule

*Editor's note—*

Consistent with the provisions of the Act, this schedule only contains the proposed agreement authorised to be entered into by the Act as originally enacted. It does not purport to be either the agreement actually entered into or that agreement as amended from time to time.

This Indenture made the second day of November one thousand nine hundred and twenty-six between Brisbane City Council duly constituted under “*The City of Brisbane Act of 1924*” (hereinafter called “the Council” which term includes its successors) of the one part and Allan and Stark Limited of Brisbane in the State of Queensland a Company duly incorporated under “*The Companies Acts, 1863 to 1913*” and having its registered office at Queen street Brisbane in the said State (hereinafter with its successors and assigns called “the Company”) of the other part.

Whereas the Company is the owner in fee simple of the land situate in the County of Stanley Parish of North Brisbane and City of Brisbane containing one rood five perches and twenty-six-one-hundredths of a perch being allotments 8, 8A, 9, 9A, and 10 of section 12 and being the whole of the land described in Certificate of Title No. 293184 volume 1609 folio 174 and which land is situate on the eastern side of and having a frontage to Burnett lane (that laneway leading from George street to Albert street in the said city of a width of twenty-one feet and extending to Queen street in the said city).

And is also the owner in fee simple of the land immediately opposite the said land and having a frontage to the said lane running back to Adelaide street in the said city being subdivision 2 of allotment 20 and the south-western moiety of allotment 19 of section 12 containing twenty-four perches and nine-tenths of a perch and being the whole of the land described in Certificate of Title No. 93121 volume 619 folio 111.

And whereas the Company has requested the permission of the Council to construct a private subway under the surface of

Schedule

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the said lane as shown on the sketch hereto annexed to connect the said lands.

And whereas the Company warrants that it has secured the consents to the construction of such private subway of the Postmaster-General The Metropolitan Water Supply and Sewerage Board The Brisbane Gas Company and The City Electric Light Company Limited.

And whereas the Council relying upon such warranty has consented to the construction of such private subway subject to the covenants conditions stipulations and provisoes hereinafter set forth.

Now this Indenture witnesseth and it is hereby covenanted by and between the parties hereto as follows:—

1. Subject as hereinafter provided the Council consents to the construction by the Company of a private subway under Burnett lane aforesaid as shown on the sketch hereto annexed to connect the said land described as allotments 8, 8A, 9, 9A, and 10 of section 12 as aforesaid and the land described as subdivision 2 of allotment 20 and the south-western moiety of allotment 19 of section 12 hereinbefore mentioned.
2. The said subway shall be constructed only in and under the land marked “Subdivision A” on the sketch hereto annexed.
3. The Company shall give to the Council seven clear days’ notice in writing of its intention to commence the work of constructing the said subway and carrying out of all subsidiary works.
4. (a) After giving the said notice the Company shall proceed as expeditiously as possible with the work of constructing the said subway and carrying out of such subsidiary works  
(b) If for any reason other than fire flood storm tempest or other act of God the said subway shall not be completed to the satisfaction of the Council’s City Engineer and City Architect and the roadways watertables and footways of the said

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Burnett lane reinstated to the satisfaction of the Council's City Engineer within six weeks from the commencement of the said work the Company shall pay to the Council on demand by way of liquidated damages and not by way of penalty a sum of ten pounds (£10) for every day or part of a day after the expiration of the said period until the said subway is so completed and the said roadway watertables and footways are so reinstated.

5. The Company shall at its own expense make all necessary arrangements with the Postmaster-General The Metropolitan Water Supply and Sewerage Board The Brisbane Gas Company and The City Electric Light Company Limited as may be necessary to disconnect shift alter and/or replace any conduits mains cables or pipes the property of the said Postmaster-General The Metropolitan Water Supply and Sewerage Board The Brisbane Gas Company and The City Electric Light Company Limited.
6. The Company will not use or permit any other person whomsoever (other than its contractors workmen servants and agents) to use the said subway for any purpose until the said subway shall have been completed to the satisfaction of the Council's City Engineer and City Architect.
7. The said subway and all subsidiary works shall be constructed carried out and performed in every particular in strict accordance with the plans and specifications approved between and signed by the parties—a counterpart of which is held by each party.
8. (a) The Council undertakes at the request and expense in all things of the Company to carry out all work in the alteration and relaying of the Council's sewers in Burnett lane as may be necessary or expedient in the opinion of the City Engineer to enable the Company to carry out the construction of the said subway and the Company hereby agrees to pay to the Council immediately upon receipt of a certificate from the City Engineer setting out the

same the amount payable to the Council for the work done in the alteration and relaying of the said sewers In carrying out the said work the Council will take all reasonable care so as not to endanger or damage any buildings on either side of the said Burnet lane or the property or effects of any owner or occupier of any such buildings but shall not be liable for any damage that may result from or be occasioned by the carrying out of the said work.

- (b) The Company hereby agrees to make good any damage except such as may be caused by the negligence of the Council done to any buildings and/or to the property or effects of any owner or occupier of any such buildings arising out of or in any way caused by the carrying out of the said work and the Company hereby indemnifies the Council from and against all actions suits claims and demands which may be made against it by any person or persons suffering damage arising out of or occasioned by the said work and from and against all costs charges and expenses which may be incurred by it arising out of the matters aforesaid.
9. From the day that the said subway is completed the Company shall at its own expense maintain to the satisfaction of the City Engineer the whole surface of the lane above such subway and the surface of the lane where such alteration of the present sewer shall have been made for a period of six months. Thereafter the Council shall undertake the care and maintenance of the surface of the lane above the said subway and the surface of the lane where the alteration of the present sewer shall have been made.
10. At all reasonable times the Council shall be at liberty to enter and inspect the progress of the work and after the completion thereof the like liberty to enter and inspect the said subway during its existence.
11. If the Company at any time ceases to be the owner or occupier of each of the aforesaid frontages to Burnett

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lane, the property in the subway is to be divested from the Company and to vest absolutely in the Council and the Council may close or otherwise deal with the said subway in any manner it thinks fit and make any reasonable rearrangement of any pipes or sewers affected by the said subway at the expense of the Company and no payment shall be made to the Company on account of such divesting and vesting.

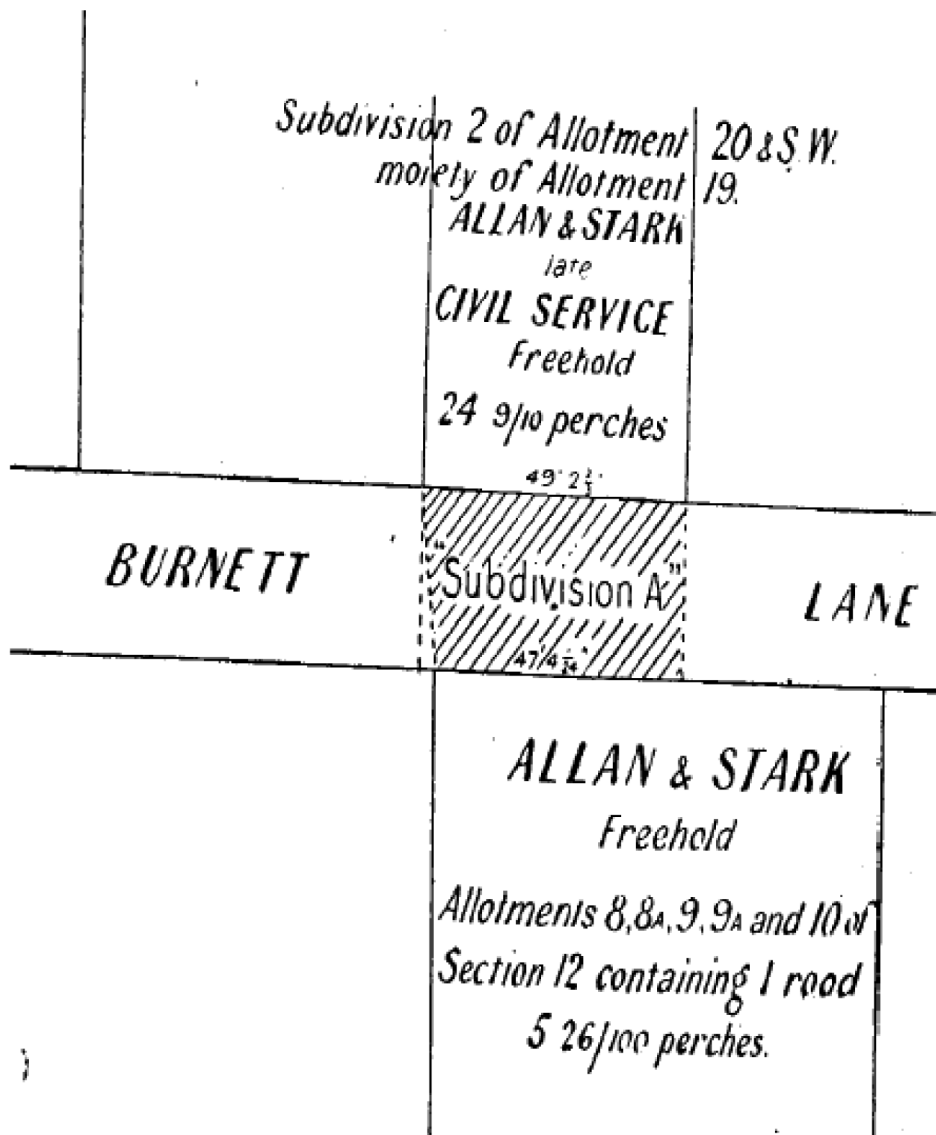
12. All the work in connection with the said subway shall be done and at all times thereafter maintained by the Company to the satisfaction of the City Engineer From time to time the Council may notify the Company of all defects in the subway requiring attention and if any such notice be not obeyed within such reasonable time as is therein prescribed the Council may do the work and recover all costs charges and expenses in connection therewith from the Company.
13. Subject only to such rights of passage given to the public from time to time by the Company the said subway is to be enjoyed solely in connection with the lands aforesaid.
14. Subject to the liability of the Company under Clause 9 hereof the Council will undertake the care of the surface of the lane above the said subway.
15. All questions or differences whatsoever which may arise between the Council and the Company as to the said subway and subsidiary works as well as to the construction and meaning of this Agreement and as to anything to be done or observed or omitted to be done or observed hereunder shall (in default of any other mutual agreement being arrived at between the parties) be referred to two arbitrators one to be appointed by each party or their umpire to be appointed before entering upon the business of the reference and in either case in accordance with the provisions of the “*Interdict Act of 1867*” or any statutory modification thereof for the time being in force.

Schedule

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16. The Company hereby indemnifies the Council against all actions suits claims and demands made upon it in respect of the construction maintenance and continuance of the said subway and all costs charges and expenses which may incurred by the Council in relation thereto or arising thereout save any claim based on the alleged negligence of the Council in respect of the condition of the surface of the said lane after the expiration of the period of six months referred to in Clause 9 hereof.
17. Should the Company fail to observe or perform its duties hereunder (conclusive proof of which shall be the service on the Company of a written notice to remedy any breach and the failure by the Company to take immediate steps to remedy such breach) the Council may before the requisitions of the notice are complied with itself remedy the breach and the Company shall pay to the Council upon demand the expense incurred by it therein as a liquidated debt.
18. These presents shall have no effect until the Parliament of Queensland shall have given statutory authority for the construction maintenance and continuance of the said subway and for the temporary closing or partial closing of the said lane to traffic during such construction and/or maintenance and during the carrying out of the work of the alteration of the Council's sewer referred to in Clause 8 hereof.
19. All costs charges and expenses of and incidental to the preparation and completion of this Agreement including the stamp duty thereon shall be borne and paid by the Company.

THE SKETCH HEREINBEFORE REFERRED TO



Schedule

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In witness whereof the execution of the parties hereto on the day and year first hereinbefore written.

The Seal of Brisbane City Council )  
was hereunto affixed this 4th )  
day of November, 1926, by me, )  
STANLEY ELDRED TRAVILL, I )  
being the proper officer to affix such )  
seal, in the presence of )

S. E. TRAVILL,  
ACTING TOWN CLERK.

THOS. PRENTICE, J.P.

The Common Seal of ALLAN & )  
STARK LIMITED was hereunto )  
affixed, under the authority of )  
three Directors of the Company )  
previously given, by the two )  
subscribing Directors hereto )  
who have hereunto affixed the )  
Seal of the Company and placed )  
their hands, in the presence of )

JAS. ALLAN,  
DIRECTOR.

E. J. GILLINGWATER.  
DIRECTOR.

W. R. BEETSON, J.P.