

2020 CPD CONFERENCE

13 MARCH



Digging deep with underground acquisitions

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Today's road map

1. Do you have the power to acquire substratum land?



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2. The three "jurisdictional gateways" – when is compensation payable?



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3. Ok, a "gateway" is open and compensation is payable, but how is it calculated?



Do you have the power to acquire substratum land?



Now more than 50 statutes that contain compulsory acquisition powers



Do you have the power to acquire substratum land?

If you have the power to acquire “land”, you have the power to acquire substratum land - subject to one important caveat...



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If you have the power to acquire “land”, you have the power to acquire substratum land - subject to one important caveat...

Are you exercising the acquisition power for a proper purpose?



Cappello & Anor v Roads and Maritime Services & Anor [2019] NSWSC 439

- RMS to acquire substratum in Haberfield for the M4-M5 Link Tunnel – a tollway and therefore not a “public road”
- Mr and Mrs Cappello argued that the power to acquire the substratum under the *Roads Act 1993* was limited to only “public road” because tollways weren’t referred to in the Objects section of the *Roads Act*
- The Court held (and confirmed on appeal) that acquisition for the purposes of the *Roads Act* isn’t limited to the Objects section



Landan Development Pty Ltd v Sydney Metro [2019] NSWLEC 65

HIS HONOUR: There is, nonetheless, what one might describe as a tubular aperture underneath Mr Hale's client's land.

DUGGAN SC: Yes. There is a tubular aperture under Mr Hale's client's land.



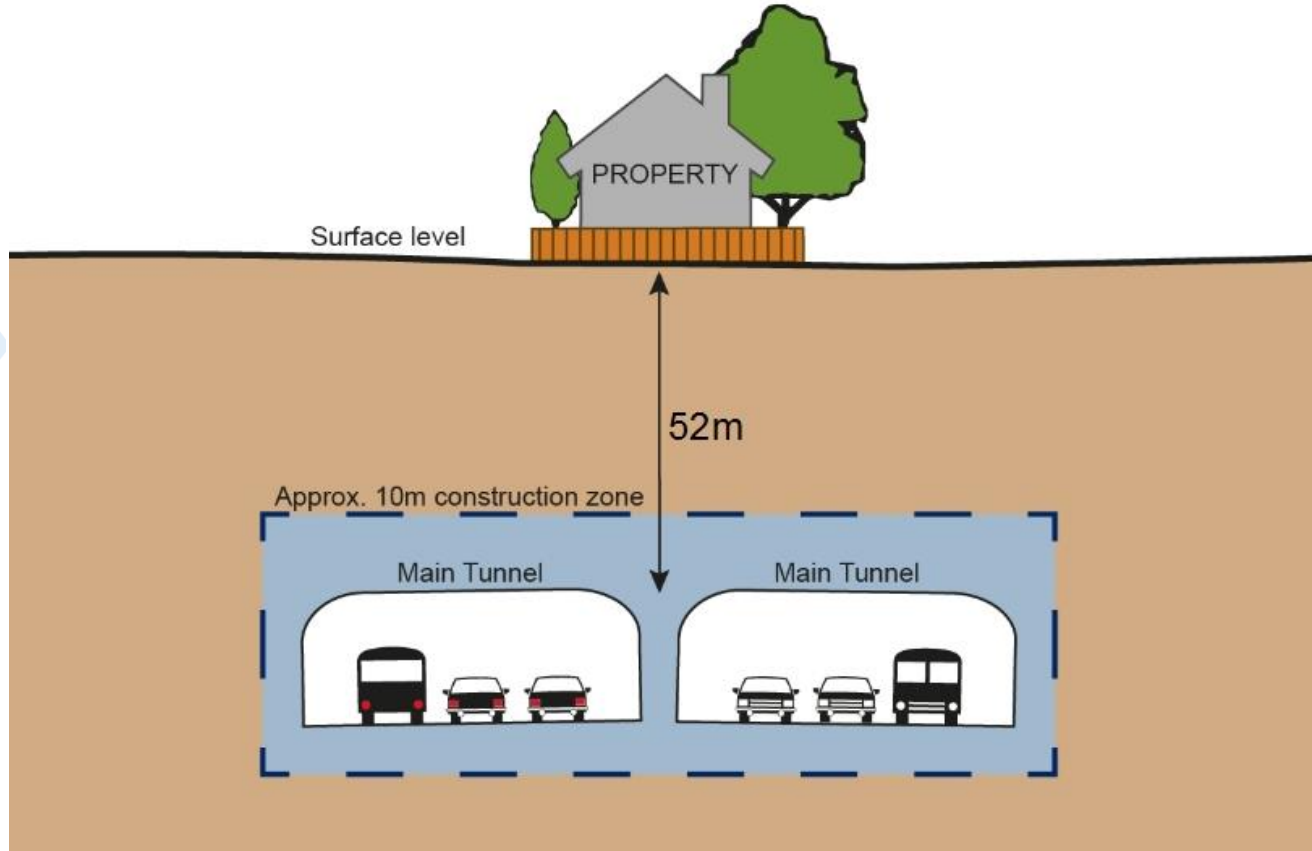
Landan Development Pty Ltd v Sydney Metro

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What about the substratum supporting the “tubular aperture”?

The literal and figurative grey area





Pennant Hills Golf Club Limited *v RTA [1999] NSWCA 110*

- RTA acquired an easement for rock anchors to be secured into the substratum of land as part of the construction of the M2 motorway
- Easement included a right not to have the soil **around** the rock anchors disturbed
- The Court held that the right to have the soil remain undisturbed was an incident of the grant of the easement for rock anchors, as a rock anchor can only work if the material around it remains static and stable

The three “jurisdictional gateways” – when is compensation payable?





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2. the support of that surface is destroyed or injuriously affected by the construction of the tunnel, or

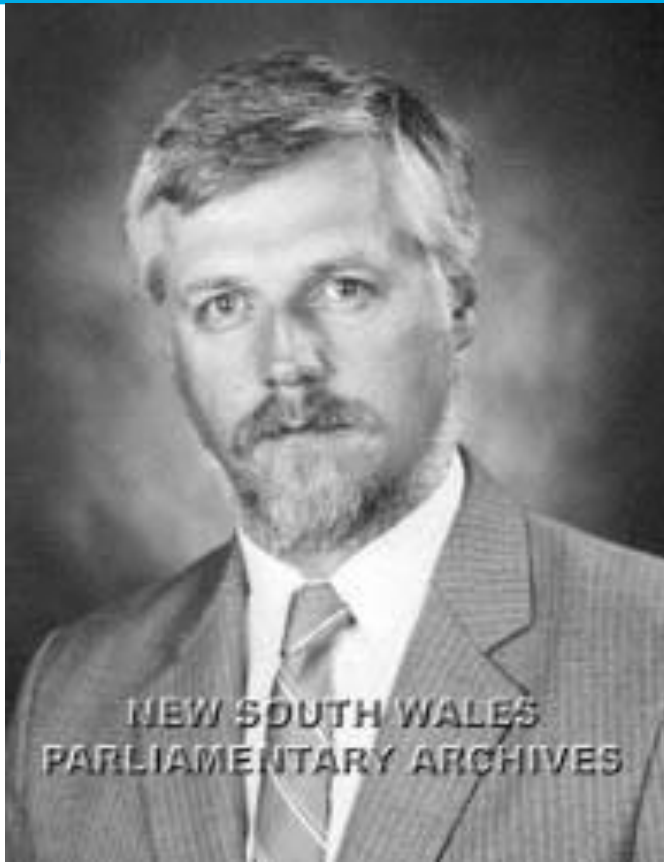


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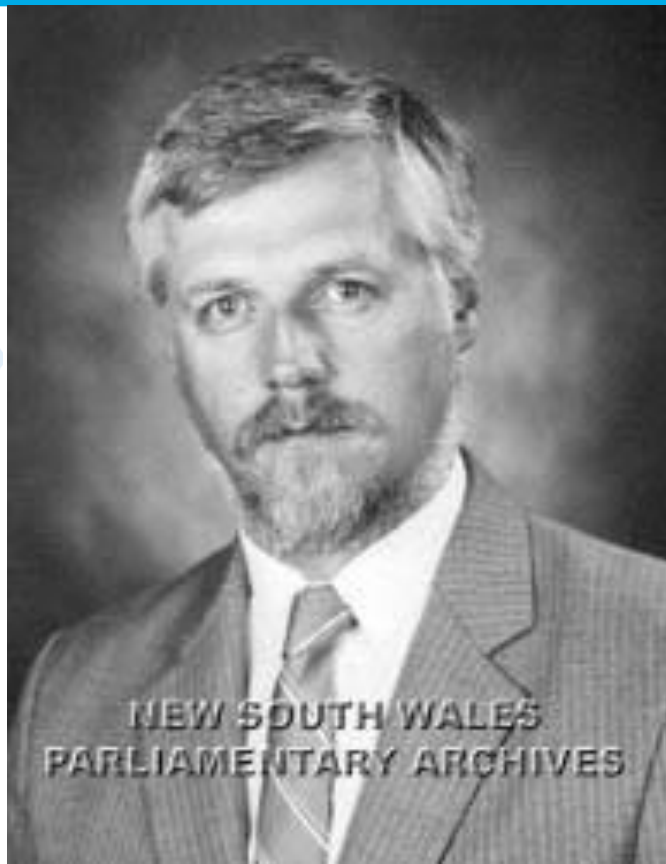
1. the surface of the overlying soil is disturbed, or
2. the support of that surface is destroyed or injuriously affected by the construction of the tunnel, or
3. any mines or underground working in or adjacent to the land are thereby rendered unworkable or are injuriously affected.

Landan Development Pty Ltd v Sydney Metro



Are the circumstances identified in ... [the three jurisdictional gateways] limited to circumstances of the kind specified **that have occurred after construction of the relevant underground rail facilities?**

Landan Development Pty Ltd v Sydney Metro



Are the circumstances identified in ... [the three jurisdictional gateways] limited to circumstances of the kind specified **that have occurred after construction of the relevant underground rail facilities?**

YES

BACK TO THE EIGHTIES!

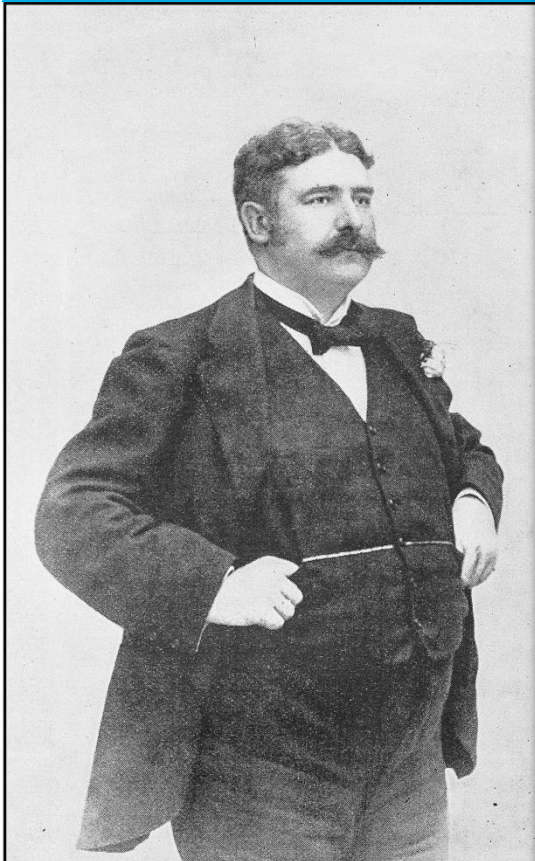


The fashion!



The
fashion!

The
cars!



The
fashion!

The
cars!

The hot
new bands!





Lands for Public Purposes Acquisition Act 1880

No. XVI.

An Act to provide for the Acquisition by Government of Lands for Public Purposes. [12th July, 1880.]

LANDS FOR
PUBLIC PURPOSES
ACQUISITION.

WHEREAS it is expedient to make provision for the acquisition Preamble.
on behalf of the Crown of Lands required for the construction
of works for Water Supply and Sewerage throughout the Colony as
well as for sites for Public Schools light-houses free libraries court-
houses gaols hospitals wharfs ferries bridges fortifications and other
purposes of defence and for buildings or works of any kind what-
soever to be erected or constructed for public purposes and to provide
compensation for lands so acquired 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 :—



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Ok, a “gateway” is open and compensation is payable, but how is it calculated?

Two alternatives?

1. Compensation for damage only?
2. The full suite of compensation under s. 55 of the Just Terms Act?

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