
Bishophthorpe Estate and St. Barnabas' Sydney
Variation Declaration of Trusts and Vesting Ordinance 1972

No. 18, 1972

AN ORDINANCE to vary the trusts upon which part of the Bishophthorpe Estate is held, to declare trusts in respect of the proceeds of a bill of exchange and to vary the trusts upon which a fund called the St. Barnabas' Sydney Building Fund is held and upon which certain land at Broadway is held and for purposes incidental thereto.

WHEREAS the Bishophthorpe Estate is vested in Glebe Administration Board (hereinafter called the "Board") and is held upon trust to hold the same unto the Bishop of Australia and his successors Bishops of Australia for ever for the maintenance of the Bishop of Australia and his successors Bishops of Australia AND WHEREAS the land described in the First Schedule hereto is part of the Bishophthorpe Estate AND WHEREAS it is expedient that the trusts on which the land described in the First Schedule hereto is held be varied AND WHEREAS the Churchwardens of St. Barnabas' Sydney have delivered to the Board a bill of exchange for Forty-seven thousand one hundred and sixty-eight dollars (\$47,168) AND WHEREAS it is expedient that the trusts be declared in respect of the proceeds of the said bill of exchange AND WHEREAS the land described in the Second Schedule hereto is held upon trust to permit the same to be used as part of or as appurtenant to certain other land and to permit the erection and maintenance thereon of an extension of the Church known as St. Barnabas or of some other Church for the celebration of public worship according to the use of the United Church of England and Ireland and of a minister's dwelling subject to the provisions of the Act four William IV number five and of a school house under the superintendence of the minister for the time being licensed or otherwise authorised to officiate in the said Church or of any of such buildings as aforesaid AND WHEREAS the land described in the Third Schedule hereto is held upon trust to permit the same to be used as a church school and community centre or partly for one and partly for another or others of such purposes in connection with the Church of England in the Parish of St. Barnabas Broadway Sydney AND WHEREAS the land described in the Second and Third Schedules hereto is part of the land described in the Fourth Schedule hereto AND WHEREAS the Church known as St. Barnabas' Sydney is located on so much of the land described in the Fourth Schedule hereto as is not part of the land described in the Second and Third Schedules hereto AND WHEREAS so much of the land described in the Fourth Schedule

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hereto as is not part of the land described in the Second and Third Schedules is church trust property and has been used for the benefit of the Parish of St. Barnabas Sydney for many years but no trusts in writing appear to have been declared in respect of the same AND WHEREAS the land described in the Fourth Schedule hereto is vested in Church of England Property Trust Diocese of Sydney (hereinafter called the "Corporate Trustee") AND WHEREAS it is expedient that the trusts upon which the land described in the Fourth Schedule is held be varied AND WHEREAS by a Deed of Appropriation made the 25th day of April 1867 the land described in the Fifth Schedule hereto was appropriated by the Bishop of Sydney for the purpose of a residence for the rector of St. Barnabas' Church Sydney AND WHEREAS it is proposed that a church and other buildings be erected on part of the land described in the Fifth Schedule hereto AND WHEREAS it is expedient that the trusts upon which the land described in the Fifth Schedule hereto is held be varied AND WHEREAS the St. Barnabas' Sydney (St. Bartholomew's Pymont) Lease Ordinance 1970 directed that certain monies be paid to a fund called "St. Barnabas' Sydney Building Fund" and that the monies so paid be held both as to capital and income upon trust for the said Parish and invested by the Corporate Trustee provided that the Synod or the Standing Committee thereof may from time to time by resolution determine that the capital and/or income of such fund be paid to the said Churchwardens and applied by them towards the purchase of land with or without improvements and/or in the erection of buildings for use in connection with the said Parish AND WHEREAS it is expedient that the trusts upon which the said capital and income are held be varied NOW the Standing Committee of the Synod of the Diocese of Sydney in the name and place of the said Synod HEREBY DECLARES ORDAINS DIRECTS AND RULES as follows:—

1. (a) By reason of circumstances which have arisen subsequent to the creation of the trusts upon which the land described in the First Schedule hereto is held it is inexpedient to carry out and observe the same.
- (b) The said land shall be held upon trust to permit the same to be used for a church, parsonage, parish hall or counselling centre or partly for one or partly for another or other of such purposes in connection with the Church of England in Australia in the Parish of St. Barnabas Sydney and for such other purpose or purposes in connection with the said Church in the said Parish as may be

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approved from time to time by the Parish Council of the said Parish and by the Archbishop.

2. The proceeds of the said bill of exchange shall be held upon the same trusts as the balance of the Bishopthorpe Estate is presently held and shall be deemed hereafter to form part of the Bishopthorpe Estate.

3. The Board is hereby empowered and directed to lend to the said Churchwardens the proceeds of the said bill of exchange.

4. (a) The said Churchwardens shall pay to Glebe Administration Board interest on so much of the said loan as from time to time remains unpaid. Such interest shall be calculated on a daily basis from the 1st July 1972 and shall be paid quarterly on the last days of September December March and June in each year. Such interest shall be at the lesser of the following rates—

(i) nine per centum (9%) per annum;

(ii) the nett return from the Bishopthorpe Estate for the year ending on the 31st of December next following the day on which interest is being calculated, expressed as a percentage.

(b) For the purposes of this clause—

(i) the nett return from the Bishopthorpe Estate for the year ending on the 31st of December 1972 shall be deemed to be three per centum (3%);

(ii) the nett return from the Bishopthorpe Estate for each year ending on the 31st of December thereafter shall be deemed to be three per centum (3%) multiplied by the nett income of the Bishopthorpe Estate for that year (calculated on the same basis as the nett income of the Bishopthorpe Estate for the nine months ended 31st of December 1971 was calculated) and divided by the nett income of the Bishopthorpe Estate for the year ending on the 31st of December 1972 calculated on the same basis; and

(iii) the term "Bishopthorpe Estate" includes all assets representing the proceeds of any realisation of any part of the land presently known as the Bishopthorpe Estate.

(c) Pending the determination of the nett income of the Bishopthorpe Estate for any year ending on the 31st of

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December after 1972 such interest shall be paid at the rate hereinbefore provided for the previous year and an adjustment shall be made within one month of the Board notifying the said Churchwardens of such determination.

- (d) If any dispute shall arise as to the said nett return or as to any component thereof, the same shall be determined by the Standing Committee whose decision shall be final and binding.

5. The said Churchwardens are hereby directed to conduct an appeal amongst the members of the Church of St. Barnabas Sydney as soon as possible and to pay the amount so raised to the Board in reduction of the said loan.

6. The said Churchwardens are hereby directed to pay to the Board not less than Five thousand dollars (\$5,000) each year (the first such payment to be made in the year ending on the 31st of December 1972) which payments shall be applied by the Board first in meeting the interest payable pursuant to clause 4 hereof and then in reduction of the said loan provided that--

- (a) such payments of Five thousand dollars (\$5,000) may be made in advance, and
- (b) the last payment to be made hereunder shall be the amount necessary to repay the balance of the said loan then outstanding.

7. (a) By reason of circumstances which have arisen subsequent to the creation of the trusts upon which the monies paid to the St. Barnabas' Sydney Building Fund are held it is inexpedient to carry out and observe the same to the extent that the same are hereby varied.

(b) So long as any part of the said loan remains unpaid, the said Churchwardens may request the Corporate Trustee to pay to the said Churchwardens all monies paid (whether before or after the date on which this Ordinance is assented to) to the St. Barnabas' Sydney Building Fund.

(c) If the said Churchwardens so request, then so long as any part of the said loan remains unpaid the Corporate Trustee shall pay all such monies to the said Churchwardens. All such monies paid by the Corporate Trustee to the said Churchwardens shall be applied by them in making the payments mentioned in clause 6 of this Ordinance.

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8. (a) By reason of circumstances which have arisen subsequent to the creation of the trusts upon which the land described in the Fourth and Fifth Schedules hereto is held it is inexpedient to carry out and observe the same.

(b) The said land shall be held upon trust to permit the same to be used for a church, parsonage, parish hall or counselling centre or partly for one or partly for another or other of such purposes in connection with the Church of England in Australia in the Parish of St. Barnabas Sydney and for such other purpose or purposes in connection with the said Church in the said Parish as may be approved from time to time by the Parish Council of the said Parish and by the Archbishop.

9. If the whole or any part of the land described in the Fourth Schedule hereto is resumed or otherwise compulsorily acquired, the whole of the compensation or other monies payable in respect of such resumption or acquisition (after payment of all costs and expenses incurred in connection with such resumption or acquisition) shall be applied in reduction of the said loan.

10. The Churchwardens for the time being of St. Barnabas' Church Sydney shall within seven (7) days of the holding of the Annual Vestry Meeting of such Church during such time as any money is owing on the said loan cause an account thereof to be forwarded to the Diocesan Secretary giving particulars of the amount borrowed the amount paid off and the balance owing.

11. The land described in the First Schedule hereto is hereby vested in the Corporate Trustee.

12. This Ordinance may be cited as "Bishopthorpe Estate and St. Barnabas' Sydney Variation Declaration of Trusts and Vesting Ordinance 1972".

FIRST SCHEDULE

ALL THAT piece or parcel of land situated in the Municipality of Litchhardt Part of Petersham and County of Cumberland being Lot 10 in the unaltered Plan 439867 and being the whole of the land comprised in Certificate of Title Volume 11746 Folio 20.

SECOND SCHEDULE

ALL THAT piece or parcel of land lying and being situated within the City of Sydney Parish of Petersham in the State of New South Wales commencing at the Northern side of Parramatta Street at a

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point on the building line thirty-five feet eleven and a half inches Westerly from the South-west corner of Athlone Place and bounded on the South by the building line of Parramatta Street bearing Westerly thirty-four feet on the West by a line bearing Northerly ninety-nine feet eight and a half inches to the South-west corner of St. Barnabas' Church Allotment on the North by a line dividing it from the said allotment bearing Easterly thirty-three feet ten and three-quarter inches and on the East by a line bearing Southerly to the North-west corner of a brick house thence by the Western side of the said house being in continuation thereof to the point of commencement containing by admeasurement twelve and a half perches be the said contents or dimensions a little more or less.

THIRD SCHEDULE

ALL THAT parcel of land situate in the Parish of Petersham in the City of Sydney in the Colony of New South Wales commencing from the angle formed by Athlone Place and a reserved road seventeen feet wide and bounded on the north by that reserved road sixty feet North-westerly to Mr. Dickson's property on the West by Mr. Dickson's property forty feet to North-western boundary of Saint Barnabas' Church on the South-east by the Northern boundary of Saint Barnabas' Church to Athlone Place sixty feet on the East by Athlone Place forty feet to the point of commencement ALSO ALL THAT parcel of land situated in the County of Cumberland Denison Ward in the City of Sydney and containing twenty-nine perches commencing at its North-eastern corner being a point distant sixty-one feet from the intersection of Athlone Place and a reserved road and bounded on the North by a reserved road seventeen feet wide being a line bearing West thirteen degrees South eighty-six feet six inches on the West by church land being a line bearing South twenty degrees East eighty-seven feet on the South by Connelly's allotment being a line bearing East thirteen degrees North seventy-five feet again on the West by part of Connelly's allotment being a line bearing East thirteen degrees North seventy-five feet again on the West by part of Connelly's allotment being a line bearing Southerly thirty-nine feet and again on the South by part of Saint Barnabas' Church property being a line bearing Easterly eight feet ten inches and on the East by Saint Barnabas' Church and School being a line bearing North twenty degrees West one hundred and twenty-five feet nine inches to the point of commencement excepting thereout all that piece or parcel of land situate at Saint Barnabas' Lane City of Sydney Parish of Petersham County of Cumberland

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State of New South Wales containing by admeasurement twenty and a quarter perches commencing at a point on the Southern side of St. Barnabas' Lane distant eighty-four feet two inches Westerly from Mountain Street (late Athlone Place) and bounded on the North by St. Barnabas' Lane bearing Westerly sixty-four feet on the West by a line bearing Southerly eighty-six feet to land in application No. 9213 thence on the South by the Northern boundary of said application and a line in prolongation thereof bearing Easterly sixty-five feet on the East by a line bearing Northerly eighty-eight feet to the point of commencement be the said several dimensions a little more or less.

FOURTH SCHEDULE

ALL THAT piece or parcel of land situate in the City of Sydney Parish of Petersham and County of Cumberland being Lot 1 in Deposited Plan 532489 and being the whole of the land in Certificate of Title Volume 11040 Folio 153.

FIFTH SCHEDULE

ALL THAT piece or parcel of land situate in the Municipality of Leichhardt Parish of Petersham and County of Cumberland having an area of 1 rood 22 perches being Lot 9 in Deposited Plan 239867 and being the whole of the land in Certificate of Title Volume 11581 Folio 36.

I CERTIFY that the Ordinance as printed is in accordance with the Ordinance as reported.

ATHOL RICHARDSON,
Chairman of Committees.

I CERTIFY that this Ordinance was passed by the Standing Committee of the Synod of the Diocese of Sydney on the 5th day of June, 1972.

W. L. J. HUTCHISON,
Secretary.

I ASSENT to this Ordinance.

MARCUS LOANE,
Archbishop of Sydney.

5/6/1972.