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*St. Matthew's Botany Variation of Trusts Sale Mortgaging  
and Leasing Ordinance, 1972*

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No. 51, 1972

AN ORDINANCE to authorise the variation of trusts and sale of certain land in Botany Road, Botany, to authorise the mortgaging and leasing of certain other land in Lord Street Botany and to provide for the application of the respective proceeds of such sale and mortgage.

WHEREAS by Indenture of Conveyance dated the 17th day of March, 1862 Registered No. 783 Book 77 the land described in the First Part of the First Schedule hereto was conveyed to the Bishop of Sydney and his successors to have and to hold the said land and hereditaments unto the Bishop of Sydney and his successors forever UPON TRUST for the erection and maintenance thereon of a church for the celebration of public worship according to the use of the United Church of England and Ireland as it was then established by law and also of a dwelling house for the use of the minister for the time being of the said church and of a school house for the education of children of members of the Church of England and of such other children as the minister for the time being of the said church may approve AND WHEREAS it is expedient to vest the land described in the First Part of the First Schedule hereto in Church of England Property Trust Diocese of Sydney (hereinafter called "the Corporate Trustee") AND WHEREAS the land being known as Lot 30 in Deposited Plan No. 234967 being part of the land described in the First Part of the First Schedule hereto and being the land more particularly described in the Second Part of the First Schedule hereto is required by the Commissioner for Main Roads (hereinafter called "the Commissioner") for road widening purposes and it is expedient that such land be sold to the Commissioner AND WHEREAS the land described in the Third Part of the First Schedule forms part of the land in the First Part after the road widening as aforesaid and the land described in the Fourth Part is the residue of such land AND WHEREAS the Corporate Trustee is registered as the proprietor of an estate in fee simple of the land comprised in Certificate of Title Volume 4738 Folio 41 and more particularly described in the First Part of the Second Schedule hereto AND WHEREAS no trusts in writing have been declared in respect of the lastmentioned land AND WHEREAS the land being known as Lot 31 in Deposited Plan No. 234967 being part of the lastmentioned land and being the land more particularly described in the Second Part of the Second Schedule hereto is also required by the Commissioner for road widening purposes and it is expedient that such land be sold

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to the Commissioner AND WHEREAS all of the said lands hereinbefore mentioned are church trust property and are situated within the Parish of St. Matthew Botany AND WHEREAS there is erected on the lands more particularly described in the First Part of the First Schedule hereto inter alia a rectory but it is proposed to erect a new rectory on other church land held by the Corporate Trustee for the sole benefit of the said Parish AND WHEREAS it is proposed to demolish the existing rectory standing on the land described as aforesaid and to erect on the land described in the Third Part of the First Schedule hereto and also on the land being part of the residue of the land comprised in Certificate of Title Volume 4738 Folio 41 and being the land more particularly described in the Third Part of the Second Schedule hereto certain factory and other premises for the purpose of leasing in one parcel or by separate lettings AND WHEREAS it will be necessary to borrow a sum or sums not exceeding One hundred and twenty-five thousand dollars (\$125,000) in respect of the demolition erection and development as aforesaid on and of the two last mentioned parcels of land (which parcels of land are hereinafter collectively called "the development lands") to be applied towards the costs thereof AND WHEREAS it is expedient that the development lands be mortgaged or charged to secure such advances AND WHEREAS the land described in the Fourth Part of the Second Schedule is the balance of the residue of the land in the First Part after the road widening and factory development as aforesaid AND WHEREAS there is erected on the land described in the Fourth Part of each of the First and Second Schedules the Church of St. Matthew Botany and a church hall and other improvements NOW the Standing Committee of the Synod of the Diocese of Sydney in the name and place of the said Synod HEREBY ORDAINS DECLARES RULES AND DIRECTS as follows:—

1. The land described in the First Part of the First Schedule hereto be and the same is hereby vested in the Corporate Trustee subject to the trusts on which the same is now held.

2. By reason of circumstances which have arisen subsequent to the creation of the trusts upon which the lands described respectively in the Second Part of each of the First and Second Schedules hereto are held it is inexpedient to carry out and observe the same to the extent to which the same are hereby varied and it is expedient that the said lands be sold.

3. The Corporate Trustee is hereby authorised and empowered to sell the said lands to the Commissioner by private contract or to permit the Commissioner to acquire the said lands by way of re-sumption or otherwise at such time for such price and upon such

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terms and conditions as it may think fit freed from the trusts upon which they are respectively held and without limiting the generality of the foregoing the Corporate Trustee is also empowered:—

- (a) to execute a release of all claims for or rights to compensation under Part XIII of the Local Government Act, 1919, or any Ordinance made thereunder in respect of the said lands;
- (b) to do any such act or execute any such document or documents as may be necessary to give effect to any of the foregoing powers.

4. The proceeds of sale of the said lands after paying thereout all outgoings to which the lands are subject shall be applied as follows:—

- (a) First in payment of those costs of and incidental to this Ordinance and to any sale or conveyance or transfer in pursuance thereof as are not paid by the Commissioner;
- (b) Secondly the balance to be paid to the Churchwardens of St. Matthew's Church Botany to be applied by them in or towards the costs of demolition building and development as aforesaid.

5. By reason of circumstances which have arisen subsequent to the creation of the trusts upon which the lands described in the Third Part of each of the First and Second Schedules hereto are held it is inexpedient to carry out and observe the same and it is expedient to declare and it is hereby declared that the Corporate Trustee shall hold the said lands upon trust to permit the same to be used for the erection thereon of factory and other business or commercial premises and other buildings ancillary thereto or partly for one or another or others of such purposes and to enter into such contract or contracts as shall be necessary in accordance with plans and specifications as approved by the Corporate Trustee to erect upon the said lands such buildings and other premises as aforesaid.

6. By reason of the circumstances which have arisen subsequent to the creation of the trusts upon which the last mentioned lands are held it is expedient that such lands be mortgaged.

7. (1) The Corporate Trustee is hereby empowered to mortgage from time to time the whole or any part of the last mentioned lands for the purpose of borrowing the sums following:—

- (a) When the power is first exercised a sum not exceeding One hundred and twenty-five thousand dollars (\$125,000).
- (b) When the power is subsequently exercised such sum not exceeding One hundred and twenty-five thousand dollars (\$125,000) as the Standing Committee may by resolution

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determine PROVIDED that such debt shall be reduced by payments of principal and interest as hereinafter set forth when the power is first exercised and thereafter at such rate as Standing Committee shall by resolution determine and PROVIDED FURTHER that no person or corporation advancing moneys under the provisions of this Ordinance shall be concerned to enquire whether such reductions shall have been made.

(2) Any renewal of a mortgage shall be deemed to be a subsequent exercise of the said power.

(3) A document purporting to be certified by the Archbishop or Diocesan Secretary of the said Diocese as a copy of any such resolution shall in favour of a mortgagee or any person or corporation claiming under the mortgage be conclusive evidence that such resolution was duly passed.

8. The proceeds of any mortgage hereby authorised shall after paying the costs of and incidental to such mortgage be applied by the Corporate Trustee as follows:—

- (a) When the power is first exercised towards the costs of erection on the said lands of the factory and other business or commercial premises and other buildings ancillary thereto as hereinbefore mentioned together with all architects' and property consultants' fees legal costs and fees and all other charges and fees incidental to any development application or applications servicing of loans and bridging finance or any matters relating to the development of the said lands.
- (b) When the power is subsequently exercised (other than by a renewal of the original mortgage) in payment of the principal interest and costs of discharge of any existing mortgage and the costs and expenses of such further mortgage.
- (c) Any mortgagee advancing moneys pursuant to the provisions of paragraph (a) of this clause shall pay the same direct to the Churchwardens for the time being of St. Matthew's Church Botany.

9. (1) The Corporate Trustee is hereby empowered to lease in one parcel or by separate lettings from time to time the said factory and other premises as aforesaid to be erected on the said last mentioned lands upon such terms and conditions as the Corporate Trustee shall deem fit but nevertheless subject to the provisions of the investment policy of the Standing Committee of Synod and the Annual nett income arising from such leases shall be applied by the Corporate Trustee as follows:—

- (a) First, monthly payments on account of principal and interest

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on the mortgage on the said lands aggregating Seventeen thousand seven hundred and thirty-three dollars (\$17,733) per annum for the period of ten (10) years or as otherwise determined by resolution of the Standing Committee.

- (b) Secondly, repayment of principal and interest on any advance by way of bank overdraft under any letter of guarantee pursuant to the provisions of the Church of England Finance and Loans Board Ordinance 1957-1970.
- (c) Thirdly, by repayment of principal and interest on any advance made pursuant to the provisions of St. Matthew's Botany (St. John's Banksmeadow) Variation of Trusts and Mortgaging Ordinance 1972.
- (d) Fourthly, until the expiration of the tenth year after the practical completion of the said factory and other premises, by payment of the balance of income to the Churchwardens for the time being of St. Matthew's Church Botany to be applied by them for general parochial purposes.

(2) At or before the expiration of the tenth year after the practical completion of the buildings as aforesaid the distribution of the balance of income shall be reviewed by ordinance upon the application of the Parish Council of the said Parish.

10. The Churchwardens for the time being of St. Matthew's Church Botany shall within seven (7) days of the date of holding the annual vestry meeting during such time as any money is owing to any mortgagee pursuant to this Ordinance cause an account to be forwarded to the Diocesan Secretary giving details of the original amount borrowed the amounts paid off and the balance owing.

11. The lands described in the Fourth Part of each of the First and Second Schedules hereto shall henceforth be held upon trust for a church parsonage or parish hall or partly for one or another or others of such purposes in connection with the Church of England in Australia in the Parish of St. Matthew Botany.

12. This Ordinance may be cited as "St. Matthew's Botany Variation of Trusts Sale Mortgaging and Leasing Ordinance, 1972".

### FIRST SCHEDULE

#### FIRST PART

ALL THAT parcel of land situated in the Parish of Botany in the County of Cumberland in the Colony of New South Wales containing by admeasurement three roods thirty-three perches more or less commencing at the North-western corner of allotment number eleven of Booralee Town bounded on the West by Banks Street being a Northerly line to two chains twelve links to the South side of Lord

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Street on the North by Lord Street bearing North-easterly four chains sixty links to allotment number eighteen of the said Township on the East by a portion of that allotment being a South-easterly line of two chains twelve links to the North-eastern corner of allotment number eleven aforesaid on the South by the North boundary line of that allotment being a line bearing South-westerly four chains sixty-eight links to the point of commencement which said parcel of land is Lot 10 of a subdivision by the said George Lord of a portion of the said six hundred acres of land granted to Simeon Lord as shewn by a plan made in the month of August, One thousand eight hundred and fifty-nine and now in the possession of the said George Lord and also forms part of allotment number eighteen of the original subdivision of the said six hundred acres of land as shewn by a plan attached to an Indenture dated the fifth day of April One thousand eight hundred and fifty-four and made between the Australian Trust Company of the one part and the said George Lord of the other part and being the whole of the land described in Conveyance registered Number 783 Book 77.

SECOND PART

ALL THAT piece or parcel of land situated as aforesaid having a frontage of about 139' 10" to Botany Road being Lot 30 in Deposited Plan 234967 containing 11½ perches or thereabouts and being part of the land described in the said Conveyance Registered Number 783 Book 77.

THIRD PART

ALL THAT piece of land situated as aforesaid having a frontage of about 133' 3" to Lord Street by depths of about 138' 8"/139' 9" and a rear dimension of about 119' 8" and being part of the land described in the said Conveyance Registered No. 783 Book 77.

FOURTH PART

ALL THAT piece of land situated as aforesaid having a frontage to Botany Road of about 131' 8" after making provision for the proposed road widening as aforesaid with a splayed corner of about 12' to Botany Road and Lord Street and by a depth along Lord Street of about 130' 9" and a depth along the Southern boundary of about 161' 7" and a rear dimension of about 138' 8" and being the residue of the land described in the said Conveyance Registered No. 783 Book 77.

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SECOND SCHEDULE

FIRST PART

ALL THAT piece of land situated as aforesaid having a frontage of about 14' 8 $\frac{1}{2}$ " to Botany Road by depths of about 304' 7 $\frac{1}{2}$ "/310' 2" and a rear dimension of about 101' 11 $\frac{1}{4}$ " containing 1 rood 25 perches or thereabouts and being the whole of the land comprised in Certificate of Title Volume 4738 Folio 41.

SECOND PART

ALL THAT piece of land situated as aforesaid having a frontage of about 14' 8 $\frac{1}{2}$ " to Botany Road being Lot 31 in Deposited Plan 234967 containing 4 perches or thereabouts and being part of the land comprised in Certificate of Title Volume 4738 Folio 41.

THIRD PART

ALL THAT piece of land situated as aforesaid and being that part of the land comprised in Certificate of Title Volume 4738 Folio 41 adjoining the Southern boundary of the land described in the Third Part of the First Schedule hereto and having the same dimension of about 119' 8" along such common boundary with a dimension of about 101' 11 $\frac{1}{4}$ " along the Eastern boundary of the land in the said Certificate of Title and with a dimension of about 121' 7 $\frac{1}{4}$ " along the Southern boundary thereof and with a dimension of about 67' 8 $\frac{1}{2}$ " along the Western boundary thereof.

FOURTH PART

ALL THAT piece of land situated as aforesaid having a frontage of about 21' 3 $\frac{1}{2}$ " to Botany Road by depths of about 161' 7 $\frac{1}{2}$ "/165' 7" all of which dimensions are the result of making provision for the proposed road widening as aforesaid and a rear dimension of about 67' 8 $\frac{1}{2}$ " and being the residue of the land comprised in Certificate of Title Volume 4738 Folio 41.

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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 11th day of December, 1972.

W. L. J. HUTCHISON,  
Secretary.

I ASSENT to this Ordinance.

11/12/1972.

MARCUS LOANE,  
Archbishop of Sydney.