

*St. Luke's Miranda Declaration and Variation of Trusts  
and Lease Ordinance 1970*

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No. 57, 1970

AN ORDINANCE to vary and declare the trusts of certain land in the Shire of Sutherland, to vary such trusts and authorise the leasing of part of that land and to provide for the application of the proceeds thereof.

WHEREAS Church of England Property Trust Diocese of Sydney (hereinafter called the "Corporate Trustee") is registered as proprietor of the land comprised in Certificate of Title Volume 2950 Folio 112 more particularly described in the First Part of the First Schedule hereto AND WHEREAS such land is church trust property and by a Declaration of Trust dated 21st July, 1924 is held upon trust for a church parsonage or parish hall or partly for one or partly for another or others of such purposes in connection with the Church of England in the Parish of Cronulla AND WHEREAS the said land is now situated in the Parish of St. Luke Miranda and the Parish Council of the Parish of Cronulla have consented to a variation of the trusts of the land AND WHEREAS the Corporate Trustee is registered as proprietor of the land comprised in Certificate of Title Volume 7745 Folio 247 more particularly described in the Second Part of the First Schedule hereto AND WHEREAS such land is church trust property held for the sole benefit of the Parish of St. Luke Miranda but no trusts have been declared in writing concerning the same AND WHEREAS it is expedient to declare the trusts of such land as hereinafter set out AND WHEREAS it is proposed to subdivide the land comprised in the First Schedule and to lease that part of the said land described in the Second Schedule hereto AND WHEREAS by reason of circumstances which have arisen subsequent to the creation of the trusts upon which the land comprised in the Second Schedule is held it is inexpedient to carry out and observe the same to the extent that the same are hereby varied 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. By reason of circumstances which have arisen subsequent to the creation of the trusts upon which the lands described in the First Schedule hereto are held it is inexpedient to carry out and observe the same and it is expedient that the trusts be varied as hereinafter set out.

2. The land described in the First Schedule hereto shall be held upon trust for a church parsonage or parish hall or partly for

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one or partly for another or others of such purposes in connection with the Church of England in Australia in the Parish of St. Luke Miranda or any parochial unit into which subsequently it may be formed.

3. By reason of circumstances which have arisen subsequent to the creation of the trusts upon which the land described in the Second Schedule hereto is 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 such land be leased.

4. The Corporate Trustee (in this clause called "the Lessor") is hereby authorised and empowered to lease the land described in the Second Schedule for a term not exceeding twenty-five (25) years to H. C. Sleigh Limited or such other person or corporation as the Lessor may approve (hereinafter called "the Lessee") and subject to such terms and conditions as may be approved and required by the Lessor including but not limited to the following:—

- A. The lease shall be for a period of twenty-five (25) years to commence from a date mutually agreed upon by the Lessor and Lessee.
- B. The rental payable under the said lease shall be as follows:—
  - (i) During the first ten (10) years of the lease the sum of Six thousand dollars (\$6,000) per annum payable in advance at the commencement of the lease by a payment of Sixty thousand dollars (\$60,000);
  - (ii) During the next succeeding five (5) years of the term of the lease the sum of Eight thousand two hundred dollars (\$8,200) per annum payable yearly in advance;
  - (iii) During the last ten (10) years of the term of the lease the sum of Nine thousand dollars (\$9,000) per annum payable yearly in advance.
- C. A covenant by the Lessee to erect a building for use by the Lessee as a service station the plans and specifications for such building to be approved by the Lessor and any other body required by law to give consent or approval thereto.
- D. A covenant by the Lessee to pay all municipal rates and charges and water and sewerage rates and charges during the term of the lease and to pay insurance and any other out-

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goings or charges including land tax (if any) on the land to be leased.

- E. A covenant by the Lessee to pay all the reasonable costs and disbursements of the Lessor's Solicitors in relation to the lease of the Lessor's Surveyor and Solicitors in relation to sub-divisional costs and of the Lessor's Architects relating to the erection of the building.
- F. Covenants by the Lessee that without prejudice to any other obligation imposed by the Lessor under the lease the Lessee shall not use or permit or suffer the use of the premises hereby leased or in part thereof:—
- (a) Otherwise than for commercial, retail, residential and garaging purposes including public entertainment Provided that in the case of any public entertainment or the use of any auditorium in any leased premises the prior consent by the Standing Committee to any proposed use shall be first obtained in writing;
  - (b) for any illegal or immoral purpose;
  - (c) for the sale by wholesale of tobacco in any form;
  - (d) in any way connected with gambling;
  - (e) for the sale or distribution on the said premises of liquor (construed in this paragraph (e) as it was defined in the Liquor Act, 1912 as at 22 August 1966 but so as to exclude liquor produced and sold or distributed for medicinal purposes or for purposes other than human consumption) in any of the following ways:—
    - (i) in a restaurant;
    - (ii) at social functions held in premises used commercially as reception rooms;
    - (iii) on the premises of a club or any like association;
    - (iv) in or from any hotel shop or other point of delivery;
    - (v) otherwise (to the extent to which it is not referred to in sub-paragraphs (i) to (iv) inclusive of this paragraph (e)) for the manufacture sale or distribution of any liquor otherwise than in the course of or incidental to a business not carried on as a main or as one of a number of main businesses for the manufacture, sale or distribution of liquor;

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- (f) in any way connected with narcotic drugs except as part of the normal trading practices of a registered chemist or a registered pharmacist;
  - (g) for the erection of any sign or advertisement which expressly or impliedly refers to tobacco or alcoholic liquor in such a position as to be visible from the outside of the premises leased or any part thereof provided that this prohibition may be waived by the Lessor in the case of any non-illuminated signs relating to tobacco in or adjacent to any kiosk or shop premises which relate to goods sold therein;
  - (h) on Sundays for purposes of trade except the operation of automatic vending machines in essential purposes and for such trade as the law may at any time and from time to time permit authorise or make lawful for the sale of food and petrol or pharmaceutical supplies and other necessary emergent services between the hours of 12 noon and 6 p.m. or such other hours as the Lessor with the approval of the Standing Committee may agree to in writing from time to time.
- G. A covenant by the Lessee not without the consent of the Lessor to name or permit any other person or body to name the building by any name in any way imputing a connection with the Lessor or the Parish of St. Luke Miranda.
- H. A proviso for re-entry on non-payment of rent or non-performance of the covenants and conditions.
- I. A covenant by the Lessor for quiet enjoyment.
- J. A covenant by the Lessee not to use the demised premises other than for:—
- (i) The sale by retail of petrol oil batteries tyres accessories and other things associated with motor vehicles;
  - (ii) The supply of compressed air;
  - (iii) The fitting removing and exchanging of tyres and the repairing of tubes;
  - (iv) The charging of batteries;
  - (v) The lubrication of motor vehicles;
  - (vi) The adjustment of carburettors;

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- (vii) The cleaning and adjustment of spark plugs and other minor running repairs adjustments and maintenance in connection with motor vehicles;
  - (viii) The receipt of tyres for retreading and other processes and the re-delivery thereof;
  - (ix) The rendering of minor services incidental to any of the foregoing.
- K. A covenant to keep in good repair and deliver up in the same condition at the expiration of the lease.
- L. Such other covenants and conditions as may be approved and required by the Lessor.  
PROVIDED that the Standing Committee by resolution may vary any of the conditions contained in this Clause 4.
5. The Corporate Trustee shall apply the rents in respect of the said lease as follows:—
- (a) First, in payment of the costs and disbursements of and incidental to this Ordinance and of any subdivision and of any lease granted pursuant hereto to the extent that such costs and disbursements are not paid by the Lessee;
  - (b) Secondly, in payment of any costs and disbursements of and incidental to this Ordinance and of any lease granted pursuant hereto which have been paid by the said Parish;
  - (c) Thirdly, in payment of the amount by which any assessment made under the General Assessment Authorisation Ordinance 1959 or under the Special Purposes Assessment Ordinance 1959 or under any ordinance amending or replacing those ordinances or any similar ordinance to those ordinances made upon the Parish within which the land described in the Second Schedule is situated at the time of such assessment is increased by virtue of the inclusion of the rent paid under the lease in the income of that Parish;
  - (d) Fourthly, in or towards discharge of the loan from the Rural Bank of New South Wales secured upon the land described in the First Schedule such loan having been made for the purpose of the erection of the church hall now erected upon the land comprised in the First Schedule;

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- (e) Fifthly, in or towards discharge of the loan from the Rural Bank of New South Wales secured upon the land described in the First Schedule such loan having been made for the purpose of the erection of the new church now erected upon the land comprised in the First Schedule;
- (f) Sixthly, the balance of such rents from time to time to such purpose or purposes as may be determined by resolution of the Parish Council of the Parish of St. Luke Miranda or any Parish into which it may be subsequently formed and approved by resolution of the Standing Committee.

6. This Ordinance may be cited as "St. Luke's Miranda Declaration and Variation of Trusts and Lease Ordinance 1970".

**FIRST SCHEDULE**

**FIRST PART**

ALL THAT piece or parcel of land situate in the Shire of Sutherland, Parish of Sutherland and County of Cumberland of irregular dimensions containing an area of about 1 acre 3 roods 21 perches being part of Portions 6 and 34 of the said Parish and being the whole of the land in Certificate of Title Volume 2950 Folio 112.

**SECOND PART**

AND ALSO ALL THAT piece or parcel of land situated as aforesaid having a frontage to Jackson Avenue of about 37.99 links a splay corner of about 41.7 links a frontage to The Kingsway of 231.7 links a boundary on the Eastern side of 68.29 links and a boundary on the Southern side of 262.2 links containing an area of 27½ perches or thereabouts being the closed part of the road shown as The Kingsway in Plan R26074/1603 in the Department of Lands and being the whole of the land in Certificate of Title Volume 7745 Folio 247.

**SECOND SCHEDULE**

ALL THAT piece or parcel of land situate as aforesaid having a common boundary of 110' with the land shown in Certificate of

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Title Volume 2950 Folio 112 as "public school" a frontage to The Kingsway of 145' a boundary on the South-eastern side of 62' a boundary on the Eastern side of 75' a rear line on the South of 105' (be all the said dimensions a little more or a little less) as shown on plan of subdivision by Registered Surveyor G. W. Oborn and being part of the land in Certificates of Title Volume 2950 Folio 112 and Volume 7745 Folio 247.

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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 26th day of October, 1970.

W. L. J. HUTCHISON,  
Secretary.

I ASSENT to this Ordinance.

MARCUS LOANE,  
Archbishop of Sydney.

26/10/1970.