

St. Michael's Surry Hills Resumption.

5/19/15

AN ORDINANCE to authorise The Church of England Property Trust Diocese of Sydney (hereinafter called "The Property Trust") to receive from the Municipal Council of Sydney (hereinafter called "The Council") or out of Court the amount of compensation money to be paid by the Council in respect of the resumption by the Council of certain land forming the site of St. Michael's Surry Hills Church Parsonage and School House and the land held in connection therewith and also to declare the trusts upon which the said compensation money and also certain land to be assured to the Property Trust by the Council as and by way of part compensation for the said resumption shall be held.

WHEREAS by an Indenture of Conveyance bearing date the 23rd day of February 1861 Registered No. 627 Book 71 made between Edward Flood of the first part George Henry Rowley and Henry Lumsdaine of the second part and the Bishop of Sydney of the third part the lands and hereditaments comprised and described in the first part of the first Schedule hereto were for the consideration therein mentioned assured unto and became vested in the Bishop of Sydney his successors and assigns in trust for the United Church of England and Ireland in New South Wales upon the trusts in the said Indenture of Conveyance expressed and contained namely upon trust for the appropriation thereof as the site of a dwelling house garden and other appurtenances for the Clergyman duly appointed to officiate in the Church of the United Church of England and Ireland as by law established erected at Surry Hills and known as "St. Michael's" in conformity with the provisions of an Act of the Governor and Legislative Council of the Territory of New South Wales made and passed in the eighth year of the reign of His Late Majesty King William the Fourth intituled "An Act to regulate the temporal affairs of Churches and Chapels of the United Church of England and Ireland in New South Wales" and of a certain other Act of the Governor and Legislative

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Council of the said Territory made and passed in the seventh year of the Reign of His said Late Majesty King William the Fourth intituled "An Act to promote the building of Churches and Chapels and to provide for the maintenance of Ministers of Religion in New South Wales" so far as the same were and might be in force and might apply to this matter and for no other purpose whatsoever AND WHEREAS by another Indenture of Conveyance dated the 10th day of July 1871 Registered No. 631 Book 125 made between Esther Dodd and Frances Ann Dodd of the one part and the Bishop of Sydney of the other part the lands and hereditaments comprised and described in the second part of the said First Schedule hereto were for the consideration therein mentioned assured unto and became vested in the Bishop of Sydney his heirs and successors to the intent that part of the land thereby assured should be used as a site for the erection of a Church to be devoted to the worship of Almighty God according to the Rites and Ceremonies of the United Church of England and Ireland And to the further intent that the other part or parts of the said land should be used as a site or sites for the erection of a dwelling house and of a Schoolhouse or one of them such dwelling house if the same should be erected to be inhabited by the Minister who should for the time being be licensed to or in respect of the Church so to be erected as aforesaid and such School if the same should be erected to be used for the teaching and instruction therein of children either gratuitously or otherwise according to such system under such regulations and in such manner in all respects as should from time to time be directed or sanctioned by the Bishop of or in connection with the United Church of England and Ireland within whose Diocese such Schoolhouse should for the time being be situate and to no other uses ends intents and purposes whatsoever. AND WHEREAS by another Indenture of Conveyance bearing date the eleventh day of July 1902 Registered No. 898 Book 715 made between The Reverend James Napoleon Manning of the one part and The Property Trust of the other part. After reciting that by "The St. Michael's Surry Hills School Land Sale Ordinance of 1890" it was ordained declared and directed that certain lands therein described should be sold and that the proceeds arising from the said sale should be applied after payment of certain expenses therein mentioned in or towards the payment of the purchase money of a site for a School House in Albion Street

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Surry Hills aforesaid adjoining St. Michael's Church of England Church and Parsonage Surry Hills aforesaid and that such lands when so purchased should be vested in The Property Trust AND ALSO that the lands so directed to be sold had been sold and the land thereafter described (together with other land under the provisions of the Real Property Act) and being portion of the said site thereinbefore mentioned had been purchased out of the proceeds of such sale for a Schoolhouse in connection with St. Michael's Church aforesaid as directed by the said Ordinance AND ALSO that the said James Napoleon Manning in whom the said land thereafter described was then vested had agreed and consented to vest the same in The Property Trust in accordance with the direction contained in the said Ordinance the said James Napoleon Manning (in pursuance of the direction contained in the said Ordinance and in consideration of the premises) did thereby assure unto The Property Trust and its successors ALL THAT piece of land described in the Schedule thereto and being the land described in the first part of the Second Schedule to these presents to hold the same together with the appurtenances unto and to the use of The Property Trust its successors and assigns for ever UPON TRUST and for the purpose declared and directed in the said Ordinance AND WHEREAS by a Certificate of Title under the provisions of the Real Property Act of the State of New South Wales and dated the twentieth day of May 1891 Registered Volume 1014 Folio 38 The Property Trust is registered as the proprietor of an Estate in fee simple of and in the land described in the second part of the Second Schedule hereto and which last mentioned land is referred to in the lastly before recited Indenture of Conveyance as being under the provisions of the Real Property Act and is the residue of the land held by The Property Trust upon trust for the site of a Schoolhouse in accordance with the said "The St. Michael's Surry Hills School Land Sale Ordinance of 1890" AND WHEREAS by an Indenture of Mortgage dated the twenty-eighth day of October 1902 Registered No. 638 Book 723 made between The Property Trust of the one part and John Kent and James Plummer (since deceased) of the other part the land and hereditaments comprised and described in the hereinbefore recited Indenture of Conveyance dated the eleventh day of July 1902 were in pursuance of the provisions of "The St. Michael's Surry Hills School Land Mortgage Ordinance of 1902" assured unto and to the use of the said John Kent and James

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Plummer by way of Mortgage for securing the repayment to them of the sum of £500 advanced to The Property Trust for the purpose of completing the erection of a Schoolhouse on the said land and for other the purposes in the said Ordinance mentioned together with interest upon the said sum payable at the rate and times therein mentioned AND WHEREAS by a Memorandum of Mortgage under the provisions of the Real Property Act 1900 and also dated the twenty-eighth day of October 1902 and Registered No. 352358 the lands and hereditaments described in the second part of the said Second Schedule were also mortgaged by The Property Trust to the said John Kent and James Plummer as collateral security to the before recited Indenture of Mortgage of the same date AND WHEREAS by Notice of Resumption dated the sixth day of March 1912 under the Common Seal of the Council the Council in pursuance of the power and authority given to or vested in the Council by the "Sydney Corporation Amendment Act 1905" and otherwise did declare and give notice that the lands described in the Schedule thereto (which comprise the lands described in the First and Second Schedules of land hereunder written) were thereby resumed by the Council under the provisions of the "Sydney Corporation Amendment Act 1905" aforesaid AND WHEREAS the said Notice of Resumption and the description in the Schedule thereto were duly published in the Government Gazette and in four of the Sydney daily newspapers on the eleventh day of March 1912 and thereupon the lands therein described became for the purposes and subject to the provisions of the said Act vested in the Council for an estate in fee simple in possession freed and discharged from all trusts obligations estates interest contracts charges rates rights of way or easements whatsoever AND WHEREAS The Property Trust and the said Archbishop respectively in pursuance of the provisions of the Public Works Act 1900 as adopted by the Sydney Corporation Amendment Act 1905 aforesaid caused Notices of Claim in respect of the resumption of the said lands and premises to be served upon the City Solicitor and the Lord Mayor and the Municipal Council of Sydney in which Notices they respectively claimed the sums of £2250 and £20,000 as and for compensation AND WHEREAS by Deed Poll dated the fifth day of March 1914 under the hand and seal of the said Archbishop the said Archbishop in pursuance of the provisions contained in the "Church of England Property Trust Incorporation Act 1881" did thereby

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consent that the compensation moneys and interest payable to him in respect of the resumption of the lands described in the First Schedule of lands hereunder written^d should become vested in The Property Trust its successors and assigns subject to and upon the trusts in the aforesaid Indentures of the tenth day of July 1871 and the twenty-third day of February 1861 respectively contained AND WHEREAS by an Agreement made the ninth day of August 1915 between The Council of the first part The Property Trust of the second part John Kent of the third part and The Most Reverend John Charles Wright (thereinafter called the Archbishop) of the fourth part and being an Agreement for the settlement of all matters in dispute between the parties thereto arising in any way out of the hereinbefore recited resumption it was amongst other things agreed that the Council should pay the sum of £7,500 without interest into the Equity Court to the credit of an Account to be entitled "Ex parte The Municipal Council of Sydney in the matter of the claims of The Church of England Property Trust Diocese of Sydney and the Archbishop of Sydney or other the person or persons entitled thereto" AND FURTHER that the Council should thereupon transfer or convey to The Property Trust (subject to such provision as might be necessary for the purpose of demolishing such parts of the buildings standing on the lands described in the First and Second Schedules hereto as are outside the limits of the land described in the Third Schedule hereto) the land described in the Third Schedule hereto AND WHEREAS by reason of the said resumption it has become impossible to carry out or observe the respective particular purposes to which the said respective lands and hereditaments described in the respective First and Second Schedules hereto are by such respective trusts as aforesaid devoted AND WHEREAS it is expedient that the trusts upon which The Property Trust shall hold the said land and hereditaments described in the Third Schedule hereto should be declared AND FURTHER that The Property Trust should be authorised to receive the amount of compensation money and interest thereon to be paid by the Council in the matter of the said resumption and that powers should be conferred upon The Property Trust to apply or to invest the same and the income arising therefrom in the manner hereinafter appearing NOW THEREFORE the Synod of the Diocese of Sydney in pursuance of the powers in that behalf conferred upon it by the Constitutions for the management

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and good government of the Church of England within the State of New South Wales and of all powers vested in the said Synod by the "Sydney Bishopric and Church Property Act 1887" and the "Church of England Property Act of 1889" ordains declares directs and rules as follows:—

1. In the construction and for the purpose of this Ordinance the following expressions shall bear the respective meanings set against them.

"The Property Trust." The Church of England Property Trust Diocese of Sydney its successors and assigns.

"Parish Authority." The body empowered under the provisions of the "Sydney Church Ordinance 1912" or any Ordinance amending or taking the place of the same to control funds and property of the said Church of St. Michael's Surry Hills.

"The Compensation Money." The money paid or payable as compensation for the resumption of the lands described in the First and Second Schedules hereto.

2. By reason of the circumstances before recited which have occurred since the creation of the said respective recited trusts it has become impossible or inexpedient to carry out or observe as to the lands described in the First and Second Schedules hereto the particular purpose or purposes to which the said lands were by the said respective trusts devoted.

3. The Property Trust is hereby authorised to receive from the Council the amount of compensation money to be paid by the Council as part compensation in respect of the resumption by the Council of the said land described in the First and Second Schedules hereto or in the event of the said compensation money and interest being paid into Court The Property Trust is hereby authorised to receive the same from the Master in Equity with all interest accruing due thereon.

4. The Property Trust is hereby authorised to give and execute effectual receipts and releases for the compensation money and interest and the receipt of The Property Trust shall effectually discharge the Council or the Master in Equity from being concerned to see to the application thereof or being answerable for the loss or misapplication thereof.

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5. The compensation money shall be applied by The Property Trust in and towards all or any of the following purposes:—

- (a) In paying and discharging all costs and expenses incurred in and about the said resumption and the preparation and completion of the hereinbefore recited Deed Poll of the fifth day of March 1914 and the Agreement of the ninth day of August 1915 and of the Ordinance of Synod approving the terms of the lastly mentioned Agreement as well as of these presents and also all costs and expenses which may be incurred in or about the obtaining payment by the Property Trust of the compensation money and in the execution of the trusts hereby declared including the legal expenses and fees which may be incurred in order to vest in The Property Trust the said land described in the said Third Schedule hereto.
- (b) In paying and discharging the principal and interest moneys owing upon the security of the before recited respective Indenture and Memorandum of Mortgage of the twenty-eighth day of October 1902 and of all costs and expenses in connection therewith.
- (c) In paying for the cost of demolishing the Rectory and also such parts of the Church building and School Hall standing upon the lands described in the First and Second Schedules hereto as are outside the boundaries of the land described in the Third Schedule hereto and also the cost of demolishing such further part or parts thereof or the whole of the said Church building and School Hall or other of the said buildings and appurtenances as the Property Trust may with the approval of the Archbishop of Sydney consider expedient.
- (d) In expending and applying so much of the compensation money as the Parish Authority shall with such approval as aforesaid deem expedient (but not exceeding the sum of £2000) in re-building or restoring and making repairs and additions to the said Church and in and towards the costs charges and expenses (including Architect's fees) in and about or in relation to the negotiation preparation and execution of the necessary contract or contracts for the said work.

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- (e) In expending and applying so much of the compensation money as the Parish Authority shall with such approval as aforesaid deem expedient but not exceeding the sum of £2000) in erecting on portion of the land comprised in the Third Schedule hereto a dwelling-house with a garden and other appurtenances for the Clergyman duly appointed to officiate in the Church of St. Michael and in and towards the costs charges and expenses (including Architect's fees) in and about or in relation to the negotiation preparation and execution of the necessary contract or contracts for the erection of the said building or otherwise in relation thereto.
- (f) In expending and applying so much of the said compensation money (not exceeding £200) as the Parish Authority shall with such approval as aforesaid deem expedient in repairing or restoring the Parish Hall and in the erection of suitable outbuildings and fences and in restoring the grounds around the said Church Rectory and School Hall to their former condition.
- (g) In applying the sum of £300 as a contribution to "The Church Buildings Loan Fund for the Diocese of Sydney."
- (h) In paying the rent of a temporary residence for the Clergyman for the time being of the said Church of St. Michael as from the date of his vacating the Rectory intended to be demolished as aforesaid until a new Rectory shall have been erected as hereinbefore provided and also to pay to the said Clergyman such amount as The Property Trust with the approval of the Archbishop of Sydney may think reasonable (but not exceeding £100) by way of compensation for the disturbance occasioned him by the removal of his said residence.

6. Any part of the said compensation moneys in the possession of The Property Trust and not immediately required to be applied as aforesaid may until such application be invested by The Property Trust in any Stocks Funds or Securities of or guaranteed by the Government of the Commonwealth of Australia or of or guaranteed by any of the States in the said Commonwealth

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of Australia or on mortgage of freehold properties in any part of New South Wales with power from time to time to vary any such investments for any other or others of them and pending such investments may be deposited at interest with the Commonwealth and State Savings Banks or either of them or with any Joint Stock Company carrying on the business of Bankers in Sydney.

7. The interest accrued on the amount of the said compensation money up to the date when the same shall be received by The Property Trust (if any) and the income arising from any such investments or deposits as aforesaid shall be applied (first) in paying and discharging the Assessment for Synod and Registry expenses and insuring Parish Church property against loss by fire and any other pecuniary obligations imposed by any Ordinance of Synod upon the Parish of St. Michael or the Clergyman licensed thereto. And the balance (if any) of the said interest and income shall be paid by The Property Trust to the Parish Authority for the time being of the said Church of St. Michael and be controlled by them as Parish Church funds and property within the meaning of the "Sydney Church Ordinance 1912" or any Ordinance or Ordinances amending or taking the place of the same.

8. The Property Trust shall hold the land and hereditaments comprised in the Third Schedule hereto when the same shall have been assured unto it UPON TRUST as to such part or parts thereof as The Property Trust shall with the approval of the Archbishop of Sydney deem expedient as the site for the said Church of St. Michael as to a further part or parts thereof as the site of a Dwelling House with a garden and other appurtenances for the Clergyman duly appointed an officiate in the said Church of St. Michael and as to the residue of the said lands and hereditaments as the site of a Schoolhouse and/or Parish Hall for use in connection with the said Church.

9. The said proceeds of sale or any part thereof may be applied in lieu of the purposes aforesaid to such other purposes as may hereafter from time to time be determined by the Synod.

10. This Ordinance shall be styled and cited as "St. Michael's Surry Hills Resumption Ordinance of 1915."

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FIRST SCHEDULE.

First Part.

All that parcel of land situate in Botany Street and contiguous to St. Michael's Church being a portion of the Riley Estate described or known as part of Block 7E bounded on the North by a Lane 10 feet wide commencing at its junction with a Lane 20 feet wide and bearing Westerly 21 feet on the West by a line bearing Southerly 53 feet dividing it from other portion of Mr. Flood's land on the South by a line bearing North-easterly 42 feet dividing it from the Church land and on the East by the abovementioned Lane 20 feet wide bearing Northerly 39 feet 4 inches to the point of commencement be the said several dimensions respectively a little more or less.

Second Part.

All that piece or parcel of land situate lying and being on the Surry Hills in or near the City of Sydney in the Parish of Alexandria County of Cumberland bounded on the North by Riley's Estate 115 feet on the East by land of Edward Flood by a South-easterly line of feet on the South by a new Street 80 feet and on the West by land of P. Hayden 86 feet being Lot No. 5 in the particulars of sale and ground plan or chart thereof exhibited at the time of a certain sale by auction which took place on the 23rd day of November 1833 And secondly all that piece or parcel of land containing by admeasurement 39 $\frac{1}{4}$ perches more or less situate in the County of Cumberland Parish of Alexandria and City of Sydney allotment No. 2 and part of Nos. 1, 3, and 4 and 28 of Block 7E of the Riley Estate Surry Hills commencing in Botany Street distant 74 feet 4 inches Northerly from the Southernmost corner of that block and bounded towards the East by 101 feet 3 inches of Botany Street bearing North 18 degrees West towards the North by a South-westerly line of 152 feet 2 inches to the South-west boundary of said Block 7E towards the South-west by 121 feet 7 inches of that boundary bearing East 24 degrees South and towards the South-east by a line of 62 feet 6 inches North-easterly to the commencing corner in Botany Street.

SECOND SCHEDULE.

First Part.

All that piece or parcel of land situated at Sydney in the Parish of Alexandria County of Cumberland aforesaid be the

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hereinafter mentioned several dimensions a little more or less being a part of Block E7 of the Riley Estate Surry Hills commencing at the intersection of the Eastern side of Church Street with the Southern side of Flood's Lane and bounded thence towards the North-west by that Lane bearing North-easterly 59 feet $7\frac{3}{4}$ inches thence towards the South-east by a line bearing South-westerly 53 feet 4 inches thence towards the South-west by a line bearing North-westerly 61 feet $2\frac{3}{4}$ inches to Church Street aforesaid and towards the North-west by that Street bearing North-easterly 8 feet 4 inches to the point of commencement.

Second Part.

That piece of land situated at Surry Hills in the City of Sydney Parish of Alexandria and County of Cumberland containing $19\frac{1}{4}$ perches or thereabouts commencing on the Northern side of Albion Street at its intersection with Church Street and bounded thence on the South by the building line of Albion Street bearing Easterly 39 feet 9 inches to land of the Bishop of Sydney on the South-east by that land bearing North-easterly 89 feet 11 inches to other land of Edward David Madgwick on the North-east by that land bearing North-westerly 61 feet $2\frac{3}{4}$ inches to Church Street aforesaid and on the North-west and on the West by that Street being lines bearing South-westerly 38 feet $2\frac{1}{4}$ inches and Southerly 72 feet $10\frac{1}{4}$ inches to the point of commencement.

THIRD SCHEDULE.

All that piece or parcel of land situate lying and being in the City of Sydney Parish of Alexandria County of Cumberland and State of New South Wales and be the hereinafter dimensions all more or less commencing at the intersection of the Eastern building line of Flood's Place with the Northern building line of Albion Street and bounded thence on the West by that building line of Flood's Place aforesaid bearing Northerly about 110 feet to the new Southern building line of Flood's Lane as widened to 20 feet thence on the North by that building line and its prolongation crossing Clare Street bearing Easterly about 172 feet to the new Western building line of Flinders Street as widened to 90 feet thence on the East by that building line bearing Southerly about 140 feet to the Northern building line of Albion Street Extension thence on part

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of the South by that building line bearing Westerly about 105 feet to the Northern building line of Albion Street thence again on the South by that building line bearing Westerly about 122 feet to the point of commencement.

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

E. W. MOLESWORTH,
Chairman of Committees.

We certify that this Ordinance was passed on 9th September, 1915.

E. CLAYDON } *Secretaries of*
W. R. BEAVER } *the Synod.*

I assent to this Ordinance.

JOHN CHARLES SYDNEY.

23rd September, 1915.