
*The Church of England Homes Leasing and/or Sale
Ordinance (Leura Land) 1937.*

No. 3, 1937.

AN ORDINANCE to authorise the leasing and/or sale of certain land at Leura held for the benefit of The Church of England Homes and to provide for the application of the proceeds thereof and for further purposes.

WHEREAS by The Church of England Homes Constitution Ordinance 1930 the amalgamation of the two societies theretofore existing and known respectively as The Church of England Homes and The Church of England Committee for Homes and Hostels for Children was approved and the constitution of the amalgamated Society known as The Church of England Homes (hereinafter referred to as the said Society) set forth in the schedule to the said ordinance was thereby ratified and confirmed and by the said ordinance it was declared that the said Society should be thenceforth managed and conducted pursuant to the provisions of the said constitution and with respect to the properties set out in the said constitution and to the property to be thereafter acquired thereunder and in all respects should have and exercise all the rights powers and be otherwise subject to all the provisions therein contained AND WHEREAS the land described in the first schedule hereto being the land described in paragraph (b) of the second part of the schedule to the said constitution is vested in The Lord Bishop of Sydney as a Corporation Sole (hereinafter referred to as The Archbishop) in trust for the benefit of the said Society as appears from the said Ordinance and the said constitution AND WHEREAS by the said constitution the management conduct and control of the said Society is vested in a committee to be elected as therein provided AND WHEREAS the land described in the first schedule hereto is no longer suitable for the purpose of carrying on the work of the said Society and the said Society has no further use for the same and the Committee of the said Society has agreed to lease the same to one Percy Abbott Byrnes and grant to the said Percy Abbott Byrnes an option to purchase the same in the terms of the form of lease set forth in the second schedule hereto which has been accepted and agreed to by the said Percy Abbott Byrnes AND WHEREAS by reason of circumstances subsequent to the creation of the said recited trusts it is expedient to lease the said

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land to the said Percy Abbott Byrnes and grant to the said Percy Abbott Byrnes an option to purchase the same in terms of the said form of lease NOW THEREFORE the Standing Committee of the Synod of the Diocese of Sydney in pursuance of the powers in that behalf conferred upon it by the Church of England Trust Property Act 1917 and the Land Ordinance Procedure and Delegation of Powers Ordinance 1926 and in pursuance of the powers in that behalf conferred upon the said Synod by the Constitutions for the management and good government of the Church of England in the State of New South Wales and of all other powers thereunto enabling it ordains declares determines directs and rules as follows:—

1. By reason of circumstances subsequent to the creation of the said recited Trusts it is expedient to lease and/or sell the land described in the first schedule hereto.

2. The agreement of the Committee of the Church of England Homes to lease the land described in the first schedule hereto to Percy Abbott Byrnes and grant to the said Percy Abbott Byrnes an option to purchase the said land in terms of the form of lease contained in the second schedule hereto is hereby ratified and confirmed and the said land and the buildings and other improvements erected thereon may be leased by The Archbishop at the request of the Committee of the Church of England Homes to the said Percy Abbott Byrnes for the term at the rent and generally upon the terms and conditions set out in the form of lease contained in the second schedule hereto and The Archbishop may at the like request grant to the said Percy Abbott Byrnes as part of or in connection with such lease an option to purchase the said land at the price and upon the terms and conditions set out in the said form of lease and if and when such option to purchase shall be exercised by the Lessee of the said land may at the like request sell the said land to the Lessee thereof upon the terms of the said option and The Archbishop is hereby authorised to execute a lease of the said land to the said Percy Abbott Byrnes and grant to him an option to purchase the said land in terms of the said form of lease and to execute a transfer or transfers of the said land to the Lessee thereof if and when the said option to purchase shall be exercised by the said Lessee and to accept a mortgage of the said land to secure payment of the balance of the purchase price for the said land and interest thereon.

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3. The rents profits and income to arise in respect of the leasing of the said land under the powers herein contained shall be paid to the Treasurer for the time being of The Church of England Homes and shall be applied by the Committee for the time being of The Church of England Homes firstly in payment of all rate taxes and other outgoings payable in respect of the said land insofar as such rates taxes and other outgoings may be payable by The Church of England Homes or The Archbishop and the balance of such rents profits and income shall be applied and utilised by the said Committee for the benefit of The Church of England Homes as the said Committee shall determine.

4. The moneys to arise from any sale of the said land under the powers herein contained or payable pursuant to any mortgages of the said land securing payment of the purchase price therefor or any part thereof and interest thereon shall be paid to The Archbishop and such part of such moneys as shall be required for that purpose shall be applied in payment of the costs fees and expenses of and incidental to this Ordinance and of and incidental to the said sale and the balance of such moneys shall be paid by The Archbishop to the Treasurer for the time being of The Church of England Homes to be applied and utilised by the Committee for the time being of The Church of England Homes in its discretion in and towards the carrying on and the continuing of the work of the said Society.

5. This Ordinance shall be styled and cited as "The Church of England Homes Leasing and/or Sale Ordinance (Leura Land) 1937."

THE FIRST SCHEDULE HEREINBEFORE REFERRED TO.

ALL THAT parcel of land situate at Leura in the Shire of Blue Mountains Parish of Jamieson and County of Cook containing an area of 1 acre 1 rood 38½ perches or thereabouts having a frontage of about 206 feet 8 inches to Railway Parade by depths of about 333 feet 4 inches on one side and about 346 feet 6 inches on the other side being Lots 3, 4 and 5 and part of Lot 9 of Section 4 Deposited Plan 1175 and being the whole of the land comprised in Certificate of Title dated the 14th day of May 1910 Registered Volume 2056 Folio 88.

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THE SECOND SCHEDULE HEREINBEFORE REFERRED TO.

New South Wales.

MEMORANDUM OF LEASE.

Real Property Act, 1900.

I, THE LORD BISHOP OF SYDNEY (hereinafter called or included in the expression Lessor) being registered as the proprietor of an estate in fee simple in the land hereinafter described, subject, however, to such encumbrances, liens, and interests, as are notified by memorandum underwritten or endorsed hereon: DO TH HEREBY LEASE unto PERCY ABBOTT BYRNES of Leura in the State of New South Wales, Clerk in Holy Orders (hereinafter called or included in the expression Lessee) ALL THAT piece of land containing one acre one rood thirty-eight and three-quarters perches or thereabouts situated in the County of Cook Parish of Jamieson Shire of Blue Mountains at Leura being the whole of the land comprised in Certificate of Title dated 14th day of May A.D. 1910, Registered Volume 2056 Folio 88 to be held by the said Lessee as tenant for the term of three years computed from the First day of February 1937 at the yearly rent of SEVENTY-EIGHT POUNDS (£78) payable as follows: By equal monthly instalments of SIX POUNDS TEN SHILLINGS (£6/10/0) in advance such monthly instalments to be paid on the first day of each and every month during the said term the first of such monthly instalments to be paid on the First day of February One thousand nine hundred and thirty-seven subject to the following covenants, conditions and restrictions, viz.:—

1. To the covenants and powers implied in every Memorandum of Lease by virtue of the Conveyancing Act, 1919-1932, Secs. 84 and 85 or such of them or so far as not hereby expressly negatived or modified. The covenants implied in every lease by virtue of Section 84 of the said Act are hereby negatived.

THE powers implied in every lease by virtue of Section 85 (1) of the said Act are hereby varied as follows: Section 85 (1) (a) shall be read as though the words "twice in every year" appearing therein were omitted and the words "at any time" substituted therefor. Section 85 (1) (d) shall be read as though the words "one month" and "two months" wherever therein occurring were omitted and the words "seven days" substituted therefor in each case.

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2. To the full effect of the covenants next hereinafter shortly noted as the same are set forth in words at length in the second column of Part 2 of the Fourth Schedule to the Conveyancing Act, 1919-32.

- (a) That the Lessee covenants with the Lessor to pay rent.
- (b) And to pay taxes including taxes for local improvements.
- (c) And to repair reasonable wear and tear and damage by fire lightning flood and tempest only excepted.
- (d) And to leave the premises in good repair (having regard to the condition thereof at the commencement of the lease) reasonable wear and tear and damage by fire lightning flood and tempest only excepted.
- (e) And to insure from fire in the joint names of the Lessor and the Lessee.
- (f) And to paint outside within the first two years.
- (g) And to paint and paper inside during the last year.
- (h) And to keep up fences.
- (i) That the Lessee will not without consent use the premises otherwise than as a Church of England School for Boys.
- (j) And will not assign or sub-let without leave no fine to be taken.
- (k) That the Lessee will not carry on any offensive trade.

3. To the following special covenants conditions and restrictions—

THE Lessee hereby covenants with the Lessor:—

- (a) That the Lessee will at all times during the continuance of the term at his own cost and expense duly and punctually comply with and carry out the requirements of any notice given by the Local Municipal Council, Board of Public Health or any other Public or Statutory Authority whether served upon the Lessor the Lessee or any other person with reference to or affecting the demised premises or any part thereof or the use to which the same shall be put by the Lessee or any person or persons claiming under him.
- (b) That the Lessee will not without the consent of the Lessor in writing first had and obtained carry out or

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make any structural alterations to the demised premises or any building thereon and in the event of the Lessee desiring to carry out and make any such structural alterations and obtaining the consent of the Lessor to the same he shall when making application for such consent submit to the Lessor proper plans and specifications showing the nature and extent of the alterations proposed to be carried out or made by him and any such alterations consented to by the Lessor shall be made or carried out by and at the cost of the Lessee to the full satisfaction of the Architect for the Lessor and if so required under the supervision and direction of the Architect of the Lessor.

- (c) That the Lessee will not permit or allow the demised premises or any part thereof to be used for any immoral purpose and will not permit or allow the sale at or upon the demised premises of any spirituous or intoxicating liquor.
- (d) That the Lessee will at all times during the term keep and at the expiration or sooner determination of the term yield up the grounds of the demised premises in a clean and tidy condition and free of all undergrowth and noxious weeds or plants.
- (e) That the Lessee will during the continuance of the term carry on and conduct at and upon the demised premises in a proper and efficient manner a Church of England School for Boys and in so doing will comply with the requirements of any legislation of the State of New South Wales concerning or affecting such school.

4. AND IT IS HEREBY AGREED AND DECLARED by and between the Lessor and the Lessee:—

- (a) That if the Lessee shall pay the rent hereby reserved at the times and in manner herein provided for the payment thereof and shall duly and faithfully observe and perform the covenants herein contained and on the Lessee's part to be observed and performed the Lessee shall and may peaceably possess and enjoy the said demised premises for the term hereby created without any interference or disturbance by the Lessor or any

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other person or persons lawfully claiming by through or under it.

- (b) That if the Lessee be desirous of purchasing the reversion in fee simple of the premises hereby demised at any time prior to the expiration of the said term and shall at least three months prior to the expiration of the said term leave with the Lessor a notice to that effect then the Lessee shall be purchaser of the said reversion at the price of One thousand seven hundred pounds (£1,700) subject to the conditions following namely:—
- (i) A Contract in writing for the purchase of the said reversion to be prepared by the Lessor or his Solicitors shall forthwith be executed by the Lessee and a deposit of Two hundred and fifty pounds (£250) shall be paid to the Lessor by the Lessee on the execution of such Contract.
- (ii) The balance of purchase money shall be paid to the Lessor by three equal instalments of Four hundred and eighty-three pounds six shillings and eightpence (£483/6/8) each payable at the expiration of the first second and third years after the completion of the purchase and sale. The Lessee will also pay to the Lessor interest on the balance of purchase money from time to time remaining unpaid at the rate of Five pounds per centum per annum by quarterly payments computed from the date of completion of the purchase and sale. The Lessee will on completion execute in favour of the Lessor a Mortgage over the demised premises to secure payment of the said balance of purchase money and interest thereon such mortgage to be prepared by the solicitors for the Lessor and to be in such form and to contain such covenants and provisions as are usually contained in mortgages of a like nature prepared by such solicitors including a provision negating any moratorium legislation then in force relating thereto and also valid and enforceable personal covenants for the payment of the principal interest and other moneys thereby secured.

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- (iii) The purchase shall be completed and the aforesaid mortgage executed by the Lessee and delivered to the Lessor within three months after the leaving of the aforesaid notice with the Lessor and in the event of completion not being effected and such mortgage not having been executed by the Lessee and delivered to the Lessor within that period then the Contract for purchase and sale may be rescinded by the Lessor and thereupon the deposit of Two hundred and fifty pounds shall be forfeited to the Lessor.
- (iv) The Lessee shall until completion and execution and delivery of the aforesaid mortgage continue to pay the rent reserved by this Lease at the times and in manner hereinbefore provided for the payment of the same and to observe and perform the covenants and conditions in this Lease contained and on his part to be observed and performed and shall pay all rent up to and including the date of completion of the purchase.
- (v) On completion of the purchase and execution by the Lessee and delivery to the Lessor of the aforesaid Mortgage and on payment of all rent and other moneys owing or payable to date of completion the Lessor shall execute a Transfer of the said reversion to the Lessee such Transfer to be prepared by the Lessee.
- (vi) The costs and expenses of the Lessor of and incidental to the sale and purchase and of and incidental to the said Mortgage shall be paid and borne by the Lessee.
- (vii) The purchase and sale shall otherwise be subject to the conditions of sale adopted by the Real Estate Institute of New South Wales in connection with sales by Private Treaty of land under the provisions of the Real Property Act and all the terms and conditions of the purchase and sale shall be incorporated in and form part of the said Contract for purchase and sale.

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

R. C. ATKINSON,

Chairman of Committees.

I certify that this Ordinance was passed by the Standing
Committee of the Synod of the Diocese of Sydney this Twenty-
second day of March 1937.

H. V. ARCHINAL,

Diocesan Secretary.

I assent to this Ordinance.

HOWARD SYDNEY.

23rd March, 1937.