
*St. Barnabas Sydney (St. Bartholomew's Pyrmont) Lease
Ordinance 1970*

No. 2, 1970

AN ORDINANCE to authorise the leasing of certain land at the corner of Church and Point Streets Pyrmont, to provide for the application of the rents and profits therefrom and purposes incidental thereto.

WHEREAS by Indenture of Conveyance dated the 13th day of August, 1849 (unregistered) between Edward Macarthur of the one part and The Lord Bishop of Sydney of the other part the land and hereditaments firstly described in the First Schedule hereto were vested in The Lord Bishop of Sydney in fee simple AND WHEREAS such land is Church Trust Property held upon trust to permit and suffer to be erected and built upon the said land and hereditaments a church or chapel or minister's dwelling and school house of the United Church of England and Ireland and also to permit and suffer the same or part thereof to be used as a burial ground by the said United Church of England and Ireland AND WHEREAS by Indenture of Conveyance dated the 10th day of November 1855 between the said Edward Macarthur of the one part and The Bishop of Sydney of the other part Registered No. 178 Book 217 the land and hereditaments secondly described in the First Schedule hereto were vested in the Bishop of Sydney in fee simple AND WHEREAS such land is Church Trust Property held upon trust to permit and suffer to be erected and built upon the said land a church or chapel or minister's dwelling and school house of the United Church of England and Ireland and also permit and suffer the same or part thereof to be used as a burial ground of the said United Church of England and Ireland AND WHEREAS the land secondly described in the First Schedule contains within it the land firstly described in the First Schedule AND WHEREAS there is now erected on the said land the church known as St. Bartholomew together with a parsonage and parish hall AND WHEREAS no record can be found in the Diocesan Registry that the said Church has been consecrated AND WHEREAS by reason of the decrease of members of the Church of England in Australia residing in the neighbourhood of the said church and other circumstances which have since occurred it has become inexpedient to continue to use the same as a church of the Church of England in Australia AND WHEREAS by Indenture of Conveyance dated the 16th day of December, 1932 between The Municipal Council of Sydney of the one part and Church of England Property Trust Diocese of Sydney of the other part Registered No. 56 Book 1654

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the land and hereditaments thirdly described in the First Schedule hereto were vested in the Church of England Property Trust Diocese of Sydney (hereinafter called "the Corporate Trustee") in fee simple AND WHEREAS such land is church trust property held for the sole benefit of the Parish of St. Barnabas Sydney (St. Bartholomew's Pymont) but no trusts in writing have been declared concerning the same AND WHEREAS the land described in the First Schedule is by more recent survey described by the metes and bounds set out in the Second Schedule AND WHEREAS by Ordinance No. 47 of 1968 entitled St. Barnabas Sydney (St. Bartholomew's Pymont) Variation of Trusts and Land Sale Ordinance 1968 authority was given for the sale of the land described in the Second Schedule upon and subject to the terms and conditions therein set forth AND WHEREAS it is now proposed to lease the land described in the Second Schedule for the purpose of demolition of existing buildings and erection of residential flats in lieu thereof and to apply the rents and profits as hereinafter set forth AND WHEREAS it is further proposed to revoke the provisions of Ordinance No. 47 of 1968 AND WHEREAS it is proposed that the land described in the Third Schedule hereto be dedicated to the Council of the City of Sydney NOW the Standing Committee of the Synod of the Diocese of Sydney in the name and place of the said Synod HEREBY DECLARES ORDAINS AND DIRECTS as follows:—

1. By reason of circumstances which have arisen subsequent to the creation of the trusts upon which the land described in the Second Schedule and the Church of St. Bartholomew Pymont together with the parsonage and parish hall erected thereon 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 the land described in the Second Schedule hereto be leased subject to the dedication to the Council of the City of Sydney of the land described in the Third Schedule hereto.

2. The Corporate Trustee is hereby authorised and empowered to lease the land described in the Second Schedule subject to the dedication to the Council of the City of Sydney of the land described in the Third Schedule hereto substantially upon the terms and conditions contained in the draft Deed of Lease produced to the Corporate Trustee and signed for identification by the Secretary thereof and by the Rector for the time being of the Parish of St. Barnabas Sydney and including inter alia the following provisions:—

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- (a) The Lease will commence on the 1st day of January, 1970 and expire on the 31st day of December, 2068.
- (b) The rental payable under the said Lease shall be as follows:—
- (i) During the period from the commencing day of this Lease to the 31st day of December, 1979 at the rate of Four thousand five hundred dollars (\$4,500) per annum.
 - (ii) During each succeeding period of ten (10) years of the term of this Lease and during the period from the day following the last of such succeeding period of ten (10) years to the 31st day of December, 2068 at the highest of the following rates:—
 - (1) the rate of Four thousand five hundred dollars (\$4,500) per annum;
 - (2) the same rate as was payable during the immediately preceding period of ten (10) years; or
 - (3) whichever is the greater of 7½% or 3.0 units of percentage higher than the yield to maturity at which the Commonwealth Government issued the longest dated security offered in its most recent public loan raising prior to the date of each rental review, of the unimproved capital value on the first day of the period for which the rent then to be determined is to apply.
 - (iii) The said unimproved capital value shall be determined upon the basis set forth in the Lease and shall be the capital sum for which the fee simple of the land might be expected to realise if offered for sale on such reasonable terms and conditions as a bona fide seller would require but assuming that on the first day of the said period
 - (1) this Lease had not been granted,
 - (2) no building or buildings or other improvements comprised in the premises hereby leased had been erected on the land, but all development and other permits and consents necessary for the erection thereof had been granted and were effective, and
 - (3) there were no financial or similar restriction or hindrance or rules, regulations, ordinances and proclamations which would at the date of valuation

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- prevent the erection of the building or buildings or other improvements comprised in the premises hereby leased on the first day of the said period.
- (c) A covenant by the Lessee to demolish the existing buildings at his own expense and to obtain all necessary approvals for rebuilding within not less than four (4) months nor more than ten (10) months after the date of commencement of the Lease aforesaid with a proviso that the Lessor shall have the right at its option to remove from the site all sandstone and all memorials, windows, the organ, furniture and effects.
 - (d) A covenant by the Lessee to erect a building containing residential hostel units, within two (2) years from the date of completion of the demolition according to plans and specifications approved by the Lessor.
 - (e) A covenant by the Lessee to pay all the reasonable fees of the Lessor's architects relating to the erection of the building.
 - (f) A proviso for re-entry if the Lessee makes any default in the said demolition or the erection or completion of the building.
 - (g) Payment by the Lessee of rates, land tax, insurance and other outgoings or charges on the land to be leased.
 - (h) A covenant by the Lessee not later than the sixty-fifth year of the Lease to rebuild the premises in accordance with plans and specifications approved by the Lessor.
 - (i) A covenant by the Lessee not to use or permit or suffer the use of the premises hereby leased or any part thereof:—
 - (aa) for any illegal or immoral purposes;
 - (bb) for the sale by wholesale of tobacco in any form;
 - (cc) in any way connected with gambling or betting;
 - (dd) for the manufacture on the premises of liquor in any way or the sale, distribution or consumption on the premises of liquor in any of the following ways:—
 - (1) in a restaurant;
 - (2) at social functions held in premises used commercially as reception rooms;
 - (3) on the premises of a club or any like association; or
 - (4) in or from any hotel, shop or other point of delivery.

PROVIDED THAT the prohibitions contained in this subparagraph (dd) shall not apply to liquor manufactured sold or distributed or consumed for medicinal purposes

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- or for purposes other than for human consumption AND PROVIDED FURTHER THAT the word "liquor" shall be construed in this sub-paragraph (dd) as it was defined in the Liquor Act, 1912 as at 22nd August, 1966; or
- (ee) in any way connected with narcotic drugs except as part of the normal trading practices of a registered pharmacist or a registered chemist.
- (j) 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. Barnabas, Sydney.
- (k) a proviso for re-entry on non-payment of rent or non-performance of the covenants and conditions.
- (l) a covenant by the Lessor for quiet enjoyment.
- (m) That the Lessee will not at any time during the term of the Lease assign underlet or part with possession of the premises in whole or in part without the previous consent in writing of the Lessor such consent not to be unreasonably withheld in respect of a reasonable and responsible person or corporation.
- (n) A covenant to keep in good repair and deliver up in the same condition at the expiration of the lease.
- (o) Such other covenants and conditions as may be approved and required by the Corporate Trustee.

3. The income arising from the Lease shall be held by the Corporate Trustee for the St. Barnabas Sydney Building Fund hereinafter described and upon the termination of such Fund for the Parish of St. Barnabas Sydney for general parochial purposes absolutely PROVIDED that in any one year the Churchwardens for the time being of the Church of St. Barnabas Sydney may require payment to them of a sum not exceeding one-fifth of the income received during such year which sum shall be applied by the said Churchwardens primarily within the area of the Parish formerly served by the Church of St. Bartholomew Pymont.

4. The moneys paid to the said "St. Barnabas, Sydney Building Fund" shall 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

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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.

5. The St. Barnabas Sydney (St. Bartholomew's Pyrmont) Variation of Trusts and Land Sale Ordinance, No. 47 of 1968 is hereby repealed.

6. The Corporate Trustee is hereby empowered to dedicate to the Council of the City of Sydney the lands more particularly described in the Third Schedule hereto.

7. This Ordinance may be cited as "St. Barnabas Sydney (St. Bartholomew's Pyrmont) Lease Ordinance, 1970".

FIRST SCHEDULE

FIRST PART

ALL THAT piece or parcel of land situate lying and being at Pyrmont in the County of Cumberland in the Colony of New South Wales aforesaid containing by admeasurement two roods and four-teen perches little more or less bounded on the West by Point Street commencing at a point on the East side thereof being the junction of the said Street with Church Street bearing North nineteen degrees West two hundred and nine feet two inches on the North by a line bearing North fifty-three degrees ten minutes East eighty-five feet nine inches dividing the land being described from Allotment number sixteen on the East by a line bearing South thirty-six degrees thirty minutes East two hundred and thirty-five feet seven inches dividing it from Allotments number seventeen and on the South by Church Street bearing West twenty-two degrees forty-five minutes South one hundred and forty-nine feet to the point of commencement be the said several dimensions a little more or less.

SECOND PART

ALL THAT piece or parcel of land situate lying and being at Pyrmont in the County of Cumberland in the Colony of New South Wales aforesaid containing by admeasurement three roods and four and a half perches a little more or less bounded on the West by Point Street commencing at a point on the East side thereof bearing North nineteen degrees West three hundred and thirty-five feet two inches on the North by a line bearing North fifty-four degrees thirty minutes East forty-one feet four inches dividing the land being described from Allotment number fifteen on the East by a line

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bearing South thirty-five degrees thirty minutes East three hundred and fifty-five feet seven inches dividing it from part of Allotment number sixteen and from Allotment number seventeen and on the South by Church Street bearing West twenty-two degrees forty-five minutes South one hundred and forty-nine feet to the point of commencement be the said several dimensions a little more or less.

THIRD PART

ALL THAT piece or parcel of land containing an area of fourteen perches situate in the City of Sydney Parish of St. Andrew County of Cumberland and State of New South Wales being part of Lot 17 of the Pyrmont Estate part of fifty-five acres granted to Thomas Jones on the Fourteenth day of March One thousand seven hundred and ninety-five and part of the land resumed by the Municipal Council of Sydney by Notice of Resumption published on the Eighth day of October One thousand nine hundred and twenty-three COMMENCING at a point on the North-western building line of Church Street being the Easternmost corner of St. Bartholomew's Church land and bounded thence on the South-west by the North-eastern boundary of that land being lines bearing three hundred and twenty-seven degrees sixteen minutes twenty-five seconds for fifty-nine feet three hundred and twenty-six degrees forty-five minutes fifty seconds for sixty-four feet three inches and three hundred and twenty-four degrees forty-nine minutes twenty seconds for forty-six feet five inches respectively to the Northernmost corner of that land thence on the North-west by the North-easterly prolongation of the North-western boundary of that land being a line bearing sixty-one degrees twenty-eight minutes twenty seconds for twenty-two feet two inches to the South-western side of Ways Terrace as laid out twenty-six feet wide by the Municipal Council of Sydney thence on the North-east by part of that side of Ways Terrace being lines bearing one hundred and forty-five degrees seventeen minutes thirty-five seconds for one hundred and forty-seven feet and three-quarters of an inch and one hundred and fifty-eight degrees two minutes twenty-five seconds for twenty feet one and seven-eighths of an inch respectively to the building line common to Ways Terrace and Church Street thence on part of the South-east by that common building line being a line bearing two hundred and two degrees fifty-four minutes for seven feet one inch to the North-western building line of Church Street aforesaid and thence on the remainder of the South-east by that building line of Church Street being a line bearing two hundred and forty-seven

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degrees forty-five minutes twenty-five seconds for fifteen feet three and a quarter inches to the point of commencement.

SECOND SCHEDULE

ALL THAT piece or parcel of land situated at Pymont in the City of Sydney Parish of St. Andrew County of Cumberland being part of the land described in an unregistered deed between Edward Macarthur of London and The Lord Bishop of Sydney dated the Thirteenth day of August One thousand eight hundred and forty-nine COMMENCING at the intersection of the Eastern building line of Point Street with the Northern building line of Church Street thence on part of the West by the aforesaid Eastern building line of Point Street bearing 360 degrees 00 minutes distant 156 feet 1 inch to the North-western corner of a stone pillar thence on part of the North by consecutive lines firstly and secondly along fencing bearing 78 degrees 52 minutes distant 30 feet 3 $\frac{3}{4}$ inches bearing 79 degrees 50 minutes distant 29 feet 2 $\frac{1}{2}$ inches respectively to the South-eastern corner of the main wall of an adjoining brick building thirdly along the Southern face of a brick wall being part of a second floor balcony attached to the aforesaid adjoining building bearing 90 degrees 18 minutes distant 4 feet 0 inches thence on the remainder of the West by the Eastern face of a brick wall being part of the aforesaid second floor balcony bearing 360 degrees 18 minutes distant 0 feet 9 $\frac{1}{4}$ inches thence on the remainder of the North by a fenced line bearing 79 degrees 25 minutes distant 39 feet 10 $\frac{1}{4}$ inches thence on the North-east by consecutive lines firstly along the North-eastern face of a concrete retaining wall bearing 162 degrees 52 minutes distant 46 feet 5 inches secondly and thirdly along the North-eastern face of a stone retaining wall bearing 164 degrees 48 minutes 30 seconds distant 64 feet 3 inches bearing 165 degrees 19 minutes distant 59 feet 0 inches respectively thence on the South by consecutive lines along the aforesaid Northern building line of Church Street firstly bearing 265 degrees 45 minutes 54 seconds distant 44 feet 1 inch secondly bearing 265 degrees 18 minutes 45 seconds distant 103 feet 6 inches to the point of commencement containing an area of 1 rood 34 $\frac{1}{2}$ perches by admeasurements. AND ALSO ALL THAT piece of land commencing at a point on the North-western building line of Church Street being the Easternmost corner of St. Bartholomew's Church land and bounded thence on the South-west by the North-eastern boundary of that land being lines bearing 327 degrees 16 minutes 25 seconds for 59 feet 328 degrees 45 minutes 50 seconds for 64 feet 3 inches and 324 degrees

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49 minutes 20 seconds for 46 feet 5 inches respectively to the Northernmost corner of that land thence on the North-west by the North-easterly prolongation of the North-western boundary of that land being a line bearing 61 degrees 28 minutes 20 seconds for 22 feet 2 inches to the South-western side of Ways Terrace as laid out 26 feet wide by the Municipal Council of Sydney thence on the North-east by part of that side of Ways Terrace being lines bearing 145 degrees 17 minutes 35 seconds for 147 feet and $\frac{3}{4}$ of an inch and 158 degrees 2 minutes 25 seconds for 20 feet $1\frac{1}{2}$ of an inch respectively to the building line common to Ways Terrace and Church Street thence on part of the South-west by that common building line being a line bearing 202 degrees 54 minutes for 7 feet 1 inch to the North-western building line of Church Street aforesaid and thence on the remainder of the South-east by that building line of Church Street being a line bearing 247 degrees 45 minutes 25 seconds for 15 feet $3\frac{1}{4}$ inches to the point of commencement.

THIRD SCHEDULE

ALL THAT piece or parcel of land at Pymont comprising about 50 square feet having a frontage of 10 feet to Point Street and a frontage of 10 feet to Church Street being a triangular splay corner. AND ALSO all that piece or parcel of land at Pymont comprising about 20 square feet having a frontage of 3 feet to Ways Terrace both frontages being joined by a frontage of 7 feet 1 inch to the corner being a quadrilateral splay corner.

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 23rd day of February, 1970.

W. L. J. HUTCHISON,
Secretary.

I ASSENT to this Ordinance.

MARCUS LOANE,
Archbishop of Sydney.

23/2/1970.