

Austinmer Ordinance 1994

No 55, 1994

Long Title

An Ordinance to permit the sale of certain land at Austinmer, to provide for the application of the proceeds of sale, to declare the trusts of certain other land at Austinmer, to authorise the mortgaging of such land and to provide for the application of the proceeds, to amend Ordinance No 46, 1989, to permit the sale of certain land at Thirroul and to provide for the application of the proceeds of sale.

Preamble

Whereas

A. The Property Trust is the registered proprietor of the land comprised in Certificate of Title Folio Identifier 1/607410 being lot 1 in Deposited Plan 607410 ("Austinmer sale land").

B. The Austinmer sale land is church trust property and under Declaration of Trust dated 28th April, 1924 made by Edgar Potter is held to use or permit the same to be used for a church parsonage or parish hall or partly for one and partly for another or other of such purposes in connection with the Church of England in the Parish of All Saints Austinmer ("Parish").

C. By reason of circumstances which have arisen after the creation of the trusts upon which the Austinmer sale land is held it is inexpedient to carry out and observe those trusts and it is expedient that the Austinmer sale land be sold and the proceeds of sale be applied in the manner set out in this Ordinance.

D. The Property Trust is the purchaser in a certain Contract for Sale of the land described in the First Schedule ("Austinmer purchase land").

E. The Austinmer purchase land will upon the completion of the purchase and transfer be church trust property held for the sole benefit of the Parish.

F. It is expedient that on completion as aforesaid the Austinmer purchase land be mortgaged or charged to secure a sum not exceeding \$215,000 to be applied towards payment of the purchase price of the land and towards additions and alterations to the improvements erected on the land and/or other land held on trust for the Parish.

G. The Austinmer (Coledale) Land Sale Ordinance No 46, 1989 (the "1989 Ordinance") impresses certain trusts upon certain sums.

H. By reason of circumstances which have arisen after the creation of those trusts it is inexpedient to carry out and observe the trusts to the extent they are varied by this Ordinance.

I. The Property Trust is the registered proprietor of the land comprised in Certificate of Title Folio Identifier A/318256 being lot A in Deposited Plan 318256 ("Thirroul land").

J. The Thirroul land is church trust property and under Declaration of Trust made 11th November 1927 by the Property Trust is held on trust to permit the same to be used for a church parsonage or church hall or partly for one and partly for another or others of such purposes in connection with the Church of England in the Parish.

K. By reason of circumstances which have arisen after the creation of the trusts upon which the Thirroul land is held it is inexpedient to carry out and observe those trusts in part and it is expedient that the Thirroul land be sub-divided and part thereof be sold and the proceeds of sale be applied in the manner set out in this Ordinance.

Now the Standing Committee of the Synod of the Diocese of Sydney in the name and place of the said Synod Hereby Ordains Declares Directs and Rules as follows.

Part 1 - Citation

Citation

1. This ordinance may be cited as the "Austinmer Ordinance 1994".

Part 2 - Austinmer Sale Land

Declaration

2. By reason of circumstances which have arisen after the creation of the trusts on which the Austinmer sale land is held it is inexpedient to carry out and observe those trusts and it is expedient that the Austinmer sale land be sold and that the proceeds of the sale be applied in the manner set out in this ordinance.

Power of Sale

3. (1) The Property Trust is authorised and empowered to sell the Austinmer sale land within 3 years after the sale of assent to this Ordinance and thereafter only with the consent of the Standing Committee given by resolution.

(2) Such sale may be by public auction or private agreement in one or more lots and for such price or prices and subject to such terms and conditions as the Property Trust may deem appropriate.

Application of Proceeds

4. The proceeds arising from the sale of the Austinmer sale land after the payment of all outgoing to which that land may be subject, the costs of and incidental to this Ordinance and the sale shall be applied by the Property Trust towards the purchase price of the Austinmer purchase land.

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Part 3 - Austinmer Purchase Land

Declaration

5. Upon completion of the purchase and transfer the Austinmer purchase land shall be vested in the Property Trust and held upon trust for a church, hall or halls, school or other place of assembly or partly for one or another or others of those purposes or any other ancillary purposes in connection with the Anglican Church of Australia within the Diocese of Sydney for the sole benefit of the Parish or any parish or ecclesiastical district into which it may be subsequently formed or form a part.

Power to Mortgage

6. (1) Upon completion of the purchase the Property Trust is hereby empowered from time to time to mortgage the land for the purpose of borrowing the sums following -

- (a) When the power is first exercised a sum not exceeding \$215,000;
- (b) When the power is subsequently exercised such sum not exceeding \$215,000 as Standing Committee shall by resolution determine

PROVIDED that such debt shall be reduced by calendar monthly payments inclusive of principal and interest over a term not exceeding 15 years or by such other payments as the Standing Committee may by resolution from time to time approve when the power is first exercised and when the power is subsequently exercised at such rate as the Standing Committee may by resolution determine

PROVIDED FURTHER that no person or corporation advancing moneys pursuant to this ordinance shall be concerned as to whether this condition has been complied with.

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

(3) A document purporting to be a certificate signed by the Archbishop or the 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.

(4) The proceeds of any mortgage duly authorised shall be applied by the Property Trust as follows -

- (a) When the power is first exercised in payment of the costs of and incidental to this ordinance, the costs, fees and other outgoings of and incidental to any mortgage or charge executed in pursuance of this ordinance, the balance of purchase money and adjustments required to complete the transfer, and the balance shall be applied towards additions or alterations to any improvements erected upon the Austinmer purchase land and/or other land held on trust for the Parish.
- (b) When the power is subsequently exercised in payment of the principal, interest and costs of and incidental to the discharge of then any existing mortgage and the expense of such further mortgage or for such other purpose or purposes as the Standing Committee shall by resolution determine.

7. The churchwardens of the principal church of the Parish shall within 7 days of the date of holding the annual vestry meeting during which time as any money is owing to any mortgagee pursuant to this ordinance cause an account to be forwarded to the Property Trust giving details of the original amount borrowed the amounts paid off and the balance owing as at the end of the last financial year.

Part 4 - 1989 Ordinance

Declaration

8. By reason of circumstances which have arisen after the creation of the trusts impressed by subclauses 3(b)(i) and (ii) of the 1989 Ordinance it is inexpedient to carry out and observe the trusts to the extent they are varied by this Ordinance.

Variation

9. The sums presently held pursuant to subclauses 3(b)(i) and (ii) of the 1989 Ordinance shall be applied by the Property Trust towards the cost of the purchase of the Austinmer purchase land.

Part 5 - Thirroul Land

Declaration

10. By reason of circumstances which have arisen after the creation of the trusts on which the Thirroul land is held it is inexpedient to carry out and observe those trusts in so far as they apply to that part of the land described in the Second Schedule and it is expedient that the land in the Second Schedule be sold and that the proceeds of sale be applied in the manner set out in this Ordinance.

Power of Sale

11. (1) The Property Trust is authorised and empowered to sell the land in the Second Schedule within 3 years after the date of assent to this Ordinance and thereafter only with the consent of the Standing Committee given by resolution.

(2) Such sale may be by public auction or private agreement in one or more lots and for such price or prices and subject to such terms and conditions as to the Property Trust may deem appropriate.

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Application of Proceeds

12. (1) The proceeds arising from the sale of the land in the Second Schedule, after the payment of all outgoings to which that land may be subject, and the costs of and incidental to this Ordinance and the sale shall be applied by the Property Trust towards the cost of purchase of and/or the construction of and alterations and additions to a residence in the Parish for a minister, assistant to the minister or person employed by the churchwardens of any church in the Parish.

(2) Pending the application in subclause (1) hereof the Property Trust shall invest the balance and capitalise the income.

First Schedule

All that piece or parcel of land in Folio Identifiers 9/A/2111, 10/A/2111, 11/A/2111, 12/A/2111 and 13/A/2111 at Austinmer in the City of Wollongong, Parish of Sutherland and County of Cumberland.

Second Schedule

All that piece or parcel of land being lot 20 in Plan of subdivision of lot A in Deposited Plan 318256 prepared by Mr Dennis Smith, surveyor annexed hereto to be registered.

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

N.M. Cameron
Chairman of Committees

I Certify that this Ordinance was passed by the Standing Committee of the Synod of the Diocese of Sydney on 21 November 1994.

W.G.S. Gotley
Secretary

I Assent to this Ordinance.

R.H. Goodhew
Archbishop of Sydney
21/11/1994