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## Cooks River (Tempe Church) Sale Ordinance 1986

(Reprinted under the Interpretation Ordinance 1985.)

The Cooks River (Tempe Church) Sale Ordinance 1986 as amended by the Cooks River (Tempe Church) Sale Ordinance 1986 Amendment Ordinance 1989 and the Cooks River (Tempe Church) Sale Ordinance 1986 Further Amendment Ordinance 1993.

### Long Title

An Ordinance to authorise the sale of certain land to vary the certain trusts and to provide for the application of the proceeds of sale.

### Preamble

Whereas

A. Anglican Church Property Trust Diocese of Sydney (formerly known as Church of England Property Trust Diocese of Sydney)(hereinafter referred to as “the corporate trustee”) is seised in fee simple of the land described in the First Schedule (hereinafter referred to as “Lot 22”).

B. Erected on Lot 22 is a church building known as St Mark’s Tempe. Church services were held in that building until 31 March 1975 and it was de-licensed on 18 March 1985.

C. Lot 22 is church trust property held by the corporate trustee to the intent that a building may be erected upon the said land and be used for the celebration of divine worship according to the rites of the Church of England and for school purposes or such other purpose or purposes as the minister or incumbent and churchwardens for the time being of St Peter’s Church Cooks River or a majority of such churchwardens shall determine.

D. By Conveyance bearing date 29 July 1920 and registered Number 401 Book 1229 Ernest Alfred Turtle of Manly, Estate Agent, became seised in fee simple of inter alia the land described in the Second Schedule (hereinafter referred to as “Lot 23”).

E. For as long as is known Lot 23 has been used for the purposes of the said Parish and, although no trusts have been located, Lot 23 is likely to be held upon a trust for the Anglican Church of Australia in the said Parish.

F. In 1978 there was a purported sale to the owners of Lot 24 of a strip of land three (3) feet wide along the whole of the eastern boundary of Lot 23.

G. By reason of circumstances which have arisen subsequent to the creation of the trusts on which the said lots are held it is inexpedient to carry out and observe the same and it is expedient that the lots be sold. It is also inexpedient to hold the proceeds of sale on the said trusts and it is expedient that those trusts be varied. It is also inexpedient to deal with or apply the proceeds from the sale or the income therefrom for the use or benefit of the parish or parishes which might otherwise have had the use or benefit of the same or the same or like purposes as those hitherto applicable to the said proceeds and income.

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.

1. Pursuant to the power given in the Anglican Church of Australia Trust Property Act 1917 consent is hereby given to Lot 23 vesting in the corporate trustee.

2. By reason of circumstances which have arisen subsequent to the creation of the trusts upon which Lots 22 and 23 are held it is inexpedient to carry out and observe the same and it is expedient that both lots be sold. It is also inexpedient to hold the proceeds of sale on the said trusts and it is expedient that those trusts

be varied. It is also inexpedient to deal with or apply the proceeds from the sale or the income therefrom for the use or benefit of the parish or parishes which might otherwise have had the use or benefit of the same or the same or like purposes as those hitherto applicable to the said proceeds and income.

3. The corporate trustee is hereby authorised and empowered to sell Lot 22 and Lot 23 freed from all trusts at such a price and upon such terms and conditions as it may determine within a period of three (3) years from the date of assent to this Ordinance and thereafter only with the consent by resolution of the Standing Committee.

4. The corporate trustee is hereby empowered to do all things necessary to complete or confirm the purported sale hereinbefore recited.

<sup>1</sup> 5. The proceeds arising from the sale of Lot 22 and the part of Lot 23 to which clause 4 does not apply shall be applied as follows -

- (a) First, to pay all outgoing to which the said lots may be subject and the costs of and incidental to the sale or sales authorised by this Ordinance.
- (b) Secondly, the whole of the net balance shall be applied:-
  - (i) in payment of arrears of assessments,
  - (ii) up to an amount of thirty thousand dollars (\$30,000) for the purposes of re-roofing the church, kitchen and rectory and for the electrical rewiring of the rectory,
  - (iii) to repay loans to the general account which were granted to fund repairs to the rectory and to secure the rectory following a burglary in 1986, and
  - (iv) the balance remaining to be invested and the interest earned in respect of the period ending on 30 September 1993 applied as to one half for capitalisation and then the balance of the interest as to twenty per cent of that balance, or at least two thousand dollars (\$2,000) per annum to the Inner City Committee and the remaining to the Parish for maintenance of parish properties **Provided That**, on the expiration of 3 years from the date of assent to this Ordinance, the Parish Council of Cooks River shall forward to the Secretary of the Standing Committee a report as to the suitability of these arrangements having regard to their operation over that 3 year period and the property maintenance needs of the Parish at the date of the report.

<sup>2</sup> 6. The whole of net balance of the proceeds of sale (including any interest capitalised under subparagraph 5(b)(iv)) which as at 1 October 1993 has not been applied under clause 5 shall thereafter be applied as follows -

- (a) in the payment of, or the reimbursement for, the costs of the promotion of the Cooks River (Tempe Church) Sale Ordinance 1986 Further Amendment Ordinance 1993; and
- (b) towards the payment of the costs of the erection of a new residence for the minister of the Parish to be erected on the Cooks River parish site, being lot 1 on deposited plan 233214.

Such sums are to be paid as may be requested and directed in writing from time to time by the majority of the churchwardens of St Peter's Church, Cooks River and supported by the written consent of the majority of the parish council of the parish of Cooks River. Pending the application of the net balance under this clause, the balance remaining is to be invested and the interest capitalised.

<sup>3</sup> 7. This Ordinance may be cited as "Cooks River (Tempe Church) Sale Ordinance 1986".

#### First Schedule

All that allotment or parcel of land situate in the Village of Tempe Parish of Petersham and County of Cumberland in the Colony of New South Wales being allotment Number Twenty Two of Section three commencing in Wentworth Street at the South Eastern Corner of allotment Twenty One and bounded on the North West by that allotment being a line bearing North Easterly ninety nine feet on the North East by a line

bearing South Easterly thirty one feet on the South East by allotment Number Twenty Three being a line bearing South Westerly ninety nine feet to the said street and on the South West by the said street to the commencing corner aforesaid.

#### Second Schedule

All that allotment or parcel of land situate in the Village of Tempe Parish of Petersham and County of Cumberland in the Colony of New South Wales being allotment Number Twenty Three of Section Three commencing in Wentworth Street at the South Eastern Corner of allotment Twenty Two and bounded on the North West by allotment being a line bearing North Easterly ninety nine feet on the North East by a line bearing South Easterly thirty one feet on the South East by allotment Number Twenty Four being a line bearing South West by the said street to the commencing corner aforesaid.

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#### Endnotes

1. Amended by Ordinance Nos 28, 1989 and 46, 1993.
2. Inserted by Ordinance No 46, 1993.
3. Renumbered by Ordinance No 46, 1993.

MARK PAYNE  
**Legal Officer**

W.G.S. GOTLEY  
**Diocesan Secretary**

27 October 1993