

ST. MARY'S WAVERLEY VARIATION OF TRUSTS  
AND MORTGAGING ORDINANCE 1982

No. 15 1982

AN ORDINANCE to vary the trusts upon  
which certain land is held, to authorise  
the mortgaging thereof and to provide for  
the application of the mortgage advance.

WHEREAS:

A. By indenture bearing date 16th May 1864 and registered No. 87 Book 88 being the land described in the First Schedule Robert William Newman et al conveyed to James Norton and his heirs to have and to hold the said land and hereditaments unto the said James Norton and his heirs to the use of the said Robert William Newman William Barker and Edward Raynes (thereinafter designated trustees) their heirs and assigns forever upon trust for the maintenance thereon of the Church known as St. Mary's Church or any other Church for the celebration of public worship according to the uses of the United Church of England and Ireland which may be erected in lieu thereof.

B. By indenture bearing date 5th November 1878 and registered No. 516 Book 185 being the land described in the Second Schedule Robert William Newman conveyed to Edward Stanley Ebsworth and his heirs the said land and hereditaments to hold the same unto the said Edward Stanley Ebsworth and his heirs to the use of Robert William Newman, James Vickery and Alexander Kenneth Mackenzie their heirs and assigns for the maintenance of St. Mary's Church or any other church for the celebration of Divine Worship according to the United Church of England and Ireland which may be erected thereon.

C. By indenture bearing date 20th April 1887 and registered No. 559 Book 363 being the land described in the Third Schedule the Reverend Stanley Mitchell conveyed to Phillip Billingsley Walker et al (therein described and called

trustees) upon the same trusts as the land in Recital A hereof.

D. By reason of circumstances which have arisen subsequent to the creation of the trusts on which the said land is held it is inexpedient to carry out and observe the same and it is expedient that the trusts be varied and the land described in the third schedule be mortgaged as hereinafter provided.

NOW the Standing Committee of the Synod of the Diocese of Sydney in the name and place of the Synod HEREBY ORDAINS DECLARES DIRECTS AND RULES as follows:-

1. Consent is hereby given to the lands described in the schedules vesting in Church of England Property Trust Diocese of Sydney (hereinafter called "the Corporate Trustee") and those lands are hereby so vested.
2. By reason of the circumstances which have arisen subsequent to the creation of the trusts upon which the lands described in the schedules are held it is inexpedient to carry out and observe the same to the extent that the same are hereby varied and it is expedient that the land described in the third schedule be mortgaged.
3. The lands described in the schedules shall be held upon trust for a:
  - (a) Church;
  - (b) Residence for a minister, assistant to the minister or person employed by the churchwardens;
  - (c) Hall or halls;
  - (d) School or other place of assembly;or partly for one or another or others of those purposes or any other purpose ancillary thereto in connection with the Anglican Church of Australia within the Diocese of Sydney for the sole benefit of the parish or other ecclesiastical district of St. Mary's Church, Waverley or any parish or

ecclesiastical district into which it may subsequently be formed or form a part.

4. (1) The Corporate Trustee is hereby empowered to mortgage from time to time the whole or any part of the land described in the third schedule for the purpose of borrowing such sum as may have been last approved by the Standing Committee by resolution thereof.

(2) The amount borrowed on the security of any mortgage granted pursuant to this ordinance shall be paid to the churchwardens of St. Mary's Waverley and, after the costs of and incidental to this ordinance and to every such mortgage have been met therefrom, shall be applied for the purpose of a pro rata contribution to the cost of restoration work approved by the Heritage Council of N.S.W. or for such other purpose in the Parish of Waverley (being not inconsistent with the trusts on which the said land is held) as the Standing Committee may have last approved by resolution thereof.

(3) Any document purporting to be certified by the Archbishop or the Diocesan Secretary of the said Diocese as a copy of any resolution of the Standing Committee passed pursuant to this clause shall, in favour of a mortgagee or any person claiming under a mortgage granted pursuant to this Ordinance, be conclusive evidence that such resolution was duly passed and, except where a subsequent certificate pursuant to this clause has been delivered to such mortgagee or person, be conclusive evidence that such resolution was the last resolution passed by the Standing Committee pursuant to this clause.

5. Whilst any money is secured by any mortgage granted pursuant to this ordinance, the said churchwardens, in every statement of assets prepared pursuant to Clause 41 of the Sydney Church Ordinance 1912 (as amended) shall disclose the

amount so secured on the last day of the financial year to which the statement of assets relates.

6. This Ordinance may be cited as "St. Mary's Waverley Variation of Trust and Mortgaging Ordinance 1982".

#### FIRST SCHEDULE

All that parcel of land situate in the Parish of Alexandria in the County of Cumberland and Colony of New South Wales commencing at a point on the Northern side of Birrell Street in the Municipality of Waverley Three hundred and forty feet Easterly from its intersection with Botany Road and bounded on the South by Birrell Street bearing East One hundred and ninety-two feet six inches on the Easterly part of R. Roberts' ten acres and a line bearing North about One hundred and ninety-five feet to Phennas Land on the North by a line bearing West One hundred and ninety-two feet six inches and on the West by a line South dividing the same from the residue of the said Robert William Newman's Land about One hundred and ninety-five feet to the point of commencement.

#### SECOND SCHEDULE

ALL THAT piece or parcel of land situate in the Parish of Alexandria in the County of Cumberland and Colony of New South Wales commencing at a point on the northern side of Birrell Street in the Municipality of Waverley being the south west corner of R. Roberts' ten acres and bounded on the east by the western boundary of the said R. Roberts' ten acres being a line bearing north about one hundred and ninety-five feet to Phenna's land on the north by a line bearing west one hundred and seven feet six inches to the land conveyed to the trustees of St. Mary's Church by the hereinbefore recited indenture of 16th May One thousand eight hundred and sixty four on the west by that land being a line south about one hundred and ninety five feet to the northern side of Birrell Street and on the south by the northern side of Birrell Street being a line bearing east one hundred and seven feet six inches to the point of commencement.

#### THIRD SCHEDULE

All that piece or parcel of land situate in the Parish of Alexandria in the County of Cumberland and Colony of New South Wales commencing at a point on the northern side of Birrell Street in the Municipality of Waverley being the southwest corner of an allotment of land held in trust for the Church of St. Mary's at Waverley and bounded on the east by the western boundary of the said allotment being a line bearing north about one hundred and ninety five feet to Phenna's land now or formerly Mr. John Martins on the north by a line bearing West forty two feet six inches on the west by a line bearing south about one hundred and ninety five feet to the northern side of Birrell Street on the south by the northern side of Birrell Street being a line bearing East forty two feet six inches to the point of commencement.

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

D. CAMERON  
Chairman of Committees

I CERTIFY that this Ordinance was passed the Standing Committee of the Diocese of Sydney on this 28th day of June 1982.

W.G.S. GOTLEY  
Secretary

I ASSENT to this Ordinance

DONALD ROBINSON  
Archbishop of Sydney  
28 / 6 /1982