
St. Philip's Sydney Drive-in Bay Ordinance 1972

No. 55, 1972

AN ORDINANCE to vary the trusts of certain property in York Street Sydney to authorise the granting of an easement affecting part of the said property and for other purposes incidental thereto.

WHEREAS by Crown Grant dated the 11th day of February 1858 registered in the Register of Grants of the United Church of England and Ireland No. 1 page 58/2, the lands described in the Schedule hereto were granted to John Campbell George Kilgour Ingelow and John Alexander Matthews upon trust for the erection thereon of a Church of the United Church of England and Ireland and for no other purpose whatsoever AND WHEREAS by Ordinance No. 16 of 1935 the said lands were vested in the Church of England Property Trust Diocese of Sydney (hereinafter called the "Corporate Trustee") upon the aforesaid trusts AND WHEREAS by several ordinances subsequently passed it has been ordained, directed, declared and ruled that the aforesaid trusts should be varied in a manner and to an extent with which this Ordinance is not inconsistent AND WHEREAS by reason of circumstances which have arisen subsequent to the creation of the first mentioned trusts it is expedient to vary such trusts in manner hereinafter mentioned and to make the further provisions hereinafter contained NOW the Standing Committee of the Synod of the Diocese of Sydney in the name and place of the said Synod HEREBY ORDAINS AND DIRECTS as follows:—

1. By reason of circumstances which have arisen subsequent to the creation of the trusts upon which the lands described in the said Schedule are held it is expedient that the said trusts be further varied as hereinafter set out.

2. The Corporate Trustee is hereby authorised to enter into an agreement with the Council of the City of Sydney (hereinafter called the "City Council") for the granting of an easement which will give completely unrestricted access to pedestrians within an area (being part of the said lands) contained within the Western boundary of the said lands and a line drawn parallel to and distant 12 feet (more or less) East from the kerb line, and being the Eastern boundary of a drive-in bay to be constructed by the City Council in the Eastern footway of Clarence Street Sydney* fronting the main entrance to St. Philip's Church, between the points where such line intersects the Western boundary of the said lands (the said area being herein-

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after called the "servient tenement") in accordance with the details shown on a plan prepared by the City Council No. E3-337/88 a copy whereof has been 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. Philip's Sydney on the eleventh day of December 1972, the said agreement being in such form and containing such covenants, terms, conditions and provisions as the Corporate Trustee, with the consent in writing of a majority of the members of the Parish Council of the Parish of St. Philip's Sydney, shall determine, including, but without prejudice to the generality of the foregoing, covenants, terms, conditions and provisions substantially to the following effect:—

- (a) The access to pedestrians over the servient tenement shall be by way of a footway, the form of construction and type of surface of which shall be to the requirement of the officers of the City Council but the Corporate Trustee shall be responsible for the cost of construction and the future maintenance of the said footway.
- (b) The design of the said drive-in bay and form of construction thereof shall be to the requirement of the officers of the City Council and in accordance with the said plan No. E3-337/88.
- (c) All work within the public way (either within Clarence Street or the servient tenement) associated with the construction of the drive-in bay and the footway within the servient tenement, including any modification that may be found necessary after the same have been placed in service, shall be carried out by the City Council but the Corporate Trustee shall reimburse to the City Council the cost thereof.
- (d) The Corporate Trustee shall be responsible for the cost of alterations to the services of the various public utility authorities made necessary by the construction of the said drive-in bay and footway.
- (e) If the drive-in bay is at any time in the opinion of the said Parish Council no longer required for purposes associated with the use of St. Philip's Church, the Corporate Trustee shall be responsible for the full cost incurred by the City Council in removing the bay and of reinstating the footway, kerb, gutter and associated public works and adjusting the services of the public utility authorities and, upon completion of such work, the City Council shall release to the Corporate Trustee the easement over the servient tenement.

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- (f) If any of the public utility authorities disturb the drive-in bay under its statutory rights for the repair, renewal or amplification of its underground mains, the Corporate Trustee shall bear the cost of reinstatement over and above the amount that would be expended for the reinstatement of a standard asphalt footway.
- (g) The Corporate Trustee shall accept such responsibility as may attach either to it or to the City Council in law with respect to all claims which either the City Council or the Corporate Trustee might receive due to the construction or existence of the drive-in bay and shall indemnify and keep indemnified the City Council against all claims which may arise by reason of the making of the said agreement.
- (h) The Corporate Trustee shall undertake in the case of the land within the servient tenement being sold or exchanged, to obtain indemnities and undertakings from the purchaser, transferee or other disponee in terms similar to those to be set out in the said agreement, provided that upon such indemnities and undertakings being obtained from the purchaser, transferee or other disponee and delivered to the City Council, the Corporate Trustee shall be relieved of all responsibility in respect of the said agreement.
- (i) The said agreement shall be subject to the concurrence of the Police Traffic Authorities, the Parking Advisory Committee for the City of Sydney and the Department of Main Roads for the State of New South Wales.

3. By the said agreement, the Corporate Trustee shall require that, if for any reason the drive-in bay is at any time removed, the City Council shall release the aforesaid easement.

4. If required by the City Council, the Corporate Trustee may, by the said agreement, further undertake to bear any costs incurred by the City Council in altering or removing the drive-in bay, including any costs of altering or reinstating, as a consequence, the kerb and eastern footway of Clarence Street.

5. If required by the City Council, the Corporate Trustee may agree to pay the costs of the City Council in connection with the preparation, execution and stamping of the said agreement and all other like costs associated with such agreement.

6. The Corporate Trustee is hereby authorised to grant an easement over the servient tenement to the City Council substantially in accordance with the terms of the said agreement.

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7. The Churchwardens and the Parish Council of the Parish of St. Philip Sydney shall reimburse the Corporate Trustee for any costs, damages, losses or expenses which it might suffer, incur or be put to out of or by reason of the said agreement and any easement granted pursuant thereto.

8. This Ordinance may be cited as "St. Philip's Sydney Drive-In Bay Ordinance 1972".

SCHEDULE

ALL THAT piece or parcel of land containing by admeasurement two roods thirty perches and three-quarters of a perch be the same more or less situated in the County of Cumberland and Parish of St. Philip and City of Sydney commencing at the Westerly intersection of York and Jamison Streets and bounded thence on the North by the South-west building line of York Street North-westerly one hundred and seventy-four feet on the North-west by a line South-westerly parallel to Jamison Street one hundred and seventy-three feet six inches to Clarence Street on the South-west by the North-east building line of Clarence Street South-easterly one hundred and seventy-four feet to Jamison Street on the South-east by the North-west building line of that Street North-easterly one hundred and seventy-three feet six inches to the point of commencement.

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 11th day of December, 1972.

W. L. J. HUTCHISON,
Secretary.

I ASSENT to this Ordinance.

MARCUS LOANE,
Archbishop of Sydney.

11/12/1972.