

CASTLE HILL VARIATION OF TRUST ORDINANCE 1984

NO. 15 1984

AN ORDINANCE to authorise the grant of an irrevocable licence for parking and An easement to drain sewage over certain land at Castle Hill in the Shire of Baulkham Hills.

WHEREAS

A. Anglican Church Property Trust Diocese of Sydney (hereinafter called the "Property Trust") is the registered proprietor of the land described in the Second Schedule hereto.

B. The said land is held upon trust for a Cemetery or Burial place for the dead bodies of the Christian residents in and about the neighbourhood to be consecrated and held according to the order of the United Church of England and Ireland and to be subject to all such rules and regulations appropriate to a Cemetery as the Bishop of Sydney and his successors may from time to time approve or ordain.

C. Pursuant to the authority conferred by the Castle Hill Variation of Trusts and Land Sale Ordinance No. 50 of 1983 and by an agreement made the 15th day of June, 1984, the Property Trust agreed to sell the land comprised in Indenture dated 30th July, 1862, Registered No. 806 Book 81.

D. Special condition 7 of the said agreement is in the following terms (the reference to the vendor therein being a reference to the Property Trust):

7. The Vendor shall grant to the purchaser a licence for parking and an easement to drain sewage in the form or to the effect of Annexure 'D' hereto over the strip of land referred to as "(B) Proposed Easement for Parking" in the plan annexed hereto and marked with the letter "C" being part of the land comprised in Conveyance between Richard Greenup and the Bishop of Sydney dated 31st July, 1862 Registered No. 807 Book 81. The purchaser shall be responsible for payment for all survey costs and registration fees in connection with such licence for parking. The grant of such licence for parking and easement to drain sewage by the vendor is subject to and conditional upon an Ordinance being passed by the Standing Committee of the Synod of the Diocese of Sydney of the Anglican Church providing for such licence and easement to drain sewage to be granted. If such ordinance is not passed within twelve (12) weeks from the date hereof the purchaser shall have the right exercisable by notice in writing given to the vendor within thirteen (13) weeks after the date hereof to rescind this agreement.

E. The terms of the said irrevocable licence for parking and easement to drain sewage are set out in the first schedule hereto.

F. By reason of circumstances subsequent to the creation of the trust on which the said land is held it is expedient that authority be given to the Property Trust to grant the irrevocable licence for parking and the easement to drain sewage referred to in the said Condition.

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

1. This Ordinance may be cited as "Castle Hill Ordinance 1984".
2. By reason of circumstances which have arisen subsequent to the creation of the trusts on which the said land is held it is expedient that the Property Trust be authorised to grant the irrevocable licence for parking and the easement to drain sewage referred to in the said Condition and as more fully recited in the First Schedule hereto.
3. The Property Trust is hereby authorised and empowered to grant the irrevocable licence for parking and the easement to drain sewage upon the terms and conditions as set out in the First Schedule hereto.

FIRST SCHEDULE

THIS DEED made the _____ day of _____ 1984, BETWEEN ANGLICAN CHURCH PROPERTY TRUST DIOCESE OF SYDNEY A Body Corporate duly incorporated under the Anglican Church of Australia Trust Property Act, 1917, and whose office is situated at St. Andrews House, Sydney Square, Sydney (hereinafter called the "Grantor") of the one part and BEVERLEY LILLIAN MORGAN of 23 Polding Road, Lindfield in the State of New South Wales, Pharmacist (hereinafter called the "Grantee") of the other part.

WHEREAS

- (i) The Grantor is seised in fee simple of the whole of the land comprised in Conveyance dated 31st July, 1862, made between Richard Greenup and the Bishop of Sydney Registered Number 807 Book 81 (hereinafter called the "Servient Tenement").
- (ii) The Grantee is seised in fee simple of the land comprised in Conveyance dated 30th July, 1862 between Richard Greenup of the one part and Andrew Servis Macdougall, Samuel Moore, Alfred Sotheren Greenup and the Licensed Minister for the time being of St. Pauls Church Registered Number 806 Book 81 (hereinafter called the "Dominant Tenement") and the Grantee acquired such Dominant Tenement pursuant to the Agreement for Sale dated 15th of June 1984, between the Grantor as Vendor and the Grantee as Purchaser.
- (iii) It was condition of such Agreement for Sale that the Grantor grant to the Grantee an irrevocable licence for parking over the land delineated and colored red on the plan annexed hereto and marked with the letter "A" being part of the land comprised in the Servient Tenement (hereinafter called the "burdened land") together with an easement to drain sewage as described in Part IV of Schedule VIII of the Conveyancing Act, 1919, over the burdened land.

NOW THIS DEED WITNESSETH as follows:-

1. In consideration of the payment by the Grantee to the Grantor of the sum of One Hundred and Twenty Five Thousand Dollars (\$125,000.00) pursuant to the Agreement for Sale referred to in recital (ii) for the acquisition of the Dominant Tenement the Grantor as beneficial owner HEREBY

GRANTS unto the Grantee her legal personal representatives successors and assigns an irrevocable licence (hereinafter called the "Licence") to the Grantee her legal personal representatives successor assigns invitees and licensees and all other persons authorised by the Grantee from time to time at all times hereafter at the will and pleasure of the Grantee to pass and re-pass and to park or stand not more than fifteen carriages engines motor cars and other vehicles laden or unladen over upon and along the burdened land for all purposes connected with the use and enjoyment of the Dominant Tenement by the Grantee her legal personal representatives successors and assigns.

2. The Grantee shall carry out at her own expense all necessary work in relation to the burdened land as she shall deem fit from time to time, namely, the excavation and filling of the land, levelling and sealing the surface of the parking areas forming part of the burdened land and construction of any new retaining wall immediately adjoining the southern boundary of the burdened land.

3. The Grantee covenants with the Grantor that she shall maintain in good and substantial repair and condition the whole of the burdened land and the grantee shall indemnify and keep the Grantor its servants or agents indemnified against all liability for death or injury to persons of loss or damage to property arising out of the use of the burdened land pursuant to this Licence.

4. The Grantee acknowledges that any motor vehicle parked on the burdened land pursuant to this Licence shall be at the risk of the Grantee and the Grantor shall not be liable in respect of any loss or damage to any such motor vehicle or anything attached thereto or contained therein (whether belonging to the motor vehicle or not) except to the extent that such loss or damage be caused by the negligence of the Grantor or any of its servants or agents.

5. The Grantee shall have full and free right and liberty at any time to assign the Licence to the person (whether corporate or natural) who at that time is or is entitled to be seised for an estate in fee simple in the Dominant Tenement.

6. The parties expressly acknowledge that it is intended that the burden of the Licence should bind the Grantor's successors in title. Without derogating from the foregoing provisions of this clause the Grantor hereby expressly covenants with the Grantee that it will not agree to sell or otherwise dispose of the burdened land or any part thereof or any land of which the burdened land forms part, to any third party without first disclosing to such third party the existence of the Licence and the terms and conditions of this Deed and that it will not complete any such sale or other disposition without first obtaining the written agreement of such third party with the Grantee to be bound by the Licence and the provisions of this Deed including this clause.

7. It is hereby agreed and declared that this Deed does not confer upon the Grantee any estate in the burdened land or any part thereof nor does it create between the parties the relationship of landlord and tenant.

8. In furtherance of the consideration set out in Clause One hereof, the Grantor hereby grants unto the Grantee her

legal personal representatives successors and assigns forever an easement to drain sewage over the burdened land AND IT IS HEREBY DECLARED that the land to which the benefit of the said easement hereby granted is appurtenant is the Dominant Tenement and the land subject to the burden of the said easement is the burdened land and the person having the right to release vary or modify the terms of the easement hereby created is the Grantee her legal personal representatives successors and assigns.

SECOND SCHEDULE

All that piece or parcel of land commencing at the north east corner of the allotment conveyed by the said Richard Greenup to certain trustees for the site of a school Bounded on the north by Crane's land being a line east thirteen and one third rods; on the east by a line south six rods; and on the south by a line west extending to the Great Northern Road leading from Sydney to Wiseman's Ferry together with the free use and enjoyment of a reserved road one rod wide leading from the said Main Road and separating the said School land from the other portion of the said Richard Greenup's one hundred acres as the same is more particularly shewn and described in the plan or sketch hereto annexed together with all rights members and appurtenances whatsoever to the said land belonging or in comprise appertaining and all the estate right title and interest at law or in equity of him the said Richard Greenup into or out of the same and being the whole of the land comprised in Indenture of Conveyance dated 31st July, 1862 Registered Number 807 Book 81.

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

E.D. Cameron
Chairman of Committees

I CERTIFY that this Ordinance was passed by the Standing Committee of the Synod of the Diocese of Sydney on the 30th day of July 1984.

W.G.S. Gotley
Secretary

I ASSENT to this Ordinance.

Donald Robinson
Archbishop of Sydney
30/7/1984