

East Sydney Leasing and Variation of Trusts Ordinance 2004

No 46, 2004

Long Title

An Ordinance to vary the trusts of land at East Sydney, to authorise the leasing or licensing of such land and to provide for the application of income arising from the lease or licence.

Preamble

A. Anglican Church Property Trust Diocese of Sydney (the "Property Trust") is the registered proprietor of the land at East Sydney comprised in folio identifier 1/225418 and known as 118A Darlinghurst Road Darlinghurst (the "Land").

B. By clause 1 of the St Johns Darlinghurst Vesting and Leasing Ordinance 1962, the Land is held upon trust to permit the same to be used for a church, parsonage, or parish hall or partly for one and partly for another of such purposes in connection with the Church of England in the parish of St John Darlinghurst (the "Parish").

C. Under the East Sydney (Kings Cross) Development Ordinance 2002 (the "2002 Ordinance") the Property Trust was authorised to enter into a short-term lease and development agreement with a syndicate of companies with a view to effecting a freehold stratum development on the Land.

D. The Property Trust has not proceeded with the development of the Land set out in the 2002 Ordinance and it is proposed that the Land be leased or licensed.

E. By reason of circumstances which have arisen after the creation of the trusts on which the Land is held it is inexpedient to carry out or observe those trusts or to deal with or apply the Land for the same or like purposes as those trusts or to deal with or apply the income arising from the Land wholly for the purposes of the Parish and it is expedient that those trusts be varied and that the Land be leased or licensed and the income from the lease or licence be applied in the manner set out in this Ordinance.

The Standing Committee of the Synod of the Diocese of Sydney Ordains as follows.

1. Name

This Ordinance is the East Sydney Leasing and Variation of Trusts Ordinance 2004.

2. Declaration

By reason of circumstances which have arisen after the creation of the trusts on which the Land is held it is inexpedient to carry out or observe those trusts or to deal with or apply the Land for the same or like purposes as those trusts or to deal with or apply the income arising from the Land wholly for the purposes of the Parish and it is expedient that those trusts be varied in the manner set out in clause 3 and that the Land be leased or licensed and the income from the lease or licence be applied in the manner set out in clause 5.

3. Variation of trusts

- (1) Subject to subclause (2), the Land is held on trust for the purposes of the Parish.
- (2) The trusts of the Land are further varied to permit the application of income under clause 5.

4. Authority to Lease

The Property Trust is authorised within 3 years of the date of assent to this ordinance to enter into a lease or licence of the Land, or any part thereof, for a period of up to 6 years including options on such terms and conditions as the Property Trusts considers appropriate.

5. Application of Proceeds

- (1) Subject to clause 5(2), the income from any lease granted under clause 4, after payment of all costs and expenses of and incidental to this Ordinance and the lease or licence, is to be paid to the Property Trust and applied as follows –
 - (a) in the first year of the lease or licence –
 - (i) first, in payment of any goods and services tax (as defined in *A New Tax*

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- System (Goods and Services Tax) Act 1999* payable in connection with the lease, and
- (ii) second, as to 5% of the net income to the South Sydney Regional Council for the purposes of that Council or alternatively, to such other organisation as is determined by the Standing Committee, and
 - (iii) the balance, to be paid to the churchwardens of St John's Church Darlinghurst and applied for such purposes of the Parish as are determined from time to time by resolution of the parish council excluding the stipends, allowances and benefits paid or provided to the minister, and
- (b) in the second and subsequent years of the lease or licence and during any option period under the lease –
- (i) first, in payment of any goods and services tax (as defined in *A New Tax System (Goods and Services Tax) Act 1999*) payable in connection with the lease or licence, and
 - (ii) second, as to 10% of the net income to the South Sydney Regional Council for the purposes of that Council or alternatively, to such other organisation as is determined by the Standing Committee, and
 - (iii) third, as to 1% of the net income to the Community Care and Development Program of the Anglican Church Diocese of Sydney to be used in such manner as the Directors of that program shall determine from time to time, and
 - (iv) the balance, to be paid to the churchwardens of St John's Church Darlinghurst and applied for such purposes of the Parish as are determined from time to time by resolution of the parish council excluding the stipends, allowances and benefits paid or provided to the minister.
- (2) If –
- (a) an order is made under the Heritage Act 1977 in relation to any building or other improvements on land held on a trust for the Parish ("Heritage Land"), or
 - (b) the condition of any building or other improvement on Heritage Land is such that it is reasonable to conclude in accordance with recommendation(s) in a report commissioned from a heritage architect or other expert on heritage buildings, that an order may be made under that Act in relation to that building or improvement, or
 - (c) as regards any building or improvement on Heritage Land, an offence is committed under that Act,

the Property Trust may do all such works and other things as to comply with the order, avoid the issue of the order or satisfy the omission or action which has given rise to the offence (as the case may be) and apply the whole or any part or parts of the income from any lease or licence referred to in clause 5(1) in or towards meeting the cost of all such works and things.

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

PG KELL
Chairman of Committees

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I Certify that this Ordinance was passed by the Standing Committee of the Synod of the Diocese of Sydney on 13 December 2004.

MA PAYNE
Secretary

I Assent to this Ordinance.

PETER F JENSEN
Archbishop of Sydney
21/12/2004