

Leichhardt Variation of Trusts and Mortgaging Ordinance 2004

(Reprinted under the Interpretation Ordinance 1985.)

The Leichhardt Variation of Trusts and Mortgaging Ordinance 2004 as amended by the Variation of Trusts Ordinance 2004, the Leichhardt Variation of Trusts and Mortgaging Ordinance 2004 Amendment Ordinance 2010 and the Leichhardt Variation of Trusts and Mortgaging Ordinance 2004 Amendment Ordinance 2011.

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Long Title

An Ordinance to provide for the application of certain funds held for the parish of Leichhardt, to authorise the application of rental income from and the mortgaging of certain land at Leichhardt and for purposes incidental thereto.

Preamble

A. Anglican Church Property Trust Diocese of Sydney (the "Property Trust") is the registered proprietor of certain land at Leichhardt comprised in certificate of title folio identifier 1/502105 (the "Land").

B. The recitals to the All Souls Leichhardt Leasing Ordinance 1962 declare that the Land is church trust property held for the sole benefit of the parish of Leichhardt (the "Parish").

C. By the Leichhardt Leasing Ordinance 1993 the Property Trust is authorised to lease or licence the Land for such purposes as may be determined from time to time and to apply the rental income from the leasing or licensing of the Land in the manner set out in that ordinance.

D. The Property Trust holds certain funds (the "Funds") arising from the sale of property under the Leichhardt Variation of Trusts and Land Sale Ordinance 1983. The recitals to that ordinance declare that the property giving rise to the Funds was held on trust for such purposes of the Anglican Church of Australia Parish of Leichhardt as the rector and wardens thereof for the time being may decide.

E. The Parish wishes to mortgage the Land to finance the construction of a ministry centre on land held on trust for the Parish between All Souls, Leichhardt and the rectory (the "Building Works").

F. By reason of circumstances which have arisen after the creation of the trusts on which the Land and the Funds are held it is inexpedient to carry out or observe such trusts or to deal with or apply the income derived from the Land wholly for the use or benefit of the Parish and it is expedient –

- (a) to vary the trusts of the Land to permit the application of rental income from the Land in the manner set out in this Ordinance, and
- (b) to mortgage the Land and apply the proceeds of such mortgage and the Funds 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 Leichhardt Variations of Trusts and Mortgaging Ordinance 2004.

2. Declarations

By reason of circumstances which have arisen after the creation of the trusts on which the Land and the Funds are held it is inexpedient to carry out or observe such trusts or to deal with or apply the income derived from the Land wholly for the use or benefit of the Parish and it is expedient –

- (a) to vary the trusts of the Land to permit the application of rental income from the Land in the manner set out in clause 4, and
- (b) to mortgage the Land and apply the proceeds of such mortgage and the Funds in the manner set out in clause 6.

3. Variation of trusts

- (1) Subject to clause 3(2), the Land is held on trust for the sole purpose of the Parish.
- (2) The trusts on which the Land is held are further varied to permit rental income from the Land to be applied in the manner specified in clauses 4(1)(b)(i), (ii), 4(3), (4) and (5).

4. Application of rental income

(1) Any rent, licence fees and any other receipts earned from the leasing or licensing of the Land on and from 1 July 2004 are to be applied as follows –

- (a) firstly in payment of all outgoings in respect of the Land, including but not limited to rates, taxes, assessments, repairs, maintenance, costs and expenses; and
- (b) the balance of any such income is to be applied as follows –
 - (i) 10% to the South Sydney Regional Council for the general purposes of the Council;
 - (ii) 5% to the Church Missionary Society NSW for its general purposes; and
 - (iii) 85% to the churchwardens of All Souls, Leichhardt (the “Churchwardens”) for any purpose of the Parish as may be determined from time to time by resolution of the parish council of the Parish except the payment or provision of the stipend, allowances and benefits of the minister.

(2) Unless the Property Trust by resolution otherwise directs, the Churchwardens are authorised and directed to make the payments referred to in paragraphs 4(1)(a), (b)(i), (ii) as agent of the Property Trust and for that purpose –

- (a) all rental moneys and other moneys arising from or accruing under the lease or licence are to be paid directly to the Churchwardens in that capacity; and
- (b) after the application of moneys under paragraphs 4(1)(a), (b)(i), (ii), the remaining balance is taken to have been paid to the Churchwardens pursuant to paragraph 4(1)(b)(iii).

(3) If the South Sydney Regional Council ceases to exist the amount which would otherwise be payable to the Council is to be paid to an organisation which the Standing Committee (after consulting with the parish council of the Parish) by resolution decides has purposes similar to the Council.

5. Authority to mortgage

The Property Trust is authorised to grant a mortgage over the Land to secure a loan amount or loan amounts not exceeding in total the amount of \$400,000 or such greater amount as the Standing Committee may by resolution approve.

6. Application of mortgage proceeds and the Funds

The proceeds of any mortgage authorised under clause 5 and the Funds (including any income earned on the Funds) are to be applied by the Property Trust as follows –

- (a) in payment of the costs, charges and expenses of and incidental to this Ordinance and any such mortgage, and
- (b) the balance is to be applied towards the Building Works including any charges, costs and expenses incidental thereto.

7. Review

The Churchwardens will, on or before the twelfth anniversary of the date of assent to this Ordinance, present an ordinance to the Standing Committee to provide for the application of the rent, licence fees and any other receipts from the leasing or licensing of the Land earned after that date.

Notes

The original form of ordinance was assented to on 2 June 2004.

Table of Amendments

Title	Amended by Ordinance No 24, 2004.
Preamble	Amended by Ordinance No 24, 2004.
Clause 1	Amended by Ordinance No 24, 2004.
Clause 2	Amended by Ordinance No 24, 2004.
Clause 3	New clause inserted by Ordinance No 24, 2004 and amended by Ordinance No 18, 2011.
Clause 4	Original clause renumbered and amended by Ordinances Nos 24, 2004 and 18, 2011.
Clause 5	Original clause renumbered by Ordinance No 24, 2004.
Clause 6	Original clause renumbered and amended by Ordinance No 24, 2004.
Clause 7	Original clause renumbered by Ordinance No 24, 2004 and amended by Ordinances Nos 13, 2010 and 18, 2011.

STEVE LUCAS
Manager, Legal Services

15 July 2011

ROBERT WICKS
Diocesan Secretary