

# East Sydney (Kings Cross) Development Ordinance 2002

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## Long Title

An Ordinance to authorise the development of the properties known as 118A Darlinghurst Road, Darlinghurst and part of 120 Darlinghurst Road, Darlinghurst and the distribution of income.

## Preamble

Whereas

A. The land (Land) described in the First Schedule (Lot 1) and the Second Schedule (Lot 2) is vested in Anglican Church Property Trust Diocese of Sydney (Property Trust).

B. The parish of St John's Darlinghurst is now known as the parish of East Sydney (the Parish).

C. Under the East Sydney (Kings Cross) Development Ordinance 1999 (1999 Ordinance) the trusts on which the Land was held, were amended to authorise the Property Trust to lease the Land for a term of 60 years with 2 options for further terms of 20 years and 19 years respectively and to permit the redevelopment of the Land by the construction by the lessee of a serviced apartment complex.

D. The Property Trust has not proceeded with the redevelopment of the Land outlined in the 1999 Ordinance.

E. Under the East Sydney (Kings Cross) Leasing Ordinance 2000 (2000 Ordinance) the Property Trust was authorised to lease Lot 1 for a term not exceeding 5 years and with the rent applied in the manner specified in the Ordinance.

F. The Property Trust has not proceeded with the leasing of Lot 1 outlined in the 2000 Ordinance.

G. Under the East Sydney (Kings Cross) Development Ordinance 2001 (2001 Ordinance) the Property Trust was authorised to lease Lot 1 to Gwynvill Trading Pty Limited ABN 35 002 224 517 or other Preferred Developer agreed to by the Property Trust for a term not exceeding 5 years and to distribute the rent from such lease in the manner set out in the Ordinance.

H. Under the 2001 Ordinance the Property Trust was authorised to procure the redevelopment of the land described in Lot 1 and part of the land described in Lot 2 by entering into a Development Agreement with the Preferred Developer pursuant to which long-term leases would be granted on the completion of the redevelopment and for that purpose the Property Trust had entered Heads of Agreement dated 8 May 2001 with Cornerstone Property Group Pty Limited ABN 00 000 684 686.

I. The Property Trust has not proceeded with the redevelopment of the Land outlined in the 2001 Ordinance.

J. The Property Trust proposes to lease Lot 1 for a term not exceeding 5 years (Short-Term Lease) to GSDT Pty Limited as Trustee for the GS Development Fund ACN 087 264 453 or nominee and Trafalgar Properties Limited ACN 003 174 847 or nominee (Syndicate) and to distribute the rent from such lease in the manner set out in this Ordinance.

K. The Property Trust proposes to enter a development agreement (Development Agreement) with the Syndicate and for this purpose the Property Trust has entered Heads of Agreement dated 6 December 2001 (Heads of Agreement) with the Syndicate.

L. It is proposed that provision be made for the distribution of moneys received from the development of the Land.

M. By reason of circumstances which have arisen after the creation of the trusts created by the 2001 Ordinance in respect of the Land, it is inexpedient to carry out and observe those trusts and to deal with or apply the Land for the same or like purposes as those trusts and it is expedient to vary those trusts 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 (Kings Cross) Development Ordinance 2002.

#### **2. Declarations**

By reason of circumstances which have arisen after the creation of the trusts created by the 2001 Ordinance in respect of the Land –

- (a) it is inexpedient to carry out and observe those trusts and to deal with or apply the Land wholly for the use or benefit of the Parish or for the same or like purposes as those trusts; and
- (b) it is expedient that the Land or any part or parts thereof be leased or licenced and the proceeds of such lease or licence be applied in the manner set out in this ordinance; and
- (c) it is expedient that the Land be subdivided and part or parts of the Land be sold and the proceeds of such sale or sales be applied in the manner set out in this ordinance; and
- (d) it is expedient to otherwise deal with and apply the Land in the manner set out or referred to in this ordinance.

#### **3. Interpretations**

The terms and expressions referred to in this Ordinance have the same meaning as those defined in the Heads of Agreement, unless otherwise indicated by the context.

#### **4. Authorities**

- (1) The Heads of Agreement are hereby confirmed.
- (2) The Property Trust is authorised to grant a Short-Term Lease to the Syndicate of Lot 1 for a term not exceeding 5 years at the best rent achievable to be used for a commercial purpose which is approved by the local council and which does not breach any written policy of the Standing Committee relating to the use of the Land and on such other terms and conditions as the Property Trust thinks fit.
- (3) The Property Trust is authorised to enter a Development Agreement with the Syndicate as outlined in the Heads of Agreement which –
  - (a) will allow for the demolition of the existing improvements on Lot 1, remediation of Lot 1 and the construction on Lot 1 of new buildings and effect a stratum subdivision of Lot 1 into 2 lots; and
  - (b) will allow for the redevelopment of the existing community facilities building on Lot 2 and effect a stratum subdivision of all or part of Lot 2 into 2 lots,

in consideration of which the Syndicate will pay the Property Trust an occupation fee during the Redevelopment.

(4) The Property Trust is authorised to execute all documents and do all things required or necessary for the purpose of entering into and implementing the terms and conditions of the Development Agreement.

(5) The Property Trust is authorised to consent to the freehold stratum subdivision of the Land –

- (a) with the height limit of any development in the Residential Stratum not to exceed 30 metres above the street level without the prior approval of the Property Trust, and
- (b) with a restrictive covenant that there be no advertising signage without the prior approval of the Property Trust.

The freehold stratum subdivision will encompass the St John's Facilities Stratum, the Retail/Commercial Stratum and the Residential Stratum. The Property Trust will retain freehold title to the Retail/Commercial Stratum and the St John's Facilities Stratum.

(6) The Property Trust is authorised to enter sales agreements with purchasers of residential apartments and pass the proceeds of such sales to the Syndicate. Where by the date one year after the completion of the Redevelopment, residential apartments remain unsold, the Property Trust is authorised to transfer to the Syndicate for consideration of \$1 per residential apartment for each of the residential apartments remaining unsold at that time.

(7) On the signing of the Heads of Agreement the Syndicate paid and will continue to pay to the Churchwardens of St John's Anglican Church Darlinghurst (Churchwardens) \$12,500 per month as an Exclusivity Period Fee and \$2,500 per month towards consultancy fees of and incidental to this development incurred by the Parish, until the signing of the Development Agreement. Furthermore on the signing of the Heads of Agreement, the Syndicate will pay to the Churchwardens an advance of \$10,000 towards consultancy fees of and incidental to the development, incurred by the Churchwardens.

(8) The payments referred to in sub-paragraph (7) are not refundable even if this ordinance not be passed by Standing Committee.

(9) On the signing of the Development Agreement, the Syndicate will pay to the Churchwardens \$90,000 being part payment of the Exclusivity Fee.

(10) The payment referred to in sub-paragraph (9) is not refundable, even if Development Consent is not granted to the Syndicate.

(11) On Development Consent being granted to the Development Application for the redevelopment of the Land, the Syndicate will pay to the Churchwardens \$100,000 being the balance of the Exclusivity Fee.

(12) The Property Trust is authorised to enter lease agreements with respect to the Retail/Commercial Stratum to derive rental income and/or enter a Long-Term lease with the Syndicate or another third party for an agreed rent or annuity in relation to the Retail/Commercial Stratum.

(13) In the event of any inconsistency between the Heads of Agreement and this ordinance, the terms of this ordinance must prevail.

## **5. Payments by the Syndicate**

The payments to be made by the Syndicate are to be structured so that –

- (a) from the signing of the Heads of Agreement until the signing of the Development Agreement, the Syndicate will pay to the Churchwardens \$12,500 per month as an Exclusivity Period Fee and \$2,500 per month towards consultancy fees of and incidental to this development incurred by the Parish. These payments are not refundable.
- (b) on the signing of the Heads of Agreement, the Syndicate will pay to the Churchwardens an advance of \$10,000 towards consultancy fees of and incidental to this development incurred by the Churchwardens. This payment is not refundable.
- (c) rent under the Short-Term Lease of \$150,000 per annum gross exclusive of GST is to be paid quarterly in advance to the Property Trust from the date of the signing of the Development Agreement to the granting of Development Consent.
- (d) from the date of the signing of the Development Agreement to the receipt of the Development Consent a sum of \$2,500 per month is to be paid in advance towards consultancy fees of and incidental to this development incurred by the Parish.
- (e) on Development Consent being granted to the Development Application for the redevelopment of the Land, on terms reasonably acceptable to both the Property Trust and the Syndicate, the Syndicate will pay to the Churchwardens \$100,000

being the balance of the Exclusivity Fee.

- (f) an Occupation Fee of \$445,000 per annum gross exclusive of GST payable quarterly in advance from the date of the Development Consent to the completion of construction.
- (g) from the date of the completion of construction, a minimum rent or an annuity payment of \$400,000 net per annum is to be paid, in respect of the Long-Term Lease of the Retail/Commercial Stratum, in accordance with the agreement reached between the Property Trust and the Syndicate or another third party.

## **6. Security**

The Syndicate will provide prior to construction a completion guarantee or bond in terms reasonably acceptable to the Property Trust for the amount of the constructions cost of the redevelopment.

## **7. Application of Income**

(1) Subject to clause 9, the rent from the Short-Term Lease received by the Property Trust from the Syndicate, under clause 5 (c), after the payment of any costs of and incidental to this ordinance and any charges and commissions properly payable to the Property Trust, is to be applied as follows –

- (a) as to 10% 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;
- (b) as to 1% 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
- (c) as to the balance to be paid to the Churchwardens and applied as follows:
  - (i) firstly in or towards the total of the diocesan cost recovery charge payable by the Parish;
  - (ii) secondly towards the payment or provision of stipend, allowances and benefits of any clerical and/or lay person licensed to the Parish or employed by the Churchwardens on a part- or full-time basis to undertake ministry within the Parish or within the Diocese except the payment of the stipends, allowances and benefits paid or provided to the minister;
  - (iii) thirdly the remaining balance, if any, in or towards the maintenance, refurbishment, repair, renovation and restoration of St John's church building and other fittings, fixtures and furniture, the Rectory and Parish Hall including fencing and walls adjacent to the church building or towards any such other purpose as determined by the Parish Council from time to time.

(2) Subject to clause 9, the income received by the Property Trust from the date of Development Consent, under clauses 5(f) and 5(g) after the payment of any costs of and incidental to this ordinance and any charges and commissions properly payable to the Property Trust, is to be applied as follows:

- (a) as to 15% 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;
- (b) as to 1%
- (c) 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;
- (d) as to the balance to be paid to the Churchwardens and applied as follows –
  - (i) firstly in or towards the total of the diocesan cost recovery charge payable by the Parish;
  - (ii) secondly towards the payment or provision of stipend, allowances and benefits of any clerical and/or lay person licensed to the Parish or employed by the Churchwardens on a part- or full-time basis to undertake ministry within the Parish or within the Diocese except the payment of the stipends, allowances and benefits paid or provided to the minister;
  - (iii) thirdly the remaining balance, if any, in or towards the maintenance, refurbishment, repair, renovation and restoration of St John's church building

and other fittings, fixtures and furniture, the Rectory and Parish Hall including fencing and walls adjacent to the church building or towards any such other purpose as determined by the Parish Council from time to time.

(3) Pending any application of the income under sub-clauses (1) and (2) such income must be invested by the Property Trust.

#### **8. Review**

(1) On or before the day being 6 months before the Review Date the Churchwardens must promote an ordinance to the Standing Committee for the application of income.

(2) In this clause, the 'Review Date' is that day being the 4th anniversary of the date of assent to this Ordinance.

#### **9. Heritage Buildings**

If –

- (a) an order is made under the Heritage Act 1977 in relation to any building or other improvements on the Land; or
- (b) the condition of any building or other improvement on the 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 the Land, an offence is committed under that Act, the Property Trust may -
  - (i) 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
  - (ii) apply to the whole or any part or parts of the rent referred to in clause 7(1) or the income referred to in clause 7(2) in or towards meeting the cost of all such works and things.

#### **First Schedule**

Being Lot 1 in Deposited Plan 225418

#### **Second Schedule**

Being Lot 2 in Deposited Plan 225418

ROBERT WICKS  
**Legal Officer**  
13 February 2008

MARK PAYNE  
**Diocesan Secretary**