

Oakhurst (Richard Johnson Anglican School) Leasing and Variation of Trusts Ordinance 2021

No 6, 2021

Long Title

An Ordinance to permit the leasing of certain land at Oakhurst, to vary trusts and matters consequential thereto.

Preamble

A. Anglican Church Property Trust Diocese of Sydney (the **ACPT**) is the registered proprietor of the land contained in Folio Identifier 100/845891 known as Hyatts and Jersey Roads, Oakhurst (the **Hyatts and Jersey Road Property**).

B. The Anglican Schools Corporation (the **Corporation**) is the registered proprietor of the land contained in Identifier 54/5027 known as 6 Flora Street, Oakhurst (the **Flora Street Property**).

C. By clause 5 of the *Oakhurst Trust Ordinance 2005* that part of the Hyatts and Jersey Road Property, being Lot 1002 in the proposed plan of subdivision signed dated 28 February 2003 by the Diocesan Secretary (the **Plan of Subdivision**), is held on trust for the purposes of the Parish of Oakhurst (the **Parish**).

D. The remainder of the Hyatts and Jersey Road Property, being Lot 1001 in the Plan of Subdivision, forms part of the Mission Property Fund and by clause 5A of the *Mission Property Ordinance 2002* is held on trust for the purposes of the Anglican Church of Australia in the Diocese of Sydney.

E. The Corporation paid the sum of \$116,000 to the ACPT on or about 1 January 1997 to acquire a 31.35% interest in Lot 1001 of the Plan of Subdivision. The Anglican Church Property Trust Diocese of Sydney continues to hold a 68.65% interest in Lot 1001 of the Plan of Subdivision (but not the buildings and other improvement thereon) as part of the Mission Property Fund.

F. The *Oakhurst Subdivision Leasing and Variation of Trusts Ordinance 2010* authorised a subdivision of the Hyatts and Jersey Road Property in accordance with the Plan of Subdivision and certain other matters consequence upon the registration of that plan. The subdivision is prohibitive as a result of the cost of the infrastructure required and the disruption those works would cause to the use of the Hyatts and Jersey Road Property by both the Parish and the Corporation.

G. By reason of circumstances which have arisen after the creation of the trusts on which the Hyatts and Jersey Road Property is held, it is inexpedient to carry out or observe those trusts and it is expedient to vary those trusts and to lease the Hyatts and Jersey Road Property 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 Oakhurst (Richard Johnson College) Leasing Ordinance 2021.

2. Declarations

By reason of circumstances which have arisen after the creation of the trusts on which the Hyatts and Jersey Road Property is held, it is inexpedient to carry out or observe those trusts and it is expedient to –

- (a) vary those trusts in the manner set out in clause 3, and
- (b) to lease the Hyatts and Jersey Road Property in the manner set out in clause 5.

3. Variation of Trust

The Trusts of the Hyatts and Jersey Road Property are varied to the extent necessary to permit the arrangements set out in this Ordinance.

4. Documenting the Corporation's Interest

The ACPT and the Corporation are to enter into documentation to reflect and govern the Corporation's interest described in Recital E – being the Corporation's 31.35% interest in Lot 1001 of the previously proposed Plan of Subdivision of Lot 100.

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5. Lease

(1) The ACPT is authorised to lease the Hyatts and Jersey Road Property to the Anglican Schools Corporation for value for a period of 50 years subject to –

- (a) the Corporation leasing the buildings and licensing the land on that part of the Hyatts and Jersey Road Property marked as 'Church Land' in the sketch in the Schedule (the **Church Land**) to the ACPT for a period of 50 years, with such lease and licence to be held on trust for the purposes of the Parish,
- (b) the Corporation and the Parish having shared use of that part of the Hyatts and Jersey Road Property marked as 'Car Park' in the sketch in the Schedule (the **Carpark**) for a period of 50 years under the terms of a licence to be agreed between the ACPT and the Corporation,
- (c) the Corporation transferring the Flora Street Property for value to the ACPT to be held on trust for the purposes of the Parish as part of the capital of the ACPT-Oakhurst Trust under the *Oakhurst Trust Ordinance 2005*,
- (d) the Corporation being responsible for the maintenance and upkeep of all improvements erected on the Hyatts and Jersey Road Property, other than improvements on the Church Land, and except that the maintenance and upkeep of the Carpark is to be shared by the Parish and the Corporation on a proportional basis having regard to their respective use of the Carpark, and
- (e) such other terms and conditions as it may think fit.

6. Dispute Resolution

In the event that the Parish and the Corporation cannot reach agreement on some matter concerning the use of the Hyatts and Jersey Road Property either party may appeal to the Archbishop or his nominee to determine the matter. The Archbishop or his nominee may make such enquires, seek such advice and do all such things as appear reasonable and proper in the circumstances before making a determination. The parties will be bound by any determination of the Archbishop or his nominee made under this clause, subject to such determination not being inconsistent with any contractual agreements between the parties and not resulting in the Richard Johnson Anglican School (operated by the Corporation on the Hyatts and Jersey Road Property) operating 'for profit' in accordance with section 83C of the *Education Act 1990* (NSW).

7. Repeal

The *Oakhurst Subdivision Leasing and Variation of Trusts Ordinance 2010* is repealed without affecting the validity of any action taken pursuant to the ordinance prior to its repeal.

8. Commencement

- (1) Subject to subclause (2), this Ordinance commences on the date of assent.
- (2) Clauses 2(a), 3, 4, 6 and 7 commence upon the execution of a lease in accordance with clause 5 of this Ordinance.

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Schedule



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

R TONG
Chair of Committee

I Certify that this Ordinance was passed by the Standing Committee of the Synod of the Diocese of Sydney on 22 March 2021.

D GLYNN
Secretary

I Assent to this Ordinance.

GN DAVIES
Archbishop of Sydney

24/03/2021