

# St James' Sydney Phillip Street Property Ordinance 1962

(Reprinted under the Interpretation Ordinance 1985.)

The St James' Sydney Phillip Street Property Ordinance 1962 as amended by and under the St James' Sydney Phillip Street Property Amendment Ordinance 1972, the St James' Sydney Phillip Street Property Ordinance Amendment Ordinance 1973, the St James' Sydney Phillip Street Property Ordinance Amendment Ordinance 1975, the St James' Sydney Phillip Street Property Ordinance Amendment Ordinance 1978, St James' Sydney Phillip Street Property Amendment Ordinance 1981, Anglican Church Property Trust Diocese of Sydney (Change of Name) Ordinance 1982, St James' Sydney Phillip Street Property Amendment Ordinance 1987, the St James' Sydney Phillip Street Property Amendment Ordinance 1990, the St James' Sydney Phillip Street Property Ordinance 1962 Amending Ordinance 1991, the St James' Sydney Phillip Street Property Ordinance 1962 Amending Ordinance 1992, the St James Sydney Phillip Street Property Ordinance 1962 Amendment Ordinance 1997, the St James Sydney Phillip Street Property Ordinance 1962 Amendment Ordinance 1998, the St James' Sydney Phillip Street Distribution Ordinance 2003, the St James Sydney Phillip Street Amendment Ordinance 2004, the St James' Sydney Phillip Street Amendment Ordinance 2006, the St James' Sydney Phillip Street Property Amendment Ordinance 2008, the St James' Sydney Phillip Street Property Amendment Ordinance 2011, the St James' Sydney Phillip Street Property Ordinance 1962 Further Amendment Ordinance 2011, the St James' Sydney Phillip Street Property Ordinance 1962 Amendment Ordinance 2014 and St James' Sydney Phillip Street Property Amendment Ordinance 2015.

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## Long Title

An Ordinance to vary the trusts of certain property in Phillip Street, Sydney, to authorise the mortgaging of the same, to appoint the purposes for which the proceeds of such Mortgage may be used, to authorise the leasing of the same property and for other purposes incidental thereto.

## Preamble

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Now the Standing Committee of the Synod of the Diocese of Sydney in the name and place of the said Synod Hereby Ordains Declares Directs and Rules as follows.

## Definitions

1. (1) In this Ordinance –

“Building” means the building and other improvements from time to time erected on the Land.

“Church building” means all improvements erected upon the whole of the land comprised in Schedule 2.

“Churchwardens” means the wardens from time to time of St James' Church, King Street, Sydney.

“Committee of Management” means the committee established pursuant to clause 3A(2).

“Consultants Fees” means fees incurred and payable to professional consultants including, without limitation, lawyers, accountants, architects, valuers, town planners and real estate agents engaged pursuant to clause 5(c) to advise in relation to the repair, renovation, refurbishment, improvement, development or redevelopment, consolidation, acquisition and similar matters relating to the Land, the Building and adjoining properties.

“Land” means the land described in the Schedule 1.

“Parish” means the Parish of St James' King Street, Sydney.

“Parish Area” means the parts of the Building reserved by this ordinance for the purposes of the Parish.

“Reserve Fund” means the fund constituted by Clause 6.

“Trigger Event” means where an amount of \$500,000 or more is raised by gifts, donations or grants towards the replacement of the pipe organ in the Church building.

“Trustee” means the trustee from time to time of the Building and the Land.

“Year” means a calendar year.

(2) . . . . .

(3) For the purposes of this Ordinance, any revaluation of the Land or the Building is not to be taken into account in determining the income of the Building or any part thereof.

### **Mortgaging Powers**

2. Subject to the proviso hereinafter contained, the Trustee is hereby authorised and empowered to mortgage and charge the Land for the purposes of borrowing or otherwise obtaining the moneys needed for all or any of the following purposes –

- (a) to distribute the moneys the distribution of which is authorised by Clause 7;
- (b) to pay all costs, expenses and outgoings of or incidental to the repair, renovation, refurbishment or improvement of the Building including all professional fees incurred in connection with any such work;
- (c) to pay rates, taxes and other charges payable from time to time in respect of the Land or the Building;
- (d) to insure the Building or any part thereof;
- (e) to carry out repairs and maintenance to the Church building and the replacement of the pipe organ to a limit of \$2,000,000; and
- (f) to pay interest and other charges on or in connection with such moneys or in repaying such moneys;

provided that no such power is to be exercised without the written consent of the Churchwardens.

### **Leasing Powers**

3. The Trustee is hereby authorised and empowered to grant leases, licences and other rights to occupy –

- (a) the Building – excluding the Parish Area; and
- (b) with the prior written consent of a majority of the members of the Parish Council of the Parish – the part of the Parish Area specified in such consent;

for such period, and at such rent or rents, and on and subject to such terms and conditions as the Trustee considers fit with the written consent of the Churchwardens.

### **Management of the Building and Land**

3A. (1) Subject to the terms of this Ordinance, the Churchwardens are responsible for the proper management, security and administration of the Building and the Land in accordance with Parish Administration Ordinance 2008.

(2) The Churchwardens are to establish a committee of management, on terms agreed in writing between the Churchwardens and Trustee from time to time, to provide advice and otherwise assist the Churchwardens fulfil the responsibilities referred to in subclause (1).

(3) In undertaking the proper management and administration of the Building and Land the Churchwardens will –

- (a) maintain proper financial accounts, which are to be separate from the other accounts of the Churchwardens maintained under the Parish Administration Ordinance 2008, and
- (b) ensure that such financial accounts are audited annually, and
- (c) ensure that the income from the Building and Land is applied in accordance with this Ordinance.

3AA. In undertaking the proper management and administration of the Building and the Land, the Churchwardens –

- (a) may enter into contracts with third parties (including managing agents) where the contract value is up to \$500,000 (whether in a lump sum or spread over 3 years);
- (b) must refer any contract where the value exceeds \$500,000 (whether in a lump sum or spread over 3 years) to the Trustee, unless the Trustee has resolved to exempt the contract or contracts from this sub-clause (b).

### **Parish Area**

4. (1) The Parish Area comprises –

- (a) the first, second and third floors of the Building (excluding all lifts and stairways); and
- (b) 4 car parking bays on the first level of the basement of the Building.

(2) The Churchwardens and other persons entitled to use the Parish Area must permit the Trustee reasonable access to the same for the purposes of refurbishing the same and repairing and maintaining the rest of the Building.

(3) The Churchwardens and other persons entitled to use the Parish Area are entitled to exclusive possession of, and access to the same, but must comply with such rules and regulations as are reasonably necessary for the security of the Building, and shall not commit any nuisance in respect thereof.

(4) The Churchwardens –

- (a) are responsible for the cost of air-conditioning the Parish Area; and
- (b) shall continue to be responsible for the costs incurred by the Trustee in connection with the Building on the same basis as other tenants and occupiers of the Building.

(5) All income from a lease, licence or exercise of other right to occupy the Parish Area or any part thereof granted to another party under clause 3(b) is to be applied in the following order of priority –

- (a) in or towards the appropriate share to be borne by the Parish Area or part so occupied of all rates, taxes and other outgoings and expenses assessed or charged on, or in relation to the Land or the Building, or incurred in connection with the derivation of such income, or the management of the Building, and
- (b) the residue is to be paid to the Churchwardens for the use and benefit of the Parish.

### **Application of Income (ex Parish Area)**

5. All income from the Building or any part thereof (excluding the Parish Area) shall be applied in the following order of priority –

- (a) in or towards all rates, taxes and other outgoings and expenses assessed or charged on, or in relation to the Land or the Building, or incurred in connection with deviation of such income, or the management of the Building;
- (b) except for monies borrowed pursuant to clause 2(e) which will be repaid, or reimbursed, by the Churchwardens from the distribution payable under clause

- 7(a)(i), in paying interest and other charges on moneys borrowed or otherwise obtained pursuant to clause 2 and in repaying those moneys;
- (c) by crediting to the Reserve Fund an amount considered by the Churchwardens (acting on the advice of the Committee of Management) to be appropriate to be applied or set aside for –
- (i) the repair, renovation, refurbishment or improvement of the Building; or
  - (ii) the redevelopment of the Land and/or the Building; or
  - (iii) the acquisition of the whole or part of an adjoining property; or
  - (iv) payment of Consultants Fees;
- (d) in paying a trustee management fee in accordance with the following provisions –
- (i) the fee for 2015 and each year thereafter is to be calculated at the rate of 1.1% (or such other rate as the Standing Committee may agree by resolution from time to time) of the gross income of the Building and Land as disclosed in the budget for that year, and
  - (ii) the fee for a year is to be paid, in advance, by 14 January of that year provided that if by that date the budget for that year has not been finalised, the fee to be paid is the fee payable in the immediately preceding year and an appropriate adjustment is to be made within 14 days of the budget being determined;
- (e) in paying the reasonable management fees and other costs incurred by the Churchwardens in administering the Building and Land;
- (f) in paying all costs (including legal costs) and expenses of and incidental to this Ordinance;
- (g) in making the distributions authorised from time to time by clause 7.

#### **Reserve Fund**

6. (1) The Reserve Fund comprises –
- (a) . . . . .
  - (b) all moneys credited to the Reserve Fund pursuant to Clause 5(c); and
  - (c) all income derived therefrom.
- (2) The Churchwardens are authorised to invest the Reserve Fund in any mode of investment in which the Trustee is authorised to invest moneys.
- (3) The Reserve Fund is to be applied –
- (a) in or towards the reduction of any borrowings pursuant to clause 2 (with the exception of subclause 2(e)); or
  - (b) in or towards future distributions pursuant to clause 7;
  - (c) in or towards payments pursuant to clause 5(c).

#### **Income Distributions**

7. (a) The following distributions are authorised for the period commencing 1 July 2015 to 30 June 2020 or until the occurrence of a Trigger Event, whichever is the earlier –
- (i) an amount equal to 80% of the balance remaining is to be paid to the Churchwardens for the use and benefit of the Parish except payment of the stipend, allowances and benefits paid or provided to the Minister of the Parish; and
  - (ii) an amount equal to 20% of the balance is to be paid to the Sydney Diocesan Synod Fund, for the use and benefit of the Anglican Church of Australia in the Diocese of Sydney as determined from time to time by the Synod.
- (b) While ever the second and third floors of the Parish Area are not occupied by the parish and let to a third party, the income from those floors will be regarded as income for the purposes of clause 5 and distributed to the Parish and the Synod in the percentages authorised in this clause 7.
- (c) If an ordinance or policy is passed or approved by the Synod which has the effect of imposing a levy or tax upon the property receipts of parishes within the Diocese, the Parish shall pay the greater of –
- (i) the amount payable pursuant to such tax or levy, and

(ii) the amount payable under clause 7(a)(ii),  
and such payment shall be taken to be in full satisfaction of the amounts otherwise payable pursuant to such tax or levy and under clause 7(a)(ii).

7A. . . . .

7AA. . . . .

7B. . . . .

7C. . . . .

7D. . . . .

7E. . . . .

8. The Churchwardens will promote an Ordinance to the Synod of the Diocese or to the Standing Committee for the purpose of considering and if thought fit varying the provisions of clause 7 –

- (a) on or before 30 June 2020 for a period commencing from and including 1 July 2020; or
- (b) on the occurrence of a Trigger Event for a period commencing from and including the date the Synod or the Standing Committee vary the provisions of clause 7.

**Promotion of a Further Ordinance**

9. The Churchwardens shall on or before 30 June 2015 promote an ordinance to the Synod of the Diocese or the Standing Committee for the purpose of considering and if thought fit varying the provisions of clause 7 for a period commencing from and including 1 January 2015.

**Name of Ordinance**

10. This Ordinance is the “St James Sydney Phillip Street Property Ordinance 1962”.

**Schedule 1**

**(Title to the Phillip Street Land and Building)**

The whole of the land situated in the City of Sydney, Parish of St James and County of Cumberland being Lot 1 in Deposited Plan 61495 and being the whole of the land comprised in Certificate of Title Folio Identifier 1/61495 together with all improvements erected thereon and known as 169 Phillip Street, Sydney.

**Schedule 2**

**(Description of Church Building Land)**

The whole of the land situated in the City of Sydney, Parish of St James and County of Cumberland being the whole of the land contained a Crown Grant dated 19 June 1843 with such additional parcels of land as shown on miscellaneous plan no. 1803-3000 surveyed by Mr Surveyor S.R. Dobbie on 15 June 1901 and examined and chartered on 13 August 1901 and as most recently surveyed on 3 July 1998 by Mr Surveyor David John Gray together with all improvements erected thereon and known as St James Anglican Church King Street, Sydney and most recently comprised in Certificate of Title Folio Identifier 1/1022557.

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**Notes**

Clause 6 of the St James' Sydney Phillip Street Property Ordinance 1962 Further Amendment Ordinance 2011 provides as follows –

**“6. Indemnity**

The Trustee from time to time and whether before or after the passing of this Ordinance, is entitled to be indemnified from the property comprising the Building and Land, and the income therefrom, for costs, expenses, charges, liabilities or other claims properly incurred by the Trustee (whether before or after the passing of this Ordinance) in the course of undertaking its duties as trustee.”

## Table of Amendments

|            |   |
|------------|---|
| Preamble   | Amended by Ordinance No 36, 1982 and omitted by Ordinance No 26, 1990.  |
| Clause 1   | Amended by Ordinances Nos 26, 1990; 49, 1991; 38, 2008; 3, 2011, 46, 2011 and 44, 2015.   |
| Clause 2   | Amended by Ordinances Nos 26, 1990; 3, 2011, 46, 2011 and 44, 2015.   |
| Clause 3   | Amended by Ordinances Nos 26, 1990; 3, 2011 and 46, 2011.   |
| Clause 3A  | Inserted by Ordinance No 3, 1973 and omitted by Ordinance No 26, 1990. New clause inserted by Ordinance No 46, 2011 and amended by Ordinance No 44, 2015.   |
| Clause 3AA | Inserted by Ordinance No 26, 1987 and omitted by Ordinance No 26, 1990. New clause inserted by Ordinance No 44, 2015.   |
| Clause 4   | Amended by Ordinances Nos 26, 1990; 49, 1991; 38, 2008; 3, 2011 and 46, 2011.   |
| Clause 5   | Original clause amended by Ordinances Nos 26, 1990 and 49, 1991. Original clause deleted and new clause inserted by Ordinance No 46, 1998. Clause amended by Ordinances Nos 59, 2003; 40, 2004; 50, 2006; 38, 2008; 3, 2011; 46, 2011, 40, 2014 and 44, 2015.   |
| Clause 6   | Amended by Ordinances Nos 26, 1990; 49, 1991; 38, 2008; 3, 2011, 46, 2011 and 44, 2015.   |
| Clause 7   | Original clause deleted and new clause inserted by Ordinance No 51, 1997. New clause deleted and further new clause inserted by No 46, 1998. New clause deleted and further new clause inserted by Ordinance No 38, 2008 and amended by Ordinances Nos 3, 2011 and 40, 2014. Clause deleted and new clause inserted by Ordinance No 44, 2015. |
| Clause 7A  | Inserted by Ordinance No 58, 1981 and omitted by Ordinance No 26, 1987. New clause inserted by Ordinance No 40, 2004. Deleted by Ordinance No 38, 2008.   |
| Clause 7AA | Inserted by Ordinance No 26, 1987 and omitted by Ordinance No 26, 1990.   |
| Clause 7B  | Inserted by Ordinance No 58, 1981 and omitted by Ordinance No 26, 1987.   |
| Clause 7C  | Inserted by Ordinance No 26, 1987 and omitted by Ordinance No 26, 1990.   |
| Clause 7D  | Inserted by Ordinance No 26, 1987 and omitted by Ordinance No 26, 1990.   |
| Clause 7E  | Inserted by Ordinance No 26, 1987 and omitted by Ordinance No 26, 1990.   |
| Clause 8   | Original clause deleted and new clause inserted by Ordinance No 51, 1997. New clause deleted and further new clause inserted by No 46, 1998. New clause amended by Ordinances Nos 59, 2003 and 40, 2004. Omitted by Ordinance No 50, 2006. New clause inserted by Ordinance No 44, 2015.  |
| Clause 9   | Original clause amended by Ordinances Nos 58, 1981 and 26, 1990. Original clause deleted and new clause inserted by Ordinance No 46, 1998. Amended by Ordinances Nos 38, 2008; 3, 2011 and 40, 2014.  |
| Clause 10  | Inserted by Ordinance No 46, 1998.  |
| Schedule 1 | Original Schedule deleted and new Schedules 1 and 2 inserted by Ordinance No 46, 1998.  |
| Schedule 2 | Original Schedule deleted and new Schedules 1 and 2 inserted by Ordinance No 46, 1998. Schedule 2 amended by Ordinance No 3, 2011.  |

STEVE LUCAS  
**Legal Counsel**

ROBERT WICKS  
**Diocesan Secretary**

15 December 2015