

East Sydney (Kings Cross) Development Ordinance 2001

No 18, 2001

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

A. The land (Land) described in the First, Second, Third and Fourth Schedules is vested in the Anglican Church Property Trust Diocese of Sydney (Property Trust).

B. Under the St John's Darlinghurst Vesting and Leasing Ordinance 1962 the Land is held on trust as to part to be used as a church, parsonage or parish hall in connection with the Church of England in the Parish of St John's Darlinghurst and as to the remainder (being the land described in the Third Schedule) (the Leased Site) to be leased for a term not exceeding 20 years on the conditions, and with the rent to be applied in the manner, specified in the Ordinance.

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

D. Under the St John's King Cross Leasing Ordinance 1988 the trusts on which the Land is held were amended to authorise the Property Trust to lease the Leased Site for a term not exceeding 5 years on the conditions, and with the rent applied in the manner, specified in the Ordinance.

E. Under the St John's Kings Cross Leasing Ordinance 1992 the Property Trust was authorised to lease the Leased Site for a term not exceeding 5 years on the conditions, and with the rent applied in the manner, specified in the Ordinance.

F. Under the East Sydney (Kings Cross) Leasing Ordinance 1997 (1997 Ordinance) the Property Trust was authorised to lease the Leased Site for a term of 1 year and to grant an option to renew the lease for a further term of 1 year on the conditions, and with the rent applied in the manner, specified in the Ordinance.

G. The option to renew referred to in recital F was exercised by the lessee and the lessee vacated the site prior to 13 April 2000.

H. Under the East Sydney (Kings Cross) Development Ordinance 1999 (1999 Ordinance) the trusts on which the Leased site was held, were amended to authorise the Property Trust to lease the Leased site 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 Leased Site by the construction by the lessee of a serviced apartment complex.

I. The Property Trust has not proceeded with the redevelopment of the land outlined in the 1999 Ordinance.

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

K. The Property Trust has not proceeded with the leasing of the Leased Site as outlined in the 2000 Ordinance.

L. The Property Trust proposes to lease the Leased Site to Gwynvill Trading Pty Limited ABN 35 002 224 517 or other Preferred Developer agreed to by the Property Trust (Preferred Developer) for a term not exceeding 5 years (Short-Term Lease) and to distribute the rent from such lease in the manner set out in this Ordinance.

M. The Property Trust proposes to procure the redevelopment of the land described in the Third Schedule and part of the land described in the Fourth Schedule (the Development Site) by entering into a Development Agreement with the Preferred Developer (Development Agreement) pursuant to which long-term leases (Long-Term Leases) will be granted on the completion of the redevelopment and for that purpose the Property Trust has entered Heads of Agreement dated 8 May 2001 (Heads of Agreement) with Cornerstone Property Group Pty Limited ABN 00 000 684 686 (Cornerstone).

N. It is proposed that provision be made for the distribution of moneys received from the development of the Development Site.

O. By reason of circumstances which have arisen after the creation of the trusts created by the 1997 Ordinance, the 1999 Ordinance and the 2000 Ordinance in respect of the Leased Site, it is inexpedient to carry out and observe those trusts and it is expedient that they be varied in the manner set out below, and it is also inexpedient to deal with the Leased Site or apply the income in the manner provided in those Ordinances and it is expedient that the Development Site be leased and redeveloped in the manner set out below.

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 2001.

2. Declarations

By reason of circumstances which have arisen after the creation of the trusts created by the 1997 Ordinance, the 1999 Ordinance and the 2000 Ordinance in respect of the Leased Site, it is inexpedient to carry out and observe those trusts and it is expedient that they be varied in the manner set out below, and it is also inexpedient to deal with the Leased Site or apply the income therefrom in the manner provided in those Ordinances and it is expedient that the Development Site be leased and redeveloped in the manner set out in this Ordinance.

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3. Authorities

- (1) The Heads of Agreement are hereby confirmed.
- (2) The Property Trust is authorised to grant a Short-Term Lease to the Preferred Developer of the Leased Site 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 Preferred Developer for the redevelopment of the Development Site (the Redevelopment) as outlined in the Heads of Agreement, in consideration of which the Preferred Developer will pay to the Property Trust an occupation fee, during the Redevelopment.
- (4) The Property Trust is authorised to grant Long-Term Leases of the Development Site on completion of the Redevelopment for a term of 99 years, in consideration of which rental payments will be made subject to the terms and conditions set out below and in accordance with the terms and conditions of the Heads of Agreement and such other terms and conditions as are agreed between the Property Trust and the Preferred Developer.
- (5) 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.
- (6) The Property Trust is authorised to consent to any subdivision of the Development Site, with the Property Trust to retain freehold title.
- (7) The Property Trust is authorised to enter a strata leasehold scheme pursuant to the Strata Schemes (Leasehold Development) Act 1986, as amended with respect to the Development Site.
- (8) On the signing of the Heads of Agreement Cornerstone paid to the Property Trust \$200,000 as an exclusivity fee (Exclusivity Fee).
- (9) From the date of the signing of the Development Agreement, the Exclusivity Fee shall become the absolute property of the Property Trust, which shall disburse the sum held in trust at the direction of the churchwardens of St John's East Sydney (Churchwardens).
- (10) In the event of any inconsistency between the Heads of Agreement and this ordinance, the terms of the ordinance must prevail.

4. Commencement of Leases

- (1) The Short-Term Lease and Development Agreement with the Long-Term Leases annexed between the Property Trust and the Preferred Developer will be prepared by the Property Trust and made ready for signing within 3 months of the date of the assent to this Ordinance or such later date as the Property Trust and the Preferred Developer agree. The Long-Term Leases will commence on the date the first Certificate of Occupation in relation to the Redevelopment issues under the Environmental Planning and Assessment Act 1979, as amended (Certificate of Occupation) or occupation of the building, whichever occurs first. This will be subject to the Property Trust being satisfied that all other requirements of the Development Agreement have been met to its reasonable satisfaction.
- (2) If the development consent (Development Consent) to the Redevelopment has not been granted on conditions acceptable to the Property Trust and the Preferred Developer within 12 months from the date of the Development Agreement, either party may terminate the Development Agreement. Neither party will have a claim against the other except for any breach prior to termination.

5. Payments from the Preferred Developer

The payments made by the Preferred Developer are to be structured so that -

- (a) rent under the Short-Term Lease for the first twelve month period is paid on the signing of the Development Agreement, and at the expiration of this twelve month period, rent will become payable monthly in advance,
- (b) an Occupation Fee is paid from the date of Development Consent to the commencement of the Long-Term Leases,
- (c) from the date of commencement of the Long-Term Leases, ground rent is to be paid by the Lessees in accordance with the Long-Term Leases.

6. Short-Term Lease

The Preferred Developer must pay for the installation and supply of all services, if applicable in respect of the Short-Term Lease and in respect of its occupation of the Development Site under clause 3(3).

7. Long-Term Leases

- (1) Through-out the term of the Long-Term Leases, the rent will be adjusted by annual increases, as described in the Heads of Agreement.
- (2) On the tenth or other anniversary as agreed, of the commencement date of the Long-Term Leases and thereafter on every tenth or other anniversary as agreed, the value of the land of the Development Site will be reassessed.
- (3) The mechanism for the land value reassessment is described in the Heads of Agreement.
- (4) In no circumstances will the annual rent decrease.
- (5) Pursuant to the terms and conditions of the Long-Term Leases all rates, taxes and other outgoings in respect of the land the subject of the Long-Term Leases will be payable by the Lessee.

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8. Security

The Preferred Developer will provide an acceptable form of guarantee for the proposed building works on the Development Site and the Lessees under the Long-Term Leases will provide lease security in the sum of 12 months rent covered by a bank guarantee.

9. Option to Purchase

The Preferred Developer will have the right of first refusal to purchase the Development Site.

10. Application of Income

(1) Subject to clause 12, the rent from the Short-Term Lease received by the Property Trust from the Preferred Developer, as authorised by this Ordinance pursuant to clause 5(a), after payment of the costs of and incidental to this Ordinance and any charges and commissions properly payable to the Property Trust (the net proceeds) is to be applied as follows:-

- (a) firstly, as to 10% of the net proceeds to the South Sydney Regional Council for the purposes of that council, or alternatively, to such other organization as is determined by the Standing Committee;
- (b) secondly, as to 1% of the net proceeds 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) thirdly, as to the residue of the net proceeds, 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, in or towards the payment of stipends, allowances or remuneration of clerical and/or lay persons (other than the stipends or allowances of the Rector) employed or contracted on a full or part-time basis within the Parish or within adjacent areas in the Diocese; and
 - (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.

(2) Subject to clause 12, the income received by the Property Trust from the date of Development Consent, as authorised by this Ordinance pursuant to clause 5(b) and 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 (the net proceeds) is to be applied as follows:-

- (a) firstly, as to 10% to the South Sydney Regional Council for the purposes of that Council, or alternatively, to such other organization as is determined by Standing Committee;
- (b) secondly, as to 5% to the "Historic Buildings Restoration Fund" known as Fund 165;
- (c) thirdly, 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 determine from time to time;
- (d) fourthly, as to the residue of the net proceeds, 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, in or towards the payment of stipends, allowances or remuneration of clerical and/or lay persons (other than the stipends or allowances of the Rector) employed or contracted on a full or part-time basis within the Parish or within adjacent areas in the Diocese; and
 - (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.

(3) Pending any application of the rental moneys and occupation fees such funds must be invested by the Property Trust.

11. 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 received after the Review Date.

(2) In this clause, the "Review Date" is that day being the 5th anniversary of the date of assent to this Ordinance.

12. Heritage Buildings

If -

- (a) an order is made under the Heritage Act 1977 in relation to any building or other improvement 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 10(1) or the income referred to in clause 10(2) in or towards meeting the cost of all such works and things.

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First Schedule

The land described in Crown Grant dated 28 October 1857 registered in the Register of Grants to the United Church of England and Ireland No.1 Page 57/2 being all that piece or parcel of land in Our said Territory, containing by admeasurements Three roods, thirty seven perches and three quarters of a perch, be the same more or less, situated in the County of Cumberland and Parish of Alexandria, City of Sydney at Darlinghurst, commencing on the West Side of Victoria Street at the South East corner of the Church of England School allotment and bounded on the east by Victoria Street bearing south three chains and eighty links; on the South by a line bearing west two chains fifty nine links and one half link to Brougham Street; on the West by Brougham Street bearing North three chains and eighty links, and on the North by the South boundary of the School allotment aforesaid being a line bearing East two chains fifty nine links and one half link to the point of commencement. Advertised in the Government Notice dated 5th March 1857.

Second Schedule

All that piece or parcel of land in Our said Territory, containing by admeasurement, one rood, fourteen and one half perches be the same more or less, situated in the County of Cumberland and Parish of Alexandria at Woolloomooloo City of Sydney, commencing at the North East corner of the Church allotment and bounded on the east by Victoria Street northerly one chain thirty three and one half links; on the North by Westerly line of two chains and Sixty links to Brougham Street; on the West by that Street southerly one chain thirty links; and on the South by an easterly line of two chains fifty nine and one half links, dividing it from vacant land and from the Church allotment, to the commencing corner aforesaid.

Third Schedule

All that land being Lot 1 in Deposited Plan 225418 being all that piece or parcel of land containing about 1 rood 12 perches being part of the land in Crown Grants of 28th October 1857 and 27th March 1850 for Church, parsonage and school situated in the City of Sydney Parish of Alexandria County of Cumberland State of New South Wales, commencing at a point on the Western alignment of Victoria Street being 1 degree 3 minutes and distant 383 feet 5 inches from the intersection of the western alignment of that street with the northern alignment of Liverpool Street and bounded thence on the east by part of the aforesaid western alignment of Victoria Street being a line bearing 1 degree 3 minutes for 123 feet to the south eastern corner of land comprised in Primary Application No 28790 on the north by the southern boundary of the land comprised in that Application being a line passing along the southern face of a break wall bearing 269 degrees 31 minutes 20 seconds for 125 feet 8½ inches to the south eastern alignment of Darlinghurst Road as fixed 10 feet south west of a very old stone kerb on the north west by part of the south eastern alignment of Darlinghurst Road by lines bearing consecutively 196 degrees 27 minutes for 4 inches, 196 degrees 1 minute for 96 feet 6½ inches and 194 degrees 28 minutes 30 seconds for 3 feet 1¾ inches and on the south west by lines bearing consecutively 92 degrees 17 minutes for 119 feet 5 inches and 123 degrees 37 minutes for 38 feet to the point of commencement be the said several dimensions all a little more or less.

Fourth Schedule

Being Lot 2 in Deposited Plan 225418.

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

P W YOUNG
Chairman of Committees

I Certify that this Ordinance was passed by the Standing Committee of the Synod of the Diocese of Sydney on 28 May 2001.

M A PAYNE
Secretary

I Assent to this Ordinance.

P W BARNETT
Administrator
31/5/2001