

St Andrew's House Trust Ordinance 2015

No 3 , 2015

Long Title

An Ordinance to redeclare the trusts of the property held in the trust fund known as the St Andrew's House Trust, and for purposes related thereto.

Preamble

A. Glebe Administration Board is the trustee of the Land held on the trusts set out in clause 4 of the *St Andrew's House Income Ordinance 2011*.

B. By clause 1 of the *St Andrew's House Ordinance 1975*, the Land is managed by St Andrew's House Corporation.

C. The Land forms part of the property held by Glebe Administration Board in the trust known as the St Andrew's House Trust.

D. The other property of the St Andrew's House Trust is the property held in the fund known as Fund 011 in the books of account maintained in respect of the Trust.

E. By reasons of circumstances which have arisen after the creation of the trusts on which the property of the Trust is held, it is inexpedient to carry out and observe those trusts and it is expedient that trusts of that property be redeclared.

The Standing Committee of the Synod of the Diocese of Sydney Ordains as follows.

Part 1 – Introduction

1. Name

This Ordinance is the *St Andrew's House Trust Ordinance 2015*.

2. Definitions

In this Ordinance –

“Building” means the office tower known as “St Andrew's House” erected on the Land, together with the shopping arcade erected on the Land and the car park situated under the office tower.

“Diocesan Endowment Fund” means the property held on the trusts set out in the *Diocesan Endowment Ordinance 1984*.

“Endowment of the See Capital Fund” means the property held on the trusts set out in the *Endowment of the See Capital Ordinance 2012*.

“Existing Loan” means the loan made by Glebe Administration Board as trustee of the Diocesan Endowment Fund to St Andrew's House Corporation pursuant to a letter dated 22 February 2008, as amended by the parties from time to time.

“Existing Property” means –

- (a) the Land;
- (b) the Building; and
- (c) the other property of the Trust recorded in the fund known as Fund 011 in the books of account maintained in respect of the Trust.

“Freehold Land” means the land comprised in Volume 13705 Folio 170.

“Income” means the income earned from, or in connection with, the Property.

“Land” means –

- (a) the Freehold Land; and
- (b) the Leasehold Land.

“Law” includes any statute and rule of common law, rule of equity or judgement which applies to the Trust or the Trustee (as the case may be).

St Andrew's House Trust Ordinance 2015

"Leasehold Interest" means the Trustee's interest in the leases of land adjoining or near the Freehold Land between The Council of the City of Sydney, as landlord, and the Trustee, as tenant, and includes the lease of land comprised in Folio Identifier 100/104811 (registered no. 7304411).

"Leasehold Land" means the land that is the subject of the Leasehold Interest and any right, power or obligation of the Trustee in respect of that land under this ordinance is only applicable to the extent of the Leasehold interest.

"Manager" means St Andrew's House Corporation or such other person or corporation who or which, from time to time, is appointed by the Standing Committee to manage and control the Property.

"Outgoings" means all outgoings of any description in relation to the Land and Building and, without limiting the generality of the foregoing, includes –

- (a) any amount payable to The Council of the City of Sydney under any lease of the Land to the Trustee, and
- (b) any amount reasonably determined by the Manager for depreciation and for any actual or contingent liability.

"Property" means such of the Existing Property as remains held by the Trustee from time to time as property of the Trust, and such other property as may be paid to applied or acquired by the Trustee to be held as property of the Trust.

"School Council" means the Council of St Andrew's Cathedral School and its successors.

"Security Interest" means any mortgage, charge, pledge, lien, encumbrance, arrangement for the retention of title or other similar right, interest, power or arrangement of any nature having the effect of providing security.

"St Andrew's House Corporation" means the council incorporated under that name under the *Anglican Church of Australia (Bodies Corporate) Act 1938* by order published in the Government Gazette on 15 August 1975.

"Trust" means the St Andrew's House Trust.

"Trust Loan" means the Existing Loan and any other loan taken out by the Trustee from time to time for the purposes of the Trust.

"Trustee" means Glebe Administration Board or such other person or corporation who or which, from time to time, is the trustee of the Trust.

3. Declarations

By reason of circumstances which have arisen after the creation of the trusts on which the Existing Property and the income from the Existing Property are held, it is inexpedient to carry out and observe those trusts and it is expedient to redeclare the trusts upon which the Existing Property is held and to provide for the application of the income from the Existing Property.

Part 2 – Trusts

4. Trusts of the Property

The Property is held on the following trusts for the Anglican Church of Australia in the Diocese of Sydney –

- (a) as to one undivided half of the Property, for the purposes of the Diocesan Endowment Fund, and
- (b) as to the other undivided half of the Property, for the purposes of the Endowment of the See Capital Fund, and
- (c) as to the Income, to permit the applications set out in clause 5.

5. Application of Income

(1) The Income earned in 2015, and in each calendar year thereafter, is to be applied, so far as it extends, in the following order of priority –

- (a) to pay or repay –

St Andrew's House Trust Ordinance 2015

- (i) all interest due and payable on a Trust Loan, and
 - (ii) the principal of the Trust Loan in accordance with the repayment schedule determined from time to time by the lender, and
 - (iii) all Outgoings incurred during the year, and
- (b) to set aside the amount or amounts determined by the Manager to, or as an addition to, any provision or reserve which the Manager determines is desirable for the proper management and control of the Trust or the Property including, without limiting the generality of the foregoing –
- (i) a provision or reserve for replacement or refurbishment of the Building or any part thereof, and
 - (ii) a provision or reserve for application in a following year or years in accordance with the trusts upon which the Property is held, and
- (c) the balance, if any, is to be applied in accordance with the trusts upon which the Property is held.
- (2) The Trustee may make applications under clause 5(1) by way of payments in advance during the year in which the relevant Income is earned, provided that appropriate adjustments are made having regard to the actual amounts to be applied under clause 5(1) as determined from the audited financial accounts for the relevant year.

Part 3 – Management of the Property

6. Management of the Property

- (1) Subject to this Ordinance, the Manager is responsible for managing and controlling the Property.
- (2) In exercising its responsibilities under clause 6(1) the Manager may give directions to the Trustee in relation to the exercise by the Trustee of its powers in respect of the Property.

Part 4 – Powers of the Trustee

7. Powers of the Trustee

- (1) The Trustee is not to exercise its powers under this clause 7 unless –
- (a) it has been directed by the Manager to exercise those powers, or
 - (b) it has been directed by the Standing Committee by resolution to exercise those powers, or
 - (c) it is required by law to exercise those powers, or
 - (d) in the opinion of the Trustee, the exercise of those powers is necessary or desirable to protect or preserve the Property, or any part thereof.
- (2) Subject to this Ordinance, the Trustee has the following powers –
- (a) to grant any lease and/or sublease, licence or other rights to occupy the Building or the Land or any part or parts thereof for a term or terms which in aggregate do not exceed 25 years at such rents and subject, to this Ordinance, on such terms and conditions as the Trustee determines, and
 - (b) to accept surrenders of leases and release tenants from claims thereunder, and
 - (c) to receive and give receipts for all moneys accruing from the Building or the Land for rent or on any account whatsoever, and
 - (d) to undertake alterations to the Building and other improvements erected upon the Land, and
 - (e) to carry out repairs, renovations and alterations of the Building and other improvements erected upon the Land and to erect on the Land any further building or improvements, and
 - (f) with the approval of the Archbishop-in-Council, to subdivide the Freehold Land or the Building or the Freehold Land and Building into 2 or more lots by means of a plan or plans of subdivision (which may provide for stratum subdivision) or by a strata plan or plans,

St Andrew's House Trust Ordinance 2015

- (g) dedicate land or transfer, grant or create or take the benefit of any easement or other right to or from, or enter into any arrangement or agreement with any owners, tenants or occupiers or others having an interest in any land (including the Land) near the Property or with any Authority (under any valid and enforceable requirement of that Authority) as the Trustee thinks fit, and
 - (h) to effect insurance policies in relation to the Property and in respect of its functions as trustee of the Trust and in respect of the functions of the Manager under this Ordinance, and
 - (i) to invest the Property, other than the Land, in accordance with the *Investment of Church Trust Property Ordinance 1990*, and
 - (j) to guarantee liabilities of any person or provide indemnities in respect of such liabilities, and
 - (k) to institute, defend and compromise legal proceedings in respect of the Property, including arbitrations and investigations.
- (3) Despite clause 7(2)(a), the Trustee may grant a lease or leases of any part or parts of the Building to the School Council for any term, and at such rent and subject to such terms and conditions which the Trustee and School Council may agree upon and without the covenants specified in clause 7(4).
- (4) Every lease is to contain covenants forbidding the use of and requiring the lessee to refrain from using the leased premises or any part thereof –
- (a) for any illegal or immoral purpose, or
 - (b) for the sale by wholesale of tobacco in any form, or
 - (c) in any way connected with gambling or betting, or
 - (d) for the manufacture or sale of liquor except, in the case of the sale of liquor, for consumption with food to be consumed on the leased premises, or
 - (e) for the sale or distribution of films, computer games, publications or digital media that are classified “X” or “R” by the Australian Classification Board, or
 - (f) in any way connected with narcotic drugs except as part of the practice of a qualified medical practitioner or qualified dentist or the normal trading practices of a registered pharmacist or registered chemist.
- (5) The Trustee also has power –
- (a) to lease from The Council of the City of Sydney any Leasehold Land vested in or owned by The Council of the City of Sydney, and
 - (b) to enter into any agreement with The Council of the City of Sydney for any such lease for any term, and at such rent and subject to such terms and conditions which the Trustee and The Council of the City of Sydney may agree upon.
- (6) The Trustee also has the following powers –
- (a) to appoint and remove officers, employees, agents and attorneys and fix their remuneration, if any, and
 - (b) subject to clause 8, to borrow or raise money whether on the security of the Property or part thereof, or otherwise as it considers necessary, and
 - (c) to receive money on deposit or loan, and
 - (d) subject to clause 8(4), to draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange and other negotiable or transferable instruments, and
 - (e) to create any other Security Interest in respect of its interest in the Property, and
 - (f) to fetter discretions, such as by the granting of options.
- (7) Subject to this Ordinance, the Trustee has such other powers as are necessary or desirable to enable it to fulfil its duties as trustee of the Trust.
- (8) No purchaser, mortgagee, lessee, lender or other person on any sale, exchange, mortgage, lease from or any loan or provision of other financial accommodation to or in relation to the Trustee shall be concerned to see or enquire into –

St Andrew's House Trust Ordinance 2015

- (a) the purpose, necessity or propriety thereof, or
- (b) the power of the Trustee in relation thereto or the mode of exercising the same, or
- (c) the application or disposition of any purchase, mortgage or other money or rent paid by him.

8. Liabilities of the Trustee

- (1) The Trustee remains and continues to be solely responsible for all liabilities incurred by it or on its behalf as trustee of the Trust.
- (2) Neither the Trustee nor the Manager is to represent to any person, persons or corporation that the Archbishop or the Synod or the Standing Committee or any person or persons or any other corporate body or corporation holding church trust property for the Anglican Church of Australia in the Diocese of Sydney or any other corporate body incorporated under the *Anglican Church of Australia (Bodies Corporate) Act 1938*, will or may meet or discharge all or any part of any liability or liabilities which have been or may or will be incurred wholly or partly by or on behalf of the Trustee or for the purposes of the Trust.
- (3) The Trustee is not to exercise any power to borrow moneys for the purposes of the Trust if the amount which it proposes to borrow, when added to the amount of all moneys previously borrowed by it as trustee of the Trust and not repaid, exceeds \$25,000,000 or such other amount as may be approved by resolution of the Standing Committee. Nothing in this clause 8(3) limits the liability of the Trustee under the Existing Loan.
- (4) The Trustee is not to execute or deliver any mortgage, charge, debenture, guarantee, indemnity or promissory note or bill of exchange or other negotiable instrument other than a cheque drawn on the Trustee's bank unless the following clause is included therein without qualification –

"Notwithstanding anything contained herein to the contrary, each of the parties hereto acknowledges and agrees that [name of Trustee] is not liable to any other party hereto for any amount whatsoever (whether by virtue of any express or implied obligation) beyond such amount (if any) as [name of Trustee] may be able to pay to that party in the event of the St Andrew's House Trust constituted under the *St Andrew's House Trust Ordinance 2015* being wound up."
- (5) If a person or corporation (a "Former Trustee") ceases to be Trustee each subsequent Trustee will assume any debts or other liabilities incurred by a Former Trustee as trustee of the Trust in accordance with the terms upon which those debts or other liabilities were incurred.

Part 5 – General

9. Manager and Trustee Fees

The Trustee and Manager are each entitled to be paid from time to time, from the Property, a fee approved by the Standing Committee by resolution to recompense them for the reasonable costs and expenses incurred by each of them in, or in connection with, performing their functions under this Ordinance.

10. Indemnity

- (1) In addition to any indemnity under any Law, the Trustee is entitled to be indemnified from the Property and all income generated from the Property on a full indemnity basis for all costs, expenses, charges, liabilities or other claims properly incurred by the Trustee (or assumed by the Trustee under clause 8(5)) in the course of undertaking its duties as trustee of the Trust.
- (2) Such right of indemnity in respect of a matter (an "Indemnified Matter") will not be lost or impaired by reason of a separate matter (whether before or after the Indemnified Matter) in respect of which the indemnity does not apply. Also, the right of indemnity continues to be available after the Trustee retires or is removed as trustee of the Trust.
- (3) The Trustee is not required to do anything (including enter into any contract or commitment) which involves it incurring any liability (actual or contingent) unless its liability is limited in a manner satisfactory to it in its absolute discretion.
- (4) Where a liability is incurred by the Trustee in properly performing or exercising any of its powers or duties in relation to the Trust, the Trustee may exercise any of its rights to be indemnified or reimbursed out of the Trust Fund to meet that liability. It may do so despite any

St Andrew's House Trust Ordinance 2015

loss incurred in relation to the Trust or any reduction in the value of the Assets arising from any unrelated act or omission by the Trustee or by any person acting on behalf of the Trustee.

11. Records, Auditor and Reports

The Trustee will comply with the provisions of the *Accounts, Audits & Annual Reports Ordinance 1995* as if the Trustee, in its capacity as trustee of the Trust, was an organisation for the purposes of that Ordinance.

12. Not-for-profit and dissolution of the Trust

(1) The Property is church trust property within the meaning of the *Anglican Church of Australia Trust Property Act 1917*, and therefore must not, as a matter of law, be distributed for the private benefit of individuals either during the operation of the Trust or on its winding up or dissolution.

(2) If the Trust is wound up or dissolved, the Property, after satisfaction of all its liabilities, must be applied for such purposes of the Diocese of Sydney as the Synod of the Diocese may determine.

13. Application of the 2011 Ordinance

Clause 5 of the *St Andrew's House Income Ordinance 2011* does not apply in relation to Income earned in 2015, or in any year thereafter.

14. Repeal of clauses 2 and 7 of the 1975 Ordinance

Clauses 2 and 7 of the *St Andrew's House Ordinance 1975* are repealed with effect from the date of commencement of this Ordinance, but without invalidating any action taken under those clauses prior to that date.

15. Commencement

This Ordinance commences on the date of assent.

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

R TONG
Chairman of Committees

I Certify that this Ordinance was passed by the Standing Committee of the Synod of the Diocese of Sydney on 23 March 2015.

R WICKS
Secretary

I Assent to this Ordinance.

GN DAVIES
Archbishop of Sydney
23/03/2015