

ST. JAMES' SYDNEY PHILLIP STREET PROPERTY AMENDMENT ORDINANCE 1990

No 26, 1990

AN ORDINANCE to amend the St James' Sydney Phillip Street Property Ordinance 1962-1987.

WHEREAS

- A. The Glebe Administration Board (hereinafter called "the Trustee") is registered as proprietor of the whole of the land comprised in Certificate of Title Volume 1352 Folio 218 upon which are erected buildings and improvements known as No. 169 and 171 Phillip Street, Sydney.
- B. The said land is church trust property held for the sole benefit of the Parish of St James, Sydney.
- C. Clause 7AA of the St James, Sydney Phillip Street Property Ordinance 1962-1987 (hereinafter called "Principal Ordinance") provides that part of the lease income, as therein defined, derived from certain leases in the calendar years from 1987 to 1990 inclusive shall be applied by the Trustee in such manner and for such purposes as therein set forth.
- D. The said Clause 7AA further provides that such of the said lease income as is not paid or applied for such purposes shall be paid into a capital fund to be established pursuant to paragraph (b) thereof which fund is held upon certain trusts as set out therein.
- E. All the leases in respect to office space have terminated and no substantial lease income is now payable to the Trustee pursuant to the aforesaid provisions.
- F. It is proposed to repair, renovate, refurbish and improve the buildings erected on the said land and to enter leases to enable further income to be provided to the Trustee.
- G. In accordance with the provisions of Clause 7D of the Principal Ordinance the review therein referred to has been carried out and it is desired to substantially amend the Principal Ordinance in the manner hereinafter provided.
- H. By reason of circumstances which have arisen subsequent to the creation of the trusts upon which the real and personal property herein referred to is held it is inexpedient to carry out and observe the same and it is inexpedient to deal with or apply the said property in the manner therein set forth and the trusts are accordingly varied to the extent to which they are varied by the terms hereof and it is expedient to vary the same accordingly.
- I. The Parish recognise and acknowledge that if the Building is not substantially fully leased within a reasonable time after the refurbishment of the Building has been completed it may be necessary for the Building to be sold.

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:

1. (1) This Ordinance may be cited as "St James' Sydney Phillip Street Property Amendment Ordinance, 1990".

(2) The Principal Ordinance, as amended by this Ordinance may be cited as "St James' Sydney Phillip Street Property Ordinance 1962-1990".

2. By reason of circumstances which have arisen subsequent to the creation of the trust upon which the real and personal property herein referred to is held it is inexpedient to carry out and observe the same and it is inexpedient to deal with or apply the said property in the manner therein set forth and the trusts are accordingly varied to the extent to which they are varied by the terms hereof and it is expedient to vary the same accordingly.

3. The Principal Ordinance is amended as follows:-

(1) By the omission of the recitals.

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- (2) By the omission of Clauses 1,2,3,3A,3AA and 4 (provided that the omission of these clauses shall not prejudice or affect anything done or not done pursuant to any of those clauses prior to such repeal) and by the insertion of the following Clauses 1 and 2:

"1. (1) In this Ordinance:

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

"Churchwardens" means the churchwardens from time to time of St James' Church, King Street, Sydney.

"GAB" means the Glebe Administration Board.

"Land" means the land described in the Schedule.

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

"Parish Land" means the parts of the Building reserved by this ordinance for the purposes of the Parish.

"Price Index" means the All Groups Consumer Price Index applicable to Sydney kept by the Commonwealth Statistician but:

- (a) in the event of that index being discontinued or abolished then such other index as the Commonwealth Statistician may substitute therefor; and
- (b) if no other index is substituted for that index by the Commonwealth Statistician then the index which, in the opinion of GAB, most nearly approximates the All Groups Consumer Price Index applicable to Sydney kept by the Commonwealth Statistician in 1989.

"Refurbishment Fund" means the fund constituted by Clause 6.

"Year" means a calendar year.

- (2) For the purpose of this Ordinance, an amount payable in any Year is varied in accordance with the Price Index if it is multiplied by the fraction represented by:

$$\frac{A}{B}$$

Where

A is the Price Index figure applicable upon the first day of the Year, and

B is the Price Index applicable upon the first day of the Year which precedes that Year,

Provided that in any Year, until the amount of the variation is ascertained as herein provided, the amount payable as at the last day of the preceding Year shall continue to be payable, and when such variation is ascertained, then an adjustment payment shall be forthwith made as necessary in respect of the part of the Year as may have elapsed at the time of such ascertainment.

2. Subject to the proviso hereinafter contained, GAB is hereby authorised and empowered to mortgage and charge the Land for the purposes of borrowing or otherwise obtaining the moneys need by GAB from time to time for all or any of the following purposes:

- (a) to distribute the moneys the distribution of which is authorised by Clause 7;

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- (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; and
- (e) to pay interest and other charges on or in connection with such moneys or in repaying such moneys

Provided that no such power shall be exercised unless or until the Trustee shall first have given to the Churchwardens prior written notice as to the maximum amount proposed to be borrowed or as to any increase thereof above an amount in respect of which such written notice has previously been given.

(3) By the omission of Clause 5, (provided that the omission of that clause shall not prejudice or affect anything done or not done pursuant to any of that clause prior to such repeal), and by the insertion of the following as Clauses 3 and 4:

"3. GAB 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 GAB consider fit, provided that, in the case of a lease, licence or other right relating to any part of the Parish Area, such period, rent, terms and conditions are approved in writing by the Churchwardens.

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 shall permit GAB 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 GAB in connection with the Building on the same basis as other tenants and occupiers of the Building;

on the understanding that and provided that they shall continue to be reimbursed in respect of all such moneys from distributions authorised by Clause 7.

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- (4) By the omission of Clause 6,7AA,7B and 7C and by the insertion of the following as Clauses 5,6 and 7:
- "5. All income from the Building or any part thereof (excluding the Parish Area) in any Year 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 the derivation of such income, or the management of the Building;
 - (b) in making the distributions authorised from time to time by Clause 7;
 - (c) in paying interest and other charges on moneys borrowed or otherwise obtained pursuant to Clause 2 and in repaying those moneys; and
 - (d) by crediting the residue to the Refurbishment Fund.
6. (1) The Refurbishment Fund comprises:
- (a) all moneys held by GAB pursuant to the Principal Ordinance as at the date of assent to the St. James' Sydney Phillip Street Property Amendment Ordinance 1990;
 - (b) all moneys credited to the Refurbishment Fund pursuant to Clause 5(d); and
 - (c) all income derived therefrom.
- (2) GAB is authorised to invest the Refurbishment Fund in any mode of investment in which GAB is authorised to invest moneys.
- (3) The Refurbishment Fund is to be applied:
- (a) in or towards making distributions authorised by Clause 7;
 - (b) 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 the management of the Building;
 - (c) in or towards the repair, renovation, refurbishment or improvement of the Building (including payment of professional fees incurred in connection with such works) as GAB considers appropriate from time to time.
7. The following distributions are authorised:
- (a) The payment of all costs, expenses and outgoings in relation to or arising from the preparation and promotion of the St James' Sydney Phillip Street Property Amendment Ordinance 1990.
 - (b) In 1990, payment of the sum of \$269,000 to the Churchwardens for the use and benefit of the Parish by equal quarterly instalments in advance."
- (5) By the substitution of the following Clause 7D:
- "8. The provisions of Clause 7 shall be supplemented by Ordinance promoted by the Churchwardens after 1 July 1991."
- (6) By the omission of Clause 7E, provided that the omission of that clause shall not prejudice or affect anything done or not done pursuant to that Clause prior to such repeal.
- (7) By Clause 8 being re-numbered as Clause 9.

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(8) By the omission of Clause 9.

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

E.D. CAMERON
Chairman of Committees

I CERTIFY that this Ordinance was passed by the Standing Committee of the Synod of the Diocese of Sydney on the 24th day of September 1990.

W.G.S. GOTLEY
Secretary

I ASSENT to this Ordinance.

DONALD ROBINSON
Archbishop of Sydney
12 / 10 / 1990