

St John's Kings Cross Leasing Ordinance 1992

No 42, 1992

An Ordinance to vary the trusts of certain property to authorise the leasing thereof and for other purposes incidental thereto.

Whereas

A. The land ("Land") described in the First Schedule and the Second Schedule is vested in the Property Trust.

B. Under the St John's Darlinghurst Vesting and Leasing Ordinance 1962 ("the 1962 Ordinance") the Land is to be used for a church parsonage and parish hall or partly for one and partly for another of such purposes in connection with the Church of England in the Parish of St John Darlinghurst.

C. The Parish of St John Darlinghurst now includes the Church of St Peter's Woolloomooloo and is known as the Parish of East Sydney.

D. Under the St John's Kings Cross Leasing Ordinance 1988 ("the 1988 Ordinance") the trusts on which the Land was held were amended so as to authorise the Property Trust to lease that part of the Land described in the Third Schedule ("the Leased Site") upon the conditions set forth in that ordinance and apply the income therefrom in the manner specified in that ordinance.

E. The Leased Site has been leased for a term of five (5) years which is shortly to expire.

F. The Property Trust proposes to grant a lease of the Leased Site for a further term of five (5) years upon the terms and conditions herein set forth.

G. By reason of circumstances which have arisen subsequent to the creation of the trusts on which the Leased Site is held it is inexpedient to carry out and observe the same to the extent to which the same are hereby varied and it is also inexpedient to deal with the Leased Site or apply the same or the income therefrom in the manner therein provided and it is expedient to vary such trusts in manner hereinafter mentioned and to make the further provisions hereinafter contained.

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. This ordinance may be cited as the "St John's Kings Cross Leasing Ordinance 1992".

2. By reason of circumstances which have arisen subsequent to the creation of the trusts created by the 1988 Ordinance upon and in respect of the Leased Site it is inexpedient to carry out and observe the same to the extent to which the same are hereby varied and it is also inexpedient to deal with the Leased Site or apply the same or the income therefrom in the manner therein provided and it is expedient that such trusts be varied in the manner hereinafter mentioned and that the land in the said Third Schedule be leased as hereinafter set forth.

3. The Property Trust is authorised to lease the Leased Site for a term not exceeding five (5) years in consideration of rental payments by the lessee as follows -

- (a) Three hundred and nine thousand and eighty-four dollars (\$309,084) per annum for the first year of the lease payable by quarterly instalments in advance of seventy-seven thousand two hundred and seventy one dollars (\$77,271) per quarter;
- (b) The amount of the rental per annum for each of the subsequent years of the lease shall be as determined by the provisions of clause 4 hereof;

and in further consideration of payment by the lessee of certain outgoings as determined by the Property Trust on the basis that the permitted use of the Leased Site shall be for the purpose of conducting a hire car business thereon and such lease shall otherwise contain such terms covenants and conditions as may be approved by the Property Trust.

4. (a) In this clause -

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"Index Number" means the Index Number contained in the Consumer Price Index - all-Groups for Sydney - published from time to time by the Australian Statistician.

"Valuer" means a duly qualified real estate valuer of not less than ten (10) years' experience in the metropolitan area of Sydney as is nominated by the President or other chief office bearer for the time being of the Real Estate Institute of New South Wales or its successor.

- (b) On each anniversary of the commencement date of the lease authorised by this ordinance the rent reserved thereby shall be increased for the next ensuing year of the term. Unless and until the amount of the annual increase is determined as hereinafter provided the lessee shall be obliged to continue to pay each month in advance by way of rent a sum equal to the rent payable for the month immediately preceding the relevant anniversary date from which the increase is to take effect. When the amount of the increase (if any) is determined the lessee shall be obliged to make forthwith such retrospective payments as are necessary to effect payment in full of the increase applicable in respect of those months or part thereof for the relevant ensuing year as have elapsed at the time of such determination.
- (c) Any increase in annual rent to take effect as aforesaid shall be calculated on the following basis -
- (i) The said annual rent of Three hundred and nine thousand and eighty-four dollars (\$309,084) shall be multiplied by that fraction having as its denominator the Index Number applicable or in force as at the date of commencement of the Lease and as its numerator the Index Number applicable or in force on the relevant anniversary date;
- (ii) If there be no Index Number in existence as at the relevant anniversary date the amount of the increased annual rent (if any) shall be a sum as shall be determined in writing by the Valuer as the true market annual rent of the demised premises as at the relevant anniversary date without regard to the length of the unexpired term of the lease but otherwise having regard to the lessee's obligations (apart from the obligation to pay rent) under the lease. The Valuer shall be required to assume that the rental value of the demised premises as at the date of the commencement of the lease is Three hundred and nine thousand and eighty-four dollars (\$309,084) per annum. The fees of such Valuer shall be borne by the lessee.
- (d) Nothing herein contained shall be construed as entitling the lessee to any decrease in the amount of the annual rent or as preventing the Property Trust and the lessee mutually agreeing from time to time as to the amount of any increase to be applicable to any period of the lease. If for any reason no increase in the annual rent is payable for any ensuing year following any particular anniversary date and the annual rent for such ensuing year shall be equivalent to that payable for the last preceding year of the term.

5. The rental moneys arising from or incidental to the lease authorised by this ordinance and all other moneys accruing to or payable to the Property Trust arising from or incidental to that lease must be applied in the following order of priority -

- (a) in payment of costs of and incidental to this ordinance and of the preparation and execution of the lease; and
- (b) thereafter such moneys shall be paid and applied in accordance with the provisions of a further ordinance a bill for which shall be presented by the churchwardens of the time being of St John's Kings Cross no later than 30 November 1992.

Pending payment or application of the said moneys in accordance with this clause the Property Trust must invest the moneys and capitalise the income.

First Schedule

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

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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 5 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 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 brick 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 1¼ 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.

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

N.M. 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 26th day of October 1992.

W.G.S. Gotley
Secretary

I Assent to this Ordinance.

Donald Robinson
Archbishop of Sydney
23/10/1992