



East Sydney (Kings Cross) Leasing Ordinance 1997

No 37, 1997

Long Title

An Ordinance to authorise the leasing of certain property and the distribution of rental moneys therefrom.

Preamble

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 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 is now 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. Under the St John's King Cross Leasing Ordinance 1992 ("the 1992 Ordinance") the Property Trust was authorised to lease the Leased Site for a term not exceeding five years at a rental and upon terms, covenants and conditions as approved by the Property Trust.
- F. The Leased Site has been leased pursuant to the 1992 Ordinance for a term of five (5) years which will expire on 13 April 1998.
- G. The Property Trust proposes to grant a further lease of the Leased Site for a term of one year as from expiry of the present lease and to grant an option to the lessee to renew the lease for a further term of one year commencing 14 April 1999 on condition that such option is exercisable by written notice no later than 14 October 1998.
- H. It is desired to make provision herein for the distribution of the rental moneys arising from and incidental to the proposed further lease and arising from and identical to the renewal period of the lease if the option is duly exercised.
- I. 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.

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

Name of Ordinance

1. This Ordinance is the East Sydney (Kings Cross) Leasing Ordinance 1997.

Variation of Trust

2. By reason of circumstances which have arisen subsequent to the creation of the trusts created by the 1988 Ordinance 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.

Authority to Lease

3. The Property Trust is authorised to lease the Leased Site for a term not exceeding one (1) year commencing 14 April 1998 and further to grant an option to the lessee to renew such lease for a further term of one year thereafter commencing 14 April 1999 in consideration of rental payments by the lessee as follows -

(a) for the period of the lease, the sum calculated by multiplying the sum of three hundred and forty four thousand, five hundred and six dollars (\$344,506) by that fraction having as its denominator the Consumer Price Index - All Groups for Sydney (as published from time to time by the Australian Statistician) applicable or in force as at 14 April 1997 and as its numerator the said Index applicable or in force as at 14 April 1998, provided that if the rent in respect of the period, calculated as above, is less than the sum of three hundred and forty four thousand, five hundred and six dollars (\$344,506) then the rent payable in respect of such period shall be the sum of three hundred and forty four thousand, five hundred and six dollars (\$344,506);

(b) for the renewal period of the lease, the sum calculated by multiplying the rental payable by the lessee in respect of the period of the lease by that fraction having as its denominator the Consumer Price Index - All Groups for Sydney (as published from time to time by the Australian Statistician) applicable or in force as at 14 April 1998 and as its numerator the said Index applicable or in force as at 14 April 1999, provided that if the rent in respect of the renewal period, calculated as above, is less than the rental payable by the lessee in respect of the period of the lease then the rent payable in respect of such period shall be the same as that payable by the lessee in respect of the period of the lease, 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. For the purposes of calculating the rental payable in respect of the period of the lease or any renewed period of the lease, as referred to in clause 3 of this Ordinance, the following provisions shall also apply -

(a) Unless and until the amount of the rental for the period of the lease or any renewal period is determined as provided in clause 3 the lessee shall be obliged to continue to pay each quarter in advance by way of rent the quarterly sum payable during the respective preceding year. 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 such time as shall have elapsed at the time of such determination.

(b) If there be no Consumer Price Index number in existence at the relevant date, the amount of the increased annual rental, 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 14 April 1998 or 1999 as the case may be, 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 the rental payable per annum in respect of the period of the lease calculated in accordance with clause 3(a). The fees of such a Valuer shall be borne by the lessee. For the purposes of this clause, "Valuer" means a duly qualified real estate valuer of not less than 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.

Application of Proceeds

5. The rental moneys referred to in clause 3 above shall, as received from the lessee be applied by the Property Trust in payment of the costs of and incidental to this ordinance and subject to such administrative charges and commissions properly payable to the Property Trust, then such moneys shall be held and paid upon trust as follows -

(a) as to 12.5% to the South Sydney Regional Council for the purposes of that Council;

(b) as to 1% to the Church Missionary Society to be used in such manner as the New South Wales General Committee of that Society shall determine from time to time; and

(c) as to the balance, the provisions of clause 6 shall apply.

6. The balance of the rental monies shall be applied as follows -

(a) a sum not exceeding \$197,500 in respect of the first year;

(b) a sum not exceeding \$200,100 in respect of any renewal period of one year thereafter, shall be applied 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) working on a full or part-time basis within the Parish of East Sydney or within adjacent areas in the diocese;

(c) a sum not exceeding \$25,000 in respect of the first year only shall be paid into the Property Planning and Development Reserve Fund currently administered by the Property Trust to be applied towards the costs of preparing a development strategy of the Leased Site;

(d) a sum not exceeding \$23,000 in each year shall be paid to the church wardens of St John's Kings Cross and be applied by them in or towards estimated diocesan assessments (including the payment of Parish Ministry/Property Costs) payable by the Parish of East Sydney during 2000 and 2001 provided that if the amount of such assessments is less than the amount of such provision, an amount equal to the excess shall be paid to the Sydney Diocesan Secretariat for application through the Income and Expenditure Ordinance of the Synod for the maintenance of historical buildings in the region administered by the South Sydney Regional Council; and

(e) any balance shall be paid to the said churchwardens for payment in or towards the maintenance, refurbishment, repair, renovation and restoration of St John's Church building, church organ and other fittings, fixtures and furniture, the rectory and church hall, and fencing and walls adjacent to the Church.

7. Pending the application of the rental moneys under clauses 5 and 6 those moneys shall be invested by the Property Trust.

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 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 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 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 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.

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 27 October 1997.

W.G.S. GOTLEY
Secretary

I Assent to this Ordinance.

R.H. GOODHEW
Archbishop of Sydney
27/10/1997