



East Sydney (Kings Cross) Development Ordinance 1999

No 12, 1999

Long Title

An Ordinance to authorise the long term redevelopment of property known as 120A Darlinghurst Road, Darlinghurst and the distribution of rental moneys therefrom.

Preamble

- 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 held upon trust to be used for a church, parsonage or 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 (the "Parish").
- D. By 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 "Development 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 Property Trust was authorised to lease the Development Site for a term not exceeding five years at a rental and upon terms, covenants and conditions as approved by the Property Trust.
- F. Under the East Sydney (Kings Cross) Leasing Ordinance 1997 the Property Trust was authorised to lease the Development Site for a term of one year and to grant an option to renew the lease for a further term of one year commencing 14 April 1999.
- G. The option to renew referred to in recital F has been exercised by the lessee and it is anticipated that the lessee will vacate the Development Site no later than 13 April 2000.
- H. It is now desired to redevelop the Development Site on a long term basis and for that purpose the churchwardens of St John's Church Darlinghurst (the "Churchwardens") have entered into written heads of agreement dated 24 December 1998 (the "Heads of Agreement") with Toga Pty Limited ACN 000 926 947 ("Toga").
- I. In relation to the proposed redevelopment the Property Trust proposes to grant a licence and a ground lease of the Development Site to Toga subject to the terms and conditions set out in the Heads of Agreement with a view to the construction of a serviced apartment complex on the Development Site.
- J. It is desired to make provision for the distribution of the rental moneys arising from and incidental to the proposed licence and ground lease.
- K. By reason of circumstances which have arisen subsequent to the creation of the trusts on which the Development 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 Development Site or apply the same or the income

therefrom in the manner provided in the 1988 Ordinance, and it is expedient to vary such trusts in the manner hereinafter mentioned.

L. It is further proposed that Toga must carry out a full refurbishment of the existing parish hall of the Parish situated upon the land described in the First Schedule (the "Parish Hall") upon the terms and conditions set out in clause 7 of the Heads of Agreement but subject always to any variations to the sketch plans comprising annexure C to the Heads of Agreement or to the facilities to be included in the Parish Hall which are referred to in clause 7.1 and clause 7.5 of the Heads of Agreement, as are determined by a resolution of the Standing Committee of the Synod of the Diocese of Sydney at the request of the parish council ("Variations"). It is further proposed to authorise the borrowing of the sum of not more than \$1 million for the purpose of financing the cost of this work.

M. The Heads of Agreement are expressed to record the intentions of the Churchwardens who are signatories to that document in relation to the proposed construction and refurbishment work on the Development Site and are expressed not to be legally binding on either party until or unless a formal agreement is executed. Toga has also acknowledged that no legally binding agreement can be executed until approval by resolution or ordinance of the Standing Committee of the Synod of the Diocese of Sydney is given to the proposed arrangements described in the Heads of Agreement. It is desired to approve, authorise, ratify and confirm the Heads of Agreement for the purposes of implementing the proposed arrangements, the construction and refurbishment work on the Development Site, to grant the abovementioned ground lease and to give full effect to the terms and conditions of the Heads of Agreement, subject to the Variations (if any).

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 1999.

2. Declarations

(1) By reason of circumstances which have arisen subsequent to the creation of the trusts created by the 1988 Ordinance in respect of the Development 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 Development 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 Development Site be licensed and leased and otherwise dealt with as set out below.

(2) By reason of circumstances which have arisen subsequent to the creation of the trusts upon which the land described in the First Schedule is held it is expedient that such land be licensed in the manner referred to in paragraph 3(2)(d).

3. Authorities

(1) The Property Trust is authorised to lease the Development Site for a term of 60 years to Toga and further to grant an option to Toga to renew the lease for a further term of 20 years thereafter and to grant a further option to Toga to renew the lease for a second term of 19 years following expiry of the previous 20 year period (the "Proposed Lease") in consideration of rental payments by Toga and 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 agreed between the Property Trust and Toga provided that the term of the Proposed Lease including options to renew must not exceed 99 years.

(2) The Property Trust is also authorised to execute all documents and do all things required or necessary for the purpose of implementing the terms and conditions of the Heads of Agreement (subject to the Variations (if any)) affecting construction of the proposed works on the Development Site and refurbishment of the Parish Hall including without limitation -

(a) the execution of an agreement for the granting of the Proposed Lease which will include the granting of a licence of the Development Site in terms of subclause 5(1); and

(b) the granting of a mortgage of the Development Site as security for the loan referred to in subclause 7(3); and

(c) the execution of a design and construction contract in terms of clause 7 of the Heads of Agreement and clause 7 of the ordinance; and

(d) the execution of a non-exclusive licence agreement for the use of the conference facilities in the Parish Hall in terms of clause 7 of the Heads of Agreement.

(3) The Heads of Agreement (subject to the Variations (if any)) are hereby confirmed for the purpose of implementing the proposed arrangements for the construction and refurbishment work on the Development Site, and all ancillary matters as referred to in the Heads of Agreement.

(4) In the event of any inconsistency between the Heads of Agreement and this ordinance, the terms of this ordinance must prevail.

4. Commencement of Lease

(1) The grant of the Proposed Lease by the Property Trust is to be conditional upon -

(a) vacant possession of the Development Site which will not be before 14 April 2000; and

(b) Toga receiving local government approval for a serviced apartment complex together with retail and car parking upon the Development Site.

(2) If the scope of the development is decreased to permit less than 60 serviced apartments Toga may withdraw from the arrangement without penalty.

(3) The Proposed Lease is to commence on the first to occur of -

(a) the date on which the serviced apartment development has reached practical completion and is lawfully able to be used as serviced apartments; and

(b) the date two years after conditions described in paragraphs 4(1)(a) and (b) above have been satisfied or waived.

(4) The Property Trust may terminate the agreement for the Proposed Lease with Toga if the condition described in paragraph 4(1)(b) has not been satisfied or waived within one year after the date of making the agreement for the Proposed Lease.

5. Rent

(1) Pending commencement of the Proposed Lease Toga must pay monthly in advance a licence fee to the Property Trust equal to the initial annual rent to be payable under the Proposed Lease from the date on which Toga receives the required development consent or possession of the Development Site whichever is the later.

(2) Toga must pay all statutory outgoings, rates and land tax from the date of commencement of the Proposed Lease.

(3) The initial annual rent for first year of the Proposed Lease is to be calculated by the formula -

$$8\% \times \$A$$

where A is the agreed current site value of the Development Site of \$6.5 million subject to any adjustment agreed upon between the Property Trust and Toga.

(4) The annual rent of the Proposed Lease is to be adjusted on the fifth anniversary of the commencement of the Proposed Lease (and every succeeding five years) by revaluing the land content only of the Development Site -

(a) based on the then actual use;

(b) disregarding any future zoning potential or any detrimental rezoning; and

(c) disregarding the value of any site works

("Current Site Value")

and applying the following formula -

$$\text{annual rent} = \text{Current Site Value} \times 8\%$$

(5) On each adjustment of annual rent the adjusted annual rent must not be -

(a) more than 122% of the previous annual rent; or

(b) less than 90% of the previous annual rent.

(6) The annual rent formula shall be adjusted as follows -

(a) if there is any variation in the numbers of serviced apartments approved by the council from 48 one bedroom serviced apartments and 37 two bedroom serviced apartments, \$A will be increased by \$65,000 for each additional one bedroom serviced apartment approved and \$80,000 for each two bedroom serviced apartment approved (similarly, if less serviced apartments are approved, \$A will be reduced by the same amounts); and

(b) if as a result of the adjustment of the annual rent formula the initial annual rent is less than \$400,000, the Property Trust may terminate the agreement for the Proposed Lease by giving not less than one month's written notice of its intention to do so to Toga and Toga may either -

(i) accept the Property Trust's termination; or

(ii) give written notice to the Property Trust agreeing that the initial annual rent will be \$400,000 despite the operation of paragraph 5(6)(a); and

(iii) if Toga agrees that the initial annual rent will be \$400,000 under subparagraph 5(6)(b)(ii) then on any revaluation of the Development Site, the Development Site shall be revalued on the basis that the building included the number of serviced apartments which would have produced an initial annual rent of \$400,000 under paragraph 5(6)(a).

(7) The Current Site Value on rental reviews should be determined as follows -

(a) not more than six months before each review date the Property Trust shall submit a valuation to Toga but if the Property Trust has not submitted a valuation to Toga by the date being three months prior to the relevant review date, Toga may submit a valuation to the Property Trust;

(b) if either party disputes the other party's valuation, the parties or their valuers shall confer to attempt to reach agreement;

(c) if no agreement is reached within 21 days, the matter shall be referred at the request of either party to the President of the NSW Division of the Australian Property Institute (or his nominee) for appointment of a valuer to determine the Current Site Value in accordance with the terms of the Proposed Lease. The decision given by such a valuer shall be final.

(d) if a valuer is appointed under paragraph 5(7)(c) both parties may make written submissions to the valuer in relation to matters which the Property Trust and Toga believe to be relevant to the determination of the Current Site Value;

(e) any valuer appointed by a party or the President of the Australian Property Institute must be a person who as at the date of the appointment has practised as a valuer for not less than five years in the Sydney metropolitan area and is active as a valuer in that area, is a member of the Australian Property Institute, is registered to practice as a valuer and has at least five years experience in valuing property of a like nature to the Development Site.

6. Open Space Corridor

The interest of Toga in the Development Site must be subject to a right of way providing an open space corridor as stipulated and described in clause 8 of the Heads of Agreement.

7. Refurbishment of Church Hall

(1) In accordance with the provisions of clause 7 of the Heads of Agreement (but subject to the Variations (if any)) it is agreed that Toga will undertake a full refurbishment of the Parish Hall subject to the approval of the Property Trust, and at a fixed cost to the Property Trust of not more than \$1.6 million payable to Toga.

(2) It is agreed that the Property Trust will at the request of the Churchwardens enter into a design and construction contract with Toga on terms and conditions acceptable to both parties for the purpose of carrying out the refurbishment of the Parish Hall.

(3) The Property Trust is authorised to borrow and will at the request of the Churchwardens borrow the sum of up to \$1 million upon such terms and conditions as it may consider appropriate for the purpose of financing the refurbishment of the Parish Hall and all matters ancillary to the refurbishment work.

8. Security

Toga must guarantee to complete the proposed building works on the Development Site to the stage of practical completion.

9. Application of Rental Income

(1) The rental income and licence fees referred to in clause 5 and arising under any licence agreement granted under paragraph 3(2)(d) earned during the period ending on 13 April 2005 shall be applied by the Property Trust as follows -

(a) first, in payment of all costs associated with and incidental to the promotion of this ordinance;

(b) second, in payment of all fees properly charged by the Property Trust in respect of any matter arising under this ordinance;

(c) third, in payment of all costs and expenses associated with and incidental to the granting of the Proposed Lease;

(d) fourth, in each year commencing 14 April, toward annual repayments in equal monthly installments of interest and principal on the loan for the Parish Hall development as follows -

Year 2000/1 - \$222,500

Year 2001/2 - \$182,500

Year 2002/3 - \$166,000

Year 2003/4 - \$166,000

Year 2004/5 - \$149,500

(e) as to the balance -

(i) 15% to the South Sydney Regional Council;

(ii) 1% to the Church Missionary Society.

(2) The balance of such rental income, and licence fees together with any income earned by the Property Trust on the investment of such rental income and licence fees, earned during the period ending on 13 April 2005 shall be paid to the Churchwardens and applied as follows -

(a) first, in or toward total Diocesan assessments payable by the Parish in respect of the rental income and licence fees referred to in clause 5 and arising under any licence agreement granted under paragraph 3(2)(d);

(b) second, toward the payment of stipends, allowances or remuneration of clerical and/or lay persons (other than the stipend or allowances of the minister of the Parish) working on a full or part-time basis within the Parish or in adjacent areas in the Diocese; and

(c) third, the remaining balance, if any, toward the maintenance, refurbishment, repair, renovation and restoration of St John's Church building, including fittings, fixtures and furniture, the rectory of the Parish and Parish Hall including fencing and walls adjacent to the Church.

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

10. Review

Income earned from the Development Site and under any licence agreement granted under paragraph 3(2)(d) on and after 14 April 2005 is to be applied in accordance with a further ordinance, a bill for which must be presented to Standing Committee by the Churchwardens before 30 November 2004. The Parish presently anticipates that income earned from the Development Site and under any licence agreement granted under paragraph 3(2)(d) on and after 14 April 2005 will be applied toward an increased distribution to the South Sydney Regional Council for the purposes of that Council.

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 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.

Land contained in Crown Grant dated 28 October 1857 being lot 2 in deposited plan 225418.

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.

Land contained in Crown Grant dated 27 March 1850 being lot 1 in deposited plan 225418.

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 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 24 May 1999.

M A PAYNE

Secretary

I Assent to this Ordinance.

R H GOODHEW
Archbishop of Sydney
28/5/1999