

Manly Corso Property Ordinance 2013

No 55, 2013

Long Title

An Ordinance to declare the trusts of certain property at Manly, to provide for the management and control of that property, and for other purposes related thereto.

Preamble

A. Anglican Church Property Trust Diocese of Sydney (the "Property Trust") is the registered proprietor of the whole of the land contained in Certificate of Title Folio Identifier Y/162102, being the site of offices and retail shops on The Corso at Manly (the "Land").

B. The Land is church trust property and, under clause 3(1) of the *Manly Leasing and Variation of Trusts Ordinance 2006*, is held on trust for the purposes of Manly, with the proceeds of leases of the Land or any part thereof to be applied in the manner set out in clause 5 of that Ordinance.

C. By reason of circumstances arising after the creation of the trusts on which the Land is held, it is inexpedient to carry out and observe those trusts and it is expedient that those trusts be varied in the manner set out in this Ordinance.

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

Part 1 – Introduction

1. Name

This Ordinance is the *Manly Corso Property Ordinance 2013*.

2. Definitions

In this Ordinance –

"Financial Year" means the period commencing on 1 January and ending on 31 December.

"Parish" means the Parish of Manly.

"Trustee" means the Property Trust or such other body or person appointed by the Standing Committee from time to time as trustee of the Land.

"Wardens" means the wardens from time to time of the Parish.

3. Declarations

By reason of circumstances arising after the creation of the trusts on which the Land is held –

- (a) it is inexpedient to carry out or observe those trusts, and
- (b) it is expedient that the trusts be varied so that the Land is henceforth held on the trusts set out in clause 4 and the income from the Land applied in accordance with clause 9.

Part 2 – Trusts of Land

4. Trusts

The Land is held on the trust for the purposes of the Anglican Church of Australia in the Parish.

Part 3 – Powers of Trustee to Lease

5. Powers of Trustee to Lease

(1) The Trustee has the following powers –

- (a) to lease the Land, and any building erected on the Land, or any part or parts thereof for a term not exceeding 20 years (including any options to renew) and, subject to this Ordinance, on such terms and conditions as the Wardens determine, and
- (b) to accept surrenders of leases and release tenants from claims thereunder.

(2) Every lease is to contain covenants forbidding the use of and requiring the lessee from using the leased premises or any part thereof –

- (a) for any illegal or immoral purpose, or

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- (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 sale of liquor, except for consumption with food to be consumed on the leased premises, or
- (e) in any way connected with narcotic drugs except as part of the practice of a qualified medical practitioners or qualified dentist, or the normal trading practices of a registered pharmacist or registered chemist.

(3) The Trustee is not to exercise its powers under clause 5(1) without the consent in writing of the majority of the parish council of the Parish.

Part 4 – Functions of the Wardens

6. Functions of the Wardens

(1) Subject to the terms of this Ordinance, the Wardens are responsible for the proper management, security and administration of the Land, and any building erected on the Land, in accordance with the *Parish Administration Ordinance 2008*.

(2) On behalf of the Trustee, the Wardens are to receive and give receipts for all moneys accruing from the Land for rent or on any account whatsoever.

(3) The Wardens may appoint from time to time a licensed real estate agent to manage on behalf of the Wardens any retail leases relating to the building erected on the Land, or any part thereof, including the issuing of invoices of rent and the collection of that rent.

(4) In undertaking the management and administration of the Land the Wardens will –

- (a) prior to the commencement of a Financial Year –
 - (i) prepare a financial budget in respect of the income from the Land during that Financial Year, and the amounts to be paid from that income under clause 9 in respect of that income, and
 - (ii) provide a copy of that budget to the Trustee, and
- (b) maintain proper financial accounts for each Financial Year, which are to be separate from the other accounts of the Wardens maintained under the *Parish Administration Ordinance 2008*, and
- (c) maintain in the financial accounts referred to in clause 6(4)(b) a separate account to be known as the Redevelopment Sinking Fund which records all amounts paid to that Fund under clause 9 and amounts applied from that Fund in accordance with clause 7, and
- (d) ensure that such financial accounts for each Financial Year are audited annually by the auditor for the Parish appointed under the *Parish Administration Ordinance 2008* provided that if such auditor is not a registered auditor, the financial accounts are to be audited by an auditor approved by the Trustee, and
- (e) provide the Trustee with the following documents within 90 days after the end of each Financial Year –
 - (i) a copy of the financial accounts for that Financial Year, and
 - (ii) a copy of the report of the auditor about the audit of those financial accounts, and
 - (iii) if, during that Financial Year, or any part of that Year, a licensed real estate agent was not appointed under clause 6(3) to manage any retail leases relating to the building erected on the Land, or any part thereof, a certificate from the wardens that all such retail leases were duly managed in accordance with their terms during that Financial Year, or part of that Year when a licensed real estate agent was not so appointed.
- (f) ensure that the income from the Land is applied in accordance with clause 9.

7. Redevelopment Sinking Fund

Amounts paid to the Redevelopment Sinking Fund under clause 9 are to be applied by the Wardens for the purpose of meeting the present or future costs of and incidental to refurbishment of existing buildings or construction of new buildings or structures in replacement

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of, the shops and offices on the Land or any building erected upon the Land, including the payment of the interest and principal on any loan or loans taken out for that purpose.

8. Provision of Information to the Trustee

The Wardens, upon request made in writing by the Trustee, will provide the Trustee with such information as the Trustee reasonably requests in relation to the performance by the Wardens of their functions under clause 6.

Part 5 – Application of Income

9. Application of Income

(1) The income from the Land earned during a Financial Year and any income from the investment thereof under clause 9(2) is to be applied by the Wardens in the following order of priority –

- (a) first, in and towards payment or provision for payment of all rates, taxes, repairs and maintenance expenses, commissions, legal expenses, consultant's fees and other outgoings charged, or to be charged, against or relating to the Land or any building erected upon the Land applicable to that Financial Year, insofar as the same are not recoverable from any tenant under the leases, and
- (b) secondly, from the balance after the payments referred to in paragraph (a) have been made or provided for, in payment to the Trustee of a trustee fee of an amount being 1.1% (or such other rate as the Standing Committee may determine by resolution from time to time) of the gross income from the Land for that Financial Year, and
- (c) thirdly, from the balance after the payments referred to in paragraphs (a) and (b) have been made or provided for, an amount equal to 5% of that balance is to be paid to the Wardens (or provision made for such payment) for application towards the payment of the costs and expenses of or incidental to –
 - (i) the alteration, extension, addition, demolition or redevelopment of buildings or structures or held for the general or specific purposes of the Parish, and
 - (ii) the construction of new buildings or structures whether inside or adjacent to, or in replacement of the shops, offices, halls, function room, church and other spaces on the Land, and
 - (iii) the provision of fixtures and fittings in or adjacent to, or incidental to, such alteration, extension, addition, redevelopment or construction.
- (d) fourthly, from the balance after the payments referred to in the preceding paragraphs have been made or provided for, a payment in each Financial Year specified in the Schedule of the relevant percentage of that balance set out in the Schedule (or such other percentage as may be specified by the Standing Committee by resolution) is to be made to the Redevelopment Sinking Fund, and
- (e) fifthly, the balance (if any) remaining after the payments referred to in the previous paragraphs have been made or provided for is to be applied as follows –
 - (i) 50% is to be paid to the Synod of the Diocese of Sydney, or the Standing Committee thereof, for such purpose or purposes as the Synod may determine through ordinances promoted under clause 3 of the *Synod Estimates Ordinance 1998*, and
 - (ii) 50% is to be applied by the Wardens for such purposes of the Parish as the parish council may from time to time determine, except the payment of the stipends, allowances and benefits paid or provided to the minister.

(2) Pending application under clause 9(1) the income, or balance thereof, is to be invested.

(3) The payments referred to in clauses 9(1)(b), 9(1)(d) and 9(1)(e) are to be made by equal quarterly instalments due on 30 June, 30 September and 31 December in the relevant Financial Year and 31 March in the next Financial Year. The payments due on 30 June, 30 September and 31 December are to be calculated having regard to the relevant amount set out in the budget for that Financial Year prepared under clause 6(4)(a). The payment due on 31 March in the next Financial Year is to be appropriately adjusted having regard to the actual total amounts payable under clauses 9(1)(b), 9(1)(d) and 9(1)(e) as determined from the audited financial accounts for the relevant Financial Year.

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Part 6 – Other Matters

10. Repeal

(1) The *Manly Leasing and Variation of Trusts Ordinance 2006* and the *Manly Leasing (Interim Management Arrangements) Ordinance 2013* are repealed but without affecting the validity of any action undertaken in pursuance to the provisions of those Ordinances.

(2) Notwithstanding clause 10(1), the income from the Land in any Financial Year commencing before 1 January 2014 is applied in accordance with the *Manly Leasing and Variation of Trusts Ordinance 2006*.

11. New Ordinance

On or before 30 September 2017, the Wardens must present an ordinance to the Standing Committee to provide for the application of the income from the Land for the period from and including 1 January 2018 having regard to the needs of the Parish and the Diocese of Sydney.

12. Commencement

This Ordinance commences on 1 January 2014.

Schedule

Year	Percentage
2014	50%
2015	50%
2016	100%
2017	100%

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 9 December 2013.

S LUCAS
Acting Secretary

I Assent to this Ordinance.

GN DAVIES
Archbishop of Sydney
10/12/2013