

Manly Corso Property and Mortgage Ordinance 2017

(Reprinted under the Interpretation Ordinance 1985.)

The Manly Corso Property Ordinance 2013 as amended by the Manly Corso Property Ordinance 2013 Amendment Ordinance 2017 and the Manly Corso Property and Mortgage Ordinance 2017 Amendment Ordinance 2022.

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Long Title

An Ordinance to declare the trusts of certain property at Manly, to provide for the management and control of that property, to authorise the obtaining of financial accommodation in connection with that property, to authorise the mortgaging of that property and to authorise the application of the proceeds of the financial accommodation, 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 the Parish 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. The Parish wishes to mortgage the Land to finance the construction on the land of:

- (a) 7 ground floor retail shops with approximately 532 square metres of premium lettable retail space; and
- (b) an additional 2 floors inclusive of fitout and furnishings that will be used as ministry space inclusive of classrooms, a breakout area, modern amenities and a professional auditorium,
(together, the "Building Works").

D. 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:

- (a) it is expedient that those trusts be varied in the manner set out in this Ordinance, so that the whole and each part of the land is henceforth held on the trusts specified in clause 4; and

- (b) it is expedient to obtain financial accommodation to mortgage the Land and to apply the proceeds of such financial accommodation 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 and Mortgage Ordinance 2017*.

2. Definitions

In this Ordinance –

“1928 Building” means the building site comprising of existing offices and retail shops on The Corso at Manly, built on the land contained in Certificate of Title Folio Identifier Y/162102.

“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 13.

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
 - (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 this Part or Part 4 without the consent in writing of the majority of the parish council of the Parish and the Wardens.

Part 4 – Powers of Trustee with respect to financing

6. Authority and power to borrow, to obtain financial accommodation and to indemnify

The Trustee is authorised and empowered to borrow and raise moneys and obtain financial accommodation of any kind, whether alone or jointly with any other person, upon such terms and in such manner and with or without security as the Trustee may in its absolute and uncontrolled

discretion determine, including but without diminishing the generality of the foregoing by way of unsecured or secured –

- (a) loan,
- (b) overdraft facility
- (c) letter of credit facility,
- (d) bank of guarantee facility, and
- (e) bill of exchange facility,

and any such borrowing raising or obtaining of financial accommodation may be made whether or not the liability arising out of such transaction is joint and/or several. The Trustee is also authorised and empowered to give an indemnity, whether alone or jointly with any other person, for the payment of money, or the performance of any contract, obligation or undertaking by any person, upon such terms and with or without security as the Trustee thinks fit, in connection with the financial accommodation contemplated in this clause.

7. Authority and power to mortgage

The Trustee is authorised and empowered to mortgage the whole or any part of the Land by one or more mortgages, upon such terms and in such manner as the Trustee may in its absolute and uncontrolled discretion determine, for any one or more of the following purposes –

- (a) to secure financial accommodation (and to secure any indemnity given by the Trustee in respect of such financial accommodation) the principal of which does not exceed the sum of \$10,000,000 obtained to finance the Building Works,
- (b) to secure financial accommodation (and to secure any indemnity given by the Trustee in respect of such financial accommodation) obtained to refinance in whole or in part any prior financial accommodation for the purposes referred to in paragraph (a), where the amount of financial accommodation being obtained does not exceed the amount being refinanced,
- (c) to secure financial accommodation (and to secure any indemnity given by the Trustee in respect of such financial accommodation) not exceeding such other amount as the Standing Committee may determine by resolution.

8. Authority and power to enter into derivatives

The Trustee is authorised and empowered to enter into any derivative, swap or other hedge or risk management transaction or any financial arrangement of a similar nature, permitted or required under the terms of any financial accommodation referred to in clause 6.

9. Proceeds of financial accommodation

The proceeds of any financial accommodation authorised under clause 6, after payment of costs, charges and expenses of an incidental to this Ordinance and incidental to establishing any such financial accommodation authorised under clause 6 or any mortgage authorised under clause 7, are to be applied by the Trustee as follows –

- (a) in and towards the charges, costs and expenses of, and incidental to, the Building Works,
- (b) where financial accommodation is obtained to refinance any prior financial accommodation, in repaying any moneys owing under that prior financial accommodation, or secured by the previous mortgage given in respect of such prior financial accommodation (if applicable), and
- (c) in any other case for such purpose as the Standing Committee approves by resolution.

Part 5 – Functions of the Wardens

10. 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 13 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 10(4)(b) a separate account to be known as the Redevelopment Sinking Fund which records all amounts paid to that Fund under clause 13 and amounts applied from that Fund in accordance with clause 11, 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 10(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 13.

11. Redevelopment Sinking Fund

- (1) Amounts paid to the Redevelopment Sinking Fund under clause 13 prior to commencement of the redevelopment are to be applied to the redevelopment project in accordance with the terms agreed to within the financing arrangements entered into in accordance with clause 6 and applied to the Building Works proposed under clause 9(b).
- (2) Application of all sinking fund monies is to be clearly recorded in the annual audited accounts provided to the Diocese in accordance with clause 10(d).

12. 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 10.

Part 6 – Application of Income

13. Application of Income

- (1) The income from the retail and commercial leases of premises on the ground floor on the Land earned during a Financial Year and any income from the investment thereof under clause 13(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 and towards payment of such amounts of interest,

- principal, costs and expenses that are required to be paid to a financier during that Financial Year under the terms of any financial accommodation obtained to finance the Building Works, or (as applicable) under the terms of any financial accommodation obtained to refinance any prior financial accommodation associated with the Building Works, and
- (c) thirdly, from the balance after the payments referred to in paragraphs (a) and (b) 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 of the Land for that Financial Year, and
 - (d) fourthly, from the balance after the payments referred to in paragraphs (a), (b), and (c) 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 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, and
 - (e) fifthly, 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 (if any) 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 paid –
 - (i) prior to the demolition of the 1928 Building, into the redevelopment sinking fund, and
 - (ii) following the demolition of the 1928 Building, as additional capital loan repayments, and
 - (f) sixthly, 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 13(1) the income, or balance thereof, is to be invested.

(3) The payments referred to in clauses 13(1)(c), 13(1)(d) and 13(1)(f) 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 10(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 13(1)(c), 13(1)(d) and 13(1)(f) as determined from the audited financial accounts for the relevant Financial Year.

Part 7 – Other Matters

14. 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 14(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*.

15. New Ordinance

On or before 30 September 2029, 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 2030 having regard to the needs of the Parish and the Diocese of Sydney.

16. Commencement

This Ordinance commences on 1 January 2018.

Schedule

Year	Percentage
2018	100%
2019	100%
2020	100%
2021	100%
2022 - 2029	100%

Notes

Table of Amendments

Long Title	Amended by Ordinance No 46, 2017.
Preamble	Amended by Ordinance No 46, 2017
Clause 1	Amended by Ordinance No 46, 2017
Clause 2	Amended by Ordinance No 46, 2017
Clause 3	Amended by Ordinance No 46, 2017
Clause 5	Amended by Ordinance No 46, 2017
Clause 6	New clause inserted by Ordinance No 46, 2017
Clause 7	New clause inserted by Ordinance No 46, 2017
Clause 8	New clause inserted by Ordinance No 46, 2017
Clause 9	New clause inserted by Ordinance No 46, 2017
Clause 10	Renumbered and amended by Ordinance No 46, 2017
Clause 11	New clause inserted by Ordinance No 46, 2017
Clause 12	Renumbered and amended by Ordinance No 46, 2017
Clause 13	Renumbered and amended by Ordinance No 46, 2017; Amended by Ordinance No 19, 2022
Clause 14	Renumbered and amended by Ordinance No 46, 2017
Clause 15	Renumbered and amended by Ordinance No 46, 2017
Clause 16	Renumbered and amended by Ordinance No 46, 2017
Schedule	Amended by Ordinances No 46, 2017 and No 19, 2022

STEVE LUCAS

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26 July 2022

DANIEL GLYNN

Head of Diocesan Services