

# Wollongong Leasing Ordinance 2004

(Reprinted under the Interpretation Ordinance 1985.)

The Wollongong Leasing Ordinance 2004 as amended by the Wollongong Leasing Amendment Ordinance 2004, the Variation of Trusts Ordinance 2004, the Wollongong Leasing Further Amendment Ordinance 2004, the Wollongong Leasing Amendment Ordinance 2005, the Wollongong Leasing Ordinance 2004 Amendment Ordinance 2009 and the Miscellaneous Amendments Ordinance 2012.

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## Long Title

An Ordinance to authorise the subdivision and leasing of certain property at Wollongong and for other purposes incidental thereto.

## Preamble

A. Anglican Church Property Trust Diocese of Sydney (the "Property Trust") is registered as proprietor of the land comprised in certificates of title folio identifier 1/220248 and folio identifier 2/220248 situated at Church Square, Wollongong (the "Land").

B. By the Wollongong Ordinance 1989 that part of the Land described in the Schedule is held upon trust for the promotion of religion in connection with the Anglican Church of Australia in the Wollongong Region.

C. By the St Michael's Wollongong Sale Ordinance 1957 the balance of the Land is held upon trust to be used for a church, parsonage, parish hall or curate's residence, or partly for one or partly for another or others of such purposes in connection with the Church of England in the parish of St Michael Wollongong.

D. It is proposed that the Land be subdivided in the manner detailed in plan of subdivision of Surveyor Thomas designated 11853/76/82 (the "Plan") and that the proposed lot 101 shown on the Plan (the "Leased Land") be leased for the purposes of constructing and operating a residential hotel.

E. By reason of circumstances which have arisen after the creation of the trusts on which the Land is held it is inexpedient to carry out or observe those trusts or to deal with or apply the Leased Land for the same or like purposes as those trusts or wholly for the purposes of the parish of Wollongong (the "Parish") and it is expedient –

- (i) to subdivide the Land and to grant such easements and rights of way reasonably necessary to effect the subdivision; and
- (ii) to vary the trusts of the Leased Land in the manner set out in this Ordinance; and to lease the Leased Land and apply the rental income from such lease in the manner set out in this Ordinance.

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

## 1. Name

This Ordinance is the Wollongong Leasing Ordinance 2004.

## **2. Declarations**

By reason of circumstances which have arisen after the creation of the trusts on which the Land is held it is inexpedient to carry out or observe those trusts or to deal with or apply the Leased Land for the same or like purposes as those trusts or wholly for the purposes of the Parish and it is expedient –

- (a) to subdivide the Land and grant such easements and rights of way reasonably necessary to effect the subdivision; and
- (b) to vary the trusts of the Leased Land in the manner set out in clause 3; and
- (c) to lease the Leased Land and apply the rental income from such lease in the manner set out in clause 6.

## **3. Variation of trusts**

- (1) Subject to subclause (2), the Leased Land is held upon trust for the purposes of the Parish.
- (2) The trusts of the Lease Land are further varied to permit the application of rental income under clauses 6(1)(e)(iii) and (iv).

## **4. Authority to subdivide**

The Property Trust is authorised at any time within 3 years from the date of assent to this Ordinance and thereafter only with the consent of the Standing Committee by resolution to subdivide the Land into 2 or more lots as detailed in the Plan (subject to minor matters of survey) and to grant such easements and rights of way as are reasonably necessary to effect the subdivision.

## **5. Authority to lease**

- (1) The Property Trust is authorised and directed to lease the Leased Land for a term of up to 41 years with 2 options to renew for a further term of 10 years each upon the terms set out in subclauses (2) to (6) and upon such other terms and conditions as the Property Trust considers appropriate. For this purpose the Property Trust is also authorised to execute an agreement to lease for the construction of a residential hotel on the Leased Land.
- (2) The rent under the agreement to lease and the lease is to be as follows –
  - (a) from the date of execution of the agreement to lease to the earlier of the second anniversary of the commencement date of the lease and the date the lessee commences trading on the premises to be constructed on the Leased Land (the “Trigger Date”), the rent is to be no less than \$46,025 per annum (excluding GST) payable by monthly instalments in advance; and
  - (b) from the Trigger Date until the 5th anniversary of the commencement date of the lease, the rent is to be no less than \$140,000 per annum (excluding GST), less any amortisation of costs, and thereafter is to be no less than \$155,000 per annum (excluding GST).
- (3) The rent under the lease is to be reviewed as follows –
  - (a) on the tenth, twentieth and thirtieth anniversaries of the commencement date of the lease and upon the exercise of any option to renew, the rent is to be reviewed and adjusted to market; and
  - (b) on 1 January of each year of the lease, the rent is to be reviewed and adjusted to the Consumer Price Index (“CPI”).
- (4) The lessee is to pay all outgoings incurred in relation to the Leased Land.
- (5) The lease is to contain covenants forbidding the use of and requiring the lessee to refrain from permitting or suffering the use of the Leased Land or any part thereof –
  - (a) for any illegal or immoral purpose;
  - (b) for the sale by wholesale of tobacco or the promotion of the use of tobacco in any form;
  - (c) in any way connected with gambling or betting;
  - (d) for the manufacture, sale, distribution, consumption or promotion of the consumption of liquor other than –

- (i) the sale and consumption of liquor on premises where –
  - (A) the liquor is intended to be consumed with food sold on those premises for consumption on those premises, or
  - (B) the liquor is consumed without the consumption of food by no more than 30% of patrons on those premises being premises at which liquor can be consumed with food sold on the premises,
  - (C) the premises is a hotel bedroom and the liquor is made available from a mini bar situated in the bedroom, or
- (ii) liquor manufactured, sold or distributed for medicinal purposes or for purposes other than for human consumption;
- (e) in connection with narcotic drugs (including any prohibited drug, prohibited plant or drug of addiction) except as part of the normal trading practices of a registered medical practitioner, pharmacist, chemist, dental or veterinary surgeon;
- (f) for the sale, distribution or viewing (for payment or non-payment) of video cassettes, DVDs, CDs or any other published, recorded or electronically stored, transferred or downloaded material presently rated "X" or "R" by the Commonwealth Censorship Board.

(6) For the avoidance of doubt, the requirements of subclause (5) supersede any other requirement or restriction that may arise in relation to the lease from a declaration made by the Standing Committee pursuant to clause 2 of the Church Trust Property (Declaration of Certain Purposes and Objects) Ordinance 1979.

#### **6. Application of rental income**

(1) The rental income arising from or incidental to the lease and the agreement to lease granted under clause 5 and all other moneys accruing to or payable to the Property Trust arising from or incidental thereto are to be paid to the Property Trust and, after payment of all outgoings in relation to the lease, applied as follows –

- (a) . . . . .
- (b) in payment of any goods and services tax (as defined in *A New Tax System (Goods and Services Tax) Act 1999*) payable in connection with the lease and the agreement to lease; and
- (c) until the Trigger Date, the net rental income is to be paid to the churchwardens of the Cathedral Church of St Michael, Wollongong (the "Churchwardens") to be applied for the purposes of the Parish; and
- (d) the net rental income received for the period from the Trigger Date until the date certified by the churchwardens to be the date upon which the costs of the Parish incurred for or in relation to the lease and agreement to lease and the satisfaction of the conditions precedent thereunder have been fully amortised or repaid from the rents under the lease is to be paid to the churchwardens for the purposes of the Parish.
- (e) from the day immediately following the date certified by the churchwardens in paragraph (d) (the "Start Date"), the net rental income received under the lease each calendar year (or part thereof) is to be applied in the following order of priority –
  - (i) first, the sum of \$45,000 per annum (indexed to CPI) is to be paid to the Churchwardens for the purposes of the Parish, and
  - (ii) secondly, the following amounts are to be paid into a maintenance and conservation fund for the purposes of the maintenance and restoration of buildings on the St Michael's Church site at Wollongong –
    - (A) until 31 December following the 10th anniversary of the Start Date, the sum of \$51,000 per annum (or proportionate part thereof for part of a calendar year) (indexed to CPI or changes in market rent under the lease), and
    - (B) from 1 January after the 10th anniversary of the Start Date, the sum of \$43,000 per annum (or proportionate part thereof for part of a calendar year) (indexed according to CPI or changes in market rent under the lease), and

- (iii) thirdly, until the 5<sup>th</sup> anniversary of the commencement date of the lease an amount equal to 15% of the balance remaining is to be paid into the Mission Property Fund constituted under the Mission Property Ordinance 2002 for the purposes of that Fund, and
- (iv) fourthly, from the 5th anniversary of the commencement date of the lease an amount equal to 15% of the net rental income, or the balance remaining, which ever is the lesser, is to be paid into the Sydney Diocesan Synod Fund, for the use and benefit of the Anglican Church of Australia in the Diocese of Sydney as determined from time to time by the Synod, and
- (v) fifthly, the balance is to be applied for such purposes of the Parish as determined by the Standing Committee by resolution at the request of the parish council of the Parish.

(2) Pending the application of the rental income pursuant to clause 6(1), the Property Trust is to invest the same and capitalise the income.

## **7. Review**

On or before the third and tenth anniversaries of the commencement date of the lease and on or before every sixth such anniversary thereafter the Churchwardens must present an ordinance to the Synod or the Standing Committee for the purpose of reviewing the application of rental income from the lease.

## **Schedule**

ALL THAT piece or parcel of land situate at Wollongong in the City of Wollongong Parish of Wollongong County of Camden and State of New South Wales being part of Lot 11 in a plan of subdivision by Mr Surveyor Thomas dated 3<sup>rd</sup> of February 1989 being also part of Lot 2 D.P. 220248 COMMENCING at the south eastern corner of Lot 1 D.P. 220248 being a point on the northern side of Market Street and bounded thence on the west by part of the eastern boundary of Lot 1 aforesaid being a line bearing 359° 45' for 25.69 metres bounded thence on the north by a line bearing 89° 45' for 2.26 metres thence again on the west by a line bearing 359° 45' for 4 metres thence again on the north by a line bearing 89° 45' for 26.18 metres bounded thence on the east by a line bearing 179° 45' for 11 metres thence on the north east by a line bearing 147° 37' 20" for 10.23 metres and thence again on the east by a line bearing 179° 45' for 10 metres to the northern side of Market Street aforesaid and bounded thence on the south by part of the northern side of Market Street aforesaid being a line bearing 269° 42' for 33.88 metres to the point of commencement and containing an area of 913 square metres all the aforesaid dimensions and area being a little more or less.

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## **Notes**

The original form of ordinance was assented to on 6 July 2004.

## **Table of Amendments**

Preamble	Amended by Ordinance No 24, 2004.
Clause 2	Amended by Ordinance No 24, 2004.
Clause 3	New clause inserted by Ordinance No 24, 2004 and amended by Ordinance No 37, 2012.
Clause 4	Amended by Ordinance No 23, 2004. Original clause renumbered by Ordinance No 24, 2004.

- Clause 5 Original clause renumbered by Ordinance No 24, 2004. Amended by Ordinance No 49, 2004.
- Clause 6 Original clause renumbered and amended by Ordinance Nos 24, 2004; 16, 2005 and 38, 2009.
- Clause 7 Original clause renumbered by Ordinance No 24, 2004.

STEVE LUCAS  
**Manager, Legal Services**

ROBERT WICKS  
**Diocesan Secretary**

26 September 2012