

Variation of Trusts Ordinance 2004

No 24, 2004

Long Title

An Ordinance to vary the trusts of proceeds arising from the sale of certain land at Neutral Bay, to vary the trusts of certain other land at Neutral Bay, Leichhardt, Narellan, Randwick and Wollongong and for purposes incidental thereto.

Preamble

A. Anglican Church Property Trust Diocese of Sydney (the "Property Trust") is the trustee of the property described in each of the cells in column 1 of the table in the Schedule (the "Property").

B. The property described in a cell in column 1 of the table in the Schedule is held on the trusts described in the corresponding cell in column 2 of the Schedule.

C. By reason of circumstances which have arisen after the creation of the trusts on which the Property is held, it is inexpedient to carry out or observe those trusts and it is expedient to vary those trusts in the manner set out in this Ordinance.

D. It is also expedient to amend certain provisions relating to the applications of proceeds and income derived from the Property as a consequence of such variation of trusts.

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

1. Name

This Ordinance is the Variation of Trusts Ordinance 2004.

2. Declarations

By reason of circumstances which have arisen after the creation of the trusts on which the Property is held, it is inexpedient to carry out or observe those trusts and –

- (a) it is inexpedient that the Property be held for the same or like purposes as the trusts on which the Property is held, and
- (b) it is inexpedient that certain parts of the Property be dealt with or applied wholly for the purposes of the parish or provisional parish for which those parts of the Property are held, and
- (c) it is expedient to vary the trusts in the manner set out in this Ordinance.

3. Neutral Bay (St Chad's Rectory) Sale Ordinance 2004

(1) The Property Trust is to hold the proceeds arising from the sale of land under the Neutral Bay (St Chad's Rectory) Sale Ordinance 2004 on trust for the purposes of the parish of Neutral Bay.

(2) The Neutral Bay (St Chad's Rectory) Sale Ordinance 2004 is amended by deleting the words "on which Lot B is held" in clause 4(1)(c) and inserting instead the words "referred to in clause 3(1) of the Variation of Trusts Ordinance 2004".

4. Neutral Bay (St Chad's Church) Sale Ordinance 2004

The Neutral Bay (St Chad's Church) Sale Ordinance 2004 is amended as follows –

- (a) in the heading and in clause 1 insert the words "Variation of Trusts and" after the matter "(St Chad's Church)", and
- (b) in the long title insert the words "vary the trusts and" before the word "authorise", and
- (c) delete recital E, and
- (d) delete recital F and insert instead the following –

"F. By reason of circumstances which have arisen after the creation of the trusts on which Lot A is held –

- (a) it is inexpedient to carry out or observe those trusts or to deal with or apply Lot A for the same or like purposes as those trusts or to deal with or apply Lot A for the purposes of the former parish of Cremorne, and

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- (b) it is expedient to vary those trusts in the manner set out in this Ordinance, and
- (c) it is expedient to sell Lot A and to apply the sale proceeds in the manner set out in this Ordinance.”, and
- (e) delete the text of clause 2 and insert instead the following –
 - “By reason of circumstances which have arisen after the creation of the trusts on which Lot A is held -
 - (a) it is inexpedient to carry out or observe those trusts or to deal with or apply Lot A for the same or like purposes as those trusts or to deal with or apply Lot A for the purposes of the former parish of Cremorne, and
 - (b) it is expedient to vary those trusts in the manner set out in clause 3, and
 - (c) it is expedient to sell Lot A and to apply the sale proceeds in the manner set out in clause 5.”, and
- (f) insert a new clause 3 (with consequential renumbering of existing clauses 3, 4 and 5) as follows –
 - “3. Trusts for Lot A**
 - The trusts of Lot A are varied to permit the applications under clause 5.”, and
- (g) in renumbered clause 4(2) delete the matter “clause 3(1)” and insert instead the matter “clause 4(1)”, and
- (h) delete paragraph (c) in renumbered clause 5 and insert instead the following –
 - “(c) thirdly, 10% of the proceeds from the sale to be added to the capital of the fund established under the Sydney Anglican Indigenous Peoples’ Ministry Ordinance 2002, and
 - (d) the balance to be held by the Property Trust as an addition to the Mission Property Fund.”, and
- (i) delete renumbered clause 6.

5. Beacon Hill Sale Ordinance 2004

The Beacon Hill Sale Ordinance 2004 is amended as follows –

- (a) in the heading and in clause 1 insert the words “and Variation of Trusts” after the word “Sale”, and
- (b) in the long title delete all the words after the words “certain land” and insert the following matter instead –
 - “, to permit other land to be leased or licensed and to vary the trusts of such other land with respect to the parish of Beacon Hill”, and
- (c) in recital G delete all the matter after the words “Church Land are held” and insert the following matter instead –
 - “, it is inexpedient to carry out or observe those trusts and it is expedient to sell the Property, to vary the trusts on which the New Rectory Land and Church Land are held and to lease or license the New Rectory Land and the Church Land.”, and
- (d) in clause 2 delete all the matter after the words “Church Land are held” and insert the following matter instead –
 - “, it is inexpedient to carry out or observe those trusts and -
 - (a) it is expedient to sell the Property and to apply the proceeds of sale in accordance with clause 4, and
 - (b) it is expedient to vary the trusts on which the New Rectory Land and the Church Land are held in the manner specified in clause 5, and

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- (c) it is expedient to lease or licence the New Rectory Land and the Church Land and apply the rental proceeds in accordance with clause 7.”, and
- (e) insert a new clause 5 (with consequential renumbering of existing clauses 5 and 6) as follows –
 - “5. Variation of trusts**
 - The Church Land and the New Rectory Land are held upon trust for the purposes of the Parish.”, and
- (f) in renumbered clause 7(1) –
 - (i) delete the matter “clause 5(1)” and insert instead the matter “clause 6(1)”, and
 - (ii) delete the matter “clause 6(2)” and insert instead the matter “clause 7(2)”, and
- (g) in renumbered clause 7(1)(b) delete all the words after the word “Parish” and insert the following words instead –
 - “except for the purposes of the stipend, allowances and benefits of the minister.”, and
- (h) in renumbered clause 7(2) delete the matter “clause 6(1)(b)” and insert instead the matter “clause 7(1)(b)”.

6. Leichhardt Mortgaging Ordinance 2004

The Leichhardt Mortgaging Ordinance 2004 is amended as follows –

- (a) in the heading and in clause 1 insert the words “Variation of Trusts and” after the word “Leichhardt”, and
- (b) delete recital F and insert instead the following –
 - “F. By reason of circumstances which have arisen after the creation of the trusts on which the Land and the Funds are held it is inexpedient to carry out or observe such trusts or to deal with or apply the income derived from the Land wholly for the use or benefit of the Parish and it is expedient -
 - (a) to vary the trusts of the Land to permit the application of rental income from the Land in the manner set out in this Ordinance, and
 - (b) to mortgage the Land and apply the proceeds of such mortgage and the Funds in the manner set out in this Ordinance.”, and
- (c) delete the text in clause 2 and insert instead the following –
 - “By reason of circumstances which have arisen after the creation of the trusts on which the Land and the Funds are held it is inexpedient to carry out or observe such trusts or to deal with or apply the income derived from the Land wholly for the use or benefit of the Parish and it is expedient -
 - (a) to vary the trusts of the Land to permit the application of rental income from the Land in the manner set out in clause 4, and
 - (b) to mortgage the Land and apply the proceeds of such mortgage and the Funds in the manner set out in clause 6.”, and
- (d) insert a new clause 3 (with consequential renumbering of existing clauses 3, 4, 5 and 6) as follows –
 - “3. Variation of trusts**
 - (1) Subject to clause 3(2), the Land is held on trust for the sole purpose of the Parish.

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- (2) The trusts on which the Land is held are further varied to permit rental income from the Land to be applied in the manner specified in clauses 4(1)(b)(i), (ii), (iii), 4(3), (4) and (5).”, and
- (e) in renumbered clause 4(1) delete paragraph (b) and insert instead the following –
- “(b) the balance of any such income is to be applied as follows -
- (i) 5% to the South Sydney Regional Council for the general purposes of the Council;
 - (ii) 5% to the South Sydney Regional Council for church planting in consultation with the parish council of the Parish;
 - (iii) 5% to the Anglican Youth and Education Division Diocese of Sydney (‘AYE’) for the purposes of training children’s and youth workers at the College operated by AYE; and
 - (iv) 85% to the churchwardens of All Souls, Leichhardt (the ‘Churchwardens’) for any purpose of the Parish as may be determined from time to time by resolution of the parish council of the Parish except the payment or provision of the stipend, allowances and benefits of the minister.”, and
- (f) in renumbered clause 4(2) –
- (i) delete the words “apply the income” and insert instead the words “make the payments”, and
 - (ii) delete the matter “3(1)(a) and (b)(i)” and insert instead the matter “4(1)(a), (b)(i), (ii), (iii)”, and
- (g) in renumbered clause 4(2)(b) –
- (i) delete the matter “3(1)(a) and (b)(i)” and insert instead the matter “4(1)(a), (b)(i), (ii), (iii)”, and
 - (ii) delete the matter “3(1)(b)(ii)” and insert instead the matter “4(1)(b)(iv)”, and
- (h) insert new clauses 4(3), (4) and (5) as follows –
- “3) If the South Sydney Regional Council ceases to exist the amount which would otherwise be payable to the Council is to be paid to an organisation which the Standing Committee (after consulting with the parish council of the Parish) by resolution decides has purposes similar to the Council.
- 4) If church planting ceases to be an activity funded by the South Sydney Regional Council the amount which would otherwise be payable to South Sydney Regional Council for this purpose is to be paid to an organisation which the Standing Committee (after consulting with the parish council of the Parish) by resolution decides is engaged in church planting or similar purposes.
- 5) If AYE ceases to operate a college to train children’s and youth workers the amount which would otherwise be payable to AYE for this purpose is to be paid to an organisation which the Standing Committee (after consulting with the parish council of the Parish) by resolution decides trains children’s and youth workers.”, and
- (i) in renumbered clause 6 delete the matter “clause 4” and insert instead the matter “clause 5”.

7. Narellan (Richardson Road) Land Sale Ordinance 2004

The Narellan (Richardson Road) Land Sale Ordinance 2004 is amended as follows –

- (a) delete recital C and insert instead the following –
- “C. By reason of circumstances which have arisen after the creation of the trusts on which the Land is held it is inexpedient to

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carry out or observe those trusts or to apply the Land wholly for the use or benefit of the parish of Narellan (the 'Parish') or for the same or like purposes as those trusts and it is expedient –

- (i) to vary those trusts in the manner set out in this ordinance, and
 - (ii) to subdivide the Land and grant such easements and rights of way reasonably necessary to effect the subdivision; and
 - (iii) to sell part of the subdivided Land and apply the proceeds of sale in the manner set out in this Ordinance.”, and
- (b) delete the text in clause 2 and insert instead the following –
- “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 Land wholly for the use or benefit of the Parish or for the same or like purposes as those trusts and it is expedient -
- (a) to vary those trusts in the manner set out in clause 3; and
 - (b) to subdivide the Land and grant such easements and rights of way reasonably necessary to effect the subdivision; and
 - (c) to sell part of the subdivided Land and apply the proceeds of sale in the manner set out in clause 6.”, and
- (c) insert a new clause 3 (with consequential renumbering of existing clauses 3, 4 and 5) as follows –
- “3. Variation of Trusts**
- (1) Subject to clause 3(2), the Land is held on trust for the purposes of the Parish.
 - (2) The trusts of the Land are further varied to permit the application of the proceeds of sale of the Land or any part thereof for the purpose referred to in clause 5(1)(b)(vi) of the Narellan Ordinance 2002.”, and
- (d) delete paragraph (b) in renumbered clause 6(2) and insert instead the following –
- “(b) secondly, in accordance with clause 5(1)(b) of the Narellan Ordinance 2002; and
 - (c) any balance, for such capital purposes of the Parish as the Standing Committee may by resolution approve at the written request of the parish council of the Parish.”.

8. Randwick Trust Ordinance 2004

The Randwick Trust Ordinance 2004 is amended as follows –

- (a) in clause 6(1) insert the matter “(other than the land referred to in clause 6(1A)),” after the words “trust fund”, and
- (b) insert a new clause 6(1A) as follows –

“(1A) The land comprised in folio identifier 1/840568 (except that part upon which is constructed the improvements referred to in clause 3(1) of the Randwick Variation of Trusts Ordinance 1999) is to be used for the purposes of a cemetery.”, and
- (c) delete paragraph (d) in clause 10(1) and insert instead the following –
 - “(d) delete clause 3(4); and
 - (e) delete the words ‘and shall then be distributed to the churchwardens of St Jude’s Randwick for application by the parish council of the Parish for the purposes of the Parish’ in clause 4(1) and insert instead –

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‘and treated as income of the Randwick Trust established under the Randwick Trust Ordinance 2004’.”, and

- (d) insert the following additional rows in the table in the Schedule –

“

Auto Consol 1191-71 known as St Jude’s Church hall and Parish centre, situated at 100 Avoca Street, Randwick.	The Randwick Lease Ordinance 1984 recites that the land is held upon trust for the erection of a School House in connection with the United Church of England and Ireland by Law established.
Folio identifier 1/840568 being a cemetery situated at the corner of Frances Street and The Avenue, Randwick.	By the St Jude’s Randwick Variation of Trusts Land Sale and Amendment Ordinance 1973 it was recited that the property is held on trust for the sole benefit of the parish of St Jude of Randwick for the internment of the dead.

”

9. Wollongong Leasing Ordinance 2004

The Wollongong Leasing Ordinance 2004 is amended as follows –

- (a) recital E is deleted and the following inserted instead –

“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
- (iii) to lease the Leased Land and apply the rental income from such lease in the manner set out in this Ordinance.”, and

- (b) delete the text in clause 2 and insert the following instead –

“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.”, and

- (c) insert a new clause 3 (with consequential renumbering of existing clauses 3, 4, 5 and 6) as follows –

“3. Variation of trusts

- (1) Subject to subclause (2), the Leased Land is held upon trust for the purposes of the Parish.

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- (2) The trusts of the Lease Land are further varied to permit the application of rental income under clauses 6(1)(d)(ii)(B) and (iii)(A).”, and
- (d) in renumbered clause 6(1) delete the matter “clause 4” and insert instead the matter “clause 5”, and
 - (e) delete paragraph (a) in renumbered clause 6(1) and insert instead the following –
 - “(a) firstly, in payment of the costs of and incidental to this Ordinance and the preparation and execution of the lease and the agreement to lease (excluding the costs to be reimbursed under subparagraph (d)(ii)(A)); and”, and
 - (f) in renumbered clause 6(1)(c) delete the words “such purposes as are consistent with the trusts on which the Leased Land is held” and insert instead the words “the purposes of the Parish”, and
 - (g) delete paragraph (d) in renumbered clause 6(1) and insert the following instead –
 - “(d) from the Trigger Date, \$30,000 per annum (indexed to CPI on each anniversary of the commencement date of the lease) is to be paid to the Churchwardens for the heritage conservation, management and maintenance of the Cathedral Church of St Michael, Wollongong with the remaining balance of the net rental income (the ‘Remaining Balance’) to be applied as follows –
 - (i) 32% of the Remaining Balance is to be paid to the Churchwardens for the purposes of the Parish; and
 - (ii) until the second anniversary of the Trigger Date –
 - (A) \$90,000 per annum is to be paid to the Churchwardens for the purposes of the Parish to reimburse costs incurred in relation to the buy out of an existing lease over part of the Leased Land and legal and valuation costs associated with the lease, and
 - (B) the balance is to be paid to the Mission Property Fund constituted under the Mission Property Ordinance 2002; and
 - (iii) from the second anniversary of the Trigger Date –
 - (A) 15% of the Remaining Balance is to be paid to the Mission Property Fund constituted under the Mission Property Ordinance 2002, and
 - (B) 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.”, and
 - (h) in renumbered clause 6(2) delete the matter “clause 5(1)” and insert instead the matter “clause 6(1)”.

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Schedule

Column 1	Column 2
Proceeds arising from the sale of land under the Neutral Bay (St Chad's Rectory) Sale Ordinance 2004 held by the Property Trust in Client Fund 657.	By Declaration of Trust dated 2 March 1919 the proceeds derived from the sale of land under the Neutral Bay (St Chad's Rectory) Sale Ordinance 2004 are held on trust to permit the same to be used for a church parsonage or parish hall or partly for one and partly for another or others of such purposes in connection with the Church of England in the parish of Cremorne.
Folio identifier A/449796 known as 42A Cremorne Road, Cremorne Point.	By Declaration of Trust dated 3 March 1919 the land is held on trust to permit the same to be used for a church parsonage or parish hall or partly for one and partly for another or others of such purposes in connection with the Church of England in the parish of Cremorne.
Folio identifiers 2/309860 and A/355833 known as Oxford Falls Road, Oxford Falls.	The Narraweenaa and Oxford Falls Land Sale Ordinance 1975 recites the land is held upon trust for the erection and maintenance of a church to be erected for the worship of Almighty God according to the use of the Church of England.
Folio identifier 1/814750 known as 7 Boyer Road, Beacon Hill.	By clause 1 of the Holy Trinity Beacon Hill Mortgage Ordinance 1976 the land is held upon trust to permit the same to be used for a church, parsonage, parish hall or parish centre or partly for one and partly for another or others for such purposes in connection with the Church of England in Australia at Beacon Hill in the parish of Beacon Hill or any parish, provisional parish or provisional district into which it may be subsequently formed.
Folio identifier 1/502105 known as 126A Norton Street, Leichhardt.	The recitals to the All Souls Leichhardt Leasing Ordinance 1962 declare that the land is church trust property held for the sole benefit of the parish of Leichhardt.
Folio identifier 3/876325 known as 172 Richardson Road, Narellan.	By clause 2(c) of the Narellan Ordinance 1998, the Land is held on trust to be used as a – (a) church; (b) residence for a minister, assistant to the minister or person employed by the church wardens; (c) hall or halls; (d) school or other place of assembly; or partly for one or another or other

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	of those purposes in connection with the Anglican Church of Australia within the Diocese of Sydney for the sole benefit of the parish of Narellan or any parish or ecclesiastical district into which it may be subsequently formed or form a part.
Auto Consol 1191-71 known as 100 Avoca Street, Randwick.	The Randwick Lease Ordinance 1984 recites that the land is held upon trust for the erection of a School House in connection with the United Church of England and Ireland by Law established.
Folio identifier 1/840568 situated at the corner of Frances Street and The Avenue, Randwick.	By the St Jude's Randwick Variation of Trusts Land Sale and Amendment Ordinance 1973 it was recited that the property is held on trust for the sole benefit of the parish of St Jude of Randwick for the internment of the dead.
Part folio identifiers 1/220248 and 2/220248 shown as proposed lot 101 in the plan of subdivision of Surveyor Thomas designated 11853/76/82.	By the Wollongong Ordinance 1989 the part of the land described in the Schedule to the Wollongong Leasing Ordinance 2004 is held upon trust for the promotion of religion in connect with the Anglican Church of Australia in the Wollongong Region. By the St Michael's Wollongong Sale Ordinance 1957 the balance of the land is held upon trust 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.

I Certify that the Ordinance as printed is in accordance with the Ordinance as reported.

NM CAMERON
Deputy Chairman of Committees

I Certify that this Ordinance was passed by the Standing Committee of the Synod of the Diocese of Sydney on 27 September 2004.

MA PAYNE
Secretary

I Assent to this Ordinance.

PETER F JENSEN
Archbishop of Sydney
27/9/2004