

# Balgowlah Trust Ordinance 2019

No 13, 2019

## Long Title

An Ordinance to vary the trusts on which certain property is held and to establish the ACPT – Balgowlah Trust.

## Preamble

A. Anglican Church Property Trust Diocese of Sydney (the “ACPT”) is the trustee of the property described in each of the cells in column 1 of the table in the Schedule (the “Existing 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 Existing Property is held, it is inexpedient to carry out and observe those trusts.

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

### 1. Name of ordinance

This Ordinance is the Balgowlah Trust Ordinance 2019.

### 2. Declarations

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

- (a) it is inexpedient that the Existing Property be held for the same or like purposes as the trusts on which the Existing Property is held, and
- (b) it is expedient that power be given to the ACPT to lease or license from time to time any part of the real property forming part of the trust fund.

### 3. Definition of trust fund

In this Ordinance –

“trust fund” means –

- (a) the Existing Property, and
- (b) all real and personal property received or acquired by the ACPT from time to time as an addition to the trust fund.

### 4. Name of the trust fund

The trust fund is to be known as the ACPT – Balgowlah Trust.

### 5. New trusts

Subject to the terms of this Ordinance, the trust fund is held upon trust for the purposes of the parish of Balgowlah (the “Parish”).

### 6. Capital of the trust fund

(1) Any real property which forms part of the trust fund, may be used for one or more of the following purposes –

- (a) a church,
- (b) a residence for the minister, an assistant minister or any person employed by the wardens of a church in the Parish,
- (c) a hall or halls,
- (d) a school or other place of assembly,
- (e) any purpose incidental to a purpose referred to in paragraph (a), (b), (c) or (d).

(2) Any personal property which forms part of the capital of the trust fund may be applied by the ACPT for one or more of the following purposes –

- (a) the payment of all rates, taxes and charges incurred by the ACPT in relation to the trust fund, any property forming part of the trust fund or any transaction with property forming part of the trust fund, and

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- (b) the costs of maintenance and repair of any property forming part of the trust fund required to meet minimum standards of maintenance and repair prescribed by Act, Regulation, Order or other law and applying to that property, and
  - (c) to the extent such personal property arises from a payment made to the ACPT by the wardens of a church in the Parish for the purpose of enabling the ACPT to make a payment under any contract made or to be made by the ACPT as trustee of the trust fund with the approval of a majority of the parish council, for that purpose, and
  - (d) to the extent such personal property arises from ACPT Client Funds 426 and 730, it may be applied for such purposes of the Parish as the parish council may from time to time determine, and
  - (e) for such purposes as the Standing Committee may direct by ordinance or resolution, provided that any such purposes directed by resolution must be purposes within the purposes of the Parish in accordance with clause 5.
- (3) Pending application under clause 6(2), any personal property which forms part of the capital of the trust fund is to be invested.
- (4) If the wardens of a church in the Parish make a payment to the ACPT as an addition to the trust fund for the purpose of enabling the ACPT to make a payment under any contract made or to be made by the ACPT as trustee of the trust fund and –
- (a) the full amount of the payment made by the wardens is not required by the ACPT for that purpose, the ACPT may pay to the wardens an amount equal to the excess, or
  - (b) the ACPT claims an input tax credit (as defined in the *New Tax System (Goods and Services) Act 1999*) in respect of the payment made under the contract, the ACPT may pay to the wardens an amount equal to the amount of the input tax credit (or proportionate part thereof where the payment made by the wardens is less than the payment made by the ACPT).

### **7. Application of the income of the trust fund**

- (1) The income of the trust fund (other than income referred to in clause 7(2)), after paying all rates, taxes and charges incurred by the ACPT in relation to the trust fund, any property forming part of the trust fund or any transaction with property forming part of the trust fund, is to be applied as follows –
- (a) if, from time to time, the personal property, not arising from a lease as pursuant to clause 9(1) or 9(2), of the trust fund –
    - (i) is predominantly invested in the ACPT's Long Term Pooling Fund – no portion is to be capitalised, or
    - (ii) is not predominantly invested in the ACPT's Long Term Pooling Fund – 30% is to be capitalised, and
  - (b) the balance is to be paid to the wardens of the church of the Parish or, if there is more than one church, the wardens of the principal church of the Parish, to be applied for such purposes of the Parish as the parish council may from time to time determine.
- (2) The income of the trust fund arising from a lease or licence granted pursuant to clause 9(1) or 9(2) is to be applied in accordance with clause 7(1)(b).

### **8. Review**

- (1) The authority to apply income under clause 7(1)(b) earned after the review date terminates on the review date.
- (2) For the purposes of subclause (1) "review date" means the date which is 10 years after the date this Ordinance commences or such later date as the Standing Committee approves from time to time by resolution.
- (3) Any review of the application of income under clause 7(1)(b) must take into account the repair and maintenance of the building or other improvement situated on any real property which forms part of the trust fund in order to comply with the Heritage Act 1977.

### **9. Powers – leasing and licensing of real property**

- (1) Subject to subclause (2) with the written consent of the parish council of the Parish, the ACPT may lease or license any part of the real property forming part of the trust fund, except any part which is consecrated or licensed for use as a church, if –

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- (a) the term of the lease or licence (when aggregated with the term of any option to renew such lease or licence) does not exceed 5 years, and
- (b) the rental payable by the lessee or licensee is not more than any limit that is determined by the Standing Committee by resolution from time to time for the purposes of this clause.

(2) Notwithstanding subclause (1), the ACPT may lease or license 1 Bareena Drive, Balgowlah Heights for the purposes of a preschool or other similar purpose if the term of the lease or licence (when aggregated with the term of any option to renew such lease or licence) does not exceed 20 years, without limitation as to the rental amount.

(3) Nothing in this clause limits the powers of the ACPT under the Anglican Church Property Trust Diocese of Sydney Ordinance 1965 or under any other ordinance.

### 10. Commencement

This Ordinance commences on the date of assent.

#### Schedule

Column 1	Column 2
The land in folio identifier Auto Consol 10191-72, comprised of Lots 16-17 of section 56 in Deposited Plan 758044 known as 1 Bareena Drive, Balgowlah Heights and the site of the current Rectory and St James Kindergarten	By clause 1 of the All Saints Balgowlah Declaration of Trusts Ordinance 1966 the land is held upon trust to permit the same to be used as a church, parsonage or parish hall or partly for one and partly for another or other of such purposes in connection with the Church of England in Australia in the Provisional Parish of All Saint's Balgowlah or any parish into which it may subsequently be formed.
The land in folio identifier A/347673 and B/347673 known as 18 Boyle St, Balgowlah 2093 and the site of All Saint's Anglican Church, Hall and the Old Rectory	The All Saint's Balgowlah Mortgaging Ordinance 1968 recites that by Declaration of Trust dated 15 October 1943 the land is held on trust for the benefit of the members of the Church of England within the parochial district of Balgowlah and, inter alia as a site for or as a church chapel mission room, meeting room or lecture theatre in connection with the Church of England.
ACPT Client Fund 0426	By the Will of the late FJB Morrisby the funds are held on trust to be applied for such purposes of All Saints Anglican Church at Balgowlah as may be determined by a majority of the Parish Council of the Parish in which that Church may from time to time be situated or if there is not Parish Council by the majority of the Church Wardens of that Church.

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Column 1	Column 2
ACPT Client Fund 0730	By the Will of the late FJB Morrisby the funds are held on trust to be applied for such purposes of All Saints Anglican Church at Balgowlah as may be determined by a majority of the Parish Council of the Parish in which that Church may from time to time be situated or if there is not Parish Council by the majority of the Church Wardens of that Church

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

R TONG  
Chair of Committees

I Certify that this Ordinance was passed by the Standing Committee of the Synod of the Diocese of Sydney on 17 June 2019.

D GLYNN  
Secretary

I Assent to this Ordinance.

GN DAVIES  
Archbishop of Sydney

17/06/2019