

# Balmain (St Mary's) Variation of Trusts Ordinance 1996

(Reprinted under the Interpretation Ordinance 1985.)

The Balmain (St Mary's) Variation of Trusts Ordinance 1996 as amended by the Balmain (St Mary's) Variation of Trusts Amendment Ordinance 2002.

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## Long Title

An Ordinance to vary the trusts on which a certain sum of money is held and for other purposes.

## Whereas

A. The land in Conveyance Registered Book 11 Number 470 (the "Church Site") is church trust property held upon trust to permit and suffer to be erected and built upon the land a church or chapel to be used for performance of divine worship according to the rites of the United Church of England and Ireland and for such other purposes as the Bishop of Australia or his successors shall from time to time determine.

B. It is expedient to vest title to the Church Site in Anglican Church Property Trust Diocese of Sydney ("the Property Trust") and to redeclare the trusts on which that land is held.

C. The land in Certificate of Title Folio Identifier 51/790333 (the "Rectory Site") is church trust property held on trust for the provisional parish of St Mary's Balmain (the "Provisional Parish") although there are no written trusts.

D. It is expedient to redeclare the trusts on which the Rectory Site is held.

E. A sum of money (the "Sum") is held by the Property Trust under the St Mary's, Balmain (Consolidation) Ordinance 1990 (the "1990 Ordinance") with the income applied as set out in that ordinance.

F. By reason of circumstances which have arisen after the creation of the trusts on which the Sum is held it is inexpedient to carry out and observe those trusts and it is expedient that the trusts be varied as set out in this ordinance.

Now the Standing Committee of the Synod of the Diocese of Sydney in the name and place of the said Synod Ordains as follows.

## Name

1. This ordinance is the Balmain (St Mary's) Variation of Trusts Ordinance 1996.

## Consent to Vesting

2. Consent is given to the vesting of title to the Church Site in the Property Trust.

## Declaration of Inexpediency

3. By reason of circumstances which have arisen after the creation of the trusts on which the Church Site and the Rectory Site are respectively held it is inexpedient to carry out and observe those trusts and it is expedient that those trusts be amended in the manner set out in this ordinance.

4. By reason of circumstances which have arisen after the creation of the trusts on which the Sum is held it is inexpedient to carry out and observe those trusts and it is inexpedient to deal with and apply the Sum solely for the purposes of the Provisional Parish or for the same or like purposes as the trusts on which the Sum is presently held.

## Variation of Trusts of the Land

5. The Church Site and Rectory Site shall each be held upon trust for -

- (a) a church;
- (b) a residence or residences;
- (c) a hall or halls;
- (d) a school or other place of assembly,

or partly for one or another or others of such purposes or any other ancillary purposes in connection with the Anglican Church of Australia within the Diocese of Sydney for the sole benefit of the Provisional Parish or any parish or ecclesiastical district into which it may be subsequently formed or form a part.

## Variation of Trusts of the Sum

6. The Sum (together with all interest and other income earned thereon) shall be applied as follows -

- (a) \$25,000 is to be paid to the Inner City Committee to be applied towards the provision of housing for the Aboriginal ministry in Redfern; and
- (b) in payment of all costs associated with vesting title to the Church Site in the Property Trust and bringing the title to that land under the provisions of the Real Property Act 1900.

7. The balance, after the applications under clause 6 and subject to clause 10, shall be applied as follows -
- (a) a sum of \$120,000 or such lesser amount as the Standing Committee may by resolution approve shall be applied towards the costs of repairs to St Mary's Church Balmain and the modification of its interior and the payment of fees, costs and expenses associated therewith or incidental thereto;
  - (b) the balance, after allowing for the application referred to in paragraph (a) may be applied toward the costs of any one or more of the following on the Church Site or the Rectory Site or both -
    - (i) the construction and furnishing of a residence or the renovation and furnishing of any existing residence for use as a rectory;
    - (ii) additional repairs to St Mary's Church Balmain and modifications to its interior;
    - (iii) the construction of other residences and/or the renovation of any existing building or part thereof for use as another or other residences;
    - (iv) the demolition of existing structures;
    - (v) the provision of an area for car parking; and
    - (vi) landscape works associated with any of the works referred to in sub-paragraphs (i) to (vi); and
  - (c) the balance, after allowing for the application referred to in paragraph (a), may also be applied towards the payment of fees, costs and expenses associated with or incidental to the provision of the facilities and the carrying out of the works referred to in paragraph (b), including fees, costs and expenses concerning -
    - (i) the subdivision of the land;
    - (ii) any necessary consents and approvals of statutory authorities;
    - (iii) the services and advice of architects, landscape architects, builders, engineers, surveyors, demolition contractors, real estate agents and legal practitioners; and
    - (iv) the preparation and promotion of this ordinance.
8. The balance, after all applications under clauses 6 and 7, is to be invested and the income from the investment paid to the churchwardens of St Mary's Church Balmain and applied by them for purposes within the Provisional Parish .
9. Pending application under clauses 6 and 7 the Sum, or such part thereof as remains to be applied, shall be invested and the income applied as follows -
- (a) 80% of the income must be capitalised; and
  - (b) 20% of the income must be paid to the churchwardens of St Mary's Balmain and applied by them for purposes within the Provisional Parish.

### Heritage Buildings

10. If -
- (a) an order is made under the Heritage Act 1977 in relation to any building or other improvement on land within the Provisional Parish; or
  - (b) the condition of any building or other improvement on land within the Provisional Parish is such that it is reasonable to conclude in accordance with recommendation(s) in a report commissioned from a heritage architect or other expert on heritage buildings, that an order may be made under that Act in relation to that building or improvement; or
  - (c) as regards any building or improvement on land within the Provisional Parish, an offence is committed under that Act,
- the Property Trust may -
- (d) do all such works and other things as to comply with the order, avoid the issue of the order or satisfy the omission or action which has given rise to the offence (as the case may be); and
  - (e) apply the whole or any part of the Sum in or towards meeting the cost of all such works and things.

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### Table of Amendments

Clause 7	Amended by Ordinance No 42, 2002
Clause 10	Inserted by Ordinance No 42, 2002.

ROBERT WICKS  
**Legal Officer**  
 5 August 2002

MARK PAYNE  
**Diocesan Secretary**