

Beacon Hill Sale and Variation of Trusts Ordinance 2004

(Reprinted under the Interpretation Ordinance 1985.)

The Beacon Hill Sale and Variation of Trusts Ordinance 2004 as amended by the Beacon Hill Sale and Variation of Trusts Ordinance 2004.

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Long Title

An ordinance to permit the sale of certain land, 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.

Preamble

A The Anglican Church Property Trust Diocese of Sydney (the "Property Trust") is the trustee of the whole of the land contained in folio identifier 1/585261 and which is known as 9 Janice Place, Narraweena (the "Property").

B The Property Trust is also the trustee of the whole of the property at Oxford Falls Road, Oxford Falls, being the whole of the land in folio identifiers 2/309860 and A/355833 (the "New Rectory Land").

C The parish of Beacon Hill (the "Parish") wishes to sell the Property and apply the proceeds towards the construction of a new rectory on the New Rectory Land and to carry out certain repairs to and modification of the existing church buildings of the Parish erected on land contained in folio identifier 1/814750 known as 7 Boyer Road, Beacon Hill (the "Church Land").

D The Beacon Hill Easement Ordinance 1998 recites that the Property is held on trust for the purposes of the Parish although no trusts have been declared in writing.

E The Narraweena and Oxford Falls Land Sale Ordinance 1975 recites that the New Rectory 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.

F By clause 1 of the Holy Trinity Beacon Hill Mortgage Ordinance 1976 the Church 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 of 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.

G By reason of circumstances which have arisen after the creation of the trusts on which the Property, the New Rectory Land and the Church Land are held, 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.

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

1. Name

This Ordinance is the Beacon Hill Sale and Variation of Trusts Ordinance 2004.

2. Declarations

By reasons of circumstances which have arisen after the creation of the trusts on which the Property, the New Rectory Land and the Church Land are held, 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
- (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

3. Sale of property

(1) The Property Trust is authorised to sell the Property within 3 years after the date of assent to this Ordinance and thereafter only with the consent of the Standing Committee given by resolution.

(2) Such sale may be by public auction or private agreement for such price and subject to such terms and conditions as the Property Trust considers appropriate.

4. Application of sale proceeds

(1) The costs of and incidental to this Ordinance and the sale of the Property are to be paid from the proceeds of sale of the Property.

(2) The remaining balance of the proceeds of sale are to be paid to the Property Trust and applied in the following order of priority –

- (a) firstly, in payment of any goods and services tax (as defined in *A New Tax System (Goods & Services Tax) Act 1999*) payable in connection with the sale authorised by clause 3;
- (b) secondly, to reimburse the churchwardens of the Church of the Holy Trinity, Oxford Falls (the “Churchwardens”) all moneys spent in preparation for the sale of the Property;
- (c) thirdly, to pay out the balance of a loan received for the purposes of the Parish in relation to the existing rectory;
- (d) fourthly, in payment of the costs of the construction of a rectory on the New Rectory Land and all landscaping, fitting out and all other works necessary and incidental to enable the building to be occupied as a rectory;
- (e) fifthly, to repay any bridging loan received for the purposes of the Parish in relation to the construction of a new rectory for the Parish on the New Rectory Land;
- (f) sixthly, toward the cost of carrying out repairs and modifications to the church buildings of the Parish located on the Church Land in accordance with a resolution of a majority of the parish council of the Parish; and
- (g) seventhly, for such further purposes as requested by a majority of the parish council of the Parish and approved by resolution of the Standing Committee.

(3) Pending the application of the proceeds of sale, the proceeds (or the remaining balance from time to time) are to be invested and all interest is to be capitalised.

5. Variation of trusts

The Church Land and the New Rectory Land are held upon trust for the purposes of the Parish.

6. Powers - Leasing and Licensing of Real Property

(1) With the written consent of the parish council of the Parish, the Property Trust may lease or licence any part of the Church Land and the New Rectory Land, except any part which is consecrated or licensed for use as a church, if the term of the lease or the licence (when aggregated with the term of any option to renew such lease or licence), does not exceed 5 years.

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

7. Application of rental proceeds

(1) The rental proceeds arising from a lease or licence authorised by clause 6(1) (except the rental proceeds referred to in clause 7(2)) are to be paid to the Property Trust and applied as follows –

- (a) first in payment of the costs of and incidental to the lease or licence including any goods and services tax (as defined in *A New Tax System (Goods and Services Tax) Act 1999*) payable in connection with the lease or licence, and
- (b) the balance to be paid to the Churchwardens for the purposes of the Parish except for the purposes of the stipend, allowances and benefits of the minister.

(2) The rental proceeds arising from a residential lease of any part of the New Rectory Land and the Church Land for a weekly rental which does not exceed \$750 or such other amount as the Standing Committee determines by resolution are to be applied in accordance with clause 7(1)(b).

Notes

- 1. The original form of ordinance was assented to on 20 April 2004.
- 2. At its meeting on 30 March 2009 the Standing Committee passed a resolution under clause 3(1) to extend the period in which the Property can be sold to 20 April 2011.

Table of Amendments

Title	Amended by Ordinance No 24, 2004
Long Title	Amended by Ordinance No 24, 2004
Preamble	Amended by Ordinance No 24, 2004
Clause 1	Amended by Ordinance No 24, 2004
Clause 2	Amended by Ordinance No 24, 2004
Clause 5	New clause inserted by Ordinance No 24, 2004
Clause 6	Original clause renumbered by Ordinance No 24, 2004
Clause 7	Original clause renumbered and amended by Ordinance No 24, 2004

STEVE LUCAS
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1 April 2009

ROBERT WICKS
Diocesan Secretary