

Cobbitty Trust Ordinance 2013

(Reprinted under the Interpretation Ordinance 1985.)

Cobbitty Trust Ordinance 2013 as amended by the Cobbitty Trust Ordinance 2013 Amendment Ordinance 2018, and the Cobbitty Amendment, Allocation and Authorisation Ordinance 2021.

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Long Title

An Ordinance to vary the trusts on which certain property is held and to establish the ACPT – Cobbitty 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 Cobbitty Trust Ordinance 2013.

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 licence 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 – Cobbitty 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 Cobbitty (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
- (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) 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 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, except the payment of the stipends, allowances and benefits paid or provided to the minister.

(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) 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 –

- (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 \$50,000 per annum (including GST), or such other amount as may be determined by the Standing Committee by resolution from time to time.

(2) Notwithstanding subclause (1), with the written consent of the parish council of the Parish, the ACPT may lease or licence that part of the land in folio identifier 102/738007 known as 326 Cobbitty Road, Cobbitty as shown approximately in the diagram in the Schedule to the *Cobbitty Trust Ordinance 2013 Amendment Ordinance 2018*, if –

- (a) the term of the lease or licence (when aggregated with the term of any option to renew such licence) does not exceed 20 years, and
- (b) the rental payable by the lessee or licensee is not more than \$50,000 per annum (including GST) or such other amount as may be determined by the Standing Committee by resolution from time to time.

(3) Notwithstanding subclause (1), with the written consent of the parish council of the Parish the ACPT may lease or licence that part of the land in folio identifier 1/DP562336 known as 335 Cobbitty Road, Cobbitty as shown approximately in the diagram in the Schedule to the *Cobbitty Amendment, Allocation and Authorisation Ordinance 2021*, provided that the term of the lease or licence (when aggregated with the term of any option to renew such lease or licence) does not exceed 30 years, without limitation as to the rental amount.

(4) 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 1 January 2014.

Schedule

Column 1	Column 2
<p>The land in folio identifier 7/24271 known as 320 Cobbitty Road Cobbitty and the site of a residence and vacant land.</p>	<p>By clause 4 of the Declaration of Trust dated 1 March 1920 made by the Property Trust, the land is held upon trust as an additional portion for the use of the incumbent of St Pauls Cobbitty in accordance with the devise thereof contained in the will of Thomas Hassall deceased (and therein referred to as All that piece or parcel of land around St Pauls Church land Cobbitty bounded by the Cobbitty Road by a reserved road to the Nepean River by that River and by the land occupied by John Clissole) and subject to the provisions of the Church of England Trust Property Act 1917.</p>
<p>The land in folio identifier 1/81585 known as 344 Cobbitty Road Cobbitty and the site of vacant land.</p>	<p>By clause 3 of the Narellan Variation of Trusts and Amendment Ordinance 2005, the land is held on trust for the purposes of the parish of Narellan.</p>
<p>The land in folio identifier 3/72243 known as 336 Cobbitty Road Cobbitty and the site of a parish hall.</p>	<p>By clause 2 of the Narellan Variation of Trusts Ordinance 1986 the land is held upon trust for a hall or halls 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 subsequently be formed or form a part.</p>
<p>The land in folio identifier 1/562336 known as 335 Cobbitty Road Cobbitty and the site of the parish rectory.</p>	<p>By clause 3 of a Declaration of Trust dated 1 March 1920 made by the Property Trust, the land is held upon trust for the uses of the Church of England as a Glebe for the incumbent of St Pauls Cobbitty in accordance with the devise thereof contained in the will of the Reverend Thomas Hassall deceased (and therein referred to as All that parcel of land containing about 42 acres lying on the north side of the Cobbitty Road (opposite St Pauls Church) being a portion of Pormare Grove Farm) and subject to the provisions of the Church of England Trust Property Act 1917.</p>

Column 1	Column 2
<p>The land in folio identifier 101/738007 known as 330 Cobbitty Road Cobbitty and the site of St Paul's Chapel, Heber Chapel and St Paul's Cemetery.</p>	<p>By clause 1 of a Declaration of Trust dated 1 March 1920 made by the Property Trust that part of the land formerly comprised in Crown Grant Certificate of Title Volume 100 Folio 137 is held upon trust for the erection thereon of a church of the United Church of England and Ireland as bylaw established and also for the site of a burial ground in connection with the said church in accordance with the trusts declared in the Crown Grand and the provisions of the Church of England Trust Property Act 1917.</p> <p>By clause 4 of the Declaration of Trust, the balance of the land is held upon trust as an addition portion for the use of the incumbent of St Pauls Cobbitty in accordance with a devise thereof contained in the will of the Rev. Thomas Hassall deceased (and therein referred to as All that piece or parcel of land around St Pauls Church land Cobbitty bounded by the Cobbitty Road, by a reserved road to the Nepean River by that River and by the land occupied by John Clissole) and subject to the provisions of the Church of England Trust Property Act 1917.</p>
<p>The land in folio identifier 102/738007 known as 326 Cobbitty Road Cobbitty and the site of vacant land.</p>	<p>By clause 4 of the Declaration of Trust dated 1 March 1920 made by the Property Trust, the land is held upon trust as an additional portion for the use of the incumbent of St Pauls Cobbitty in accordance with a devise thereof contained in the will of the Rev. Thomas Hassall deceased (and therein referred to as All that piece or parcel of land around St Pauls Church land Cobbitty bounded by the Cobbitty Road, by a reserved road to the Nepean River, by that River and by the land occupied by John Clissole) and subject to the provisions of the Church of England Trust Property Act 1917.</p>

Column 1	Column 2
<p>The land in folio identifier 33/826181 known as (19) 55 Chittick Lane Cobbitty and the site of vacant land.</p>	<p>That part of the land described in clause 2 of the Declaration of Trust dated 1 March 1920 made by the Property Trust is held upon trust for the appropriation thereof as the Glebe annexed to the church of the United Church of England and Ireland as by law established erected at Cobbitty and known as St Pauls in accordance with the trusts declared by the Crown Grant to the Lord Bishop of Australia dated 9 May 1842 and the provisions of the Church of England Trust Property Act 1917.</p> <p>That part of the land being part of the land described in clause 3 of a Declaration of Trust dated 1 March 1920 made by the Property Trust, the land is held upon trust for the uses of the Church of England as a Glebe for the incumbent of St Pauls Cobbitty in accordance with the devise thereof contained in the will of the Reverend Thomas Hassall deceased (and therein referred to as All that parcel of land containing about 42 acres lying on the north side of the Cobbitty Road (opposite St Pauls Church) being a portion of Pomare Grove farm) and subject to the provisions of the Church of England Trust Property Act 1917.</p>
<p>The land in folio identifier 34/826181 known as (10) 55 Chittick Lane Cobbitty and the site of vacant land used as a cricket ground.</p>	<p>By Clause 3 of a Declaration of Trust dated 1 March 1920 made by the Property Trust, the land is held upon trust for the uses of the Church of England as a Glebe for the incumbent of St Pauls Cobbitty in accordance with the devise thereof contained in the will of the Reverend Thomas Hassall deceased (and therein referred to as All that piece or parcel of land containing about 42 acres lying on the northern side of the Cobbitty Road (Opposite St Pauls Church) being a portion of Pomare Grove Farm) and subject to the provisions of the Church of England Trust Property Act 1917.</p>
<p>That part of ACPT Client Fund 0633 comprising 69.87% of the fund balance and any income payable to the fund.</p>	<p>The fund is held on the trusts set out in the Narellan Ordinance 2002.</p>

Notes

1. On 21 July 2023 the Diocesan Secretary, in exercise of sub-delegated authority from the Finance Committee, approved under clause 8(2) of the Ordinance an extension of the review date to 1 January 2034.

Table of Amendments

Clause 6	Amended by Ordinance No 14, 2018.
Clause 7	Amended by Ordinance No 14, 2018.
Clause 9	Amended by Ordinance Nos 14, 2018 and 40, 2021.

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Lawyer

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8 August 2023