

# Darling Point Trust Ordinance 2013

No 4, 2013

## Long Title

An Ordinance to vary the trusts on which certain property is held and to establish the ACPT – Darling Point 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 Darling Point 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 – Darling Point 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 Darling Point (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 –

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- (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.
- (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) 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.

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### 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 licence 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) Nothing in this clause limits the powers of the ACPT under the Anglican Church Property Trust 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 2/551733 and known as 59 Darling Point Road, Darling Point and the site of a residence.	By deed dated 20 April 1951 between Miss Annie Monson Paul and the Property Trust, the land is held on trust for the sole benefit of the Parish of St Marks Darling Point, Sydney to be used for such church or otherwise charitable purposes in respect of the said Parish as may be determined from time to time by the Parish Council of such Parish if any and if there is no Parish Council then by a majority of the Rector and Churchwardens for the time being of the Parish.
The land in folio identifier 1/6151 and known as Greenoaks Avenue, Darling Point and the site of a parish hall.	By declaration of trust dated 21 October 1927 as amended by the Act known as the St Marks Darling Point (Church Lands) Act 1944 the land is held upon trust to permit the same to be used for a clergy house, school, parish hall or other charitable purposes or partly for one and partly for another or others of such purposes in connection with the Church of England in the Parish of St Marks Darling Point near Sydney as the Parishioners of the Parish of St Marks Darling Point at a duly convened vestry meeting may decided.

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Column 1	Column 2
The land in folio identifier 1/1033255 and known as Corner Greenoaks Avenue and Darling Point Road, Darling Point and the site of St Mark's Darling Point.	By Declaration of Trusts dated 26 June 1848 Registered No.678 Book 15, the land is held upon trust that the land and the church and the buildings to be thereon might be for ever thereafter appropriated and used as and for a church according to the order and usage of the United Church of England and Ireland.
The land in folio identifier 1/1034149 and known as 53 Darling Point Road, Darling Point and the site of the parish rectory.	By Declaration of Trusts dated 28 July 1849 Registered No.234 Book 17, the land is held upon trust that the land and ministers' dwelling on the land shall be used as a Parsonage to the Church of Saint Mark Darling Point.
The land in folio identifier 1/966640 and known as 21 Etham Avenue, Darling Point and the site of a residence.	The land is held upon trust for the parish of Darling Point although there are no written trusts.
ACPT Client Fund 347	The fund is held on trust for the parish of Darling Point although there are no written trusts.
ACPT Client Fund 501	The fund is held on trust for the purposes of the parish of Darling Point although there are no written trusts.
ACPT Client Fund 509	The fund is held on the trusts set out in the St Mark's Darling Point and Glebe Administration Board Ordinance 1967.

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

PG KELL  
Chairman of Committees

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I Certify that this Ordinance was passed by the Standing Committee of the Synod of the Diocese of Sydney on 25 February 2013.

R WICKS  
Secretary

I Assent to this Ordinance.

PETER F JENSEN  
Archbishop of Sydney  
18/03/2013