

Darling Street Trust Ordinance 2005

(Reprinted under the Interpretation Ordinance 1985.)

The Darling Street Trust Ordinance 2005 as amended by the Darling Street Trust Ordinance 2005 Amendment Ordinance 2015, the St Mary's Balmain Variation of Trusts Ordinance 2020 and the Darling Street Land Sale and Amendment 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 – Darling Street 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 this ordinance

This Ordinance is the Darling Street Trust Ordinance 2005.

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 inexpedient to deal with or apply the Existing Property wholly for the use or benefit of the parish of Darling Street (the "Parish"); and
- (c) 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 Street Trust.

5. New trusts

Subject to the terms of this Ordinance, the trust fund is held upon trust for the purposes of the Parish, but the trusts are further varied to the extent necessary to permit the application of income in accordance with clause 7(1)(b).

6. Capital of the trust fund

(1) Any real property which forms part of the capital 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;
- (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 the ACPT investing the amount, for such purposes as a majority of the parish council may from time to time determine,
- (d) 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
- (e) for such purposes as the Standing Committee may direct by ordinance or resolution provided that any such purposes directed by resolution must be 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) is to be applied in accordance with clause 7(1)(b).

8. Review

(1) The authority to apply income under clause 7(1)(c) earned after the review date terminates on the review date.

(2) For the purposes of subclause (1) "review date" means the date which is 25 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)(c) must take into account the repair and maintenance of the building or other improvement situated on any real property which forms part of the capital 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 five 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) 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. Repeal and transition

(1) The Rozelle Ordinance 1994 is repealed but without affecting the validity of any act taken under that Ordinance prior to the date of repeal.

(2) Any income derived from a lease or licence granted under the Rozelle Ordinance 1994 is to be paid to the ACPT as part of the income of the trust fund and applied under clause 7.

11. Commencement

This Ordinance commences on the date of assent to this Ordinance.

Schedule

Column 1	Column 2
<p>(1) Volume 866 Folio 100, and</p> <p>(2) Volume 947 Folio 246</p> <p>known as the site of St Mark's Church and offices, 31 O'Neill Street, Lilyfield.</p>	<p>(1) By Declaration of Trust dated 12 December 1946, the land comprised in Certificate of Title Volume 866 Folio 100 is held upon trust to permit the same to be used for a church, parsonage or parish hall or partly for one and partly for another or others of such purposes in connection with the Church of England in the parish of All Soul's Leichhardt in the state of New South Wales.</p> <p>(2) The land comprised in Certificate of Title Volume 947 Folio 246 is held upon trust for the parish of Lilyfield although there are no written trusts.</p>
<p>Auto Consol 11139-17 known as 42 Lamb Street, Lilyfield.</p>	<p>By declaration of trust dated 10 October 1969 the land is held upon trust for the use and benefit of St Mark's Church of England Lilyfield in the parish of St Thomas' Rozelle in such a manner as the churchwardens of such church in their discretion deem fit.</p>
<p>Folio Identifier 1/740389 known as the site of St Thomas' Church, hall and rectory, 668 Darling Street, Rozelle.</p>	<p>By clause 3 of the Rozelle Ordinance 1994 the land is held upon trust for –</p> <p>(a) a church;</p> <p>(b) a residence for a minister, assistant to the minister or person employed by the churchwardens;</p> <p>(c) a school or other place of assembly,</p> <p>or partly for one or another of such purposes or other ancillary purposes in connection with the Anglican Church of Australia in the Diocese of Sydney for the sole benefit of the parish or any other parish or ecclesiastical district into which it may be subsequently formed or forms part.</p>
<p>Folio Identifier 1/445248 known as part of the St Thomas' Church site, Victoria Road, Rozelle.</p>	<p>By clause 3 of the Rozelle Ordinance 1994 the land is held upon trust for –</p> <p>(a) a church;</p> <p>(b) a residence for a minister, assistant to the minister or person employed by the churchwardens;</p> <p>(c) a school or other place of assembly,</p> <p>or partly for one or another of such purposes or other ancillary purposes in connection with the Anglican Church of Australia in the Diocese of Sydney for the sole benefit of the parish or any other parish or ecclesiastical district into which it may be subsequently formed or forms part.</p>
<p>Anglican Church Diocese of Sydney Client Fund 427</p>	<p>By clause 7(b) of the Balmain (St Mary's) Variation of Trusts Ordinance 1996, the fund, subject to clause 10, may be applied toward the costs of any one or more of the following on the land comprised in folio identifier 100/861875 and land comprised in folio identifier 51/790333 or both –</p> <p>(i) the construction and furnishing of a residence</p>

Column 1	Column 2
	<p>or the renovation and furnishing of any existing residence for use as a rectory;</p> <p>(ii) additional repairs to St Mary's Church Balmain and modifications to its interior;</p> <p>(iii) the construction of other residences and/or the renovation of any existing building or part thereof for use as another or other residences;</p> <p>(iv) the demolition of existing structures;</p> <p>(v) the provision of an area of car parking; and</p> <p>(vi) landscape works associated with any of the works referred to in sub-paragraphs (i) to (vi).</p> <p>By clause 7(c), after allowing for the application under paragraph (b), the fund 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 –</p> <p>(i) the subdivision of the land;</p> <p>(ii) any necessary consents and approvals of statutory authorities;</p> <p>(iii) the services and advice of architects, landscape architects, builders, engineers, surveyors, demolition contractors, real estate agents, and legal practitioners; and</p> <p>(iv) the preparation and promotion of the Balmain (St Mary's) Variation of Trusts Ordinance 1996.</p> <p>By clause 8, the balance after all applications under clause 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 of St Mary's Balmain.</p> <p>By clause 9, pending application under clause 7 the fund, or such part thereof as remains to be applied, shall be invested and the income applied as follows –</p> <p>(a) 80% of the come must be capitalised; and</p> <p>(b) 20% of the income must be paid to the churchwardens of St Mary's Balmain and applied by them for purposes within the provision parish of St Mary's Balmain.</p> <p>By clause 10, if –</p> <p>(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</p> <p>(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</p>

Column 1	Column 2
	<p>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</p> <p>(c) as regards any building or improvement on land within the Provisional Parish, an offence is committed under that Act,</p> <p>the Property Trust may –</p> <p>(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</p> <p>(e) apply the whole or any part of the Sum in or towards meeting the cost of all such works and things.</p>
<p>Anglican Church Property Trust Client Fund 701.</p>	<p>By clause 2(c) of the St Thomas' Rozelle Ordinance 1987, the balance of funds shall be invested in units of the Sydney Anglican Property Trust fund and the income from the investment shall be applied as follows –</p> <p>(i) 12.5% per annum shall be paid to the South Sydney Regional Council constituted under the Regions Ordinance 1995 to be applied by that Council for its purposes;</p> <p>(ii) 87.5% per annum shall be paid to the churchwardens of St Thomas' Church, Rozelle to be applied by them for purposes within the provisional parish of Rozelle/Lilyfield.</p>
<p>Anglican Church Property Trust Client Fund 700.</p>	<p>The funds (if any) are held on trust for the parish of Darling Street, although there are no written trusts.</p>

Notes

1. The original form of ordinance was assented to on 19 April 2005.
2. At its meeting on 24 August 2020 the Standing Committee resolved to authorise an extension of the review date for the purposes of clause 8(2) of the *Darling Street Trust Ordinance 2005* to 31 December 2020.

Table of Amendments

Long Title	Amended by Ordinance No 11, 2015.
Clause 2	Amended by Ordinance No 47, 2021.
Clause 3	Amended by Ordinance No 47, 2021.
Clause 4	Amended by Ordinance No 11, 2015.
Clause 5	Amended by Ordinance No 11, 2015.

Clause 6 Amended by Ordinance No 47, 2021.
Clause 7 Amended by Ordinance Nos 11, 2015, and 47, 2021.
Clause 8 Amended by Ordinance Nos 11, 2015, and 47, 2021.
Clause 9 Amended by Ordinance Nos 11, 2015, and 47, 2021.
Clause 10 Amended by Ordinance No 47, 2021.
Schedule Amended by Ordinance No 66, 2020.

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