

Dulwich Hill Trust Ordinance 2002

(Reprinted under the Interpretation Ordinance 1985.)

The Dulwich Hill Trust Ordinance 2002 as amended by the Parish Trust Fund (Amendment) Ordinance 2004 and the Dulwich Hill Trust Ordinance 2002 Amendment Ordinance 2019.

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Long Title

An Ordinance to vary the trusts on which certain property is held and to establish the ACPT – Dulwich Hill 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 Dulwich Hill Trust Ordinance 2002.

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 – Dulwich Hill Trust.

5. New trusts

Subject to the terms of this Ordinance, the trust fund is held upon trust for the purposes of the provisional parish of Dulwich Hill (the “Parish”).

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; 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 a 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 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.

- (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 22 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 any building or other improvement situated on land 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 license (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 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 Ordinance 1965 or under any other ordinance.

10. Commencement

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

Schedule

Column 1	Column 2
Folio Identifier 3/529533 known as 15 Herbert Street Dulwich Hill.	The preamble to the Holy Trinity Dulwich Hill Mortgage Ordinance 1963 states that, the land is held for the sole benefit of the parish of Dulwich Hill although there are no written trusts.
Volume 1025 Folio 236 being Lot 9 and Part Lot 10 in Section 2 Deposited Plan 676 known as 2 Herbert Street Dulwich Hill	By Declaration of Trust dated 25 September 1914 the land is held upon trust to permit the same to be used for the erection and maintenance thereon or on part thereof of a Church or Churches for the celebration of divine service according to the rites of the Church of England and the erection and maintenance thereon of a School Hall, Rectory and such other building or buildings as shall be requisite or necessary to be used in connection with the said Church or Churches or otherwise for the purposes in connection with the Church of England in the Parish of Holy Trinity Dulwich Hill.

Column 1	Column 2
Folio Identifier 1/529533 known as the Corner of Seaview St and Herbert St Dulwich Hill	By Declaration of Trust dated 25 September 1914 the land is held upon trust to permit the same to be used for the erection and maintenance thereon or on part thereof of a Church or Churches for the celebration of divine service according to the rites of the Church of England and the erection and maintenance thereon of a School Hall, Rectory and such other building or buildings as shall be requisite necessary to be used in connection with the said Church or Churches or otherwise for the purposes in connection with the Church of England in the Parish of Holy Trinity Dulwich Hill.
Volume 3286 Folio 93 being Part Lot 24, Lot 25, Part Lot 26 in Section 4 Deposited Plan 676 known as 19 Herbert St Dulwich Hill	By Declaration of Trust dated 11 November 1935 the land is held upon trust to permit the same to be used for the purpose of a rectory in connection with the Church of England in the Parish of Holy Trinity Dulwich Hill.
ACPT – Diocese of Sydney Client Fund 517	Pursuant to clause 4 of the Dulwich Hill Land Sale Ordinance 1999 the balance of the proceeds of the sale of land comprised in Volume 4326 Folio 13 known as 17 Bedford Crescent, Dulwich Hill shall be held on trust for the sole purposes of the Parish of Dulwich Hill and income from such proceeds paid to the wardens of Holy Trinity, Dulwich Hill quarterly in arrears for the general purposes of the Parish of Dulwich Hill.
ACPT – Diocese of Sydney Client Fund 516	Pursuant to clause 6 of the Dulwich Hill (St Aidan's) Sale Ordinance 1991 the balance of the proceeds arising from the sale of land comprised in Volume 4547 Folio 76 known as 19 Bedford Crescent, Dulwich Hill shall be invested and the income applied as follows: (a) 30% to be capitalised; and (b) the balance paid to the wardens of Holy Trinity, Dulwich Hill for the promotion, development and maintenance of the cross cultural ministry of the Parish of Dulwich Hill or for such purpose or purposes as requested from time to time by resolution of the majority of the Parish Council of the Parish of Dulwich Hill and approved by the Standing Committee or, failing such approval, as approved by the Synod of the Diocese of Sydney.

Notes

1. The original form of ordinance was assented to on 21 November 2002.
2. On 15 November 2012 the Finance Committee of the Standing Committee approved a "review date" of 21 November 2015 for the purposes of clause 8(2) of the Ordinance.

Table of Amendments

Long Title	Amended by Ordinance No 27, 2019.
Preamble	Amended by Ordinance No 27, 2019.
Clause 4	Amended by Ordinance No 27, 2019.
Clause 6	Amended by Ordinance No 52, 2004 and No 27, 2019.
Clause 7	Amended by Ordinance No 27, 2019.
Clause 8	Amended by Ordinance No 27, 2019.
Clause 9	Amended by Ordinance No 27, 2019.

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