

# Malabar Trust Ordinance 2001

(Reprinted under the Interpretation Ordinance 1985.)

The Malabar Trust Ordinance 2001 as amended by the Parish Trust Fund (Amendment) Ordinance 2004, the Malabar with Lord Howe Island Trust Ordinance 2001 Amendment Ordinance 2006 and the Malabar Trust Ordinance 2001 Amendment Ordinance 2016.

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## Long Title

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

## Preamble

A. Anglican Church Property Trust Diocese of Sydney 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 Malabar Trust Ordinance 2001.

### 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 – Malabar Trust.

#### **5. New trusts**

(1) Subject to the terms of this Ordinance, the trust fund is held upon trust for the purposes of the parish of Malabar (the "Parish").

(2) The trusts are varied to the extent necessary to permit the distribution of income under paragraph 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 legislation 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 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) 30% is to be capitalised, and
- (b) 15% is to be paid to the wardens of Unichurch (UNSW) for the purposes of Unichurch (UNSW), and

- (c) 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)(c).

#### **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.

#### **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 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 Diocese of Sydney Ordinance 1965 or under any other ordinance.

#### **10. Commencement**

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

#### **Schedule**

<b>Column 1</b>	<b>Column 2</b>
Folio Identifier 3/570035 known as Yarra Road Phillip Bay.	By clause 1 of the All Saint's Matraville (St Andrew's Phillip Bay) Declaration and Variation of Trust and Land Sale Ordinance 1973, the land 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 Provisional District of Matraville with Phillip Bay or with any Parish of which the Church of St Andrew Phillip Bay shall form part.
Auto Consol 12746-191 Lots 5 & 12 of Section 6 in DP 758637 known as Franklin and Victoria Streets Malabar.	By Clause 3 of the St Mark's Malabar Land Sale Ordinance 1969 the land is held on trust for a church building and rectory site for the Parish of St Mark Malabar.
Folio Identifier 27/1/253676 known as 17 Pozieres Ave Matraville.	By clause 3 of the St Mark's Malabar Land Sale Ordinance 1969 (as amended by Ordinances No 39 of 1971 and 41 of 1974) the land is held upon trust for the general purposes of the Parish of St Mark Malabar.
Folio Identifier 4715/752015 known as 1 Hunter Ave Matraville.	The land is held on trust for the Parish of Malabar although there are no written trusts.

Column 1	Column 2
<p>Anglican Church Property Trust Diocese of Sydney Client Fund 601</p>	<p>Pursuant to clause 5 of the Malabar (Phillip Bay) Land Sale Ordinance 1994 income from the investment of the remaining proceeds of sale of land comprised in Volume 12772 Folio 233 Lot 2 DP 570035 shall be applied as follows:</p> <ul style="list-style-type: none"> <li>(a) 30% of the income is to be capitalised; and</li> <li>(b) the balance is to be paid to the churchwardens of St Mark's Church Malabar to be applied for such purposes of the Parish of Malabar as the parish council shall from time to time determine.</li> </ul>
<p>Anglican Church Property Trust Diocese of Sydney Client Fund 602</p>	<p>Pursuant to clause 4(f) of the All Saints' Matraville (St Andrew's Phillip Bay) Declaration and Variation of Trusts and Land Sale Ordinance 1973 the balance of proceeds from the sale of Lot 1 and Lot 2 in a Plan of Subdivision of Land Grant Volume 5258 Folio 157 are to be paid to the Churchwardens of St Andrew's Church Phillip Bay to be applied by them for such purpose or purposes as may be determined by resolution of the Parish Council of the Provisional District of Matraville with Phillip Bay and approved by resolution of the Standing Committee.</p> <p>Pursuant to clause 3 of the Malabar (Phillip Bay Property) Ordinance 1988 the proceeds arising from the sale of Lot 1 in a Plan of Subdivision of land grant Volume 5258 Folio 157 are to be invested and the net income therefrom applied as follows:</p> <ul style="list-style-type: none"> <li>(a) 70% shall be paid or applied in or towards the stipend, salary, remuneration or other allowances of a lay or clerical person exercising a ministry substantially within the Parish of Malabar or such other ecclesiastical district with which the said Parish may be amalgamated or of which it may form part, or otherwise in or for such purposes as the Standing Committee, at the written request of a majority of the Parish Council of the said Parish, may by resolution from time to time determine (and pending such payment or application, such income shall be capitalised); and</li> <li>(b) 30% shall be capitalised.</li> </ul>

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## Notes

1. The original form of ordinance was assented to on 6 May 2001.
2. On 28 May 2001 the Standing Committee passed the following resolution under clause 6(2)(c) (subsequently relettered as clause 6(2)(d)) –

“Pursuant to clause 6(2)(c) of the Malabar with Lord Howe Island Trust Ordinance 2001, the Standing Committee directs that the Property Trust may apply up to \$30,000 of the personal property which forms part of the capital of the Malabar with Lord Howe Island Trust toward the cost of and incidental to complying with fire safety measures required by local government in relation to any building situated on land held on trust for the provisional parish of Malabar with Lord Howe Island.”
3. On 11 December 2006 the Standing Committee passed the following resolution under clause 6(2)(d) –

“Standing Committee, under clause 6(2)(d) of the Malabar with Lord Howe Island Trust Ordinance 2001, directs that the Property Trust may apply up to \$115,000 of the personal property forming part of the trust fund towards the costs of and incidental to the maintenance, repair and improvement of All Saints Anglican Church, its hall and grounds, Matraville (whether incurred before or after the passing of this resolution).”

## Table of Amendments

Title	Amended by Ordinances Nos 52, 2004 and 51, 2006.
Long Title	Amended by Ordinances Nos 51, 2006 and 13, 2016.
Clause 1	Amended by Ordinances Nos 52, 2004 and 51, 2006.
Clause 2	Amended by Ordinance No 13, 2016.
Clause 3	Amended by Ordinance No 13, 2016.
Clause 4	Amended by Ordinances Nos 52, 2004; 51, 2006 and 13, 2016.
Clause 5	Amended by Ordinances Nos 52, 2004; 51, 2006 and 13, 2016.
Clause 6	Amended by Ordinances Nos 52, 2004 and 13, 2016.
Clause 7	Amended by Ordinances Nos 51, 2006 and 13, 2016.
Clause 8	Amended by Ordinances Nos 51, 2006 and 13, 2016.
Clause 9	Amended by Ordinance No 13, 2016.

STEVE LUCAS  
**Legal Counsel**

MARTIN THEARLE  
**Manager, Diocesan Finance**

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