

Penrith Trust Ordinance 2005

(Reprinted under the Interpretation Ordinance 1985.)

The Penrith Trust Ordinance 2005 as amended by the Penrith Trust Ordinance 2005 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 – Penrith Trust.

Preamble

A. Anglican Church Property Trust Diocese of Sydney (the "Property Trust") is the trustee of the property described in each of the cells in column 1 of the table in Schedule 1 (the "ACPT Property").

B. The ACPT Property is held on the trusts described in the corresponding cell in column 2 of Schedule 1.

C. Henry James Fulton Neale and John Henry Jones are the trustees of the property described in column 1 of the table in Schedule 2 (the "Private Trustee Property").

D. The Private Trustee Property is held on the trusts described in column 2 of the table in Schedule 2.

E. Under section 19 of the Anglican Church of Australia Trust Property Act 1917 it is expedient to consent to the vesting of the Private Trustee Property in the Property Trust, the corporate trustee of the Diocese of Sydney.

F. By reason of circumstances which have arisen after the creation of the trusts on which the ACPT 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 Penrith Trust Ordinance 2005.

2. Declarations

By reason of circumstances which have arisen after the creation of the trusts on which the ACPT Property is held, it is inexpedient to carry out and observe those trusts, and

- (a) it is inexpedient that the ACPT Property be held for the same or like purposes as the trusts on which the ACPT Property is held; and

- (b) it is expedient that power be given to the Property Trust 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 ACPT Property, and
- (b) all real and personal property received or acquired by the Property Trust from time to time as an addition to the trust fund.

4. Name of trust fund

The trust fund is to be known as the ACPT – Penrith 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 Penrith (the “Parish”).

6. Capital of the trust fund

(1) Subject to clause 10, 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 churchwardens of a church in the Parish;
- (c) a hall or halls;
- (d) a school or other place of assembly;
- (e) any purpose (that is not prohibited by law or the trusts on which the real property is held) under a lease or licence entered into under clause 9 or as otherwise permitted by the Property Trust whether at a commercial, or nominal, rent or licence fee;
- (f) 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 Property Trust for one or more of the following purposes –

- (a) the payment of all rates, taxes and charges incurred by the Property Trust 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 Property Trust by the churchwardens of a church in the Parish for the purpose of enabling the Property Trust to make a payment under any contract made or to be made by the Property Trust 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 churchwardens of a church in the Parish make a payment to the Property Trust as an addition to the trust fund for the purpose of enabling the Property Trust to make a payment under any contract made or to be made by the Property Trust as trustee of the trust fund and –

- (a) the full amount of the payment made by the churchwardens is not required by the Property Trust for that purpose, the Property Trust may pay to the churchwardens an amount equal to the excess; or
- (b) the Property Trust 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 Property Trust may pay to the churchwardens an amount equal to the amount of

the input tax credit (or proportionate part thereof where the payment made by the churchwardens is less than the payment made by the Property Trust).

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 Property Trust 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 Property Trust's Long Term Pooling Fund – no portion is to be capitalised; or
 - (ii) is not predominantly invested in the Property Trust's Long Term Pooling Fund – 30% is to be capitalised; and
- (b) the balance is to be paid to the churchwardens of the church of the Parish or, if there is more than one church, the churchwardens 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 20 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 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 Property Trust 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 Property Trust under the Anglican Church Property Trust Diocese of Sydney Ordinance 1965 or under any other ordinance.

10. Cemetery

The land comprised in Folio Identifier 102/597910 is to be used for the purposes of a burial ground.

11. Consent

(1) Under section 19 of the Anglican Church of Australia Trust Property Act 1917, consent is given to the Private Trustee Property being vested in the Property Trust, the corporate trustee of the Diocese of Sydney.

(2) For the avoidance of doubt, the vesting of the Private Trustee Property in the Property Trust –

- (a) does not and is not intended to vary or modify the trusts on which the Private Trustee Property is held, and
- (b) is not and is not intended to be a receipt by the Property Trust as an addition to the trust fund.

12. Commencement

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

Schedule 1

Column 1	Column 2
Folio Identifier 3/4/1582 known as 250 High Street, Penrith.	The land is held on trust for the parish of Penrith although there are no written trusts.
Folio Identifier 101/597910 known as the site of St Stephen's Anglican Church, Penrith.	The land is held on trust for the parish of Penrith although there are no written trusts.
Folio Identifier 111/243976 known as 28 Sunset Avenue, South Penrith.	<p>By clause 1 of the Penrith Land Sale and Variation of Trusts Ordinance 1972, 54,081 of 69,714 undivided parts are held upon trust to be paid or applied for future development within any part of the South Penrith area in such manner as may be determined by the parish council of the parish.</p> <p>By clause 2(1) of the Penrith Land Sale and Variation of Trusts Ordinance 1972, 15,633 of 69,714 undivided parts are to be held upon trust for any one or more of the following purposes of the parish of Penrith as the parish council of the parish may determine from time to time namely –</p> <ul style="list-style-type: none">(i) for the repayment of the existing debt and interest owing in relation to the rectory of the proposed provisional parish of Kingswood;(ii) for future development within any part of the South Penrith area of the said parish of Kingswood and the parish of Penrith;(iii) for the construction maintenance renovation and reconstruction of buildings in the said parish of Penrith which are for Church purposes;(iv) for the general parochial purposes of the said parish of Penrith as the parish council may determine from time to time.
Folio Identifier 102/597910 known as the site of the cemetery, Fulton Street, Penrith.	The land is held on trust for the parish of Penrith although there are no written trusts.

Column 1	Column 2
Auto Consol 1642-31 and Folio Identifier 61/133322 known as 252 High Street and 7 Fulton Street, Penrith.	By Declaration of Trust dated 21 July 1924 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 Church of England in the parish of Penrith.
Anglican Church Property Trust Diocese of Sydney Client Fund 666.	By clause 2(1)(b) of the Penrith Land Sale and Variation of Trusts Ordinance 1972 the income derived from the remainder of the capital sum shall be paid to the churchwardens for the time being of St Stephen's Church in the parish of Penrith for parochial purposes for the period up to but not including 1 April 2001 for any one or more of the following purposes as the Parish Council of the said Parish may determine from time to time namely – (i) for the repayment of the existing debt and interest owing in relation to the Rectory of the proposed provisional parish of Kingswood; (ii) for future development within any part of the South Penrith area of the said parish of Kingswood and the parish of Penrith; (iii) for the construction maintenance, renovation and reconstruction of buildings in the said parish of Penrith which are used for Church purposes; (iv) for the general parochial purposes of the said parish of Penrith as the Parish Council may determine from time to time.

Schedule 2

Column 1	Column 2
Volume 785 Folio 206 known as 5 Fulton Street, Penrith.	The land is held on trust for the parish of Penrith although there are no written trusts.

Notes

The original form of ordinance was assented to on 28 June 2005.

Table of Amendments

Long Title	Amended by Ordinance No 2, 2016.
Clause 4	Amended by Ordinance No 2, 2016.
Clause 6	Amended by Ordinance No 2, 2016.
Clause 7	Amended by Ordinance No 2, 2016.
Clause 8	Amended by Ordinance No 2, 2016.
Clause 9	Amended by Ordinance No 2, 2016.

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22 February 2016