

Yagoona Trust Ordinance 2004

No 28, 2004

Long Title

An Ordinance to vary the trusts on which certain property is held and to establish the Yagoona 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 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.

D. It is also expedient to amend the Yagoona Leasing Ordinance 1997.

The Standing Committee of the Synod of the Diocese of Sydney Ordains as follows.

1. Name of this ordinance

This Ordinance is the Yagoona Trust Ordinance 2004.

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 Property Trust to lease or licence from time to time any part of the real property forming part of the trust fund; and
- (c) it is expedient that power be given to the Property Trust to mortgage from time to time 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 Property Trust 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 Yagoona 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 Yagoona (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 churchwardens 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);
- (f) 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 of this Ordinance or

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under the Yagoona Leasing Ordinance 1997 or as otherwise permitted by the Property Trust whether at a commercial, or nominal, rent or licence fee.

(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.

(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) 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 in lieu of such stipends and allowances paid or provided to the minister.

(2) The income of the trust fund arising from -

- (a) a residential lease granted pursuant to clause 9(1) for a weekly rental which does not exceed \$750 or such other amount as the Standing Committee determines by resolution; or
- (b) a lease granted pursuant to clause 3 of the Yagoona Leasing Ordinance 1997,

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.

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(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 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.

(2) Nothing in this clause limits the powers of the Property Trust under the Anglican Church Property Trust Ordinance 1965 or under any other ordinance.

10. Powers – mortgaging certain real property

(1) With the written consent of a majority of the parish council and subject to clause 10(2), the Property Trust may from time to time mortgage the whole or part of the real property of the trust fund comprised in folio identifiers 1/19799 and 2/19799 being land at Rodd Street and Auburn Road, Birrong for the purposes of borrowing a sum not exceeding the sum of \$700,000 or such greater sum as Standing Committee may by resolution approve.

(2) The authority to mortgage the real property under clause 10(1) does not arise until the licence or sentence of consecration of any church situated on the property is revoked.

(3) For the purpose of clause 6(2)(d), the Property Trust is directed that it may apply the proceeds from any mortgage granted under clause 10(1) toward such capital purposes of the Parish as the parish council may by resolution approve.

11. Amendment

Clause 4 of the Yagoona Leasing Ordinance 1997 is amended by deleting paragraph (b) and inserting the following instead –

“(b) secondly, as income of the Yagoona Trust established under the Yagoona Trust Ordinance 2004.”

12. Commencement

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

Schedule

Column 1	Column 2
Folio identifiers 1/19799 and 2/19799 known as the site of St Matthew’s Church and hall, situated at the corner of Rodd Street and Auburn Road, Birrong.	By clause 3 of the Regents Park with Birrong Ordinance 1992 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 of such purposes in connection with the Anglican Church of Australia Diocese of Sydney in the Parish (of Regents Park with Birrong) or any other parish into which the parish may be amalgamated.
Folio identifier 1/518275 known as the site of St Clement’s Church, 195 Edgar Street, Condell Park.	The preamble to the Provisional District of Yagoona Land Sale Ordinance 1965 states that the land is church trust property held for the sole benefit of the provisional district of Yagoona but no trusts have been declared in writing.

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Folio identifier 2/501707 known as the site of St Mark's Church and rectory, 213 Auburn Road, Yagoona.	By clause 2 of the Yagoona Mortgage Ordinance 1957 the land is held upon trust to permit the same to be used as a church, rectory and parish hall or partly for one and partly for another or others of such purposes in connection with the Church of England in the provisional district of Yagoona or any parochial district or parish into which it may subsequently be formed or form a part.
Folio identifier 2/213771 known as 193 Edgar Street, Condell Park.	By clause 2 of the St Mark's Yagoona (Condell Park) Mortgage Ordinance 1980 the land is held upon trust for – (a) a church; (b) a residence for a minister, assistant to the minister or person employed by the churchwardens; (c) a hall or halls; (d) a school or other place of assembly, or partly for one or another of those purposes in connect with Church of England in Australia at Condell Park within the Diocese of Sydney for the sole benefit of the Parish or other ecclesiastical district of Yagoona or any parish or ecclesiastical district into which it may subsequently be formed or form a part.
Folio identifier 1/501707 known as 580 Hume Highway, Yagoona.	By clause 2 of the St Mark's Yagoona Building and Leasing Ordinance 1961 the land is held upon trust to erect thereon a building to be used for the purpose of a furniture showroom or for such other purpose as the Standing Committee may from time to time by resolution determine.

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

NM CAMERON
Acting Chairman of Committees

I Certify that this Ordinance was passed by the Standing Committee of the Synod of the Diocese of Sydney on 27 October 2004.

MA PAYNE
Secretary

I Assent to this Ordinance.

PETER F JENSEN
Archbishop of Sydney
27/9/2004