

# Smithfield Road Trust Ordinance 2005

No 26, 2005

## Long Title

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

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

### 1. Name of this ordinance

This Ordinance is the Smithfield Road 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 Smithfield Road (the "Parish"); and
- (c) 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 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 Smithfield Road 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.

(2) The trusts of the trust fund are further varied to the extent necessary to permit the application under clause 6(2A).

### 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).

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(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.

(2A) The Property Trust is directed to pay an amount of \$50,000 to the Georges River Regional Council from the capital of the trust fund to be applied towards the costs of employing persons for gospel ministry within the Georges River Region.

(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 paid or provided to the minister.

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

(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.

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### 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. Repeal and Amendment

(1) The St John's Park (Canley Vale) Variation of Trusts Ordinance 2004 and St John's Park (Canley Heights) Land Sale and Variation of Trusts Ordinance 1998 are repealed.

(2) The St John's Park Land Sale and Variation of Trust Ordinance 1999 is amended as follows –

(a) delete all of the matter in recital B from and including the words “and by declaration of trust dated 26 May 1915” and insert instead -

“and by clause 5 of the Smithfield Road Trust Ordinance 2005 is held upon trust for the purposes of the parish of Smithfield Road (the “Parish”).”

(b) delete recitals C, D, F and G, and

(c) delete clause 2(2), and

(d) delete the word “third” in clause 3(2) and insert instead the word “eighth”, and

(e) delete all of the matter in clause 4 from and including the words “shall be applied (subject to clause 6)” and insert instead -

“are to be paid to the Property Trust as part of the capital of the trust fund established under the Smithfield Road Trust Ordinance 2005,”  
and

(f) delete clauses 5, 6 and 7.

### 11. Commencement

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

### Schedule

Column 1	Column 2
Folio Identifier 2/984059 and 1/817982 known as the site of a service station situated at 96 Canley Vale Road, Canley Heights.	By declaration of trust dated 26 May 1915 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 other of such purposes in connection with the Anglican Church at Canley Vale.
Folio Identifier 100/828936 known as the site of St John's church, hall and rectory situated at 73 Edensor Road and 7 and 8 Toorak Close, St John's Park.	By Declaration of Trust No 14516 dated 20 November 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 Canley Vale and Cabramatta at St John's Park.
Folio Identifier 607/786959 situated at 6 Toorak Close, St John's Park.	The land is held upon trust for the provisional parish of St John's Park with Canley Heights although there are no written trusts.

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<p>Folio Identifiers 1/569440 and 14/1033062 known as St James Church and rectory situated at 13- 15 Justin Street, Smithfield.</p>	<p>By Deed Book 217 No 183 the land is held for the erection thereon of a Church or Chapel for the performance of Divine Worship according to the rites of the United Church of England and Ireland and also for the erection of a dwelling house for a clergyman in Holy Orders to be licensed by the Bishop of Sydney for the time being to the cure of the said Church and also for the erection of a school house or for all or any of the said objects as the said Bishop of Sydney shall for the time being determine.</p>
<p>Anglican Church Property Trust Client Fund 464</p>	<p>Pursuant to clause 6(b) of the St John's Park (Canley Heights) Land Sale and Variation of Trusts Ordinance 1998 the funds are to be held on trust to be applied towards the building and fitting out of additional facilities in the provisional parish of St John's Park with Canely Heights on the properties known as 73 Edensor Road and 7 and 8 Toorak Close, St Johns Park.</p>
<p>Anglican Church Property Trust Client Fund 469</p>	<p>Pursuant to clause 9(c) of the St Johns Park (Canley Heights) Land Sale and Variation of Trusts Ordinance 1998 the funds are to be held on trust to be applied towards the payment and provision of the stipend, salary, allowances and benefits for ministry workers in the Provisional Parish, other than the payment of the stipend, allowance and benefits of the minister.</p>
<p>Anglican Church Property Trust Client Fund 471</p>	<p>Pursuant to clause 9(a) of the St John's Park (Canley Heights) Land Sale and Variation of Trusts Ordinance 1998 the funds are to be held on trust to be applied for the benefit of the provisional parish of St John's Park with Canely Heights for such purposes as the Standing Committee at the request of the said parish council may approve by resolution.</p> <p>By resolution dated 24 March 2003 the Standing Committee approved the use of the funds to meet all costs and expenses incurred by the Property Trust in relation to:</p> <ul style="list-style-type: none"> <li>(a) decontaminating the site known as 96 Canley Vale Road, Canley Vale to a level which complies with the requirements of the Environmental Protection Authority ("EPA"), and</li> <li>(b) enforcing the obligations of Mobil Oil Australia Limited ("Mobil") under a lease of the site granted to Mobil by the Property Trust including an</li> </ul>

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	<p>obligation to decontaminate the site to a level which complies with the requirements of the EPA, and</p> <p>(c) recovering from Mobil all costs and expenses incurred by the Property Trusts undertaking the actions referred to in paragraphs (a) and (b).</p>
<p>Anglican Church Property Trust Client Fund 473</p>	<p>Pursuant to clause 8 of the St John's Park (Canley Heights) Land Sale and Variation of Trusts Ordinance 1998 the funds are to be held on trust to be applied towards the building and fitting out of additional facilities in the provisional parish of St John's Park with Canely Heights on the properties known as 73 Edensor Road and 7 and 8 Toorak Close, St Johns Park.</p>
<p>Anglican Church Property Trust Client Fund 474</p>	<p>Pursuant to clause 4 of the St John's Park Land Sale and Variation of Trust Ordinance 1999 the funds are to be held on trust to be applied towards the building and fitting out of additional facilities in the provisional parish of St John's Park with Canely Heights on the properties known as 73 Edensor Road and 7 and 8 Toorak Close, St Johns Park.</p> <p>Pursuant to clause 3 of the St John's Park (Canley Vale) Variation of Trusts Ordinance 2004 the trusts on which the funds are held are varied to the extent necessary to permit the fund and any income derived therefore to be applied towards the costs and expenses incurred by the Property Trust in relation to –</p> <p>(a) decontaminating the site known as 96 Canley Vale Road, Canley Vale to a level which complies with the requirements of the Environmental Protection Authority ("EPA"), and</p> <p>(b) enforcing the obligations of Mobil Oil Australia Limited ("Mobil") under a lease of the site granted to Mobil by the Property Trust including an obligation to decontaminate the site to a level which complies with the requirements of the EPA, and</p> <p>(c) recovering from Mobil all costs and expenses incurred by the Property Trusts undertaking the actions referred to in paragraphs (a) and (b).</p>

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Anglican Church Property Trust Client Fund 697	By declaration of trust dated 26 May 1915 the fund 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 other of such purposes in connection with the Anglican Church at Canley Vale.
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I Certify that the Ordinance as printed is in accordance with the Ordinance as reported.

P G KELL  
Chairman of Committees

I Certify that this Ordinance was passed by the Standing Committee of the Synod of the Diocese of Sydney on 29 October 2005.

R WICKS  
Secretary

I Assent to this Ordinance.

PETER F JENSEN  
Archbishop of Sydney  
30/8/2005