

South Head Trust Ordinance 2012

(Reprinted under the Interpretation Ordinance 1985.)

The Watsons Bay Trust Ordinance 2012 as amended by the South Head Variation of Trusts and Amendment Ordinance 2021.

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Long Title

An Ordinance to vary the trusts on which certain property is held and to establish the ACPT -- South Head 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 or to deal with or apply the Existing Property for the same or like purposes as those trusts or to deal with or apply the Existing Property wholly for the purposes of the parish of South Head (the “Parish”).

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

1. Name of this ordinance

This Ordinance is the South Head Trust Ordinance 2012.

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;
- (b) it is inexpedient to deal with or apply the Existing Property for the same or like purposes as those trusts or to deal with or apply the Existing Property wholly for the purposes of the Parish; and
- (c) 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 – South Head 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 are further varied to the extent necessary to permit the application in clause 6(3)(b).

6. Capital of the trust fund

- (1) Any real property which forms part 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 any 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) That part of the personal property forming part of the capital of the trust fund which comprises ACPT Client Fund 0786, being the balance of proceeds from the sale of the land in folio identifier 11/1161266, is to be applied by the ACPT as follows –
 - (a) as to 15%, to be added to the capital of the Diocesan Endowment held under the Diocesan Endowment Ordinance 1984, and
 - (b) as to the balance, to be applied in and towards the costs of and incidental to, renovation and improvement of the hall located on the site of St Peter’s Watsons Bay, Old South Head Road, Watsons Bay.
- (4) Pending application under clauses 6(2) and 6(3), any personal property which forms part of the capital of the trust fund is to be invested.
- (5) 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, 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 18 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 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 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 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 Diocese of Sydney Ordinance 1965* or under any other ordinance.

10. Commencement

This Ordinance commences on the date of assent.

Schedule

Column 1	Column 2
Folio identifier 2/622595 known as the site of St Peter's Watsons Bay, hall and rectory, Old South	By clause B of the preamble to the <i>St Peter's Watsons Bay Ordinance 1978</i> , that part of the land formerly contained in Certificate of Title Volume 561 Folio 71 is held upon trust for the

Column 1	Column 2
Head Road, Watsons Bay.	<p>erection thereon of a church in connection with the Church of England in Australia.</p> <p>By clause C of the preamble to the <i>St Peter's Watsons Bay Ordinance 1978</i>, that part of the land formerly contained in Certificate of Title Volume 561 Folio 72 is held upon trust as a site of a dwelling house, garden and other appurtenances for the clergyman licensed to officiate in the church erected at Watsons Bay.</p> <p>By clause D of the preamble to the <i>St Peter's Watsons Bay Ordinance 1978</i>, that part of the land formerly contained in Certificate of Title Volume 2763 Folio 73 is held upon trust as a site for a school in connection with the church at Watsons Bay.</p>
Folio identifier 12/1161266 known as the Wentworth Memorial Church, Fitzwilliam Road, Vacluse	The land is held on trust for the parish of Watsons Bay although there are no written trusts.
Folio identifier 1/622595 known as 331A Old South Head Road, Watsons Bay	<p>By clause B of the preamble of the <i>St Peter's Watsons Bay Ordinance 1978</i> that part of the land formerly contained in Certificate of Title Volume 561 Folio 71 is held upon trust for the erection thereon of a church in connection with the Church of England in Australia.</p> <p>By clause C of the preamble of the <i>St Peter's Watsons Bay Ordinance 1978</i> that part of the land formerly contained in Certificate of Title Volume 561 Folio 72 is held upon trust as a site of a dwelling house, garden and other appurtenances for the clergyman licensed to officiate in the church erected at Watsons Bay.</p>
Folio identifiers 2/871485 and 3/871485 known as the site of the Wentworth Mausoleum, Chapel Road, Vacluse	The Land is held on trust for the parish of Watsons Bay although there are no written trusts.
ACPT Client Fund 0786	The funds are held on trust for the parish of Watsons Bay although there are no written trusts.

Notes

This ordinance was first passed on 12 November 2012.

Table of Amendments

Title	Amended by Ordinance No 3, 2021.
Long Title	Amended by Ordinance No 3, 2021.
Clause 1	Amended by Ordinance No 3, 2021.
Clause 4	Amended by Ordinance No 3, 2021.
Clause 6	Amended by Ordinance No 3, 2021.
Clause 8	Amended by Ordinance No 3, 2021.

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2 March 2021