

# South Hurstville Trust Ordinance 2002

No 77, 2002

## Long Title

An Ordinance to vary the trusts on which certain property is held and to establish the South Hurstville 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 South Hurstville Trust Ordinance 2002.

### 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 part of the real property of the trust fund comprised in certificate of title folio identifier B/309869 known as 15 The Mall, South Hurstville and certificate of title folio identifier 2/326088 known as 31 The Mall, South Hurstville.

### 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 South Hurstville 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 South Hurstville (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);

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- (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 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;
  - (c) 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 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 mortgage granted pursuant to clause 10,
- 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 any building or other improvement situated on land 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**

With the written consent of the parish council of the Parish, the Property Trust may mortgage part of the real property of the trust fund comprised in certificate of title folio identifier B/309869 known as 15 The Mall, South Hurstville and certificate of title folio identifier 2/326088 known as 31 The Mall, South Hurstville for the purposes of borrowing a sum not exceeding the sum of \$810,000.

### **11. Amendment of South Hurstville Land Sale Ordinance 2002**

The South Hurstville Land Sale Ordinance 2002 is amended as follows -

- (a) delete recital B and insert instead the following -
  - “B. The Land is church trust property and is held for the purposes of the parish of South Hurstville (the “Parish”) as part of the trust fund established by the South Hurstville Trust Ordinance 2002.”; and
- (b) delete clauses 4 and 5 and insert instead the following -
  - “4. Allocations from the South Hurstville Trust**
  - (1) Subject to clause 4(2), the Property Trust is directed to make the following payments from the capital of the South Hurstville Trust for any 1 or more of the following purposes -
    - (a) first, in payment of the costs of and incidental to this Ordinance and the sale of the Land; and
    - (b) second, in payment of any goods and services tax (as defined in *A New Tax System (Goods and Services Tax) Act 1999*) in connection with the sale of the Land; and
    - (c) third, towards the costs of and incidental to the purchase and fitting out of a residence to be used for the Parish including the repayment of any amount borrowed for the purposes of the purchase; and
    - (d) fourth, towards such other capital purposes of the Parish as the parish council of the Parish may by resolution determine including modifications and alterations to the residence referred to in clause 4(1)(c).
  - (2) No payment is to be made under clause 4(1) until the Land has been sold and the proceeds of sale paid to the Property Trust.”

### **12. Commencement**

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

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### Schedule

Column 1	Column 2
Folio Identifier 2/326088 known as the site of the rectory, 31 The Mall, South Hurstville.	By clause 4 of the St Mark's South Hurstville Sale and Mortgage Ordinance 1957, the land is held upon trust to permit the same to be used as a rectory in connection with the Church of England in the parish of St Mark South Hurstville.
Folio Identifiers 157/6202 and 156/6202 known as the site of St Mark's church, corner The Mall and Grosvenor Road, South Hurstville.	By clause 2 of the St Mark's South Hurstville Declaration of Trust and Mortgaging Ordinance 1967, 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 such purposes in connection with the Church of England in Australia in the parish of St Mark at South Hurstville.
Folio Identifier B/309869 known as 15 The Mall, South Hurstville.	The land is held on trust for the parish of South Hurstville although there are no written trusts.

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

PG KELL  
Chairman of Committees

I Certify that this Ordinance was passed by the Standing Committee of the Synod of the  
Diocese of Sydney on 9 December 2002.

MA PAYNE  
Secretary

I Assent to this Ordinance.

PETER F JENSEN  
Archbishop of Sydney  
10/12/2002