

Sutton Forest Trust Ordinance 2023

No 19, 2023

Long Title

An Ordinance to vary the trusts on which certain property is held and to establish the ACPT – Sutton Forest 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.

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

1. Name of ordinance

This Ordinance is the Sutton Forest Trust Ordinance 2023.

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 ACPT to lease or license from time to time any part of the real property forming part of the trust fund.

3. Definition of trust fund

In this Ordinance –

“Cemetery Endowment” means that part of the trust fund comprising ACPT Client Fund 0754.

“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 – Sutton Forest Trust.

5. Trusts

Subject to the terms of this Ordinance, the trust fund is held upon trust for the purposes of the parish of Sutton Forest (the “Parish”).

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, and
- (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 (except the Cemetery Endowment) may be applied by the ACPT for one or more of the following purposes –

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- (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,
 - (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) 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 the ACPT investing the amount, for such purposes as a majority of the parish council may from time to time determine,
 - (d) 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
 - (e) 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) Any personal property which forms part of the capital of the Cemetery Endowment may - on application by the Wardens from time to time of All Saints' Church, Sutton Forest - be applied by the ACPT for the purpose of maintaining, repairing and up keeping the cemetery on the grounds of All Saints' Church, Sutton Forest.
- (4) Pending application under clause 6(2) or 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) and 7(3)), 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 Long Term Pooling Fund – no portion is to be capitalised, or
 - (ii) is not predominantly invested in the 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).
- (3) The income arising from that part of the trust fund comprising the Cemetery Endowment is to be paid to the Wardens of All Saints' Church, Sutton Forest for the purpose of maintaining, repairing and up keeping the cemetery on the grounds of All Saints' Church, Sutton Forest.

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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 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 license 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
The land in folio identifier 6/32 and 7/32 known as Illawarra Highway, Sutton Forest, and the site of vacant land.	By Declaration of Trust No 612 made by the Bishop of Sydney on 5 June 1880 the land is held upon trust for the erection thereon of a school house, school masters residence and appurtenances in connection with the United Church of England and Ireland and for such other purposes in connection with the said Church as the bishop of the Diocese shall from time to time appoint, and, by declaration of trust dated 13 December 1929 the land is held upon trust 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 Sutton Forest.

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Column 1	Column 2
<p>The land in folio identifier 119/751289 known as Church Street Bundanoon and the site of Holy Trinity Church, a parish hall, a rectory, and a cemetery.</p>	<p>By clause 2 of the Sutton Forest Variation of Trust and Easement Ordinance 1987 the land is held upon trust for a -</p> <ul style="list-style-type: none"> (i) church; (ii) residence for a minister, assistant to the minister or person employed by the church wardens; (iii) hall or halls; (iv) school or other place of assembly; (v) cemetery; <p>or partly for one or other of those purposes in connection with the Anglican Church of Australia within the Diocese of Sydney for the sole benefit of the Parish of Sutton Forest or an parish or ecclesiastical district into which it may be subsequently formed or form a part.</p>
<p>The land in folio identifier 133/751298 known as 640 Wingello Road Tallong and the site of St Stephen's Church.</p>	<p>The land is held on trust for the Parish of Sutton Forest although there are no written trusts.</p>
<p>The land in folio identifier 1/952304, 10/5/3373, and 9/5/3373 known as Exeter Road Exeter and the site of St Aidan's Church and parish hall.</p>	<p>By clause 5 of the Sutton Forest (Exeter Land and Lambeth Estate) Variation of Trusts Ordinance 1996, the land is held upon trust for a -</p> <ul style="list-style-type: none"> (a) church; (b) residence for a minister, assistant to the minister or person employed by the churchwardens of any church in the parish of Sutton Forest; (c) hall or halls; (d) school or other place of assembly; <p>or partly for one or another or others of those purposes or any purpose ancillary in connection with the Anglican Church of Australia within the Diocese of Sydney at Exeter in the parish of Sutton Forest.</p>
<p>The land in folio identifier 1/1220332 known as Illawarra Highway Sutton Forest and the site of All Saints Church and a cemetery.</p>	<p>By the Crown Grant (Register of Grants of the United Church of England and Ireland No 65 Page 27) the land is held upon trust for the erection of a church of the United Church of England and Ireland, as by law established, and also for the site of a burial ground in connection with the Church.</p>

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Column 1	Column 2
ACPT Client Fund 0394	Under clause 4 of the <i>Sutton Forest (Wingello) Land Sale Ordinance 1997</i> , the fund is held on trust for purposes of the parish of Sutton Forest.
ACPT Client Fund 0754	The funds arise from the sale of plots and niches at the cemetery on the grounds of All Saints' Church, Sutton Forest (and investment income thereon) and are held for the maintenance, repair and restoration of the said cemetery, although there are no written trusts.

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

R TONG
Chair of Committee

I Certify that this Ordinance was passed by the Standing Committee of the Synod of the Diocese of Sydney on 19 June 2023.

B BOUNDS
Secretary

I Assent to this Ordinance.

P HAYWARD
Commissary

20/06/2023