

# Wollongong Trust Ordinance 2016

No 56, 2016

## Long Title

An Ordinance to vary the trusts on which certain property is held and to establish the ACPT – Wollongong 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, and it is inexpedient to deal with or apply the Existing Property wholly for the use or benefit of the parish of Wollongong (“the Parish”).

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

### 1. Name of ordinance

This Ordinance is the Wollongong Trust Ordinance 2016.

### 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 wholly for the use or benefit of the Parish, 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 –

“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, and

### 4. Name of the trust fund

The trust fund is to be known as the ACPT – Wollongong Trust.

### 5. New trusts

(1) Subject to the terms of this Ordinance and clause 5(2), the trust fund is held upon trust for the purposes of the Parish.

(2) The trusts are varied to the extent necessary to permit the distribution in clause 7(3)(c).

### 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).

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(2) Subject to clause (2A), 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 purposes within the purposes of the Parish in accordance with clause 5.

(2A) The personal property forming the capital of ACPT Client Fund 451, and additions thereto pursuant to clause (7)(3)(d), comprise a maintenance and conservation fund to be applied for the purposes of the maintenance and restoration of buildings and surrounding grounds on the St Michael's Church site at Wollongong.

(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 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 *A 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).

(3) Notwithstanding clause 7(2), in the case of the lease granted pursuant to the Wollongong Leasing Ordinance 2004 (the "2004 Ordinance"), the income of the trust fund arising from this lease, after payment of all outgoings in relation to the lease, is to be applied as follows –

- (a) first, in payment of any goods and services tax (as defined in *A New Tax System (Goods and Services Tax) Act 1999*) payable in connection with the lease, and

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- (b) second, the sum of \$66,000 per annum (or proportionate part thereof for part of a calendar year) (indexed to CPI or changes in market rent under the lease), to be paid into a maintenance and conservation fund for the purposes of the maintenance and restoration of buildings and surrounding grounds on the St Michael's Church site at Wollongong, and
  - (c) third, 15% of the balance remaining after subclauses (3)(a) and (b) are dealt with, is to be paid into the Sydney Diocesan Synod Fund, for the use and benefit of the Anglican Church of Australia in the Diocese of Synod as determined from time to time by the Synod, and
  - (d) fourth, the sum of \$58,000 per annum (indexed to CPI) to be paid to the wardens for the purposes of the Parish, except the payment of the stipends, allowances and benefits paid or provided to the minister, and
  - (e) finally, the balance is to be paid to the Parish to be applied towards Parish property costs, which includes but is not limited to costs incurred by the Parish in administering the lease, further conservation and maintenance work, maintenance and improvement of other property and equipment, and further property acquisitions.
- (4) Pending the application of the rental income pursuant to clause 7(3), the ACPT is to invest the same and capitalise the income.

### 8. Review

- (1) The authority to apply income under clauses 7(1)(b) and 7(3) earned after the review date terminates on the review date.
- (2) For the purposes of subclause (1) "review date" means the date which is 5 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 \$50,000 per annum (including GST), or such other amount as may be determined by the Standing Committee by resolution from time to time.
- (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 102/1101956 known as the corner of Church Street and Market Street Wollongong and the site of the site of St Michael's church.	Under the St Michaels Wollongong Sale Ordinance 1957, part of lot 2 in DP 220248 is held upon trust to permit the same to be used for a church, parsonage, parish hall or curates residence or partly for one and partly for another or others of such purposes in connection with the Church of England in the parish of St Michaels Wollongong. Under the Wollongong Ordinance 1989 the remaining part of lot 2 is held on trust for the promotion of religion within the Anglican Church of Australia in the Wollongong zone.

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Column 1	Column 2
The land in folio identifier 39/30903 known as 24 Georgina Avenue, Keiraville and the site of a residence.	The land is held on trust for the parish of Wollongong, although there are no written trusts.
The land in folio identifier 101/1101956 known as the corner of Church Street and Market Street and the site of a commercial building.	Under the Wollongong Leasing Ordinance 2004 the land is held upon trust to deal with or apply the Leased Land for the same or like purposes as those trusts or wholly for the purposes of the Parish and it is expedient (a) to subdivide the Land and grant such easements and rights of way reasonably necessary to effect the subdivision, and (b) to vary the trusts of the Leased Land in the manner set out in clause 3, and (c) to lease the Leased Land and apply the rental income from such lease in the manner set out in clause 6. Subject to subclause (2), the Leased Land is held upon trust for the purposes of the Parish. The trusts of the Leased Land are further varied to permit the application of rental income under clauses 6(1)(d)(ii)(B) and (iii)(A).
The land in folio identifier B/417675 known as 40A Mangerton Road Mangerton and the site of a residence.	The land is held on trust for the parish of Wollongong, although there are no written trusts.
The land in folio identifier 4/38/759104 known as Kenny Street Wollongong and the site of a cemetery.	By the former title deed, Certificate of Title Volume 657 Folio 153, the land is held upon trust for the interment of the dead, according to the use of the United Church of England and Ireland, as by law established, in conformity with the provisions of the Act 8 William IV entitled An Act to Regulate the Temporal Affairs of Churches and Chapels of the United Church of England and Ireland in New South Wales and the Act 7 William IV entitled An Act to Promote the Building of Churches and Chapels and to Provide for the Maintenance of Ministers of Religion in New South Wales.
ACPT Client Fund 451	By clause 6(1)(e)(ii) of the Wollongong Leasing Ordinance 2004 the funds are held on trust for the maintenance and restoration of buildings on the St Michael's Church site at Wollongong.
ACPT Client Fund 693	The funds are held on trust for the parish of Wollongong although there are no written trusts.
ACPT Client Fund 796	The funds are held on trust for the parish of Wollongong 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 Committees

## **Wollongong Trust Ordinance 2016**

I Certify that this Ordinance was passed by the Standing Committee of the Synod of the Diocese of Sydney on 5 December 2016.

R WICKS  
Secretary

I Assent to this Ordinance.

GN DAVIES  
Archbishop of Sydney

12/12/2016