

Ryde Trust Ordinance 2013

No 17, 2013

Long Title

An Ordinance to vary the trusts on which certain property is held and to establish the ACPT – Ryde 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 Ryde Trust Ordinance 2013.

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 or to apply the Existing Property wholly for the purposes of the Parish,
- (b) it is expedient that power be given to the ACPT to lease or licence from time to time certain real property forming part of the trust fund, and
- (c) it is expedient that power be given to the ACPT to mortgage the Kirkby Gardens Land from time to time in the manner set out in this Ordinance.

3. Definitions

In this Ordinance –

“2 Little Church Street Land” means lot 4 in deposited plan 394640.

“Archbold Building Land” means lots 2 and 3 in deposited plan 225913.

“Development Fund” means ACPT Client Fund 704.

“Kirkby Gardens Land” means lot 1 in deposited plan 225913.

“Maintenance Fund” means ACPT Client Fund 705.

“Net Income Holding Fund” means ACPT Client Fund 706.

“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 – Ryde 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 Ryde (the “Parish”) but the trusts are further varied to the extent necessary to permit the application of income in accordance with clause 10(5)(d).

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,

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- (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 upon the written request of a majority of the Parish Council of the Parish.
- (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 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).

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8. Review

(1) The provisions of this Ordinance are to be reviewed as soon as reasonably possible after the date that is 10 years after the date this Ordinance commences or such later date as the Standing Committee approves from time to time by resolution.

(2) 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. 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 Ordinance 1965 or under any other ordinance.

10. Kirkby Gardens, Archbold Building and 2 Little Church Street

(1) Notwithstanding any other provision of this Ordinance, this clause 10 applies to the –

- (a) Kirkby Gardens Land,
- (b) Archbold Building Land,
- (c) 2 Little Church Street Land,
- (d) Development Fund,
- (e) Maintenance Fund, and
- (f) Net Income Holding Fund.

to the exclusion of clauses 6, 7 and 9 of this Ordinance.

(2) The Property Trust is authorised to mortgage from time to time the whole or any part of the Kirkby Gardens Land for the purposes of borrowing a sum not exceeding \$3,000,000 or such further or other amount as may be approved from time to time by the Standing Committee upon the written request of a majority of the Parish Council of the Parish.

(3) The sum borrowed on the security of the mortgage granted under clause 10(2) is to be applied for the purpose of the Development Fund.

(4) The Property Trust is authorised to lease from time to time the buildings constructed upon the Kirkby Gardens Land, the Archbold Building Land and the 2 Little Church Street Land, or any part or parts of those buildings.

(5) The annual net income arising from the lease or leases of the buildings or any part or parts of those buildings is to be applied in the following order of priority –

- (a) first, in payment of any interest payable on any loan secured by the mortgage granted under clause 10(2) of this Ordinance and the repayment of the principal amount of any such loan, at the rate required by the lender,
- (b) secondly, the payment of an amount of \$40,000 per annum to the Maintenance Fund,
- (c) thirdly, the payment of \$110,000 per annum to the Development Fund, and
- (d) fourthly, the balance is to be applied as follows –
 - (i) 42.5% is to be retained by the Property Trust and applied under an ordinance of the Synod or the Standing Committee towards the mission and ministry of the Diocese of Sydney,
 - (ii) 7.5% is to be paid into the Expenditure Fund held under the Endowment of the See Expenditure Ordinance 2012,

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- (iii) 42.5% is to be paid to the wardens of St Anne's Ryde to be applied for such purposes (whether within the Parish or outside the parish) as the Parish Council of the Parish determines from time to time, and
- (iv) 7.5% is to be paid to the wardens of St Anne's, Ryde to be applied towards the maintenance, repair, restoration or replacement of the property and improvements held by the Property Trust for the purposes of the Parish.

(6) The Property Trust shall pay the proceeds in accordance with clauses 10(5)(a), (b) and (c) as soon as it has sufficient funds to do so and shall pay the proceeds in accordance with clause 10(5)(d) as soon as practicable after the end of each calendar year but no later than two (2) months from the end of each calendar year.

(7) The Maintenance Fund is to be applied for the repair, renovation and maintenance of the buildings erected on the Kirkby Gardens Land, the Archbold Building Land and the 2 Little Church Street Land as the Parish Council of the parish of Ryde determines from time to time and the Property Trust is to pay moneys from the Maintenance Fund to the wardens of St Anne's Ryde, when required for those purposes.

(8) The Development Fund is to be applied for the acquisition of real estate, the carrying out of major repairs, the payment of professional fees and any fees relating to any proposed development of any of the land or any other property acquired by the Property Trust as an addition to the ACPT – Ryde Trust as determined by the Parish Council from time to time.

11. Commencement

This Ordinance commences on the date of assent.

12. Repeal

The Ryde (Kirkby Gardens, Archbold Building and 2 Little Church Street) Ordinance 2000 is repealed with effect from the date of assent without affecting the validity of any act that has been undertaken in accordance with the provisions of that ordinance.

Schedule

| Column 1 | Column 2 |
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| The land in folio identifier Auto Consol 6626-202 (1/113532 and 4/394640) known as 44-46 Church Street Ryde, 2 Little Church Street Ryde and the site of St Anne's Church and cemetery and residential property. | <p>That part of the land comprising St Anne's Church and cemetery is held on trust for the parish of Ryde although there are no written trusts.</p> <p>That part of the land comprising residential property (the 2 Little Church Street Land) is, by clause 3(2) of the Ryde (Kirkby Gardens, Archbold Building and 2 Little Church Street) Ordinance 2000 held for the purposes of the parish of Ryde.</p> |
| The land in folio identifier 8/26322 known as 103 Cressy Road, Ryde and the site of residential property. | By clause 4 of the St Anne's Ryde Sale Ordinance 1991, the land is held upon trust for a rectory or residence for the minister or other staff employed by the parish of St Anne's Ryde or any parish or ecclesiastical district into which it may subsequently be formed or form a part. |
| The land in folio identifier 3/394640 known as 4 Little Church Street, Ryde and the site of residential property. | The land is held upon trust for the parish of Ryde although there are no written trusts. |

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| Column 1 | Column 2 |
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| The land in folio identifier 2/225913 known as 7A Church Street, Ryde and the site of a lane way. | By clause 4 of the St Anne's (Ryde) Glebe Leased Lands Sale (Further Amendment) and Variations of Trust and Mortgaging Ordinance 1968, the land is held upon trust to permit the same to be used for the erection thereon of shop and residential flat buildings or partly for one and partly for another of such purposes and to enter into such contract or contracts as may be necessary in accordance with plans and specifications as approved by the Corporate Trustee to erect upon the said lands such buildings as aforesaid. |
| The land in folio identifier 3/225913 known as 5-7 Church Street, Ryde and the site of residential and retail property. | By clause 3(1) of the Ryde (Kirkby Gardens, Archbold Building and 2 Little Church Street) Ordinance 2000, the Kirkby Gardens Land and the Archbold Building Land are each to be held for the use of shops and residential flat buildings or partly for one and partly for another of such purposes. |
| The land in folio identifier 1/225913 known as 9-17 Church Street, Ryde and the site of residential and retail property. | By clause 3(1) of the Ryde (Kirkby Gardens, Archbold Building and 2 Little Church Street) Ordinance 2000, the Kirkby Gardens Land and the Archbold Building Land are each to be held for the use of shops and residential flat buildings or partly for one and partly for another of such purposes. |
| The land in folio identifier 2/541856 known as 42 Church Street, Ryde and the site of residential property. | By the preamble to the St Anne's (Ryde) Glebe Leased Lands Sale 1927, the land is held upon trust for the maintenance of a church or chapel and for the provision of the revenue belonging to or arising from the use of the said church or chapel in such a manner as should be lawfully appointed of all things necessary for the celebration of divine worship of the United Church of England and Ireland with the appurtenances thereto belonging and also to permit the same or a part thereof to be used as a burial ground of the said United Church of England and Ireland. |

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| Column 1 | Column 2 |
|---|---|
| <p>ACPT Client Fund 704 (known as the Development Fund)</p> | <p>By clause 3(1) of the Ryde (Kirkby Gardens, Archbold Building and 2 Little Church Street) Ordinance 2000, the lease income arising from the Kirkby Gardens Land and the Archbold Building Land is held for the use of shops and residential flat buildings or partly for one and partly for another of such purposes and the lease income arising from the 2 Little Church Street Land is held for the purposes of the parish of Ryde.</p> <p>By clause 9 of the said Ordinance, the fund is to be applied for the acquisition of real estate, the carrying out of major repairs, the payment of professional fees and any fees relating to any proposed development of any of the land or any other property acquired by the Parish and which shall be held upon trust for the Parish (whether those trusts have been declared or not) as determined by the Parish Council from time to time.</p> |
| <p>ACPT Client Fund 705 (known as the Maintenance Fund)</p> | <p>By clause 3(1) of the Ryde (Kirkby Gardens, Archbold Building and 2 Little Church Street) Ordinance 2000, the lease income arising from the Kirkby Gardens Land and the Archbold Building Land is held for the use of shops and residential flat buildings or partly for one and partly for another of such purposes and the lease income arising from the 2 Little Church Street Land is held for the purposes of the parish of Ryde.</p> <p>By clause 9 of the said Ordinance, the fund is to be applied for the repair, renovation and maintenance of the buildings erected on the Kirkby Gardens Land, the Archbold Building Land and the 2 Little Church Street Land as the parish council of the parish of Ryde determines from time to time and the Property Trust is to pay moneys from the Fund to the churchwardens of St Anne's Church Ryde, when required for those purposes.</p> |

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| Column 1 | Column 2 |
|---|---|
| ACPT Client Fund 706 (known as the Net Income Holding Fund) | <p>By clause 3(1) of the Ryde (Kirkby Gardens, Archbold Building and 2 Little Church Street) Ordinance 2000, the lease income arising from the Kirkby Gardens Land and the Archbold Building Land is held for the use of shops and residential flat buildings or partly for one and partly for another of such purposes and the lease income arising from the 2 Little Church Street Land is held for the purposes of the parish of Ryde.</p> <p>The funds are to be applied in accordance with clause 7 of the said Ordinance.</p> |

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

K SOWADA
Deputy Chairman of Committees

I Certify that this Ordinance was passed by the Standing Committee of the Synod of the Diocese of Sydney on 24 June 2013.

R WICKS
Secretary

I Assent to this Ordinance.

PETER F JENSEN
Archbishop of Sydney
25/06/2013