

Oakhurst Trust Ordinance 2005

(Reprinted under the Interpretation Ordinance 1985.)

The Oakhurst Trust Ordinance 2005 as amended by the Oakhurst Trust Ordinance 2005 Amendment Ordinance 2016.

Table of Provisions

Clause	
1	Name of this ordinance
2	Declarations
3	Definition of "trust fund"
4	Name of the trust fund
5	New Trusts
6	Capital of the trust fund
7	Application of the income of the trust fund
8	Review
9	Powers – leasing and licensing of real property
10	Amendment
11	Commencement
Schedule	

* * * * *

Long Title

An Ordinance to vary the trusts on which certain property is held and to establish the ACPT – Oakhurst 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, and to deal with or apply the Existing Property wholly for the purposes of the Parish of Oakhurst ("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 Oakhurst Trust Ordinance 2005.

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

- 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;
- it is inexpedient to deal with or apply the Existing Property wholly for the use or benefit of the Parish; and
- 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 – Oakhurst 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 further varied to the extent necessary to permit the distribution in clause 7(1)(b).

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 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).
- (f) any purpose (that is not prohibited by law or the trusts on which the real property is held) under a lease of licence entered into under clause 9 or as otherwise permitted by the ACPT 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 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.

(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 Property Trust's Long Term Pooling Fund – no portion is to be capitalised; or
 - (ii) is not predominantly invested in the Property Trust's Long Term Pooling Fund – 30% is to be capitalised; and
 - (b) 10% is to be paid to the Sydney Diocesan Synod Fund, for the use and benefit of the Anglican Church of Australia in the Diocese of Sydney as determined from time to time by the Synod, and
 - (c) 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) a lease or licence granted pursuant to clause 9(1); or
 - (b) a licence granted to St Mark's Child Care Centre Oakhurst Incorporated or any organisation with similar goals and purposes,

is to be applied in accordance with clause 7(1)(b) and 7(1)(c).

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 20 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 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 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 \$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. Amendment

The matter in item 8 of Schedule 1 to the New Areas Variation of Trusts Ordinance 1999 is deleted.

11. Commencement

This Ordinance commences on the date of assent.

Schedule

Column 1	Column 2
Part Folio Identifier 100/845891 being proposed lot 1002 known as the site of St Mark Church and rectory, situated at 95-99 Hyatts Road, Oakhurst.	By Notice dated 15 October 1999 pursuant to clause 4(8) of the New Sites Ordinance 1982, the land is held on trust for the benefit of the provisional parish of Oakhurst.
Lot 11 Deposited Plan 793739 being land known as 21 Athens Avenue, Hassall Grove.	By the New Areas Variation of Trust Ordinance 1999, the land is held on trust for the Western Sydney Regional Council to be applied for the purposes set out in that ordinance.

Notes

The original form of ordinance was assented to on 30 August 2005.

Table of Amendments

Long Title	Amended by Ordinance No 52, 2016.
Preamble	Amended by Ordinance No 52, 2016.
Clause 2	Amended by Ordinance No 52, 2016.
Clause 3	Amended by Ordinance No 52, 2016.
Clause 4	Amended by Ordinance No 52, 2016.
Clause 5	Amended by Ordinance No 52, 2016.
Clause 6	Amended by Ordinance No 52, 2016.
Clause 7	Amended by Ordinance No 52, 2016.
Clause 8	Amended by Ordinance No 52, 2016.
Clause 9	Amended by Ordinance No 52, 2016.

STEVE LUCAS
Legal Counsel

MARTIN THEARLE
Manager, Diocesan Finance

7 December 2016