

Malabar Trust Ordinance 2001

No 17, 2001

Long Title

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

Preamble

- A. Anglican Church Property Trust Diocese of Sydney 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 Malabar Trust Ordinance 2001.

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.

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 Malabar Trust.

5. New trusts

Subject to the terms of this Ordinance, the trust fund is held upon trust for the purposes of the provisional parish of Malabar (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).

(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 legislation 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

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- (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.

(2) The income of the trust fund arising from 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 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 5 years after the date this Ordinance commences or such later date as the Standing Committee approves from time to time by resolution.

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. Commencement

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

Schedule

Column 1	Column 2
Folio Identifier 3/570035 known as Yarra Road Phillip Bay.	By clause 1 of the All Saint's Matraville (St Andrew's Phillip Bay) Declaration and Variation of Trust and Land Sale Ordinance 1973, 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 others of such purposes in connection with the Provisional District of Matraville with Phillip Bay or with any Parish of which the Church of St Andrew Phillip Bay shall form part.
Auto Consol 12746-191 Lots 5 & 12 of Section 6 in DP 758637 known as Franklin and Victoria streets Malabar	By Clause 3 of the St Mark's Malabar Land Sale Ordinance 1969 the land is held on trust for a church building and rectory site for the Parish of St Mark Malabar.
Folio Identifier 27/1/253676 known as 17 Pozieres Ave Matraville.	By clause 3 of the St Mark's Malabar Land Sale Ordinance 1969 (as amended by Ordinances No 39 of 1971 and 41 of 1974) the land is held upon trust for the general purposes of the Parish of St Mark Malabar.
Folio Identifier 4715/752015 known as 1 Hunter Ave Matraville.	The land is held on trust for the Parish of Malabar although there are no written trusts.

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<p>Anglican Church Property Trust Diocese of Sydney Client Fund 601</p>	<p>Pursuant to clause 5 of the Malabar (Phillip Bay) Land Sale Ordinance 1994 income from the investment of the remaining proceeds of sale of land comprised in Volume 12772 Folio 233 Lot 2 DP 570035 shall be applied as follows:</p> <p>(a) 30% of the income is to be capitalised; and</p> <p>(b) the balance is to be paid to the churchwardens of St Mark's Church Malabar to be applied for such purposes of the Parish of Malabar as the parish council shall from time to time determine.</p>
<p>Anglican Church Property Trust Diocese of Sydney Client Fund 602</p>	<p>Pursuant to clause 4(f) of the All Saints' Matraville (St Andrew's Phillip Bay) Declaration and Variation of Trusts and Land Sale Ordinance 1973 the balance of proceeds from the sale of Lot 1 and Lot 2 in a Plan of Subdivision of Land Grant Volume 5258 Folio 157 are to be paid to the Churchwardens of St Andrew's Church Phillip Bay to be applied by them for such purpose or purposes as may be determined by resolution of the Parish Council of the Provisional District of Matraville with Phillip Bay and approved by resolution of the Standing Committee.</p> <p>Pursuant to clause 3 of the Malabar (Phillip Bay Property) Ordinance 1988 the proceeds arising from the sale of Lot 1 in a Plan of Subdivision of land grant Volume 5258 Folio 157 are to be invested and the net income therefrom applied as follows:</p> <p>(a) 70% shall be paid or applied in or towards the stipend, salary, remuneration or other allowances of a lay or clerical person exercising a ministry substantially within the Parish of Malabar or such other ecclesiastical district with which the said Parish may be amalgamated or of which it may form part, or otherwise in or for such purposes as the Standing Committee, at the written request of a majority of the Parish Council of the said Parish, may by resolution from time to time determine (and pending such payment or application, such income shall be capitalised); and</p> <p>(b) 30% shall be capitalised.</p>

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

N M CAMERON
Chairman of Committees

I Certify that this Ordinance was passed by the Standing Committee of the Synod of the Diocese of Sydney on 28 May 2001.

M A PAYNE
Secretary

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I Assent to this Ordinance.

P W BARNETT
Administrator
6/5/2001