

Picton Trust Ordinance 2004

No 51, 2004

Long Title

An Ordinance to vest certain funds in the Property Trust and to vary the trusts on which certain property is held and to establish the Picton 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 Schedule 1 (the "CPT Property").

B. John Stanley Fergusson, John Richard Bicknell and Robert Frederick Maddison are the trustees of funds being church trust property described in the cell in column 1 of the table in Schedule 2 (the "Stewart Estate").

C. The CPT Property and the Stewart Estate (the "Existing Property") described in each of the cells in column 1 of the tables in Schedules 1 and 2 respectively are held on the trusts described in the corresponding cells in column 2 of those Schedules.

D. 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.

E. It is also expedient that the Stewart Estate is vested in the Property Trust.

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

1. Name of this ordinance

This Ordinance is the Picton Trust Ordinance 2004.

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 Picton 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 Picton (the "Parish").

6. Capital of the trust fund

(1) The real property which forms part of the capital of the trust fund (other than the part of the land comprised in folio identifier 1/1023843 which is a burial ground) 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;

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(e) any purpose incidental to a purpose referred to in paragraph (a), (b), (c) or (d).

(1A) The part of the land comprised in folio identifier 1/1023843 which is a burial ground and which forms part of the capital of the trust fund is to be used for the purposes of a burial ground.

(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 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 Property Trust by the churchwardens of a church in the Parish 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 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.

(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
- (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, 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 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 10 years after the date this Ordinance commences or such later date as the Standing Committee approves from time to time by resolution.

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(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 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. Vesting

Under section 19 of the Anglican Church of Australia Trust Property Act 1917, consent is given to the Stewart Estate being vested in the Property Trust, the corporate trustee of the Diocese.

11. Commencement

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

Schedule 1

Column 1	Column 2
Folio Identifier 1/1023843 known as the site of St Mark's church and cemetery situated on Menangle Street (West), Picton.	By Deed of Conveyance Book 135 No 178 the land is held upon trust to permit part of the land to be used as a site for the erection of a church to be devoted to the worship of Almighty God, and to permit the residue of the land to be used as a burial ground in connection with the said church.
Folio Identifier 1/1023210 known as 5 Menangle Street, Picton.	The land is held upon trust for the parish of Picton although there are no written trusts.
Folio Identifier 28/262075 known as 23 Turner Street, Thirlmere.	The land is held upon trust for the parish of Picton although there are no written trusts.
Anglican Church Property Trust Client Fund 671	Pursuant to clause 4 of the Picton Land Sale Ordinance 1998, the net proceeds of sale and any income earned thereon which is capitalized under clause 5 should be applied by the Property Trust in a manner consistent with the trusts on which the land is held. By Declaration of Trust dated 21 July 1916 the land is held upon trust to permit the same to be used for a parsonage or rectory or parish hall or partly for one and partly for another of such purposes in connection with the Church of England in the parish of Picton.

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Schedule 2

Column 1	Column 2
Funds arising from the sale of real property known as the Old Church of England Rectory 253-255 West Argyle Street, Picton pursuant to Order of the Supreme Court of New South Wales, Equities Division No 2626 of 1976 dated 23 November 1982.	By the Will of Charlotte Stewart deceased dated 16 May 1891, the Freehold Estate is to be held upon trust to receive the rents issues profits and income of the Freehold Estate and to pay the same half yearly towards the stipend of the Minister who might be appointed from time to time of Saint Marks Church at Picton aforesaid for all time and to pay out of the said rents issues and profits of the said Freehold properties all such sums as the trustee(s) and the Minister for the time being of the said Church may think necessary and proper towards repairs and other necessary expenses in keeping the said property in tenantable condition. And for the purpose of letting such property to grant leases thereof for any term the trustee(s) may think fit and on any condition the trustee(s) may choose but the trustee(s) are not to sell or absolutely dispose of the same it being the intention that the said property shall be kept and maintained for the aforesaid purposes.

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

PG KELL
Chairman of Committees

I Certify that this Ordinance was passed by the Standing Committee of the Synod of the Diocese of Sydney on 13 December 2004.

MA PAYNE
Secretary

I Assent to this Ordinance.

PETER F JENSEN
Archbishop of Sydney
14/12/2004