

St. Thomas' Church of England, North Sydney, Cemetery Act 1967 No 22

[1967-22]



New South Wales

Status Information

Currency of version

Repealed version for 23 March 1967 to 5 January 2012 (accessed 21 December 2024 at 15:49)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Repeal**

The Act was repealed by Sch 5 to the [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2011 No 62](#) with effect from 6.1.2012.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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St. Thomas' Church of England, North Sydney, Cemetery Act 1967 No 22



New South Wales

An Act to dedicate certain land at North Sydney as a public park; to make provision for the appointment of trustees thereof; to confer and impose certain powers, authorities, duties and functions on such trustees; and for purposes connected therewith.

1 Name of Act

This Act may be cited as the *St. Thomas' Church of England, North Sydney, Cemetery Act 1967*.

2 Definitions

In this Act, unless the context or subject-matter otherwise indicates or require:

Committee of Management means Committee of Management of the scheduled land appointed pursuant to Ordinance No 29 of the Sydney Church Ordinances of the Diocese of Sydney of the Church of England in Australia.

Council means Council of the Municipality of North Sydney.

the scheduled land means the land described in the Schedule to this Act.

3 Dedication of the scheduled land

- (1) The scheduled land is hereby dedicated as a public park and shall be deemed to be a public park within the meaning of the *Public Parks Act 1912*, as amended by subsequent Acts.
- (2) The Council shall be the trustees of the scheduled land for all purposes of the *Public Parks Act 1912*, as amended by subsequent Acts, and shall be deemed to have been appointed pursuant to that Act, as so amended, to be the trustees of the scheduled land.
- (3)
 - (a) The Council shall maintain the scheduled land as a rest park and garden and may erect and maintain a columbarium on the scheduled land, and, notwithstanding

anything in any other Act, but subject to the provisions of this Act, the Council shall not use the scheduled land or permit it to be used for any other purpose.

- (b) The Council may, either alone or in conjunction with the Rector and Churchwardens of St. Thomas' Church of England, North Sydney, place in the columbarium referred to in paragraph (a) of this subsection the ashes of persons who have been cremated.

(4)

- (a) Any estate or interest in the scheduled land which, immediately before the commencement of this Act, was vested in or held by any person or body of persons is hereby divested.
- (b) Any person or body referred to in paragraph (a) of this subsection and the Committee of Management are hereby discharged from any duties, liabilities or obligations existing immediately before the commencement of this Act in respect of or in relation to the scheduled land.
- (c) Any liabilities incurred or debts due by the Church of England Property Trust Diocese of Sydney, or the Committee of Management, immediately before the commencement of this Act in respect of the scheduled land are hereby transferred to the Council.
- (d)
 - (i) Any moneys, securities or assets held or received by the Church of England Property Trust Diocese of Sydney or the Committee of Management, whether before or after the commencement of this Act, in respect of the scheduled land or of any grave in the scheduled land, shall vest in and, as soon as practicable, be paid or transferred to the Council, and those moneys, securities or assets shall thereupon be freed from any conditions or trusts subject to or on which they were held immediately before they so vest.
 - (ii) The Council shall use the said moneys, securities or assets for or towards maintaining the graves or monuments or other surface structures preserved pursuant to the provisions of section five of this Act or for or towards maintaining the scheduled land as a rest park and garden.
- (e) Any trusts, conditions, encumbrances, dedications or reservations affecting the scheduled land immediately before the commencement of this Act are hereby revoked and annulled.
- (f) Any Crown grant issued in respect of any part of or including any part of the scheduled land and subsisting immediately before the commencement of this Act is hereby cancelled insofar as it relates to the scheduled land.

4 Powers and duties of the Council in relation to the scheduled land

- (1) The Council shall, as soon as practicable after the commencement of this Act:
 - (a) compile from information made available by the Church of England Property Trust Diocese of Sydney and the Committee of Management a register of the names of and other relevant information in respect of persons who are buried in or whose ashes have been placed in or on the scheduled land, so far as such names and information can by reasonable diligence be obtained, and deposit and maintain the register at the Stanton Library, Miller Street, North Sydney, or at such other library or office of the Council as the Council may appoint, so as to be available for inspection by any interested person from time to time,
 - (b) furnish a certified copy of the register to the Minister,
 - (c) furnish a certified copy of the register to the Mitchell Library, Sydney, where it shall be maintained so as to be available for inspection by any interested person from time to time,
 - (d) plant the scheduled land with trees, lawns, shrubs and plants, including native Australian plants, and otherwise improve it as a rest park and garden, and
 - (e) erect a memorial, tablet or plaque in a suitable position on the scheduled land indicating the sacred nature of the area and where the register referred to in paragraph (a) of this subsection may be inspected and stating that a copy of the register may be inspected at the Mitchell Library, Sydney.
- (2) Subject to this Act, the Council may do all such other things as it may consider necessary to effect the conversion of the scheduled land into a rest park and garden and for the erection, maintenance and use of a columbarium on the scheduled land.

5 Preservation of certain monuments etc

- (1) The Council shall, subject to the provisions of section six of this Act, preserve in its existing position or remove and preserve in a new position on the scheduled land:
 - (a) any monument or other surface structure which:
 - (i) is erected over any grave which, in the opinion of the Council, is of historical importance, and
 - (ii) is, in the opinion of the Council, reasonably capable of being preserved,
 - (b) any monument or other surface structure erected over any grave in respect of which the Council has notice that any moneys, securities or assets were, immediately before the commencement of this Act, held by any person or body of persons for the perpetual care of such grave.

- (2) Subject to the provisions of section six of this Act, the Council may remove all other monuments and other surface structures erected on the scheduled land, and dispose of them at the discretion of the Council.
- (3) If any monument or other surface structure preserved in accordance with the provisions of subsection one of this section ceases at any time after the expiration of the period of three months referred to in subsection two of section six of this Act by reason of its condition to be, in the opinion of the Council, reasonably capable of being preserved, the Council may dispose of it at the discretion of the Council.
- (4) Before determining which of the monuments or other surface structures the Council will preserve, or remove and preserve, pursuant to subsection one of this section, or remove pursuant to subsection two of this section, the Council shall take into consideration any views of the Royal Australian Historical Society, furnished to the Council within three months after the commencement of this Act, relating to the historical importance of each or any monument or other surface structure.

6 Advertisement to be published before removal of monuments etc

- (1) At least three months before any monuments or other surface structures erected over graves are removed by the Council pursuant to subsection one or two of section five of this Act, an advertisement of the intention to remove them and drawing attention to the right conferred by subsection two of this section on the representatives or persons claiming to be representatives referred to in the said subsection shall be inserted twice at an interval of not less than two weeks in a newspaper or newspapers published and circulating in the locality, and twice at an interval of not less than two weeks in a newspaper or newspapers published in Sydney and circulating widely throughout New South Wales.
- (2) At any time after the publication of the first advertisement referred to in subsection one of this section and before the expiration of three months after the publication of the last of such advertisements the representatives or any persons claiming to be representatives of any person who is buried in or whose ashes have been placed in or on the scheduled land may, at their own expense, and with the permission of the Council, remove the monument or other surface structure erected over the grave of or in respect of such person, whether or not such monument or other surface structure is one which is referred to in subsection one of section five of this Act, and may, at their own expense, and with the permission of the Director-General of Public Health, remove the remains of such person to another cemetery for burial or to a crematorium for cremation.

7 Remains not to be disturbed

- (1) The Council or any person or body of persons shall take due care not to unearth or disturb the remains of any person who is buried in, or the ashes of any person which have been placed in or on, the scheduled land.

- (2) If any such remains or ashes are unearthed or disturbed, the Council shall cause:
 - (a) such remains to be reverently interred anywhere in the scheduled land, or
 - (b) such ashes to be reverently placed anywhere in or on the scheduled land.
- (3) Nothing in this section prevents the removing of any remains pursuant to subsection two of section six of this Act.

8 Sexton's dwelling

- (1) The Council may maintain the dwelling erected on the scheduled land at the commencement of this Act, and may, from time to time, repair, rebuild or replace it.
- (2) The dwelling may, with the approval of the Council, be used as a residence for a sexton, groundsman, or caretaker, of the scheduled land, upon such terms and conditions as may be agreed upon from time to time between the Council and the sexton, groundsman, or caretaker, as the case may be.
- (3) So long as the land on which the dwelling is erected is so used for the purposes of a residence for a sexton, groundsman, or caretaker, of the scheduled land, the public shall not be entitled to enter upon or use it, or any land which is within the curtilage of the dwelling and is bounded by a substantial fence, as a public park.
- (4) Notwithstanding the provisions of subsections two and three of this section, the Council may use the dwelling, and the land within the curtilage of the dwelling and bounded by a substantial fence, for such other purposes and subject to such terms and conditions as the Minister may approve in writing.
- (5) A reference in this section to the dwelling erected on the scheduled land at the commencement of this Act includes a reference to that dwelling as repaired, rebuilt or replaced from time to time under the provisions of this section.

9 No compensation payable

No compensation or damages shall be payable to any person or body of persons in respect of the divesting of any estate or interest by this Act or in respect of the performance of any act authorised by this Act.

Schedule

(Section 2)

ALL THAT piece or parcel of land situate at North Sydney in the parish of Willoughby, county of Cumberland, containing an area of about 4 acres 18 $\frac{1}{4}$ perches being the land comprised in Conveyance Book 8 No 703 and Conveyance Book 102 No 53 EXCLUSIVELY of the area of 2 $\frac{1}{4}$ perches resumed for Electricity Purposes by notification in the Government Gazette of the 4th February 1927.