

CHURCH TRUST PROPERTY ORDINANCE 2012

AN ORDINANCE to make provision for the administration of property held upon any trust for the use, benefit or purposes of the Diocese of Newcastle in accordance with and providing delegations under the various provisions, powers and duties prescribed under the *Anglican Church of Australia Trust Property Act 1917* and the *Bishop Tyrrell Trust Act 1910*.

BE IT ORDAINED by the Bishop, Clergy and Laity meeting in Synod as follows:

PART 1 – PRELIMINARY

Short Title

1. This Ordinance may be cited as **Church Trust Property Ordinance 2012**.

Repeal

2. The following Ordinances are hereby repealed provided that such repeal shall not affect or invalidate any act done under those Ordinances –
 - (a) *The Church Trust Property Ordinance 1929*;
 - (b) *The Number of Members of the Trustees of Church Property for the Diocese of Newcastle Ordinance 1929*;
 - (c) *Church Trust Property Investments Ordinance 1963*;
 - (d) *The Administration of Trust Funds Ordinance 1968*;
 - (e) *Term of Office of Trustees of Church Property for the Diocese of Newcastle Ordinance 1978*;
 - (f) *The Church Trust Property Investments Additional Powers Ordinance 1998*;
 - (g) *The Bishop Tyrrell Trusts Investment Ordinance 1961*;
 - (h) *The Bishop Tyrrell Trust Pooling Ordinance 1986*;
 - (i) *The Execution of Instruments Authorisation Ordinance 2000*; and
 - (j) *The Tyrrell Trust Endowments Capitalisation of Interest Ordinance 2004*.

PART 2 – DEFINITIONS

3. In this Ordinance, unless the contrary intention appears

Bishop	means the Bishop of the Diocese or a Commissary of the Bishop or the Administrator of the Diocese appointed to exercise the powers and functions of the Bishop.
Bishop Tyrrell Acts	means the <i>Bishop Tyrrell Trust Act 1910</i> and any Act amending that Act.

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Diocesan Council	means the Diocesan Council established in accordance with the Diocesan Council Ordinance 1929.
Diocese	means the Diocese of Newcastle.
Entity	means the bishop, a parish, organization, property approvals board or school within the Diocese.
Morpeth Trusts	means the Church trust property described in schedule 2.
Property Approvals Board	means the Board appointed by the Diocese for the oversight of and advice on property matters relating to the parishes in accordance with the Administration of Parishes Ordinance 2010.
Reserve Fund	means the reserve fund maintained by the Trustees <i>Synod</i> means the Synod of the Diocese.
Synod	means the Synod of the Diocese.
Trustee	means any member of the Corporate Body of Trustees known as The Trustees of Church Property for the Diocese of Newcastle.
Trustees	means the Corporate Body of Trustees known as The Trustees of Church Property for the Diocese of Newcastle ABN 31 876 908 346.
Trust Property Act	means the Anglican Church of Australia Trust Property Act 1917 (NSW).
Tyrrell Trusts	means the Church trust property described in schedule 1.

PART 3 – TRANSITIONAL

4. Any act commenced under a repealed Ordinance but not completed at the time of the passing of this Ordinance may be dealt with as to all further steps or requirements and completed under the provisions of this Ordinance.

Scope

5. The provisions of Ordinance shall apply to all trust property held for the purposes of the Anglican Church of Australia within the Diocese including trust property pursuant to the will of Bishop William Tyrrell and the Bishop Tyrrell Trust Acts.
6. Nothing in this Ordinance shall restrict or affect the purposes or provisions of any trust relating to trust property unless or until the Synod shall by Ordinance otherwise so declare.

Delegation to Diocesan Council

7. The Diocesan Council is appointed during the recess of the Synod and in place of the Synod of the Diocese to exercise such of the powers and functions and to do and make such of the things referred to in the Trust Property Act and the Bishop Tyrrell Acts as may be done by the Synod of the Diocese under the provisions of the said Acts.
8. The Synod may continue to exercise any power and function delegated to the Diocesan Council.
Confirmation of Previous Actions

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9. All variations of trusts carried out pursuant to the power given by Section 32 of the *Anglican Church of Australia Trust Property Act 1917*, the *Church Trust Property Ordinance 1929*, the *Administration of Parishes Ordinance 2010*, the *Synod (Delegation of Powers) Ordinance 2009* and any repealed Ordinance are hereby validated and held always to have been valid.

Members of the Corporate Body of Trustees

10. The Trustees shall be the Board Members of the Newcastle Anglican Church Corporation (**NACC**) for the time being.
11. A Trustee ceases to be a Trustee if they cease to be a Board Member of the NACC.
12. A Board Member of the NACC must acknowledge and accept in writing their role as Trustee before exercising any responsibility under this Ordinance.

Overriding Duties and Responsibilities

13. A Trustee must:
- (a) if the Trustee's profession, business or employment is or includes acting as a trustee or investing money on behalf of other persons, exercise the care, diligence and skill that a prudent person engaged in that profession, business or employment would exercise in managing the affairs of other persons, or
 - (b) if the Trustee is not engaged in such a profession, business or employment, exercise the care diligence and skill that a prudent person would exercise in managing the affairs of other persons.
14. The Trustees may exercise any power conferred on a trustee by the *Trustee Act 1925 (NSW)* subject to any obligation imposed by that Act in relation to that power unless such power or obligation is inconsistent with:
- (a) the Trust Property Act, the Bishop Tyrrell Acts or any Ordinance of the Synod; or
 - (b) any policy or rule determined by the Diocesan Council relating to the operation of the Trustees.

PART 4 – POWERS OF THE TRUST

Investment Powers

15. The Trustees may invest trust funds in any form of investment and at any time vary any investment provided that the Trustees in exercising any power to invest:
- (a) has regard to the matters a trustee must take into account in accordance with section 14C of the *Trustee Act 1925 (NSW)*; and
 - (b) does not invest in any scheme, entity or business which the Synod or the Diocesan Council has by resolution declared to be a disapproved scheme, entity or business.
16. The Trustees may appropriate to the capital of any fund which is pooled for investment any securities which may be required by law or be expedient to be allocated to it.

Pooling

17. The Trustees may pool for purposes of investment separate Church trust properties and may continue the pooling of all funds now or hereafter in its hands for investment so long as it thinks it expedient to do so.
18. The Trustees may exercise the discretion to remove Funds which have been pooled for

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investment from the pool and keep such Funds so removed separate or pool them together for investment.

19. The Trustees may manage any funds which have been pooled together as a unit trust in accordance with such rules as policies determined in accordance with this Ordinance.
20. The net income payable in regard to each separate Church trust property included among the various properties pooled shall be the declared interest by the Trustees for all pooled Church trust properties.
21. The Trustees shall distribute the net annual income of the investments of the pooled funds in the following order:-
 - (a) to any trust fund in respect of which a particular rate of income is specified by or declared under an Ordinance - an amount calculated at such rate;
 - (b) to any other fund to which public securities have been appropriated, the amount of interest received in respect of such public securities and an amount calculated at the uniform rate hereinafter mentioned upon the balance of such fund;
 - (c) to all other trust funds pooled for investment at such uniform rate as the Trustees may from time to time declare; and
 - (d) by transferring any undistributed net annual income to the Reserve Fund.

Reserve Fund

22. (Repealed)
23. (Repealed)
24. (Repealed)

Charges

25. Each trust property and the income (if any) arising therefrom shall be liable for the payment of all costs or expenses incurred in connection with such property.
26. All expenses otherwise incurred by the Trustees, or which it shall not consider properly chargeable against any specific property, shall be chargeable against all or any moneys coming to it by way of income in such proportions as the Trustees shall see fit.
27. For the purpose of meeting the legitimate and necessary expenses of the management of funds and properties it shall be lawful for the Trustees to make such charge or charges as it shall with the concurrence of the Diocesan Council determine.

Tyrrell Trusts

28. The trust property known as the Tyrrell Trust Endowment Funds are those trusts described in Schedule 1.

Morpeth Trusts

29. The trust property known as the Morpeth Trusts are those trusts described in Schedule 2.
30. The Trustees may establish for a parish an Endowment Fund account where the funds are vested for the purposes of the Church in that parish, and into which may be deposited any bequest, gift, proceeds of land sale or similar deposit and for which the Trustees may permit the distribution of income but are not permitted to distribute any capital of the account.
31. The Trustees may establish for a parish a Consolidated Trust account where the funds are

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- vested for the purposes of the Church in that parish, and into which may be deposited any bequest, gift, proceeds of land sale or similar deposit and for which the Trustees may permit the distribution of income and may permit the distribution of the capital of the account following a resolution of the Parish Council approved by the Diocesan Council.
32. The Trustees may establish a specific purpose Endowment Fund account for a parish where the funds are vested for the specific purposes of the Church in that parish, and into which may be deposited any bequest, gift, proceeds of land sale or similar deposit and for which the Trustees may permit the distribution of income for specific purposes but are not permitted to distribute any capital of the account.
 33. The Diocesan Council, bearing in mind the purposes of a bequest, gift, proceeds of land sale or similar deposit, may direct that any bequest, gift, proceeds of land sale or similar deposit for a parish not exceeding fifty thousand dollars (\$50,000) shall be deposited in the Endowment Fund, Consolidated Trust, or specific purpose Endowment Fund for that parish.
 34. The Diocesan Council, bearing in mind the purposes for which funds in an existing trust account are held and the current practices associated with that existing trust account, may direct that the funds in any existing trust account for a parish, the balance of which is less than fifty thousand dollars (\$50,000), shall be deposited in the Endowment Fund, Consolidated Trust or specific purpose Endowment Fund for that parish.
 35. The Diocesan Council, for a parish where there are funds in an existing trust account where the balance is greater than fifty thousand dollars (\$50,000), may, following a resolution of the parish council, approve the deposit of the whole or part of those funds in the Endowment Fund, Consolidated Trust or a specific purpose Endowment Fund for that parish.

Diocesan Endowments

36. The Trustees may establish a Diocesan Endowment Fund account where the funds are vested for the purposes of the Church in the Diocese, and into which may be deposited any bequest, gift, proceeds of land sale or similar deposit and for which the Trustees may permit the distribution of income but are not permitted to distribute any capital of the account.
37. The Trustees may establish a Consolidated Trust account where the funds are vested for the purposes of the Church in the Diocese, and into which may be deposited any bequest, gift, proceeds of land sale or similar deposit and for which the Trustees may permit the distribution of income and may permit the distribution of the capital of the account following a resolution approved by the Bishop and a two thirds majority of the members the Diocesan Council present and voting.
38. The Trustees may establish a specific purpose Diocesan Endowment Fund account for a where the funds are vested for the specific purposes of the Church in the Diocese, and into which may be deposited any bequest, gift, proceeds of land sale or similar deposit and for may permit the distribution of income for specific purposes but are not permitted to distribute any capital of the account.
39. The Diocesan Council, bearing in mind the purposes of a bequest, gift, proceeds of land sale or similar deposit, may direct that any bequest, gift, proceeds of land sale or similar deposit for the Diocese not exceeding fifty thousand dollars (\$50,000) shall be deposited in the Diocesan Endowment Fund, Diocesan Consolidated Trust, or specific purpose Diocesan Endowment Fund.
40. The Diocesan Council, bearing in mind the purposes for which funds in an existing trust account for the Diocese are held and the current practices associated with that existing trust account, may direct that the funds in any existing trust account for the Diocese, the balance of which is less than fifty thousand dollars (\$50,000) shall be deposited in the Diocesan Endowment Fund, Diocesan Consolidated Trust or specific purpose Diocesan Endowment Fund.

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41. The Diocesan Council, where there are funds in an existing trust account for the Diocese and where the balance of the account is greater than fifty thousand dollars (\$50,000), may, by a. resolution approved by the Bishop and two thirds of the members of the Diocesan Council present and voting, approve the deposit of the whole or part of those funds in the Diocesan Endowment Fund, Diocesan Consolidated Fund or a specific purpose Diocesan Endowment Fund. Diocesan and Parish Endowments General Provisions.
42. Any rule or restriction in a bequest, gift, Ordinance or like deposit that requires the capitalization or reinvestment of interest shall not apply to funds held in trust with the Trustees.
43. Where any bequest, gift, Ordinance or similar instrument refers to an amount held in trust as a Permanent Trust such reference shall be construed unless the context determines otherwise to mean such amount is held in trust as an Endowment Fund.
44. The Diocesan Chief Executive shall cause to be kept a record of the persons who have contributed funds to an Endowment Fund and shall make that record available upon request.

Rules

45. The Diocesan Council may establish, alter, rescind, or amend policies and rules which shall apply to the conduct of business and the management and control of Church trust properties by the Trustees provided that no such establishment, alteration rescission or addition be inconsistent with the duties of a Trustee, any provision contained in Trust Property Act or with any provision of any Ordinance of the Synod of the Diocese.

Meetings of the Trustees

46. The quorum for any meeting of the Trustees shall be three (3).
47. The Chair at any meeting of the Trustees shall be the Bishop if the Bishop is present. In the absence of the Bishop from a meeting of the Trustees the Trustees shall elect a Trustee to preside at the meeting.
48. The Chair at a meeting of the Trustees shall have a deliberative vote only.
49. The Trustees shall determine the time and procedures of its meetings and may meet at a place or electronically as the Chair shall determine.
50. The Bishop may convene meetings at other dates as the Bishop may think necessary, and shall convene a meeting at any time upon written request by two (2) Trustees.
51. All books, records, deeds, documents, other muniments and the Corporate Seal of the Trustees shall be maintained within the Diocesan Office.
52. The Corporate Seal shall not be affixed to any deed, document or instrument save in pursuance of a resolution of the Trustees.
53. Where any statute regulation or custom provides that an instrument shall be executed under the Corporate Seal of the Trustees such instrument shall by the signatures of three Trustees.
54. Any deed, or instrument, executed or signed, and any other act, matter, or thing done by any three Trustees in pursuance of a resolution of the Trustees shall be as effectual as if the same had been executed, signed, or done by all the Trustees.
55. The Trustees may pass a resolution without a meeting of the Trustees being held if all of the Trustees entitled to vote on the resolution indicate in writing that they are in favour of the resolution set out in the document provided further that:
 - (a) separate copies of the document may be used if the wording of the resolution is identical

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- in each copy; and
- (b) an electronic message which is received by the Secretary and expressed to have been sent by a Trustee is taken to be a document from that Trustee at the time of receipt of the electronic message by the Secretary; and
 - (c) the resolution is passed when all Trustees have voted in favour of the resolution; and
 - (d) the Trustees are to ensure that the resolution is recorded in the minutes of the Trustees at the next ordinary meeting of the Trustees.
56. The proceedings of the Trustees shall not be invalid in consequence only of there being a vacancy in the number of Trustees at the time of such proceedings, so long as there are three Trustees.
57. The Trustees shall cause to be kept proper books of accounts and present them for audit by the Diocesan Auditors, and shall present a financial report to each ordinary session of Synod.
58. The Trustees shall provide a report to the Diocesan Council at such times as the Diocesan Council may from time to time determine.
59. The Trustees shall cause all moneys received by them to be paid into such financial institutions and to the credit of such account as it may determine. All payments shall be authorized in such manner as determined by the Trustees.
60. The Trustees shall cause to be kept a register of all property and trusts vested in it.
61. When any property intended to form the subject of specific trusts shall be offered to the Trustees, the question as to the advisableness of accepting it, subject to such trusts, shall be referred by it for decision to the Bishop.
62. Any Trustee who has a personal or professional interest in a matter before the Trustees shall withdraw from the meeting and not participate further in deliberations on the matter.

Diocesan Chief Executive

63. The Diocesan Chief Executive shall be the Secretary and Treasurer of the Trustees.
64. The Diocesan Chief Executive shall give seven (7) days' notice to each Trustee of any meeting together with a statement of the business to be brought before such meetings, provided that in cases of urgency a meeting may be summoned by the Bishop with lesser notice.
65. The Diocesan Chief Executive shall be responsible for all notifications and gazettals required under the provisions of any Act of Parliament regulating the affairs of Church Trust Property.
66. Except as otherwise provided by this Ordinance the Diocesan Chief Executive may execute any instruments to give effect to a direction or resolution of the Trustees unless legally advised that the instrument must be signed and sealed.

Ordinances and Resolutions Relating to Church Property

67. An entity may apply to the Diocesan Chief Executive for a determination in relation to Church trust property. The application shall:
- (a) outline the purpose of the determination; and
 - (b) provide evidence in support of the application.
68. No application shall be considered in relation:
- (1) to a parish unless such application includes advice on the consultation undertaken with the Incumbent and the Churchwardens;

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- (2) to property vested in the Trustees for general Church purposes, Diocesan purposes or for use at the discretion of the Bishop unless such application is supported by the Bishop; and
- (3) to any property given by any person by deed or will unless the person or the person's executor or administrator consents, or unless the person has been dead for at least twenty five (25) years.
69. The Diocesan Chief Executive shall ensure that a resolution or a bill for an Ordinance is drafted to give effect to an application for a determination in relation to Church trust property and present it to the Diocesan Council.
70. No matter shall be considered by resolution if:
- (a) the Trust Property Act requires the matter to be considered by Ordinance; or
 - (b) the Bishop shall require the matter to be considered by Ordinance.
71. The proposed resolution or the bill for an Ordinance shall be accompanied by an explanatory memoranda reciting the facts on which the Ordinance or resolution is based and which bring the proposal within the provisions of the *Anglican Church of Australia Trust Property Act 1917*, stating the purpose for which the Ordinance or Resolution is required and establishing whether the matter can be considered by Ordinance or Resolution.
72. The Diocesan Council may pass the Ordinance or resolution with or without such amendments as it thinks proper, or may reject the Ordinance or resolution.
73. The Synod, the Diocesan Council, and the Property Approval Board are empowered by this Ordinance to pass resolutions to enable the Trustees to enter into a lease relating to trust property held for parish purposes for a period not exceeding five years.
74. The Diocesan Council when acting as Synod:
- (a) may determine the procedures by which it shall consider an Ordinance or resolution; and
 - (b) may refer an Ordinance or resolution to the next ordinary session of Synod for consideration with such report as it may think proper.
75. Any Ordinance proposed to be made by Diocesan Council pursuant to this Ordinance at any stage prior to the granting of assent:
- (a) may be referred to Synod by the Bishop; and
 - (b) must be referred to Synod by the Bishop upon request in writing of any 5 members of Diocesan Council, and, if so referred, the Bishop must withhold assent to the Ordinance.
76. No Ordinance passed by the Synod or Diocesan Council acting as Synod shall take effect or have any validity unless within one month after the passing thereof the same shall be assented to under the *Anglican Church of Australia Constitutions Act 1902*.
77. The Diocesan Council shall provide each ordinary session of Synod with a report on any action it has taken in accordance with this Ordinance or any repealed ordinance since the last ordinary session of Synod to which it reported.
78. That this ordinance be reviewed and amended or updated as required at least every five (5) years from the date of the assent.

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PART 5 – SCHEDULES

SCHEDULE ONE

The Tyrrell Trusts

Episcopal Expenses Endowment
Diocesan Office Budget Expenses Endowment
Episcopal Pension Fund Endowment
Archdeaconries Endowment Fund
Bishop, Assistant Bishop and Clergy Superannuation and Pension Support Endowment
Special Purposes Endowment Fund
Extra Special Purposes Endowment Fund
Cathedral Endowment
Property Approvals Board Interest and Development Fund Endowment
Lambeth and Special General Travelling Fund
Diocesan Budget Support Endowment

SCHEDULE TWO

Morpeth Trusts

Theological Education and Ministry Development Permanent Trust
Theological Education and Ministry Development Permanent Trust Number 1
Theological Education and Ministry Development Permanent Trust Number 2

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PART 6 – ORDINANCE ADMINISTRATION

Table of Amendments

Date	Current Section	Instrument and Date of Commencement	Section Amended
28 August 2014	19	<i>Church Trust Property Ordinance Amendment Ordinance 2014</i>	21A
	-	<i>Church Trust Property Ordinance Amendment Ordinance 2014</i>	31
	-	<i>Church Trust Property Ordinance Amendment Ordinance 2014</i>	33
24 October 2015	30 - 44	<i>Church Trust Property Ordinance Amendment Ordinance 2015</i>	33A – 33O
25 February 2016	42	<i>Church Trust Property Ordinance Amendment Ordinance 2016</i>	33M
22 September 2016	22 - 24	<i>Reserve Fund Finalisation Ordinance 2016</i>	24 - 26
11 May 2017	3	<i>The Newcastle Anglican Governance Reform Ordinance 2017</i>	3
	10 - 12	<i>The Newcastle Anglican Governance Reform Ordinance 2017</i>	10 - 15
	28 - 29	<i>The Newcastle Anglican Governance Reform Ordinance 2017</i>	28 - 29
	57	<i>The Newcastle Anglican Governance Reform Ordinance 2017</i>	46
	Repealed	<i>The Newcastle Anglican Governance Reform Ordinance 2017</i>	Schedule One
	Schedule One	<i>The Newcastle Anglican Governance Reform Ordinance 2017</i>	Schedule Two
	Schedule Two	<i>The Newcastle Anglican Governance Reform Ordinance 2017</i>	Schedule Three
26 March 2020	67(c)	<i>Governance during Australian COVID-19 Pandemic Emergency Ordinance 2020</i>	Repealed
	68(1)	<i>Governance during Australian COVID-19 Pandemic Emergency Ordinance 2020</i>	68(1)

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