

A 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 and various Bishop Tyrrell Trust Amendment Acts.

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

SHORT TITLE

1. This Ordinance may be cited as "The 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 The following Ordinances are hereby repealed provided that such repeal shall not affect or invalidate any act done under those Ordinances –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;
 - (j) The Tyrrell Trust Endowments Capitalisation of Interest Ordinance 2004.

DEFINITIONS

3. *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 Bishop Tyrrell Trust Act 1910 and any Act amending that Act;
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 3;
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;
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”;
Trust Property Act means the Anglican Church of Australia Trust Property Act 1917;
Tyrrell Trusts means the church trust property described in schedule 2.

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

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 number of Trustees shall be five in addition to the Bishop.
11. The term of office of a Trustee (with exception of the Bishop) shall be five years.
12. The term of membership for Trustees at the commencement of this Ordinance shall expire on the dates detailed in schedule 1.
13. The office of a Trustee shall become vacant if
 - (a) the term of office for the Trustee expires; or
 - (b) the Trustee
 - i. resigns by notice in writing to the Bishop;
 - ii. dies;
 - iii. becomes an insolvent under administration;
 - iv. ceases to hold any qualification which was necessary for election to office;
 - v. is absent from 3 consecutive ordinary meetings of the Trustees without the leave of the Trustees and the Trustees by resolution declares the office to be vacant;
 - vi. becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the laws relating to mental health or becomes otherwise incapable of acting;
 - vii. is removed from office in accordance with any Ordinance of this Diocese; or
 - viii. becomes or is a prohibited person within the meaning of the Child Protection (Prohibited Employment) Act 1998.
14. The Diocesan Council shall by ballot fill any vacancy in the office of Trustee
 - (a) in accordance with any protocol agreed by the Trustees and the Diocesan Council and
 - (b) where a vacancy occurs in accordance with section 13(b) the ballot shall be for a Trustee to complete the balance of term of office of the Trustee whose office has become vacant.
15. A Trustee whose term of office expires shall be eligible for re-election.

OVERRIDING DUTIES AND RESPONSIBILITIES

16. 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.
17. The Trustees may exercise any power conferred on a trustee by the Trustee

Act 1925 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.

POWERS OF THE TRUST

Investment Powers

18. 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 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.
19. 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

20. 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.
21. The Trustees may exercise the discretion to remove Funds which have been pooled for investment from the Pool and keep such Funds so removed separate or pool them together for investment.
22. 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.
23. 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

(d) by transferring any undistributed net annual income to the Reserve Fund.

Reserve Fund

24. For the purpose of averaging gains and losses as between the pooled church trust properties and to provide stability in the rates of distribution from year to year the Trustees shall maintain a Reserve Fund by placing to the capital of such Reserve Fund in any and every year such sum of money from the total income of all pooled church properties as it may deem expedient. Any loss arising from the investment of pooled church trust properties may be reimbursed from the Reserve Fund.
25. The Trustees may pool the amount in the Reserve Fund with other funds pooled for investment and if so pooled income shall be distributed in a similar manner to others funds within the pool.
26. The Trustees may from time to time, and shall if the Diocesan Council so require, make recommendation how any balance in the Reserve Fund not foreseeably required for the purpose of providing stability from year to year in the rates of distribution should be used and Synod or the Diocesan Council acting as Synod may by Ordinance give effect to such recommendation.

Charges

27. 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.
28. 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.
29. 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

30. The trust property known as the Tyrrell Trust Endowment Funds are those trusts described in schedule 2.
31. An amount equal to 20% of the amount distributed to the Tyrrell Trust Endowment Funds shall be added to the capital of such endowment funds from the distribution each year.

Morpeth Trusts

32. The trust property known as the Morpeth Trusts are those trusts described in schedule 3.
33. An amount equal to 20% of the amount distributed to the Morpeth Trusts shall be added to the capital of such endowment funds from the distribution each year commencing from the year beginning 1 January 2015.

Rules

34. 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

35. The quorum for any meeting of the Trustees shall be three.
36. 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.
37. The Chair at a meeting of the Trustees shall have a deliberative vote only.
38. The Trustees shall determine the time and procedures of its meetings and may meet at a place or electronically as the Chair shall determine.
39. 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 Trustees.
40. All books, records, deeds, documents, other muniments and the Corporate Seal of the Trustees shall be maintained within the Diocesan Office.
41. The Corporate Seal shall not be affixed to any deed, document or instrument save in pursuance of a resolution of the Trustees.

42. Where any statute regulation or custom provides that an instrument shall be executed under the Corporate Seal of the Trustees such instrument shall bear the signatures of three Trustees.
43. 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.
44. 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 in each copy; and
 - (b) an electronic message which is received by the Secretary and is 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.
45. 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.
46. 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.
47. The Trustees shall provide a report to the Diocesan Council at such times as the Diocesan Council may from time to time determine.
48. 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.
49. The Trustees shall cause to be kept a Register of all property and Trusts vested in it.
50. 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.
51. 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 BUSINESS MANAGER

52. The Diocesan Business Manager shall be the Secretary and Treasurer of the Trustees.
53. The Diocesan Business Manager shall give seven 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.
54. The Diocesan Business Manager shall be responsible for all notifications and gazettals required under the provisions of any Act of Parliament regulating the affairs of Church Trust Property.
55. Except as otherwise provided by this Ordinance the Diocesan Business Manager 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

56. An entity may apply to the Diocesan Business Manager for a determination in relation to church trust property. The application shall
 - (a) Outline the purpose of the determination
 - (b) Provide evidence in support of the application
 - (c) In the case of a property vested in the Trustees for purposes associated with a parish, detail the manner in which the subject of the application has been made known to members of the parish for a period of not less than 14 days and details of any submissions in relation to the application from members of the parish.
57. No application shall be considered in relation
 - (a) to a parish unless such application includes advice on the consultation undertaken with the Parish Council, such consultation to include formal meetings with parish representatives with minutes to be signed by diocesan and parish representatives at the time of the meeting.
 - (b) 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,
 - (c) 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 25 years.
58. The Diocesan Business Manager 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.

59. 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
 60. 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.
 61. 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.
 62. 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.
 63. 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.
 64. 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.
 65. 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.
 66. 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.
 67. That this ordinance be reviewed and amended or updated as required at least every five years from the date of the assent.
-

Schedule One

Trustee	Appointment as Trustee to expire
John Price AM	1 November 2013
Keith Allen	1 November 2014
John Kilpatrick OAM	1 November 2015
Malcolm McDonald	1 November 2016
Jayne Drinkwater	1 November 2017

Schedule Two

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 Three

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

I HEREBY CERTIFY the Ordinance as printed is in accordance with the Ordinance as reported.


Mr WK (Keith) Allen
Chairman of Committees

Passed by Synod on the **Twenty-Eighth** day of **October 2012**.

Ruth Brand

The Reverend Ruth Brand
Clerical Secretary of Synod

K. S.

Mr Kevin Short
Lay Secretary of Synod

THE ASSENT of the Lord Bishop of the Diocese was given to the above Ordinance on the **Twenty-Eighth** day of **October 2012** in the Twenty-First year of our Consecration and of our Translation to this See of the Eighth.

+ Brian Newcastle.

PRESIDENT