

ANGLICAN CHURCH OF AUSTRALIA

DIOCESE OF GOULBURN

¹ANGLICAN CHURCH PROPERTY TRUST ORDINANCE 1944²

CONSOLIDATED VERSION

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¹ Please note that the Original Ordinances included in this Consolidation are recorded in the Ordinance books of the Diocese of Canberra and Goulburn. If you have any concern about this consolidation please contact: ordinances@anglicands.org.au

This version of the Ordinance has not yet been approved by the Chancellor in accordance with section 75 of the Diocesan Legislation Ordinance 2007 and is only for information.

² Name changed by the Church of England Property Trust Diocese of Canberra and Goulburn Change of Name Ordinance 1981

AN ORDINANCE

TO ENABLE the Diocese of Canberra and Goulburn to avail itself of certain provisions of the Anglican Church of Australia Trust Property Act, 1917.

THE SYNOD of the Diocese of Canberra and Goulburn in pursuance of the powers in that behalf conferred upon it by the Constitutions for the management and good government of the Anglican Church of Australia within the State of New South Wales and of all powers vested in the said Synod by the Anglican Church of Australia Trust Property Act, 1917, declares, directs, rules and ordains as follows:

1 Repeals³

1 Name of Ordinance⁴

1.1 This Ordinance is the Anglican Church Property Trust Ordinance 1944.

1A In this ordinance:

“**Anglican Church of Australia Trust Property Act**” means the Anglican Church of Australia Trust Property Act, 1917 of New South Wales as amended and in force from time to time;

“**Trust**” means the Anglican Church Property Trust, Diocese of Canberra and Goulburn⁵

⁶**Note:** The Dictionary included in the Diocesan Legislation Ordinance 2007 provides definitions of the following term:

- Bishop-in-Council

2 Membership of the Trust

2 Membership of the Trust⁷

2.1 The Trust consists of:

- (a) the Bishop; and
- (b) eight other members

2.2 The members of the Trust referred to in paragraph 2.1 (b) will, subject to the Anglican Church of Australia Trust Property Act and section 2.3, be elected by the Synod for a term commencing on the day after their election and ending on the expiration of the second day of the sixth ordinary session of Synod after their election.

2.3 When a casual vacancy occurs in the office of a member of the Trust, other than the Bishop, (called in this section “the vacating member”) Bishop-in-council shall appoint a person to the vacant office caused by the casual vacancy and the person so appointed shall hold office until the end of the second day of the next ordinary session of Synod after the occurrence of the

³ Deleted by Anglican Church Property Trust Amendment Ordinance 2017

⁴ Inserted by Anglican Church Property Trust Amendment Ordinance 2017

⁵ Name changed by the Diocesan Titles Ordinance 1950 and Church of England Property Trust Diocese of Canberra and Goulburn Change of Name Ordinance 1981 commenced 1st November 1981 and

Church of England Property Trust Diocese of Canberra and Goulburn (Change of Name) Ordinance 1982

⁶ Inserted by Diocesan Legislation Ordinance Consequential Amendments Ordinance 2009

⁷ Inserted by Anglican Church Property Trust Amendment Ordinance 2012

casual vacancy during which session an election shall be held for the office vacated by the vacating member.

- 2.4 The person elected as a member of the Trust under section 2.3 shall hold office from the date of their election until the date on which the term of office of the vacating member would have expired had the casual vacancy not occurred.^{8 9 10}

2A

2AA ¹¹Authority of the Members of the Trust

- 2AA.1 The provisions of section 8 of the Anglican Church Trust Property Act 1917 (NSW) are amended by
- (a) omitting “three” and substituting “two”;
 - (b) by permitting the Trust to authorise by resolution two members of the Trust to execute a class of documents which the Trust by resolution has identified in order to give effect to decisions of the Trust; and
 - (c) by granting a Power of Attorney to any two members of the Trust to execute any deed or other instrument required to be executed under seal on behalf of the Trust.
- 2AA.2 The provisions of section 8 of the Anglican Church Trust Property Act 1917 (ACT) are amended by
- (a) omitting “three” and substituting “two”;
 - (b) by permitting the Trust to authorise by resolution two members of the Trust to execute a class of documents which the Trust by resolution has identified in order to give effect to decisions of the Trust; and
 - (c) by granting a Power of Attorney to any two members of the Trust to execute any deed or other instrument required to be executed under seal on behalf of the Trust.

2B¹²

2C¹³

⁸ Section 2 was amended by the Property Trust Ordinance 1944 Amendment Ordinance 1972

⁹ Please note that Synod passed the Anglican Church Property Trust Amendment Ordinance 2011 but Bishop-in-Council did not bring this amendment into effect.

¹⁰ Section 2 was amended by the Anglican Church Property Trust Amendment Ordinance 2012

¹¹ Amended by the Anglican Church Property Trust Amendment Ordinance 2016

¹² Omitted by the Anglican Church Property Trust Amendment Ordinance 2012

¹³ Omitted by the Anglican Church Property Trust Amendment Ordinance 2012

2D Presiding Member of the Trust¹⁴

- 2D¹⁵.
- (1) The Bishop shall preside at a meeting of the Trust at which the Bishop is present.
 - (2) In the event of the absence of the Bishop from a meeting of the Trust:
 - (a) if there is present at the meeting a person entitled to exercise all the powers of the Bishop under Section 38 or 39 of the Anglican Church of Australia Trust Property Act - that person shall preside at the meeting; or
 - (b) in any other case - the members of the Trust shall elect one of their number to preside at the meeting.
 - (3)¹⁶ A quorum for a meeting of the Trust shall be:
 - (a) either the Bishop or other person appointed in accordance with section 2D(2); and
 - (b) four other members.
 - (4)¹⁷ The provisions of section 7 of the Anglican Church Property Trust Property Act 1917 (NSW) are varied by subsection 2D.3

3. Delegation of Powers of Synod

3. The Ordinance Initiation Ordinance of 1937 is amended:
 - (a) by omitting from the Title the words “and delegating certain powers and functions in pursuance of the provisions of the said Act”;¹⁸
 - (b) by omitting from the Preamble the words “and delegating certain powers and functions in pursuance of the provisions of the said Act”; and ¹⁹
 - (c) by omitting sections 17 and 18.²⁰

4. Delegation to Standing Committee

4. ²¹Bishop-in-Council is hereby appointed for the purpose of exercising and accordingly may during the recess of the Synod of the Diocese exercise in place of such synod all or any of the powers and functions and do and make all or any of the things referred to in the following sections of the Anglican Church of Australia Trust Property Act, namely:
 - (a) Section 12 to 16 inclusive constituting portion of Part III;
 - (b) Section 19 constituting portion of Part IV;
 - (c) Sections 24 to 32 inclusive constituting Parts V, VI, and VII; and
 - (d) Section 37 constituting portion of Part IX, so far as it related to Ordinances passed under the said Parts VI or VII or under any Act by the said Act of 1917 repealed;Provided that any Ordinance proposed to be made by Bishop-in-Council partly or wholly under the powers conferred by the said section 32 shall be dealt with by Bishop-in-Council resolving:
 - (a) whether it be impossible or inexpedient to carry out and observe the

¹⁴ Amended by the Anglican Church Property Trust Amendment Ordinance 1991

¹⁵ Inserted by the Anglican Church Property Trust Amendment Ordinance 1991

¹⁶ Inserted by the Anglican Church Property Trust Amendment Ordinance 2012

¹⁷ Inserted by the Anglican Church Property Trust Amendment Ordinance 2012

¹⁸ Noted

¹⁹ Noted

²⁰ Noted

²¹ Amended by the Diocesan Legislation Ordinance Consequential Amendments Ordinance 2009

- existing trusts;
- (b) whether it be impossible or inexpedient to apply the said property or part thereof for the parish or parishes, if any, for which it was immediately theretofore held in trust, and for the same or like purposes; and
 - (c) afterwards, at the same or an adjourned meeting; for what other purposes and what other parishes the property or part should be applied, any may at any stage before assent thereto be referred to the Synod by the person for the time being authorised to assent to the ordinance, and shall be so referred upon the request in writing of one-third of the members of Bishop-in-Council present when the Ordinance was under consideration by it.

This section shall be deemed to have commenced and has effect as from the twenty-third day of November 1937.

5 Report to Synod on Action Taken Under Section 37

- 5. The procedure of the Diocesan Council in acting under the last preceding section shall be in accordance with the standing orders of Synod for the time being, *Mutatis Mutandis*, and in accordance with the provisions of the Ordinances Initiation Ordinance of 1937, except that the Diocesan Council instead of reporting to Synod as in that Ordinance provided, shall from time to time specially report to Synod all action taken by the Diocesan Council under the last preceding section.

5A Application of Certain Sections

- 5A. Sections 26A, 27A and 32A of the Anglican Church of Australia Trust Property Act apply to the Diocese of Canberra and Goulburn.

5B Delegation of Powers of Synod

- 5B. (1) ²²Bishop-in-Council may in place of the Synod, exercise all the powers of the Synod under sections 26A and 32A of the Anglican Church of Australia Trust Property Act.
- (2) Section 5 applies to and in relation to the exercise by the Standing Committee of the powers of the Synod referred to in sub-section (1) of this section in like manner as it applies to the exercise of the powers of Synod referred to in section 4 of this Ordinance.

5C Committees and Delegation of Powers²³

- 5C (1) The Trust may, as it thinks fit, establish, by resolution, any committee or committees consisting of two or more members of the Trust for the purpose of, in its opinion, more effectively and efficiently discharging the business of the Trust.
- (2) The Trust may delegate to any committee established under subsection (1) the power to make any decision or any class of decisions (except the power to delegate the making of any such decision) as shall be set out in the resolution of the Trust establishing the committee.
- (3) The Trust may, from time to time, by resolution delegate to any committee

²² Amended by the Diocesan Legislation Ordinance Consequential Amendments Ordinance 2009

²³ Inserted by the Anglican Church Property Trust Amendment Ordinance 2017

established under subsection (1) the power to make any decision or class of decisions (except the power to delegate the making of any such decision) in addition to any power delegated under sub-section (2).

- (4) Any decision made by a committee established under subsection (1) shall be as effective as if made by the Trust, shall be taken to be a decision of the Trust and may be given effect as if it had been made by the Trust.
- (5) Any committee established under subsection (1) shall
 - (a) exercise its powers to make a decision which it is under this section authorised to make in accordance with any policies, procedures or directions made by the Trust applicable to the decision, decisions of a class, or to the committee; and
 - (b) report to the Trust at its next meeting any decision it has made under this section.
- (6) A quorum for any committee established under subsection (1) shall be two members.
- (7) A committee may pass a resolution without a meeting being held if at least the number of members of the committee who would constitute a quorum of members entitled to vote on the resolution sign a document, even if not signed at the same time, containing a statement that they are in favour of the resolution and the resolution made in this way is passed when the last of the members required to constitute a quorum signs the statement in favour of the resolution.
- (8) Subject to this section and any resolution of the Trust, any committee established under subsection (1) may conduct its business in such manner as it thinks fit.
- (9) A committee established under subsection (1) may seek such advice from any person or entity that it reasonably considers can provide it with appropriate advice and may act on that advice.
- (10) The Trust may by resolution delegate, as it thinks fit, to Anglican Diocesan Services the power to make any decision or any class of decisions as shall be set out in the resolution of the Trust.
- (11) Subject to Anglican Diocesan Services conducting any matter delegated under subsection (10) in accordance with its ordinary method of operation, including the delegation of decisions within its corporate structure and employment of agents where a person or company would, acting with prudence and in the ordinary course of business, employ an agent, Anglican Diocesan Services may not delegate any decision or class of decisions which it has been authorised to make under subsection (10) to any other entity or to any person not employed by Anglican Diocesan Services without the prior approval of the Trust.
- (12) Notwithstanding this section, the Trust may
 - (a) itself make any decision it has power to make notwithstanding that it has delegated to any committee or to Anglican Diocesan Services the power to make the decision, including a decision within a class

of decisions that it has delegated to any committee or to Anglican Diocesan Services; and

- (b) vary or revoke any decision of a committee or of Anglican Diocesan Services made under this section as if the decision had been made by the Trust itself and any decision so varied shall be as effective as varied as if it had been made by the Trust, shall be taken to be a decision of the Trust and may be given effect as if it had been made by the Trust and any decision that is revoked shall cease to have any force or effect.
- (13) In this section, **decision** includes any resolution or act that the Trust has, under this Ordinance and the Anglican Church of Australia Trust Property Act, to make.
- (14) The Trust may, by power of attorney, appoint any corporation, firm, person or body or bodies of persons to be the attorney or attorneys of the Trust with such power, authority and discretion (save for this power of appointment, the power of delegation to exercise any such discretion and any power, authority or discretion that exceeds those of the Trust) for such period and subject to such conditions as the Trust may think fit, but subject to the condition that any such attorney or attorneys shall report to each meeting of the Trust the exercise by the attorney or attorneys of any power, authority or discretion since the prior meeting of the Trust.
- (15) Notwithstanding subsection (14), the Trust may exercise any power, authority or discretion that it has granted to any attorney or attorneys under that subsection and no such power of attorney granted under that subsection shall oust, restrict or impair the Trust's right, capacity or power to exercise any such power, authority or discretion.

6 Validation of Appointments to the Trust²⁴

6 Meetings of the Trust by Electronic and Other Means²⁵

- 6.1 A meeting of the Trust may be held by electronic means of communication between the members of the Trust or between members of the Trust present together in one or more places and in electronic communication with other members of the Trust not so present who can communicate with the other members at the time when the meeting is held.
- 6.2 A vote of members of the Trust otherwise than at a meeting of the Trust may be taken by mail, facsimile transmission, electronic mail, telephone or other means of communication.
- 6.3 A resolution on which a vote is taken in accordance with subsection 6.2 is to be taken to have been agreed to by the Trust if a majority of members vote in favour of the resolution and shall be reported to the next meeting of the Trust and recorded as a minute of the proceedings of the Trust.

7 Capital Funds

- 7. The Trust shall stand possessed of the capital funds enumerated in the schedule hereto upon the trusts appearing there and of such other funds as may be

²⁴ Deleted by Anglican Church Property Trust Amendment Ordinance 2017

²⁵ Inserted by Anglican Church Property Trust Amendment Ordinance 2017

entrusted to it from time to time. Except where inconsistent with particular bequests, deeds or gift or declarations of trust no new personal monetary trusts shall be created within the diocese but all such monetary trusts shall be vested in the Trust.

8 Pooling For Investment

- 8.²⁶ (1) For the purpose of investing church trust property held by the Trust, the Trust may, from time to time:
- (a) establish one or more investment pools; or
 - (b) abolish an investment pool previously established by it.
- (2) An investment pool comprises those separate church trust properties held by the Trust for the purposes of investment as are allocated by the Trust to that pool for the time being.
- (3) The Trust may determine, from time to time, whether particular church trust property held by it shall be allocated to an investment pool for the purposes of investment or invested separately.
- (4) The Trust shall so manage an investment pool as to average gains, losses and income among the separate church trust properties allocated to the pool and may, in its discretion, determine the times when the averaging shall take place.
- (5) In exercising its discretion under sub-section (4), the Trust shall have regard to its general fiduciary duties as trustee.
- (6) Where the Trust abolishes an investment pool, it shall:
- (a) determine the capital value of each separate church trust property allocated to that pool;
 - (b) allocate any unallocated income among those properties; and
 - (c) invest separately each church trust property that was allocated to the pool or allocate it to another pool.
- (7) Under sub-section (6), the Trust may:
- (a) treat any of the pool investments as investments of separate church trust property that was allocated to the pool immediately before its abolition; or
 - (b) transfer any of the pool investments to another investment pool as representing church trust property that was allocated to the abolished pool immediately before its abolition and is being re-allocated to that other pool.

²⁶ Amended by then Anglican Church Property Trust Fund Amendment Ordinance 1991

9 Management

9. For the purpose of meeting the legitimate and necessary expenses of the management of funds and properties under the control of synod it shall be lawful for the Trust to make such charge or charges as it shall in its discretion think fit such charges not to exceed in the case of rents 5 per cent and in the case of other income 2½% and capital hereafter raised 1%.

10 Share Investment

10. (a) The Trust may invest the profits of any Diocesan Fire Insurance scheme in shares or debentures to be held in the name of the Trust.
- (b) The Trust may, in its absolute discretion, hold any shares or debentures bequeathed or given to the Trust or the Church within the Diocese.
- (c) The Trust may with the approval of Bishop-in-Council invest any moneys not required for immediate application in investment and/or securities other than those authorised by the Trustee Act subject however to such conditions and requirements (if any) as in the view of the Standing Committee the circumstances require and may from time to time vary such investments within the provisions aforesaid.^{27 28}

11 Capital Funds

- 11.²⁹ (1) In this section:
- (a) unless the contrary intention appears, a reference to a church body shall be read as a reference to the Diocese, an agency of the Diocese, a parish or a special district;
- (b) unless the contrary intention appears, a reference to trustees shall be read as a reference to the Trust as the corporate body of trustees for church trust property of the Anglican Church of Australia in the Diocese, the Bishop of the Diocese as a corporation sole, separate trustees elected under section 16 of the Anglican Church Trust Property Act or other trustees responsible for the administration of the particular trust property; and
- (c) a reference to an agency of the Diocese shall be read as a reference to a body established by the Synod or Bishop-in-Council or to an incorporated company over which the Diocese is able to exercise control by reason that a majority of the members of the Board of Management are appointed by Bishop-in-Council.
- (2) Any real property acquired by, or held on trust for; a church body shall be vested in the trustees.
- (3) Moneys or other personal property:
- (a) received by a church body; or
- (b) raised by a church body;
- for the purpose of being held as capital funds and the income only being applied for the relevant purposes shall be held by trustees.
- (4) Where moneys or other personal property:

²⁷ Inserted by the Church of England Property Trust Ordinance Amendment Ordinance 1962

²⁸ Amended by the Diocesan Legislation Ordinance Consequential Amendments Ordinance 2009

²⁹ Amended by Anglican Church Property Trust Amendment Ordinance 1991

- (a) is received, by way of gift or bequest, or is raised, by an agency of the Diocese, a parish or a special district for application for a particular purpose or purposes or for a purpose or purposes included in a class of purposes; and
 - (b) it is expected that the moneys or property will not be so applied within the period of twelve months next following the receipt or raising of the moneys or property;
- the moneys or property shall be vested in trustees.
- (5) Moneys and personal property of a kind described in subsection (3) shall be listed in the annual financial statements of the agency, parish or special district concerned separately from other moneys or property of the agency, parish or special district and the financial statement shall state whether the moneys and property are held by trustees, and if not so held, the manner in which they are held, including particulars of any investments representing the moneys and property.
 - (6) Where the moneys of a church body are set aside for a particular purpose or purposes or for a purpose included in a particular class of purposes, the moneys may nevertheless be applied for any purpose of the church body concerned unless the moneys have been paid into a fund that also contains moneys received by way of gift or bequest, or raised especially, for the same purpose or purposes.
 - (7) Subject to subsection (6), moneys or other personal property held by trustees or by a church body for a particular purpose or purposes or a purpose included in a class of purposes shall not be applied for any other purpose unless that other purpose has been declared under section 32 of the Anglican Church Trust Property Act.

12 Short Title³⁰

13³¹

³⁰ Deleted by Anglican Church Property Trust Amendment Ordinance 2017

³¹ Please note that Synod has passed the Anglican Church Property Trust Amendment Ordinance 2011 but Bishop-in-Council has not brought this amendment into effect.

SCHEDULE CAPITAL FUNDS AND PRECIS TRUSTS³²

Adaminaby Capital	Parochial Endowment: Widdowson and Mackay bequests
Administration Capital	(1) CEPT reserve account for averaging gains, losses and interest as in clause 6 of this Ordinance (2) Income from Insurance shares as an endowment for Diocesan Administration
Albury Capital Funds	As laid down in terms of Dight, Griffith, Lloyd, Pardy and Thompson bequests and as an endowment for Gerogery and other country centres
Community of Ascension, Capital Account	Metcalf Bequest
Bega Capital	The income arising therefrom to be applied and used as an endowment for the Church and parish of St John's Bega
Berridale Capital	E J Allen Memorial Endowment
Binalong Capital Fund	The capital itself or the income arising therefrom to be applied and used for the maintenance of the building of St Thomas' Church, Binalong, and maintenance of the C E Cemetery at Binalong
Bishopric Endowment Capital	The Income arising therefrom to be applied and used as an endowment for the See of Goulburn and the upkeep of the residence of the Bishops of Goulburn and as laid down in the Goulburn Bishopric Synod and Diocesan Council Ordinance of 1924.
Bishop Barlow Memorial for Clergy Training	As laid down in the Church Society Ordinance of 1921
Bodalla Capital	As laid down in the various deeds of gifts and bequests
Bombala Capital	Parochial Endowment; Boucher Bequest
Borambola Church Capital Fund	Accumulating at interest for the building of a Church or Hall
Bungendore-Molonglo Capital	Molonglo Endowment Capital £500, Bungendore Endowment Capital £200, as laid down in the terms of Rutledge Bequest
Campbell, Fred, Endowment	As laid down in the deed of gift
Canberra Capital Funds	As laid down in Canberra, Ginninderra and Pialligo Acquisitions Ordinance of 1917 and in M C Campbell Bequest
Canberra Church Trust. Charles Campbell Endowment	As laid down in deed of gift
Canberra Grammar School Chapel Fund	Accumulating at interest for building of School Chapel
Canberra Grammar School, Prize Fund	Interest to provide annual prizes in terms of Sir Graham Waddell's gift and the Harold Ellis Memorial Fund
Clergy Widows' and Orphans' Fund	As laid down in Goulburn Church Society Ordinance of 1921
Cooma Capital	As laid down in Cooma Parochial Endowment Ordinance of 1937
Crookwell Capital	Accumulated cemetery funds
Delegate Capital	Accumulated cemetery funds

³² Amended by the Diocesan Legislation Ordinance Consequential Amendments Ordinance 2009

Diocesan Board of Education Capital	As laid down in the Diocesan Board of Education Ordinance of 1918 or any ordinance replacing the same
Diocesan Children's home Capital	For the purchase, extension and maintenance of Children's Homes as prescribed by the donors
Goulburn Cemeteries	As laid down in Hardy and Middleton Bequests, Hovell and Seaborn/Marsden gifts and accumulated cemetery funds.
Goulburn Church Society Capital	As laid down in the Church Society Ordinance of 1921
Guarantee and Loan Fund Capital	Part (Centennial Capital) for the extension of the Church by living agents and material machinery as laid down in the Provincial Synod report of 1887. The balance for the purpose of a Guarantee and Loan Fund
Gundagai Capital	As laid down in the Gundagai Church Lands Sale Ordinance of 1904
Gunning Capital Funds	As laid down in the Chisholm and Dowling bequests, the Chisholm gifts for Breadalbane and the Gundaroo Ordinance of 1939.
Junee Diocesan Lands and Junee Glebe Capital	As laid down in the Junee Church Lands Ordinance of 1915 and amending ordinances of 1916, 1921 and 1923.
Karlsson P L Bequest Capital Fund	Income applied in the discretion of the Bishop-in-Council to Clergy Widows' and Orphans
Lake Bathurst Capital	Bequests and gifts for a parochial endowment
Marula Capital	Gifts for a parochial endowment
Moruya Capital	Gifts for a parochial endowment and proceeds sale of a lease at Kiora also used for a parochial endowment
Murrumburrah Endowment Capital	As laid down in Murrumburrah Church Lands Sale Ordinance of 1927.
North Goulburn Capital	As laid down in North Goulburn Ordinances of 1898, 1925, 1927 and 1930
Queanbeyan Capital Fund	As laid down in Queanbeyan Ordinances of 1924, 1925, 1926, 1927, 1929 and Pialligo Ordinance of 1917
Richmond, the late Mrs M M G, Bequest	As laid down in terms of Bequest
St Saviour's Cathedral Capital Funds	As set out in Cathedral Ordinance of 1894 and Baxter, Ferguson, Gibson, Gill, Price and Chilmers' Bequests
Superannuation Capital	As laid down in Goulburn Church Society Ordinance of 1921 and James Mitchell Bequest
Taralga Capital	Gifts and Charteris Bequest for parochial endowment
Tarcutta Capital	As laid down in the deed of gift
Temora Capital	Accumulated cemetery funds
Tumut Capital	As laid down in Harris, Hargreaves and Stacy Bequests
West Goulburn Capital Funds	As an endowment for the parish or parochial district of Christ Church, West Goulburn (Glebe resumption).
Yass Capital	Glebe resumption; parochial endowment, Yass Glebe Ordinance of 1929
Young Capital Funds	As laid down in Dowling and Hutchings Bequests and the Young Church Lands Ordinance of 1934
Young Anglican Capital	Set apart by the Bishop-in-Council as an endowment for the Young Anglican movement

APPENDIX 1: ANGLICAN CHURCH PROPERTY TRUST ORDINANCE OF 1944

(Note this Appendix does not form part of the ordinance)

TRANSITIONAL PROVISIONS OF THE CHURCH OF ENGLAND PROPERTY TRUST AMENDMENT ORDINANCE 1981

1. Subsection 3(2) to (6) (inclusive) applying to new sections 2, 2B and 2C.
 - (2) Notwithstanding the amendment made by sub-section (1), the members (other than the Bishop) of the Church of England Property Trust Diocese of Canberra and Goulburn (in this section referred to as “the Trust”) who held office immediately before the commencement of this Ordinance continue to hold office as members of the Trust in accordance with this section.
 - (3) Each of four of the members of the Trust who continue to hold office by virtue of sub-section (2) holds office, subject to section 12 of the Church of England Trust Property Act, 1917 (in this section referred to as “the Act”) for a term commencing on the date of commencement of this Ordinance and ending on the expiration of the second day of the ordinary session of the Synod to be held in the year 1984.
 - (4) Each of the other members of the Trust who continue to hold office by virtue of sub-section (2) holds office, subject to section 12 of the Act, for a term commencing on the date of commencement of this Ordinance and ending on the expiration of the second day of the ordinary session of the Synod to be held in the year 1987.
 - (5) The Trust shall, as soon as convenient after the commencement of this Ordinance, determine which members of the Trust shall hold office in accordance with sub-section (3).
 - (6) Sub-section 2C(3) of the Principal Ordinance applies to a member of the Trust elected in place of a member who holds office, subject to section 12 of the Act, until the expiration of the second day of the ordinary session of the Synod to be held in the year 1984 or 1987.

APPENDIX 2: ANGLICAN CHURCH PROPERTY TRUST ORDINANCE OF 1944

(Note this appendix does not form part of the ORDINANCE)

TEXT OF SECTIONS OF THE ANGLICAN CHURCH OF AUSTRALIA TRUST PROPERTY ACT 1917 REFERRED TO IN SECTIONS 4 AND 5A OF THE ANGLICAN CHURCH PROPERTY TRUST ORDINANCE OF 1944.

VACANCIES IN MEMBERSHIP

12. It shall be lawful for the Synod of a diocese from time to time, by resolution, to declare the existence of a vacancy, or vacancies, in the office of member of the corporate body of trustees of such diocese by reason of one or more of the members for the time being of such corporate body having died, resigned office, refused or neglected or having become incapable to act in the said office, or having for the space of six months ceased to reside within the said diocese, or by reason of some other matter to be specified in such resolution, and thereupon or at any time thereafter the Synod of the said diocese may elect a person or persons to be, and such person or persons shall thereupon become a member or members of the said body in the place or places of the member or members referred to in the said resolution.

ALTERATION OF NUMBER OF TRUSTEES

13. It shall be lawful for the synod of a diocese for which any church trust property is for the time being held from time to time, by ordinance, to declare what shall be the number of trustees of such property, and in case of increase in the number such increase shall be effected by the Synod of such diocese electing a new trustee, or new trustees, by way of addition, and in case of decrease in the number such decrease shall be effected by the Synod of such diocese not electing a person, or persons, to fill a vacancy, or vacancies, declared under the provisions of this Act.

VACANCIES IN OFFICE OF TRUSTEE

14. It shall be lawful for the Synod of a diocese for which any church trust property is for the time being held from time to time by resolution to declare the existence of a vacancy or vacancies in the office of trustee of such property, by reason of one or more of the trustees having died, resigned office, refused or neglected, or having become incapable to act in the said office, or having for the space of six months ceased to reside within the said diocese, or by reason of some other matter to be specified in such resolution, and thereupon or at any time thereafter the Synod of the said Diocese may elect or by resolution provide for the election of a person or persons to be, and such person or persons shall upon such election become a trustee or trustees in the place or places of the trustee or trustees referred to in the said resolution.

NEW TRUSTEES FOR ALLOCATED PROPERTY

15. It shall be lawful for the synod of a diocese to elect a new trustee or new trustees respectively for church trust property, which may be allocated under the provisions of this Act for such diocese.

SEPARATE TRUSTEES

16. It shall be lawful for the Synod of a diocese for which any church trust property is for the time being held by ordinance to provide for the election of separate trustees for any part or parts of such property, and to elect such separate trustees.

VESTING TRUST PROPERTY

19. Any church trust property which may at any time belong to or be vested in any trustee or trustees shall upon the consent of such trustee or trustees, or the majority of them given in writing, or upon the consent of the Synod of the Diocese for which such property is held, given by or under an ordinance of the Synod of such diocese by virtue of such consent and without other assurance in the law, become vested in the corporate trustees of such diocese. Provided that if in consequence of death or disability the consent of any trustee or trustees cannot be obtained it shall be lawful for the bishop of the diocese to consent in the place of any such trustee.

MANAGEMENT

24. It shall be lawful for the synod of a diocese for which any church trust property is for the time being held, from time to time by ordinance, to provide and to vary any provision now or hereafter to be made for governing and controlling the management and user of such property for the purposes for which the same is for the time being held in trust, and for all things incidental to such government and control, including constitutions of councils, committees, and other bodies, whether incorporated or not, and such property shall be held, managed, and used and in accordance with such ordinance accordingly, the provisions of the trust instrument or instruments (if any) to the contrary notwithstanding.

INVESTMENT

25. It shall be lawful for the Synod of a diocese for which any church trust property is for the time being held, from time to time by ordinance, to provide and to vary any provision now or hereafter to be made for the investment of such property, and for the pooling of separate church trust properties for the purpose of investment, and for averaging gains, losses, and interests, and for all other matters and things incidental to such investment and pooling.

SYNOD MAY DIRECT SALES

26. It shall be lawful for the Synod of the diocese for which any church trust property is for the time being held if it shall appear to such Synod expedient by reason of circumstances subsequent to the creation of the trusts of such property by ordinance to direct that such property be sold, exchanged, mortgaged, or let on mining, building, occupation, or other leases, or otherwise dealt with in manner provided by such ordinance, and to provide for accepting the surrender of any lease thereof and for laying out and dedicating parts thereof for any purpose or purposes, and to provide for the application of the real and personal property arising from any such sale, exchange, mortgage, letting or other dealing as aforesaid; Provided that in the cases of the dioceses of Sydney and Goulburn no such ordinance in respect of property held for the sole benefit of some particular parish shall be assented to under the Church of England Constitutions Act Amendment Act of 1902 or any Act amending or taking the place of the same, without the consent in writing of a majority of the members of the parish council (if any) for the time being of the parish, and in the case of property

gratuitously granted or assured within twenty years preceding the time being by any private donor without the like consent of such donor if living.

CERTAIN DIRECTIONS MAY BE GIVEN IN ANTICIPATION

- 26A (1) This section applies to the Diocese of Sydney but does not apply to any other diocese until an ordinance of the Synod of that other diocese is published in the Gazette under the hand of the Bishop declaring that this section applies to that diocese.
- (2) The Synod of a diocese to which this section applies may by ordinance:
- (a) direct that, upon specified real property becoming church trust property held for the diocese, it may be mortgaged, let on mining, building, occupation or other leases or otherwise dealt with as specified in the ordinance; and
 - (b) provide for the application of the personal property arising from any such mortgage, letting or other dealing.

DEEDS OF CONVEYANCE

27. It shall be lawful for the Synod of a diocese by ordinance to direct what person or persons shall execute the deed or deeds or other instrument or instruments, and do all acts, measures, and things necessary for the purpose of carrying into effect the sale, exchange, mortgage, lease, or other dealing directed by ordinance of the Synod of such diocese under the provisions of this Act, and the deed or deeds, or other instrument or instruments executed, and the acts, measures, and things done by such person or persons shall take effect as if the trust instrument relating to the church trust property comprised in the said ordinance had contained a power enabling such person or persons to effect such sale, exchange, mortgage, lease, or other dealing, and so as to operate, if necessary, by way of revocation and appointment of the use or otherwise as the said ordinance shall direct.

CERTAIN DIRECTIONS MAY BE GIVEN BY RESOLUTION

- 27A. (1) This section applies to the Diocese of Sydney but does not apply to any other diocese unless an ordinance of the synod of that other diocese is published in the Gazette under the hand of the Bishop declaring that this section applies to that other diocese.
- (2) Subject to this section, where the synod of a diocese to which this section applies is authorised by section 26, 26A or 27 to give a direction for or with respect to a mortgage, the direction may be given instead:
- (a) by resolution of its synod or of the standing committee or its synod; and
 - (b) in the case of the Diocese of Sydney - also by resolution of the Sydney Church of England Finance and Loans Board,
- being, in either case, a resolution that does not contravene or fail to comply with any ordinance referred to in subsection (3) or (4) that is applicable.
- (3) A direction may not be given under subsection (2) where:
- (a) the same direction, if given by ordinance under section 26, would require a consent referred to in that section before it could be assented to; and
 - (b) that consent has not been given.
- (4) The Synod of a diocese may, by ordinance, restrict or regulate the right of its members and of the members of its standing committee to move a resolution referred to in subsection (2) and prescribe the form that any such resolution shall take, and the synod of the Diocese of Sydney may similarly restrict, regulate and prescribe in relation to the Sydney Church of England Finance and Loans Board.
- (5) A resolution passed under subsection (2) shall be certified:
- (a) by the Registrar of the diocese for which is held the church trust property to which the resolution relates or by a person for the time being acting in that office; or
 - (b) by a secretary of the synod of that diocese or by a person for the time being acting in that office.

POWER TO LET IN CERTAIN CIRCUMSTANCES

28. A corporate body of trustees may let the church trust property vested in such body on lease for such term or terms as shall from time to time be approved of by the Synod of the diocese for which such corporate body is constituted, or if the Synod be not in session then as shall be approved of by the standing committee of such diocese: Provided, however, that until the first session of such synod after this Act comes into force in such diocese such corporate body may let such church trust property for any term of years not exceeding seven.

PROTECTION OF PURCHASERS

29. No purchaser, mortgagee, lessee or other person, or the Registrar General, upon any sale, exchange, mortgage, lease, or other dealing purporting to be made under the powers granted by or under this Act, shall be concerned to see or inquire into the necessity or propriety thereof, or the mode of exercising the same, nor be affected by notice that the exercise of the power is unauthorised, irregular, or improper, nor be concerned to see to the application or disposition of any purchase, mortgage, or other money or rent paid by him.

DISCHARGE FOR PURCHASE MONEYS

30. The moneys (if any) arising from any sale, exchange, mortgage, lease, or other dealing purporting to be made under the powers granted by or under this act shall be paid to the trustee or trustees in whom the property, the subject matter of such sale, exchange, mortgage, lease or other dealing immediately theretofore vested, or to such other person or persons as the ordinance (if any) directing such sale, exchange, mortgage, lease or other dealing may provide. And the receipt of the said trustee or trustees, or other person or persons as the case may be, shall be an effectual discharge therefore.

TEMPORARY INVESTMENTS

31. Pending the application of any moneys to arise as aforesaid, the same may, after payment thereof of all proper costs, charges, and expenses, be invested in Government or real securities in New South Wales or in the Commonwealth of Australia, or on fixed deposit in any bank, or otherwise as the ordinance directing such dealing, or any ordinance of the Synod of the said diocese in force for the time being and applicable thereto may provide.

VARIATION OF TRUSTS

32. In each case where by reason of circumstances subsequent to the creation of the trusts, including trusts declared under this section, to which any church trust property is for the time being subject, it has in the opinion of the Synod of the diocese for which such property is held become impossible or inexpedient to carry out or observe such trusts, it shall be lawful for the synod of such diocese by ordinance to declare such their opinion, and by the same or any subsequent ordinance to declare other trusts for or for the use, benefit, or purposes of the Church of England within the said diocese instead of such first-mentioned trusts, and such first-mentioned trusts shall thereupon by force of the said ordinance cease and determine, and such property shall thereupon be held upon such other trusts accordingly: Provided that such property shall be dealt with and applied for the benefit of the Church of England in the parish or parishes (if any) for the benefit of which such property was immediately before such ordinance held in trust, and for the same purposes as nearly as may be as the purposes for which such property was immediately before such ordinance held unless the synod of such diocese shall by ordinance declare that by reason of circumstances, subsequent to the creation of the first-mentioned trusts, it is, in the opinion of the synod, impossible or inexpedient to deal with or apply such property or some part thereof for the use or benefit of such parish or parishes or for the same or the like purposes, in which case such property or such part thereof may be dealt with and applied for the use and benefit of the Church of England for such other purposes and in such other parish or

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parishes in the said diocese or otherwise as shall be declared by ordinance of the synod of the said diocese.

LIMITED SUBSTITUTION OF TRUST OF INCOME

1981

32A. (1) In this section:

“church trust property” does not include church trust property held for the sole benefit of a particular parish;

“prescribed period” in relation to an ordinance made under subsection (3) means:

- (a) where the ordinance specifies a particular period of 12 months as the prescribed period for the purposes of this section - that period of 12 months; or
- (b) in any other case - the period of 12 months that next succeeds assent to the ordinance by the Bishop of the diocese.

- (2) This section applies to the Diocese of Sydney but does not apply to any other diocese until an ordinance of the synod of that other diocese is published in the Gazette under the hand of the Bishop declaring that this section applies to that other diocese.
- (3) The synod of a diocese to which this section applies may by ordinance declare that it is temporarily inexpedient to carry out or observe the trusts to which the income from that property, or a specified part of that income, is subject.
- (4) Where the Synod of a diocese makes an ordinance under subsection (3) with respect to any income it may, by the same or a subsequent ordinance, declare that, during the prescribed period for the ordinance, that income is held upon trusts, specified in the ordinance, for or for the use, benefit or purposes (whether within or beyond that diocese or the State) of the Church of England in Australia.
- (5) Income to which a declaration under subsection (4) relates shall, during the prescribed period for the ordinance by which the declaration is made, be held upon the trusts specified in that ordinance to the exclusion of any other trusts to which it was subject and shall, at the expiration of that prescribed period,

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become again subject to those other trusts.

REPEAL OR AMENDMENT OF ORDINANCES

37. Subject and without prejudice to any past operation of any ordinance made or to be made under the provisions of this Act or any Act hereby repealed, and subject and without prejudice to any estate, right privilege, obligation, or liability vested, acquired, accrued, or incurred under any such ordinance or resolution:
- (a) the synod of a diocese may by ordinance repeal or amend:
 - (i) any ordinance made by that Synod;
 - (ii) any resolution passed by that Synod or its Standing Committee; or
 - (iii) where the diocese is the Diocese of Sydney - any resolution of the Sydney Church of England Finance and Loans Board;
 - (b) the standing committee of the synod of a diocese may by resolution repeal or amend any resolution of that committee; and
 - (c) the Sydney Church of England Finance and Loans Board may by resolution repeal or amend any resolution of that Board.

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APPENDIX 3: APPROVED INVESTMENTS

(Note this appendix does not form part of the Ordinance)

RESOLUTIONS OF BISHOP-IN-COUNCIL

Resolved that the following types of investments be confirmed as approved investments for the Anglican Church Property Trust Diocese of Canberra and Goulburn and the Diocesan Development Fund (Resolution 1136/76 (13/2/76)):

- (a) In shares and debentures listed on an Australian Stock Exchange and issued by companies which have made profits and paid dividends in each of the five years prior to the time of the investment under consideration;
- (b) In shares and debentures of companies with a Paid-up Capital of at least \$5,000,000 or owned as to at least 40% by a Bank or Insurance Company and which have made profits and paid dividends in each of the five years prior to the time of the investment under consideration;
- (c) In debentures, deposits or unsecured notes which are unconditionally guaranteed by a public company with a Paid-up Capital of at least \$5,000,000 or owned as to at least 40% by a Bank or Insurance Company and which has made profits and paid dividends in each of the five years prior to the time of the investment under consideration;
- (d) In deposits at call with the Diocesan Development Fund.

Addendum for the DDF:

- (e) In unsecured deposits for periods not exceeding 12 months in companies of the categories listed above;
- (f) In the Methodist Investment Fund or similar Church-backed funds.

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Notes:

- The original Ordinance was passed without amendment and assented to on 19 May 1944
- Church of England Property Trust Ordinance Amending Ordinance 1962
- The Church of England Property Trust Ordinance (As Amended) Further Amendment Ordinance Of 1972 passed without amendment and assented to by Bishop Cecil on 25 November 1972
- Church of England Property Trust Diocese of Canberra and Goulburn Change of Name Ordinance 1981 passed without amendment and assented to by Bishop Owen on 24 July 1981
- Church of England Property Trust Diocese of Canberra and Goulburn Change of Name Ordinance 1982 assented to by Bishop on 12 February 1982
- Anglican Church Property Trust Amendment Ordinance 1987 passed without amendment and assented to by Bishop Owen on 31 July 1987
- Anglican Church Property Trust Amendment Ordinance 1991 assented to by Bishop George on 3 August 1991
- 1994
- 1995
- Amended by Diocesan Legislation Ordinance Consequential Amendments Ordinance 2009 and assented to by Bishop Stuart 18 September 2009
- Anglican Church Property Trust Amendment Ordinance 2011 assented to by Bishop Stuart on 3 September 2011 (Synod has passed the Anglican Church Property Trust Amendment Ordinance 2011 but Bishop-in-Council has not brought this amendment into effect.)
- Anglican Church Property Trust Amendment Ordinance 2012 was passed without amendment by Synod on 1 September 2012 and assented to by Bishop Stuart on 1 September 2012.
- Anglican Church Property Trust Amendment Ordinance 2016 was passed without amendment by Synod on 10 September 2016 and assented to by Bishop Stuart on 10 September 2016
- Anglican Church Property Trust Amendment Ordinance 2017 was passed without amendment by Synod on 7 October 2017 and assented to by Bishop Stuart on 7 October 2017.

See also the Diocesan Property Development Ordinance 2016.

The Diocesan Lands Commission Ordinance 1974 was repealed by the Ordinances Repeal Ordinance passed by Bishop-in-Council on 16 April 2016 and assented to by Bishop Stuart on 16 April 2016.