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Anglican (Diocese of Christchurch) Church Property Trust Act 2003

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Commencement see section 2

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

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Preamble

- (1) There is real and personal property in New Zealand held on trusts relating to the Anglican Diocese of Christchurch:
- (2) The powers of the trustees (including the Church Property Trustees) in relation to the investment of the property are limited by the statutes and instruments creating the trusts:
- (3) It is desirable to—
 - (a) consolidate and amend the enactments relating to the trustees; and

- (b) widen the trustees' powers of investment; and
 - (c) apply the variation of trusts provisions in the Anglican Church Trusts Act 1981 to trusts under this Act:
- (4) The objects of this Act cannot be achieved without legislation.

1 Title

This Act is the Anglican (Diocese of Christchurch) Church Property Trust Act 2003.

Part 1 Preliminary

2 Commencement

This Act comes into force on 1 October 2003.

3 Purpose

The purpose of this Act is to—

- (a) consolidate and amend the Church Property Trust Ordinance 1854 (C) and the Church Property Trust (Canterbury) Act 1879 and their amendments; and
- (b) widen the investment powers of trustees who hold real and personal property on trusts relating to the Anglican Diocese of Christchurch; and
- (c) apply the variation of trusts provisions in the Anglican Church Trusts Act 1981 to trusts under this Act.

4 Interpretation

In this Act, unless the context otherwise requires,—

appointed trustees means trustees appointed by the Synod under a power conferred by an Act or an instrument

Bishop means the Bishop of Christchurch

Bishopric estate means the property held, immediately before the commencement of this Act, in the Bishopric estate referred to in the Church Property Trust (Canterbury) Act 1879

Canon means a Canon of the Cathedral

Cathedral means Christchurch Cathedral in Cathedral Square in Christchurch

Church means the Anglican Church of Aotearoa, New Zealand and Polynesia

Church Property Trustees means the Church Property Trustees constituted a body politic and corporate by section 2 of the Church Property Trust Ordinance 1854 (C), and continued by section 5(3)

committee means a committee of, and appointed by, the Church Property Trustees

constitution means the constitution of the Church

Dean means the Dean of the Cathedral

Dean and Chapter estate means the property held, immediately before the commencement of this Act, in the Dean and Chapter estate referred to in the Church Property Trust (Canterbury) Act 1879

diocese means the diocese of Christchurch as constituted by the General Synod

General Synod means the General Synod of the Church

general trust estate means the property held by the Church Property Trustees on trust for the general purposes of the Church in the diocese

income—

- (a) includes rents, dividends, and profits; but
- (b) excludes rents, dividends, and profits that are treated under any rule of law as in the nature of capital

local endowments means property, including glebe land, held by appointed trustees

ministry unit means a group of persons constituted by the Synod as a ministry unit of the diocese

original local endowments means property that—

- (a) is held on trust by appointed trustees; and
- (b) has been held on trust by appointed trustees since the creation of the trust

parish—

- (a) means a parish of the diocese; and
- (b) in sections 21 to 30 includes a ministry unit and a mission unit

property—

- (a) means every type of property; and
- (b) includes—
 - (i) every type of estate and interest in property; and
 - (ii) money

sale includes exchange

spouse includes a de facto partner as defined in section 2C of the Property (Relationships) Act 1976

standing committee means the group of persons appointed by the Synod under Part E of the constitution as the standing committee

Synod—

- (a) means the Synod of the diocese; and
- (b) for the purposes of Parts 3, 4, and 5, includes the standing committee if the Synod is not in session

trust deed—

- (a) means any instrument or writing (whether testamentary or otherwise) creating or declaring a trust on which local endowments or other property is to be held; and
- (b) includes any amendments to the instrument or writing

trust fund or trust property means money or property held on trust by the Church Property Trustees or appointed trustees for any object or purpose—

- (a) relating to the Anglican Church in the diocese or a parish; or
- (b) of furthering social services, hospital or residential care, or educational needs relating to the Anglican Church.

Part 2

Church Property Trustees

5 Church Property Trustees

- (1) There continues to be a body called the Church Property Trustees.
- (2) The Church Property Trustees continues to be a body corporate with perpetual succession and a common seal.
- (3) The Church Property Trustees is the same body of that name existing immediately before the commencement of this Act under the Church Property Trust Ordinance 1854 (C).

Compare: 1854 No 4 (C) s 2

6 Function of Church Property Trustees

- (1) The function of the Church Property Trustees is to hold and administer trust property in accordance with this Act.
- (2) Subsection (1) applies despite anything in any other Act or in any instrument creating or relating to the trusts on which trust property is held.

Compare: 1854 No 4 (C) s 2

7 Powers of Church Property Trustees

- (1) For the purpose of carrying out its function, the Church Property Trustees may exercise the powers set out in Schedule 1 and in the Trusts Act 2019.
- (2) The Church Property Trustees must exercise its powers subject to any authorisations that this Act requires to be given by the Synod or other body or person.

Compare: 1859 No 6 (C) s 1

Section 7(1): amended, on 30 January 2021, by section 161 of the Trusts Act 2019 (2019 No 38).

8 Membership of Church Property Trustees

- (1) The membership of the Church Property Trustees comprises—
 - (a) the Bishop; and
 - (b) 8 trustees, being members of the Church elected by the Synod.
- (2) The chairperson of the Church Property Trustees is the Bishop.
- (3) At each annual session of the Synod—
 - (a) the 2 longest serving trustees must retire; and
 - (b) the Synod must elect 2 members of the Church to be trustees.
- (4) A retiring trustee is eligible to be re-elected as a trustee.
- (5) The following persons must not be elected as a trustee—
 - (a) a person who is an undischarged bankrupt;
 - (b) a person who is subject to a property order under section 30 or section 31 of the Protection of Personal and Property Rights Act 1988;
 - (c) a person who has been convicted of a criminal offence.
- (6) A trustee may resign by writing addressed to the Bishop and delivered to the office of the diocese.
- (7) The Church Property Trustees may, with the prior approval of the standing committee, appoint 1 or more members of the Church to be trustees either to fill a casual vacancy or as an additional trustee or trustees.
- (8) However, a trustee must not be appointed under subsection (7) if that would result in there being more than 8 trustees.
- (9) A trustee appointed under subsection (7) holds office only until the next Synod following his or her appointment, but is eligible for re-election.

Compare: 1867 No 12 (C) ss 5, 6, 8

9 Church Property Trustees to comply with ecclesiastical laws

In carrying out its function, the Church Property Trustees must comply with all canon and ecclesiastical laws and regulations that, under the authority of the Synod, apply to the administration of trust property.

Compare: 1867 No 12 (C) s 12

10 Financial records and accounts

- (1) The Church Property Trustees must ensure that accounting records are kept that—
 - (a) correctly record and explain its transactions; and
 - (b) will enable its financial position to be determined with reasonable accuracy; and

- (c) will enable its financial statements to be readily and properly audited.
- (2) The Church Property Trustees must ensure that in each year the following financial statements are prepared in respect of its operations:
 - (a) a statement of income and expenditure; and
 - (b) a statement of financial position.
- (3) The financial statements must be prepared in accordance with generally accepted accounting practice.
- (4) The financial statements must be audited by a person appointed for that purpose by the Church Property Trustees.
- (5) After the financial statements have been audited, the Church Property Trustees must present the financial statements and the auditor's report on them to the next annual session of the Synod.
- (6) The financial statements must be published or made available in accordance with any directions given by the Synod.

Compare: 1867 No 12 (C) s 13

11 Members' liabilities and indemnities

- (1) No member of the Church Property Trustees is personally liable for any act or omission of the Church Property Trustees, or of any officer or employee of the Church Property Trustees, done or omitted in good faith in the course of the operations of the Church Property Trustees.
- (2) Being a member of the Church Property Trustees does not, of itself, impose on the member any liability in respect of any contract, debt, or other obligation made or incurred by the Church Property Trustees.
- (3) The Church Property Trustees may indemnify a member or employee of the Church Property Trustees against—
 - (a) any loss or costs incurred by him or her in any proceedings that relate to liability for any act or omission made in good faith in his or her capacity as a member or employee; or
 - (b) any costs incurred by the member or employee in defending or settling any claim or proceeding relating to such liability, not being—
 - (i) criminal liability; or
 - (ii) liability,—
 - (A) in the case of a member, in respect of a duty imposed by law; or
 - (B) in the case of an employee, in respect of any fiduciary duty owed to the Church Property Trustees.
- (4) A member is not bound to take, or is not liable for failure to take, proceedings against another member for any breach or alleged breach of trust by the other member.

- (5) The Church Property Trustees may provide insurance cover for a member or an employee in respect of—
- (a) liability (not being criminal liability) for any act or omission in his or her capacity as a member or employee; or
 - (b) costs incurred by the member or employee in defending or settling any claim or proceedings relating to any such liability; or
 - (c) costs incurred by the member or employee in defending any criminal proceedings in which he or she is acquitted.

Compare: 1867 No 12 (C) s 7

12 Protection for persons dealing with Church Property Trustees or appointed trustees

- (1) A person who pays money to the Church Property Trustees or appointed trustees is—
- (a) not required to see to the application of the money; and
 - (b) not liable for the misapplication or non-application of the money.
- (2) A person entering into a transaction with the Church Property Trustees or the appointed trustees is not required to enquire into whether the Church Property Trustees or the appointed trustees have the power or authority to enter into the transaction.

Compare: 1879 No 4 (P) ss 16, 26

13 Further provisions applying to Church Property Trustees

The provisions set out in Schedule 2 apply in respect of the Church Property Trustees.

Compare: 1867 No 12 (C) ss 10–13

Part 3

Trusts administered by Church Property Trustees and appointed trustees

Bishopric estate

14 Church Property Trustees to hold Bishopric estate on trust

- (1) The Church Property Trustees hold the Bishopric estate on the primary trusts set out in section 15 and on the secondary trusts set out in section 16.
- (2) If the Church Property Trustees must choose between applying the Bishopric estate to the primary trusts or to the secondary trusts, the Church Property Trustees must apply the Bishopric estate to the primary trusts.

- (3) In applying the Bishopric estate to the secondary trusts, the Church Property Trustees must comply with any directions of the Synod about the manner, proportion, and times of applying the Bishopric estate to the secondary trusts.

Compare: 1879 No 4 (P) s 7

15 Primary trusts

The primary trusts are—

- (a) to hold the capital and the income of the Bishopric estate on trust—
- (i) to provide a suitable residence and furnishings for the Bishop and the Bishop’s family; and
 - (ii) to pay all rates, taxes, repairs, maintenance, and insurances relating to the residence and the land on which it is situated; but
 - (iii) if the Bishop owns a residence, to pay to the Bishop a reasonable housing allowance as determined by the Church Property Trustees:
- (b) to apply the income of the Bishopric estate—
- (i) to pay all proper and necessary charges relating to the management of the Bishopric Estate; and
 - (ii) to pay the Bishop’s salary as approved by the Church Property Trustees; and
 - (iii) to pay to the New Zealand Anglican Church Pension Fund the appropriate contribution for the Bishop’s pension; and
 - (iv) to provide a suitable car for the Bishop and pay the expenses associated with its maintenance and operation; and
 - (v) to make provision for the Bishop and the Bishop’s spouse to undertake travel as approved by the Church Property Trustees; and
 - (vi) to pay all other expenses appropriate to the office of a bishop.

Compare: 1879 No 4 (P) ss 7–9

16 Secondary trusts

The secondary trusts are to hold the capital and the income of the Bishopric estate on trust—

- (a) to augment the annual income of the Bishop:
- (b) to maintain a fund to be applied—
- (i) towards the building, maintenance, enlargement, or replacement of the Bishop’s residence and its furnishings; or
 - (ii) to providing the Bishop with a housing allowance as determined under section 15(a)(iii):

- (c) to contribute to the stipend and maintenance of assistant bishops in the diocese, of chaplains for the Bishop or assistant bishops, of diocesan employees, and of other clerical or lay assistants as may from time to time be required by the Bishop:
- (d) to maintain other bishops that—
 - (i) are appointed by the diocese under the authority of the General Synod; and
 - (ii) have jurisdiction in the diocese or, if the diocese is divided into 2 or more dioceses or part of it is transferred to another diocese, in an area that was part of the diocese:
- (e) to provide residences for assistant bishops, and other bishops whose ministries are within the diocese, and to provide for the payment of all rates, taxes, repairs, maintenance, and insurances payable in respect of the residences:
- (f) to provide—
 - (i) special training for candidates for holy orders; and
 - (ii) post-ordination training for ministers during the first 3 years of their ordained ministries:
- (g) to pay the expenses and allowances of the Bishop, assistant bishops, and other bishops in connection with travelling in the course of their duties:
- (h) to pay the travel and removal expenses of a person (including the person's spouse and family) after his or her acceptance of nomination as—
 - (i) the Bishop:
 - (ii) assistant bishop:
 - (iii) the bishop of a diocese arising from the subdivision of the diocese.

Compare: 1879 No 4 (P) s 10

Dean and Chapter estate

17 Church Property Trustees to hold Dean and Chapter estate on trust

- (1) The Church Property Trustees hold the Dean and Chapter estate on the primary trusts set out in section 18 and on the secondary trusts set out in section 19.
- (2) If the Church Property Trustees must choose between applying the Dean and Chapter estate to the primary trusts or to the secondary trusts, the Church Property Trustees must apply the Dean and Chapter estate to the primary trusts.
- (3) In applying the Dean and Chapter estate to the secondary trusts, the Church Property Trustees must comply with any directions of the Synod about the

manner, proportion, and times of applying the Dean and Chapter estate to the secondary trusts.

Compare: 1879 No 4 (P) s 18

18 Primary trusts

The primary trusts are to hold the capital and the income of the Dean and Chapter estate on trust—

- (a) to pay all proper and necessary charges relating to the management of the Dean and Chapter estate:
- (b) to pay the Dean's salary, pension contribution, and expenses (including travel and removal expenses for the Dean and his family), as approved by the Church Property Trustees after consulting the Cathedral Chapter:
- (c) to provide for—
 - (i) the purchase, repair, and insurance of, and payment of all rates on, the Dean's residence and its associated buildings and fences; or
 - (ii) if the Dean owns a residence, the payment to the Dean of a reasonable housing allowance as determined by the Church Property Trustees.

Compare: 1879 No 4 (P) ss 19, 20

19 Secondary trusts

The secondary trusts are to hold the capital and the income of the Dean and Chapter estate on trust—

- (a) to augment the annual income of the Dean:
- (b) to maintain a fund to be applied to—
 - (i) building, maintaining, enlarging, or replacing the residence for the Dean; or
 - (ii) providing the Dean with a housing allowance as determined under section 18(c)(ii):
- (c) to maintain the services in, and activities of, the Cathedral:
- (d) to employ such persons (including choristers) as are required to assist in the preparation and conduct of services:
- (e) to keep the Cathedral and its precincts in good repair:
- (f) to maintain a person or persons (other than the Dean), whether in holy orders or not, appointed as Cathedral staff for any work undertaken in the Cathedral or the Cathedral Chapter:
- (g) to provide, maintain, repair, renew, or replace all or any of the furniture or fittings for use in the Cathedral or its associated buildings or its precincts:
- (h) to maintain and repair the Cathedral:

- (i) to erect and maintain a chapter house or other buildings for the Cathedral Chapter:
- (j) to erect and maintain 1 or more schools in connection with the Cathedral.

Compare: 1879 No 4 (P) s 21

Local endowments

20 Application

Sections 21 to 30 do not apply to the general trust estate.

Compare: 1879 No 4 (P) s 35

21 Local endowments to be administered for benefit of particular parish

Appointed trustees must, after deducting reasonable and proper charges, administer a local endowment for the benefit of the particular parish concerned.

Compare: 1879 No 4 (P) s 23

22 Administration of glebe land

Appointed trustees must, after deducting reasonable and proper charges, administer a local endowment held as glebe land—

- (a) first, for the benefit of the vicar and clergy licensed by the Bishop to the parish in which the glebe land is situated; and
- (b) second, for the benefit of the parish.

Compare: 1879 No 4 (P) s 24

23 Meaning of consent

In section 24, **consent** means—

- (a) the written consent of the Synod given by—
 - (i) the president of the Synod; or
 - (ii) if the Synod is not in session, the chairperson of the standing committee; and
- (b) the written consent of—
 - (i) the vicar licensed by the Bishop to the parish in which consent is sought in respect of a particular local endowment; or
 - (ii) if no such vicar is in office, the Archdeacon of the district in which the parish is situated; and
- (c) the written consent of—
 - (i) the churchwardens of the parish concerned; or
 - (ii) the appropriate officers of a ministry unit or mission unit.

Compare: 1879 No 4 (P) s 25

24 Powers of appointed trustees

- (1) Appointed trustees may, with consent, exercise 1 or more of the powers specified in section 7.
- (2) The appointed trustees may apply the proceeds arising from exercising the power of sale in relation to a local endowment—
 - (a) to purchase other property:
 - (b) to purchase sites to build or rebuild churches, vicarages, schools, or other buildings to be used for parochial purposes in the parish, either—
 - (i) in the area in which the original local endowment was situated; or
 - (ii) for the benefit of which the original local endowment may have been given, acquired, or held:
 - (c) for the benefit of the parish.
- (3) Income from property purchased under subsection (2) may, with the approval of the Synod, be applied to any parochial purpose; and any undistributed income may be accumulated or added to the capital money from which it is derived.
- (4) The proceeds of sale of any land originally given or acquired as a site for a church, parsonage, vicarage, or school may be dealt with as a local endowment under section 30, whether or not the property has increased in value to be more than sufficient for the purposes of the Church within the parish concerned.

Compare: 1879 No 4 (P) ss 25, 28

25 Manner in which appointed trustees may make contracts

- (1) Contracts and other obligations which, if entered into by a natural person would by law be required to be by deed, may be entered into by appointed trustees in writing and signed by 2 or more appointed trustees whose signatures are witnessed by a person who is not an appointed trustee.
- (2) Contracts and other obligations which, if entered into by a natural person would by law be required to be in writing, may be entered into on behalf of the appointed trustees in writing by a person acting under the express authority of the appointed trustees.
- (3) Contracts and other obligations which, if entered into by a natural person would by law not be required to be in writing, may be entered into on behalf of appointed trustees in writing or orally by persons acting under the express authority of the appointed trustees.
- (4) This section does not apply to the Church Property Trustees acting in their capacity as appointed trustees.

Compare: 1879 No 4 (P) s 56

26 Schedule 2 applies to appointed trustees

Schedule 2 applies, with all necessary modifications, to appointed trustees as if a reference in that schedule to “Church Property Trustees” were a reference to “appointed trustees”.

27 Administration of newly constituted parishes

- (1) If the Synod constitutes a new parish that includes part of an existing parish,—
 - (a) the Church Property Trustees must, after deducting reasonable costs and charges, administer the local endowments or any part of them situated in the new parish for the benefit of the new parish:
 - (b) the Church Property Trustees must administer any glebe lands that are situated in the new parish—
 - (i) first, for the benefit of the vicar and clergy licensed by the Bishop to the new parish; and
 - (ii) second, for the benefit of the new parish:
 - (c) the powers exercisable by the Church Property Trustees in relation to the new parish are subject to the trusts on which the original endowments are held.
- (2) The proceeds of sale of any property in a local endowment that is situated in the new parish must be held by the Church Property Trustees for the benefit of the new parish.

Compare: 1879 No 4 (P) ss 29, 30

28 Appointed trustees may transfer property to Church Property Trustees

- (1) Appointed trustees may transfer to the Church Property Trustees property held on trust by the appointed trustees.
- (2) Property transferred to the Church Property Trustees under subsection (1) must be held by the Church Property Trustees on the same trusts as the property was held for by the appointed trustees.
- (3) The Church Property Trustees may, in relation to property transferred to them under subsection (1), exercise the powers conferred by section 24.
- (4) The transfer of property under subsection (1) does not affect or prejudice any thing lawfully done by the appointed trustees in relation to the property before its transfer.

Compare: 1879 No 4 (P) ss 51, 52, 53

29 Powers not to be exercised if inconsistent with trust deed

Nothing in this Act, including a consent given under section 23, authorises the Synod or appointed trustees to exercise any power in respect of a local endowment in a manner inconsistent with the trust governing the local endowment.

Compare: 1879 No 4 (P) s 32

30 Power to apply local endowments to general church purposes in other parts of diocese

- (1) Subsection (2) applies if the Synod considers that the value of a local endowment has increased so as to be more than sufficient for church purposes within the particular parish within which the local endowment is situated, or for which the local endowment was originally given.
- (2) The Synod may direct the appointed trustees or the Church Property Trustees, as the case may be, to administer the local endowments (or the property into which the local endowments have been invested), and to apply the income or such part of it as the trustees think fit, for general church purposes in other parts of the diocese.
- (3) Subsection (2) does not apply if the trust deed or other document indicates, expressly or impliedly, that the local endowments were intended to be applied for the exclusive benefit of the particular parish specified in the trust deed, or for some specified purpose within that parish.

Compare: 1879 No 4 (P) s 33

Part 4

Funds administered by Church Property Trustees

31 Power to establish investment funds

- (1) This section applies to trust funds held by the Church Property Trustees.
- (2) The Church Property Trustees may amalgamate some or all of the trust funds into 1 or more investment funds.
- (3) Without limiting subsection (2), the Church Property Trustees may establish 1 or more of the following funds:
 - (a) amalgamated fixed interest fund:
 - (b) investment fund:
 - (c) property fund:
 - (d) forestry fund.

Compare: 1879 No 4 (P) s 57A

32 Amalgamated fixed interest fund

- (1) Income derived from investments amalgamated into the amalgamated fixed interest fund must be paid into a separate account (the amalgamated fixed interest fund income account).
- (2) A trust fund amalgamated into the amalgamated fixed interest fund must have credited to it annually from the amalgamated fixed interest fund income account interest at a uniform rate as determined from time to time by the trustees and agreed to by the standing committee.

- (3) The interest credited must be in the same proportion as the trust fund concerned bears to the amalgamated fixed interest fund.
- (4) The rate of interest must be not less than 1% below the average rates of interest from all the investments in the amalgamated fixed interest fund.

Compare: 1879 No 4 (P) s 57A

33 Transfer of trust funds to investment fund

- (1) The vicar and churchwardens of a parish or the appropriate officers of a ministry or mission unit may request that any trust funds be amalgamated in an investment fund.
- (2) A request must be in writing and addressed to the Church Property Trustees.
- (3) If the Church Property Trustees accept a request, the trust funds concerned may be amalgamated in an investment fund on such terms and conditions (if any) as are agreed to by the Church Property Trustees and the trustees of the trust fund.
- (4) This section applies subject to any bylaws made by the Synod.

Compare: 1879 No 4 (P) s 57A

34 Church Property Trustees to make annual report on investments

- (1) The Church Property Trustees must, in each calendar year, provide to the standing committee a brief report and an audited set of accounts for all the investments under the Church Property Trustees' control.
- (2) The Church Property Trustees must deliver a copy of the report and accounts to—
 - (a) the Synod; and
 - (b) every parish, ministry unit, and trust on whose behalf the Church Property Trustees holds investments.

Compare: 1879 No 4 (P) s 57A

35 Donors and testators may exclude trust funds from investment fund

This Act—

- (a) does not prevent a donor or testator from providing in a gift or trust that the funds or property given or bequeathed must not be included in a specified investment fund:
- (b) does not override any provision referred to in paragraph (a).

Compare: 1879 No 4 (P) s 57A

36 Church Property Trustees to maintain reserve fund

- (1) The Church Property Trustees must maintain and administer a reserve fund.
- (2) The reserve fund must be kept separate from other trust funds.
- (3) The Synod may increase the capital of the reserve fund.

- (4) The Church Property Trustees must, at the end of each calendar year, transfer from the amalgamated fixed interest fund income account to the reserve fund all the amounts in the amalgamated fixed interest fund income account that have not been distributed to trusts under section 32.
- (5) The net annual income derived from investments in the reserve fund may be applied by the Church Property Trustees, with the agreement of the standing committee, in 1 or more of the following ways:
 - (a) to augment the reserve fund:
 - (b) to stabilise or increase the income of the amalgamated fixed interest fund:
 - (c) to replace losses of capital in the amalgamated fixed interest fund.

Compare: 1879 No 4 (P) s 57A

37 Investment of reserve fund and authority to lend for certain purposes

- (1) The Church Property Trustees may exercise their power of investment in relation to money in the reserve fund that is not immediately required for the purposes of the reserve fund.
- (2) The Church Property Trustees may, with the approval of the Synod, lend money in the reserve fund that is not immediately required for the purposes of the fund to the general trust estate of the diocese for the purpose of making loans to parishes or ministry units.

Compare: 1879 No 4 (P) s 57A

Part 5 Cemeteries

38 Interpretation

In this Part, **trustees** means the Church Property Trustees or the appointed trustees, as the case may require.

Compare: 1879 No 4 (P) s 36

39 Trustees to administer closed cemeteries

- (1) This section applies to reserves or sites for cemeteries that—
 - (a) are vested in the trustees; and
 - (b) have been closed under an Act.
- (2) The trustees must administer the reserves or sites in such manner as the Synod determines.
- (3) This section applies subject to the provisions of any other Act about the administration of the reserves or sites.

Compare: 1879 No 4 (P) s 36

40 Trustees' powers in respect of certain closed cemeteries

- (1) This section applies to reserves and sites that—
 - (a) are held by the trustees on trust as sites or reserves for cemeteries; and
 - (b) have never been used as cemeteries; and
 - (c) have been closed under an Act.
- (2) The trustees may exercise in respect of the sites and reserves the same powers as are exercisable in respect of local endowments.
- (3) However, the trustees must not exercise any of those powers without first obtaining the consent of the Synod to do so.

Compare: 1879 No 4 (P) s 37

41 Application of income from sites and reserves

- (1) This section applies to the reserves and sites that sections 39 and 40 apply to.
- (2) The trustees must hold and apply the following for the general purposes of the Church within the diocese in such manner and proportions as the Synod directs:
 - (a) the reserves and sites:
 - (b) any land substituted for the reserves and sites:
 - (c) any rent or income derived from the reserves and sites or land substituted for them:
 - (d) any securities, investments, and property in which the proceeds of sale of any reserve or site have been invested.
- (3) This section is subject to section 42.

Compare: 1879 No 4 (P) s 38

42 Power to vary application of income

The Synod may direct the trustees to vary the application of the rent or income specified in section 41(2)(c).

Compare: 1879 No 4 (P) s 39

43 Power to substitute reserve or site

- (1) The trustees may use the proceeds of sale of a reserve or site, or any money received for equality of exchange, to purchase a site or reserve for the purposes of a cemetery within the parish in which the reserve or site that was sold or exchanged was situated.
- (2) However, the trustees must not exercise the power under subsection (1) without first obtaining the consent of the Synod.

Compare: 1879 No 4 (P) s 39

44 Trustees' powers under this Part exercisable despite trusts

- (1) The powers of the trustees under this Part are exercisable even though the reserves and sites are held on trust for the benefit and use of 1 or more particular parishes.
- (2) On the exercise by the trustees of a power under this Part, the trusts, objects, intents, and purposes declared by a trust deed or other document transferring or bequeathing the reserves and sites on which they are held come to an end and cease to have any force or effect.

Compare: 1879 No 4 (P) s 41

45 Trustees to obtain consent of Synod to deal with site or reserve used as cemetery

- (1) The trustees must obtain the approval of the Synod before selling, exchanging, letting, or otherwise dealing with any site or reserve that is being used or has been used as a cemetery.
- (2) Subsection (1) applies whether or not a cemetery or any part of it—
 - (a) has been consecrated; or
 - (b) has been closed under an Act.

Compare: 1879 No 4 (P) s 42

46 Trustees' powers in respect of burial places in unused or closed cemeteries

- (1) This section applies to reserves or sites that—
 - (a) have never been used as a cemetery; or
 - (b) have been closed as cemeteries.
- (2) The trustees may exercise the powers under this Part in relation to a burial place or plot set apart or purchased in a reserve or site if—
 - (a) the trustees have paid or tendered payment of the money to the persons entitled to it, being the money paid or expended on the burial place or plot; and
 - (b) the Synod agrees to the exercise of the trustees' powers.

Compare: 1879 No 4 (P) ss 43, 44

47 Discharge of claims in respect of burial places

After payment or tender of payment of money to a person under section 46(2)(a), the trustees are discharged from all claims in respect of the burial place or plot concerned.

Compare: 1879 No 4 (P) s 45

48 Purchaser not required to inquire whether certain payments have been made

No person dealing with the trustees in the exercise of their powers under this Part is required to inquire or see that the trustees have paid or tendered payment of money in respect of any burial place or plot.

Compare: 1879 No 4 (P) s 46

49 Trustees may establish fund to maintain used parts of cemeteries

The trustees may, out of money from the exercise of their powers under this Part, set aside a sum for the maintenance and repair of—

- (a) the reserves and sites that have been closed as cemeteries; and
- (b) graves, monuments, tombs, burial places, mortuary chapels, and other buildings within the boundaries of those reserves and sites.

Compare: 1879 No 4 (P) s 47

50 Provisions of sections 11 and 12 apply to trustees

The provisions of sections 11 and 12 apply to the trustees in relation to the exercise of powers under this Part.

Compare: 1879 No 4 (P) s 40

Part 6

Miscellaneous provisions

51 Power of Church Property Trustees to act together with other persons

The Church Property Trustees continues to be an authorised trust board (as defined in the Anglican Church Trusts Act 1981), and Part 1 of that Act continues to apply accordingly.

52 Variation of trusts under Anglican Church Trusts Act 1981

Part 3 of the Anglican Church Trusts Act 1981 applies to the trust funds and trust property as if the funds and property were trust property as defined in section 11 of that Act.

53 Costs and charges

The costs, charges, disbursements, and expenses of preparing, promoting, and passing this Act may be paid by the Church Property Trustees out of the income of the general trust estate.

54 Repeals

- (1) The enactments specified in Schedule 3 are repealed.
- (2) A reference in a document to an enactment repealed by this Act is to be treated as a reference to this Act.

(3) This section is in addition to section 38 of the Legislation Act 2019.

Section 54(3): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Schedule 1 Powers of the Church Property Trustees

s 7

- 1 Power of sale by public auction, tender, or private contract, except where a sale is expressly forbidden by the terms of the trust; but subject to the express terms (if any) of the exercise of a power of sale.
- 2 Power of exchange for any other property, whether real or personal, with power to pay or to receive any money for equality of exchange.
- 3 Power to lend money with or without security, and without limitation, and in whatever manner the Church Property Trustees thinks fit; including power to lend without limitation, whether by contributory mortgage or not, on freehold or leasehold land or land held under the Unit Titles Act 2010, despite any enactment to the contrary.
- 4 Power to lease in such manner and on such terms or conditions as the Church Property Trustees thinks fit for any term of years not exceeding 21 years.
- 5 Power to accept, on such terms and conditions as the Church Property Trustees thinks fit, a surrender of any lease, whether with respect to the whole or to any part of the land comprised in the lease; with power if it thinks fit to expend trust funds in the purchase of any improvements of any such land.
- 6 Power to invest in accordance with the Trusts Act 2019.
- 7 Power to borrow, with or without security, and without limitation, and in whatever manner the Trustees thinks fit.
- 8 Power to combine or intermingle trusts funds, including power to form common funds or unit trusts, despite any rule of law or practice to the contrary.
- 9 Power to lend money to the Church Property Trustees on mortgage, in its capacity as trustee of any other trust property.
- 10 Power to lease, grant licences over, or let any land vested in the Church Property Trustees to itself in its capacity as trustee of any other trust property.
- 11 Power to enter into bailments.
- 12 Power to purchase or acquire any real or personal property; including power to take up and hold, subscribe for, or acquire shares in a company either with or without liability for uncalled capital.
- 13 Power to join with any other person, company, corporation, or body of persons in purchasing, acquiring, or erecting buildings or other improvements on or developing any real or personal property.
- 14 Power to build on or develop any property whatsoever.
- 15 Power in the Church Property Trustees' absolute discretion to receive from any person who is a trustee any money or investment held by that person on trust for any Anglican religious, educational, or other charitable trust.

- 16 Power to carry on farming, agriculture, horticulture, or silviculture in all or any of their aspects.
- 17 Power to enter into such contracts and do or perform such things as in the opinion of the Church Property Trustees will be for the benefit of any trust administered by it.
- 18 Power to act as a special trust adviser in accordance with section 74 of the Trusts Act 2019.
- 19 Power to charge fees, including a percentage commission, on all assets administered and on income received.

Schedule 1 item 3: amended, on 20 June 2011, by section 233(1) of the Unit Titles Act 2010 (2010 No 22).

Schedule 1 item 6: amended, on 30 January 2021, by section 161 of the Trusts Act 2019 (2019 No 38).

Schedule 1 item 18: amended, on 30 January 2021, by section 161 of the Trusts Act 2019 (2019 No 38).

Schedule 2

Further provisions applying in respect of the Church Property Trustees

s 13

1 Meetings of members of Church Property Trustees

- (1) The chairperson of the Church Property Trustees is the Bishop.
- (2) The members of the Church Property Trustees must elect one of themselves as a deputy chairperson to chair meetings of the members in the absence of the chairperson.
- (3) In the absence of both the chairperson and deputy chairperson from a meeting of members, the members must elect one of the members present to act as chairperson for that meeting.
- (4) A quorum for a meeting of the members of the Church Property Trustees is 5 members.
- (5) A meeting of members of the Church Property Trustees must decide matters before it by—
 - (a) consensus, if possible; but
 - (b) in any event, by a majority of the members present at the meeting.

2 Voting

- (1) Every member of the Church Property Trustees has 1 vote.
- (2) The chairperson decides whether voting is by voice or show of hands.
- (3) The chairperson has a casting vote.

3 Matters in which Bishop has personal interest

- (1) If the Bishop has a personal interest in a matter before the Church Property Trustees, the Bishop—
 - (a) must not attend or participate in a meeting or part of a meeting of the Church Property Trustees at which the matter is considered or voted on;
 - (b) is not to be treated as a member for the purposes of whether a quorum is present at the meeting;
 - (c) must not cast a vote or a casting vote on the matter at the meeting.
- (2) Without limiting the matters in which the Bishop has a personal interest, the Bishop has a personal interest in the matters specified in sections 15 and 16(a), (b), (g), (to the extent that it relates to the Bishop), and (h)(i).

4 Unanimous resolution

- (1) A resolution in writing, signed or assented to by each member of the Church Property Trustees, is as valid and effective as if it had been passed at a meeting of the members duly convened and held.
- (2) Such a resolution may consist of several documents (including faxes or other similar means of communication) in like form each signed or assented to by 1 or more members.

5 Professional fees and charges

A member of the Church Property Trustees is entitled to be paid all professional, business, or trade charges for work done by the member, or by the member's employee or business partner, in relation to trust property.

6 Chairperson may reserve matters for consideration of Synod

- (1) The chairperson of the Church Property Trustees may reserve for the decision of the Synod any matter raised for consideration by the Church Property Trustees.
- (2) The Synod must not decide under subclause (1) to rescind or cancel any contract or agreement or any sale, mortgage, lease, or other disposition of any part of the property.

7 Method of entering into contracts and other obligations

- (1) Contracts and other obligations which, if entered into by a natural person, would by law be required to be by deed, may be entered into by the Church Property Trustees in writing under its common seal and signed by 2 or more of its members whose signatures are witnessed by a person who is not a member.
- (2) Contracts and other obligations which, if entered into by a natural person, would by law be required to be in writing, may be entered into on behalf of the Church Property Trustees in writing by a person acting under the express authority of the Church Property Trustees.
- (3) Contracts and other obligations which, if entered into by a natural person, would by law not be required to be in writing, may be entered into on behalf of the Church Property Trustees in writing or orally by persons acting under the express authority of the Church Property Trustees.

8 Register of contracts and obligations entered into under common seal

- (1) The Church Property Trustees must maintain a register of all contracts and obligations it enters into under its common seal.
- (2) The register must contain details of the contracts and obligations sufficient to identify them.

9 Bylaws

- (1) The Church Property Trustees may make bylaws for 1 or more of the following purposes:
 - (a) to regulate the proceedings of the Church Property Trustees, including the times and places of its meetings:
 - (b) the management of the property and affairs of the Church Property Trustees:
 - (c) the employment of trust managers, agents, and employees.
- (2) A bylaw has effect and applies according to its tenor.
- (3) A bylaw has no effect unless, before the meeting of the Church Property Trustees at which the bylaw is made, not less than 2 clear days' notice in writing is given to each member of the Church Property Trustees of the time, place, and purpose of the meeting.
- (4) A bylaw or a provision of a bylaw has no effect to the extent that it is inconsistent with the provisions of—
 - (a) this Act; or
 - (b) any canon or ecclesiastical law or regulation in force in the diocese under the authority of the Synod.

10 Minutes

- (1) The Church Property Trustees must ensure that minutes are kept of all proceedings at its meetings.
- (2) The minutes for each meeting of the Church Property Trustees must be signed by the chairperson.
- (3) The minutes must be made available to members of the Church in the diocese at reasonable times and places.
- (4) Subclause (3) applies subject to any restrictions or prohibitions imposed by the Bishop.
- (5) The minutes, as signed by the chairperson, are—
 - (a) admissible in evidence in all courts and before any person authorised to take evidence; and
 - (b) prima facie evidence of the proceedings they relate to.

Schedule 3

Enactments repealed

s 54

Church Property Trust Ordinance 1854, Session II, No 3

Church Property Trust Amendment Ordinance 1859, Session XI, No 6

Church Property Trust Amendment Ordinance 1867, Session XXVII, No 12

Church Property Trust (Canterbury) Act 1879 (1879 No 4 (P))

Church Property Trust (Canterbury) Act 1887 (1887 No 3 (P))

Church Property Trust (Canterbury) Act 1889 (1889 No 2 (P))

Church Property Trust (Canterbury) 1879 Amendment Act 1906 (1906 No 1 (P))

Church Property Trust (Canterbury) 1879 Amendment Act 1915 (1915 No 1 (P))

Church Property Trust (Canterbury) 1879 Amendment Act 1927 (1927 No 1 (P))

Church Property Trust (Canterbury) 1879 Amendment Act 1934 (1934 No 4 (P))

Church Property Trust (Canterbury) 1879 Amendment Act 1962 (1962 No 3 (P))

Church Property Trust (Canterbury) 1879 Amendment Act 1964 (1964 No 2 (P))

Church Property Trust (Canterbury) 1879 Amendment Act 1990 (1990 No 1 (P))

Notes

1 *General*

This is a consolidation of the Anglican (Diocese of Christchurch) Church Property Trust Act 2003 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 *Amendments incorporated in this consolidation*

Secondary Legislation Act 2021 (2021 No 7): section 3

Trusts Act 2019 (2019 No 38): section 161

Unit Titles Act 2010 (2010 No 22): section 233(1)