

The Synod of the Diocese of Grafton in pursuance of the powers in that behalf conferred upon it by the Constitutions for the management and good government of the Church of England within the State of New South Wales and of all powers vested in the said Synod by the Church of England Trust Property Act 1917 and of all other powers thereunto enabling it ordains declares determines directs and rules as follows:—

**SHORT TITLE AND PARTS.**

- 1. This Ordinance may be cited as the 'Church Trust Property Ordinance 1934' and is divided into parts as follows:—
  - Part 1. Repeals and Declarations, ss. 2—3.
  - Part 2. Interpretation, S. 4.
  - Part 3. The Corporate Trustees, ss. 5—15.
  - Part 4. Vesting Church Trust Property, ss. 16—21.
  - Part 5. Powers and duties of Corporate Trustees, ss. 22—26.
  - Part 6. Pooling, S. 27.
  - Part 7. Property vested in Bishop, ss. 28—29.
  - Part 8. Property vested in Separate Trustee, ss. 30—33.
  - Part 9. Ordinances and Delegation of Powers, ss. 34—43.

**PART 1.**

**REPEALS AND DECLARATIONS.**

2. (a) The Ordinances mentioned in the Schedule to this Ordinance are hereby repealed, but the said repeal shall not affect the body of trustees duly constituted as The Corporate Trustees of the Diocese of Grafton; the persons the members of the said body of trustees; property vested, acts and things validated or certificates given under the said Ordinances or any of them; provided further that this Ordinance shall not be held to revive any Ordinances repealed by the said Ordinances.

(b) Except so far as there is anything in this Ordinance inconsistent therewith this Ordinance shall apply to all matters and things made, done or commenced under the said repealed Ordinances and at the commencement of this Ordinance of any force or effect or capable of acquiring any force or effect by virtue of the said repealed Ordinances as if this Ordinance had been in force at the time they were made done or commenced and they were made done or commenced hereunder.

**DECLARATION.**

3. The members of the Corporate Trustees of the Diocese of Grafton are hereby declared to have been elected in conformity with the provisions of the Church of England Trust Property Act 1917 and all acts matters and things done or

**THE CHURCH TRUST PROPERTY ORDINANCE, 1934**

**AN ORDINANCE**

To consolidate and amend the Ordinances relating to property held upon any trust for the use, benefit or purposes of the Church of England in the Diocese of Grafton; to provide for governing and controlling the management and investment of the said property; to regulate the procedure in the initiation of Ordinances under the Church of England Trust Property Act 1917 and amendment thereto and to delegate certain powers and functions in pursuance of the provisions of the said Act.

## PART II.

### INTERPRETATION.

4. In this Ordinance unless inconsistent with the context or subject matter:—

“Registrar” means the Registrar of the Diocese duly appointed by the Bishop-in-Council and in his absence the Acting Registrar so appointed and acting for him.

“Secretary” means the Secretary of the Corporate Trustees appointed in accordance with this Ordinance and in his absence the Acting Secretary appointed by the Corporate Trustees to act for him.

“The Corporate Trustees” means the Corporate Trustees of the Diocese of Grafton.

“Separate Trustee” means any trustee or trustees or body of trustees whether incorporated or not other than The Corporate Trustees of the Diocese of Grafton or The Bishop of the Diocese of Grafton.

“Parish” means Parish, Parochial District or other district.

“Parochial Council” means the Parochial Councillors and Churchwardens of the respective Parishes or districts acting together

“Incumbent” shall mean Rector, Vicar or other holding a Cure of Souls.

## PART III.

### TRUSTEES.

#### THE CORPORATE TRUST.

5. The number of members of the corporate body constituting the Corporate Trustees of the Diocese of Grafton shall be six of whom the Bishop of the Diocese shall ex-officio be a member.

6. Any three of the Corporate Trustees shall form a quorum and shall have and may exercise all the powers authorities and functions which are conferred upon the said Trustees by this Ordinance or by any Synodical Ordinance to be hereafter in force.

7. The proceedings of the Corporate Trustees shall not be invalid in consequence only of there being a vacancy in the Corporate Trustees at the time of such proceedings so long as there are four Trustees.

8. The Bishop shall be Chairman. In his absence the Trustees shall elect one of the members present to be Chairman. The Chairman shall have a deliberative vote only.

10. The Registrar of the Diocese for the time being shall be the Secretary of the Corporate Trustees.

The Corporate Trustees are hereby authorised to pay such emoluments as they consider necessary to carry out the provisions of this Ordinance.

12. The Secretary shall at and within the building known as the Bishop's Registry at Grafton have the custody of the Common Seal of the Corporate Trustees and in addition to other duties hereinafter stated or assigned to him under Section 15 hereof shall carry out the provisions contained in Sections 42 and 43 of the Church of England Trust Property Act, 1917.

13. The affixing of the Common Seal of the Corporate Trustees shall be verified by the signature of not less than three of the Corporate Trustees and any deed or instrument so sealed shall bear on the face thereof a declaration in or to the effect of Form 1 hereunder.

### FORM 1.

The Common Seal of the Corporate Trustees of the Diocese of Grafton was hereto affixed pursuant to a resolution passed at a duly constituted meeting of the said Trustees held on the ..... day of ..... 19 ..... in the presence of .....

14. Any cheque or withdrawal form made pursuant to a resolution passed at a duly constituted meeting of the Corporate Trustees for the purpose of operating upon any fund or funds the possession of the said Corporate Trustees deposited with any Savings Bank or other banking institution signed by any two of the Corporate Trustees and countersigned by the Secretary or in his absence the Acting Secretary for the time being shall be as effectual as if the same had been made and signed by all of the Corporate Trustees.

### RULES AND REGULATIONS.

15. The Corporate Trustees may subject to the provisions of the Church of England Trust Property Act 1917 and of this Ordinance make rules and regulations for the transaction of business.

## PART IV.

### VESTING CHURCH TRUST PROPERTY.

16. All Church Trust Property except as hereinafter provided including Capital Funds of the Diocese, Endowment Funds, Church lands and Funds acquired for the purpose of erecting buildings on Church lands shall be vested in the Corporate Trustees.

#### **TRUSTEES TO ACCEPT OR REJECT TRANSFER.**

17. The Corporate Trustee may accept or reject the transfer of any property which may be offered to them for purposes of Church Trust Property and shall in all cases report any action to the next ensuing session of Synod.

#### **TRUST TO BE DECLARED.**

18. Whenever any Church Trust Property is vested in the Corporate Trustees the purpose of the Trust and the uses to which it is held shall be ascertained and a declaration of Trust in accordance therewith shall be executed by the Corporate Trustees and lodged at the Bishop's Registry to be filed with the relative deed or other documents belonging to the parish or institution concerned.

19. The Corporate Trustees shall hold the legal estate of such property as shall be vested in them and preserve the same for the purposes set forth in the respective instruments of trust, but the care of any Church Clergy House or School House thereon or other parochial property and the management of the affairs thereof shall be exercised by Parish Councils as hereinafter provided subject nevertheless to the observance of any special trusts affecting such management which shall be in force for the time being and the Trusteeship of such sites shall not confer or impose upon any Corporate Trustee any right duty or obligation other than that of permitting the same to be used for the purposes of the Church School Clergy House or other Parochial building erected or which shall be erected thereon but all other rights duties and obligations of ownership shall belong to and rest upon the Parish Council for the time being.

20. Notwithstanding anything to the contrary herein contained the furniture of every Church and the Church books, muniments records and sacred vessels of every Parish and all other Parochial furniture shall be and be deemed to be vested in and be the property of the Corporate Trustees. But the custody, care and control of such furniture, books, muniments, records and sacred vessels shall remain with the Churchwardens of the respective Churches.

21. The Provisions contained in Section 19 shall not apply to the Cathedral Church of the Diocese.

#### **PART V.**

#### **POWERS OF CORPORATE TRUSTEES.**

22. The Corporate Trustees are hereby empowered to invest Church Trust Property in one or more of the following investments with power to transfer, vary or realise all or any such investments and deal with all or any securities in respect thereof as the said Trustees may think fit. Provided always that in the case of any Church Trust Property which is for the time being subject to express trusts relating to the manner and mode of investment thereof the said Trustees shall hold such

Church Trust Property subject to investment in terms prescribed 1. by such express trust and not otherwise.

(a) Any public funds or Government stock or Government securities of the Commonwealth of Australia or any State thereof or the Dominion of New Zealand.

(b) Any Debentures or securities issued by the Municipal Council of Sydney or any Municipal or Shire Council in New South Wales.

(c) Any Debentures or securities guaranteed by the Commonwealth Government.

(d) Any public funds or Parliamentary stocks or Government securities of the United Kingdom.

(e) Deposit in the Commonwealth Bank of Australia.

(f) Any of the stocks, funds or securities for the time being authorised for the investment of cash under the control or subject to the order of the Supreme Court of New South Wales.

(g) The said Trustees may also when necessary place money on temporary deposit at interest or on current account with any bank in the name of the said Trustees pending the investment or disposal of such moneys.

#### **MANAGEMENT EXPENSES.**

23. It shall be lawful for the Corporate Trustees to charge against the income of each Church Trust Property:—

(a) The special charge connected therewith.

(b) Such sum or sums as may be authorised under Section 11 hereof.

(c) Such proportionate sum or sums as shall be required to meet all necessary costs and expenses incurred in or about the execution of the Trusts under the provisions of this Ordinance.

24. The Corporate Trustees shall pay interest at such rate or rates and at such time or times as the said Trustees shall from time to time determine to the person or persons entitled to receive income from any Church Trust Property held by the Corporate Trustees for investment or management provided that the rate of interest so paid be not less than the interest earned less cost of management under Section 23.

#### **BOOKS TO BE KEPT.**

25. The Corporate Trustees shall cause the accounts of all transactions of the said Trustees to be regularly entered in proper books which shall be kept for the purpose by the Registrar of the Diocese or such other person as may be appointed by Bishop-in-Council and such books and accounts shall be audited by the Diocesan Auditor annually.

#### **YEARLY STATEMENT AND BALANCE SHEET.**

26. The Corporate Trustees shall supply to the Bishop-in-Council after the close of each financial year a balance sheet

and statement of accounts showing the whole of the transactions of the said Trustees during the previous year in order that such balance sheet and statement of accounts may be duly presented to Synod at its next session following and after the said balance sheet and statement of accounts have been received and adopted by the Synod shall cause them to be published in the next issue of the official Year Book of the Diocese.

**PART VI.**

**POOLING OF INVESTMENTS.**

27. It shall be lawful for the Corporate Trustees for the purposes of investment to pool separate Church Trust properties under their control and management.

**PART VII.**

**PROPERTY VESTED IN THE BISHOP.**

28. The Bishop may as a corporation sole act as Trustee of property and funds vested in him upon trust for Parochial or diocesan purposes. In all such cases during the vacancy of the See the Corporate Trustees of the Diocese of Grafton shall become the Trustee of such properties and/or funds and shall have power to receive rents and interest and to recover the same to receive payment of principal moneys and to invest the same in securities authorised by law for the investment of trust funds and generally to act as Trustees of the said properties with power to make any payments out of the income which may be necessary for the protection and preservation of any of the properties administered.

29. The provisions contained in Section 26 shall mutatis mutandis apply to the Bishop as Trustee.

**PART VIII.**

**PROPERTY VESTED IN SEPARATE TRUSTEE.**

30. Any Church Trust property which by the provisions of the instrument creating such Trust shall belong to or become vested in any trustee (hereinafter called Separate Trustee) other than the Corporate Trustees of the Diocese of Grafton shall be so held managed and controlled by the said Separate Trustee subject to the provisions of the Church of England Trust Property Act 1917 and the due performance of duties by this Ordinance required to be performed by any Separate Trustee.

**DUTIES OF SEPARATE TRUSTEE.**

31. Whenever any Church Trust Property is vested in any Separate Trustee it shall be the duty of such Trustee to:—  
(a) Execute a declaration of Trust in accordance with the purpose of the Trust and to lodge such declaration at the

Bishop's Registry to be filed with the relative deeds or other documents the property of the parish or institution concerned.  
(b) To keep proper accounts.

(c) To supply to the Bishop-in-Council not later than 30 days after the close of each financial year a balance sheet and statement of accounts for the previous financial year for presentation to Synod and upon adoption by Synod for publication in the Year Book of the Diocese.

(d) To permit any certificated auditor or firm of auditors authorised in that behalf by the Bishop-in-Council to examine such accounts and relative documents and to audit any accounts relating to the Trust or Trusts.

**NAMES TO BE REGISTERED.**

32. The name of every Separate Trustee shall be entered in a book to be kept by the Registrar of the Diocese and the death removal or resignation of any such trustee shall be duly entered therein.

**TRUSTS MAY BE CONVEYED TO CORPORATE TRUSTEES.**

33. Any Separate Trustee of Church Trust Property may if he so desire convey such property to the Corporate Trustees upon the original trusts and such conveyance when it has been accepted by the Corporate Trustees shall discharge such conveying Separate Trustees from all subsequent duties in respect of such Trust.

**PART IX.**

**RULES AND ORDINANCES.**

**PETITION.**

34. No rule or Ordinance shall be initiated under the Provisions of Parts 5, 6, 7 of "The Church of England Trust Property Act, 1917 (No. 21)," except upon a petition first presented with at least 20 printed or typewritten copies of the proposed Ordinance which petition shall be signed by one or more of the parties applying.

**NOTICE TO BE PUBLISHED.**

35. In the case of Church Trust Property which is held on trust for and on behalf of any parish no such petition shall be presented unless a notice containing the matters hereinafter mentioned shall within three months immediately before the presentation thereof and during a period of 21 days before the presentation of such petition be posted at or upon the main entrance door of the principal Church of any Parish affected by such proposed Ordinance and of any other Church of such Parish which may be specially affected by the same and the attention of the congregation of such Church or Churches shall be directed

to the terms of such notice by the clergy officiating at such Church or Churches at the ordinary services held at least one Sunday during such period of 21 days.

#### NOTICE TO STATE INTENTION.

36. Every such notice shall state the intention to apply to the Synod for the proposed Ordinance and the general objects of such Ordinance and shall also contain a notification that every petition in opposition to such Ordinance shall be presented with the petition for such Ordinance.

#### CERTIFICATE.

37. Every such initiating petition shall state that such notice has been given as aforesaid and the production of a certificate from the incumbent shall be sufficient proof of such notice having been given.

#### PETITION TO BE SENT TO BISHOP-IN-COUNCIL.

38. Every such petition shall be addressed to the Synod and shall be submitted to the Bishop-in-Council before the last meeting of the said Council preceding a Session of Synod together with copies of the proposed Ordinance.

#### BISHOP-IN-COUNCIL TO REPORT ON ORDINANCE.

39. Every such Ordinance shall be examined by the Bishop-in-Council who shall hear such evidence for or against such Ordinance as the Council may think necessary and shall present a report thereon at the next session of Synod and the report shall specify:—

- (a) Whether the preamble has been proved and if not in what respects.
- (b) What amendments (if any) are required in the Ordinance.
- (c) The Bishop-in-Council's opinion on all matters at issue between the promoters of the Ordinance and any person opposing it; and
- (d) The reasons why Bishop-in-Council is of the opinion that the Ordinance should or should not be passed.

#### FEE.

40. Before any such Ordinance shall be read a first time a fee of £5/5/ shall be paid to the Bishop-in-Council by the parties applying.

#### PREAMBLE TO ORDINANCE.

41. Every such proposed Ordinance shall contain a preamble reciting the circumstances on which such Ordinance is founded and bringing the case within the provisions of the aforementioned Act and stating the matters in reference to which the Ordinance is sought and the Bishop-in-Council shall require proof of the allegations contained in the preamble.

#### DELEGATION OF POWERS IN CERTAIN CASES.

The Bishop-in-Council of the Diocese as constituted in the Bishop-in-Council Ordinance 1934 is hereby appointed a Committee or Council under Section 40 of the Church of England Trust Property Act 1917 and may during the recess of Synod exercise in place of the Synod of the Diocese such of the powers and functions and do and make such of the things referred to in such Act as may be done by the Synod of the Diocese under the provisions of Sections 12, 13, 14, 15, 19, 24, 25, 26, 27, 28, 31, 32, 37 and 39 of the Church of England Trust Property Act 1917 and shall report to the Synod at the next session all actions taken under this Section.

#### PROCEDURE.

43. The procedure of the Bishop-in-Council in acting under Section 42 hereof shall be in accordance with the Standing Orders of Synod for the time being mutatis mutandis and in accordance with the foregoing Sections hereof except that the Bishop-in-Council need not present a report under Section 39 hereof.

#### SCHEDULE.

Date of Ordinance.	Title of Ordinance.	Extent of Repeal.
1918	Delegation of Powers Ordinance.	The Whole.
1918	The Parochial Ordinance 1918.	Part IV.
1919	The Regulation of Land Sales Ordinance.	The Whole.

We hereby certify that this Ordinance was passed by the Synod of the Diocese of Grafton on the 25th day of September, 1934.

F. S. DUTTON, Clerical Secretary.

I. C. DIGHT, Lay Secretary.

I assent to this Ordinance.

JOHN WILLIAM GRAFTON,

September 26, 1934.