

SECOND SCHEDULE
THE ST COLUMBA ANGLICAN SCHOOL FOUNDATION CONSTITUTION

1. Title

This is the constitution for **ST COLUMBA ANGLICAN SCHOOL FOUNDATION**

2. Definitions

ACNC Act means the Australian Charities and Not-for-profits Commission Act 2012 (Cth).

Anglican Church means the Anglican Church of Australia.

Bishop means the present Bishop of Grafton, his or her successors in office and any person formally appointed to exercise the powers of the Bishop during any vacancy or absence from the Diocese.

Bishop-in-Council means the Council appointed to assist and advise the Bishop in the conduct of the Synod business or any body delegated by the Bishop-in-Council to exercise some or all of its rights and powers under this constitution.

Bodies Corporate Act means the Anglican Church of Australia (Bodies Corporate) Act 1938 (NSW) as amended.

Business Manager means the person occupying the position of Business Manager from time to time of the School.

Chair means the person holding the office of the Chairperson of the Council.

Church Trust Property means property managed by the Council in accordance with the Anglican Church of Australia Trust Property Act 1917 (as amended).

Council means the governing body of the Foundation.

Councillor means a person who is a member of the Council.

Deputy Chair means the person holding the office of the Deputy Chair of the Council.

Diocese means the corporation known as the Anglican Diocese of Grafton or the region identified as the Diocese of Grafton by the Anglican Church, as the context requires.

Diocesan Policy means a requirement, restriction, policy or procedure applicable to foundations in the Diocese which is either:

- (a) set out in, or approved in accordance with, an ordinance adopted by the Synod or Bishop-in-Council; or
- (b) approved by the Bishop-in-Council.

Financial Year means the year from 1 January to 31 December.

Foundation means the body corporate incorporated under the Bodies Corporate Act known as St Columba Anglican School Foundation.

Grafton Anglican Schools Commission means the body established pursuant to the Schools Commission Ordinance 1997 as amended.

Member of the Anglican Church means a baptised person who attends the public worship of the Anglican Church and who declares membership of the Anglican Church and is not a member of any other church.

Ordinance means any ordinance adopted by the Synod or the Bishop-in-Council.

Principal means the person occupying the position of Principal from time to time of the School.

School means St Columba Anglican School Council Incorporated ABN 42 149 714 015 trading as St Columba Anglican School and Columba Cottage Early Learning Centre.

Surplus Assets means any assets of the Foundation that remain after paying all debts and other liabilities of the Foundation, including the costs of winding up.

Secretary means the person holding the office of Secretary of the Council.

Synod means the Synod of the Diocese.

3. Transitional

- 3.1. This constitution amends the constitution of the Foundation which was in force immediately before the adoption of this form of the constitution.
- 3.2. Any action undertaken in accordance with the requirements of the previous version of the constitution continues to be in effect following the adoption of this constitution as if properly done in accordance with this constitution.

4. Aims and Objectives of the Foundation

- 4.1. The objects of the Foundation are for the charitable objects and purposes for the advancement of education by providing financial support for and the endowment of the School by any means including:
 - 4.1.1. Creating opportunities for the School to attract and retain the continuing interest and financial support of members of the community, past students, parents of students and friends;
 - 4.1.2. Soliciting donations and gifts to or for the benefit of the School from members of the community, past students, parents or friends and from any other source deemed appropriate to the promotion of the objects of the Foundation;
 - 4.1.3. Raising funds for the acquisition of land or the acquisition, construction or maintenance of buildings used or to be used by the School and to acquire, construct or maintain the buildings;
 - 4.1.4. Promoting or assisting in the educational, sporting, cultural and extracurricular activities of all kinds of the School and to disseminate information concerning the School or any such activities;
 - 4.1.5. Providing financial assistance for the acquisition by the School of anything reasonably required for the benefit of the School;
 - 4.1.6. Attracting and encourage bequests, legacies and all forms of deferred gifts for the benefit of the School;
 - 4.1.7. Establishing a Scholarship Fund for providing financial assistance by scholarships and bursaries for students whose presence will add to the richness and diversity of the student body of the School but whose financial situations would otherwise prevent them from enrolling at the School;

- 4.1.8. Acting as a trustee of trusts and funds that may be established for the benefit of the School from time to time;
- 4.1.9. Providing financial support for the School in its efforts to foster among pupils, staff and parents an understanding of and a commitment to a Christian way of life according to the principles and traditions of the Anglican Church;
- 4.1.10. Providing financial support and relief to individuals and families who, due to death, serious illness or other unforeseen events, may find themselves in dire circumstances;
- 4.1.11. Promoting financial assistance for the employment of teaching staff with special skills, carrying out of research, the provision of scholarships and bursaries, visits from distinguished scholars and others with qualifications which enable them to make a substantial contribution to the education of the students and teaching staff of the School;
- 4.1.12. Providing financial support and relief to indigenous Australians who are, in the opinion of the Council, requiring financial assistance for their education;
- 4.1.13. Providing funds for academic prizes, scholarships and bursaries;
- 4.1.14. Reaching out to members of the community to ensure they are continually included, recognised, informed and involved in the development and growth of the School;
- 4.1.15. Promoting public awareness of these objectives; or
- 4.1.16. Undertaking and pursue all such other similar, related or compatible objects as may from time to time be considered appropriate by the Council.

5. Authority, Powers and Duties

5.1. Foundation Powers

- 5.1.1 The Foundation is constituted as a body corporate under the Bodies Corporate Act and subject to this constitution has all the powers of a natural person and a body corporate constituted under the Bodies Corporate Act and the ACNC Act.

5.2 Council Powers

- 5.2.1. The Council will govern, control and supervise the Foundation's business and affairs in accordance with the provisions of any relevant Act of Parliament, Diocesan Policy and this constitution.

5.3. Duties of Councillors

- 5.3.1. The Councillors shall comply with their duties under law as officeholders of the Foundation, and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:
 - a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Councillor of the Foundation;
 - b) to act in good faith in the best interests of the Foundation and to further the charitable purposes of the Foundation set out in clause 4.1;

- c) not to misuse their position as a Councillor;
- d) not to misuse information they gain in their role as a Councillor;
- e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 5.4;
- f) to ensure that the financial affairs of the Foundation are managed responsibly; and
- g) not to allow the Foundation to operate while it is insolvent.

5.4. Conflicts of Interest

- 5.4.1. A Councillor must disclose to the other Councillors the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of the Council (or that is proposed in a circular resolution).
- 5.4.2. The disclosure of a conflict of interest by a Councillor must be recorded in the minutes of the meeting.
- 5.4.3. Each Councillor who has a material personal interest in a matter that is being considered at a meeting of Councillors (or that is proposed in a circular resolution) must not, except as provided under clauses 5.4.4:
 - a) be present at the meeting while the matter is being discussed; or
 - b) vote on the matter.
- 5.4.4. A Councillor may still be present and vote if:
 - a) their interest arises because they are a Councillor of the Foundation, and the other Councillors have the same interest;
 - b) their interest relates to an insurance contract that insures, or would insure, the Councillor against liabilities that the Councillor incurs as a Councillor of the Foundation;
 - c) their interest relates to a payment by the Foundation of any contract relating to an indemnity that is allowed under the Corporations Act 2001 or the ACNC Act; or
 - d) the Councillors who do not have a material personal interest in the matter pass a resolution that:
 - (i) identifies the Councillor, the nature and extent of the Councillor's interest in the matter and how it relates to the affairs of the Foundation; and
 - (ii) says that those Councillors are satisfied that the interest should not stop the Councillor from voting or being present.
- 5.4.5. If a circumstance arises where all Councillors have the same material conflict of interest then:
 - a) The Council must refer the matter to the Bishop within 21 days; and
 - b) The Bishop may authorise the Council, with or without conditions, to make a decision despite the conflict of interest or the Bishop may refer the issue to the Bishop-in-Council for determination.

- 5.4.6 If an issue is referred to the Bishop-in-Council under clause 5.4.5, Bishop-in-Council may determine the issue on behalf of the Council and the determination of the Bishop-in-Council shall be binding on the Council.
- 5.4.7 Notwithstanding any provision or legislation to the contrary, in doing an act Councillors will consider the best interests of the Diocese provided the act does not cause the Foundation to become insolvent. In considering the interests of the Diocese, Councillors will be taken to be acting in good faith and in the best interest of the Foundation.

5.5. Council Accountability

- 5.5.1. The Council will be accountable to the Synod and the Bishop-in-Council for the governance and stewardship of the Foundation.
- 5.5.2. Subject to the requirements of any relevant Act of Parliament, the Bishop-in-Council is entitled to have access to, and take copies of, all financial reports or financial records, Council papers and reports, registers and other information and records maintained by the Foundation.
- 5.5.3. The Council will provide Grafton Anglican Schools Commission with an annual report on the progress and condition of the Foundation.
- 5.5.4. The Council will provide the School with an annual report on the progress and condition of the Foundation and it will provide other information as requested by resolution of the Council of the School from time to time.
- 5.5.5. The Council will report to the Synod, the Bishop-in-Council, or the Grafton Anglican Schools Commission as required by Diocesan Ordinance or Diocesan Policies and it will provide other information as requested by resolution of the Bishop-in-Council from time to time.

5.6. Council Responsibilities

- 5.6.1. The Council will:
- a) pursue the aims and objectives of the Foundation as stated in this constitution;
 - b) provide oversight and monitor the performance of all aspects of the operations of the Foundation;
 - c) ensure compliance by the Foundation with all laws and Diocesan Ordinances; and
 - d) comply with Diocesan Policies in regard to the operation of the Foundation.

5.7. Property Management

- 5.7.1. All property of any kind held, used or to be used for the purposes of the Foundation is Church Trust Property.
- 5.7.2. The Council shall in accordance of section 24 of the Anglican Church Trust Property Act 1917 (as amended) govern and control the management and use of property for the purposes of the Foundation as expressed in the aims and objectives of the Foundation set out in this constitution.

- 5.7.3. The Council may:
- a) purchase, lease or otherwise acquire rights in real property; and
 - b) sell, mortgage, exchange, lease or otherwise dispose of rights in real property
- for purposes of the Foundation provided that it has first obtained the written approval of the Bishop-in-Council.
- 5.7.4. The Council may improve the property and premises utilised by the Foundation.

5.8. Financial Management

- 5.8.1. The assets and income of the Foundation will be applied solely in furtherance of the objects of the Foundation and no portion of the income or assets of the Foundation may be paid or transferred, directly or indirectly to any Councillor, except as provided for in clause 5.8.2.
- 5.8.2. Nothing in clause 5.8.1 prevents the payment in good faith by the Councillors of:
- a) remuneration to any officers or employees of the Foundation for services actually rendered to the Foundation;
 - b) making a reasonable payment to a Councillor in carrying out the Foundation's charitable objects and purposes; or
 - c) an amount to any Councillor in return for any services or goods actually rendered or supplied to the Foundation in the ordinary and usual course of business (whether by the Councillor or any corporation or partnership in which the Councillor has an interest or is a member) if the terms of the contract including price are on reasonable commercial terms and have the prior approval of the Councillors.
- 5.8.3. The Council will make financial arrangements and decisions for the present and future operation of the Foundation, subject to Diocesan Policies.
- 5.8.4. The Council may borrow funds and provide security for the borrowed funds subject to the requirement to seek the approval of the Bishop-in-Council to mortgage Church Trust Property.
- 5.8.5. The Council may invest money in accordance with the provisions of the Anglican Church Trust Property Act 1917 (as amended) or any resolution or policies of the Bishop-In-Council.
- 5.8.6. The Council may enter into contracts of any kind subject to any restriction set out in any Diocesan Policy.
- 5.8.7. The Council may lend and advance money or give credit to any person or body subject to Diocesan Policies.
- 5.8.8. The Council may open and operate bank accounts subject to Diocesan Policies.
- 5.8.9. The Council may determine financial delegations and levels of authority to sign on the Foundation's behalf, subject to any Diocesan Policies.
- 5.8.10. The Council may receive donations and apply the proceeds for any purpose in support of the aims and objectives of the Foundation, taking into account any request of the donor.

5.8.11. The Council may approve fundraising strategies and structures for the benefit of the Foundation.

5.9. Delegation

5.9.1. The Council may delegate a function or power of the Council to a person or another body.

5.9.2. A delegation by the Council:

- a) is subject to any condition or limitation specified by the Council; and
- b) is revocable at will by the Council; and
- c) does not prevent the Council from acting in any particular matter itself.

5.10. Committees

5.10.1. The Council may appoint subcommittees and Councillors to chair those committees.

5.10.2. The Council may co-opt non Councillors to serve on committees.

6. Council Membership

6.1. Principles of membership

6.1.1. The Councillors should have between them a broad range of interests, talents and experience to assist them to meet their responsibilities to the best advantage of the Foundation and as a ministry of the Anglican Church.

6.1.2. No person employed by the School may be a Councillor.

6.2. Council membership

6.2.1. The Council will comprise of Councillors in the following categories:

- a) Two persons appointed by the Bishop;
- b) Two persons nominated by the School and approved by the Bishop-in-Council; and
- c) Up to five persons nominated by the Council and approved by the Bishop-in-Council.

6.2.2. At least 50% of the membership of the Council should be constituted by persons who are members of the Anglican Church.

6.2.3. The Councillors may make recommendations to the Bishop-in-Council for the appointment of Councillors under 6.2.1 c) who:

- a) have made a significant philanthropic or other significant contribution to the objects and purposes of the Foundation or the School; or
- b) is a person who:
 - (i) is a parent of a current or past student of the School; or
 - (ii) a person with significant expertise, interests, talents or experience; and

who will complement and assist the Council in carrying out the objects and purposes of the Foundation to the best advantage of the School.

6.3. Appointment of Councillors

6.3.1. At the time of nomination for appointment or reappointment to the Council, all prospective Councillors must declare their support for the aims and objectives of the Foundation and the vision and values of the Diocese, in a format determined from time to time by the Bishop-in-Council.

6.4. Term of Council membership

6.4.1. The term of each Councillor will be 3 years.

6.4.2. All Councillors are eligible for reappointment to a maximum of 9 years served in total.

6.4.3. The initial terms of appointment may be varied by determination of the Council to ensure that not all positions become vacant at the same time.

6.4.4. In circumstances where the expiry of the term of a Member's membership would have a seriously adverse effect on the working of the Council, the Bishop-in-Council may, on the recommendation of the Grafton Anglican Schools Commission made after due consideration of a request by the Council, extend the Member's term as it thinks fit.

6.5. Vacancies

6.5.1. A vacancy occurs when a Councillor

- a) resigns;
- b) dies;
- c) becomes physically or mentally ill to a point that in the opinion of a majority of Councillors the incapacity interferes with the Councillor's ability to continue to carry out their function;
- d) becomes bankrupt;
- e) is convicted of an indictable offence;
- f) if appointed by the Bishop, is removed from office by the Bishop;
- g) if nominated by the School or the Council and approved by Bishop-in-Council, has his or her approval removed by Bishop-in-Council;
- h) is ineligible to hold office in the Anglican Church arising from a professional standards determination; or
- i) is absent without leave of Council from three consecutive meetings of Council.

6.6. Meetings of Council

6.6.1. The Council will hold ordinary meetings at least four times a year.

6.6.2. The meeting will be convened by either the Bishop or the Chair.

6.6.3. The Bishop, at his or her discretion, may attend meetings of the Council and, if present, may assume the chair at meetings of the Council.

- 6.6.4. Subject to clause 6.6.9, the person chairing a meeting of the Council will have a deliberative vote only and in the case of an equality of votes the motion will be considered to have been lost.
- 6.6.5. The greater of a majority of Councillors appointed or three Councillors will constitute a quorum at meetings of the Council.
- 6.6.6. A special meeting of Council may be convened to consider a specific item of business.
- 6.6.7. At least 7 days written notice shall be given to the Bishop and to each Councillor specifying the date, time and place of meeting and the business to be discussed for both ordinary and special meetings of Council.
- 6.6.8. The Council may:
 - a) Require the Principal and or the Business Manager to attend any of its meetings; or
 - b) Exclude the Principal and or the Business Manager from all or part of its meetings.
- 6.6.9. The Bishop will not have a right to vote at a meeting of the Council regardless of the capacity in which the Bishop attends the meeting.

6.7. Circular resolutions of Council

- 6.7.1 The Council may pass a circular resolution without a Council meeting being held.
- 6.7.2 A circular resolution is passed if all the Councillors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 6.7.3 or clause 6.7.4.
- 6.7.3 Each Councillor may sign:
 - a) a single document setting out the resolution and containing a statement that they agree to the resolution; or
 - b) separate copies of that document, as long as the wording of the resolution is identical in each copy.
- 6.7.4 The Foundation may send a circular resolution by email to the Councillors and the Councillors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- 6.7.5 A circular resolution is passed when the last Councillor signs or otherwise agrees to the resolution in the manner set out in clause 6.7.3 or clause 6.7.4.
- 6.7.6 The Secretary will table all circular resolutions that have been passed since a meeting of the Council at the next meeting of the Council.

7. Chair and Deputy Chair and other officers of the Council

- 7.1. The Chair of the Council must be a Councillor and will be appointed as Chair by the Bishop, following consultation with the Council.
- 7.2. The Chair may be removed from the office of Chair by the Bishop, following consultation with the Council.

- 7.3. Subject to clause 7.2 the Chair will hold the office of Chair for the balance of their term as a Councillor.
- 7.4. The Bishop may reappoint the Chair, subject to their continuing appointment as a Councillor.
- 7.5. The Council will elect a Deputy Chair from the Councillors to hold office for the balance of their term as a Councillor. The Deputy Chair is eligible for re-election, subject to their continuing appointment as a Councillor.
- 7.6. The Council shall appoint a person to act as Secretary.

8. Accounts, Audit and Reporting

- 8.1. The Council will comply with the requirements of any Diocesan Policy outlining the obligations of a Diocesan entity in regard to the preparation of annual budgets of income and expenditure, the keeping of accounts, the appointment of an auditor, and reporting to the Bishop-in-Council and the Grafton Anglican Schools Commission.
- 8.2. In general the Council will:
 - 8.2.1. prepare and adopt an annual budget of income and expenditure and regularly review performance against budget;
 - 8.2.2. ensure true accounts are kept in accordance with the relevant Australian Accounting Standards and other relevant professional reporting standards;
 - 8.2.3. appoint an independent and appropriately experienced registered auditor to conduct an annual audit of the financial statements and financial practices of the Foundation in accordance with Australian Accounting Standards Board standards;
 - 8.2.4. provide timely and regular financial reports to the Diocese;
 - 8.2.5. report not less than annually to the School;
 - 8.2.6. prepare, adopt, implement and review not less frequently than annually a business plan including financial forecasts and a risk management plan.
- 8.3. Subject to the requirements of any relevant Act of Parliament, the Bishop-in-Council may require the Foundation to furnish additional information on its affairs.

9. Insurance

- 9.1. The Council will arrange appropriate insurance cover through the Diocesan Master Insurance Policies, in accordance with Diocesan Policies.

10. Common Seal

- 10.1. The Common Seal of the Foundation will only be affixed to a document subject to a resolution of the Council.

11. Liabilities of Council

- 11.1. The Foundation will not execute or deliver any mortgage, or charge over the assets of the Foundation, or guarantee or indemnity unless the following clause is included therein -
- "Notwithstanding anything contained to the contrary, each of the parties hereto acknowledge and agree that neither the Foundation nor the Councillors will be liable for any amount pursuant to any expressed or implied obligations beyond the value of the Surplus Assets of the Foundation."
- or unless Bishop-in-Council authorises alternative wording having the same effect.
- 11.2. The Council and no other body has responsibility for ensuring that the Foundation properly discharges all its liabilities as and when they fall due.
- 11.3. The Council and its Councillors shall not, either individually or collectively, represent to any person or persons or corporation that the Bishop, the Synod or the Bishop-in-Council, or any person or persons or any other corporate body or corporation holding Church Trust Property for the Anglican Church in the Diocese, or any other corporate body constituted by or pursuant to the Bodies Corporate Act, or any unincorporated body established by the Synod shall or may meet or discharge all or any part of any liability or liabilities which have been or may or will be incurred wholly or partly by or on behalf of the Council.
- 11.4. Councillors will be indemnified for any loss or liability properly incurred by the Council for which they may become personally liable in so far as such liability was not incurred by reason of their misconduct or wilful default.

12. Winding Up

- 12.1. If the Foundation ceases to operate or is wound up, the Surplus Assets will be transferred to a body with charitable purposes substantially similar to, or substantially inclusive of, the purposes in clause 4.1 which primarily benefit one of the following bodies in the following order of priority:
- a) the School;
 - b) an Anglican school in the Diocese; or
 - c) if there is no such school willing or able to accept the transfer, then an Anglican school in another diocese of the Anglican Church; or
 - d) if there is no such school willing and able to accept the transfer, then a school conducted by another Christian denomination within the Commonwealth of Australia; or
 - e) if there is no such school willing or able to accept the transfer, then a body within the Commonwealth of Australia; and

which also prohibit the distribution of any surplus assets to its members to at least the same extent as the Foundation.

13. Amendment to the Constitution

- 13.1. This Constitution may be amended from time to time by the Bishop-in-Council, either at the request of the Grafton Anglican Schools Commission, the Council, or the initiative of the Bishop-in-Council.

- 13.2. This Constitution took effect on 8 December 2016 pursuant to The St Columba Anglican School Foundation Constitution Ordinance 2016.
- 13.3. This Constitution was amended by The St Columba Anglican School Foundation Constitution Ordinance 2016 Amending Ordinance 2023 which took effect on 21 September 2023.