

DIOCESE OF ARMIDALE

THE CORPORATE TRUSTEES ORDINANCE 2009

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NAME

This Ordinance shall be known as The Corporate Trustees Ordinance 2009.

LONG TITLE

An Ordinance to specify the powers of The Corporate Trustees of the Diocese of Armidale, a body corporate, to borrow monies, to specify matters in relation to membership and elections, proceedings, powers and authorities, duties and functions of such body, and to repeal the Corporate Trustees Ordinance 1935-78.

PREAMBLE

WHEREAS some banks now require to sight specific powers to borrow money on mortgage security prior to lending funds, this Diocese of Armidale is desirous of specifying the powers of the Corporate Trustees of the Diocese to borrow, and of specifying matters in relation to membership, elections, proceedings, powers authorities duties and functions of such body, and amending and re-enacting the said Ordinance; and

WHEREAS The Corporate Trustees of the Diocese of Armidale (hereinafter called "The Corporate Trustees") is a body corporate under the provisions of the Anglican Church of Australia Trust Property Act 1917 as amended (hereinafter called the said Act); and

WHEREAS pursuant to the said Act the Synod of the said Diocese has various powers and by Section 24 of the said Act the Synod may from time to time by ordinance provide and vary any provision for governing and controlling the management and use of church trust property vested in The Corporate Trustees and for all things incidental to such government and control; and

WHEREAS the Synod may pursuant to the Constitutions set forth in the Schedule to the Anglican Church of Australia Constitutions Act 1902 make ordinances upon and in respect of all matters and things concerning the order and good government

of the Church within the said Diocese including the management and disposal of all church property moneys and revenues; and
WHEREAS it is expedient to provide for governing and controlling the management and use of church property;

ORDINANCE

Now the Synod of the Diocese of Armidale assembled in pursuance of the powers conferred upon it by the Constitutions for the management and good government of the Anglican Church within the State of New South Wales and in pursuance of the powers conferred by the Anglican Church of Australian Trust Property Act 1917 (the Act), and of all other powers thereunto enabling HEREBY ORDAINS DECLARES DIRECTS AND RULES as follows:-

Repeal

1. The Corporate Trustees Ordinance 1935-78 is hereby repealed, but such repeal shall not affect the past operations thereof, nor anything done or commenced, nor any rights, privileges, obligations or liabilities acquired, accrued or incurred there-under, nor shall it revive any Ordinance heretofore repealed.

Definitions

2 In this Ordinance unless the contrary intention appears -

- (a) "board" means any council committee board or body constituted by or under the provisions of an ordinance whether incorporated or not to which the management control or user of any church trust property is thereby committed.
- (b) "church trust property" has the same meaning as in the Act.
- (c) "diocesan organisation or body" means any board carrying out any social educational or other purposes of the Church within the Diocese of Armidale.
- (d) "Diocesan Council" means the Diocesan Council of the Diocese of Armidale constituted under the Diocesan Council Ordinance 1935-1997 as amended.
- (e) "Furniture" means the furniture of a Church and shall include all articles pertaining to the furnishing of the Church for Divine Service, such as the Articles included in the "Ornaments of the Church" in what is commonly called the Ornaments Rubric of the Book of Common Prayer.

Membership and Elections

3.1 The Corporate body constituted under the provisions of the Church of England Trust Property Incorporated Act 1881 and known as "The Corporate Trustees of the Diocese of Grafton and Armidale" was by the operation of the Diocesan Corporate Trustees Ordinance 1896, Amendment Ordinance 1918 thenceforth made known as, and is hereby known as, "The Corporate Trustees of the Diocese of Armidale".

3.2 The members of The Corporate Trustees of the Diocese of Armidale (The Corporate Trustees) shall be the Bishop of Armidale and not more than six (6) other members. At least three (3) of the members shall be in Holy Orders and at least three (3) shall be laypersons who before their election shall declare themselves to be members of the Anglican Church of Australia having an active affiliation with the Church.

3.3 A Corporate Trustee must be a communicant member of the Church, and over twenty-one (21) years of age.

3.4 The members of The Corporate Trustees at the date when this Ordinance comes into operation are hereby continued in office.

3.5 Subject to section 12 of the Act and to clause 3.4 each member of The Corporate Trustees shall hold office for a term of six (6) years provided that each member whose term comes to an end under this clause shall continue to hold office until his or her successor is elected.

3.6 A member of The Corporate Trustees whose term of office expires is eligible for re-election as a member of The Corporate Trustees.

3.7 Each member of The Corporate Trustees who is elected by the Diocesan Council pursuant to the powers in section 12 of the Act, which powers are hereby delegated to the Diocesan Council pursuant to section 40 of the Act, shall hold office until the first day of the ordinary session of the Synod next following such election. Each member whose term comes to an end under this clause shall continue to hold office until his or her successor is elected.

3.8.1 Subject to subclauses 3.8.2 to 3.8.4, any election by the Synod pursuant to section 12 of the Act shall take place in accordance with the Synodal Elections Ordinance 1935-2002 and any ordinance which replaces or amends that Ordinance.

3.8.2 The elections to take place during any ordinary session of a Synod shall be for members whose office is declared vacant pursuant to section 12 of the said Act by that Synod in the course of that ordinary session.

3.8.3 The Diocesan Council shall bring before each ordinary session of a Synod resolutions declaring vacancies in respect of the office of members who, during the period commencing on the first day of the last ordinary session of a Synod preceding that session and ending on the day preceding the first day of that session, have either -

- (a) held office for a term of six (6) years since the date on which that member was last elected which term expired during that period,
- (b) been elected pursuant to clause 3.7 during that period.

3.8.4 For the purposes of the said ordinances, the elections to take place during any ordinary session of a Synod shall be the elections to the vacancies to be declared pursuant to the resolutions described in subclause 3.8.3.

3.8.5 No person shall be declared to be elected a member of The Corporate Trustees unless and until a vacancy has been declared pursuant to section 12 of the Act.

3.9 The Diocesan Council may, in the exercise of the powers conferred upon it to declare by resolution the existence of a vacancy in the office of a member of The Corporate Trustees by reason inter alia of the age of such member, have regard, subject to any special circumstances which it may deem relevant at the time of make such resolution, to the law relating to the retiring age of directors of public companies in New South Wales.

President, Chairman, and Secretary

4.1 The Bishop shall be President of The Corporate Trustees.

4.2 The Corporate Trustees shall elect a member to be Chairman at meetings from which the President may be absent and in the absence of the President and the Chairman may elect a member to be Deputy Chairman.

4.3 The Registrar of the Diocese for the time being shall be the Secretary to The Corporate Trustees and shall at and within the building known as the Diocesan Registry at Armidale have the custody of the Common Seal of the said corporate body and the Deeds and Certificates of Title comprising the properties vested in the corporate body.

Proceedings

5.1 A quorum for the transaction of business at a meeting of The Corporate Trustees shall be four (4) members of whom at least one (1) shall be a member in Holy Orders and at least one (1) shall be a member not in Holy Orders.

5.2 Subject to the provisions of this Ordinance, The Corporate Trustees may regulate its own proceedings and for that purpose has power to make, rescind or alter regulations from time to time.

5.3 The Trustees shall keep minutes and records of their proceedings in such manner and form as they may from time to time determine.

5.4 Whenever a majority of The Corporate Trustees present at a meeting and voting shall disagree with a direction or proposal of the Diocesan Council such disagreement may be referred back to the next meeting of Diocesan Council for further consideration. If the Diocesan Council should adhere to its original direction or proposal the decision of the Diocesan Council shall be final.

5.5 Any deed, or instrument, executed or signed, and any other act, matter, or thing done by any three (3) members of The Corporate Trustees in pursuance of a resolution of the Corporate Trustee shall be as effectual as if the same had been executed, signed, or done by all the members of The Corporate Trustees.

5.6 The members of The Corporate Trustees may pass a resolution without a meeting of The Corporate Trustees being held if all members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

5.7 For the purposes of clause 5.6 -

- (a) separate copies of the document may be used for signing by the members if the wording of the resolution is identical in each copy; and
- (b) a facsimile message which is received by the secretary of The Corporate Trustees and is expressed to have been sent by a member is taken to be a document signed by that member at the time of receipt of the facsimile message by the secretary; and
- (c) the resolution is passed when the last member signs; and
- (d) the members are to ensure that the resolution is recorded in the minute book of The Corporate Trustees within one (1) month.

Powers and Authorities with respect to property

6.1 All real estate now held or to be acquired hereafter by or on behalf of the Anglican Church within the Diocese of Armidale shall be vested in The Corporate Trustees of the Diocese of Armidale except that, with the consent of Synod, any such real estate may be otherwise vested.

6.2 The Corporate Trustees shall hold and deal with all real and personal estate vested in or held by them on behalf of the Anglican Church within the Diocese of Armidale on such terms and in such manner as the Synod of the Diocese shall direct.

6.3 With respect to all church trust property vested or to become vested in the corporate body, The Corporate Trustees shall have, and may subject to the policy and direction (if any) of Synod or the Diocesan Council exercise, absolute and full powers of managing and controlling such property, and without limiting the generality of such powers and so far as may be necessary or convenient in the name and on behalf of The Corporate Trustees may -

- (a) Let or demise the said property or any part or parts thereof for any term not exceeding ten years or on building lease for any term not exceeding fifty years at such rents fixed or progressive and subject to such conditions as the Trust shall think fit save and except as hereinafter provided or grant a licence in respect of the said property or any part or parts thereof for any term not exceeding ten years.
- (b) Accept surrenders of leases licences and tenancies and release tenants and licensees from claims there-under.
- (c) Receive and give effectual receipts for all moneys accruing from the said property for rent or on any account whatsoever.
- (d) Sub-divide the said property or any part or parts thereof and lay out and make roads streets and ways to be dedicated to the public or not and close existing roads streets and ways and grant easements rights of way or drainage.

- (e) Carry out repairs renovations and alterations of existing buildings on the said property and erect thereon new building or buildings.
- (f) Borrow money, either with or without giving security of the said property, and enter into any mortgage, charge, bill of sale, lien or security over the said property or the future rents profits and other income arising therefrom as it may deem necessary for any of the purposes set forth in this clause.
- (g) Use the revenues of the property not otherwise appropriated for any of the purposes aforesaid and for the payment of all costs charges and expenses of and incidental to the management and control of the said property.
- (h) Appoint and remove officers servants and agents and fix their remuneration if any.
- (i) Give or procure the giving of indemnities guarantees or undertakings.
- (j) Establish special funds in the nature of reserve funds sinking funds or otherwise.
- (k) For the purpose of developing any such property consisting of real estate, form or join in forming a company.
- (l) Insure against loss or damage whether by fire or otherwise any insurable property and against any risk or liability which it would be prudent for a person to insure if he were acting for himself.

Provided that no part of the said property shall be let licensed or used for any such purpose as the Synod or the Diocesan Council may by resolution disapprove.

6.4 The powers and authorities aforesaid shall not apply to church trust property the control management or user of which is by ordinance committed to a board unless such board by resolution assents to the exercise thereof and Synod or Diocesan Council by ordinance authorises the same.

6.5 The powers and authorities aforesaid shall not apply to property held for the sole benefit of any parish provisional parish or special district unless a majority of the parish council in writing authorises the same.

6.6 In any case where the Synod or Diocesan Council has consented to a loan from any bank or other lending body or person for the use and purposes of a Parish or Special District or other Diocesan body, The Corporate Trustees shall be empowered to certify to such bank or other lending body or person that the Diocese of Armidale accepts responsibility for repayment of all moneys advanced on such loan, provided that, unless otherwise provided in the approval to such loan by the Synod or Diocesan Council, the acceptance of such responsibility for repayment of such moneys advanced shall be limited to the extent of such moneys and other assets (other than consecrated buildings) as shall for the time being be

held by The Corporate Trustees for the use and purposes of the particular Parish or Special District or other Diocesan body involved in the said loan.

6.7 The furniture of every Church and Parish books muniments records and sacred vessels of every parish belonging to such Church and all other parochial furniture shall be and be deemed to be vested in and be the property of The Corporate Trustees. Provided always that the Clergyman in charge shall have custody, care and control of all Parish Books muniments and records and the control of the sacred vessels and furniture of the Church and the Church wardens shall have the custody and care of the Church and its furniture.

6.8 The respective parties charged with the custody, care and control of furniture, books, muniments, records and sacred vessels of each Church shall make a full and complete inventory of the same and furnish a copy thereof to the Registrar of the diocese, and shall also from time to time whenever any additions to or removals from the same are made furnish the Registrar with full particulars of such additions or removals.

Powers and Authorities with respect to Money

7.1 With respect to all moneys held by it for investment The Corporate Trustees may -

- (a) for the purpose of investment pool the same though subject to separate trusts and in respect of such pooled moneys may average gains losses and interests and deal with all matters and do all things incidental to such pooling;
- (b) invest the same in trustee securities authorised by law;
- (c) invest in shares of any company listed on any Australian Stock Exchange (other than companies carrying on a business of which Synod or Diocesan council may by resolution disapprove) and exercise rights to take up shares if such rights become available to it;
- (d) invest in debentures issued by any such company;
- (e) invest in any secured or unsecured notes (whether or not convertible into shares or stock) issued or to be issued by any such company;
- (f) invest in units of any unit trust;
- (g) purchase any land;
- (h) lend moneys,
- (i) without limiting the generality of sub-paragraph (h), place moneys on deposit, and
- (j) invest in any security authorised by an ordinance of Synod.

Provided that nothing contained in this paragraph shall be taken as authorising the Corporate Trustee to carry on the business of money-lending.

7.2 The Corporate Trustees may -

- (a) appoint any corporation to hold, on behalf of The Corporate Trustees, any church trust property being moneys referred to in subclause 7.1 of this clause or investments made pursuant to the powers conferred on The Corporate Trustees by that clause and of which The Corporate Trustees is the trustee, and
- (b) appoint the same or any other corporation to manage and advise on the investment realisation and reinvestment of all or any of such property, and
- (c) delegate to that corporation all or any one or more of the powers conferred upon The Corporate Trustees by subclause 7.1 of this clause.

7.3 Any such appointment or appointments may be made on such terms and conditions and at such remuneration as The Corporate Trustees may consider appropriate provided always that -

- (i) every such appointment shall contain a covenant to the effect that the corporation appointed shall not invest any church trust property in or retain any investment of church trust property in any company carrying on a business of which the Synod or the Diocesan Council may by resolution disapprove after notice of that resolution has been given by The Corporate Trustees to that corporation, and
- (ii) no such appointment shall be made by The Corporate Trustees in relation to church trust property held for the sole benefit of any parish or provisional parish unless a majority of the parish council thereof in writing authorises the same.

7.4 Any corporation appointed by The Corporate Trustees pursuant to this subclause shall not be bound to enquire as to whether or not the requirements of paragraph 7.3(ii) (if applicable) have been complied with by The Corporate Trustees and shall be entitled to rely on a certificate from The Corporate Trustees to the effect that the said requirements have been satisfied or are not applicable as conclusive evidence of that fact.

Power to Investigate and Report

8.1 The Corporate Trustees shall enquire and ascertain or appoint a committee or person to enquire and ascertain who is or are the trustee or trustees of all church trust property not vested in itself and may report to the Diocesan Council thereupon and may recommend to the Diocesan Council what action (if any) under section 19 of the said Act should be taken with respect to such property.

8.2 The Corporate Trustees may at the request of Diocesan Council investigate, or appoint some of its members to investigate, and report upon the audited accounts and financial position of any diocesan organisation or body.

Power to Engage Staff

9.1 The Corporate Trustees may for the purpose of its activities engage staff and may, subject to the approval of Diocesan Council take over staff engaged in the administrative activities of any diocesan organisation or body and may pay salaries and wages of persons engaged or taken over by it and make arrangements with the Diocesan Council and any such organisation or body for contribution towards such salaries and wages.

9.2 The Corporate Trustees by power of attorney, may appoint any corporation, firm, person or body of persons to be the attorney or attorneys of The Corporate Trustees for such purposes and with such powers, authorities and discretion (not exceeding those which The Corporate Trustees may have) and for such period and subject to such conditions as The Corporate Trustees may think fit.

Power to Appoint Executive Officer

10 The Corporate Trustees may appoint an executive officer with this or such other title with the approval of the Diocesan Council and define his powers duties and functions in relation to property vested in it, administration of its policy or policies and all other activities and affairs under its government and control.

Power to Charge Fees

11.1 The Corporate Trustees may charge fees at the rate or rates last approved pursuant to Clause 11.3 for services provided by The Corporate Trustees in relation to church trust property held by if for the Diocese. Such fees may be charged in lieu of any revenues which might otherwise be applied pursuant to paragraph 6.1(g).

11.2 The Corporate Trustees may waive the whole or any part of any fee which would otherwise be payable.

11.3 A rate is or rates are approved for the purpose of this Clause if -

- (a) notification of the rate or rates is given by the Property Trust to the Diocesan Registrar/Secretary;
- (b) the notification is tabled at a meeting of the Diocesan Council by the Diocesan Registrar/Secretary or any member of the Diocesan Council; and
- (c) the rate or rates specified in the notification are either -
 - (i) approved by resolution of the Diocesan Council;
 - (ii) not disallowed by resolution of the Diocesan Council passed at that meeting or at the next ordinary meeting of the Diocesan Council.

Date of Coming into Force

12 This Ordinance shall come into force upon such date as Diocesan Council shall by resolution appoint.

Name of Ordinance

13 This Ordinance may be cited and known as ‘The Corporate Trustees Ordinance 2009’.

Note

The date appointed by the Diocesan Council pursuant to clause 12 was:
1st December, 2009

Table of Amendments

Preamble	Amended by Ordinance No. 12, 2009
Clause 1	Repeated from Ordinance 1924, 1935, 1978
Clause 2 (a) to (d)	Inserted by Ordinance No. 12, 2009.
Clause 2 (e)	Repeated from clause 9 of 1978 Ordinance.
Clause 3.1 & 3.3	Repeated from clauses 1, 2 & 3 of 1978 Ordinance.
Clauses 3.2, and 3.4 to 3.9	Inserted by Ordinance No. 12, 2009.
Clauses 4.1 & 4.2	Inserted by Ordinance No. 12, 2009.
Clause 4.3	Repeated from clause 4 of 1978 Ordinance.
Clause 5.1 & 5.2	Inserted by Ordinance No. 12, 2009.
Clauses 5.3 & 5.4	Repeated from clauses 5 & 7B of 1978 Ordinance.
Clause 5.5 to 5.7	Inserted by Ordinance No. 12, 2009.
Clause 6.1 & 6.2	Repeated from clauses 6 & 7 of 1978 Ordinance.
Clause 6.3 to 6.5	Inserted by Ordinance No. 12, 2009.
Clause 6.6	Amended by Ordinance No. 12, 2009.
Clause 6.7 & 6.8	Repeated from clauses 8 & 10 of 1978 Ordinance.
Clause 7, 8, 9, 10, 11 & 12	Inserted by Ordinance No. 12, 2009.