

ANGLICAN CHURCH OF AUSTRALIA

Diocese of Wangaratta

Protocol for the authorisation and execution of documents affecting Church property

Purpose

- 1 The purpose of this Protocol is to clarify the requirements for the authorisation and execution of documents affecting Church property – whether affecting freehold land (for example, sales, purchases and mortgages), leases and licences affecting land or other property, such as motor vehicles, furniture, goods and services.

Background

- 2 The Wangaratta Diocesan Trustees ('the Trust Corporation') was established under the *Anglican Trusts Corporation Act 1884* (an Act of the State of Victoria), section 4:

4. Incorporation of trustees as body corporate

After the registration of such resolution the Registrar-General shall notify the same in the Government Gazette, and thereupon the trustees named in such notice and their successors to be appointed as hereinafter provided shall be a body corporate by the name stated in such notice, and shall have perpetual succession and a common seal and may sue and be sued and may acquire take and hold any property in trust for the Church in the diocese in which such resolution shall have been passed or for any person or persons holding for the time being any office therein and may receive any moneys which have been or shall be given or contributed by any person or persons to be applied to any of the purposes of the said Church and may take over any securities for money held by any person or persons on behalf thereof and may take in the name of such corporate body any securities for money belonging to the said Church which shall be lent or advanced on account thereof, and shall deal with all such property and securities so as to give effect to the trusts to which they shall be specially subject, or when not subject to any express trust in such manner as the Synod of such diocese may from time to time direct but so as not to interfere with the jurisdiction of the Supreme Court in the enforcement of trusts.

The effect of these provisions is that all Diocesan property is owned by the Trust Corporation as trustee for the Diocese. The Trust Corporation is also the trustee of the various special and specific trusts that have been established from time to time for purposes within the Diocese. It is also the trustee of the Common Fund under *The Church Property Act 1997* and is also the trustee of The Anglican Diocese of

Wangaratta Foundation, now known as The Wangaratta Anglican Development Fund.

3 The name of the Trust Corporation in the Diocese of Wangaratta – ‘The Wangaratta Diocesan Trustees’ – was given by Diocesan legislation in accordance with section 4A of the *Anglican Trusts Corporations Act 1884* (Vic). The relevant provision in Diocesan legislation is contained in *The Trustees Act 1934-2003*, section 4(1).

4 The Trust Corporation is given extensive powers to manage and deal with Diocesan property, but subject to the directions of Bishop in Council, as the provisions of section 4(10) of *The Trustees Act 1934-2003* make clear:

- (10) The said Corporation shall (subject to any Acts Rules and Regulations which may from time to time be made by this Synod) manage and deal with all property and securities for the time being vested in it (not being subject to express trusts) in such manner as the Bishop in Council may from time to time direct concerning the same subject nevertheless where the function of management of a trust has been committed either by the said Corporation or by the Bishop in Council to another person or persons or to a church committee the said Corporation in the proper discharge of its duties hereunder shall retain overall control of and responsibility for the trust.

5 *The Trustees Act 1934-2003* also makes it clear that all Church property in the Diocese is vested in – owned by – the Trust Corporation. Sections 7, 8 and 9 of this legislation make this position clear:

7. The said Corporation shall hold the legal estate of such property as may be vested in it and preserve the same for the purposes set forth in the respective instruments of trust but the care of any Church or Rectory or other building used for Parochial purposes thereon and the management of the affairs thereof shall be exercised in accordance with the provisions of Division 5 of Part IX of the *Parish Administration Act 1984 -1995* subject never-the-less to the observance of any express trusts affecting the management which shall be in force for the time being and the Trusteeship of such sites shall not confer or impose upon the said Corporation any right duty or obligation other than that of permitting the same to be used for the purposes of the Church Rectory or other buildings erected or which shall be erected thereon and all other rights duties and obligations of ownership shall belong to and rest upon those charged with the responsibility therefore in accordance with the provisions of Division 5 of Part IX of the said *Parish Administration Act*.
8. 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 said Corporation. But the custody care and control of such furniture books muniments records and sacred vessels shall remain with the several parties charged therewith by Division 5 of Part IX of the said Parish Administration Act.

9. The term "furniture" used in Division 5 of Part IX of the said Parish Administration Act with reference to the furniture of a Church shall be deemed to include all articles used in connection with the performance of Divine Service or the administration of the Sacraments or for the decoration or adornment of the Church building.

6 The relevant provisions of the *Parish Administration Act* 1984-1995 (which are contained within Division 5 of Part 1X of that Act) are sections 120 and 121 (legislation which has now been replaced by the *Parish Governance Act* 2019, in which the provisions of Part 7 (Sections 105 to 120) which are, as presently relevant, in substance very similar):

120. The Council shall:

- (1) Have the care of the Rectory the grounds thereof and the fabric and fittings of the Rectory for which it or a Sub-Committee thereof shall make a half yearly inspection thereof.
- (2) Following each half yearly inspection attend to all repairs or alterations required in the building of the Rectory or of the fabric and fittings thereof.

121. Buildings, fabric etc. of a Church and other buildings the fabric thereof etc:

(1)(a) The Vestry shall not

- (i) add to alter or remove its Church or its other buildings;
or
- (ii) add to alter or remove any part of the fabric or of the fittings or furniture of any such building without the approval of the incumbent to the plans therefor and the consent in writing of the Bishop to such plans and his faculty therefor first had and obtained.

(1)(b) The Council shall not

- (i) construct any Church Rectory or other building in the Parish or add to alter or remove any Rectory therein; or
- (ii) add to alter or remove any part of the fabric or of the fittings or furniture of the Rectory

Without the approval of the Incumbent to the plans therefor and the consent in writing of the Bishop to such plans and his faculty therefor first had and obtained.

(2) Painting or redecorating:

The Council with respect to the Rectory and the Vestry with respect to its Church and other buildings shall not paint any unpainted surface of any Church Rectory or other building nor redecorate the surface of any such building previously painted without the faculty of the Bishop first had and obtained.

(3) Memorials:

Any structure for the deposition of ashes or any Monuments Ornaments furniture or furnishings given or purchased as memorials may be placed in or removed from the Church or churchyard by the Vestry with the consent of the Incumbent but subject to the Bishop after submission to him before the commission or purchase thereof of a design or plan therefor and in accordance with any regulations of the Bishop-in-Council relating thereto giving his faculty therefor.

122. Each Parish Council shall provide such monies as are required by Section 5 of the Insurance Act 1995 or of like provision in any legislative amendment or re-enactment thereof.

7 Neither the *Anglican Trusts Corporation Act 1884* (Vic) nor *The Trustees Act 1934-2003* give particular guidance on the execution of documents. The former (1884) Act provides general management powers in the Trust Corporation; in section 12, as follows:

12. Property vested in trustees

All property becoming vested in any corporate body of trustees as hereinbefore mentioned or which shall in any manner be acquired by such corporate body shall so far as the same is subject to any express trust be held managed dealt with, mortgaged, charged or otherwise encumbered by such corporate body in conformity with such expressed trust, and shall so far as the same is not subject to any express trust be held managed dealt with, mortgaged, charged or otherwise encumbered in such manner as the Synod in the diocese may from time to time direct, and such property shall be subject as to the management thereof to the acts and regulations of the Synod in force for the time being which are applicable thereto.

And *The Trustees Act 1934-2003* directly addresses the custody of the official seal, in section 4(8), as follows:

(8) The common seal of the said Corporation shall be kept in safe custody by the Registrar of the Diocese and shall be affixed to documents needing to be impressed therewith in the presence of not less than

three Corporation Trustees who shall verify the same with their signatures.

But, additionally, this legislation empowers the Trust Corporation to direct the management of the property of the Diocese in sub-sections 4(10) to (12), as follows:

- (10) The said Corporation shall (subject to any Acts Rules and Regulations which may from time to time be made by this Synod) manage and deal with all property and securities for the time being vested in it (not being subject to express trusts) in such manner as the Bishop in Council may from time to time direct concerning the same subject nevertheless where the function of management of a trust has been committed either by the said Corporation or by the Bishop in Council to another person or persons or to a church committee the said Corporation in the proper discharge of its duties hereunder shall retain overall control of and responsibility for the trust.
- (11) The said Corporation shall keep and maintain in whatever fashion it may decide such registers and books of record it may determine which registers and books of record shall be preserved in the diocesan registry and available for inspection by the members of Synod in accordance with such rules as the Bishop in Council may prescribe.
- (12) The said Corporation may in its own discretion make such rules and regulations consistent with Act 797, this Act or any other Act, the more effectively to carry out the proper discharge of its duties hereunder.

8 The Diocese of Wangaratta is unusual in the Australian Church as it includes two parishes, the Parish of Albury and the Parish of North Albury, which are in another State; namely New South Wales. The Diocesan trustee arrangements in these parishes could not be accommodated under Victorian or general Diocesan legislation, and so a New South Wales company was formed, namely 'The Wangaratta Diocesan Trustees (NSW)'. The provisions of the Articles of Association of that company confer powers with respect to Diocesan property which, for present purposes, can be taken to be substantially the same as those conferred on the Trust Corporation under the legislation to which reference has already been made. The relevant provisions are Articles 38, 39 and 41 of its Articles of Association, which are as follows:

38. The business of the company shall be managed by the Directors who may pay all expenses incurred in promoting and registering the company and may exercise all such powers of the company as are not, by the Code or by these articles, required to be exercised by the company in general meeting, subject nevertheless, to any of these

articles to the provisions of the Code, and to such regulations, being not consistent with the aforesaid articles or provisions, as may be prescribed by the company in general meeting; provided that any rule regulation or by-law of the company made by the Directors may be disallowed by the company in general meeting and provided further that no resolution or regulation made by the company in general meeting shall invalidate any prior act of the Directors which would have been valid if that resolution or regulation had not been passed or made.

39. The Directors may exercise all the powers of the company to borrow money and to mortgage or charge its property, or any part thereof, and to issue debentures and other securities whether outright or as security for any debt, liability, or obligation of the company.

...

41. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the company shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any two members of the Directors or in such other manner as the Directors from time to time determine.

Protocols

- 9 On the basis of the provisions set out in the background material (paragraphs [2] to [8]) the Trust Corporation and The Wangaratta Diocesan Trustees (NSW), in relation to the Diocese (in Victoria and New South Wales, respectively) adopt and require observance of the following protocols with respect to the authorisation of transactions and the execution of transaction documents:

LEGEND

- S = Seal of The Wangaratta Diocesan Trustees (Vic)
CS = Company Seal of The Wangaratta Diocesan Trustees (NSW)
T = Signature of two Trustees
D = Signature of two Directors
R = Signature of Diocesan Registrar
P = Authority under Parish legislation

One or more forms of execution/signature may be required, as indicated.

Diocesan General Property/Assets (Vic) [Subject to Victorian and Synod legislation]						
<u>Transactions</u>	Authority			Execution (on behalf of WDT)		
	BIC	WDT	Parish	Seal/other	Registrar	Parish
Land						
<i>Sales contracts</i>	✓			S		
<i>Purchase contracts</i>	✓			S		
<i>Transfer documents</i>	✓			S		
<i>Council applications for subdivision/development</i>	✓				R	
<i>Heritage applications</i>	✓				R	
<i>Lease of</i>	✓			S		
<i>Lease to</i>	✓			S		
<i>Community use agreements (e.g. community gardens/farmers markets)</i>	✓				R	P
<i>One-off use agreements</i>			✓			P
Buildings						
<i>Council building permits</i>	✓				R	
<i>Heritage applications</i>	✓				R	
<i>Building contracts</i>	✓			S		
<i>Renovation contracts</i>	✓		✓		R	P
<i>Lease of</i>	✓			S		
<i>Lease to</i>	✓			S		
<i>Hall/venue hire – long term</i>	✓		✓		R	P

<i>Hall/venue hire – one-off</i>			✓			P
Money						
<i>Bank accounts opening and closing</i>					R	P
Common Fund operations						
<i>Approval of investment strategy</i>	✓			T	R	
<i>Appointment of adviser contract</i>	✓				R	
<i>Drawdowns from fund</i>	✓			T/Treasurer	R	
<i>Day-to-day operation</i>	✓			S: Treasurer/ finance committee		
Provision of Services						
<i>Utilities contracts</i>					R	P
<i>Phone/internet contracts</i>					R	P
<i>Diocesan special/specific trusts</i>						
<u>Transactions</u>	Authority			Execution (on behalf of WDT)		
	BIC	WDT	Parish	Seal/other	Registrar	Parish
Land						
<i>Sales contracts</i>		✓		S		
<i>Purchase contracts</i>		✓		S		
<i>Transfer documents</i>		✓		S		
<i>Council applications for subdivision/development</i>		✓			R	
<i>Heritage applications</i>		✓			R	
<i>Lease of</i>		✓		S		

<i>Lease to</i>		✓		S		
<i>Community use agreements (e.g. community gardens/farmers markets)</i>		✓			R	P
<i>One-off use agreements</i>			✓			P
Buildings						
<i>Council building permits</i>		✓			R	
<i>Heritage applications</i>		✓			R	
<i>Building contracts</i>		✓		S		
<i>Renovation contracts</i>		✓	✓		R	P
<i>Lease of</i>		✓		S		
<i>Lease to</i>		✓		S		
<i>Hall/venue hire – long term</i>		✓	✓		R	P
<i>Hall/venue hire – one-off</i>			✓			P
Money						
<i>Bank accounts opening and closing</i>		✓			R /Treasurer	
Anglican Development Fund						
<u>Transactions</u>	Authority			Execution (on behalf of WDT)		
	BIC	WDT	Parish	Seal/other	Registrar	Parish
<i>Loan Agreements (Clergy and Parish)</i>	✓ (in excess of \$50K) Finance committee below \$50K	✓		T	R	

<i>Parishes of Albury and North Albury (the Wangaratta Diocesan Trustees (NSW))</i>						
<u>Transactions</u>	Authority			Execution (on behalf of WDT)		
	BIC	WDT	Parish	Seal/other	Registrar	Parish
Land						
<i>Sales contracts</i>	✓	WDT (NSW)		CS		
<i>Purchase contracts</i>	✓	WDT (NSW)		CS		
<i>Transfer documents</i>	✓	WDT (NSW)		CS		
<i>Council applications for subdivision/development</i>	✓	WDT (NSW)			R	
<i>Heritage applications</i>	✓	WDT (NSW)			R	
<i>Lease of</i>	✓	WDT (NSW)		CS		
<i>Lease to</i>	✓	WDT (NSW)		CS		
<i>Community use agreements (e.g. community gardens/farmers markets)</i>	✓	WDT (NSW)				P
<i>One-off use agreements</i>		WDT (NSW)				P
Buildings						
<i>Council building permits</i>	✓	WDT (NSW)			R	
<i>Heritage applications</i>	✓	WDT (NSW)			R	
<i>Building contracts</i>	✓	WDT (NSW)		CS		
<i>Renovation contracts</i>	✓	WDT (NSW)	✓		R	P
<i>Lease of</i>	✓	WDT		CS		

		(NSW)				
<i>Lease to</i>	✓	WDT (NSW)		CS		
<i>Hall/venue hire – long term</i>	✓	WDT (NSW)	✓		R	P
<i>Hall/venue hire – one-off</i>			✓			P

10 Any inquiries with respect to the application of this Protocol should be referred to the Registrar.

WANGARATTA DIOCESAN TRUSTEES

THE WANGARATTA DIOCESAN TRUSTEES (NSW)

27 August 2020

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