

The Property Handbook

**A GUIDE FOR PARISHES & PRESBYTERIES
WHEN DEALING WITH PROPERTY**



**3rd Edition
2016**

**THE PRESBYTERIAN CHURCH
PROPERTY TRUSTEES**





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Introduction

Two Trusts

Properties belonging to the Presbyterian Church in New Zealand are vested in two separate Trusts. The Waitaki River (North Otago) is the geographical boundary for the two Trusts. Property north of the Waitaki River is vested in The Presbyterian Church Property Trustees. Property south of the Waitaki River is vested in the Otago Foundation Trust Board.

This handbook is based on the procedures of The Presbyterian Church Property Trustees. Refer to the Synod of Otago & Southland for its specific requirements.

The Legal Background

Three Acts of Parliament establish the framework and principles of operation of The Presbyterian Church Property Trustees. Under the first Act, The Presbyterian Church Property Act 1885, The Presbyterian Church Property Trustees (Church Property Trustees) are the registered owners of, and are legally responsible for, all Presbyterian Church Property located north of the Waitaki River.

The other two Acts, The Trustee Act 1956 and the Charitable Trusts Act 1957, provide binding legal principles under which the Church Property Trustees operate. All property transactions are managed through the Church Property Trustees.

The Book of Order is the Presbyterian Church's official rule book, and covers all activities of the Church. It explains the responsibilities of church members, and sets out the procedures for each area of governance and management.

Every presbytery, parish and church member is obliged to comply with it, except for members of co-operative ventures in circumstances where the Guide to Procedures in Co-operative Ventures applies instead.

Chapter 16 of the Book of Order deals with property and finance matters.

The Book of Order can be viewed on the Presbyterian Church website www.presbyterian.org.nz

The Guide to Co-operative Ventures can be viewed on the Uniting Congregations website www.ucanz.org.nz

Status of this Handbook

The Property Handbook is provided as a guide for dealing with Church property. It is not a substitute for seeking legal advice in the case of property transactions that will affect the title or legal status of Church land.

In certain cases, property transactions must be recorded using specific legal forms approved for the purpose.

This Handbook calls attention to these formal and binding requirements of property transactions, but it is the congregation's responsibility to obtain appropriate legal and other professional advice before entering into such transactions.

Explanation of Terms

Attestation clause

Formal statement describing the manner in which a legal document is signed. The Attestation Clause for documents executed by the Church Property Trustees reads: “The Common Seal of The Presbyterian Church Property Trustees was hereunto affixed and these presents signed by two of the said Trustees”.

Agreement for Sale & Purchase

Legal document in which all the terms and conditions of sale are recorded. This is signed by the purchaser and the vendor at the time of agreement. Once signed by both parties, the agreement becomes a binding contract subject only to the conditions stated in the agreement.

Certificate of Title

Record that identifies a specific property by legal description, registered location, size and the owner. Records of properties are now electronically recorded by LINZ (Land Information New Zealand.)

Church Council

Governing body of a congregation, which may be a Session or Parish Council or other approved body.

Church Property Trustees

Shortened form of The Presbyterian Church Property Trustees. Often abbreviated to CPT.

Detailed Seismic Assessment

(DSA) A more detailed quantitative appraisal by an earthquake engineer that establishes the seismic performance of a building based on its individual characteristics. The DSA was previously called a Detailed Engineering Evaluation (DEE).

Execution

Act of formally signing a legal document. For Church property matters, this is done by affixing the Common Seal of The Presbyterian Church Property Trustees.

Fiduciary duty

Responsibility of a Trustee to act without personal gain and independently from personal interest.

Instrument of transfer

Formal document upon which the details of a sale and purchase of property is entered for recording in the Land Transfer Office.

Initial Seismic Assessment

(ISA) High level assessment to indicate the likely seismic performance of a building, often considerably more conservative than the next assessment. The ISA was previously called an Initial Evaluation Procedure (IEP).

Joint Regional Forum

(JRF) Regional body that oversees co-operative ventures on behalf of partner churches. UCANZ acts where there is no JRF.

LIM (Land Information Memorandum)

A report issued by a Local Authority, which contains information about a property.

Loan agreement

Formal document in which all the terms and conditions pertaining to the money being borrowed must be disclosed.

Manse

Parish residential property which provides accommodation for the Minister and family.

Mortgage

Legal document which sets out the terms and conditions upon which the security for any borrowing is effected against property.

Partner churches

Other denominations in a co-operative venture – mainly Methodist and/or Anglican.

PCANZ Directory

Directory containing contact details for every parish, minister and nationally appointed organisation within the Presbyterian Church.

Presbytery

Regional body of the Presbyterian Church that has oversight of all Presbyterian parishes in that area.

The Trustees

For the purposes of this handbook, this means The Presbyterian Church Property Trustees.

UCANZ (Uniting Congregation of Aotearoa New Zealand)

This is the national body which oversees co-operative ventures, including union parishes, on behalf of partner churches. In respect of particular co-operating ventures, it exercises the powers of a Joint Regional Forum where none exists for that co-operating venture.

Valuation

Report from a Registered Valuer, stating the condition and current market value of the property under consideration.

Vendor

Owner of the property that is being sold.



Important First Principles

Principle 1

Everyone making decisions about property or finance within the Church is a “trustee”.

Elders, Managers, Deacons, Presbytery members and the Presbyterian Church Property Trustees (the Trustees) all have responsibilities under The Trustee Act 1956.

- We all are required to act with care and prudence, in a trustee capacity.

Principle 2

We are a Church – not a collection of independent congregations.

- Parishes are under the oversight of Presbyteries and the Trustees.
- The necessary approvals must be obtained before action is taken. For Co-operative Ventures, the partner church(es) should also be consulted.

Principle 3

Our decisions must keep faith with the long-term interests of the whole Church.

The Congregations of the Future Will Inherit Our Choices

The 2008 General Assembly endorsed the principle that all property transactions should serve the purposes of God’s mission, and adopted guidelines that the Church Property Trustees were asked to take into account when considering applications in relation to parish property proposals.

All applications to the Church Property Trustees (“the Trustees” or “CPT”) must include responses to various questions that are based on the Assembly guidelines.

These requirements apply to all property transactions including the sale, purchase or leasing of property, major alterations and building projects, the use of property (capital) funds, borrowing and applying for lottery grants or any community trust grants funded by gaming.

For any proposal, the congregation is asked to explain how the proposal fits into the congregation’s mission plan and to demonstrate how it will contribute to God’s mission and the growth of the Church. The congregation will also be asked to provide evidence of its financial sustainability.

The Presbytery must assess how realistic the congregation has been in its response to the questions, and explain how the proposal fits into the regional missional strategy.

Section 1:

Sale of Property

General Guidelines

Ask yourselves how the sale of this property will contribute to the life and growth of the congregation and advance God's mission.

This is the first thing Presbytery and the Trustees will want to know, so it pays to clarify your thinking from the outset.

- Allow sufficient time to prepare your application and to obtain the approval of the Congregation, Presbytery and the Trustees.
- Talk early on to your Presbytery and the Trustees' office about your general plans and time frames. It will help to make early contact to alert them that decisions are underway. Challenging or unusual proposals may take extra time.
- The whole congregation needs to be involved in the decision-making. The asset does not belong to just one little group of the congregation. It is an 'asset' held in trust for the benefit of many others.
- Find out from your Presbytery Clerk when Presbytery's Property Committee meets, as generally this committee will consider the application and then make a recommendation to Presbytery. Presbyteries normally meet monthly. Some Property & Finance Committees are authorised to act as a Commission of Presbytery for property transaction applications. You should have your application to this committee, through the Presbytery Clerk, at least a week before it meets.
- When Presbytery has considered an application and made its decision, the application will be passed on to the Trustees for their decision. The Trustees place considerable weight on Presbytery's view on any proposal to sell property.

Property may be sold if:

- It is no longer needed for mission purposes.
- You wish to replace it with a property that will better fulfil God's mission – in which case you need to consider the objectives of both the sale and the purchase, and comply with the requirements in both this section and the section on purchasing property.
- It has the approval of the Church Council, the congregation, Presbytery and the Trustees.

Further points to consider

Are there any heritage building issues or special trusts attached to bequests or past gifts that may hinder or prevent the sale?

This means there may be restrictions on what you can do with the property or with the proceeds from the sale. If the property was gifted to the congregation, any legally documented conditions associated with the original gift must be fulfilled. Any issues must be resolved before the sale goes ahead.

Sometimes, the wider local community in which a surplus church is sited (particularly in rural areas) may have strong views about what should happen to it. Consultation with the community can help avoid negative publicity. Remember that Church property is a trust from all the past members of your congregation, going right back to its establishment. The assets have been given in the expectation they will continue to be used for the mission of the Presbyterian Church.

Mission needs to be viewed in a Church-wide context – not just from a local perspective.

In order to sell a property you must obtain approval from:

- Church Council
- Congregation
- Presbytery
- Church Property Trustees

You will need to request an application form for *Approval to Sell Property* from the CPT office at trustees@presbyterian.org.nz or by phone on (04) 381 8290.

You must have a registered valuation

You will need to provide a market valuation from a registered valuer with your application. Rating valuations or estimates from real estate firms are not sufficient. A registered valuation provides a professional assessment of the property and allows a realistic selling price to be set.

Valuations must be no more than 90 days old at the time of application. You may need to ask the valuer to provide an update if there is a lengthy period between obtaining the Trustees' approval to sell and finding a buyer. A valuer will generally do this with a letter either confirming or amending their earlier valuation.

What to do once the Church Property Trustees have given their approval

- A letter from the Trustees' office confirming the Trustees' approval for the sale and advising the minimum permitted sale price, will also outline various clause deletions and additions that are required in the Agreement for Sale & Purchase.
- Consult your parish solicitor. He or she may assist with drawing up the Agreement for Sale & Purchase and will be responsible for arranging the property settlement, land transfer and any mortgage repayment and discharge (if applicable). The parish will be asked to sign a letter of engagement. This is appropriate, as the Trustees do not engage the parish's solicitor.

A word about Real Estate Agents

- Most agents want a sole agency. It is prudent to invite several proposals from agents for comparison before deciding on an agency and method of sale.
- If you do decide to use a sole agency, then your contract (Sole Agency Agreement) with them should be for a short duration e.g. 60 days. This time limit must be written into the contract.
- If you sell a property while there is a sole agency agreement in operation (or you sell privately while any agency is in operation), you will have to pay the agent's fee even if they had nothing to do with the sale.
- It is good practice to have your parish solicitor approve the proposed agency agreement before you sign it.

Approval to sell is not indefinite

Approvals automatically expire after six months but may be extended at the Trustees' discretion. Please contact the CPT office if your property has not sold within six months and you wish to obtain an extension of the approval period.

Important Points About Completing an Agreement for Sale & Purchase

- **The vendor is named as The Presbyterian Church Property Trustees**
- **The Agreement for Sale & Purchase must be signed by the Trustees, not by the parish**
- **Include the required clause deletions and additions as advised in the approval letter and noted below**

The following changes must be made to the Agreement before it is signed by the Purchaser:

Delete clauses 7.1 (1)&(2) and clauses 7.2 (5)&(6) and 7.3 in the standard ADLS Agreement for Sale and Purchase (9th edition 2012 (4) "Vendor's warranties and undertakings"

Add the following clauses

As is, where is

The Purchaser acknowledges and confirms that they are buying the property the subject of this agreement on an "as is, where is" basis solely reliant on their own judgement and not on any representations made by the Vendor. The Vendor will not be responsible in any way whatsoever financially or otherwise for any upgrading and/or remedial and/or maintenance work that may be required by any local authority or government authority to bring the said property up to any standard required by the said authorities.

Limitation of Liability

Notwithstanding any other clause in this agreement, the liability of The Presbyterian Church Property Trustees as vendor in this agreement shall be limited to the Property and shall not constitute a debt payable by the Vendor or their successors in office out of any other fund or property.

The Agreement for Sale & Purchase must be sent to the CPT office for approval by the Trustees' solicitor before it can be signed by the Trustees.

Remember – the Agreement for Sale & Purchase must not be signed by the parish.

Sale by Auction or Tender

Where a property is offered for sale by tender or auction, the draft tender or auction agreement must be provided to the Property Trustees for approval **before** the tender or auction process commences.

The following clauses are required to be deleted:

Clauses 8.1 (1)&(2), 8.2 (5)&(6) and 8.3 in the standard ADLS Tender Agreement form (4th edition)

Clauses 8.1 (1)&(2), 8.2 (5)&(6) and 8.3 in the standard ADLS Auction Agreement form (4th edition)

The “As is, where is” and Limitation of Liability clauses noted above are also required to be included in tender and auction agreements.

**The Agreement to sell by Auction or Tender must be signed
by the Trustees, not by the parish.**

What happens when an Agreement for Sale & Purchase becomes unconditional?

Your parish solicitor will prepare the Land Transfer Authority and Instruction (A&I) form and send this to the CPT office for signing by the Trustees, preferably at least a week before the agreed settlement date. CPT will return the signed A&I to the parish solicitor together with the Trustees' bank account details for payment of the sale proceeds.

What happens on the settlement date?

- Your parish solicitor will handle the settlement.
- Your solicitor will receive payment from the purchaser's solicitor and repay any outstanding mortgages and attend to local council rates adjustments.
- Your solicitor will then pay the balance (less their fees and disbursements) to the Trustees' bank account. Once received by the Trustees, the sale proceeds will be held in a Presbyterian Investment Fund (PIF) property account in the parish's name. (There are restrictions on what you can use this money for. Refer to the section on Capital Funds for guidelines).
- If GST is payable on the sale, the Trustees will account for this in their GST return and pay the amount owed from the sale proceeds held in the PIF property account.

Remember to cancel the insurance cover on the property once the sale has been completed and title has transferred to the new owner.

Legal review of documents

All documents to be signed by the Trustees must first be reviewed by the Trustees' solicitor and approved as being in order for signing. This includes the sale agreement and the Land Transfer Authority and Instruction (A&I) form. The cost of this review is an expense associated with the sale and will be on-charged for payment by the parish.

GST

Before you commence marketing the property, you need to carefully consider the GST aspects of the sale i.e. will the sale price be inclusive or exclusive of GST where applicable.

The Trustees are GST registered and (being the legal owner) must include the sale transaction in their GST return. The general rule of thumb is that the sale of a manse or other residential property is not subject to the payment of GST and the sale price may be stated as “inclusive of GST (if any)”.

The sale of all other church property (churches, halls, commercial buildings, land) is subject to GST and the sale price must be stated as “plus GST (if any)”. Often sales in this category are zero-rated for GST purposes depending on the GST status of the purchaser and the intended use of the property.

The GST aspect is not always well understood and the parish may wish to obtain professional advice in this regard.

Mission Enterprise Fund (MEF) Contribution

The General Assembly 2014 decision 14.101 states *“That 10% of the net sale of property proceeds, where exclusions do not apply, are released to the Mission Enterprise Fund.”*

Exclusions apply where a manse or worship centre is sold for the purpose of its replacement.

The decision means that 10% of the net proceeds of all property sales will be released to the Mission Enterprise Fund unless the sale meets the exclusion criteria or an exemption is granted by the Council of Assembly.

The parish may request costs directly related to the sale of the property to be reimbursed from the proceeds prior to the calculation of the 10% contribution. Typically, these costs would be valuation fees, CPT and legal fees and the repayment of any borrowings against the property. Items such as rates, insurance, lawn mowing etc, are operational expenses and cannot be claimed against the sale proceeds.

Checklist for Property Sales

- Approval by Church Council.
- Approval by Congregation.
- Congregation mission plan prepared and the property sale proposal is tested against this.
- Congregation's intentions discussed with Presbytery.
- Registered valuation of the property obtained and is less than 90 days old.
- Complete the Application for Approval to Sell Property and forward it together with all other required documents to Presbytery.
- Working party set up to oversee the sale and to engage parish solicitor and to investigate any issues that may restrict the sale.
- Appoint real estate agent(s) (if required). A sole agency must have a definite end date.
- Negotiate and agree sale price and conditions.
- Follow requirements with regard to the Agreement for Sale & Purchase and consider GST aspects of the sale.
- Remember – the Agreement must be signed by the Trustees – not by the parish.
- Insurance cover on the property to be cancelled once the sale has been completed and title has transferred to the new owner.

Section 2:

Purchase of Property

General Guidelines

Ask yourselves how this purchase will contribute to the life and growth of the congregation and advance God's mission.

This is the first thing Presbytery and the Trustees will want to know, so it pays to clarify your thinking from the outset.

- Allow sufficient time to prepare your application and to obtain the approval of the congregation, Presbytery and the Trustees.
- Talk early on to your Presbytery and the Trustees' office about your general plans and time frames. It will help to make early contact to alert them that decisions are underway. Challenging or unusual proposals may take extra time.
- Find out from your Presbytery Clerk when Presbytery's Property Committee meets, as generally this committee will consider the application and then make a recommendation to Presbytery. Presbyteries normally meet monthly. Some Property & Finance Committees are authorised to act as a Commission of Presbytery for property transaction applications. You should have your application to this committee, through the Presbytery Clerk, at least a week before it meets.
- When Presbytery has considered an application and made its decision, the application will be passed on to the Trustees for their decision. The Trustees place considerable weight on Presbytery's view on any proposal to purchase property.

Remember this will be an asset 'in trust' for the congregation of the future as well as the present. The whole congregation needs to be involved in the decision-making. The asset will not belong to just one little group of the Congregation. It is an 'asset' to be held in trust for the benefit of many others.

Do the thinking before you look

Talk through all the issues (purpose, function, location, financing, time frames as well as structure, price, legal title etc) before you start the purchase process. It would be prudent to review these guidelines again once you've found a preferred property.

Get the necessary authorities in place as you proceed

You will need formal approval from the congregation to proceed. It is usual for a congregation to delegate the purchasing process to a subcommittee. If you are planning to borrow money for the purchase, you will also need to follow the borrowing procedures set out in Section 4 of this handbook.

The following points should be considered when looking to purchase a property

- Is the property within the price band approved by the Congregation?
- Is the location suitable for the building's intended purpose?
- Is it located near the parish office and main worship centre?
- If this is to be a manse, is it near to schools?
- Is it convenient to public transport?
- Is the property in good condition?
- Are there any deferred maintenance or ongoing maintenance issues?
- Are there any conditions associated with the title?
- Does it have good resale potential (particularly for a manse)?
- Are there any health and safety or seismic issues?
- Does the Local Authority LIM Report raise any concerns?
- Are there any actual or potential heritage issues that could affect the use of the property?
- If the property is to be used as a manse, please refer to Ministers' Housing Requirements later in this section.

In order to purchase a property you must obtain approval from:

- Church Council
- Congregation
- Presbytery
- Church Property Trustees

You will need to request an application form for *Approval to Purchase Property* from the CPT office at trustees@presbyterian.org.nz or by phone on (04) 381 8290.

You must have a registered valuation

You will need to provide a market valuation from a registered valuer with your application. Rating valuations or estimates from real estate firms are not sufficient. A registered valuation provides a professional assessment of the property and should support the price being asked. The valuation must be no more than 90 days old at the time of application.

What to do once the Church Property Trustees have given their approval

- A letter from the Trustees' office will confirm the Trustees' approval for the purchase and advise any special conditions that approval may be subject to.
- Consult your parish solicitor when you find a suitable property. He or she may assist with drawing up the Agreement for Sale & Purchase and will be responsible for arranging the property settlement, the land transfer and mortgage registration (if applicable). The parish will be asked to sign a letter of engagement. This is appropriate, as the Trustees do not engage the solicitor.
- **The Agreement for Sale & Purchase must be sent to the Trustees' office for approval by the Trustees' solicitor before it can be signed by the Trustees.**

The Agreement for Sale & Purchase must be signed by the Trustees, not by the parish.

Important points about completing an Agreement for Sale & Purchase

- The purchaser is named as The Presbyterian Church Property Trustees.
- The Agreement for Sale & Purchase must be signed by the Trustees, not by the parish.
- Include any applicable conditions e.g. financing, due diligence period, building or LIM reports required.
- The following clause must be included in the Agreement:

Limitation of Liability

Notwithstanding any other clause in this Agreement, the liability of The Presbyterian Church Property Trustees as Purchaser in this Agreement shall be limited to the Purchase Price and shall not constitute a debt payable by the Purchaser or their successors in office out of any other fund or property.

Legal review of documents

All documents to be signed by the Trustees must first be reviewed by the Trustees' solicitor and approved as being in order for signing. This includes the Sale & Purchase Agreement and the land transfer instruction form. The cost of this review is an expense associated with the property purchase and will be on-charged for payment by the parish.

Agreement for Sale & Purchase becomes unconditional – what happens next?

- When an Agreement become unconditional, you will be required to pay a deposit to the real estate agency and then to pay the final purchase amount and any amounts owed on local council rates to the parish solicitor prior to the agreed settlement date.
- If the required funds are held in a Presbyterian Investment Fund (PIF) account, ask the Trustees' office to transfer the funds to your parish bank account a few days before they are required. This will ensure you have sufficient time to pay the funds to your solicitor's trust account.
- If you are borrowing a portion of the purchase price, ensure the lender knows when and where to transfer the funds.
- Your parish solicitor will prepare the Land Transfer Authority and Instruction (A&I) form and send this to the Trustees' office for signing by the Trustees at least one week before the agreed settlement date.
- You will need to arrange full replacement insurance cover to take effect on the settlement date. Contact Crombie Lockwood to arrange this through the Church's collective insurance scheme.

What happens if a suitable property is found before the required approvals have been obtained?

The situation sometimes arises where a parish is intending to purchase a property and wishes to negotiate a purchase before the congregation, Presbytery and Trustee approvals have all been obtained.

Purchasing a property can often be a more pressing situation than selling, in that the opportunity to make an offer on a preferred property could be lost if an agreement cannot be signed prior to obtaining the required approvals.

If this situation arises, contact the Trustees' office for advice as to how you may be able to proceed and the special conditions that would need to be included in an Agreement for Sale & Purchase.

GST

You need to carefully consider the GST aspects of the purchase i.e. will the purchase price be **inclusive or exclusive of GST** where applicable.

The Trustees are GST registered and (being the legal purchaser) must include the transaction in their GST return. The rule of thumb is that GST cannot be claimed on the purchase of a manse or other residential property, and the purchase price may be stated as "inclusive of GST (if any)".

The purchase of all other church property (churches, halls, commercial buildings, land) is subject to GST and the purchase price must be stated as "plus GST (if any)". Often sales in this category are zero-rated for GST purposes depending on the GST status of the seller and the intended use of the property by the purchaser.

The GST aspect is not always well understood and the parish may wish to obtain professional advice in this regard.

Ministers' housing requirements

The Church's regulations on housing for ministers are set out in the Conditions of Service Manual, which accompanies the Book of Order. Further details are in the Accommodation for Ministers guidelines. (See PCANZ website.)

You may provide accommodation for your minister by:

- owning a house of an approved standard
- providing an accommodation allowance to the minister *
- leasing a house from an independent owner
- leasing a house from the minister **

There will be taxation implications for the minister in respect of the amount paid as rent. Consult the PCANZ Finance Manager if you need advice.

* If the minister is to be paid either an accommodation allowance or rent, it should be the lower of the market rental for a suitable property within an appropriate radius of the main worship centre or main site of the ministry, or the cost of the mortgage on a house owned by the minister. Presbyteries often set guidelines.

** Leasing a house from the minister is the least preferred option, and there is a risk that IRD will challenge it. In any event, the rental should be established having regard to market rental prices in the area.

The manse must be within a reasonable radius of the congregation's main worship centre
Exceptions to this must be approved by Congregation and Presbytery.

Congregations should provide attractive, appropriate accommodation for their ministers.

Minimum requirements for a manse

- Adequate living space which is separate from the space used for church activities
- Facilities for offering hospitality
- A study/office with adequate shelving unless this is provided elsewhere
- A washing machine and a refrigerator with adequate freezer space
- Floor coverings in all rooms
- Wardrobes in all bedrooms
- Drapes or blinds
- Adequate heating for all living areas and the study

Refer also to suggested selection criteria on page 15.

Your manse needs to be safe

All practical steps should be taken to eliminate, isolate and minimise any potential hazards. Congregations that own any property (including a manse) have responsibilities and liabilities for these.

Safety Checklist

- Fencing, paths, steps, staircases and railings, decking and verandas are sound and free of obstructions.
- Exterior lighting is installed as appropriate.
- Interior wiring, plugs and appliances are safety tested.
- Hot water temperature is appropriate.
- Smoke detectors are installed and working, and emergency exits available.
- Ensure there is an alternative exit from upstairs in the event of a fire.
- Secure storage for dangerous substances.
- When thinking of safety, anticipate that children will visit the manse, even if the current manse family itself does not have children.

General Checklist for Property Purchases

- Approval from Church Council.
- Approval from congregation.
- Working party authorised to proceed.
- Congregation mission plan prepared and the property purchase proposal is tested against this.
- Congregation's intentions discussed with Presbytery.
- Criteria checklist prepared, against which to measure potential properties. (This section of the handbook has suggestions. Add to this any other factors special to your situation.)
- Will you need to borrow money? If so, the congregation, Presbytery and the Trustees all need to give formal approval.
- Registered valuation obtained for preferred property. (A copy of the valuer's report must be included with the approval application to Presbytery and the Trustees.
- Negotiate and settle purchase price.
- Complete the Application for Approval to Purchase Property and forward it together with all other required documents to Presbytery.

Section 3:

Renovations, Alterations, Extensions and New Buildings

General Guidelines

As with the purchase of a new property, any decision to significantly alter, extend or build new buildings should start with the question: “How will this decision fit the mission of the congregation?” We are not in the business of property management – we own buildings when they provide the best means of enabling the Church to fulfil its life, worship, and mission.

This means that the parish should consider a wide range of options early in the process, and be convinced that the proposed option is the best way to go. This requires you to ask questions such as the following. Should we look for a different location or site to use? Would it be better to sell the existing buildings as they are, rather than altering them? Can we share facilities with other congregations either on our site or their site, and reduce the capital expenditure? In some ways, a major rebuilding process is like a purchase so, depending on the project, the advice in Section 2 of this Handbook on what to consider may also be useful.

A small warning: it pays to seek advice on the building rules early.

Small alterations can force major costs. The Building Code and Regulations and obtaining Resource and Building Consents have become more complex. Sometimes, relatively minor projects can grow to expensive major undertakings if full code compliance is required by the Local Authority (such as upgrading access, improving fire safety or earthquake strengthening). It pays to obtain advice from a professional who knows your Local Authority’s rules before going too far down the process.

The approval process

Significant changes to a building, including major renovations, require approval from the Church Council, the congregation, Presbytery and the Trustees.

Your application needs to include plans/drawings, cost estimates/quotes and how the project is to be funded.

If the building project is a major one, Presbytery must obtain a report from the Church Architecture Reference Group before it gives approval. You should discuss the timing of this with your Presbytery, as some Presbyteries prefer the Reference Group to only be involved once they have a clear view of the overall reasoning behind a major development application. However, we do recommend that once it is time to contact the Reference Group, you do so as early as possible.

You will need to request an application form *for Approval to Undertake Major Repairs, Alterations or Erect a New Building* from the Trustees’ office at trustees@presbyterian.org.nz or by phone on (04) 381 8290.

Approval process for projects over \$500,000

For projects over \$500,000, you should use a two-stage approval process where you first get approval to the concept at an early point in the project (when the intended scope of the project is reasonably clear, but before major design costs, etc. have been incurred). Approval of the concept and to move to the second stage of full design and costing, should be obtained from your Church Council, the congregation, Presbytery and the Trustees. Final approval to proceed will need to be obtained from all of the above once the design is fully developed and all the costs are reasonably certain.

1. **Concept approval** by the Church Council, congregation, Presbytery and the Trustees to the project as a concept and to move to the next stage.

Concept approval should be sought when the plans are fairly clear but before significant funds have been spent on detailed design. It should include how the money for the project is going to be raised, and in particular seek approval for any borrowing or lottery grant funding.

As a general guide this will require:

- An outline of the parish strategy for mission and growth opportunities
- Alternatives that have been considered in coming to the recommendations
- Project strategy
- Current accounts and assets together with income and expenditure history
- General design proposal and design philosophy
- Details of proposed consultant team
- Church Architectural Reference Group report on the concept

2. **Final approval** from the Church Council, congregation, Presbytery and the Trustees, to allow the project to proceed.

Final approval should be sought once the design has been finalised, reasonably firm costings have been received, and the details of how the project is to be financed have been determined, but before any commitment has been made to proceed.

In addition to the information required for the concept approval, this will generally require:

- Specific design details
- Details of proposed project team
- Proposed Quality Assurance plan covering material standards, supervision and certification
- Details of local planning consent requirements
- Proposed project execution strategy for tenders and construction
- Project cost and cost control proposals
- Project financing, including final approvals for any borrowing
- Project management and time scheduling control plans
- Church Architectural Reference Group report on the whole project

Managing the process

Most projects require a significant time commitment from the congregation. It is best if the congregation appoints a dedicated team (a “works committee”) that will oversee the process from the start, and which is responsible for its successful completion. For projects over \$100,000, the Trustees expect systems will be established to manage and control the project with regular reporting in a way that leaves no room for surprises as work advances.

Before signing a major contract, such as for building work, all approvals must be in place and the contract checked by your solicitor.

For projects over \$500,000, the Trustees as title-holder should sign the contract documents on the parish’s behalf.

This is to ensure that, should a contractual dispute later arise, the parish’s interests are not jeopardized for want of legal standing. A parish is not a legal entity and does not have sufficient standing in law to enforce a contract in its name, should it become a matter of legal dispute. The Trustees are a legal entity and can take action to enforce a contract.

This “signing requirement” is therefore to protect the parish’s interests and the \$500,000 threshold is to strike a balance between minimising risk and administrative simplicity.

Your solicitor should draft the documents that must then be reviewed by the Trustees’ solicitor to ensure they are in order for signing and that both the parish and the Trustees are adequately protected.

Because the Trustees act for many parishes, your solicitor will need to include a clause limiting their liability to your parish property, which should read something like:

“The liability of The Presbyterian Church Property Trustees under this contract shall be limited to the property set out in the schedule attached, and shall not constitute a debt payable by The Presbyterian Church Property Trustees and their successors in office out of any other fund or property.”

Cost overruns and major changes to your project

If, at any time, either before or after you commence your project, the approved cost is likely to increase by 15% or more, or major changes to the scope of the work are required, please advise Presbytery and the Trustees immediately as this may negate the original approval and a further approval may be needed.

Some advice from experience - It is important to ensure you have good professional assistance.

For any major project, it is important that you find a professionally qualified principal designer and agree the extent of the work, and that you take advice from other members of the design and construction team. The team will generally be made up of the architect, and civil and structural engineers. Other engineers, (mechanical, electrical and fire services) may need to be appointed by the principal designer depending on the size of the project.

In addition to selecting the designers, we strongly recommend that any major project employs:

- A Project Manager who will report to you on quality assurance certification, the impact of project scheduling and any cost variations.
- A Quantity Surveyor to provide a cost plan, schedule the job for tendering, advise on the prices submitted and handle cost variation approvals. They should be asked to regularly report on the anticipated final cost as well as provide advice on approving progress payments and other claims as they arise.

Getting good value for money

Normally for a large project, this is best achieved by tendering with pre-selected contractors considered capable of doing the work. This ensures you are getting competitive prices for the work. Your professional advisors should be able to suggest suitable tenderers.

There are other ways of getting the work designed and constructed outside of the competitive tender process. If you use these, then the Trustees will want to be assured by Presbytery's Property and Finance Committee that the congregation is getting value for their money, that independent advice is used to ensure quality standards are achieved and that cost plans and time schedules will be established and independently monitored. If using a design-build arrangement, it is particularly important that the parish receives the Producer Statement including the final construction review.

It is important to ensure that the contractors pricing the work provide a work schedule showing target finish dates. The time schedule should become part of the contractual documentation with regular reports provided on the progress being made against the agreed schedule.

Protect your congregation from claims

Check that your professionals, particularly your builder, have adequate insurance, including professional liability insurance. Make sure you understand when the insurance by the builder finishes, and have your own insurance ready to replace it immediately. It is also important to ensure that your contractor clearly has the responsibility for compliance with Health and Safety regulations, and that all members of your congregation comply with his requirements about accessing the site.

Checklist for Renovations, Alterations, Extensions or New Buildings

- Congregation mission plan prepared including what property resources are needed to support this mission
- Determine the options to be considered, and the criteria that they will be assessed against, to best reflect the mission objectives of the parish
- Discuss and agree with your Presbytery on when the Church Architecture Reference Group should be involved in your process
- Agreement to proceed with the project requires the approval of:
 - Church Council.
 - Congregation.
 - The congregation should also appoint a “works committee” unless the project is very small.
 - Presbytery.
 - Church Property Trustees (using the form available from the Trustees’ office).
- Will you need to borrow money? If so, the Church Council, congregation, Presbytery and the Trustees all need to give formal approval for this. The details for this are provided in Section 4 of the Handbook.

Once final approvals have been obtained

- Ensure contracts are approved by your lawyer and provide protection to your congregation through insurance and adequate handling of Health and Safety requirements.
- If the project is over \$500,000, the Trustees should sign the contract. The draft contract should be prepared by the parish solicitor and include the appropriate limitation of liability clause.
- Check your GST situation - are you registered and able to claim back the GST charged by consultants, contractors and other providers?
- Set up the reporting requirements to ensure that your committee will get timely advice on the progress of the project, and adequate assurance about the quality of the work
- Before you make your final payment and take possession of the building, check that:
 - your professionals have signed off that the work is complete and to standard.
 - you have the Producer Statement and the Resource Consent is finalised and has been released.
 - you have adequate insurance.

Section 4:

Borrowing by Parishes

Trustees' Discretion

The Book of Order provides in Chapter 16 section 8 (9):

Before contracting any debt in excess of a sum determined by the Council of Assembly and specified in the Supplementary Provisions, the church council must obtain

- (a) the authority of the congregation,*
- (b) the approval of the presbytery, and*
- (c) the approval of the Presbyterian Church Property Trustees or the Synod of Otago and Southland, as the case may require.*

(The specified sum is \$50,000 - Supplementary Provisions to the Book of Order as at 11 June 2016)

All borrowing in excess of this sum is at the absolute discretion of the Church Property Trustees. This includes a capacity to vary the routine conditions in exceptional circumstances, including the refusal to approve applications.

However, any borrowing that requires a mortgage to be registered over Church property or an alteration to an existing mortgage, requires the approval of the Church Property Trustees.

Limits on Borrowing

- Maximum of 50% of the cost of a project may generally be borrowed
- Loans on low or nil interest and both formal and informal loans are included in this condition
- The borrowing term is limited to a maximum of 15 years

Why there are limits

- To ensure wide congregation buy-in to proposals
- To ensure current congregation members do not over-burden future members
- To prevent over-commitment

All borrowing proposals in excess of \$50,000 or that involve a registered mortgage, require the following approvals:

- Church Council
- Whole-hearted congregational support of the proposed borrowing, including formal voting of 80% support at the relevant congregational meeting
- Presbytery assessment of the viability of the proposal, including capacity to service the borrowing
- Formal Presbytery endorsement of the proposal to borrow
- Approval from the Trustees

You will need to request an application form for *Approval to Borrow* from the CPT office at trustees@presbyterian.org.nz or by phone on (04) 381 8290. *(A borrowing application will generally accompany a property purchase or building project application as required)*

New Zealand Baptist Savings & Development Society Inc (Baptist Savings)

Baptist Savings is a source of mortgage finance for churches. If your application to borrow is approved, and you wish to use Baptist Savings, a copy of the approval letter should be provided to them as confirmation. Baptist Savings will draw up the necessary Loan Agreement and mortgage documents for execution by the Trustees.

Contact: John Smeaton, Lending & Finance Manager on (09) 582 0037 or john@baptistsavings.co.nz

These documents will be sent to your parish solicitor whose role is to ensure the terms and conditions are clear and acceptable to the congregation.

Section 5:

Leasing Property

Ask yourselves how leasing this property will contribute to the life and growth of the congregation and advance God's mission.

Leases are involved when a congregation:

- needs to rent additional property for its use
- decides to lease out a property, or part of it, for income

In order to lease a property for a term of longer than one year you must obtain approval from:

- Church Council
- Congregation
- Presbytery
- Church Property Trustees

Allow sufficient time to prepare your application and to obtain the required approvals. Renewals of leases require the same approvals as the original lease, so it pays to start the process at least a month before the renewal or lease expiry date.

You will need to request an application form for *Approval to Lease Property* from the CPT office at trustees@presbyterian.org.nz or by phone on (04) 381 8290.

The lease must be in the name of **The Presbyterian Church Property Trustees**, as the landlord or the tenant (as applicable) and signed by the Trustees – **not** by the parish.

The lease document (Deed of Lease) must be in writing and preferably be prepared by your parish solicitor.

The Deed of Lease must include:

- the Trustees as Lessee (if you are renting additional property) or Lessor (if you are renting out your existing property)
- the legal description of the property
- the period of the lease
- the amount of the rental
- any renewal rights and obligations
- a clause limiting liability of the Church Property Trustees to the property being leased (refer below)
- an inventory of chattels
- it may include a bond payment

If the lease is a residential tenancy, you must also ensure you understand and abide by your obligations under the Residential Tenancies Act. Copies are widely available, together with standard tenancy agreements at Post Shops or online at www.tenancy.govt.nz.

The Trustees' approval is not required for a residential tenancy with a term of less than the one year.

Limitation of Liability Clause

This clause is required because the Trustees legally own a lot of property on behalf of the Presbyterian Church. It is important that liability is restricted to the actual property involved.

The Clause should read something like this:

“The liability of The Presbyterian Church Property Trustees as (tenant, landlord, lessee or lessor - as appropriate) under the terms of this Deed of Lease shall be limited to the property as set out in the schedule (attached) and shall not constitute a debt payable by The Presbyterian Church Property Trustees or their successors in office out of any other fund or property.”

This clause may vary on a case by case basis as recommended by the Trustees’ solicitor when he or she reviews the draft Deed of Lease.

It is the Congregation’s responsibility to ensure any conditions attached to leases are fulfilled. The Church Council must give the required notice to renew a lease that has a “right of renewal” clause.

Insurance of leased property

- Leasing part of your property may affect your insurance cover.
- It may be prudent to also require the lessee to carry their own insurance e.g. public liability.
- Ask the Church’s insurance brokers (Crombie Lockwood) for advice.

Keeping records

The Trustees will hold an original Deed of Lease signed by all parties and will provide a copy to the parish for its records.

It is the responsibility of the parish to abide by the conditions of the lease, to manage rent reviews and to know when lease renewals and lease expiries are due.

Section 6:

Subdividing Land

As with all property proposals, ask yourselves how subdividing the property will contribute to the life and growth of the congregation and advance God's mission.

There are a number of reasons a parish may wish to subdivide its land, such as:

- the land is larger than the parish requires and it wishes to sell the area that is surplus to its requirements
- to register a church and manse property on individual titles, perhaps to enable the separate sale of one or the other

Talk early on to your Presbytery and the Trustees' office about your general plans and time frames. It will help to make early contact to alert them that decisions are underway. Challenging or unusual proposals may take extra time.

In order to subdivide a property you must obtain approval from:

- Church Council
- Congregation
- Presbytery
- Church Property Trustees

You will need to request an application form for *Approval to Subdivide Property* from the CPT office at trustees@presbyterian.org.nz or by phone on (04) 381 8290.

You must have a registered valuation

You will need to obtain a valuation from a registered valuer based on the value of the proposed subdivision being issued with its own title. Valuations must be no more than 90 days old at the time of application.

Cost of subdividing

There are significant costs involved with subdividing land, such as:

- a survey plan
- local authority consent fees
- valuation fees
- possible ground works, water supply etc
- creation of easements
- land transfer and legal fees

You need to consider how these costs will be funded and make this clear in your application.

The final stage of a subdivision of land is its registration with Land Information New Zealand (LINZ) and the issue of a separate title. Your parish solicitor will prepare the necessary transfer documents which are then executed by the Trustees as the legal owners of the land.

Legal review of documents

All documents to be signed by the Trustees must first be reviewed by the Trustees' solicitor and approved as being in order for signing. This includes any easements that may be associated with the subdivision and the Land Transfer Authority and Instruction (A&I) form. The cost of this review is an expense associated with the subdivision process and will be on-charged for payment by the parish.

Section 7:

Use of Capital Funds

Why are there restrictions on the use of money raised by selling property?

Your parish property is in the nature of a trust which you have received from past members of your congregation.

When a property is sold, the proceeds are deposited to your parish's Presbyterian Investment Fund (PIF) Property account and held in trust for property-related projects. These funds are referred to as Capital or Property funds, and can only be used with the approval of Presbytery and the Trustees – regardless of the amount.

Interest earned on property funds is credited quarterly to a separate Interest on Property account that the parish may draw on as it wishes. The interest may be used to assist with the running costs of the parish – the capital may not be used for this purpose.

What can't capital funds be used for?

Capital funds cannot be used for the congregation's running costs, such as:

- minister's stipend or staff salaries
- administration costs
- power, phone, rates, insurances etc
- worship materials e.g. hymn books, projectors
- vehicles
- office equipment, appliances, sound systems etc
- routine maintenance

Capital funds can generally be used for:

- buying or building property
- buying land
- major renovations & alterations (including earthquake strengthening)
- repaying mortgages
- mission projects

Some guidance about Mission Projects

When the Trustees assess applications for mission projects, they look for evidence that the proposal will build up the Presbyterian Church for God's mission. This means that the proposal needs to provide some evidence that it is likely to be successful, that the level of expenditure is appropriate to the likely outcomes and that it is aligned to the long-term mission plans of the congregation and the Presbytery.

In the Trustees' view, buildings are only an enabler of mission; real success depends on the leadership and activity of the congregation. This means approval is more likely if there is evidence that the project is already working (and it would be helped by better facilities), than if it is based on the hope that better facilities will start a new mission, or make an existing struggling one become successful.

What else might capital funds be used for?

You might, with special approval, be allowed to use property money for major maintenance items, or for adding to the value of your existing property, providing certain conditions are met. Such approval is at the Trustees' discretion. The main criteria are:

- How necessary is the expenditure?
- Why is the parish unable to do this from current income?
- How will this expenditure benefit the mission of the congregation?

These types of expenditure might be approved

- major maintenance of buildings
- painting existing buildings
- major refurbishments of the interior, including carpeting
- purchase or repair of the principal musical instrument used in services
- costs associated with fulfilling legal requirements e.g. building warrant of fitness
- security and fire protection installations

Any use of capital funds requires the approval of:

- Church Council
- Congregation
- Presbytery
- Church Property Trustees

You will need to request an application form for *Approval to Use Capital Funds* from the CPT office at trustees@presbyterian.org.nz or by phone on (04) 381 8290.

The Trustees' approval must be obtained before you commit to any spending.

If you are planning to use property money, check with the Trustees' office as to whether your proposal is likely to be within the Church Property Trustees' discretion.

Section 8:

Gifts Property

Rather than sell, can we gift the property, or discount its price, to a worthy cause?

The answer is both Yes and No.

Occasionally, congregations prefer not to sell their property, but to have it used in some worthy manner (or sold at below market rates to a cause which cannot afford the full value of the property.)

The main distinction is the status of the congregation concerned. If the congregation is continuing its ministry in the area, it is appropriate that the congregation, having carefully considered and agreed a proposal, puts it to Presbytery and the Trustees.

If, however, the congregation is being dissolved and the parish closing, only Presbytery can make such decisions. (*Refer to Section 11 – Dealing with the Property When a Congregation is Dissolved*).

Is such a proposal the best use of the property to fulfil the mission of your local, regional and national church?

This can take a lot of talking through – so allow plenty of time for the process, and don't promise the property until all the required approvals have been obtained. Any proposal to gift or sell property at a discount requires the approval of your Church Council, congregation, Presbytery and the Church Property Trustees.

It is important to remember that church property is a trust from all the past members of your congregation, going right back to its establishment. The assets have been given in the expectation they will continue to be used for the mission of the Presbyterian Church. It is important that any gifting fulfils this trust.

The Trustees are not generally in favour of gifting property, as this notion is contrary to a trustee's fundamental obligation to protect the value of assets.

It may therefore be preferable to sell a property at a nominal sum of say \$1, rather than formally gifting the property.

Any proposal to gift or sell property for minimal value requires the approval of:

- Church Council
- Congregation
- Presbytery
- Church Property Trustees

You will need to request an application form for *Approval to Gift Property or Sell at Minimal Value* from the CPT office at trustees@presbyterian.org.nz or by phone on (04) 381 8290.

Section 9: Gifting or Lending Congregational Funds

Introduction

The 2008 General Assembly wished to make it easier for the Church's financial resources to be shared more widely. In response, the Church Property Trustees, in consultation with the Council of Assembly, developed a process to encourage congregations and Presbyteries to gift or lend funds to another congregation or Presbytery. Through Press Go, the Church can collectively evaluate and fund promising growth projects. Parishes are urged to gift or lend funds through Press Go.

Gifting of non-capital funds

No external approvals are needed if a parish wishes to gift any of its surplus funds that have not come from the sale of a church property. However, the Church Property Trustees and the Council of Assembly expect that proposals to gift funds, particularly over \$20,000, will first be discussed in principle with the Press Go Board.

The donor church council should develop a formal proposal to be put to the congregation for approval. Once approved, the funds can be directly gifted to the Press Go Board or to the selected recipient parish or Presbytery.

Parishes may also gift a proportion of the quarterly interest earned on their Presbyterian Investment Fund (PIF) accounts to the Mission Enterprise Fund (MEF). You can contact the CPT office to arrange this.

Loans from non-capital funds

The donor congregation does not need external approval to lend non-capital funds but, if the loan is more than \$50,000, the recipient parish must obtain approval from Presbytery and the Trustees to borrow funds. A formal agreement, with clear terms and conditions should be drawn up with legal advice, and signed by both congregations.

Gifting or loans from capital funds

If a congregation has surplus funds from the sale of a property, these may be gifted or loaned to another congregation or Presbytery subject to approval from:

- Church Council
- Congregation
- Presbytery
- Church Property Trustees

You will need to request an application form for *Approval to Gift or Lend Capital Funds* from the CPT office at trustees@presbyterian.org.nz or by phone on (04) 381 8290.

Section 10:

Lotteries Commission and Community Trust Grant Applications

The following conditions apply to all applications for grants from the Lotteries Commission and grants from any Community Trusts that are funded from gaming.

The Presbyterian Church has long-standing objections to gambling, particularly to large scale gambling as promoted by the Lotteries Commission. The General Assembly has endorsed the following criteria for parish applications for Lottery Grants:

- Benefits of the grant must be wider than the congregation e.g. for community projects;
- Grants cannot be used to fund parish running costs;
- Applications for grants for property development, including building alterations, will only be considered when most of the use of the property will be for groups or organisations that are not part of the congregation;
- The congregation will be able to sustain the project financially during its life;
- The congregation has sufficient realizable assets, either financial or in property, to cover the restitution of any grant which the Church Property Trustees may be required to make in terms of the agreement with the Lottery Grants Board;
- The congregation has specifically agreed that should restitution be required, it will be funded from these specific assets; and
- Presbytery has undertaken to ensure that the conditions of the grant are met, and has processes in place to fulfil this.

You will need to request an application form for *Approval to Apply for Lottery Grant* from the CPT office at trustees@presbyterian.org.nz or by phone on (04) 381 8290.

Applications to apply for Lotteries Commission grants or grants from any community trust funded from gaming must be approved by:

- Church Council
- Congregation (including an undertaking to repay the grant if the conditions attached to it are not met)
- Presbytery (which must undertake to monitor the project to ensure any conditions attached to the grant are met)
- Church Property Trustees

Presbytery and the Trustees will assess applications using the above criteria.

The Lottery Grants Board has a number of schemes that vary between regions, and change over time. Enquire at www.communitymatters.govt.nz/funding-and-grants to check if your proposal will fit their current criteria, and whether a scheme exists under which your proposal might get a grant.

Lottery Grants Board Process

When all the required Church approvals have been obtained, your application to the Lottery Grants Board must be completed online and be made in the name of **The Presbyterian Church Property Trustees** on behalf of your parish or congregation.

The process requires input by the CPT office and can be complex and time-consuming. You need to allow sufficient time to ensure the application is submitted online prior to the funding round closing date.

It is up to the parish to lodge the online application and to request CPT to input its authorisation and subsequent acceptance if the grant application is successful.

The Trustees have absolute discretion in this area, and are likely to decline any applications they judge to be marginal.

Section 11:

Dealing with Property When a Congregation is Dissolved

The process of dissolving a congregation is the responsibility of Presbytery

The process for dissolving a congregation is set out in sections 5.9 to 5.13 of the Book of Order. It may be initiated by the congregation concerned under section 5.9 or by the Presbytery under section 5.10. The oversight of this process lies totally with the Presbytery. The Trustees are only involved in relation to the Presbytery's disposal (or retention) of the property of a dissolved congregation under section 39 of the Presbyterian Church Property Act 1885 (1885 Act).

The process for considering the ongoing viability of a congregation under section 5.10 of the Book of Order involves the appointment by the Presbytery of a Commission. The role of the Commission is important, not only in discerning the appropriate way forward for the congregation but also in resolving property-related matters if the congregation is to be dissolved. A Commission is also appointed when a congregation applies to be dissolved under section 5.9, although its role is more circumscribed. It can however, still play an important role in providing guidance to the Presbytery on property-related matters.

What happens to the property of dissolved congregations?

There is a need for clarity around the notion of dissolution of a congregation. Presbyteries need to take note of the different possibilities and of the advice from the Council of Assembly (see below) as to their suitability. Following dissolution a congregation may simply cease to exist (be 'closed-down') or it may be amalgamated with one or more also dissolved congregations to form a new congregation, or it may be incorporated into an existing, usually larger, congregation.

There is a big difference in what happens to congregational property depending on whether the dissolved congregation is 'closed down', amalgamated or incorporated. There is also a significant difference when considering amalgamation, between combining two struggling congregations in the hope the new entity will survive, and merging two 'relatively healthy' congregations for mission purposes.

- When a parish is dissolved, then, under section 39 of the 1885 Act, the property previously held by the dissolved congregation is to be disposed of as directed by the Presbytery. The Presbytery may, in some cases, decide to retain the property for its own use rather than dispose of it, but it must obtain the approval of the Trustees (see the section below "Presbytery Responsibilities and Trustees' Requirements").
- If the congregation has been closed down and no longer exists in any sense then the Presbytery can dispose of the property and direct that the proceeds be used for mission purposes within the Presbytery area, e.g. for the planting of a new congregation or the development of a new mission field.
- If the dissolved congregation is amalgamated with another dissolved congregation to form a new congregation, then the Presbytery must direct to what extent the property is to be held for the benefit of the new amalgamated congregation. The new amalgamated congregation would then make any further decisions on the property coming under its beneficial control in the same manner as other congregations.

- If the dissolved congregation is incorporated into an existing congregation, then the Presbytery must direct to what extent the property of the dissolved congregation is held for the benefit of the enlarged existing congregation. The new enlarged congregation would then make any further decisions on the property coming under its beneficial control in the same manner as other congregations.

See also the Section “Presbytery Responsibilities and Trustees’ Requirements” and Appendix A

Bringing Clarity to Our Mission

The Council of Assembly has provided a number of key considerations that should guide all Church decision-makers as we build our future together. A number of these are directly relevant for Presbyteries and Commissions when considering the dissolution of a congregation.

From the 10 critical decisions for our future in the *Bringing Clarity to our Mission* report:

- Invest in the future by not spending any more money on buildings that are not meaningfully contributing to the present and future mission of our Church.
- Address the difficult issues around decline and stewardship – with a focus on shifting resources to support mission and new forms of being the church.
- Do not amalgamate declining parishes.

The full report can be found online at:

http://presbyterian.org.nz/sites/default/files/publications/bt/2014/COA-Mission_Clarity2014.Print.booklet.pdf

The following quotes from the *Bringing Clarity to Our Mission* report urge Presbyteries as follows:

Do not support the amalgamation of any numerically declining congregations unless there is a change in the current leadership team, an agreed renewed mission, and a means to provide resourcing to engage in that mission.

Continue a process of dissolving small and declining congregations that do not have a sustainable future, but do so in conjunction with a plan to continue a Presbyterian presence and witness through planting, replanting or alternative congregation’s structures.

These statements make it clear that amalgamation of ‘numerically declining congregations’ should not usually be sanctioned unless certain mission safeguards are put in place. The key consideration is mission, not survival as an ‘end’ in itself.

Why is the Council of Assembly against amalgamating declining congregations?

In recent years, many Commissions have recommended, or congregations have sought, amalgamation with a neighbouring congregation, either Presbyterian or one of our partner churches, as a survival strategy. The Council of Assembly is now recommending against amalgamating numerically declining congregations as a survival strategy. The Council has provided the following explanation.

Amalgamations

As both our own experience and the overseas data indicates, amalgamating congregations that have both been declining (as a survival strategy) and without a renewed sense of mission, a change in the dynamics of the leadership team, and increased resourcing of ministry, is almost never an effective option in terms of supporting mission-focused growth.

What about cooperating ventures?

There are implications in adopting this strategic framework for the Church's relationship with other partner churches who share cooperating ventures. However, all these congregations are fully Presbyterian just as they are fully the denomination of the other partner(s). The presbytery has the same obligations to address issues of mission and ministry in these entities and work through, on a case-by-case basis with church members and partners, the implications of these strategic initiatives.

From the *Bringing Clarity to our Mission*, which can be found at http://presbyterian.org.nz/sites/default/files/publications/bt/2014/COA-Mission_Clarity2014.Print.booklet.pdf

The Role of the Presbytery Commission

The Commission appointed under section 5.9 or 5.10 of the Book of Order plays a critical role in helping the Presbytery decide what should happen to the property of a dissolved congregation. Its investigations mean that it is well-placed to advise the Presbytery on what seems to be best for the future mission of the Church (see Appendix A). It will usually have addressed the history of the congregation, which can pose some difficulties, and may have had to deal with some legal issues.

The Commission may be focused on the future – but congregations also have a history.

Often the most difficult issue the Commission has to deal with is the congregational history, especially any emotional links to the church buildings. Given the reality of this, we have observed that the best results come from Commissions that:

- **Keep the focus on the future.** More successful Commissions have made this focus clear to the congregation early and repeated it often, and by doing so managed the expectations as to what extent past history will determine the future.
- **Follow carefully the Book of Order process but without moving too slowly.** We acknowledge that this is a difficult balance to achieve, but unduly protracting the process does not help with a difficult time for everyone.
- **Have terms of reference that require them to consider, in the event of dissolution of the congregation, what should happen after dissolution, e.g. simple closure, amalgamation or incorporation.** The checklist at Appendix A provides some assistance in determining which of the options might be applicable in any given case.
- **Have terms of reference that ask them to provide advice to the Presbytery on how to implement the preferred option** (including practical advice like the recommended date of closure, who should do what, and when each step will happen). If the Commission does not provide that advice, in our experience, someone else has to pick up the threads, and often this has created uncertainty and time-delays which aggravate an already tense situation.

- **Have a sole focus on their Book of Order responsibilities, with another person or group being appointed by Presbytery to provide pastoral care to the existing members of the congregation.** We have observed that, when Commissions try to do both these activities, inevitably people feel they have failed in one or the other.
- **Include advice, if necessary, on how the value of the history of this congregation should be acknowledged.** Often seemingly small decisions (e.g. what will happen to the war memorials or the photos of past ministers) can have a major impact on the sense of wellbeing of the remaining congregation.

Legal issues that sometimes arise around property

“Mine” versus “Thine” – whose assets are they?

The Church’s assets, including its buildings, belong to the whole of the Presbyterian Church and are part of our mission. They do not belong to the people in the congregation, either past, present or future. They ‘belong’ to the mission of the Church as discerned by the Church. That is why Presbyteries and the Trustees are involved in all major property decisions.

When a parish is dissolved, the last members don’t have the right to say what happens next.

The fact that the property is for the benefit of the whole Presbyterian Church also means that the current people in the congregation do not have any greater rights over the congregation’s assets on its dissolution than the rest of the Church.

In particular, the current members cannot decide to gift the property to a cause that they support, nor can they make their acquiescence to dissolution conditional on any particular decision. This includes money and other assets as well as buildings and land. It is often prudent for a Commission appointed under section 5.10 to advise Presbytery early in their investigation on how to ensure that the financial resources of the congregation are maintained intact, possibly by the Presbytery or the Commission having oversight of the withdrawal of funds for other than routine expenditure.

Past gifts do not give rights to decide now

Even if someone has given a generous gift, it does not limit the ability of the Church to change its discernment of how it should be used in the mission of the Church, unless those limitations were accepted at the time of the gift and in writing (e.g. in the terms of a will, or an agreement signed at the time).

The two most common arguments that we see raised around property are some variants of:

- *“My great-great grandfather gave this building, so you now have to do what I say.”*

This is not true unless there are conditions in writing from the gift giver. Once a gift is given, it is given, and there is no way it binds the recipient to do anything in the future. The congregation’s lawyer and the Trustees have the record of dealings with the property and so between them they can help sort out whether there were any conditions associated with past gifts.

- *“The community gave money and/or met occasionally and/or loves this building, so you must do what the community says and/or give it to the community.”*

Even if the community did give money, it gave it knowing that it was going to a Presbyterian church. Our buildings may, at our discretion, be used by the community, but the Presbyterian Church’s mission is not about providing community assets.

Sometimes people threaten to take the Church to court using one or other of these arguments. While clearly it pays to check they do not have a legitimate case, Church decisions should not be driven by fear of court action.

Similarly, in many cases, those who feel they are “losing” will go to the press. The PCANZ National Office can provide the Presbytery with professional help in managing this and we suggest you discuss what is happening with them early in the process and certainly well before you need them. Church decisions should not be driven by fear of publicity.

Union and Co-operating partners may have legal rights

When a union or co-operating parish is considering closure, the other partner Churches must be consulted through the Joint Regional Forum. If the parish is closed, a proportion of the parish’s assets will go to the partner Churches involved. These proportions were agreed when the parish was first united, and are adjusted any time there is a change in the property of the parish. For this reason, ensure that the schedule of assets, which accompanied the original agreement, is up to date.

Presbytery Responsibilities and Trustees’ Requirements

When a congregation is dissolved the responsibility for decisions as to the disposal of the property of the dissolved congregation lies with the Presbytery, as previously stated. The Presbytery needs to inform the Trustees of the decisions it makes about the property. Until the Presbytery does dispose of the property, it is responsible for all the issues arising out of owning a property such as health and safety matters and maintenance. If the Presbytery does not have the capacity to deal with these things, then it might be better for a neighbouring congregation to be charged with temporary oversight on behalf of the Presbytery.

Normally, where the Presbytery has the primary responsibility for a property any proposal as to the property must be submitted to the Property Commission of Assembly for approval. However, the approval of a Property Commission is not required for the disposal of property of dissolved congregations (see clause 16.6(10) of the Book of Order). In general, Presbyteries move to sell or otherwise dispose of the property reasonably soon after a congregation is dissolved. The Trustees encourage Presbyteries to do this, both because it means the property does not deteriorate with time and because continued ownership can raise “hopes” that it will be either returned to use or given to the community.

If the Presbytery wants to continue to hold the property for its own use for a length of time, then this will require the approval of the Trustees. As part of that, the proposal would require the endorsement of the Property Commission of General Assembly. The Property Commission provides the opportunity for the wider Church to review the mission plans and the practicalities of the Presbytery’s decision from the perspective of the wider mission of the Church. (In effect, it plays the role that Presbytery plays when considering a congregation’s proposal).

APPENDIX A**Options for a Commission**

There is a range of options that a Commission should consider if it is going to recommend that the congregation be dissolved. (see “What happens to the property of dissolved congregations?”)

Below we provide the key options and relevant considerations under the Council of Assembly’s *Bringing Clarity to Our Mission* report:

1: The congregation is dissolved and incorporated into a larger Presbyterian congregation

- Consider if this is a wise use of the resources of the church.
- Explain how this will advance the mission of the Church (see also 4. below).

2: The congregation is dissolved and becomes part of a new amalgamated Presbyterian congregation

- Consider if this is a wise use of the resources of the church.
- Is the driving force ‘mere survival’ or is it a ‘merger for mission’?
- Explain why this reaches the high hurdle against amalgamations set by the Council of Assembly.

3: The congregation amalgamates with that of another partner church

- Consider if this is a wise use of the resources of the church compared to other new mission opportunities.
- Is the driving force ‘mere survival’ or is it a ‘merger for mission’?
- Explain why this reaches the high hurdle against amalgamations set by the Council of Assembly.

4: The congregation is dissolved but a new mission outreach established in the same place

- This option would be worth considering if the Commission believed the current congregation was not reaching out into the community around it but a new congregation or new approach may.
- Consider how the new congregation would be formed, and when the existing congregation and its leadership is not the primary driver of the new mission.

5: The congregation is dissolved

- Consider when and how this would happen including practical guidance on the steps to be taken.
- Consider in particular what will happen to the property and who will oversee this process.
- Keep in mind the need for Trustees’ approval if the Presbytery wants to retain the property for its own use.

Section 12:

Heritage Listings, Local Authority Controls and Other Constraints on Property Use

This section deals with ways in which the use of a church property can be constrained by legal processes. There are many different ways in which this can happen, but the most common ones are heritage listings, easements across the property, land use restrictions in district plans and compulsory purchase of property.

Sometimes the law provides little opportunity for the Church to do anything about the constraints placed on the property, but other times action can be taken to avoid or minimize the effect of the constraints.

Because constraints come in so many forms, it is difficult to provide specific guidance that will cover all situations. This means the Trustees are guided by some basic principles.

As a church, we do not own property for its own sake. We own property when it is the best way to achieve God's mission in our area, both now and into the future. For this reason, the Trustees' basic position is that:

The Church should avoid having any constraints on its property as far as possible.

Avoiding constraints not only means that the current congregation can use its property in the best way possible to achieve God's mission, but it also keeps open the possibility that the congregation of the future may have a different view of what mission is and how the building fits into it. Heritage listings are a particular concern because many congregations have found the authorities want to "freeze" the building in its original form, rather than acknowledging that this building is a church that grows and changes. This attitude may limit the congregation's ability to remodel the property as worship styles and mission outreach options change.

However, sometimes as with any other good citizen, it is only reasonable for us to agree to have a constraint on our property. The Trustees take the view that **when legal constraints are placed on our property, the Church should receive the same compensation that any other property owner would receive in the situation.**

We have found that sometimes the Church is seen as a "soft touch" and so a less generous offer of compensation is made than would otherwise be the case. This is unacceptable. The Church does not exist to provide the community with cheap resources; it is to fulfil God's mission for the area. Financial compensation can be used by the congregation to offset any issues caused by the constraint or to establish a new mission.

Finally, in some cases the constraints are requested by neighbouring property holders. The Trustees take the view that we should be good neighbours, but that does not mean that we always need to agree with what our neighbours want. The basic principle here is:

Requests from neighbouring property owners should be evaluated from the viewpoint of their impact on the mission of the congregation, both now and long-term.

We should not be unduly swayed by wanting to be kind in the short run only to risk damaging our ability to fulfil God's mission in the long term. This includes the damage to the long-term mission of the congregation if the property falls in value because of the constraints on it.

The two biggest risks - Local Authority Decisions and Heritage Protection

Constraints can come in many forms, but some of the most restrictive constraints come from local authority decision-making and heritage listing, so we have provided some explicit advice around these two issues.

Local Authorities can place restrictions on your property via a district plan, including:

- incorporating Heritage Status listing into the district plan
- the imposition of drainage easements,
- boundary set-backs, or
- taking land for public schemes.

What to do if you are advised of pending District Code planning changes affecting Church owned sites

The Trustees have attempted to advise all Local Authorities that any requests or notices regarding site change use or code changes affecting that site should be sent to The Presbyterian Church Property Trustees as the party responsible for property ownership matters.

If a congregation is issued with notice of a pending code change or site restriction, it should be copied and immediately sent to The Presbyterian Church Property Trustees' Executive Officer and the Presbytery Clerk.

If the notice is part of a congregation's development consenting process, then the congregation's design team and its Solicitor should be asked to advise on the consequence, and their advice passed to the Trustees as soon as possible.

What are the Trustees prepared to do where a congregation's plan to alter or develop a site is restricted by District scheme requirements?

Because the rules around property developments are mostly set by local authorities, it is important that congregations use experienced professional advisors who are familiar with your local authority's requirements. They, in turn, may suggest more specialist advisors for complex resource consent issues. You should also consult with your Presbytery and the Trustees on heritage constraints, as depending on how widely they may impact on our network, the Trustees and the local Presbytery may want to appeal these through a regional or national process rather than each congregation appealing the same rules individually.

The effect of local authority decisions relating to adjacent landowners

Local authority decisions can also lead to restrictions on the site development, use or potential use because of actions taken during development by adjacent landowners and developers. Applications from neighbours requesting support for exemptions to height or site lines requirements, and permission for encroachment to allow development to take place without a formal dispensation, such as Resource Consent hearings, may seem simple requests, but they can have the result of imposing permanent restrictions on future development and hence diminishing the value of Church-owned land.

What to do if you are asked to agree to an endorsement or restriction being placed on the legal title of a Church-owned site

Any changes to the site title plan have to be approved by the Trustees and the documentation signed by them. The congregation, or its solicitor, should advise the Trustees and the Presbytery

immediately and forward any request and related correspondence directly to the Trustees' Executive Officer.

Heritage Protection

Our purpose is God's mission into the future

We are privileged to have many beautiful and historic buildings. However, we are a Church – not a provider of monuments for the population. Although the Trustees appreciate the work of those who advocate the preservation of our New Zealand-built heritage, and of those who want to mark the historic and social significance of sites owned by the Church, the Trustees are required to support the work of active congregations and to maintain the value of the assets held in the name of the Presbyterian Church.

Our view of our heritage buildings is that they should not be allowed to impede the ability of our congregations to fulfil God's mission and, just as they were built to meet the mission needs in the past, they should change and develop to meet the mission purpose of congregations of the present and the future. In our experience, congregations show respect for their heritage when they seek to make such changes.

The Presbyterian Church Property Trustees are also aware that many congregations are faced with troubling realities when it comes to maintaining their existing buildings. This was acknowledged in the *Bringing Clarity to our Mission* report received by the 2014 General Assembly. *'We spend a vast amount on buildings, an amount that is likely to increase as our communities commit their funds to comply with new building codes.'* It is a situation that calls for careful and discerning congregational decision-making, if necessary looking beyond the current buildings for the sake of God's mission.

Bringing Clarity to our Mission makes it clear that matters are becoming increasingly critical for our future life as a Church and need to be addressed with urgent prayer to help us to discern God's will for the future. We believe that the time is right for bold action - to take risks, to try new things as our forebears did, as we undertake our journey towards re-imagining mission and the Church for today's world.

The full text of *Bringing Clarity to our Mission, April 2014*, can be found at: http://presbyterian.org.nz/sites/default/files/publications/bt/2014/COA-Mission_Clarity2014.Print.booklet.pdf

We don't have to own the building for it to exist.

We also know from experience that we do not have to continue to own a building for its heritage value to continue. These days, alternative uses of significant heritage sites and buildings may well be a way of funding the strengthening and restoring of historic real estate. The sale of such sites to community interests may release local congregations from the burden of maintaining and preserving heritage sites and allow the local community to continue to appreciate the significant heritage values of the location.

However, one of the biggest issues with a formal heritage listing is the loss of value when congregations and Presbyteries see advantages in selling land and buildings or where a congregation is dissolved. The Trustees are bound to support the realisation of the maximum value for land and buildings in order to release funds to the Presbytery for God's mission. The Trustees therefore do not want to see any long-term restrictions or constraints placed on land and buildings that could delay opportunities to realise assets and create more flexible ways of resourcing mission.

What can the Trustees do to assist local congregations in terms of District Plans and Scheme Reviews where recommendations are made to list Church-owned sites as significant historic heritage places?

The effect of significant historic heritage place listings will vary depending on the District Scheme recommendations of particular Local Authorities. The heritage values may be evaluated under a number of categories such as: Historical, Social, Manu whenua, Knowledge, Technology, Physical attributes, Aesthetic, and Context. The relevance for a particular site will be shown in proposed or adopted schedules.

Under District Scheme Plans, some or all of the following historical heritage place restrictions (local authorities will have their own specific requirements) may apply:

- Maintenance and Repairs of scheduled buildings and structures will likely be permitted and can be undertaken within a resource consent
- Heritage rules are likely to impose restrictions on:
 - Total or substantial demolition or deconstruction of scheduled buildings
 - Relocation of scheduled buildings
 - Construction of new buildings or structures on the land
 - Modification of scheduled buildings
 - Subdivision of the land and seismic strengthening work.

These or similar rules could obviously impact on the use/redevelopment of church buildings or the redevelopment or sale of the land on which a building stands.

By passing on information to the Trustees as soon as congregations have been advised that scheme changes are proposed, then, in conjunction with the Presbytery it may be possible and desirable, in some circumstances to engage specialist legal and planning advice and engage with the Local Authority before any hearings, as well as to make sure the local and national interests of the Church are represented at any formal hearings.

Can a Congregation agree to a Heritage listing (under a District Plan or proposed by Heritage New Zealand) in order to get financial assistance to develop or preserve an item on the site?

Sometimes congregations seek to have heritage listing because the local authority or Heritage New Zealand indicates that funding may be available. One of the unfortunate realities at present is that the public funding for the upkeep of heritage buildings is very small, and the requirements (particularly for Heritage New Zealand category 1 buildings) are extremely expensive. For this reason, we do not recommend congregations seek this kind of funding.

In addition, a congregation that does wish to obtain a heritage listing **must** obtain the approval of its Presbytery and the Trustees before seeking a voluntary heritage listing. This is because it may have implications for the regional and national mission of the Church. In addition, the Trustees must also be involved in any request or application for funding that requires a grant application likely to result in restrictions being placed on the site status and/or requiring repayment of any grant.

Open Space Covenant

The open space covenant is akin to heritage protection in its impact, but is administered by the Queen Elizabeth II National Trust rather than a local authority. An open space covenant provides private landowners in New Zealand with a mechanism for protecting special natural and cultural features on their land.

The purpose of the covenant is to preserve areas of land or bodies of water that have special aesthetic, cultural, recreational, scenic, scientific or social interest or value. The National Trust assists landowners with the ongoing management of the special features covered by the covenant and may meet some of the costs of securing or managing the covenanted land.

The covenant is voluntary but, once registered on the title of the land affected, it binds the current and subsequent landowners for all time.

For this reason, any parish wishing to enter into an open space covenant must obtain the prior approval of the Church Council, the congregation, Presbytery and the Church Property Trustees.

Section 13:

Property Insurance

The brokers for the Presbyterian Insurance Collective (PCIC) are Crombie Lockwood (NZ) Limited.

Crombie Lockwood provide full administrative support including the management of the Church's property insurance database, valuations, billings and claims together with insurance packages tailored to the needs of individual parishes.

Church property must be maintained and adequately insured

The Book of Order in Chapter 16 states that the Church Council is responsible for the management and administration of all property of the congregation. It must do everything necessary or appropriate for the use and management of all property associated with the life, worship and the mission of the congregation including:

- (a) the care and maintenance of all property,
- (b) the provision of adequate insurance cover on all property.

Basic principles that apply

The Church's First Principles acknowledge that everyone who makes decisions about property or finance within the Church is a "trustee" and that these decisions must keep faith with the long-term interests of the whole Church. Parishes must always bear in mind that we are a Church with a common ministry and should not focus exclusively on local concerns.

Because insurance decisions can impact the whole Church, it is important when thinking about insurance to consider:

- being able to reinstate Church property after a disaster; and
- protecting the value of a property for both the parish and the Church as a whole.

The Book of Order requires the Trustees to ensure the proper management of congregation property and assets by Church Councils in accordance with the rules of the Church. These rules are set out in the Book of Order and various other handbooks and guidelines. This includes the proper management of property in a way so as to maintain the value of the resources for both current and future use and benefit of the whole Church.

Managing risk is protecting the future

Managing risk through insurance is an important part of the proper management of a congregation's property and assets. Under the Book of Order, a congregation must have adequate insurance on all its property.

The Trustees consider "**adequate insurance**" as that which covers all normally insurable property and contents risks, including fire and natural disaster (which includes earthquake), at **replacement value**. Full replacement cover is required throughout the insurance period and during any period of reconstruction following an incident.

This should also include cover for demolition costs. Contract Works Insurance will usually be required during any period of building or major alterations.

Insuring for less than replacement value requires special permission.

A decision by a Church Council to insure a building for less than replacement value requires the approval of the Trustees. As with any property-related matter, the decision must be supported and approved by the congregation and Presbytery before being submitted to the Trustees for approval.

The Trustees, will consider specific variations to the requirement to insure at full replacement on a case by case basis. Applications for the Trustees' approval must be received well in advance of the commencement date for the proposed insurance arrangements.

When considering an application the Trustees will look at:

- the long term value of the building to the congregation; and
- the value of the building to the Church as a whole if it was sold.

For this reason, the Trustees are unlikely to approve less than replacement value insurance for church buildings that have material value, simply because the current parish cannot afford the replacement insurance premium.

Any approval by the Trustees to insure a building for less than full replacement value will be valid for a period of 5 years. Further approval will have to be obtained if the reduced cover is to continue beyond that period so that both the Parish and Presbytery are aware of this decision.

Your congregation needs to have more than property insurance

It is essential that congregations are covered for the many liabilities that they could be exposed to because of their activities. This is managed through a policy provided by Crombie Lockwood and charged through the Church's national office. We need all congregations that are part of the Presbyterian Church (including uniting and co-operative parishes) to take this cover, regardless of whether you have Presbyterian buildings or not, because your activities are what place you, and the wider Church, at risk.

The main liabilities covered by insurance are:

- **Public liability insurance**
In layman's terms this covers the risk that someone will have "personal injury" (including physical, mental and defamation damage) or their "property damage". Both the terms in quotation marks have quite specific legal meanings and Crombie Lockwood can advise you on this.
- **Professional indemnity**
This covers the church against claims when professional people employed by us cause damage through being negligent in the performance of their duties.
- **Statutory liability**
This covers costs arising from legal action taken about whether the Church has complied with the law.
- **Trustees' liability**
This covers losses due to "wrongful acts" of a trustee.

- **Associations' liability**

This insures against the “wrongful acts” of office holders, committee members and others. Again the term “wrongful acts” in these last two insurance categories has very specific legal meanings and Crombie Lockwood can provide advice on this.

These insurances cover the Church against unexpected expenditure that would be difficult to anticipate. No insurance is likely to cover deliberate or reckless behaviour by the leadership. In other words, if you know something is wrong, choosing to do nothing about it (because you think it will be covered by insurance) is **not** an option.

Who can provide your insurance cover?

While the Trustees recommend using Crombie Lockwood Limited, they will accept alternative insurance cover arranged by parishes, provided the arrangements (i.e. cover type, agreed cover amounts, deductibles, policy terms and insurer) are approved by the Trustees.

These insurance responsibilities also apply to Presbyteries that take over Church properties due to the dissolution of parishes and to campsite committees in respect of their buildings.

Money received from substantial losses covered by insurance claims will be held by the Trustees in parish PIF property accounts. Insurance claim settlement proceeds will be available to the congregation to pay for reinstatement works (where appropriate) or otherwise for an approved purpose in accordance with the Supplementary Provisions.

Presbyterian Church Insurance Collective (PCIC)

The Church operates an insurance collective known as the Presbyterian Church Insurance Collective (PCIC) for the placement of all insurances applicable to congregations and the Church.

The PCIC provides congregations with access to insurance cover for properties on terms acceptable to the Trustees and, given the purchasing power of the congregations as a combined purchaser, at competitive rates.

THE PCIC is managed by a registered charitable trust known as The Presbyterian Bureau Services Trust Board (PBST). The trustees of PBST are appointed by the Church Property Trustees. The PBST operates under the oversight of the Trustees and an advisory group appointed by the General Assembly.

Participation by congregations in the PCIC is not mandatory. The decision as to the cover to be taken and the insurer lies with the Church Council (subject to satisfying the Trustees that the cover taken is adequate).

Premium payment options offered through the Church's insurance brokers, Crombie Lockwood Limited, may assist parishes with cash flow issues.

However, participation in the PCIC is strongly recommended, as the ‘one for all’ ethos underpinning the PCIC does allow congregations to acquire insurance cover on good terms over the medium to longer term. The PCIC also provides a level of risk-sharing that allows cover to be placed at reasonable rates and, following a good year, allows surpluses to be carried over as a subsidy for subsequent years' premiums.

The PCIC also arranges liability and other insurances for the Church, which includes public liability and professional indemnity covers that are arranged on a whole-of-Church basis.

Please note:

Property cover for full replacement value taken through the PCIC does not require the Trustees' approval.

- Property cover taken through the PCIC for less than full replacement only requires the Trustees' approval as to the type and/or amount of cover taken.
- Property cover taken outside of the PCIC needs Trustees' approval as to all aspects of the cover including cover type, agreed cover amounts, deductibles, policy terms and insurer.

Insurance Checklist

1. If all property is insured for full replacement:

- Are you certain all your property (buildings and contents) is included?
- Are you insuring through the PCIC?

If the answer to both of the above is yes, nothing further is required.

2. If you are insuring all your property for full replacement but not through the PCIC:

- Are you certain all your property (buildings and contents) is included?
- Have you sent the alternative policy details to the Trustees for their approval at least one month before the placement of cover is required?
- Have you received Trustees' approval?

If the answer to each of the above is yes, nothing further is required.
If not, you must attend to these checkpoints.

3. If you are not insuring all property for full replacement, have the following approvals been obtained:

- Congregation Presbytery Trustees
- Are all these approvals less than 5 years old?

If the answer to each of the above is yes, nothing further is required. If not, you must attend to these checkpoints.

For further information contact:

Kos van Lier, Executive Officer – Church Property Trustees (04) 381 8296
kos@presbyterian.org.nz

Crombie Lockwood – Stuart Thompson (09) 356 1527 (Property & Contents)
stuart.thompson@crombielockwood.co.nz

Crombie Lockwood – Andrew Baker 0800 740 001 (Liability Insurance)
andrew.baker@crombielockwood.co.nz

Section 14:

Church Property Maintenance Guidelines

The Book of Order Chapter 16.3(1) states that the Church Council (Board of Managers or Property Committee) is responsible for the care and maintenance of all property of the congregation.

Scheduled, regular maintenance is the key to preserving the value of your congregation's property.

- It prevents unexpected damage and deterioration and expensive repairs.
- Damage to a building because of inadequate maintenance is not covered by insurance.
- If your premises look good, more people will want to visit.

The following guidelines and checklist will help you manage your congregation's property maintenance.

Exterior

Roof defects let in moisture, leading to rot and possible damage to electrics. Ensure that:

- Roof tiles are undamaged and firmly held in place.
- Roofing iron is well painted and securely nailed down.
- Bitumastic felt (Butynol) roofs are not cracked.
- Flashings are adequate, clean and rust-free.
- Gutters and down pipes are clear and in good order.

Exterior walls benefit from a regular wash down. When having this done, check that:

- Weather boards are free of rot and cracks and the paintwork is in good repair.
- Brick and block work is free of settlement cracks.
- Mortar in brick and block work is sound.
- All flashings are adequate and free of rust.
- Doors and windows are water tight.

Interior

- Doors and windows should open and close easily.
- Emergency exits must be clearly marked and never blocked.
- Buildings need continuous ventilation, particularly when locked up for long periods.
- Secure bookcases and other equipment that is on shelves or affixed to walls or ceilings, e.g. speaker boxes or heaters that could fall during an earthquake.
- Have the electrical wiring and fuse/meter board regularly checked by a certified electrician (especially for older buildings).
- Smoke alarms must be in working order and checked regularly (replace batteries once a year).
- First Aid kit must be clearly marked, easily found, and kept well stocked.
- Fire fighting equipment must be easily accessible, of sufficient capacity and in good working order.

Building Warrant of Fitness

- If a building e.g. church hall requires an annual Warrant of Fitness, diary this for annual renewal.
- A qualified certifier will see that this is done to local Council requirements.

On the ground

- Ensure that surface water is channeled away from the building.
- Keep underground drains clear. Cracked or damaged pipes caused by tree roots can result in silting away of subsoil with potential subsidence problems.
- Keep plants and shrubs away from the side of the building.
- Check ventilation under the building is adequate.
- Keep access safe by levelling uneven paths and clearing paths, steps and stairs of moss etc.
- Keep trees and hedges trimmed to prevent hiding places or visual barriers behind which break-ins can take place.
- Keep rubbish bins locked away (where rubbish bins are kept next to a building and arson results, insurance companies may refuse to pay out).

Building records and other documentation

- A photographic record and copies of all important documents for all property under your care should be stored off site in case of a natural disaster.
- Plans (including renovations) should be held in a safe location and copied electronically as a back up. Plans can be lost, even when stored on site.
- Plans are very helpful to engineers and others who may initiate repair work or undertake building assessment.
- For each building, keep a file of basic information e.g. age of building. Google street view photos and sky shots are helpful in providing a rough plan.
- Keep a schedule of building contents and update this frequently. This should include date and cost of furniture and equipment purchases. Store a copy of the schedule off site. Photos of the interior and its contents are also valuable.
- If there is a major incident, take photos of the damage as soon as possible and document what has happened.

Funding major maintenance projects

Please ensure that a reasonable sum for unforeseen repairs or maintenance is included in the annual budget. Please note that:

- Any property expenditure over \$50,000 requires the approval of your Church Council, congregation, Presbytery and the Church Property Trustees.
- Capital funds (held in a Presbyterian Investment Fund account) may be used for major maintenance projects, subject to approval by your presbytery and the Church Property Trustees.

Annual Maintenance Checklist

- Roof inspected and any defects fixed
- Gutters and down pipes clear
- Exterior paint work in good order all round
- Doors and windows water tight
- Adequate ventilation through interior
- Electrical wiring inspected
- Smoke alarms and other fire fighting equipment in good working order
- Book cases and all equipment on shelves or hanging from the ceiling secured
- Building Warrant of Fitness current
- Storm water drains clear
- Adequate ventilation under building
- Grounds including paths, steps and stairs tidy
- Building records and other important documentation up to date and stored off site

Section 15:

Earthquake Prone Buildings and Health and Safety Responsibilities

As Trustees, Presbyteries and Congregations – as a Church – we all need to understand what earthquake prone and earthquake safety mean for us in relation to the Health and Safety at Work Act 2015 (HSW Act) and the Building Act 2004. The HSW Act came into force on 4 April 2016 and replaced and updated the Health and Safety in Employment Act 1992 (HSE Act).

The HSW Act builds on the health and safety requirements of the HSE Act, lifts the bar on what is now required in the health and safety field and formalises the steps to be taken. The HSW Act applies to organisations such as local churches as well as to places of work and employment. The InterChurch Bureau has prepared training resources to help congregations adapt to the new regime of the HSW Act and assistance is also available from the National Office of the PCANZ.

The HSW Act requires any “person conducting a business or undertaking” (PCBU), which includes a local church, to ensure, so far as reasonably practicable, the health and safety of workers and other persons involved in, or carrying out work for, the undertaking. (Officers of the PCBU, which will include the local church leadership, have related responsibilities.) The PCBU’s responsibilities require identifying and effectively managing hazards in work places, including building-related hazards associated with the church buildings. The PCBU is required to take all practicable steps to mitigate harm to building users. Requirements under the Building Act include compliance with earthquake resilience standards.

This section deals more specifically with health and safety issues that arise in the case of earthquake prone buildings and earthquake safety.

WorkSafe New Zealand has recently issued a statement as to how it will enforce health and safety obligations in respect of earthquake safety. This statement was issued when the HSE Act was in force. It is possible/likely that a similar stance will apply under the new HSW Act, but this has yet to be tested.

The key points from this statement that relate to all buildings owned by the Church are:

- **If you’re not doing what you’re supposed to be doing under the Building Act and someone is seriously harmed following an earthquake, you could face enforcement action under the HSE Act (HSW Act).**
- The HSE Act (and its replacement HSW Act) covers to how you manage hazards arising from objects in and around workplace buildings (for our purposes – church buildings, halls, offices etc). These hazards are not covered by the Building Act. You are expected to proactively identify and manage these types of workplace hazards on a regular and ongoing basis. Failing to do so will receive attention from WorkSafe New Zealand as the regulator, and it could also result in serious harm.
- Preparing your workplace to deal with an earthquake is not a new requirement. You are not being asked to do anything above and beyond what you’re already expected to do under the HSE Act (and now the HSW Act) – that is, to identify and manage hazards. However, you do need to continue to be mindful about new or emerging information. When in doubt, get professional advice.

- Owners of buildings, employers and persons in control need to prepare for emergencies. All need to work together to ensure emergency plans work and people are safe during emergencies.
- Further workplace safety information can be found on WorkSafe New Zealand’s website www.worksafe.govt.nz

A death or serious injury as a result of a “head in the sand” or “she’ll be right” attitude is legally and morally indefensible. We must all make every possible effort to ensure our Church’s buildings are safe for our congregations and communities.

What is required?

The local church, as a PCBU, and its officers (e.g. Session, Board of Managers) are required to provide a safe environment. A vital part of this process as it relates to your church buildings is to obtain a professional assessment of the earthquake rating of your buildings.

- Church buildings must meet the minimum 34% of New Building Standard (NBS) as required under the Building Act (and also under the Church Property Trustees’ Policy on Earthquake-prone Buildings). An Initial Seismic Assessment (ISA) is the first step to finding out your building’s earthquake rating. This was previously called an Initial Evaluation Procedure (IEP).
- You must take action as promptly as possible to obtain a Detailed Seismic Assessment (DSA) if your buildings are rated at less than 34% NBS. The DSA was previously called a Detailed Engineering Evaluation (DEE).

**This is an important part of what is meant by
“doing what you’re supposed to be doing under the Building Act”**

Things we have learnt along the way

- The ISA (or IEP) is a basic assessment that will usually identify and explain any critical, structural weaknesses. The ISA can help in determining the focus of the more detailed Detailed Seismic Assessment (DSA).
- It may be that a specific critical weakness, and not the entire structure, is responsible for the low rating. Focussing on identified critical weaknesses may help to reduce the cost of the DSA.
- Because of the particular skills required to produce a meaningful and dependable ISA or DSA, there are risks in using a sole practitioner to do the assessment. If you engage a sole practitioner, it is important that you ask him or her, as part of their contract, to have their report peer-reviewed by a suitably qualified and experienced engineer. This is best practice and what professionals should expect.
- When you have obtained the seismic reports for your parish buildings, please provide a copy to Presbytery and to the Church Property Trustees’ office so that we can keep our information on your buildings up to date.

Earthquake Prone Buildings Policy

The Earthquake Prone Buildings Policy has been reviewed and updated to take account of legislative changes and the request from the 2014 Assembly to consider requests from Congregations to strengthen to only 34% in certain circumstances.

The fundamental legal and moral obligations of the Trustees as building owners of all Church property north of the Waitaki River, and of congregations as managers of their buildings, remain unchanged. Under the Book of Order and the Presbyterian Church Property Act 1885, the leadership of each congregation has the primary responsibility for ensuring that its public buildings are safe and up to current earthquake standard. This is clearly expressed in the Council of Assembly's statement on the issue:

Our Council of Assembly, after consulting with our Doctrine Core Group, has reached the conclusion that Church owned buildings that are unsafe should not be used for church or community activities. This conclusion is not just a matter of risk management, but also one that the Council believes affirms the integrity and nature of our Church and its Christian witness and mission; none of us wishes to knowingly place anyone at risk by worshipping or working in an unsafe environment.

So, what has changed?

Firstly, we have divided the country according to the Government's recently published high, medium and low risk areas and extended the reporting and strengthening timeframes as appropriate for each area.

Secondly, the Trustees remain convinced that 67% NBS is the minimum standard required to ensure both the safety of our congregations and other building users and to provide reasonable certainty that our buildings will survive to be part of the Church's mission into the future. 67% NBS is also recommended by the New Zealand Society for Earthquake Engineering as being the minimum to provide an acceptable level of protection in a moderate to severe earthquake.

However, as requested by the 2014 General Assembly, the Trustees may permit congregations to upgrade to the lower 34% NBS when the cost of strengthening to 67% is excessive, or when the facility is not one that is critical for the functioning of the congregation and/or has very low levels of use.

The full 2015 Earthquake Prone Buildings Policy can be viewed and downloaded from:

http://presbyterian.org.nz/sites/public_files/15-09-09_Earthquake_Prone_Building_Policy_with_AES_endorsement.doc.pdf

Section 16:

Duties and Responsibilities of Decision Makers

- All members of church courts who manage the assets of a parish are in a “trustee relationship.”
- They have responsibilities as trustees in keeping with The Trustee Act 1956.
- The most important responsibility is to exercise “care and prudence” in all decisions that are made.
- There is a legal accountability to the parish for this responsibility.
- If you are ever in doubt about whether any decision is likely to breach this duty, seek legal advice first.

This is what we mean by ‘good stewardship.’

Responsibilities of Presbytery

Presbyteries play a pivotal role in property matters.

The Book of Order places responsibility on Presbyteries for the oversight of all property dealings with parishes. While the Trustees have the final legal authority over property, the Trustees do not know the local situation.

The Trustees expect the Presbytery to give careful scrutiny to property proposals before endorsing them. The views of Presbytery carry considerable weight.

Presbytery should consider whether a property proposal before it:

- is consistent with the mission strategy of the parish and of Presbytery
- is a wise use of resources
- complies with the requirements of the Book of Order and its supplementary provisions
- has sufficient support within the parish
- will not over-commit the parish
- will not put undue pressure on the congregation.

Chapter 16.4 of the Book of Order defines the property and finance responsibilities and duties of a presbytery as follows:

1. A presbytery has the following functions in relation to church buildings:
 - a) approval of sites and plans for new buildings
 - b) approval of the erection of new buildings for the purposes of the Church
 - c) oversight of building proposals submitted by congregations

- d) approval of plans for re-erection or renovation of, and alterations and additions to the buildings in excess of a sum determined by the Council of Assembly and specified in the supplementary provisions.

(The specified sum is \$50,000 - Supplementary Provisions to the Book of Order as at 11 June 2016)

- e) approve the purchase of existing buildings.

- 2. A presbytery must not approve any building proposals in excess of a sum determined by the Council of Assembly and specified in the supplementary provisions unless it is satisfied that any person or persons engaged in drawing up plans and specifications for such buildings is or are competent and recognised by the appropriate industry body.

(The specified sum is \$50,000 - Supplementary Provisions to the Book of Order as at 11 June 2016)

- 3. A presbytery must ensure that a registered architect, registered clerk of works or other competent person acceptable to presbytery carries out inspections at regular intervals of building proposals involving expenditure in excess of a sum determined by the Council of Assembly and specified in the supplementary provisions.

(The specified sum is \$50,000 - Supplementary Provisions to the Book of Order as at 11 June 2016)

- 4. A presbytery must approve all purchases, sales, exchanges, leases and other transactions affecting Church property (including Church campsites where appropriate) within the area for which it has responsibility and in doing so must have regard to the requirements of the supplementary provisions relating to value and terms of leases.

- 5. Before approving any building proposal subject to the requirements of the Trustees, whether by way of new building, alteration, addition, or purchase of existing buildings (but not including maintenance), the presbytery must obtain and be satisfied with the report of the Church Architecture Reference Group on the proposal.

This applies to any building proposal involving a sum in excess of \$200,000. (See also section 16.5(3)(c) of the Book of Order.

- 6. Subsection (5) does not apply to any proposal for maintenance of buildings.
- 7. In exercising its responsibilities for worship and mission through the purchase, development and sale of sites, the presbytery must consult with the negotiating partners through the Joint Regional Committee in their region.

The Supplementary Provisions to Chapter 16 contain further details.

Property held in the name of Presbytery

If a Presbytery wishes to sell a property held in its name, or undertake material work on such property, then the Presbytery must apply to a Commission of Assembly, which will then forward the application to the Church Property Trustees for final approval.

The Presbyterian Church Property Trustees

The Trustees are a group of up to 20 people who are appointed by the General Assembly to administer the property and financial assets of the Presbyterian Church.

You can find out who the current Trustees are by contacting the Church Property Trustees office at trustees@presbyterian.org.nz or by phone on (04) 381 8290.

In addition to their general accountabilities as Trustees, The Presbyterian Church Property Trustees are required to keep the rules set out in Acts of Parliament, which are specific to Presbyterian Church property. These Acts are listed below. The Trustees are also guided by decisions made at General Assembly.

The Acts of Parliament under which The Trustees work:

The Presbyterian Church Property Act 1885
The Presbyterian Church Property Amendment Act 1914
The Presbyterian Church Property Amendment Act 1930
The Presbyterian Church Property Trustees Empowering Act 1957
The Presbyterian Church Property Amendment Act 1963
The Presbyterian Church Property Amendment Act 1970
The Presbyterian Church Property Amendment Act 1974
The Presbyterian Church Property Amendment Act 1996

Other Church Property Acts of interest are:

The Presbyterian Church of New Zealand Act 1901
The Otago Church Board of Property Act 1962
The Otago Foundation Trust Board Amendment Act 1968
The Otago Foundation Trust Board Act 1992

The Trustees have skills and experience appropriate to the role, and volunteer their services free of charge. The Trustees:

- are appointed by the General Assembly
- must be members of the Presbyterian Church
- must be of “full age and good fame”
- must be resident in New Zealand.

THE PRESBYTERIAN CHURCH
PROPERTY TRUSTEES



Presbyterian Church
of Aotearoa New Zealand