



Building up the Presbyterian Church for God's Mission

The Property Handbook

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



5th Edition

2025

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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 (Church Property Trustees). Under the first Act, The Presbyterian Church Property Act 1885 ([1885 Act](#)) (click on this link to access the legislation online), the Church Property Trustees are the registered owners of, and are legally responsible for, all Presbyterian Church Property located north of the Waitaki River. All transactions for these properties are managed through the Church Property Trustees.

The other two Acts, the Trusts Act 2019 and the Charitable Trusts Act 1957, provide binding legal principles under which the Church Property Trustees operate.

The [Book of Order](#) (click on the link for online access) 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. Chapter 16 deals with property and finance matters. The Other Supplementary Provisions include additional regulations.

Every Presbytery, congregation and church member is obliged to comply with it, except for members of Cooperative Ventures in circumstances where the [Procedures for Cooperative Ventures](#) (click on the link for online access) apply.

Status of the Handbook

The 1885 Act gives the Church Property Trustees the power to make by-laws to give effect to the Act. The Trustees' by-laws are set out as procedures and requirements in the Property Handbook. The Supplementary Provisions to the Book of Order note that the process for obtaining approvals for any property transaction is set out in the Property Handbook, and that in fulfilling its responsibilities in relation to church properties, a presbytery must follow the Trustees' requirements and guidelines as set out in the Property Handbook.

In dealing with property, the General Assembly, Presbyteries and Congregations, must abide by legislation, the Book of Order (and Supplementary Provisions) and/or Procedures for Cooperative Ventures, and the Property Handbook.

Not a substitute for legal advice

The Property Handbook provides procedures and guidelines for dealing with Church property. It is not a substitute for seeking legal advice.

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 Congregation Council or other approved body.

Church Property Trustees

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

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).

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

Congregation residential property which provides accommodation for the Minister.

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 Cooperative Venture – mainly Methodist and/or Anglican.

PCANZ Directory

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

Presbytery

Regional body of the Presbyterian Church that has oversight of all Presbyterian congregations in that area. It includes Te Aka Puahou and Pacific Presbytery.

The Trustees

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

UCANZ (Uniting Congregations of Aotearoa New Zealand)

This is the national body which oversees Cooperative Ventures, including union congregations, on behalf of partner churches.

Valuation

Report from a Registered Valuer, stating the condition and current market value of the property under consideration. Can also include various valuations for insurance purposes.

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 powers and responsibilities under the Presbyterian Church Property Act 1885 and the Trusts Act 2019.

- 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

- Congregations are under the oversight of Presbyteries and the Trustees.
- The necessary approvals must be obtained before action is taken. For Cooperative Ventures, the partner Church(es) should also be consulted and must be consulted in the case of any significant property development. The Church Property Trustees must be consulted for any significant property development in relation to property held by partner Church(es) property trustees.

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 congregation property proposals.

All applications to the Church Property Trustees (“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.

- All members of church courts who manage the assets of a congregation are in a “trustee relationship.”

Section 1:

Duties and Responsibilities of Decision Makers

- All members of church courts who manage the assets of a congregation serve in a “trustee capacity”.
- They have responsibilities as trustees in keeping with the Trusts Act 2019.
- The most important responsibilities are to exercise “reasonable care and prudence” in all decisions that are made and to act honestly and in good faith for the benefit of the Church.
- There is a legal accountability to the congregation for these responsibilities.
- If you are ever in doubt about whether any decision is likely to breach your fiduciary duty, seek legal advice first.

This is what we mean by ‘good stewardship’.

Responsibilities of the Congregation and Church Council

Church Councils and Congregations are the beneficial owners of the property

The Trustees, the Congregation, and the Church Council each share in the ownership of congregational property. The Trustees hold the legal title to the property on behalf of the congregation under the 1885 Act. The Church Council is a beneficial owner of the property and so is the Congregation. That is, they get to enjoy the use and benefits of the property. This enjoyment comes with obligations as owner, some of which fall on the Church Council and some on the Congregation.

Chapters 16.3 of the Book of Order defines the property responsibilities and duties of a Congregation (summarised) as follows:

1. The Church Council is responsible for the management and administration of all congregational property, including:
 - a. care and maintenance
 - b. adequate insurance
 - c. determining use
 - d. proposals to acquire, lease or dispose of any property
 - e. obtaining congregational approval for any significant effect on the use of buildings.
2. Before proceeding, the Church Council must comply with Supplementary Provisions
3. Where a Co-operative Venture, the Church Council must consult the partners and the Regional Forum.
4. Before making any decision to buy, lease or sell property, the Church Council must:
 - a. Take account of the life, worship and mission of the Congregation
 - b. Determine whether the proposal enables the congregation to fulfil its life, worship and mission
 - c. Comply with the Supplementary Provisions and necessary approvals from the relevant Trustees

5. The Church Council must review at least annually the following matters for each property:
 - a. The state of repair
 - b. The adequacy of insurance cover
 - c. The arrangements for public risk insurance and personal accident insurance for volunteers
 - d. The value and liability of each property
 And must implement any requirements imposed by the Presbytery or Supplementary Provisions.
6. The Church Council must ensure and regularly monitor that it complies with all with legislation which affects the use and maintenance of property.

Chapter 5.2(4) of the Book of Order lists the functions of a Congregation in providing for its property and finances, including holding any meeting necessary to deal with the Congregation's property.

Section 14 of this Handbook looks at the legislative requirements when dealing with earthquake-prone buildings.

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 congregations. While the Trustees have the final legal authority over property, the Trustees do not know the local situation, so the Presbytery's evaluation is important.

The Trustees expect the Presbytery to carefully scrutinise 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 congregation 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 congregation
- Will not over-commit the congregation
- Will not put undue pressure on the congregation.

Chapters 16.4 and 16.5 of the Book of Order define the property responsibilities and duties of a Presbytery (summarised) 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 Provisions¹

¹ \$50,000 as at October 2023.

- e. approval of the purchase of existing buildings
 - f. inspection by or arranged by a Presbytery Property Committee, at least every 6 years, of all properties within its area of responsibility. The Committee must report to Presbytery on the result of the inspection(s) and propose appropriate action to ensure the maintenance of all properties in good and safe condition.
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 Provisions¹ 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.
 3. 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.
 - a. Building proposals which involve expenditure of more than \$50,000¹ also require inspection by an appropriately qualified person.
 4. A Presbytery must, 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), involving expenditure in excess of the sum determined by the Council of Assembly and specified in the Supplementary Provisions², obtain and be satisfied with the report of the Church Architecture Reference Group.

This does not apply to any proposal for maintenance of buildings.

5. In exercising its responsibilities for worship and mission through the purchase, development and sale of sites, the Presbytery must consult with all Partner Churches in their region.
6. Any significant property development in a Cooperative Venture must have final approval from the trustees in whom the property is vested, and it must also be approved by the regional courts of the local church partners and be referred to the trustees of the relevant Partner Churches (Section 3.5.3 of the Procedures for Cooperative Ventures).

Presbyteries must forward proposals for properties held in the name of a Partner Church's property trustees to the Trustees for endorsement. Transactions cannot proceed until this endorsement has been given.

Significant property proposals for property held in the name of Partner Churches require the endorsement of The Presbyterian Church Property Trustees (and vice versa).

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.

This does not apply to property being disposed of under section 39 of the 1885 Act (see Section 9: Dealing with a property when a congregation is dissolved).

² \$200,000 as at October 2023.

Section 2:

Renovations, Alterations, Extensions and New Buildings

General Guidelines

As with all major property activity, 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 congregation 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 4 of this Handbook on what to consider may also be useful.

Approvals Required

Approvals required for building projects depend on the amount involved, the purpose of the building, and the source of funding.

- Alterations to places of worship and manses that cost less than \$50,000 funded from congregational funds (not property capital) require the approval of:
 - The Church Council or Board of Managers
- Building projects (including alterations) to places of worship and manses that cost more than \$50,000, or any projects to other buildings, or those that use property capital (including insurance proceeds), require the approval of:
 - The Church Council
 - Congregation
 - Presbytery – and partner Churches for Co-operative Ventures
 - Trustees – and partner Church Trustees for Co-operative Ventures
- Building projects that cost more than \$200,000 require the approvals above and:
 - Submission to a Church Architecture Reference Group
- Building projects that cost more than \$500,000 require:
 - Concept and Final approvals from the Church Council, congregation, presbytery and Trustees
 - The Trustees to sign major contracts/agreements with providers/suppliers.

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 8296.

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

Renovations, alterations or new builds by a Cooperative Venture for a property held in the name of a partner church property trustee require the endorsement of The Presbyterian Church Property Trustees (and vice versa).

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

Small alterations can result in 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.

Approval process for projects less than \$50,000

Congregations can spend up to \$50,000³ on new buildings, additions, alterations or renovations of worship centres and manses without the need for approval from either the Presbytery or Trustees – unless the congregation wants to fund the project from property capital.

Otherwise, you will require approvals via the relevant application form.

Where the congregation wishes to use property capital, applications for projects costing less than \$50,000 can follow a short-form process. Instead of completing an application form, congregations can apply to the Trustees via a letter, accompanied by supporting documentation.

The letter should address:

- The nature of the project. You can include any plans if you have them.
- The purpose of the project and how it supports the mission of the congregation
- The cost of the project, including a contingency if appropriate. Please attach any quotes (or receipts) for the work
- The source of funding, including the amount of property capital to be used.
- Details of Church Council and congregational approval. Please attach a copy of the minutes of the congregational meeting approving the project.

These applications still require the approval of the congregation and Presbytery. Please send your letter and accompanying documents to the Presbytery for their approval first.

Church Architecture Reference Group approval for projects over \$200,000

If the building project is expected to cost over \$200,000⁴, Presbytery must obtain a report from the Church Architecture Reference Group (CARG) 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 recommend that once it is time to contact the Reference Group, you do so as early as possible.

³ The threshold amount above which Presbytery and Trustees approval is required is set by the Council of Assembly in the Supplementary Provisions to the Book of Order.

⁴ The threshold amount above which CARG approval is required is set by the Council of Assembly in the Supplementary Provisions to the Book of Order.

Concept and Final approvals 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 next stage of full design and costing, should be obtained from your Church Council, the congregation, Presbytery and the Trustees. We call this Concept Approval.

Concept and Spend Approval

Concept approval seeks approval for:

1. A concept design, and
2. A concept spend amount

Concept approval should be sought when you have a clear idea of what you intend to do, but before significant funds have been spent on detailed design and consents. It will cost money to get to this point, but before you start spending 'big' money, you need the approval of the congregation, Presbytery and the Trustees.

The concept spend amount is the amount you think you will need to spend to get to the point where you are ready to seek final approval. Planning and design can be expensive – before the project even gets to the construction stage. You might spend around 20%-25% of total costs on planning/design and consents - and of course, there is no guarantee that you will get the go-ahead.

Requesting approval for a concept spend amount as part of the Concept Approval stage ensures everyone knows what is being spent in the next stage (and how much might be foregone if final approval is not granted).

An application for Concept approval should also include indicative total costing and where the funds will come from, including if borrowing or lottery funding is proposed.

As a general guide, Concept Approval will require:

- An outline of the congregation's strategy for mission and growth opportunities
- The objectives of the proposed concept
- General design proposal
- Alternatives considered
- Details of proposed consultant team (architects, engineers, builders, ...)
- Indicative costs and proposed sources of funding (including funds spent to date)
- The most recent financial statements and current year budget

Final Approval

If the expected project cost is less than \$500,000 or you have already received Concept Approval, you may apply for final approval.

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. Where required, an application for borrowing or lottery funding should also be included.

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 (including costs already incurred and a contingency amount) and cost control proposals
- Project financing, including final approvals for any borrowing or lottery funding
- Project management and time scheduling control plans
- Church Architecture Reference Group report (if the costs exceed \$200,000)

Timing and conditional approvals

While you need to get costings to the point where they are reasonably firm before submitting an application for final approval, you do not need to wait until you have quotes from all contractors. Quotes are usually accompanied by deadlines, which may put unnecessary pressure on the approval process. Instead, wait until you are able to get a reasonable idea of final costs and use an appropriate contingency to allow for higher quotes.

While the Trustees prefer a complete application, you might consider applying for conditional approval if you have everything lined up, except for one component. For example, if you have not finalised funding for your project, you could apply for final approval, subject to finance.

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.

**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. Major projects require the use of a registered architect. Other engineers, (mechanical, electrical and fire services) may need to be appointed by the principal designer depending on the size of the project. In projects involving heritage buildings, a heritage consultant may be required.

In addition to selecting the designers, we strongly recommend (and in some cases may require) 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. We know that good project managers more than make up for their cost through savings they generate
- 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.

Signing contracts

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 congregation's behalf.

This is to ensure that, should a contractual dispute later arise, the congregation's interests are not jeopardized for want of legal standing. A congregation 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 congregation'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 congregation and the Trustees are adequately protected.

Because the Trustees act for many congregations, your solicitor will need to include a clause limiting their liability to your congregation 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."

Access to Property Capital

In order to access property capital held by the Trustees for your project, you will need to forward a request to the Trustees' office, along with copies of invoices to support the payment. Please allow a few days for payment, particularly for amounts in excess of \$100,000.

Keeping your congregation (and the Trustees) informed

Most project teams will receive progress reports from project managers or contractors. Progress reports and photos can be a great way to keep your congregation engaged with the project. You can also load video feeds to your congregation website.

Please forward progress reports, photos and links to video feeds to the Trustees: we're keen to hear how your project is getting on, and to share good news stories with others.

Contingencies, cost overruns and major changes to your project

Cost increases are almost inevitable. This is particularly the case if you are undertaking seismic strengthening or a major renovation project, where you may not always know the state of the existing building. It also applies where Heritage is involved. As a result, you should include a reasonable contingency amount in your project costing - at least 15% for strengthening or major renovation projects. It is much better to report to the congregation that the project cost less than expected, than to have to go back for further approvals.

If, at any time, either before or after you commence your project, the total cost (including your contingency) is likely to increase by 5% 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.

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 congregation 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.

Once your project is complete

Once your project is complete, you are required to advise the Trustees and provide:

1. A Certificate of Completion from the Local Council Authority (if appropriate),
2. A Statement of Cost showing the total project cost and how this compares with the approved amount (we suspect your congregation might expect the same sort of accountability), and
3. For major projects (over \$500,000), a Close Out Report sharing what worked well, what didn't work well, and any lessons that might be useful for other congregations/presbyteries.

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 congregation
- ☐ 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
 - The property trustees of partner Church(es) for Cooperative Ventures must be consulted in respect of significant projects
 - Church Property Trustees (using the form available from the Trustees’ office).
- ☐ Will you need to borrow money or apply for lottery funding? If so, the Church Council, congregation, Presbytery and the Trustees all need to approve this. The details for this are provided in Section 4 (Borrowing) and Section 5 (Lottery) 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 congregation 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 3:

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 or Executive Officer how the application will be processed – each Presbytery will have different ways of dealing with applications with many things now being dealt with electronically. It is important to know of any deadlines and time limits so that there is no unnecessary delay. Presbyteries consider the property, mission and financial aspects of applications and this may be more than one committee. Most Presbytery committees would appreciate more time to consider complex proposals.
- 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.

Approvals required

The sale of church property requires the approval of:

- The Church Council – which must consider the life, worship and mission of the congregation
- The Congregation
- The Presbytery – and partner Churches for Co-operative Ventures
- The Trustees – and partner Church Trustees for Co-operative Ventures

The sale by a Cooperative Venture of a property held in the name of partner church property trustee requires the endorsement of The Presbyterian Church Property Trustees before the sale can commence (and vice versa).

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 8296.

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.

There may also be some simple ways the congregation can honour the past and help the congregation and community accept the sale. These include a farewell service. Key chattels, stained glass windows, or significant plaques can be removed prior to sale and incorporated into a new building (or another church). It may be possible to transplant important trees, or a commitment made to plant trees (in memory) in a new location.

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.

Mana whenua right of first refusal

Following a decision at General Assembly, Supplementary Provision 4.5A requires that:

Property that is to be sold on the open market must, subject to the Trustees' overriding discretion, first be offered to relevant Māori entities for purchase in accordance with the relevant guidelines issued by the Council of Assembly. For the avoidance of doubt, this obligation is not binding in respect of the sale of property that is:

- (a) Held by the Synod of Otago and Southland;*
- (b) Subject to a private trust;*
- (c) Held by partner church property trustees;*
- (d) Being sold by a presbytery under section 39 of the Presbyterian Church Property Act 1885; or*
- (e) Is otherwise subject to conflicting contractual, fiduciary or legal obligations.*

The first thing to note, is that just because this provision is not binding in certain cases, this does not mean that the selling party need ignore the provision. For instance, a presbytery selling a property under section 39 of the Presbyterian Church Property Act 1885 cannot be bound by a decision of General Assembly, but it might consider a decision of the Assembly persuasive, and that following the wishes of the Assembly is the right thing to do. In the same way, a congregation that is considering a direct (off-market) sale to a third party might still elect to invite mana whenua to make an offer.

The obligation to issue an invitation for an offer to purchase property to relevant Māori entities is important. It is one way that our church is able to acknowledge in a meaningful way the principles

of Te Tiriti o Waitangi (the Treaty of Waitangi). The obligation recognises the importance of land to mana whenua and the fact that since 1840 Māori have been dispossessed of most of their ancestral land.

Right of first refusal Guidelines

The Council of Assembly issued guidelines on 5 June 2024, and these have been circulated to congregations and presbyteries. The guidelines are quite detailed and address the following areas:

- When the guidelines apply - and when they do not apply. Where the guidelines apply, they are binding and must be complied with.
- What happens if the property is sold directly to a third party - in which case there is no obligation to invite mana whenua to make an offer.
- The process to be followed when inviting relevant Māori entities to make an offer for the property. Where the obligation to issue an invitation arises, a property must not be advertised on the open market until the property has first been offered to relevant Māori entities in accordance with the guidelines.
- How to identify who those relevant Māori entities might be. The guidelines provide a number of suggestions to assist sellers actively seek that information.
- What the offer should consist of, which in reality, is an invitation to offer. It confirms that the property must not be sold for less than a current market valuation (which must be obtained by the selling congregation). The invitation must also include a Sale and Purchase Agreement that has been approved by the Trustees.
- The point at which the property can be placed on the market. Congregations must give relevant Māori entities no less than 50 working days to consider the invitation – and must also give all relevant Māori entities 5 working days' notice that it intends to place the property on the market.
- A sample letter inviting an offer.

Right of first refusal approvals

Congregations can only proceed to offer a property to relevant Māori entities once:

1. They have received approval for the sale from the congregation, presbytery and the Trustees,
2. They have secured a current market valuation for the property, and
3. The Sale and Purchase Agreement has been signed-off by the Trustees.

Congregations can only proceed to place the property on the market once it has complied with the guidelines, including providing presbytery with a copy of the invitations to offer and confirming to presbytery that no offer, or no sufficient offer, was received.

You must have a registered valuation

The Trustees assume that properties will be sold on the open market or for no less than current market value. 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 180 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.

Communications plan

On some occasions it may be appropriate to prepare a communications plan to address potential interest or concern from the community and/or media. The Trustees may require this as a condition of the sale approval. While the property belongs to the Church, as noted above, some communities have a strong sense of ownership. There is also the risk that the Church is seen as selling community assets simply to build its (already large) bank balance. Community consultation at the planning stage of a sale can be hugely important and help avoid future conflict.

A communications plan can help explain why the decision has been made to sell the building, how the past is being recognized, how the proceeds will be used to benefit the community, ... A communications planning document is available from the Assembly Office Communications team, and they are available for help if needed.

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 congregation solicitor. He or she should 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 congregation will be asked to sign a letter of engagement. This is appropriate, as the Trustees do not engage the congregation's solicitor.
- Please note that the Trustees, as title-holders, may be required to provide identity verification information to your real estate agent and solicitor in order to comply with anti-money laundering and countering financial terrorism legislation as part of the sale process.

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 obtain an extension of the approval period.

GST on sales

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. GST can make a significant difference to the amount the congregation will receive from the sale.

Whereas the Trustees hold the title to the property, the congregation (or presbytery as appropriate) is the beneficial owner. That is, the Trustees are acting as a bare trustee or agent for the congregation (or presbytery) in the sale. As a result, if registered, the congregation (or presbytery) must enter its GST number in the Sale and Purchase Agreement and include the transaction in its GST return. This is different to past GST treatment of property sales.

The general rule of thumb is that the sale of a manse or other residential property is not subject to the payment of GST (provided it is being used as a place of residence) 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 typically subject to GST and the sale price must be stated as “plus GST (if any)”. Sales in this category may be zero-rated for GST purposes. Factors that might influence GST treatment include the extent to which revenue and expenses associated with the use of the property form part of the congregation’s taxable supplies, the GST status of the purchaser and the intended use of the property, and whether GST was paid on the purchase of the property.

It is also important to note that GST may be liable before the sale has settled. That is, the congregation may need to pay GST before it has received the proceeds of sale. A GST liability will be crystallised at the ‘time of supply’, which is when an invoice is issued or any payment is received by the seller. For example, the full GST liability (if any) will be due for the period in which a deposit is received by a congregation. Time of supply is not triggered if the deposit is held in a solicitor’s trust account on behalf of the seller.

The treatment of GST on property transactions is not straightforward and is not always well understood. As a result, we recommend the congregation obtain professional tax advice in respect of its GST obligations. If in doubt, it is recommended that properties are sold “plus GST (if any)” as this means that the purchaser, not the congregation, will be liable for any GST due.

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 congregation solicitor approve the proposed agency agreement before you sign it.

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 congregation**
- **Please use the current edition of the REINZ/ALDS Sale and Purchase Agreement**
- **Please ensure Schedule 1 (GST Information) is completed using the congregation’s GST number**

Include clause deletions and additions as advised in the approval letter and as follows:

Delete the following clauses

7.1 (1) and (2), 7.2, 7.3 (5), (6) and (7), and 7.4 in the standard REINZ/ADLS Agreement for Sale and Purchase 11th edition 2022 (3) “Vendor’s warranties and undertakings”.

Congregations should also consider if the warranties under 7.3(1) are appropriate.

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.

Nomination of Liability

Where the Purchaser nominates a third party to complete the purchase under this agreement, the Purchaser will promptly inform the Vendor’s solicitor of the nomination and provide a duly executed Deed of Nomination prior to settlement.

If an updated edition is used, please check with the CPT Office regarding the deletion of clauses.

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 congregation.

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 9.1 (1) and (2), 9.2, 9.3 (5), (6) and (7), and 9.4 in the standard ADLS Tender Agreement form 11th edition 2022 (3).

Clauses 9.1 (1) and (2), 9.2, 9.3 (5), (6) and (7), and 9.4 in the standard ADLS Auction Agreement form 11th edition 2022 (3).

The “As is, where is”, Limitation of Liability, and Nomination 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 congregation.

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 congregation.

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

Your congregation 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 congregation solicitor together with the Trustees' bank account details for payment of the sale proceeds.

What happens on the settlement date?

- Your congregation 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 congregation'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 congregation will need to account for this in its GST return and request the Trustees release funds from the congregation's PIF property account for payment of any GST liability.

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

Mission Enterprise Fund (MEF) Contribution

Following a decision at General Assembly, Supplementary Provision 4.5 requires that:

Ten per cent of the net proceeds from the sale of property, excluding the sale of manses and/or worship centres for the purpose of replacement or significant improvement of either a manse and/or a worship centre as approved by the Church Property Trustees, must be transferred to the Mission Enterprise Fund of the General Assembly.

The purpose of the provision is to re-allocate some of the Church's capital, currently tied up in land and buildings, towards the renewal of the Church through new mission projects.

This provision is subject to the requirements set out in section 6A of Schedule 2 of the Presbyterian Church Property Act 1885. This section allows the Trustees, at their discretion, to apply the proceeds of sale for other church purposes (other than the purchase of land or building or the erection of a new building for church purposes) as the congregation and presbytery request.

Express MEF approval required from congregations and presbyteries

This means that, in most cases, the Trustees will require express approval from the congregation and/or presbytery before making a deduction for the MEF.

As a result, at the discretion of the Trustees, deductions for the MEF will usually be made:

- (a) Following congregational sales - excluding for replacing or improving a worship centre or manse:
 - i. Only where the congregation and the relevant presbytery specifically request the

Trustees to make the deduction for the MEF from the proceeds of sale; or

- ii. Where triggered by a successful request by the congregation and the relevant presbytery to use some, or all, of the proceeds of sale for other church purposes, e.g., for a mission project, building renovations, repairs and maintenance; or
 - iii. Where it is determined that the congregation will not require the proceeds for property purposes, e.g., where a congregation is likely to be dissolved.
- (b) Following sales of property by a presbytery where the presbytery is the beneficial owner, e.g., a campsite. No express approval from the presbytery is required in this situation.
- (c) Following sales of the property of a dissolved congregation by a presbytery pursuant to section 39 of the 1885 Act, only where the presbytery expressly agrees to the deduction for the MEF.

As with the right of first refusal for mana whenua, the 1885 Act takes precedence over decisions of the General Assembly. The 1885 Act confers powers on congregations to use the proceeds of sale for certain purposes (purchasing land and buildings or erecting a building) and they cannot be compelled to release those funds for other reasons. That said, congregations and presbyteries need to consider the wishes of the General Assembly where releasing property proceeds for new mission is the right thing to do.

Net sale proceeds

The congregation/presbytery 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 (except for in exceptional circumstances).

In the case of Cooperative Ventures, the 10% will be divided between the partner churches in accordance with the property ratios stated in the Schedule of Record.

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 180 days old.
- ☐ Complete the Application for Approval to Sell Property and forward it together with all other required documents to Presbytery.
- ☐ Cooperative Ventures must also consult the property trustees of partner Church(es).
- ☐ Working party set up to oversee the sale and to engage a congregation solicitor and to investigate any issues that may restrict the sale – including the treatment of GST (we recommend seeking professional tax advice to confirm your GST obligations).
- ☐ Where it is intended to sell on the open market, mana whenua have been invited to make an offer to purchase the property in accordance with the Guidelines.
- ☐ Follow requirements for drafting the Agreement for Sale & Purchase and get this signed-off by the Trustees.
- ☐ A communication plan is developed to address potential community interest or concern if appropriate.
- ☐ Appoint real estate agent(s) (if required). A sole agency must have a definite end date.
- ☐ Negotiate and agree sale price and conditions.
- ☐ Remember – the Agreement must be signed by the Trustees – not by the congregation.
- ☐ Farewell the building in the appropriate fashion, maybe with a final service of blessing, and remove any memorials or important items.
- ☐ Insurance cover on the property to be cancelled once the sale has been completed and title has transferred to the new owner.

Section 4:

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 or Executive Officer how the application will be processed – each Presbytery will have different ways of dealing with applications with many things now being dealt with electronically. It is important to know of any deadlines and time limits so that there is no unnecessary delay. Presbyteries consider the property, mission and financial aspects of applications and this may be more than one committee. Most Presbytery committees would appreciate more time to consider complex proposals.
- 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.

Approvals required

The sale of church property requires the approval of:

- Church Council
- Congregation
- Presbytery – and partner Churches for Co-operative Ventures
- Church Property Trustees – and partner Church Trustees for Co-operative Ventures

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 8296.

The purchase by a Cooperative Venture of a property to be held in the name of a partner church property trustee requires the endorsement by The Presbyterian Church Property Trustees before the purchase can proceed (and vice versa).

Seek approval first

It is recommended that you secure all the necessary approvals before a serious search for a property begins. That way, if and when you find a property you want, you are in a position to make an offer without having to wait for all the relevant approvals, which can take some time to secure.

Approvals of this nature should include the maximum value agreed to by the Church Council, congregation, presbytery and Trustees – and will include the condition that the purchase price does not exceed a registered market valuation. 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.

As part of the approval process, it is usual for a congregation to delegate the purchasing process to a subcommittee.

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 congregation office and main worship centre?
- If this is to be a manse, is it near to schools?
- Is it convenient for 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.

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

Sometimes a congregation finds a property it would like to buy 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.

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 180 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 congregation 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 congregation 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 congregation.**

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 congregation.**
- **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.

GST on purchases

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.

If the congregation is registered for GST, it must use its GST number in the Agreement for Sale and Purchase. 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 typically 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 we recommend the congregation seeks professional advice in this regard.

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 congregation.

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

- You will typically be required to pay a deposit to the real estate agency when an Agreement becomes unconditional (although this will depend on the terms, and a deposit may be required earlier or later). You will then need to pay the purchase amount (adjusted for things like the deposit and any amounts owed on local council rates) to the congregation’s solicitor prior to the agreed settlement date.
- If the required funds are held in a Presbyterian Investment Fund (PIF) account, please ask the Trustees’ office to transfer the funds to the congregation’s 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 congregation’s solicitor should 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 Gallager to arrange this through the Church’s collective insurance scheme (see section 13 Insurance for contact details).
- We strongly recommend you complete a pre-settlement inspection of the property prior to final settlement to ensure everything is in order.

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 Provision 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 and Operations Manager if you need advice.

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
- Insulation
- Smoke detectors

The house must also comply with healthy homes requirements.

Refer also to suggested selection criteria on page 27.

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 hazards. The following checklist is a starting point, each property will have its own potential hazards.

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.
- Requisite 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 minister does not have children.

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.
- ☐ Cooperative Ventures must also consult the property trustees of partner Church(es).
- ☐ Complete a pre-settlement inspection of the property prior to the final payment.

Section 5:

Use of Capital Funds

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

Your congregation's property is in the nature of a trust which you have received from past members of your congregation. There is an expectation that this property (or capital, whether in the form of land and buildings or financial assets) is passed on to future congregations.

When a property is sold, the proceeds are deposited to your congregation's Presbyterian Investment Fund (PIF) Property account and held in trust for the purposes of the trust as set out in legislation. These funds are referred to as Property Capital or Property funds and can only be used with certain approvals – regardless of the amount.

Sections 6 and 6A of the Second Schedule to the 1885 Act state that all money arising from the sale of property can be:

- 1. Invested in the PIF, or**
- 2. Used to:**
 - a. Purchase land and buildings, or**
 - b. Erect a new building, or**
- 3. Applied for other purposes, subject to any directions from the General Assembly and at the discretion of the Trustees.**

Capital funds can be used for:

The two primary uses of property capital are:

1. Purchasing land and buildings (including repaying a mortgage used to fund a purchase)
2. Erecting a new building

Alternative uses of property capital (where the Trustees might grant their discretion) include:

- Major renovations & alterations (including earthquake strengthening)
- New mission projects
- Limited major maintenance projects
- Contributions to the Mission Enterprise Fund
- Gifts to Press Go or other congregations or presbyteries

Approvals Required

The use of property capital requires approval from:

- The Church Council
- The Congregation
- The Presbytery
- The Church Property Trustees

And in certain circumstances, may be subject to directions from the General Assembly.

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 8296. Where the use of capital funds relates to major repair/renovations, an *Approval to Undertake Major Repairs, Alterations or Erect a New Building* form should be used (see Section 2).

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

Interest on property capital

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

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 the availability of more funds would increase the likelihood of growth), than if it is based on mere hope that a proposed new mission project will bring about growth or that an existing struggling mission project will become successful if more money is spent on it.

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

These types of additional 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

What use might trigger a Mission Enterprise Fund contribution

If you use property capital to buy land and buildings or erect a new building, you will only need to pay a mission enterprise fund contribution if the congregation and presbytery expressly approve such a contribution.

However, if you receive approval to use property capital for other purposes, such as alterations, a new mission project, or major maintenance work, the General Assembly has directed that 10% of the sale proceeds used be transferred to the Mission Enterprise Fund. The transfer to the Mission Enterprise Fund is also subject to the Trustees' discretion.

Section 6:

Borrowing by Congregations

Care when borrowing

Borrowing is often a necessary component in major property developments. It can help secure the go ahead for projects that otherwise might not proceed. Many congregations have a great track record of successful borrowing, often repaying debt well before it was due.

That said, decisions to borrow should not be taken lightly. Borrowing not only binds members of the current congregation, but can also place obligations on future members. Borrowing also entails risk, in many cases requiring congregations to offer property as security. Default may result in the loss of that property.

Approvals Required

Approvals required for borrowing are as follows:

- Any borrowing involving security over property requires the approval of:
 - The Congregation
 - The Presbytery
 - The Trustees
- Any unsecured borrowing in excess of \$50,000⁵, requires the approval of:
 - The Congregation
 - The Presbytery
 - The Trustees

Trustees' Discretion and Limits

All borrowing requiring the approval of the Church Property Trustees is at the absolute discretion of the Trustees. This includes a capacity to refuse an application and, in exceptional circumstances, to vary the routine conditions.

The Supplementary Provisions set out limits as guidelines for the Trustees in considering any applications to borrow. These limits are:

- A maximum of 50% of the cost of a project may be borrowed. This applies whether the loan attracts interest or is interest-free.
- The borrowing term is limited to a maximum of 15 years.

The Trustees also expect over 80% of the votes at a congregational meeting to approve the borrowing.

These limits ensure widespread support from the congregation for borrowing and that the congregation does not over-commit itself or over-burden future members.

⁵ The limit is set by the Council of Assembly and set out in the Supplementary Provisions.

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 8296.

A borrowing application will generally accompany a property purchase or building project application as required.

Sources of loan funding

Once you have the Trustees' approval to borrow, you are welcome to approach lenders to arrange the borrowing.

Borrowing sources include:

- The Presbyterian Investment Fund (PIF)
 - The PIF is able to lend between \$250,000 and \$2,500,000 to congregations with mortgage security.
 - The PIF is also able to lend to up to \$1,000,000 to congregations secured against its Presbytery's balance in the PIF. It is up to each Presbytery to determine whether it wishes to make this facility available, and whether it wishes to offer security to any particular congregation.
 - If you wish to borrow from the PIF, you will need two approvals: (1) Approval to borrow; and (2) Approval for a PIF loan. The loan approval process is separate from the approval to borrow process. The decision to lend is made by the Trustees as trustee of the Presbyterian Investment Fund, who's primary duty is to the PIF account-holders (who are the ultimate lenders). Just because a congregation has received approval to borrow, or a Presbytery is prepared to offer security, does not mean that the PIF will approve the loan.
 - Please contact the Trustees at trustees@presbyterian.org.nz for a Loan Application Form.
- Christian Savings (or other Finance Companies)
- Banks
- Individuals

Typically, the lender will draw up the appropriate loan agreement and mortgage documents.

The Presbyterian Church Property Trustees must be recorded as the name of the borrower and the Trustees must sign the documents.

The documents will be sent to your congregation solicitor, whose role it is to ensure the terms and conditions are clear and acceptable to the congregation. The congregation solicitor will be required to provide a certificate to that effect.

You should allow for the payment of legal fees, including those incurred by the Trustees, along with any placement and other fees that might be charged by the lender. There will also be costs at the end of the loan to ensure the release of the mortgage.

Section 7:

Lotteries Commission and Community Trust Grant Applications

The Presbyterian Church has long-standing objections to gambling, particularly to large scale gambling as promoted by the Lotteries Commission. That said, lottery and community grants can be a valuable source of funding for property development or mission projects where the community stands to directly benefit from the project.

The Church has asked the Trustees to manage the approval process. This section of the Handbook outlines what is required for approval and how to go about applying for funding.

Approvals Required

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

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

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 8296.

Approval Criteria

The following conditions, endorsed by General Assembly, apply to all applications for grants from the Lotteries Commission and grants from any Community Trusts that are funded from gaming:

- Benefits of the grant must be wider than the congregation e.g., for community projects or property projects that will result in facilities used by the community. The Trustees will require evidence of the community benefit.
- Grants cannot be used to fund congregation 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.
- Note that the Trustees consider that property development projects where a building is subject to heritage constraints may constitute a benefit to the community and that heritage requirements can significantly increase the costs associated with the building. That is, the Trustees will consider applications for lottery funding for the purposes of strengthening, renovating or maintaining a building in accordance with heritage requirements.
- 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.

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

Lottery Grants Online Process

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.

When all the required Church approvals have been obtained, your application to the Lottery Grants Board must be completed online.

All applications for funding in excess of \$10,000 are supposed to be made by a legal entity. Congregations are not legal entities, but the Trustees are. However, Internal Affairs has agreed to a 'work-around' process as follows:

1. The application can be made in the name of the congregation.
2. The legal status/bank account/GST information in the congregation's organisational profile in the Grants and Customer Management System will be its own.
3. One of the two signatories identified in the request must be a CPT Trustee (or delegate).

Once you have set up your congregation as an organisation, please advise the Trustees office and they will request for a Trustee signatory to be attached to the organisation. You must then accept this request.

The Trustees will also provide a letter as below.

4. You must attach a letter to your application from CPT stating that:
 - It accepts responsibility for the project's financial expenditure and outcomes, and
 - It will countersign any Grant Agreement and monitoring reports (Pre-Payment Report, Ara Poutama Milestone Reports and the Otinga Korero Final Results Report) arising from approval of a grant.

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 congregation to lodge the online application and to request the Trustees to input its authorisation and subsequent acceptance if the grant application is successful.

Section 8:

Leasing Property

Many congregations are blessed with a variety of buildings, not all of which are required for the congregation's mission and ministry. In some cases, it might make sense to sell the unused buildings. In other cases, it might make sense to lease them to others.

Before considering a lease, ask yourselves how leasing the property will contribute to the life and growth of the congregation and advance God's mission.

Approvals Required

Approvals to lease congregational property to others are required as follows:

- For any lease of 12 months or less (typically residential tenancies), the approval of:
 - The Managers or Church Council
 - The Presbytery
 - The Trustees

You do not require the approval of the congregation for leases of up to one year.

- For any lease of more than one year (typically commercial leases), the approval of:
 - The Managers or Church Council
 - The Congregation
 - The Presbytery
 - The Trustees
- You do not require the Trustees approval:
 - If you wish to lease property from another owner for the use of the congregation
 - To hire out congregational property to others.

Hire agreements

The Trustees need not be involved in arrangements to hire out rooms or facilities in a church complex to other organisations. However, the Trustees strongly recommend that congregations use written agreements for such arrangements. These can be relatively simple documents, but should include, among other aspects:

- The space that is being used, including whether there is access to toilets/kitchens and use of any storage and/or car parks
- Obligations on the hirer, including for things such as cleaning, health and safety, and insurance
- Any specific conditions of use that might apply, e.g., no alcohol
- Fees (and any ability to increase fees for long-term arrangements) and payment of costs for damages
- The term of the arrangement (we do not recommend open-ended arrangements)
- Termination rights and powers (including the power for the congregation to terminate the agreement if the hirer breaches key terms)

- Clarity as to obligations relating to COVID-19 and an acknowledgement that the hirer warrants and confirms it will comply with the COVID-19 Protection Framework and any legislation and orders in relation to COVID-19 and abide by all rules and directives published and updated by the government from time to time.

Lease arrangements requiring the Trustees approval

There are two types of lease arrangements requiring involvement from the Trustees:

1. Residential tenancies – typically for 12 months
2. Commercial leases – typically for more than one year

In rare instances, a congregation may also be involved in a license to occupy, usually used in the case of retirement housing. Please contact the Trustees for advice on what to do in these instances.

Residential Tenancies

Many congregations lease out former manses or houses to individuals or families. These are residential leases or tenancies and are governed by the Residential Tenancies Act 1986 (and Amendments).

You will need to request an application form for *Approval to Lease a Residential Property* from the CPT office at trustees@presbyterian.org.nz or by phone on (04) 381 8296. This is a short one-page form asking for basic details of the agreement and confirmations that the Church Managers/Council have approved the tenancy and that the congregation is meeting all its obligations under the Residential Tenancies Act.

Please attach a signed electronic copy of the tenancy agreement to the form and forward to Presbytery for its approval. As above, residential tenancies of no more than 12 months require the approval of the Church Council, Presbytery and the Trustees.

Applications for a fixed term tenancy for more than 12 months will be considered in exceptional circumstances, but also require the approval of the Congregation.

Residential Tenancy Agreements

Residential tenancies are typically recorded using the standard-form Residential Tenancy agreement available from Tenancy Services (www.tenancy.govt.nz).

All residential tenancy agreements must include the Trustees' standard limitation of liability clause – see below – but the Trustees do not need to sign the agreement (these can be signed by the congregation).

Expiry of a tenancy

Residential tenants can renew tenancies (for no longer than 12 months on each occasion) without the Trustees approval.

If a fixed term tenancy is not renewed or extended, it automatically becomes a periodic tenancy. Congregations should take care to avoid a fixed term tenancy automatically becoming a periodic tenancy, unless this is the Church Council's intention. The Residential Tenancies Act sets out the

requirements for giving notice under a periodic tenancy, and the notice periods that apply in each case.

Congregations must advise the Trustees via email if a tenancy is renewed or extended, becomes a periodic tenancy, or ends (so that we can keep track of 'live' tenancies).

Residential Tenancies Act

This Act imposes a number of obligations on the congregation as landlord. These include the healthy homes standards and requirements for smoke alarms. It also sets out the terms on which a landlord can end a tenancy. Congregations must comply with the requirements of the Residential Tenancies Act 1986 at all times.

Healthy Home and Smoke Alarm Requirements for Tenanted Residential Properties

If a congregation is renting out a residential property it must abide by the requirements for landlords as set out in the Residential Tenancies Act 1986, including healthy homes standards and the installation of smoke alarms.

- **Healthy Homes** standards introduce specific and minimum standards for heating, insulation, ventilation, moisture and drainage, and draught-stopping in rental properties. From 1 December 2020, landlords must include a separately signed healthy homes standards compliance statement in most new or renewed tenancy agreements. Further information is available at [Healthy Homes » Tenancy Services](#)
- **Smoke alarms** must be installed in all tenanted residential properties in accordance with the requirements under the Act. It is the landlord's responsibility to ensure that smoke alarms comply and are in good working order. Tenants are required to replace expired batteries (if any) and to advise the landlord of any problems with the alarms. Further information is available at [Smoke alarms » Tenancy Services](#)

Ministers' Housing

Congregations must abide by the requirements for landlords as set out in the Residential Tenancies Act 1986, even if housing is provided to a minister as part of their terms of engagement (rather than via a tenancy agreement).

Commercial Leases

Some congregations have vacant land or buildings that are leased to commercial ventures or businesses under a Deed of Lease or Lease Agreement. These are classified by the Trustees as commercial leases and are governed by the Property Law Act 2007.

You will need to request an application form for *Approval to Lease a Commercial Property* from the CPT office at trustees@presbyterian.org.nz or by phone on (04) 381 8296.

As noted above, leases for periods of more than one year (typically all commercial leases) requires the approval of the Church Council, Congregation, Presbytery and Trustees. Please allow sufficient time to prepare your application and to obtain the required approvals.

Lease Agreements

Commercial leases are typically recorded using the latest edition of the Auckland District Law Society Agreement to Lease and/or Deed of Lease.

The lease must be in the name of **The Presbyterian Church Property Trustees**, as the landlord and **must be signed by the Trustees – not by the congregation**.

The lease document (Agreement and/or Deed of Lease) must be in writing and should be prepared by your congregation solicitor. Before the document is given to the lessee for signing, the draft should be sent to the Trustees for review by the Trustees' solicitor to ensure it is ready for signing by the Trustees (the congregation will be on-charged for any legal costs incurred by the Trustees). Only then can it be provided to the lessee for execution.

The Agreement to Lease and/or Deed of Lease must include:

- the Trustees as Lessor
- a clause limiting liability of the Church Property Trustees to the property being leased (refer below)
- the legal description of the property
- a plan of the property clearly showing the area of the lease the period of the lease
- any renewal rights and obligations
- a right to terminate the lease on the sale of the property (for any leases for periods longer than 5 years) unless there is an exceptional case not to
- the amount of the rental – in a commercial arrangement, the congregation should take adequate steps to ensure it is receiving a fair market rate
- rent review provisions – congregations should set up a reminder to ensure that rent reviews are carried out in accordance with the provisions of the lease
- an inventory of chattels
- details of outgoing expenses and who is responsible for payment
- a bond payment (optional)
- photos (optional)

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 (landlord 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, to manage rent reviews and to know when lease renewals and expiries are due. The Church Council must give the required notice to renew a lease that has a “right of renewal” clause.

Renewals

Commercial tenants can renew leases without the Trustees’ approval, but these are typically executed by a Deed of Renewal, which the Trustees must sign. Even if a Deed of Lease is not required, congregations must advise the Trustees via email on each renewal occasion (so we can keep track of ‘live’ leases).

Rent reviews should be supported by a Valuer’s recommendation.

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 (Gallagher) for advice.

Consulting the community

There may be times it is appropriate to consult the community before entering into a commercial lease. For example, some congregations have leased a small portion of their land for the installation of a cell tower. We are aware that the installation of cell towers close to residential housing can be a cause of contention for some members of the community.

Keeping records

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

Section 9:

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 (but not a Co-operative Venture) is set out in sections 5.9 to 5.11 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 (including retention) of the property of a dissolved congregation under section 39 of the Presbyterian Church Property Act 1885 (1885 Act). A congregation that has been dissolved has 'ceased to exist' for the purposes of section 39(1) of the 1885 Act (see below).

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 Review Commission (a Commission is also appointed when a congregation applies to be dissolved under section 5.9, although its role is more circumscribed). The role of the Commission is important, and the Book of Order Advisory Committee has drafted Guidelines to assist commissions appointed under section 5.10. It should be noted that dissolution is only one of three possible outcomes of the review process (see section 5.10(6) of the Book of Order).

The draft Guidelines clearly distinguish the role of the commission from the role of Presbytery.

Remember, the commission's role [under section 5.10] is to make a determination based solely on the congregation's ability to fulfil its functions. Implementation details surrounding dissolution, ongoing pastoral support for congregation members, and broader decisions about the availability of Christian or Presbyterian ministry in the area are presbytery responsibilities. The commission should focus on making a clear determination while leaving these practical and strategic arrangements to presbytery (p. 32).

Presbytery decides what happens to the property of dissolved congregations

When a congregation is dissolved, under section 39 of the 1885 Act, **the property previously held by the Trustees for the congregation is to be disposed of and dealt with as the Presbytery by resolution directs**. This is the starting point in every instance for what the Presbytery does with that property. There must be a clear resolution, communicated to the Trustees, by the Presbytery disposing of and dealing with the property previously held for the now dissolved congregation.

Until the Presbytery disposes of the land and buildings, it is responsible for all the issues arising out of managing a property, such as health and safety matters, maintenance and insurance. 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.

Approvals Required

Approvals are required in respect of the disposal of property under section 39 as follows:

- For any property allocated to another or new congregation, the approval of:
 - The Presbytery

The Presbytery must advise the Trustees of the new beneficial owner.

- For any property the Presbytery wishes to sell:
 - The approval of the Presbytery
 - The endorsement of the Trustees
- For any property the Presbytery wishes to retain as beneficial owner:
 - The approval of the Presbytery
 - The endorsement of the Trustees (for the retention)
 - The approval of the Property Commission of General Assembly (for the mission purpose of the retention)
 - The approval of the Trustees (for the mission purpose and, if relevant, for any subsequent property proposals in respect of the property)

Section 39 of the 1885 Act states that ...

- 1) in the event of any congregation ceasing to exist; or
- 2) the members of any congregation becoming so divided as to render the existence of such congregation in the opinion of the Presbytery undesirable

then, and in any such case, all property held by the trustees shall be disposed of and may be dealt with in such manner as the Presbytery shall by resolution direct.

Four options for property

The Book of Order offers little guidance for presbyteries in disposing of property when a congregation is dissolved beyond requiring the presbytery to “*consider facilitating and resourcing a restart worshipping community in the premises occupied by the dissolved congregation, under the leadership of another congregation within the presbytery*” (section 5.10(6)(c) of the Book of Order). This requirement must be considered in the broader context of the decisions of the 2023 General Assembly on fit for purpose property in response to the Report of the Trustees (Section E11.2 of the White Book). This report offered presbyteries a framework for assessing property from a mission perspective using four fit for purpose categories: location, condition, current use, and future potential. It is likely that this, or a similar framework, will help presbyteries make good decisions about property under section 39 of the 1885 Act.

There are four main outcomes for the property of dissolved congregations as follows:

1. Transferred to be held for a new congregation

If a new congregation is formed by amalgamation (i.e., the new congregation ‘replaces’ two or more dissolved congregations), then the Presbytery might direct that the property from the dissolved congregations, or part thereof, be held for the benefit of the new congregation. The new congregation would then make any further decisions on the property coming under its beneficial control in the same manner as other congregations, subject to any additional constraints imposed by the Presbytery.

2. Transferred to be held for another existing congregation

If people from the dissolved congregation join an existing congregation in sufficient numbers (incorporation), then the Presbytery might direct that the property from the dissolved congregation, or part thereof, be held for the benefit of the congregation into which those people have been incorporated. That congregation would then make any further decisions on the property coming under its beneficial control in the same manner as other congregations, subject

to any additional constraints imposed by the Presbytery. This option might also be used if the Presbytery decides to facilitate and resource a restart worshipping community (see above).

3. Transferred to be held for the Presbytery (pending sale)

If the land and buildings are not to be held for another (or new) congregation, the Presbytery might direct that the land and buildings of the dissolved congregation be sold, and the proceeds 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.

4. Transferred to be held for the Presbytery for the Presbytery's own mission

The Presbytery might, in some cases, decide to retain the land and buildings of the dissolved congregation for its own use rather than sell them, but it must obtain the approval of the Trustees for the new mission venture because it involves a 'change of use (see Approvals Required above). The usual approval requirements will apply where the Presbytery wishes to carry out work on the property in readiness for engaging in the mission or to lease out the land and buildings or part thereof as a mission activity.

12 Months for Presbyteries to dispose of and deal with land and buildings

The Trustees expect Presbyteries to have disposed of and dealt with the land and buildings of a dissolved congregation within 12 months. In general, Presbyteries move to dispose of 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 unrealistic "hopes" that it will be either returned to use or given to the community.

However, Presbyteries can also apply to the Trustees for a temporary extension of the 12-month time limit to dispose of the property. This might be required where the Presbytery proposes to retain the land and buildings, but needs more time to complete its plans before making a decision, or where the sale process is more complicated.

In this instance, the Trustees will want to ensure that the property is being maintained, secured and remains fully insured in the interim.

The Presumption of Sale (Land and Buildings)

If the Presbytery has not directed that the land and buildings previously held for the dissolved congregation be held for the benefit of another (or new) congregation, there is a presumption that the Presbytery will sell the land and buildings. The Trustees expect such properties will be sold within 12 months of the dissolution of the congregation. The approval of a Property Commission is not required for the sale of property of dissolved congregations under section 39 of the 1885 Act.

Notwithstanding Presbyteries' power under section 39 to dispose of the property of a dissolved congregation and the presumption of sale, the Trustees strongly encourage Presbyteries to seek endorsement from the Trustees for the sale to ensure good process is followed.

In the event of a proposed sale, Presbyteries are encouraged to write to the Trustees seeking their endorsement and giving the following details:

- The name of the dissolved congregation
- Details of the property, including type of property and address
- A current market valuation
- Proposed sales process or arrangement (e.g., direct sale to another church)

- Assessment of any community/media interest and details of a communications plan
- Any other risks associated with the sale
- What the Presbytery proposes to do with the proceeds
- Any other relevant information
- Confirmation of a Presbytery resolution to sell the property.

NB. To enable the Trustees to give effect to the sale, the Presbytery must forward to the Trustees a copy of the resolution signed by the Moderator of the Presbytery and attested by the Presbytery Clerk (section 41 of the 1885 Act).

As in the case of property sales by congregations, the Trustees will need to sign the sale and purchase agreement. Presbyteries will be on-charged any legal fees incurred by the Trustees through this process.

Presbyteries retaining Land and Buildings requires Property Commission Approval

Any Presbytery that wishes to retain the property for its own use will require the approval of first, the Property Commission of General Assembly, and secondly, the Trustees, to the proposed use. 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.

Non-Property Property

For the most part (as above), property refers to land and buildings. However, it also refers to property money or property capital held by the Trustees (in the Presbyterian Investment Fund) for and on behalf of the congregation.

The property capital of a dissolved congregation becomes the property of the Presbytery. It will, however, continue to be held by the Trustees for and on behalf of the Presbytery. This includes the proceeds of the sale of any land and buildings of a dissolved congregation. There is no time limit for the disposal of and dealing with property capital.

Congregational funds held by the Church Council become funds that can be held by the Presbytery. The Presbytery should take care in dealing with any bequests that direct the use of funds for a particular purpose associated with the congregation.

The Administration of Dissolutions

There are some major decisions to be made when it comes to giving effect to a dissolution and what happens to the property of the dissolved congregation. In the event of a dissolution, there is also some administration required.

The Trustees hold property on behalf of a congregation. If that congregation no longer exists, the Trustees need to know who they now hold the property for: whether the presbytery or another congregation. **It is up to the Presbytery to inform the Trustees of this.** The Trustees also need to know which individuals have authority over that property. This is particularly important for access to Presbyterian Investment Fund (PIF) accounts. The Trustees will typically **revoke all existing access to the congregation's PIF account** unless otherwise advised.

A final set of dissolution accounts should be prepared. It is important that any trusts for special purposes are identified so that the wishes of the benefactor can continue to be honoured.

Dissolution of Co-operative Ventures

When a Co-operative Venture is dissolved, the partnership agreement between the participating partners comes to an end and the parish created by that partnership ceases to exist for the purposes of section 39 of the 1885 Act.

Thus, the dissolution of a Co-operative Venture adds another level of complexity to the dissolution process and administration. Fortunately, section 7 of the UCANZ Procedures for Co-operative Ventures provides guidance on key steps required (see also 9.3.4 Guidelines on Dissolution).

Each partner church will need to determine whether they wish to retain beneficial ownership of any of the land and buildings involved (usually to allocate to another congregation). If not, these will be sold as part of the dissolution process. For practical purposes, the Presbytery (empowered by section 39) acts in its capacity as the local church partner on behalf of the partner church.

The UCANZ Procedures note a number of important points in respect of property, the first being that: **No move to dissolve a Co-operative Venture can be taken without a confirmed Capital Ratio.**

The Procedures also require the establishment of a Dissolution Commission that will:

- Liaise with the Trustees who hold property – the Commission will assume temporary authority over the congregation's property and funds. Once a Dissolution Commission is appointed, **the Trustees will revoke all existing access to the congregation's PIF account** unless the Dissolution Commission advises that existing users are authorised to act on its behalf.
- Confirm the current property schedules (or, where no clear ratio exists, create one - see 9.3.4.3 of the Guidelines on Dissolution) – in dividing up the property all land and buildings should be revalued or sold as part of the process to ensure that each partner receives their fair share of the congregation's net assets according to the capital ratio. All income should be collected and expenses paid (or accrued for). A final set of accounts should be prepared as evidence of the net asset position.
- Define the distribution of assets – the simplest form of distribution is where all the assets of the dissolved congregation are liquidated, and the proceeds shared with each partner as cash in accordance with the capital ratio.

If any land and buildings have not been sold (presumably because one of the partner churches would like to retain the property), then these will be transferred to be held for the Presbytery (or a partner church trustee) as part of a mixed asset settlement. A mixed asset settlement involves each partner receiving its share as a mix of land/buildings and cash.

In some cases, the distribution process may include an adjustment to the capital ratio of another congregation in lieu of receipt of cash.

The Dissolution Commission needs to work closely with the Presbytery in the disposal of, and dealing with, the assets of the Co-operative Venture held by the Trustees, i.e., in Presbyterian title. Section 39 provides the only mechanism for realising those assets and it is the Presbytery, not the Dissolution Commission, that is empowered to act under the legislation.

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 congregation 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.

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.

Dissolution, Pastoral Care and Mission

When a congregation is dissolved, it ceases to exist as a Presbyterian entity, but the people of that former congregation remain, and the Presbytery is responsible for ensuring that they are not left at a loose end. Specifically, section 5.10(6)(c) of the Book of Order states that *“the presbytery must ensure the continued pastoral care [of the members] of the [dissolved] congregation.”*

There are two basic possibilities for how this might be achieved. In most cases, they will be encouraged to join one or more neighbouring congregations (incorporation), but occasionally they might be joined with the people of another dissolved congregation to form a new congregation (amalgamation). Presbyteries need to take note of the advice from the Council of Assembly (see below) as to the relative suitability of these options.

The choice of path chosen by the Presbytery will influence what happens to the property of a dissolved congregation – and there are differences between each option – but it will also likely impact on the mission success of the Church. Incorporation offers some new possibilities, including that of a restart worshipping community, but amalgamation has a weak track record. There is a significant difference when proposing amalgamation between combining two struggling congregations into a new entity in the hope the new entity will survive and merging two relatively healthy congregations for mission purposes. Mission impact and pastoral care need to be kept in conversation.

Bringing Clarity to Our Mission

The Council of Assembly has provided several 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 congregations.

The full report can be found online at: [Bringing Clarity to our Mission](#)

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

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, some 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 Cooperative Ventures?

There are implications in adopting this strategic framework for the Church's relationship with other partner churches who share Cooperative 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: [Bringing Clarity to our Mission](#)

Section 10:

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 congregation may wish to subdivide its land, such as:

- the land is larger than the congregation requires and it wishes to sell some land to release funds for other capital purposes or reduce the costs associated with the property
- to register a church and manse property on individual titles to enable the possible future separation or 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.

Approvals Required

Approvals to sub-divide property must be obtained from:

- The Church Council
- The Congregation
- The Presbytery
- The 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 8296.

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 180 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

These costs can be recovered from the proceeds of the sale of surplus land, but 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 congregation 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 congregation.

Amalgamating titles

Please contact the CPT Office regarding the process for any other actions involving congregational land, such as a proposal to amalgamate separate titles together.

Section 11:

Gifts Property (outside the PCANZ)

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

The answer is more than likely no – because we are governed by trust law and the fiduciary threshold for approval of gifting is high

The Trusts Act 2019 requires that a trustee must act in accordance with the terms of the trust (section 24). It further requires that a trustee must hold or deal with trust property and otherwise act for the benefit of the beneficiaries - and in the case of a trust for a permitted purpose, to further the purpose of the trust - in accordance with the terms of the trust (section 26).

The Trustees are obligated to consider not only current beneficiaries, usually the current members of a congregation, but also future members. The Presbyterian Church Property Act 1885 (1885 Act) defines a congregation as the body of persons now or hereafter in existence worshipping under the spiritual jurisdiction of the General Assembly of the Presbyterian Church of Aotearoa New Zealand.

For the Church, the 'trusts' applying to property are set out in the 1885 Act. Property includes land and buildings, and money. The 1885 Act requires that land and buildings should be held for purposes associated with the Presbyterian Church, whether for worship, for ministers' housing, or general or special purposes.

Regardless of merit

This means that we can't gift land and buildings for others to use for their purposes, regardless of the merit of those purposes. If a congregation gives property to another group, that property would be used for their purposes, not for the purposes of the Presbyterian congregation. It does not matter if their purposes are worthy, aligned with our purposes, or supported by our purposes.

This has been tested in cases where a group has split from the Presbyterian Church and asked for ownership of some of the Church's property. Even if the split was amicable and the departing group intends to carry on with ministry and mission similar to that of the Presbyterian congregation, they are no longer a Presbyterian congregation. As a result, they are not entitled to the property.

The same constraint applies in respect of the property of a dissolved congregation. Under the 1885 Act (section 39), this property shall be disposed of and may be dealt with in such manner as directed by a resolution of the Presbytery. While on the face of it, this would seem to give a Presbytery unfettered power to deal with property as it so resolves, Presbyteries are also bound by a duty to act in the interests of the Presbyterian Church.

As a result, the Trustees' default position is that all land and buildings should be sold on the open market or for not less than market value.

What about gifting the proceeds of sale?

When congregational property is sold, the 1885 Act regulates how the proceeds from the sale of property can be spent. In the first instance, the sale proceeds can be used by the congregation to purchase other land and buildings, or to erect a new building for church purposes. This is a statutory power given to congregations under the 1885 and cannot be eroded, even by the General

Assembly. This is why the approval of congregations is required for any contributions to the Mission Enterprise Fund.

The 1885 Act also provides for certain alternative uses of the proceeds of sale for “*other church purposes*”, as set out in Section 8 of this Handbook. This carefully regulated provision allows the Trustees to authorise limited use of property capital for other church purposes, including those directed by the General Assembly, such as Mission Enterprise Fund contributions.

However, this use is still subject to the discretion of the Trustees, with the overriding duty that property (and the proceeds of sale) be used for the benefit of the Presbyterian Church. This allows the Trustees to support the use of property capital to enhance buildings by way of alterations and strengthening, and to support new congregational mission projects. It does not extend to congregations gifting property capital to other entities, even if those entities will use the money for good causes.

Congregations are thus subject to the same fiduciary constraint as Presbyteries when it comes to spending the proceeds of sale of property. The proceeds of sale can only be spent for the benefit of the Presbyterian Church.

Property as capital

It can be useful to think about property (including the proceeds of sale) as the capital of the trust under which the Trustees operate. That property or capital must be used for the purposes of the Church and, with limited exceptions, ought not to be used up in the life of the Church (and, even then, only if it is for the benefit of the Church). However, the Church can use up the income flowing from that capital. For example, income from property capital invested in the Presbyterian Investment Fund or rental income from a residential property can be used up in mission or even in meeting the operating expenses of a congregation.

This is consistent with the responsibility the Trustees have as stewards of the Church’s capital, not only for use by the Church of today, but by the Church of the future. Gifting that capital to other entities would most likely breach this stewardship responsibility.

We are also honouring the wishes of past benefactors who have given money for the purchase of land and buildings or the construction of a new church. This money was given to the Presbyterian Church for this purpose and the expectation that it would continue to be used as such. It was not given to another church or another organisation for their purposes.

What about gifting to a Partner Church?

The Trustees’ position on gifting is the same for proposed gifts to a Partner Church, (i.e., to any one of the other three churches (Anglican, Christian Churches, Methodist) that have formed a partnership in UCANZ with the Presbyterian Church) either directly or on the dissolution of a Co-operative Venture.

Although the Procedures for Cooperative Ventures state (3.3.1) that a “Cooperative Venture is regarded by [each of] the Partner Church[es] as one of their own” this does not negate the fiduciary duties placed on the Trustees and the entities of the Presbyterian Church under the 1885 Act. A gifting proposal would necessarily be outside the Trustees’ commitment to hold any CV property in Presbyterian title in trust for all participants of the Cooperative Venture “according to the Schedules of Record” (Procedures 3.5.2).

Any exchange of property would either need to be via a sale for market value or would require an adjustment to be made in a Schedule of Record to ensure that the Presbyterian Church is not

disadvantaged. That is, where a Congregation might view the transfer of property to a Partner Church as a gift, the Trustees will more likely treat it as a capital withdrawal by the Partner Church.

Approvals Required

Although it is difficult to envisage a scenario where gifting or selling property at a material discount to others is consistent with use for the purposes of the Presbyterian Church, Congregations and Presbyteries are welcome to apply to ask the Trustees to use their discretion in this way. The Trustees will need compelling evidence that gifting will build up the Presbyterian Church.

It is important that no promises are made until all approvals have been secured.

Gifting property or selling land and buildings at a material discount requires approval from:

- The Church Council
- The Congregation
- The Presbytery
- The 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 8296.

Each application will be treated on a case-by-case basis.

Section 12:

Gifts or Loans to other Congregations

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. Congregations are urged to gift or lend funds through Press Go.

Gifts of non-capital funds

No external approvals are needed if a congregation 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 congregation or Presbytery.

Congregations 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

A lending congregation does not need external approval to lend non-capital funds but, if the loan is more than \$50,000, the borrowing congregation must obtain approval from Presbytery and the Trustees to borrow funds (as per Section 6 of this Handbook). A formal agreement, with clear terms and conditions should be drawn following legal advice and signed by both congregations.

Gifts or loans from capital funds to other congregations

If a congregation has surplus funds from the sale of a property, these may be gifted or loaned to another congregation subject to approvals, and subject to those funds being treated as capital funds by the receiving congregation (in accordance with Section 5 of this Handbook).

Approvals Required

Gifts or loans to another congregation requires approval from:

- The Church Council
- The Congregation
- The Presbytery
- The 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 8296.

Section 13:

Property Insurance

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.

How much insurance is adequate?

The Trustees have historically considered “adequate insurance” as that which covers all normally insurable property and contents risks, including fire and natural disaster (which includes earthquake), at full replacement value. Full replacement cover has been required throughout the insurance period and during any period of reconstruction following an incident. This should have included a provision for inflation and cover for demolition costs.

However, as congregations have declined both in terms of members and financial strength, and the cost of insurance has increased sharply due to both construction cost inflation and more frequent natural disasters, the Trustees have agreed to relax the requirement for full replacement cover - for the time being.

In doing so, the Trustees recognise that the Church does not need all its buildings, and even some of those we do need would not be replaced (in the event of total loss) in the same way. Insuring for full replacement may not be a wise use of scarce finances.

Congregations can choose their level of cover

As a result, the Trustees, working with the Church’s Insurance Advisory Group, have agreed that congregations can choose the level of cover appropriate for their buildings and their finances. This typically involves selecting from the following cover types:

- Full replacement or reinstatement
- Functional replacement
- Indemnity
- Demolition only

Congregations have also been encouraged to consider whether the same or different cover should apply for Perils (fire, storms, water damage, burglary) or Natural Disaster (earthquake, tsunami) cover.

Of course, there is no free lunch. Lower forms of cover will cost less but result in congregations carrying more insurance risk themselves. This might prove expensive, particularly in the event of partial damage. That is, the congregation might have to use its own funds, alongside those (if any) of the insurer, to meet the cost of repairs.

Congregational approval is required for where cover below full replacement is selected.

Working together as a Church

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. Congregations need to 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 the Church after a disaster; and
- protecting the value of property for both the congregation and the Church as a whole – for now and into the future.

When it comes to selecting insurance cover, congregations are expected not only to consider their own position, but to work with neighbouring congregations and the presbytery. We all have an interest in ensuring that the Church continues in our area. Imagine an area where four congregations all decide they cannot afford full cover. In the event of a major disaster, the Church might be left with no buildings in the area. However, together those congregations might be able to afford enough cover to ensure the Church is able to rebuild at least one new building.

At this point in time, congregations do not need to seek approval for cover below full replacement, but they **must inform the presbytery at each renewal when they select cover below full replacement**. Presbyteries have responsibility for mission and ministry in their region. Just because a congregation cannot afford full insurance, does not mean that a building should not be fully insured.

Congregations are still required to secure Contract Works insurance during any period of building or major alterations.

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 the Collective. We need all congregations that are part of the Presbyterian Church (including Cooperative Ventures) 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 liability covers are "whole" of Church based rather than on a congregation-by-congregation basis as individual congregations do not have separate legal status. Also, the risks covered under the liability covers tend to relate to the actions of persons who can move between congregations. Similarly, the policies will respond to claims against the Presbyterian Church arising from UCANZ congregations with Presbyterian participation.

The way to look at it is, "are they part of the Presbyterian Church?" If the answer is yes, then they are insured under the liability policies. For this reason, it is not possible for congregations to "opt out" of the liability covers and arrange their own. All congregations benefit from and must participate in the PCANZ–arranged "group" covers.

The main liabilities covered 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 the Collective's broker 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 the Collective's broker 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.

Approvals are still required to use insurance proceeds

If you have an insurable event, the first person to contact is your insurer/broker's Claims team (see below for contact details for the Presbyterian Church Insurance Collective), but it is a good idea to copy in your Presbytery property contact and the Trustees at the same time so they know what is going on and can offer help as required.

Money received from substantial losses covered by insurance claims will be held by the Trustees in congregation 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.

Insurance is required so we can repair and rebuild facilities to ensure that congregations can continue mission and ministry. However, even though insurance proceeds may be available, congregations are still required to follow standard procedures and apply for approval to spend funds on property (whether you insure through the Presbyterian Church Insurance Collective or elsewhere). Where the expenditure is less than (or equal to) \$50,000 you are able to proceed to use insurance funds provided you inform the Trustees about your actions (an email will suffice in the first instance).

Where expenditure is more than \$50,000 you must secure the approval of the congregation, Presbytery and Trustees, even if all the expenditure is met by insurance proceeds. Just because the funds are available, does not mean that they should be used without due consideration. For example, it might be an opportunity to do something new and different. It might also be the case that it is not prudent to repair and rebuild to the same extent. Most claims are met by the Collectives' self-insurance pool, which means that every paid claim costs the Church money – not the insurer. The more claims we make, the higher our premiums. That is, insurance proceeds are not 'free money'.

The only exception is where expenditure is required to make the building safe, in which case congregations are able to proceed to use insurance proceeds provided you inform the Trustees of your actions.

Please liaise with the Trustees' Office to find out what form your application needs to take. This will depend on the nature of the repair and the size of the expenditure.

Who can provide your insurance cover?

While the Trustees recommend using the Presbyterian Church Insurance Collective, congregations are able to arrange their own cover outside of the Collective. If you do not use the Collective, you are required to confirm to the Trustees that you have secured cover elsewhere, along with details of that cover, including cover type, agreed cover amounts, deductibles, policy terms and insurer.

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

Presbyterian Church Insurance Collective (PCIC)

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

The Collective 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 Collective 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 Insurance Advisory Group appointed by the General Assembly.

Gallagher (formerly Crombie Lockwood (NZ) Limited) acts as the Collective's broker. Gallagher provide full administrative support including the management of the Church's property insurance database, valuations, billings and claims, payment plans, together with insurance packages tailored to the needs of individual congregations.

Participation by congregations in the Collective is not mandatory. The decision as to the cover to be taken and the insurer lies with the Church Council (subject to approval by the congregation where less than full replacement cover is selected).

However, participation in the Collective is strongly recommended, as the 'one for all' ethos underpinning the Collective allows congregations to acquire insurance cover on good terms over the medium to longer term. In some instances, congregations in high-risk areas would not have been able to secure cover without the work of the Collective. The Collective uses its scale to buy insurance at the best rates possible. The self-insurance pool also provides a level of risk-sharing and, following a good year, allows surpluses to be carried over as a subsidy for subsequent years' premiums. The self-insurance pool ensures prompt settlement of claims, and in the event of a major disaster, our scale means we have the attention of our insurers. To facilitate this, we have appointed our own loss adjuster.

The Collective 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.

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 for the Presbyterian Church Insurance Collective contact:

Russell Garrett, Executive Officer – Church Property Trustees (04) 381 8296
russell@presbyterian.org.nz

Gallagher – Jeffery Nathan (09) 356 1525 (Property & Contents)
jeffery.nathan@ajg.co.nz

Gallagher – Kelly Jury (07) 925 7381 (Liability Insurance)
kelly.jury@ajg.co.nz

Gallagher - Brendan Main (06) 350 3802 (Claims)
brendan.main@ajg.co.nz

Section 14:

Earthquake Prone Buildings and Health and Safety Responsibilities

The Church has both legal and moral obligations as building owners. 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.

Legal obligations

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 (Earthquake-prone Buildings) Amendment Act 2016 (EQBA Act).

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 EQBA Act came into force on 1 July 2017 and amends the Building Act 2004.

The obligations for compliance with the Building Act 2004 (and the Health and Safety at Work Act 2015) rest with the Church Council.

Approvals Required

Strengthening church buildings require the approvals required for alterations as per Section 3 above, being:

- Strengthening to places of worship and manses that cost less than \$50,000 funded from congregational funds (not property capital) require the approval of:
 - The Church Council or Board of Managers
- Strengthening projects to places of worship and manses that cost more than \$50,000, or strengthening of other buildings, or those that use property capital (including insurance proceeds), require the approval of:
 - The Church Council
 - Congregation
 - Presbytery – and partner Churches for Co-operative Ventures
 - Trustees – and partner Church Trustees for Co-operative Ventures

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 8296.

67% still the preferred target

The Trustees still hope that congregations will get on and strengthen their mission critical buildings to at least 67% of New Building Standard. There are several reasons to do so. This means that all applications to strengthen a mission-critical building to less than 67% NBS should, with the plans submitted for approval, provide:

1. An estimate of the additional cost to strengthen to at least 67%, and
2. Evidence as to why it is not worth spending this money.

Approval is no longer required for:

- An exemption from strengthening for buildings with an NBS between 34% and 66% (inclusive).
- Use of earthquake-prone buildings (the liability for this rests with Church Councils).

Earthquake Prone Buildings Policy

The Council of Assembly asked the Trustees to develop a policy to assist the Church meet its legal and moral obligations. The Trustees Building Safety Policy was first shared with the Church in 2012. This became the Earthquake-prone Buildings Policy, which has since been updated on multiple occasions. The 2023 General Assembly invited the Trustees to consider aligning the Earthquake prone buildings policy with the requirements under the Building Act 2004 (which in general terms provides for lower standards and longer timeframes).

The Trustees believe that working to lower standards might be convenient, but may not be in the best interests of the Church over the long term. Nonetheless, they resolved to align the Earthquake prone building policy with the requirements of the Building Act 2004.

A revised Earthquake Prone Building policy was issued in 2024. [Click here for: The latest Earthquake Prone Buildings Policy](#)

Congregations (and presbyteries where appropriate) no longer need to strengthen buildings with a NBS between 34% and 66% (inclusive) or apply to the Trustees for an exemption. And those buildings with a NBS below 34% will only need to be strengthened in accordance with an earthquake prone building notice issued by a territorial authority (and the deadline associated with that notice).

Compliance rests with Church Councils

Church Councils are the owners of buildings for the purposes of the Building Act 2004. Presbytery Councils assume this responsibility for buildings held on behalf of a presbytery.

The purpose of the Earthquake prone buildings policy is to assist Church Councils and Presbyteries with their responsibilities and obligations in respect of earthquake prone buildings. Whereas the earlier policy provided some protection for Church Councils (by virtue of the earlier deadlines and higher standards), this is no longer the case.

The Building Act

The Building Act 2004 places the onus on the owner to:

- Provide information in relation to potential earthquake prone buildings, and
- Ensure seismic work is undertaken to strengthen those that are earthquake-prone.

It also puts responsibility on owners when seismic work is not completed in accordance with the deadline in an earthquake prone building notice. If the Building Act obligations are not met by the owner, then there is also potential risk of liability by way of an offence under the Building Act.

What is an earthquake prone building?

A building, or part of a building, is earthquake prone if it will have its ultimate capacity exceeded in a moderate earthquake, and if it were to collapse, would do so in a way that is likely to cause injury or death to persons in or near the building or on any other property, or damage to any other property.

Whether a building (or a part of a building) is earthquake prone is determined by the territorial authority in whose district the building is situated. Each territorial authority has an applicable timeframe to identify earthquake prone buildings in their area based on the level of seismic risk of that area.

The deadline for completing seismic work is measured from the date the first earthquake prone building notice is issued and differs based on the level of seismic risk of the relevant area. The following deadlines are applicable⁶:

- a) In an area of low seismic risk, 35 years for any building; and
- b) In an area of medium seismic risk, 12 years and 6 months for a priority building and 25 years for any other building; and
- c) In an area of high seismic risk, 7 years and 6 months for a priority building and 15 years for any other building.

Use of an earthquake prone building

A building assessed as Grade E (below 20% NBS) or Grade D (20% - 33% NBS) is an earthquake prone building under the Building Act. While there is no legal requirement to close an earthquake prone building, the Council of Assembly has determined that 'unsafe buildings' should not be used.

Church Councils have a legal and Christian duty to safeguard the users of their buildings.

The Ministry of Business Innovation and Employment (MBIE) has developed seismic risk guidance to help building owners and users understand seismic assessments and provide them with the tools to make informed and risk-based decisions about continuing to occupy buildings with low seismic ratings. This is called a life safety risk assessment and must be completed before any buildings classified as earthquake-prone by a territorial authority, or believed to be earthquake-prone by the Church Council, can be used.

When the Trustees might act

A territorial authority may carry out seismic work themselves if the seismic work on a building or a part of a building that is subject to an earthquake prone building notice has commenced but is not completed by the deadline that applies, or is not proceeding with reasonable speed in the light of that deadline. If a building owner does not carry out any work subject to an earthquake prone building notice by the given deadline, a territorial authority may move to have the building demolished.

⁶ In January 2025 the government extended any current earthquake prone building notice deadlines by four years.

In light of potential offences or liability for costs associated with a territorial authority undertaking seismic work, the Trustees will likely step in before a territorial authority applies to a District Court for a works order.

Health and Safety at Work

The key objective of the Health and Safety at Work Act 2015 (HSW Act) is to give “workers and other persons the highest level of protection against harm to their health, safety, and welfare from work risks as is reasonably practicable”.

The HSW Act is the primary legislation that governs workplace health and safety in New Zealand. It establishes the role of a Person Conducting a Business or Undertaking (PCBU) who has a primary duty of care to provide a safe workplace. The HSW Act requires all PCBUs to be cognisant of, and reduce or eliminate, health and safety risks not only within their workplaces, but also regarding the building they work within. This obligation includes an awareness of the risks relating to how their building and its fixtures and fittings will perform in a seismic event.

For the purpose of the HSW Act, Church Councils are considered a PCBU and have the responsibilities and obligations under the Act.

As the HSW Act does not give specific details about the liability of PCBUs in relation to the seismic safety of buildings, WorkSafe released a policy clarification entitled “Dealing with earthquake-related health and safety risks: information for PCBUs and building owners”. You can find this document [here](#). This document covers key actions PCBUs should be undertaking to meet their obligations under the HSW Act.

The important points from the policy clarification were:

1. If a PCBU is meeting the requirements of the Building Act 2004, then WorkSafe will not enforce to a higher standard.
2. If a PCBU is not meeting the requirements of the Building Act 2004 then it is the Local Council who should intervene and take any necessary action. If the PCBU is not meeting the requirements of the Building Act 2004 and someone is harmed, then the PCBU may be liable under the HSW Act and WorkSafe may take action against them.
3. All PCBUs are expected to:
 - a. Proactively manage risks arising from objects in and around buildings in the workplace on a regular and ongoing basis.
 - b. Keep abreast of new or emerging information that is relevant to the building’s performance in an earthquake.
 - c. Prepare for an earthquake.
 - d. Work with other PCBUs with overlapping duties (e.g. landlords and tenants).

We strongly recommend that Church Councils:

- Do not wait for a territorial authority to make a declaration about the seismic status of their buildings. The HSW Act requires you to protect the people that work in and use the building. This is consistent with the Church’s Christian witness and mission. Church Councils need to know the seismic status of the buildings they are responsible for.
- Consider risks that might arise from an earthquake that might not be addressed by strengthening the building, including securing fixtures and fittings.

Section 15:

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.

Building materials deteriorate over time, some more quickly than others. Scheduled inspections and regular maintenance are 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.
- Identify and remove tripping hazards in accessways.
- 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. Consider installing a portable defibrillator.
- 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.
- Engage a qualified certifier to ensure this is completed to local Council requirements.

On the ground

- Ensure that surface water is channeled away from the building.
- Keep underground drains clear and in good working condition. Repair any cracked or damaged pipes caused by tree roots as promptly as possible. Potential foundation subsidence could occur due to the loss of ground support arising from erosion.
- 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.
- Copies of plans (including renovations) and important building documentation should be held in a safe location, both on-site and offsite, 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 scheduled and unforeseen repairs or maintenance is included in the annual budget. Note that:

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

Annual Maintenance Checklist

- ☐ The building inspection and maintenance programme is up to date and implemented
- ☐ Roof inspected and any defects fixed
- ☐ Gutters, downpipes and stormwater drains clear
- ☐ Exterior paint work in good order all round
- ☐ Doors and windows watertight
- ☐ Accessways are clear of hazards and exits marked appropriately
- ☐ Adequate ventilation under the building and through interior
- ☐ Electrical wiring inspected and tagged
- ☐ Smoke alarms and other fire-fighting equipment in good working order
- ☐ Shelves, bookcases and cupboards secured to walls or ceilings
- ☐ Freestanding equipment is secured
- ☐ Rubbish bins secured away from the building
- ☐ Grounds, including paths, steps and stairs, are tidy
- ☐ Building Warrant of Fitness current
- ☐ Building records and other important documentation is up to date with a copy offsite and an electronic back-up

Section 16:

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. The most common ones are heritage listings, protection of notable trees, 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 for 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:

Constraints and compensation

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.

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

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.

Requests from neighbours

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.

Affected person consent

From time to time, congregations may be asked by a neighbour to sign an affected person consent form. As the title-holder, the Trustees will need to sign this form, which will require the approval of the congregation and Presbytery. The Trustees expect that the congregation will seek expert and independent advice, which the neighbour may agree to pay for. It may be appropriate for the congregation to negotiate conditions to the neighbour's development, such as limited noise on Sunday mornings or to restrict the impact of construction-related traffic on the congregation's activities.

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
- identifying protected, notable or special trees
- the imposition of drainage easements
- boundary set-backs
- 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 must 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 do the Trustees expect 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 advisers who are familiar with your local authority's requirements. They, in turn, may suggest more specialist advisors for complex resource consent issues. You must 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 must be approved by the Trustees and the documentation signed by them. Please inform the Trustees as soon as you are aware of potential plan changes. The congregation, or its solicitor, must 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 congregations need to think carefully about how much they spend on buildings. Our focus needs to be on spending that supports and enhances our ministry and mission. The same principle applies when it comes to spending on buildings. Just because we have a building and just because it has a heritage status, does not mean that we should continue to spend money on it.. 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-imaging mission and the Church for today's world.

The full text of *Bringing Clarity to our Mission*, April 2014, can be found at: [Bringing Clarity to our Mission](#)

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.

Should 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 a heritage listing in an effort to secure 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.

Some funding available

Notwithstanding the fact that there is little heritage funding available, Lottery Environment and Heritage does provide grants for projects that protect and conserve heritage buildings. The Trustees tend to take the view that, where the community has placed a Heritage constraint on a building, funds spent on preserving the building in accordance with heritage requirements are for the purposes of the community. That is, an application for lottery fund on this basis may be approved, even if the building is not regularly used by non-congregational groups.

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 congregation 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.

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 8296.

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.

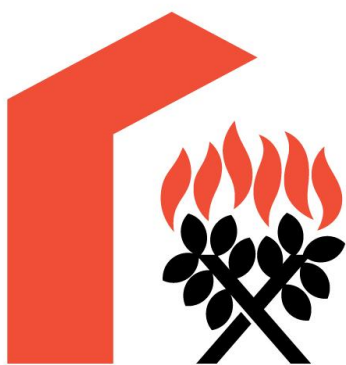
The Trustees are appointed by the General Assembly and must be:

- members of the Presbyterian Church
- of “full age and good fame”
- resident in New Zealand.

Contact Details

You can contact the Trustees by email trustees@presbyterian.org.nz or phone 04 381 8296.

For property matters, please contact John White, Property and Administration Manager, by email johnw@presbyterian.org.nz or phone 027 361 6773.



The Presbyterian Church
Property Trustees

Building up the Presbyterian Church for God's Mission