

**DIOCESE OF WAIKATO AND TARANAKI**

**STATUTE NO. 48**

**THE BISHOPRIC TRUSTS AMALGAMATION STATUTE 2018**

The Synod of the Diocese of Waikato and Taranaki enacts as follows –

**1. TITLE**

This Statute is the Bishopric Trusts Amalgamation Statute 2018.

**2. PURPOSE**

The purpose of this Statute is to confirm the approval by the Diocesan Synod of a scheme for the amalgamation of various trusts currently providing for the sustentation of the Bishop or Bishops of the Diocese and to clarify provisions relating to recourse to the capital of those trusts.

**3. COMMENCEMENT**

This Statute shall come into force immediately at the close of the Synod at which it is enacted.

**4. COMPLIANCE WITH ANGLICAN CHURCH TRUSTS ACT 1981  
(“THE ACT”)**

(1) A scheme for the amalgamation of the trusts listed in Schedule One of this Statute was prepared by the Diocesan solicitors on behalf of the Waikato Diocesan Trust Board and the Taranaki Anglican Trust Board because it was proving impracticable and inexpedient to continue to administer the many different trusts.

(2) The scheme was submitted to the Diocesan Chancellor pursuant to Part III of the Act together with the Declaration of Trust contained in Schedule Two of this Statute.

(3) After some amendments were made, the Chancellor sent to the Attorney-General, through the Solicitor-General, written notice of the proposed scheme, together with a copy of the proposed Declaration of Trust.

(4) The Attorney-General requested a modification to the Declaration of Trust, which has been duly made, and agreed to by the Chancellor and the two Trust Boards, and the Attorney-General has confirmed that he has no objection to the scheme.

(5) The Chancellor, having considered the scheme and the Declaration of Trust, has furnished a report thereon which is contained in Schedule Three of this Statute.

**5. APPROVAL OF SYNOD**

This Synod hereby gives its approval to the scheme.

## 6. REPLACEMENT OF TRUSTS

From this time onwards, the trusts set out in Schedule One of this Statute are ended and replaced by the trust set out in Schedule Two.

### SCHEDULE ONE

<b>Trusts administered by the Waikato Diocesan Trust Board</b>	
Waikato Diocesan No. 2 Trust Epsom Properties Fund (known as The Diocesan Trust)	<ul style="list-style-type: none"> <li>• Comprising funds received by the WDTB from the sale of properties at Epsom, Auckland being land transferred to the Diocese and administered by the WDTB upon the creation of the Diocese in 1926.</li> <li>• Use of funds in this trust were clarified by section 6 of the Diocese of Waikato Statute No. 31 known as the Taranaki Trusts Statute 1997, to be held for the benefit of the Diocese of Waikato.</li> <li>• Value of funds invested as at 31 December 2017: \$2,886,468.02.</li> </ul>
See Trust (originally named Cathedral No. 5 Trust)	<ul style="list-style-type: none"> <li>• Trust funds originated from the sale of properties in Hamilton East received by the Diocese at the direction of the General Synod from the constitution of the Diocese in 1926.</li> <li>• Also including funds from the sale of properties in Central Hamilton (Dyer Street and Teddy Street properties).</li> <li>• Value of funds invested as at 31 December 2017: \$686,638.74.</li> </ul>
Bishopric Endowment Trust	<ul style="list-style-type: none"> <li>• Established by a Diocesan Synod resolution in 1997.</li> <li>• Comprising funds raised within the Diocese to assist in the establishment and maintenance of the Bishopric of Taranaki.</li> </ul>
Diocesan Bishopric (Taranaki) Endowment Fund	<ul style="list-style-type: none"> <li>• Established by a Diocesan Synod resolution in 1997 to be a capital endowment fund for the sustentation of the then Assistant Bishop of Waikato in Taranaki and provision of a house for that Bishop.</li> </ul>

	<ul style="list-style-type: none"> <li>• Affirmed in the Taranaki Trusts Statute 1997 that the fund is to be used for the housing of the Bishop in Taranaki.</li> </ul>
	<ul style="list-style-type: none"> <li>• Established by the Taranaki Trusts Statute 1997, clause 5.1. The income from this fund to supplement the endowment for the sustentation of the then Assistant Bishop of Waikato in Taranaki.</li> <li>• Value of funds invested of the Bishopric Endowment Trust, Diocesan Bishopric (Taranaki Endowment Fund) and Taranaki Bishopric Endowment Fund No. 4 as at 31 December 2017: \$998,892.90.</li> </ul>

<b>Trusts administered by the Taranaki Anglican Trust Board</b>	
Taranaki Bishopric Trust No. 1 (also known as 'Taranaki Bishopric Endowment Fund' and 'Cole Fund')	<ul style="list-style-type: none"> <li>• Established by Declaration of Trust dated 6 May 1913 and varied by the Taranaki Trusts Statute 1997, clause 3.</li> <li>• Income from the trust to be paid to the Diocese of Waikato for the sustentation of the Assistant Bishop of Waikato in Taranaki.</li> </ul>
Taranaki Bishopric Endowment Funds No. 2, 3 & 4	<ul style="list-style-type: none"> <li>• Fund No. 2 was established by a resolution dated 13 November 1917.</li> <li>• Fund No. 3 was established at a General Meeting held on 29 November 1920.</li> <li>• Funds No. 2 and No. 3 were varied pursuant to the Scheme dated 28 May 1926.</li> <li>• Fund No. 4 was established by a resolution passed on 1 June 1926.</li> <li>• Declaration of Trust dated 21 December 1926 provided that the three funds were to be administered as one trust fund.</li> <li>• The three funds were varied by the Taranaki Trusts Statute 1997, clause 4.2 to provide that the funds be used by the Diocese for the sustentation of the Assistant Bishop of Waikato in Taranaki.</li> <li>• Value of funds invested of the Taranaki Bishopric Trust No. 1 and the Bishopric Endowment Funds No. 2 &amp; 3 as at 31 December 2017: \$102,442.02</li> <li>• No separate records are available in respect of the Bishopric Endowment Fund No. 4. It is assumed for the purposes of this Application that over time this fund has been amalgamated by the Taranaki Anglican Trust Board within the Taranaki Bishopric Trust No. 1 and the Bishopric Endowment Funds No. 2 &amp; 3.</li> </ul>
Taranaki Parochial Sustentation Fund	<ul style="list-style-type: none"> <li>• Established by Deed of Trust dated 6 May 1913.</li> <li>• Affirmed in the Taranaki Trusts Statute 1997, clause 8.1, that the funds</li> </ul>

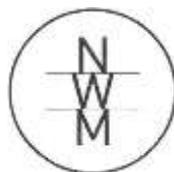
	<p>continue to be held for the benefit of the Archdeaconry of Taranaki in whatever Diocese that Archdeaconry may form a part.</p> <ul style="list-style-type: none"> <li>• Value of funds invested as at 31 December 2017: \$142,449.43</li> </ul>
Govett-Brown Memorial Fund	<ul style="list-style-type: none"> <li>• Established by Deed of Trust dated 26 April 1907.</li> <li>• Varied by Taranaki Trusts Statute 1997, clause 7.1.2.1, that the funds continue to be held for the benefit of the Archdeaconry of Taranaki in whatever Diocese that Archdeaconry may form a part.</li> <li>• Value of funds invested as at 31 December 2017: \$35,400.46</li> </ul>
The Taranaki Anglican Trust Board General Trust	<ul style="list-style-type: none"> <li>• Established by Bishop Selwyn by a Declaration of Trust in Conveyance dated 26 June 1862, varied by the 1925 Commission Report to General Synod.</li> <li>• Affirmed in the Taranaki Trusts statute 1997 that there that the funds continue to be used for the benefit of the Archdeaconry of Taranaki in whatever Diocese that Archdeaconry may form a part.</li> <li>• Value of funds invested as at 31 December 2017: \$474,091.20</li> </ul>

**SCHEDULE TWO**

**Declaration of Trust**

# DECLARATION OF TRUST

in respect of the Bishopric Trust



NORRIS  
WARD  
MCKINNON



**Bishopric** means a district under a Bishop's control within a Diocese and under this Declaration of Trust, "Bishoprics" means the Bishopric of Waikato and Bishopric of Taranaki.

**Bishops** means the Bishop of Waikato and the Bishop of Taranaki.

**Church** means the Anglican Church in Aotearoa, New Zealand and Polynesia.

**Diocese** means a geographical area overseen by a Bishop or Bishops, and under this Declaration of Trust means the Diocese of Waikato and Taranaki.

**Diocesan Synod** means the chief legislative and governing body of a Diocese, and under this Declaration of Trust means the Synod of the Diocese of Waikato and Taranaki.

**General Synod** means the General Synod of the Church, being the chief legislative and governing body of the Church with representatives from each Diocese voting in 'Houses' of Bishops, Clergy and Laity to enact its business.

**Standing Committee** means the administrative body of the Diocese with delegated authority from the Diocesan Synod and/or General Synod, which is responsible for the orderly management and administration of the affairs of the Diocese.

1.2 References: In this Declaration of Trust reference to:

- a. Any statutory provision will include any statutory provision which amends, or replaces it, and any subordinate legislation made under it; and
- b. Any canon or statute of the Church or statute of the Diocese will include any canon or statute which amends, or replaces it, and any subordinate documents made under it.

## 2. TRUSTEE

2.1 The Waikato Diocesan Trust Board shall be the trustee of the Bishopric Trust.

2.2 In the event the Waikato Diocesan Trust Board ceases to exist or is otherwise unable to continue to perform its duties as trustee, the Appointing Body may in its sole discretion replace or appoint additional trustees in accordance with the statutes of the Diocese.

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- 2.3 Notwithstanding anything else in this Declaration of Trust, the Bishop of Waikato and the Bishop of Taranaki may not be trustees of the Trust.

### **3. PURPOSES**

- 3.1 The Waikato Diocesan Trust Board shall, as trustee of the Bishopric Trust, hold and apply the trust funds for the following charitable purposes:

3.1.1 To provide for the sustentation of the Bishops of the Diocese of Waikato and Taranaki;

3.1.2 To provide financial assistance and support to the Bishoprics in the Diocese;

3.1.3 To undertake such other activities and provide such other assistance whether by way of financial assistance, support, or otherwise, of a charitable nature and generally do all such acts, matters or things which are incidental or conducive to achieving all or any of the Bishopric Trust's charitable purposes or which the Waikato Diocesan Trust Board may consider necessary or expedient to facilitate the achievement of the purposes set out above.

### **4. INCOME, BENEFIT OR ADVANTAGE TO BE APPLIED TO CHARITABLE PURPOSES**

- 4.1 The Waikato Diocesan Trust Board agrees and acknowledges that any income, benefit or advantage earned or otherwise received by the Bishopric Trust will be applied towards the furtherance of the charitable purposes of the Bishopric Trust. No individual may derive any private pecuniary profit or any income, benefit or advantage from the Bishopric Trust where they can materially influence the payment of the income, benefit or advantage.

### **5. POWERS**

- 5.1 In addition to the powers implied by the general law of New Zealand, or contained in the Anglican Church Trusts Act 1981, the Trustee Act 1956 and any successor legislation, the powers which the Waikato Diocesan Trust Board may exercise in order to carry out the Bishopric Trust's charitable purposes, (but subject at all times to the Anglican Church Trusts Act 1981, the statutes of the Diocese, and canons and statutes of the Church), include:

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- (a) To do all things as may from time to time be necessary or desirable to enable the Waikato Diocesan Trust Board to give effect to and to attain or endeavour to achieve the charitable purposes of the Bishopric Trust and which the Bishopric Trust could do if it was a natural person; and
  - (b) To use or apply any capital of the Bishopric Trust fund for all or any of the purposes of the Bishopric Trust without first using or applying the whole or any portion of the income of the trust fund for that year, including the power to use or apply any capital of the trust fund in the event the income from the trust fund is insufficient to provide for any or all of the charitable purposes set out in clause 3.

## **6. VARIATION**

- 6.1 The Waikato Diocesan Trust Board may by majority vote, make alterations or additions to the terms and provisions of this Declaration of Trust provided that:
  - (a) Prior written approval of such alterations or additions shall be obtained from the Standing Committee of the Diocese; and
  - (b) No such alteration or addition will detract from the exclusively charitable nature of the Bishopric Trust, provide for the private profit of any of the individual trustees of the Waikato Diocesan Trust Board or result in the distribution of its assets on winding up for any purpose that is not charitable.
- 6.2 Any alterations and additions to the terms and provisions of this Declaration of Trust must be consistent with the purposes set out in clause 3.1 of this Declaration of Trust.

## **7.WINDING UP AND DISPOSITION OF SURPLUS ASSETS**

- 7.1 The Bishopric Trust may be wound up by unanimous resolution of the Waikato Diocesan Trust Board subject to the prior written approval of the Standing Committee of the Diocese. On the winding up of the Bishopric Trust:
  - 7.1.1 Surplus assets of the trust fund (if any) will be applied to a charitable purpose or purposes within the Diocese as determined by the Waikato Diocesan Trust Board and subject to the prior written approval of the Standing Committee of the Diocese;
  - 7.1.2 In the event that the Diocese ceases to exist, then the surplus assets will be applied for the benefit of the Church in accordance with the directions of the General Synod;

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7.1.3 Where the surplus assets cannot be distributed in accordance with clauses 7.1.1 or 7.1.2, such surplus assets will be disposed of in accordance with the directions of the High Court.

**EXECUTED AS A DEED**

**Signed by Waikato Diocesan Trust Board** by affixing its common seal in the presence of:

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Trustee's signature

\_\_\_\_\_  
Trustee's full name

\_\_\_\_\_  
Trustee's signature

\_\_\_\_\_  
Trustee's full name

**REPORT OF THE CHANCELLOR  
IN RELATION TO THE VARIATION OF THE BISHOPRIC TRUSTS**

1. For many years there have been concerns about the unnecessary number of trusts that require to be maintained in support of the Bishopric, and from time to time doubts as to whether the various existing trusts permit, in particular circumstances, access to the capital of those trusts.
2. On 11 October 2009 the Diocesan Synod resolved to proceed pursuant to the Anglican Church Trusts Act 1981 (“the Act”) to endeavour to amalgamate the various trusts and to ensure that the provisions relating to access to capital were clarified.
3. Over a number of years work was done with a view to progressing the proposal to the extent that in January 2018 the Diocesan solicitors presented to me as Chancellor a formal application seeking to vary and amalgamate the trusts, together with a proposed new deed of trust, and documentation endeavouring to justify the process under the provisions of the Act.
4. The Act provides an alternative process to an application to the High Court, if it is desired to change the terms of trusts for an Authorised Trust Board. Both the Waikato Diocesan Trust Board and the Taranaki Anglican Trust Board are authorised Trust Boards, and therefore able to use the process in the Act.
5. The legal test to be applied, is that which would ordinarily be applied by the High Court to a variation in connection with a Charitable Trust which is not an authorised Trust Board within the Anglican Church system.
6. After consideration and further discussion through the Diocesan solicitors, resulting in amendments to the form of trust and material provided, I was satisfied that the proposal should be forwarded to the Attorney-General for

consideration as to his approval or not. In practice that involves referring the matter to the Solicitor-General within the Crown Law Office which attends to these matters on behalf of the Attorney.

7. The Solicitor-General's office had a number of queries, and further information was provided together with a slight amendment to the form of trust so as to assuage any potential concerns.
8. The amended form of trust, as set out in Schedule 2 of this Statute, is that which has been approved.
9. In this, my report to the Synod, I have explained in brief terms the process which has been followed.
10. I give my approval to the variation of trust as is required by section 14 of the Act.
11. I advise that the proposed deed of trust has been approved by the Attorney-General, and I invite Synod to pass the Statute so as to both accept my report, and to record the terms of the new trust to apply from this point onwards.



C J Harding

3 August 2018