

Holding surplus ministry assets in trust for the purposes of the Diocese

(A report from the Standing Committee.)

Key Points

- The Archbishop's Property Forum recommended that, in the situation where ministry has ceased in a parish and it is to be amalgamated with another parish, surplus ministry assets should be held in trust for the purposes of the Diocese.
- Surplus ministry assets on amalgamation should be held in the Mission Property Fund/Ministry Infrastructure Development Fund, and a policy of the Standing Committee has been adopted by the Standing Committee subject to the endorsement of the Synod.

Purpose

1. The purpose of this report is to seek the Synod's endorsement of a policy of the Standing Committee in relation to surplus ministry assets on amalgamation.

Recommendations

2. Synod receive this report.
3. Synod, noting this report, endorse the attached Standing Committee policy on Variations of Trusts after Parish Amalgamation.

Background

4. In 2021, Archbishop Kanishka Raffel established the Archbishop's Property Forum (**APF**), in recognition that property issues were significant barriers to future ministry, both in the Greenfields, in terms of lack of sites, and in existing suburbs, by way of inadequate or substandard facilities.
5. Recommendation 10b of the APF was that surplus ministry assets arising when ministry ceased in a parish should be held in trust for the purposes of the Diocese. The explanation given by the APF for the recommendation in its report of 24 October 2021 to the Standing Committee was as follows –

Historically, when ministry in a parish has diminished to the point of non-viability, or has ceased entirely, that parish has been amalgamated with a neighbouring parish. The property assets are thenceforth held on trust for the purposes of the new, combined parish, and its wardens and parish council become the key decision makers as to the strategic use and development of these assets. Continuing to pursue this approach will result in property that remains concentrated in the same geographic locations in the Diocese, with little opportunity to consider whether surplus assets in one location would be better redeployed elsewhere.

We should explore the feasibility of surplus ministry assets in such a scenario being held on trust for the wider purposes of the Diocese, and for the Standing Committee (on advice from the ACGC) to be the key decision maker in relation to the strategic use and development of these assets. The Standing Committee should have the flexibility to explore different options over time. For example, the assets could be put to the use for the amalgamated parish for a time, to see if ministry can be reinvigorated, but this would not preclude a different strategy in the future, should ministry not revitalise.

If feasible, a policy should be developed and put to Synod for adoption, so that the Synod collectively can give its approach to this new approach. It will probably be necessary to “grandfather” existing arrangements, and only have this policy apply prospectively to new amalgamations.

Legal considerations in implementing the recommendation

6. Amalgamations and boundary changes under the *Parishes Ordinance 1979* do not change the trusts of the church trust property in the affected parishes. Any variation to the trusts would need to be effected by an ordinance passed under section 32 of the *Anglican Church of Australia Trust Property Act 1917* (NSW).
7. Section 32 makes it lawful for the Synod to declare by ordinance other trusts for the use, benefit or purposes of the Anglican Church within the Diocese if it is of the opinion that, as a result of circumstances subsequent to the creation of the current trusts, it has become impossible or inexpedient to carry out or observe the current trusts.
8. Section 32 also includes the following proviso on the power to vary trusts:

Provided that such property shall be dealt with and applied for the benefit of the [Anglican Church] in the parish or parishes (if any) for the benefit of which such property was immediately before such ordinance held in trust, and for the same purposes as nearly as may be as the purposes for which such property was immediately before such ordinance held unless the synod of such diocese shall by ordinance declare that by reason of circumstances, subsequent to the creation of the first mentioned trusts, it is, in the opinion of the synod, impossible or inexpedient to deal with or apply such property or some part thereof for the use or benefit of such parish or parishes or for the same or the like purposes, in which case such property or such part thereof may be dealt with and applied for the use and benefit of the [Anglican Church] for such other purposes and in such other parish or parishes in the said diocese or otherwise as shall be declared by ordinance of the synod of the said diocese.
9. Currently, the usual practice of the Standing Committee is to pass an ordinance to vary the trusts of the property of both former parishes so it is held on trust for the purposes of the newly amalgamated parish. The master trust ordinance of the primary parish is amended to accommodate this change and the master trust ordinance of the secondary parish is repealed. This form of variation falls within the first limb of the proviso since the property is held for the purposes of the same (albeit expanded) parish and for purposes that are as nearly as may be the purposes for which it was formerly held.
10. The Standing Committee could instead vary the trusts of the church trust property of the secondary parish using the second limb of the proviso so it is held for some other purpose of the Anglican Church in the Diocese of Sydney. However, to do so the ordinance will need to include a further declaration that it is not only impossible or inexpedient to carry out the current trusts but also “impossible or inexpedient to deal with or apply such property or some part thereof for the use or benefit of such parish or parishes or for the same or the like purposes”.
11. Such ‘double declaration’ variations of trust are not uncommon. For example, they are the means by which a proportion of sale proceeds or property income is applied for non-parish purposes under the Large Receipts Policy.
12. Each trust requires an Australian Business Number and registration with the Australian Charities and Not-for-Profits Commission or else the income of the trust will be subject to tax, among other implications.
13. Surplus parish assets could be added to an existing trust (such as the Mission Property Fund/Mission Infrastructure Development Fund) or a new trust could be created to hold the assets. If a new trust is required, it may be possible to continue to use the ABN and charity registration of the ACPT as trustee of a parish that is being amalgamated with another parish since only one ABN will be needed for the newly amalgamated parish. That fund could then be used to hold surplus parish assets from

other sources in the future. The master trusts ordinance of the parish would be amended or replaced as the trust instrument for the fund.

Summation

14. On this basis, surplus ministry assets should be held in the Mission Property Fund/Ministry Infrastructure Development Fund, rather than in a recycled Master Trust ordinance.
15. Notwithstanding the suggestion in the report from the APF that “a policy should be developed and put to Synod for adoption”, this matter should be a policy of the Standing Committee (rather than the Synod), since it is the Standing Committee that passes ordinances to vary trusts in relation to specific parish property. If this matter is regulated by a policy of the Standing Committee, the Standing Committee retains the flexibility to vary the policy or to depart from the policy in particular circumstances.
16. Accordingly, at its meeting on 22 August 2022, the Standing Committee conditionally adopted the policy at **Attachment 1** of this report: ‘Variations of Trusts after Parish Amalgamation’. In order to ensure alignment with the Synod, the policy requires the endorsement of the Synod before it comes into effect.

For and on behalf of the Standing Committee.

DANIEL GLYNN
Diocesan Secretary

22 August 2022

Variations of Trusts after Parish Amalgamation (A policy of the Standing Committee, subject to the endorsement of the Synod)

1. An amalgamation of parishes occurs by means of a resolution for amalgamation passed under clause 10(1) of the *Parishes Ordinance* 1979 by a Regional Council (acting on behalf of the Standing Committee). For this to occur, the minister and parish councils of the parishes involved must give approval for the amalgamation.
2. An amalgamation changes parish boundaries, but it does not alter the trusts on which the church trust property of the former parish was held. This requires an ordinance of the Standing Committee. The purpose of this policy is to articulate the principles and guidelines that the Standing Committee has adopted for determining the extent to which the church trust property is to be used for the purposes of the amalgamated parish and the extent to which it should be used for purposes beyond the boundaries of that parish.

Principles and Guidelines

3. Parishes seeking to amalgamate should prepare a “ministry and evangelism plan” (MEP). The MEP should articulate how the church / residences / other property of the combined parish will be used to support the ministry of the parish. In addition, where the ministry activity in one or more of the ministry sites had declined such that the local offertories are below the Net Operating Receipts threshold for ongoing viability, the ministry and evangelism plan must include measures which have the potential to revitalise ministry, including a weekly service, at the site/in the former parish, unless scenario 4 below is considered the appropriate path forward. The Regional Council should not proceed with an amalgamation unless the ministry and evangelism plan is approved by the Regional Bishop.

Scenario 1 – Continuing Ministry at a Site

- Church trust property is held on trust for the beneficial use of a particular local parish. Where the MEP demonstrates that ongoing Anglican ministry is planned to continue **at that ministry site** beyond amalgamation, Standing Committee should vary the trusts so that the church trust property is held for the benefit of the parish unit (or recognised church) that will have the responsibility for ministry on that site. The trust ordinance will include a clause that requires the parish to bring a report to Standing Committee three years hence (or a longer period if, in the view of the Regional Bishop, this is warranted by the MEP), so that the Standing Committee can review progress against the goals set out in the MEP. In the event that Anglican ministry subsequently ceases at the site, the Standing Committee will have regard to the principles of this policy in any subsequent application to it in relation to the property.

Example: *Parish B has a church (St Barnabas) and a rectory. Parish A and parish B amalgamate. As per the prepared MEP, services at St Barnabas continue after amalgamation, with the assistant minister who leads this congregation living in the associated rectory. On amalgamation, Standing Committee varies the trusts of Parish B to transfer the beneficial use of church and rectory to parish A. At the three year review, the report from the parish indicates that the revitalisation milestones set out in the MEP have not been reached, but that there is still prospect for this to occur. Standing Committee extends the review date for another three years.*

However, five years after amalgamation, the amalgamated parish decides to cease Anglican ministry at St Barnabas. Any subsequent application to Standing Committee in relation to the church of St Barnabas or its rectory will be treated in line with the policy principles below (i.e., Standing Committee will “remember” that these assets arose from the former parish B and that parish A does not have an a priori right to use those assets for purposes unrelated to the continuation of the ministry at St Barnabas.) The amalgamated parish still has the option of continuing ministry on a newly developed site (scenario 2), pausing ministry (scenario 3) or ceasing ministry altogether (scenario 4).

Scenario 2 – Continuing Ministry, but at a newly developed site

- Where the intention is that Anglican ministry will not continue at a church site, but that church's congregation will continue meeting at a new site to be developed, then the Standing Committee should direct the first portion of the proceeds from sale to the *reasonable property needs* for ministry in the new location. The *reasonable property needs* should be set out in the MEP prepared by the parish, in accordance with advice from the ACGC and as approved by the Regional Bishop. Any portion remaining after the reasonable property needs of the parish should be directed to other property purposes outside the parish.

Example: *Parishes A and B each have parish churches that are inadequate. The parishes plan to amalgamate and sell both parish churches so that they can build a new, appropriate church centre for their combined congregations to meet in. In conjunction with the Regional Bishop and the ACGC, the parish develops an MEP that takes into account the combined size of the new congregation, the population projections for the area and the number and state of other nearby churches to determining the appropriate scale of the new church facilities (and hence the reasonable property needs). On the basis of an MEP supported by Regional Bishop and the ACGC, the Standing Committee allocates the first portion of the proceeds from sale to reasonable property of the parish, and the remainder allocated to the NCNC to fund the construction of a church in (say) South West Sydney.*

Scenario 3 – Uncertainty as to Continuing Ministry

- In this scenario, Anglican ministry is not continuing at a site immediately after amalgamation, but there is some potential for a continuing ministry on that site in the future. In conjunction with the Regional Bishop, the parish prepares an MEP for this site which articulates a pathway (with milestones) towards the revitalisation of viable ministry at this site. At the point of amalgamation, the trusts are varied so that the assets are transferred to the ACGC to be held on trust in support of the development of new properties for ministry, but assigned for the exclusive use of the parish for a period of three years (or a longer period if, in the view of the Regional Bishop and the ACGC, it is warranted by the MEP). This exclusive use allows the parish to receive the income generated from the church trust property, and also obligates the parish to maintain the church trust property. The purpose of this arrangement is to allow the ACGC to use this church trust property as security for loans, but not otherwise to deal with the property. In other respects, the local parish has both the use of, and responsibility for, the property.

After the three year (or longer) period, the progress towards revitalisation will be assessed with reference to the milestones established by the parish in the MEP. If ministry on the site is progressing towards viability, the Standing Committee can either extend the current arrangement for a further three years, or (in the event that vibrant, continuing ministry has been restored) alter the trusts so that the property is held on trust for the beneficial use of the parish.

If there is a mortgage over the property when it is transferred to the parish, the ACGC will continue to be responsible for all aspects of servicing the mortgage. In the event that Standing Committee approves the parish using the property as security for another mortgage, the Standing Committee will direct the ACGC to refinance the original mortgage so that it is secured against other assets in the ACGC portfolio.

Scenario 4 – No Continuing Ministry

- Where Anglican ministry is to cease at a church site and there is no "successor" ministry for the congregation formerly meeting on that site, the church trust property should be transferred to ACGC, to be held on trust in support of the development of new properties for ministry (rather than a particular parish). Any proposal for the sale or other dealings with the property requires the approval of the Standing Committee, based on advice received from the Regional Bishop and the ACGC, which should consider the reasonable property needs of

ministry in that location, weighed against the reasonable property needs elsewhere in the Diocese. This should include a consideration of the opportunity cost of actions now and in the future, and considerations of the potential for escalation in property values over time.

Example: *Parish A amalgamates with Parish B. The MEP demonstrates that the amalgamated parish needs the old rectory from Parish B for its ministry to the (larger) amalgamated parish, but does not need (or want) the church from parish B, because it is not a suitable site for ministry (now or in the future). The trusts are varied so that the amalgamated parish gains the rectory and the old church is transferred to the ACGC.*