

Synod of Otago and Southland

Property Handbook

A Guide for Southern Presbyterian Parishes Dealing with
Church Property

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This publication is intended only to provide a summary of the subject covered. It does not purport to be comprehensive or to provide legal advice. No person should act in reliance on any statement contained in this document without first obtaining specific professional advice. If you require any advice or further information on the subject matter of this article, in the first instance please contact the Synod Executive Officer and/or the Factor of the Otago Foundation Trust Board.

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Part One - Introduction

Introduction

1. Status of this Handbook

- 1.1 This Property Handbook is provided as a guide for dealing with all property owned by the Presbyterian Church that is located south of the Waitaki River.
- 1.2 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:
 - (a) property south of the Waitaki River is vested in the Otago Foundation Trust Board under the Otago Foundation Trust Board Act 1992;
 - (b) property north of the Waitaki River is vested in The Presbyterian Church Property Trustees.
- 1.3 This handbook is based on the procedures of the Presbyterian Synod of Otago and Southland and the Otago Foundation Trust Board in dealing with any property held in accordance with section 14 of The Otago Foundation Trust Board Act 1992.

2. Handbook Not a Substitute for Legal Advice

- 2.1 This Property Handbook provides procedures and guidelines for dealing with Parish property and is intended only to provide a summary of the subject covered. The information contained in this Property Handbook is correct as at the date of publication and is subject to change from time to time.
- 2.2 This Property Handbook does not purport to be comprehensive or to provide legal advice. No person should act in reliance on any statement contained in this document without first obtaining specific professional advice.
- 2.3 If you require any advice or further information on the subject matter in this Property Handbook, please contact the Otago Foundation Trust Board who will direct you to liaise with its solicitors, or obtain independent legal advice, if appropriate.

Governance and Decision-Making Roles

1. Definitions

Book of Order	means the Book of Order of the Presbyterian Church of Aotearoa New Zealand dated 26 September 2006 (as amended in October 2008, October 2010, October 2012, November 2014 and November 2016, corrected May 2017) and as amended from time to time.
Campsite Committee	means the committee established to run and manage camps held in the name of the OFTB on trust for the purposes of a campsite.
Church Council	means the governing body of a Congregation, Parish, or camp as set out in the Book of Order. The Church Council may also be referred to as the session council or parish council.
Congregation	a Congregation consists of its members, associate members and other persons who unite for worship, life and mission within the Provincial District of Otago already or hereafter to be sanctioned

by, or which is or may be under the jurisdiction or control of the Synod.

Deacons' Court	means the persons, whether incorporated or not, acting in the management of the temporal affairs of any Congregation and appointed according to the laws and usages of the Presbyterian Church of New Zealand; and includes the Board of Managers or Church Council (within the meaning of that term as used in the Book of Order of the Presbyterian Church of New Zealand) of any Congregation.
Factor	means the chief executive officer of the Otago Foundation Trust Board as appointed under section 16 of the OFTB Act.
General Assembly	means the highest court of the PCANZ.
Land and Buildings	has the meaning given in section 2 of the OFTB Act.
Mission	means mission and evangelism ministry as defined in section 2 of the OFTB Act.
OFTB	means the Otago Foundation Trust Board.
OFTB Act	means the Otago Foundation Trust Board Act 1992.
Parish	means a local church community, and includes Parish operated camps.
Parish Property	means the land and buildings of a Parish, Congregation, Campsite Committee, or Deacons' Court held on Trust by the OFTB in accordance with section 14 of the OFTB Act.
PCANZ	means the Presbyterian Church of Aotearoa New Zealand.
Property Commission	means the subgroup of the Synod appointed pursuant to section 24 of the OFTB Act with the role of making decisions in relation to applications to deal with Parish Property.
Regulations	means the Regulations of the Synod of Otago and Southland of the Presbyterian Church of Aotearoa New Zealand (as amended from time to time).
Southern Presbytery	means the regional court of the PCANZ responsible for all parishes and ministries in Otago and Southland.
Synod	means the Synod existing in connection with that part of the Presbyterian Church of New Zealand situated in the Provincial District of Otago and as referred to in the Presbyterian Church of New Zealand Act 1901.
Synod Executive Officer	means the Executive Officer of the Synod as appointed pursuant to the Regulations of the Synod of Otago and Southland of the Presbyterian Church of Aotearoa New Zealand (as amended from time to time).

2. Introduction

- 2.1 The Synod of Otago and Southland has its origins back in the events of the Disruption of 1843 in Scotland when the Free Church of Scotland split off from the Church of Scotland. Members of the Free Church established the Otago Settlement in 1848. They formed into local Congregations and set up the Presbyterian structures of Church Courts, independent of the Presbyterian Church that already existed north of the Waitaki River.
- 2.2 In 1854, the Presbytery of Otago was formed with responsibility for the area south of the Waitaki River. In 1866, the Presbytery was broken up into the Presbyteries of Dunedin, Clutha and Southland, all being under the jurisdiction of the Synod of Otago and Southland which was established at that time. Eventually, in 1901, the two churches united under the name of The Presbyterian Church of New Zealand. The Synod wished to continue its existence and, since it had been established by Act of Parliament and could not be dissolved, it became a Court of the United Church and retained control of its trusts. The Synod of Otago and Southland remains a regional Court of the Presbyterian Church of Aotearoa New Zealand.
- 2.3 When the members of the Free Church arrived in Otago in 1848, they found the land occupied by the tangata whenua, Ngāi Tahu. The Treaty of Waitangi had been signed only eight years previously, passing sovereignty to Britain and guaranteeing the rights of the Māori. The Pākehā settlers in Otago survived and thrived with the support of local members of Ngāi Tahu.
- 2.4 There were no direct purchases of land from Ngāi Tahu by the Church or any Congregation. Rather, the original purchase from Ngāi Tahu was by the New Zealand Company, which then on-sold the land.
- 2.5 The Synod recognises and respects the tangata whenua and acknowledges that the Treaty has been breached by the Crown on many occasions, but desires to work together with Ngāi Tahu in partnership to genuinely fulfil the intentions of the Treaty.

3. Presbyterian Synod of Otago and Southland

- 3.1 The Synod has jurisdiction over the area of New Zealand south of the Waitaki River.
- 3.2 The Presbyterian Church of New Zealand Act 1901 allowed the Synod to retain full rights over the trust property and funds it already administered, and the Synod kept its separate existence as a church court.
- 3.3 In matters concerning its trust funds, Parish Property and assets, as well as properties and assets of ministries recognised by the Southern Presbytery within its bounds, the decisions of the Synod are final.
- 3.4 Decisions of the Synod in other matters may be appealed to the General Assembly.
- 3.5 The Synod is an unincorporated association that pre-dates the legislation establishing what is now known as the OFTB. The Presbyterian Church of Otago Lands Act 1866 and the Presbyterian Church of New Zealand Act 1901 both acknowledge the Synod as being pre-existing. The latter Act spelt out that the Synod was to continue to hold all the powers, rights and privileges that were previously vested in it. Accordingly, the Synod is an ancient institution possessing all the necessary powers and rights to enable it to perform its functions.
- 3.6 Regulations regarding the membership and procedures of the Synod are set by the Synod in accordance with section 23 of the OFTB Act.

Property Commission

- 3.7 The Synod appoints standing committees to carry out the duties of the Synod requiring attention between annual meetings. The Property Commission is one such committee, and its function is

to consider all property applications received through the Southern Presbytery from congregational courts seeking permission to purchase, sell, build, dismantle, remove, subdivide, lease, borrow or mortgage, or otherwise deal with property.

- 3.8 In exercising its functions the Property Committee must have regard to:
- (a) the life, worship and mission of the Southern Presbytery;
 - (b) the policies of the Southern Presbytery and the General Assembly;
 - (c) the financial feasibility of the project; and
 - (d) the design and location.
- 3.9 In usual circumstances, the decision of the Property Commission will be notified in writing within two weeks of the application having been received by the Synod Executive Officer. This decision will then be forwarded to the OFTB as a recommendation that the decision be given legal effect to.
- 3.10 The appropriate application forms are available from the Synod Executive Officer.

Synod Executive Officer

- 3.11 The Synod Executive may appoint an Executive Officer to carry out the ongoing duties of the Synod, as described in the Regulations, including those of the treasurer.
- 3.12 The Synod Executive Officer is responsible to the Synod Executive through its convener.
- 3.13 The Synod Executive Officer is an associate of all the Synod committees.
- 3.14 The Synod Executive Officer is to provide administrative and financial services and advice to the Congregations within the Synod bounds and the Southern Presbytery, in matters relating to the trust funds and properties; and to provide administrative and financial services and advice to the various committees of the Synod which have been established to carry out the functions of the Synod.
- 3.15 Parishes wishing to deal with Parish Property should first contact the Synod Executive Officer who will advise the next steps and provide forms when appropriate for the Parish to complete.

Book of Order

- 3.16 The Book of Order is the Presbyterian Church's official rule book, and covers all activities of the Church. It explains the responsibilities of church members, and sets out the procedures for each area of governance and management.
- 3.17 Every Presbytery, Parish and church member is obliged to comply with the Book of Order, except for members of co-operative ventures in circumstances where the Guide to Procedures in Co-operative Ventures applies instead. The guide to Co-operative Ventures can be viewed on the Uniting Congregations website www.ucanz.org.nz
- 3.18 Chapter 16 of the Book of Order deals with property and finance matters. The Book of Order can be viewed on the Presbyterian Church website www.presbyterian.org.nz

4. The Otago Foundation Trust Board

Overview

- 4.1 When the Free Church settlers settled the province of Otago, certain proceeds of sale of land were put into trust for educational and religious purposes (**Original Trusts**). The original trustees were Rev Thomas Burns, Captain William Cargill, Edward Lee and Edward McGlashan.
- 4.2 On the formation of the Presbytery of Otago, control of the Original Trusts was transferred to it, and the Southern Presbytery, in turn, transferred control, including the power of appointment of trustees, to the Synod when the Synod came into existence in 1854. The Original Trusts were recognised in the Presbyterian Church of Otago Lands Act 1866 and the predecessor to the current OFTB acquired corporate status in 1875. In those early years, there were always close links between the Synod and the Original Trusts, and often the same personnel served on both.

Legal Framework for Operation

- 4.3 Three Acts of Parliament establish the framework and principles of operation of the OFTB:
 - (a) the Otago Foundation Trust Board Act 1992 - under section 14 of the OFTB Act, the OFTB holds property as trustee for the camps and Congregations south of the Waitaki River is the registered owner of, and is legally responsible for, all Parish Property located south of the Waitaki River. The OFTB Act governs what the Synod may do with the various funds and properties within the Synod area;
 - (b) Trusts Act 2019;
 - (c) Charitable Trusts Act 1957.
- 4.4 The Trusts Act 2019 and Charitable Trusts Act 1957 provide binding legal principles under which the OFTB operates as trustees.

Operation of the OFTB

- 4.5 The OFTB is the body which administers the various funds and trusts from which the Synod derives its income. The net annual income is then disbursed at the direction of the Synod in accordance with sections 17, 18, 20 and 22 of the OFTB Act.
- 4.6 Another important role of the OFTB is to acquire, and hold in its name, Land and Buildings upon trust for any Congregation or Deacons' Court, and to administer the trusts under which such Land and Buildings are held. This requires the identification of the purpose for which the land or buildings were acquired in the first place, and then ensuring that that purpose is honoured, in accordance with the law.
- 4.7 The Synod recognises that the OFTB has an obligation as a prudent trustee to ensure that the net annual income is allocated for the benefit of the Presbyterian Church in Otago and Southland and educational organisations as prescribed in the OFTB Act. The independent auditor's opinion, issued in conjunction with the annual audit, will be relied upon as proof of compliance.
- 4.8 In the 1970s, there were tensions between the OFTB and the Synod, and an agreement was reached between them in 1981 as to their ongoing relationship. The pertinent terms of that agreement were:
 - (a) both the OFTB and the Synod have responsibility in the administration of the trusts established by the Act;

- (b) the OFTB members as Trustees are legally responsible for the administration of the Trust for the purposes stated in the Act;
- (c) the Synod has a statutory responsibility to carry out the duties allocated to it by the Act. In the exercise of these duties and powers, individual members of the Synod are legally responsible for the performance of the trusts established by the Act;
- (d) it is contemplated that the Synod and the OFTB will jointly exercise their powers for the purposes of safeguarding the corpus of the trust funds and maximising income. The OFTB and the Synod cannot exercise their functions without close communication;
- (e) the proceeds of sale of any land or monies received on the sale of any such land remain subject to the trusts which attach to the land;
- (f) the OFTB has the power, subject to such regulations as the Synod may make, to purchase land on behalf of Congregations for churches, manses, halls, or glebes;
- (g) once a year, or more frequently if so desired by both parties, an informal meeting should be held between the members of the OFTB and the Synod's finance committee or its subcommittee to discuss the affairs of the Trust;
- (h) as a general rule, all communication will be between the Factor and the Synod Executive Officer.

4.9 Both the Synod and the OFTB will work together to ensure that the trusts identified in the Act are observed in their legal requirements, and to ensure that all trusts in relation to properties held on behalf of Congregations are also appropriately observed. The Synod and the OFTB will generally work together to carry out their respective lawful functions and, wherever possible, to enhance the Mission goals of the Synod.

4.10 The OFTB comprises between five and seven Trustees, all of whom are appointed in accordance with the OFTB Act.

5. Role of the Parish and Church Council

5.1 Chapter 16 of the Book of Order places the responsibility on the Church Council for the management and administration of all property of the Congregation. The Church Council must do everything necessary or appropriate for the use and management of all property associated with the life, worship, and mission of the Congregation including:

- (a) the care and maintenance of all property;
- (b) determining the use of Land and Buildings, subject to the provisions of this handbook;
- (c) dealing with proposals for the acquisition, leasing or disposal of any property; and
- (d) obtaining the authority of the Congregation, the Synod and the Property Commission regarding any proposal concerning property that would have a significant effect on the use of the buildings.

5.2 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, including the views of the Congregation in respect of the proposal;
- (b) determine whether the proposal is consistent with the mission strategy of the Congregation; and

- (c) ensure the proposal complies with the requirements of the Book of Order and the its supplementary provisions;
- (d) obtain the authority of the Congregation, the Synod and the Property Commission; and
- (e) obtain the endorsement of the Property Commission decision from the OFTB.

Part Two– Sale of Property

Sale of Property - General Guidelines

1. Definitions

Agreement for Sale and Purchase	means the standard form of Agreement for Sale and Purchase of Real Estate provided by the Auckland District Law Society Incorporated (ADLS) and as amended from time to time.
Auction	means a method of selling a property through the process of a public sale. The property is sold to the buyer with the highest bid after the vendor's reserve price is reached.
Book of Order	means the Book of Order of the Presbyterian Church of Aotearoa New Zealand dated 26 September 2006 (as amended in October 2008, October 2010, October 2012, November 2014 and November 2016, corrected May 2017) and as amended from time to time.
Campsite Committee	means the committee established to run and manage camps held in the name of the OFTB on trust for the purposes of a campsite.
Church Council	means the governing body of a Congregation, Parish, or camp as set out in the Book of Order. The Church Council may also be referred to as the session council or parish council.
Congregation	a Congregation consists of its members, associate members and other persons who unite for worship, life and mission within the Provincial District of Otago already or hereafter to be sanctioned by, or which is or may be under the jurisdiction or control of the Synod.
Council	means the local or territorial council or body having jurisdiction over the Parish Property pursuant to the Local Government Act 1974 or Local Government Act 2002 or any part thereof.
Deacons' Court	means the persons, whether incorporated or not, acting in the management of the temporal affairs of any Congregation and appointed according to the laws and usages of the Presbyterian Church of New Zealand; and includes the Board of Managers or Parish Council (within the meaning of that term as used in the Book of Order of the Presbyterian Church of New Zealand) of any Congregation.
Factor	means the chief executive officer of the OFTB, as appointed under section 16 of the OFTB Act.
GST	means tax chargeable in accordance with the Goods and Services Tax Act 1985.
Listing Agreement	means a legally binding contract between the owner of a property and the real estate agency that helps to sell the property. A listing agreement gives the agency the right to market the property for sale and sets out all the terms and conditions of the contract such as what your agent will do and what the owner will pay. A listing agreement may also be referred to as an agency agreement.

Manse	means a Parish residential property which provides accommodation to the Minister and family.
Mission	means mission and evangelism ministry as defined in section 2 of the OFTB Act.
OFTB	means the Otago Foundation Trust Board.
OFTB Act	means the Otago Foundation Trust Board Act 1992.
Parish	means a local church community, and includes Parish operated camps.
Parish Property	means the land and buildings of a Parish, Congregation, Campsite Committee, or Deacons' Court held on trust by the OFTB in accordance with section 14 of the OFTB Act.
PCANZ	means the Presbyterian Church of Aotearoa New Zealand.
Property Commission	means the subgroup of the Synod appointed pursuant to Section 24 of the OFTB Act with the role of making decisions in relation to applications to deal with Parish Property.
Property Commission Approval	means an approval of an application made by a Church Council setting out the terms and conditions of that approval, and contact information of the OFTB's solicitors.
Record of Title	means the record held with Land Information New Zealand that identifies a specific property by legal description, registered location, size and the registered owner.
Registered Valuation	means a report from a Registered Valuer, stating the condition and current market value of the property under consideration.
Southern Presbytery	means the Southern Presbytery of the Presbyterian Church of Aotearoa, New Zealand.
Statement of Account	means a statement of trust account transactions for money handled for a client, all transactions in the client's account, and the balance of the client's account and as more particularly defined in the section 12 of the Lawyers and Conveyancers Act (Trust Account) Regulations 2008.
Synod	means the Synod existing in connection with that part of the Presbyterian Church of New Zealand situated in the Provincial District of Otago and referred to in the Presbyterian Church of New Zealand Act 1901.
Synod Executive Officer	means the Executive Officer of the Synod as appointed pursuant to the Regulations of the Synod of Otago and Southland of the Presbyterian Church of Aotearoa New Zealand (as amended from time to time).
Tender	means the process of selling a property whereby prospective buyers (the tenderers) submit confidential written offers to the vendor and/or the agent, before a set closing deadline.

2. Selling a Parish Property – Application Process

- 2.1 The sale of Parish Property must be undertaken in accordance with the formal processes set out in the Book of Order and by the Synod. The approval of the Church Council, Congregation, Southern Presbytery, and the Property Commission are required before any formal steps to sell Parish Property are taken.
- 2.2 As a first step, the Church Council should make enquiries with the Synod Executive Officer who will advise the next steps, what information needs to be included with an application, and provide forms when appropriate for the Church Council to complete.
- 2.3 While there are a number of reasons the Church Council may wish to sell Parish Property, generally approval to sell will require that the Parish Property:
 - (a) is no longer needed for Mission purposes;
 - (b) is to be replaced with a property that will better fulfil the needs of the Congregation – in which case consideration needs to be given to the objectives of both the sale and the purchase, and comply with the requirements in both this Chapter and the Chapter Three; and
 - (c) is a surplus building on a piece of land that the Parish wishes to build on, and the Parish wishes to sell the building rather than demolish it.
- 2.4 When the Southern Presbytery has considered an application and made its decision, the application will be passed on to the Property Commission for their decision. The Property Commission will place considerable weight on the Southern Presbytery view on any proposal to sell Parish Property.
- 2.5 In usual circumstances, the decision of the Property Commission Approval will be notified in writing within two weeks of the application having been received by the Synod Executive Officer. This decision will then be forwarded to the OFTB as a recommendation that the decision be given legal effect to.

3. Matters to Consider Before Selling a Property

- 3.1 Before a decision to sell Parish Property is made, there are a number of matters that should be considered, and this information should be provided to the Synod with any application.
- 3.2 Generally, the following issues would form part of a prospective purchaser's due diligence on the property. However, many of the issues noted below may affect the ability to sell a Parish Property, including finding a prospective buyer, and also the timeframes in which the property can be sold. Being informed about potential issues ahead of an application to sell can assist in the Church Council's decision as to whether or not an application is appropriate, and may be relevant factors the Property Commission considers when setting out the conditions of a sale.
- 3.3 Additionally, while it is a prospective purchaser's responsibility to undertake their own investigations of the Parish Property before submitting an offer, being upfront about matters that may affect the purchaser's use of the property may save the Parish time and cost if that matter is considered too onerous by the purchaser at the outset, rather than once they are well-advanced through their property due diligence.

Is the sale of a building for removal?

- 3.4 If the Property Commission Approval is for the sale of a building located on Parish land (e.g. the Parish wishes to sell a chapel building, but retain the land) a well-drafted Building Sale and Removal contract needs to be prepared, as there are a number of legal complexities involved with this sort of sale.

- 3.5 The OFTB's solicitors have a standard form of contract for the sale and removal of buildings, and subject to Property Commission Approval, the Church Council should contact the OFTB's solicitors to discuss the same, prior to engaging a real estate agent to market the building.

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

- 3.6 The way a Parish Property was acquired, or statutory restrictions on the use of a Parish Property, may limit whether that Parish Property can be sold and what may be done with the proceeds from the sale. Accordingly, it is important to clarify these matters before an application to sell Parish Property is well-advanced with the Synod.
- 3.7 More detailed restrictions on the use of property are set out in Part Ten of this Handbook. However, some common examples of matters to consider are:

Gifts and Bequests

- (a) If the property was gifted to the Parish, for example, through a Will bequest, any legally documented conditions associated with the original gift must be fulfilled.

Record of Title Issues

- (b) Are there any issues with the Record of Title or are there any informal arrangements with neighboring landowners that could affect the saleability of the Parish Property. For example, if the Parish Property is accessed through the use of a shared driveway, but there is no legal record of that arrangement, this could affect the ability to sell the Property and the value of the same.
- (c) If there are any matters of concern, the Parish should raise these with the Synod prior to an application being submitted, and the Synod may take further legal advice in respect of the same.

Heritage Matters

- (d) The Heritage New Zealand Pouhere Taonga Act 2014 establishes the New Zealand Heritage List/Rārangi Kōrero which identifies significant and valued historical and cultural heritage places. It also restricts the modification and demolition of "archaeological sites" which are defined in the Act to mean any place associated with pre-1900 activity where there may be evidence relating to the history of New Zealand.
- (e) This Act may be relevant, as many older Parish buildings are registered on the New Zealand Heritage List and this could restrict a purchaser's use of the property. Additionally, pre-1900 buildings are considered to be archaeological sites under this Act, and modification or destruction of an archaeological site is prohibited, unless an archaeological authority is obtained from Heritage New Zealand. This applies whether or not an archaeological site is a recorded archaeological site, entered on the New Zealand Heritage List, or entered on the Council's landmarks list (if applicable). If the property is pre-1900, a purchaser may need to obtain authority granted by Heritage New Zealand to modify or demolish the Parish Property, and may also need to get an Archaeological Assessment (which is costly, and can take some time).

Council Designations or Heritage Structures

- (f) Councils keep records of special land features, designations and heritage structures located in their area of governance. Where a special land feature is identified, there may be rules in the operative district plan that set out the rules regarding use of the same. For example, if a prospective purchaser wishes to demolish a building noted as being a

heritage structure, the Council may require that a resource consent be issued for the same.

Tenancies or Leases

- (g) If the property is tenanted, consideration needs to be given to the landlord obligations of the Parish to provide the necessary notice to the tenant that the property will be listed (and if open homes are to be arranged) to comply with the Residential Tenancies Act 1986. Additionally, if the property is to remain tenanted following settlement, the particulars of the tenancy need to be included within any Agreement for Sale and Purchase entered into.

Are there any Building Consent or Permit issues that need to be addressed?

- 3.8 Any construction or renovations on a property may have required building consents or building permits. If the Church Council is unclear whether all the buildings or building works on the Property have the requisite consents and permits, it is important that this be raised in any application to the Property Commission, and enquiries made with the relevant Council about what consents are held for the Parish Property. It is better to address any issues upfront with a Purchaser than to have to address these once negotiation of the sale is well-progressed.

What are the general views of the wider local community?

- 3.9 Sometimes, the wider local community, in which a surplus Parish Property is sited (particularly in rural areas), may have strong views about what should happen to that property. Consultation with the community, if appropriate, can help avoid negative publicity or opposition to a sale.
- 3.10 If applicable, professional advice should be taken about how to deal with the media and community, and an appropriate spokesperson from a Church Council needs to be appointed.

Are there any GST issues?

- 3.11 The GST aspect of an Agreement for Sale and Purchase is an important consideration and the OFTB and the Synod consult regularly with accounting and tax professionals when assessing the GST status of Agreements to sell Parish Property.
- 3.12 Section 14 of the OFTB Act provides that all land and buildings subject to the authority of the Synod are owned by the OFTB on trust for the relevant Parish. This applies whether the land and buildings are in the name of the OFTB, a Deacons' Court or otherwise. The Inland Revenue Department treats the land held on behalf of individual Congregations or Deacons' Court as being in separate trusts, and as such, each trust is treated as separate for GST purposes.
- 3.13 From 1 October 2015, the Taxation (Land Information and Offshore Persons Information) Act 2015 required anyone buying or selling land to provide their IRD number as part of the transaction. As a result, the OFTB is required to obtain an IRD number at the time land is sold or acquired for use by a Parish. This is arranged by the OFTB's accountant at the request of the OFTB's solicitors, and only once an Agreement has been entered into by all parties.
- 3.14 It is important that the Church Council and Congregation are aware that certain activities associated with the use of a Parish Property (for example, claiming GST on significant building improvements) could result in a tax liability on the sale of the Parish Property. When making an application to sell a Parish Property, the application should disclose any claims that have been made in respect of GST. For more information see Part Five 'Renovation, Demolition and New Builds'.
- 3.15 If you have any queries regarding the GST treatment of a property transaction, contact the Synod Executive Officer in the first instance who will determine if it is appropriate to take tax advice in the circumstances.

Sale Process

4. Entering into an Agreement with a prospective buyer

- 4.1 Once approval is given to sell the Property, there are a number of ways a Parish Property can be made available for sale. A private buyer may approach the Parish with an offer, which, if accepted, means no third party agent is required. Alternatively, the Church Council may elect to engage a Real Estate Agent to market and sell the Property on the Parish's behalf. This could be by way of a negotiated Agreement for Sale and Purchase, Tender or Auction. The Property Commission Approval always states a minimum price (based on valuation) on which the sale can proceed. Any proposed sale below this figure will require further approval from the Property Commission.

Sale by a Real Estate Agent

- 4.2 If the Church Council chooses to engage a real estate agent, the real estate agent will require a Listing Agreement to be signed.
- 4.3 Most real estate agents will require that any Listing Agreement record a sole agency. A sole agency agreement means that:
- (a) the property can only be listed with one real estate agent until the term of the agreement has expired;
 - (b) if the property is sold while there is a sole agency agreement in operation (including if the property is sold privately while any agency is in operation), real estate agent's fees will still be payable even if they had nothing to do with the sale.
- 4.4 It is prudent to invite several proposals from several real estate agents for comparison before deciding on an agency and method of sale. If it is decided to enter into a sole agency, then the contract should be for a short duration (for example two to three months). This time limit must be written into the contract, and if it expires before the Parish Property is sold, a renewal needs to be completed, or a new Listing Agreement entered into by the OFTB.
- 4.5 Any Listing Agreement, renewal of Listing Agreement, or Agreement for Sale and Purchase must be approved by the OFTB's solicitors, and signed by the Factor on behalf of the OFTB.

Open Market or Private Sale

- 4.6 Where the Parish instructs a real estate agent, or where a potential purchaser approaches the Parish to make an offer to purchase the Parish Property, the OFTB's solicitors will draw up an Agreement for Sale and Purchase recording the agreement between the Parish and the potential purchaser that must record:
- (a) that the vendor is 'the Otago Foundation Trust Board (as trustee for the [name of Parish/Congregation])';
 - (b) any conditions to which the Agreement is subject to – for example, the potential purchaser may wish to obtain a LIM, organise finance, or make the Agreement conditional on the sale of their own property;
 - (c) the title requisition provisions specified in clauses 6.1 and 6.2 must be amended so that there is no obligation on the OFTB to point out the boundaries of the property to a potential purchaser, and that in the event there is a defect in the Record of Title, the purchaser has no right to requisition the title;

- (d) the Vendor's warranties and undertakings specified in clauses 7.1(1) and (2), clause 7.2, clauses 7.3(1), (2), (5) and (6) and clause 7.4 of the General Terms of Sale are to be deleted. This is because the OFTB has no, or limited, knowledge of the works (if any) that have been undertaken on the Parish Property, and whether the necessary consents or approvals have been obtained, and accordingly is unable to provide warranties in respect of the same.
- (e) the chattels schedule in Schedule 2 of the Agreement needs to be reviewed and completed. It is important that this is agreed before a contract is signed, as it limits the possibility of disputes as to what is included in the sale, and what is not;
- (f) "As is, Where Is" and "Vendor as Trustee" clauses should be included as Further Terms of Sale as follows:

Vendor as Trustee

The parties acknowledge and agree that the Vendor holds the land in Record of Title [] as trustee for the [] (Trust) pursuant to section 14 of the Otago Foundation Trust Board Act 1992.

The parties acknowledge that the Vendor has no right to or interest in any assets of the Trust except in that its capacity as a trustee of the Trust, that its liability under the Agreement is limited to the realisable assets of the Trust available for distribution.

As is, Where Is

The Purchaser acknowledges and agrees that the Property is being sold in its current "as is, where is" basis solely reliant upon its own judgement and inspection of the Property in entering this Agreement and not upon any statements or representation made by the Vendor or the Vendor's duly appointed agent. The Vendor does not provide any warranties in relation to the Property (including, but not limited to, warranties as to the structural integrity of any structures on the Property) unless specified in the General Terms of Sale. The Purchaser enters into this Agreement and accepts the Property on this express understanding and will have no claim against the Vendor under the Vendor's warranties which have been deleted in clause 7.

Sale by Tender or Auction

- 4.7 Where a Parish Property is offered for sale by Tender or Auction, the draft Tender or Auction Agreement for Sale and Purchase must be provided to the OFTB's solicitors for approval **before** the Tender or Auction process commences. The following must be included in the Agreement:
- (a) the vendor is 'the Otago Foundation Trust Board (as trustee for the [name of Parish/Congregation])';
 - (b) the title requisition provisions specified in clause 8.1 must be amended so that there is no obligation to point out the boundaries of the property to a potential purchaser;
 - (c) the vendor's warranties and undertakings specified in clauses 9.1(1) and (2), 9.2 and 9.3(1), (2), (5) and (6) and 9.4 in General Terms of Sale must be deleted. This is because the OFTB has no, or limited, knowledge of the works (if any) that have been undertaken on the Parish Property, and whether the necessary consents or approvals have been obtained, and accordingly is unable to provide warranties in respect of the same.
 - (d) the chattels schedule in the Agreement needs to be reviewed and completed. It is important that this is agreed before a contract is signed, as it limits the possibility of disputes as to what is included in the sale, and what is not;

- (e) "As is, Where Is" and "Vendor as Trustee" clauses should be included as Further Terms of Sale as follows:

Vendor as Trustee

The parties acknowledge and agree that the Vendor holds the land in Record of Title [] as trustee for the [] (Trust) pursuant to section 14 of the Otago Foundation Trust Board Act 1992.

The parties acknowledge that the Vendor has no right to or interest in any assets of the Trust except in that its capacity as a trustee of the Trust, that its liability under the Agreement is limited to the realisable assets of the Trust available for distribution.

As is, Where Is

The Purchaser acknowledges and agrees that the Property is being sold in its current "as is, where is" basis solely reliant upon its own judgement and inspection of the Property in entering this Agreement and not upon any statements or representation made by the Vendor or the Vendor's duly appointed agent.

The Vendor does not provide any warranties in relation to the Property (including, but not limited to, warranties as to the structural integrity of any structures on the Property) unless specified in the General Terms of Sale. The Purchaser enters into this Agreement and accepts the Property on this express understanding and will have no claim against the Vendor under the Vendor's warranties which have been deleted in clause 9.

- 4.8 Any Agreement to sell a Parish Property must be sent to the OFTB's solicitor's office for approval before it can be signed by the OFTB.

5. Settlement of the Sale

- 5.1 Once an Agreement for Sale and Purchase becomes unconditional – that is, there are no conditions still to be met, and both parties are legally committed to completing the transaction, the OFTB's solicitors will attend to settlement of the sale. This includes:
- (a) preparing the necessary land transfer documentation for signing by the OFTB;
 - (b) obtaining an IRD number to be issued through the OFTB's accountants (if required);
 - (c) liaising with the purchaser's solicitors to arrange settlement on the settlement date agreed between the vendor and the purchaser (**Settlement Date**).
- 5.2 On the Settlement Date, the OFTB's solicitors will:
- (a) complete the settlement;
 - (b) receive payment from the purchaser's solicitor, repay any outstanding mortgages, real estate agent commission or fees, and attend to local council rates adjustment;
 - (c) pay the balance (less legal fees and disbursements) to the OFTB's bank account;
 - (d) if GST is payable on the sale, the OFTB will account for this in their GST return and pay the amount owed from the sale proceeds held in the OFTB Sundry Trusts Account; and
 - (e) report to the OFTB and the Parish's representative, including Statements of Account.
- 5.3 The insurance cover on the Parish Property should only be cancelled once the sale has been completed and title has transferred to the new owner. This is arranged by the Factor.

6. Proceeds from the sale of surplus Parish Property

- 6.1 When a Parish Property is sold, the proceeds may be used by the Parish, with the agreement of the Synod, for a replacement property. If the net funds derived from the sale are less than the replacement property, an application may be made for a Synod allocation based on the appropriate percentage of the shortfall.
- 6.2 Proceeds may, with approval of Synod Executive Officer, also be used for alterations and major maintenance on any other Parish Property or for the purchase of another property e.g. the proceeds from the sale of a church may be used to purchase or build a Manse.
- 6.3 Where there is no requirement by the Congregation for a replacement Parish Property, the disposition of the proceeds of the sale will depend on the underlying purpose for which funds were given by people originally to enable purchase or construction. All property is held on trust for the purposes of that particular Congregation of the Synod and any proceeds of sale of that Parish Property must be used for a purpose that most closely represents the purpose of the original trust. In most cases, there will be no trust documentation in place and it will be necessary to infer what the purposes of the trust were from the circumstances. Unless there is an intention to the contrary clearly expressed, the proceeds of sale of a church or halls or a Manse may only be used for the purposes of churches, halls or Manses or any or all of them. These matters are determined by the Synod.
- 6.4 Any proceeds of sale of Parish Property must be paid into an account with the OFTB. The same applies in the event of there being insurance proceeds when this has been a total or partial destruction of a building. In both cases, the OFTB will hold the funds on trust for that Congregation

Checklist for Property Sales

Approval by Church Council and Congregation	
Parish's intentions discussed with Synod	
Consider any GST implications – has the Parish been claiming GST on a building?	
Registered valuation of the property obtained and is less than 90 days old	
Complete the Application for Approval to Sell Property and forward it together with any other documentation required by Synod/Property Commission	
Liaise with OFTB's solicitors	
Once approval is given, appoint real estate agent(s) (if required). Agency Agreement to be signed by OFTB	
Negotiate and agree sale price and conditions	
Follow requirements with regard to the Agreement for Sale & Purchase - Agreement to be signed by OFTB	

Part Three – Purchase of Property

Purchase of Property - General Guidelines

1. Definitions

Agreement for Sale and Purchase	means the standard form of Agreement for Sale and Purchase of Real Estate provided by the Auckland District Law Society Incorporated (ADLS) and as amended from time to time.
Auction	means a method of selling a property through the process of a public sale. The property is sold to the buyer with the highest bid after the vendor's reserve price is reached.
Book of Order	means the Book of Order of the Presbyterian Church of Aotearoa New Zealand dated 26 September 2006 (as amended in October 2008, October 2010, October 2012, November 2014 and November 2016, corrected May 2017) and as amended from time to time.
Campsite Committee	means the committee established to run and manage camps held in the name of the OFTB on trust for the purposes of a campsite.
Church Council	means the governing body of a Congregation, Parish, or camp as set out in the Book of Order. The Church Council may also be referred to as the session council or parish council.
Congregation	a Congregation consists of its members, associate members and other persons who unite for worship, life and mission within the Provincial District of Otago already or hereafter to be sanctioned by, or which is or may be under the jurisdiction or control of the Synod.
Council	means the local or territorial council or body having jurisdiction over the Parish Property pursuant to the Local Government Act 1974 or Local Government Act 2002 or any part thereof.
Deacons' Court	means the persons, whether incorporated or not, acting in the management of the temporal affairs of any Congregation and appointed according to the laws and usages of the Presbyterian Church of New Zealand; and includes the Board of Managers or Parish Council (within the meaning of that term as used in the Book of Order of the Presbyterian Church of New Zealand) of any Congregation.
Factor	means the chief executive officer of the OFTB, as appointed under section 16 of the OFTB Act.
GST	means tax chargeable in accordance with the Goods and Services Tax Act 1985.
Listing Agreement	means a legally binding contract between the owner of a property and the real estate agency that helps to sell the property. A listing agreement gives the agency the right to market the property for sale and sets out all the terms and conditions of the contract such as what your agent will do and what the owner will pay. A listing agreement may also be referred to as an agency agreement.

Manse	means a Parish residential property which provides accommodation to the Minister and family.
Mission	means mission and evangelism ministry as defined in section 2 of the OFTB Act.
OFTB	means the Otago Foundation Trust Board.
OFTB Act	means the Otago Foundation Trust Board Act 1992.
Parish	means a local church community, and includes Parish operated camps.
Parish Property	means the land and buildings of a Parish, Congregation, Campsite Committee, or Deacons' Court held on Trust by the OFTB in accordance with section 14 of the OFTB Act.
PCANZ	means the Presbyterian Church of Aotearoa New Zealand.
Property Commission	means the subgroup of the Synod appointed pursuant to section 24 of the OFTB Act with the role of making decisions in relation to applications to deal with Parish Property.
Property Commission Approval	means an approval of an application made by a Church Council setting out the terms and conditions of that approval, and contact information of the OFTB's solicitors.
Record of Title	means the record held with Land Information New Zealand that identifies a specific property by legal description, registered location, size and the registered owner.
Registered Valuation	means a report from a registered valuer, stating the condition and current market value of the property under consideration.
Southern Presbytery	means the regional court of the PCANZ responsible for all parishes and ministries in Otago and Southland.
Statement of Account	means a statement of trust account transactions for money handled for a client, all transactions in the client's account, and the balance of the client's account and as more particularly defined in the section 12 of the Lawyers and Conveyancers Act (Trust Account) Regulations 2008.
Synod	means the Synod existing in connection with that part of the Presbyterian Church of New Zealand situated in the Provincial District of Otago and referred to in the Presbyterian Church of New Zealand Act 1901.
Synod Executive Officer	means the Executive Officer of the Synod as appointed pursuant to the Regulations of the Synod of Otago and Southland of the Presbyterian Church of Aotearoa New Zealand (as amended from time to time).
Tender	means the process of selling a property whereby prospective buyers (the tenderers) submit confidential written offers to the vendor and/or the agent, before a set closing deadline.

2. Purchasing a Parish Property – Application Process

- 2.1 The purchase of a Parish Property must be undertaken in accordance with the formal processes set out in the Book of Order and by the Synod. The approval of the Church Council, Congregation, Southern Presbytery, and the Property Commission are required before any formal steps to purchase property are taken.
- 2.2 As a first step, the Church Council should make enquiries with the Synod Executive Officer who will advise the next steps, what information needs to be included with an application, and provide the requisite forms for the Church Council to complete.
- 2.3 When the Southern Presbytery has considered an application and made its decision, the application will be passed on to the Property Commission for its consideration. The Property Commission will place considerable weight on the Southern Presbytery view on any proposal to purchase Parish Property.
- 2.4 When assessing an application to purchase a property, the Southern Presbytery and the Property Commission may require any Agreement for Sale and Purchase recording the Parish's offer to be conditional on satisfactory due diligence, and may also give consideration to the following matters:
- (a) is the property within the price band approved by the Parish – the Synod will require a Registered Valuation (that is no more than 90 days old at the time of the application), to be provided with any application to purchase a property;
 - (b) how is the purchase to be financed;
 - (c) is the location suitable for the building's intended purpose;
 - (d) is the property located near the Parish office and main worship centre;
 - (e) is the property convenient to public transport;
 - (f) is the property in good condition and are there any deferred maintenance or ongoing maintenance issues – for example, will the roof need to be repaired or replaced in the near future, and if so, does the Parish have sufficient budget to attend to this;
 - (g) are there any issues with the Record of Title associated with the property;
 - (h) does the property have good resale potential (particularly for a Manse);
 - (i) are there any health and safety seismic issues;
 - (j) are there any seismic issues or other natural hazard issues;
 - (k) does the Land Information Memorandum (**LIM**) raise any concerns;
 - (l) are there any actual or potential heritage issues that could affect the use of the property;
 - (m) whether the property is insurable to an extent acceptable to the OFTB; and
 - (n) if the property is to be used as a Manse, does it meet the Ministers' Housing Requirements set out in the Book of Order.
- 2.5 In usual circumstances, the decision of the Property Commission will be notified in writing within two weeks of the application having been received by the Synod Executive Officer. The Property Commission Approval will then be forwarded to the OFTB as a recommendation that the decision be given legal effect to.

3. Due Diligence

- 3.1 If the Property Commission Approval is conditional on due diligence, this will be carried out by the OFTB's solicitors. This may include, but is not limited to:
- (a) review of the Record of Title and any registered instruments;
 - (b) review of the LIM for the property, builders and/or electricians report, methamphetamine contamination reports, along with enquiries regarding respect to code compliance certificates and building permits in relation to the property;
 - (c) review of the district plan to ascertain if the intended use of the land is permitted by the Council;
 - (d) earthquake strengthening, asbestos, and toxicity matters;
 - (e) whether the property is insured; and
 - (f) if the property is intended to be used as a Manse, whether the property complies with the relevant tenancy laws under the Residential Tenancies Act 1986. Also see Parts Six and Seven on Residential Tenancies and Leasing.
- 3.2 The cost of any due diligence is an expense associated with the property purchase and will be on-charged for payment by the Parish.

4. Making an Offer to Purchase

- 4.1 If Property Commission Approval is granted, the Church Council may make an offer on a property, subject to any conditions contained within that approval.
- 4.2 If there is a real estate agent marketing the property, they may provide an Agreement for Sale and Purchase to the Church Council for completion by the OFTB's solicitors. Alternatively, the OFTB's solicitors can draw up an Agreement for Sale and Purchase recording the Church Council's offer.
- 4.3 The following terms are required in any offer to purchase:
- (a) the purchaser is 'the Otago Foundation Trust Board (as trustee for the [name of Parish/Congregation])';
 - (b) any conditions to which the offer is subject will be included – for example, if the Agreement is to be conditional on a satisfactory LIM or builders report, this will be included in the Agreement;
 - (c) the chattels in Schedule 2 of the Agreement needs to be reviewed and completed prior to the submission of an offer. It is important that this is agreed before a contract is signed, as it limits the possibility of disputes as to what is included in the sale, and what is not;
 - (d) a "Purchaser as Trustee" clause should be included as Further Terms of Sale as follows:

Purchaser as Trustee

The parties acknowledge and agree that the Purchaser is it is entering into this Agreement as Trustee for the [name of Parish] pursuant to section 14 of the Otago Foundation Trust Board Act 1992 (Trust).

The parties further acknowledge that the Purchaser has no right to or interest in any assets of the Trust except in that its capacity as a trustee of the Trust, that its liability under this Agreement will

not be personal and unlimited but will be limited to the actual amount recoverable from the assets of the Trust from time to time.

- 4.4 If the property the Parish wishes to purchase is being sold by Auction, all due diligence must be completed to the satisfaction of the Synod and the OFTB before the Auction date. An offer accepted at Auction is required to be unconditional, and accordingly, the Church Council should discuss any requirements in respect of an Auction with the OFTB and the Synod Executive Officer.
- 4.5 If the Agreement for Sale and Purchase is provided to the Parish by a real estate agent, this must be reviewed by the OFTB's solicitors prior to signing by the OFTB.

5. Settlement of the Purchase

- 5.1 Once an Agreement for Sale and Purchase becomes unconditional – that is, there are no conditions in the Agreement still to be met, and both parties are legally committed to completing the transaction, the OFTB's solicitors will attend to settlement of the transaction. This includes:
- (a) payment of the deposit – generally a deposit is a condition of an Agreement for Sale and Purchase. The Church Council should ensure it has sufficient funds to pay the deposit, or, that it has made the necessary arrangements with the OFTB in respect of the same;
 - (b) preparing the necessary land transfer documentation for signing by the OFTB;
 - (c) obtaining an IRD number to be issued through the OFTB's accountants (if required);
 - (d) liaising with the purchaser's solicitor to arrange settlement on the settlement date agreed between the vendor and the purchaser (**Settlement Date**).
- 5.2 On the Settlement Date, the OFTB's solicitors will:
- (a) pay the amount required to settle the purchase to the vendor's solicitor – if the funds required for any part of the settlement are held in an OFTB bank account, or if the Parish is borrowing a portion of the purchase price, the Church Council will need to arrange for these to be paid to the OFTB's solicitors at least two working days in advance of the Settlement Date;
 - (b) register the mortgage or any other instruments required (if applicable);
 - (c) send a sales notice to the requisite Council to update them as to the change in ownership of the property; and
 - (d) report to the OFTB and the Parish's representative, including Statements of Account and copies of the Record of Title noting the OFTB's ownership of the property.
- 5.3 On confirmation of the Agreement, the Factor will arrange full replacement insurance cover to take effect on the Settlement Date.

General Checklist for Property Purchases

Approval by Church Council and Congregation	
Parish's intentions discussed with Synod	
Registered valuation of the property obtained and is less than 90 days old	
Complete the Application for Approval to Sell Property and forward it together with all other required documents to Synod	
Will the Parish need to borrow money? If so, the Parish, Church Council, Property Commission and the OFTB all need to give formal approval	
Negotiate and agree purchase price and conditions	
Complete Due Diligence as required by the Property Commission Approval	
Remember – the Agreement must be signed by the OFTB – not by the Parish	

Part Four – Subdividing Land

Subdividing Land – General Overview

1. Definitions

Book of Order	means the Book of Order of the Presbyterian Church of Aotearoa New Zealand dated 26 September 2006 (as amended in October 2008, October 2010, October 2012, November 2014 and November 2016, corrected May 2017) and as amended from time to time.
Boundary Adjustment	means a survey to amend the common boundaries between two or more separate titles.
Campsite Committee	means the committee established to run and manage camps held in the name of the OFTB on trust for the purposes of a campsite.
Church Council	means the governing body of a Congregation, Parish, or camp as set out in the Book of Order. The Church Council may also be referred to as the session council or parish council.
Congregation	a Congregation consists of its members, associate members and other persons who unite for worship, life and mission within the Provincial District of Otago already or hereafter to be sanctioned by, or which is or may be under the jurisdiction or control of the Synod.
Consent Notice	means a notice issued under section 221 of the Resource Management Act 1991 and imposed as a condition on a subdivision resource consent decision to ensure the continuing compliance of a condition, or a set of conditions, made in the resource consent decision. A consent notice is registered on the title of the relevant parcels of land when the solicitor creates the title.
Council	means the local or territorial council or body having jurisdiction over the Parish Property pursuant to the Local Government Act 1974 or Local Government Act 2002 or any part thereof.
Deacons' Court	means the persons, whether incorporated or not, acting in the management of the temporal affairs of any Congregation and appointed according to the laws and usages of the Presbyterian Church of New Zealand; and includes the Board of Managers or Parish Council (within the meaning of that term as used in the Book of Order of the Presbyterian Church of New Zealand) of any Congregation.
Factor	means the chief executive officer of the OFTB, as appointed under section 16 of the OFTB Act.
GST	means tax chargeable in accordance with the Goods and Services Tax Act 1985.
LINZ	means Land Information New Zealand.

LT Plan	means a Land Transfer Plan being a survey plan prepared under the Land Transfer Act, but which has not yet had the new titles created.
Manse	means a Parish residential property which provides accommodation to the Minister and family.
Mission	means mission and evangelism ministry as defined in section 2 of the OFTB Act.
OFTB	means the Otago Foundation Trust Board.
OFTB Act	means the Otago Foundation Trust Board Act 1992.
Parish	means a local church community, and includes Parish operated camps.
Parish Property	means the land and buildings of a Parish, Congregation, Campsite Committee, or Deacons' Court held on Trust by the OFTB in accordance with section 14 of the OFTB Act.
PCANZ	means the Presbyterian Church of Aotearoa New Zealand.
Property Commission	means the subgroup of the Synod appointed pursuant to section 24 of the OFTB Act with the role of making decisions in relation to applications to deal with Parish Property.
Property Commission Approval	means an approval of an application made by a Church Council setting out the terms and conditions of that approval, and contact information of the OFTB's solicitors.
Record of Title	means the record held with Land Information New Zealand that identifies a specific property by legal description, registered location, size and the registered owner.
Registered Valuation	means a Report from a Registered Valuer, stating the condition and current market value of the property under consideration.
RMA	means the Resource Management Act 1991 or any legislation amending or replacing this Act.
Section 223 Certificate	means a certificate issued by the Council approving the Title Plan and any easement shown on the plan.
Section 224(c) Certificate	means a certificate issued by the Council when a subdivision is completed and all the conditions of consent have been complied with, or: <ul style="list-style-type: none"> (i) a condition requires ongoing compliance and so a consent notice is created and the conditions are registered on it for each Lot; or (ii) a condition cannot be complied with at the moment, so a cash bond has been entered into until it can be complied with.

Southern Presbytery	means the Southern Presbytery of the Presbyterian Church of Aotearoa, New Zealand.
Synod	means the Synod existing in connection with that part of the Presbyterian Church of Aotearoa New Zealand situated in the Provincial District of Otago and referred to in the Presbyterian Church of New Zealand Act 1901.
Synod Executive Officer	means the Executive Officer of the Synod as appointed pursuant to the Regulations of the Synod of Otago and Southland of the Presbyterian Church of Aotearoa New Zealand (as amended from time to time).

2. What is a Subdivision?

2.1 Subdivision is a process of:

- (a) dividing a parcel of land into one or more further parcels of land; or
- (b) rearranging the boundaries of two or more parcels of land – this form of subdivision is called a 'boundary adjustment' and may occur, for example, where a common fence or wall between two properties are not in the position of the true boundary, and the neighbours choose to conduct a boundary adjustment rather than move the wall or fence. This type of subdivision still has to go through the full subdivision process with the Council.

2.2 There are a number of reasons why a Parish may wish to subdivide a Parish Property, for example:

- (a) the land is larger than the Parish requires and it wishes to sell the area that is surplus to its requirements; or
- (b) to register a church building and Manse on individual titles, perhaps to enable the separate sale of one or the other.

3. Cost of Subdividing

3.1 There are significant costs involved with subdividing land, which include (but are not limited to):

- (a) consultant fees (surveyors, engineers, planning consultants, landscape architects);
- (b) Council consent fees for the issue of the consents, sections 223 and 224 certification, engineering approval and work supervision, and connection to public infrastructure;
- (c) valuation fees;
- (d) extensions or improvements of the public infrastructure network necessary to serve the subdivision (serviced site) accountants fees;
- (e) financial or development contribution (e.g., road and reserve contributions and public services upgrading contributions);
- (f) construction of engineering works, such as driveways, roads, services, etc;
- (g) costs associated with resource consent conditions, such as protecting areas of native vegetation;

- (h) solicitor fees (Council's and applicant's) for consent notices, drainage easements, and bond documents, and for completing the subdivision; and
- (i) fees charged by LINZ for plan approval and deposit, and issue of new titles.

3.2 The Parish needs to consider how these costs will be funded and make this clear in any application to the Property Commission to subdivide a Parish Property.

4. Application Process

- 4.1 Subdivisions are complex. As a first step, the Church Council should make enquiries with the Synod Executive Officer who will advise the next steps, what information needs to be included with an application, and provide forms, where appropriate, for the Church Council to complete.
- 4.2 The Parish may also wish to engage a licensed surveyor to advise on the suitability of the Parish Property for subdivision, prior to making an application to the Property Commission. This will make it clear from the outset what is required to subdivide the Parish Property and the potential cost of the same. A surveyor can assist with the following key aspects of a subdivision:
 - (a) drafting a subdivision design for the property;
 - (b) rules around subdividing property, specific to the city or area the property is in;
 - (c) site specific zoning;
 - (d) clarifying the need for stormwater, wastewater, and sewer connections;
 - (e) identifying power, water, and phone connections;
 - (f) vehicle access;
 - (g) providing a detailed breakdown of all subdivision costs associated with subdividing the section from the design, consent and development stages, through to the issuing of new titles.
- 4.3 The Parish should also be aware that the Property Commission may require a registered valuation based on the value of the proposed subdivision being issued with its own title, particularly if the Parish proposes to sell one of the lots following completion of the subdivision.
- 4.4 When the Southern Presbytery has considered an application to subdivide and made its decision, the application will be passed on to the Property Commission for its decision. The Property Commission will place considerable weight on the Southern Presbytery view on any proposal to sell Parish Property.
- 4.5 In usual circumstances, provided all relevant information is provided with the application to subdivide, the decision of the Property Commission Approval will be notified in writing within two weeks of the application having been received by the Synod Executive Officer. This decision will then be forwarded to the OFTB as a recommendation that the decision be given legal effect.

5. Subdivision Process

- 5.1 If Property Commission Approval permits subdivision of Parish Property, and the Parish decides to proceed with a subdivision, the following steps will need to occur:

Step 1: Obtaining a Subdivision Resource Consent from the Council

- 5.2 A subdivision resource consent will need to be obtained from the Council. The surveyor will prepare a scheme plan showing the new lots to be created and will lodge this plan with the Council, along with the resource consent application.
- 5.3 The subdivision application will be assessed by the Council in accordance with the relevant provisions of the Council's district plan and the RMA. Subdivisions that involve significant earthworks, discharges and/or diversions of watercourses may require consents from the regional Council.
- 5.4 The Council will grant (or decline) subdivision consent subject to certain conditions which may include:
- (a) engineering requirements - e.g. provision for roads, vehicle crossings/entrances, sewers, water supply and stormwater;
 - (b) connections to other utilities, such as street lighting, power and telephone;
 - (c) financial contributions (sometimes referred to as development contributions) to help fund the costs borne by the public – for example upgrades to roads, services, parks and community facilities;
 - (d) protection of waterways, notable trees, heritage items, natural vegetation, wetlands and the coastal marine area;
 - (e) matters relating to titles such as registration of easements (for example the Council may require easements to be registered to allow it, or third party utilities providers, to drain water or sewage, convey electricity, telecommunications or water, or access other land over the subdivided parcels).
- 5.5 The timeframes for processing of Council subdivision applications vary, and the Parish should make enquires with the Council as to expected timeframes.
- 5.6 Once a subdivision resource consent has been issued by Council, the applicant has a maximum of five years in which to have the survey plan approved by the Council (as set out in Step 3, below).
- 5.7 It is important that the conditions of the resource consent are reviewed by the OFTB's solicitors in order to advise the Parish of its obligations and to ascertain whether the conditions, cost and time frame for complying with the conditions are acceptable to the Parish and the OFTB.

Step 2: Conditions of Consent

- 5.8 If the conditions of the consent are acceptable to the Parish and the OFTB, the second stage of subdivision involves the consent holder complying with the conditions of subdivision consent. This typically includes the payment of any financial or development contributions, design and approval of the engineering details by the council, and completing the physical works such as the provision of roading, water supply, earthworks and drainage.
- 5.9 During this period, a licensed cadastral surveyor will define the lots and prepare a title plan for submission to the Council and lodgment with LINZ. This plan will finalise the areas and dimensions of the proposed lots and note any existing or newly created easements.

Step 3: Approval of the Survey Plan by Council

- 5.10 Once the survey plan is completed, the surveyor will submit this to the Council for approval. The Council will ensure that the subdivision layout and provisions are correct and that all

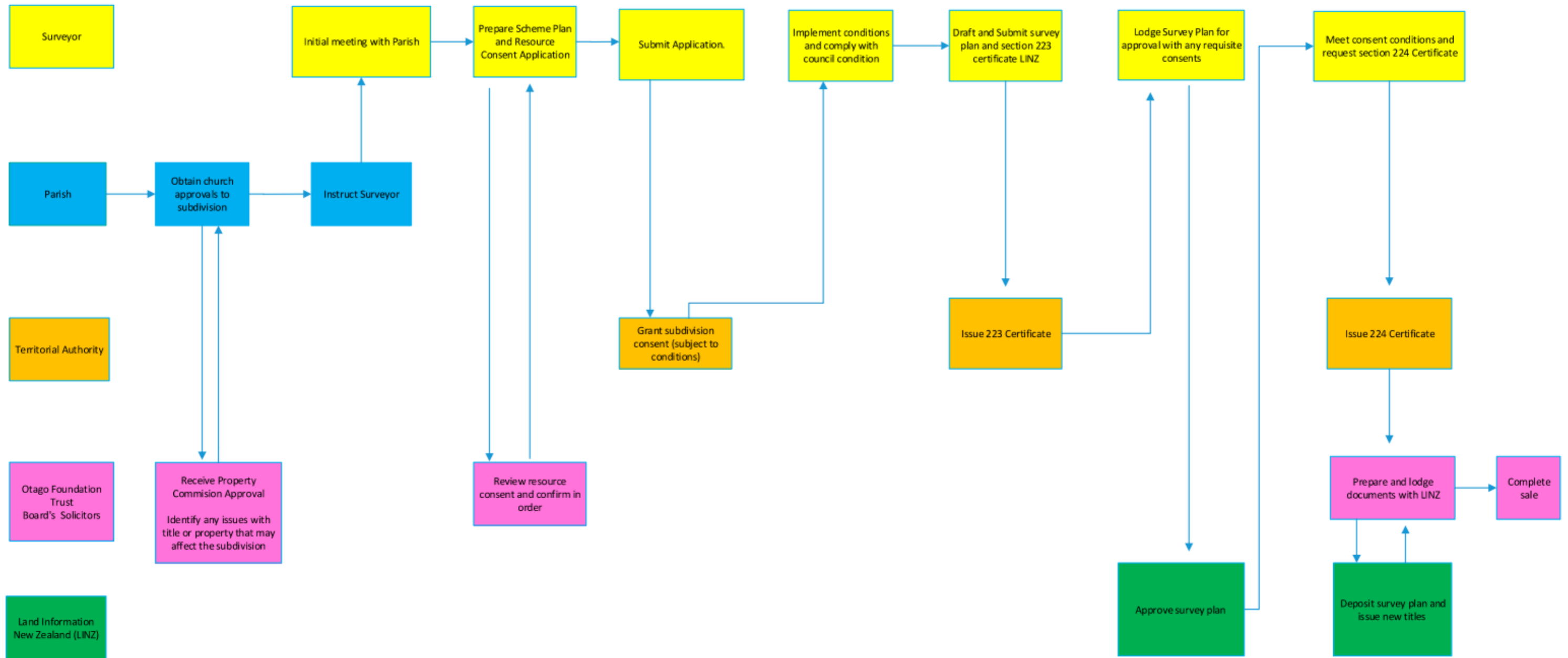
conditions of the consent have been (or will be) satisfied. Conditions may include matters such as required construction activities, vesting of lands for roads and reserves, payment of financial or development contributions, amalgamation of allotments, protection of land against erosion, granting or reserving of easements, and registration of bonds or consent notices for securing conditions of a continuing nature.

- 5.11 If the survey plan complies with the subdivision resource consent the Council will issue:
- (a) a certificate under section 223 of the RMA;
 - (b) a certificate under section 224(c) of the RMA stating that all or any of the conditions of the subdivision consent have been complied with to its satisfaction.
- 5.12 Once the survey plan has been approved by the Council, the OFTB's solicitors will review the same, and prepare the documentation required for the issue of the new titles. This includes:
- (a) preparing the necessary land transfer documentation for signing by the OFTB;
 - (b) drafting easements, covenants, consent notices, bonds and any other matters required as a condition of the resource consent;
 - (c) obtaining the consent of any mortgagee; and
 - (d) obtaining an IRD number to be issued through the OFTB's accountants (if required).
- 5.13 These documents will be forwarded to the OFTB for signing.
- 5.14 The RMA sets time frames to ensure subdivisions (and all other resource consents) are given effect to in a reasonable time period. The resource consent for a subdivision has a five-year time frame (unless a different time frame is specified). A subdivision is deemed to be "given effect to" by the issue of the s 223 certificate, and the survey plan approved under s 223 must be deposited with LINZ within three years following that approval. This therefore provides up to eight years to complete from the time the consent has been issued by Council. Most subdivisions however occur a lot quicker than this.

Step 5: Approval and Deposit of the Survey Plan by LINZ

- 5.15 Once the sections 223 and 224 certificates have been issued, the final stage of subdivision involves survey plan approval and the applicant has a maximum of five years from the date the section 223 certificate is issued to get the survey plan deposited with LINZ. This cannot be fully executed unless the plan is accompanied by the required sections 223 and 224(c) certificates and all necessary documents for registration as required by section 224.
- 5.16 The plan is processed by LINZ to check the definition of land boundaries and validate that it correctly fits into the national cadastral database (called Landonline). Once the plan has been assessed as correct, the plan is 'Approved as to Survey' and new titles will be issued.

6. Subdivision Process



Part Five - Renovation, Demolition, and New Builds

General Guidelines

1. Definitions

Alter	means to alter, extend, modify, renovate, or undertake any other work that changes the structure of a building, and includes construction of new buildings or structures.
Book of Order	means the Book of Order of the Presbyterian Church of Aotearoa New Zealand dated 26 September 2006 (as amended in October 2008, October 2010, October 2012, November 2014 and November 2016, corrected May 2017) and as amended from time to time.
Campsite Committee	means the committee established to run and manage camps held in the name of the OFTB on trust for the purposes of a campsite.
Church Council	means the governing body of a Congregation, Parish, or camp as set out in the Book of Order. The Church Council may also be referred to as the session council or parish council.
Congregation	a Congregation consists of its members, associate members and other persons who unite for worship, life and mission within the Provincial District of Otago already or hereafter to be sanctioned by, or which is or may be under the jurisdiction or control of the Synod.
Council	means the local or territorial council or body having jurisdiction over the Parish Property pursuant to the Local Government Act 1974 or Local Government Act 2002 or any part thereof.
Deacons' Court	means the persons, whether incorporated or not, acting in the management of the temporal affairs of any Congregation and appointed according to the laws and usages of the Presbyterian Church of New Zealand; and includes the Board of Managers or Parish Council (within the meaning of that term as used in the Book of Order of the Presbyterian Church of New Zealand) of any Congregation.
Factor	means the chief executive officer of the OFTB, as appointed under section 16 of the OFTB Act.
GST	means tax chargeable in accordance with the Goods and Services Tax Act 1985.
Manse	means a Parish residential property which provides accommodation to the Minister and family.
Mission	means mission and evangelism ministry as defined in section 2 of the OFTB Act.
OFTB	means the Otago Foundation Trust Board.
OFTB Act	means the Otago Foundation Trust Board Act 1992.
Parish	means a local church community, and includes Parish operated camps.

Parish Property	means the land and buildings of a Parish, Congregation, Campsite Committee, or Deacons' Court held on Trust by the OFTB in accordance with section 14 of the OFTB Act.
PCANZ	means the Presbyterian Church of Aotearoa New Zealand.
Property Commission	means the subgroup of the Synod appointed pursuant to section 24 of the OFTB Act with the role of making decisions in relation to applications to deal with Parish Property.
Property Commission Approval	means an approval of an application made by a Church Council setting out the terms and conditions of that approval, and contact information of the OFTB's solicitors.
Record of Title	means the record held with Land Information New Zealand that identifies a specific property by legal description, registered location, size and the registered owner.
Southern Presbytery	means the regional court of the PCANZ responsible for all parishes and ministries in Otago and Southland.
Synod	means the Synod existing in connection with that part of the Presbyterian Church of New Zealand situated in the Provincial District of Otago and referred to in the Presbyterian Church of New Zealand Act 1901.
Synod Executive Officer	means the Executive Officer of the Synod as appointed pursuant to the Regulations of the Synod of Otago and Southland of the Presbyterian Church of Aotearoa New Zealand (as amended from time to time).

2. General Considerations

- 2.1 On occasions, buildings such as churches, halls and Manses will need to be considered for demolition or significant alteration because of one or more issues involving economics, safety or fitness for purpose.
- 2.2 Often these buildings will be regarded in the communities in which they stand as having important aesthetic or heritage values. These values are important and care needs to be taken in considering proposals to ensure, as much as possible, that the local community is not alienated.
- 2.3 Ultimately, the question of whether or not a building should be demolished or altered is primarily for the Congregation involved. The Parish Property is held on trust by the OFTB for the purposes of that Congregation of the Synod. It is important that within the Congregation there be high levels of communication, information and consultation. This will need to be led by the Church Council, in consultation with the Congregation and the Synod.

3. Application Process – Demolition

- 3.1 An application to demolish a building must be undertaken in accordance with the formal processes set out in the Book of Order and by the Synod. All of the Property Commission and the Synod requirements will need to be met and those authorities must be advised at the start of any discussions to demolish Parish buildings, and must be kept informed as to progress.
- 3.2 The Church Council concerned needs to consult the Factor and the Executive Officer of the Synod as to the next steps to take. This may include:

Seismic Reports

- (i) The Church Council will be required to obtain appropriate professional reports – if there are seismic issues then a Detailed Seismic Assessment (**DSA**) is necessary. If costs of maintenance are an issue then a report on this and the financial implications is desirable. If the building is regarded as no longer being fit for purpose then an appropriate objective report on this is desirable.
- (j) The Synod Executive Officer will have a list of experienced seismic engineers who are familiar with church structures within the Synod region and can make a recommendation about a suitable appointment.
- (k) In the event of there being more than one DSA available to the Congregation, and these conflict, then the two assessments must be peer reviewed by a suitably qualified engineer at the cost of the Congregation. That peer review will be binding on all parties.

Heritage Reports

- (l) If there are heritage values involved, the Church Council should take specialist architectural advice on this and to consult with Heritage New Zealand.
- (m) In particular, the Heritage New Zealand Pouhere Taonga Act 2014:
 - (i) establishes the New Zealand Heritage List/Rārangi Kōrero which identifies New Zealand's significant and valued historical and cultural heritage places, and places limitations on the alteration and/or destruction of listed property; and
 - (ii) restricts the modification and demolition of "archaeological sites" which are defined in the Act to mean any place associated with pre-1900 activity where there may be evidence relating to the history of New Zealand. This applies whether or not an archaeological site is a recorded archaeological site, entered on the New Zealand Heritage List//Rārangi Kōrero, or entered on the local Council's landmarks list.
- (n) Accordingly, if the Parish Property subject to an application to demolish is a heritage listed property, or was built prior to 1900, the permission of Heritage New Zealand may be required (which may require an Archeological Assessment), in addition to Property Commission Approval.

Asbestos

- (o) Any building in New Zealand that was built before 1990 may contain asbestos or features using asbestos containing material (**ACM**). Asbestos insulation was commonly used from 1930 to 1950, while hot water and steam pipes often had asbestos sleeves.
- (p) The Health and Safety at Work (Asbestos) Regulations 2016 requires building owners and occupiers to identify and remove asbestos or ACM, before any demolition or refurbishment work on a building is to be carried out if:
 - (i) it was constructed or installed before 1 January 2000; or
 - (ii) asbestos has been identified; or
 - (iii) asbestos is likely to be present from time to time.
- (q) For the purposes of this Act:
 - (i) Demolition is defined to include the removal of a loadbearing or structurally integral part of the building; and

- (ii) refurbishment is not defined, however minor work and routine maintenance is specifically excluded from this obligation. If minor work and routine maintenance is likely to be adequately dealt with through the asbestos management plan, this does not trigger a requirement to remove asbestos.
- (r) Given the obligations set out in the Health and Safety at Work (Asbestos) Regulations 2016, prior to a decision to demolish or alter a building, the Parish may need to engage an accredited asbestos testing service who specialise in asbestos testing, risk identification and asbestos removal.

Advice on Community and Media Engagement

- (s) Professional advice should be taken about how to deal with the media and community, and an appropriate spokesperson from a Church Council needs to be appointed.
- 3.3 Once the above process has been followed, the Church Council should forward its application to demolish a Parish Property to the Synod Executive Officer. When the Southern Presbytery has considered an application and made its decision, the application will be passed on to the Property Commission for their decision. The Property Commission will place considerable weight on the Southern Presbytery's view on any proposal to demolish a Parish Property.
 - 3.4 Ultimately, this process needs to be led by the Church Council. The Church Council will need to consider those reports and then make a clear recommendation to the Congregation. The Congregation needs to decide clearly in favour of demolition, and it may be that it is agreed in advance that more than a simple majority is required.
 - 3.5 All of these steps taken need to be well-documented and those involved in the decision-making process need to clearly show that they have been objective and have not predetermined the matter.
 - 3.6 In usual circumstances, the decision of the Property Commission will be notified in writing within two weeks of the application having been received by the Synod Executive Officer. This decision will then be forwarded to the OFTB as a recommendation that the decision be given legal effect to.
 - 3.7 No documents in relation to demolition can be signed by anyone without the approval of the OFTB.

4. Application Process - Renovation

- 4.1 When a Parish wishes to alter an existing Parish Property it must obtain the authority of the Parish, the Church Council, and the approval of the Property Commission. In the event of construction or alteration work, such authority is only required where the cost exceeds \$50,000 (excluding GST if registered).
- 4.2 An application to alter a Parish Property must be undertaken in accordance with the formal processes set out in the Book of Order and by the Synod. The approval of the Church Council Congregation, the Southern Presbytery, and the Property Commission are required before any formal steps are taken.
- 4.3 As a first step, the Church Council should make enquiries with the Synod Executive Officer who will advise the next steps, what information needs to be included with an application, and provide forms, when appropriate, for the Church Council to complete.
- 4.4 When making its application, the Church Council should include why the application to alter a Parish Property is appropriate. The Church Council should also seek advice from a professional who knows the local Council rules regarding the alteration or construction of buildings, and who can advise on the relevant building regulations. The following matters should be considered and addressed in any application to renovate:
 - (a) would the purchase of property at different location or site be more appropriate than upgrading an existing building;

- (b) would it be better to sell the existing buildings as they are, rather than altering them;
 - (c) could the Parish share facilities with another Parish and reduce the capital expenditure;
 - (d) what is required in terms of building consents and permits;
 - (e) are there any restrictions on the use of the land or buildings, for example under the relevant district plan or heritage listing matters, that would prevent the project being undertaken?
- 4.5 When the Southern Presbytery has considered an application to alter a Parish Property and made its decision, the application will be passed on to the Property Commission for its decision. The Property Commission will take into account the following considerations but will be free to determine which considerations will receive greater weight:
- (a) the wishes of the Congregation;
 - (b) the underlying trust upon which property is held;
 - (c) the financial viability and feasibility of both the Congregation and the project in mind;
 - (d) Mission;
 - (e) design;
 - (f) location;
 - (g) health and safety which includes seismic and asbestos risks; and
 - (h) heritage values.
- 4.6 In usual circumstances, the decision of the Property Commission will be notified in writing within two weeks of the application having been received by the Synod Executive Officer. This decision will then be forwarded to the OFTB as a recommendation that the decision be given legal effect to.
- 4.7 It is important to be aware that what may seem to be a relatively minor project at the outset can become a major undertaking if unexpected issues arise – for example, if the Council or other statutory authority requires the Parish to undertake additional works (for example, upgrading access or fire safety features, removal of asbestos, or earthquake strengthening).

5. Claiming GST on Alterations

- 5.1 A common question to the Synod Executive Officer from Church Council's is whether a Parish is entitled to claim GST on any improvements they are making on Parish Properties. OFTB's accountant has considered this matter, and notes that while this is very fact-specific, and advice should be sought on each occasion, there are three possible scenarios to consider as to whether a Parish claiming GST raises any issues. These are set out in the table below.
- 5.2 As a general comment, it is noted that any departure from Option 1 in the table should be clearly documented so, if in the future a property is to be sold, it is clear to whoever is reviewing the transaction, whether it is likely a tax liability will arise (noting that the onus is on the party potentially incurring the tax liability to show IRD if this should not be the case). The Church Council should always discuss these matters with the Synod Executive Officer who will determine if it is appropriate to take tax advice in the circumstances.

Claims for GST

Option One	Option Two	Option Three
<p>OFTB owns the Land and Buildings</p> <p>No alterations are undertaken by the parish, or are completed by OFTB</p>	<p>OFTB owns the Land and Buildings/Improvements but the Parish undertakes repairs/maintenance or improvements to a level that may be expected in a landlord/tenant relationship.</p>	<p>OFTB owns the Land and Buildings/Improvements but the Parish undertakes significant upgrades to the buildings – for example, if a consent is required to undertake any work (i.e a building consent) OR</p> <p>OFTB owns the Land but not the Buildings</p>
<p>OFTB is not registered for GST and is unable to claim GST for any improvements etc.</p> <p>Any sale is GST neutral.</p>	<p>Parish could claim GST on minor matters without this creating a major GST issue on sale.</p> <p>On sale the improvements revert to OFTB as if this was a landlord/tenant relationship.</p> <p>It is unlikely that GST will arise but it would be advantageous to record the arrangement between OFTB/Parish in respect of the improvements in writing for clarity</p>	<p>If Parish claims GST on the improvements, this may trigger a tax liability in the future when the property is sold/transferred.</p> <p>The ownership of the improvements will need to be transferred back to OFTB (at market value) prior to a sale of the land. This could trigger a significant GST liability.</p>
	<p>Recommendations/Options:</p> <p>Record a lease-type arrangement to clarify ownership of any improvements etc at end of lease – i.e these revert to OFTB</p>	<p>Recommendations/Options:</p> <ul style="list-style-type: none"> • Parish does not claim GST so no trigger for GST on sale; or • The arrangement is documented so it is clear if the property is sold in the future how the funds will be dealt with, including any tax liability, for example: <ul style="list-style-type: none"> o Property Sharing Agreement; or o Agreement for sale and purchase of improvements with Parish as vendor and OFTB as purchaser, with OFTB to make funds available to Parish to meet any tax liability following settlement of the transaction.

Part Six – Residential Tenancies

Residential Tenancy Agreements– Overview

1. Definitions

Book of Order	means the Book of Order of the Presbyterian Church of Aotearoa New Zealand dated 26 September 2006 (as amended in October 2008, October 2010, October 2012, November 2014 and November 2016, corrected May 2017) and as amended from time to time.
Campsite Committee	means the committee established to run and manage camps held in the name of the OFTB on trust for the purposes of a campsite.
Church Council	means the governing body of a Congregation, Parish, or camp as set out in the Book of Order. The Church Council may also be referred to as the session council or parish council.
Congregation	a Congregation consists of its members, associate members and other persons who unite for worship, life and mission within the Provincial District of Otago already or hereafter to be sanctioned by, or which is or may be under the jurisdiction or control of the Synod.
Council	means the local or territorial council or body having jurisdiction over the Parish Property pursuant to the Local Government Act 1974 or Local Government Act 2002 or any part thereof.
Deacons' Court	means the persons, whether incorporated or not, acting in the management of the temporal affairs of any Congregation and appointed according to the laws and usages of the Presbyterian Church of New Zealand; and includes the Board of Managers or Parish Council (within the meaning of that term as used in the Book of Order of the Presbyterian Church of New Zealand) of any Congregation.
Factor	means the chief executive officer of the OFTB, as appointed under section 16 of the OFTB Act.
GST	means tax chargeable in accordance with the Goods and Services Tax Act 1985.
HSW Act	means the Health and Safety at Work Act 2015 (or any replacement or substituted legislation) or any orders or legislation made under the HSW Act, including, but not limited to the Health and Safety at Work (Asbestos) Regulations 2016.
Manse	means a Parish residential property which provides accommodation to the Minister and family.
Mission	means mission and evangelism ministry as defined in section 2 of the OFTB Act.
OFTB	means the Otago Foundation Trust Board.
OFTB Act	means the Otago Foundation Trust Board Act 1992.

Parish	means a local church community, and includes Parish operated camps.
Parish Property	means the land and buildings of a Parish, Congregation, Campsite Committee, or Deacons' Court held on Trust by the OFTB in accordance with section 14 of the OFTB Act.
PCANZ	means the Presbyterian Church of Aotearoa New Zealand.
PCBU	means a Person Conducting a Business or Undertaking as defined in the HSW Act.
Property Commission	means the subgroup of the Synod appointed pursuant to Section 24 of the OFTB Act with the role of making decisions in relation to applications to deal with Parish Property.
Property Commission Approval	means an approval of an application made by a Church Council setting out the terms and conditions of that approval, and contact information of the OFTB's solicitors.
Record of Title	means the record held with Land Information New Zealand that identifies a specific property by legal description, registered location, size and the registered owner.
Southern Presbytery	means the Southern Presbytery of the Presbyterian Church of Aotearoa, New Zealand.
Synod	means the Synod existing in connection with that part of the Presbyterian Church of New Zealand situated in the Provincial District of Otago and referred to in the Presbyterian Church of New Zealand Act 1901.
Synod Executive Officer	means the Executive Officer of the Synod as appointed pursuant to the Regulations of the Synod of Otago and Southland of the Presbyterian Church of Aotearoa New Zealand (as amended from time to time).
Tenancy Agreement	means a written contract between a landlord and a tenant recording terms of a lease to residential property.

2. Overview

- 2.1 Where a Parish has property surplus to its current requirements, but wishes to retain ownership of that property, a decision may be made to rent out the property in order to generate income for the Parish.
- 2.2 The form of such agreement is dependent on the purposes for which a prospective tenant wishes to use the Parish Property for – i.e. whether this is to be for commercial use or residential use. This Chapter sets out the requirements of a residential tenancy – that is, an agreement between a landlord and tenant to use a property for residential purposes. For information on commercial and farm leases, see Part Seven - Leasing.

3. What is a Residential Tenancy?

- 3.1 A residential tenancy relates to the lease of a residential property, is subject to the Residential Tenancies Act 1986 (RTA) and is recorded by way of a Tenancy Agreement. A residential tenancy may be appropriate if the Parish wishes to rent out a Parish Property to a private individual for additional income.

3.2 There are several types of residential tenancies:

- (a) **Periodic Tenancy** – a periodic tenancy has no fixed end date and will last until either the landlord or tenant gives the requisite written notice set out in section 51 of the RTA to the other party that they want the arrangement to come to an end. The following timeframes apply to termination of a periodic tenancy as follows:
- (i) A tenant must give the landlord at least 28 days' written notice to end a periodic tenancy, unless the landlord agrees to a shorter time.
 - (ii) A landlord may give a tenant 90 days' written notice to end a periodic tenancy if:
 - (A) the premises are to be put on the market by the owner within 90 days after the termination date for the purposes of sale or other disposition;
 - (B) the owner is required, under an unconditional agreement for the sale of the premises, to give the purchaser vacant possession;
 - (C) the landlord is not the owner of the premises and the landlord's interest in the premises is due to end;
 - (D) the landlord or owner has acquired the premises to facilitate the use of nearby land for a business activity. That fact is clearly stated in the tenancy agreement, and the premises are required to be vacant of residential tenants to facilitate that use;
 - (E) the premises are to be converted into commercial premises for at least 90 days by the landlord or owner;
 - (F) extensive alterations, refurbishment, repairs, or redevelopment of the premises are to be carried out by the landlord or owner, and it would not be reasonably practicable for the tenant to live there while the work is being done. The work must begin, or material steps towards it are to be taken, within 90 days after the termination date; and
 - (G) the premises are to be demolished and the demolition is to begin, or material steps towards it are to be taken, within 90 days after the termination date
 - (iii) A landlord may give a tenant 63 days' written notice to end a periodic tenancy if:
 - (A) the owner of the premises requires the premises within 90 days after the termination date as the principal place of residence (for at least 90 days) for the owner or a member of the owner's family; or
 - (B) the landlord customarily uses the premises, or has acquired the premises, for occupation by employees of the landlord or by contractors under contracts for services with the landlord. That fact is clearly stated in the tenancy agreement, and the premises are required for that use.
 - (iv) A landlord may also end a periodic tenancy on the following grounds:
 - (A) **Overdue Rent:** If on three separate occasions within a 90-day period, an amount of rent that was due has remained unpaid for at least five working days, the landlord can apply to the Tenancy Tribunal to end the tenancy.
 - (B) **Family Violence:** A tenant who experiences family violence while a tenant at the premises can withdraw from the tenancy by giving at least 2 days' notice without financial penalty or the need for agreement by the landlord.

- (C) **Anti-social or unacceptable behaviour:** If on three separate occasions within a 90-day period, the tenant displays anti-social or unacceptable behaviour, the landlord can apply to the Tenancy Tribunal to end the tenancy.
 - (D) **Physical Assault:** A landlord can give notice of at least 14 days to terminate a tenancy, if the tenant has assaulted the landlord, the owner, a member of their family, or the landlord's agent, and the Police have laid a charge against the tenant in respect of the assault
- (b) **Fixed Term Tenancy** – a fixed term tenancy lasts for a defined period of time, and neither the landlord nor the tenant can end this early unless the contract specifically allows it. Early termination of a fixed term tenancy would usually only occur if all parties agreed or this was ordered by the Tenancy Tribunal. At the end of a Fixed Term Tenancy, unless the parties agree otherwise or the tenant gives a 28-day notice, the tenancy will automatically convert to a periodic tenancy.
 - (c) **Boarding House Tenancy** – at a boarding house, each tenant has their own agreement with the landlord to rent a single room, or a sleeping area in a room they share with other tenants. They also share facilities, for example, the kitchen and bathroom. This is different to a standard tenancy, where one or more tenants sign the agreement to rent the whole property. A boarding house has (or intends to have) at least six tenants at any one time and generally lasts for at least 28 days.
 - (d) **Service Tenancy** – a service tenancy is when an employer provides accommodation for a worker to live in during their employment. This type of agreement is covered by the RTA which means all the standard rules apply, except for a couple of differences about rent and ending a service tenancy. Service tenancy rules will often apply where a Parish is providing Manse housing to a Minister, however, the Parish should take legal advice on this.

4. What should be included in a Residential Tenancy Agreement?

- 4.1 The rights and obligations set out in the RTA are implied in every residential tenancy agreement, however, a residential tenancy agreement generally sets out the rights and obligations of landlords and tenants in respect of residential tenancies, including the following:
- (a) the full names and contact addresses of the landlord and tenant(s), including, if applicable, the name and contact information of any property manager;
 - (b) the address of the rental property;
 - (c) the date the tenancy agreement is signed;
 - (d) the date the tenancy will begin;
 - (e) an address for service for both the landlord and the tenant;
 - (f) whether the tenant is under the age of 18;
 - (g) the amount of any bond charged;
 - (h) the rent amount, and frequency of payments;
 - (i) how the rent will be paid (e.g., bank account number);
 - (j) any fees to be paid (if applicable);
 - (k) a list of any chattels (for example, furniture, curtains and other fittings) provided by the landlord;
 - (l) if the tenancy is a fixed-term tenancy, the date the tenancy will end;

- (m) an insulation statement, an insurance statement and a healthy homes statement;
- (n) a separately signed statement with details of the property's current level of compliance with the healthy homes standards;
- (o) any additional matters (provided they comply with the RTA) – for example, whether pets are permitted, whether the tenant is permitted to smoke in the property, parking, a limit on the number of people who may reside in the property, whether the tenant is responsible for maintenance of the gardens/lawns.

5. Tenant Obligations

5.1 When renting a property, tenants need to:

- (a) pay the rent on time;
- (b) keep the property reasonably clean and tidy;
- (c) let the landlord know about any damage or repairs straight away;
- (d) unless otherwise stated in the Tenancy Agreement, pay for their own outgoings – for example electricity, gas and internet;
- (e) use the property mainly for residential purposes rather than business activities;
- (f) leave the property clean, tidy, and clear of rubbish and possessions;
- (g) leave all keys with the landlord when they move out;
- (h) leave all items that were supplied with the tenancy (for example, whiteware).

5.2 Tenants must not:

- (a) stop paying rent if the landlord has not completed repairs;
- (b) damage the property;
- (c) disturb the neighbours or the landlord's other tenants;
- (d) make any alterations to the property without the landlord's written consent;
- (e) use the property for any unlawful purpose; and
- (f) have more than the maximum number of occupants listed in the tenancy agreement.

6. Landlord Obligations

6.1 A Tenancy Agreement must be in writing, and the landlord must give the tenant a copy before the tenancy starts. However, even if there is no formal agreement in writing, the RTA still applies.

6.2 When renting out a property the landlord must:

- (a) provide and maintain the house in a reasonable condition;
- (b) allow the tenant to use the property for its quiet enjoyment;
- (c) meet all relevant health and safety and building standards;
- (d) inform the tenant when selling the property; and

- (e) give the requisite notice set out in the RTA to complete inspections and repairs, and to terminate the tenancy.

6.3 Additionally, landlords are required to comply with a number of new requirements under the Residential Tenancies (Healthy Homes Standards) Regulations 2019 (Residential Tenancies Amendment Act 2020) (**Healthy Homes Standards**) and Residential Tenancies Amendment Act 2020 (**Amendment Act**).

6.4 The Amendment Act expands the obligations under the RTA as follows:

- (a) **Rent increases:** under the Amendment Act, a landlord can only increase rent once every 12 months. Under the previous regime, a landlord could increase rent once every 6 months.
- (b) **Prohibition on rental bidding** – a landlord must state the amount of rent when advertising residential premises (except for a service tenancy where the provision of housing is part of an employee's employment package or a social housing tenancy). Landlords cannot encourage prospective tenants to pay more rent than stated in the advertisement (i.e. bid for rent). However, prospective tenants are not prevented from offering to pay more rent than is stated in the advertisement.
- (c) **Fibre broadband** – tenants can request to install fibre broadband, and landlords must agree if it can be installed at no cost to them, unless specific exemptions apply.
- (d) **Privacy and access to justice** – a suppression order can remove names and identifying details from published Tenancy Tribunal decisions if a party who has applied for a suppression order is wholly or substantially successful, or if this is in the interests of the parties and the public interest.
- (e) **Assignment of tenancies** – all requests to assign a tenancy must be considered. Landlords cannot decline unreasonably. If a residential tenancy agreement prohibits assignment, it is of no effect.
- (f) **Landlord records** – not providing a tenancy agreement in writing will be an unlawful act and landlords will need to retain and provide new types of information.
- (g) **Enforcement measures being strengthened** – the Regulator (the Ministry of Business, Innovation and Employment) will have new measures to take action against parties who are not meeting their obligations.
- (h) **Termination due to family violence** – tenants who experience family violence are able to withdraw from a fixed-term or periodic tenancy without financial penalty by giving two days' notice and evidence of the family violence. If they are the only tenant, the tenancy will end.
- (i) **Termination due to physical assault** – a landlord is able to issue a 14-day notice to terminate the tenancy if the tenant has assaulted the landlord, the owner, a member of their family, or the landlord's agent, and the Police have laid a charge against the tenant in respect of the assault.

6.5 In addition to the requirement under the RTA and Amendment Act, the Healthy Homes Standards legislation introduces specific and minimum standards for heating, insulation, ventilation, moisture ingress and drainage, and draught stopping in rental properties. If a Parish is renting out a residential property e.g. a Manse or former Manse, it must comply with the legislation requiring the installation of smoke alarms and insulation, and must comply with the Healthy Home Standards as follows:

- (a) **Heating** – the main living area must have a fixed heating device that can heat the room to at least 18°C.

- (b) **Insulation** – ceiling and underfloor insulation has been compulsory in all rental homes since 1 July 2019. The healthy homes insulation standard builds on the current regulations and some existing insulation will need to be topped up or replaced.
- (c) **Smoke alarms** – smoke alarms must be installed in all tenanted residential properties. It is the landlord's responsibility to ensure that smoke alarms are in good working order and meet the RTA requirements. Tenants are also required to replace expired batteries and to advise the landlord of any problems with the alarms.
- (d) **Ventilation Standard** - rental homes must have openable windows in the living room, dining room, kitchen and bedrooms. Rooms with a bath or shower or indoor cooktop must have an appropriately sized extractor fan.
- (e) **Moisture Ingress and Drainage Standards** - rental properties must have efficient drainage for the removal of storm water, surface water and ground water. Rental properties with an enclosed sub-floor space must have a ground moisture barrier.
- (f) **Draught Stopping Standard** - landlords must make sure the property doesn't have unreasonable gaps or holes in walls, ceilings, windows, skylights, floors and doors which cause noticeable draughts. All unused open fireplaces must be closed off or their chimneys must be blocked to prevent draughts.
- (g) **Health Homes Statement** – landlords need to include a healthy homes compliance statement in all new or renewed tenancy agreements.

Approval Process for Residential Tenancies

7. Property Commission Approval to a Residential Tenancy

- 7.1 The lease or tenancy of a Parish Property must be undertaken in accordance with the formal processes set out in the Book of Order and by the Synod. The approval of the Church Council, the Southern Presbytery, and the Property Commission are required before any formal steps to lease a Parish Property are taken. In most cases the approval of the congregation is not required so please check your situation with the Synod Executive Officer before commencing the formal process.
- 7.2 As a first step, the Church Council should make enquiries with the Synod Executive Officer who will advise the next steps, what information needs to be included with an application, and provide forms when appropriate for the Church Council to complete.
- 7.3 Prior to submission of an application to the Property Commission for approval to rent out a Parish Property, the Church Council must ensure that the Parish Property complies with all of the requirements under the Residential Tenancies Act 1986, Healthy Homes Standards and Amendment Act. Evidence of compliance with these Acts must be submitted to the Property Commission with any application to enter into a tenancy. As it will be the responsibility of the Parish to ensure it complies with the provisions of the various residential tenancies legislation, the Church Council should also consider whether it has sufficient funds available to maintain the Parish Property to the required legal standard during the term of the tenancy and whether it is, and will continue to be, in a position to meet all the legal obligations of a landlord under the same.
- 7.4 Allow sufficient time to prepare an application and to obtain the required approvals. Renewals of tenancies require the same approvals as the original tenancy, and accordingly the application process should be commenced at least a month before the renewal or lease expiry date.
- 7.5 In usual circumstances, the decision of the Property Commission Approval will be notified in writing within two weeks of the application having been received by the Synod Executive Officer. This decision will then be forwarded to the OFTB as a recommendation that the decision be given legal effect to.

- 7.6 Property Commission Approval is not required for a residential tenancy with a term of less than one year, however, it is the responsibility of the Parish to meet all the obligations of a landlord and requirements below must be met when entering into a residential tenancy agreement with a tenant.

8. What to do once the Property Commission has given their approval

- 8.1 The Property Commission Approval confirming their approval for the tenancy will be provided to the OFTB's solicitors. The OFTB's solicitors will then prepare, or review the Tenancy Agreement (if required).
- 8.2 A residential tenancy agreement should be prepared on a standard form of Tenancy Agreement available from Tenancies Services. This is available online at <https://www.tenancy.govt.nz/assets/forms-templates/residential-tenancy-agreement.pdf>
- 8.3 The following clause is required in all leases, residential or otherwise, because the OFTB legally owns significant amounts of property in accordance with the OFTB Act 1992 and it is essential that the OFTB's liability is restricted to the actual property involved under the tenancy.

"Limitation of Liability

The parties acknowledge and agree that the Otago Foundation Trust Board holds the property at [property address] as trustee for the [name of Parish] (Trust) pursuant to section 14 of the Otago Foundation Trust Board Act 1992.

The parties acknowledge that the Vendor has no right to or interest in any assets of the Trust except in that its capacity as a trustee of the Trust, that its liability under this Tenancy Agreement is limited to the to the property subject to this Tenancy Agreement.

Other Considerations

9. Ministers' Housing Requirements

- 9.1 The Church's regulations on Manses are set out in the Conditions of Service Manual, which accompanies the Book of Order. Further details are in the Accommodation for Ministers guidelines on the PCANZ website: <https://www.presbyterian.org.nz/for-ministers>
- 9.2 Accommodation may be provided by a Parish for its minister by:
- (a) owning a house of an approved standard;
 - (b) providing an accommodation allowance to the minister – if the minister is to be paid either an accommodation allowance or rent, it should be the lower of the market rental for a suitable property within an appropriate radius of the main worship centre or main site of the ministry, or the cost of the mortgage on a house owned by the minister. Presbyteries often set guidelines;
 - (c) leasing a house from an independent owner;
 - (d) leasing a house from the minister – leasing a house from the minister is the least preferred option, and there is a risk that adverse consequences could arise in this situation. In any event, the rental should be established having regard to market rental prices in the area, and advice from the OFTB's accountants should be obtained prior to any lease being signed.
- 9.3 There may be taxation implications for the minister in respect of the amount paid as rent. Consult the PCANZ Finance Manager for advice.

10. Minimum requirements for a Manse

- 10.1 The Manse must be within a reasonable radius of the Congregation's main worship centre. Exceptions to this must be approved by the Parish and the Synod.
- 10.2 Parishes should provide attractive and appropriate accommodation for their ministers, and must meet the relevant standard required under the RTA. Such housing includes:
- (a) adequate living space which is separate from the space used for church activities;
 - (b) facilities for offering hospitality;
 - (c) a study/office with adequate shelving unless this is provided elsewhere;
 - (d) a washing machine and a refrigerator with adequate freezer space;
 - (e) floor coverings in all rooms;
 - (f) wardrobes in all bedrooms;
 - (g) drapes or blinds;
 - (h) adequate heating for all living areas and the study;
 - (i) insulation; and
 - (j) smoke detectors.
- 10.3 The Manse needs to be safe. All practical steps should be taken to eliminate, isolate and minimise any potential hazards. Parishes that own any property (including a Manse) have responsibilities and liabilities for these, and should consider the following:
- (a) fencing, paths, steps, staircases and railings, decking and verandas are sound and free of obstructions;
 - (b) exterior lighting is installed as appropriate;
 - (c) interior wiring, plugs and appliances are safety tested;
 - (d) hot water temperature is appropriate;
 - (e) smoke detectors are installed and working, and emergency exits available;
 - (f) ensure there is an alternative exit from upstairs in the event of a fire;
 - (g) secure storage for dangerous substances; and
- when thinking of safety, anticipate that children will visit the Manse, even if the current Manse family itself does not have children.

11. Insurance

- 11.1 Leasing part of Parish Property may affect the insurance cover on the property and this should be discussed with the Synod Executive Officer or Factor and when entering into any new tenancy.

12. Record Keeping

- 12.1 The OFTB will hold an original Tenancy Agreement signed by all parties and will provide a copy to the Parish for its records. Additionally, from 11 February 2021, landlords are required to keep the

following documents during the tenancy and for 12 months after the end of the tenancy. Copies of these documents must be provided to the OFTB on receipt by the Parish:

- (a) any variations of the tenancy agreement;
- (b) any reports of inspections carried out by, or for, the landlord during the tenancy;
- (c) records of any building work for which a building consent is required, prescribed electrical work, sanitary plumbing, gasfitting, or other maintenance or repair work carried out by, or for, the landlord during the tenancy;
- (d) any reports or assessments by a tradesperson of work that is carried out or required in relation to the landlord's compliance with section 45 or section 66I of the RTA;
- (e) records that relate to the landlord's compliance with the healthy homes standards;
- (f) any advertisement for the tenancy (including an advertisement from before the start of the tenancy);
- (g) any notices or correspondence between a landlord (or a person acting on the landlord's behalf) and:
 - (i) a tenant (or a person acting on the tenant's behalf); or
 - (ii) a prospective tenant (or a person acting on the prospective tenant's behalf) in relation to the tenancy.

12.2 It is the responsibility of the Parish to abide by the conditions of the Tenancy Agreement, to manage rent and inspections, and to know when lease renewals and lease expiries are due.

Part Seven – Leasing

Leases – Overview

1. Definitions

ADLS Deed of Lease	means the Auckland District Law Society Incorporated Deed of Lease (as amended from time to time).
Book of Order	means the Book of Order of the Presbyterian Church of Aotearoa New Zealand dated 26 September 2006 (as amended in October 2008, October 2010, October 2012, November 2014 and November 2016, corrected May 2017) and as amended from time to time.
Campsite Committee	means the committee established to run and manage camps held in the name of the OFTB on trust for the purposes of a campsite.
Church Council	means the governing body of a Congregation, Parish, or camp as set out in the Book of Order. The Church Council may also be referred to as the session council or parish council.
Congregation	a Congregation consists of its members, associate members and other persons who unite for worship, life and mission within the Provincial District of Otago already or hereafter to be sanctioned by, or which is or may be under the jurisdiction or control of the Synod.
Council	means the local or territorial council or body having jurisdiction over the Parish Property pursuant to the Local Government Act 1974 or Local Government Act 2002 or any part thereof.
Deacons' Court	means the persons, whether incorporated or not, acting in the management of the temporal affairs of any Congregation and appointed according to the laws and usages of the Presbyterian Church of New Zealand; and includes the Board of Managers or Parish Council (within the meaning of that term as used in the Book of Order of the Presbyterian Church of New Zealand) of any Congregation.
Factor	means the chief executive officer of the OFTB, as appointed under section 16 of the OFTB Act.
GST	means tax chargeable in accordance with the Goods and Services Tax Act 1985.
HSW Act	means the Health and Safety at Work Act 2015 (or any replacement or substituted legislation) or any orders or legislation made under the HSW Act, including, but not limited to the Health and Safety at Work (Asbestos) Regulations 2016.
Lease	means a contract between a landlord and a tenant recording terms of a lease to commercial or rural property.
Manse	means a Parish residential property which provides accommodation to the Minister and family.
Mission	means mission and evangelism ministry as defined in section 2 of the OFTB Act.

OFTB	means the Otago Foundation Trust Board.
OFTB Act	means the Otago Foundation Trust Board Act 1992.
Parish	means a local church community, and includes Parish operated camps.
Parish Property	means the land and buildings of a Parish, Congregation, Campsite Committee, or Deacons' Court held on Trust by the OFTB in accordance with section 14 of the OFTB Act.
PCANZ	means the Presbyterian Church of Aotearoa New Zealand.
PCBU	means a Person Conducting a Business or Undertaking as defined in the HSW Act.
Property Commission	means the subgroup of the Synod appointed pursuant to Section 24 of the OFTB Act with the role of making decisions in relation to applications to deal with Parish Property.
Property Commission Approval	means an approval of an application made by a Church Council setting out the terms and conditions of that approval, and contact information of the OFTB's solicitors.
Record of Title	means the record held with Land Information New Zealand that identifies a specific property by legal description, registered location, size and the registered owner.
Southern Presbytery	means the Southern Presbytery of the Presbyterian Church of Aotearoa, New Zealand.
Synod	means the Synod existing in connection with that part of the Presbyterian Church of New Zealand situated in the Provincial District of Otago and referred to in the Presbyterian Church of New Zealand Act 1901.
Synod Executive Officer	means the Executive Officer of the Synod as appointed pursuant to the Regulations of the Synod of Otago and Southland of the Presbyterian Church of Aotearoa New Zealand (as amended from time to time).

2. Overview

- 2.1 Where a Parish has property surplus to its current requirements, but wishes to retain ownership of that property, a decision may be made to rent out the property in order to generate income for the Parish.
- 2.2 The form of such agreement is dependent on the purposes for which a prospective tenant wishes to use the Parish Property for – i.e. whether this is to be for commercial use or residential use. This Part sets out the requirements of a lease – that is, an agreement between a landlord and tenant to use a property for purposes other than residential purposes. For information on residential tenancies, see Part Six of this Handbook.

3. What is a Lease?

- 3.1 A lease is a contract between a landlord and a tenant (sometimes referred to as the lessor and lessee) usually for a commercial property (though leases can be entered into for rural property and farming purposes). Leases are typically very detailed in regards to the conditions of the tenant's occupation of the property, so that there are no discrepancies or issues during the term.

- 3.2 Leases cover the responsibilities (warranties) of both the tenant and landlord in detail. Some warranties given by the landlord are to comply with the Health and Safety at Work Act 2015, to act reasonably when considering an assignment of the Lease to a third party during the term, ensuring the premises is safe for public access and use (if applicable).
- 3.3 Leases will typically include details such as the term of the Lease, its expiry date, the monthly rent payments and outgoings (i.e. insurance premiums, utilities, rates), rent reviews and rights of renewal. There is an inherent benefit of including rent review dates (when the annual rent can be increased or decreased) and rights of renewal (how many times the tenant can renew the Lease) because this ensures that the landlord cannot arbitrarily raise the rent or cancel the Lease. However, it also ensures that the tenant cannot leave the property before the end of the term without repercussions.
- 3.4 If the existing Lease reaches its expiry date, the Lease is at an end. If the tenant does not leave the property, under the Property Law Act 2007 they will be considered to be on a month to month tenancy. Therefore, if the tenant(s) wish to remain in the property, both parties must enter into a new Lease. The landlord has the option to renew the terms of the old Lease or is free to change the terms and rental amounts as they see fit.

4. What should be included in a Deed of Lease?

Commercial Leases

- 4.1 A commercial lease would ordinarily be recorded on the ADLS Deed of Lease, with the following matters included:
- (a) **Premises:** this should set out the area being leased, and any areas to be excluded from the Lease. Additionally, you should consider getting a Premises Condition Report for the property (or at the very least, the buildings on the property). This provides a clear indication at the outset of the Lease as to the condition of the property at the commencement date, along with the condition of any of your chattels and fixtures.
 - (b) **Term:** the Lease should include clear start and end dates and record any options for the tenant to extend or renew the Lease.
 - (c) **Rights of Renewal:** a Lease may include one or more rights of renewal, effectively extending the term of the Lease. The tenant's right of renewal is subject to it giving the requisite notice required under the Lease and having complied with all its obligations under the Lease.
 - (d) **Annual Rent:** to determine the rent of the premises, the Property Commission may require that a market valuation be undertaken to establish the initial rent. The following are also relevant to the negotiation process:
 - (i) **Rent Review:** A rent review clause provides the landlord and the tenant of a property with the ability to alter the premises rent at specified times (i.e. annually/biannually) using a specific calculation. This can be done by way of set increases (for example 2.5% per annum, except on a market review date) or in accordance with the Consumer Price Index (**CPI**).
 - (ii) **Market Rent Review:** A market rent review provides a mechanism to obtain an up-to-date market valuation of the rental on dates specified as market rent review dates (for example, on renewal of the Lease/every five years). It is recommended that any lease entered into by the OFTB on behalf of a Parish include a ratchet clause stating that any rent determined on the market rent review date cannot be less than the rent payable in the immediately preceding 12-month term.
 - (e) **Guarantee:** it is standard practice to include a personal guarantee from the directors of a company, where it is the company entering into the Lease, or to require a bank guarantee (also known as a bank bond), which is effectively a written promise by an institutional bank to

pay a specified sum to the landlord if the tenant is in arrears or otherwise in default under the Lease. A bank guarantee is commonly for an amount equating to six or nine months annual rent plus GST.

- (f) **Insurance:** the requirements for insurance of the leased property should be considered. The options in the standard terms of the ADLS Deed of Lease are for or indemnity insurance or full replacement and reinstatement. A requirement that the tenant hold its own public liability insurance throughout the term of the Lease should also be considered.
- (g) **Outgoings:** outgoings are cost incurred in relation to the leased premises that are not included in the Annual Rent. These include, for example, rates, utilities, insurance premiums and valuation costs. The outgoings that are to be the responsibility of the tenant should be clearly recorded in the lease documentation.
- (h) **Default Interest:** the Lease should include a default interest provision, which will be payable if the tenant is in rental arrears.
- (i) **Business Use:** the Business Use recorded in the Lease is the only use of the premises that is permitted. If the tenant wished to use the premises for an alternative use, it would need to first obtain permission from the Landlord to do so.
- (j) **Maintenance Obligations:** the Lease should clearly record the respective obligations of the landlord and tenant in respect of the leased property. For example, if the tenant is to be responsible for maintenance of the grounds, this should be included in the Lease.
- (k) **Alterations and Additions** a clause should be included that requires the tenant to obtain landlord consent to any additions or alterations it intends to make to the premises, and should record the obligations of the parties at the end of the Lease. These matters should be considered at the outset of the Lease so that there can be a smooth transition of the property back to the landlord at the end of the Lease.
- (l) **No Access in Emergency:** a no access clause provides for a fair proportion of payment of rent to cease temporarily if the premises is unable to be accessed in an emergency (for example due to a Covid-19 lockdown) where the use of the premises is not deemed "essential", and there are rights for the landlord or tenant to terminate the Lease if the no access continues for an extended period (the default period being nine month). If no such clause is included in the Lease, there are default provision in the Property Law Act 2007 that will apply.
- (m) **Resource Consents:** depending on the tenant's proposed use of the property, the Lease should include provisions that the tenant is responsible for obtaining, complying with, and maintaining any resource consents to operate its business on the premises, and include a requirement that the tenant comply with its obligations under the Resource Management Act 1991 (or any other relevant Act).
- (n) **Health and Safety:** the HSW Act places obligations on the PCBU to secure the health and safety of workers and minimise risks in the workplace. Both a landlord and a tenant can be considered a PCBU for the purposes of the HSW Act. Accordingly, the Lease should, where appropriate, confirm that the tenant is the 'PCBU' on the land for the purposes of the HSW Act, and the Lease should include a warranty from the tenant that they have and will maintain a health and safety management system applicable to the type of work to be carried out on the property.

It is important to note, however, that landlords are required to comply with the Health and Safety at Work (Asbestos) Regulations 2016. This includes the obligation to manage and remove any asbestos risks to ensure the working environment is free of airborne asbestos fibers. Generally, if a building was built prior to 1 January 2000, it is more likely to have asbestos-containing material incorporated within it. In this situation, the Parish should liaise with the Synod Executive Officer in respect of the Synod's requirements for assessing and/or dealing with asbestos.

- (o) **Assignment and Subleasing:** the parties should consider whether the tenant may assign the Lease (i.e. another party takes over the tenant's obligations under the Lease) or sublease the premises (effectively the tenant takes on its own tenant, while retaining its obligations to the landlord). Generally, a lease will contain a provision that the tenant needs to obtain the landlord's consent to any assignment or sublease (not to be unreasonably withheld). However, the inclusion of such provision should be considered on a case by case basis.

Farm Leases or Leases of Rural Land

4.2 Farm Leases, or leases of rural land would include all of the above matters. However, additional matters that would need to be addressed in a lease document include:

- (a) **Permitted Use:** before negotiation of a farm lease commences, the Parish should check that the proposed use of the property is permitted under the relevant local council planning rules. All land is assigned a zone which determines the use to which land can be used. The landowner should also ensure there is nothing recorded on a record of title for the property that affects the ability to use the property in a particular way.
- (b) **Farm Environmental Management Plan (FEMP):** all farms are required to have a FEMP by 2025 and it is the obligation of a landowner to ensure that any use of their property for farming has, and is, compliant with a FEMP. However, where there is a farm lease in place, there should be clear provisions in the Lease as to whose responsibility it is to prepare and comply with the FEMP and who bears the costs of compliance. The Lease should also contain a warranty from the tenant to the landlord that it will to comply with the FEMP including monitoring and reporting obligations, will indemnify the landlord for any cost arising out of non-compliance, and a requirement that the FEMP be provided to the landlord for its approval.
- (c) **Resource Management:** the parties need to carefully consider and establish their respective responsibilities in respect of any resource management matters affecting the property. For example, if the tenant is to have the benefit and use of the Parish's resource consents, then the responsibility and liability in relation to adherence to the terms of the consents needs to be recorded in the Lease.

Where additional consents are required to enable the tenant to use the property for the permitted use, for example, if discharge consent is required to discharge dairy shed effluent or water take consent is needed to take and use water, the Lease should record the party responsible for obtaining and complying with the terms of the consent together with an indemnity to OFTB against any liability arising out a breach of these obligations.

- (d) **Hazardous Substances:** in addition to the resource management considerations, if applicable, the Lease should also set out what responsibility the tenant has in respect of the storage of hazardous substances on the property and clean-up of any contamination (if any).
- (e) **Good Husbandry:** farm leases commonly include good husbandry clauses which set out the tenant's obligation to keep the land in good repair, conduct general farm maintenance, stock the pasture on the land, fertilise or top-dress the land, adequately clear weeds, rabbits and vermin from the property, cultivate and manage the land in accordance with accepted farming practices, and comply with all legislation that is relevant to the use of the property. The parties should consider any other matters specific to the property and use thereof that should also be addressed in the Lease.
- (f) **Biosecurity and Pests:** lease negotiations should give specific consideration to the use of the property and the specific biosecurity matters that may affect the property during the term of the Lease. Many leases will contain a general obligation on the tenant to comply with the relevant biosecurity legislation, however, where the type of farming is more at risk for certain issues, for example, dairy farms and mycoplasma bovis or kiwifruit orchards and Psa, there should be specific obligations on the tenant to comply with the legislation relevant to those specific matters, in addition to a general obligation.

- (g) **Reinstatement:** the Lease should record the obligations of the parties at the end of the Lease: will the tenant be required to leave a quantity of residual feed and a specific level of grass cover at the end of the Lease? Will the landlord have any obligation to pay the tenant for any capital improvements to the property, or to purchase any farm machinery? These matters should be considered at the outset of the Lease so that there can be a smooth transition of the property back to the landlord at the end of the Lease.

- 4.3 The OFTB's solicitors have a standard form of farm lease, and subject to Property Commission Approval, the Church Council should contact the OFTB's solicitors to discuss the same, prior to entering into negotiations with a proposed tenant.

Approval Process for Leases

5. Property Commission Approval to a Lease

- 5.1 The lease or tenancy of a Parish Property must be undertaken in accordance with the formal processes set out in the Book of Order and by the Synod. The approval of the Church Council, the Congregation, the Southern Presbytery, and the Property Commission are required before any formal steps to lease a Parish Property are taken.
- 5.2 As a first step, the Church Council should make enquiries with the Synod Executive Officer who will advise the next steps, what information needs to be included with an application, and provide forms when appropriate for the Church Council to complete.
- 5.3 Allow sufficient time to prepare an application and to obtain the required approvals. Renewals of leases require the same approvals as the original lease, and accordingly the application process should be commenced at least a month before the renewal or lease expiry date.
- 5.4 In usual circumstances, the decision of the Property Commission Approval will be notified in writing within two weeks of the application having been received by the Synod Executive Officer. This decision will then be forwarded to the OFTB as a recommendation that the decision be given legal effect to.

6. What to do once the Property Commission has given their approval

- 6.1 The Property Commission Approval confirming their approval for the lease will be provided to the OFTB's solicitors. The OFTB's solicitors will then prepare, or review the ADLS Deed of Lease (if required).
- 6.2 The following clause is required in all leases, because the OFTB legally owns significant amounts of property in accordance with the OFTB Act 1992 and it is essential that the OFTB's liability is restricted to the actual property involved under the lease:

"Limitation of Liability

The parties acknowledge and agree that the Otago Foundation Trust Board holds the property at [property address] as trustee for the [name of Parish] (Trust) pursuant to section 14 of the Otago Foundation Trust Board Act 1992.

The parties acknowledge that the Vendor has no right to or interest in any assets of the Trust except in that its capacity as a trustee of the Trust, that its liability under this Lease is limited to the to the property subject to this Lease".

Other Considerations

7. Insurance

- 7.1 Leasing part of Parish Property may affect the insurance cover on the property and this should be discussed with the Synod Executive Officer or Factor when entering into any new lease.
- 7.2 It may be prudent, in the case of a commercial tenant, to also require the tenant to carry their own insurance such as public liability insurance.

8. Record Keeping

- 8.1 The OFTB will hold an original Deed of Lease signed by all parties and will provide a copy to the Parish for its records.
- 8.2 It is the responsibility of the Parish to abide by the conditions of the Lease, to manage rent reviews, and to know when the Lease renewals and Lease expiries are due. All renewals and rent reviews should be documented by OFTB's solicitors.

Part Eight – Financial Matters

Borrowing by Parishes - General Guidelines

1. Definitions

Agreement for Sale and Purchase	means the standard form of Agreement for Sale and Purchase provided by the Auckland District Law Society Incorporated (ADLS) and as amended from time to time.
Auction	means a method of selling a property through the process of a public sale. The property is sold to the buyer with the highest bid after the vendor's reserve price is reached.
Book of Order	means the Book of Order of the Presbyterian Church of Aotearoa New Zealand dated 26 September 2006 (as amended in October 2008, October 2010, October 2012, November 2014 and November 2016, corrected May 2017) and as amended from time to time.
Campsite Committee	means the committee established to run and manage camps held in the name of the OFTB on trust for the purposes of a campsite.
Church Council	means the governing body of a Congregation, Parish, or camp as set out in the Book of Order. The Church Council may also be referred to as the session council or parish council.
Congregation	a Congregation consists of its members, associate members and other persons who unite for worship, life and mission within the Provincial District of Otago already or hereafter to be sanctioned by, or which is or may be under the jurisdiction or control of the Synod.
Council	means the local or territorial council or body having jurisdiction over the Parish Property pursuant to the Local Government Act 1974 or Local Government Act 2002 or any part thereof.
Deacons' Court	means the persons, whether incorporated or not, acting in the management of the temporal affairs of any Congregation and appointed according to the laws and usages of the Presbyterian Church of New Zealand; and includes the Board of Managers or Parish Council (within the meaning of that term as used in the Book of Order of the Presbyterian Church of New Zealand) of any Congregation.
Factor	means the chief executive officer of the OFTB, as appointed under section 16 of the OFTB Act.
GST	means tax chargeable in accordance with the Goods and Services Tax Act 1985.
Listing Agreement	means a legally binding contract between the owner of a property and the real estate agency that helps to sell the property. A listing agreement gives the agency the right to market the property for sale and sets out all the terms and conditions of the contract such as what your agent will do and what the owner will pay. A listing agreement may also be referred to as an agency agreement.

Manse	means a Parish residential property which provides accommodation to the Minister and family.
Mission	means mission and evangelism ministry as defined in section 2 of the OFTB Act.
OFTB	means the Otago Foundation Trust Board.
OFTB Act	means the Otago Foundation Trust Board Act 1992.
Parish	means a local church community, and includes Parish operated camps.
Parish Property	means the land and buildings of a Parish, Congregation, Campsite Committee, or Deacons' Court held on Trust by the OFTB in accordance with section 14 of the OFTB Act.
PCANZ	means the Presbyterian Church of Aotearoa New Zealand.
Property Commission	means the subgroup of the Synod appointed pursuant to Section 24 of the OFTB Act with the role of making decisions in relation to applications to deal with Parish Property.
Property Commission Approval	means an approval of an application made by a Church Council setting out the terms and conditions of that approval, and contact information of the OFTB's solicitors.
Record of Title	means the record held with Land Information New Zealand that identifies a specific property by legal description, registered location, size and the registered owner.
Registered Valuation	means a Report from a Registered Valuer, stating the condition and current market value of the property under consideration.
Southern Presbytery	means the Southern Presbytery of the Presbyterian Church of Aotearoa, New Zealand.
Statement of Account	means a statement of trust account transactions for money handled for a client, all transactions in the client's account, and the balance of the client's account and as more particularly defined in the section 12 of the Lawyers and Conveyancers Act (Trust Account) Regulations 2008.
Synod	means the Synod existing in connection with that part of the Presbyterian Church of New Zealand situated in the Provincial District of Otago and referred to in the Presbyterian Church of New Zealand Act 1901.
Synod Executive Officer	means the Executive Officer of the Synod as appointed pursuant to the Regulations of the Synod of Otago and Southland of the Presbyterian Church of Aotearoa New Zealand (as amended from time to time).

2. Capital Funds from Proceeds of the Sale of Surplus Property

- 2.1 When a Parish Property is sold, the proceeds may be used by the Parish, with the agreement of the Synod, for a replacement building. If the net funds derived from the sale are less than the

replacement property, application may be made for a Synod allocation based on the appropriate percentage of the shortfall.

- 2.2 Capital funds can generally be used for buying or building a replacement property, buying land, repaying mortgages. The Church Council may also apply to the Synod Executive Officer for special approval to use capital funds from the sale of surplus property for major renovations and alteration to other Parish Property, including:
- (a) major maintenance of buildings;
 - (b) painting existing buildings;
 - (c) major refurbishments of the interior, including carpeting;
 - (d) purchase or repair of the principal musical instrument used in services;
 - (e) costs associated with fulfilling legal requirements e.g. building warrant of fitness; and
 - (f) security and fire protection installations.

Such application requires the support of the Synod Executive Officer and if required, the Property Commission. In considering an application to use capital funds for these purposes, the Synod Executive Officer is entitled to consider the necessity of the expenditure, why the Parish is unable to complete the works from its current income and how the expenditure benefits the mission of the congregation.

- 2.3 Capital funds cannot be used for the Congregation's running costs, such as:
- (a) the minister's stipend or staff salaries;
 - (b) administration costs;
 - (c) power, phone, rates, insurances etc;
 - (d) worship materials e.g. hymn books, projectors;
 - (e) vehicles;
 - (f) office equipment, appliances, sound systems etc; and
 - (g) routine maintenance.

3. Funds administered in accordance with the OFTB Act

- 3.1 The OFTB administers various funds and trusts from which the Synod derives its income. The net annual income is then disbursed at the direction of the Synod in accordance with sections 17, 18, 20 and 22 of the OFTB Act. These sections establish the following funds:
- (a) the ecclesiastical fund;
 - (b) the educational fund;
 - (c) the manse fund (this fund is now called the heritage fund);
 - (d) the college site fund and the college fund (these are referenced as two separate funds in the Act, but have since been amalgamated into one fund); and
 - (e) the First Church fund (this fund has now been wound up).

(together, the **Funds**).

- 3.2 Parishes may apply to the Synod for an allocation out of the ecclesiastical and heritage funds to assist in various aspects of the Parish's operations. Applications for allocations out of the educational fund are open to Parishes and the public.

Ecclesiastical Fund

- 3.3 The Ecclesiastical Fund is administered by the OFTB in accordance with the directions of the Synod issued pursuant to section 25 of the OFTB Act. This section provides that the fund is firstly for:
- (a) acquiring, constructing, repairing, or maintaining any land or buildings in the Provincial District of Otago for churches, manses, church halls, or other buildings to be used for, or in connection with, religious purposes; or
 - (b) repaying any money borrowed at any time for such purposes or;
 - (c) endowing or assisting in the endowment of any theological lectureship, in connection with the Presbyterian Church of New Zealand, in any college or university in the Provincial District of Otago, or paying salaries or other emoluments to the incumbent of any such chair or lectureship; or
 - (d) for any other purposes consistent with those purposes as determined from time to time by the Synod in accordance with the said directions; and
- 3.4 The fund is secondly for the purpose of the Mission and evangelism ministry.
- 3.5 Allocations are subject to the availability of funds. Allocations are subject to automatic cancellation if it appears to the Synod that the relevant work has not been commenced within two years of the date of the approval of the allocation.

The Heritage Fund (referred to as the Manse Fund in the OFTB Act)

- 3.6 The Heritage Fund is administered by the OFTB in accordance with the directions of the Synod issued pursuant to section 25 of the OFTB Act, and may be used for the purposes of:
- (a) acquiring, constructing, repairing, or maintaining any land and buildings used, or to be used, for manses, churches, church halls, or for or in connection with religious purposes in the Provincial District of Otago; or
 - (b) repaying any money borrowed at any time for such purposes; or
 - (c) for any other purpose consistent with those purposes as determined from time to time by the Synod in accordance with section 25 of the OFTB Act.
- 3.7 In 1999, and after the Barrier Act 1697 procedures were followed, the Annual Meeting of the Synod agreed, in conjunction with the OFTB, to change the purpose of the Manse Fund to read:
- (a) allocations from the Manse (Reserve) Fund shall be used solely for major repairs and maintenance to Presbyterian buildings/precincts which hold classification 1 status with the New Zealand Historic Places Trust Register of Classified Buildings; and
 - (b) allocations of up to 100% of cost may be paid, but only where a conservation plan, approved by the Historic Places Trust, is first obtained.

Education Fund

- 3.8 The Education Fund is administered by the OFTB in accordance with the directions of the Synod issued pursuant to section 25 of the OFTB Act, and may be used for the purposes of:

- (a) assisting any school, college, or other educational institution in the Provincial District of Otago; or
- (b) endowing or assisting in the endowment of any literary chair or literary lectureship in any college or university in the Provincial District of Otago, or paying salaries and other emoluments to the incumbent of any such chair or lectureship; or
- (c) meeting or contributing towards the cost of any land and buildings used or to be used by any college or university in the Provincial District of Otago, so long as the college or university has, as part of its objects, the provision of suitable residential accommodation for students of all denominations and of all faculties to reside under Christian influence and discipline; or
- (d) promoting secular and religious education in the Provincial District of Otago to the end that the community, as well as the church, will receive the greatest possible benefit; or
- (e) for any other purpose consistent with those purposes as determined from time to time by the Synod in accordance with section 25.

Application process

- 3.9 More information about eligibility for funds, and the relevant application forms are available from the Synod Executive Officer or from the Southern Presbyterians website:
<https://www.southernpresbyterians.nz/resource/category/5/Funding>

4. Borrowing and Mortgages

- 4.1 Before contracting debt of any nature in excess of \$5,000.00, whether secured or unsecured, the approval of the Church Council, Congregation, the Southern Presbytery, and the Property Commission are required.
- 4.2 As a first step, the Church Council should make enquiries with the Synod Executive Officer who will advise the next steps, what information needs to be included with an application to the Property Commission, and provide the requisite forms for the Church Council to complete.
- 4.3 In usual circumstances, the decision of the Property Commission will be notified in writing within two weeks of the application having been received by the Synod Executive Officer. The Property Commission Approval will then be forwarded to the OFTB as a recommendation that the decision be given legal effect to.
- 4.4 However, any borrowing that requires a mortgage to be registered over Church property or an alteration to an existing mortgage, requires the approval of the Property Commission.

Recording a Mortgage and Registration

- 4.5 If Property Commission Approval is granted to borrow or mortgage Parish Property, the Property Commission may require that the loan be recorded in a Loan Agreement (for example a Term Loan Agreement). Additionally, the lending entity (whether that be a registered bank, church funding entity or private lender) may require that a mortgage be registered against the Record of Title of the relevant Parish Property.
- 4.6 Any loan agreement or mortgage terms provided to the Church Council must be reviewed by the OFTB's solicitors prior to signing by the OFTB. Where a mortgage is to be registered, the OFTB's solicitors will prepare the relevant land registry documentation for signing by the OFTB.

5. Lotteries

- 5.1 The General Assembly determined in 2008 that Parishes can make applications for Lottery Board Grants subject to the following criteria:
 - (a) benefits of the grant must be wider than the Congregation e.g. for community projects;

- (b) grants cannot be used to fund Parish running costs;
 - (c) 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;
 - (d) the Congregation will be able to sustain the project financially during its life;
 - (e) the Congregation has sufficient realisable assets, either financial or in property, to cover the restitution of any grant which the OFTB may be required to make in terms of the agreement with the Lottery Grants Board;
 - (f) The Congregation has specifically agreed that should restitution be required, it will be funded from these specific assets; and
 - (g) The Synod has undertaken to ensure that the conditions of the grant are met, and has processes in place to fulfil this.
- 5.2 Congregations wishing to apply for government funding for a community project must apply directly to the Lottery Grants Board, after having obtained the authority of the Congregation, the Southern Presbytery and the approval of the Property Commission.
- 5.3 Once Property Commission Approval has been granted, the Synod Executive Officer will issue the Lottery Grants Board with a letter indicating that the Congregation is one sanctioned within the bounds of the Synod, and that the terms and conditions of the grant (if approved) will be guaranteed by the OFTB in accordance with an agreement signed on 4 July 2006.
- 5.4 While the OFTB is the body directly responsible to the Lottery Grants Board, the Synod has signed a "Memorandum of Understanding" with the OFTB. This states that should a Congregation which obtains Lottery Grants Board funding for a community project fail in its obligations, the Synod will authorise the OFTB to draw money from the Ecclesiastical Fund to pay any refunds or penalties incurred by the erring Congregation. The Synod will then take action against the erring Congregation to reclaim the money drawn from the Ecclesiastical Fund.

6. Some guidance about Mission Projects

- 6.1 When the Synod assesses applications for mission projects (for example employment of people and deployment of resources at Synod, Presbytery, and Parish level in the field of Christian education, youth work, evangelism, and outreach with emphasis towards persons who are unchurched or underprivileged), 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 Synod.
- 6.2 In Synod's view, buildings are only an enabler of a mission; real success depends on the leadership and activity of the Congregation. This means approval is more likely if there is evidence that the project is already working (and it would be helped by better facilities), rather than if it is based on the hope that better facilities will start a new mission, or make an existing and struggling one become successful.

Gifting Property – An Overview

7. Can Property be gifted to a worthy cause?

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

- 7.2 Where a Church Council approaches the Synod to obtain the approval to gift a Parish Property, a number of factors must be taken into account. However, the key matter to be considered is the status of the Congregation:
- (a) if the Congregation is continuing its ministry in the area, the Church Council, having obtained the consent to the Congregation, may apply to the Synod Executive Officer to receive permission to gift Parish Property. The normal approvals process through the Property Commission and the OFTB endorsement will be required before any gift can be made;
 - (b) if, however, the Congregation is being dissolved and the Parish is closing, only the Property Commission can make such decisions about whether a Parish Property may be gifted.
- 7.3 It is also important to remember that church property is a trust from all the past members of your Congregation, going right back to its establishment. The assets have been given in the expectation they will continue to be used for the mission of the Presbyterian Church. It is important that any gifting fulfils this trust.

Application Process

- 7.4 A decision to gift or sell a Parish Property at less than market value can take some time. The Church Council should ensure that no promise is made in respect of a Parish Property until all the required approvals have been obtained. Any proposal to gift or sell property at a discount requires the approval of the Church Council, the Congregation, the Southern Presbytery, the Property Commission, and the OFTB.
- 7.5 As a first step, the Church Council should make enquiries with the Synod Executive Officer who will advise the next steps, what information needs to be included with an application to the Property Commission, and provide the requisite forms for the Church Council to complete.
- 7.6 Once the Property Commission Approval has been notified, this will be forwarded to the OFTB as a recommendation that the decision be given legal effect to.
- 7.7 The OFTB are not generally in favour of gifting property, as this notion is contrary to a trustee's fundamental obligation to protect the value of assets. The Synod recognises that the OFTB has an obligation as a prudent trustee under the OFTB Act, Trusts Act 2019 and Charitable Trusts Act 1957 to ensure that the administration of any trusts established under the OFTB Act are in accordance with the terms of those trusts.
- 7.8 Accordingly, where a Congregation wishes to gift Parish Property, the Property Commission, and the OFTB together, consider whether the proposal is permitted under the trusts identified in the Act, and that any gifts are in accordance with any legal requirement to ensure all Trusts in relation to properties held on behalf of Congregations are also appropriately observed.
- 7.9 It may, therefore, be preferable to sell a property at a nominal sum of say \$1, rather than formally gifting the property. There may also be tax implications for this kind of transaction and advice from an accountant should be obtained.

Part Nine – Dealing with Property when a Congregation is Dissolved

Dealing with Property when a Congregation is Dissolved – An Overview

1. Definitions

Book of Order	means the Book of Order of the Presbyterian Church of Aotearoa New Zealand dated 26 September 2006 (as amended in October 2008, October 2010, October 2012, November 2014 and November 2016, corrected May 2017) and as amended from time to time.
Church Council	means the governing body of a Congregation, Parish, or camp as set out in the Book of Order. The Church Council may also be referred to as the session council or parish council.
Congregation	a Congregation consists of its members, associate members and other persons who unite for worship, life and mission within the Provincial District of Otago already or hereafter to be sanctioned by, or which is or may be under the jurisdiction or control of the Synod.
Deacons Court	means the persons, whether incorporated or not, acting in the management of the temporal affairs of any Congregation and appointed according to the laws and usages of the Presbyterian Church of New Zealand; and includes the Board of Managers or Parish Council (within the meaning of that term as used in the Book of Order of the Presbyterian Church of New Zealand) of any Congregation.
Factor	means the chief executive officer of the OFTB, as appointed under section 16 of the OFTB Act.
GST	means tax chargeable in accordance with the Goods and Services Tax Act 1985.
Manse	means a Parish residential property which provides accommodation to the Minister and family.
OFTB	means the Otago Foundation Trust Board.
OFTB Act	means the Otago Foundation Trust Board Act 1992.
Parish	means a local church community, and includes Parish operated camps.
Parish Property	means the land and buildings of a Parish, Congregation or Deacons' Court held on Trust by the OFTB in accordance with section 14 of the OFTB Act.
Property Commission	means the subgroup of the Synod with the role of making decisions in relation to applications to deal with Parish Property.
Provincial District of Otago	means the Provincial District of Otago including that geographical area frequently referred to as Southland.
Record of Title	means the record held with Land Information New Zealand that identifies a specific property by legal description, registered location, size and the registered owner.

Registered Valuation	means a Report from a Registered Valuer, stating the condition and current market value of the property under consideration.
Southern Presbytery	means the Southern Presbytery of the Presbyterian Church of Aotearoa, New Zealand.
Synod	means the Synod of Otago and Southland of the Presbyterian Church of Aotearoa, New Zealand.

2. Process to Dissolve a Congregation

- 2.1 A Congregation can be dissolved in two ways, the manner of which determines how property held on trust for the Congregation is dealt with.
- (a) **Dissolution by the High Court:** the OFTB Act provides that, in the event of the Registrar of the High Court at Dunedin issuing a Certificate of Cancellation of Incorporation of a Deacons' Court, the net assets or liabilities of the Deacons' Court to which the cancellation relates shall, without further conveyance or other assignment, be transferred into, and form part of, the capital of the Manse Fund which is now known as the Heritage Fund.
- (b) **Dissolution by the Synod:** pursuant to section 40 of the OFTB Act, if there is no issuing of a Certificate of Cancellation of Incorporation under section 43 and if:
- (i) any Congregation ceases to exist; or
 - (ii) the members of any Congregation become so divided as to render the continued existence of the Congregation, in the Synod's opinion, undesirable; or
 - (iii) there is no personal body residing or existing within the Provincial District of Otago capable of dealing with the property of any Congregation; or
 - (iv) any person or Body Corporate in whom or in which the property of any Congregation is vested fails to obey or carry out the direction of the Synod as to the manner in which such a property or its income or proceeds should be held or applied; or
 - (v) the Deacons' Court of any Congregation (whether incorporated or unincorporated) so requests,
- the Synod may direct that all property held by the Deacons' Court or Congregation shall be held or disposed of and the income and proceeds thereof applied in the way that best represents the underlying purpose for which the property was given in the first place.

- 2.2 All property is held on trust for the purposes of that particular Congregation of the Synod and any proceeds of sale of that property must be used for a purpose that most closely represents the purpose of the original trust. In most cases, there will be no trust documentation in place and it will be necessary to infer what the purposes of the trust were from the circumstances. Unless there is an intention to the contrary clearly expressed, the proceeds of sale of a church or halls or a Manse may only be used for the purposes of churches, halls or manses or any or all of them

3. Property on Dissolution

- 3.1 If, after dissolution, Parish Property is to vest in the OFTB, then the Synod Executive Officer will issue a certificate in the form of Form 6 to the Schedule to the OFTB Act 1992. The Property will then be dealt with in accordance with the guiding principles of the Synod as follows:
- (a) if there is the reasonable likelihood of there being a need to re-establish a church, hall or Manse in the area of the dissolved Congregation, it might be appropriate to hold the proceeds of sale on trust for such future purpose;

- (b) if there is no such reasonable likelihood, then the proceeds of sale may be used for the acquisition or maintenance of churches, halls or manses in Presbyterian Congregations geographically associated with the dissolved Congregation that are catering for parishioners that previously attended the dissolved Congregation; and
- (c) developments in transport and communications need to be taken into account. Many of the trusts were established in the 19th century when transport was difficult, and small communities were self-sustaining. People are now prepared to travel further to attend places of worship.

3.2 An important principle flowing from the OFTB Act is that trusts must be properly administered by both the Synod and the OFTB, and funds that were originally given to establish an item of tangible property such as a church, hall or Manse must be used in relation to tangible items of property on an ongoing basis. This is essentially a principle of preservation of capital.

4. Property Other than Buildings and Land on Dissolution

4.1 The OFTB Act does not specifically empower the Synod or the Trust Board in relation to property, other than land and buildings. Accordingly, uses such property can be put to are less restricted but the overriding principle must be that if money is given for a particular purpose then it must be used for that purpose.

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

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

1. Definitions

Book of Order	means the Book of Order of the Presbyterian Church of Aotearoa New Zealand dated 26 September 2006 (as amended in October 2008, October 2010, October 2012, November 2014 and November 2016, corrected May 2017) and as amended from time to time.
Church Council	means the governing body of a Congregation or camp as set out in the Book of Order. The Church Council may also be referred to as the session council or parish council.
Deacons' Court	means the persons, whether incorporated or not, acting in the management of the temporal affairs of any Congregation and appointed according to the laws and usages of the Presbyterian Church of New Zealand; and includes the Board of Managers or Parish Council (within the meaning of that term as used in the Book of Order of the Presbyterian Church of New Zealand) of any Congregation.
District Plan	means the district plan established by a territorial authority under the Resource Management Act 1991 which outlines the territorial authority's resource management strategy for land in its district or city and indicates how the territorial authority will control the effects of activities and development within its jurisdiction.
Factor	means the Factor of the OFTB, as appointed under section 16 of the OFTB Act.
GST	means tax chargeable in accordance with the Goods and Services Tax Act 1985.
Manse	means a Parish residential property which provides accommodation to the Minister and family.
OFTB	means the Otago Foundation Trust Board.
OFTB Act	means the Otago Foundation Trust Board Act 1992.
Parish	means a local church community, and includes Parish operated camps.
Parish Property	means the land and buildings of a Parish, Congregation or Deacons' Court held on Trust by the OFTB in accordance with section 14 of the OFTB Act.
Property Commission	means the subgroup of the Synod with the role of making decisions in relation to applications to deal with Parish Property.
Record of Title	means the record held with Land Information New Zealand that identifies a specific property by legal description, registered location, size and the registered owner.

Registered Valuation	means a Report from a Registered Valuer, stating the condition and current market value of the property under consideration.
Southern Presbytery	means the Southern Presbytery of the Presbyterian Church of Aotearoa, New Zealand.
Synod	means the Synod of Otago and Southland of the Presbyterian Church of Aotearoa, New Zealand.

2. Executive Summary

- 2.1 Constraints on property use can take many forms, but some of the most common constraints in respect of property come from local authority decision-making and heritage listing, so we have provided some explicit advice around these two issues.
- 2.2 This section covers some of the common restraints that apply to Parish Property, including heritage listings, land covenants and land use restrictions in district plans. This is by no means a comprehensive list of restrictions that may apply to Parish Property, however it is intended to cover some of the common matters that may arise and be relevant to a Parish's decision to sell or subdivide Parish Properties.

Heritage Constraints

3. Overview

- 3.1 Heritage protection is required to preserve the culture, heritage and local character of the country for future generations. Heritage buildings must be maintained and adapted for changing needs such as providing access for people with disabilities or protection from earthquake or fire.
- 3.2 There are a number of ways that the use of Parish Property can be constrained by heritage requirements.

4. Local Authority Requirements

- 4.1 Local authorities are required to contribute to heritage protection under legislation including the:
- (a) Resource Management Act 1991
 - (b) Heritage New Zealand Pouhere Taonga Act 2014
 - (c) Building Act 2004
 - (d) Local Government Act 1974
 - (e) Local Government Act 2002
- 4.2 Local authorities have the statutory responsibility to recognise and provide for the protection of historic heritage from inappropriate subdivision, use, and development within the context of sustainable management. Management strategies for heritage protection are included in strategic directions, policy statements and district plans. Partnerships are sometimes formed between different groups for the preservation of specific sites.
- 4.3 Local authorities usually have sections on their websites outlining their own rules to preserve and protect heritage buildings. Local authorities have a duty to gather information and monitor the state of heritage matters in the region or district and will generally maintain a register of historic sites and buildings in the relevant District Plan. They may also be directed by another

Heritage Protection Authority (as defined in section 118 of the Resource Management Act) by way of a heritage order, to include a building or site in its register.

- 4.4 Where a building is listed in the District Plan, a resource consent may be required from the council for matters such as:
- (a) additions, including the placing or fixing of certain signs, new extensions, decks and other publicly visible additions;
 - (b) construction of new buildings or structures on the land;
 - (c) alterations, including the painting of unpainted buildings, the replacement of original doors and windows with modern systems, re-roofing in modern materials (e.g. replacing tiles and slates with steel), the removal of chimneys and other visible features;
 - (d) relocation of scheduled buildings; and
 - (e) demolition of protected buildings (both scheduled and character-contributing).
- 4.5 The heritage rules in the District Plan can impact on the use/redevelopment of church buildings or the redevelopment or sale of the land on which a building is located

5. Heritage New Zealand Pouhere Taonga Act 2014

- 5.1 The Heritage Act makes it unlawful for anyone to modify or destroy, or cause to be modified or destroyed, all or part of an "archaeological site" without first getting the authority of Heritage New Zealand.
- 5.2 An "archaeological site" is defined in the Heritage Act to mean any place associated with pre-1900 activity where there may be evidence relating to the history of New Zealand. This includes pre-1900 buildings, and modification or destruction of a pre-1900 building is prohibited, unless an archaeological authority is obtained from Heritage NZ. This applies irrespective of whether the building is listed with the New Zealand Heritage List/Rārangi Kōrero, or, the activity is permitted under the District or Regional Plan, or, a resource or building consent has been granted. The Act provides for substantial penalties for unauthorised destruction or modification of an archeological site.
- 5.3 This is an important matter of note, as there are many Parish Buildings, including chapels and halls, around the South Island. Some chapels were built prior to 1900, and accordingly are subject to the provision of the Act. The application of the Act could affect the following use:
- (a) alteration or demolition of a building by the Parish; or
 - (b) sale of a Building for removal.
- 5.4 Before undertaking any work that may affect an archaeological site, the Parish must obtain an authority from Heritage New Zealand (or in a sale situation, advise the Purchaser it may require this) and an archeological assessment of the Building may be required. Further information on this process can be found on the Heritage New Zealand Houhere Taonga website, or by contacting the Heritage New Zealand office.

6. New Zealand Heritage List/Rārangi Kōrero

- 6.1 The New Zealand Heritage List/Rārangi Kōrero (**Heritage List**) identifies New Zealand's significant and valued historical and cultural heritage places and is maintained by Heritage New Zealand Pouhere Taonga pursuant to the Heritage New Zealand Pouhere Taonga Act 2014 (**Heritage Act**).
- 6.2 The purposes of the New Zealand Heritage List/Rārangi Kōrero are:

- (a) to inform members of the public about historic places, historic areas, wāhi tūpuna, wāhi tapu, and wāhi tapu areas;
- (b) to notify the owners of historic places, historic areas, wāhi tūpuna, wāhi tapu, and wāhi tapu areas, as needed, for the purposes of this Act; and
- (c) to be a source of information about historic places, historic areas, wāhi tūpuna, wāhi tapu, and wāhi tapu areas for the purposes of the Resource Management Act 1991.

6.3 Where there is a proposal to demolish or alter a building on the Heritage List (or remove trees, or subdivide listed land), enquires should first be made to Heritage New Zealand to ensure there are no restrictions on the same. If a property is being sold, registration on the Heritage List should be disclosed to potential purchasers.

7. Heritage Covenants

7.1 Heritage covenants are voluntary agreements under the Heritage Act, which are agreed to by a property owner for the purpose of protecting and conserving a historic place or area, building or structure, wāhi tapu, or wāhi tapu area. A property does not have to be entered on the Heritage List in order to be subject to a heritage covenant, but does need to meet the requirements of the Heritage Act.

7.2 A heritage covenant is usually permanently registered against the Record of Title to the land on which the heritage building/structure is located, and places conditions on the management and use of the place or wāhi tapu. These restrictions will operate to protect the historic place for the future and are legally binding on all subsequent owners. A heritage covenant is therefore a very important mechanism for long term heritage protection. Covenants can be unregistered in certain circumstances and can be for a defined number of years.

7.3 Heritage covenants can arise in a number of ways:

- (a) through the request of an owner to ensure long term protection of their property;
- (b) through the requirements for protection of places or areas as part of the resource consenting process;
- (c) as a condition of a grant under the National Heritage Preservation Incentive fund; and
- (d) as a means to mitigate or prevent damage to archaeological sites.

7.4 Heritage covenants can be varied or cancelled by agreement between Heritage New Zealand and the owners of the property where it is in the best interests of safeguarding the long-term conservation of the properties, or, the historic place has been destroyed.

7.5 As a heritage covenant can restrict dealing with a building or property, if the Parish wishes to alter, demolish or sell a Parish Property, enquiries should be made with Heritage New Zealand (and in the case of demolition or alteration, the local council) to ensure there are no issues with the proposal to do so.

8. Can a Congregation agree to heritage list a property to get financial assistance?

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

8.2 In addition, a Congregation that does wish to obtain a heritage listing **must** obtain the approval of the Property Commission and the OFTB 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 OFTB 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.

9. Summary

- 9.1 The effect of significant historic heritage place listings will vary, depending on the District Plan that applies in the area a property is located and on the recommendations of the relevant local authority.
- 9.2 However, one of the biggest issues with a formal heritage listing is the loss of value when a Congregation see advantages in selling land and buildings, or where a Congregation is dissolved.
- 9.3 Further as, the OFTB is bound to support the realisation of the maximum value for land and buildings in order to release funds to the Synod for God's mission. The OFTB 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 their mission.

Land Covenants

10. Overview

- 10.1 Land covenants are comparable to a legally binding promise to do/not do something in respect of the burdened land. On registration, they create an enforceable legal obligation to do or not do those activities.
- 10.2 There are two main forms of land covenants in New Zealand. The most common type of land covenant is an agreement registered against the title to a property between a Covenantor (owner of the Burdened Land which is subject to the land covenant) and Covenantee (owner of the Benefited Land which receives a benefit from the land covenant) to do or refrain from doing something, in respect of the land. An example of this is where land covenants are registered against residential sections in a subdivision which impose restrictions around the type of dwelling which can be built for the benefit of the other properties in the subdivision.
- 10.3 A land covenant in gross is a promise or agreement made between the Covenantor (owner of the Burdened Land) and the Covenantee, who in this case does not need to be the owner of another property, to do or refrain from doing something, in respect of the land. Covenants in gross have only been permitted since the new Land Transfer Act came into force in 2017. An example of this is where a local authority attaches a burden to land by way of a covenant in gross, and is not an affected land owner.

11. Common Types of Land Covenant

- 11.1 Common land covenants include the following:
 - (a) **Restriction on Dwellings and Construction:** it is common for modern developments to include covenants that impose a minimum floor area for any dwelling, and restrict constructions of more than one dwelling, or development that includes a relocatable building.
 - (b) **Construction Material Restrictions:** covenants often cover the look, colour, size, and shape of the building and what materials can be used in construction (including fences) and the standard of the building.

- (c) **Restrictions on Behaviour and Use of Property:** covenants can also restrict what activities are permitted on the property. Examples of restrictive covenants include:
- (i) that a property must be used for residential purposes only (there may be a restriction on business activities including use of the property for short-term accommodation such as Airbnb);
 - (ii) clotheslines may not be permitted to be viewed from the road;
 - (iii) the types or number of a certain kind of animal which can occupy the property may be restricted; and
 - (iv) the ability to complain about activities on adjacent or nearby land may be prohibited. For example, a property in the vicinity of an airport or a dairy farm may include a land covenant that the owner of the property may not complain about noise, dust, odour, air discharges, vibration, visual effects, traffic generation and safety related issues.
- (d) **Trees and Vegetation:** covenants may restrict the height of trees, type of vegetation that is permitted on the property, or may prohibit removal of certain mature trees or vegetation.

11.2 If buying bare land with the intention to build on it, extra attention should be paid to the restrictions of what can and cannot be done on the land. If this is not checked, it could later be discovered that a land covenant prevents the planned development of the property.

12. Can Land Covenants be changed or removed?

- 12.1 Covenants can be changed by agreement of the owner of the “Burdened Land” and the owner of the “Benefited Land”, or, in the case of a covenant in gross, the person with the benefit of the covenant, and the consent of any chargeholder for example a bank registered as mortgagee.
- 12.2 In practice, this means all parties with an interest in the land covenant need to agree, and mortgagee (or any other chargeholder) consent needs to be obtained.
- 12.3 Failing agreement between the parties, it is possible to apply to the court to have a covenant changed or removed, however, this can be a difficult and expensive process.

13. Queen Elizabeth II Open Space Covenant

- 13.1 A Queen Elizabeth II Open Space Covenant (**QEII Covenant**) is legal agreement between Queen Elizabeth II National Trust (**Trust**) and a landowner to protect a special open space feature in perpetuity. It is similar to heritage protection in its impact, but is administered by the Trust rather than a local authority.
- 13.2 The general purpose of a QEII Covenant is to preserve areas of land or bodies of water that have special aesthetic, cultural, recreational, scenic, scientific or social interest or value, and provides private landowners in New Zealand with a mechanism for protecting special natural and cultural features on their land. The 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 (including fencing).
- 13.3 The covenant is voluntary but, once registered on the title of the land affected, it binds the current and subsequent landowners for all time. For this reason, any Parish wishing to enter into an open space covenant must obtain the prior approval of the Church Council, the Congregation, Southern Presbytery, Property Commission, and the OFTB.

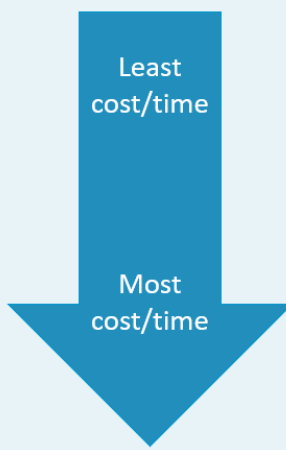
Local Authority Controls

14. District Plan

- 14.1 Each city or district council in New Zealand has its own regulations set out in a District Plan. These deal with issues of land use and subdivision, and all site usage and development must comply with the district plan
- 14.2 Each city or district is divided into zones, for example, inner residential, outer residential, commercial, suburban and industrial. Within each zone, activities are defined according to their actual or potential adverse effects on the environment. Classifications of activities are:
- (a) permitted;
 - (b) controlled;
 - (c) discretionary – restricted;
 - (d) discretionary – unrestricted;
 - (e) non-complying;
 - (f) prohibited.
- 14.3 The type of activity determines the requirement to obtain resource consent within each zone.

Types of resource consent needed for development

Activity type	Consent requirements
Permitted	Consent not required – can do of right
Controlled	Consent must be granted, conditions may be imposed
Restricted discretionary	Consent may be granted, if certain matters have been properly managed in the development proposal
Discretionary	Consent may be granted, if all key environmental effects have been properly managed in the development proposal
Non-complying	Consent possible, but because there is a high potential for adverse effects the proposal will need to comprehensively address all environmental effects
Prohibited	Consent cannot be granted



- 14.4 Where there is a proposal by the Parish to develop a Parish Property or to use the Parish Property in a different way, specialised planning advice must be obtained to ensure what is proposed is permitted under the relevant District Plan, and to ascertain the cost and timeframes for the proposed development.

Other Property Encumbrances

15. Easements

- 15.1 An easement is a right granted by one landowner (**Grantor**) in favour of another landowner (**Grantee**) that permits the Grantee to do something on the Grantor's land. An easement may also be granted "in gross". This is a legal right that applies for the benefit of a certain person or entity, rather than a specific piece of land, for example a right granted to the local council for the purposes of running drains or other pipes over the Grantor's land for the provision of council services.
- 15.2 Common examples of rights that are created by easements include:
- (a) a right of way (such as a driveway or path that allows access over another landowner's land);
 - (b) a right in respect of services, such as the right to transmit power and gas through lines, or convey and/or drain water or sewerage through pipes, on another party's land; and
 - (c) a right to preservation, also known as an "easement of light and air", where a landowner may be prevented from doing anything that would obscure the light or prevent the free passage of air to neighbouring properties (such as building over a certain number of stories or land area).
- 15.3 Usually, an easement is registered on the relevant titles of land that it affects, being the burdened title (the land that is subject to the right) and the benefitted title (being the land that enjoys the benefit of the easement). The easement instrument will explain the nature of the easement and any explicit conditions, and will be listed on the title of your property.
- 15.4 An easement does not grant ownership of the land, rather, it represents a right to use part of the land for a specified purpose. The rights created by easements can last for a nominated period of time or forever. An easement that is registered against land will bind future landowners.

16. Caveats

- 16.1 A caveat is a document which is lodged against a Record of Title to land and is notice by an interested party that no action is to be taken in relation to that Record of Title until that party's interest has been taken into account.
- 16.2 The main purpose of a caveat is to prevent the sale or disposition of the land until the issue of the interest under the caveat has been protected or perfected. Common examples might include:
- (a) when a purchaser enters into an agreement to purchase land from the owner of the land and settlement is delayed or when a substantial deposit has been paid;
 - (b) where a person has lent money to another person and as security for that loan the borrower has signed an agreement to mortgage;
 - (c) a tenant under an unregistered lease may wish to lodge a caveat to give notice of its interest in the land. It is important to note that the lease may contain a clause which provides that the tenant will not register a caveat; and
 - (d) when a person has entered into an agreement to create an easement over another person's land and the easement has not yet been registered on the title to the land.
- 16.3 It is not uncommon for there to be a registered caveat on the Records of Title in favour of the Otago Foundation Trust Board, given the unusual ownership structure of Parish Properties, and

the prior ownership in the name of Deacon's Court. On sale of a Parish Property this is discharged to enable the Record of Title to be transferred.

17. Encumbrances

- 17.1 An encumbrance is a registered interest that requires that the owner of the property (**Encumbrancer**) to comply with requirements of the encumbrance, and if they do not, they are required to pay the rent charge set out in the encumbrance to the person who has the benefit of the encumbrance (**Encumbrancee**).
- 17.2 The Encumbrancee under a registered memorandum of encumbrance is in the nature of a mortgage, and has the normal remedies of a mortgagee (including the power of sale) under a registered mortgage unless the encumbrance specifically excludes any of those remedies.
- 17.3 Common examples of encumbrances include:
- (a) an agreement with a Council that the landowner will meet certain conditions set by Council in return for the Council agreeing that the structure can be erected over Council infrastructure, such as a pipeline or road;
 - (b) a requirement on owners lots in a subdivision to join a residents' association and pay annual fees, to enter contracts with a specified utility provider and pay charges for the use of the facilities;
 - (c) a requirement for a boatshed be placed on one lot in the subdivision, the owners in the subdivision being shareholders in the jetty;
 - (d) an agreement with Council to perform certain obligations in respect of development on land or to comply with conditions on an ongoing basis in relation to some activity that is proposed on the land
 - (e) a prohibition on the owner of a property from objecting to the presence of an electricity company's infrastructure on their land; and
 - (f) to secure compliance with a right of first refusal to offer a property back to a third party.

18. Consent Notices

- 18.1 Where a condition of subdivision consent is required to be complied with on a continuing basis after a subdivision has been completed, a local council can require a consent notice under section 221 of the Resource Management Act 1991 to be registered against any new Records of Title. These consent notices are a form of covenant between the council and the land owner imposed through a subdivision consent that restricts certain activities and buildings allowed on a site.
- 18.2 Common conditions in a consent notice might include:
- (a) a restriction on the number of dwellings on a property;
 - (b) the number and location of accessory buildings, garages and decks;
 - (c) specific requirements for foundations;
 - (d) a restriction on building on certain parts of the property; an amalgamation condition that prohibits two or more parcels of land within the one title, with separate legal descriptions parcels to be dealt with separately, unless the approval of council is obtained; and
 - (e) protection of heritage aspects or trees on the property.

18.3 Where, as part of a subdivision consent, the Council requires two parcels of land be held together and not dealt with separately but there is some reason why they cannot be held in the same title, the Council will require that the subdividing owner enter into a covenant under section 240 of the

19. Summary

- 19.1 It is very important to understand the interests registered against the Record of Title to a Parish Property, or to obtain advice on the same where there is a proposal to purchase a new Property, as these can have a significant impact on the use of the Parish Property.
- 19.2 For example, the terms of the various registered interests can vary greatly and some terms are not specifically stated within the easement instrument, but are implied by legislation. For example, under an easement, there can be provisions relating to the sharing of costs to maintain the easement facility who pays for repairs when the damage was caused by one particular user, and what restrictions apply to the easement. These may be recorded within the memorandum of easement registered on the Record of Title, or may be implied under the Land Transfer Regulations 2002 or 2018.
- 19.3 It is also important to obtain legal advice if a third party requests the registration of an instrument on the Record of Title to a Parish Property as any registered interest may affect the use of the Parish Property and could affect the value of the same, on any proposed sale. Any registration documents must be forwarded to the OFTB' solicitors for review, and if all is in order, signed by the OFTB.