



St Peter’s Parish Endowment Fund Trust Bill

223—1

Report of the Governance and Administration
Committee

August 2023

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Ian McKelvie
Chairperson

St Peter's Parish Endowment Fund Trust Bill

Recommendation

The Governance and Administration Committee has examined the St Peter's Parish Endowment Fund Trust Bill and recommends that it be passed.

About this bill

The St Peter's Parish Endowment Fund Trust Bill is a private bill that seeks to make amendments to the trust deed governing the St Peter's (Wellington) Endowment Fund Trust Board.

The St Peter's (Wellington) Endowment Fund was established by a trust deed in 1922, for the parish of St Peter's Anglican Church, in Wellington. Shortly after, the St Peter's Parish Endowment Fund Act 1927 was enacted to alter the trust deed, in relation to how funds can be distributed. The fund must be administered in accordance with the trust deed, as varied by the Act.

The Trust Board is limited in its ability to distribute surplus income from the fund for the benefit of the church and its community because the trust deed restricts the size of distributions. Administrative difficulties also arise because the provisions of the deed are based on a 1920s legal model.

This bill would amend the trust deed to enable the Trust Board to make distributions of up to 4 percent of the trust fund in any one financial year, without regard to the income or capital of the fund. In exceptional circumstances, the Trust Board could make additional distributions up to a (cumulative) maximum of 20 percent in any one financial year. The bill would also address other matters, including allowing the Trust Board to lend to the parish, updating and modernising the governance and administration arrangements of the Trust Board, and setting out the legal liability of its members.

The aspects of trust administration that the bill seeks to amend can only be changed by an Act of Parliament because the original trust deed was varied by the Act. The Trust Board concludes that a private bill is the only option to modify the trust's administrative powers.

We note that a similar private bill was recently considered by the Economic Development, Science and Innovation Committee, to modernise the arrangements of the Trust Board in the Thomas Cawthron Trust Act 1924.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

Submissions process

This bill was referred to us on 15 March 2023. We opened for public submissions on 17 March with a closing date of 26 April 2023. We received nine written submissions and heard oral evidence from four submitters. The St Peter's (Wellington) Endowment Fund Trust Board submitted as the promoter of the bill. All submitters, aside from Crown Law and the Anglican Archdiocese of Wellington, are directly involved with St Peter's Church as members of the parish, the vestry, or the clergy.

Changing how funds are distributed

The St Peter's Endowment Fund is valued at \$5.7 million and comprises investments in land, property, and financial securities. It is mainly used for general operating purposes of the church, as well as maintenance and upkeep of the church building. In addition, it has been used to support some of the church's community-based projects.

Clause 5 of the bill would allow the Trust Board to distribute up to 4 percent of the endowment fund per financial year. Generally, the annual income and capital growth of the fund exceeds 4 percent a year, so the fund would still be able to grow. The committee is of the view that a 4 percent distribution limit strikes an appropriate balance between protecting the fund from economic shifts and allowing the Trust Board enough flexibility to make distributions for the benefit of the parish. Providing for this conservative percentage to be distributed regardless of income or capital would protect the fund and parish from economic shifts, such as during the COVID-19 pandemic when the church suffered significantly reduced attendance, and hence lower income. This would enable the parish to better engage in long-term financial planning. Clause 5(6) would allow the Trust Board to make a distribution at any time, and for any period.

Exceptional circumstances

Clause 5(3) states that an additional distribution of the fund may be requested by the vestry to the Trust Board "in exceptional circumstances". In its submission, Crown Law noted that a distribution of 20 percent in one financial year (the maximum permitted under clause 5(5)) could lead to significant erosion of the fund in a short period of time. We considered what types of situation would meet the threshold of "exceptional". One submitter, who had assisted in drafting the bill, stated that "exceptional circumstances" would not include matters that relate to the ordinary operation of the parish.

We note that clause 5 would allow the parish flexibility to respond to emergency situations. We think it would be useful to include this provision in the bill for such situations. However, we do not consider it necessary to provide a definition for "exceptional circumstances". We think that each circumstance should be assessed on a case-by-case basis.

The bill includes guidelines to help ensure that the fund is accessed wisely in exceptional circumstances. Clause 5(4) lists the following factors that the Trust Board would be required to take into account when considering a request to make an additional distribution:

- the needs of the parish
- the investment strategy of the trust

- the desirability of maintaining the capital of the fund
- any other matters considered relevant to the making of an additional distribution.

In submissions, we heard that the Trust Board intends to create administrative rules to require 80 percent of those present at a parish special or annual meeting to approve a request made by the vestry to the Trust Board for an additional distribution under exceptional circumstances.

Administrative powers

Clause 6 of the bill would enable the Trust Board to determine its own administrative rules for “the conduct of meetings, the responsibilities and powers of the Trust Board, and other matters not governed by this Act”. The meaning of “rules” would need to align with the meaning in the Charities Act 2005.

As noted, administrative rules could be used to guide a request by the vestry to make an additional distribution. However, we note that under clause 5(5), the Trust Board would still have absolute discretion to decide what distributions could be made.

Mitigating liability and indemnity of trustees

Clause 7 of the bill would protect members of the Trust Board from liability. That clause would require each member to be fully indemnified by the fund if they were to incur any loss or liability from their involvement as trustees. We note that it is not unusual for protections for board members to exist for a trust of considerable size. Clause 7(3) states that this section would not apply if the loss or liability was due to a board member’s “dishonesty, wilful misconduct, or gross negligence”. This would align with the Trusts Act 2019. We do not consider that this indemnification would have a significant impact on the trust’s capital.

Future amendments to the trust deed

The changes to the trust deed proposed by the bill would make the St Peter’s Parish Endowment Fund Act 1927 obsolete. Accordingly, clause 10 would repeal that Act. The bill would replace the 1927 Act with the St Peter’s Parish Endowment Fund Trust Act 2023.

We queried whether it would be possible to achieve the policy intentions by using the bill to repeal the 1927 Act, without putting in place a replacement Act. We were particularly interested in this option because clause 9 would provide that any subsequent amendments to the trust deed could be made in accordance with the Anglican Church Trusts Act 1981 and, where applicable, the Charitable Trusts Act 1957. Part 3 of both of these Acts would apply to the Trust Board and would allow a variation of the trust, and the trust deed, to be made.

We do not recommend repealing the Act without replacement as we consider the legal implications of this to be uncertain and potentially complex. We consider that using the Anglican Church Trusts Act or the Charitable Trusts Act would be the preferable method for making any future amendments to the trust deed.

Appendix

Committee procedure

The St Peter's Parish Endowment Fund Trust Bill was referred to the committee on 15 March 2023. The closing date for submissions was 26 April 2023. We received and considered submissions from nine interested groups and individuals. We heard oral evidence from four submitters at hearings in Wellington.

We received advice on the bill from the Ministry of Justice. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee members

Ian McKelvie (Chairperson)
Hon David Bennett
Rachel Boyack
Naisi Chen
Jamie Strange

Advice and evidence received

The documents that we received as advice and evidence are available on the Parliament website, www.parliament.nz.