

Anglican Church Property Trust Diocese of Sydney (“ACPT”)

Building Works Kit

Have a question or comment about the Building Works Kit? Please [contact your ACPT Regional Manager](#)

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Introduction

1. From time to time a parish may propose to undertake building work on parish land. Parish land is owned by the Anglican Church Property Trust Diocese of Sydney (“ACPT”) and held in trust for the purposes of a parish.¹ The building work proposed may include the erection of a new building, the alteration, extension, demolition or relocation of an existing building and / or landscaping, car parking etc.

2. The purpose of this kit is to generally outline the steps which need to be undertaken for building works and, in particular, to describe the role of the ACPT in the process - as the registered proprietor (owner) of the land on which the building work is proposed to take place. As this kit is of a general nature, parish representatives are encouraged to have discussions with the [staff of the ACPT](#) about projects that are proposed, to determine whether additional project-specific requirements may be applicable. For major projects (that is, projects with total construction costs including GST in excess of \$500,000), please also refer to the “Major Projects Kit” (available upon request from the ACPT).

¹ A few remaining pieces of parish land are owned by private trustees. For more information about private trustee church trust property, please contact the ACPT.

Steps in undertaking building work

3. If a parish wants to undertake building work the following general steps apply -

Step 1 - Discuss the matter with the [regional Archdeacon or Bishop](#)

Step 2 - Notify the [ACPT Manager](#) for your region

Step 3 - Obtain [regional architectural panel](#) approval

Step 4 - Obtain government authority approval(s)

Step 5 - Construction and other contracts

Step 6 - Administration of the contract(s)

4. Acting under delegated authority from the Board of the Anglican Church Property Trust Diocese of Sydney, [Wardens have the delegated power](#) to repair and renovate church properties where the building work to be undertaken is minor - ie. less than \$100,000 (including GST) in value. All other contracts over \$100,000 in value need to be submitted to the ACPT for execution in accordance with the guidelines in this document. Where an architect, project manager or other contractor is to be engaged, the ACPT will also need to sign an appropriate agreement / contract with that party (where the value of the contract is over \$100,000 in value or where the ACPT is also signing the main works contract). For projects involving total constructions costs that exceed (or are likely to exceed) \$500,000 (including GST) in value, parish representatives should refer to the, "Major Projects Kit" ([available from your ACPT Regional Manager upon request](#)).

Step 1 - Discuss the matter with the regional Archdeacon or Bishop

5. Any proposal to undertake building work should first be discussed with the [regional Archdeacon or Bishop](#). Early consultation with the Archdeacon or Bishop is essential to minimise the possibility of unnecessary cost and delays at a later time. In particular, the regional Archdeacon or Bishop can advise about guidelines issued by the regional architectural panel which must be satisfied to obtain its approval for the proposed building works (see step 3 below).

Step 2 - Notify the ACPT

6. For situations where the ACPT will be entering into the building contract (contracts with a value over \$100,000 incl. GST), or if approval from an authority such as the local council is required for the building work, the [ACPT should be notified](#) (preferably in writing) as early as possible about the proposal. The initial notification need not be detailed or extensive. The ACPT may be able to provide guidance about specific issues relevant to the property on which the building work is proposed. For example, the ACPT can advise about whether the legal trusts applicable to the land would permit the building work that is proposed (some church trust property has restrictive trusts which limit the purpose or purposes for which the land can be used. The ACPT can provide information about existing trusts over parish land as well as information about the mechanism for changing trusts).

Step 3 - Obtaining the approval of the regional architectural panel

7. Pursuant to the terms of the [Parish Administration Ordinance 2008](#) a person wishing to construct or alter a building intended for use as a church or hall, or to construct or effect structural alterations to a house for the use of clergy or other members of the Anglican Church of Australia, must first obtain approval for the proposed works from the regional architectural panel. No building work may commence unless that approval has been obtained. Click [here](#) for contact information for regional architectural panels.

8. An application for approval from the regional architectural panel is to be lodged with the regional archdeacon or bishop. The application must-

- (a) Be approved by resolution of the parish council of the parish in which the relevant building is (or will be) situated; and
- (b) Be signed by the minister and a majority of the members of the parish council of that parish; and
- (c) Be accompanied by site plans, building plans and specifications in relation to the proposed work; and
- (d) Contain information sufficient to satisfy an architectural panel that arrangements will be made for the proper and adequate supervision of the proposed works.

It should be noted that the Board of the ACPT has determined as a matter of policy that principles of Environmentally Sustainable Design (“ESD”) are to be incorporated into alterations, additions, and construction of new buildings. The regional architectural panel can provide guidance about principles of ESD. [Click here](#) to view the Environment page of the Sydney Diocesan Secretariat.

9. The [Parish Administration Ordinance](#) requires that all site plans, building plans and specifications must be prepared by a suitably qualified person substantially in accordance with the current guidelines issued by the regional architectural panel.

10. The ACPT will require a letter from the chairman of the architectural panel advising the panel's approval, before the ACPT will execute the development application (if applicable) and any building contract relating to the proposal.

Step 4 - Obtain government authority approval(s)

11. Approval for building work will generally be required from the local municipal council. This will usually mean obtaining development consent (or sometimes a complying development certificate) and, a construction certificate. Furthermore, in some instances, approvals from other statutory authorities may be necessary.

For example, if it is proposed to build on land which is listed on the State Heritage Register, or alter (or even repair) a building listed on such a register, the approval of the Heritage Council of New South Wales will also be required. Click [here](#) for more information about heritage buildings.

If a heritage grant is being applied for to fund or partially fund the work, *it is important to note that an approved heritage grant does constitute “sufficiency of funds” for the ACPT to sign a building contract.* Please contact the [Manager, ACPT](#) assigned to your region to discuss what arrangements will need to be made for projects with approved government heritage funding.¹ For more information about “sufficiency of funds” please refer to the checklist at Item 20.

12. Local councils are responsible for issuing fire safety schedules detailing Essential Fire Safety Measures (“EFSM”) for new or modified buildings. In the context of building work, it is a legal requirement that a [fire safety schedule](#) (of existing and proposed EFSM be attached to the construction certificate (or complying development certificate) for any applicable class of building. A copy of the fire safety schedule must be sent to the ACPT (see BWK Item 20(c)). Please speak to the [Manager, ACPT](#) assigned to your region, for more information about Essential Fire Safety Measures.

[Signing Development Applications \(and other statutory forms\)](#)

13. All applications for approval from local councils and statutory authorities must be sent to the ACPT for signing (unless it relates to *non-parish* land). Before the ACPT will sign the, “Owner’s Consent” section of a Development Application (DA) or combined DA / Construction Certificate Application, or any other statutory form, the ACPT will require –

- **The form itself, filled in and signed by the Applicant** (the Applicant should be the Wardens or the Parish’s appointed consultant (eg. Architect). *Only the “Applicant” section should be signed. Do not sign the “Owner’s Consent” section of the form.*
- **A letter signed by at least two Wardens** requesting that the ACPT sign the particular form; and
- **The written approval of the Regional Archdeacon or Bishop**

Please note the following in relation to council and other statutory forms:

- Regardless of the value of the proposed works, Wardens do not have the delegated authority to sign the “Owner’s Consent” section or field of government or statutory forms (for instance, in the case of Development Applications, the [Local Government Act 1993](#) requires that the “Owner’s Consent” section of the application be signed by the legal owner);
- The ACPT does not provide written authorities to lodge development applications (unless it is a specific authority relating to a development application that has already been signed by the ACPT);

¹ It is important to note that an approved heritage grant does not constitute “sufficiency of funds” for the ACPT to sign a building contract. Please contact the staff of the ACPT to discuss what arrangements will need to be made for projects with approved government heritage funding.

- Forms can be hand delivered by Parish representatives to St. Andrew's House, however, due to work scheduling arrangements, forms cannot be signed "on the spot". Please make an appointment in advance if there is a need to discuss the proposed application with the [Manager, ACPT](#) assigned to your region;
- Most paperwork received by the ACPT for reviewing and signing is mailed to the ACPT, and can be sent to the following postal address –

**Anglican Church Property Trust Diocese of Sydney
PO Box Q190
QVB POST OFFICE NSW 1230**

- Please ensure that a contact person and daytime contact phone number and email address is included in case the ACPT needs to contact the Parish about the submitted paperwork;
- Do not send blank forms to the ACPT for signature;
- The written approval letter from the Regional Archdeacon (or Bishop) will usually be the same letter that has been issued by the Archdeacon (or Bishop) in his capacity as Chairman of the Regional Architectural Panel; and

For Construction Certificate Applications, the completed form (signed by the Applicant) should be send to the ACPT under cover of a letter signed by at least two Wardens requesting that the ACPT sign the Construction Certificate Application.

It should be carefully noted that the neither the signing of a Development Application, nor the signing of a Construction Certificate Application by the ACPT constitutes ACPT approval of the proposed works, or approval for commencement of the proposed works.

For a [section 96 application](#) (modification to an existing development consent) the Parish will need written confirmation from the Regional Archdeacon or Bishop that the proposed changes will not trigger the need for the proposal to be re-considered by the Regional Architectural Panel. Section 96 applications should be prepared and submitted to the ACPT for signature following the same process as the submission of development applications.

Step 5 - the building contract

Contract terms

14. Parish Wardens are responsible for arranging and negotiating building contracts with contractors and suppliers. Regardless of the value of the proposed works, a written contract will be required.

Industry standard building contracts are required, and are available from:

- [Standards Australia;](#)
- [Department of Fair Trading;](#)
- [Housing Industry Association;](#)
- [Master Builders Association;](#) and
- [The Royal Australian Institute of Architects](#)

Advice should be obtained from a suitably qualified and independent architect or solicitor as to the best type of contract to use. Further information can be obtained from the [Department of Fair Trading](#) which can also advise whether a builder is appropriately licensed for the work that is proposed to be undertaken, and whether any charges or complaints have been lodged about a particular builder's work.

It should be noted that an independent solicitor will need to be engaged by the Parish to review the contract and to supply a, "Legal Practitioner's Certificate" to the ACPT. The solicitor acting for the Parish should contact the [Manager, ACPT](#) assigned to your region to discuss the general requirements of the ACPT in relation to building contracts and any specific requirements that may also be applicable to the Parish's project. The ACPT can also supply a pro forma "Legal Practitioner's Certificate" for completion by the parish's solicitor.

15. The terms and conditions of the contract should be read carefully and given due commercial consideration. **Fixed price (often referred to as "lump sum") building contracts are required.** The ACPT Board has determined as a matter of policy that Design and Construction ("D&C") contracts - where the final price is unknown – are not be entered into by the ACPT or Parish Wardens.

[Residential Construction](#)

16. The [Home Building Act 1989](#) requires that all residential building work over \$5,000 that is performed under a contract be insured by the builder. The builder must therefore take out and maintain the following insurance policies before a contract can be signed -

- (a) Home building insurance;
- (b) Builder's all risk insurance;
- (c) Public liability insurance (for a minimum of \$10 million) which notes the interest of the "Anglican Church Property Trust Diocese of Sydney"; and
- (d) Workers' compensation insurance.

Certificates of currency on the letter-head of the builder's insurer are to be provided to the ACPT before contracts can be signed.

Non-residential construction

17. For all non-residential building work a builder must provide insurance for –

- (a) The building work;
- (b) Building materials;
- (c) Public liability insurance (for a minimum of \$10 million) which notes the interest of the Anglican Church Property Trust Diocese of Sydney; and
- (d) Workers' compensation.

Certificates of currency on the letter-head of the builder's insurer are to be provided to the ACPT before the ACPT is asked to sign the building contract.

Defects Liability Period and Contract Security

18. The Board of the ACPT has adopted the following policies for non-residential building contracts -

- (a) The building contract must include a defects liability period of 26 weeks for the building and 52 weeks for the roof); and
- (b) The contract must include a security amount equal to 5% of the GST-inclusive contract sum.

In relation to the above, bank guarantees are the preferred method for providing security. Bank guarantees are to be provided by a major Australian trading bank as per the following criteria –

- Two bank guarantees (BG) should be prepared, each BG being equal to 2.5% of the GST-inclusive contract sum;
- Each bank guarantee is to be unconditional and without expiry date;
- The "favouree" is to be named as, "Anglican Church Property Trust Diocese of Sydney" ABN XX XXX XXX XXX [ABN to be provided by ACPT staff upon written application by an authorised parish representative]

To avoid delays in processing builder progress claims, bank guarantees should be provided to the ACPT before the building contract is signed.

19. It is important that builders be responsible for occupational health and safety matters on that part of the site where the contract works are to be undertaken. Once a contract is signed, a builder will usually erect temporary fences for that part of the site that will be managed by the builder.

To ensure that the builder meets all obligations of an occupational health and safety nature, the ACPT requires that the builder be officially -

- (a) Appointed as the [“principal contractor”](#) for the purposes of Section 210 of Chapter 8 of the [Occupational Health and Safety Regulation 2001](#) (the “Regulation”); and
- (b) Required to erect signs in accordance with [clause 210\(7\)](#) of the Regulation.

Appropriate clauses relating to the above will need to be drafted by the solicitor acting for the Parish, and, negotiated with the builder for inclusion in the contract.

The “principal contractor” clauses are not required to be inserted in contracts where there will not be (or there is unlikely to be) “high-risk construction work” (as defined in the Regulation) or where the cost of work will not exceed (or is unlikely to exceed) \$250,000. For abundant caution, if there is any likelihood of high-risk construction work or the contract sum is almost \$250,000 (and could exceed \$250,000 with approved variations, then the ACPT will still require the appointment of the builder as, “principal contractor”.

[Signing the contract](#)

20. Any contract to be signed by the ACPT is to be prepared in duplicate (or triplicate) and must be an original (due to Copyright laws photocopied contracts cannot be accepted by the ACPT).

All building plans, specifications, consents etc must also be prepared in duplicate (or triplicate) to match the number of contract counterparts (originals) submitted to the ACPT, and noted in the list of contract documents.

To avoid delays, it should be ensured that the builder has signed all counterparts of the contract before the ACPT is requested to sign.

Please see the separate [checklist](#) for contracts to be submitted to the Anglican Church Property Trust Diocese of Sydney

21. If funds already held in trust for the Parish by the ACPT are insufficient to meet the contract price, the wardens must make payments to the ACPT to meet the shortfall (before the contract can be signed by the ACPT. These payments will not be subject to GST, provided that the parish is a member of the [Anglican Church GST Religious Group](#). Payments can be made by cheque or direct bank transfer. Please contact the staff of the ACPT for more information.

Step 6 - administering the contract

22. After the ACPT has signed the contract, one counterpart original will be retained by the ACPT, and the second counterpart will be returned to the Parish for handing to the Builder. In instances where the contract has been prepared in triplicate the remaining counterpart will returned to the architect or parish.

23. All tax invoices must be issued by the builder with the following details –

Anglican Church Property Trust Diocese of Sydney
PO Box Q190
QVB POST OFFICE NSW 1230

- so that the ACPT can claim any available input tax credits on behalf of the Parish. Input tax credits will be returned to the parish client fund held in trust for the parish by the ACPT.

However, it should be carefully noted that all invoices (even though addressed to the ACPT) must be first sent to the Parish so that the Wardens can approve payment by the ACPT. If tax invoices are sent directly to the ACPT by the Builder, a delay in payment will result as the ACPT will still be required to seek approval from the wardens to make the payment.

23. Where the wardens execute a contract for repairs or renovations, all tax invoices must be issued by the builder in the name of the parish or church so that the parish or church can claim any available input tax credits. If the Wardens are making payments directly to the builder they should ensure that they comply with the Australian Taxation Office's requirements regarding GST and Pay-as-You-Go (PAYG) withholding tax. Further information is [attached](#).

24. A [Payment Authorisation](#) form is to be used for all claims sent to the Property Trust for payment or reimbursement.

Variations

25. The need for variations can arise after the signing of the contract and commencement of the project works. Whilst variations can be negotiated by wardens (or the project architect or manager as applicable), *only the ACPT can approve variations*. A proposed variation document should be submitted to the ACPT electronically, by fax or by post, with a request signed by at least two wardens. Please note, however, that the ACPT will be unable to approve the variation unless there are sufficient funds (apart from the original contract sum) held by the ACPT. For this reason, it is recommended that the ACPT be supplied with a project contingency sum of 10% over and above the GST-inclusive contract sum at the time that the ACPT is asked to sign the contract. This will enable the ACPT to deal quickly with any minor variation requests that are submitted.

Contracts where third parties are involved

26. From time to time a parish may propose to allow a third party to undertake building work on parish land. Parish land is owned by the Anglican Church Property Trust Diocese of Sydney (“ACPT”) and held in trust for the purposes of a parish. The building work proposed may include the erection of a new building, the alteration, extension, demolition or relocation of an existing building and / or landscaping, car parking etc. It is important to note that (generally speaking) all building improvements will be held in trust for the parish, not the third party that has paid for those improvements.

A typical example might be where a parish has two halls, one of which is used by a pre-school pursuant to a licence agreement between the pre-school and the ACPT. The pre-school may have approached the parish with a proposal to refurbish the hall, install a new kitchen and toilets and carry out various other minor improvements. Under such circumstances, parish representatives should proceed with extreme caution so that the offer of new facilities does not cloud sound judgement.

Proposals submitted by third parties should be discussed by parish representatives with the [Manager, ACPT](#) assigned to your region before any commitments are made or given. There will be a number of issues specific to each set of parish circumstances that will arise and that will need to be properly addressed before the proposed works can proceed.

Building Works Kit last updated: 21 July 2010

If you have any questions about the Building Works Kit or would like to report any faulty or broken links please email the ACPT at infosec@sydney.anglican.asn.au

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