

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

- (i) From time to time a parish may propose to undertake building work on parish land. Parish land is typically 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 construction of a new building, the alteration, extension, demolition or relocation of an existing building and / or landscaping, car parking etc.
- (ii) 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 encourage 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).

¹A few remaining pieces of parish land are owned by private trustees. To check parish land ownership details, please contact your ACPT Regional Manager.

Steps in undertaking building work

(iii) If a parish wants to undertake building work the following general steps apply:

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(iv) Acting under delegated authority from the Board of the Anglican Church Property Trust Diocese of Sydney, [Wardens have the delegated power](#) to undertake works that are 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 - Approvals

Discuss the matter with the regional Archdeacon or Bishop

1.1 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 following).

Notify the ACPT

1.2 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 to occur. 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).

Obtaining the approval of the regional architectural panel

1.3 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.

1.4 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.

1.5 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.

1.6 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.

Obtain government authority approval(s)

1.7 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 is not considered by the ACPT to 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.

1.8 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. The ACPT is required to sign the statement as legal owner of the property. 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)

1.9 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;
- The written approval of the Regional Archdeacon or Bishop;

- For projects below \$500,000 (GST inclusive) submission of a project cost estimate prepared by the project manager;
- For projects above \$500,000 (GST inclusive) submission of a preliminary cost estimate prepared by a Quantity Surveyor, and
- Wardens to list the proposed funding sources (whether funds held or the intended fundraising).

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 be signed by the ACPT);
- 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.

The ACPT has prepared a [checklist](#) for the lodgement of DA and other Statutory forms with the ACPT for signing.

Step 2 – Preparing and Signing the Contract

The building contract

Contract terms

2.1 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.

Consistent with prudent commercial practice, there is an expectation by the ACPT that a minimum of 2 quotations from reputable, certified, independent tradesmen/consultants will be obtained for all projects in order to benchmark quotations and mitigate the prospect for non market contracts to be entered into.

For contracts involving financial obligations -

- (a) less than \$100,000 (GST inclusive), the wardens can decide whether one or more quotations are obtained before a decision is taken to let a contract,
- (b) between \$100,000 and \$500,000 (GST inclusive), ACPT will require that at least two quotations be obtained before a decision is taken to let a contract, and
- (c) in excess of \$500,000 (GST inclusive), ACPT will require that at least three quotations be obtained before a decision is taken to let a contract.

For contracts in-excess of \$500,000 (GST inclusive), evidence is to be provided in the form of a tender summary that at least three quotations have been obtained. As a risk mitigation measure in addition to the competitive quotations, ACPT requires that a preliminary cost estimate prepared by a quantity surveyor be provided prior to submission of the development application.

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 an "Australian Lawyer'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 "Australian Lawyer's Certificate" for completion by the parish's solicitor.

2.2 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

2.3 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

2.4 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

2.5 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 52 weeks; 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]

Bank guarantees should be prepared and provided to the ACPT before the building contract is signed.

2.6 It is important that builders be responsible for work health and safety matters on that part of the site where construction works are to be undertaken.

To ensure that the builder meets all obligations of a work health and safety nature under *the Work Health and Safety Act 2011 (NSW)* and the *Work Health and Safety Regulation 2011(NSW)* ("**WHS Legislation**"), the ACPT requires that where any "construction work", including "high risk construction work", (as those

terms are defined under the WHS Legislation) is undertaken, the builder:

- (a) agrees that for the purpose of the WHS Legislation, the builder, has the control of the site where construction works are to be undertaken;
- (b) must implement procedures, including the preparation of safe work method statements (if applicable), to identify all risks to the health and safety of any person arising from its use and occupation of the site and activities and in carrying out the construction work at the site and take all necessary steps to minimise those risks;
- (c) must comply with, and ensure that its subcontractors and other persons engaged by the builder comply with, the WHS Legislation;
- (d) must ensure that it does not do anything or fail to do anything that would cause ACPT to be in breach of the WHS Legislation; and
- (e) must immediately notify ACPT of any accident, notifiable incident under the WHS Legislation or injury which occurs at the site.

In addition, where a “construction project” (as that term is defined under the WHS Legislation) is to be undertaken, the builder must also be:

- (f) appointed as the principal contractor for the purposes of the WHS Legislation; and
- (g) authorised to have management and control of each workplace at which construction work is to be carried out and to discharge the duties of a principal contractor under the WHS Legislation.

The builder’s engagement and authorisation as principal contractor is to continue until practical completion of the construction works and while ever any defect rectification, that is construction work, is carried out.

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 the cost of the construction work will not exceed \$250,000. However, for abundant caution, if there is any likelihood the contract sum is almost \$250,000 (and could exceed \$250,000 with approved variations, then ACPT will still require the appointment of the builder as principal contractor.

Please note that we have removed any links to the WHS Legislation and not referred to any particular provisions in the legislation. This is to avoid any issues with changes to the law.

Signing the contract

2.7 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.

Project Funding

- 2.8 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 3 – Project Funding – Contingency

Administering the contract

For contracts under \$500,000 (incl. GST) the ACPT will need to hold funds greater than the contract value (incl. GST) and a contingency sum of 5%. For example a building contract with a value of \$400,000 (incl. GST) will require a \$20,000 contingency sum (being 5% of \$400,000). Thus the ACPT would need to hold a minimum of \$420,000 in trust for the Parish before signing a \$400,000 (incl. GST) building contract.

For contracts over \$500,000 (incl. GST) the ACPT will need to hold funds greater than the contract value (incl. GST) and a contingency sum of 10%. For example a building contract with a value of \$1,000,000 (incl. GST) will require a \$100,000 contingency sum (being 10% of \$1,000,000). Thus the ACPT would need to hold a minimum of \$1,100,000 in trust for the Parish before signing a \$1,000,000 (incl. GST) building contract.

3.1 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 can be returned to the architect or parish.

3.2 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 tax 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 before the payment can be processed.

3.3 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](#).

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

Variations

3.5 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, the ACPT is to be supplied with a project contingency sum of 5% 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

3.6 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 or contributed towards 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.

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 <https://www.sds.asn.au/contact-us>

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