

7 June 1995

Circular to Ministers and Churchwardens

Re: Use of Churches by Other Denominations

Contents	Item
Introduction	1
Approval to Use a Church Building	2
Obtaining Approval	3
Form of Licence Agreement	4
And Finally	5

1. Introduction

The Standing Committee has passed the Use of Church Property Ordinance 1995 (the "Ordinance") which allows for a church or congregation of another denomination which professes the apostolic faith ("Other Church") to use a consecrated or licensed Anglican church building on the terms set out in the Ordinance. The Archbishop has given his assent. A copy of the Ordinance is attached.

The purpose of this circular is to outline the terms on which the Ordinance allows for the Other Church to use an Anglican church building. You may not need the circular now but should you keep it for future reference.

2. Approval to Use a Church Building

The Ordinance provides that the churchwardens of a church may allow the Other Church to use their church if -

- (a) the Archbishop, or an Assistant Bishop on behalf of the Archbishop if authorised by the Archbishop, has approved of that use and, if such approval is conditional, any conditions have been satisfied; and
- (b) a licence agreement (for a term not exceeding 2 years) approved by the Property Trust has been executed by or on behalf of the Other Church which regulates the terms on which the Other Church will use the Anglican church.

The Archbishop has authorised each Assistant Bishop to give the approval referred to in (a) on his behalf and has requested that all applications for approval be made to the Assistant Bishop of the area or region.

3. Obtaining Approval

The procedure for obtaining the Archbishop's approval is prescribed in the Ordinance. In practical terms, that procedure is as follows -

- (a) Where you are asked to permit your church to be used by the Other Church you must discuss the proposal with your area Archdeacon. In particular, the Archdeacon will want information about the basis of the faith of the Other Church.

- (b) An agreement to regulate the terms of the use of the church by the Other Church must be prepared, negotiated with the Other Church and approved by the Property Trust (see item 4 below). Then a copy of the draft agreement must be provided to the Archdeacon.
- (c) The Archdeacon must prepare a report on the basis of the faith of the Other Church and certify that he has a copy of the draft agreement.
- (d) The minister and the majority of the parish council must consent in writing to the proposed use of the church by the Other Church. If there is no parish council the minister and the majority of the churchwardens must approve of that use.
- (e) The report and certificate of the Archdeacon referred to in (c) and the consent referred to in (d) must be sent to the Assistant Bishop.
- (f) The Assistant Bishop will then consider the matter on the Archbishop's behalf. The Ordinance requires that before the Assistant Bishop can approve an application he must be satisfied that the Other Church professes the Christian faith in the way which is consistent with the 39 Articles of Religion. As noted in item 2(a), the Assistant Bishop may issue an approval which is subject to conditions.
- (g) If the Assistant Bishop gives approval on the Archbishop's behalf, the licence agreement referred to in item 2(b) should then be executed by or on behalf of the Other Church.

The Archbishop-in-Council has power to make guidelines relating to the use of an Anglican church by the Other Church. No such guidelines have yet been made.

4. Form of Licence Agreement

The parish must obtain specific legal advice in the preparation of a suitable licence agreement and it is reasonable to ask the Other Church to agree to reimburse the parish for the reasonable cost of that advice. To assist parishes, the Property Trust has approved a proforma licence agreement, a copy of which is attached. It is suggested that parishes and their legal advisors use the proforma agreement although amendments may be necessary in the particular circumstances. If the proforma agreement is to be amended, the amendments must be approved by the Property Trust before a copy of the draft agreement is provided to the Archdeacon (see item 3(b)).

The Property Trust has confirmed its policy that it requires all licence agreements forwarded to it for execution to be accompanied by a certificate from a solicitor stating that the document is in order for execution by the Property Trust.

5. And Finally

The procedure under the Ordinance means that it is not necessary for an ordinance to be promoted each time it is proposed that an Anglican church be used by a church or congregation of another denomination. It is still open for a parish to promote a specific ordinance to allow another denomination to use a church if the proposed use is not permitted by the Ordinance.

Please contact me on (02) 265-1558 if you have any questions.

Kind regards

MARK PAYNE
Legal Officer
Sydney Diocesan Secretariat

Use of Church Property Ordinance 1995

No 4, 1995

Long Title

An Ordinance to provide for the use of an Anglican church building by a church of another denomination for a purpose of that church.

Preamble

Whereas

A. Section 32B of the Trust Property Act confers power upon the Synod to provide, by ordinance, for the use of church trust property by a church of another denomination (which is therein defined to include any unit of that church however designated or a body established by that church or a unit, including a body of persons worshipping regularly at a place according to the rites of that church), for a purpose of that church.

B. The power of the Synod under section 32B has been delegated to the Standing Committee under section 40 of the Trust Property Act.

C. It is appropriate to provide for the use of a church building by a church of another denomination for a purpose of that church.

Now the Standing Committee of the Synod of the Diocese of Sydney Ordains as follows -

Citation

6. This ordinance may be cited as the "Use of Church Property Ordinance 1995".

Definition and Interpretation

7. In this ordinance -

"Church Building" means a building or a part of a building of a parish duly consecrated or licensed for the celebration of divine service; and

"Other Church" means -

- (a) a church of another denomination which professes the apostolic faith; or
- (b) any unit of a church referred to in (a) however designated; or
- (c) a body established by the church referred to in (a) or a unit of such a church.

8. (1) Terms which are used in this ordinance and which are not defined have, unless the contrary intention appears, the same meaning as in the Church Administration Ordinance 1990 or the Church Grounds and Buildings Ordinance 1990.

(2) The Interpretation Ordinance 1985 applies.

Use of Church Buildings by Other Denominations

9. The churchwardens of a Church Building may permit the Other Church to use that Church Building for the purposes of that Other Church if -

- (a) the Archbishop, or an Assistant Bishop on his behalf if so authorised by the Archbishop, has approved such use and any conditions of that approval have been fulfilled; and
- (b) an agreement in the form of the draft agreement referred to in paragraph (d) of subclause 5(1) has been executed by or on behalf of that Church. Any such agreement must not authorise the use of a Church Building for a term exceeding 2 years.

Approval of the Archbishop or an Assistant Bishop

10. (1) The Archbishop, or an Assistant Bishop on his behalf if so authorised by the Archbishop, may only approve the use of a Church Building by the Other Church if -

- (a) the minister and the majority of the parish council (if any) or if no parish council a majority of the churchwardens of the parish in which the Church Building is situated consent in writing to that use;
- (b) the Archbishop, or such Assistant Bishop, is satisfied that the Other Church professes the christian faith in a way consistent with the 39 Articles;
- (c) the Archdeacon has reported on the basis of faith held by the group seeking use of a Church Building; and
- (d) the Archdeacon is in possession of a copy of a draft agreement relating to such use in a form approved by the Property Trust;

and he has notified the Standing Committee of his action.

(2) An approval under subclause (1) must be communicated in writing to -

- (a) the minister and the parish council (if any) of the parish in which the Church Building is situated; and
- (b) the Property Trust.

(3) An approval under subclause (1) may be given subject to such conditions as the Archbishop, or the Assistant Bishop, as the case may be, considers appropriate.

Archbishop-in-Council may make Guidelines

11. The Archbishop-in-Council may, from time to time, make guidelines not inconsistent with this ordinance relating to the use of a Church Building by the Other Church.

Lapsing of Ordinance

12. This ordinance lapses on 31 December 2000, but so as not to prejudice any agreement approved under its provisions.

I Certify that the Ordinance as printed is in accordance with the Ordinance as reported.

K.H. Handley
Deputy Chairman of Committees

I Certify that this Ordinance was passed by the Standing Committee of the Synod of the Diocese of Sydney on 27 February 1995.

W.G.S. Gotley
Secretary

I Assent to this Ordinance.

R.H. Goodhew
Archbishop of Sydney
10/3/1995

Licence Agreement for the use of an Anglican Church by Another Denomination

This Agreement is made on _____ 19 _____ between the following parties -

1. **Anglican Church Property Trust Diocese of Sydney** of 2nd Floor, St Andrew's House, George Street, Sydney NSW 2000 ("ACPT"); and
2. **[Name of Licensee]** (A.C.N. *Insert A.C.N. if Licensee is a company*) of [*Insert address details*] ("the Licensee").

Recitals

- A. ACPT is the registered proprietor of the Property on which the Church is situated.
- B. The Licensee has requested that ACPT grant a licence to the Licensee to permit the Licensee to use the Church, the Services and the Access Way.
- C. ACPT has agreed to grant a licence on the terms set out in this agreement.

In consideration of, among other things, the mutual promises contained in this agreement, it is agreed between the parties as follows -

Definitions

1. In this agreement unless the context otherwise requires -
 - "Access Way" means the pathway designated by the Churchwardens as the route by which the Licensee and the Licensee's Employees and Visitors may have access to the Church and to the Services.
 - "Church" means [*Insert details of building*] erected on the Property.
 - "Churchwardens" means the churchwardens from time to time of [*Insert Name of church*] Anglican Church [*Insert name of Suburb in which church is situated*].
 - "Commencement Date" is [*Insert commencement date*].
 - "Expiry Date" that day being 2 years from the Commencement Date or such earlier date as the Licence may be terminated under this agreement.
 - "Licensee's Employees and Visitors" means each and every of the Licensee's employees, agents, visitors and invitees who may at any time be in or upon the Church or upon the Property.
 - "Licence" means the licence granted by ACPT to the Licensee under clause 2.
 - "Licence Term" means the period commencing on the Commencement Date and expiring on the Expiry Date.
 - "Month" means calendar month.
 - "Permitted Use" means worship according to the rites of the [*insert description of other denomination*].
 - "Property" means the land comprised in certificate of title [*Insert title details - can be obtained from the Property Trust*].
 - "Services" means the tearooms, washrooms, toilets and other services designated by the Churchwardens as being available for use by the Licensee and the Licensee's Employees and Visitors.

Grant of licence

2. (1) ACPT grants to the Licensee and the Licensee accepts from ACPT a licence to enter and use the Church and the Services between the hours of [*am/pm*] and [*am/pm*] on each [*Sunday*] during the Licence Term on the terms set out in this agreement.

(2) ACPT agrees to permit the Licensee and the Licensee's Employees and Visitors to use the Access Way for the purpose only of ingress and egress from the Church and the Services.

(3) The Licensee may, subject to the direction of the Churchwardens, use the following property situated in the Church in conjunction with the Permitted Use -

- (a) [prayer books]
- (b) [bibles]
- (c) [musical instruments (eg. the organ)]
- (d) [other ?]

Licence constitutes personal right only

3. The Licensee has a personal right of use of the Church, the Services and the Access Way on the terms specified in this agreement and has no interest in the Property. The legal right to possession and control over the Church, the Services and the Access Way remains vested in ACPT throughout the Licence Term.

Contribution to Expenses

4. The Licensee must pay to ACPT, within 14 days of request by ACPT or the Churchwardens on behalf of ACPT, such amounts as ACPT or the Churchwardens on behalf of ACPT may determine as being the Licensee's reasonable contribution toward -

- (a) the costs of electricity consumed in the Church and the Services;
- (b) the costs of excess water charges for water used in the Church and the Services;
- (c) the costs of cleaning the Church and the Services; and
- (d) the costs of maintaining the Church and the Services in good order and repair.

Bond

5. On or before the Commencement Date the Licensee will pay to the Churchwardens by way of bond, the sum of [*Insert amount of bond*]. If the Licensee is in breach of its obligations under this agreement ACPT will be entitled to apply all or part of the amount of such bond to rectify such breach or to compensate ACPT for the loss suffered as a result of that breach.

Goods and Services Tax ("GST")

6. (1) If GST is payable by ACPT in respect of a supply made under this Licence -

- (a) the Licensee must pay the amount of the GST to ACPT at the same time the Licensee pays for the supply; and
- (b) the amount paid for the supply must be exclusive of the amount of GST paid in respect of the supply.

(2) In this clause -

'GST' means a tax on the value of a supply imposed by the Commonwealth or State Governments and payable during all or any part of the term of the Licence.

'supply' means the supply of goods services or other items.

Undertakings by Licensee

7. The Licensee agrees and undertakes that -

- (a) the Licensee will use the Church for the Permitted Use only and for no other purpose;
- (b) the Licensee will not use the Services or cause them to be used for any purposes other than those for which they were constructed;
- (c) the Licensee will not do or permit anything to be done in the Church which is unlawful or immoral;
- (d) the Licensee will not use or permit the Church to be used for the purposes of "public entertainment" within the meaning of the Local Government Act 1993;
- (e) the Licensee will not do anything which may imperil any insurance effected in respect of the Church or Services or any building of which the Church or Services may form part;
- (f) the Licensee will not damage or alter the Church or its furniture or fittings in any way and will at the Licensee's own cost make good any defect or damage to the Church or any other building on the Property caused by the misconduct, neglect, default or breach by the Licensee or the Licensee's Employees and Visitors; and

- (g) the Licensee will not permit or suffer any of the Licensee's Employees and Visitors to do any act, matter or thing which would be in breach of paragraphs 7(a) to (f).
8. The Licensee further agrees and undertakes -
- (a) the Licensee will cause all doors and other means of access to the Church and Services to be securely fastened on all occasions when the Church and Services are not being used by the Licensee;
 - (b) the Licensee will remove from the Church any property belonging to the Licensee leaving the Church clear and available for use by other persons on days or times when the Church is not permitted to be used by the Licensee;
 - (c) the Licensee will promptly give notice to ACPT of any accident to or defect or want of repair in any services to or fittings in the Church or the Services and of any other circumstances likely to cause any danger, risk or hazard to the Church, the Services or any person; and
 - (d) the Licensee will, on or before the Expiry Date, return all keys which it may have to the Church and the Services to the Churchwardens.
9. If by reason of the Licensee's use of the Church, the Property or any part thereof becomes liable to rating under the provisions of the Local Government Act 1993 or any Act replacing the same, the Licensee will within 7 days of notice from ACPT, pay to ACPT an amount equal to the rates assessed on the Church, the Property or part thereof in any rating year or part thereof during the Licence Term.

Indemnity

10. The Licensee agrees to use the Church, the Services and the Access Way at the risk of the Licensee and releases ACPT, to the full extent permitted by law, from all claims and demands of every kind in respect of, or resulting from, any accident, damage, theft, injury or death occurring in or on the Church, the Services or the Access Way for which ACPT is or could become legally liable. The Licensee indemnifies ACPT against all actions, claims, demands, losses, damages, costs and expenses for which ACPT shall or may be liable in respect of or arising from the use by the Licensee or the Licensee's Employees and Visitors of the Church, the Services or the Access Way.

Licensee to effect insurances

11. (1) The Licensee must obtain and keep current during the Licence Term the following insurance policies -
- (a) a public liability insurance policy for an amount in respect of any single accident or event of not less than \$5,000,000 or such greater amount as ACPT may require relating to the Church, the Services and the Access Way indemnifying the Licensee in respect of the indemnity given by the Licensee to ACPT under clause 10 of this agreement; and
 - (b) where the Permitted Use includes any form of counselling or preschool/kindergarten/child care centre, a professional indemnity insurance policy for an amount in respect of any single claim of at least \$2,000,000 or such greater amount as ACPT may require in respect of any advice given by the Licensee or activities directed by the Licensee in or on the Church.
- (2) The policies shall be with a reputable insurance office or company. The Licensee must provide to ACPT, within 7 days of request, a copy of the policies effected pursuant to this clause and a certificate of currency in relation thereto.

Termination of agreement

12. (1) If any moneys payable by the Licensee to ACPT under this agreement remain unpaid for more than 14 days after the date on which such moneys ought to have been paid, or if the Licensee commits, permits or suffers to occur any breach or default in the due and punctual performance of any other provision of this agreement, and where such breach or default is capable of rectification such breach or default is not rectified within 28 days of notice from ACPT requiring such rectification, ACPT may at any time thereafter terminate the Licence agreement by giving notice of termination to the Licensee.
- (2) The Licensee may terminate this agreement at any time by giving 28 days written notice to ACPT.

No Liability

13. No liability shall attach to a party by reason of the termination of the Licence pursuant to clause 12 but such termination is without prejudice to the rights of a party in respect of any breach or non-observance of any provision of this agreement by the other party occurring before such termination.

Notices

14. Any notice required or authorised to be given or served upon a party must be in writing and be signed by the party giving the notice. Such notice may be given by facsimile, post or hand to that party at its address or facsimile number appearing below or such other address or facsimile number as that party may notify to the other in writing -

- (a) If to ACPT -

c/- The Churchwardens
Anglican Church
[insert address]

with a copy to -

The Secretary
Anglican Church Property Trust Diocese of Sydney
PO Box Q190
QVB POST OFFICE NSW 1230
Facsimile: (02) 9261 4485

- (b) If to the Licensee -

c/- [*Insert address*]

15. Any notice will be deemed, in the absence of proof to the contrary, to have been received by the party to whom it was sent -

- (a) in the case of hand delivery, upon such delivery;
(b) in the case of prepaid post, 2 business days after the date of posting; and
(c) in the case of facsimile transmission, at the time of dispatch provided that the recipient confirms in writing that the notice has been received.

16. A notice shall be deemed to have been duly signed by ACPT if signed by a member of the board, the secretary or assistant secretary of ACPT or by any two of the Churchwardens.

Entire Agreement

17. This agreement contains the entire agreement between the parties and will not be amended or supplemented except in writing signed by each of the parties.

Assignment

18. The Licensee may not assign its rights under this agreement without the prior written consent of ACPT.

Costs, Taxes and Duties

19. The Licensee will pay the reasonable costs of ACPT in the preparation and execution of this agreement (including all reasonable legal costs) and will pay all taxes and duties to which this agreement may be subject.

Executed by the parties as an agreement -

Signed for and on behalf of
Anglican Church Property Trust Diocese of Sydney
by its attorneys in the presence of -

Attorney _____

Witness

Attorney

Name (please print)

Signed for and on behalf of
the Licensee by its attorney
in the presence of -

Witness

Attorney

Name (please print)

Name (please print)

The common seal of the
Licensee was affixed by
authority in the presence of -

Director/Secretary
(cross out which is not applicable)

Director

Name (please print)

Name (please print)