

Church Grounds and Buildings Ordinance 1990 Amendment Ordinance 1996

Explanatory Statement

Introduction

1. This bill is at the second reading stage, the first reading having occurred at the 3rd session of the 43rd Synod. The bill was deferred to the first session of the 44th Synod under Standing Order 53(2).

2. The report ("Report") on resolution 37/94 Legal Responsibilities and Liabilities re Columbaria (set out on pages 396 to 399 inclusive of the 1996 Year Book) indicates that problems may arise when a columbarium is erected on church trust property especially if the terms and conditions upon which ashes and memorials are placed in columbaria are poorly documented.

Long Term Arrangements

3. Arrangements relating to columbaria are generally long term, commonly for an indefinite period. As the Report indicates the existence of a columbarium on church land can have a significant impact on the ability to develop, sell or otherwise deal with the land in future. The Property Trust considers that it is undesirable that the use of church property be fettered in this way. Even well documented arrangements allowing for the sale or development of the land are problematic: the value of the land may be reduced and future generations of churchwardens are left with the difficult problem of moving or returning ashes or plaques.

Purpose of the Bill

4. The bill seeks to amend part 7 of the Church Grounds & Buildings Ordinance 1990 to include a new clause 14B which will allow the erection of columbaria on church land and the placing of ashes in a columbarium on such land where, in each case, the land is a burial ground and comprises a separate lot in a plan registered with the Land Titles Office.

5. Land used as a burial ground is, by reason of that fact, set apart for long term specific usage and so the argument that a columbarium restricts the use of the land upon which it is erected does not apply with the same force if such land is a burial ground. The requirement for the land to be a separate lot will ensure that the erection of the columbarium will not inhibit a future dealing with the other church land.

6. Further, the Property Trust believes that the placing of ashes in a columbaria is a form of interment of the remains of a deceased person and as such should be interred only on land set aside by trust and consecrated specifically as a burial ground. The bill will also amend the trusts of church land being used as a burial ground to enable a columbarium to be built upon that land.

7. There is another purpose in ensuring that columbaria are built on burial grounds. Burial grounds generally have standard rules and regulations which can easily be amended or supplemented to provide the necessary conditions for a columbarium. Many rules and regulations for burial grounds would be immediately applicable to columbaria. Therefore if columbaria are erected on burial grounds it is more likely that the terms and conditions for the use of the columbarium will be clear and unambiguous. New clause 14C gives the Archbishop and the trustees of land on which a columbarium is erected the power to make regulations about columbaria.

8. Additionally, the rules and regulations would become the standard "agreement" for existing columbaria, unless a specific licence agreement was produced by the churchwardens. The rules and regulations could be amended to provide for the moving of existing columbaria under certain circumstances eg development or sale of the church land.

Terms of the Bill

9. It is proposed that clause 14 of the Church Grounds and Buildings Ordinance 1990 (the "Principal Ordinance") be expanded and divided up into clauses 14, 14A, 14B and 14C.

10. The first half of clause 14(1) of the Principal Ordinance provides a definition. The definitions have been expanded and are contained in the new clause 14.

11. The second half of the existing clause 14(1) and 14(2) are included as the new clause 14A with minor editing.

12. Columbaria have been specifically provided for in clause 14B, which is worded in a similar way as for burial grounds in clause 14A.

13. The existing clause 14(3) has been expanded to provide for columbaria and is shown as the new clause 14C. Clause 14C(2) specifically provides for existing columbaria which have been erected on land which is not a burial ground at present.

14. The amendments to clause 14 of the Principal Ordinance are expressed to apply on and from 1 December 1995 although will be subject to any legally binding arrangements made before that time. By reason of the deferral of the bill from the third session of the 43rd Synod, this date should be amended during the Committee stage.

Recommendation

15. The Property Trust recommends that the Synod pass the bill as an ordinance.

For and on behalf of Anglican Church Property Trust Diocese of Sydney

MARK FRANCIS
Secretary

30 August 1996