

Anglican Church Property Trust Diocese of Sydney (“ACPT”) Leasing and Licensing Policy

Name of Policy

1. This policy is the ACPT Leasing and Licensing Policy.

Commencement of Policy

2. This policy is effective 17 November 2017, as amended from time to time by the ACPT Board.

Delegation

3. SDS management is authorised to execute a lease¹ or licence agreement under power of attorney pursuant to the terms of this policy.

Scope of Policy

4. A proposed lease or licence agreement will fall within the scope of the ACPT Leasing and Licensing Policy if:
 - a) it is any form of lease (regardless of the rent amount); or
 - b) it is an ACPT standard form licence agreement (regardless of the licence fee amount) for children’s services or counselling services or similar services; or
 - c) it is any other type of ACPT standard form licence agreement with a licence fee that it is over \$50,000 per annum;

- and if the Conditions Precedent in this policy have been satisfied.
5. Residential Tenancy Agreements are generally excluded from this policy, noting that Residential Tenancy Agreements will be entered into by real estate agents appointed by the ACPT on behalf of parishes (refer appointment of real estate managing agent in this policy).
6. All licence agreements that do not fall within the scope of this policy can be signed by parish wardens subject to the requirements of the Parish Administration Ordinance 2008.

Conditions Precedent

7. The following documents and requirements are the Conditions Precedent for a proposed Lease or Licence Agreement.
 - a) *Current trust instrument* authorising the execution of a lease or licence agreement, i.e., a ‘Master Trust ordinance’² or Will with current leasing or licensing authority.
 - b) *Parish Council Consent* signed by a majority of the parish Council of the parish.
 - c) *Australian Lawyer’s Certificate* (not required for ACPT standard form licence agreements) supplied by the Australian Lawyer acting for the parish/ACPT, noting that all legal/related costs are to be met by the parish.
 - d) Valuation provided by a registered, independent valuer.
 - i. For valuations involving children’s services, the valuation is to be provided by a registered independent Valuer with experience in the child care sector. The Valuer is to be provided with the following information:
 - (a) whether it is for a licence or lease; and
 - (b) Whether the mode of operation of the centre is:
 - a preschool operated short day and up to 40 weeks of the year (school

¹ In this policy a reference to a “lease” also includes an “agreement to lease”.

² A parish ‘Master Trust’ ordinance or specific leasing ordinance may provide a specific leasing power, but in the absence of such an ordinance, the leasing powers contained within the *Anglican Church Property Trust Diocese of Sydney Ordinance 1965* will suffice for execution of residential tenancy agreements and all licensing agreements, but not other leases (for which a leasing ordinance power will be required).

- terms only) and part of parish outreach
 - a preschool operated short day and up to 40 weeks of the year (school term only) and operated by third party not related to the parish outreach
 - a child care operation long day up to 50 weeks per year and part of parish outreach
 - child care operation long day up to 50 weeks per year and operated by third party to the parish.
- ii. For all other valuations not involving children's services, the valuation is to be provided by registered independent Valuer with experience in the relevant sector.
- iii. A copy of the existing/proposed type of licence or lease is to be provided, along with that being changed or proposed.
- iv. Valuer to provide the market value of the licence or lease based on the proposed term, noting that for the proposal to proceed, the fee or rent is equal or greater than the market valuation.
- v. All agreements are to reflect a minimum increase per year of Sydney CPI or set % (equal or greater than CPI) during the term of the agreement.
- vi. Special Considerations
 - (a) The Head of Parish Property is authorised to approve the fee or rent up to 10% below market value subject to any such approvals being reported to the ACPT Board at its next meeting.
 - (b) The ACPT Board will consider departures to this paragraph of the Policy for requests from parish councils seeking approval of rental or licence fees that are greater than 10% below the assessed market rental/licence fee if there are extenuating and compelling local circumstances. Details of such circumstances should be in writing, endorsed by the Regional Bishop or Assistant to the Bishop and appended to the parish council consent to the Lease/Licence agreement.
 - (c) Circumstances that may be taken into consideration include, but are not limited to: the lessor/licensee being a not for profit organisation such as an incorporated association, company limited by guarantee; the involvement of the parish in the management committee of the lessee/licensee; joint activities between the parish and lessee/licensee; opportunities for evangelism being taken by the parish with the families attending the lessee/licensee centre.
 - (d) If these circumstances are approved, the parish can charge a fee or rent less than market value, but the lease or licence should show the market value, the rebate given and the amount being charged.
- vii. Change of Licensee / Lessee
 - (a) Where the business of the licensee/lessee centre is to be sold, the rent/licence fee will revert to the market value plus CPI on assignment of, or granting of a new lease/licence. Should the parish wish to apply a rebate to the new business owner, approval must be requested from the Head of Parish Property as per 7(d)(vi)(a).
 - (b) All agreements are to reflect a review of the licence fee and terms subject to a proposed change in licensee and/or lessee, to ensure that the return for the use of the premises are reflective of the nature of the use.
 - (c) A change from a parish operated preschool to a long day care commercial operator will require commercial terms of the licence or lease to be amended.
 - (d) Where a business is sold, the rent/licence fee **may** be varied at that time as a condition of the assignment of lease, or the grant of a new licence, and it may be varied to be the market rate. A lease/licence is to include a requirement enabling the parish to vary the rent/licence fee in the event that the Business is sold. This will be at the discretion of the parish taking into account the circumstances of the Purchaser (for example, commercial operator vs parish ministry). Where the purchaser of the business is another not for profit organisation, the parish should consider varying the rent/licence fee to be the market rate in any event as the purchaser may still be paying a market price for the purchase of the business.

(e) The new agreement must include a ratchet clause.

e) *Written approval* of the Regional Bishop or Assistant to the Bishop.

f) *Security* – bank guarantee provided to the ACPT on the following terms:

- i. favouree named as, “Anglican Church Property Trust Diocese of Sydney”;
- ii. appropriate ABN for ACPT used;
- iii. unconditional and without expiry date;
- iv. for an amount no less than three month’s rent or licence fee; and
- v. issued by a major Australian banking institution;

noting that a bank guarantee is not required for–

- residential tenancy agreements (where the security will be a bond lodged with the NSW Department of Fair Trading) or
- counselling services operating on an infrequent and irregular basis; and

also noting that the requirement for a bank guarantee may be waived by the Chair of ACPT upon the recommendation of the Head of Parish Property.

g) *Leasing period* – the leasing period (including options to renew) is not to exceed 20 years unless approved by resolution of the ACPT Board. For licence agreements the licensing period is not to exceed 5 years. Options to renew are not to apply to licence agreements.

h) *Insurance Certificates of Currency* on the issuing insurer’s letterhead for –

- minimum \$10,000,000 public liability; and
- minimum \$2,000,000 professional indemnity (required for childcare centres, preschools, long day care centres, other children’s services, counselling services or similar services).

Administration of Leases and Licences - Appointment of Real Estate Managing Agent

8. Unless otherwise agreed by resolution of the ACPT Board or specifically authorised by ordinance, a real estate managing agent is required to be appointed by the ACPT for all leases unless waived (at the discretion of the Chair or Deputy-Chair of the ACPT on recommendation of the Head of Parish Property) that are executed by the ACPT.
9. Amendments are required to be made to management agency agreements, where the deletion of any clause allows the agent to extend a lease (or licence agreement) on the owner's behalf.
10. Where required by ordinance, or where there is more than one lease or licence income beneficiary, all lease and licence income is to be paid to the ACPT on a monthly basis, less (if applicable) the managing agent’s fee and (if applicable) approved expenditure incurred by the managing agent. The ACPT will cause distributions to be made in accordance with the relevant trust instrument. Unless required by ordinance, or resolution of the ACPT Board, rent from residential tenancy agreements, and, lease/licence income under \$50,000 per annum (for each lease/licence agreement) is not required to be paid to the ACPT and can be paid monthly directly to the parish wardens.

Leasing or Licensing for Diocesan Organisations

11. Where the ACPT is proposed to be the lessor or licensor of land on behalf of a diocesan organisation, this ACPT Leasing and Licensing Policy still applies, except in lieu of Parish Council Consent, the Chief Executive Officer (or equivalent position) of the diocesan organisation is to provide written evidence, to the satisfaction of the Head of Parish Property, that the proposed lease or licence agreement has been approved by the governing board or committee of that organisation.

Leasing of residential properties

12. Vacant parishes may want to lease out their rectory in situations where the acting rector does not require accommodation and the nomination process is expected to take a substantial length of time. There may also be other circumstances when a residence is not required to accommodate parish ministry staff.
13. Relying on its powers under the *Anglican Church Property Trust Diocese of Sydney Ordinance 1965*, the ACPT will waive the requirement for a current trust instrument authorising the lease (residential tenancy agreement) of a residence for a maximum period of 12 months subject to a leasing or 'Master Trust' ordinance being promoted by the parish to authorise any ongoing lease of the rectory.

Review of Policy

14. Unless reviewed earlier, this policy is to be reviewed by the ACPT Board every 5 years.

Note: This policy was reviewed and amended by the ACPT Board on 17 November 2017.

Effective	17 November 2017
Revised	
Review Date	Due 2022