



16 March 2023

Mr David Ford
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By email: dford@codea.com.au

Dear David

BRIEF TO ADVISE

St Mary and St Mina’s Coptic Orthodox College: Section 83C of the Education Act 1990 (NSW)

Thank you for taking my call and initial enquiry on 14 March 2023. The New South Wales Coptic Orthodox Board of Education (the Board) seeks advice on the legal implications, problems, concerns and issues that may arise from a proposal for a not-for-profit independent school to hand back a building that it has occupied for twenty-four years.

Specifically, advice is sought in relation to whether the proposal offends section 83C of the *Education Act 1990 (NSW)*.

Please provide a written costs disclosure (or estimate) of your professional services before commencing work on the advice.

BACKGROUND AND OBSERVATIONS

The following observations set out the background and context of the advice that is being sought by the Board.

1. The NSW Coptic Orthodox Board of Education Ltd (ACN 629 636 906) is a company limited by guarantee. The Board is charged with the task of overseeing the educational ministry of the Coptic Orthodox Church in the Diocese of Sydney and its Affiliated Regions.
2. The Board oversees two schools in NSW. The subject of this advice is St Mary and St Mina’s Coptic Orthodox College (the College) which operates through a separate Company limited by Guarantee (ACN 088 941 913).
3. The College is a co-educational K-12 Christian College in the Coptic tradition.
4. The preamble to the College’s constitution provides that the College “...*was founded in 1999 by its affiliated Church committee for the purpose of encouraging young children to mature into young adults equipped with the knowledge of Christ*”. Attached and marked with the letter **A** is a copy of the College’s constitution.

5. Established in 1969, St Mary & St Mina's Church (the Church) was one of the first Coptic Orthodox Churches outside of the Nile Valley. That Church was located at 24A – 32 Railway Road, Sydenham.
6. Significantly impacted by the aircraft noise that came about from being under the flight path of the third runway at Sydney airport, the Church was provided assistance in the mid-1990s by the Commonwealth Government as part of the Sydney Airport Noise Amelioration Program.
7. On 5 August 1996, the Commonwealth and the Coptic Orthodox Church (NSW) Property Trust entered into a deed on the following relevant terms:
 - a. The Commonwealth agreed to acquire with the Church a site at 339 – 377 Forest Road Bexley from the NSW Department of Education and Training.
 - b. The property was purchased in joint names with the Commonwealth and the Coptic Orthodox Church (NSW) Property Trust being tenants in common.
 - c. The acquisition of the Bexley site was conditional upon the Church obtaining approval from the local council to a development application and to the rezoning of the Bexley site.
 - d. Upon completion of the new Church and the renovation of the existing buildings on the Bexley site, the Commonwealth agreed to transfer its share as tenants in common in the Bexley site to the Church for \$1.00 and the Church agreed to transfer the Sydenham site to the Commonwealth for \$1.00.
8. Annexed and marked with the letter **B** is a copy of the Deed entered into between the Commonwealth and the Coptic Orthodox Church (NSW) Property Trust on 5 August 1996.
9. Annexed and marked with the letter **C1** and **C2** is a copy of the Development Application and a copy of the Plans approved by Rockdale Council on 2 December 1997.
10. At the time of the purchase, the Bexley site comprised of four buildings including an old school heritage building which was previously used as a public school.
11. The Church which is now known as St Mary and St Mina's Coptic Orthodox Cathedral (the Cathedral) relocated to the Bexley site in 2001 upon completion of the new Cathedral building.
12. Since its foundation in 1999 the College has occupied part of the site at 339 – 377 Forest Road Bexley. As at the date of this brief the primary campus of the College occupies two buildings on the Bexley site. The first is best described as the old heritage building and existed on the Bexley site at the time of the purchase of the site. The second building is referred to in this brief as the new school building and it was built as part of the Building Education Revolution.
13. The occupation by the College of the heritage building is as a tenant, however, this relationship was and has never been formalised by way of a rental agreement. Rent has never been paid by the College to the Cathedral, however, the College pays for an agreed of the cost of utilities.

14. Over the twenty-four years that the College has occupied the heritage building, the College had reason to invest money in the maintenance and upkeep of the building for College purposes. In the period between August 2017 and January 2021 approximately \$375k was spent on things such as blinds, projectors, whiteboards, flooring, CCTV cameras, air-conditioning, carpentry, lighting, and internal partitions.
15. In 2011 the College opened a three-storey building which is referred to in these observations as the new school building. The new school building was funded by the Commonwealth under the Nation Building and Jobs Plan.
16. On 1 March 2023 the Board received a correspondence signed by the Secretary of the Cathedral's Parish Council. The Cathedral requested that the College return the old heritage building and relocate the primary school operation to the new school building. Annexed hereto and marked with the letter **D** is a copy of the correspondence dated 1 March 2023.

It is against this background that advice is sought in relation to whether the Cathedral's request offends section 83C of the *Education Act 1990* (NSW), and if there are any problems, concerns and issues that may arise from the proposal for College to hand back the Cathedral's building which it has occupied for the last twenty-four years.

Should you require any additional information or material please do not hesitate to contact me on 0437 391 442.

Yours sincerely



Ross Nassif
Chair
NSW Coptic Orthodox Board of Education