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| Board Meeting: November 2017 | Agenda Number: 10 (i) | Record No: ED17/6260 |
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LORD HOWE ISLAND BOARD

Business Paper

OPEN SESSION

ITEM

Administration of the Estate of the Late E.M.s Shick – Perpetual Leases 1992.01 and 1993.03

RECOMMENDATION

It is recommended that the Board seek the Minister's approval for John Whitfield as the Executor of the Estate of the Late Eleni May Shick to hold perpetual lease 1992/01 until 17 May 2019 to enable completion of the administration of the leasehold affairs of the estate.

BACKGROUND

Prior to her passing in February 2017, the Late Mrs Shick held two Perpetual leases, numbers 1992.01 (the "Top House") and 1993.03 ("Blackburn House"). An application has been received from Mr John Whitfield, as executor of the Estate, to hold Perpetual lease 1992/01 to enable completion of the administration of the estate. Mr Whitfield also states that Perpetual lease 1990.03 will be transferred directly to the beneficiaries hence there is no need for the executor to hold the lease for an extended period. A copy of this letter is attached at Tab A. A copy of the Grant of Probate of the Will of the Late Mrs Shick naming Mr Whitfield as Executor and dated 17 May 2017 has been provided and is attached at Tab B.

It is anticipated that the forms required for direct transfer of Perpetual lease 1990.03 to the beneficiaries will be lodged in due course and this transfer will be considered separately from the transfer of Perpetual lease 1992.01 into the executor's name.

CURRENT POSITION

Section 23 of the Lord Howe Island Act ("the Act") governs the transfer of perpetual leases, with subsections (10) to (13) dealing with the transfer of leases the subject of a will or intestacy.

Section 23(10)(a) provides that "*If a lease under this Act devolves under a will or intestacy upon any person, such person may hold the lease for such period after the death of the testator or intestate as the Minister on the recommendation of the Board may permit.*"

The effect of section 23(10)(a) of the Act is to limit the period that the executor of an estate may hold leases previously held by the deceased.

Section 23(10)(b) of the Act provides that during the time that the Minister permits the executor to hold the lease, the executor may either:

- apply to the Board to obtain a certificate from the Minister that they are entitled to hold the lease; or
- sell or transfer the lease.

It should be noted that Section 23(10)(d) provides that if, during the period the Minister permits the executor to hold the lease, the executor neither obtains a certificate from the Minister that they are permitted to hold the lease nor transfers the lease, the lease shall be liable to forfeiture.

The Act does not stipulate the period of time the Minister may approve an executor of an estate to hold a perpetual lease or leases. The Board's "Transfer of Perpetual Lease Policy" recommends that "*a maximum of 2 years from the date of probate as a reasonable period of time to enable an executor to either apply to the Board for a certificate from the Minister that the beneficiary is entitled to hold the lease or to sell and transfer the lease*".

RECOMMENDATION

It is recommended that the Board seek the Minister's approval for John Whitfield as the Executor of the Estate of the Late Eleni May Shick to hold Perpetual lease 1992/01 until 17 May 2019 to enable completion of the administration of the leasehold affairs of the estate.

Prepared: James Lonergan, Manager Environment & Community Services

Endorsed: Penny Holloway, Chief Executive Officer

Attachments:

Attachment A: Letter from John Whitfield dated 18 September 2017 (CONFIDENTIAL)

Attachment B: Probate of the Will dated 17 May 2017 (CONFIDENTIAL)