

LORD HOWE ISLAND BOARD

Business Paper

OPEN SESSION

ITEM

Estate of the Late Joyce Petherick

RECOMMENDATIONS

It is recommended that the Board seek the Minister's consent for the transfer of perpetual lease 1970/03 by sale from Ian Petherick as Executor of the Estate of the Late Joyce Petherick to Lea Catherine Petherick, Jean Oaks and Patricia Petherick.

It is also recommended that the Board seek the Minister's consent and the Governor's approval for the transfer of Perpetual lease 1970/03 by sale from Lea Catherine Petherick, Jean Oaks and Patricia Petherick to Lea Catherine Petherick and Ben Ohlback as joint tenants.

BACKGROUND

An application has been received from Ian Petherick, as Executor of the Estate of the Late Mrs Petherick, to transfer the Deceased's perpetual lease to Lea Catherine Petherick, Jean Oaks and Patricia Petherick. An application has also been received for the subsequent transfer of the lease from Lea Catherine Petherick, Jean Oaks and Patricia Petherick to Lea Catherine Petherick and Ben Ohlback as joint tenants.

Mr Petherick, son of the late Mrs Petherick, was appointed Executor of the Estate under Grant of Probate issued in August 2016. Mr Petherick then applied to hold the lease to allow administration of the Estate. The Minister, on recommendation of the Board, approved the holding of the lease by Mr Petherick until 30 September 2018.

Mr Petherick is beneficiary of one half of the lease under the will. Mses Petherick and Oak, grandchildren of the Late Mrs Petherick, are beneficiaries of the lease under the will as to one sixth each of the lease.

Given that holding the lease as tenants in common would be impractical in this case, it has been agreed between the four beneficiaries that Mses Petherick would purchase Mr Petherick's share of the lease. If the transfer from Mr Petherick is approved, Mses Petherick have agreed to transfer the lease in whole to Lea Catherine Petherick and her partner Ben Ohlback.

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.”*

Section 23(10)(c) provides that *“If by the provisions of the will or by law, such person has power to sell the lease, the sale may be effected under such power; in any other case the sale may be effected with the consent of all persons beneficially entitled to the lease or by order of the Supreme Court in its equitable jurisdiction...”*

Section 23(10)(d) provides that *“If such person does not within any such period obtain the certificate of the Minister as aforesaid, nor transfer the lease as aforesaid, the same together with any moneys paid to the Crown in respect thereof shall be liable to forfeiture.”*

Section 23(4) provides that *“The Board shall have an absolute discretion to recommend the granting or refusal of any application for consent under this section, but shall not recommend the granting of consent to a transfer or subletting to any person other than an Islander unless satisfied that there is no Islander who desires and is in a position to take a transfer or sublease, as the case may be, of the lease.”*

Ian Petherick as Executor has applied within the approved two year period to transfer the lease directly to the three other beneficiaries. This is within the power of the Executor and, if approved, effectively acquits the leasehold affairs of the Estate. A copy of the Deed of Settlement and Release satisfying the provisions of 23(10)(c) is attached at “A”. As lineal descendants of the Late Mrs Petherick, Mses Petherick and Oak are Islanders for the purposes of this transfer.

In the case of the transfer from Mses Petherick and Oak to Ms Petherick and Mr Ohlback, Ms Petherick is an Islander but Mr Ohlback is not. The Board’s Transfer of Perpetual Lease Policy however provides that, in the case of a transfer to joint tenants who are spouses and where one of the spouses is not an Islander, the Board will accept that there is no Islander in a position to take the transfer ahead of the non-Islander transferee.

RECOMMENDATIONS

It is recommended that the Board seek the Minister’s consent for the transfer of perpetual lease 1970/03 by sale from Ian Petherick as Executor of the Estate of the Late Joyce Petherick to Lea Catherine Petherick, Jean Oaks and Patricia Petherick.

It is also recommended that the Board seek the Minister’s consent and the Governor’s approval for the transfer of Perpetual lease 1970/03 by sale from Lea Catherine Petherick, Jean Oaks and Patricia Petherick to Lea Catherine Petherick and Ben Ohlback as joint tenants.

Prepared: James Lonergan, Manager Environment & Community Services

Endorsed: Penny Holloway, Chief Executive Officer

Attachments:

Attachment A: - Deed of Settlement and Release - **CONFIDENTIAL**