

Board Meeting: September 2017	Agenda Number: 10(vi)	Record No: ED17/4112
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LORD HOWE ISLAND BOARD

Business Paper

OPEN SESSION

ITEM

Application for Permissive Occupancy – NSW Police

RECOMMENDATION

It is recommended that the Board seek the Minister's approval for the granting of a Permissive Occupancy over portion 10 to NSW Police for the purpose of a Police Station and residence subject to the standard conditions of such occupancies and at fair rental as determined by independent valuation.

BACKGROUND

Solicitors acting for NSW Police have requested that a Permissive Occupancy be granted over the site of the existing Police Station and residence, portion 10. A copy of the request is attached at Tab A. The facilities were constructed in the mid 1980's and have never been the subject of formal arrangements for occupation of the site.

Section 31A of the *Lord Howe Island Act 1953* provides that the Minister may, on recommendation of the Board, grant a permission to occupy Crown lands for such purposes and upon such terms and conditions as may be imposed. Section 31A further provides that such permissions shall be terminable at will by the Minister on recommendation of the Board. A copy of the agreement and standard conditions of such occupancies is attached at Tab B.

COMMENT

Permissive occupancies on the Island are normally granted where the granting of either a perpetual or special lease is inappropriate or not legally possible, such as where the user of the land is an organisation rather than a natural person. As NSW Police is to be responsible for occupation of the land, a permissive occupancy is the only form of "tenure" available in this instance.

RECOMMENDATION

It is recommended that the Board seek the Minister's approval for the granting a Permissive Occupancy over portion 10 to NSW Police for the purpose of a Police Station and residence subject to the standard conditions of such occupancies and at fair rental as determined by independent valuation.

Prepared: James Lonergan, Manager Environment & Community Services

Endorsed: Penny Holloway, Chief Executive Officer

Attachments:

Attachment A: Letter from Norton Rose Fulbright Solicitors dated 12 July 2017

Attachment B: Agreement and Standard Conditions of Permissive Occupancies

PERMISSIVE OCCUPANCY AGREEMENT

Permissive Occupancy No:

Location and Description
of Subject Lands:

Approved Purpose:

Commencement Date:

Holders:

We, , being the holders of Permissive Occupancy No. hereby acknowledge that the occupation and use by us of the subject land, being for the purpose of is granted by the NSW Minister for the Environment (the Minister) as a Permissive Occupancy under Section 31 A of the Lord Howe Island Act 1953 (the Act), and may be revoked at any time by the Minister, upon the recommendation of the Lord Howe Island Board (the Board), and that occupation and use of the subject land under this agreement shall not create or confer or imply any tenancy or right of ownership or possession of the subject lands other than a permission to occupy and use, terminable at will, and also that we occupy the said premises, and that this agreement is not transferable,

AND we hereby agree to pay for the use and occupation of the subject land a sum by way of rent at the rate as determined by an independent valuation and CPI adjusted per annum, commencing from 3rd July 2014 which shall be deemed to accrue from day to day, and shall be payable by us in advance on or before 31st day of December in each year together with a proportionate part up to the date of termination of such tenancy at will as is hereinafter provided, and upon termination of this tenancy to deliver up to the Board quiet and peaceable possession of the subject lands.

AND we hereby acknowledge and agree that our occupation and use of the subject lands will be subject to the Board's Standard Conditions For Permissive Occupancy, and any other lawful condition which the Board may apply, as set out in Schedule (A)

We undertake not to sublet the premises without the consent in writing of the Minister for the Environment having been first obtained, to occupy and use the subject land in accordance with the approved purpose and any Board policy which may apply from time to time, and with all relevant State and Commonwealth Acts and Regulations.

We hereby also acknowledge that any improvements effected by us on the said premises during this occupation will become the property of the Crown upon the termination of this agreement if any arrears of rent remain due and unpaid by us at the date thereof, but it is hereby agreed and acknowledged that we have the right to remove such improvements or to sell the same to the Board, or any such person as the Board may agree to in writing.

We further agree that this tenancy may be terminated at any time by a written demand of possession signed by the Minister for the Environment for the time being of the State of New South Wales or any person appointed on his behalf, and served on us personally, or left for us on the said premises. It is also agreed and acknowledged that we may terminate and cease to occupy the land at any time by giving notice in writing to the Minister for the Environment of the date on which we intend to cease occupation, and that we shall be liable for rent up to that date unless the occupancy should be terminated by the Minister for the Environment at an earlier date.

SCHEDULE A CONDITIONS OF PERMISSIVE OCCUPANCY

Permissive Occupancy No:

Location and Description
of Subject Lands:

Approved Purpose:

Commencement Date:

Holder(s):

- 1) Annual rent as determined by an independent valuation and, to be CPI adjusted annually, shall be paid in advance to the Board on or before 31st December of the year preceding that for which it is due.
- 2) The land shall be occupied and used only for the approved purpose.
- 3) The occupant shall keep the area in a safe and clean condition to the satisfaction of the Board.
- 4) The occupant shall throughout the currency of the occupancy continually control all Noxious Weeds and such plants or weeds as may from time to time be required to be destroyed by direction of the Board.
- 5) Any improvements the property of the Crown upon the land shall be kept in good repair throughout the currency of the occupancy reasonable wear and tear excepted.
- 6) The public shall, unless otherwise agreed to by the Board in this agreement, have unrestricted right to the use of any defined or designed road, track or pedestrian pathway within the land and such use shall not be interfered with by the occupant.
- 7) The occupant shall take effective steps to keep the land free from rats or other introduced animals throughout the currency of the occupancy.
- 8) No building or structure shall be erected, nor shall any building or structure be altered, without the approval of the Board first obtained.
- 9) The right is reserved to the Board or anybody or person authorised by it to enter upon the land with any material and equipment at any time and from time to time for the purpose of constructing and maintaining authorised works or any other purpose approved by the Board without interference or annoyance by the occupant.
- 10) No bush, timber, trees, palms or vegetative material shall be interfered with by ringbarking, cutting or otherwise unless under authority of the Board. Where in pursuance of such authority any ringbarking, cutting or other interference is effected for the purpose of improvement of the land, all second growth, weeds or noxious plants on such improved area shall be eradicated by the occupant by such regular consecutive treatments as the Board may direct.
- 11) No burning off shall be carried out except with the consent of and subject to such conditions as may be imposed by the Board.
- 12) The occupant shall not depasture stock on the land without prior approval of the Board.
- 13) This agreement is not transferable and will be surrendered when the holder no longer requires the subject and for the approved occupation and use.
- 14) The subject land may not be sub-let other than with the written agreement of the Board.
- 15) Should stock be depastured on the land in accordance with an authority from the Board, the occupant shall not overstock the land either wholly or in part, the decision as to overstocking to rest with the Board. Should the Board deem it necessary for maintenance of pasture or preservation of the fertility of such land or for the prevention of erosion thereon, it may determine the maximum number of stock that may be depastured on such land or any specified part of such land and the occupant shall not

