

LORD HOWE ISLAND BOARD

Business Paper

OPEN SESSION

ITEM

Application for Permissive Occupancy – Lord Howe Island Community Pre-School Incorporated.

RECOMMENDATION

1. It is recommended that the Board seek the Minister's approval for the granting of a Permissive Occupancy over a portion of the unnamed Reserve Land illustrated in Attachment C for the purposes of the Community Pre-School subject to the standard conditions of such occupancies and with a peppercorn rental of \$2 per annum.

BACKGROUND

On the 24 April 2018 the Board wrote to Rachael McFadyen representing the Lord Howe Island Community Pre School (LHICPS) Incorporated, indicating that the Board would favourably consider either granting a Permissive Occupancy, or a declaration of the area as a public reserve for the purpose of a preschool and appointment of the office bearer of the LHICPS as trustees of the reserve (Attachment A). In July 2018 the LHICPS was successful in receiving \$560 000 in Grant funding under the Start Strong Capital Works Program. The grant is to be used to build a purpose built facility for the Island's children to start their education experience.

One of the requirements of the grant funding is that LHICPS be granted suitable tenure over the proposed land that the Preschool will be constructed and operated from.

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 (Attachment B).

COMMENT

There are two forms of land tenure that could be granted to the LHICPS – Permissive Occupancy or a declaration of the site as a public reserve.

Permissive occupancies on the Island are normally granted where the granting of either a perpetual or special lease is inappropriate or not possible under the Act, such as where the user of the land is an organisation rather than a Natural Person. Under the Lord Howe Island Act 1953 (the Act), it is not possible to grant a Perpetual Lease or Special Lease for the

proposed use because the LHICPSI is not a Natural Person and a lease cannot be granted to business entities, incorporated bodies, government agencies, etc.

Alternatively under section 19 of the Act, the Minister may at the recommendation of the Board grant a public reserve “in such manner as may seem best for the public interest for any purpose declared by the Minister”. Such a reserve would need to be managed by the Board, or persons appointed by the Minister as trustees for that reserve. As the LHICPS is a small organisation driven by a team of dedicated parents, it is unlikely to have the resources to sufficiently manage a reserve or maintain a suitable board of trustees in the long term in addition to the responsibilities of the Pre-Schools governance.

A permissive occupancy is considered the most appropriate form of tenure for this use due to the small size of land required by the LHICPS, and the reduced administrative burden required to manage this form of tenure. Both forms of tenure can be revoked at any time by the Board, although in practice this very rarely happens.

Under the terms of a Permissive Occupancy, the Minister on the recommendation of the Board may grant permission to occupy vacant Crown Land subject to such terms and conditions as recommended by the Board. For Permissive Occupancies occupied by commercial and other government agency tenants, custom and practice has been to charge rents at a commercial rate. The Board has previously indicated to the LHICPS that the land would be allocated free of charge (see attachment A). As this proposal remains largely unchanged since this commitment was given in April 2014, it is proposed that the Permissive Occupancy be offered free of annual rent.

All other outgoing expenses associated with the LHICPS including, but not limited to, electricity, access to waste water services, waste services, building and grounds maintenance will be the responsibility of the LHICPS to fund and will not form part of the Permissive Occupancy agreement.

The proposed location and extent of the Permissive Occupancy is shown in Attachment C.

RECOMMENDATION

1. It is recommended that the Board seek the Minister’s approval for the granting of a Permissive Occupancy over a portion of the unnamed Reserve Land illustrated in Attachment C for the purposes of the Community Pre-school subject to the standard conditions of such occupancies and with a peppercorn rental of \$2 per annum.

Prepared: Justin Sauvage, Manager Environment & Community Services

Endorsed: Peter Adams, Chief Executive Officer

Attachments:

Attachment A: Letter from Lord Howe Island Board to LHICPS dated 24 April 2018

Attachment B: Agreement and Standard Conditions of Permissive Occupancies

Attachment C: Extent of the proposed Permissive Occupancy

Record Number: ED18/3405
Enquiries: James Lonergan



24 April 2018

Rachael McFadyen
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Dear Rachael

RE: ESTABLISHMENT OF PRESCHOOL ON LORD HOWE ISLAND

I am writing in further reference to the proposed establishment of a preschool on the Island and in particular land tenure on the Island.

Under the Lord Howe Island Act 1953 (the Act), the entire Island is Crown land under the care, control and management of the Lord Howe Island Board. The Act provides that the Minister may grant Perpetual leases over land on the Island for residential and commercial purposes and Special leases for agricultural and similar uses. Lease on the Island can only be granted to Natural Persons and cannot be granted to business entities, incorporated bodies, government agencies, etc.

The Act does however provide that Permissive Occupancies can be granted to organisations, agencies or incorporated bodies. Permissive Occupancies can be granted for any purpose over any vacant Crown land on the Island. Permissive Occupancies are subject to conditions including a condition that the land be used for the purpose the occupancy was issued. Although permissive occupancies can be withdrawn, in practice this rarely happens unless holder of the occupancy relinquishes it or use of the occupancy is permanently abandoned. Attached is a copy of a pro-forma Permissive Occupancy licence for your information.

In addition to Permissive Occupancies, vacant crown land on the Island may be declared as a reserve for public purposes under the Act. The Act also provides that reserves may be managed by either the Board or a group of trustees. Again, a public reserve may be altered or revoked however this has never happened on the Island since the Act was passed in 1953. Examples of existing public reserves include the Island Central School and teachers' residences, the Island Hospital, nurses' quarters and doctor's residence and the Island Museum.



WORLD HERITAGE AREA

As previously indicated, the Board fully supports the building of a preschool on land adjacent to the existing central school however the Act does not permit granting of a lease over the site to the Lord Howe Island Community Preschool group (LHICPS). Should the LHICPS be successful in receiving capital works funding, the Board would favourably consider either granting a Permissive Occupancy to the LHICPS or declaration of the area as a public reserve for the purpose of a preschool and appointment of office bearers of the LHICPS as trustees of the reserve. The Board would submit the necessary documentation for consideration by the Minister for Environment as soon as practicable. This process should take approximately 3 months.

The Board sees the allocation of this land free of charge for use by the LHICPS Group as a community contribution to establishment of a much needed Island facility and would welcome your feedback on preferred arrangements for this within the framework of the Act.

Yours sincerely



Penny Holloway
CHIEF EXECUTIVE OFFICER

PERMISSIVE OCCUPANCY AGREEMENT

Permissive Occupancy No:

Location and Description
of Subject Lands:

Approved Purpose:

Commencement Date:

Holder(s):

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 of \$2 from <insert commencement date> 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.

We agree, upon termination of this occupancy and within such time as may be given, to remove structures or all or any material from the land at our cost and without compensation, if required by the Minister for the Environment in writing to do so.

We agree to release and indemnify and keep indemnified the Board, all members of the Board, all of the Board's staff, the Minister and the State of New South Wales ('those indemnified') from and against all liability including but not limited to actions, suits, claims, demands, proceedings, losses, damages, compensation, costs (including my solicitor and client costs), charges, expenses and penalties whatsoever to which any of those indemnified may incur in respect of: the loss of life, personal injury or damage to property or persons occurring in connection with our use and occupation of the subject lands and which arise directly or indirectly from:

- a) Any negligent or willful act or omission of the approval holder, its employees, contractors, sub contractors or agents done or omitted to be done in the course of using the subject land; or
- b) Any act or omission, however caused, of the approval holder, its employees, contractors, sub contractors or agents done or omitted to be done in the course of using the subject land; or
- c) Any other event for which the approval holder would be able to make a claim with respect to the subject land.

We declare that we are above the age of eighteen (18) years.

Signed Date:

Witness Name:.....

Witness Signature: Date:

Signed Date:

Witness Name:.....

Witness Signature: Date:

SCHEDULE A CONDITIONS OF PERMISSIVE OCCUPANCY

Permissive Occupancy No:

Location and Description
of Subject Lands:

Approved Purpose:

Commencement Date:

Holders:

- 1) Annual rent: \$0 ex GST, or such other sum as shall be determined by the Board from time to time and approved by the Minister.
- 2) The land shall be occupied and used predominantly for the purpose of a Community Pre School and Early Childhood Learning Centre.
- 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 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 de-pasture 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) The occupant shall, if and when directed by the Board, adopt and maintain on the land or any part or parts of it, such pastoral practices and/or install such soil erosion control structures as it may specify in the interests of soil conservation and the mitigation or prevention of erosion.
- 16) All minerals which the land contains are reserved and excepted to the Crown and such minerals and any stone, gravel, clay, shells or other material shall not be removed from

the land except by the holder of a permit issued under authority of the Minister for the Environment.

- 17) The occupant shall not conduct upon the land any trade or activity which in the opinion of the Board is offensive or which may endanger the public health.
- 18) The occupation and use of the subject lands will be in accordance with the any Board policy which may apply from time to time, and all relevant State and Commonwealth legislation.
- 19) Any use of the land is limited to those for permissible purposes.
- 20) Any of these conditions may, on application by the occupant, and on recommendation of the Board, be varied, modified or revoked by the Minister for the Environment.
- 21) A breach of any of these conditions will render the occupancy liable to termination.

Signed: Date:

Witness Name:

Witness Signature: Date:

Signed: Date:

Witness Name:

Witness Signature: Date:

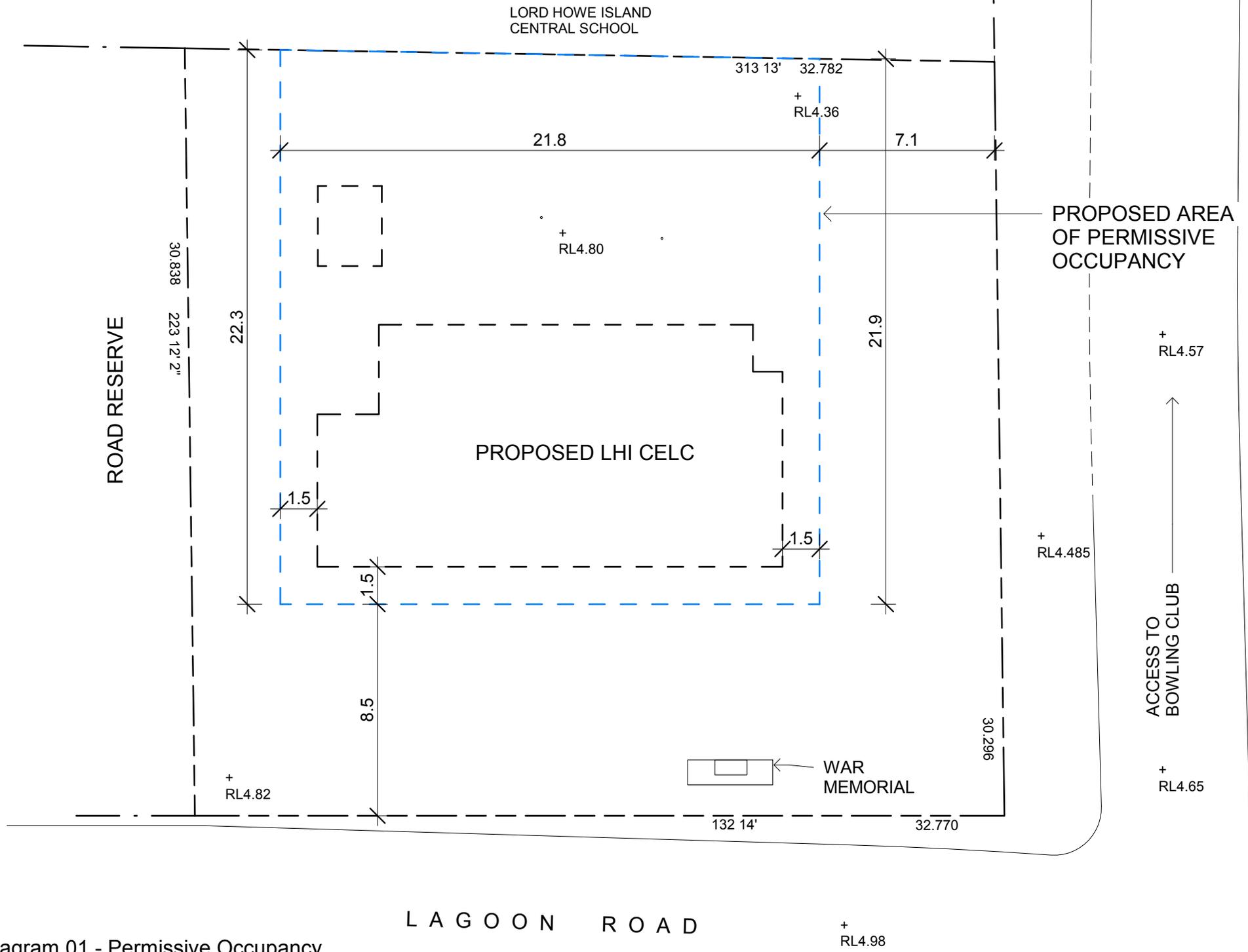


Diagram 01 - Permissive Occupancy

L A G O O N R O A D

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