

PORT OF AIRLIE MARINA DEVELOPMENT

Appendix B Permit to Occupy

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DEPARTMENT
OF LANDS

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Our Ref: 95/004422

12 March 1996

THE MANAGER
WHITSUNDAY SAILING CLUB LIMITED
PO BOX 504
PROSERPINE Q 4800

Dear Sir/Madam,

Re: Instrument of Lease for Permit To Occupy No. 206577.

I wish to advise that the above tenure document has now been issued and is forwarded herewith.

Yours faithfully,

For Regional Director, Brisbane

QUEENSLAND PERMIT TO OCCUPY

Land Act 1994

Pursuant to the provisions of the person described in Schedule 3 is hereby permitted to occupy the area of land described in Schedule 1, beginning on the day specified in Schedule 2.

SUBJECT TO -

- (a) the payment of the annual rent under the Land Act 1994; and
- (b) the conditions specified in schedule 4; and
- (c) such other reservations and conditions as may be contained in and declared by the laws of the State.



The delegate of the Director General
Department of Natural Resources

Date: 5 March 1995

SCHEDULE 1 - DESCRIPTION OF LAND

Permit Ref: PO 208577

Lot/Plan	County	Parish
1/PER208577	HERBERT	CONWAY

Area About 130.000000 Ha.

Land Description:	The area described in Drawing 6158-PIA/1
Purpose of Permit:	Investigation

Note: For details of description, dimensions and marking of boundaries refer to plan mentioned above.

SCHEDULE 2 - COMMENCEMENT OF PERMIT

Permit commencing on 4 January 1996

SCHEDULE 3 - PERMITTEE

WHITSUNDAY SAILING CLUB LIMITED

SCHEDULE 4 - SPECIFIED CONDITIONS

- 128 The permittee shall use the permit area for investigation purposes and for purposes incidental thereto.
- 836 The rent for this permit to occupy shall be paid yearly in advance and shall be at a rate determined at any time by the Minister administering the Land Act 1994.
- 27 At the expiration of the permit or sooner determination thereof the land and improvements thereon will become the property of the Crown without payment of compensation on any account whatsoever and may be dealt with in any manner that Crown land may be dealt with under the provisions of the Land Act 1994.
- 218 In the event of the permittee ceasing to use the land for the express purpose for which the permit is issued, the permit shall be terminated.
- 225 The permittee shall not interfere with or restrict the rights of the public in the use of the permit area for the purpose for which it is reserved or dedicated to public use.
- 237 An application for the issue of any tenure other than this permit will not be approved.

- The permittee shall not under any circumstances, enter into any arrangements to sublet, dispose of, or transfer the occupancy.
- The permit shall be terminable at any time at the discretion of the Minister administering the Land Act 1994 on notice in writing by the Department of Natural Resources.
- C110 The lessee shall at all times comply with the provisions of Clean Air Act 1963 and the Clean Waters Act 1971.
- C250 The permittee shall not keep or store or permit to be kept or stored on the permit area, any materials of a dangerous, flammable or explosive nature or any materials, the keeping of which, may contravene any statute by law or regulation for the time being in force, unless the permittee shall have previously complied with all requirements and regulations thereunder.
- C277 The permittee shall not interfere with any forest products or remove any quarry material (including any stone, gravel, sand, earth, soil, rock, guano or clay which is not a mineral within the meaning of the Mineral Resources Act 1989) or other material upon the permit area without the permission of the Minister administering the Land Act 1994 except under the authority of and in compliance in every respect with the requirements of a permit, license, agreement or contract granted or made under the Forestry Act 1959.
- C278 The permittee shall allow any person authorised under the Forestry Act 1959 access to the permit area for the purpose of cutting and removing timber or removing other forest products, or quarry material, or other material from the permit area.
- C291 The permittee shall not destroy any trees on the permit area unless in accordance with a tree clearing permit under the provisions of the Land Act 1994 or the provisions relating to the clearing for routine management purposes as prescribed in the Land Regulations 1995.
- E1 The permittee shall pay the cost of any required survey.
- H2 No further access to the permit area will be provided by the Crown or Local Authority.
- H49 The permittee shall ensure that the operations on the permit area do not interfere with or affect the launching/retrieval operations and recreational boating originating from and proceeding to any public boat ramp.
- H81 The permittee shall at all times permit the Commonwealth and or Queensland Governments and their officers and employees with workmen and others, free and unrestricted access to, from and across the permit area for the purpose of erecting navigation lights or marks on the permit area or on any structure thereon and for the purpose of inspecting, maintaining, repacking, altering or removing any navigation light or mark and the permittee shall not in any way interfere with any navigation mark or light lawfully erected (whether erected before or after the date of commencement of the permit) on the permit area or any structure thereon.
- H87 The permittee shall not fence or otherwise restrict access across the land at any time.
- I38 The permittee shall execute and deliver to the Minister for Natural Resources a Deed of Indemnity in form provided in the offer of this permit. The Deed of Indemnity shall operate from the commencement of this permit.
- I39 The permittee shall, forthwith effect a Public Risk Policy of Insurance with an authorised insurer approved by the Minister naming the Minister and the Council and the permittee as the insured in respect of any liability at law for any loss of or damage to any property and for the injury (including death) to any person arising out of anything done or omitted on or about the permit area or any improvements thereon and against all claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof. Such policy shall:-
- be for an amount of \$5 million in respect of all claims arising out of a single event or such higher amounts as the Minister determines and shall include a cross-liability clause, the purpose of which requires the insurer to accept the term "insured" as applying to each of the persons insured as if a separate policy of insurance had been issued to each of them.
 - be maintained at all times during the currency of the permit.
 - contain provisions acceptable to the Minister that will:-
 - require the insurer whenever the insurer gives or serves upon the permittee, any Insurance Broker or agent of the permittee, a Notice of Cancellation or any other Notice under or in relation to the policy, at the same time, to inform the Minister, in writing, that the Notice has been given to or served upon the permittee, insurance Broker or agent; and
 - provide that a Notice of Claim given to the insurer by the Minister, the Council or the permittee shall be accepted by the insurer as a Notice of Claim given to the insurer by the Minister, Council and the permittee.
 - be effected on reasonable terms and conditions.
- The permittee shall, as soon as practicable, inform the Minister, in writing, of the occurrence of any event that may give rise to a claim under the policy of insurance effected and shall ensure that the Minister is kept fully informed of subsequent actions and developments concerning the claim.
- Within seven (7) days of the commencement of the permit and whenever requested in writing, from time to time by the Minister, the permittee shall produce evidence to the satisfaction of the Minister of the insurance effected and maintained by the permittee.

- N10 The permittee covenants that it shall be the owner of copyright in all the license material and that it has not and shall not grant by license or any interest in the copyright to any other person.
- N11 The permittee fully indemnifies the Crown in respect of any loss, costs, expenses, demands or liability whether direct or indirect arising from or resulting from any claim that the use of the license material constitutes a breach of copyright or an infringement of any other rights of a third party.
- N12 In the event that it is established at any time that the permittee is not the owner of copyright in any part of the license material, the permittee shall take all necessary steps to obtain from the owner of such part a license in favour of the Crown in the same terms as the license contained herein.
- N13 The permittee shall, within one (month) from the commencement of the permit, provide to the Crown a separate License Agreement in substantially the same terms as this provision and otherwise in the form acceptable to the Crown.
- N14 The benefits of this provision shall continue notwithstanding the expiration or earlier termination of this lease.
- N21 The permittee shall consult with all Authorities from which statutory approvals will be required or which may have requirements at various stages of the development. Authorities to be consulted shall include the Department of Natural Resources, Council of the Shire of Whitsunday, Queensland Department of Transport, Department of Environment and Heritage and Great Barrier Reef Marine Park Authority and any other Authority which may be specified by the Department of Natural Resources.
- N22 The permittee shall, apart from additional requirements which may be specified by the Authorities mentioned in condition N21, attend to specific issues identified by the Department of Natural Resources. These issues are as follows:-
- (a) The permittee shall:-
- (i) Carry out preliminary site investigations and assessment of the settlement characteristics of the completed reclamation;
 - (ii) Carry out preliminary structural and hydraulic engineering designs, including the design of breakwaters and revetments and the calculation of wave penetration into the marina basin;
 - (iii) Carry out a preliminary investigation of the hydraulic characteristics of the site, including the stability and liability of the channel and basin to siltation;
 - (iv) Enter into arrangements satisfactory to the Local Government and the Department of Housing, Local Government and Planning to ensure that future use and development of the land conforms to the Planning Scheme, Local Laws and requirements of the Local Government;
 - (v) Conclude financial arrangements and submit evidence of the feasibility and viability of the proposal together with confirmation of the financial ability of the permittee to execute the proposal; and
- (b) When preparing the updated proposal required under Condition N8 the permittee shall make provision for a public boat ramp, trailer park and car parking area..
- N26 If the updated proposal is not satisfactory to the Minister administering the Land Act 1994 then the Minister or his delegate may negotiate with the permittee in the interests of formulating a mutually acceptable proposal. Providing an acceptable proposal is submitted or negotiated, the Minister will consider the recommendation to the Governor in Council of the grant of a further lease to permit development of the permit area (excluding any unacceptable parts of the said permit area) subject to terms and conditions to be determined by the Minister.
- U28 This permit is not transferable, including changes in ownership structures occasioned by transfer of shares in the permittee company.
- Z14 The permit area shall be kept in a clean and tidy condition at all times and no solid, liquid or other waste products of any kind whatsoever shall be deposited in the sea.
- Z31 Upon termination the permittee shall leave the land in a clean, orderly and sanitary condition.
- Z75 The permittee has the responsibility for a duty of care for the permit area.

The permittee shall punctually renew at its expense such policy each year during the currency of this permit and forward a certificate to the Minister.

- 140 The permittee shall indemnify and keep indemnified and save harmless the Minister administering the Land Act 1994, the State and all and every instrumentality of the Government of Queensland from and against all losses, damages, claims, demands, actions, suits, proceedings, costs and expenses which may be brought against or made upon it or any of them or which it or any of them may pay, suffer, sustain or be put to by reason of, in consequence of or in connection with the use or attempted use of the area, the subject of this lease.
- K19 The permittee must keep any noxious plants, on the permit area, under control.
- L9 The permittee shall not effect any improvements, structural or otherwise on the permit area without the consent of the Minister administering the Land Act 1994 having been first obtained.
- M30 The permittee shall not interfere with, or permit interference with, any navigation marks at any time erected on the permit area except by officers of the Marine and Ports Division, Department of Transport.
- M143 The permittee shall not cause any nuisance on the permit area.
- M173 The permittee shall exercise reasonable care in protecting the habitat of the flora and fauna and the natural environment of the permit area.
- M184 The permittee shall comply with any requirements of any relevant Government Department, Statutory Body or Local Authority.
- M308 The permittee shall not pump or dispose of any foreign material or waste or carry out any activity which will cause land contamination within the meaning of the Contaminated Land Act 1991 within the permit area.
- M309 The permittee shall not put, cast or cause or suffer to fall or permit a person to put, cast or cause or suffer to fall from anywhere within the permit area, any litter, filth, sewage, dry or wet refuse or waste materials into the waters within the permit area.
- M314 The permittee must give the Minister administering the Land Act 1994, the information the Minister administering the Land Act 1994 asks for about the permit.
- N6 The permittee shall commence investigations within one (1) month from the commencement of the permit and finalise, within twelve (12) months of the commencement of the permit, a submission to the Minister administering the Land Act 1994, on the results of all investigations and studies, together with three (3) copies of an updated development proposal which shall include the following:-
- (a) A comparison between the updated proposal and the initial proposal under similar headings to the initial proposal together with an explanation of the difference between the two proposals;
 - (b) Evidence that the permittee has attended to the issues identified in Condition N22;
 - (c) Evidence that other relevant State or Commonwealth Authorities have been consulted and arrangements made to ensure that the project will conform to the requirements of those Authorities;
 - (d) A statement confirming information previously submitted in relation to the registered office of the Company, its postal address, the names of the directors of the Company and the names and respective interests in the Company of the shareholders;
 - (e) A statement confirming information previously submitted and clarifying the permittees' intentions in relation to:-
 - (i) Offer of rent for the development Term Lease;
 - (ii) Offer of purchase price for freeholding;
 - (f) A design plan prepared by a Licensed Surveyor illustrating:-
 - (i) The bearings and distance of the external boundaries and calculated area of the total area sought for development;
 - (ii) Bearings and distances and calculated area of land to be reclaimed;
 - (iii) Illustrate how access is to be provided to the site from an existing road system and how dedicated access is to be provided to each subdivision within the site. In relation to internal roads distinguished between roads to be dedicated to public use and those which remain private roads under the control of the developer. (Plans should be drawn on A3 size paper)
- N8 The permittee shall during the term of the permit carry out a full Impact Assessment Study to the satisfaction of the Division of Environment, Department of Environment and Heritage and in accordance with guidelines to be provided by that Department.
- N9 In consideration of the grant of this permit, the permittee hereby grants an irrevocable non-exclusive license to the Crown in the right of the State of Queensland, its servants, agents, consultants and other persons authorised by it (hereinafter jointly and severally called "the Crown") to use all reports investigations and studies submitted by the permittee pursuant to N6 hereof (hereinafter called "the license material") for any purpose of the Crown.

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