

1977/06



LEASES RESTRICTIONS REGULATIONS 1977

Gaven John Donne, Chief Justice of the High Court

ORDER IN EXECUTIVE COUNCIL

At Avarua, Rarotonga this 18th day of May, 1977

Present:

HIS HONOUR THE CHIEF JUSTICE OF THE HIGH COURT
IN EXECUTIVE COUNCIL

PURSUANT to Section 13 of the Leases Restrictions Act 1976 the Chief Justice of the High Court of the Cook Islands acting for the High Commissioner acting by and with the advice and consent of the Executive Council, hereby makes the following regulations:

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1. Short Title and Commencement (1) These regulations may be cited as the Leases Restrictions Regulations 1977.

(2) These regulations shall come into force on the day of 1977.

2. Interpretation In these regulations unless the context otherwise requires -

"Act" means the Leases Restrictions Act 1976;

"Applicant" means any person who has made application to the Committee;

"Chairman" means the person appointed as Chairman of the Committee;

"Committee" means the Leases Approval Committee;

"Secretary" means the Secretary to the Committee.

3. Procedure and practice (1) Subject to the provisions of these regulations, no practice which is inconsistent with these regulations shall prevail in any sitting of the Committee.

(2) If any case arises for which no form of procedure has been provided by the Act or these regulations, the Committee shall dispose of the case in such manner as the Committee deems best calculated to deal with the case.

(3) The Committee may from time to time as it considers necessary make such rules not inconsistent with the Act or these regulations for regulating the conduct of its business.

4. Failure to comply with these regulations Failure to comply with any of these regulations shall not render any proceedings of the Committee void unless expressly so provided for in the Act or unless the Committee so directs:

Provided that any such proceedings may be set aside either wholly or in part as irregular or may be amended or otherwise dealt with in such manner and upon such terms as the Committee thinks fit.

5. Forms The forms prescribed by these regulations for use in any proceedings before the Committee shall be those set forth in the First Schedule hereto:

Provided that such forms may be used with such modification as the case may require and if no form is prescribed by these regulations, then such form may be used as the Committee may direct or approve.

6. Sittings of the Committee (1) The Committee shall sit at such times and at such places as the Chairman may from time to time appoint.

(2) The time and place appointed for the sitting of the Committee shall be publicly notified in such manner as the Committee directs.

7. Applications to be notified The Secretary shall at least seven clear days before the sitting of the Committee notify the parties to the transaction to be dealt with at the sitting of the Committee.

8. Commencement of proceedings before Committee (1) Unless otherwise prescribed by the Act or these regulations, every proceedings before the Committee shall be commenced by an application in the form LAC 1 in the First Schedule hereto and shall be filed with the Secretary at Rarotonga.

(2) Any application may be filed by delivery through the post and shall be deemed to have been filed upon receipt thereof by the Secretary and upon payment of the fee prescribed in the Second Schedule hereto.

(3) Every application shall be signed by the applicant or his authorized agent and where directed by the Secretary under regulation 9 hereof shall be attested.

(4) A declaration of compliance in form IAC 3 in the First Schedule hereto shall be filed with every application made to the Committee.

9. Secretary may require application to be attested
The Secretary may if he considers necessary require the signature of any applicant to be attested.

10. Secretary may refuse application Unless directed otherwise by the Committee, the Secretary if in his opinion an application is not properly made or is not in conformity with the requirements of the Act or these regulations shall refuse to accept such application and shall return such application to the applicant.

11. Procedure at hearing (1) The Chairman shall preside at every sitting of the Committee.

(2) It shall be the duty of one of the Committee members to record the proceedings of the Committee in a Minute Book provided for the purpose which Minute Book shall be a record of the proceedings before the Committee and shall be retained in the custody of the Secretary.

(3) Any person who is affected by any application shall be entitled to appear and be heard upon the application.

(4) The Committee may if it thinks necessary arrange the order in which the parties appearing in respect of any application shall be heard.

(5) The Committee may if it thinks fit, arrange the order of its business and determine the procedure in matters not specifically provided in these regulations.

12. Committee may require further information (1) The Committee may if it considers necessary require an applicant to produce to the Committee such further documents and other information as are required to dispose of the application.

(2) The Committee may decline to deal with an application if the requirements of subclause (1) of this regulation have not been complied with.

(3) The Committee shall if it considers necessary call for evidence and advice from professional and technical persons to assist the Committee in its deliberations.

13. Decision of Committee Every application dealt with by the Committee shall be endorsed with the decision of the Committee and shall be signed by the Chairman.

14. Certificate of Approval The Certificate of Approval of the Committee shall be in form IAC 4 in the First Schedule hereto.

15. Minute Book to be signed by the members of Committee The Minute Book containing the proceedings before the Committee shall be signed respectively by each member of the Committee presiding.

16. Fees The fees set out in the Second Schedule hereto are hereby prescribed as the fees to be paid in respect of the proceedings of the Committee.

17. Policy directives and criteria The Committee shall in considering any application apply the policy directives and criteria set out in the Third Schedule hereto.

18. Publication of policy directives and criteria For the purposes of section 6 and section 11 of the Act any policy directives or criteria issued by Cabinet from time to time through the Minister responsible for Justice shall be published in the Cook Islands Gazette and in any daily newspaper or publication circulating in the Cook Islands or in such other manner as the Minister responsible for Justice directs.

These regulations are administered in the Justice Department.

FIRST SCHEDULEFormLAC 1Application for Approval of LeaseIN THE LEASES APPROVAL COMMITTEE
HELD AT RAROTONGAIn the Matter of the Leases
Restrictions
Act 1976andIn the Matter of the land
known as

I, _____ hereby make
application to the Leases Approval Committee to approve of
the Assignment of Lease/Lease/Sublease of particulars
whereof are set out hereunder:

Name of Land:
Area:
Date of execution of instrument:
Nature of instrument:
Names of owners alienating:
Shares being alienated:
Person to whom alienation made:
Amount of consideration:
Annual rental:
Any special covenants:

DATED at Rarotonga this _____ day of _____ 1977.

Applicant

Fee:Rec.No.:Date:

Notice of Intention to Appear Upon Form 1
An Application LAC 2

IN THE LEASES APPROVAL COMMITTEE
HELD AT RAROTONGA

In the Matter of the land
known as

and

In the Matter of an
application by

_____ for

I, _____ claiming to be interested
in or affected by the abovementioned application hereby
give notice that I intend to appear at the hearing in support
of (or in opposition to) the same.

The grounds upon which I support or oppose the
Application are as follows:-

DATED the _____ day of _____ 1977.

(Signature) _____

(Address) _____

DECLARATION OF COMPLIANCE

Form
LAC 3

I, _____ of _____
DO SOLEMNLY AND SINCERELY DECLARE:-

1. That all provisions of the relevant legislation in respect of matters precedent to the making of the application for approval and incidental thereto have been complied with.
2. That the instrument has been properly drawn up and duly certified as having been explained to the party or parties affected and in the case where a party is a Maori such explanation was made in the Maori language.
3. The contents of the instrument have been read to the parties concerned and they have appeared to understand the meaning and effect of the same.

AND I make this solemn declaration believing the same to be true and by virtue of the Cook Islands Act 1915.

DECLARED at _____)
this _____ day of _____)
1977 in the presence of: _____)

CERTIFICATE OF APPROVAL

Form
LAC 4

I,, Chairman of the
Leases Approval Committee HEREBY CERTIFY that the application
of to the Leases
Approval Committee to approve a

.....
.....
.....
.....
.....

has been

DATED at Rarotonga this day of 1977.

Chairman,
Leases Approval Committee.

SECOND SCHEDULEReg. 16Fees to be paid to the Justice Department pursuant
the provisions of the Leases
Restrictions Act 1976

Application for approval	\$5.00
Certificate of approval	\$5.00
Any other document	\$5.00

THIRD SCHEDULEReg. 17Policy Directives and Criteria

1. The Committee shall ensure that the parties to any transaction are given the opportunity to be heard if they so desire and that they are notified of the time and place of any hearing affecting the transaction.
2. The Committee shall call for evidence and advice from professional and technical persons where this is appropriate to assist the Committee in its deliberations.
3. The Committee shall not proceed to consider any lease until it is satisfied that the lessor is fully aware of the implications and effect of the lease.
4. If the Committee is not satisfied that the lessor understands and duly accepts all the terms of the lease, it may then call upon a legal officer to explain and advise the lessor thereto or alternatively to conduct an inquiry of its own.
5. Before approving any transaction submitted, the Committee shall satisfy itself:
 - (i) That there is endorsed on the documents a certificate by the Committee certifying that the contents of the documents have been read and explained to the parties and that they both understand the meaning thereof and the effect of the same.
 - (ii) That in the case of a lease or sublease the purposes for which the land may be used are specified.
 - (iii) That in the case of a lease, the lease does not deprive the lessor's children of family land which is reasonably required by any of them for their own purposes.
 - (iv) That the acquisition of the land by the lessee will not cause an undue aggregation of land by the lessee.
 - (v) That the rental and/or consideration for the transaction and the other terms and conditions thereof are fair and reasonable.
 - (vi) That in the case of any lease it is not contrary to the public interest.
 - (vii) That in the case of a lease the lease contains a provision giving the lessors the right of first refusal in the event of any sublease or assignment.

- (viii) That where the transaction is among Cook Islanders and/or permanent residents, all the above criteria are satisfied.
6. In addition to the above criteria no approval shall be given to any transaction to any person who is not a Cook Islander or a permanent resident unless -
- (a) The transaction shall directly or indirectly benefit substantially the economic development of the Cook Islands or otherwise make a significant contribution to the advancement of the Cook Islands; or
- (b) The transaction is for the purpose of enabling the person to establish a business and/or home in the Cook Islands.
7. The Committee shall consider whether in the circumstances of each particular case there should be a provision in the lease or sublease requiring performance by the lessee or sublessee of any obligation relating to the purpose of the lease and the termination of the lease or sublease for failure to so perform, and where the Committee decides that such a provision should be included the Committee shall withhold its approval until a satisfactory provision is included.
8. All applications for approval of leases of land on which commercial buildings other than dwelling houses are to be erected shall be supported by evidence of any approval, permit or licence required under the law in respect of the proposed building or business.
9. In the case of applications by a company or corporate body they must be locally registered as a company or corporate body carrying on business in the Cook Islands and must produce evidence of any approval permit or licence required under the law in respect of the proposed business.
10. Notwithstanding anything contained in these criteria, the Committee shall grant its approval to any transaction where the transaction results from the breach by a mortgagor of the terms of his mortgage and action by the mortgagee to reasonably recover the advances and other moneys due to the mortgagee.
11. Notwithstanding anything contained in these criteria, the Committee shall grant its approval to any mortgage of any lease or sublease to the National Bank of New Zealand Limited or the Housing Authority.

A. Tuteru
Acting Clerk of the Executive
Council
