

LUNA PARK SITE ACT 1990 No. 59

NEW SOUTH WALES



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SCHEDULE 1—LUNA PARK SITE

LUNA PARK SITE ACT 1990 No. 59

NEW SOUTH WALES



Act No. 59, 1990

An Act to return the Luna Park site to the people of New South Wales and to provide for its future management; to deal with the payment of any compensation which may be payable to the lessee of the site; to repeal the Luna Park Site Act 1981; and for other purposes. [Assented to 28 September 1990]

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Luna Park Site Act 1990.

Commencement

2 (1) This Act commences on the date of assent, except as provided by this section.

(2) A provision of Part 2, Part 3 or Schedule 1 commences or is to be taken to have commenced on a day or days to be appointed by proclamation.

(3) Such a proclamation may appoint 6 June 1990 or any later day as the date of commencement of a provision of Part 2, Part 3 or Schedule 1 .

Object of this Act

3. The object of this Act is to return the Luna Bark site to the people of New South Wales and to ensure that Luna Park and the associated harbour foreshore remain available and accessible for the enjoyment of the people of New South Wales.

Definitions

4 (1) In this Act:

"**arbitrator**" means the arbitrator appointed under section 12;

"**improvement**" means an improvement that was on the Luna Park site immediately before 6 June 1990;

"**Luna Park lease**" means the sub-lease registered number S 830396 dated 27 May 1981 between the Minister for Lands for and on behalf of Her Majesty Queen Elizabeth II and Harbourside Amusement Park Pty. Limited, as varied by

(a) the deed made 14 December 1983 between those persons;
and

(b) the deed made 18 March 1988 between the Minister for Lands for and on behalf of Her Majesty Queen Elizabeth II and Prome Investments Pty. Limited;

"Luna Park Reserve" means the reserve consisting of the land comprising the Luna Park site;

"Luna Park site" means the land described in Schedule 1;

"the lessee" means:

- (a) the lessee under the Luna Park lease and includes any person to whom the estate or interest of the lessee under that lease has been lawfully assigned; or
- (b) if the Luna Park lease is determined (by forfeiture or otherwise), the person who, immediately before the determination of the lease, was the lessee under the lease.

(2) If a provision of Part 2 or Part 3 is to be taken to have commenced before the date of assent to this Act, this section is, to the necessary extent, to be taken to have commenced on the commencement of the provision.

PART 2—DEDICATION OF THE LUNA PARK SITE

Vesting and dedication of the Luna Park site

5. (1) The land comprising the Luna Park site:

- (a) is vested or is to be taken to have been vested in the Crown by this Act on the commencement of this section freed and discharged from any trusts, estates, interests, dedications, conditions, restrictions, covenants and provisions affecting that land or any part of that land; and
- (b) is or is to be taken on and from the commencement of this section to be land dedicated under the Crown Lands Act 1989 for the purposes of public recreation, public amusement and public entertainment.

(2) The Luna Park lease (if in force on the commencement of this section) and all other tenancies of, licences relating to, and other rights to occupy, the land comprising the Luna Park site or any part of that land are or are to be taken to have been terminated on the commencement of this section.

Application of the Crown Lands Act 1989

6. On and from the commencement of this section, the Crown Lands Act 1989 applies to and in respect of the land comprising the Luna Park site, except as provided by this Act or the regulations.

PART 3 - THE LUNA PARK RESERVE TRUST

Establishment etc. of the Luna Park Reserve Trust

7. (1) On the commencement of this section, there is to be taken to have been established and named, under section 92 of the Crown Lands Act 1989, a reserve trust under the name of the Luna Park Reserve Trust.

(2) The Luna Park Reserve Trust is to be taken to have been appointed, under section 92 of the Crown Lands Act 1989, as trustee of the reserve consisting of the land comprising the Luna Park site.

Plan of management

8. (1) On the commencement of this section, the Luna Park Reserve Trust is to be taken to have been directed by the Minister, under section 112 of the Crown Lands Act 1989, to prepare a plan of management for the Luna Park Reserve.

(2) The plan of management is required to be prepared within 9 months after the commencement of this section.

(3) The plan of management is required to include provision for the following matters:

- There must be public access to the Luna Park Reserve and along the foreshore of that Reserve at all times.
- The use of the Luna Park Reserve must be limited to purposes which are sympathetic to the historic and community significance of the land comprising the Luna Park site.
- The following uses of the Luna Park Reserve are to be prohibited:

Dwellings and other buildings used or designed or intended for use for the purpose of permanent residential accommodation; hotels, motels, hostels, tourist or other holiday accommodation, caravan parks and other facilities providing for temporary or overnight accommodation.

(4) This section does not prevent the Minister, under section 112 (4) of the Crown Lands Act 1989, from requiring the plan of management to include provision for other matters which are not inconsistent with the matters referred to in subsection (3).

PART 4—COMPENSATION

Claims and demands against the Crown

9. (1) Except as provided by this Part, no person is entitled to make or to proceed with any claim or demand against the Crown arising before 6 June 1990 in respect of any matter relating to the Luna Park site or the Luna Park lease and any such claim or demand is extinguished by this Act.

(2) This section extends to a claim or demand which has been made but not finally determined before the commencement of this section.

(3) In this section, "the Crown" means the Crown in right of New South Wales and includes:

- (a) the Government of New South Wales; and
- (b) a Minister of the Crown in right of New South Wales; and
- (c) a statutory corporation, or other body, representing the Crown in right of New South Wales; and
- (d) a person employed by or acting under the direction of the Crown, the Government, a Minister, a statutory corporation or other body.

Claim for compensation by the lessee

10. (1) The lessee may claim compensation from the Crown in relation to the determination of the Luna Park lease, whether under this Act or otherwise, or the vesting of the land comprising the Luna Park site in the Crown under section 5, as the case may be.

(2) Any such claim is to be made and determined solely under and in accordance with this Act.

(3) This section does not entitle the lessee to claim compensation from the Crown if, before the commencement of this section, a court has found that the Luna Park lease has been determined (by forfeiture or otherwise) and a court has found that the lessee is not entitled to relief against determination of the lease.

Assessment of compensation

11. (1) The maximum amount of compensation that the lessee is entitled to receive (apart from any compensation determined under section 14) is the market value, immediately before 6 June 1990, of the estate or interest under the Luna Park lease of the lessee.

(2) In assessing the amount of any such compensation, the arbitrator is required to have regard to the following matters in relation to the Luna Park lease:

- (a) whether or not the lease had been determined (by forfeiture or otherwise) before, on or after 6 June 1990;
- (b) if the lease had been so determined, whether there was any entitlement of the lessee to relief against the determination of the lease;
- (c) if the lease had not been so determined, whether or not the lease was capable of being determined (by forfeiture or otherwise) at any time before, on or after 6 June 1990;
- (d) any outstanding liability under the lease of the lessee to the lessor;
- (e) any liability in damages in relation to the lease of the lessee to the lessor;
- (f) the cost of carrying out any work which the lessee may, had the lessee continued to occupy the land comprising the Luna Park site for the balance of the term of the lease, have been required to carry out under the lease or any law;
- (g) any reduction required to be made under section 14 (5) to the amount of any compensation;
- (h) any other matter the arbitrator considers relevant.

(3) If the arbitrator finds that the Luna Park lease had been or was capable of being determined (by forfeiture or otherwise) before, on or after 6 June 1990 and that the lessee had no entitlement to relief against determination of the lease, no compensation is payable under this Act to the lessee.

Appointment of arbitrator

12. (1) As soon as practicable after the sooner of:

- (a) the date of publication in the Gazette of a proclamation which commences section 5 (1), whether or not the proclamation commences any other provision of this Act; or
- (b) the date on which a request made in writing to the Minister by the lessee for the appointment of an arbitrator for the purposes of this Act is received by the Minister,

the Governor is required to appoint an arbitrator for the purposes of this Act.

(2) A person may not be appointed as the arbitrator unless the Minister certifies to the Governor that the person has appropriate qualifications and experience in commercial dispute resolution.

(3) The Minister is required to give the lessee notice of the appointment as soon as practicable after it is made and to specify the place at which any arbitration proceedings are to be conducted.

Making of claim for compensation

13. (1) A claim for compensation under this Act is to be made in writing to the arbitrator at the place specified under section 12 (3).

(2) Any such claim constitutes a dispute between the lessee and the Minister.

(3) Any such claim is required to specify the amount of compensation claimed and the particulars in accordance with which that amount has been assessed.

(4) Any such claim must be made within 3 months after the date on which notice of the appointment of the arbitrator is given by the Minister to the lessee.

Removal of improvements at the request of the lessee

14. (1) The lessee may remove any improvements made by the lessee from the Luna Park site, but only with the approval in writing of the Minister.

(2) An application for an approval under this section may not be made by the lessee later than 3 months after such date as the Minister may, for the purposes of this subsection, notify in writing to the lessee.

(3) If an approval under this section to the removal of an improvement is not granted within 1 month after it is applied for by the lessee, the lessee may submit the matter to the arbitrator to determine:

- (a) whether or not the lessee should be entitled to remove the improvement; and
- (b) if the arbitrator determines that the improvement is not to be removed, whether or not any compensation should be paid to the lessee in respect of the improvement and, if compensation should be paid, the amount of the compensation.

(4) If an improvement which may be removed under this section is not removed by the lessee within 3 months after approval to remove

the improvement is given by the Minister or the arbitrator, the improvement (in so far as it is not vested in the Crown under section 5) is forfeited to the Crown and no compensation is payable to any person in respect of its forfeiture.

(5) If, before, on or after 6 June 1990, an improvement is improperly removed from the Luna Park site by the lessee, the amount of any compensation to which the lessee may be entitled under this Act is to be reduced by an amount equal to the value of the improvement as determined by the arbitrator.

Removal of improvements at the direction of the Minister

15. (1) The lessee is required to remove from the Luna Park site any improvement made by the lessee that the Minister directs the lessee, in writing, to remove.

(2) If an improvement that is the subject of such a direction is not removed within 3 months after the date on which the direction is given to the lessee, the improvement (in so far as it is not vested in the Crown under section 5) is forfeited to the Crown and no compensation is payable to any person in respect of its forfeiture.

Fees and expenses of the arbitrator

16. The lessee is not required to pay or to make any contribution towards the fees and expenses of the arbitrator, but is otherwise subject to any order for costs that may be made under the Commercial Arbitration Act 1984 by the arbitrator.

Application of the Commercial Arbitration Act 1984

17. (1) Except as provided by this Act or the regulations, the Commercial Arbitration Act 1984 applies to and in respect of any arbitration under this Act as if the lessee and the Minister were parties to an arbitration agreement.

(2) Part 2 (except section 9) of the Commercial Arbitration Act 1984 and sections 24, 25, 26, 44 and 45 of that Act do not apply to or in respect of any arbitration under this Act.

PART 5—MISCELLANEOUS

Right to possession of the Luna Park Reserve

18. (1) On the commencement of this section or section 7, whichever is the later, the Luna Park Reserve Trust is entitled to immediate vacant possession of the Luna Park Reserve.

(2) If, after the Luna Park Reserve Trust is entitled to immediate vacant possession of the Luna Park Reserve and before the Luna Park Reserve Trust takes up occupation of the land comprising the Reserve, any person remains in, or takes up, occupation of the land or any part of it, the Trust may, by order, direct and empower the Sheriff, or any person prescribed by the regulations, to deliver possession of the land to the Trust.,

(3) On receipt of an order under subsection (2), the Sheriff or prescribed person, as the case maybe, is required to deliver possession of the land to the Luna Park Reserve Trust.

(4) For the purposes of subsection (2), a person does not occupy any part of land only because a structure or any part of a structure is on that part of the land.

(5) Nothing in this section operates to limit or restrict the power of the Luna Park Reserve Trust to enforce its right to possession of land otherwise than under this section.

Removal etc. of structures

19. (1) A person must not, without lawful authority:

- (a) remove any structure from the land comprising the Luna Park site; or
- (b) damage any structure on the land comprising the Luna Park site.

Maximum penalty: 100 penalty units,

(2) In this section, "**structure**" means any structure, amusement device, decoration, fitting, seawall, wharf, pier, pile, floor or any other thing on the land comprising the Luna Park site.

Proceedings for offences

20. Proceedings for an offence against this Act or the regulations are required to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Exclusion of s. 344 of the Local Government Act 1919

21. Section 344 of the Local Government Act 1919 does not apply and is to be taken never to have applied to or in respect of any land to which this Act applies.

Repeal of the Luna Park Site Act 1981 No. 29

22. The Luna Park Site Act 1981 is repealed.

Regulations

23. The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

SCHEDULE 1—LUNA PARK SITE

(Sec. 4 (1))

1. The whole of the land comprised in Certificate of Title Folio Identifier 103/82409.
2. That part of the land comprised in Certificate of Title Folio Identifier 102/574070 which excludes the land shown as "To be vested in the Municipal Council of North Sydney for the purpose of a public road and highway" in Deposited 109128.
3. The whole of the land comprised in Certificate of Title Volume 4811 Folio 180 being Lots 1 and 2 in Deposited Plan 82531.
4. The whole of the land comprised in Certificate of Title Folio Identifier 2/219097 (formerly Certificate of Title Volume 9750 Folio 79).
5. The whole of the land comprised in Certificate of Title Folio Identifier 4/21 9097 (formerly Certificate of Title Volume 14074 Folio 208).

SCHEDULE 1—LUNA PARK SITE—*continued*

6. The whole of the land comprised in Certificate of Title Volume 12419 Folio 204 and part of the land comprised in Certificate of Title Volume 5018 Folio 1 which comprise areas of 2600 square metres and 60 square metres and the sites of a 3 pile dolphin and 2 mooring piles shown on plan R.P. 1047B catalogued at the Maritime Services Board of New South Wales.
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*[Minister's second reading speech made in—
Legislative Council on 6 June 1990
Legislative Assembly on 5 September 1990]*