

LORD HOWE ISLAND BOARD

BUSINESS PAPER

OPEN SESSION

Item

Application to transfer lease PL1954.47 by way of sale from the Estate of Daphne Pearl Simpson to Rebecca Moran and Timothy Solomon as joint tenants.

Recommendations

1. **The Board recommend** to the Minister to accept transfer by way of sale of PL1954.47, being Portion 1, LHI 41 and Portion 258 of DP48283 from the Estate of Daphne Pearl Simpson to Rebecca Moran and Timothy Solomon as joint tenants
2. **Note:** A separate non-compliance process will be undertaken by the LHIB to address internal access and the presence of a second kitchen.

Current position

On 14th October 2022 an application was received from Roseanne O'Brien and Stephen Simpson, as Executors of the Estate of the late Daphne Pearl Simpson, requesting consent to transfer PL1954.47 by way of sale to Rebecca Moran and Timothy Solomon as Joint Tenants.

As Executors of the Estate, Ms O' Brien and Mr Simpson are empowered to sell and transfer the lease in accordance with Grant of Probate issued on 15 April 2020.

Section 23 of the *Lord Howe Island Act 1953* ("the Act") governs the transfer of perpetual leases, with subsections (10) to (13) dealing with the transfer of leases the subject of a will or intestacy. Section 23(1)(a) is also pertinent in this case.

Section 23(1)(a) of the Act provides that *"A lease under this Part may be transferred in the prescribed form and manner as to the whole or a part of the land comprised in the lease or may be sublet at any time, but the consideration for the transfer shall not exceed the fair market value of the interest of the transferor in the unimproved land the subject of the lease, the fair market value of the improvements on the land at the commencement of the lease and of any improvements subsequently effected thereon with the approval of the Board and, in the case only of a lease of land used for commercial purposes, a sum for the goodwill of the business conducted thereon, being goodwill transferred to the transferee in connection with the transfer of the lease or accruing to the transferee in consequence thereof. Such fair market values and, as the case may require, such sum for goodwill shall be as determined by the Valuer-General.*

Section 23(4) of the Act provides that *“The Board shall have an absolute discretion to recommend the granting or refusal of any application for consent under this section, but shall not recommend the granting of consent to a transfer or subletting to any person other than an Islander unless satisfied that there is no Islander who desires and is in a position to take a transfer or sublease, as the case may be, of the lease.”*

Section 23(10)(a) provides that *“If a lease under this Act devolves under a will or intestacy upon any person, such person may hold the lease for such period after the death of the testator or intestate as the Minister on the recommendation of the Board may permit.”*

Section 23(10)(d) provides that *“If such person does not within any such period obtain the certificate of the Minister as aforesaid, nor transfer the lease as aforesaid, the same together with any moneys paid to the Crown in respect thereof shall be liable to forfeiture.”*

As stated in the Board's Transfer of Perpetual Lease Policy:-

The Act allows for the executor or administrator of the estate to hold a perpetual lease for the purpose of residence for a period stipulated by the Minister (section 23(10)(a)) to enable the executor to either obtain a certificate from the Minister that they are entitled to hold the lease; or to sell and transfer the lease (section 23(10)(b)). The provisions of section 23(4) of the Act are relevant for the purposes of determining entitlement to be granted a certificate by the Minister pursuant to section 23(10)(b) to hold the lease.

- In this instance, the Executors have not sought approval to hold the lease under Section 23(10)(a) for any period and have, instead, applied to transfer the lease. Transfer of the lease is within the power of the Executors and partially acquits the leasehold affairs of the Estate.

The proposed transfer is consistent with the relevant *Lord Howe Island Act* sections and the Lord Howe Island Transfer of Perpetual Lease Policy. Specifically:

- The applicants have submitted an application in the prescribed form with the appropriate statutory declarations.
- Both Rebecca Moran and Timothy Solomon satisfy the definition of an Islander under the Act.
- The contract sale price listed on the prescribed form (Form 5) does not exceed the Valuer General valuation provided with the application in accordance with s23(1)(a) of the Act.
- Neither Rebecca Moran nor Timothy Solomon currently hold a perpetual lease on Lord Howe Island.
- Rebecca Moran and Timothy Solomon have stated on the prescribed Form 5 that it is their intention to reside on the lease, therefore satisfying section 21(7) of the Act.

During the review process it is noted that the Valuer General valuation and form 5 highlighted a non-compliance issue with regard to internal access and the presence of a second kitchen.

This compliance issue will be dealt with through the standard LHIB compliance process and is not under consideration with regard to the sale of the property.

The non-compliance has been disclosed to the transferee/s who have indicated that they wish to processed with the proposed sale process, knowing compliance will be undertaken.

There are no known impediments under Act that would prevent the Board from recommending to the Minister to support the transfer of this lease.

Attachments

Attachment	Title
Nil	

Approval and contact

Approver	Position
Suzie Christensen	Chief Executive Officer
Preparer	Position
Darcelle Matassoni	Acting Senior Manager Environment and Community Services