

LORD HOWE ISLAND BOARD POLICY

TITLE	Business Licence for the Provision of Long Term Accommodation		
DATE ADOPTED	March 2014	AGENDA ITEM	8i March 2014
CURRENT VERSION	March 2014 March 2017 (draft) March 2014	AGENDA ITEM	8i March 2014 8(ii) May 2017
REVIEW	5 years	FILE REFERENCE	CO0024
ASSOCIATED LEGISLATION	<i>Lord Howe Island Act 1953 (NSW)</i> <i>Lord Howe Island Regulation 2014 (NSW)</i> <i>Local Government Act 1993 (NSW)</i> <i>Competition and Consumer Act 2010</i> <i>Fair Trading Act 1987</i> and other legislation administered by Fair Trading		
ASSOCIATED POLICIES	Conditions of Licence to Provide Tourist Accommodation		

1 Policy Aim

The aim of this policy is to ensure that those providing long term accommodation on the island do so in accordance with the Lord Howe Island Act 1953 (the Act) and the Lord Howe Island Regulation 2014 (the Regulation).

Under Clause 49 of the Regulation the approval of the Board is required to carry out a commercial undertaking on the island. The provision of long term accommodation is deemed to be a commercial undertaking.

This policy does not apply to:

- a) Approved staff accommodation as defined under the Lord Howe Island Local Environment Plan 2010,
- b) Residential occupancy of a dwelling where the Perpetual Lease is subject to a sublet in accordance with the Act, and the occupants of the dwelling are the sub-lessees,
- ~~b)c) Residential occupancy of a dwelling solely for the accommodation of family or friends and for which no remuneration is payable or, and~~
- ~~c)d) Government agencies providing housing for staff.~~

No approval under this policy excuses any lessee/s or sublessee/s of any Perpetual lease from performing the condition of residence on ~~thier~~their lease

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2 Legal Situation

All land on Lord Howe Island is Crown land and may only be dealt with in accordance with the provisions of the Lord Howe Island Act 1953 (section 18).

There are a number of provisions of the Act, which work together to support a permanent and committed residential community on the Island.

The Act does not prevent the granting of a licence to occupy premises, as this is a personal right only, not a dealing in land. Subject to any other Act in force, the licence must be terminable at the will of the leaseholder, not be transferrable and not give a right of exclusive possession.

The differences between a lease and a licence are set out below.

2.1 Lease

- a) A Lease is a transfer of right to enjoyment (exclusive possession) of that property by the lessor to the lessee, made for a certain term, in consideration of a fee subject to the terms set out in the lease agreement.
- b) A lease grants exclusive possession for a fixed period (term).
- c) A lease creates an interest in the land which can be transferred to the lessee for the period of the lease.
- d) A lease can be transferred (assigned) to another party and, if registered on the title, is binding on a new owner of the land.
- e) A lease is not revocable (other than subject to any conditions set out in the lease (e.g. a redevelopment clause)).

2.2 Licence

- a) A Licence is the granting of a permission to use the land/premises in consideration of a fee subject to the conditions set out in the licence.
- b) A licence does not grant exclusive possession.
- c) A licence does not create or transfer an interest in the land.
- d) A licence is not transferable.
- e) A licence is revocable by the licensor.

~~Premises on a perpetual lease cannot be sublet other than in accordance with the provisions of the Act. Clause 23 of the Act requires, amongst other things, that a subletting have the consent of the Minister for the Environment (in the case of a sublease to an Islander), or the consent of the Governor (in the case of a sublease to a non-Islander).~~

~~However, the Act does not prevent the granting of a licence to occupy premises, as this is a personal right only, not a dealing in the land. The licence must be terminable at the will of the leaseholder, not be transferrable and not give a right of exclusive possession.~~

~~The essential differences between a lease and a licence are set out below.~~

~~Lease~~

- ~~) A Lease is a transfer of right to enjoyment (exclusive possession) of that property by the lessor to the lessee, made for a certain term, in consideration of a fee subject to the terms set out in the lease agreement.~~
- ~~) A lease grants exclusive possession for a fixed period (term).~~
- ~~) A lease creates an interest in the land which can be transferred to the lessee for the period of the lease.~~
- ~~) A lease can be transferred (assigned) to another party and, if registered on the title, is binding~~

~~on a new owner of the land.~~

~~— A lease is not revocable (other than subject to any conditions set out in the lease (e.g. a redevelopment clause).~~

~~3.0 Licence~~

- ~~— A Licence is the granting of a permission to use the land/premises in consideration of a fee subject to the conditions set out in the licence.~~
- ~~— A licence does not grant exclusive possession.~~
- ~~— A licence does not create or transfer an interest in the land.~~
- ~~— A licence is not transferable.~~
- ~~— A licence is revocable by the licensor.~~

3 Policy Provisions

- a) ~~It is open to the holder of a perpetual lease to grant a licence to occupy premises. In granting any licence it is essential that the arrangement is, a licence arrangement and not a lease,~~
- a) ~~It is open to the holder of a perpetual lease to grant a licence to occupy premises. In granting any licence it is essential that the arrangement is, in fact, just a licence arrangement and not an attempt to disguise an arrangement as a licence when it is, in fact, a lease,~~
- b) The licence must be between the perpetual leaseholder and the person who is being granted the right to occupy the premises,
- c) The perpetual leaseholder must seek their own legal or other advice and assistance regarding the most appropriate terms and conditions for a licence to occupy the premises subject to any other Act in force,
- d) If required, ~~the~~ applicant must provide evidence that the premises to be licensed has development consent for use as a residential dwelling,
- e) All business licenses issued under this policy will be for a minimum of three months and a maximum period of two years, and will be subject to a new application at the cessation of the approval period,
- e) ~~As of March 5, 2015, where the holder of a perpetual lease wishes to apply for a business licence for the provision of long term accommodation, and the dwelling is either:~~
- ~~• the applicant's principle place of residence, and is the premises which the applicant relies upon to fulfill the condition of residency, and the licensing of the premises will result in the applicant not being able to fulfill the condition of residency for a period in excess of twelve months, or,~~
 - ~~• a dwelling located on a second perpetual lease held by the applicant, but upon which they do not reside,~~
- ~~the Board will require, prior to issuing a business licence, that the applicant first apply to sublet the perpetual lease in accordance with the Act, and that he or she seek, and obtain, a waiver of the residency requirement under either Section 21(7) for a. and Section 21(7A) for b.~~
- f) The Chief Executive Officer (CEO) of the Board is delegated to determine any application made under this policy, provided that the application complies with this policy. The CEO of the Board is delegated to suspend or withdraw any approval given under this policy where it can be established to the satisfaction of that officer that a significant breach of the conditions of approval has occurred. In determining any application, where the application is proposed to be refused, or where the CEO believes that the application will prove controversial, the CEO will consult with the Board. Where the CEO intends determining the application contrary to the majority view of the elected members, the CEO will document the reasons for doing so and provide a written briefing to the Chairperson, who will determine the matter in consultation with the Board.

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4 Fees

The Private Accommodation fees charged by the Board are levies imposed for the granting of permission to carry out a commercial undertaking on the island in accordance with the Regulation.

The fees charged will be determined by the Board from time to time.

LORD HOWE ISLAND BOARD APPLICATION FOR BUSINESS LICENCE

Name of Applicant					
Name of Business					
Premises Address					
Postal Address					
Contacts	Phone		Fax		Email
Business Activities to be carried out under this Licence					
Statement by Applicant	<p>I, _____, being the applicant and proprietor of the business described above hereby apply for a business licence to undertake the stated activities on Lord Howe Island.</p> <p>I declare that I hold appropriate and adequate insurances in relation to the business and that all of the activities specified in this application are covered by my policy. I have attached a written statement from my insurer to confirm this.</p> <p>I also declare that I hold all relevant State and Commonwealth approvals required for the activities specified in this application.</p> <p>I understand that there is an annual licence fee applicable and I agree to pay that fee quarterly as invoiced by the Board, and continue to pay the required fee unless the licence expires or is suspended or cancelled. I also understand that if the business ceases to operate I will be liable to pay the licence fee until the quarter after I have informed the Board in writing that I no longer require a business licence.</p>				
	_____ Signature of Applicant		_____ Signature of Witness		
	_____ Name of Applicant		_____ Name of Witness		
	_____ Date		_____ Date		

Board Meeting: May 2017	Agenda Number: 8(ii)	File Ref: CO 024
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LORD HOWE ISLAND BOARD

Business Paper

OPEN SESSION

ITEM

Review of 'Business Licence for the Provision of Long Term Accommodation' Policy

RECOMMENDATION

It is recommended that the Board adopt the revised 'Business Licence for the Provision of Long Term Accommodation' Policy attached.

BACKGROUND

In March 2014, the Board adopted a revised policy to ensure that those persons providing long term accommodation on the Island did so in accordance with the *Lord Howe Island Act 1953* and the *Lord Howe Island Regulation 2014*.

At present the Policy does not appear to be consistent with the *Lord Howe Island Act*. Under the Act leaseholders are required to reside on their lease as their principal place of residence unless the condition of residence of the lease is suspended or the lease is sublet and the sublessee resides on the lease. The current Policy however suggests that leaseholders could rent out their property for 12 months and not reside on their lease without going through the sub-leasing process. The policy has been amended to remove the inconsistency.

The policy is clear where there are additional dwelling/s on the lease that are not the principal residence of the lessee (or sublessee). In these instances, the Policy enables the Board to issue a "long-term accommodation licence" which permits the leaseholder to rent out the additional dwelling/s.

COMMENT

The policy has been revised to clarify requirements and to provide clarity on application of policy provisions (Attachment 1).

RECOMMENDATION

It is recommended that the Board adopt the revised 'Business Licence for the Provision of Long Term Accommodation' Policy attached.

Prepared: James Lonergan, Manager Environment & Community Services

Endorsed: Penny Holloway, Chief Executive Officer

Attachments:

1. Revised 'Business Licence for the Provision of Long Term Accommodation' Policy