

LORD HOWE ISLAND BOARD

Business Paper

OPEN SESSION

ITEM

Policy - Transfer of Perpetual Lease – Proposed Amendment

RECOMMENDATION

It is recommended that the Board:

1. Place the proposed amendment of the existing Transfer of Perpetual Lease policy on public exhibition for 28 days.
2. Adopt the amended policy if no public submissions are received during that time.

BACKGROUND

During public exhibition of the recently adopted Suspension of Condition of Residency on Perpetual Leases Policy, one public submission was received and a copy is included with this paper. The submission broadly suggests that, when considering transfer of Perpetual leases, the Board should take reasonable steps to satisfy itself that any proposed transferee will comply with the residency condition of the lease, or that other arrangements are or will be in place to satisfy this condition, prior to recommending any consent.

COMMENT

Although linked, the suggestion relates more closely to the existing Transfer of Perpetual Lease Policy than the Suspension of Condition of Residency on Perpetual Leases Policy. Accordingly the lease transfer policy has been amended to incorporate the submission and a copy of the revised policy is attached at "A" (see page 5 clause 3.1)

RECOMMENDATION

It is recommended that the Board:

1. Place the proposed amendment of the existing Transfer of Perpetual Lease policy on public exhibition for 28 days.
2. Adopt the amended policy if no public submissions are received during that time.

Prepared: James Lonergan, Manager Environment & Community Services

Endorsed: Penny Holloway, Chief Executive Officer

Attachments:

Attachment A: Policy - Transfer of Perpetual Lease – Proposed Amendment

From: [REDACTED]
Sent: Saturday, 25 November 2017 15:39
To: administration
Subject: public comment suspension of residency

I support the policy but believe a little more needs to be added. It should be stipulated that the circumstances that require a person to seek a suspension of residency did not exist prior to the person taking transfer of the lease, or that the person could not reasonably have known that these circumstances existed when they applied for the lease. I am concerned that people may apply for transfer of a lease knowing that circumstances will preclude them from ever residing or substantially delay their requirement to reside. This is contrary to the intent and spirit of the Act. Any person applying for a new lease or transfer of an existing lease should be required to complete a statutory declaration stating that they do intend to reside and know of no circumstances currently existing that in any way preclude their taking up residence.

I believe we have recently seen an example where people took transfer in poor faith with every intention of not residing for some time. Circumstances that existed prior to their application should not be allowed as justification for exemption and this should be clearly stated in advance. It should be clearly spelled out that pre existing circumstances can not subsequently be used as justification for exemption from residence re Form 1 where a person holds only 1 lease. [REDACTED]

Sent from [Mail](#) for Windows 10

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LORD HOWE ISLAND BOARD POLICY

TITLE	Transfer of Perpetual Lease Policy		
DATE ADOPTED	March 2014	AGENDA ITEM	10 (v)
CURRENT VERSION	March 2014	AGENDA ITEM	10 (v)
REVIEW	5 years	FILE REFERENCE	TE0003 / TE0001
ASSOCIATED LEGISLATION	<i>Lord Howe Island Act 1953 (NSW)</i> <i>Lord Howe Island Regulation 2004 (NSW)</i>		
ASSOCIATED POLICIES	Long-term Accommodation Policy		

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1 Introduction

1.1 Title and Commencement

This policy is titled the *Lord Howe Island Board Transfer of Perpetual Lease Policy (the Policy)*. The policy was adopted by the Lord Howe Island Board (the Board) in March 2014 to replace the *Advertising the Transfer of Perpetual Leases to Non Islanders Policy* which was last revised in 2007.

1.2 Purpose of the Policy

The purpose of the Policy is to set out a process for the transfer of perpetual leases on Lord Howe Island (the Island) in accordance with the requirements of the *Lord Howe Island Act 1953* (the Act). The policy also establishes a framework to guide the Board's consideration of the requirements in section 23(4) of the Act relating to applications to transfer perpetual leases to a person other than an Islander (non- Islander).

1.3 Objectives and Coverage of the Policy

The objectives of this Policy are to:

1. Set out processes in relation to the transfer of perpetual leases that satisfy the requirements and objectives of the Act and the *Lord Howe Island Regulation 2014* (the Regulation).
2. Establish a framework to guide the Board's consideration of applications for the transfer of perpetual leases to non-Islanders.
3. Guide the conduct of applicants, interested islanders and the Board in relation to applications for the transfer of perpetual leases.
4. Establish a framework for fair and transparent negotiations in relation to the transfer of perpetual leases to non-Islanders.

Whilst the Board must at all times comply with the Act and Regulations, it should not apply the Policy inflexibly. In circumstances where the Board considers it appropriate to depart from the Policy, the Board should document the circumstances and its reasons for the departure.

1.4 Background to the Policy

In accordance with section 16 of the Act, all land on Lord Howe Island is vested in the Crown. In accordance with section 21 of the Act, the Minister may lease vacant Crown lands (of 2 hectares or less) in perpetuity for the purpose of residence to an Islander (as defined in section 3 of the Act). Applications for the transfer or subletting of perpetual leases on Lord Howe Island can be made under section 23 of the Act. Section 23(3) of the Act states:

The Minister may consent to the transfer (not being a transfer referred to in paragraph (a) or (b) of subsection (2)) or subletting if the Board so recommends, or the Minister may at his or her discretion refuse consent.

The Act makes particular provision in relation to applications for transfer to a non-Islander. In accordance with section 23(4), the Board may only recommend that the Minister consent to a transfer or subletting where it is satisfied that no Islander desires and is in a position to take the transfer.

Section 23(4) of the Act states:

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.

Under section 23(2) of the Act, a transfer of a lease to a non-Islander (not being a transfer by way of mortgage) will not be valid unless the approval of the Governor has been obtained.

Section 23(1) of the Act provides that the consideration for the transfer of a lease 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 with the Board's approval. Such fair market values (and any amount for good will) shall be as determined by the NSW Valuer-General.

The Act also establishes the functions, duties and responsibilities of the Board. The Board is required to act in accordance with the provisions of the Act and is guided by the Board's charter and the objectives of the Act: see section 5(2).

2 Application to Transfer a Perpetual Lease

Applications to transfer a lease must be made in accordance with the Regulation. The lease holder must pay the prescribed fee to the Board: see clause 39 and Schedule 2. The application must:

- a) Be in the prescribed form, being Form 5, with all information fully completed;
- b) Be accompanied by a formal valuation of the interest of the leaseholder prepared by the NSW Valuer General in accordance with the Act, in particular section 23(1);
- c) If a written agreement for sale has been entered into - be accompanied by a duly certified copy of the agreement and lodged within 3 months after the date of execution of the agreement: see clause 39(2) of the Regulation; and
- d) If the application is for consent to transfer part only of the land comprised in a lease - be accompanied by a sketch of the proposed subdivision of the land: see clause 39(3) of the Regulation.

2.1 Application to Transfer a Perpetual Lease to a Non Islander

From time to time, the Board receives an application to transfer a perpetual lease to a person who is not an Islander or able to be deemed an Islander under the Act. Section 23(4) of the Act provides that the Board shall have absolute discretion to recommend the granting or refusal of any application for consent to the Minister, except that the Board should not recommend that consent be granted for a transfer of a lease to a non-Islander unless the Board is satisfied that there is no Islander who desires and is in a position to take the transfer of the lease or sublease, as the case may be.

In the case of an application to transfer a perpetual lease to a non-Islander, in addition to the matters referred to in section 2 of the policy, the application must also:

- a) Include supporting information demonstrating that, prior to submitting the application, the lease holder advertised on the Island that the lease was available for transfer at the fair market value and that good faith negotiations were progressed with any Islander who expressed interest interested in taking the transfer; and
- b) Demonstrate how the proposed (non-Islander) transferee would satisfy the requirements of the Act in relation to perpetual leases, including in particular the condition in s 21(7) of residence on the lease.

Section 8 of the Policy outlines the process to guide the Board in determining whether an Islander desires and is in a position to take the transfer of lease where it has received an application to transfer to a non-Islander. All applications to transfer a perpetual lease to a non Islander will be advertised by the Board in accordance with the Policy for a period of 28 days in all local newspapers, on the Board internet website, by way of notice to all residents on the island, and by way of notice on all Board public notice boards.

2.2 Transfer a Perpetual Lease by way of Mortgage

All land on the Island is vested in the Crown. Dealings in respect of land on the Island are dealt with in the same manner as land under the “Old System” of land title. A mortgage of a perpetual lease involves a transfer of the lease to the bank or other financial institution mortgagee. The consent of the Minister is required in respect of any such mortgage, but the non-Islander status of the mortgagee is not an impediment to the giving of consent or the mortgage itself: see section 23(2) of the Act. No consent is required to retransfer a lease by way of a discharge of the mortgage: see also section 23(2).

2.3 Bequeathing a Perpetual Lease in a Will

A perpetual lease may be inherited, and the lease taken up by an Islander. The Minister may consent to the transfer on the recommendation of the Board.

Where under a will a perpetual lease devolves beneficially upon a lineal descendant who is not an Islander, that person shall be deemed to be an Islander if application is made for his or her registration as a holder of the lease not later than 2 years, or such longer period as the Minister may in a particular case approve, after the death of the lessee. A lineal descendant is a child, grandchild, great grandchild etc of the deceased.

If a perpetual lease devolves under a will or intestacy upon a person who is not an Islander or a lineal descendant of the deceased leaseholder, the person is not automatically entitled to take up the lease.

Upon the grant of probate the executor, as the personal representative of the deceased, owns the property of the deceased by the operation of law. No consent is required from the Board for this to occur and accordingly Form 5 is not relevant as it relates to an application to transfer a lease pursuant to Section 23(2).

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.

Neither the Act or the Regulation prescribe the process that must be followed for applying to the Board to recommend to the Minister for a certificate of eligibility to hold the lease for the purposes of section 23(10)(b). In order to effect this process the executor should write to the Board requesting that a recommendation is made to the Minister permitting them to hold the lease pursuant to section 23(10)(a) of the Act.

Section 23(10)(a) of the Act restricts the length of time that they are permitted to hold the lease to *“such period after the death of the testator or intestate as the Minister on the recommendation of the Board may permit.”*

A maximum of 2 years from the date of probate is a reasonable period of time to enable an executor to either apply to the Board for a certificate from the Minister that the beneficiary is entitled to hold the lease or to sell and transfer the lease pursuant to section 23 (10)(b).

Should a beneficiary wish to hold the lease they may apply to the Board to recommend to the Minister for a certificate that they are eligible to hold the lease on the basis of either:

- a) Demonstrating that they are eligible to hold the lease by virtue of being Islanders or being declared Islanders (section 3); or

Generally, to be eligible to hold a lease in perpetuity for the purpose of residence a person must demonstrate that they are Islanders as defined by the Act (section 3(1)) or a lineal descendant of the deceased (that is a child, grandchild, great grandchild etc) (section 23(11)).

On recommendation of the Board made in special circumstances, the Minister may, by order published in the Gazette, declare a person in whom a lease has devolved beneficially (and who is not an Islander or lineal descendant of the deceased leaseholder) to have acquired the status of an Islander: see section 3(1)(a) of the Act.

- b) As non Islanders they could apply for a certificate to hold the lease on the basis that there are no Islanders who desire and are in a position to take a transfer of the lease (Section 23(4)).

In considering an application to grant a certificate, the Board shall determine whether there is any Islander who desires and is in a position to take a transfer of the a lease in accordance with section 7 of the Policy. If no Islander desires and is in a position to take a transfer of the lease, the Minister may, on recommendation of the Board, grant a certificate.

Should the application for a certificate be successful then a beneficiary may apply for the lease to be transferred to them following the usual process for the transfer of leases (section 23) noting that should the certificate be issued on the basis of option ii. The approval of the Governor must be obtained (section 23(2)).

3 Board Decision-Making Processes in General

3.1 Transfer to Any Person/s

Section 21(7) of the Act provides that a condition of residence attaches to all perpetual leases that is to be performed by the holder or sublessee of the lease. Section 2 of the Act defines reside and residence to mean “a residing by the person referred to in the context continuously and in good faith on the land indicated by the context as his or her usual home, without other habitual residence.” It is important that the ability of any proposed transferee/s to comply with this requirement be assessed when considering applications to transfer a lease.

The Board should consider the circumstances of all proposed transfers and, if necessary, require any proposed transferee/s to complete a statutory declaration stating that, if the proposed transfer is approved, they intend to reside on the subject lease and they know of no circumstances currently existing that would preclude their taking up residence within a reasonable period as agreed by the Board.

This requirement will not be necessary in all cases e.g. where an exemption from the residency condition already applies or may be considered, however any such arrangements should be agreed prior to the transfer being recommended for the Minister’s consent (see also LHIB *Suspension of Condition of Residency on Perpetual Leases Policy*).

3.2 Transfer to Islanders

In accordance with section 21 of the Act, the Minister may lease vacant Crown lands, of 2 hectares or

less, in perpetuity for the purpose of residence to an Islander (as defined in s 3 of the Act).

The Minister may approve or refuse the grant of a lease, but the Minister can only grant consent to a transfer if the Board so recommends: sections 21(5) and (6). However, notwithstanding that the Board recommends consent to the transfer, the Minister may still exercise discretion to refuse consent.

The Board will consider the application in accordance with the Act. If the Minister approves the transfer, the leaseholder shall submit the prescribed form, being Form 6, for the lodgement of transfer of a lease, and the Register of Leases shall be updated by the Board to record the transfer.

3.3 Transfers to Non Islanders

In the case of applications which propose the transfer of a perpetual lease to a non-Islander, this Policy contains additional particular provisions:

- a) First, the Board must satisfy itself before recommending that the Minister consent to an application to transfer a lease to a non-Islander that there is no Islander who desires and is in a position to take a transfer of the lease – as to which see section 7 below; and
- b) Second, the Policy provides for specific procedures in relation to advertising applications to transfer a perpetual lease to a non-Islander, and decision-making by the Board – as to which see section 8 below.

Where the application proposes the transfer of a perpetual lease to a non-Islander, the Board shall have “absolute discretion” in making its recommendation to grant or refuse the application, except that the Board cannot recommend to the Minister that consent be granted unless the Board is satisfied that there is no Islander who desires and is in a position to take the transfer of the lease: section 23(4).

The Minister may approve or refuse the transfer of a lease, but the Minister can only grant consent to a transfer if the Board recommends so. However, notwithstanding that the Board recommends that the Minister consent to the transfer, the Minister may still exercise discretion to refuse consent.

If the Minister consents to the transfer, the Governor’s approval must also be obtained for the transfer to a non-Islander (other than by way of mortgage to a financial institution) to be valid. On approval by the Governor, the leaseholder shall submit the prescribed form, being Form 6, for the lodgement of transfer of a lease, and the Register of Leases shall be updated by the Board to record the transfer.

The decision by the Board to recommend approval or refusal of an application to transfer a perpetual lease to a non-Islander should not be made arbitrarily or without sound reason. The Board must always make the decision having regard to the objectives and purposes of the Act, and must act bona fides and comply with administrative law principles.

Further, as noted in section 1.3 above, whilst the Board must at all times comply with the Act and Regulations, it should not apply the Policy inflexibly. In circumstances where the Board considers it appropriate to depart from the Policy, the Board should document the circumstances and its reasons for the departure.

3.4 Processes following Approval of a Transfer

In accordance with the Regulation, a transfer of whole or part of a perpetual lease must be lodged at the Island Office of the Board in the prescribed form (Form 6), and must be accompanied by the relevant fee: clause 40(2). The transfer must be executed by both the transferor and the transferee:

clause 40(3).

A lease that is transferred remains subject to all conditions not complied with at the time of transfer and to all forfeitures incurred: clause 41.

4 Determining Whether There is an Islander Who Desires and is in a Position to Take a Transfer of a Perpetual Lease

The Board must satisfy itself before recommending that the Minister consent to an application to transfer a lease to a non-Islander that there is no Islander who desires and is in a position to take a transfer of the lease. In determining this, the Board should consider amongst other relevant matters:

- a) Whether the procedures in section 8 of the Policy in relation to advertising applications to transfer to non-Islanders have been followed; and
- b) Where the Board has advised the leaseholder of any Islander potentially interested in taking the transfer, whether there has been a genuine opportunity for that Islander to negotiate with the leaseholder to take the transfer.

In considering whether there has been a genuine opportunity for any interested Islander to negotiate with the leaseholder to take the transfer, the Board may consider a range of matters, including:

- a) Whether the leaseholder has:
 - Sought genuinely and in good faith to negotiate the transfer of the lease to an interested Islander for fair market value as determined by the NSW Valuer-General or for any lesser amount (noting that the Valuer-General's valuation is a cap on the transfer price not a minimum price);
 - Had regard to the interests of any interested Islander.
- b) Whether the interested Islander has:
 - Acted reliably in any representations about their capacity to take the transfer of the lease and to fulfil any offer made on the lease;
 - Sought genuinely and in good faith to negotiate the transfer of the lease for a fair and reasonable price (noting that the fair market value is as determined by the NSW Valuer-General);
 - Had regard to the interests of the leaseholder.

The Act does not place any specific obligations on the leaseholder and any interested Islander in how they conduct their negotiations. However, the Board may consider how the leaseholder and Islanders have conducted their negotiations in determining whether it is satisfied that there is no Islander who desires and is in a position to take a transfer of the lease.

Indicators of whether the parties have engaged in good faith negotiations may include:

- a) Unreasonable delay in initiating communication in the first instance;
- b) Unexplained failure to respond to correspondence, telephone calls or otherwise communicate with the other parties within a reasonable time;
- c) Failing to respond to reasonable requests for relevant information within a reasonable time;
- d) Failing to follow up a lack of response from the other parties;
- e) Failing to take reasonable steps to facilitate and engage in discussions with the other parties.

5 Specific Procedures in Relation to Advertising Applications to Transfer a Perpetual Lease to a

Non Islander and Decision-Making by the Board

Unless otherwise provided for under this Policy, the Board, the leaseholder and any non-Islander interesting in taking a transfer of a perpetual lease shall comply with the following procedures once an application to transfer to a non-Islander has been received by the Board:

- a) Notice of the application to transfer will be advertised by the Board:
 - In all local newspapers circulating on the Island;
 - On the Board internet website;
 - By way of notice by post to all residents on the Island (householder); and
 - By way of notice placed on all Board public notice boards on the Island.

The advertisement shall include but not be limited to the following details:

- The name of the leaseholder/s and proposed transferee/s;
 - The lease number and lease area;
 - The value of the proposed transfer.
- b) The notice will give Islanders twenty eight (28) days to make a submission to the Board indicating that they desire and are in a position to take a transfer of the lease.
 - c) All written submissions to the Board will be assessed by the Chief Executive Officer who will advise the Board whether any Islander has made a submission indicating that they desire and are in a position to take a transfer of the lease.
 - d) For the purposes of this policy, the Board will determine that an Islander desires to take up a lease if:
 - In the case of an application for transfer by sale, the Islander provides within the prescribed time a statement of intent to negotiate the transfer of the lease for a fair and reasonable price;
 - In the case of an application for a sub-lease, the Islander provides within the prescribed time a Statutory Declaration that they will, if required to by the leaseholder, for the period of the sub-lease, pay all lease fees, and any other fees and charges for which the leaseholder may be liable in relation to the lease.
 - e) Where the Board determines that one or more Islander desires to take up the lease, the Islander/s will be provided with the Valuer-General's valuation for the property, and given twenty-eight (28) days, or some other reasonable period agreed to by the Board (**the prescribed period**), to engage in and finalise negotiations with the leaseholder for the transfer of the lease.
 - f) The current leaseholder will be informed in writing if any Islander desires to take a transfer of the lease, and requested to engage in negotiations with the interested Islander/s for the transfer of the lease in accordance with the policy.
 - g) The Board will proceed to determine the application to transfer:
 - Where the Board does not receive any submission from an Islander indicating that they desire and are in a position to take a transfer of the lease; or
 - Where an Islander does not finalise negotiations for the transfer of the lease within the prescribed period; and
 - Where the leaseholder has demonstrated that the requirements of the Policy have been satisfied.

As noted in section 6.2 above, the decision by the Board to recommend approval or refusal of an application to transfer a perpetual lease to a non-Islander should not be made arbitrarily or without sound reason. The Board must always make the decision having regard to the objectives and purposes

of the Act, and must act bona fides and comply with administrative law principles.

The Board will not initiate the procedures in 1 to 7 above in the following circumstances:

- a) Where the application to transfer is by way of mortgage and the lease will be held for that purpose by a bank or other financial institution mortgagee.
- b) Where an Islander or leaseholder has applied to have a spouse who is not an Islander included as a lessee on their lease, provided that the spouse resides on the subject lease, and has resided there for a period exceeding twelve (12) months prior to the application being made.

6 Surrender of a Perpetual Lease

An instrument of surrender of a lease under section 22A of the Act must be lodged at the Island Office of the Board in the prescribed form (Form 7), and must be signed by the lessee: clause 42 of the Regulation.

7 Register of Leases

The Board will keep a register containing particulars of leases under the Act. The register is to be kept available at the Island Office of the Board for inspection by members of the public (on payment of a fee, if any, fixed by the Board under section 15 of the Act: see clause 45 of the Regulation.

8 Right to Vary or Revoke

The Board reserves the right to vary or revoke this Policy at any time following consultation with relevant interested parties.

9 Attachment: Form 5 – Application for Consent to Transfer a Lease or Part of a Lease or to Sublet a Lease

Form 5

Application for consent to transfer a lease or part of a lease or to sublet a lease

(Clause 39 (1))

Lord Howe Island Act 1953, section 23

RECEIVED the sum of \$ _____, being the fee required with this application.

Receipt No.

Date: / /

.....
Administration Officer, Lord Howe Island Board

Pursuant to section 23 of the Lord Howe Island Act 1953,

I, [full name]

of [address]

the holder of the lease(s) specified in Schedule 1, apply for the consent of the Minister (*and the approval of the Governor*) (*where required*) to transfer such lease(s) or part(s) of such lease(s) by way of

(*sale, mortgage*)

or sublet such lease(s) [*give particulars of subletting*]

.....
to [*proposed transferee or sublessees*]

of [address]

Declaration marked "A" has been made by me.

I enclose a certified copy of the original agreement or contract for the sale of such lease(s) or part(s) of such lease(s) and apply for approval of that agreement or contract. [*Strike out if there is no written agreement or contract*]

I also enclose a sketch showing the subdivision line or lines and indicating the part(s) of the lease(s) proposed to be transferred. [*Strike out if it is proposed to transfer whole of lease(s)*]

Schedule 1

Class of Lease (Perpetual or Special)	No of Lease	Area	Portion No

.....
Signature of person proposing to transfer or sublet:

Address to which notices are to be sent:
To the Chairperson,
Lord Howe Island Board
Lord Howe Island NSW 2898

Declaration “A” by persons proposing to transfer or sublet

I, *[full name]*

of *[address]*

being the holder of the lease(s) specified in Schedule 1, solemnly declare and affirm that the answers to the questions in Schedule 2 are correct in every particular.

Schedule 2

1	What is the date of your birth?	
2	What are your reasons for wishing to transfer your lease(s) or part(s) of such lease(s) or sublet your lease(s)? State fully.	
3	Are there any improvements on the land proposed to be transferred? Give brief particulars and estimated values of the improvements.	
4	What is the amount: (a) of the consideration agreed on? (b) of the sum for goodwill included in the consideration?	(a) (b)
5	Have you made any agreement or contract for the sale of the lease(s) or part(s) of such lease(s)? If so, a certified copy should be lodged with this application.	
6	Is the person to whom you propose to transfer your lease(s) or part(s) of such lease(s) or sublet your lease(s) an Islander?	
7	If the person to whom you propose to transfer your lease(s) or part(s) of such lease(s), or sublet your lease(s), as the case may be, is not an Islander, is there any Islander residing on the Island who desires and is in a position to take such transfer or sublease? Indicate the grounds for your answer to this question.	

I make this solemn declaration as to the above matters according to the law in this behalf made and subject to the punishment by law provided for any wilfully false statement in any such declaration.

.....
Signature of Declarant:

Made before me at

This day of, 20.....

.....
Signature of a Justice of the Peace, Commissioner for Affidavits or Notary Public:

Declaration “B” by proposed transferee or sublessee

I, *[full name]*

of *[address]*

solemnly declare and affirm that I am the person to whom

[the proposed transferor]

proposes to transfer the lease(s) or part(s) of such lease(s) (or to sublet) the lease(s) particularised in Schedule 1, that the transaction is entered into in good faith, and that Schedule 3 contains a true statement of all lands now held by me, my spouse and my children living with me or dependent on me.

Schedule 3

Class of holding	No of holding	Area	Portion No	By whom held (spouse or child)
If no land is held write “Nil”				

I solemnly declare and affirm that my sole object in acquiring the land is in order that I may hold and use it for my own exclusive benefit, and that the answers to the questions in Schedule 4 are true and correct in every particular.

Schedule 4

1	Are you an Islander? If so, state the grounds on which you claim to be one.	
2	What is the date and place of your birth?	
3	(a) What is your marital status? (b) State the age and sex of any children living with you or dependent on you.	(a) (b)
4	What is the amount: (a) of the consideration agreed on? (b) of the sum for goodwill included in the consideration?	(a) (b)
5	What are your reasons for wishing to acquire the subject lease(s) or part(s) of such lease(s)? Indicate the use you intend to make of the land.	

I make this solemn declaration as to the above matters according to the law in this behalf made and subject to the punishment by law provided for any wilfully false statement in any such declaration.

.....
Signature of Declarant:

Address to which notices are to be sent:

.....

Made before me at

This day of, 20.....

.....
Signature of a Justice of the Peace, Commissioner for Affidavits or Notary Public:

10 Attachment: Statutory Declaration – Heritage Islander

**STATUTORY DECLARATION
(Oaths Act 1900 (NSW))**

I,
(Insert full name)

of
(insert address)

....., do solemnly and sincerely declare as follows:
(insert occupation)

- 1. I resided on Lord Howe Island ("the Island"), continuously and in good faith as my usual home, without any other habitual residence immediately before 1 January 1982;

AND

- 2. (Please tick the appropriate box)

I am a person whose name was, on 22 April 1954, shown in the records of the Chief Secretary's Department as that of a holder (at any time before 22 April 1954) of a permissive occupancy of part of the Island from the Board of Control.

OR

I am the spouse, widow or widower of (insert name) who is a person whose name was, on 22 April 1954, shown in the records of the Chief Secretary's Department as that of a holder (at any time before 22 April 1954) of a permissive occupancy of part of the Island from the Board of Control.

OR

I am the issue of (insert name) who is a person whose name was, on 22 April 1954, shown in the records of the Chief Secretary's Department as that of a holder (at any time before 22 April 1954) of a permissive occupancy of part of the Island from the Board of Control.

OR

I am the spouse, widow or widower of (insert name) who is the issue of (insert name) who is a person whose name was, on 22 April 1954, shown in the records of the Chief Secretary's Department as that of a holder (at any time before 22 April 1954) of a permissive occupancy of part of the Island from the Board of Control.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Oaths Act 1900.

Declared at Date.....
(Name of place)

Signature of person making declaration

Before me, signature of witness.....

Name of witness

Address of witness

Authority of witness (JP/ solicitor/ other (please state)): JP Registration Number:

11 Attachment: Statutory Declaration – 10 Year Islander

**STATUTORY DECLARATION
(Oaths Act 1900 (NSW))**

I,
(Insert full name)

of
(insert address)

....., do solemnly and sincerely declare as follows:
(insert occupation)

3. I reside on Lord Howe Island ("the Island"), continuously and in good faith as my usual home, without any other habitual residence

AND

4. I have resided on the Island, immediately previously to this time, continuously for a period of years;

AND

5. My continuous residence on the Island has not been interrupted other than:
 a. to attend a school, college, university or other educational institution or
 b. to gain experience in a trade, profession or gainful employment for a period of years.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Oaths Act 1900.

Declared at Date.....
(Name of place)

Signature of person making declaration

Before me, signature of witness.....

Name of witness

Address of witness

Authority of witness (JP/ solicitor/ other (please state)): JP Registration Number:

12 Attachment: Form 6 – Transfer of Lease

Form 6 Transfer of lease

(Clause 40 (1))

[Lord Howe Island Act 1953](#), section 23

I, *[full name]*

of *[address]*

in consideration of the sum of *[specify sum]*\$

(the receipt of which is acknowledged) transfer by way of *[sale, mortgage]*

to *[full name]*

of *[address]*

all *[my, its]* estate and interest in the land described as follows:

Class of lease (perpetual or special)	No of lease (indicate if part only)	Area	Portion No

Signed at _____ the _____ day of _____, 20

Signed in my presence:

Witness

Signature of transferor

I accept this transfer.

Signed in my presence:

Witness

Signature of transferee

Notes:

- (1) The witness must be a legal practitioner, Justice of the Peace, Notary Public, Commissioner for Affidavits or bank manager.
- (2) If executed under seal, the usual attestation clause is also to be inserted. If signed by virtue of a power of attorney, the memorandum of non-revocation on the back of this form is to be signed by the attorney before a witness.
- (3) The following memorandum is to be published on the back of this form.

Memorandum of non-revocation of power of attorney

[/We] have had no notice of revocation of the Power of Attorney registered No

[specify No.] Miscellaneous Register under the authority of which *[/we]*

have just signed the transfer.

Signed at _____ the _____ day of _____, 20

Witness:

Notes:

- (1) All alterations and interlineations must be initialled in the left margin by the attesting witnesses.
- (2) Transfers, other than those by way of discharge of mortgage to the registered mortgagor or a legal representative or by way of mortgage or sub-mortgage, cannot be accepted for registration unless duly stamped or endorsed "exempt from duty" or bearing other evidence of having been submitted to the Chief Commissioner of State Revenue for assessment.
- (3) A transfer involving lands in the name of a deceased person (whether mortgagor or mortgagee) cannot be accepted unless the first transfer involving each such holding has been marked "Registration not opposed" by the Chief Commissioner of State Revenue.

13 Attachment: Form 7 – Instrument of Surrender

Form 7 Instrument of surrender

(Clause42)

Lord Howe Island Act 1953, section 22A

I, *[full name]*

of *[address]*

being the holder of the land described below, surrender the land to the Crown, intending that the land will vest in the Crown as Crown land.

[Description of land to be surrendered that will enable it to be identified]

Signed at _____ this _____ day of _____, 20 _____.

Signature of surrenderor:

Signed in my presence by *[full name of surrenderor]*
who is personally known to me.

Signature of Justice of the Peace:

I, *[full name of mortgagee if surrender is by mortgagor]*,

the mortgagee under Mortgage No *[specify No]*, _____ join in this surrender.

Signed at _____ this _____ day of _____, 20 _____.

Signature of mortgagee:

Signed in my presence by *[full name of mortgagee]*
who is personally known to me.

Signature of Justice of the Peace:

I, *[full name of mortgagor if surrender is by mortgagee]*,

being the mortgagor of the land described above, join in this surrender.

Signed at _____ this _____ day of _____, 20 _____.

Signature of mortgagor:

Signed in my presence by *[full name of mortgagor]*

who is personally known to me.

Signature of Justice of the Peace:

Accepted for and on behalf of the Crown this _____ day of _____, 20 _____.

Signature of Minister:

Signed in my presence by the Minister administering the Lord Howe Island Act 1953, who is personally known to me.

Signature of Witness: