

# LORD HOWE ISLAND BOARD

## Business Paper

### OPEN SESSION

#### **ITEM**

Review of Perpetual Leases that are potentially in breach of their lease conditions.

#### **RECOMMENDATION**

That this report be received and noted.

#### **Background**

Recommendation 2 of the final *Handley Review of Land Allocation on Lord Howe Island* (“the Handley Review”) stated that:

*“Properly police and enforce the residency condition in perpetual leases, with forfeiture as a last resort.”*

This recommendation was supported by Government with the following comment:

*Guidelines will be developed to support the Board in:*

- *assessing applications for suspension in residency condition*
- *monitoring habitual residence of leaseholders*
- *enforcing the residency requirements in the case of ‘joint tenants’ and ‘tenants in common’ or situations where there are multiple dwellings on an allotment.*

A review of residency status of all lessees was undertaken in late 2017 by the administration with advice from local Board members. The review found that of the 115 Perpetual leases on the Island:

- The lessee/s of 78 leases (68%) were considered to be living on their leases
- The lessee/s of 23 leases (20%) who were not living on their leases had existing suspensions of the residency condition in place, were otherwise temporarily excused from fulfilling the residency condition (e.g. unresolved deceased estates), were technically in breach due to “historic” administrative oversights (which have substantially been rectified) and the like.
- One or more of the lessee/s of 14 leases (12%) were considered to be possibly not living on their leases.

#### **CURRENT POSITION**

In preparing this report a review of the original list presented to the Board has been undertaken and updated (Attachment A – update of Perpetual Leaseholders potentially in breach with their lease conditions - Closed). Two investigations have been completed with residency requirements met by the respective leaseholders. A further four perpetual leases are subject to separate reports at this Board meeting that if adopted will satisfy residency requirements.

Board staff are also investigating a number of new instances where leaseholders who may be in breach of their lease conditions. For privacy and confidentiality reasons and to ensure due administrative process is being followed the revised list will not be reported to the Board until after the initial investigation has been completed and any responses to show cause letters received.

Where the Board identifies a lease that is potentially in breach, an investigation process will be initiated. Table 1 describes the key steps in the investigation process.

<b>Phase</b>	<b>Stage</b>	<b>Description</b>
Investigation	Initial investigation	The Board administration considers whether there has been an arguable breach of the perpetual lease condition based upon available material.
	Show cause	The Board invites the affected leaseholder to show cause why, on the basis of the initial investigation, the Board should not further investigate whether the lease is liable to be forfeited for the reason of a breach of the perpetual lease condition.
Final deliberation	Preliminary report	After considering any comment from the affected leaseholder and, upon consideration of all information then available, the Board forms a preliminary view whether there has been a forfeiture event by reason of a breach of the perpetual lease condition. That preliminary view is set out in a report that collects all available information and includes the leaseholder response. That report should be considered and, if accepted, adopted at a formal meeting of the Board and include any proposed recommendation that might be made to the Minister for publication of a Gazette notice.
	Invitation to respond	The Board invites the affected leaseholder to comment upon the preliminary report.
	Final report	After considering the response of the leaseholder, and again considering the entirety of the available information, the Board adopts a final report setting out the determination of the Board whether the lease is liable to be forfeited for breach of the perpetual lease condition. That report would be provided to the Minister with a

		recommendation from the Board as to publication of a Gazette notice.
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*Table 1 Summary of procedural steps in relation to a breach event.*

The Board administration seeks to investigate all potential non-compliance with lease matters. However in order to manage limited Board resources investigations into non-compliance are being prioritised according to the degree of non-compliance. For example in the two scenarios:

1. A lease that is not being occupied by its lease holder and is otherwise vacant
2. A lease that is not being occupied by its lease holder, but is being occupied by an Islander.

Both scenarios are in breach of the Lord Howe Island Act, however scenario two can be remedied by way of a sublease arrangement that would be permissible under the Act. While the Board would intend to investigate and pursue compliance for both scenarios, scenarios where there is no obvious administrative solution will have a higher priority than scenario two.

## **RECOMMENDATION**

That this report be received and noted.

**Prepared:** Justin Sauvage Manager Environment and Community Services.

**Endorsed:** Peter Adams Chief Executive Officer, Lord Howe Island Board

### **Attachments:**

Attachment A: List of Perpetual Leaseholders potentially in breach of their perpetual lease conditions – September 2019 - **Closed**