



# LORD HOWE ISLAND BOARD

## PLAIN LANGUAGE GUIDE TO THE LORD HOWE ISLAND ACT

### Information Sheet 5: Perpetual Leases on Lord Howe Island

#### What are perpetual leases?

The *Lord Howe Island Act 1953* provides that all the land on the Island belongs to the Crown. The law does not allow freehold private ownership.

Instead, the Act provides for the creation of Perpetual Leases over Crown Land, up to 2 hectares in area, to be used for residential purposes

Perpetual Leases are issued to Islanders to reside on. The creation of new Perpetual Leases is strictly constrained by the *Lord Howe Island Local Environmental Plan 2010*. The plan divides the Island into 7 different zones, each with its own set of controls on the use of land in that zone. The plan also limits the total number of future dwellings on the Island to 25 during the 20 year period up to 2025. The Board has developed a policy, the *LHIB Dwelling Entitlement and Allocation Policy* so that the creation of new leases is done fairly and transparently. A copy of this policy is available from the Board.

The creation of new lease is controlled by the Act, which sets out criteria which Islanders must meet to apply for a lease.

The subsequent transfer or subleasing of Perpetual Leases is also strictly controlled and constrained by the Act. These provisions date back to 1953 and were designed to ensure land is available for people who have made the Island their home and to prevent speculation and trading in Island land.

#### Is there a Register of Perpetual Leases?

Yes. The Lord Howe Island Board keeps a register containing particulars of leases granted under the Act. The register may be inspected by the public at the Island office of the Board.

#### Who may be granted a new Perpetual Lease?

New Perpetual Leases may only be granted to Islanders of or above 18 years of age. For more information about who is an Islander for the purposes of the Act, see the fact sheet in this series entitled "*Who is a Lord Howe Islander?*"

The creation of new leases is controlled by the section 21 of the Act, which sets out criteria which Islanders must meet to apply for a lease.

#### How long does a Perpetual Lease last?

A Perpetual Lease is on-going unless it is forfeited for failure to comply with any requirement applying to the lease.

#### Is there a residential condition applying to Perpetual Lease?

Yes. The leaseholder must reside on the property unless it has been subleased as set out below. In that event, the sublessee must reside on the property.

#### What about absences from the property?

The Act describes what is meant by residing on a property.

Broadly, it means using the property as the person's usual home, continually and in good faith, with no other habitual residence. There are 4 exceptions to this general rule.

Absences from the property will not be taken as a failure to comply with this residential condition if:

- The absence is so the person may attend an educational institution off the Island;

- The absence is so the person may gain employment experience off the Island and the periods of absence for this purpose do not total more than 10 years;
- The Board has waived the residential condition for the period of absence because of the illness of the person, or of a family member, or because of other adverse circumstances;
- The Minister has, in special circumstances, waived the residential condition because the Islander already holds or subleases one other Perpetual Lease on the Island.

#### **Can an existing lease be transferred or subleased?**

Yes. A Perpetual Lease may be transferred or subleased to another Islander.

It may only be transferred or subleased to a non-Islander if no Islander is willing and able to take it up. Islanders can purchase, sub-lease or inherit existing Perpetual Leases.

Transfers and subleases of Perpetual Leases require Minister's approval on the recommendation of the Board.

The transfer may apply to the whole of the land the subject of the lease or only part of it. The transfer may be to more than one person, but if any one of them is not an Islander, the transfer cannot take effect unless no Islander or group of 2 or more Islanders is willing or able to take the transfer.

The transfer requires the approval of Minister on the recommendation of the Board, and in the case of a transfer to a non-Islander, the approval of the Governor is also required. Application forms for consent to transfer are available from the Island office of the Board.

#### **Are there restrictions on the sale price of the transfer of a lease?**

Yes. The sale price for the transfer must not exceed the sum determined by the Valuer General, being the sum of:

- The fair market value of the transferor's interest in the unimproved value of the land; and
- The fair market value of the Board approved improvements on the land;
- In the case of a transfer involving the sale of a business, the fair market value of the goodwill of the business.

#### **What is the rental for a Perpetual Lease?**

The annual rent for a Perpetual Lease is payable in advance. The amount is determined from time to time by the Board in accordance with the *Lord Howe Island Regulation 2014*. The Regulation imposes a maximum annual rent that the Board may determine, based on a flat dollar amount plus an amount per square metre of land comprised in lease. Generally, the Board may make a new determination of the annual rental every three or more years. The maximum amounts (both the fixed amounts and the amounts per square metre of land) are increased on 1 September each year in accordance with the Consumer Price Index.

#### **Can a person inherit a Perpetual Lease?**

See the fact sheet titled "Owning and inheriting land on Lord Howe Island – An Overview".

#### **Can a Perpetual Lease be cancelled?**

Yes, but this would only occur in an unusual and extreme circumstance. For example, a Perpetual Lease could be forfeited for non-payment of rent or failure to comply with conditions applying to the lease such as the residency requirement. Forfeiture takes effect when the Minister declares it to be forfeited in the Government Gazette.

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#### **Other legal fact sheets forming part of this series include the following titles:**

- Information Sheet 1: History of the Lord Howe Island Act 1953
- Information Sheet 2: NSW and Commonwealth Laws on Lord Howe Island
- Information Sheet 3: Owning and Inheriting Land on Lord Howe Island
- Information Sheet 4: Who is a Lord Howe Islander?
- Information Sheet 6: Special Leases on Lord Howe Island
- Information Sheet 7: Permissive Occupancies on Lord Howe Island