



LORD HOWE ISLAND BOARD

PLAIN LANGUAGE GUIDE TO THE LORD HOWE ISLAND ACT

Information Sheet 7: Permissive Occupancies on Lord Howe Island

Under the Lord Howe Island Act 1953 (the Act), all land on the island is NSW Crown Land. The Act does not allow freehold private ownership of land.

The Minister, on the recommendation of the Board can make Crown Land available under Permissive Occupancy to eligible persons for a variety of valid purposes which range from gardens and boatsheds to communications infrastructure and churches.

Permissive Occupancies are the most flexible and open mechanism available to the Board to allow private occupation and use of land on the island. All other private use of land on the island under the Act must be by Perpetual Lease or Special Lease.

In general, Permissive Occupancies are made available for a purpose which is lawful, consistent with the zoning of the land under the Lord Howe Island Local Environmental Plan 2010, and with community values and expectations.

Approval to occupy land under a Permissive Occupancy is not a tradable commodity and does not vest any interest in the land in the holder. Permissive Occupancies are issued at the absolute discretion of the Minister and may be terminated at will.

How is a Permissive Occupancy created?

Any person may apply to be granted a Permissive Occupancy. The Minister on the recommendation of the Lord Howe Island Board may grant a person permission to occupy vacant Crown land or Crown land reserved for a public purpose. The Board's recommendation to the Minister is made subject to the Board's *Permissive Occupancy Policy 2007*.

Key features of the policy include:

- The Board will only recommend the granting of a permissive occupancy to perpetual leaseholders or incorporated bodies providing essential community services.
- Permission will not be recommended if the proposed use of land does not comply with the planning controls applying to the land. These controls are currently set out in the Lord Howe Island Local Environmental Plan 2010.
- The occupant must continually use and occupy the land for the purpose for which the permission to occupy was given.
- The Board will seek expressions of interest before granting a permissive occupancy to a person or body for the first time.
- A list of matters the Board will take into account in determining the occupancy fee.

Prospective applicants, and current holders, should read this policy, which is available from the Board. Permissive Occupancies are granted subject to a standard set of conditions, and any specific conditions which the Board believes should apply to the subject land.

Can a permissive occupancy be transferred or inherited?

Unlike a Perpetual Lease, a permissive occupancy cannot be transferred, sublet or inherited. Under the law, a perpetual leaseholder of land acquires a legal interest in the land but a Permissive Occupant does not.

A Permissive Occupant only has permission to occupy the land and that permission may be terminated at any time.

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 5: Perpetual Leases on Lord Howe Island
- Information Sheet 6: Special Leases on Lord Howe Island