

LORD HOWE ISLAND BOARD POLICY

TITLE	Business Licence for the Provision of Long Term Accommodation		
DATE ADOPTED	March 2014	AGENDA ITEM	8 (i) March 2014
CURRENT VERSION	May 2017	AGENDA ITEM	8 (ii) May 2017
REVIEW	5 years	RECORD NUMBER	ED17/1850
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;
- c) Residential occupancy of a dwelling solely for the accommodation of family or friends and for which no remuneration is payable; or
- 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 their lease

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.

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.
- 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.
- 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.

g) The landlord is responsible for the removal of waste from the licensed premises.

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			