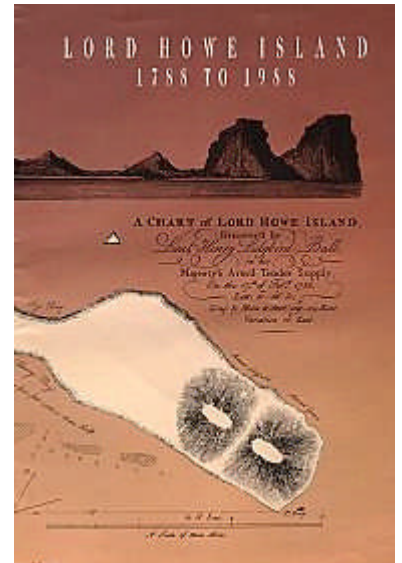


Land Tenure

Squatters in paradise

The story of land tenure on Lord Howe is a monumental tale of frustration for the aspirations of Island residents. The State Government, acting somewhat like a feudal land lord, treated the Islanders with paternalistic benevolence, but showed a remarkable reluctance to grant them secure tenure over lands they had occupied for generations. Consequently, in spite of innumerable attempts to secure freehold or leasehold title to land, Island residents remained, for almost 120 years, squatters in paradise.

Between 1788 (when the Island was discovered) and 1855, control of the Island was vested with the British Crown. When the colony of New South Wales was granted a measure of autonomous government in 1855, the state's parliament assumed responsibility for Island affairs. This transfer of power from big brother to little brother made little, if any, difference to policies involving land tenure.



The preamble to the historic Lord Howe Island Act of 1953 in which Islanders were given secure leasehold land tenure for the first time. Act No 39, 1935. Lord Howe Island.

An Act to make provision for the care, control and management of Lord Howe Island; to constitute a Lord Howe Island Board and an Island Committee and to define their prospective powers, authorities, duties and function; to make provision relating to the tenure of land upon the said Island., to validate certain matters; and for purposes connected therewith.



The first permanent settlers arrived on the Island in 1833 or '34, but soon sold out to an impressive triumvirate of gentlemen squatters: Dr J. Foulis, Richard Dawson, and Captain Poole. However, Captain Poole was unable to obtain a freehold title to the lands they occupied and so the three abandoned their enterprise in about 1847. More humble settlers, who had been brought to the Island to work for Dr Foulis and his associates, decided to stay on and farm the land. They were soon joined by others, including mariners like Nathan Thompson and Captain Nichols.

Before long, a small but thriving community had established itself on the Island, supplying victuals to passing whaling ships. In 1871, when Commander Challis visited the Island in HMS 'Rosario', the residents asked him to submit to the state governor their desire to 'have a long lease or absolute gift of the land they are cultivating'. This request was passed on to the commanding naval officer in Sydney, but appears to have fallen on deaf ears thereafter. Four years later, the Crown Lands Consolidation Act was passed by State Parliament and, as a consequence, Surveyor Berry carried out the first survey of the Island in 1878.

A number of short term leases were granted, but these appear to have been of doubtful legality, because the Crown Lands Act (and subsequent Land Acts) completely failed to mention the Island in their provisions.

When the Island was proclaimed a Forest Reserve in 1878, Captain Armstrong was appointed a Forest Ranger and granted a lease of 100 acres at an annual rental of 5 shillings. While it seems that the Captain did his best to improve conditions on the Island, he was soon embroiled in a series of controversies with Island residents. Following a Commission of Inquiry in 1882 he was removed from office, but was subsequently vindicated by a Parliamentary Select Committee. He did riot, however, return to the Island to live.



Thompson's farm in 1882

A sketch of Lord Howe Island was drawn from memory by Dr. John Foulls in 1853. Dr Foulis had been asked to prepare a report for the Government of New South Wales which was considering the establishment of a penal colony on the Island. He had been an Island resident between 1844 and 1847, and his simple sketch is the earliest known map showing the settlement pattern and landholdings. (Courtesy Mitchell Library)

The man who led the initial inquiry into Captain Armstrong's behaviour, the Hon. J. Bowie Wilson, made his own recommendations about land tenure. He urged that no more persons be allowed to settle on the Island other than existing residents and their families, who should be granted leases for a ten year period. Bowie Wilson believed that the Island should be preserved as a health resort for the Australian Sanatorium. Again, however, nothing came of his proposals.

In 1898, the burning issue of occupation of Crown Lands on Lord Howe Island was raised in yet another official report. Visiting magistrate J. Brodie was asked to represent the Islanders' case for a secure form of land tenure. Accordingly, Surveyor Murphy was sent to the Island to survey all holdings, and it was decided to include the Island as part of a Land District in New South Wales. However, this could not be put into effect as it would have required an amendment to the existing Crown Lands Act.

Yet another visiting magistrate, Frank Farnell, took up the Islanders' grievances in 1905. Thirteen Island residents petitioned him to obtain government approval for a plan to convert their Permissive occupancies to Freehold title. Mr Farnell, who had himself been granted a Permissive occupancy on the Island two years earlier, strongly supported the application. Again, nothing could be done without a change to existing legislation.

At last, however, it looked like the drought would break. Because of difficulties in the lucrative Island palmseed trade, the State Government appointed two Commissions of Inquiry into Island affairs in 1911 and 1912 respectively. Mr Langwell, who led the first Commission, recommended that holders of Permissive occupancies be granted leases subject to some strict conditions. The second Commission, led by W. Bevan, was specifically requested 'to find some equitable system of land tenure which will secure effective and stable settlement of the present residents of the Island and their descendants' (Clause 6). In his report, Mr Bevan recommended that a Board of Control be established to manage the affairs of the Island on behalf of the Government. He further recommended that the proposed Board be empowered to grant ? (a)

special homestead leases up to 21 years for areas of about 5 acres; and (b) grazing leases to the respective occupants over the balance of the land now held by them, for short periods.

In 1913, a Board of Control was duly appointed. All existing Permissive occupancies were revoked and the board was granted the Permissive occupancy of all the lands of the Island. Alas, the Board did not carry out the land tenure recommendations of either of the two Royal Commissions. As far as land tenure was concerned, the labours of Commissioners Langwell and Bevan were like the proverbial mountain that gave birth to a mouse! No one on the Island was any better off!

Unbelievably, five more attempts had to be made before the Gordian knot of land tenure was finally cut by the Lord Howe Island Act in 1953. The attempts are briefly summarised below

1923: Surveyor L.S. Ferrier surveyed existing leaseholds and recommended that more secure tenure be given to Island residents.

1940: Board Member, Mr R. Hicks, visited the Island and recommended that long term tenure be granted to all Island residents.

1946: The Hon. D. Clyne, MLA for King and local parliamentary representative, forwarded a petition to the Government signed by 94 'landholders and prospective landholders' requesting secure leaseholds subject to certain conditions.

1948: The Under Secretary of Lands visited the Island and recommended the introduction of legislation in Parliament to provide a system of Perpetual and Special leases for Island residents.

1951: In a controversial move, the Hon. Clive Evatt QC visited the Island and recommended the granting of 99-year leases to Islanders subject to certain conditions. The Island community was split over the proposal because it was believed that the leases could be too easily sold to outsiders. In addition, it was rumoured that the Island Board was opposed to the granting of the leases. Some leases were actually issued, but the Government withdrew them and decided to introduce special legislation to cover the situation.

In 1953, the Lord Howe Island Act passed through Parliament providing for a system of Perpetual and Special leases for persons holding 'Islander' status (that is, lineal descendants of the early settlers). The leases were transferable subject to certain stringent conditions. A comprehensive survey was carried out by Surveyor Mulley and 51 Perpetual leases were notified in the Government Gazette of February 18, 1955. Island residents must have breathed an audible sigh of relief. One hundred and twenty years of squatting had come to an end. At long last they had achieved security of tenure.

The Freehold Title That Almost Was

For some unknown reason, Lord Howe Island was half forgotten when the principal laws of New South Wales were laid down. In the Constitution Act of 1856, in which legislative power was transferred from the British to the State Parliament, Lord Howe received a brief mention. However, the Island was completely ignored in the important Crown Lands Consolidation Act of 1884, in which the Eastern Division of the State was defined as 'the waters of the Pacific Ocean'. To make matters more complicated still, there was a British Statute - The Colonial Laws Validity Act - which stated that imperial law would always prevail over colonial law if the two were in conflict.

All these weighty constitutional issues suddenly became important in the early 1950's, when land tenure on Lord Howe was the burning issue of the day. Gerald Kirby, the owner of 'Pinetrees', and a number of other Island residents, engaged the eminent constitutional lawyer, Garfield Barwick QC, to advise them on their land rights. Garfield Barwick actually visited the Island, and addressed a number of meetings of local residents. He stated clearly that: -

'The right and power of the Crown, whether by itself or by its delegate in New South Wales, to deal with land was, and in my opinion still is, governed by the Statutes of England affecting the disposal of Crown land. ('Bulletin' 9/12/553). The bottom line was this: English Common Law stipulates that any person who resides on a piece of land for 60 years or longer automatically becomes its owner, entitled to Freehold title or its equivalent. Alas, the Islanders did not feel themselves wealthy enough to challenge the State Government in the High Court. The Lord Howe Island Act, with its restrictive leasehold land tenure cramped by a multitude of stringent conditions, was swept through Parliament. Only the MP, Sir Henry Manning, roundly condemned the Government saying 'This appeals to me as being one of the most outrageous exhibitions of expropriation that this Parliament has ever dealt with'. (P 2608, Hansard No 50, 1953).