

Ref: DA2019.10  
Enquiries: Justin Sauvage

3 June 2020

Mrs Janelle Makiiti  
[REDACTED]



ADMINISTRATION OFFICE  
P.O. Box 5  
Lord Howe Island NSW 2898

**Phone:** 02 6563 2066  
**Facsimile:** 02 6563 2127  
**Email:** [administration@lhib.nsw.gov.au](mailto:administration@lhib.nsw.gov.au)

Dear Mrs Janelle Makiiti

**RE: NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION UNDER ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979**

I am writing in reference to your owner consent OC2020.1 and development application for DA2019.10.

Pursuant to section 4.16(1)(a) and section 4.17 of the Environmental Planning & Assessment Act, notice is hereby given of the determination by the consent authority. Your application has been conditionally approved at the April 2020 Board Meeting.

<b>Proposed Development</b>	DA2019.10
<b>Property Description</b>	Lot: 813 DP: 1213759
<b>Description of Proposed Development</b>	Alterations and Additions to the Existing Primary Dwelling including Demolition of Shed and Construction of Attached Studio, Relocation of Approved Property Access, Retention of Existing Cottage and Decommissioning to a Non-Habitable Storage Shed and FujiClean CE1500EX wastewater treatment system to replace existing septic.
<b>Date from which Consent Applies</b>	29 April 2020
<b>Date in which Consent will Lapse</b>	29 April 2025

The application has been determined by granting consent subject to the following conditions of consent and advisory notes:

**CONDITIONS OF CONSENT**

**1. Approved Plans and Supporting Documentation**

The development is to be carried out in accordance with the plans and documentation provided with OC 2020-01 and DA 2019-10 as listed below and endorsed with the Lord Howe Island Board's stamp, except where amended by other conditions of consent. To the extent of any inconsistency between the plans and conditions of consent, the imposed conditions of consent are to prevail.

- a) Completed OC and DA Forms prepared by Janelle Makiiti, dated 02.09.2019 and 13.02.2019 respectively, as amended by the submissions from Peter McFadyen dated 30th May and 22nd November 2019.



WORLD HERITAGE AREA

- b) Statement of Environmental Effects prepared by Janelle Makiiti, dated 13.02.2019 and associated memorandum by McFadyen Architects dated 01-02-2019
- c) The following plans prepared by McFadyen Architects Pty Ltd, Project No. 48:
  - Site Plan (Rev 3 dated 6 February 2020), Sheet No. 00 R3
  - Dwelling Floor Plan, Elevations, 3D Perspectives, Studio Floor Plan/ Elevations & 3D Perspectives, Sheet Nos. 01-07, Rev 1 – 8 January 2019
- d) BASIX Certificate (No. A339426\_02) dated 6th February 2020

Reason: To ensure the development is carried out in accordance with the details submitted in the DA.

## 2. Construction Certificate

- a) A construction certificate is required to be approved and issued by an Accredited Certifier, prior to the commencement of any works on site.
- b) All construction work is to be carried out and completed in accordance with the National Construction Code (NCC)/ Building Code of Australia (BCA).
- c) The applicant is to ensure that the Construction Certificate Plans are the same as the approved DA Plans.
- d) **Prior to the issuing of a Construction Certificate** the applicant is to provide **detailed structural engineering plans** for the development. The structural plans are to address all actions, including construction in Wind Zone A, and are to be certified by an appropriately qualified Structural Engineer in accordance with AS1170.2.
- e) As the building is classified as 1a, construction must be overseen by a licenced builder. The licenced builder is to be nominated in the Construction Certificate application.

Alternatively, the applicant can apply for an Owner Builder Permit, issued by NSW Fair Trading. A copy of the Owner Builder Permit is to be supplied with the Construction Certificate Application.

- f) Prior to issuing a Construction Certificate the applicant is to provide evidence of **payment of a Long Service Levy** as per section 34 of the Building and Construction Industry *Long Service Payments Act 1986* Prior to the issuing of a Construction Certificate the applicant is to provide evidence that the licensed contractor/builder undertaking the residential building work has taken out under the **Home Building Compensation Fund** as per the *Home Building Act 1989*.
- g) Prior to the issuing of a Construction Certificate the applicant is to ensure compliance with any/all conditions imposed by the Board as part the Development Application approval process.

Reason: To ensure construction is undertaken in accordance with requirements.

## 3. BASIX

The Construction Certificate plans are to include all BASIX commitments nominated in the BASIX Certificate. BASIX Commitments are to be certified by a certifying authority before the issuing of an Occupation Certificate.

## 4. Ecology and Habitat

- a) If any live LHI Gecko or LHI Placostylus are detected during works they must be moved to similar habitat structures in the adjacent area (e.g. fallen timber within dense native vegetation, old garage bedsits/structures) away from the development

site so they can escape predation by predators such as LHI Currawong, and LHI Woodhen.

- b) All building materials and building activity are restricted to being stock piled on cleared open areas.
- c) During installation of the wastewater surface irrigation system all leaf litter and fallen timber shall be retained on site, and if required to be moved, be immediately redistributed across the site following completion of installation works; and
- d) Domestic chickens are not kept or allowed to free range through the waste water irrigation area to improve habitat resources and reduce predation of LHI Placostylus.

Reason: To ensure ecological communities are not adversely impacted by the development.

## 5. Fire Safety

- a) The applicant is to ensure that fire detection and early warning devices, such as automatic smoke detectors, are installed so that occupants may evacuate, in the event of fire, to a place of safety. The placement of early warning devices is to be in accordance with AS1851.8.
- b) The applicant is encouraged to install 38mm 'Storz' fittings to existing and new water tanks, to enable the Rural Fire Service fire fighting capabilities should there be a need for firefighting at the residence.

Reason: To ensure the resulting development is fire safe

## 6. Wastewater

As proposed in the subject DA, the existing septic system is to be replaced with a FujiClean CE1500EX wastewater treatment system prior to issue of any occupation certificate to the satisfaction of the LHIB.

Reason: To ensure compliance with the NSW Health, and LHI On-site Wastewater Management Strategy, wastewater treatment system.

## 7. Water

- a) The applicant is to ensure that all plumbing work, including the disconnections and connections to the wastewater system and to the potable water system, is to be undertaken by a licensed plumber.
- b) The applicant is to ensure that all waterproofing of wet areas such as bathrooms is to be certified by an appropriate person. The **waterproofing certification** is to be provided to the Board **before issuance of an Occupancy Certificate**.
- c) The applicant is to ensure all stormwater from the roof structures is diverted to existing rainwater tanks or an appropriate absorption trench. The method of management of the stormwater is to be shown on the construction drawings.

Reason: To ensure works are undertaken appropriately.

## 8. Waste Management

- a) The applicant is to ensure that any waste generated from the proposed development is to be contained within the site and then be recycled or disposed of at the authorised waste management facility on the Island. This excludes asbestos waste, if any, which is the responsibility of the applicant to remove from the Island.

- b) No waste shall be placed in any location or in any manner that would allow it to fall, descend, blow, wash, percolate or otherwise escape from the site.
- c) The applicant is advised that waste disposal fees will be charged in accordance with the Lord Howe Island Board's schedule of fees and charges.

Reason: To ensure the proper removal of waste is carried out.

#### 9. Waste Management – Asbestos

- a) If any material containing asbestos is found on site during the demolition process the material is to be removed and disposed of in accordance with WorkCover requirements. An appropriately licensed asbestos removalist must complete all asbestos works if they consist of the removal of more than 10m<sup>2</sup> of bonded asbestos and/or any friable asbestos.
- b) The removal of more than 10m<sup>2</sup> of bonded asbestos and/or any friable asbestos must be certified by an appropriate person. The clearance certification must be provided to the Board before any Occupancy Certificate for the building can be issued.

Reason: To ensure the proper removal of waste is carried out.

#### 10. Construction

- a) A Demolition and Construction Management Plan is to be submitted and approved by the Board prior to the issuing of a Construction Certificate. The Plan shall detail:
  - A programme for the works including indicative time frames for different activities including inspection points
  - A waste management plan detailing how all building waste will be managed. This plan will include waste types and quantities in m<sup>3</sup>.
  - If the intent is for the waste to be disposed of through the Waste Management Facility the plan should detail discussion with the Waste Management Facility Coordinator.
  - A site plan showing material storage areas, stockpile areas – waste and construction materials - and any erosion protection measures to be implemented.
- b) The applicant is to ensure that all electrical work is carried out by a licensed electrician and an **Electrical Compliance Certificate issued with, or before, the application for Occupancy Certificate.**
- c) All works are to be undertaken in accordance with approved Construction Certificate documentation.
- d) Pre-Commencement meeting to be arranged with the Owner, Builder and Board Personnel prior to any work commencing on site. If the applicant is nominating the Lord Howe Island Board as the Principal Certifying Authority, this meeting will constitute the pre-commencement and site set-out inspection.
- e) No excavation is to be commenced until the site is inspected by the Lord Howe Island Senior Electrical Officer (i.e. Dial before you dig).
- f) The applicant is to ensure all Mandatory Inspections are undertaken.

Reason: To ensure works are undertaken appropriately.

#### 11. Inspections

The Principal Certifying Authority shall determine the appropriate mandatory inspections to be completed and when those inspections to be undertaken.

Reason: This condition is prescribed under the Environmental Planning and Assessment Regulation 2000.

## **12. Construction Hours**

To limit the impact of the development on adjoining owners, all construction work shall be restricted to the hours of 7.00am to 6.00pm Monday to Friday and 8.00am to 1.00pm Saturdays. No construction work shall take place on Sundays or Public Holidays.

Reason: To limit the potential for any loss of amenity to adjoining owners and/or occupiers associated with the construction of the approved works.

## **13. Notice of Commencement**

Notice must be given to the Lord Howe Island Board at least two (2) days prior to the commencement of building work.

Reason: This is a legislative requirement.

## **14. Erection of construction signs**

A sign must be erected in a prominent position on any site on which building work, is being carried out:

- a) Showing the name, address and telephone number of the principal certifying authority for the work, and showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- b) Stating that unauthorised entry to the work site is prohibited. Any such sign is to be maintained while the building work is being carried out, but must be removed when the work has been completed,

Reason: This condition is prescribed under the Environmental Planning and Assessment Regulation 2000.

## **15. Site Landscaping**

Existing site landscaping and all major areas of native plantings on site are to be protected and maintained.

No significant native vegetation is to be removed or damaged. Reason: To minimise vegetation removal.

## **16. Materials and Colours**

The materials and colour selection for the proposed works are to complement the existing dwelling on the site. Details of the selected materials and colours shall be submitted with the construction certificate application.

Reason: To ensure that the proposed development complements the surrounds.

## **17. Demolition of Cottage and Shed for Studio.**

- a) The cottage proposed to be retained and de-commissioned shall be demolished
- b) No Occupancy Certificate of any kind, for any of the development under DA2019.10 is to be issued until such time that the Board is satisfied the above works have been completed

- c) All demolition works are to be carried out in accordance with AS2601-2001: The Demolition of Structures, so that the risk of injury to the residents, workers and other site personnel, and the risk of damage to adjacent property and the immediate environment is minimised.

## **18. Right of Access**

- a) A Right of Access and Easement for Services shall be created burdening Lot 813 to the benefit of Lot 812 over the general location (and with an extension), of the existing driveway to the east of the primary dwelling on Lot 813 as indicated on the subject approved site plan.
- b) Within two (2) months of the endorsed date of approval of the subject OC and DA, the following process shall be commenced:
- c) The applicant shall submit a request to the LHIB to recommend that the Minister make provision for the following amendments to the conditions in the perpetual leases of the two respective properties:  
Insert the following clause (or wording to the same effect) in the respective perpetual leases:

*'the lessee has the benefit of a Right of Access and Easement for Services in terms of the wording of Part 14 of Schedule 8 of the Conveyancing Act 1919 but only within the surveyed boundaries shown on the unregistered plan [applicant will advise number] held by the Board vide a copy of which is attached as a notation to this lease.'*

- d) This right of access and easement for services shall be completed and in place prior to the issue of an occupation certificate for the proposal.

Reason: To ensure that the required access to the benefit of Lot 812, and burden of Lot 813 is created and in a timely manner.

## **ADVISORY NOTES**

### **1. Significant Native Vegetation**

Damage to, or removal of Significant Native Vegetation is prohibited, as per Clause 11 of LEP 2010.

### **2. Commonwealth Environment Protection and Biodiversity Conservation Act 1999**

The *Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)* provides that a person must not take an action which has, will have, or is likely to have a significant impact on

*A matter of national environmental significance (NES) matter; or Commonwealth land without an approval from the Commonwealth Environment Minister.*

This application has been assessed in accordance with the New South Wales *Environmental Planning & Assessment Act, 1979*. The determination of this assessment has not involved any assessment of the application of the Commonwealth legislation.

It is the proponent's responsibility to consult Environment Australia to determine the need or otherwise for Commonwealth approval and you should not construe this grant of consent as notification to you that the Commonwealth EPBC Act does not have application.

The Commonwealth EPBC Act may have application and you should obtain advice about this matter. There are severe penalties for non-compliance with the Commonwealth legislation.

Section 8.7 and 8.10 of the Act confers on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court. This right of appeal is only valid for six months from the date of the consent. To determine the extent to which the consent is liable to lapse refer to Section 4.53 of the Act.

If you are carrying out residential building work using a licensed contractor(s) you are required to ensure the contractor has Home Warranty Insurance with a minimum cover of \$300,000 before you pay any money to the contractor and before starting any work under the contract. Home Warranty Insurance is not required where the contract price, or the cost of labour and materials does not exceed \$20,000.

Should you require further clarification of this matter please contact Justin Sauvage on (02) 6563 2066 at your convenience.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Peter Adams', with a long horizontal flourish extending to the right.

Peter Adams  
**CHIEF EXECUTIVE OFFICER**

Lord Howe Island Board  
Mr Peter Adams  
Chief Executive Officer  
LORD HOWE ISLAND 2898

03<sup>rd</sup> August, 2020

RECEIVED

- 4 AUG 2020

Dear Mr Adams,

Lord Howe Island Board

**Makiiti House  
Lot 813 DP 1213759  
Lord Howe Island**

Further to correspondence received from the LHIB, as the applicant and leaseholder of Lot 813 I would like to request the reconsideration, under clause 8.3(1) of the Environmental Planning and Assessment Act 1979, of condition 17 of development consent 2019.10.

Having reviewed the minutes of the board meeting I believe that there is a strong misconception that the existing cottage proposed to be retained is intended for residential use. As detailed in the development application the existing cottage was to be decommissioned so that it was unfit for residential use and was to be repurposed to be used for storage.

The development application included for a relocation of a right way of way for access and services previously approved by the board, but subsequently assessed by Board officers as potentially having a detrimental effect on identified significant vegetation if it was to proceed in the approved location.

The relocation of the right of way meant that it was unnecessary to demolish the existing building. To require its demolition as noted in condition 17 of the recent consent, I believe is unwarranted and against sustainability principles. Building on Lord Howe Island presents difficulties and to require demolition of an existing structure without valid reason should not be acceptable and repurposing of buildings supported. If the concern of the board is that the existing building is to be potentially used for residential purposes there are punitive measures that can be imposed to ensure this would not occur.

I believe I have clearly illustrated my good faith and responsible actions in agreeing to and commencing the process to relocate the approved right of way location to negate potential detrimental impacts on significant vegetation and similarly can assure the board the existing building if retained would not be used for residential purposes.

I understand that the planning assessment by the board's consultant planners agreed with the retention of the existing building. Subsequently, I would request for a review of condition 17 of the development consent given there are no valid reasons for requiring demolition of the existing building.

Yours Faithfully,

Janelle Makiiti





21 January 2021

Mr Justin Sauvage  
**MANAGER ENVIRONMENT AND COMMUNITY SERVICES**  
Bowker Avenue  
Lord Howe Island Board.  
NSW 2898

**RE: REVIEW OF CONDITION 17 OF DA2019.10**

Dear Mr Justin Sauvage

I am writing this statement as to provide you a strong understanding of my argument and to support my application to the usage of the retained building on my lease.

It is noted clearly in the Owners Consent application form back in 2019 that this building is to be strongly use for **STORING BUILDING**.

**Not for residential usage.**

It is my own presumption to think that there are some confusions to this matter/s were the retained building is to be available for residential usage.

I am appreciating of your acknowledgement of getting back to me regarding to this matter.

Kind regards

Janelle Makiti

