



LORD HOWE ISLAND BOARD

REVIEW OF BOARD DECISIONS

From time to time, the Board rejects applications made by members of the community under the Lord Howe Island Act 1953 (LHI Act) and Lord Howe Island Regulation 2014 (LHI Regulation). Common examples of applications made under the Act and Regulations are for the importation of a vehicle, a dog or garden plants, or to construct or use a mooring. Naturally, a person who has had an application rejected may wish to have access to some mechanism or forum to further argue their case.

INTERNAL REVIEW

To assist in ensuring transparency and administrative fairness, the Board has developed and adopted a simple internal review procedure. This is a relatively quick and easy way to resolve disputes with applicants and assists in avoiding potentially more expensive external merit review mechanisms, such as the Land and Environment Court. The procedure is set out below.

Internal Review Procedure for Applications Determined Under Delegation:

1. All negative determinations made by a delegated Board officer of applications under the Lord Howe Island Act 1953 and Regulations 2014 will be subject to written notification to the applicant, including a statement providing twenty-eight (28) days to respond in writing to the decision.
2. To be considered, a written appeal against the rejection of an application must be received within the twenty-eight (28) days and contain a statement setting out the reasons why the original decision was either: illegal; based on a mistake of law or fact; based on improper or irrelevant grounds; unjust or oppressive; unreasonable or unfair; improperly discriminatory; otherwise wrong. The applicant may also provide additional information to support the application which was not provided with the original application.
3. The original determining officer will consider the additional information provided within twenty-eight (28) days. If the officer determines that their original decision (or part thereof) should be upheld, the matter, including all relevant documentation and information, will be referred to a review panel within a further twenty-eight (28) days comprising of a majority of the elected Board members.
4. Where the review panel finds that the objection is supported, and the original decision of the determining officer should not be upheld, it will provide a written recommendation to that effect to the Chairperson, who will determine the matter, or refer it to the full Board, at their discretion, or at the next quarterly Board Meeting, whichever is sooner.
5. Where the review panel, Chairperson or full Board uphold an original decision, applicants will be made aware of and be referred to the external appeal mechanisms available.

NOTE 1:

The above process may also be used where approval has been given but a condition or conditions of approval are disputed.

NOTE 2:

An applicant has the right to forego the above process and refer their dispute directly to an external review, such as the Land and Environment Court.

Review Procedure for Applications Determined by the Full Lord Howe Island Board:

All negative determinations made by the full Board of applications under the Lord Howe Island Act 1953 and Regulations 2014 will be subject to written notification to the applicant, including a statement informing them of the various mechanisms available to them to appeal and/or obtain further scrutiny of the decision, including the NSW Land and Environment Court, the NSW Ombudsman and the NSW Independent Commission Against Corruption (ICAC).

EXTERNAL REVIEW MECHANISMS

The NSW Land and Environment Court:

Under Part 1, clause 4 (2) of the Lord Howe Island Regulation 2014, any approval given by the Board is subject to the certain Sections of the Local Government Act 1993 (LG Act). The LG Act specifies how approvals are to be applied for, made, amended and terminated.

All provisions relating to approvals in the LG Act apply to the LHI Regulation including Sections 176 to 184 of the LG Act, which relate to appeals concerning approvals.

Section 176 provides that "an applicant who is dissatisfied with the determination of a council (the Board) with respect to their application for an approval may appeal to the Land and Environment Court".

In the event of such an appeal, the Land and Environment Court places itself in the position of the original decision-maker and determines the matter on its own merits. Merits review in the Land and Environment Court is available for decisions made by the LHIB regarding approvals under the LHI Regulation.

Naturally, a person also has appeal rights to the Land and Environment Court where the Board has exercised its power as a Consent Authority under the NSW Environmental Planning and Assessment Act 1979. For example, in the refusal of a development consent.

The appeal mechanisms described above would apply to a decision made by the full Board and a decision made by a delegate of the Board. When a person has been delegated authority to exercise a power, they exercise that power on behalf of the Board.

The NSW Ombudsman

Any person has a right to complain to the NSW Ombudsman's Office about the conduct of a NSW public authority. For the purpose of complaints to the Ombudsman's Office, conduct is defined as any action or inaction relating to a matter of administration and any alleged action or inaction relating to a matter of administration. The NSW Ombudsman has the power to investigate conduct that is:

- illegal
- unreasonable

- unjust or oppressive
- improperly discriminatory
- based on improper or irrelevant grounds
- based on a mistake of law or fact
- otherwise wrong

In relation to the Board's role as a local government authority, the NSW Ombudsman's Office may also look at the conduct of Board members and Board employees and the administrative conduct of the Board itself.

The NSW Ombudsman's Office can investigate matters such as:

- failing to comply with proper procedures or the law
- failing to notify affected people before certain decisions are made
- unreasonable, discriminatory, or inconsistent treatment
- failing to reply to correspondence

Where an applicant believes that the determination of their application involves any of the above, the matter could be referred to the NSW Ombudsman.

Contact NSW Ombudsman's Office:

General inquiries	02 9286 1000
Toll Free	1800 451 524
Email	nswombo@ombo.nsw.gov.au

NSW Independent Commission Against Corruption (ICAC)

ICAC's principle role is to promote the integrity and accountability of public administration and to investigate, expose and prevent corruption involving or affecting public authorities or public officials.

Where an applicant believes that the determination of their application involves any of the above, the matter could be referred to the ICAC.

Contact ICAC:

General inquiries	02 8281 5999
Toll Free	1800 463 909
Fax	02 9264 5364
Email	icac@icac.nsw.gov.au

The NSW Civil & Administrative Tribunal (NCAT):

In NSW, there is a facility to appeal certain administrative decision in the NSW Civil & Administrative Tribunal. However, decisions made by the Lord Howe Island Board (LHIB) under the LHI Act and LHI Regulation are not subject to appeal to the Civil & Administrative Tribunal, that is the NCAT has no jurisdiction over such decisions.

A person can only appeal to the NCAT in relation to decisions made under Acts that specifically confer jurisdiction on the NCAT. For example, the NCAT may have jurisdiction over decisions made by the LHIB under other Acts, e.g. the Government Information (Public Access) Act 2009. NCAT deals with a

broad and diverse range of cases such as: Housing and property, Consumers and businesses, Guardianship, Administrative review and regulation, Anti-discrimination and Professional discipline.