

# LORD HOWE ISLAND BOARD

## BOARD MEETING AGENDA

<b>MEETING DATE:</b>	<b>MEETING LOCATION:</b>	<b>MEETING TIME:</b>
24 <sup>th</sup> September 2021	Public Hall and Online	Closed Session: 9.30AM to 12.30 Open Public Session: 1.30PM to 3:00PM

Preparer	Presenter		ITEM	OPEN (O)	CLOSED (C)	ACTION Note / Decide	*CONSENT AGENDA ITEM (CA)	TIME ALLOCATED
N/A	Chair	<b>1</b>	<b>CONFLICT OF INTEREST DECLARATIONS</b>	O				1:30 – 1:35
N/A	Chair	<b>2</b>	<b>ITEMS DEALT WITH BY EXCEPTION (CONSENT AGENDA ITEMS)</b>	O				
		<b>3</b>	<b>MINUTES OF PREVIOUS MEETING – NOTICE OF ADOPTION</b>					
BPa	AS	(i)	Adoption of Minutes of Previous Meeting (Open Session) <b>Attachment A:</b> Board Meeting Minutes – April 2021	O		Note	CA	
		(ii)	Adoption of Minutes of Previous Meeting (Closed Session) <b>Attachment A:</b> Board Meeting Minutes – July 2021		C			
		<b>4</b>	<b>OUT OF SESSION MATTERS</b>					
BPa	AS	(i)	Out of Session Matters – Status Report <b>Attachment A:</b> Out of Session Result Summary Sheet	O		Note	CA	
		<b>5</b>	<b>ACTIONS FROM PREVIOUS MEETINGS</b>					
MM	AS	(i)	Actions From Previous Meetings – Status Report <b>Attachment A:</b> Action Sheet from the July 2021 Board Meeting and Previous Meetings	O		Note	CA	
		<b>6</b>	<b>WH&amp;S AND PUBLIC RISK MANAGEMENT</b>					
JSp	AS	(i)	WH&S and Public Risk Management Update		C			
		<b>7</b>	<b>FINANCE AND BUSINESS MANAGEMENT</b>					
MM	MM	(i)	TCorp Loan		C			
MM	MM	(ii)	30 June 2021 financial statements		C			
MM	MM	(iii)	COVID-related relief – 2020/21		C			
MM	MM	(iv)	COVID-related relief – 2021/22		C			
MM	MM	(v)	2021/22 Budget		C			
AS	AS	(vi)	Audit and Risk Attestations		C			
		<b>8</b>	<b>RODENT ERADICATION</b>					
CM	AS	(i)	Rodent Response Update and Proposed Future Actions	O		Note		1:35 – 1:50

Preparer	Presenter		ITEM	OPEN (O)	CLOSED (C)	ACTION Note / Decide	*CONSENT AGENDA ITEM (CA)	TIME ALLOCATED
			<p><b>Attachment A:</b> Locations of retrieved carcasses and monitoring areas/zones as of 13 September 2021.</p> <p><b>Attachment B:</b> Relative monitoring effort (number of monitoring devices utilised per month) during the RRP and the number of confirmed rodent deaths as of 6 September 2021</p>					
		<b>9</b>	<b>OPERATIONS AND SERVICES</b>					
DW/BP	DW	(i)	<p>Stronger Country Communities Fund Stevens Reserve and Skate Park</p> <p><b>Attachment A:</b> Stronger Country Communities Fund – Stevens Reserve and Skate Park – Supporting Information</p>	O		Note		1:50 – 2:00
MM	MM	(ii)	Liquor Store Operations		C			
DW	DW	(iii)	Flood Study Update	O		Decide	CA	
		<b>10</b>	<b>CHIEF EXECUTIVE OFFICER'S REPORT</b>					
AS	AS	(i)	<p>Chief Executive Officer's Report</p> <p><b>Attachment A:</b> Infrastructure and Engineering Services Report</p> <p><b>Attachment B:</b> Environment and Community Services Report</p> <p><b>Attachment C:</b> HREP Report</p>	O		Note	CA	
		<b>11</b>	<b>DEVELOPMENT APPLICATIONS</b>					
BPa	JS	(i)	Owner Consent approved under Delegated Authority	O		Note	CA	
BPa	JS	(ii)	DAs Determined Under Delegated Authority	O		Note	CA	
AAP	AAP	(iii)	OC2021.05 and DA2021.06 – Proposed New Tourist Accommodation and Onsite Waste water System - Jessica Owens	O		Decide		2:00 – 2:05
		<b>12</b>	<b>POLICY AND STRATEGY</b>					
LS	AS	(i)	Motor vehicle import or transfer – Status Report	O		Note	CA	
AS	AS	(ii)	<p>Review of Vehicle Importation, Transfer and Use Policy</p> <p><b>Attachment A:</b> Submissions Report</p> <p><b>Attachment B:</b> Draft Policy with changes and comments shown</p> <p><b>Attachment C:</b> Letter from Marine Rescue requesting essential services vehicle</p>	O		Decide		2:05 – 2:25
		<b>13</b>	<b>LEASING AND LAND ADMINISTRATION</b>					
JS	JS	(i)	<p>LEP Process Stage 2 Review</p> <p><b>Attachment A:</b> LHI LEP 2010 Review Final Project Plan (RPS 2015)</p>	O		Note	CA	2:25 – 2:30
LS	JS	(ii)	<p>Proposed Extension of the Term of Special Leases</p> <p><b>Attachment A:</b> Special Lease Information Sheet</p>	O		Decide		2:30 – 2:40
LS	JS	(iii)	Review of Compliance with Residency Condition on Perpetual Leases	O		Note	CA	

Preparer	Presenter		ITEM	OPEN (O)	CLOSED (C)	ACTION Note / Decide	*CONSENT AGENDA ITEM (CA)	TIME ALLOCATED
JS	JS	(iv)	Surrender of PL1954.06 and creation of two new perpetual leases for Larry and Elizabeth Wilson and Grant and Margaret Devine <b>Attachment A:</b> Registered subdivision plan DP1273017	O		Decide		2:40 – 2:45
LS	JS	(v)	Surrender of PL2016.02 and creation of two new perpetual leases for Lisa Makiiti and Rodney Oxley and Kylie Owens <b>Attachment A:</b> Registered subdivision plan DP1274979	O		Decide		2:45 – 2:50
LS	JS	(vi)	Application to transfer one share of PL1954.10 from the Estate of Barry Malcolm Thompson to Marie Thompson	O		Decide		2:50 – 2:55
		<b>14</b>	<b>GOVERNANCE</b>					
AS	AS	(i)	New Code of Conduct and Procedures for Lord Howe Island Board Members and Officials <b>Attachment A:</b> Draft new Code of Conduct with changes and comments highlighted <b>Attachment B:</b> Draft new Code of Conduct (clean version) <b>Attachment C:</b> Procedures for the Administration of the Lord Howe Island Board's Code of Conduct	O		Decide		2:55 – 3:00
MM	MM	(ii)	Internal Audit Charter		C			
		<b>15</b>	<b>GENERAL BUSINESS AND QUESTIONS ON NOTICE</b>					

INITIAL	FULL NAME AND POSITION
AF	Atticus Fleming - Chair
AS	Angie Stringer - A/CEO
BP	Bill Paterson - A/ Manager Infrastructure and Engineering Service
BPa	Belinda Panckhurst - Administration Officer
CM	Christie Mills - Team Leader Rodent Response
DW	David Waterhouse - Manager Infrastructure and Engineering Service
JS	Justin Sauvage - Manager Environment and Community Services
JSp	Jemima Spivey - Manager Administration
LS	Lynda Shick - Administration Officer
MM	Mark McCoy - A/Manager Business and Corporate Services

**\*CONSENT AGENDA ITEMS:**

As listed in the Model Code of Meeting Practice for Local Councils, a council may resolve to adopt multiple items of business on the agenda together by way of a single resolution. The items proposed to be adopted together are listed in the agenda as a 'Consent Agenda Item'.

The following is an extract from the Model Code of meeting Practice for Local Councils, section 13:

- 13.1 The council or a committee of council may, at any time, resolve to adopt multiple items of business on the agenda together by way of a single resolution.
- 13.2 Before the council or committee resolves to adopt multiple items of business on the agenda together under clause 13.1, the chairperson must list the items of business to be adopted and ask councillors to identify any individual items of business listed by the chairperson that they intend to vote against the recommendation made in the business paper or that they wish to speak on.
- 13.3 The council or committee must not resolve to adopt any item of business under clause 13.1 that a councillor has identified as being one they intend to vote against the recommendation made in the business paper or to speak on.
- 13.4 Where the consideration of multiple items of business together under clause 13.1 involves a variation to the order of business for the meeting, the council or committee must resolve to alter the order of business in accordance with clause 8.3.
- 13.5 A motion to adopt multiple items of business together under clause 13.1 must identify each of the items of business to be adopted and state that they are to be adopted as recommended in the business paper.
- 13.6 Items of business adopted under clause 13.1 are to be taken to have been adopted unanimously.
- 13.7 Councillors must ensure that they declare and manage any conflicts of interest they may have in relation to items of business considered together under clause 13.1 in accordance with the requirements of the council's code of conduct.

You can view the full code here:

<https://www.olg.nsw.gov.au/wp-content/uploads/2020/09/Model-Code-of-Meeting-Practice-10122018.pdf>

# LORD HOWE ISLAND BOARD

## Business Paper

### Consent Agenda Items for acceptance by exception.

**Recommendation:** That the Board adopt a Consent Agenda approach due to the extensive list of agenda items today so that the available time can be focused on matters requiring discussion and decisions.

**Action:**

The Board resolves to note multiple items of business on the agenda together by way of single resolution, being items: 3 (i), 4 (i), 5 (i), 9 (iii), 10 (i), 11 (i) (ii), 12 (i), 13 (i) (iii).

Noting that there were no public questions put forward in advance regarding any of the below items.

**Proposed Consent Agenda Items:**

- 3 (i) Adoption of Minutes of Previous Meeting, Attachment A: Board Meeting Minutes – April 2021, Attachment B: Board Meeting Minutes – July 2021
- 4 (i), Out of Session Matters – Status Report Attachment A: Out of Session Result Summary Sheet
- 5 (i), Actions From Previous Meetings – Status Report Attachment A: Action Sheet from the July 2021 Board Meeting and Previous Meetings
- 9 (iii) Flood Study Update
- 10 (i) Chief Executive Officer’s Report Including Attachments, A, B and C
- 11 (i) Owner Consent approved under Delegated Authority
- 11 (ii) DAs Determined Under Delegated Authority
- 12 (i) Motor vehicle import or transfer – Status Report
- 13 (i) LEP Process Stage 2 Review
- 13 (iii) Review of Compliance with Residency Condition on Perpetual Leases

<b>Board Meeting:</b> September 2021	<b>Agenda Number:</b> 3 (i)	<b>Record:</b> ED21/3428
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# LORD HOWE ISLAND BOARD

## Business Paper

### OPEN SESSION

#### **ITEM**

Minutes of the previous Board meeting (open session).

#### **RECOMMENDATION**

For confirmation.

#### **BACKGROUND**

The adopted process for distributing Board minutes from the previous meeting (approved by the Board during its December 2020 meeting) is:

- draft minutes will be produced within five working days of a Board meeting, and posted to Board members on the sixth working day, unless delayed for a valid reason agreed to between the Chief Executive Officer and the Chairperson.
- Board members are to return their endorsement, or otherwise, of minutes on a pro forma document provided by the Administration no later than seven working days after date of posting.
- seven working days after date of posting, the Board will deem the minutes of the meeting to be endorsed, subject to any amendments which were received prior to that date, and agreed for inclusion by the Chairperson.

#### **CURRENT POSITION**

Minutes of the April 2021 meeting were distributed to each Board member and have been endorsed through the above process.

A copy of the endorsed minutes are attached.

#### **RECOMMENDATION**

For confirmation.

**Prepared:** Belinda Panckhurst, Administration Officer

**Endorsed:** Angie Stinger, Acting Chief Executive Officer

**Attachment:**

Attachment A: Board Meeting Minutes – April 2021

<b>Board Meeting:</b> September 2021	<b>Agenda Number:</b> 4 (i)	<b>Record:</b> ED21/3430
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# **LORD HOWE ISLAND BOARD**

## **Business Paper**

### **OPEN SESSION**

#### **ITEM**

Out of Session Matters Status Report

#### **RECOMMENDATION**

Submitted for the Board's information.

#### **CURRENT POSITION**

Since the last Board Meeting in April 2021, three matters were considered out of session.

#### **RECOMMENDATION**

Submitted for the Board's information.

**Prepared:** Belinda Panckhurst, Administration Officer

**Endorsed:** Angie Stringer, Acting Chief Executive Officer

**Attachment:**

Attachment A: Out of Session Result Summary Sheet – Open

<b>Board Meeting:</b> September 2021	<b>Agenda Item:</b> 5 (i)	<b>Record Number:</b> ED21/3510
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# LORD HOWE ISLAND BOARD

## Business Paper

### OPEN SESSION

#### ITEM

Actions from Previous Meeting – Status Report

#### RECOMMENDATION

Attachment A is for the Boards noting.

It is recommended that the Administration review the actions out of session in order to rationalise and review their status. This will be presented at the next Board meeting for review.

#### BACKGROUND

As a matter of process and procedure, a list of actions is prepared after each Board meeting to ensure that the Board's resolutions are systematically carried out by staff. Those actions reported as complete are deleted from the Action List at the subsequent Board meeting.

#### CURRENT POSITION

A list of actions from decisions of the July 2021 Board meeting, and previous meetings, is attached for the Board's information.

**Prepared:** Mark McCoy, Acting Manager Business and Corporate Services

**Endorsed:** Angie Stringer, Acting Chief Executive Officer

#### **Attachments:**

Attachment A (included): Action Sheet from Board Meetings.



# **LORD HOWE ISLAND BOARD**

## **Business Paper**

### **OPEN SESSION**

#### **ITEM**

Rodent Response Update and Proposed Future Actions

#### **RECOMMENDATION**

1. That this report be noted
2. The Board thank DPIE for their support in delivering and maintaining the LHIB rodent response.

#### **BACKGROUND**

After 16 months of no rodent detection on Lord Island, on the evening of Wednesday 14 April, the Board's Biosecurity Team received a report of a rodent sighting near the Ned's Beach cemetery. As per procedure, a formal investigation commenced immediately. The presence of an adult and juvenile ship rat (*Rattus rattus*) were confirmed on the 15<sup>th</sup> April. The rats were killed and collected and autopsy results showed that the adult was a pregnant female and the juvenile was male.

Board staff initiated the deployment of the rodent response plan on Thursday 15<sup>th</sup> April.

As the response is active and ongoing, any estimates of rodent numbers, costs or other statistics are only accurate as of the time of drafting this report.

#### **CURRENT POSITION**

##### **Response update**

The original response area now covers approximately 405ha. As of 15<sup>th</sup> September, 96 rat carcasses have been retrieved including 52 juveniles and 44 adults. Approximately 10 rats are believed to have died without bodies being able to be retrieved. Attachment A shows the locations of retrieved carcasses and monitoring areas/zones. The last confirmed rodent was detected on July 28 2021.

There has been no sign of rodents in the Permanent Park Preserve (PPP). Intensive monitoring has been undertaken in the PPP adjacent to the northern and southern settlement.

While two long-dead rats were found in early August, the last active site from which dead rats were retrieved was on July 28<sup>th</sup>. Searching with trained rodent dogs and checking of monitoring devices continues on a regular basis, despite the lack of recent activity. Given current information, and the demographics and behaviour of despatched individuals, there may be a very small number of rats remaining in the settlement area. An accurate figure cannot be stated with confidence, however, it is likely to be in the single figures. Dog searches continue

to provide different levels of rodent indications that are followed up with a different dog team where possible, and trail cameras installed with lures to monitor for rodent presence at that site. There is still considerable rodent material being found that dates from the 2019 Rodent Eradication Program (REP), including scat, bodies and old nests – all of which the dogs still indicate on.

### **Actions since last known rodent**

Since the removal of two known rodents at the end of July, there have been no new active sites discovered, and effort continues to remain high. An active site is defined as one where a rodent indication has been followed up with a camera placement and a rodent being confirmed via camera images.

The methods that have successfully detected and removed rodents from the island from April to July continue to be deployed. We have reduced our dog team capacity as two of our New Zealand-based dog handlers have returned to New Zealand. Due to COVID travel restrictions we have been unable to bring over replacement dog handlers from New Zealand as intended, but have received one additional rodent detection dog 'Emma' sent over from NSW, that is being handled by Tim Solomon.

Monitoring in the last five weeks since the last known active rodent site has focused primarily on the northern settlement, where all rodent activity has been found to date. Additionally, we have also covered the southern settlement area and extended dog searches into parts of the PPP. These have included the ridgeline and southern slopes of Malabar, most of Transit Hill and the western and northern slopes of Intermediate Hill. Detection dogs have also checked the Mount Gower Track and the area up to Grey Face. Targeted dog searches, camera trapping and bait stations have been deployed following sightings from members of the public.

*Refer to: Attachment B*

### **DNA Analysis**

All rodents collected during this response have been catalogued and a number of dead rodents sent to the Australian Museum for independent DNA analysis. Rodents collected since mid-June had not been able to be sent due to the closure of the Australian Museum. Further samples have now been able to be sent to be included with the Australian Museum staff able to return to work. The analyses aims to determine the genetic relationship between rodents found during the response to historical rodent populations on Lord Howe Island, and rodent populations from around the East Coast of mainland Australia including Port Macquarie, Sydney and other locations in NSW.

Two types of DNA analysis are being undertaken:

1) Mitochondrial DNA (MtDNA)

MtDNA that is only inherited through the maternal line and changes relatively slowly between generations. This often leads to 'coarse' or inconclusive results when comparing individuals to determine which population they may have originated from.

2) Microsatellite comparison (genotyping)

This involves sequencing selected parts of full chromosomal DNA. These analyses take longer to complete than the above testing, but gives a higher resolution of information. This allows for a more accurate determination of which founding population the current rodents are most closely related to, and how closely related individual rodents are. It is anticipated that these results will be available in November following the collection of additional samples from the Port Macquarie area to provide greater statistical confidence in the analysis.

The results of the analyses will hopefully tell us if the DNA of the recently detected rodent population is the same or different to the pre-eradication LHI rodents, and how they relate to rodents from mainland Australia. It is anticipated that the outcomes of the DNA analysis will give us all additional certainty as to whether rodents have been re-introduced or are derived from survivors of the REP, however this is not guaranteed. The results of the analysis are expected in the next few months.

### **Methodology**

The Rodent Response Program (RRP) is a refined version of the rodent response plan that was created at the end of the baiting phase for the REP (See Attachment B). This details a 540m monitoring grid set out around each rodent detection location.

From the start of August the methodology to detect and remove rodents has followed on from the methods used from April to July. Using a mixture of passive and active methods to detect rodents. Passive methods include the setting of monitoring devices and bait stations in a grid pattern. In addition to these devices, we have a network of some 250 trail cameras spread across the northern and southern settlement. The majority of these cameras are in a fixed position and are checked twice weekly on Mondays and Thursdays. A small number (about 30) are 'dynamic' in that they are relocated in response to suspected rodent activity and to confirm rodent activity at a site.

Monitoring devices and cameras are lured (nontoxic, usually peanut butter, mayonnaise, macadamia nuts or avocado) to attract any rodents in the vicinity to them.

These devices are called passive because they rely on a rodent to come to the devices and interact with them to provide evidence of rodent activity.

Our primary active detection method is the detection dogs currently here. The dog teams search systematically through the settlement areas to detect rodent presence. This can be challenging as there are numerous rodent scents remaining from the 2019 eradication, including old scats, bodies and nesting materials, all of which have been found frequently by the dogs. Dogs are considered an active search method because they actively seek out rodents by detecting their scent. The other active method we use sporadically is a thermal imaging camera, which detects variations in temperature gradients, such as the warm body heat of mammals from the surrounding cooler environment. This method is used mostly around roadsides and through crown land.

All reported sightings are followed up and responded to according to the information received. This usually involves positioning of lured cameras, dog searches and at times bait stations in the specified area.

If a rodent has been confirmed at a site it becomes an 'active site' and the rodent is targeted with bait in bait stations, and additional cameras to record bait take and information on the number, age class and gender of the rodent(s).

This approach has been demonstrated to effectively locate and remove rodents in the response to date, and should continue to be effective.

### **How much longer?**

The current response is funded to October 31st. Stop rules have been developed by the Technical Advisor providing guidance under which the response should be stopped, either due to the response being unlikely to be successful, or because rodents have been considered to be successfully removed.

The Rodent Response Plan states a monitoring period of three months after the last known rodent has been accounted for should be implemented. However, the number of rodents found in this response suggests a longer monitoring period is warranted, and a further two months is recommended. This reflects the number of breeding rodents recovered already through the winter, and the onset of the spring breeding season making breeding events more likely. The additional period may allow a greater confidence to be gained in the removal of rodents and reflects the need to secure the biodiversity gains that have accrued since the rodent eradication project in 2019, and the financial outlay in that project and this 2021 response.

An extension is currently unfunded and funding options to allow continuation of monitoring for a further two months would need to be investigated. Results from the independent review (see below) will inform the direction of the program.

### Financial support received for Rodent Response

Funding Source	Amount	Details
DPIE	\$500,000	
Commonwealth	\$545,000	Was spent by June 30, 2021
DPIE	\$2,000,000	Incorporates response costs and a portion of Biosecurity costs 21/22 (July-Oct 2021)
<b>Total</b>	<b>\$3,045,000</b>	

### Independent Review:

The Board is seeking an independent review of the actions and methodology of the Rodent Response Program it has undertaken since April this year.

We are seeking to understand:

- If the type and extent of monitoring has been adequate to provide a high level of confidence that all rodents have been detected and removed
- If the proposed monitoring (type/extent) is adequate to detect with a high level of confidence, the probability of any remaining rats and/or any future rat incursions.

The review will provide further insights into the suitability of monitoring methodologies utilised, examine efforts and results of what has been undertaken to date, whilst identifying what could be done in the future to maximise the confidence that the island is and remains rodent-free. The review is due to be completed at the end of October.

**Prepared:** Keith Springer – Technical Advisor – Rodent Response Project

Christie Mills – Project Manager – Rodent Response

**Endorsed:** Angie Stringer A/CEO

Attachment A: Locations of retrieved carcasses and monitoring areas/zones as of 13 September 2021.

Attachment B: Relative monitoring effort (number of monitoring devices utilised per month) during the RRP and the number of confirmed rodent deaths as of 6 September 2021.

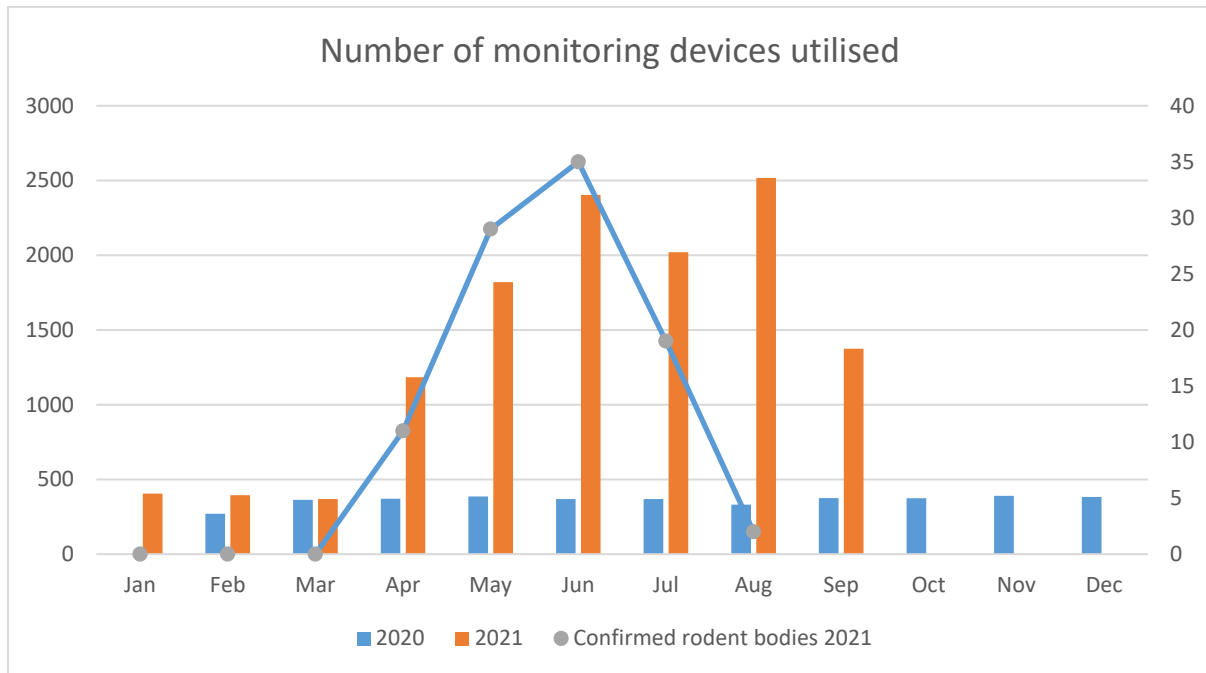
Attachment A:



White dots locations of retrieved carcasses

Green dots indicate monitoring areas

Attachment B:



# LORD HOWE ISLAND BOARD

## Business Paper

### OPEN SESSION

#### ITEM

Stronger Country Communities Fund – Stevens Reserve and Skate Park

#### RECOMMENDATION

That the Board approve the following course of action and direct the Administration to seek a variation from SCCF:

1. change the scope of the Stevens Reserve project to include a beach accessibility project and to reduce the scale of the walking track upgrades, thereby releasing funds;
2. transfer the released funds from the Stevens Reserve project to the Skate Park project, allowing this project to be fully funded by SCCF and proceed according to scope.

#### BACKGROUND

##### **Stevens Reserve Walking Track**

LHIB was awarded a NSW Government Stronger Country Communities Fund (SCCF) Round 2 grant in February 2019 for the upgrade of Stevens Reserve walking track. This successful grant award followed a previously unsuccessful application to Round 1B of the SCCF.

The grant amount is \$594,705 and LHIB has made a commitment to SCCF to co-fund an amount of \$57,200, although this has not been included in the 21/22 budget due to other items taking priority.

The grant project is to upgrade the 1.3km Stevens Reserve loop walking track to a Class 1 standard (wheelchair accessible according to Australian Standard AS2156.1).

The application was made on the basis of a recommendation from the *LHIB Walking Track Strategy 2017*. The recommendation is to upgrade the *Stevens Reserve Loop Track to include 350m ambulant standard Class 1 track as described in Gorrell 1997* (the previous walking track strategy report).

Note that the Strategy recommends that a section of 350m is upgraded to Class 1; the grant application proposed a section of 1.3km. The grant proposal is therefore not consistent with the recommendation of the Strategy.

A large proportion of the 1.3km Stevens Reserve Loop Track passes through Significant Native Vegetation (see Attachment A). The development of a Class 1 walking track in this area zoned Environment Protection would require development approval. The track construction would require removal of Significant Native Vegetation (SNV) and therefore the development cannot be approved (as per the Lord Howe Island Local Environmental Plan 2010).

Thus the grant project in its current form cannot be granted development approval and the LHIB cannot deliver the project as per the grant agreement. It is therefore recommended to pursue modifications or alternatives to the current Stevens Reserve walking Track Upgrade project.

#### Alternatives

1. The Strategy's recommendation to upgrade 350m of track to Class 1 may be possible through a corridor in the SNV. Thus a modified walking track upgrade could be explored as an alternative. The estimated price (based on quotes obtained for the 2018 grant application) for 350m of hardened on-ground AS2156.1 compliant track is \$378,855. There would still be a number of issues to resolve before this proposal could go ahead. The current alignment of the Stevens Reserve track enters the reserve from Lagoon Road (near the post office) through a perpetual lease and through SNV. Thus a realignment of the track will likely be required and may introduce further complications. These issues would be addressed during the track design and development application process.
2. An alternative project has been suggested which would meet the same aim to improve wheelchair access to Lord Howe Island's natural environment. This is to purchase and install a lightweight portable beach access track and beach wheelchair. Such a proposal would likely be set up by the LHIB as follows:
  - Purchase 50m of woven plastic portable beach access pathway, a storage roller for the matting, and a beach access wheelchair (see Attachment A for photos of suggested products).
  - Explore options to enter into an agreement with one of the boat shed operators on Lagoon Beach to offer storage of the equipment and support for users of the equipment.

While this option needs further work to confirm details, a preliminary assessment has shown that the project is feasible and would be supported by the community and visitors. It is estimated to cost \$45,000 to purchase the equipment and set up a storage facility.

#### **Lord Howe Island Skate Park**

LHIB was awarded a NSW Government Stronger Country Communities Fund (SCCF) Round 2 grant in February 2019 to construct the Lord Howe Island Skate Park on behalf of the Lord Howe Island Skate Park Association.

The grant amount is \$231,000 and LHIB has made a commitment to SCCF to co-fund an amount of \$36,700, although this has not been included in the 21/22 budget due to other items taking priority.

The Lord Howe Island Skate Park Association has development approval to build the skate park.



LHIB, SCCF and the Skate Park Association shared some concerns about the project budget which was prepared to support the funding application. SCCF engaged NSW Public Works Advisory (PWA) to review the cost estimates and the budget. PWA assessed the proposal and prepared a revised project budget total of \$624,500, and this assessment has been endorsed by the LHIB Infrastructure and Engineering Services section.

The project is therefore not viable unless it receives additional funding or the scope is changed to fit the available funds. To date, the Lord Howe Island Skate Park Association has been unsuccessful in obtaining further funding.

The following alternative actions have been identified:

1. Change the scope of the construction. PWA put forward a number of alternative lower cost structures which would provide a recreation facility for skateboarding and meet the objectives of the grant. These include a modular skate park made of plywood, and a bike/skateboard “pump track” (see attachment A). Initial enquiries indicate that these options could be constructed using the available funds. The Skate Park Association does not support these options. The Association has concerns about the durability and longevity of the materials – a plywood construction is not as durable and long lived as concrete. The Association has also raised concern that the skateboarding experience offered by the alternatives is less appealing to the youth population than that offered by a concrete structure.
2. Approach SCCF to reallocate part of the funding from the Stevens Reserve grant to the skate park project, thereby fully funding the skate park project and enabling it to go ahead according the original scope and design and provide a full skate park experience. SCCF has indicated a willingness to consider this proposal.

## **CURRENT POSITION**

The Lord Howe Island Board has been awarded two SCCF grants:

1. to upgrade the Stevens Reserve walking track;
2. to construct a skate park.

Neither project can be delivered due to development incompatibility in the case of Stevens Reserve, and due to a significant lack of funds in the case of the Skate Park.

A change to the scope of the Stevens Reserve project could allow a modified accessibility project to be delivered in lieu of a full walking track upgrade, while freeing up funds to be transferred to the Skate Park, allowing it to be delivered according to scope.

It is proposed that the LHIB approach SCCF to reallocate funding from Stevens Reserve to the Skate Park so that the Skate Park is fully funded.

Both the Skate Park and Stevens Reserve projects are behind schedule. SCCF is keen to see progress on these projects as soon as possible. The beach accessibility project is likely to be quick and relatively simple to implement as the items to be purchased are available off-the-shelf. It is recommended that this project is proposed to SCCF as a means of promptly meeting an adjusted project outcome, thus paving the way for an extension of time request for the other project outcomes.

After funding the skate park and the beach access project, there would still be an amount of \$155,000 remaining which could be allocated to Stevens Reserve for a partial track upgrade.

This would likely be over the 350m section, but constructed to a modified lower-cost standard, if possible still meeting the Class 1 designation.

The current grant budget is

<b>Project</b>	<b>SCCF funds</b>	<b>LHIB funds</b>
Skate Park	\$231,000	\$36,700
Stevens Reserve	\$594,000	\$57,200

The proposed adjusted budget and project listing is:

<b>Project</b>	<b>SCCF funds</b>	<b>LHIB funds</b>
Skate Park	\$624,500	\$0
Beach Accessibility	\$45,000	\$0
Stevens Reserve	\$155,000	\$0

This model also removes the requirement for co-funding by LHIB. Removal of the LHIB contributions would require agreement from SCCF.

### **RECOMMENDATION**

That the Board approve the following course of action and direct the Administration to seek a variation from SCCF:

1. change the scope of the Stevens Reserve project to include a beach accessibility project and to reduce the scale of the walking track upgrades, thereby releasing funds;
2. transfer the released funds from the Stevens Reserve project to the Skate Park project, allowing this project to be fully funded by SCCF and proceed according to scope.

**Prepared:** David Waterhouse                      Manager Infrastructure and Engineering Services

**Endorsed:** Angie Stringer                      Acting Chief Executive Officer

**Attachments:**

Attachment A: Stronger Country Communities Fund – Stevens Reserve and Skate Park – Supporting Information

## Stronger Country Communities Fund – Stevens Reserve and Skate Park

### Supporting Information



Figure 1 – Map of Stevens Reserve Track showing extent of Significant Native Vegetation



Beach access wheelchair



Beach access matting



Beach access matting



Matting storage and deployment roller

Figure 2 – Examples of portable beach access systems

### 3. Potential Options

PWA are providing these options for consideration of the LHI Board. If any options are considered suitable, PWA will provide a high-level estimate for these works.

Option	Pros	Cons
<p>Modular Skate Park</p> 	<ul style="list-style-type: none"> <li>• Can be added to at a later date if / when more funding is available</li> <li>• Concrete base is not specialised work</li> </ul>	<ul style="list-style-type: none"> <li>• Large concrete base is required and may be above current budget.</li> </ul>
<p>Resin Impregnated Paper Material with Plywood Surrounds</p> 	<ul style="list-style-type: none"> <li>• Bowl shape achievable</li> <li>• Different size options available</li> <li>• Minimal concrete</li> </ul>	<ul style="list-style-type: none"> <li>• Durability in outdoor environment unknown (more investigation required)</li> <li>• Further cost investigations are required to ensure this product will fit into current budget</li> </ul>
<p>Modular Pump Track</p> 	<ul style="list-style-type: none"> <li>• Minimal concrete</li> <li>• Ease of build</li> <li>• Can be used by push bikes as well as skateboards</li> </ul>	<ul style="list-style-type: none"> <li>• Not a Skate Park</li> <li>• Some earthworks may be required</li> <li>• Further cost investigations are required to ensure this product will fit into the current budget</li> </ul>

Figure 3 – Extract from *Budget Review and Recommendations, Lord howe Island Skate Park, Public Works Advisory* showing alternative skate park options

# **LORD HOWE ISLAND BOARD**

## **Business Paper**

### **OPEN SESSION**

#### **ITEM**

Lord Howe Island Flood Study Update

#### **RECOMMENDATION**

That the Board approve adoption of the Draft Flood Study.

#### **BACKGROUND**

The Lord Howe Island Board engaged specialist flood consultant WMAwater to review and update the Lord Howe Island Flood Study. The last Flood Study was conducted in 1998. This review has used new data and modelling techniques to update the study in accordance with the NSW Floodplain Development Manual (2005).

A flood questionnaire was sent out to the community in June 2019 with a number of responses received which have been incorporated into the review.

The study is funded by a grant from the NSW Government Floodplain Management Program.

#### **CURRENT POSITION**

The draft study was placed on public exhibition from 29 July to 27 August 2021. A community information session was held at the Community Hall on 4 August 2021. No submissions were received.

It is now proposed to approve and adopt the Flood Study. Adopting the Study will establish it as the official reference for flood information, to assist the Board with flood risk management, planning and development control. Adopting the Study will establish the Flood Planning Area and Flood Planning Level which are used to define land subject to flood related development controls. Note that the Study does not define flood planning/development controls. These will be established in a separate process (not yet commenced) and will be subject to Board approval, including an update to the Local Environment Plan, as per NSW Government flood planning policies and guidelines.

The Draft Flood Study and associated documents have previously been submitted to the Board (April 2021). They may be reviewed at <https://www.lhib.nsw.gov.au/community/news/lord-howe-island-flood-study-review-update-public-exhibition>

**RECOMMENDATION**

That the Board approve adoption of the Draft Flood Study.

**Prepared:** David Waterhouse                      Manager Infrastructure and Engineering Services

**Endorsed:** Angie Stringer                      A/Chief Executive Officer

# **LORD HOWE ISLAND BOARD**

## **Business Paper**

### **OPEN SESSION**

#### **Chief Executive Officer's Report to the 24 September 2021 Meeting of the Board**

#### **RODENT RESPONSE (RR)**

Response to the rodent detection in April has been ongoing with an incident management team undertaking constant monitoring of the settlement area for rodents. Several dog teams are active at any one time and experts from New Zealand and NPWS have assisted in the effort. To date there not been a detection for 41 days. The RR program has been funded by the Australian Government (\$540k) in 2019/21FY and DPIE \$2.5million over 20/21 and 21/22 FY. Key biosecurity tasks need to be undertaken to mitigate against possible rodent incursion and other pest species establishing themselves on the island.

The Environmental Trust Board received a presentation regarding the Rodent Eradication Program (which they funded 50%) and the RR earlier this month. The Board will continue to engage with the Environmental Trust over any future opportunities regarding biodiversity monitoring and ongoing protection of the rodent free investment made to date.

#### **SOLAR FARM UPDATE**

The solar farm has been going full sun ahead. Whilst these figures are assisted by a low island electrical load at this time, it is still evident the Hybrid Renewable System is performing very well. There are a few minor issues that will need addressing in the future, namely relating to the system spinning reserve settings, but these will be undertaken as we progress into the warmer high load months at the end of the year.

From 8:30am on 27th August until 20:30pm on 5th September (with the exception of one 25 minute diesel engine run period), the island was fully supplied by solar/ battery generation. A total of 30 litres of fuel was used during this time.

Since the 1st September 2021 the powerhouse has generated 37700 kWh and used 700 litres of fuel. We have experienced a fantastic fuel efficiency figure of 53.85 kWh / litre. This compares to the same period in 2020 (pre Hybrid System installation) where the powerhouse generated 37000 kWh and used 8400 litres of fuel. A fuel efficiency of 4.40 kWh / litre.

#### **Human Resources**

The previous LHIB CEO, Mr Peter Adams finished up in the role in early June. Since then Justin Sauvage, Manager Environment and Community Service and Mr Mick Pettitt, Director Southern Ranges Branch, National Parks and Wildlife Service (NPWS) acted in the role. On 27 July Ms Angie Stringer, Director Partnerships, Planning and Heritage NPWS began acting in the role. The role was advertised in July and the recruitment process is underway. To help



ensure continuity, it is intended that Ms Stringer continue in the role of CEO until the position is permanently filled.

The previous Manager, Business and Corporate Services (MBCS), Mr John van Gaalen also departed in June. The role has been filled on a temporary basis by Mr Mark McCoy, and on 13 September, Mr Mervyn Yuen took up the MBCS role for a six month secondment from Department of Regional NSW.

### **Workplace Health and Safety Review**

The Board has initiated a Workplace Health and Safety (WHS) review to help understand our current WHS arrangements and how we can improve on the current practices. Expenditure on this important piece of work was approved at the July 2021 meeting and the Lloyd-Jones Meakin (LJM) Group have been contracted to undertake the assessment.

The assessment will identify hazards and risks in the workplace by evaluating the existing approach we are undertaking and making recommendations to help improve WHS. LJM will review current the WHS systems, plans and procedures (via a desktop review) as well as engaging with LHIB managers (via Teams / Zoom). A site visit by LJM to meet staff and undertake some training is due to take place in early October.

### **COVID-19**

The Island was under the stay at home orders from 14th August- 10 September. The Island residents are nearly 95% fully vaccinated. There have been financial impacts for the island community and business and the Board is currently examining its financial impacts due to COVID.

Any contractors engaged by the Board have been asked to have a COVID test before departure to help reduce risk of transmitting COVID and are also being requested to have had at least one vaccination. The Board is aware that many tourism and accommodation providers would prefer their visitors to be vaccinated. Enforcement of this will be up to those business to have their own policies and ensure they are complying with NSW Health Orders.

### **Airport and Shipping Contract Expiry**

#### **Airline:**

The contract for provision of airline services is due to expire next year. Transport NSW is working with the LHIB and the Department of Planning, Industry and Environment to address the contract expiry for the islands flights from Sydney which occurs in March 2022. Transport has written to Mr Andrew Nicholls (DPIE) to request that a letter be provided by the Lord Howe Island Board on behalf of their community to outline the needs and requirement for the continued operation of an aviation service between the island and Sydney (Kingsford Smith) Airport.

**Board to Note:** The CEO is preparing a response to Transport NSW in consultation with the Lord Howe Tourism Association and the Elected Board Members.

#### **Shipping:**

We are approaching the final 12 months of the initial 5 year shipping service contract with Birdon. Work has commenced to plan next steps to ensure continuity of service.

In order to ensure expert advice and support the Board will need to engage a consultant with expertise in shipping contract issues as it relates to procurement and legal advice.

**Prepared:** Angie Stringer A/Chief Executive Officer

**Attachments:**

Attachment A: Infrastructure and Engineering Services Report – Open

Attachment B: Environment and Community Services Report – Open

Attachment C: HREP Report Solar Report – Open

## CEO Board Report

### Infrastructure and Engineering Services

This report covers the period between the last Board report in April 2021, through to September 2021 and includes the material from the deferred from the May/June 2021.

#### Human Resources

- A recruitment process was held for the Waste Management Facility Coordinator and Brad Josephs has been appointed permanently to the position. Brad brings considerable experience to the role including acting as WMF Coordinator for 2 years.
- A recruitment process for field officers has been completed and three ongoing positions filled in the Works Unit.
- The IES unit's project officer Amy Foxe concluded her position with the LHIB in order to pursue a new opportunity in the NSW Government. I wish to thank Amy for her excellent work to lead and steer a number of projects to successful outcomes, in particular the Hybrid Renewable Energy Project. A recruitment process has been completed and the position filled on a temporary basis.

#### Parks and visitor facilities

- Maintenance continues to public areas, parks and gardens to maintain a high standard of presentation.
- Picnic areas and BBQs were very busy prior to the regional NSW lockdown – provision of firewood is consuming considerable resources.

#### Roads

- Pothole road maintenance being carried out weekly. Road drain maintenance, sand and debris removal as required.
- LHIB was unsuccessful in its application for the NSW Fixing Local Roads Round 2 grant. Follow up is underway to seek feedback and discuss possible funding models with Transport for NSW.
- LHIB has submitted applications for the NSW Government Fixing Local Roads Round 3 grant program. The grant body confirmed that LHIB is eligible to apply for this program after doubts were raised during the Round 2 process.
- Work is underway to repair Muttonbird Drive and McGees Parade. This work is progressing using funds from Commonwealth Roads to Recovery and Local Roads and Community Infrastructure grants, as well as LHIB capital works funds. The work has had some delays due to wet weather but is scheduled for completion prior to end of September 2021.

#### Marine and coastal

- Regular pressure cleaning to jetty stairs and boat ramp.
- A request to market is being prepared for major jetty maintenance. This work is part funded in the 21/22 capital budget, but will likely require further funding in 22/23.

## General maintenance, operations and mechanical

- The old Commonwealth Bank room has been converted into a shared office space. It has lately been used by the National Parks staff supporting the rodent incursion response, and has been a valuable additional space.
- The old phasmid enclosure at the LHIB depot has now been converted into a water testing facility. This provides an improved work area for water officers to carry out regular testing on LHIB potable water supplies.
- Community Hall windows repaired (counterweights).
- LHIB staff continue to monitor mosquito larvae species as per the Lord Howe Island Mosquito Surveillance and Vector Monitoring Programme. This programme is part of a National scheme run by the Commonwealth Department of Agriculture, Water and the Environment.
- Neds Beach Cemetery railings repaired.
- Mechanical programmed and breakdown maintenance and workshop services continue as usual.
- Workshop is managing a Toyota recall issue which affects a vehicle in the LHIB fleet. Likely to result in Toyota sending a mechanic to the island to conduct repairs.
- There are a number of items of plant in poor/unserviceable condition due to age and wear and tear. This includes the Caterpillar traxcavator, 20T excavator and Linde forklift. Capital funds have been allocated for a replacement excavator and forklift and procurement work is underway.

## Electrical

- All programmed maintenance and safety checks completed.
- For reporting period 12 March to 18 May 2021:
  - Energy demand for the reporting period was 449,600 kWh.
  - Fuel consumption for the reporting period was 48,900 litres.
  - Fuel energy efficiency for the reporting period was 9.2 kWh/L
  - There are currently 295 customers connected to the electrical supply system.
  - There was 1 **unplanned** customer supply interruption to the distribution system during the period. This outage was the result of localised customer overloads.
  - There was 1 **planned** supply interruption to the distribution system during the period. This resulted in a loss of supply to all customers when the powerhouse was shutdown to restart the powerhouse in manual mode and allow TESLA to update and reset the microgrid controller. The duration of this supply interruption was 25 minutes.
- Powerhouse gensets have had a number of breakdowns:
  - Genset No. 1 suffered an alternator failure resulting in the alternator being shipped to the mainland for a major rewire. The alternator was returned to service on 30th April.
  - Genset No.3 suffered a major mechanical failure on 1st May. The genset was removed from service and replaced with the spare powerhouse Series 60 engine. The genset was returned to service on 6th May and the failed engine sent for repair to the mainland (now returned).
  - Maintenance on Genset No. 2 on 7th May identified a failed camshaft idler gear. This genset is out of service and will require mainland repair at some stage, however this has been put on hold for now due to budget limitations.
  - Current status is three gensets in service (100%), with the spare engine out of service, awaiting repair. With the solar generation and battery storage, there is no critical requirement for the spare engine.
- These breakdowns did not affect security of the power supply. The emergency generator remained in service and able to power the entire island. The maintenance and operations of the gensets is being carried out as per requirements, and the breakdowns do not appear to be associated with any change in practice since the solar project has been implemented.

- There have been some notable achievements in fuel efficiency since the commissioning of the HREP:
  - From 0830 hrs on 27th August until 2030 hrs on 5th September with the exception of one 25 minute diesel engine run period the island was fully supplied by solar/ battery generation. A total of 30 litres of fuel was used during this time.
  - Since the 1st September 2021 the powerhouse has generated 37700 kWh and used 700 litres of fuel. We have experienced a fuel efficiency figure of 53.85 kWh / litre. This compares to the same period in 2020 (pre Hybrid System installation) where the powerhouse generated 37000 kWh and used 8400 litres of fuel. A fuel efficiency of 4.40 kWh / litre.
- See projects section and the attached project status report for additional reporting on the renewable energy project.
- An independent internal audit was commissioned for the Electricity Network Safety Management System (ENSMS) as per electricity regulator requirements. The audit identified a number of recommendations which will be reviewed and implemented. The audit did not identify any significant concerns or shortcomings.

### **Airport**

- Three new windsock poles have been installed.
- Aerodrome maintenance including mowing, weed control, and tarmac repairs continues. Access gates and fencing replaced in some areas.
- The 2021 Annual Aerodrome Technical Inspection had been planned for July 2021. As was the case last year, this has again been delayed due to covid travel restrictions. LHIB is liaising with CASA on this matter and will progress the inspection as soon as possible. The last inspection was completed in February 2021, so LHIB has not passed the normal 12 month interval yet and is therefore still compliant with inspections schedule. A July target had been set to return to the normal pre-covid timetable.
- The new Aerodrome Manual has been submitted to CASA. This has represented a large and complex body of work by the Team Leader Compliance and Projects and ensures compliance with new Civil Aviation Safety Regulations.
- The revised Aerodrome Wildlife Hazard Management Plan is complete.
- The new Airport Transport Security Plan has been completed and issued to comply with new Transport Security Regulations and Airport Security Classification Model.
- The Transit Hill lighting has been completed. The Intermediate Hill light was installed but appears to have been damaged by lightning. This will be assessed upon the next visit by the Marine Rescue radio contractor.

### **Island Trader**

- IES has been working with the LHIB Biosecurity Team and with Birdon to monitor and manage shipping-related biosecurity initiatives
- IES continues to liaise with Birdon on schedule changes prompted by the regional NSW lockdowns.

### **Emergency Management**

- Creeks have been monitored and cleared as required during heavy rain.
- SES Annual support visit has been postponed due to Covid, and is currently rescheduled for October 2021.

## **Waste management facility**

- Core operations continue at the WMF, with some difficulties due to staff shortages.
- The turnaround of IBC containers for waste oils was affected by the Port Macquarie floods at Birdon. This has resulted in a backlog of oil for disposal. Staff are working to catch up.
- Export of grade 3 glass off-island for recycling continues.
- NSW EPA has given preliminary approval to reuse waste glass in concrete at the WMF. This will provide a valuable reuse pathway for glass. Projects to benefit include new storage bays and shed foundations/slabs.
- Draft compost sampling plan has been submitted to the EPA. Once this plan is finalised and approved, the WMF will commence the sampling program. The results of sampling will form part of the application to the EPA to allow compost reuse.

## **COVID-19**

- Increased cleaning maintained for airport terminal and public toilets.
- Hand sanitiser provided in public areas.
- LHIB workplaces covid safety measures have been adjusted to align with NSW regulations as required.

## **Projects**

### **Aviation fuel shed**

The fire engineering assessment was finalised and a construction certificate issued. The builder is finalising procurement of materials and has scheduled construction for October 2021.

### **Stronger Country Community Fund Grants**

IES section maintains regular contact with the SCCF office to monitor project progress.

#### **Round 1 – Old Powerhouse Site Remediation – SCCF1B-0032**

Grant acquitted. Picnic tables for the concrete area and lawns have been installed and are in regular use. The amphitheatre hosted a Rockfest event and proved to be an excellent venue.

#### **Round 2 – Lord Howe Island Skate Park – SCCF2-0536**

See separate business paper.

#### **Round 2 – Stevens Reserve Walking Track**

See separate business paper.

#### **Round 2 – Upgrade amenities at Bowling Club – SCCF2-0541**

Work on this grant is complete, and final acquittal is being prepared.

### **Round 3 – Upgrade Aquatic Club building and storage and purchase new sailing / water sport equipment – SCCF3-1557**

The Board has established a sub-contract arrangement similar to the Bowling Club to allow for delivery of the project by the Aquatic Club Committee.

### **Round 3 – Community Playground Upgrade – SCCF3-1561**

Construction of the new playground is scheduled to occur during October 2021.

Approach to market has selected a supplier. Design discussion has been held with Playgroup. Work is underway to agree on final specification and complete a contract and purchase order. Planning underway to manage construction, with a view to completing the project this winter.

### **Round 3 – CBD Amenities and Wastewater System**

The new IES project officer is preparing a detailed options paper and timeline which will be used to select a solution and plan delivery of this project. The project has a budget of \$137,000 from SCCF and a further \$113,000 has been allocated from LHIB capital.

### **Windy Point Coastal Remediation**

- Sand nourishment campaign completed on 18th April 2021.
- Total 1535 Hydrema truckloads of sand moved, total volume around 8600 cubic metres. Sand bag wall removed.
- Work completed according to plan, with no safety incidents. Disruption to beach amenity was managed to an acceptable level.
- LHIB 20 tonne excavator suffered a serious hydraulic pump fault during the work. The project continued using the All Island Service excavator.
- Drone surveys completed 20 April 2021 and 7 August 2021 to monitor natural sand movement following completion of work.
- Revegetation work has commenced, but progress has slowed due to resources being diverted to rodent incursion response. Work will resume as soon as possible. Fencing has been installed along the top of the dune to limit pedestrian access to the area while vegetation is being established.
- Positive feedback obtained from advising coastal engineers at Coastal Estuary section of the NSW Department of Planning, Industry and Environment.
- The erosion immediately south of the runway at Windy Point remains a concern. At the time of writing, work is programmed to add sand to this erosion face to protect the coastline and airport infrastructure.

### **Boating Now Grant**

The Board has a grant arrangement with Transport for NSW. The grant was awarded in 2015 and has been through various conceptual iterations, with numerous delays. The current approved project is to procure a large vessel hoist trailer and to construct a marine wash down facility. The agreed completion date is 28 February 2022 and the grant body has indicated that an extension of time is unlikely to be granted, given that there have been delays for so many years, and that the grant has already been extended for several years beyond the original timeframe. IES has carried out some early stage design and product research for the project, but is behind schedule and is unlikely to be able to deliver the project in time for

February 2022. IES is now exploring a partial delivery of the project, such as procurement of a trailer only. Information may need to be considered out of session once the next steps are clear.

### **Hybrid Renewable Energy Project**

The Lord Howe Island Hybrid Renewable Energy Project (HREP) Project Status Report is attached for the information of the Board.

The faults which were outstanding at the time of the last Board meeting have been resolved. These were traced to a problem with the microgrid controller. The controller has been replaced, and no further faults have occurred. The practical completion milestone was achieved on 22 April 2021, which marked the completion of construction and handover of the system from Photon to the LHIB. The project now enters full operation and the 12 month and 24 month monitoring and performance guarantee periods are underway. LHIB remains in regular contact with Photon to monitor the system optimise performance.

Work continues to organise media releases, and to meet reporting requirements for ARENA. Once these aspects of the project are well underway, further work will proceed on finalising the site fencing and parking and constructing the composting toilet.

**Prepared:** David Waterhouse, Manger Infrastructure and Engineering Services

**Endorsed:** Angie Stringer, Chief Executive Officer



## CEO Board Report

### Environment and Community Services

#### Biodiversity Management

- Hunting of masked owls to progress eradication continues. On 5<sup>th</sup> April 2021 a female masked owl was shot in a clearing in the bush at Soldiers Creek. Since then, there has been a report from a resident of an owl calling from Stevens Reserve on one occasion and a report of an owl call from Tas Douglas Drive which when investigated was determined to be the call of a Long-tailed Cuckoo. There has been no sign or call reported. Ongoing surveys are required to determine if there are any remaining owls, and if so determine how many and their location to be able to target their removal through shooting. Ten song meters have been purchased for placement around the island to enable long term surveying across the island to determine presence/absence and location if present to inform on hunting strategies. Song meters will also assist in being able to declare eradication following a prolonged period with no calls detected across the island.
- A total of 32 woodhens have been killed by motor vehicles since the start of the year. The Board is encouraging residents to report all Woodhen deaths to the Board. Weed and Myrtle Rust inspections and African Big-headed Ant surveys have been suspended due to all staff being prioritised to work on the Rodent Response (RR).

#### Threatened plants

- Threatened plant recovery actions continue to be implemented according to the LHI Saving Our Species (SOS) grant agreement.
- The Lord Howe Morning Glory *Calystegia affinis* - Old Settlement continues to receive treatment to reduce Flea Beetle *Arispoda* sp, induced leaf defoliation and dieback.
- Phillip Island Wheat Grass *Elymus multiflorus* subsp *kingianus* has been established at six sites (North Bay, Windy Point, Blinky Point, Rocky Run and Boat Harbour and Intermediate Hill) increasing the original population known from Old Settlement and Dawson's Point of 50 plants to over 600 (including seedling recruits).
- Sand Spurge *Euphorbia psammogeton* population on Blinky Beach has been saved from localised extinction with the population reduced to 25 plants prior to REP. Supplementation of the original population on Blinky Beach was timely and the species is now self-propagating (estimate at 150 individual plants). Trials to establish Sand Spurge in 'former known' locations on the lagoon foreshore has had varied results due the modified environment. Trial plantings have been established at the Pines Trees dune rehabilitation site. The aim is to build population size to enable adequate seed dispersal to enable their persistence in the wild.
- Illegal clearing of bushland on the lagoon foreshore near Arajila Lodge has removed a mature Knicker Nut *Caesalpinia bonduc* as well as several translocated seedlings planted at the site in accordance with an approved SOS translocation plan.
- Ten out of 20 threatened plant monitoring plots were surveyed between March – May 2021.

## Biosecurity

- See separate business paper 8 (i)

## Weed Management

- The LHI Weed Eradication Program (WEP) has reached year 16 of a projected 30 year program period. Infestations of environmental weeds that were once a common feature across the island landscape are significantly reduced and are getting harder to find.
- Over 6,500 hectares have been cumulatively searched, 2.52M individual weeds removed (90 weed species), with 2M hours of labour and \$13M investment. This effort has achieved the reduction of weeds encountered per hour by 90% (previously reported).
- The new rodent free ecology of LHI (outside of the settlement area) is exhibiting increased 'weed release' (i.e. substantial weed seedling regeneration and survivorship under residual mature weeds is evident compared to the previous decade) and emergence of new weeds spreading from gardens in the Settlement; notably Cunjevoi *Alocasia brisbanensis*, Silky Oak *Grevillea robusta*, Tobacco Bush *Solanum mauritianum*, Papaya *Carica papaya*, White Cedar *Melia azederach* and Palm Grass *Setaria palmifolia*. Seedlings of Winter Senna - Arsenic Bush *Senna septemtrionalis* have been detected in areas where this low density weed have not been recorded previously, suggesting seed dispersal from the only known location or regeneration from soil stored seedbanks and reduced predation by rodents.
- Two new non-native plants have been recorded on the island (e.g. Mexican Chia *Salvia hispanica* and Annual Ragweed *Ambrosia artemisiifolia*) that may previously have been suppressed by rodents or are new incursions via unknown pathway.
- The WEP historically has forecast a 500ha yearly investment to search (on ground) about half the island per year to remove target weeds at all life stages every two years. This level of resourcing has achieved the reduction and downward trend in weeds by 90%. However, in a rodent free ecology the extent of search effort will need to be increased to keep ahead of increased weed release and to avoid losing the gains made with effort and investment to date.
- For the 2020/21 financial year, the WEP reports 560 hectares of weed search (338 on ground and 222 aerial / cliff lines) 9,300 hours of effort, removing 564 peak mature, 1845 young mature and 31,000 younger stage weed plants (33,409 total of 69 weed species).
- The LHI WEP was *temporarily on hold* with the whole WEP labour force (recurrent and grant funded) tasked to the RR (from mid April 2021).
- Planned specialist WEP contractors have also been postponed due to accommodation required for the RR external staff. As a result of the RR, priority remote and residual mature weeds detected on the western flank of Mt Lidgbird (in "*The Bowl*" south of Roundface – above the Cross) remain untreated as are all priority blocks due for repeat visitation. Re-tasking of WEP staff to other duties not only loses the time driven advantage in removing weeds before they reach reproductive maturity but also seasonal advantage in accessing remote terrain (during more favourable weather). Weed inspections have also been delayed.
- Dendra have provided the LHIB aerial weed detection data from sample sites surveyed on LHI in February 2021. The LHIB is due to ground truth the results and provide feedback to Dendra data ecologists. The rapid detection of residual mature weeds
- To gain traction on lost time from the REP & RR, the WEP will be seeking external investment to apply yearly treatment of priority weed landscapes across the island, back to back, to address residual and new and emerging weed risks before they spread. Ultimately a more robust, integrated environmental labour force needs

consideration which will give the LHIB increased capacity to effectively manage biosecurity risk and to avoid compromising other biodiversity conservation programs on island.

Table 1. Weed tallys LHIB Weeds Database 1<sup>st</sup> July – 1<sup>st</sup> May 2021

Weed Species	Seed/Juv	Young Mat	Peak Mat	Total
African Boxthorn	27	3	1	31
Bitou Bush	32	12	15	59
Climbing Asparagus	415	45	11	471
Bridal Creeper	470	166	49	685
Castor Oil	680	30	12	722
Cherry Guava	293	384	103	780
Ground Asparagus	6870	492	116	7478
Night Jasmine	519	87	7	613
Lantana	0	0	0	0
Madeira Vine	695	42	33	770
Ochna	13036	150	16	13202
Sweet Pittosporum	1116	13	7	1136

## Revegetation

- Maintenance and infill planting at the Environmental Trust funded revegetation project at “Pinetrees Sallywood Swamp Forest Revegetation” was scheduled from late April through till Spring but was suspended due to RR. Since 8 June the RR has engaged additional staff enabling most Environment Unit Board staff to return to normal duties.
- Planning is underway for upcoming revegetation works to revegetate recent coastal protection works at Windy Point, control exotic Rhodes Grass and infill planting on Blackburn Island following the breeding season for Wedge-tailed Shearwater and to convert exotic grasses to native vegetation at the Lord Howe Island Morning Glory site at Old Settlement. This work has been suspended until resources are made available due to RR.
- Maintenance work and infill planting has been suspended at all existing revegetation sites.
- The environmental unit has established a small nursery at the depot, which provides opportunity for staff to learn plant propagation skills, alternative wet weather work and capacity for the LHIB to grow uncommon and threatened plant species.

## Incident Management

NIL

## Compliance and Enforcement

- An incident that involved the attack of a dog by another dog was reported to the Board in June 2021. The owner of the dog who attacked another dog was issued with a Penalty Infringement Notice (PIN) along with an official caution to take all reasonable precautions to prevent his dog from escaping the property on which it is being kept and requiring a mandatory obedience reassessment in November 2021 as per Policy guidelines.

## Community Programs & Education

- The Board has received grant funding from DPIE to support the transition to the NSW Planning Portal for online DA submission program. The Grant Funding has been earmarked fund the purchase of equipment to set up a day use office space in Commonwealth Bank building. Residents will be given priority complimentary access to use the equipment for the submission of DA's online. When not in use for DA submissions these computers and office space will be available to the community to rent as day use office space. Due to COVID restrictions this space is currently being used as office space for Board staff to improve social distancing. Once restrictions are eased this space will be made available for residents to use when submitting DA's.
- Board staff are working with DPIE to ensure the on line system is up and running and once this occurs the community will be notified.

## Visitor Infrastructure

- Maintenance work on the Middle Beach south steps has been completed and the steps are now open.
- The Middle Beach north steps will remain closed until further notice. Storm activity has resulted in the lower steps being washed away, and LHIB staff have identified concerns with the stability of the slope that the lower portion of the steps are installed in. Expert geotechnical advice will be obtained prior to any reconstruction works being undertaken.
- Goat House walking track remains closed until further notice. A detailed geotechnical report has been completed. Preliminary work to reinstate the track will be undertaken in house, however external contractors may be required to install the re-routed track. Funding to undertake these works which may require helicopter support have not been identified. The table below provides and approximate time frame for works:

Works Requires to Reinstate Goat House Track	Timeframe
Site inspection	2 days
REF	5 days
Clearing new route	10 days
Ordering of materials	2 days
Transportation of materials (timeframe dependant on sourcing helicopter, stock supply & shipping schedule)	31 days
Engaging contractors to implement on-ground erosion control works	62 days
Engaging specific contractors (timeframe dependant on availability of contractors);	15 days

<b>Total Estimated Timeframe (days)</b>	<b>127 days</b>
<b>(working weeks)</b>	<b>25.4 weeks</b>
<b>(working months)</b>	<b>6.35 months</b>

- Inquiries are being made to confirm if the remediation works will be covered by insurance.
- Repair and maintenance of walking tracks has been interrupted by the RR. Since 8 June the RR has engaged additional staff enabling most Environment Unit Board staff to return to normal duties. Staff will prioritise works based on risk to the public.
- The recent rockfall on the south eastern face of Lidgbird has not impacted on any walking track infrastructure.

**Marine Management / Moorings**

- 11 visiting vessels attached to PTM’s during the reporting period. *Note: Report period May - July.*
- Visual mooring inspections were conducted on 20 May 2021 – minor maintenance is required. The Annual mooring inspections by commercial divers is currently being arranged for October 2021.
- Mooring issues - reinstallation being pursued for the vessel ‘Stardust’ have been resolved with the owner of the vessel, Mr Gary Payten, relocating his mooring to the area designated by the Board and MPA in June 2021.

**Human Resource Management**

- 2 x part time bush regenerator role awarded and commenced.
- Part time ranger role awarded and commenced.

**Environmental Assessment**

- Ecological assessments for all OC / DAs referred completed
- Tree risk assessments completed.

**Land Administration**

- See business papers

**Development Assessment and Land Use planning**

- Lord Howe LEP 2010 (Amendment 6) – Stage 1 various amendments – in accordance with the resolution made at the April Board meeting the Planning Proposal has been submitted to DPIE to make the LEP.
- Board staff continue to work with Spatial Services NSW to introduce rural addressing to Lord Howe Island. This provides each property on the Island with a unique address which in the coming years will be required to obtain or renew drivers licences and access government services.

**Prepared:** Justin Sauvage, Manager Environment and Community Services

**Endorsed:** Angie Stringer, A/Chief Executive Officer

# Solar PV HREP

Update September 2021

As the project construction phase is complete, there has not been significant change since the May 2021 report. The following updates are provided in addition to the below May 2021 report:

- Milestone payment 9 from ARENA of \$519,997 has been approved and invoiced.
- Work is still underway to apply for contingency funding from ARENA to cover project variations.
- Media releases for project completion have been delayed, however a resolution has been achieved and media releases from ARENA and Photon Energy Australia are expected in the week beginning 13 September 2021.
- LHIB staff are working with Photon Energy to plan scheduled maintenance activities for the solar/battery hardware and software.
- System performance has been outstanding, with a number of 100% renewable days achieved since commissioning.
- The public display screens at the Amphitheatre and in the Museum are not working reliably. LHIB staff are liaising with Photon to effect repair.

## Status Report to 22 May 2021

Overall Project Status



On Track

Project Details			
<b>Project Name</b>	Solar PV Hybrid Renewable Energy Project	<b>Portfolio</b>	Lord Howe Island Board - Engineering & Infrastructure Services
<b>Project ID</b>	ARENA reference: 2013/RAR0004	<b>RM8 Doc reference</b>	ED21/3559
<b>Project Manager</b>	David Waterhouse	<b>Geographical Location</b>	Lot 230 DP47747 Lord Howe Island -31.528491, 159.07475
<b>Project Sponsor</b>	Manager, Infrastructure and Engineering Services	<b>Current Phase</b>	Operational / Performance Monitoring

## Project Thresholds and Status

Area	Measure	Lower Threshold	Upper Threshold	Current Status	Action on variation beyond thresholds
Time	Project program – variance from schedule	-30 days on Photon milestones	+30days on Photon milestones	On track	Report to Project Control Group
Cost	Budget Line Items – variance from estimate	-10% on lines <\$100,000 -5% on lines >\$100,000	+10% on lines <\$100,000 +5% on lines >\$100,000	On track	Report to Project Control Group, CFO and CEO
	Overall budget – variance from estimate	-5% on overall budget	+5% on overall budget	On track	
Quality	Specification – non-conformances	Deviation from specification to the detriment of quality	Deviation from specification to the benefit of quality	On track	Report to Project Control Group

Scope	Inclusions – variance from priority requirements	“Must” and “Should” items 100% delivered	Decision on “Could”/“Not Essential” delivered	On track	Report to Project Control Group
Benefit	Fuel – reduction in diesel use for electricity generation	67% below 2011 (calendar) baseline year	>75% below 2011 (calendar) baseline year	On track	Report to Project Control Group

**Thresholds Comments:**

Actual Completion achieved 22 April 2021. 12 and 24 month performance monitoring has now commenced.

Layout change variation materials and design costs accepted and invoiced. Labour costing rejected by LHIB and accepted by Photon. Contingency claims to ARENA can occur now the Deed has been varied.

## Project Budget – Income and Expenditure

Income - by Funding Source	L-T-D	2019/20	2020/21	2021/22	2022/23	Available Contingency	Total
LHIB	(456,000)	-	-	-	-	-	(456,000)
Contingency - LHIB	(755,331)	-	-	-	-	(250,000)	(1,005,331)
Grant - ARENA	(1,268,172)	(2,184,462)	(519,997)	(27,369)	-	-	(4,000,000)
Contingency - ARENA	-	(11,929)	-	-	-	(488,071)	(500,000)
Loan - T-Corp	-	(2,300,787)	(3,599,213)	-	-	-	(5,900,000)
<b>Total</b>	<b>(2,479,503)</b>	<b>(4,497,177)</b>	<b>(4,119,210)</b>	<b>(27,369)</b>	<b>-</b>	<b>(738,071)</b>	<b>(11,861,331)</b>

Expenditure - By Budget Category	L-T-D	2019/20	2020/21	2021/22	2022/23	Total
Scoping, project design and approvals*	1,658,014	-	-	-	-	1,658,014
Project Management & Administration	-	431,234	682,350	66,506	49,000	1,229,090
Construction (project delivery materials and equipment)	-	18,663	136,500	-	-	155,163
EPCM Contract and Contractor Payments	-	3,867,253	3,220,680	77,300	148,500	7,313,733
Contingency - LHIB	755,331	-	-	-	-	755,331
Contingency - ARENA	-	11,929	-	-	-	11,929
<b>Total</b>	<b>2,413,345</b>	<b>4,329,079</b>	<b>4,039,530</b>	<b>143,806</b>	<b>197,500</b>	<b>11,123,260</b>

\* Life to Date expenditure audited, and includes expenditure relating to initial scoping of the project as a wind and solar PV project, and then the subsequent redesign of the project to the final form of solar PV and battery storage.

**Comments:** Budget reporting restructured in response to the ARENA Deed Variation.

**Income** - LHIB cash contingency budgeted for 2019/20 carried over in full as contractually required. Principal and interest repayments commence upon final TCorp loan draw down.

**Expenditure** - Financial audit of FY19/20 project income and expenditure has commenced with Thomas Noble & Russell accountants appointed.

**Contingency** – Contingency is shown separately. When contingency is accessed, the expenditure is reported against the Activity area until the Contingency Claim is approved. The Project Board has voted to approach ARENA to access contingency for Variations VAR-02 and VAR-04. A request to access the contingency from ARENA will be submitted. LHIB Contingency may be required to cover any additional costs incurred or rejection of the claim by ARENA.



### Current Financial Year Expenditure (Source: Cost Plan) – as at 22 May 2021

Expenditure - By Budget Category	Budget FY20/21	YTD Committed	YTD Actuals	YTD Actuals & Commitments	YTD %-Actuals & Commitments
Scoping, project design and approvals*	0	0	0	0	0
Project Management & Administration	682,350.00	203,859.33	364,948.58	568,807.91	83%
Construction (project delivery materials and equipment)	136,500.00	0	16,665.24	16,665.24	12%
EPCM Contract and Contractor Payments	3,220,680.00	295,095.82	3,568,008.76	3,863,104.58	120%
Contingency - LHIB	-	-	-	-	-
Contingency - ARENA	-	-	-	-	-
<b>Total</b>	<b>4,039,530</b>	<b>498,955</b>	<b>3,949,623</b>	<b>4,448,578</b>	<b>110%</b>

Budget Comments: EPCM funds will remain as a commitment spanning several financial years until 2022/23. Contingency claim to be lodged with ARENA being prepared now. If approved, this will result in Variation expenditure being reported in the Contingency expenditure row. Liquidated Damages claim has been submitted to Photon for consideration as per the contract. Return of Completion Undertaking is being processed according to contract.

### Milestone Tracking – As at 11 March 2021 (Claim #10)

Contractor Milestones	Forecast Due Date	Revised Due Date	Variance / Comment
1. Contract Signing	20/06/2019	-	Complete. Claim lodged & approved.
2. Site mobilisation	29/05/2020	-	Complete. Claim lodged & approved.
3. Design Documentation	07/02/2019	-	Complete. Claim lodged & approved.
4. Battery shipped from manufacturer	08/11/2019	-	Complete. Claim lodged & approved.
5. PV modules, racking, inverters shipped from manufacturer	06/12/2019	-	Complete. Claim lodged & approved.
6. (not used in final contract)			
7. Powerhouse modifications	21/09/2020	-	Complete. Claim lodged & approved.
8. Battery installation	14/09/2020	-	Complete. Claim lodged & approved.
9. A. % PV modules, racking, inverters, distribution board delivered to site	31/08/2020	-	Complete. Claim lodged & approved.
9. B. % PV modules, racking inverters, distribution board installed		-	Complete. Claim lodged & approved.
10. A. % LV cable received on site	28/09/2020	-	Complete. Claim lodged & approved.
10. B. % LV cable installed and terminated		-	Complete. Claim lodged & approved.
11. Provisional acceptance (Practical Completion)	30/11/2020	-	Complete. Claim lodged & approved.
12. Intermediate acceptance	30/11/2021	22/04/2022	On track
13. Final acceptance	30/11/2021	22/04/2023	On track

<b>Photon Milestone Comments:</b> Milestone dates for 12 and 13 intermediate and final acceptance adjusted following completion of Milestone 11.			
Composting toilet installed	30/07/2020	TBA	<i>RFQ to be issued.</i>
Unsealed access track constructed	01/09/2020	TBA	<i>Requirements to be confirmed now that solar array construction is complete.</i>
Entryway / carpark asphaltting & fuel area bund	01/09/2020	TBA	<i>Best approach being consider to integrate with roadworks.</i>
<b>Other Contractor Comments:</b> Road works to be considered as package of work for roads contractor in the context of broader Island work for improved economy of scale. Timing on this is TBA. Composting toilet quote rec'd from Photon exceeded budget. Quotes from local builders to be sourced in 2021. Work may be delayed until FY21/22.			

## Issues, Changes and Decisions

Changes / variations for period			
ID	Description of variation	Approved by	Date Approved
	Nil		
Comment:			

Decisions for period				
ID	Decision Status	Date Decision Made	Decision Made By	Decision Details
Milestone 11	Approved	22/04/2021	LHIB	Milestone 11 Practical Completion achieved.
Comments:				

Success Stories
<ul style="list-style-type: none"> <li>Completion of Milestone 11 Practical Completion. 100% reliability and high solar penetration with full automatic control since completion.</li> </ul>

## Senior Management Team and Board Feedback

### SMT: Recommended “Overall Status” For Program: On Track

Recommended focus area/s:

- Completion of ARENA Milestone 9 reporting and ARENA contingency claims.
- Focus on ARENA knowledge sharing objectives.
- Continue to monitor performance and liaise with Photon and Tesla.
- Follow up on media releases.

# LORD HOWE ISLAND BOARD

## Business Paper

### OPEN SESSION

#### ITEM

List of Owner's Consents dealt with under Delegated Authority.

#### RECOMMENDATION

The report is submitted to the Board for information.

#### BACKGROUND

The Minister for the Environment has approved delegated authority regarding the issuing of owners consents by the CEO providing:

1. The development value is not more than \$2 million,
2. Does not relate to development for the purpose of a new dwelling, and
3. Complies with any planning instrument in force relating to the Island.

#### CURRENT POSITION

The following owner consent applications complied with the above requirements and have been determined by the CEO since the last Board meeting, as detailed below:

OC	Applicant	Site	Proposal	Zone	Decision
2021.3.1	Diane Owens	Lot 2 DP 1261010	Change of use unit 1 at Lorhiti Apartments from tourist accommodation to staff room, office, storage and utilities room. Decommission unit 1.	Zone 2 Settlement	Approved subject to conditions 6/07/2021.
2021.1.1	Diane Owens	Lot 2 DP 1261010	Continued use of constructed (unapproved) Storeroom 1, and workshop. Construction of Storeroom 2 attached to existing workshop on existing concrete slab. Construction of undercover area on new concrete slab.	Zone 2 Settlement	Approved subject to conditions 8/07/2021.

2020.11.1	John Green	Portion 91	Extension to an existing building at Earl's Anchorage. Increase internal floor area. Update existing laundry and bathroom. Remove existing deck and replace with a new timber deck.	Zone 2 Settlement	Approved subject to conditions 2/03/2021
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**RECOMMENDATION**

The report is submitted to the Board for information.

**Prepared:** Belinda Panckhurst, Administration Officer

**Endorsed:** Angie Stringer, Acting Chief Executive Officer

# LORD HOWE ISLAND BOARD

## Business Paper

### OPEN SESSION

#### ITEM

List of Development Applications dealt with under Delegated Authority.

#### RECOMMENDATION

The report is submitted to the Board for information.

#### BACKGROUND

The Minister for the Environment, under section 80(1) of the Environmental Planning & Assessment Act, issued authority to the CEO to determine development applications providing:

1. The development value is not more than \$150,000
2. No more than 3 written objections are received within the exhibition period; and
3. The application has not been called up for full Board determination by any Board Member. (All Lord Howe Island Board development applications are to be determined by the full Board)

#### CURRENT POSITION

The following development applications complied with the above requirements and have been determined by the CEO since the last Board meeting, as detailed below:

DA	Applicant	Site	Proposal	Zone	Decision
MDC 2016.26.2	Fletcher Owens	Lot 2 DP1261010	1.5m extension to approved garage addition on Infrastructure Building.	Zone 2 Settlement	Approved subject to conditions 8/07/2021.
DA 2021.5.1	John Green	Portion 91	Extension to an existing building at Earl's Anchorage. Increase internal floor area. Update existing laundry and bathroom. Remove existing deck and replace with a new timber deck.	Zone 2 Settlement	Approved subject to conditions 14/07/2021
DA 2021.3.1	Diane Owens	Lot 2 DP1261010	Change of use unit 1 at Lorhiti Apartments from tourist accommodation to staff room,	Zone 2 Settlement	Approved subject to

			office, storage and utilities room. Decommission unit 1.		conditions 6/07/2021.
DA 2021.1.1	Diane Owens	Lot 2 DP1261010	Continued use of constructed (unapproved) Storeroom 1, and workshop. Construction of Storeroom 2 attached to existing workshop on existing concrete slab. Construction of undercover area on new concrete slab.	Zone 2 Settlement	Approved subject to conditions 8/07/2021.

**RECOMMENDATION**

The report is submitted to the Board for information.

**Prepared:** Belinda Panckhurst, Administration Officer

**Endorsed:** Angie Stringer, Acting Chief Executive Officer

<b>Board Meeting:</b> September 2021	<b>Agenda Item:</b> 11 (iii)	<b>File Reference:</b> ED21/6192
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# LORD HOWE ISLAND BOARD

## BUSINESS PAPER

### Planning Assessment Report

Summary Assessment Report

#### 1 Item

**OC2021.05 & DA2021.06** – Proposed New Tourist Accommodation and Onsite Wastewater System, Lot 21 DP 1169260, Old Lagoon Road, Lord Howe Island.

#### 2 Summary Assessment Report

<b>Assessment Officer</b>	Peter Chapman (AAP Consultant Planner)
<b>Address/Property Description</b>	Lot 21 DP 1169260, Old Lagoon Road, Lord Howe Island
<b>Proposal</b>	Proposed New Tourist Accommodation and Onsite Wastewater System
<b>DA No</b>	DA 2021.06
<b>Applicant</b>	Jessica Owens
<b>Owner Consent Granted</b>	OC 2021.05 submitted and assessed concurrently with DA
<b>Estimated Cost of Development</b>	\$60,000
<b>Site Inspection</b>	A site inspection has been undertaken by Board officers
<b>Zone</b>	Zone 2 Settlement. The proposed development is permissible with consent from the LHI Board.
<b>Significant Native Vegetation Map</b>	Part of the lot contains mapped Significant Native Vegetation (SNV). The proposed tourist accommodation is surrounded by mapped SNV but is located within an existing non-mapped clearing.
<b>Notification</b>	The DA was placed on public exhibition from 26/04/2021 to 26/05/2021 due to the existing dwelling onsite being a heritage item under the LEP.
<b>Submissions Received</b>	No submissions received.
<b>Recommendation</b>	<ul style="list-style-type: none"> <li>a) That OC2021.05 for a Proposed New Tourist Accommodation and Onsite Wastewater System on Lot 21 DP 1169260, Old Lagoon Road, Lord Howe Island be approved.</li> <li>b) That DA2021.06 for a Proposed New Tourist Accommodation and Onsite Wastewater System on Lot 21 DP 1169260, Old Lagoon Road, Lord Howe Island be approved subject to the application of the conditions listed in the report.</li> </ul>



### **3 Consent Authority**

#### Owner's Consent Delegations

The Minister has authorised the Lord Howe Island Board's (LHIB) CEO to grant owners consent to the lodgement of development, subject to the following conditions:

- The value of the development must not exceed \$2,000,000
- The application must, in the opinion of the person granting owner's consent, comply with any Planning Instrument which is in force relating to the Island.
- The owner's consent must not relate to a proposed development application for the subdivision of land.
- The OC must not relate to the creation of new residential dwellings.

#### Development Application Delegations

The LHIB CEO and Chairperson has delegation to grant consent to DAs (DAs) subject to the following conditions:

- The value of the development must not total \$150,000 or more (as calculated by the LHIB).
- The DA must not relate to the subdivision of land or the erection of new dwellings.
- No more than 3 written submissions received within 14 days of the public exhibition period.

The subject OC and DA meets the above CEO delegations, in all respects other than compliance with the Lord Howe Island Local Environment Plan 2013 (as a Planning Instrument) in regards to the 5m side boundary setback. Hence the OC and DA is referred to the LHIB for determination (rather than under the delegations of the CEO).

### **4 Site Description**

The site is identified as Lot 21 DP 1169260, Lord Howe Island fronting Old Lagoon Road . As illustrated in figure 1 (following) Lot 21 has an irregular in shape containing the LEP heritage listed detached dwelling known as Kentia, associated water and septic tanks and a detached studio/ storage area.

Access to Lot 21 and the above structures is off Old Lagoon Road via an established driveway.

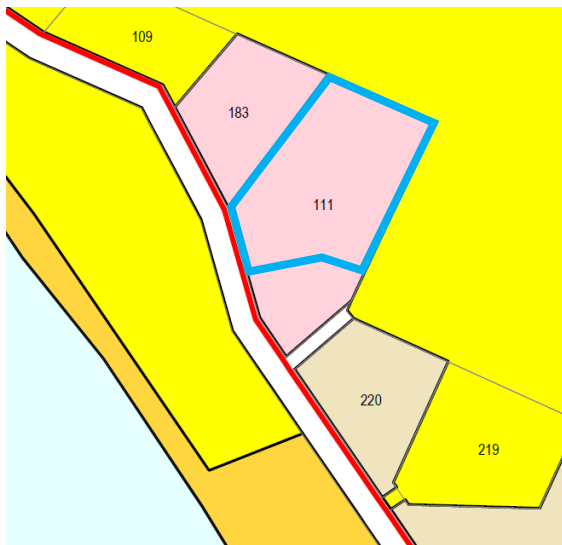
Lot 21 has a site area of 1.157ha and a frontage of 45.7m to Old Lagoon Road,.

The proposed development in located solely within Lot 21. The LHI Airport adjoins the subject site to the east and north.

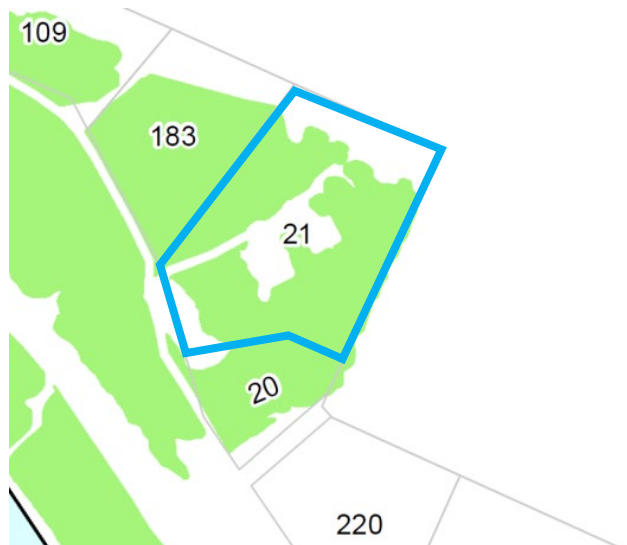
As is illustrated in figure 2 below, the site is zoned 2 Settlement under the LHI LEP 2010, and most of the site is mapped SNV with existing clearings for the primary dwelling, driveway/ manoeuvring areas, studio/ storage etc. The indicated location for the proposed tourist cabin is within a mapped SNV area however the LHIB's Manager Environment World Heritage, is satisfied that it is within an existing clearing that does not contain SNV vegetation (ref section 5 – Referrals for more details).



**Figure 1: Subject site layout with approx. cabin location highlighted**



Extract from the Lord Howe Island Local Environmental Plan 2010 (LEP 2010) Zoning Map detailing 2 Settlement zoning of site



Extract from the LEP 2010 SNV Map identifying extent of SNV on subject site.

**Figure 2: LHI LEP Mapping Extracts**

## 5 Proposed Development

The proposed development is for the construction of a new tourist accommodation and the installation of an upgraded onsite wastewater system. The accommodation is to be in the form of a detached self-contained tourist cabin to be constructed in an existing clearing within mapped SNV on the site.

As detailed on the submitted plan extracts (ref following pages) the cabin is to be 5mx9m in area with an area of 45m<sup>2</sup>, it will be of timber (piered) construction, be single storey with a single pitched, gabled colorbond roof.

The floor plan will have an external deck at one end with the cabin entrance opening onto an open plan living, dining and kitchen area with raked ceilings, then a single bedroom and adjoining bathroom.

As mentioned above the cabin is proposed within an existing vegetation clearing setback off the side boundary of Lot 21 a distance of 4m and 47m from the rear site boundary. As can be seen in the aerial photo of the site (ref figure 1), the existing surrounding vegetation will effectively screen the cabin from the existing heritage listed primary dwelling – Kentia, the nearby studio/ storage area, the adjoining airport and Old Lagoon Road.

Also included in the applications is the installation of a new onsite wastewater treatment system for the entire site including the proposed tourist accommodation. This is to be a FujiClean CE1500EX Aerated Wastewater Treatment System. It is to be installed in conjunction with the existing septic tank servicing the main dwelling. An existing additional septic tank adjoining the studio will become a catch tank from which effluent will be pumped to the new treatment system. The proposed tourist cabin will also have a catch tank that will be connected via pump to the treatment system.

The FujiClean is a NSW Health accredited system and will disinfect the effluent chlorine prior to discharge to the proposed irrigation field in the north eastern rear of the site within an existing non-vegetated area. This is to consist of 12mm drip pipe surface laid in a 10mx42m area which will be planted with native vegetation suitable for the location adjoining the LHI airport.

The above wastewater system has been designed in consultation with LHIB staff.

In association with the subject OC and DA, the applicant intends to receive 2 x tourist bed licences from Lorhiti Lodge separate to these applications. A condition regarding the holding of two bed licences for the operation of the subject tourist accommodation is included in the recommendation of this report.

Plans including a site location plan, floor plan and elevations have been submitted, as reproduced on the following pages.

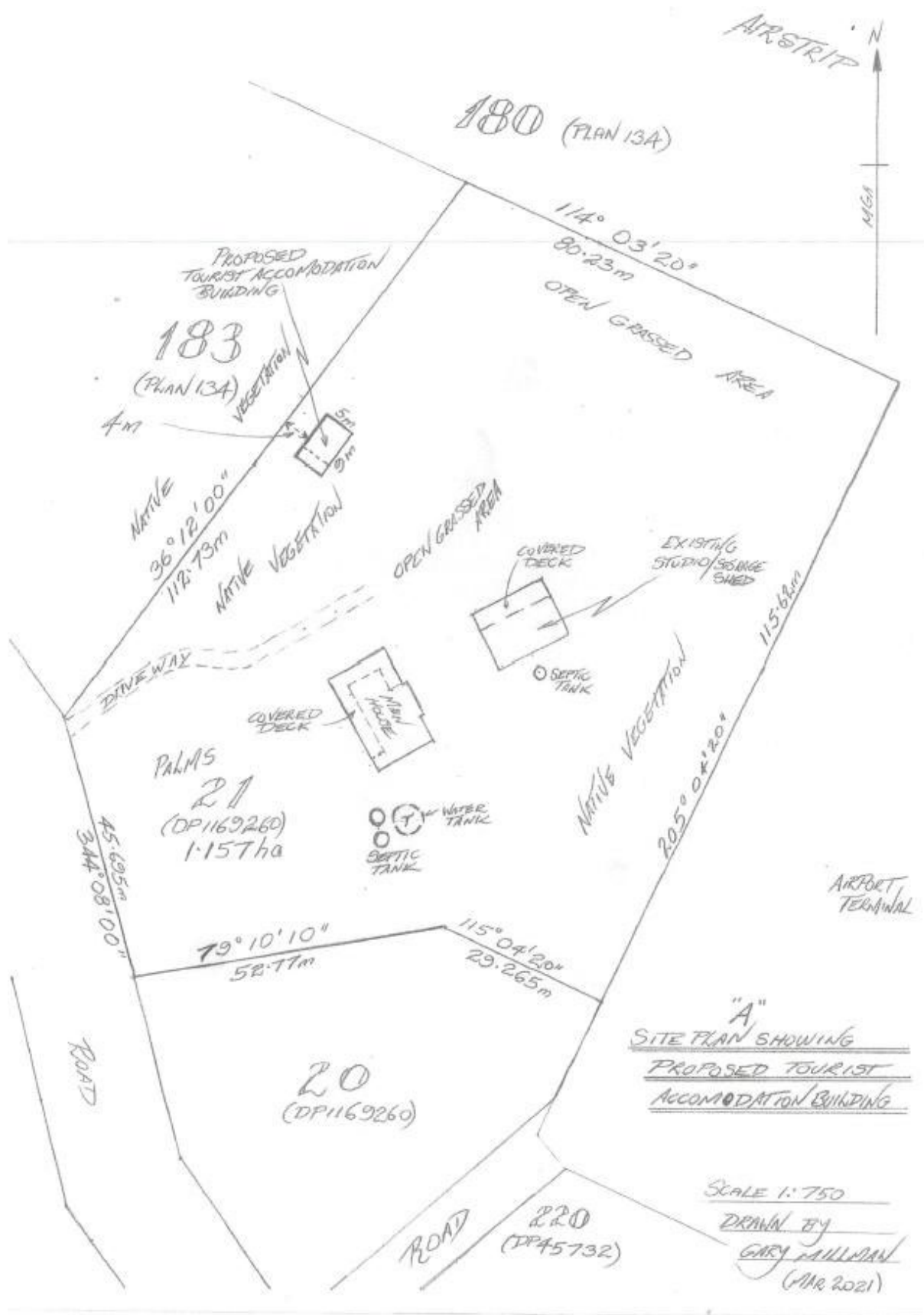
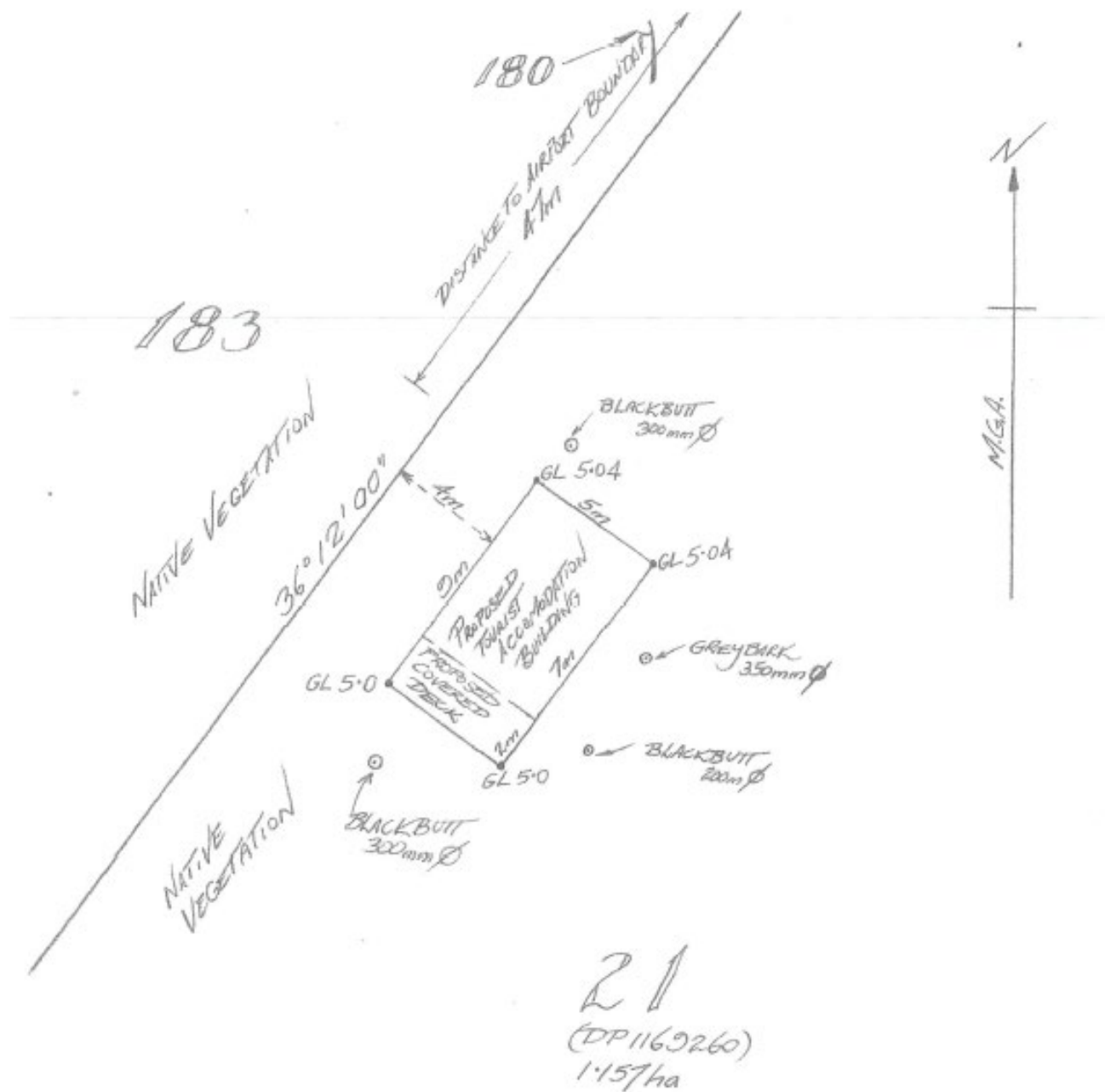


Figure 3: Submitted site layout plan



"B"

PLAN OF PROPOSED TOURIST ACCOMMODATION BUILDING

SHOWING CLOSE TREES AND LEVELS AT CORNERS (GROUND LEVEL ADOPTED)

SCALE 1:200

DRAWN BY GARY MILLMAN (MAR 2021)

BUILDING AREAS

PROPOSED TOURIST ACCOMM. BLDG. 45m<sup>2</sup>  
(INCLUDES 10m<sup>2</sup> COVERED DECK)

FROM SITE PLAN "A" STUDIO/STORAGE SHED 130m<sup>2</sup>  
(INCLUDES 33.6m<sup>2</sup> COVERED DECK)

MAIN HOUSE 210m<sup>2</sup>  
(INCLUDES 73.8m<sup>2</sup> COVERED DECK)

Figure 4: Submitted site layout detail

GROUNDPLAN

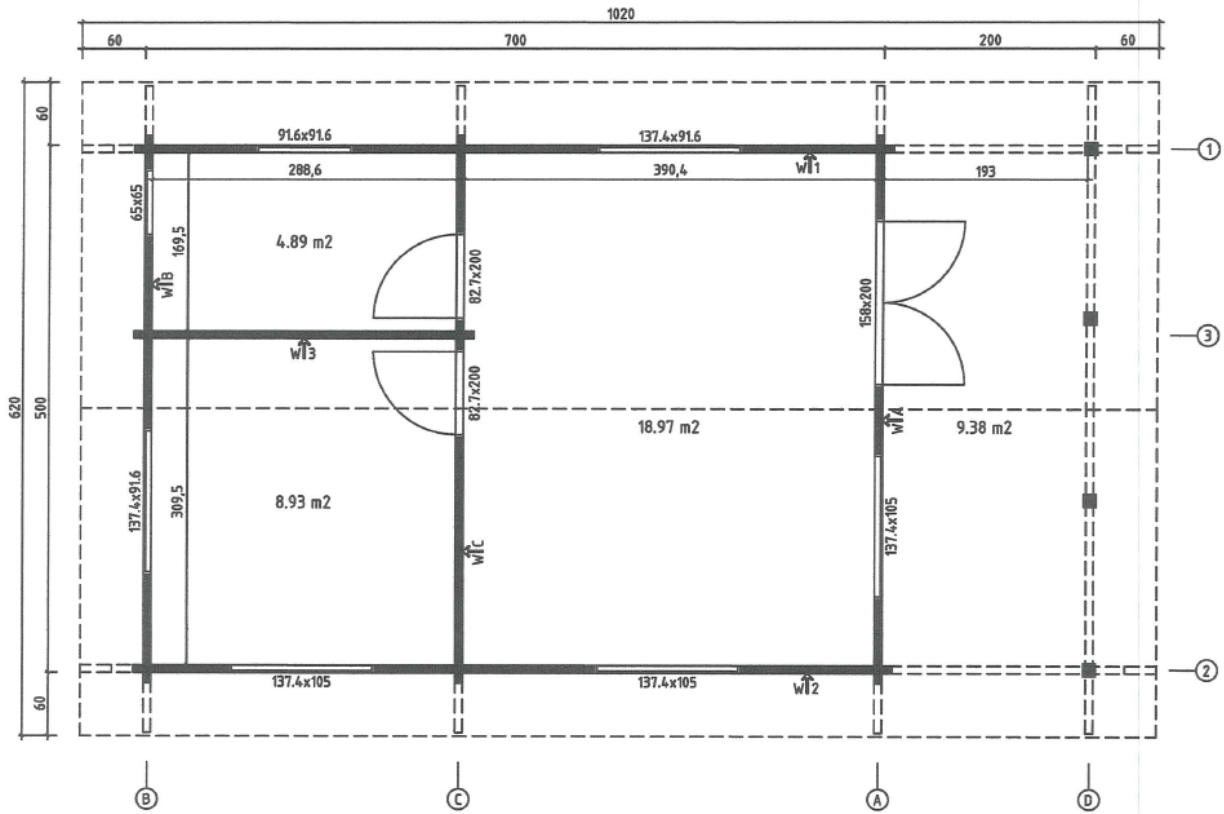
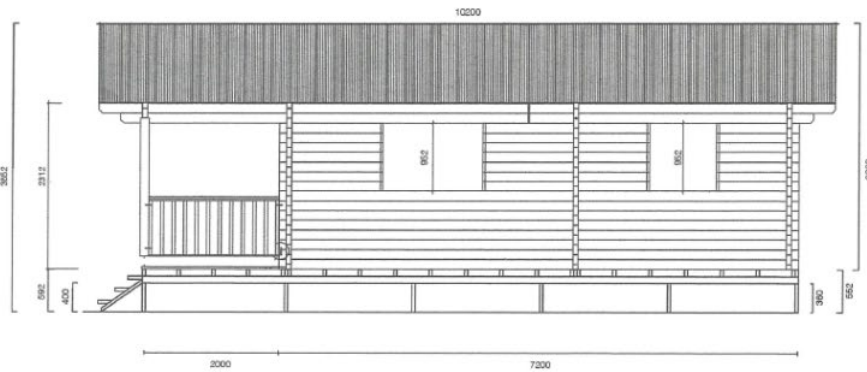


Figure 5: Submitted cabin floorplan



1 SOUTH EAST FACADE  
1 : 50

Lord Howe Island Services ATF Kentia Trust  
2 Lagoon Road  
Lord Howe Island NSW 2898  
  
02 6563 2452  
lordhoweservices@gmail.com

ELEVATION 01 - SOUTH EAST FACADE

SCALE ON A4 1 : 50

FOR PROPOSAL - LOT 21 TOURIST ACCOM

SHEET NUMBER PAGE 1

Project Number: N/A  
LOT 21, DP1169260

DATE 13 APRIL 2021

Figure 6: Submitted cabin side elevation



3 SOUTH WEST FACADE  
1 : 50

Lord Howe Island Services ATF Kentia Trust 2 Lagoon Road Lord Howe Island NSW 2898  02 6563 2452 lordhoweservices@gmail.com	ELEVATION 03 - SOUTH WEST FACADE
	FOR PROPOSAL - LOT 21 TOURIST ACCOM
	Project Number: N/A LOT 21, DP1169260

Figure 7: Submitted cabin front elevation

## 6 Referrals

The LHIB has advised that the application was distributed to the relevant internal specialists for review. No objections to the proposal were raised subject to relevant conditions. The table below outlines the issues raised by these specialists and the response.

### 6.1 Comments received from internal specialists

Specialist	Issue	Comment
Manager Environment World Heritage (Hank Bower)	<p><b>Comment</b>            The property is zoned Zone No. 2 – Settlement according to the Lord Howe Island Local Environmental Plan 2010. The objectives of this zone are: to provide opportunities for limited residential and commercial development. The proposal is consistent with these objectives.</p> <p>The proposed construction of a tourist accommodation cabin on cleared land and transfer of two bed licenses will not result in the removal or disturbance of Significant Native Vegetation (SNV) or threatened species or their habitats as it does not require the removal of any vegetation. The site is mapped as SNV, but has been subjected to considerable illegal removal of native vegetation by the previous leaseholder. The proposal as it stands will not incur in any impacts to native vegetation or fauna habitats as it is being constructed on cleared land.</p> <p>To better understand the boundaries of remaining vegetation it is</p>	Noted and recommended accordingly

recommended that the applicant provide an up to date aerial photo of the site, which will assist to prepare a vegetation restoration plan.

To improve the extent, condition and connectivity of native vegetation at the site, it is recommended the proponents prepare a vegetation restoration plan identifying priority areas for revegetation, natural regeneration, corridors, species list for planting and details weed control techniques for weeds on site. The highest priority revegetation works should be strategically located to reduce visibility of the cabin from the surrounding landscape. The proponents have indicated their desire to undertake vegetation restoration works on disturbed sections of their land, although they wish for this to be mostly aspirational rather than conditional so they can implement incrementally.

There is native vegetation in the Study area which is mapped by Sherringham *et al* 2016 as community 17a –Greybark – blackbutt rainforest, 12a Kentia Palm Forest of coral sand and calcarenite and Ep Environmental planting. The vegetation at the Subject site is mapped by Pickard (1983) as vegetation association Da-Ct *Drypetes australasica* – *Cryptocarya triplinervis*. The Sherringham *et al* 2016 mapping is considered accurate where native vegetation remains in tact.

The subject site provides known or potential habitat for at least 6 threatened species being; LHI Gecko *Christinus guentheri*, LHI Currawong *Strepera graculina crissalis*, LHI Golden Whistler *Pachycephala pectoralis contempta*, LHI Silvereye *Zosterops lateralis tephroleura*, Lord Howe Woodhen *Hypotaenidia sylvestris* and LHI Placostylus *Placostylus bivaricosus*.

The LHI Currawong, LHI Golden Whistler, LHI Silvereye and LH Woodhen are all widely distributed across the Island and regularly occupy forests and gardens within the settlement. They are commonly found co-habiting with human infrastructure within the settlement area and in the case of the LHI Currawong, LHI Golden Whistler, LHI Silvereye and LH Woodhen will forage and roost around dwellings and associated infrastructure. However, the core habitat resources for all these species is dense native vegetation.

The LHI Gecko is known to occur throughout the settlement of LHI where it can utilise human made structures and stock piled building materials (e.g. sheets of corrugated iron etc) as sheltering habitat. It can be found within cavities of dwellings that exclude rodents and shelters within cracks and cavities in trees and rocks. It may be found when moving stored items in gardens etc. Any animals detected during works must be moved to similar habitat structures in the adjacent area (e.g. fallen timber within dense native vegetation, old dwellings/structures) away from the development site.

The Subject site includes areas mapped as modeled High Quality Habitat (A) for LHI Placostylus. This mapping is considered accurate where there is intact native vegetation present. The Subject site supports habitat features suitable for the LHI Placostylus and was historically known as one of the main habitat areas on the island. The proposal will not impact this species as the construction of a tourist cabin is located on cleared land. The proposal has potential to restore habitat for threatened species through strategic revegetation with native species. The LHI Placostylus favours forested habitats on calcarenite soils with a dense shaded canopy,



	<p>continuity with large areas of vegetation and a thick moist leaf layer in which they can burrow during dry times. This habitat exists on the property and any restoration efforts should aim to reconstruct similar vegetation through revegetation, natural regeneration and weed control.</p> <p>A 5 Part Test of significance is attached and concludes that the proposed development will not result in any significant impacts on any Threatened species, populations or ecological communities, or their habitats providing the recommendations below are adhered to.</p> <p><b>Recommendations</b></p> <p>That the development be approved subject to.</p> <ul style="list-style-type: none"> <li>• 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 dwellings/structures) away from the development site so they can escape predation by predators such as LHI Currawong and LH Woodhen.</li> <li>• All building materials and building activity are restricted to being stock piled on cleared open areas.</li> <li>• Submit a vegetation restoration plan including current aerial photo of extent of native vegetation, proposed revegetation areas, natural regeneration areas, corridors, species for planting and details weed control techniques for weeds on site.</li> <li>• The highest priority revegetation works should be strategically located to reduce visibility of the cabin from the surrounding landscape and be double the area of the cabin.</li> </ul>	
<p>Team Leader, Compliance and Projects (Kate Dignam)</p>	<p><b>Building Class: 3 – Tourist Accommodation</b></p> <p>If the Development Application is approved the applicant must appoint a Principal Certifying Authority (PCA) and apply for a Construction Certificate for the proposed works. No works can commence until a valid Construction Certificate for the works has been issued.</p> <ul style="list-style-type: none"> <li>• The PCA will require lodgement of certified structural engineering plans for the works before issuance of a Construction Certificate.</li> <li>• The PCA will ensure all necessary approvals are in place, conduct mandatory inspections of the works as required and issue the Occupation Certificate.</li> </ul> <p>The applicant will need 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 to their nominated PCA prior to the issuing of a Construction Certificate.</p> <p>As a Class 3 Single Sole Occupancy Unit the Building Code of Australia requires the Tourist Accommodation Unit to be accessible i.e. have features to enable use by people with a disability. The submitted plans do not comply with access for people with a disability.</p>	<p>Noted and recommended accordingly</p>

	<p>The applicant is to ensure that fire detection and early warning devices, such as smoke detectors, are installed in the Tourist Accommodation Unit 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.</p> <p>The applicant is to ensure that fire-fighting equipment is installed as per the requirements of the Building Code of Australia (BCA) for a class 3 building.</p> <p>The applicant is to ensure that an Annual Fire Safety Statement for the Tourist Accommodation Unit is supplied to the Board as a record of the functionality and ongoing maintenance of any fire safety measures installed.</p> <p>All construction waste 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, which is the responsibility of the applicant to remove from the Island. Waste disposal fees will be charged in accordance with the Lord Howe Island Board's schedule of fees and charges.</p> <p>The applicant is to ensure all stormwater from the roof structures is diverted to rainwater tanks or an appropriate absorption provided. The method of management of the stormwater is not clear in the application and is to be shown on the construction drawings.</p> <p>The applicant must demonstrate that the drinking water supplied to the Tourist Accommodation Unit will consistently meet the <i>Australian Drinking Water Guidelines 2011</i> and any subsequent amendments to the Guidelines.</p> <p>An appropriate drinking water management system and quality assurance programme (QAP), in compliance with NSW Health requirements and the Public Health Act 2010 and Regulation 2012, is to be provided to the Board. To assist commercial operations the Board have prepared QAP templates for use and are available on the Board's website using the following link: <a href="https://www.lhib.nsw.gov.au/board/publications/plans">https://www.lhib.nsw.gov.au/board/publications/plans</a>.</p> <p>It should be noted the Board lodge the supplied QAP with NSW Health for their regulatory oversight.</p> <p>The nominated PCA is not to issue an Occupancy Certificate for the Tourist Accommodation Unit unless the QAP has been received by the Board.</p> <p>All plumbing work is to be undertaken by a licenced plumber.</p> <p>All waterproofing of wet areas, such as a bathroom, is to be carried out in accordance with the Building Code of Australia (BCA) and certified by an appropriate person. The certification must be provided to the PCA before any Occupancy Certificate for the building can be issued.</p> <p>All electrical work is to be undertaken by a licenced electrician. Electrical Compliance Certification is to be provided to the Board before any Occupancy Certificate for the building is issued.</p>	
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	<p>No excavation to be carried out until the site is inspected by the LHIB Senior Electrical Officer, i.e. 'dial before you dig'.</p> <p>Wastewater:</p> <p>The proposed wastewater treatment system, including satellite and associated effluent land application area calculations are correct for the applicant's stated intent and expected output nutrient level for a FujiClean CE1500EX system. The following table outlines the expected daily hydraulic load for the proposal:</p> <table border="1" data-bbox="387 528 1185 824"> <thead> <tr> <th>Source</th> <th>Number</th> <th>Lt/day</th> <th>Total Lt/day</th> </tr> </thead> <tbody> <tr> <td>Main House</td> <td>3 x bed = 4EP</td> <td>120</td> <td>480</td> </tr> <tr> <td>Studio (proposed staff accom.)</td> <td>1 x bed = 2EP</td> <td>120</td> <td>240</td> </tr> <tr> <td>Proposed Tourist Unit</td> <td>2 x pax</td> <td>150</td> <td>300</td> </tr> <tr> <td colspan="3">Total Daily Hydraulic Load</td> <td><b>1,020</b></td> </tr> </tbody> </table> <p>The installation of the wastewater treatment system is overseen by the Lord Howe Island Board and not the PCA. The PCA however, is not to issue an Occupancy Certificate for the Tourist Accommodation Unit until such time the Board has carried out the final commissioning inspection of the wastewater treatment system and is satisfied that the installation and operation of the system meets the parameters of the strategy.</p> <p>The effluent land application area of 412m<sup>2</sup> is based on the assumption of the soil type of sand. The applicant is to provide a soil sample from the proposed effluent land application area to validate the irrigation area calculations. The soil sample is to be taken at a depth of 1m to 1.5m. The soil sample must be received prior to any installation works of the system. If the soil sample realises a different type to sand the effluent land application area may be subject change.</p> <p>The applicant is to notify the Board, with a minimum 7 days' notice, of the commencement of the wastewater treatment system installation, this includes treatment system, satellite 'catch tanks' and effluent irrigation pipe network.</p> <p>Evidence of a Contract or Service Agreement between the applicant and a Lord Howe Island Board accredited Service Agent is required prior to approval for the wastewater management system to operate without a licence.</p> <p>Service Reports and test results, as per the requirements of the Strategy, are to be supplied to the Board on a quarterly basis. Leaseholders are to ensure their Service Agents provide this data to the Board. Failure to supply reports and tests may result in removal of operating approvals and the issuance of fines to the Leaseholder in accordance with the Local Government Act and Regulations.</p>	Source	Number	Lt/day	Total Lt/day	Main House	3 x bed = 4EP	120	480	Studio (proposed staff accom.)	1 x bed = 2EP	120	240	Proposed Tourist Unit	2 x pax	150	300	Total Daily Hydraulic Load			<b>1,020</b>	
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Proposed Tourist Unit	2 x pax	150	300																			
Total Daily Hydraulic Load			<b>1,020</b>																			
<p>Surveyor (Gary Millman)</p>	<p>The proposed new tourist accommodation measuring 5x9m overall has been staked as per the DA site plans. The proposed building is 4m from the boundary between Por.183 and Lot 21 as it is constrained by a large Greybark tree to the south east.</p>	<p>Noted</p>																				

## 7 Planning Assessment

The following planning assessment has been undertaken for the proposed development taking into account the relevant statutory controls, and other relevant matters as detailed below.

### 7.1 Commonwealth legislation

#### 7.1.1 *Environmental Protection and Biodiversity Conservation Act 1999*

The *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) provides for the protection of certain matters of national environmental significance (NES) listed under the Act, which include:

- World Heritage Areas
- National Heritage Places
- Ramsar wetlands of international importance
- Commonwealth listed threatened species and ecological communities
- Listed migratory species
- Commonwealth marine areas
- Great Barrier Reef Marine Park
- Nuclear actions.

Under the EPBC Act, Commonwealth approval is required from the Minister for the Environment (Minister) for any action that will have or is likely to have a significant impact on a NES, or on the environment of Commonwealth land or on the environment if the action is proposed to be taken by a Commonwealth agency (known as a 'controlled action').

A person proposing to take a controlled action must refer the proposal to the Minister for determination. A person proposing to take an action that the person thinks is not a controlled action may refer the proposal to the Minister for the Minister's decision whether or not the action is a controlled action.

Lord Howe Island is a declared World Heritage Property. Section 12 of the EPBC Act 1999 requires approval of actions that involve a significant impact on a declared World Heritage Property.

An Advisory Note has been included in the recommendation to this report, that the applicant make independent enquiries with the Australian Government's Department of Agriculture, Water and the Environment, to confirm whether they consider the proposed actions as detailed in this report are likely to have any impact on the heritage values of the:

- *World Heritage and National Heritage listed Lord Howe Island Group - ID 105085 and 105694, and*
- *Register of the National Estate listed Lord Howe Island Group and Marine Environs - ID 201.*

### 7.2 NSW legislation

#### 7.2.1 *Biodiversity Conservation Act 2016*

The *Biodiversity Conservation Act 2016* (NSW) (BC Act) sets the framework for the listing of threatened species, populations and ecological communities, and key threatening processes in NSW, and the preparation and implementation of recovery plans and threat abatement plans.

The BC Act also provides the mechanism for applying for and obtaining licences to take actions, which could result in harm to a threatened species, population or ecological community, or their habitat, or damage to critical habitat.

The proposed development has been reviewed and assessed for its ecological impacts by the LHIB's Environment World Heritage (ref section 5 of this report). This specialist assessment found that *"The proposal as it stands will not incur in any impacts to native vegetation or fauna habitats as it is being constructed on cleared land"*. It also advised that the 5 Part Test of Significance found *"that the proposed development will not result in any significant impacts on any Threatened species, populations or ecological communities, or their habitats providing the recommendations below are adhered to"*.

The according ecological recommendations have been included in the recommendation of this report.

### **7.2.2 NSW Heritage Act 1977**

The main objective of the Heritage Act 1977 (Heritage Act) is to encourage the conservation of the heritage of NSW. Pursuant to Section 4.45 of the EP&A Act 1979, Section 58 and Section 57(1) of the Heritage Act are triggered by this application.

The Lord Howe Island Group is listed on the State Heritage Register. Section 57(1) of the Heritage Act requires that all applications to carry out development on Lord Howe Island, be referred to and granted concurrence by the NSW Heritage Office. This provision is overridden however by the operation of section 57(2), in the circumstance of the Minister issuing a Heritage Exemption Order.

On 9 January 2015, the NSW Minister for Heritage published an order under section 57(2) of the Heritage Act, providing for an exemption to refer specific activities to the Heritage Division, instead requiring referral of only those applications requiring consent under clause 39 of the LEP 2010. As the subject site included a heritage item listed under the LHI LEP 2013, (being the primary dwelling on the site known as Kentia), the applications were required to be referred to NSW Heritage as the Ministerial Heritage Exemption could not be relied upon for the above reason.

The advice received on the subject applications from Heritage NSW was the following:

- *It is recommended that a Statement of Heritage Impact be submitted as part of the Development Application that assesses the potential impact of the proposal on the heritage significance of the State Heritage listed Lord Howe Island, locally listed 'Kentia' and other local heritage items within its vicinity. The Statement of Heritage Impact is to be prepared by a qualified heritage professional in accordance with Heritage Council guidelines.*

*The Statement of Heritage Impact should consider the potential impact of the proposal on the setting, streetscape character of Lagoon Road and visual impact of the proposed tourist accommodation including views and vistas to and from 'Kentia' and locally listed heritage items within its vicinity.*

- *It is proposed to install the Fujiclean system (wastewater system) adjacent to the existing septic tank and the treated effluent would be discharged to the proposed irrigation field. The documentation provided does not specify the excavation depth associated with the proposed installation of the wastewater system and irrigation field. Given the early*

*development of this area, it is recommended that a condition of consent be included to address the potential for historical archaeology which requires the applicant provide a historical archaeological assessment for the site prior to any works commencing to ensure that there is no potential for historical archaeology within the proposed works footprint.*

*The archaeological assessment must be undertaken by a suitably qualified and experienced historical archaeologist. If the archaeological assessment indicates the potential for historical archaeological 'relics' to be present at the site, and the proposed works will disturb them, further approval under the Heritage Act 1977 will be required prior to works commencing.*

*Heritage NSW advises that no further comment on this development is required unless the design changes in a way that would impact State significant historic heritage, or in the event historical archaeology is identified as being present at the subject site.*

The above request was passed onto the applicant who organised for a heritage consultant to (Michael Edwards - Edwards Heritage Consultants) prepare the required statement of heritage impact (SOHI).

The SOHI is comprehensive and has been suitably prepared by a qualified heritage professional in accordance with NSW Heritage Council Guidelines (as required in the Heritage NSW request).

The conclusion and recommendations of the report are as follows:

*"This heritage Impact Statement has re-assessed the heritage values of the property and found that "Kentia" is of historical, aesthetic, associative, social, technical, rarity and representative significance at a local level. Subsequently, a more comprehensive Statement of Cultural Significance has been developed.*

*The proposed secondary dwelling has been assessed with regards to the re-assessed heritage values and consideration has been given to the visual and physical impacts of the proposed development on the identified heritage values of the property.*

*The proposal will not result in any material affectation to significant heritage fabric and will sit quietly near the west boundary of the site, at a substantial distance from 'Kentia'. Hidden from sight by vegetation, the proposed cabin will not affect any significant views to or from the heritage item. As the proposed building will be of timber construction and small in scale, it will have an unobtrusive appearance and retain the prominence of the native vegetation on site.*

*Subject to the recommendations below, the proposed tourist accommodation dwelling at 'Kentia' is considered to have an entirely acceptable heritage impact."*

*Recommendation:*

- 1. Archaeology: Should substantial intact archaeological deposits whether artefacts, relics or occupation deposits be discovered or uncovered, excavation and/ or disturbance of the site is to immediately cease and the Consent Authority and Heritage NSW are to be notified.  
Additional archaeological assessment may be required prior to works continuing in the affected area/s based on the nature of the discovery."*

The recommendation of this report includes the application of the above requirement as a condition of approval.

## 7.3 Local Statutory Plans and Policies

### 7.3.1 Lord Howe Island Local Environmental Plan 2010 (LEP 2010)

The LEP 2010 is the principal environmental planning instrument applying to the proposal. The following summary table details the LEP provisions relevant to the subject proposal, together with assessment and/or comment as required.

#### LEP 2010 compliance summary table:

LEP 2010	Complies Y/N	Comment
<b>Part 1 Preliminary</b>		
2	Y	Each of the aims of the LEP 2010 have been considered in the assessment of this application. As assessed and recommended the proposed work can be undertaken with minimal negative environmental impact and/or disturbance to protected flora and fauna native to the Island.
3	Y	The LEP 2010 applies to the subject site which is part of Lord Howe Island, as defined in Section 3 of the Lord Howe Island Act 1953.
6	Y	The Lord Howe Island Board (LHIB) is the relevant consent authority.
7	Y	Noted.
9	N/A	The proposed works are not listed as Exempt Development within Schedule 1 of the LEP.
11	Y	All relevant matters contained within Clause 11 are satisfied – refer to the Clause 11 assessment following.
<b>Part 2 General Provisions applying in particular zones</b>		
12	Y	The land is zoned Zone 2 Settlement.
14	Y	The subject DA complies with the LEP zone objectives and is permissible with the consent of the LHIB.
<b>Part 3 Special Provisions</b>		
<b>Division 1 Provisions for particular kinds of development</b>		
22	Y	<p>Cl. 22(1a) of the 2010 LEP requires that the total area of the allotment occupied by any building comprising, or ancillary to, tourist accommodation, staff accommodation or commercial premises will equate to no more than 15% of the balance of the area of the allotment remaining taking into consideration the minimum dwelling area deduction.</p> <p>This equates to the following existing calculations for the subject site:  <math>11,157\text{m}^2 - 3,000\text{m}^2</math> (min. dwell area) = <math>8,157\text{m}^2 \times 15\%</math>  <b>= 1,222.55m<sup>2</sup> Max Permissible Site Coverage.</b></p> <p>The proposed site coverage (as relevant to cl.22(1a)) is:  Proposed Tourist Cabin = <math>45\text{m}^2</math></p>

			<p><b>Total Site Coverage = 45m<sup>2</sup></b> (&lt; than the 1,222.55m<sup>2</sup> max thus complying with the LEP)</p> <p>At least 50% of the total area of the lot will still remain comprised of native landscaped areas, with no proposed removal of existing species required as part of this development. Instead native revegetation works are proposed in the application supporting the LEP requirements.</p> <p>There is a satisfactory business need for the proposed new tourist accommodation through the separate proposal to transfer 2 x tourist bed licences to the applicant from Lorhiti Lodge.</p>
29	Maximum height of buildings: 7.5m	Y	The existing and proposed development has a height of 3.65m as shown on the proposed development plans. This is below the LEP specified maximum of 7.5m.
<b>Division 2 Provisions that apply to particular land</b>			
32 (2)	<p>Setbacks of buildings in Zone 1, 2 or 5:</p> <ul style="list-style-type: none"> <li>- 10m to a road frontage and</li> <li>- 5m all other boundaries</li> </ul>	Y	<p>The proposed tourist cabin is to be located approx. 54m from the front property boundary, 4m from the western side boundary and 47m from the rear property boundary with the airport. As a consequence, the proposal complies with the LEP except in relation to the 4m side boundary setback.</p> <p>In the circumstances the above non-compliance is reasonable and is supported in light of the following:</p> <ul style="list-style-type: none"> <li>• the established vegetation located both within Lot 21 and the adjoining Lot 183 provides effective screening to the proposed cabin within the site itself, to the adjoining property, the airport and Old Lagoon Road.</li> <li>• the above vegetation will protect the amenity of adjoining properties and the public.</li> <li>• given that the majority of the above existing vegetation is mapped SNV it is not likely to be removed due to the legal protection given to such vegetation.</li> <li>• the proposed cabin is small in size, low in single storey scale and being finished in timber will sit discretely in the landscape.</li> <li>• there are no dwellings or tourist accommodation on the adjoining Lot 183 that could otherwise be directly impacted by the proposal.</li> <li>• being setback quite significantly from both the front and rear boundaries and extensively screened by the existing vegetation, the proposal will not impact on the landscaped scenic and visual qualities of the Island and will remain consistent with its established character and nature.</li> <li>• That the above considerations support the application of clause 32(3) of the LHI LEP 2010 in this case, as they sufficiently demonstrate that compliance with the setback requirements of clause 32(2) are unreasonable and unnecessary and that the variation should be supported.</li> </ul>
33	Landscaping to be carried out in Zone 2	Y	As outlined elsewhere in this report, the proposed development will be well screened by the established



			vegetation on the site and surrounding it. Therefore, it has been comfortably established that the development will not have a significant adverse impact on the existing landscaped character and dispersed pattern of housing in the zone.
34	Land adjoining Zone 7 or 8	N/A	None of the adjoining properties are zoned 7 Environment Protection or 8 PPP.
38, 39, 40	Development Affecting Heritage Items	Y	Refer to discussion provided earlier in section 6.2.2 (NSW Heritage Act) regarding the referral of the applications to NSW Heritage and the submitted Statement of Heritage Impact.
<b>Division 4 Miscellaneous</b>			
41	What DA's are required to be advertised?	N/A	The subject DA was not required to be 'advertised' under the LEP. It was 'notified' for 1 month (due to the heritage listing) as per LHIB requirements with no submissions received.
42	Requirement for environmental report	NA	The proposal is not likely to have a significant adverse impact on the environment and therefore an environmental report is not required.

### Clause 11 Matters that must be satisfied before development consent granted

Clause 11 of the LEP 2010 provides that the consent authority must not consent to the carrying out of development unless it is satisfied of the following matters (to the extent that they are of relevance to the proposed development).

#### Clause 11 Compliance summary table:

CLAUSE 11 REQUIREMENT	COMPLIES Y/N	DISCUSSION
a) <i>The proposed development is consistent with the aims of this plan and the objectives of any zone, as set out in the plan, within which the development is proposed to be carried out,</i>	Y	The subject site is zoned 2 Settlement under the LHI LEP 2010. The proposal as assessed and recommended for approval in this report is consistent with the aims of the LHI LEP 2010 and objectives of Zone 2 Settlement.
b) <i>There is an adequate area available for the disposal or treatment of any effluent treatment or disposal system and any such system will not have any adverse impact on groundwater quality,</i>	Y	The proposed development being a new tourist cabin and an upgraded wastewater management system for the entire site has been assessed within this report as being suitable for the site and environmentally appropriate without having adverse impacts in any way.
c) <i>No part of the proposed development:</i> i. <i>will result in any damage to, or removal of, significant native vegetation, or</i> ii. <i>will have a significantly adverse impact on the habitat of any plants, or animals, that are native to the Island,</i>	Y	As outlined elsewhere in this assessment report the proposed development will not result in detrimental impacts on native vegetation or animals and will include active revegetation works to improve the existing site conditions.
d) <i>Access is, or will be, available to the site of the proposed development and</i>	Y	No change to the current vehicle access arrangements for the site is proposed or required.

<p><i>the provision of any such access will not:</i></p> <p><i>i. result in any damage to, or the removal of, significant native vegetation, or</i></p> <p><i>ii. have a significantly adverse impact on the habitat of any plants, or animals, that are native to the Island,</i></p>		
<p><i>e) Any proposed landscaping will provide various species of plants that are native to the Island and common in the locality to enhance any significant native vegetation,</i></p>	Y	As mentioned elsewhere in this report the proposal includes native revegetation works that will improve/ enhance the existing site conditions. These works will be undertaken in consultation with the LHIB.
<p><i>f) The proposed development will not be adversely affected by any landform limitations, including flooding, landslip, unstable soils and steep slopes,</i></p>	Y	The subject site is not identified as being affected by any identified hazard or land form limitation.
<p><i>g) Adequate services in respect of the proposed development can be provided without significant additional cost to the Board or the community of the Island,</i></p>	Y	There are no additional services required for the proposed development that requires financial outlay by the LHIB. A new electrical connection into the site from the Island mains is required but this will be undertaken at the applicant's expense as required in the recommended conditions of this report.
<p><i>h) The appearance of the proposed development (when considered by itself or in conjunction with existing buildings and works) will not have any significantly adverse impact on the locality,</i></p>	Y	The proposal will not result in a detrimental impact on the visual amenity of the subject site or the locality (ref earlier in this report sections 4 & 5, and the discussion of clauses 32 and 33, LHI LEP 2010).
<p><i>i) The proposed development will not cause any significant overshadowing of adjoining land,</i></p>	Y	Due to the low single storey scale and area of the proposed work, along with the existing vegetation closely surrounding, there will not be any significant overshadowing of adjoining properties created.
<p><i>j) The proposed development will not cause any significant reduction in the privacy of occupiers of adjoining land</i></p>	Y	Refer to the assessment of the proposal under clause 32(2), (Setbacks), LHI LEP 2010 which included privacy assessments.

### 7.3.2 Lord Howe Island Development Control Plan 2005

The Lord Howe Island Development Control Plan 2005 (DCP 2005) applies to the subject site and an assessment of the provisions of the DCP relevant to the subject proposal is included in the following table.

**DCP Compliance summary table:**

LHI DCP 2005	Complies Y/N	Comment
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<b>Part 1 Introduction</b>			
1.2	Plan Objectives	Y	The proposed works as assessed and recommended for approval are consistent with the Plan objectives.
1.4	Where does plan apply?	Y	This DCP applies to the subject site.
<b>Part 2 Design Principles</b>			
2.1	Introduction	Y	Noted.
2.2	Objectives	Y	The proposed works as assessed will be consistent with the DCP's design objectives.
2.3	Design Context	Y	The proposal as assessed is consistent with the character and nature of the site and locality.
2.4	Bulk and Scale	Y	The proposed tourist accommodation cabin and new wastewater system will be consistent with the character, existing form and scale of the site.
2.5	Building Forms	Y	The built form of the proposed works will be in keeping with the established low density residential form and character of the Island.
2.6	Building Materials & Colours	Y	The proposed works will be consistent with the existing buildings on the site.
2.7	Energy and water efficiency	Y	The proposed alterations and additions incorporate access to natural light and ventilation complying with the DCP. A BASIX Certificate accompanied the DA.
2.8	Landscaping design	Y	The proposed works will not have a detrimental impact on the established site landscaping.
2.9	Site access and parking	Y	Site parking and access will not change as a result of the proposed works

## 8 Environmental Effects

### 8.1 Environmental Planning and Assessment Act 1979

Under the provisions of Section 4.15 of the EP&A Act, in determining a DA, a consent authority is to take into consideration the following matters as are of relevance to the development the subject of the DA.

- a) the provisions of the following that apply to the land to which the development application relates:
  - i. Any environmental planning instrument  
*Comment:* An assessment against the LEP 2010 has been undertaken (see Section 5.3.1) and the proposed development was found to comply with all relevant provisions subject to the conditions of approval included in the recommendation of this report.
  - ii. Any proposed instrument that is or has been the subject of public consultation under this Act  
*Comment:* Planning Proposal (PP\_2019\_LHOWE\_001\_00 / PP-2020-2482) – proposed LHI LEP 2010 (Am 6) – housekeeping - has been on public exhibition and adopted for finalisation by the LHIB in April 2021. The draft LEP does not affect the proposed development.
  - iii. Any development control plan  
*Comment:* An assessment of the proposal against the DCP 2005 has been undertaken in Section 5.3.2 and was found to comply subject to the conditions

of approval included in the recommendation of this report.

- iiia) Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4,  
*Comment:* There are no planning agreements relevant to the application.

- iv. The regulations (to the extent that they prescribe matters for the purposes of this paragraph),  
*Comment:* There are no relevant matters prescribed by the regulations other than the requirement that all demolition works shall be undertaken in accordance with Australian Standard AS 2601—1991: The Demolition of Structures.

- v. (Repealed)

- b) The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts on the locality

An assessment of the environmental impacts of the proposed development have been considered in this subject report. The table below provides further assessment of any likely impacts.

### Likely environmental impacts

Potential Impacts	Proposal
Access, Transport and Traffic	There will be no detrimental impacts on the existing access into or within the subject site or public pedestrian or vehicular movement on any public road from the proposed development.
Public Domain, Visual and Streetscape	The proposed work will be in keeping with the established use of the site. In addition, the proposed built form will continue to be in keeping with the established form and character of the Island.
Ecological	The proposed development will not result in the removal of any SNV or result in a significant effect for any threatened species, populations or ecological communities, or their habitats.
Flood	The site is not identified as flood affected.
Heritage	The subject site is listed as a heritage item under the LHI LEP 2010 as discussed and assessed in Section 7.2.2 of this report.
Views	The proposal will not result in a detrimental impact on the visual amenity of the subject site or the locality.
Privacy	Due to the characteristics of the site and surrounds the proposed works will not create any detrimental privacy impacts to adjoining properties.
Open Space	Open space will not be impacted by the proposal.
Social and economic Impact in Locality	There will be no adverse social or economic impact arising from the development.
Construction	Potential impacts from construction activities will be minimised through the recommended conditions of the consent.

- c) the suitability of the site for the development

Having regard to the location and this assessment, the site will adequately accommodate the proposed works and is considered suitable for the site for the reasons outlined in this report.

- d) any submissions made in accordance with this Act or the regulations

As confirmed earlier in this report, the subject DA was placed on public exhibition for 1 month

from 26/04/2021 to 26/05/2021 due to the existing dwelling onsite being a heritage item under the LEP, with no submissions being received.

- e) the public interest

For the reasons outlined in the preceding assessment, it is considered that the proposed development with the recommended conditions of consent, will be in the public interest.

## 9 Conclusion

This DA has been assessed with regard to the provisions of Section 4.15 of the EP&A Act, the LEP 2010 and DCP 2005 and the relevant codes and policies of the Lord Howe Island Board.

The application for a Proposed New Tourist Accommodation and Onsite Wastewater System has planning merit and is supported subject to the application of a number of conditions outlined in the following recommendation.

## 10 Recommendation (Conditional Approval)

- a) That OC2021.05 for a Proposed New Tourist Accommodation and Onsite Wastewater System on Lot 21 DP 1169260, Old Lagoon Road, Lord Howe Island be approved.
- b) That DA2021.06 for a Proposed New Tourist Accommodation and Onsite Wastewater System on Lot 21 DP 1169260, Old Lagoon Road, Lord Howe Island be approved subject to the application of the following conditions:

### 1. Approved Plans and Supporting Documentation

The development is to be carried out in accordance with the plans and documentation provided with DA No. 2021.06 as listed below and endorsed with the Lord Howe Island Board's stamp, except where amended by other conditions of consent.

- a) Completed DA Form prepared by Jessica Owens, dated 22/04/2021.
- b) Statement of Environmental Effects in the DA Form prepared by Jessica Owens and Cameron Kirkpatrick, (undated).
- c) The following plans submitted as part of the DA documentation:
  - Site Plan A and Plan B, prepared by Gary Millman, dated: March 2021,
  - Cabin Floor Plan, Elevations and Perspective prepared by Cabin Life, dated: 13<sup>th</sup> April 2021
- d) BASIX Certificate No. 1192947S, dated: 12 April 2021, prepared by Cameron Kirkpatrick

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

### 2. Tourist Bed Licences

The operation of the proposed tourist accommodation is limited to two persons at any one time. The accommodation shall only be operated whilst two (2) tourist bed licences from the Lord Howe Island Board are in effect for the subject accommodation. The operation shall not

commence until the required bed licences are in place.

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

### **3. Archaeology**

During construction should substantial intact archaeological deposits whether artefacts, relics or occupation deposits be discovered or uncovered, excavation and/ or disturbance of the site is to immediately cease and the Consent Authority and Heritage NSW are to be notified. Additional archaeological assessment may be required prior to works continuing in the affected area/s based on the nature of the discovery.

Reason: To ensure the recommendations of the submitted Heritage Impact Statement are implemented and to address the circumstances where archaeological deposits are uncovered onsite.

### **4. Construction Certificate**

- a) the applicant must appoint a Principal Certifying Authority (PCA) and apply for a Construction Certificate for the proposed works. No works can commence until a valid Construction Certificate for the works has been issued.
  - i. The PCA will require lodgement of certified structural engineering plans for the works before issuance of a Construction Certificate.
  - ii. The PCA will ensure all necessary approvals are in place, conduct mandatory inspections of the works as required and issue the Occupation Certificate.
- 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) All waterproofing of wet areas, such as a bathroom, is to be carried out in accordance with the Building Code of Australia (BCA) and certified by an appropriate person. The certification must be provided to the PCA before any Occupancy Certificate for the building can be issued.
- d) The applicant is to ensure that the Construction Certificate Plans are the same as the approved Development Application Plans (as amended by these conditions of development consent).
- e) Prior to the issuing of 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.
- f) 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.

### **5. 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 dwellings/structures) away from the development site so they can escape predation by predators such as LHI Currawong and LH Woodhen.

- b) All building materials and building activity are restricted to being stock piled on cleared open areas.
- c) The applicants shall submit a vegetation restoration plan prepared in conjunction with the LHIB Manager Environment World Heritage (prior to the issue of the construction certificate), including current aerial photo of extent of native vegetation, proposed revegetation areas, natural regeneration areas, corridors, species for planting and details weed control techniques for weeds on site.
- d) The highest priority revegetation works should be strategically located to reduce visibility of the cabin from the surrounding landscape and be double the area of the cabin.
- e) The vegetation restoration works shall be completed to the satisfaction of the LHIB Manager Environment World Heritage.

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

## **6. Access for People with a Disability**

The applicant is to ensure BCA (NCC) compliance for Access for People with a Disability. Compliance. As a Class 3 Single Sole Occupancy Unit the Building Code of Australia requires the Tourist Accommodation Unit to be accessible i.e. have features to enable use by people with a disability. The submitted plans do not comply with access for people with a disability and amendments are to be detailed on the plans submitted with the construction certificate to achieve compliance with the above.

Reason: To ensure the required compliance with the BCA and NCC.

## **7. Fire Safety**

- a) The applicant is to ensure that fire-fighting equipment is installed as per the requirements of the BCA/NCC.
- b) 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.
- c) The applicant is to ensure that an Annual Fire Safety Statement for the tourist accommodation unit is supplied to the Board as a record of the functionality and ongoing maintenance of any fire safety measures installed.
- d) The applicant shall install 38mm 'Storz' fittings to existing and new water tanks.

Reason: To ensure the resulting development is fire safe, and the 'Storz' fitting will enhance the Rural Fire Service firefighting capabilities should there ever be a need for firefighting.

## **8. Wastewater**

- a) All plumbing work, including the disconnections and connections to the wastewater system, is to be undertaken by a licensed plumber.

- b) The proposed wastewater treatment system, including satellite and associated effluent land application area calculations are correct for the applicant's stated intent and expected output nutrient level for a FujiClean CE1500EX system. The following table outlines the expected daily hydraulic load for the proposal:

Source	Number	Lt/day	Total Lt/day
Main House	3 x bed = 4EP	120	480
Studio (proposed staff accom.)	1 x bed = 2EP	120	240
Proposed Tourist Unit	2 x pax	150	300
Total Daily Hydraulic Load			<b>1,020</b>

- c) The installation of the wastewater treatment system is overseen by the Lord Howe Island Board and not the PCA. The PCA however, is not to issue an Occupancy Certificate for the Tourist Accommodation Unit until such time the Board has carried out the final commissioning inspection of the wastewater treatment system and is satisfied that the installation and operation of the system meets the parameters of the strategy.
- d) The effluent land application area of 412m<sup>2</sup> is based on the assumption of the soil type of sand. The applicant is to provide a soil sample from the proposed effluent land application area to validate the irrigation area calculations. The soil sample is to be taken at a depth of 1m to 1.5m. The soil sample must be received prior to any installation works of the system. If the soil sample realises a different type to sand the effluent land application area may be subject change.
- e) The applicant is to notify the Board, with a minimum 7 days' notice, of the commencement of the wastewater treatment system installation, this includes treatment system, satellite 'catch tanks' and effluent irrigation pipe network.
- f) Evidence of a Contract or Service Agreement between the applicant and a Lord Howe Island Board accredited Service Agent is required prior to approval for the wastewater management system to operate without a licence.
- g) Service Reports and test results, as per the requirements of the Strategy, are to be supplied to the Board on a quarterly basis. Leaseholders are to ensure their Service Agents provide this data to the Board. Failure to supply reports and tests may result in removal of operating approvals and the issuance of fines to the Leaseholder in accordance with the Local Government Act and Regulations.

Reason: To achieve compliance with the LHI On-site Wastewater Management Strategy.

## 9. Water

- a) The applicant is to ensure that all plumbing work, including the disconnections and connections to the wastewater system, is to be undertaken by a licensed plumber.
- b) The applicant is to ensure all stormwater from the new roof structure is diverted to existing rainwater tanks or an appropriate absorption provided. The method of management of the stormwater is to be shown on the construction drawings.



- c) The applicant must demonstrate that the drinking water supplied to the premises will consistently meet the *Australian Drinking Water Guidelines 2011* and any subsequent amendments to the Guidelines.
- d) An appropriate drinking water management system and quality assurance programme (QAP), in compliance with NSW Health requirements and the Public Health Act 2010 and Regulation 2012, is to be provided to the Board. To assist commercial operations the Board have prepared QAP templates for use and are available on the Board's website using the following link: <https://www.lhib.nsw.gov.au/board/publications/plans>.
- e) It should be noted the Board lodge the supplied QAP with NSW Health for their regulatory oversight.
- f) The nominated PCA is not to issue an Occupancy Certificate for the Tourist Accommodation Unit unless the QAP has been received by the Board..

Reason: To ensure works are undertaken appropriately.

## 10. 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.

## 11. Electrical Services

- a) The required new electrical connection into the site from the Island mains shall be undertaken at the applicant's expense in accordance with the specific requirements and approval of the LHIB and shall be routed through existing clearings in the mapped SNV and the existing driveway.
- b) The applicant is to ensure that any electrical work must be carried out by a licensed electrician and an **Electrical Compliance Certificate issued with, or before, the application for Occupancy Certificate** for the building additions and alterations.
- c) No excavation to be carried out until the site is inspected by the LHIB Senior Electrical Officer, i.e. 'dial before you dig'.

## 12. Construction and Demolition

- a) All works are to be undertaken in accordance with approved Construction Certificate documentation.
- b) Pre-Commencement meeting to be arranged with the Owner, Builder and Board Personnel prior to any work commencing on site.
- c) All demolition works shall be undertaken in accordance with Australian Standard AS 2601—1991: The Demolition of Structures.

Reason: To ensure works are undertaken appropriately.

### **13. 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.

### **14. Notice of Commencement**

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

Reason: This is a legislative requirement.

### **15. 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
- b) 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
- c) stating that unauthorised entry to the work site is prohibited.
- d) 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.

### **16. Materials and Colours**

The materials and colour selection for the proposed works are to complement the existing development on the site and the natural landscape setting of the subject locality. 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.

## **ADVICE TO APPLICANT:**

### **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

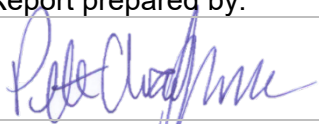
*A matter of national environmental significance (NES) matter; or Commonwealth land without an approval from the Commonwealth Environment Minister.*

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 97 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 95 of the Act.

Report prepared by:	Endorsed by:
	
Peter Chapman Date: 11 August 2021 LHI Consultant Town Planners All About Planning	Angie Stringer Date: 14/9/2021 Acting Chief Executive Officer Lord Howe Island Board

**Board Meeting:** September 2021

**Agenda Number:** 12 (i)

**Record:** ED21/3008

# LORD HOWE ISLAND BOARD

## Business Paper

### OPEN SESSION

#### ITEM

Motor vehicle importation or transfer status report.

#### RECOMMENDATION

The report is submitted to the Board for information.

#### BACKGROUND

Since the last Board meeting, thirty five (35) vehicle applications to import or transfer were determined by the Chief Executive Officer under the 'Vehicle Importation, Transfer and Use Policy'.

#### CURRENT POSITION

The table below shows the vehicle applications determined since the April 2021 Board meeting.

Applicant	Vehicle Type	Preferred Vehicle	Use	Variation to Applicant	Comment
Audrey & Damien Ball	Honda MW1112	Y	Private	1	Approved 17/03/2021 – Transfer from Sean O’Hehir & Emma Crombie
Leanda Lei – Judithy Riddle	Honda NSC 110 D10 Scooter	N	Commercial	0	Approved 14/4/2021 – Replacement
Derek O’Brien	Holden Spark LS	Y	Private	0	Approved 14/4/2021 – transferred from Estate of Daphne Simpson and Replacement for Derek O’Brien
Milky Way	Boat Trailer	N	Private	1	Approved 16/4/2021
Mike Maxwell	Boat Trailer	N	Private	0	Approved 23/4/21 – Replacement
Christie Mills	Kia Rio	N	Private	1	Approved 11/5/21 – replacement of Peter Higgins Scooter

Applicant	Vehicle Type	Preferred Vehicle	Use	Variation to Applicant	Comment
John Green	Toyota Hilux	N	Commercial	0	Approved 11/5/21 – Replacement
Wesley Holden	Toyota Hilux	N	Commercial	1	Approved 11/5/21 – transferred from John Green
San Clark & Craig Smith	Mitsubishi Miew Minicab	Y-Electric	Essential	0	Approved 11/5/21 - Replacement
Kellie Ellis	Toyota Yaris	Y	Private	1	Approved 12/5/21 – Transfer from Denise Tokailagi
Thomas Wilson	Nissan E-NV200	Y-Electric	Commercial	1	Approved 6/5/2021
Lisa & Aaron Ralph – Pro Dive	Ford Ranger Ute	N	Commercial	0	Approved 14/05/2021 - Replacement
Van Gelderen Sharon	Toyota Workmate Ute	N	Commercial	1	Approved 17/5/2021
Van Gelderen Sharon	Nissan E-NV200	Y-Electric	Private	0	Approved 17/5/21 – Replacement
Nobbs Darrin	Daihatsu Hijet Utility	N	Private	1	Approved 18/5/21
J Spivey	Nissan e-NV200	Y – Electric	Private	0	Approved 27/5/2021 – Replacement
Issac Bennett	Quintrex Boat Trailer	N	Private	1	Approved 2/6/21
J Bretnall, Ebbtide	Hyundai iMax	N	Commercial	0	Approved 8/6/21 – Replacement. Transfer from Milky Way Apartments
Denis Corcoran	BYD T3 Electric Van	Y	Private	1	Approved 18/06/2021
Campbell Wilson, Wilsons Hire Service	Mazda CX3 SUV	N	Commercial/Hire	0	Approved 18/6/21 – Replacement
J Riddle & A Wilson Leanda Lei	Great Wall Ute	N	Commercial	0	Approved 1/7/21 – Replacement
Margaret Devine, Devine Seafoods	Mitsubishi Triton	N	Commercial	0	Approved 1/7/21 – Replacement
Beverley Owens	LDV G10 Van	N	Private	0	Approved 7/7/21 – Replacement
Ralph Aaron,, Pro Dive	Boat Trailer	N	Commercial	1	Approved 9/7/21
Denise Tokailagi	Honda Scooter	Y	Private	1	Approved 23/7/21
Tyrin Thompson Shick	Toyota Hilux	N	Private	1	Approved 23/7/21 – Transfer from Photon Energy
Danielle Nicholson	Mazda Diesel Ute	N	Commercial	0	Refused 23/7/21

Applicant	Vehicle Type	Preferred Vehicle	Use	Variation to Applicant	Comment
All Island Services	Caterpillar 299D XHP Pozitrack	N	Commercial	1	Approved 28/7/21
Lord Howe Island Board	Box Trailer	N	Essential	0	Approved 27/7/21 – Replacement
Hairy Lawn Services, Craig Wrigley	Mitsubishi Express Van	N	Commercial	0	Approved 23/7/21 – Replacement
Dave and Glenys Gardiner	Nissan Navara	N	Commercial	0	Approved 20/7/21 – Replacement
Anthony Riddle	Boat Trailer	N	Private	1	Approved 29/7/21
Lindy Cameron	Honda NV5503A	Y	Private	1	Approved 3/08/21 – transferred from Helen Foote
Ian Hutton	Nissan 3-NV200	Y	Private	1	Approved 17/8/21
Fletcher Owens	Toyota Hiace	N	Commercial	1	Approved 3/08/21 – Replacement of Lorhiti Bus
Lord Howe Island Board	Box Trailer	N	Commercial	1	Approved 11/8/21

NOTE: Variation column relates to the applicant and not the increase of vehicles to the island.

### As at 24 August 2021

Registered Road Vehicles						
Essential	Commercial	Private	Hire	Plant & Equipment	Imported prior to Approval Policy	Total
33	111	163	9	27	66	409

At the May 2010 meeting it was requested that further differentiation in the vehicle statistics to identify motor vehicles and motor cycles / scooters and trucks separately be presented. This information is presented below.

Registered Road Vehicles						
Car/Utility	Bus	Motorcycle / Scooter	Truck	Plant & Equipment	Trailers	Total
192	24	40	14	42	97	409

At the June 2016 meeting it was requested that future reports include trends in regards to vehicles imported without approval and clarification that these are vehicles which pre-date the Board approval and monitoring process. There remains a total of 68 vehicles imported without approval prior to the current policy:

- 60 vehicles were imported without approval prior to and in 2014. The majority of these vehicles were trailers.
- 1 vehicle, a boat trailer, was imported without approval in 2015.
- 3 vehicles, all boat trailers, were imported without approval in 2016.

- 1 vehicle, a mower was imported without approval in 2019.
- 1 vehicle, a mobility scooter was imported without approval in 2020.
- 9 vehicles have been replaced and are awaiting removal.

The following table shows further differentiation in the vehicle statistics to identify the types of vehicles that have been imported without written approval.

<b>Vehicles Imported Without Approval – By Type</b>						
Car/Utility	Bus	Motorcycle / Scooter	Truck	Plant & Equipment	Trailers	Total
5	0	9	4	6	42	66

**RECOMMENDATION**

The report is submitted to the Board for information.

**Prepared:** Lynda Shick, Administration Officer

**Endorsed:** Angie Stringer, A/Chief Executive Officer

# LORD HOWE ISLAND BOARD

## Business Paper

### OPEN SESSION

#### **ITEM**

Review of Vehicle Importation, Transfer and Use Policy.

#### **RECOMMENDATION**

That the reviewed and exhibited Vehicle Importation, Transfer and Use Policy (Attachment B to this report) be adopted with all changes adopted as exhibited.

#### **BACKGROUND**

Following review of the subject policy and a report to the Board in December 2020, the Board resolved:

- 1) *That the reviewed Vehicle Importation, Transfer and Use Policy (Attachment B to this report) including proposed changes be placed on exhibition for six weeks over the Christmas period, with the exhibition to be notified by Householder.*
- 2) *That a report be presented to the Board at its March 2021 meeting to consider submissions and a draft Policy for adoption.*

A further report was presented to the April Board Meeting to report submissions made during the public exhibition period and recommend a draft Policy for adoption. At that meeting, the matter was deferred to the May Board Meeting with a request that further information regarding safety be provided.

#### **SUMMARY OF PROPOSED CHANGES**

At the December 2020 meeting, it was noted that the review proposed several changes. A summary of the changes (taken directly from the December 2020 Report) is shown below. The numbered reference correspond to the relevant clauses in the Policy:

##### **Section 3 Definitions:**

3.7 *Vehicles for Private Use.* The maximum dimensions no longer align with the newer models of the vehicle the Policy used to set the dimensions (Toyota Hilux). While it is concerning that vehicles appear to becoming larger over time given that keeping vehicles as compact as practical would assist in reducing impacts from vehicles, suitable choices are limited by what is available on the market.

3.10 *Power Assisted Pedal Cycle.* (Commonly termed e-bike). The definition has been amended to align with the definition by the NSW Roads and Maritime Authority (RMS).



A sentence has been added to reinforce that an electric powered cycle that does not meet the RMS definition including that it must not propel the bicycle when the rider is not pedalling (except an optional low-speed start-up mode that allows the motor to power the cycle up to 6 km/h). It is understood to be illegal for a *Power Assisted Pedal Cycle* to be used on public roads if it does not comply with the RMS definition.

Removal of the restriction on the use of *Power Assisted Pedal Cycle* (e-bikes) to only private use would allow their use by visitors to the island. A proposal has been received from an accommodation provider that some e-bikes be available to guests. The lodge is at an elevated location that some people would find it difficult to ride a conventional bicycle to. **While this approval could be granted by the Board under the current Policy, it was considered that it was preferable to include as a proposal in the Policy review to allow comment.** If adopted, it will allow business to import and hire out compliant e-bikes for the use of guests without Board approval.

3.12 *Bull bars, Roo bars, nudge bars.* No change proposed. However, confusion occurs when vehicles approved with small rounded “nudge bars” that a sometimes standard equipment are interpreted as being inconsistent with refusals to allow “bull” or “roo” bars.

#### **Section 4 Vehicle Types.**

4.1 *Preferred Vehicles.* The maximum height for a “Preferred Vehicle” is proposed to be increased from 1600mm to 1720mm. The benefits of a small footprint vehicle in reducing motor vehicles impacts is recognised but the limitation of 1600mm precluded some very small SUV shape vehicles that could be considered for inclusion as preferred vehicles.

4.2 *Electric Vehicles.* It is proposed to remove the requirement for a “Smart meter” to be installed. The purpose was to use a separate meter (not necessarily a “smart meter” to be able to charge a different tariff for charging an electric vehicle than the tariffs applying to other domestic or commercial use.

The cost of installing separate charge points and associated meter can be very prohibitive. The tariff while originally intended to be higher than other electricity use, is not necessarily higher because of the different tariffs thresholds already applicable depending on the amount of energy consumed in domestic and commercial situations.

Removing the requirement for separate metering would simplify billing.

Because the solar PV project is soon to be fully operational, charging a higher tariff for electric vehicle charging is not necessarily a positive policy outcome because of the environmental advantages of electric compared to fossil fuel vehicles.

~~6c) ——— Change “Smart” to “Advanced” meter to align with current terminology.~~

7.1.1. No change to requirements or meaning. Edits to improve ease of reading.

7.1.2 *Vehicles for Commercial Use.* Proposed to delete “Motor Assisted Pedal Bicycles will not be approved for commercial use”. See discussion at 3.10

8.4 *Schedule of Essential Vehicles.* Proposed to increase number of Board vehicles by one to include biosecurity officer and dog transport. The current electric van

used for the increased biosecurity function was approved by the Board. This change in the Policy reflects that decision.

Marine Rescue added because of the new LHI unit being formed. Marine Rescue would like to have one utility vehicle and one boat trailer as part of their allocation (refer to letter at Attachment C).

*11 Approval Conditions.* Proposed to delete fourth paragraph where a private vehicle approval is terminated if the owner moves to a new residence. It is very difficult to monitor, administer and enforce.

*15 Reporting and Monitoring.* Words added to reflect current reporting and resolutions by the Board in 2010 and 2016.

## **CURRENT POSITION**

The draft reviewed Policy was publically exhibited inviting submissions, from 11 January to 22 February 2021. Notification of the exhibition was sent by email to all on the Board's "householder" email list and hard copies delivered to PO boxes for those who do not have an email address or have indicated they wish to receive paper copies of householders. The notification was also placed on the Board's web site with a link to the December Board report with its attached current and proposed draft policy with changes highlighted.

Because those who made submissions were notified that the matter was being considered at the April meeting, and subsequently that was deferred to the May meeting, some additional comments were also made and these are incorporated in the submission summary below.

## **SUBMISSIONS**

Five submissions were received and these are summarised in Attachment A. Comments in the last column respond to the issues or suggestions made.

In short:

- Two submissions supported the changes and in particular, allowing e-bikes to be used for commercial purposes without approval.
- One submission sought to lessen the restrictions on eligibility and number of vehicles.
- Two submissions sought to increase the restrictions on eligibility, size/type of vehicles and number of vehicles.

The exhibited policy changes were therefore supported except for the submission wanting to remove many of the restrictions to vehicle ownership and use. However two of the submissions made argument for further changes (ie increase or decrease restrictions) that would require significant development, drafting and evaluation in terms of effectiveness, management and impacts.

As noted at the December meeting, due to technology changes, the Hybrid Renewable Energy Project, and questions regarding whether the policy is actually achieving its objectives, deeper review beyond this current review is recommended. The Policy is complex and lengthy. Its strong restrictions arguably reduce the rate of growth in vehicle numbers, but may not be sufficient or the most effective method of restricting vehicle numbers, usage and impacts.

Therefore, it is recommended that the exhibited amendments to the Policy be adopted making it consistent with legislative changes as well as clearer and a little more streamlined.

## **REQUEST FOR FURTHER INFORMATION**

At the April Board Meeting the matter was deferred pending provision of more information relating to the safety of power assisted pedal cycles (e-bikes). Significant research and discussion had occurred with the previous elected Board members on this matter and changes to membership has prompted discussion into whether the introduction of e-bikes for the use of other than for private use would be appropriate and safe on Lord Howe Island.

Senior Constable Heath Roberts is the LHI Police Officer. It is noted that SC Roberts is the former Traffic Coordinator for the New England Region of NSW, Local Traffic Committee Representative on various Local Traffic Committees, and the Local Road Safety Coordinator for the region. SC Roberts will attend the planning session of the Board Meeting to provide his view, present road safety and accident data and answer any questions. The following information has been provided for the benefit of the Board following meeting with SC Roberts.

A summary of his advice follows and can be further discussed at the meeting.

*Complying electrically power assisted bicycles are commonly available and used across NSW, Australia and internationally. SC Roberts commented that the 25 kph limitation of power assistance is compatible in his view to our 25 kph speed limit on LHI. It was noted that some power assisted bicycles have been observed exceeding this limit without any pedal assistance by the rider. These are not considered legal and it is intended they be enforced. Recent changes to legislation require the rider of such vehicles to prove they comply and this will assist Police enforcement as the burden of proof is now with the rider/owner.*

*It has been expressed that some bicycle accidents are observed to have been caused by older or less able riders not having sufficient strength to climb hills such as Lagoon Rd approaching Ned Beach Road intersection and other locations when they stall and swerve or fall. Power assisted bicycles may assist in avoiding this situation.*

*Hills have been mentioned by advocates for e-bikes. SC Roberts has also observed that the airport stretch of Lagoon Road often is strongly headwind affected and riders with less strength often have to walk their bikes lengthy distances who would not need to if they were allowed an e-bike.*

NSW Roads and Maritime provide the following information in relation to electrically power assisted bicycles:

<https://roadsafety.transport.nsw.gov.au/stayingsafe/bicycle-riders/petrol-powered-bicycles.html>

*Bicycles that meet the requirements for permitted e-bikes can be used on public roads and road-related areas. Petrol-powered bicycles and other powered bicycles that do not meet the e-bike requirements outlined below are illegal and may only be used on private property.*

*On 22 January 2021, the Australian Government updated the requirements for permitted e-bikes. These changes include:*

- Introducing a weight limit, seat requirements and restriction on being propelled only by the motor for power-assisted pedal cycles*
- Replacing the term 'pedelec' with electronically power-assisted cycle and replacing the requirement to conform to the requirements of European Standard EN 15194: 2009 or EN 15194:2009+A1:2009: 'Cycles – Electrically power assisted cycles – EPAC Bicycles' with requirements around when the power output reduces and cuts out.*

## What are the e-bike requirements?

There are two types of permitted e-bikes:

- *Power-assisted pedal cycles*
- *Electrically power-assisted cycles.*

*These must be designed to be propelled primarily by the rider – they cannot be propelled exclusively by the motor. The motor is intended to help the rider, such as when going uphill or riding into a headwind.*

### **Power-assisted pedal cycles**

*A power-assisted pedal cycle:*

- *Has one or more motors attached with a combined maximum power output of 200 watts*
- *Cannot be propelled exclusively by the motor/s*
- *Weighs less than 35 kg (including batteries)*
- *Has a height-adjustable seat.*

### **Electrically power-assisted cycles**

*An electrically power-assisted cycle has a maximum continued rated power of 250 watts. This power output must be:*

- *Progressively reduced as the bicycle's speed increases*
- *Cut off when:*
  - *The bicycle reaches a speed of 25km/h; or*
  - *The rider stops pedalling.*

**Prepared by:** Originally prepared for the April 2021 meeting but deferred to the September meeting.

**Endorsed by:** Angie Stringer, A/Chief Executive Officer

#### **Attachments:**

Attachment A: Review of Vehicle Importation, Transfer and Use Policy – Submissions – Open

Attachment B: Advertised draft policy with changes and comments shown – Open

Attachment C: Letter from Marine Rescue requesting Essential Services vehicle – Open

**SUBMISSIONS RECEIVED**

Sub No.	Issues Raised by Submitter	Comment by Board staff
1	Support for proposed changes especially in relation to e-bikes for business use. Some businesses “high up” and difficult to access for guests on bicycles. Evens “playing field” for those businesses.	Support noted
2	<p>Comments relate to the policy objective and methods of restricting vehicle ownership.</p> <ul style="list-style-type: none"> <li>• The aim of policy to reduce vehicle numbers fails to take into account population growth and migration to the island. A single household may have many occupants with different needs for travel.</li> <li>• Policy should be changed to allow a second vehicle per lease (specifically a motorcycle), so that the smaller vehicle can be used in lieu of larger car when not required.</li> <li>• Electric e-bikes should not be used as an excuse to refuse a motorcycle. Do not have same capability as motorcycle.</li> <li>• Requirement for an applicant to have been a permanent resident for 24 months prior to making application, should be removed. If a person demonstrates a legitimate requirement and has residential tenancy agreement, should be entitled to apply.</li> <li>• Clause 7.1.1 (d) allows the Board to exercise discretion if “exceptional circumstance which cannot be addressed by the policy” is demonstrated. Individual needs of applicants need to be taken into consideration. Should not be one rule for all.</li> </ul>	<p><i>The draft revised policy considered by the Board in December and subsequently exhibited did not have changes relating directly to the issues raised in this submission. See discussion in covering report.</i></p> <ul style="list-style-type: none"> <li>• The policy seeks to reduce impacts from motor vehicles due to the unique nature of the island, its limited road network and environment. It is acknowledged that it is restrictive and challenging.</li> <li>• This is an option that has been debated in the past and while it would increase vehicle numbers, could allow use of smaller motorcycles at times rather than cars.</li> <li>• Comment made in response to a refusal to approve a motor cycle outside the policy’s eligibility criteria and considered to not have demonstrated “exceptional circumstance”.</li> <li>• As above.</li> </ul> <ul style="list-style-type: none"> <li>• As above. While restrictive to achieve its objectives, the policy allows for demonstrated exceptional circumstances to be considered.</li> </ul>
3.	Comments relate to the busy periods for the island and adverse comments made by guests (at submitter’s business), regarding vehicle numbers, use and size. Suggestions for reducing impact or number of vehicles.	<p><i>The draft revised policy considered by the Board in December and subsequently exhibited did not have changes relating directly to the issues raised in this submission. See discussion in covering report.</i></p> <p>It is confirmed that returning guests do comment that vehicle numbers have increased. It is suggested that perceived increases in “traffic” and impacts, is a product of vehicle numbers, type and size, and frequency of use.</p>

	<ul style="list-style-type: none"> <li>• Need greater incentive to adhere to recommended vehicle size rather than just waiving of wharfage fee.</li> <li>• Perhaps a bond be retained to cover return freight to mainland.</li> <li>• Clause 7.1.1 eligibility criteria should be tightened. Person living 2 years on island should not necessarily be entitled to a car, even if they live in a second dwelling on a property.</li> <li>• Recent situation where person with car working during day had vehicle used frequently by others.</li> <li>• Just because a vehicle is for sale on island, should not mean that applicant should be granted permission to have vehicle.</li> <li>• Should be a moratorium on new vehicle importation until the roads are in a better condition (like for like could be permitted).</li> </ul>	<ul style="list-style-type: none"> <li>• There is both a maximum vehicle size within which vehicles are required to comply (CI 3.7 &amp; 3.8) unless a demonstrated alternative is not possible or practical. A much tighter set of criteria for “preferred vehicles” (CI 4.1) qualifies an applicant for incentives including waiving of application and wharfage fees. The exhibited draft policy proposes to increase the maximum vehicle size because the vehicle it is based on (Toyota Hilux) is now larger than the dimensions when the policy was revised in 2017. Increasing size is a concern. However, little alternative is available if a similar type of vehicle is required. It is noted that other vehicles such as the small buses used for guest transport are also increasing in size (eg Toyota Tarago no longer available and Granvia alternative is larger)</li> <li>• Return freight is expensive and a disincentive to complying with the requirement to remove vehicles no longer approved for use (eg when replaced). A bond could be required in a further amendment to the policy but would need to be larger than the transport costs to be effective. Administration and compliance is a significant ongoing challenge.</li> <li>• All applicants need to demonstrate need for vehicle regardless of length of residency. Further restricting eligibility may reduce numbers or increase but would be challenging to implement especially where businesses need vehicles and family or mobility needs are argued.</li> <li>• Noted.</li> <li>• When an application is made to transfer a vehicle, it is made by both the transferor and transferee. Such applications follow the same criteria as an application to import a vehicle including eligibility, demonstrated need, etc.</li> <li>• It is not considered that improved road surface condition would increase the capacity for vehicle numbers.</li> </ul>
4	<ul style="list-style-type: none"> <li>• Large vehicles are a problem especially for cyclists who can be forced off the road by larger vehicles. Asking for stronger justification before larger (hilux style) vehicles approved.</li> </ul>	<ul style="list-style-type: none"> <li>• There is a max vehicle size specified in the adopted policy and proposed to be increased in the draft changes because manufacturers no longer make vehicles (such as Hilux or</li> </ul>

	<ul style="list-style-type: none"> <li>• Long periods before vehicles removed. Can a bond be required that is refunded when the vehicle is removed.</li> <li>• Noise pollution especially by some replica style motorcycles.</li> <li>• Request that staff in dwellings not be allowed to have vehicle approval even if they have been resident for 2 years.</li> <li>• Not allowing bullbars is supported but feels some “jacked up” cars should not be allowed.</li> </ul>	<p>Triton) within those dimensions. The Board recognises that these vehicles may be required for towing boats, taking waste, etc. Elected Board members often refuse to approve an application unless justification is made for the vehicle size requested. Further policy review might seek incentives or controls to address this, although the trend for larger vehicles by manufacturers is a problem.</p> <ul style="list-style-type: none"> <li>• Return freight is expensive and a disincentive to complying with the requirement to remove vehicles no longer approved for use (eg when replaced). A bond could be required in a further amendment to the policy but would need to be larger than the transport costs to be effective. Administration and compliance is a significant ongoing challenge.</li> <li>• Legal limits apply to motor vehicles. This is a matter for Police or EPA enforcement.</li> <li>• Current policy allows a private vehicle per dwelling on a lease, but also requires justification for any vehicle.</li> <li>• The current policy and proposed changes do not address this. However, it is noted that vehicles do have to be legally roadworthy.</li> </ul>
5	<ul style="list-style-type: none"> <li>• Welcome changes to e-bike policy change for commercial operators. Would trial these for their guests.</li> <li>• Additional hire car licence suggested for their lodge. Believes this would reduce vehicle movements associated with deliveries of meals and guests to various island locations. Would welcome opportunity to bid for licence.</li> <li>• Further comment: Most frequent complaint in guests feedback surveys is that no e-bikes available. Embarrassing because they are so common elsewhere that guests assume their availability.</li> </ul>	<ul style="list-style-type: none"> <li>• Noted</li> <li>• The policy (CI 8.5 9 (a)) allows the Board to approve up to eight (8) hire vehicles. Currently there are eight (8) hire vehicles approved. These are not transferable without the Board’s written approval. These are to be “preferable vehicles” (CI 8.5 (f)), unless otherwise approved by the Board. The Board can revise this quota at any time subject to a demonstrated business need (CI 8.5 (a)).</li> <li>• Noted.</li> </ul>

# LORD HOWE ISLAND BOARD DRAFT POLICY

<b>TITLE</b>	<b>Vehicle Importation, Transfer and Use Policy</b>		
<b>DATE ADOPTED</b>	December 2006	<b>AGENDA ITEM</b>	8 (ii) December 2006
<b>CURRENT VERSION</b>	<del>September 2017</del> <u>September 2021</u>	<b>AGENDA ITEM</b>	<del>8 (v) September 2017</del> <u>12 (ii) September 2021</u>
<b>REVIEW</b>	Biannually	<b>RECORD NUMBER</b>	ED17/765
<b>ASSOCIATED LEGISLATION</b>	<i>Lord Howe Island Act 1953 (NSW)</i> <i>Lord Howe Island Regulation 2014 (NSW)</i> <i>Local Government Act 1993</i>		
<b>ASSOCIATED POLICIES</b>	N/A		

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## 1 Policy Overview

The aim of this policy is to work towards limiting the overall number and impact of vehicle movements on the island's road system, with a particular focus on the types of vehicles driven on the island. The vision is for the Island's fleet to consist of a limited number of low impact vehicles, with electric vehicles being encouraged.

The Board has developed this policy to guide its management of vehicles on the island, in accordance with the provisions of the Lord Howe Island Regulation 2014. The policy is to guide the Board's use of the powers provided for under the Regulation regarding motor vehicles so that vehicle and traffic management is aligned with the expectations and aspirations of the community, and with the island's environment and economy.

The Board will determine whether the importation of a vehicle is in the public interest and consider the likely impacts of the vehicle, including environmental impacts on both the natural and built environments, and social and economic impacts on the island. Unless otherwise provided for under this policy, no entitlement to import or use a vehicle is provided for. All applications to import or transfer and use a vehicle will need to demonstrate a genuine need for the import or transfer, and use of a vehicle, and for the vehicle selected.

In particular, the Board will manage vehicle importation to limit the number of vehicles on the island, and the frequency and intensity of their use, to ensure that the impacts of vehicles and traffic on the island are minimised.

The Board recognises that the frequency and intensity of vehicle use are major influences on road safety, aesthetics and ambience of the island and where possible should be kept to a minimum.

The Board will continue to review and develop the policy, and associated programs and initiatives. These reviews will occur biannually.

## 2 Legislative Framework

The Board's power to regulate motor vehicles on Lord Howe Island is established under Part 6 of the *Lord Howe Island Regulation 2014*, in particular clauses 84, 86 and 87. Essentially, the Board's approval is required for any importation of a vehicle to the island (c 84), hire of motor vehicles (c86) and for any use of that vehicle on the island, including how a vehicle is used (c 87).

### *84 Approval to import motor vehicles*

*(1) A person must not, except in accordance with the approval of the Board, bring a motor vehicle onto the Island.*

*Maximum penalty: 50 penalty units.*

*(2) An application for approval to bring a motor vehicle onto the Island must relate to one vehicle only.*

### *86 Hire of motor vehicles*

*(1) A person must not, except in accordance with the approval of the Board, hire or offer for hire a motor vehicle to any other person for use on the Island.*

*Maximum penalty: 50 penalty units.*

*(2) This clause applies whether or not the person from whom the motor vehicle is or is to be hired, or any employee or agent of that person, is to drive or ride the motor vehicle.*

### *87 Use of motor vehicles*

*(1) A person must not drive or ride a motor vehicle on the Island unless the Board has given its*

*approval to the use of that vehicle on the Island.*

*(2) A person who has obtained the approval of the Board under this clause may drive or ride the motor vehicle concerned only in accordance with that approval.*

### **2.1 Relevant Legislative Provisions Relating To Approvals:**

Under Part 1, clause 4 (2) of the *Lord Howe Island Regulation 2014*, any approval given by the Board is subject to Chapter 7, Part 1, Division 3 of the Local Government Act 1993. This part of the Local Government Act (LG Act) specifies how approvals are to be applied for, made, amended and terminated. In particular, under Section 94 of the LG Act, the Board may apply conditions to any approval, and may apply a time limit on any approval. Under Section 103 of the LG Act, an approval, unless otherwise specified, lapses by default after five (5) years.

### **3 Definitions**

#### **3.1 Motor Vehicle (from here on referred to as a "vehicle"):**

As defined under the *Lord Howe Island Regulation 2014* (c 83):

*A motor vehicle means a vehicle (other than an aircraft or a vessel) propelled by volatile spirit, steam, gas, oil or electricity and includes:*

- (a) An incomplete or partially constructed motor vehicle; or*
- (b) The chassis, body, frame or remains of a motor vehicle; or*
- (c) A trailer or caravan.*

**Note:** For the purpose of this policy, the above definition includes motor vehicles, motorbikes, mopeds (pedal assisted or non pedal assisted), motor scooters, mini bikes, quad bikes, trikes etc whether the motor is a permanent or temporary fixture and regardless of whether a motor vehicle licence or registration is required. A Power Assisted Pedal Cycle as defined by the NSW Roads and Maritime Services (RMS) is not considered a Motor Vehicle under this Policy.

#### **3.2 Reside**

As defined under the *Lord Howe Island Act 1953*.

#### **3.3 Dwelling**

As defined under the *Lord Howe Island Local Environment Plan 2010* and the Board's policy definition of a Separate Domicile, but not including Staff Accommodation as defined under *Lord Howe Island LEP 2010*.

#### **3.4 Tenant**

A person who lawfully occupies an approved dwelling on the island under a tenancy arrangement in accordance with the *NSW Residential Tenancy Act*.

#### **3.5 Essential Services**

Essential services for the purpose of this policy are set out in the Schedule of Essential Services

#### **3.6 Vehicle Hire**

To hire, attempt to hire, expose for hire or solicit for hire any vehicle on the island, to any person, for  
Lord Howe Island Board Vehicle Importation, Transfer and Use Policy

money or other consideration of any kind.

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### 3.7 Vehicles for Private Use

For the purpose of this policy, any lawful use of a vehicle, including activities approved in a business licence issued under clause 49 of the *Lord Howe Island Regulation 2014*, but not including vehicle hire.

As a result of community concern over road safety, the Board has introduced maximum size of a vehicle for private use permissible on the island is:

- a) Length 53320mm (not including tow ball);
- b) Width 18550mm (not including side mirrors); and
- c) Height 1815700 mm (not including roof racks or roll bars or headboard on the tray).

Note: this maximum size requirement does not apply to vehicles previously approved.

### 3.8 Vehicles for Commercial Use

For the purpose of this policy, any vehicle which has been specifically applied for and approved under the policy provisions relating to Commercial Vehicles.

As a result of community concern over the number of outsized vehicles, the Board has introduced a maximum size of a standard vehicle for commercial use permissible on the island, which is based on the current model of a 2 wheel drive Toyota Hilux utility, which in 2020~~17~~ was:

- a) Length 53320mm (not including tow ball);
- b) Width 1855950mm (not including side mirrors); and
- c) Height 1815700 mm (not including roof racks, roll bars or headboard on the tray).

Note: this maximum size requirement does not apply to vehicles previously approved.

Where a vehicle with different dimensions to the standard is required for specialised work, the case must be made as to why a non-standard vehicle should be approved.

### 3.9 Commercial Use

To sell or hire, attempt to sell or hire, expose for sale, hire or profit or solicit for sale, hire or profit any article, thing or service to any person, or conduct, or assist in the conduct of, any amusement, entertainment, instruction, performance or activity for money or other consideration of any kind.

### 3.10 Power Assisted Pedal Cycle

A ~~P~~power-~~A~~assisted ~~P~~pedal ~~C~~ycle under this policy is defined by the NSW RMS.

A ~~P~~power-~~A~~assisted ~~P~~pedal ~~C~~ycle is designed to be propelled ~~primarily by a pedalling cyclist~~solely by human power and has one or more auxiliary (electric) propulsion motors attached to assist the rider. This means that ~~it must be possible to propel the bicycle only by the rider pedalling it. The primary driving force should be the rider, and the motor is only intended to help the rider, such as when going uphill or cycling into a headwind, or to cycle at a speed they cannot maintain solely by pedalling. the main source of propulsion for the power-assisted pedal cycle is human, and the motor is only designed to assist rather than replace the rider.~~

Commented [PA1]: E-bikes wired to bypass mechanism that stops being propelled without pedalling are not legally able to be used on public roads in NSW.

Power Assisted Pedal Cycles are to meet NSW RMS vehicle standards and it is noted that they not

permitted to propel the bicycle when the rider is not pedalling (an optional low-speed start-up mode that allows the motor to power the cycle up to 6 km/h). ~~Power Assisted Pedal Cycles are only permitted for private use without approval. They are not allowed to be used for Hire purposes unless approval has been granted by the Board.~~

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**Commented [PA2]:** Consider what is meant by "hire purposes" and whether provision for use by accommodation provider is acceptable. E-bikes are commonly available for hire in NSW.

**Commented [PA3]:** Proposed to allow (without approval) for uses other than private.

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### 3.11 Motorised wheelchairs and mobility scooters

A motorised wheelchair under this policy is defined by ~~the~~ Transport for NSW.

Motorised wheelchairs are mobility aids with two or more wheels and have a top speed of 10km/h on level ground. Mobility scooters or 'gophers' are classified as motorised wheelchairs. A motorised wheelchair does not include a wheeled recreational device such as a motor scooter, pram, stroller, trolley or any other motor-assisted machine.

Motorised wheelchairs are only permitted for private use without approval. They are not allowed to be used for Hire purposes unless approval has been granted by the LHI Board.

**Commented [PA4]:** See definition of "hire" and discussion in 3.10 above.

### 3.12 Bull bars/Roo bars/Nudge bars

Bull bars/roo bars etc are not permitted to be imported on a vehicle or added to a vehicle on LHI unless approval is given by the CEO of the Board. The CEO may only grant approval for a request for a bull bar/roo bar if it includes a winch and if it can be satisfactorily demonstrated that the winch is essential to the vehicle's use.

Where it can be demonstrated that vehicles come standard with a 'nudge bar' the CEO of the Board will take this into consideration when assessing a request to import a vehicle.

**Commented [PA5]:** Nudge bars can be small, and shaped in such a way as to minimise risk to pedestrians in an accident compared to larger "bull" or "roo" bars.

Second-hand vehicles with a bull bar already attached will be required to have the bull bar/roo bar removed prior to importation to island.

Note: this item does not apply to vehicles which have bull bars/roo bars and have previously been approved for importation to the Island .

It is noted that all vehicles must comply with Australian Design Rules to ensure they are safe. Therefore when a bullbar is removed from a vehicle it must be restored to a compliant condition including replacing any body or bumper panels to ensure pedestrian and occupant safety.

**Commented [PA6]:** Para added to make it clear that removing bulbar without replacing compliant bumper is not legally compliant because ADR rules apply and a vehicle is potentially unsafe without.

## 4 Vehicle Types

Any vehicle which is approved by the Board for importation and use on the islands roads, other than plant and equipment, or motor assisted pedal bicycles, unless required by law, must be registrable and registered in the State of NSW.

### 4.1 Preferred Vehicles

The Board will give preference, by way of incentives, to the importation and use of small and low impact vehicles which are either:

- a) A motor vehicle meeting the following requirements:
  - i. Have a Vehicle Kerb weight\mass of less than 1154kg; and
  - ii. Generate noise less than 82 dba (data on noise emissions provided in green vehicle guide [www.greenvehicleguide.gov.au](http://www.greenvehicleguide.gov.au)); and

- iii. Have vehicle size "footprint"
  - Length 4000mm (max)
  - Width 1700mm (max)
  - Height ~~1600mm~~ 1720 mm (max)

b) Electric Vehicles:

- i. Electric vehicles include any vehicle that has battery storage and has an electricity plug-in recharge capacity. These vehicles (or the batteries for these vehicles) must have the ability to be plugged into an electricity power point connected to the LHI Grid. ~~Approval to import an electric vehicle will be conditional on the leaseholder upgrading their electricity meter to a "Smart" meter, if not already installed.~~
- ii. Hybrid electric vehicles that do not have a plug in recharge capacity are not deemed electric vehicles for the purpose of this policy.
- iii. Electric vehicles for private use must not exceed the maximum vehicle footprint as defined under Section 3.

c) Motor Scooters:

- i. 4 stroke motor scooters with a maximum capacity of 250cc.

#### 4.2 Other Vehicles

Any other vehicle may be imported subject to this policy. The Board will retain absolute discretion in determining an application and will consider whether the importation of a vehicle is in the public interest and the likely impacts of the vehicle, including environmental impacts on both the natural and built environments, and social and economic impacts on the island.

#### 4.3 Boat Trailers

Approval to import and use boat trailers will be at the discretion of the Board subject to application on the prescribed form.

#### 4.4 Box Trailers

Approval to import and use box trailers will be at the discretion of the Board subject to application on the prescribed form.

#### 4.5 Caravans

The importation of caravans is prohibited under this policy.

#### 4.6 Specialist / Other Trailers

Approval to import and use will be at the discretion of the Board and subject to application on the prescribed form.

#### 4.7 Plant and Equipment

Plant and Equipment – being any conditionally registered or non-registrable vehicles such as tractors, forklifts, excavators, backhoes etc. Approval to import and use will be at the discretion of the Board and subject to written application in accordance with this Policy.

This provisions of this Policy do not relate to:

**Commented [PA7]:** Proposed to be deleted because:

- 1) The term smart meter is misleading. The purpose is instead to have a separate meter to be able to charge a different tariff.
- 2) The need for a different tariff is challenged. A close examination of private and commercial tariffs shows that in many cases, the domestic or commercial tariffs are not lower than electric vehicle tariff if thresholds are exceeded.
- 3) Different tariffs lead to complexity in billing and administration arguably more costly than any higher tariff might generate in revenue.
- 4) Electric vehicles should be encouraged because of environmental benefits now that solar/PV generation is introduced.

- a) Ride-on Lawn Mowers, Dingo Diggers and similar plant. Importation and use of such plant by an eligible person will be deemed to be approved by the Board.

## 5 Fees

### 5.1 Importation or Transfer

- a) Vehicles meeting the Board's Preferred Vehicle criteria will be exempt from the importation application fee.
- b) A non-refundable application fee of \$2050 (as listed in the Lhib Fees and Charges) per vehicle will apply to all applications for the importation or transfer of vehicles which do not meet the Board's Preferred Vehicle criteria.
- c) A non-refundable application fee of \$2050 (as listed in the Lhib Fees and Charges) per vehicle will apply to all applications to renew a commercial vehicle or hire vehicle approval.
- d) Box trailers will be exempt from the above fee.
- e) Boat trailers will be exempt from the above fee.

**Commented [BP8]:** Vehicle fee removed as fee updated annually, therefore removes the need to update policy annually.

## 6 Incentives

- a) Vehicles meeting the Board's Preferred Vehicle criteria will be exempt from the Board's wharfage fee for the vehicle.
- b) Box trailers will be exempt from the wharfage fee for the vehicle (limit of one exemption per lease).
- c) ~~If not already installed, installation of 'Smart' Advanced meters at residences and businesses as part of the importation of an electric vehicle, will be 'at cost', including the Board's Senior Electrical Officer (SEO) labour and parts.~~

**Commented [BP9]:** Removed as per email advice from David.

## 7 Eligibility to Import and Use

Unless otherwise provided for under this policy, no entitlement to import or use a vehicle is provided for. All applications to import or transfer and use a vehicle, including boat trailers and box trailers, will need to demonstrate a genuine need for the import or transfer, and use of a vehicle, and for the vehicle selected.

The Board reserves the right to reject any application for any vehicle where it believes that a vehicle is not in the public interest and/or the likely impacts of the vehicle, including environmental impacts on both the natural and built environments, and social and economic impacts will be unacceptable for the island and/or where an applicant has failed to adequately justify the need for a proposed vehicle.

An application to import or transfer and use a vehicle must be made on the prescribed form and include any additional information as the Board may require or the applicant wishes to provide.

### 7.1 Eligibility

The following persons will be eligible to apply to import or transfer a vehicle:

#### 7.1.1 Vehicles for Private Use

- 1) A person who resides in an approved dwelling on a Perpetual Lease, either as: the holder, owner, or sub-lessee of the lease or; as the owner-occupant of a multiple occupancy or; by way of a current tenancy agreement under the *NSW Residential Tenancy Act 1987* and
  - a) has resided on the island for a continuous period of 24 months at time of application.

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(Proof of Tenancy will be required and should be supplied with application); and  
b) Has no existing approval for a commercial vehicle which is suitable for private use; and  
c) Does not reside with another person who has approval for a Commercial vehicle which is suitable for private use.

- 2) An employee of an Essential Service provider (other than the Board) who does not have access to the private use of a vehicle provided by the Essential Service may apply to import or transfer a preferred vehicle if they can demonstrate to the Board a genuine need for the vehicle. This will only apply where the employee will occupy the position for a period greater than 12 months and is subject to any specification set out in the schedule of Essential Service entitlements. Any approval will be in accordance with this policy. Approval under this clause will be terminated at the cessation of employment with the Essential Service provider.
- 3) Lord Howe Island Board employees other than a person described in a), may after 12 months service staff apply to import a preferred vehicle in accordance with the Board's vehicle importation and use policy. Applications must demonstrate need for vehicle in accordance with this policy. Any approval will be in accordance with this policy. Approval to import vehicle will result in termination of private use rights of LHI Board vehicle. Approval under this clause will be terminated at the cessation of employment with the Board.
- 4) A person who can demonstrate exceptional circumstance which cannot be addressed by this policy. In such cases, the Board may exercise discretion, provided that the applicant has demonstrated that no viable alternative to the importation and use of a vehicle exists.

1) A person as per a) under Private Use Eligibility who:

- b) Has no existing approval for a commercial vehicle which is suitable for private use;
- c) Does not reside with another person who has approval for a Commercial vehicle which is suitable for private use.

**Commented [PA10]:** Improves clarity for the reader. No change to requirements or meaning.

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**Commented [PA11]:** Shifted to a) above

### 7.1.2 Vehicles for Commercial Use

A person as per 1a) under Private Use Eligibility who operates an approved business on the island and can demonstrate to the satisfaction of the Board that the business requires the use of a vehicle and that the business need cannot be met from the existing island fleet.

Note: In general, the Board will only consider approval for a commercial vehicle for businesses which need to transport clients and guests and/or goods and equipment and then only when the business need cannot be serviced from an existing allocation within the island's fleet. ~~Power Assisted Pedal Cycles will not be approved for commercial use.~~

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### 7.1.3 Vehicles for Essential Services

Any authorised officer of an approved Essential Service, as set out in the Schedule of Essential Services in this Policy.

### 7.1.4 Vehicles for Hire

- a) Any person eligible under this policy who is also eligible to hold a business licence under clause 49 of the *Lord Howe Island Regulation 2014*.
- b) The Board may from time to time hire out vehicles from its existing fleet where the proposed hire arrangement does not replicate or compete with an arrangement which could be provided by an approved hire vehicle operator as per a).

## 7.2 Use

Any person who is lawfully entitled to do so, may use a vehicle on the island, and such persons will be deemed to have the approval of the Board to do so, subject to that use complying with this policy, and

any conditions applying to any approval given under this policy.

All vehicles will be used on the island in accordance with all relevant State and Commonwealth legislation, policies and procedures.

### **7.3 Private and Commercial Use**

Unless otherwise provided for in this policy, vehicles approved for private and/or commercial use may be used for any lawful purpose, including commercial use, except hire of the vehicle, provided that any commercial use is associated with an approved business on the island.

Where a person has approval for a private use vehicle and a commercial use vehicle, the commercial use vehicle cannot be used for private use.

### **7.4 Essential Services**

Vehicles approved for essential services are to be used exclusively by the essential service provider and its employees or agents for its official business. Board approval is required for Private Use of Essential Service vehicles. Private use will be limited to transferred officers of the Essential Service where the Essential Service provider has a documented policy applying to its employees or agents which allows for other uses.

Use restrictions will be set out as conditions of approval.

### **7.5 Hire Vehicle Use**

Hire vehicles may be used for any lawful purpose, including commercial activity provided that the commercial activity is associated with an approved business on the island. Any hiring of a vehicle on the island will be subject to a lawful and documented hire agreement between the approved person (the hirer) and a person who has entered into such an agreement with the hirer (the hiree).

## **8 Allocations**

The Board may approve up to the following allocations to eligible persons (refer to Eligibility provision), subject to demonstrated need.

### **8.1 Private Use**

One (1) vehicle per approved dwelling.

### **8.2 Commercial Use**

One (1) vehicle per approved business licence. Where a person holds multiple business licences, additional vehicles will only be considered where there is a demonstrated need. Access to private use vehicles will be considered when assessing need.

### **8.3 Essential Services Allocation**

Essential Services will be eligible to import vehicles as follows:

### **8.4 Schedule of Essential Services**



ESSENTIAL SERVICE	VEHICLE ALLOCATION
Lord Howe Island Board	A fleet comprising of all vehicle types, being the minimum number of vehicles required to ensure the safe, effective and efficient delivery of the Board's charter, to a maximum of <a href="#">12-13</a> road going vehicles.
NSW Police	1 Vehicle
NSW MPA	1 Vehicle
Bureau of Meteorology	1 Vehicle
NSW Education	1 Vehicle
NSW Health	1 Vehicle – Ambulance
Doctor (GP)	1 Vehicle
NSW RFS	1 Vehicle – Fire Engine
NSW SES	1 Vehicle – Emergency Response Vehicle
<a href="#">NSW Marine Rescue</a>	<a href="#">1 Vehicle</a> <a href="#">1 boat trailer (with RIB)</a>

Commented [PA12]: Biosecurity dog vehicle added.

Commented [BP13]: See request from Marine Rescue NSW

Commented [PA14]: Newly established Marine Rescue Unit added

### 8.5 Additional Vehicle Allocation for Hire Car Use

The *Lord Howe Island Regulation 2014* requires a separate approval for the use of a motor vehicle as a hire vehicle.

Clause 86 of that Regulation states that:

(1) A person must not, except in accordance with the approval of the Board, hire or offer for hire a motor vehicle to any other person for use on the Island.

(2) This clause applies whether or not the person from whom the motor vehicle is or is to be hired, or any employee or agent of that person, is to drive or ride the motor vehicle.

In addition to any other allocation:

- a) The Board may approve up to (8) additional vehicles on the island for use as hire vehicles. The Board reserves the right to revise this quota at any time subject to a demonstrated business need.
- b) The Board will review on an annual basis the fee charged for approval to use a car as a hire vehicle.
- c) Hire Car approvals are not transferable without the written approval of the Board.
- d) In addition to any fee applied for approval to hire a car on the island, the Board reserves the right to apply a transfer fee to any transfer of a hire car approval.
- e) Up to 4 vehicles may be allocated per applicant, to an island total of 8 hire cars.
- f) Vehicles are to be Preferred Vehicles unless otherwise agreed to by the Board.

### 9 Review of Applications

In determining any application to import or transfer a vehicle, where the application is proposed to be refused, or where the CEO believes that the application will prove controversial, the CEO will consult with, and document the majority view of the elected members regarding the application.

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.

## 10 Approval Periods – Importation and Use

### 10.1 Private Use Approval Period

Approval to import a vehicle for Private Use will be six (6) months. If the vehicle is not imported within that time, the approval to import will lapse and a new application must be made.

### 10.2 Commercial Approval Period

- a) Approval to import a vehicle for Commercial Use will be three (3) months. If the vehicle is not imported within that time, the approval to import will lapse and a new application must be made.
- b) Approval to use a commercial vehicle on the island will cease when the business ceases, as evidenced by termination of a business licence.
- c) A commercial vehicle cannot be used for private use where a person also has approval for a private vehicle (other than when the private use vehicle is a motor bike, motor scooter etc).

### 10.3 Hire Vehicle Approval Period

- a) Approval to import a vehicle under Hire Vehicle allocation will be six (6) months. If the vehicle is not imported within that time, the approval to import will lapse and a new application must be made.
- b) Approval to use a Hire vehicle on the island will, unless otherwise varied at the discretion of the Board, be for five (5) years, subject to annual review. At the end of the approval period, the owner of the vehicle must reapply to retain and use the vehicle on the island, based on a demonstrated business need. Note renewal fees apply.

## 11 Approval Conditions

The Board may apply such conditions as it deems necessary to any approval to import and/or use a vehicle on the island. In particular, the Board will apply conditions to safeguard the public interest and to minimise the impacts of vehicle use on the natural, built, social and economic environment of the island.

For any vehicle (including a trailer, plant and equipment) to be imported, the importer must provide a statutory declaration stating that the vehicle has been inspected and cleaned with a high pressure hose to ensure that no weeds, seeds, insects, spiders, etc. are transported to the island. Such a declaration is required to be submitted to the Board prior to the vehicle leaving the mainland.

Approvals to import a vehicle for private use will be specific for the applicant and a dwelling. The approval will include details of the dwelling where the vehicles are allocated.

~~Where the circumstances of the owner of an approved private vehicle change resulting in a new place of residence (approved dwelling) on Lord Howe Island, the vehicle approval is terminated. The owner of the vehicle must reapply under the conditions of this policy. The vehicle owners' circumstances will be considered when assessing this new application and special consideration may be given.~~

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Commented [PA15]: This requirement is very difficult to monitor. Possible removal of this paragraph proposed.

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Where the owner of a private use vehicle leaves the island the vehicle must be garaged at the approved dwelling and the approval to use the vehicle is suspended until the owner returns to the island. In circumstances where the vehicle is used by a family member who normally resides with the vehicle owner and does not have access to another private use vehicle, the family member may continue to use the vehicle during the period of owner absence.

In the case of deceased estates, where a private use vehicle is attached to the dwelling of the deceased, the vehicle must remain garaged at the approved dwelling and its use suspended until the administration of the estate has been completed. Where the executor or a caretaker living on the estate does not have access to another private use vehicle, these persons may use the vehicle during the period of administration.

In determining any development consent in its role as a Consent Authority under the *NSW Planning and Assessment Act 1979*, or application for a Business Licence under clause 49 of the *Lord Howe Island Regulation 2014*, the Board will consider: whether the development and/or activity will require the importation and use of vehicles additional to those provided for under the **Private Use Allocation** and the potential impact of the importation and use of the vehicle/s including whether it is in the public interest and whether the likely impacts of the vehicle, including environmental impacts on both the natural and built environments, and social and economic impacts will be unacceptable for the island.

### 11.1 Breach of Approval

Failure to comply with the conditions of approval will be deemed a breach of the Board's approval and may result in that approval being withdrawn and the vehicle being removed from the island.

Where the Board believes a Breach of the approval has occurred, the Board's Administration will write to the vehicle owner advising them of the alleged breach and asking them to respond to the allegation and justify as to why their approval should not be revoked. Vehicle owners will have 14 calendar days to respond. Failure to respond within the prescribed timeframe will result in immediate revocation of approval.

Following termination of approval the Board's Administration will write to the vehicle owner of this revocation of approval instructing the vehicle owner to not use the vehicle and remove the vehicle from the island within 60 days.

Vehicle Owners may reapply to the Board for approval. Until approval has been granted the vehicle is not to be used.

### 12 Vehicle Replacement

Unless a case for exceptional circumstances can be established to the satisfaction of the Board, replacement of vehicles will be on a 'one on – one off' basis, where the replacement vehicle has the same (+ 10% subject to the discretion of the Board) or smaller engine capacity and tare weight as the vehicle being replaced.

**Commented [BP16]:** Is this necessary as we now have size limits listed under private and commercial vehicles. Also people's circumstances change and a smaller vehicle may not be suitable.

Where the applicant has another vehicle (commercial or private use) that is suitable for use, the applicant must demonstrate the need to replace the vehicle.

### 13 Vehicle Transfers

Vehicle approvals will not be transferable without the written approval of the Board. Prior to granting an approval, the Board needs to be satisfied that there is a demonstrated need for the transfer. Failure to demonstrate that need will result in approval not being granted.

Applications to transfer will be made on the prescribed form and will be determined in accordance with this policy.

In addition to any fee applied for [lodging an application seeking](#) approval of a vehicle on the island,

the Board reserves the right to apply a transfer [application](#) fee to any [request to](#) transfer ~~of~~ any vehicle [approval](#).

In the case of a private vehicle, the transfer fee will be the equivalent of the appropriate importation fee.

~~In the case of a commercial vehicle, including a private vehicle which is transferred as a commercial vehicle, the Board will require the transferor and the proposed transferee to provide a Statutory Declaration stating that the proposed price to be paid between those parties regarding the transfer of the vehicle is no greater than current market value of the vehicle, plus freight and wharfage costs. The Board will levy a transfer fee of no greater than 10% of that amount.~~

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Commented [PA17]: The objective of this is not clear. Difficult to administer and proposed to be removed.

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#### 14 Delegations

The Chief Executive Officer of the Board is delegated to determine any application made under this policy, provided that the application complies with this policy.

The Chief Executive Officer 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 to import or transfer a vehicle, where the application is proposed to be refused, or where the CEO believes that the application will prove controversial, the CEO will consult with, and document the majority view of the elected members regarding the application.

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.

#### 15 Reporting and Monitoring

The Lord Howe Island Board will maintain a Vehicle Approvals Register, which will include:

- a) The names, addresses and number and type of vehicles of persons approved to import and use a vehicle;
- b) Category of Approval (Private, Commercial, Hire etc);
- c) Conditions of Approval;
- d) Approval Period;
- e) Types of Vehicles Held; and
- f) Registration Details of all Vehicles Held.

The Chief Executive Officer of the Board will provide to the Board at each meeting, a report on:

- a) Vehicle applications approved or rejected since the last meeting and a statement detailing the reasons for approval or rejection addressing the matters required to be considered in the Policy and any alternatives to the importation and use of the vehicle;
- ~~b) Cumulative total of vehicles on the island at the time of the report, [including a breakdown of vehicle types and use \(ie essential, commercial, private, hire etc\)](#).~~

**16 Attachment: Information for Applicants**

DRAFT

# LORD HOWE ISLAND BOARD

## VEHICLE IMPORTATION, TRANSFER AND USE POLICY

### Eligibility to Import or Transfer and Use: Information for Applicants

Please read carefully, as once an application is accepted, the \$20~~50~~ fee is not refundable, regardless of the outcome of your application.

Applicants should ensure eligibility before applying and should refer to the full Lord Howe Island Board *Vehicle Importation, Transfer and Use Policy* (the Policy) for further information.

All applications to import or transfer and use a vehicle will need to demonstrate a genuine need for the import or transfer, and use of a vehicle, and for the vehicle selected. The Board reserves the right to reject any application for any vehicle where it believes that a vehicle is not in the public interest and/or the likely impacts of the vehicle, including environmental impacts on both the natural and built environments, and social and economic impacts will be unacceptable for the island and/or where an applicant has failed to adequately justify the need for a proposed vehicle. An application to import or transfer and use a vehicle must be made on the prescribed form and include any additional information as the Board may require or the applicant wishes to provide.

If you are making an application to import or transfer, and use a vehicle on Lord Howe Island you will need to comply with one of the following eligibility criteria.

#### ELIGIBILITY

##### Vehicles for Private Use

- a) A person who resides in an approved dwelling on a Perpetual Lease, either as: the holder, owner, or sub-lessee of the lease or; as the owner-occupant of a multiple occupancy or ; by way of a current tenancy agreement under the *NSW Residential Tenancy Act 1987* and has resided on the island for a continuous period of 24 months at time of application. Proof of Tenancy will be required and should be supplied with application.
- b) An employee of an Essential Service provider (other than the Board) who does not have access to the private use of a vehicle provided by the Essential Service may apply to import or transfer a preferred vehicle if they can demonstrate to the Board a genuine need for the vehicle. This will only apply where the employee will occupy the position for a period greater than 12 months and is subject to any specification set out in the schedule of Essential Service entitlements. Any approval will be in accordance with this policy. Approval under this clause will be terminated at the cessation of employment with the Essential Service provider.
- c) Lord Howe Island Board employees other than a person described in a), may after 12 months service staff apply to import a preferred vehicle in accordance with the Board's vehicle importation and use policy. Applications must demonstrate need for vehicle in accordance with this policy. Any approval will be in accordance with this policy. Approval to import vehicle will result in termination of private use rights of LHI Board vehicle. Approval under this clause will be terminated at the cessation of employment with the Board.
- d) A person who can demonstrate exceptional circumstance which cannot be addressed by this

policy. In such cases, the Board may exercise discretion, provided that the applicant has demonstrated that no viable alternative to the importation and use of a vehicle exists.

- e) A person as per a) under **Private Use Eligibility** who:
- i. Has no existing approval for a commercial vehicle which is suitable for private use;
  - ii. Does not reside with another person who has approval for a Commercial vehicle which is suitable for private use.

#### Vehicles for Commercial Use

A person as per a) under **Private Use Eligibility** who operates an approved business on the island and can demonstrate to the satisfaction of the Board that the business requires the use of a vehicle and that the business need cannot be met from the existing island fleet.

Note: In general, the Board will only consider approval for a commercial vehicle for businesses which need to transport clients and guests and/or goods and equipment and then only when the business need cannot be serviced from an existing allocation within the island's fleet. Motor Assisted Pedal Bicycles will not be approved for commercial use.

#### Vehicles for Essential Services

Any authorised officer of an approved Essential Service, as set out in the Schedule of Essential Services in this Policy.

#### Vehicles for Hire

- a) Any person eligible under this policy who is also eligible to hold a business licence under clause 49 of the *Lord Howe Island Regulation 2014*.
- b) The Board may from time to time hire out vehicles from its existing fleet where the proposed hire arrangement does not replicate or compete with an arrangement which could be provided by an approved hire vehicle operator as per a).

**Commented [BP18]:** Propose that we delete this 'information for applicants' section. It is just repeats the policy. We used to give this information sheet out with the application forms, now the application forms are attached to the policy so they applicant gets the whole policy and application forms. It seems like a double up.

**17 Attachment: Application to Import a Vehicle**

DRAFT



# LORD HOWE ISLAND BOARD APPLICATION TO IMPORT A VEHICLE

## Under Clauses 84 and 87 of the *Lord Howe Island Regulation 2014*

Approval to import and use a vehicle on the island will be subject to the provisions of the *Lord Howe Island Board Vehicle Importation, Transfer and Use Policy* (the Policy). Please read this policy prior to completing this form. No entitlement to import or use a vehicle is provided for under this policy. All applications to import and use a vehicle will need to demonstrate a genuine need for the importation and use of a vehicle, and for the vehicle selected. The Board reserves the right to reject any application for any vehicle where it believes that a vehicle is not in the public interest and/or the likely impacts of the vehicle, including environmental impacts on both the natural and built environments, and social and economic impacts will be unacceptable for the island and/or where an applicant has failed to adequately justify the need for a proposed vehicle.

Please note that a non-refundable application fee (as listed in the Board's annual fees and charges) applies to the importation of a motor vehicle.

### APPLICATION FEE

Total fees lodged: ..... Receipt No.: ..... Receiving Officer: .....

### APPLICANT DETAILS

Name: .....

Address, Lot and Perpetual Lease:.....

Type of dwelling (house, flat, staff accommodation): .....

### Is this vehicle application for (please select one option):

Private Use     Commercial Use     Essential Service     Hire Use

**On what basis are you eligible to apply for the importation and use of a vehicle under the policy? Please complete the Private, Commercial, Essential or Hire section below:**

**Private Use**    Note: Refer section 7.1.1 and 8.1 of the policy.

Please indicate which of the following a,b,c,d or e private use descriptions apply to you:

- a.  Is a person who resides in an approved dwelling on Perpetual Lease as either:
  - i.  the holder/owner OR
  - ii.  sub-lessee of the lease OR
  - iii.  as the owner-occupant of a multiple occupancy OR
  - iv.  by way of a current tenancy agreement under the NSW Residential Tenancy Act 1987AND  Has resided on the island for a continuous period of 24 months at time of application. Proof of Tenancy will be required and should be supplied with application. OR
- b.  An employee of an Essential Service provider (for more information refer to the Policy) OR
- c.  Lord Howe Island Board employees other than a person described in a) (for more information refer to the Policy) OR
- d.  A person who can demonstrate exceptional circumstance which cannot be addressed by this policy. Application demonstrates that there is no viable alternative to the importation and use of a vehicle as attached. OR
- e.  A person as per a) under Private Use Eligibility who:
  - i. has no existing approval for a commercial vehicle which is suitable for private use
  - ii. Does not reside with another person who has approval for a Commercial vehicle which is suitable for private use.

**Commercial**

Note: Refer section 7.1.2 and 8.2 the policy.

A person who meets the private use eligibility (also complete private use section a – e above), who operates an approved business on the island and can demonstrate to the satisfaction of the Board that the business requires the use of a vehicle and that the business need cannot be met from the existing island fleet.

Name of approved business: .....

**Essential**

Note: Refer section 7.1.3 and 8.4 the policy.

Name of essential service provider as per Schedule of Essential Services in the policy: .....

**Hire**

Note: Refer section 7.1.4, 7.5 and 8.5 the policy.

Name of business licence and approved hire car permit holder: .....

**VEHICLE TO BE IMPORTED**

Make: ..... Model: .....

Engine Capacity: ..... No. of Cylinders: .....

Body Type (e.g. Hatch, Station wagon, Utility): .....

Unladen Weight (in Tonnes or Kgs): .....

4WD or 2WD: ..... Registration No.: .....

Fuel Type (e.g. Petrol, Diesel, Electric): .....

Dimensions of vehicle: See maximum vehicle size limits in section 3.7 and 3.8 of this policy.

Length (mm): ..... Width (mm): ..... Height (mm): .....

**Is this vehicle a preferred vehicle as per section 4.1 of the Vehicle, Importation, Transfer and Use policy?**

- a)  A motor vehicle meeting the requirements as per 4.1 (a) of the policy?
- b)  Electric Vehicle meeting the requirements as per 4.1 (b) of the policy?
- c)  Motor Scooters meeting the requirements as per 4.1 (c) of the policy?

If the vehicle applied for meets the Board’s preferred vehicle criteria, the Board will give preference, by way of incentives, to the importation and use of small and low impact vehicles (see section 5.1 (a) and 6 (a) of the policy). To receive the incentives, please provide a copy of your vehicle’s registration paper and wharfage invoice on importation of your vehicle and a short letter or email requesting reimbursement of the incentives.

**Is this vehicle electric or hybrid?**

Yes No

~~If yes, if not already installed, installation of ‘Smart’ meters at residences and businesses as part of the importation of an electric vehicle, will be ‘at cost’, including the Board’s Senior Electrical Officer (SEO) labour and parts. Please complete the form ‘New Installation Application for Supply’.~~

**Commented [BP19]:** Deleted as per policy 6 (c)

**Is a Bull bars/Roo bars/Nudge bar fitted?** Refer section 3.12 of the policy and demonstrate that the winch is essential to the vehicle’s use.

Yes No

.....

**Is this vehicle applied for second hand (please circle)?**

Yes                                  No

NOTE: If the vehicle is second hand it will be necessary for you to provide a statutory declaration stating that the vehicle has been inspected and cleaned with high pressure hoses to ensure no weed seeds, bugs, spiders etc are transported to the Island. This declaration must be submitted to the Board prior to the vehicle leaving the mainland.

**Do you own or have use of other vehicles on the island?**

Yes                                  No

NOTE: 'Vehicle' includes a road registered/registrable motorcycle or scooter.

**If yes, please specify:**

MAKE	MODEL	REGISTRATION	APPROVED USE e.g. Private, Commercial, Essential

**Will the vehicle to be imported replace one of the above vehicles?**

Yes                                  No

If yes, which vehicle is being replaced? .....

NOTE: Unless otherwise approved by the Board, the vehicle being replaced must be removed from the island within the timeframe specified by the Board.

**Please provide a detailed justification of why you require a vehicle and the specific vehicle applied for:**

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NOTE: Please attach an additional sheet if space is inadequate.

Please state whether you considered alternatives to the vehicle selected, including an alternative form of transport:

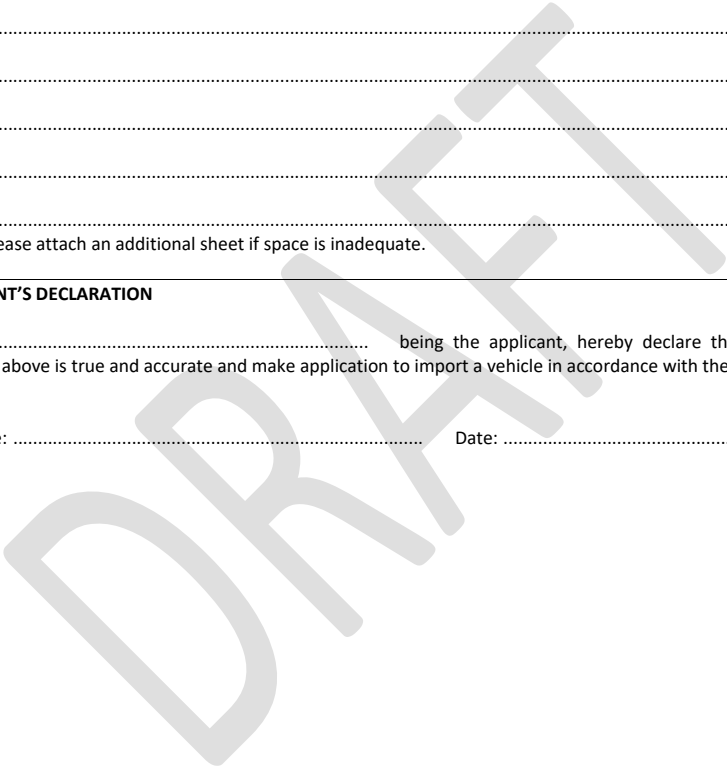
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NOTE: Please attach an additional sheet if space is inadequate.

**APPLICANT'S DECLARATION**

I ..... being the applicant, hereby declare that the information provided above is true and accurate and make application to import a vehicle in accordance with the above.

Signature: ..... Date: .....



**18 Attachment: Application to Transfer a Vehicle**

DRAFT

# LORD HOWE ISLAND BOARD

## APPLICATION TO TRANSFER A VEHICLE

### Under Clauses 84 and 87 of the *Lord Howe Island Regulation 2014*

Approval to transfer and use a vehicle on the island will be subject to the provisions of the *Lord Howe Island Board Vehicle Importation, Transfer and Use Policy* (the Policy). Please read this policy prior to completing this form. No entitlement to transfer or use a vehicle is provided for under this policy. All applications to transfer and use a vehicle will need to demonstrate a genuine need for the transfer and use of a vehicle, and for the vehicle selected. The Board reserves the right to reject any application for any vehicle where it believes that a vehicle is not in the public interest and/or the likely impacts of the vehicle, including environmental impacts on both the natural and built environments, and social and economic impacts will be unacceptable for the island and/or where an applicant has failed to adequately justify the need for a proposed vehicle.

Please note that a non-refundable application fee (as listed in the Board's annual fees and charges) applies to the transfer of a motor vehicle.

NOTE: In the case of a commercial vehicle, including a private vehicle which is transferred as a commercial vehicle, the Board will require the transferor and the proposed transferee to provide a Statutory Declaration stating that the proposed price to be paid between those parties regarding the transfer of the vehicle is no greater than current market value of the vehicle, plus freight and wharfage costs. The Board will levy a non-refundable application fee of no greater than 10% of that amount.

#### APPLICATION FEE

Total fees lodged: ..... Receipt No.: ..... Receiving Officer: .....

#### TRANSFEROR DETAILS (Person selling vehicle)

Name: .....

Address, Lot and Perpetual Lease:.....

#### TRANSFeree DETAILS (Person buying vehicle)

Name: .....

Address, Lot and Perpetual Lease:.....

Type of dwelling (house, flat, staff accommodation): .....

#### Is this vehicle application for (please select one option):

Private Use       Commercial Use       Essential Service       Hire Use

On what basis are you eligible to apply for the importation and use of a vehicle under the policy? Please complete the Private, Commercial, Essential or Hire section below:

#### Private Use

Note: Refer section 7.1.1 and 8.1 of the policy.

Please indicate which of the following a,b,c,d or e private use descriptions apply to you:

- a.  Is a person who resides in an approved dwelling on Perpetual Lease as either:
- i.  the holder/owner OR
  - ii.  sub-lessee of the lease OR
  - iii.  as the owner-occupant of a multiple occupancy OR

- iv.  by way of a current tenancy agreement under the NSW Residential Tenancy Act 1987 AND  Has resided on the island for a continuous period of 24 months at time of application. Proof of Tenancy will be required and should be supplied with application. OR
- b.  An employee of an Essential Service provider (for more information refer to the Policy) OR
- c.  Lord Howe Island Board employees other than a person described in a) (for more information refer to the Policy) OR
- d.  A person who can demonstrate exceptional circumstance which cannot be addressed by this policy. Application demonstrates that there is no viable alternative to the importation and use of a vehicle as attached. OR
- e.  A person as per a) under Private Use Eligibility who:
  - i. has no existing approval for a commercial vehicle which is suitable for private use
  - ii. Does not reside with another person who has approval for a Commercial vehicle which is suitable for private use.

**Commercial** Note: Refer section 7.1.2 and 8.2 the policy.

A person who meets the private use eligibility (also complete private use section a – e above), who operates an approved business on the island and can demonstrate to the satisfaction of the Board that the business requires the use of a vehicle and that the business need cannot be met from the existing island fleet.

Name of approved business: .....

**Essential** Note: Refer section 7.1.3 and 8.4 the policy.

Name of essential service provider as per Schedule of Essential Services in the policy: .....

**Hire** Note: Refer section 7.1.4, 7.5 and 8.5 the policy.

Name of business licence and approved hire car permit holder: .....

---

**VEHICLE TO BE IMPORTED**

Make: ..... Model: .....

Engine Capacity: ..... No. of Cylinders: .....

Body Type (e.g. Hatch, Station wagon, Utility): .....

Unladen Weight (in Tonnes or Kgs): .....

4WD or 2WD: ..... Registration No.: .....

Fuel Type (e.g. Petrol, Diesel, Electric): .....

Dimensions of vehicle: See maximum vehicle size limits in section 3.7 and 3.8 of this policy.

Length (mm): ..... Width (mm): ..... Height (mm): .....

**Is this vehicle a preferred vehicle as per section 4.1 of the Vehicle, Importation, Transfer and Use policy?**

- a)  A motor vehicle meeting the requirements as per 4.1 (a) of the policy?
- b)  Electric Vehicle meeting the requirements as per 4.1 (b) of the policy?
- c)  Motor Scooters meeting the requirements as per 4.1 (c) of the policy?

If the vehicle applied for meets the Board's preferred vehicle criteria, the Board will give preference, by way of incentives, to the importation and use of small and low impact vehicles (see section 5.1 (a) and 6 (a) of the policy). To receive the incentives, please provide a copy of your vehicle's registration paper and wharfage invoice on importation of your vehicle and a short letter or email requesting reimbursement of the incentives.

**Is this vehicle electric or hybrid?**

Yes No

~~If yes, if not already installed, installation of 'Smart' meters at residences and businesses as part of the importation of an electric vehicle, will be 'at cost', including the Board's Senior Electrical Officer (SEO) labour and parts. Please complete the form 'New Installation Application for Supply'.~~

**Commented [BP20]:** Deleted as per 6 (c) of the policy.

**Is a Bull bars/Roo bars/Nudge bar fitted?** Refer section 3.12 of the policy and demonstrate the essential use below.

Yes No

.....

**Do you own or have use of other vehicles on the island?**

Yes No

NOTE: 'Vehicle' includes a road registered/registrable motorcycle or scooter.

**If yes, please specify:**

MAKE	MODEL	REGISTRATION	APPROVED USE e.g. Private, Commercial, Essential

**Will the vehicle to be imported replace one of the above vehicles?**

Yes No

If yes, which vehicle is being replaced? .....

NOTE: Unless otherwise approved by the Board, the vehicle being replaced must be removed from the island within the timeframe specified by the Board.

**Please provide a detailed justification of why you require a vehicle and the specific vehicle applied for:**

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NOTE: Please attach an additional sheet if space is inadequate.

**Please state whether you considered alternatives to the vehicle selected, including an alternative form of transport:**

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NOTE: Please attach an additional sheet if space is inadequate.

**TRANSFEROR'S DECLARATION**

I ..... being the transferor, hereby declare that the information provided above is true and accurate and make application to transfer a vehicle in accordance with the above.

Signature: ..... Date: .....

**TRANSFeree'S DECLARATION**

I ..... being the transferee, hereby declare that the information provided above is true and accurate and make application to transfer a vehicle in accordance with the above.

Signature: ..... Date: .....

**MARINE  
RESCUE  
NEW SOUTH WALES**



**Volunteer Marine Rescue NSW**

ABN 98 138 078 092 CFN 21153

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Mr. Justin Sauvage  
Acting CEO  
Lord Howe Island Board.

8<sup>th</sup> June 2021

Dear Sir,

As of Tuesday 2<sup>nd</sup> June 2021 the Lord Howe Island Marine Rescue (LHIMR) Unit was commissioned and therefore deemed as operational. Our Unit now has a 24/7 response capability to assist vessels/aircraft out to 200 nautical miles within the Exclusive Economic Zone (EEZ). The LHIMR also provides 24/7 monitoring of International Distress channel VHF marine 16. Intermediate Hill VHF 16 repeater has now extended the VHF coverage from approximately five nautical miles seaward to a distance of approximately 120 nautical miles from the island.

As the Unit Commander (UC) I would like to make application to the Lord Howe Island Board (LHIB) to amend the LHIB Vehicle Policy to add the rescue agency Marine Rescue NSW in the essential services table under the document title listing Essential services. The LHIMR has also joined the Local Emergency Management Committee (LEMC).

It is envisaged that an appropriate utility type vehicle will be sourced to enable the refuelling of LHIMR vessel 'Fearless'. The usual amount of fuel required for refuelling is approximately 1000 litres at a time. The LHIMR Unit is extremely aware of the need to minimise vehicles on Lord Howe Island and by allocating just one essential vehicle category to the LHIMR this will enable the rescue vessel to be promptly refuelled without the need for a fuel trailer and therefore negate the need for an additional vehicle (trailer) allocation.

The LHIMR acknowledges and appreciates your continued support in establishing a world class rescue resource and capability on Lord Howe Island.

Your sincerely,

A handwritten signature in black ink, appearing to read 'J. McFadyen', with a horizontal line extending to the right.

Jim McFadyen

Unit Commander

Marine Rescue NSW

Lord Howe Island

# **LORD HOWE ISLAND BOARD**

## **Business Paper**

### **OPEN SESSION**

#### **ITEM**

Lord Howe Island Local Environment Plan (LEP) Stage 2 Review (Planning Proposal).

#### **RECOMMENDATION**

That the Board note this paper.

#### **BACKGROUND**

The Lord Howe Island Local Environment Plan 2010 (LEP) forms the blueprint for land use, development and conservation for Lord Howe Island. The LEP is a statutory planning document made under the *Environmental Planning and Assessment Act 1979*. Among other things it allocates all land on the island into one of nine different zones, with each zone having specific permissible land uses. The LEP also dictates the minimum lot sizes and the maximum number of dwellings that can be built.

The LHI LEP was made in 2010 and was largely a remake of a Regional Environmental Plan that was made in 2005.

In 2010, at the time the LEP 2010 was made the Board endorsed a report requesting that a detailed review of the LEP be undertaken. At the September 2015 Board meeting the Board adopted a two stage LEP review (Planning Proposal) process. Stage one was an administrative review that addressed relatively simple minor amendments to the LEP whilst the Stage two planning process is a comprehensive review addressing more complex issues such as restrictions on the number dwellings, tourist accommodation and minimum lot sizes.

The Stage one LEP review process has been almost completed. Following the April 2021 Board meeting the Board resolved to submit the planning proposal. The proposal has been subsequently submitted and it is anticipated that the plan will be made by the end of October.

In order to complete the Stage two Planning Proposal process a substantial body of work remains, and much of this work is likely to be complex as it will be tackling LEP matters that are of significant interest to the community.

Attached to this paper (Attachment one) is the project plan prepared in 2015 by RPS. Despite the project plan being developed in 2015, the majority of issues and processes identified in the plan remain relevant.

#### **The LEP Planning Proposal process**

The LEP review process must follow a statutory gateway process prescribed by the Department of Planning, Industry and Environment (DPIE).

The five key steps of the Gateway process can be summarised as:

1. The Planning Proposal – the planning proposal authority prepares the planning proposal. The planning proposal authority is usually the local council, however the Minister can appoint the Secretary of the Department of Planning and Environment, a regional planning panel or a Sydney planning panel to be the planning proposal authority.
2. Gateway – the Minister (or delegate) decides whether the planning proposal can proceed (with or without variation) and subject to other matters including further studies being undertaken, public consultation, public hearings, agency consultation and time frames. A planning proposal usually does not proceed without conditions of this nature. The conditions are then complied with and if necessary, the proposal is changed. A decision on whether the relevant council is able to finalise particular types of LEPs is also determined at this stage.
3. Community Consultation – the proposal is publicly exhibited as required by the Minister. A person making a submission may also request a public hearing be held.
4. Assessment – the planning proposal authority reviews public submissions. Parliamentary Counsel then prepares a draft local environmental plan.
5. The Making of the LEP – with the Minister’s (or delegate’s) approval the local environmental plan is published on the NSW legislation website and becomes law.

## **CURRENT POSITION**

Prior to any proposal to commence a LEP review the Board will need to adopt a Long Term Strategic Planning Statement (LSPS). The adoption of a LSPS is a mandatory requirement under the Environmental Planning and Assessment Act. The LSPS identifies Lord Howe Island’s economic, social and environmental land use needs and visions for the next 20 years. It addresses the planning and development issues of strategic significance for the island through the identification of planning priorities and actions, spatial land use direction, and guidance. A draft LSPS has been prepared staff from the DPIE Planning unit on behalf of the Board, and is currently in the process of being reviewed by LHIB staff prior to submission to the Board for public exhibition and endorsement. The LSPS will need to be adopted by the Board prior to the Board commencing the preparation of a new Planning Proposal.

The dwelling cap included in the Lord Howe Island LEP 2010 are due to expire on 28 October 2025. Suitable replacement arrangements need to be implemented prior to the 2025 expiry date.

The Handley Review made some recommendations for future LEP amendments related to housing on the island. Some of these have been addressed, however the recommendation to reduce minimum lot size for subdivision remain unresolved.

The first step, preparation of the planning proposal has not yet been commenced. This is the most complex and expensive part of the process. In order to prepare the planning proposal a number of supporting studies will need to be undertaken.

The stage two planning proposal requires a comprehensive strategic planning review to form the basis of the planning proposal. Due to the highly contentious nature of the matters that will be considered in the planning proposal, and limitation with existing resources it is strongly recommended that an external consultant be used to undertake the strategic planning review that will inform the planning proposal. Many of the studies that will be required to be undertaken to justify any changes, (including retention or modification of the dwelling cap) to the LEP are beyond the capacity of the LHIB to internally resource.

The review should commence during 2021/22 and carry through 2023/24 to facilitate finalisation of future arrangements during 2024/25. This timing would enable the extensive and meaningful engagement with the local community. The process would also need to consider the remoteness of Lord Howe Island and what relevant studies and information, if any, would already be available.

### **Cost**

The planning proposal process will cost approximately \$350,000 in total, of which \$70,000 would be notionally allocated to 2021/22, \$110,000 allocated to each of 2022/23 and 2023/24 and the remaining \$60,000 allocated to 2024/25. These cost estimates comprise, but would not be limited to:

- review of the earlier Handley Report recommendations and of environmental, social, agriculture, tourism, housing (recognising an ageing population), transport and infrastructure requirements - \$155,000
- housing and accommodation study - \$95,000 including:
  - review of environmental carrying capacity of the island including waste water and drinking water supply
  - review of the dwelling cap and long term residential housing demand for the island
  - review of staff accommodation and long term demand for staff accommodation
  - review of bed licence limit and impact on long term economic viability of the island.
  - review of environmental carrying capacity of the island including drinking water supply
- drafting of new LEP and DCP and submission to the planning proposal process - \$100,000

### **Note on Dwelling Cap**

One of the most contentious matters the planning proposal will need to address is the dwelling cap imposed by cl26 of the current LEP:

#### **26 Limit on number of dwellings to which consent may be given**

- (1) In any period, consent may be granted for the erection of no more than the total number of dwellings determined by the Board and approved by the Director-General in respect of that period for the purposes of this clause.

- (2) Regardless of the total number of dwellings determined for the purposes of subclause (1), consent may be granted for the erection of no more than a total of 25 dwellings during a period of 20 years commencing on 28 October 2005.

Currently it is understood that 12 of the 25 dwellings have been allocated, however there is some uncertainty as to the status of at least one dwelling allocations. The release of these allocations was initially halted by the Minister who directed that the Board pause the release of any dwelling allocations until the Gleeson and Handley reviews were completed. The Handley Review recommended that no new dwelling allocations be released until a new dwelling allocation policy is developed and adopted.

The release of the remainder of the dwelling allocations does not necessarily require a revision of the LEP via a planning proposal. Under the current LEP there is sufficient opportunities to release the remaining dwelling allocation. However, as has per the Handley Review recommendation a new dwelling allocation policy would need to be developed and adopted.

### **Risks of not proceeding with detailed Planning Proposal**

There are also a large number of planning matters including but not limited to, staff accommodation, exempt development, land zonings, and minimum lot sizes that can only be addressed through a planning proposal. Many of these matters have long term social and economic implications for the future of the island. There is a potential risk of missing opportunities to protect and enhance the long term economic and social prosperity of the island if there is a significant delay in the stage two review of the LEP.

### **Conclusion**

A comprehensive review of the LEP and subsequent submission of a Planning Proposal will help ensure the long term economic, social and environmental prosperity of the island. The LEP review should be informed by comprehensive social, economic and environmental studies undertaken by external consultants to ensure that a level of objectivity and neutrality is maintained.

### **RECOMMENDATION**

That the Board note this paper.

**Prepared:** Justin Sauvage                      Manager Environment and Community Services

**Endorsed:** Angie Stringer                      Acting Chief Executive Officer

#### **Attachments:**

Attachment      LHI LEP 2010 Review Final Project Plan (RPS 2015)



# Lord Howe Island LEP 2010 Review

## Project Plan

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**Document Status**

Version	Purpose of Document	Orig	Review	Review Date
A	Draft for client	LC	JB, PM	17 August 2015
B	Final for client	LC	DK	19 August 2015

**Approval for Issue**

Name	Signature	Date
Liz Coker		19 August 2015



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## Summary

This report has been prepared to scope the way forward for the review of the Lord Howe Island (LHI) Local Environmental Plan 2010 (LEP 2010). The Project Plan:

- Sets out the context for the current planning controls for the Island
- Identifies the drivers for the review
- Clarifies the legislative pathway
- Identifies the existing information and flags known evidence gaps
- Discusses three alternative review scopes and recommends a preferred approach
- Recommends a community engagement approach
- Identifies in broad terms likely resourcing requirements
- Points to options for project funding

The Project Plan will form the basis for discussion between the LHI Board and the Department of Planning & Environment (DP&E) to agree to a way forward with the LEP review.

## 1.0 Planning Context

The Lord Howe Island (LHI) Group is located 760 km north-east of Sydney. It comprises the main island (LHI which is 1455 ha) and 28 smaller islets and rocks. LHI is the only island within the LHI Group on which settlement has occurred. The settlement is restricted to the central lowlands and covers about 15% of the island. Tourism is one of the island's major sources of income. There is an airstrip on the island and daily (or thereabouts) commercial air services to Sydney and Brisbane. About 16 000 tourists visit the island each year. Numbers are regulated, with a maximum of 400 allowed on the island at any one time. The export of kentia palm seedlings was recently a major source of income for the island however export of seedlings has reduced in recent years due to increase in competition.

Lord Howe Island is a world heritage listed place, recognised as an outstanding example of oceanic islands of volcanic origin, containing unique flora and fauna as well as the world's most southerly true coral reef. It is an area of spectacular and scenic landscapes and provides important breeding grounds for colonies of seabirds. Tourism is a significant aspect of the island's economy.

### 1.1 Lord Howe Island Act 1953

All land on Lord Howe Island is NSW Crown Land, administered under the Lord Howe Island Act 1953 (The Act). The Act provides for a property rights regime of perpetual leases which gives Islanders certain privileges. It also establishes the Lord Howe Island Board (the Board), a seven member statutory body charged with the care, control and management of the Island and its affairs and trade.

#### 1.1.1 The Board

The Lord Howe Island Board is a statutory body established under the provisions of the Act. The Board is charged with the responsibility of administering the affairs of the Island. "Island" as defined by the Act means the island known as Lord Howe Island and all adjacent islands and coral reefs situated within one marine league measured from low-water mark on the coast of Lord Howe Island together with the islands known as Ball's Pyramid, Wheatsheaf Island, Observatory Rock and South-East Rock and the unnamed islands in the vicinity thereof.

In the exercise and discharge of its powers, authorities, duties and functions the Board is subject to the direction and control of the Minister administering the Act.

Board Meetings are scheduled for the following dates:

- 8 September 2015
- 24 November 2015
- 22 March 2016
- 17 May 2016
- 13 September 2016
- 22 November 2016

The Board is also able to meet out of session if required.

#### 1.1.2 Perpetual Leases

The Lord Howe Island Act 1953 provides that all the land on the Island belongs to the Crown. The law does not allow freehold private ownership. Instead, the Act provides for the creation of Perpetual Leases over

Crown Land, up to 2 hectares in area, to be used for residential purposes. The subsequent transfer or subleasing of Perpetual Leases is also strictly controlled and constrained by the Act.

### **1.1.3 Special Leases**

The Act provides for Special Leases for other uses. While Special Leases may be granted for a wide range of purposes, they have almost exclusively been granted for agricultural purposes such as cultivation and grazing. The issuing, transferring or subleasing of Special Leases is strictly controlled and constrained by the Act, with the intention of preventing speculation and trading in island land.

### **1.1.4 Permissive Occupancies**

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.

Unlike a Perpetual Lease, a permissive occupancy cannot be transferred, sublet or inherited.

## **1.2 The Environmental Planning and Assessment Act 1979**

The Environmental Planning & Assessment Act, 1979 (EP&A Act) applies on the Island. The Board acts as a local council for the purposes of the EP&A Act, and is the consent authority for the purposes of Part 4 of that Act. This means that the local plan making process is that set out under Part 3 of the EP&A Act.

## **1.3 Commonwealth Environment Protection and Biodiversity Conservation Act 1999 - World Heritage**

Lord Howe Island was inscribed on the World Heritage List in 1982, in recognition of its superlative natural landscapes and scenery and its rich terrestrial and marine biodiversity as an outstanding example of an island ecosystem developed from submarine volcanic activity. The World Heritage property covers Lord Howe Island, offshore islands and islets, including the central portion of the main island, of which a significant part was cleared for settlement and farming and occupied by the Islanders; and the LHI Permanent Park Preserve, which is managed in accordance with a Plan of Management.

The Lord Howe Island Group is one of 6 world heritage listings in NSW. The Group comprises Lord Howe Island, Admiralty Islands, Mutton Bird Island, Ball's Pyramid, and associated coral reefs and marine environments. The Commonwealth Environment Protection and Biodiversity Conservation Act 1999, provides protection of matters of national environmental significance including world heritage areas. Under the Act, any action that is likely to have a significant impact on the Island requires the approval of the Federal Environment Minister.

An approvals bilateral agreement with NSW and the Commonwealth was made under Section 45 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and executed in February 2015. The agreement includes accreditation of NSW's approval processes under Part 4 of the EP&A Act, providing the consent authority is not a local council. This means that the Board no longer needs to refer projects for

Commonwealth approval under the EPBC Act for impacts on world heritage. The Board's approval is sufficient.

#### **I.4 Permanent Park Preserve**

Approximately 75% of the main island, plus all outlying islets and rocks within the Lord Howe Island Group, are protected under the Permanent Park Preserve. This area is permanently dedicated for the public purpose of preserving native flora and fauna pursuant to Section 19 of the LHI Act. Under the LHI Act, the Board has the responsibility to manage, protect, restore, enhance and conserve the preserve in a manner that recognises its World Heritage values (section 5(f)). Section 15B of the LHI Act requires that a plan of management for the preserve be prepared and implemented in accordance with the provisions of Part 5 of the National Parks and Wildlife Act (NPW Act) as if the preserve were a national park. However, unlike the NPW Act arrangements, the plan of management for the preserve is to be approved by the Minister administering the LHI Act, and is to be carried out and given effect to by the Board.

#### **I.5 The Lord Howe Island Marine Park (Commonwealth Waters) - Marine Parks**

The Island is surrounded by NSW waters out to three nautical miles and Commonwealth waters from three to 12 nautical miles. The NSW Lord Howe Island Marine Park was created in 1999 to protect the marine environment and comprises all ocean waters and the ocean bed contained between mean high water mark to three nautical miles from the territorial sea baseline of Lord Howe Island, the Admiralty Islets, Ball's Pyramid and South –East Rock, covering an area of some 48,000 hectares. There is a zoning plan for the park and activities within the park are regulated under the Marine Parks (Zoning Plans) Regulation 1999. The Lord Howe Island Marine Park (Commonwealth Waters) was created in 2000 to protect the marine environment of the Commonwealth waters and is estimated to be over 300,000 hectares in area. There is a management plan for the park and activities within this park are also regulated under the Environment Protection and Biodiversity Conservation Act 1999.

## 2.0 Current LEP

### 2.1 Lord Howe Island Local Environmental Plan 2010

The Lord Howe Island Local Environmental Plan 2010 (LEP 2010) carried over the provisions of the Lord Howe Island Regional Environmental Plan 2005 (REP 2005). Those provisions were not comprehensively reviewed at that time.

LEP 2010 controls planning and development on the Island and is the key instrument in protecting the unique values of the Island. The plan places a limit on the total number of future dwellings to 25 during the 20 year period up to 2025. The plan acknowledges the importance of tourism to the Island economy and aims to permit future development of tourism, but within limits. The total number of persons permitted to be accommodated in all forms of tourist accommodation on the Island must not exceed 400 people at any time. An important aim of the plan is to ensure that tourism on the Island does not adversely affect the lifestyle of residents, or the World Heritage environmental qualities of the Island.

The plan predates the Standard LEP template format. The Board is the consent authority for the purposes of the plan.

LEP 2010 contains the following zones:

- Zone 1 Rural
- Zone 2 Settlement
- Zone 5 Special Uses
- Zone 6 Recreation
- Zone 7 Environment Protection
- Zone 8 Permanent Park Preserve
- Zone 9 Marine Park

The plan has been amended three times since it came into effect in 2010 with another amendment currently on exhibition.

### 2.2 Lord Howe Island Development Control Plan 2005

The Lord Howe Island Development Control Plan 2005 (DCP) has not been updated since its adoption in 2005 to support the REP.

## 3.0 LEP Approvals Pathway

The process for making a new principle LEP or for amending an LEP is the same. The Department's Guideline from April 2013 sets out the standard processes for preparation of a local plan.

### 3.1 DP&E as the relevant planning authority

An LEP can usually be initiated by the Council of the local government area (LGA) it applies to. In the case of LHI the Minister has appointed the Director-General (now the Secretary) of the Department of Planning & Environment (DP&E) as the appointed authority under section 54(2)(e) of the EP&A Act. The Northern Region branch of the Department has taken the role of manager through the gateway process, working collaboratively with the Board.

This approach can again be anticipated with this proposed review. This means that the Board will officially prepare a planning proposal (with the input of DP&E). DP&E will undertake the administrative processes including issuing of the gateway determination, making arrangements for agency and community consultation, collation of submissions and advising of relevant changes to the planning proposal. DP&E will then consult with the Parliamentary Counsel to legally draft the new instrument and arrange its publication.

### 3.2 Minister for Planning role

The Minister for Planning (currently Minister Robert Stokes) can make an LEP following the process set out in the EP&A Act. This role may be delegated to the Northern Region branch of DP&E.

### 3.3 Template LEP format

In 2006, the NSW Government created a common structure and language for LEPs, commonly known as the standard instrument or LEP template. The template is designed to simplify the planning system. All Councils in NSW have now adopted an LEP using this template.

Consistent with the approach to the preparation of the current LEP 2010, DP&E has again indicated that the proposed LHI LEP need not conform to the standard instrument template format. This is because the template does not suit the unique characteristics of the Island. The template standard zones have mandatory permissible uses and definitions which may not be appropriate for the Island.

Instead it would be helpful to view the template as a resource which may be of assistance, in areas such as standard definitions and clauses which have been approved by DP&E and Parliamentary Counsel. These may be tailored to specifically address the needs of the Island.

The Standard Instrument mapping format is therefore not prescribed. However, it is recommended for the LEP to be compatible with the DP&E's move to e-mapping which adheres to the format principles in the guide 'Standard technical requirements for preparing LEP maps'.



### 3.4 Process

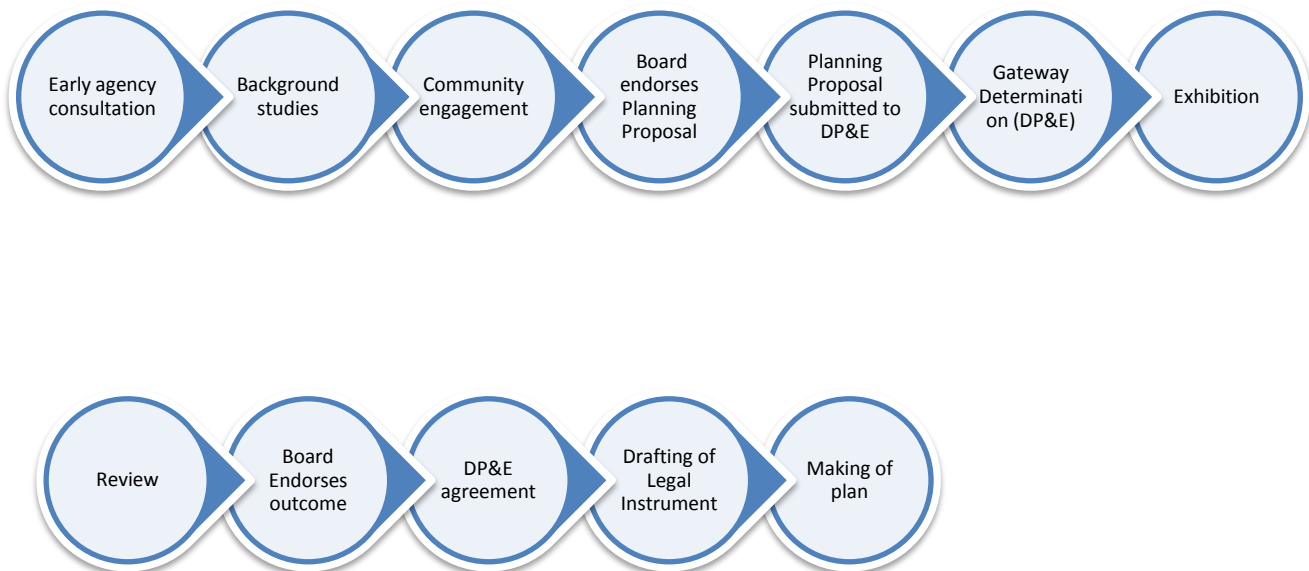


Figure 1 LEP making process

#### 3.4.2 Section 117 Directions

Even though the application of their provisions will need to take into account the unique circumstances of the Island, several Section 117 Directions will be of relevance for consideration (even where they do not strictly apply) in the preparation of a revised LHI LEP:

- 1.1 Business and Industrial zones
- 1.2 Rural Zones
- 1.5 Rural Lands
- 2.1 Environment Protection zones
- 2.2 Coastal Protection
- 2.3 Heritage Conservation
- 2.4 Recreational vehicles
- 3.1 Residential zones
- 3.3 Home Occupations
- 3.5 Development Near Licensed Aerodromes
- 4.1 Acid Sulfate Soils
- 4.3 Flood Prone Land
- 6.1 Approval and Referral Requirements
- 6.2 Reserving Land for Public Purposes
- 6.3 Site Specific Provisions

#### 3.4.3 State planning policies

No state environmental planning policies apply to the island except State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.

## 4.0 Drivers for the review

### 4.1 Current or recent work

In recent years several key pieces of work have been undertaken which should be analysed and where appropriate reflected in the LEP. These are summarised in Table 1 and expanded on below.

**Table 1: Relevant planning matters to reflect in the LEP**

Date	Item	Responsible Party	Summary	Status
2014 - 2015	<b>Review of Land Allocation and Land Tenure</b>	Department of Premier and Cabinet	<p>The Hon. Ken Handley (AO QC) was commissioned by the NSW Government to conduct a comprehensive review of the current land allocation and tenure arrangements on Lord Howe Island. The Terms of Reference identify four key areas for consideration: 1. Forms of tenure, 2. Land allocation methods, 3. Strategies to increase land and housing supply, and 4. Economic sustainability.</p> <p>A Discussion Paper was released for public comment in August 2014, with public consultation taking place over the following eight weeks. The discussion Paper sets out preliminary options in order to generate and guide discussion on a number of items, including several which may require a change to the provisions within the LEP.</p>	To NSW Cabinet September 2015
2015	<b>Significant Native Vegetation amendment to LEP</b>	LHI Board	<p>Update to the LEP 2010 Significant Native Vegetation Map, and amendment to the definition of 'significant native vegetation' to apply to only vegetation that is native to the Island.</p> <p>Addressed as a separate matter prior to comprehensive review of the LEP.</p>	Draft currently on public exhibition to 27 August 2015
2011	<b>Community Based Heritage study</b>	LHI Board	<p>The study provides:</p> <ul style="list-style-type: none"> <li>a thematic history of the island that is consistent with those prepared for other local government areas in the State;</li> <li>a list of heritage items that have been identified and assessed through a consultative process with the island community, for possible inclusion on the heritage schedule to LEP 2010 including statements of significance and heritage database forms;</li> <li>conservation strategies for the Board to employ in managing the environmental heritage of Lord Howe Island;</li> <li>an annotated bibliography of references to the cultural heritage of Lord Howe Island.</li> </ul>	adopted
2014	<b>Wastewater Management Strategy</b>	LHI Board	<p>To improve the quality of the Island's wastewater to protect the health of Islanders and visitors and guard against damage to the lagoon environment. The Board has introduced incentives to ease the cost burden to Islanders of updating onsite systems. Revised the LEP 2010 to 'permit with consent' WMS in several zones, exempt WMS in Zone 2 Settlement and provide for a definition of WMS.</p> <p>Addressed as a separate matter prior to comprehensive review of the LEP.</p>	adopted
2015	<b>Coastal Hazards Study</b>	LHI Board	<p>To improve understanding of the coastal processes and hazards that affect the coastline, define areas at risk from coastal hazards and identify management options.</p>	current

Date	Item	Responsible Party	Summary	Status
2015	<b>Review of Policies – Advertising, signage, foreshore management</b>	LHI Board	Board currently reviewing	current
2015	<b>Flood mapping</b>	LHI Board	Funding application has been submitted and awaiting approval.	imminent
2015	<b>Communication Strategy for LHI</b>	LHI Board	Board currently preparing	current
2013	<b>Renewable Energy Program</b>	LHI Board	A plan with a target of 80 percent of the Island's power to come from renewable sources (solar and wind) by 2019. As well as demonstrating in a practical way the Island's commitment to protecting the environment, this will significantly reduce reliance on diesel fuel for power.	Current. Some Federal funding obtained.
	<b>Satellite Earth-Station dish policy</b>	LHI Board	To ensure that the installation of Satellite Earth-Station dishes does not adversely affect the unique visual quality of the Island. The potential connection to the NBN would mean review of this policy is required.	current
	<b>Vegetation Rehabilitation Plan</b>	LHI Board	Clause 31 of the current LEP requires development for the purposes of vegetation restoration must be carried out in accordance with the <i>Lord Howe Island Board Vegetation Rehabilitation Plan</i> , as adopted by the Board in March 2003.	
	<b>Bi-annual Planning and Assessment System Audits</b>	LHI Board (Consultant Planner, currently RPS)	Regular analysis of Owner Consent, Development Application and s96 / Modified Development Consent assessments as well as the planning system.	ongoing

## 4.2 Key Planning Issues

Through implementation of the current LEP a number of planning issues have come to be recognised as requiring further review to inform potential amendments to the LEP. These include but may not be limited to the following:

### 4.2.1 Residential Development

- Limitations on new development for housing
- New provisions to permit/encourage reuse of existing buildings for dwellings
- Revised provisions for enlargements or extensions of dwellings
- Provision for caretaker units / granny flats
- New provisions to allow subdivision of attached dwellings/secondary dwellings in certain circumstances

### 4.2.2 Tourism / Commercial development

- Supporting emerging tourism opportunities
- Potential need for specific zoning for Business/Commercial uses
- Reconsideration of town centre uses and zoning
- Site coverage/GFA for commercial/tourism buildings
- Long-term uses where 'demonstrated business need' no longer operational

### **4.2.3 Agriculture**

- Identification of high value agricultural land
- Minimum rural lot sizes
- Simplification of subdivision provisions

### **4.2.4 Environmental Protection**

- Incorporation of Significant Native Vegetation (SNV) mapping and definition update (draft provisions currently on exhibition)
- Encouragement of solar and wind power initiatives
- Reflecting continuing uses in Environment Protection zones

### **4.2.5 Other Known LEP matters**

- Policy on advertising of DAs
- Definition of the following terms: dwelling, GFA, home business
- Updated definitions of terms
- Additions to exempt development schedule
- Spot-rezonings, for example to facilitate change on Special Uses sites

### **4.2.6 Development Control Plan**

- Need for the DCP to be updated and amended to increase its usefulness. For example to provide guidance for DAs for additions to existing buildings, and to clarify interpretation of DCP clauses.
- The DCP may also be able to contain the Dwelling Allocation Policy.

## 5.0 Approach

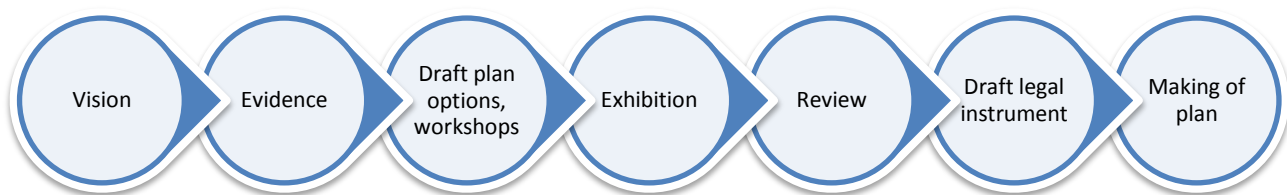
There are two clear alternatives to proceed with the LEP review. Both a comprehensive, and a more limited targeted approach, are discussed below. The third option, a blend of these two, is the preferred approach at this time for LHI.

### 5.1 Comprehensive review

In November 2011, the Board received advice from the former Department of Planning and Infrastructure (now DP&E) to revise and update the mapping of SNV, prior to the commencement of a comprehensive review of the LEP.

As part of the exhibition package currently publicly available to support the proposed SNV amendment to the LEP, a fact sheet states "The Lord Howe Island Board will soon be undertaking a review of the LHI Local Environmental Plan (LEP)."

A comprehensive review might include the following steps:



**Figure 2 Comprehensive Review Steps**

- A Visioning / ideas process with the community. The island community and other stakeholders would be asked to comment on key issues, identify others matters of importance or concern to them, and seek views or suggested policy options to address them.
- The large range of issues already identified (summarised briefly in Section 4.2 above) would provide a starting point, but limit, discussion.
- Evidence base. Studies/information/evidence. Robust and credible evidence for controls. We have identified a number of studies which may be required but this will require a more detailed gap analysis:
  - » Agriculture
  - » Tourism
  - » Housing availability/demand assessment
  - » Recreation
- Draft plans. Active input to alternative approaches. Workshops with community?
- Preparation of draft LEP and draft DCP
- Formal exhibition process. (which may be longer than the prescribed minimum and might involve facilitated explanation sessions)
- Review. Opportunity to address additional matters arising from public exhibition. Additional evidence

sought if required. Re-exhibition or community consultation if required.

- Drafting of legal instrument
- Making of the plan. Community information to implement.

The advantages of this approach include:

- It is a community driven process. This would be consistent with the Gleeson report recommendation to involve the community in decision making. It is also consistent with the NSW government direction of involving community at front end (strategic planning) stage of the planning process.
- It enables broad review to develop a plan that really caters for LHI's future. This is consistent with the intent of review of local plan provisions every 5 years.

The limitations of the comprehensive review approach are:

- The risk of unknown issues being raised. These can though be identified and set aside to be addressed through separate or more appropriate processes if needed.
- Additional resources required to undertake background studies and to manage community consultation where issues are more detailed and controversial.

## 5.2 Limited Amendments



**Figure 3 Limited Update Review Steps**

A defined scope amendment to the current LEP would involve the preparation of an issues report identifying specific, limited proposed changes to the LEP. The issues might be limited to:

- Updated definitions of terms
- New provisions to permit reuse of buildings for housing
- New provisions to allow subdivision of attached dwellings in certain circumstances
- Additions to exempt development schedule
- Spot-rezonings

Based largely on known issues and already available evidence, this approach would allow the preparation of a draft plan for exhibition at the outset of the community consultation phase.

The advantages of this approach include:

- The potential for a condensed timeframe. As the expedited amendment to the LEP 2010 SNV mapping has shown, issue specific amendments these can be separated and made expeditiously.

The limitations of this approach include:

- Limited opportunity for additional matters raised through stakeholder consultation to be addressed
- Not a community driven approach, rather a top down authority driven approach. This may be considered inconsistent with the recommendation of the Gleeson report, and largely presupposes all issues and options are known in advance.
- Will delay rather than replace the need for a comprehensive review

### 5.3 A two -staged approach

The recommended and most pragmatic approach is a two stage review process, with both the targeted and comprehensive approaches commenced simultaneously but run on differing timelines.

This approach would lead with the known and issue specific list of amendments, excluding more controversial issues such as restrictions on the number of dwellings and tourist accommodation to be dealt with through a separate more comprehensive review process.

#### 5.3.1 The First Stage: Minor anomalies and targeted amendments

Work can commence almost immediately on identifying specific known issues and preparing an Issues and Options paper to put to the community in response to issues such as those identified at section 5.2. Public engagement should be targeted to address these key issues. It should be made clear that broader consideration will be given to other matters as part of the second stage of the review, so no issues raised will be discounted.

DP&E has indicated they are very willing to work closely with the Board to facilitate early agency consultation, discuss ideas and solutions and assist in sensitively utilising relevant aspects of the LEP template.

#### 5.3.2 The Second Stage: The bigger issues

A number of more controversial and complicated matters are identified in Section 5.1. To deal adequately with these issues, higher resourcing and longer timeframes will be required.

- Clause 26 places a limit of the number of dwellings to be constructed on the Island. During the recent consultation undertaken as part of the Land Allocation & Tenure Review, a clear majority of respondents (29 out of 37) rejected the option of increasing the dwelling quota. Many said that the Island had already reached its capacity and that, given its size and unique quality, demand for housing would always exceed the supply. Only 2 respondents suggested that the quota should be abandoned and applications for the erection of new dwellings assessed on a case by case basis. A number mentioned that, on a poll of residents during the consultation process leading to the LEP, a substantial majority supported much lower quotas than the one adopted. The current LEP limits the number of dwellings until October 2025. It is recommended that any decision to review the dwelling quota be deferred until at least 2020, and should be based on a sustainability review.
- Clause 22(4) restricts the total number of persons to be permitted in all forms of tourist accommodation to no more than 400 persons (excluding those under the age of 5 years) at any time. Any proposed increase in this number would require a detailed study of the sustainability of the Island including possible impacts on the environment, economy and social matters.

It is recognised that this will require longer timeframes and additional resources which are currently not available to the Board. It is recommended that the Board commence background studies concurrent with the targeted review of the LEP. When stage 1 of the review is completed, the planning proposal for stage 2 could be ready to submit to DP&E.

## 6.0 Stakeholders/Community Engagement

A Gateway Determination would specify the community consultation to be undertaken, in accordance with Section 56 (2)(c) of the EP&A Act 1979 as part of the LEP amendment process.

This will generally be limited to a requirement for the bare essentials: the placing of a public notice in the local newspaper, the LHI Board website and on the DP&E website, and a 28 day public exhibition of the proposed plan and any supporting information.

For LHI a more active engagement with the community would be valuable:

- Early involvement in establishing the scope of the study – issues identification, use of a survey/questionnaire to scope issues, vision for the island's future, identification of planning impediments
- Feedback on issues and options paper(s) explain the planning system, the challenges and opportunities facing the island, alternative approaches available to respond to them.
- Exhibition of all background evidence – studies, reports, surveys etc
- Potentially a longer exhibition period for the draft planning instrument to allow genuine consideration and response time for the community.
- Feedback to the community during and following review of the issues raised throughout this process

### 6.1.1 Islanders

The Island is home for around 350 people, many of whom have roots going back to its early settlement in the 19th century. The people of LHI are deeply connected to the island and its history. They play an integral part in the way in which the island is managed. The LHI community will have an important role in contributing to and informing the LEP review process to ensure its adequacy, appropriateness and success.

The LHI community are likely to want to be consulted extensively in the preparation of the draft plan and not only to have the draft plan made available for comment.

The consultation process will need to acknowledge that each stakeholder group has particular needs and different communication methods will be necessary for the various phases of the program. The Board is currently preparing a general Community Consultation Strategy which will guide this process.

### 6.1.2 NSW and Federal agencies

Early engagement with relevant federal and state agencies will ensure statutory requirements and best practice advice is able to be addressed early.

**Table 3: Agency consultation**

Agency	Branch	Issues
Department of Planning & Environment	North Coast Region	Process, format, regional issues, mapping
	Legal	Liaison with PC at plan drafting
Department of Premier and Cabinet	Urban Productivity Branch	Consistency with residential entitlement limitations
Office of Environment & Heritage	Heritage Division	World Heritage status State and Local Heritage
	Biodiversity	Significant Native Vegetation



Agency	Branch	Issues
	Division	
<b>Department of Environment</b>	World Heritage and Marine Division	World Heritage status
<b>Department of Primary Industries</b>	Agriculture	Identification of productive agriculture and methods to protect
	Fisheries	Fish habitat, resources Marine Parks
<b>Destination NSW (Tourism)</b>	LHI Tourism Association	Encouraging and supporting tourism opportunities

## 7.0 Project Timeline

### 7.1 Key Components

The key steps required are similar for the delivery of either of two forms of LEP for Lord Howe Island: a comprehensive replacement plan, or a targeted limited scope amending plan. The Comprehensive review approach will however necessitate a longer delivery timeframe.

Anticipated timing for the major milestones for the recommended Two Stage Approach is summarised below. Detailed GANNT charts will be prepared at the outset of the LEP Review.

**Table 4: Indicative Timing for Key Steps**

Indicative Timing		Stage 1	Stage 2
2015	September	Board Agreement to proceed	Board Agreement to proceed
	October	Scope project Engage Planning/Community Engagement Consultant Background Analysis of Issues and Options	Scope Project
	November	Board review of Issues Report	Board review of scope issues
2016	January		
	February	Community Visioning Exercise	Community Visioning Exercise
	March	Feedback to Board Prepare Draft plan/plain English version	Board agrees to scope of review
	April		Engage technical consultants for studies as needed
	June	Planning Proposal/ Gateway determination	
	September	Formal Public Exhibition	
	October	Review by DP&E	
	November	Board agrees to Proceed	Board considers draft consultant reports
	December	Legal Drafting	
2017	March	Minster approval/Making of the plan	Planning Proposal/Gateway Determination
	June		Formal Public Exhibition
	July		Review by DP&E
	August		Board agrees to Proceed
	September		Legal Drafting
	December		Minster approval/Making of the plan
		<b>Indicative Total Timeframe 18 months</b>	<b>Indicative Total Timeframe 2+</b>

## 8.0 Funding

There are a number of funding programs run by state government agencies which the Board may be able to source some resourcing from to support the LEP review process. The first two below are the most likely sources.

### 8.1 Planning Reform Fund

The aim of DP&E's Planning Reform Fund is to support initiatives to streamline the planning process, making it more strategic, efficient and transparent while enhancing community involvement. In particular, it supports local councils to deliver key strategic planning projects for their local area.

From time to time DP&E seek expressions of interest from Councils for access to this fund. It is recommended that the Board maintain regular contact with DP&E and submit an application under this program.

### 8.2 Innovation Fund

In June 2015 the NSW Government through the Department of Local Government (DLG) made available a \$4 million Innovation Fund to develop new solutions for small rural communities. To help small regional and rural councils to better serve their communities, one-off grants are available to councils to develop new ideas and new ways of working. This is in recognition that these councils face unique issues and challenges in sustaining their communities and maintaining local services. The initiative provides one-off grants of up to \$150,000 for individual councils.

Although there are specific criteria for this fund, the Office of Local Government is currently working closely with councils to implement an integrated planning and reporting framework. It is recommended that the Board liaise with DLG to seek access to this fund.

### 8.3 Regional Development Grants

The Department of Infrastructure and Regional development supports committees across NSW with the aim of driving regional economic development and unlocking the economic potential of the regions. The Mid-North Coast Regional Development Committee (Port Macquarie) may be able to assist the Board.

### 8.4 NSW Heritage Grants program

NSW Heritage Grant funding aims to recognise and protect the state's most significant heritage places and value to ensure future generations can enjoy them. The most relevant funding stream is Local Government Grants - is available for NSW local councils only. There are three programs under this stream: Local heritage places grants, Local government heritage advisors and Local government heritage planning studies.

### 8.5 Tourism Research Australia: Destination Visitor Survey Program (DVS)

Tourism Research Australia provides research information that supports improved decision making, marketing and tourism industry performance for the Australian community. The aim of the DVS Program is to provide the opportunity for regional tourism destinations to undertake research surveys specific to their area and assist informed decision making to support growth of sustainable tourism products. The research conducted within the DVS program is split into two streams: Visitor Profile and Satisfaction Program and Strategic Regional Research Program.

# LORD HOWE ISLAND BOARD

## Business Paper

### OPEN SESSION

#### ITEM

Extension of the term of Special Leases

#### RECOMMENDATION

- The Board seek the Minister's approval for the extension of the Specials leases listed in the table below for a period of two years from the 1 January 2021 until 31 December 2023 subject to the existing conditions of the leases.

Lease No	Holder	Portions	Chargeable Area
<b>2011.01</b>	DIGNAM KATHERINE	220	80215
<b>2011.02</b>	FENTON EK	123	65037
<b>2011.03</b>	FENTON SJ	113 & 115	2475
<b>2012.01</b>	ROURKE EM & ROURKE D	234	77157
<b>2011.10</b>	RETMOCK WP	40	1460
<b>2011.11</b>	SHICK RJ	125	4500
<b>2011.12</b>	THOMPSON BRUCE	160	*0
<b>2011.13</b>	THOMPSON B D & R	214	*0
<b>2011.08</b>	WILSON GC	101	14910
<b>2011.15</b>	WILSON KB	65	10120
<b>2011.16</b>	WILSON KB	72	27600
<b>2011.17</b>	WILSON GC	268	37440
<b>2011.18</b>	WILSON GC	289 & 290	7810
<b>2011.20</b>	WILSON GC	338	15370
<b>2011.21</b>	YOUNG BRC	66	46330
<b>2011.22</b>	YOUNG BRC	276	30870
<b>2021.01</b>	TURNER THERESE	7	3200
<b>2021.02</b>	JEREMY ROBERT	32	8827

*Table 1 List of Special Lease holders on Lord Howe Island \*Note: Base fee charged only – all land is zoned nature conservation\**

- The Board administration to take the necessary steps to facilitate the creation of a new Special Lease to Gower Wilson over Lots 291 and 292 DP48692. The term of this lease is to be for two years from 1 January 2021 until 31 December 2023

## **BACKGROUND**

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 (the Act). Pursuant to Section 22 of the Act, the Minister may grant Special Leases for agriculture or other uses to perpetual leaseholders on the recommendation of the Board. Attachment A – Special Lease Information Sheet provides an overview of Special Leases on Lord Howe Island.

In October 2005, a detailed land assessment of Special Leases on Lord Howe Island was conducted by the Department of Lands, in accordance with the standards established under the NSW Crown Lands Act 1989.

In November 2005, expressions of interest were invited from members of the community for the use of vacant crown land for grazing, agricultural and associated activities, under Special Lease.

On 1 January 2006, on the recommendation of the Board, the NSW Minister for the Environment approved the granting of 18 Special Leases. Since this date, a number of Special Leases have been transferred to other individuals or surrendered.

Each of the leases was for a period of 5 years, with an option to renew for a further 5 years, subject to the management and use of the land in accordance with the Property Management Plan (PMP) for the land and the Special Lease conditions.

In 2012, the Minister approved an extension of the term of all Special Leases from 1 January 2011 for the full five year period (until 31 December 2015), subject to compliance with the management and use of the land in accordance with the PMP and conditions of the Special Lease.

In March 2014 the Government announced a review of land allocation and tenure arrangements for Lord Howe Island and appointed the Hon Ken Handley AO QC to conduct the review. Following consultation with the Island community and other stakeholders, a discussion paper seeking public comment was released in August 2014. Public submissions closed in October 2014. The final report on the Handley review was completed in February 2015. The final Government response to the Handley report was released in February 2017.

During the course of the Handley review and report, the term of Special Leases became due to expire. In order to forestall the expiry the Minister, on recommendation of the Board, approved the extension of term of all Special Leases for an additional two years. This extension concluded on 31 December 2017.

At the September 2017 Board meeting the Board resolved to extend all Special Leases a further two years. These leases expire on the 31<sup>st</sup> December 2019.

At the September 2019 Board meeting the Board resolved to extend all Special Leases a further two years. The leases expire on 31 December 2021.

## **CURRENT POSITION**

Currently there are 18 Special Leases on the Island. Table 1 below shows the current lease holders:

Lease No	Holder	Portions	Chargeable Area	Comments
2011.01	DIGNAM KATHERINE	220	80215	
2011.02	FENTON EK	123	65037	
2011.03	FENTON SJ	113 & 115	2475	
2012.01	ROURKE EM & ROURKE D	234	77157	
2011.10	RETMOCK WP	40	1460	
2011.11	SHICK RJ	125	4500	
2011.12	THOMPSON BRUCE	160	*0	
2011.13	THOMPSON B D & R	214	*0	
2011.08	WILSON GC	101	14910	Previously not renewed due to the Hybrid Renewable Energy Project (HREP) requiring this land, however nor was the lease formally cancelled. Subsequent modifications to the HREP project resulted in this portion no longer being required for HREP.
2011.15	WILSON KB	65	10120	
2011.16	WILSON KB	72	27600	
2011.17	WILSON GC	268	37440	
2011.18	WILSON GC	289 & 290	7810	
2011.20	WILSON GC	338	15370	
2011.21	YOUNG BRC	66	46330	
2011.22	YOUNG BRC	276	30870	
2021.01	TURNER THERESE	7	3200	
2021.02	JEREMY ROBERT	32	8827	

Table 2 Existing Leases proposed to be remade for a period of two years

This report recommends that these leases be renewed for a further two years.

It is also proposed that a new Special Lease (table 3) be created over Portions 291 and 292 DP48692 currently the site of a private dairy operated by Gower Wilson. These portions were originally part of a larger Special Lease 2011.05 previously held by Gower Wilson that was cancelled to enable construction of infrastructure associated with the Hybrid Renewable Energy Project (HREP).

Lease No	Holder	Portions	Chargeable Area	Comments
TBA	WILSON GC	291 and 292*	TBA	Compensation has been paid for the surrender of the original lease. It is proposed to issue a new lease over Lot 291 and 292.

Table 3 New Lease proposed to be created

Alternative forms of land tenure will be investigated and negotiated for agricultural access to the remainder of lot 230 currently part occupied by Air Services and the HREP infrastructure. As part of this process the registration of an outstanding subdivision approval for this lease will need to be finalised. Input will be required from Crown Lands as the approved subdivision includes the closure of a road.

### Renewal process

All Special Leases are due to expire on the 31<sup>st</sup> December 2021, with the lease holder having no legal right to renew the Lease.

The Handley Review, and the final Government response contain recommendations which have direct implications for Special Leases if adopted. Table 2 summarises the Handley’s recommendation and the Government’s response:

<b>Handley Recommendation</b>	<b>Government Response</b>
<b>Special Leases should be granted for 20 year terms with strong covenants to encourage new investment and ensure that the land is fully and properly used.</b>	The Lord Howe Island Act 1953 (‘The Act’) will be amended to increase the Special Lease term to 20 years. The addition of covenants can be done without legislative change. Applicants seeking renewal of their expiring Special Leases or initial grants will be required to lodge draft management plans for the use of the land for designated pastoral, agricultural or horticultural purposes. If successful in their application for a Special Lease, fully developed management plans will be requested and Lessees will be obliged by strict covenants (attached to the Lease) to make the land productive. Provision will also be made in the Special Lease for a review of the lessee’s performance against the conditions of the lease every five years during the term.

*Table 4 Special Leases - Handley Recommendation and Government Response*

Board staff are currently working with DPIE staff to pursue the necessary legislative changes through parliament. Despite previous advice to the Board that the amendments to the Act presented to parliament at the November 2019 parliamentary sitting this did not happen. At the time of drafting of this paper no timeline for submission to parliament had been identified.

The government has also recommended that in order to grant lease holders an extended Special Lease term that they be required to develop detailed management plans and be ‘obliged by strict covenants’.

The negotiation of these management plans and drafting up measurable and legally enforceable covenants will be resource intensive, possibly requiring legal advice for each contract. In order to assist with the development of the covenants and to guide management plans, Board staff will develop a draft Special Lease policy for further consideration by the Board. The policy will consider the following elements:

- Consideration of the productive capacity and economic viability of agricultural use on the land;
- Expression of interest and Special Lease allocation process;
- Template and guidelines for the development of property management plans, including the development of clear metrics to monitor ongoing compliance with property management plans;
- Community consultation of the draft policy.

### **Next Steps**

In the immediate short term the proposal is to extend the term of the leases for a further two years as per s22(2) of the LHI Act. Section 22 of the LHI Act states:

*(2) The term of a lease under this section may be fixed for any period not exceeding ten years, but such term may, on the recommendation of the Board, be extended by the Minister for such period as the Board may recommend.*

The procedure to extend the leases will follow the same procedure as with previous extensions. That is lease holders being asked to submit a brief plan of management to

demonstrate the proposed agricultural use of the land. Extending the leases for two years will give the Board time to prepare a procedure in accordance with the government recommendation of the Handley Review and for the Act to be amended allowing new leases granted in 2024 to be granted for a term of 20 years.

### **Resource implications/risks**

Currently the Board the Environment and Community Services team has a significant workload with the rodent response, biosecurity, and existing backlog of LEP, land use and administration matters. Whilst every effort will be made to undertake the above actions there is a high risk that the above tasks will not be able to be completed in the two year timeframe at existing resource levels. Further once the new protocols are developed including enforceable covenants, it is likely that additional Board resources to monitor and enforce in the medium and long term will be required.

### **Conclusion**

Given that the changes to the Act are yet to be made and the resources required to implement the government recommendation that lessees will be obliged by strict covenants to make the land productive, it is recommended that an interim two year extension of the leases be sought from the Minister. This will allow for sufficient time to develop and adopt a Special Lease policy and time to complete the process of advertising and negotiating management plans for each Special Lease.

### **RECOMMENDATION**

1. The Board seek the Minister's approval for the extension of the Specials leases listed in the table below for a period of two years from the 1 January 2021 until 31 December 2023 subject to the existing conditions of the leases.

Lease No	Holder	Portions	Chargeable Area
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<b>2021.01</b>	TURNER THERESE	7	3200
<b>2021.02</b>	JEREMY ROBERT	32	8827



*Table 5 List of Special Lease holders on Lord Howe Island \*Note: Base fee charged only – all land is zoned nature conservation\**

2. The Board administration to take the necessary steps to facilitate the creation of a new Special Lease to Gower Wilson over Lots 291 and 292 DP48692. The term of this lease is to be for two years from 1 January 2021 until 31 December 2023

**Prepared:** Justin Sauvage Manager Environment and Community Services.

**Endorsed:** Angie Stringer A/Chief Executive Officer, Lord Howe Island Board

**Attachments:**

Attachment A: Special Lease Information Sheet – September 2021 - Open



# LORD HOWE ISLAND BOARD

## PLAIN LANGUAGE GUIDE TO THE LORD HOWE ISLAND ACT

### Information Sheet 6: Special Leases on Lord Howe Island

#### What are Special Leases?

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.

Instead, the Act provides for Perpetual Leases for Islanders to reside on, and Special Leases for other uses. While Special Leases may be granted for a wide range of purposes, they have almost exclusively been granted for agricultural purposes such as cultivation and grazing. The zoning of land under the Lord Howe Island Local Environmental Plan 2010 would play a significant role in determining where, and for what purpose, a Special Lease can be issued.

The issuing, transfer or subleasing of Special Leases is strictly controlled and constrained by the Act. These provisions date back to 1953 and were designed to protect the interests of Islanders and to prevent speculation and trading in island land.

#### Is there a Register of Special Leases?

Yes. The Lord Howe Island Board keeps a register containing particulars of leases granted under the Act. It may be inspected by the public at the Island office of the Board.

#### Who can be granted a new special lease?

New Special Leases can only be granted to a person who holds a Perpetual Lease on the Island. For more information about Perpetual Leases, see the fact sheet entitled "Perpetual Leases". You do not need to be an Islander to be granted a Special Lease, but you do need to hold a Perpetual Lease.

#### What is the term of a Special Lease?

A Special Lease may be granted for up to 10 years and may be extended with Ministerial approval upon the recommendation of the Board.

#### Can a Special Lease be cancelled or not renewed?

Yes, in specific circumstances which are strictly controlled by the Act. For example, if the land is required for home sites or for public purposes during the term of the lease, the Minister may withdraw from the lease on the recommendation of the Board.

A Special Lease may not be renewed if the land the Minister, on the recommendation of the Board, determines that it is required for housing or another public purpose.

Compensation may be claimed by the Special leaseholder in these circumstances. The amount of compensation is determined by the Valuer-General, subject to any regulations under the Act, and is subject to appeal in the Land and Environment Court.

The Act states that compensation may be paid for the loss of the land and the loss of the improvement on the land.

Compensation for the loss of the land is calculated based on the unexpired period of the lease. If the unexpired portion of the lease is less than 5 years, then the unexpired portion of the lease is to be calculated at 5 years.

In other circumstances, a Special Lease could be cancelled if, for example, the holder does not pay the rent or fails to comply with any condition applying to the lease.

If the holder of a perpetual lease forfeits that lease, any Special Lease held by that person is automatically forfeited.

In this circumstance, the Minister may waive or reverse forfeiture where it appears to the Minister, after a report from the Board, that there are good and sufficient reasons to do so. The Minister may waive or reverse the forfeiture absolutely or on conditions.

The holder of a Special Lease may surrender the whole or part of the land in the lease. The holder must complete a surrender form available from the Board's Island office and the surrender will take effect on the day of its acceptance by the Minister on the recommendation of the Board.

### **What is the Rent for a Special Lease?**

The annual rent for a Perpetual Lease is payable in advance. The amount is determined from time to time by the Board in accordance with the *Lord Howe Island Regulation 2014*. The Regulation imposes a maximum annual rent that the Board may determine, based on a flat dollar amount plus an amount per square metre of land comprised in lease. Generally, the Board may make a new determination of the annual rental every three or more years. The maximum amounts (both the fixed amounts and the amounts per square metre of land) are increased on 1 September each year in accordance with the Consumer Price Index.

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#### **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 7: Permissive Occupancies on Lord Howe Island

<b>Board Meeting:</b> September 2021	<b>Agenda Number:</b> 13 (iii)	<b>Record Number:</b> ED21/6393
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# LORD HOWE ISLAND BOARD

## Business Paper

### OPEN SESSION

#### **ITEM**

Handley Review – Review of Compliance with Residency Condition of Perpetual Leases

#### **RECOMMENDATION**

It is recommended that the Board note a review has been undertaken.

#### **BACKGROUND**

Recommendation 2 of the final *Handley Review of Land Allocation on Lord Howe Island* (“the Handley Review”) stated that:

*“Properly police and enforce the residency condition in perpetual leases, with forfeiture as a last resort.”*

This recommendation was supported by Government with the following comment:

*Guidelines will be developed to support the Board in:*

- > assessing applications for suspension in residency condition*
- > monitoring habitual residence of leaseholders*
- > enforcing the residency requirements in the case of ‘joint tenants’ and ‘tenants in common’ or situations where there are multiple dwellings on an allotment.*

A review of residency status of all lessees was undertaken in late 2017 by the administration with advice from local Board members.

#### **COMMENT**

The policing of residency on lease requires the Board to prove in the positive that a resident is not residing on their lease. This makes investigations into residency status resource intensive and challenging.

The Board administration seeks to investigate all potential non-compliance with lease matters. In order to manage limited Board resources investigations into non-compliance are prioritised according to the degree of non-compliance. For example in the two scenarios:

1. A lease that is not being occupied by its lease holder and is otherwise vacant
2. A lease that is not being occupied by its lease holder, but is being occupied by an Islander.

Both scenarios are in breach of the Lord Howe Island Act, however scenario two can be remedied by way of a sublease arrangement that would be permissible under the Act. While the Board would intend to investigate and pursue compliance for both scenarios, scenarios where there is no obvious administrative solution will have a higher priority than scenario two.

There are currently nine investigations underway and one investigation has been resolved since the April 2021 meeting. Actions undertaken since the last Board meeting include four follow up letters sent as part of ongoing investigations into potential breaches of residency on lease.

**Prepared:** Justin Sauvage, Manager Environment Community Development

**Endorsed:** Angie Stringer, Acting Chief Executive Officer

# **LORD HOWE ISLAND BOARD**

## **Business Paper**

### **OPEN SESSION**

#### **ITEM**

Surrender of Perpetual Lease 1954.06 and the creation of two new Perpetual leases over Lot 1 and Lot 2 DP1273017 respectively.

#### **RECOMMENDATION**

1. The Board recommend to the Minister to accept transfer by way of gift of Lot 1 in DP1273017 in Perpetual Lease 1954.06 from Larry William Wilson and Elizabeth Wilson to Margaret Devine and Grant Steven Devine as equal shares Tenants in Common.
2. The Board recommend to the Minister to accept application to surrender Perpetual Lease 1954.06 as requested by the current leaseholders Larry William Wilson and Elizabeth Wilson.
3. The Board recommend to the Minister to grant a lease in perpetuity for the purpose of a residence over Lot 1 DP1273017 to Margaret Devine and Grant Steven Devine as equal shares Tenants in Common.
4. The Board recommend to the Minister to grant a lease in perpetuity for the purpose of a residence over Lot 2 of DP1273017 to Larry William Wilson and Elizabeth Wilson as Joint Tenants.
5. Prior to the submission of the above recommendations to the Minister the prospective lease holders must provide evidence to the satisfaction of the Board Administration of a letter of agreement between Lot 1 and Lot 2 of DP1273017 detailing obligations and liabilities for the maintenance of the joint waste water and treatment system.

#### **BACKGROUND**

Larry William Wilson and Elizabeth Wilson currently hold Perpetual Lease 1954.06. This Perpetual Lease consists of two newly subdivided Lots identified as Lot 1 and Lot 2 in DP1273017. The recently registered subdivision of Lot 10 and Lot 11 is included in Attachment A.

#### **CURRENT POSITION**

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 (the Act). Pursuant to section 21 of the Act the Minister may lease vacant Crown lands (of 2 hectares or less) in perpetuity for the purpose of residence to an Islander (as defined in section 3 of the Act).

Section 23 of the Act prescribes the form and manner by which the whole or part of a perpetual lease may be transferred. Approval to transfer a lease to an Islander requires the approval of the Minister (section 23(3)), made on the recommendation of the Board.

Section 23(4B) of the Act governs the transfer of part only of the land comprised in an original lease, where the original lease was a lease under section 21 of the Act and the residue of the land is retained by the transferor. In these circumstances, separate perpetual leases are to be issued in respect of the part transferred and the residue of the land retained, and the original lease shall be delivered up for cancellation.

Should the Minister approve the transfer, in accordance with the provisions of section 23(4B) of the Act separate perpetual leases are to be issued in respect of the part transferred and the residue of the land retained, and the original lease (1954.06) must be delivered up for cancellation.

Following the registration of the subdivision as evidenced in DP1273017 are seeking to undertake the following steps in sequential order:

- Transfer Lot 1 of Perpetual Lease 1954.06 in DP1273017 by way of gift to Margaret Devine and Grant Steven Devine as equal shares Tenants in Common.
- Surrender Perpetual Lease 1954.06 in order to allow for the creation of two new Perpetual Leases over the subdivided portions of land.
- The creation of a new Perpetual Lease for the purpose of a residence over Lot 1 of DP1273017 issued to Margaret Devine and Grant Steven Devine as equal shares Tenants in Common.
- The creation of a new Perpetual Lease for the purpose of a residence over Lot 2 of DP1273017 issued to Larry William Wilson and Elizabeth Wilson as Joint Tenants.

The proposed process is consistent with the relevant Lord Howe Island Act sections and the Lord Howe Island Transfer of Perpetual Lease Policy. Specifically:

- Larry William Wilson, Elizabeth Wilson, Margaret Devine and Grant Steven Devine satisfy the definition as an Islander under the Act
- The minimum Lot sizes for a perpetual lease are maintained in compliance with the LHI LEP.
- Larry William Wilson and Elizabeth Wilson do not hold a second lease and already currently reside on the land that will comprise their new lease and will therefore satisfy the requirement to reside on their respective perpetual leases.
- Margaret Devine and Grant Steven Devine do not hold a second lease and already currently reside on the land that will comprise their new lease and will therefore satisfy the requirement to reside on their perpetual leases.

## **RECOMMENDATION**

1. The Board recommend to the Minister to accept transfer by way of gift of Lot 1 in DP1273017 in Perpetual Lease 1954.06 from Larry William Wilson and Elizabeth Wilson to Margaret Devine and Grant Steven Devine as equal shares Tenants in Common.
2. The Board recommend to the Minister to accept application to surrender Perpetual Lease 1954.06 as requested by the current leaseholders Larry William Wilson and Elizabeth Wilson.
3. The Board recommend to the Minister to grant a lease in perpetuity for the purpose of a residence over Lot 1 DP1273017 to Margaret Devine and Grant Steven Devine as equal shares Tenants in Common.

4. The Board recommend to the Minister to grant a lease in perpetuity for the purpose of a residence over Lot 2 of DP1273017 to Larry William Wilson and Elizabeth Wilson as Joint Tenants.
5. Prior to the submission of the above recommendations to the Minister the prospective lease holders must provide evidence to the satisfaction of the Board Administration of a letter of agreement between Lot 1 and Lot 2 of DP1273017 detailing obligations and liabilities for the maintenance of the joint waste water and treatment system.

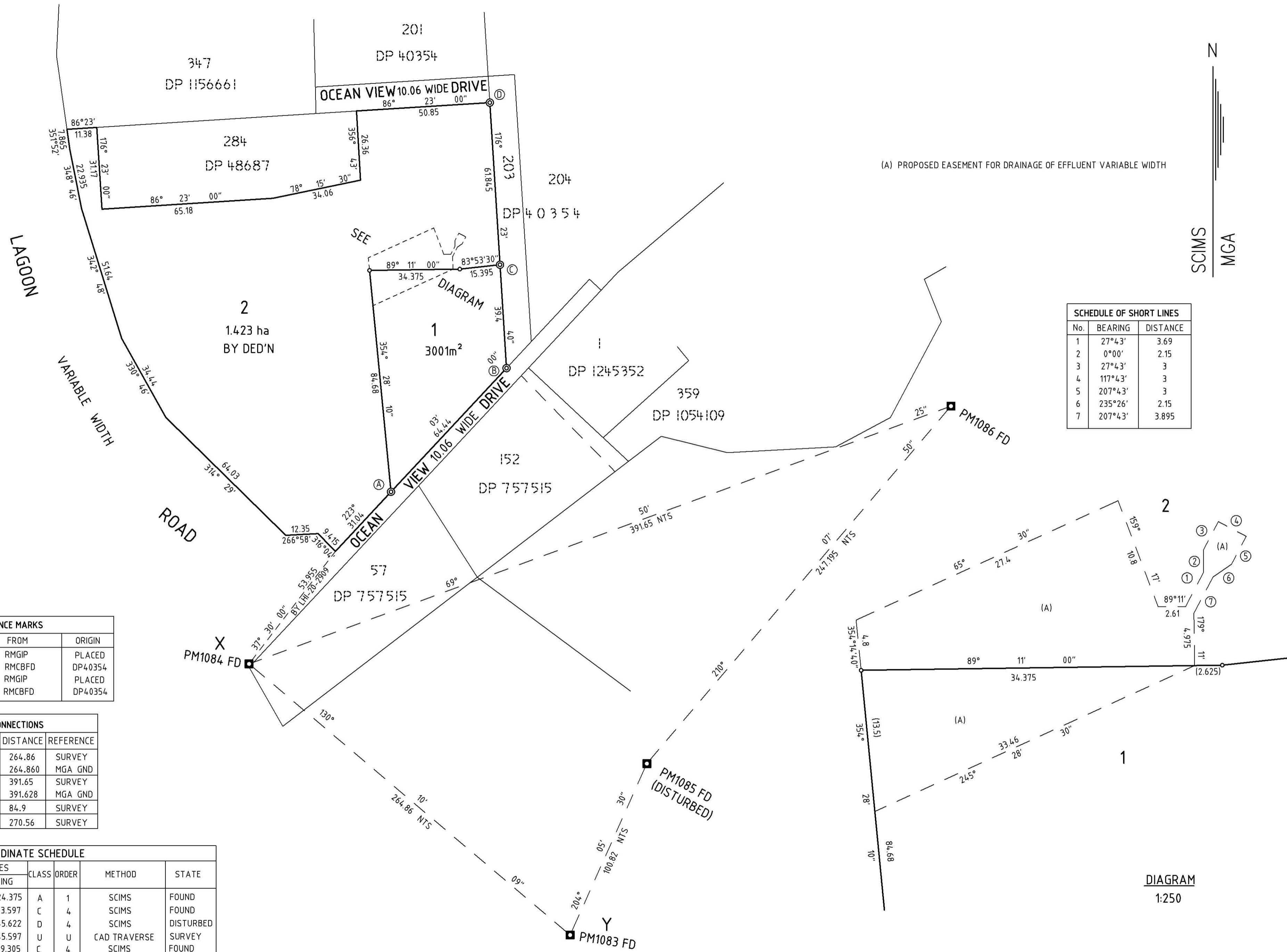
**Prepared:** Lynda Shick Administration Officer Environment and Community Services.

**Endorsed:** Angie Stringer A/Chief Executive Officer

**Attachments:**

Attachment A: Registered subdivision plan DP1273017





(A) PROPOSED EASEMENT FOR DRAINAGE OF EFFLUENT VARIABLE WIDTH


SCHEDULE OF SHORT LINES		
No.	BEARING	DISTANCE
1	27°43'	3.69
2	0°00'	2.15
3	27°43'	3
4	117°43'	3
5	207°43'	3
6	235°26'	2.15
7	207°43'	3.895

SCHEDULE OF REFERENCE MARKS				
CNR	BEARING	DISTANCE	FROM	ORIGIN
A	320°05'	0.585	RMGIP	PLACED
B	131°29'	0.22	RMCBFD	DP4.0354
C	322°53'	0.53	RMGIP	PLACED
D	357°36'	0.99	RMCBFD	DP4.0354

SCHEDULE OF PERMANENT MARK CONNECTIONS				
MARK	BEARING	DISTANCE	REFERENCE	
PM 1084 - PM 1083	130°10'09"	264.86	SURVEY	
	130°10'09"	264.860	MGA GND	
PM 1084 - PM 1086	69°50'25"	391.65	SURVEY	
	69°50'17"	391.628	MGA GND	
PM 1084 - (A)	39°31'4.0"	84.9	SURVEY	
PM 1086 - (B)	265°15'00"	270.56	SURVEY	

CO-ORDINATE SCHEDULE						
MARK	M.G.A. CO-ORDINATES		CLASS	ORDER	METHOD	STATE
	EASTING	NORTHING				
PM 1084	505 588.239	6 512 424.375	A	1	SCIMS	FOUND
PM 1083	505 790.548	6 512 253.597	C	4	SCIMS	FOUND
PM 1085	505 831.724	6 512 345.622	D	4	SCIMS	DISTURBED
PM 1086	505 831.685	6 512 345.597	U	U	CAD TRAVERSE	SURVEY
	505 955.719	6 512 559.305	C	4	SCIMS	FOUND

DATE OF SCIMS COORDINATES: 29 OCTOBER 2019 MGA ZONE:57 MGA DATUM: GDA 94  
COMBINED SCALE FACTOR: 0.999594

Surveyor: MARTIN PUNDYK Date of Survey: 31 OCTOBER 2019 Surveyor's Ref: 74.66-41	PLAN OF SUBDIVISION OF LOT 285 DP 48687	LGA: UNINCORPORATED Locality: LORD HOWE ISLAND Reduction Ratio: 1:1000 Lengths are in metres.	Registered  20.4.2021	<b>DP1273017</b>
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Req: R708776 / Doc: DP 1273017 P / Rev: 20-Apr-2021 / NSW IRS / Pgs: ALL / Pat: 21-Apr-2021 03:30 / Seq: 1 of 3  
 © Office of the Registrar-General / Src: PORTAL / Ref: lrs: eplan-eplan FOR SURVEYORS USE ONLY



# **LORD HOWE ISLAND BOARD**

## **Business Paper**

### **OPEN SESSION**

#### **ITEM**

Surrender of Perpetual Lease 2016.02 and the creation of two new Perpetual leases over:-

- Lot 11 of DP1274979 and Lot 1 of DP1174920; and
- Lot 10 of DP1274979

#### **RECOMMENDATION**

1. The Board recommend to the Minister to accept transfer by way of sale of Lot 10 in DP1274979 in Perpetual Lease 2016.02 from Lisa Makiiti and Rodney James Oxley to Kylie Owens.
2. The Board recommend to the Minister to accept application to surrender Perpetual Lease 2016.02 as requested by the current leaseholders Lisa Makiiti and Rodney James Oxley.
3. The Board recommend to the Minister to grant a lease in perpetuity for the purpose of a residence over Lot 11 DP1274979 and Lot 1 of DP1174920 to Lisa Makiiti and Rodney James Oxley as Joint Tenants.
4. The Board recommend to the Minister to grant a lease in perpetuity for the purpose of a residence over Lot 10 of DP1274979 to Kylie Owens.
5. The Board grant to Kylie Owens a suspension to the condition residency on the grounds of Adverse Circumstances under section 21(7) of the Act over Lot 10 DP1274979 until the sublease to Ronald Arthur Matthew and Daphne Edith Matthews ceases.
6. Upon receipt of completed Form 5 the Board recommend to the Minister to grant the transfer by way of mortgage Lot 10 of DP1274979 from Kylie Owens to Westpac Banking Corporation.
7. Prior to the submission of the above recommendations to the Minister the prospective lease holders of must provide evidence to the satisfaction of the Board Administration of a letter of agreement between Lot 10 and Lot 11 of DP1274979 and Lot 1 of DP1174920 detailing obligations and liabilities for the maintenance of the joint waste water and treatment system.

#### **BACKGROUND**

Lisa Makiiti and Rodney James Oxley currently hold Perpetual Lease 2016.02. This Perpetual Lease consists of two newly subdivided Lots identified as Lot 10 and Lot 11 in DP1274979. Note that PL2016.02 also comprises Lot 1 of DP1174920. The recently registered subdivision of Lot 10 and Lot 11 is included in Attachment A.

Lot 10 of DP1274979 consists of the tourist accommodation known as Lagoon Landing and a two bedroom dwelling which is encumbered by an historical sublease to Ronald Arthur Matthews and Daphne Edith Matthews.

- *The sub-lessor has obtained all necessary consents under the Act to sub-lease to the Sub-Lessees that part of Portion 33 as is edged red on the plan annexed hereto and marked "A having an area of approximately 4,046 square metres (which land together with the two-bedroom dwelling house erected thereon are hereinafter called "the demised premises").*
- *This Lease shall be for a term deemed to have commenced on the 7<sup>th</sup> day of April 1982 and terminating on whichever shall first occur of the following:-*
  - (a) The date on which the Sub-Lessees cease to reside in the demised premises but if such cessation by the Sub-Lessees does not occur contemporaneously then such date shall be the date on which the last of them shall so cease to reside;*
  - (b) The date of death of the last surviving Sub-Lessee. The expression "reside shall have the meaning set out in Section 5 of the Crown lands Consolidation Act in force at the date of this lease.*

The sublease arrangement was approved by the Minister on 15 March 1982. The Minute Paper for the Executive Council, Minute No. 13 was approved by the Executive Council and the Governor on 31 March 1982.

A letter of approval has been obtained from the sublease holders supporting the proposed lease transfer to Kylie Owens.

### **CURRENT POSITION**

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 (the Act). Pursuant to section 21 of the Act the Minister may lease vacant Crown lands (of 2 hectares or less) in perpetuity for the purpose of residence to an Islander (as defined in section 3 of the Act).

Section 23 of the Act prescribes the form and manner by which the whole or part of a perpetual lease may be transferred. Approval to transfer a lease to an Islander requires the approval of the Minister (section 23(3)), made on the recommendation of the Board.

Section 23(4B) of the Act governs the transfer of part only of the land comprised in an original lease, where the original lease was a lease under section 21 of the Act and the residue of the land is retained by the transferor. In these circumstances, separate perpetual leases are to be issued in respect of the part transferred and the residue of the land retained, and the original lease shall be delivered up for cancellation.

Should the Minister approve the transfer, in accordance with the provisions of section 23(4B) of the Act separate perpetual leases are to be issued in respect of the part transferred and the residue of the land retained, and the original lease (2016.02) must be delivered up for cancellation.

Following the registration of the subdivision as evidenced in DP1274979 Lisa Makiiti, Rodney James Oxley and Kylie Owens are seeking to undertake the following steps in sequential order:

- Transfer Lot 10 of Perpetual Lease 2016.02 in DP1274979 by way of sale to Kylie Owens, which comprises of one dwelling and the business known as Lagoon Landing.

- Surrender Perpetual Lease 2016.02 in order to allow for the creation of two new Perpetual Leases over the subdivided portions of land.
- The creation of a new Perpetual Lease for the purpose of a residence over Lot 11 of DP1274979 and Lot 1 of DP1174920 issued to Lisa Makiiti and Rodney James Oxley as joint tenants.
- The creation of a new Perpetual Lease for the purpose of a residence over Lot 10 of DP1274979 issued to Kylie Owens as a sole tenant.
- Transfer of Lot 10 of DP1274979 by way of mortgage from Kylie Owens to Westpac Banking Corporation

This paper recommends that the Board grant a conditional suspension of residency to Kylie Owens on the grounds that adverse circumstances will prevent Kylie living on the lease as per s21(7) of the Act. Section 21(7) of the Act states:

(7) Subject to this subsection and subsections (7A) and (7B), a condition of residence on the lease shall attach thereto in perpetuity, and shall be performed by the holder or sublessee thereof for the time being, and residence shall commence within six months after the granting of the application or such further period as the Minister on the recommendation of the Board may approve. Where the holder or the owner (subject to mortgage) or sublessee of the lease has been or shall be prevented by sickness of himself or herself or family or other adverse circumstance from performing such condition, the Board may, upon application as prescribed, and on sufficient reason being shown, suspend such condition for such period and subject to such conditions as the Board may approve.

Lot 10 DP1274979 currently contains one dwelling and two tourist accommodation units. The dwelling is subleased to Ronald Arthur Matthews and Daphne Edith Matthews for the terms of the lives of the lessees. This sublet was approved by the Minister and Governor of NSW in 1982.

Under s21(7) of the Act it is open to the Board to make a determination that the leaseholder is unable to live on the lease due to an adverse circumstance. Adverse circumstance is not formally defined in the Act. The adopted Suspension of Condition of Residency on Perpetual Lease Policy provides the following guidance for interpreting “Adverse Circumstance”

“Adverse circumstances” would exist where a leaseholder is suffering serious personal and/or financial difficulties that preclude residence on the Island for an extended period. Again, the “adverse circumstances” may apply to a family member of a leaseholder requiring the leaseholder’s support and absence from the Island.

As there is only one dwelling on the lease that is subject to the above sublease it is open to the Board to determine it will represent a significant financial and emotional impost on the lessees and for the lessor (Kylie Owens) to negotiate an early exit to the sublease to enable Kylie to move into the dwelling.

Noting that the sublease expires when the lessees move or otherwise no longer reside on the lease it is recommended that the suspension of residency granted on the grounds of adverse circumstances only be in place until the sublease to Ronald and Daphne expire.

The proposed process is consistent with the relevant Lord Howe Island Act sections and the Lord Howe Island Transfer of Perpetual Lease Policy. Specifically:

- Lisa Makiiti, Rodney James Oxley and Kylie Owens satisfy the definition as an Islander under the Act
- The minimum Lot sizes for a perpetual lease are maintained in compliance with the LHI LEP.
- Lisa Makiiti, Rodney James Oxley do not hold a second lease and already currently reside on the land that will comprise their new lease and will therefore satisfy the requirement to reside on their respective perpetual leases.
- The value of the sale of contract is less than the Valuer General consideration for Lot 2 as per s23(1) of the Act.
- Kylie Owens does not hold a second lease and consent is sought to suspend the condition of residency over Lot 10 DP1274979 is sought, due to the encumbrance of an historical sub-lease agreement to Ronald Arthur Matthews and Daphne Edith Matthews.

### **RECOMMENDATION**

1. The Board recommend to the Minister to accept transfer by way of sale of Lot 10 in DP1274979 in Perpetual Lease 2016.02 from Lisa Makiiti and Rodney James Oxley to Kylie Owens.
2. The Board recommend to the Minister to accept application to surrender Perpetual Lease 2016.02 as requested by the current leaseholders Lisa Makiiti and Rodney James Oxley.
3. The Board recommend to the Minister to grant a lease in perpetuity for the purpose of a residence over Lot 11 DP1274979 and Lot 1 of DP1174920 to Lisa Makiiti and Rodney James Oxley as Joint Tenants.
4. The Board recommend to the Minister to grant a lease in perpetuity for the purpose of a residence over Lot 10 of DP1274979 to Kylie Owens.
5. The Board grant to Kylie Owens a suspension to the condition residency on the grounds of Adverse Circumstances under section 21(7) of the Act over Lot 10 DP1274979 until the sublease to Ronald Arthur Matthew and Daphne Edith Matthews ceases.
6. Upon receipt of completed Form 5 the Board recommend to the Minister to grant the transfer by way of mortgage Lot 10 of DP1274979 from Kylie Owens to Westpac Banking Corporation.
7. Prior to the submission of the above recommendations to the Minister the prospective lease holders of must provide evidence to the satisfaction of the Board Administration of a letter of agreement between Lot 10 and Lot 11 of DP1274979 and Lot 1 of DP1174920 detailing obligations and liabilities for the maintenance of the joint waste water and treatment system.

**Prepared:** Justin Sauvage Manager Environment and Community Services.

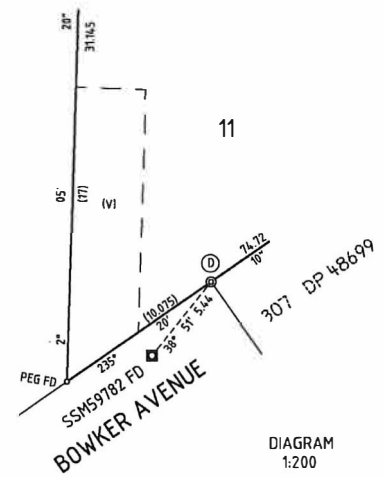
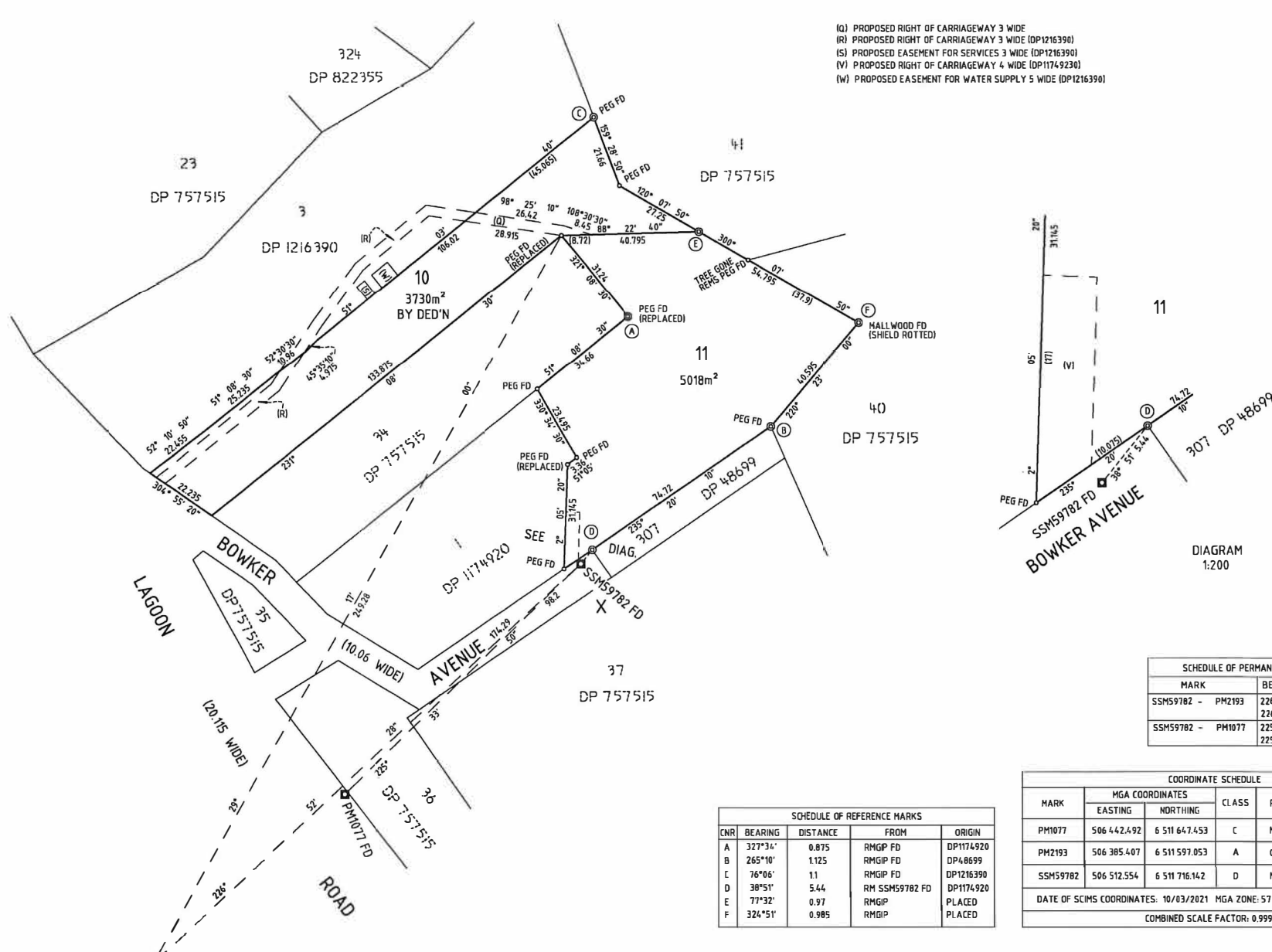
**Endorsed:** Angie Stringer A/Chief Executive Officer

**Attachments:**

Attachment A: Registered subdivision plan DP1274979

Board Meeting: September 2021 Agenda Number: 13 (v) Rec No: ED21/6629.01 OPEN Attachment: A

- (Q) PROPOSED RIGHT OF CARRIAGEWAY 3 WIDE
- (R) PROPOSED RIGHT OF CARRIAGEWAY 3 WIDE (DP1216390)
- (S) PROPOSED EASEMENT FOR SERVICES 3 WIDE (DP1216390)
- (V) PROPOSED RIGHT OF CARRIAGEWAY 4 WIDE (DP11749230)
- (W) PROPOSED EASEMENT FOR WATER SUPPLY 5 WIDE (DP1216390)



SCHEDULE OF PERMANENT MARK CONNECTIONS				
MARK	BEARING	DISTANCE	REFERENCE	
SSM59782 - PM2193	226°52'28"	174.29	SURVEY	
	226°52'28"	174.279	MGA	GND
SSM59782 - PM1077	225°33'50"	98.2	SURVEY	
	225°34'01"	98.156	MGA	GND

COORDINATE SCHEDULE						
MARK	MGA COORDINATES		CLASS	PU	METHOD	STATE
	EASTING	NDRTHING				
PM1077	506 442.492	6 511 647.453	C	N/A	From SCIMS	FOUND
PM2193	506 385.407	6 511 597.053	A	0.02	From SCIMS	FOUND
SSM59782	506 512.554	6 511 716.142	D	N/A	From SCIMS	FOUND
DATE OF SCIMS COORDINATES: 10/03/2021 MGA ZONE: 57						MGA DATUM: GDA2020
COMBINED SCALE FACTOR: 0.999597						

SCHEDULE OF REFERENCE MARKS					
CNR	BEARING	DISTANCE	FROM	ORIGIN	
A	327°34'	0.875	RMGP FD	DP1174920	
B	265°10'	1.125	RMGP FD	DP48699	
C	76°06'	1.1	RMGP FD	DP1216390	
D	38°51'	5.44	RM SSM59782 FD	DP1174920	
E	77°32'	0.97	RMGP	PLACED	
F	324°51'	0.985	RMGP	PLACED	

Surveyor: MARTIN PUNDYK Date of Survey: 12 MARCH 2021 Surveyor's Ref: 7644-43	PLAN OF SUBDIVISION OF LOT 2 DP 1174920 AND LOT 4 DP 1216390	LGA: UNINCORPORATED Locality: LORD HOWE ISLAND Reduction Ratio: 1:800 Lengths are in metres.	Registered 21.6.2021	DP1274979
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Reg:R053750 /Doc:DP 1274979 P /Rev:21-Jun-2021 /NSW IRS /Prt:22-Jun-2021 03:30 /Seq:1 of 3  
 © Office of the Registrar-General /Src:PORTAL /Ref:1:rs:eplan-eplan FOR SURVEYORS USE ONLY

0	10	20	30	40	50	60	70	80	90	100	110	120	130	140
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# **LORD HOWE ISLAND BOARD**

## **Business Paper**

### **OPEN SESSION**

#### **ITEM**

New Code of Conduct (and Procedures) for Lord Howe Island Board Members and Officials

#### **RECOMMENDATION**

That the Board:

1. Adopt the new *Lord Howe Island - Code of Conduct – Board Members and Officials – April 2021* that has been based on the new Model Code of Conduct for Local Councils.
2. Note the new *Procedures for the Administration of the Lord Howe Island Board's Code of Conduct - 2021*.
3. Agree to undertake training that will be provided by an officer of the Office of Local Government who is familiar with the Lord Howe Island legislative context.

#### **BACKGROUND**

The Lord Howe Island Board is required to adopt a Code of Conduct. Clause 101 of the Lord Howe Island Regulation provides that Section 440 of the Local Government Act apply to the Board, as if in that section references to:

- (a) a council were references to the Board, and
- (b) a councillor were references to a member of the Board, and
- (c) an ordinary election were references to an election required to be conducted under section 9A(b) of the Lord Howe Island Act 1953 (the LHI Act).

Section 440 of the LG Act requires the adoption of a code of conduct that incorporates the provisions of the Model Code of Conduct. It is noted that the Board's adopted code of conduct may also include provisions that supplement the Model Code of Conduct. In other words, the Code adopted can add to but not detract from the Model Code of Conduct.

This was originally prepared for the April 2021 meeting but deferred to the September meeting. The amended document was prepared by the previous CEO and a governance expert from the Office of Local Government. The proposed changes have subsequently been reviewed and remains appropriate.

#### **CURRENT POSITION**

The Board's current "Code of Conduct for Board Members and Board Officials" was adopted in May 2019.

A new 2020 Model Code of Conduct for Local Councils in NSW is now in place. Councils are required to adopt the new Model Code. **Because the LHI Board is subject to Section 440 of the Local Government Act, the Board is also required to adopt the new Code.**

While it is clear that the Board needs to adopt a new Code of Conduct based on the new Model Code, it is not a simple matter because of the unique legislation, responsibilities and roles that apply to the Board. These are different to the Local Government Act and the NSW local government context. In addition, the Lord Howe Island Act and Regulation change or override some provisions, references, titles, definitions, responsibilities and roles.

Therefore a new Code of Conduct had been developed in 2019 and adopted by the Board. It was a significant exercise because the Model Code is lengthy and complex.

The new (2020) Model Code of Conduct was amended largely in response to the decision by the Supreme Court in the matter of *Cornish v Secretary, Department of Planning, Industry and Environment [2019] NSWSC 1134*.

The Office of Local Government has developed a specific version for the Lord Howe Island Board that is consistent with the Model Code and with our unique legislative and governance context. The draft new Lord Howe Island Code of Conduct is attached and recommended for adoption.

It is noted that the Office of Local Government (OLG) also publishes “Procedures for the Administration of the Model Code of Conduct” on its website. Because the Lord Howe Island Board is subject to the Local Government Act and the Model Code of Conduct, but has a unique legislative context and terminology, a specific document titled “Procedures for the Administration of the Lord Howe Island Board’s Code of Conduct” has been prepared by the OLG and is attached for Board Member’s information as Attachment C.

## **WHAT HAS CHANGED?**

In summary the changes from the previous Model Code of Conduct and therefore the Board’s Code of Conduct include:

- Some minor updates and corrections in terminology and references;
- removal as a breach, failure to comply with a council resolution requiring action in relation to a code of conduct breach (because it is now redundant);
- updating the language used to describe the various heads of discrimination in clause 3.6 to reflect more contemporary standards;
- including in the definition of Board committee and Board committee members, members of the Audit and Risk Committee;
- amendments to the gifts and benefits provisions of the Model Code of Conduct in response to feedback from some NSW councils. The amendments:
  - lift the \$50 cap on the value of gifts that may be accepted to \$100
  - clarify that items with a value of \$10 or less are not “gifts or benefits” for the purposes of the Model Code of Conduct and do not need to be disclosed
  - clarify that benefits and facilities provided by the Board (as opposed to third parties) to staff and Board members are not “gifts or benefits” for the purposes of the Model Code of Conduct, and
  - remove the cap on the value of meals and refreshments that may be accepted by Board officials in conjunction with the performance of their official duties.

## **DISCRETIONARY CHANGES**



While there are changes that are mandatory and are explained in the marked up version of the new draft Code (see Attachment A), other changes are discretionary. These can be adopted by the Board as presented or changed. Discretionary clauses are listed and explained below.

#### *Clause 4.21*

The current (previous) Code of Conduct includes the requirement that “*Information contained in returns made and lodged under clause 4.9 is to be made publicly available in accordance with the requirements of the Government Information (Public Access) Regulation 2009 and any guidelines issued by the Information Commissioner.*”

It is now understood that the LHIB does not fall within the definition of a “Local Authority” under the *Government Information (Public Access) Act* and therefore it is not required to make publicly available the returns of designated persons. The Board can however elect to retain the clause in its Code of Conduct and take on the obligation voluntarily.

Given that the clause has been in previous versions of the Code and that the returns have been made publicly available as well as the ongoing actions taken by the Board to provide transparency in its governance, the Clause 4.21 has been retained in the attached draft Code. It remains an option for the Board to adopt the draft Code as attached or alternatively to remove Clause 4.21.

#### *Clause 6.2*

This clause is a new inclusion in the Model Code of Conduct for Local Government. The Board is not obliged to include 6.2 a). Inclusion of this clause means that an item with a value of \$10 or less is not defined as a gift or benefit. If not included, items of very small value (ie less than \$10) would be considered a gift or benefit. It is recommended that clause (6.2 a) be included.

#### *Clauses 6.8 to 6.11*

The new Local Government Model Code of Conduct has increased the value of gifts and benefits from not exceeding \$50 to a new value of \$100. The Board is not obliged to amend its code of conduct to lift the cap on the value of gifts that may be accepted if it does not wish to. It is open to the Board to retain the existing \$50 cap or to impose another cap up to but not exceeding \$100. The attached draft Code recommended for the Board’s adoption does increase the limit based on the OLG’s reasons for increasing the limit and the high relative cost of goods and meals on the island.

## **CURRENT STATUS AND NEXT STEPS**

The new Code is tabled with the Board for consideration with the aim of adoption.

There is a need under the Code for a panel of “Conduct Reviewers” that would investigate any substantive matters raised in regard to alleged breaches of the Code. The Board is able to satisfy the requirement for a panel of “Conduct Reviewers” via our memorandum of understanding with Port Macquarie Hasting Council. It is understood that a group of Councils including Port Macquarie Hastings have a panel for the use, if required of member Councils. Lord Howe Island can utilise this arrangement.

Following adoption, training will be undertaken by an officer of the Office of Local Government who is familiar with the Lord Howe Island legislative context to:

1. Specifically explain any changes;
2. Refresh Board members’ familiarity with the ongoing requirements;
3. Remind Board members of how they can raise or respond to any possible matters relating to the Code.

4. Provide opportunity to workshop any areas that are not clear or could be misinterpreted.

### **RECOMMENDATION**

That the Board adopt the new Code of Conduct report that has been based on the new Model Code of Conduct for Local Councils.

**Endorsed:** Angie Stringer, Acting Chief Executive Officer

#### **Attachments:**

Attachment A: Draft new Code of Conduct with changes and comments highlighted – Open

Attachment B: Draft new Code of Conduct (clean version) – Open

Attachment C: Procedures for the Administration of the Lord Howe Island Board's Code of Conduct – Open