

Agenda

Lord Howe Island Board



Meeting	Board Meeting May 2023
Location	Lord Howe Island Community Hall
Date/Time	Tuesday 09 th May 2.30pm – Closed Session, followed by dinner at Anchorage Wednesday 10 th May 9.00 am – Open Session
Chairperson	Atticus Fleming AM , A/Coordinator General, DPE
Board Members	Bruce Baird AM , Appointed Member (Tourism) Chris Bath , Appointed Member (Conservation) Gary Crombie , Elected Member James Lonergan , Elected Member Matthew Retmock , Elected Member Therese Turner , Elected Member (Deputy Chair)
Attendees	Suzie Christensen , Chief Executive Officer Paula Pollock , Senior Manager, Environment and Community Services Debbie Johnsen , Senior Manager, Business and Corporate Services (via Teams) Bradley Josephs , Acting Senior Manager, Infrastructure and Engineering Services
Minutes	Chelsea Holden , Executive Assistant

Tuesday 09th May Agenda Items – Closed Session

2.30pm	In-Camera Session • Myrtle Rust Incident Response		Board members only
3.30pm	1. CONFLICT OF INTEREST DECLARATIONS		Presenter: A Fleming
	2. WH&S AND RISK MANAGEMENT 2.1. WH&S and Risk Management Update Attachment A: CAMMS Incident Summary Report – 15/02/2023 to 25/04/2023	Note	Preparer: J Spivey Presenter: S Christensen
	3. FINANCE AND BUSINESS MANAGEMENT 3.1. Financial Status Update 3.2. Draft Interim Budget	Note Decide	Preparer: D Johnsen Presenter: S Christensen Preparer: D Johnsen Presenter: S Christensen
	4. OPERATIONS AND SERVICES 4.1. Marine Freight Renegotiation - Birdon Deed of Variation Attachment A: Birdon Deed of Variation Final Attachment B: Legal Advice HBL Ebsworth 4.2. Long Term Marine Strategy and WMF – Update 4.3. Current Status of Roads Project and Future Construction	Note Note Note	Preparer: S Christensen Presenter: A Fleming Verbal Presenter: A Fleming Presenter: B Josephs Preparer: B Josephs

Agenda

Lord Howe Island Board



Meeting	Board Meeting May 2023		
	<p>5. LEASING AND LAND ADMINISTRATION</p> <p>5.1. PL1990.01 Application to suspend condition of residence – Gillett Suzy Attachment A: Form 1 – Application to suspend condition of residence on PL1990.01 and supporting document Attachment B: Additional support documents</p> <p>5.2. PL2016.07 Application to suspend condition of residence – Daggar Christine Attachment A: Form 1 Application to suspend condition of residence and supporting documents</p> <p>5.3. Plan and Timeline for Dwelling Allocation Ballot Process 2023</p>	Decide	Preparer: P Pollock Presenter: P Pollock
	<p>6. POLICY AND STRATEGY</p> <p>6.1. Resourcing to Implement the Efficiency and Effectiveness Review Project</p> <p>6.2. Health Services (Note: Verbal only)</p>	Decide Note	Preparer: S Christensen Presenter: S Christensen Presenter: T Turner
6:00pm	Close		
6:30pm	Dinner		

Wednesday 10 th May Agenda Items – Open Session			
9:00am	<p>7. MINUTES OF PREVIOUS MEETING – NOTICE OF ADOPTION Attachment A: Board Meeting Minutes March 2023 – CLOSED</p>	Decide	Preparer: C Holden Presenter: S Christensen
	<p>8. OUT OF SESSION MATTERS STATUS REPORT Attachment A: Out of Session Result Summary Sheet – Open Attachment B: Out of Session Result Summary Sheet - CLOSED</p>	Note	Preparer: C Holden Presenter: S Christensen
	<p>9. ACTIONS FROM PREVIOUS MEETING STATUS REPORT Attachment A: Action Sheet from Previous Board Meetings - CLOSED Attachment B: Report APP Corporation Vessel Sourcing Briefing Note - CLOSED</p>	Note	Preparer: C Holden Presenter: S Christensen
	<p>10. CHIEF EXECUTIVE OFFICER'S REPORT Attachment A: Infrastructure & Engineering Services Attachment B: Environment & Community Services Attachment C: Biosecurity Compliance Attachment D: Projects Attachment E: Lease Holdings Inspection Schedule May 2023</p>	Note	Preparer: S Christensen Presenter: S Christensen

Agenda

Lord Howe Island Board



Wednesday 10th May Agenda Items – Open Session

	11. FINANCE AND BUSINESS MANAGEMENT		
	11.1. Financial Status Update (Note: Verbal update only)	Note	Presenter: S Christensen
10.00am	MORNING TEA		
10.30am	12. DEVELOPMENT APPLICATIONS		
	12.1. Owner Consent Approved Under Delegated Authority Status Report	Note	Preparer: L Shick Presenter: P Pollock
	12.2. Development Applications Approved Under Delegated Authority Status Report	Note	Preparer: L Shick Presenter: P Pollock
	12.3. Assessment Report – OC2022.8.1 and DA2022.7.1 – Wilson Chad Attachment A: Assessment Report - OC2022.8.1 and DA2022.7.1 – Wilson Chad	Decide	Preparer: All About Planning Presenter: P Pollock
	12.4. Assessment Report – OC2023.1 and DA2023.1 – Owens Diane	Decide	Preparer: All About Planning Presenter P Pollock
	13. POLICY AND STRATEGY		
	13.1. Motor Vehicle Importation or Transfer Status Report	Note	Preparer: L Shick Presenter: S Christensen
	14. LEASING AND LAND ADMINISTRATION		
	14.1. Status of Public Accommodation Licence Transfer Applications Attachment A: Report – Quarterly Status of Public Accommodation License Transfer Applications - CLOSED	Note	Preparer: L Shick Presenter: P Pollock
	14.2. Request for Owens Fletcher at Unit 1 Lorhiti to operate two public accommodation licences for Owens Jessica Attachment A: Request for Owens Fletcher at Unit 1 Lorhiti to operate two public accommodation licences for Owens Jessica	Decide	Preparer: L Shick Presenter: P Pollock
	14.3. Review of Compliance with Residency Condition on Perpetual Leases Attachment A: Review of Compliance with Residency Condition on Perpetual leases - CLOSED	Decide	Preparer: L Shick Presenter: P Pollock
	14.4. Review Correspondence from Fenton Esven SL2011.01 Cattle Grid and Fencing Attachment A: Letter – Incoming - Received 27 March 2023 - Fenton Esven Attachment B: SL2011.02 Lease Extension Agreement Attachment C: Biosecurity Act 2015 - Straying Stock	Decide	Preparer: S Christensen Presenter: S Christensen

Agenda

Lord Howe Island Board



Wednesday 10th May Agenda Items – Open Session

	Attachment D: Dividing Fences Act 1991		
	15. BUSINESS ARISING FROM PREVIOUS MEETING		
	16. GENERAL BUSINESS AND QUESTIONS ON NOTICE		
1.00pm	CLOSE		
	NEXT MEETING 22 and 23 August 2023		

Board Meeting: May 2023	Agenda Number: 7	Record Number: ED23/2998
--------------------------------	-------------------------	---------------------------------

LORD HOWE ISLAND BOARD

BUSINESS PAPER

OPEN SESSION

Item

Adoption of minutes of previous meeting.

Recommendations

1. **Endorse** the February 2023 board meeting minutes.

Current position

Process for Distribution of Board Meeting Minutes

The Board updated the adopted process for distributing Board minutes at the March 2022 Board meeting as follows:

- Draft minutes will be produced within five working days of a Board meeting and distributed 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 in writing no later than 10 working days after date of posting distribution.
- 10 working days after date of posting distribution, 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.

Endorsement of Board Meeting Minutes

Minutes of the February 2023 meeting were distributed to each Board member and were endorsed as per the above process.

A copy of the amended draft minutes is attached.

Attachments

Attachment	Title
A	Board Meeting Minutes – February 2023 – CLOSED

Approval and contact

Approver	Position
Suzie Christensen	Chief Executive Officer
Preparer	Position
Chelsea Holden	Executive Assistant

Board Meeting: February 2023	Agenda Number: 8	Record Number: ED23/2996
-------------------------------------	-------------------------	---------------------------------

LORD HOWE ISLAND BOARD

BUSINESS PAPER

OPEN SESSION

Item

Out of Session matters status report.

Recommendations

1. **Note** the information provided in this report.

Current position

Since the last Board Meeting in February 2023, no matters were considered out of session.

Attachments

Attachment	Title
A	Out of Session Result Summary – Open Session
B	Out of Session Result Summary – Closed Session

Approval and contact

Approver	Position
Suzie Christensen	Chief Executive Officer
Preparer	Position
Chelsea Holden	Executive Assistant

Board Meeting: May 2023 Agenda Number: 8 Rec No: ED23/2996.01 OPEN Attachment: A

OUT OF SESSION RESULT SUMMARY SHEET

OPEN SESSION				
No.	Date	Application	Vote	Comment
March 2023				
Nil				
April 2023				
Nil				
May 2023				
Nil				

Board Meeting: May 2023	Agenda Number: 9	Record Number: ED23/2995
--------------------------------	-------------------------	---------------------------------

LORD HOWE ISLAND BOARD

BUSINESS PAPER

OPEN SESSION

Item

Actions from previous meeting – status report.

Recommendations

1. **Note** the information provided in this report.

Current position

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.

A list of actions from decisions of the February 2023 Board meeting, and previous meetings, is attached for the Board's information.

Attachments

Attachment	Title
A	Action sheet from previous Board meetings – CLOSED
B	APP Corporation Vessel Availability Report – CLOSED

Approval and contact

Approver	Position
Suzie Christensen	Chief Executive Officer
Preparer	Position
Chelsea Holden	Executive Assistant

Board Meeting: May 2023	Agenda Number: 10.00	Record Number: ED23/2906
--------------------------------	-----------------------------	---------------------------------

LORD HOWE ISLAND BOARD

BUSINESS PAPER

OPEN SESSION

Item

Chief Executive Officer's report 01/03/2023 – 01/05/2023

Recommendations

1. **Note** the Chief Executive Officer's report including attachments

Current position

The following briefing provides an overview of highlights, risks and opportunities during the reporting period. It is reported under the six themes of the Board's Strategic Plan and supported by detailed reports from the three business-unit Senior Managers, and the Senior Project Officer.

Effective Leadership and Governance

Recruitment for the Senior Manager Business and Corporate Services (MBCS) is nearing completion, with the incumbent due to commence around the 21st May. Huge thanks to Debbie Johnsen for your contribution over the last year, and for ensuring our audit and budget process is in good shape for the new MBCS (Michael Chalmers) to take over. Michael joins us from a local government and retail background, with experience in regional and remote locations. The team looks forward to welcoming him and returning the Senior Leadership Team to full capacity. Chelsea Holden has taken up the position of Executive Assistance as approved in the FY23 budget, in a part time capacity, and is already making a difference.

Workforce Planning

Another critical EER project has commenced, with the support of DPE HR personnel with specific expertise in workforce planning. Staff and leadership team consultation has commenced, and feedback received. The plan should be complete by the end of the financial year. Some critical and mandatory training has occurred or is planned, and the workforce plan will assist development of an annual training plan.

Performance Planning

In the absence of on-line systems available to other DPE employees, a manual approach has been taken to the development of long overdue "My Talent Plans". This is the framework that staff Performance, Planning and Review occurs. Leaders will be working with their teams over the next few months to complete them, identify KPI's and training needs, recommencing the annual cycle.

IT and Systems

The IT discovery project has been completed and funding secured for the cyber security component. The report and a paper outlining option for transition, costs and benefits and budget implications is under preparation to support a decision by the Board.

Sound Infrastructure and Services

(see IES Report)

By the time of the meeting, the deed of variation to extend the marine freight contract with Birdon for another 3 years is expected to be signed. The new schedule of rates has been applied from 1st April.

Oversight of the development of business cases to support funding bids for critical infrastructure (marine freight service and waste management facility upgrade) has been an important activity in the period.

A prevention notice from EPA in relation to upgrade of the chemical storage facility has been closed following rectification of the matter. A second notice is under negotiation to change practices in preference to building infrastructure.

The roads upgrade has been progressing, with the first stage expected to be sealed within the next few weeks. This will enable planning for the completion of the projects, and identification of needs for further funding in future rounds.

The interim Asset Management Plan is being implemented, including development of new maintenance plan all LHIB vehicles and plant, procurement has begun for the replacement of several near end-of-life assets, and priority maintenance and capital upgrade components of the residential and commercial buildings.

Outstanding Environment

(see ECS Report)

The myrtle rust incursion and response been the focus across the ECS team for the period, with the rapid response and management a key factor in the ability to contain and eradicate this serious risk to the Island. Staff from all areas were also involved, and the collaboration to get the job done gratifying and effective.

Support from the broader Environment and Heritage Group, technical experts and the Commonwealth has provided welcomed additional resources. A summary report will be developed for public release to share the success and learnings

Planning is well advanced for the rodent success check following two years of no rodent activity detected on-island. Biodiversity Benefits monitoring projects have commenced, and ongoing biosecurity is according to plan.

Consultation is underway with eco-pass holders prior to their pending 5-year renewal date. The Permanent Park Plan of Management and Biodiversity Management plan reviews are both progressing.

Heliops and other weeding efforts were postponed due to myrtle rust and have now been rescheduled, and alternative resourcing options explored by way of contract and volunteer bush regenerators

Responsible Land Management

Meetings have been held with colleagues from both DPE and DRNSW to progress a coordinated and concerted effort to address planning issues.

Support a Strong and Engaged Community

It has been a busy time on Island as summer moved into the shoulder season. The Lord Howe Island Festival, Discovery Day, and Governor's visit in February and Easter, school holidays and Anzac Day were all enjoyed by the community.

With sadness, the Board has supported 4 burials of dearly loved locals in the last few months, and our condolences are extended to family and friends.

Six wedding ceremonies have also been conducted, all of whom were for visitors. This service is valued by visitors and supports some local businesses, however consideration should be given to its sustainability in the medium term as they are somewhat of administrative burden.

Attachments

Attachment	Title
A	IES report
B	ECS report
C	Biosecurity Compliance
D	Projects
E	Lease Holding Inspection Schedule May 2023

Approval and contact

Approver	Position
Suzie Christensen	Chief Executive Officer
Preparer	Position
Suzie Christensen	Chief Executive Officer

CEO BOARD REPORT

INFRASTRUCTURE AND ENGINEERING SERVICES

OPEN SESSION

Item

This report is a brief summary of IES activities and issues covering the period February to May 2023.

Core Service Streams

1. Aerodrome Operations
2. WMF Operations
3. Electricity Generation and Distribution Operations

Major Projects, Major Maintenance Items and Procurements

4. Asset Management Plan
5. Beach Nourishment

Summary of Activities and Issues

1. Aerodrome Operations

Maintenance and operations of assets has continued over the period with no major interruptions encountered due to reactive maintenance at the site. New ARO's have commenced in their roles following training and shadowing experienced ARO's. This has mitigated the risk of not having enough ARO's to cover recreational leave and illness.

Commercial operators have continued to utilise the airstrip without experiencing interruptions from airstrip availability.

Jasko Airport Services have been engaged to conduct our Annual Technical Inspection on the airport. This will involve measuring existing and new obstacles to determine whether they are currently within the OLS and may result in excavating operations being conducted on Blinky's dune as has happened in the past.

The Aerodrome has continued to support a number RAAF training exercise over the reporting period. On the 18th April the RAAF organised to conduct operations, but unfortunately cancelled and did not inform the LHIB resulting in staff being rostered and therefore paid. Follow up communication has occurred with RAAF to minimise unnecessary expenditure in the future.

2. WMF Operations

Prevention notices relating to the chemical shed have been closed through resolution of the matter. A second prevention notice relating to bunding of the fuel receival area at the jetty is under negotiation to amend practices rather than an infrastructure solution.

Operations have continued at the WMF though there have been logistical problems with getting waste off island due to receiving limitations of Port Macquarie Council and ensuing changed practices required by JR Richards and Birdon. This has resulted in the Birdon refusing to send waste west bound on occasions due to biosecurity concerns of stockpiled waste at Birdon's shipyard. A/MIES is currently working with Birdon, JR Richards, Port Macquarie Council and EPA to resolve the matter. There are certain materials that are unable to be shipped west bound that require further conversation. EPA has been informed about the situation.

Microplastics continue to be found within the compost with cardboard the main contamination source despite efforts to encourage users of the facility to remove plastics. Compost testing will cease as continued testing of the product will prove unproductive according to recent samples. Discussions with EPA are scheduled to remove the paper completely from the compost, reducing testing parameters, and allowing the LHIB to produce cleaner compost for the public. A Resource Recovery Order / Resource Recovery Exemption will be discussed with EPA to see whether there are alternative methods to reuse paper on-island before committing to sending all paper off-island.

3. Electricity Generation and Distribution Operations

The total energy demand for this reporting period was 486500kWH with diesel generation totalling 133300kWH and solar generation totalling 377400kWH. Fuel consumption for the reporting period was 34800 litres which is a difference of 1650 litres for the same reporting period last year. Fuel energy efficiency for the reporting period was 13.97 kWh/L.

Unfortunately, the savings cannot yet be passed on to customers due to the ongoing minimum fuel freight costs contractually enforced by Birdon.

There are currently 295 customers connected to the electrical supply system.

There was one **unplanned** customer supply interruption to the distribution system during the period. This outage was the result of localised customer overloading. There were three **planned** supply interruption to the distribution system during the period. These outages were to carry out equipment upgrade works and annual maintenance on Substations No.2 Ned's Beach Road, No.3 Beachcomber and No.10 Anderson Road.

Powerhouse staff undertook upgrade works on Substation No.3 Beachcomber to stop the potential for customer overload on a certain section of its respective distribution area. This involved upgrades to circuit breakers. Powerhouse staff also increased the voltage to the low voltage side of the transformers in substations No.3 Beachcomber and No. 10 Anderson Road to overcome lower than nominal voltage in certain parts of the LV distribution system when generation is via solar only.

Powerhouse staff are pleased to report that up to the current reporting period there has been no Island wide loss of supply due to generation plant failure on either the hybrid solar system or diesel generator system for a total of 25 months.

Board Meeting: May 2023 Agenda Number: 10 Rec No: ED23/2906.01 OPEN Attachment: A

4. Asset Management Plan

The interim Asset Management Plan continues to be implemented. A new maintenance plan is being developed for all LHIB vehicles and plant, and procurement has begun for the replacement of several near end-of-life assets.

A contractor has been appointed to coordinate maintenance and capital upgrade components of the residential and commercial buildings aspect of the Asset Management Plan, focussed on highest priority items identified in the AMP from the condition assessment conducted late 2022.

5. Sand Nourishment and Seabee Wall

Royal Haskonings have been reengaged to survey the Seabee wall, last surveyed on January 10th, 2020. The last survey found the Seabee wall to be in reasonable condition and recommended monitoring incorporating instrument survey to enable positional changes to points on the seawall face to an accuracy of +/- 15mm horizontal and +/- 5mm vertical. Royal Haskonings will be comparing the results to see how much movement has taken place over the past 3 years to determine whether a repair strategy is to be implemented.

Marc Daley, Program Lead – Coastal DPE, will be on-island to determine a works program suitable to address the areas of the island that are prone to erosion and scarping. Marc will be developing the LHI Coastal Management plan for LHI which when/if adopted can either be included in the Asset Management Plan or potentially used for ongoing funding under the Commonwealths Disaster Risk Reduction Fund (DRRF) to manage “at risk” locations along Lagoon Beach, Windy Point and the Airport.

Attachments

Attachment	Title
Nil	

Approval and contact

Approver	Position
Suzie Christensen	Chief Executive Officer
Preparer	Position
Brad Josephs	A/ Manager Infrastructure and Engineering Services

CEO BOARD REPORT

ENVIRONMENT AND COMMUNITY SERVICES

OPEN SESSION

Item

This report is a brief summary of ECS activities and issues covering the period February 2023 to May 2023.

Core Service Streams

1. Biodiversity Management
2. Biosecurity
3. Weed Management
4. Threatened Plants
5. Visitor Infrastructure
6. Marine Management / Moorings
7. Environmental Assessment
8. Environmental Health Assessment
9. Land Administration
10. Development Assessment and Land Use Planning
11. Spatial and data

Summary of Activities and Issues

1. Biodiversity Management

Operations

Myrtle rust detection February 2023

Since the initial outbreak of Myrtle Rust detected on 3 February 2023, LHIB staff have completed an extensive program of searches and inspections as well as intensive treatments of the four known infection sites in the settlement area.

LHIB staff, with the assistance of NPWS crews have focused on implementing the Board approved Response Plan and Reopening Strategy. Settlement searches have not produced any evidence of myrtle rust since the last detection of spores at a known site on the 17 March. There has been no detection of any infection sites within the Permanent Park Preserve (PPP).

Scheduled inspections have been focused:

- at infection sites
- within vegetated buffers around these known infection sites
- across the full settlement
- on the majority of the informal track network
- in several priority off-track areas

The following figures provide an indication of effort invested during the myrtle rust response:

Board Meeting: May 2023 Agenda Number: 10 Rec No: ED23/2906.02 OPEN Attachment: B

Item	Number	Description
Myrtaceous species inspected in the settlement	4167	5 sweeps. 1085 plants were introduced, 3532 plants were native to LHI.
Myrtaceous species inspected in the PPP	7086	3 sweeps. 7081 plants were native to LHI.
Length of track traversed in PPP	153km	
Property inspections	683, (170 leases)	Special, perpetual and permissive occupancy. Four checks per property.
Myrtle rust identification training sessions	7	LHIB, NPWS and volunteers
Expert panel interactions	multiple	<ul style="list-style-type: none"> • 3x online meetings • 1x in-person meeting on LHI • Regular liaison via email (15)
Householders published	16	Issued February-April including information on closures and reopening of the PPP, updates on infestations, and fungicide treatments.
Briefing notes drafted	3	To the Board/NSW and Commonwealth
Media releases	2	Developed by the NSW Environment and Heritage Public Affairs team (for the partial and full reopening)
Social media posts	7	Facebook posts relating to myrtle rust shared since February, with more planned for the coming weeks.
Community hall meetings	1	Attended by approximately 50 people
Myrtle rust information sessions at the museum	12	3 sessions per week - variable visitor attendance
Staff meetings	6	<ul style="list-style-type: none"> • 2x all staff, 1x Environment and Community Services and Infrastructure and Engineering Services, 3x Weed Eradication Program
Assistance at trail heads	31 days	<ul style="list-style-type: none"> • Trail heads staffed by LHIB and NPWS between 25 March – 23 April, at least 4 trail heads per day between 8am-2pm approx. • During this time, 1936 members of the public were spoken to and assisted with implementing biosecurity protocols
Lodges and eco-business interactions and communication	multiple	<ul style="list-style-type: none"> • 2x emails to all lodges • 1x Direct delivery of information packs on myrtle rust risks, identification, and best practice hygiene protocols to all lodges • 2x open offer of face-to-face meetings – 9 lodge or businesses conducted • 1x provision of information pack for bookings (to be completed)
Meetings with Eco-pass holders	3 + 1	Direct engagement and provision of updates to Eco-Pass holders plus training session. 2x emails with myrtle rust information.
Communications with researcher permit holders	2	Researchers advised of closure, response, and next steps
Airport supports	multiple	Additional staff at airport since 24 March to provide information on MR and educate visitors on best practice hygiene protocols. Treatment station established.

Board Meeting: May 2023 Agenda Number: 10 Rec No: ED23/2906.02 OPEN Attachment: B

NPWS have provided much valued support and operational assistance to the myrtle rust response over the past seven weeks (from 20 March – 7 May). This has included advanced tree felling skills to support LHIB staff with removal of dead treated trees on infected properties in addition to assistance with monitoring and visitor education on trailheads and at the airport. An exit strategy has been cooperatively drafted and is currently being implemented.

As of 28th April 2023, the direction outlined in the Response Strategy and Reopening plan regarding searches has been complied with. There has been no further detection of myrtle rust at the infected sites, within the settlement, or within the PPP. Through a rapid and comprehensive response, it appears that the myrtle rust infection has been contained.

The next steps to close out the response will be:

- a) Review of the Response Strategy and Reopening plan, including the risks and the strategies applied to manage these
- b) Evaluate the response; including lessons learned
- c) Prepare a final document to be referenced by staff in the event of any future myrtle rust occurrence on the Island.

Fish Sampling

The APVMA permit conditions authorising the use of brodifacoum during the rodent eradication program required the implementation of a sampling regime, post baiting, to monitor for the presence of brodifacoum in the marine environment.

A sampling protocol identifies a specified set of 5 fish species, 25 individuals, to be sampled annually within waters around LHI. In November 2021, very low levels of brodifacoum were detected in the livers of 2/25 individual fish - one bluefish (19.8 micrograms/kg) and 1 mullet (14.6 micrograms/kg). The LHI Human Health Risk Assessment Report, developed by the NSW Chief Scientist, quantifies the acceptable level of brodifacoum for seafood at 450 micrograms/kg. Despite this, and as a precautionary measure, the LHIB has recommended that residents and visitors not consume the liver of any fish caught within the shore area of LHI.

Failed attempts to secure on-island charter fishing services to conduct sampling delayed follow-up monitoring until April 2023. The requisite samples have now been obtained and will be sent for testing. Once laboratory results are returned, a Householder will be issued advising of outcomes.

Sampling will continue until there are no longer any detectable brodifacoum residues in the fish population in line with the APVMA licence.

Biodiversity Benefits Monitoring Project

Several of the Biodiversity Benefits Monitoring Projects have commenced including invertebrates, vegetation, and food web analysis, with little shearwater and *Placostylus* surveys due to commence in the coming months. The Board has partnered with scientists in the Department of Planning and Environment to complete the work so that we can understand how the environment is responding to the absence of rodents.

Lease holding inspections

Planned inspections are being scheduled for a range of purposes over the coming months. These are outlined in Table B, and will be advised in an upcoming Householder. Board staff aim to combine visits where the tasks and timing provide for this, and otherwise provide at least 24 hours notice to leaseholders.

Board Meeting - May 2023 - CHIEF EXECUTIVE OFFICERS REPORT

Board Meeting: May 2023 Agenda Number: 10 Rec No: ED23/2906.02 OPEN Attachment: B

Table B - Lease holding inspection schedule to September 2023

Date range	Inspection type	Description	Estimated time of visit	Estimated number of officers
April 19-26 May 3-10	Myrtle rust surveillance settlement	Part of myrtle rust response – may cease if no further spore is detected after the sixth round of fortnightly searches in the settlement.	10 -30 minutes (dependent on size and number of myrtaceous species)	2 people
April 14-25 May 26-June 9 July 7-21 August 18 –sept 1	6 weekly settlement searches	Rodent, snakes, frogs etc Required by the biosecurity monitoring protocol and in line with the Bode assessment	10min – 1 hour (Dependent on size)	1 plus detection canine. Any dog interest or detections could mean extra personnel/time
July 8-26	2-year Success check	Already included above in the 6 weekly settlement checks.	10min – 1 hour (Dependent on size)	1 plus detection canine. Any dog interest or detections could mean extra personnel/time
After September	Termites	Island-wide survey. Dates to be confirmed. Likely to focus on specific areas – property access requirements to be confirmed.	TBC	2 people
TBC	Weed inspections	Should be completed annually or bi-annually. No dates set for 2023, though most properties are overdue.	30 minutes – 1 full day	2 for inspection only, up to 5 for full grid search and treatment of weeds
After September	African Big-headed Ant	Success check. Not all properties – those in proximity to sites known to be previously infected and ports of entry (jetty, WMF, and airport)	10min – 1 hour (Dependent on size)	1-2 people plus detection canine. Any dog interest or detections could mean extra personnel/time
Before 30 June	Phytophthora	Not all properties – those in proximity to sites known to be infected or showing potential signs of infection	10 -30 minutes (dependent on size and proximity to sites known to be infected)	2 people Any detections could mean extra personnel/time

Planning and Strategic

EcoPass renewal

Several EcoPass permits are coming up for their 5-year renewal. This has triggered a review of the EcoPass conditions and requirements. Consultation and information sessions are planned with relevant tour operators in the coming months to discuss the process and proposed amendments.

Biodiversity Management Plan and Permanent Park Preserve Plan of Management

The Permanent Park Preserve Plan of Management has been reviewed by the Community Advisory Committee (CAC). All feedback generated has been collated, and a response to the committee is in preparation. The next steps in this process will see updates made to the Plan, inclusive of CAC recommendations, before formal public exhibition of the revised document.

The Biodiversity Management Plan is due to be updated to capture the goals and biodiversity objectives now being sought in an environment without rodents. Commencement of this task, along with the development of a Monitoring and Evaluation Plan and Research Strategy has been delayed as a result of the Myrtle Rust response but will again be prioritised as regular operations resume.

Training

- Safety Access and Rescue's Bill Proctor will provide a five day nationally recognised Rope Access for Natural Surfaces training & Certification and Height Safety for Natural Surfaces Training & Certification for staff from across the ECS and IES units.
- White card, forklift and dogman training will be attended by ECS staff involved in working around machinery and at the jetty.

Infrastructure

A comprehensive inspection of Mount Gower anchor points has been commissioned in addition to the installation of anchor points on Balls Pyramid to provide safe access for weeding and phasmid monitoring.

A geotechnician and a structural engineer are due to come to the Island to assess and redesign the stairs at both ends of Middle Beach. This work is funded through a Heritage grant from the Department of Climate Change Energy, the Environment and Water due to be completed in 2024/25.

Resourcing and recruitment

- Team Leader Environment and World Heritage is currently serviced on a short-term contract until 30 June, 2023. This role is currently being recruited in an ongoing capacity.

2. Biosecurity

Operations

- See business papers.
 - Chief Executive Officers Report – February 2023 Attachments C & E
- General
 - Island wide 6-weekly rodent property searches were conducted in and around myrtle rust constraints.
 - Monthly monitoring has been undertaken (no rodent detections reported)

Board Meeting: May 2023 Agenda Number: 10 Rec No: ED23/2906.02 OPEN Attachment: B

- Improvement works at Birdon Shipping and Eastern Air Services are continuing.
- Lease holding inspection schedule to September 2023 attached (Attachment E)

Success check

The success check is scheduled for 8-26 July, with the aim of detecting any live rodent or rodent activity on the Island. This is a significant undertaking and an important milestone in the LHI Rodent Eradication Project. Grant Harper of Biosecurity Restoration Specialists is assisting with planning and preparations and will act as operations manager for the duration of the check. The campaign will be resourced by five teams comprised of operational staff from the Biosecurity, Environment and Weed teams, in addition to two dog teams. An array of grids throughout the Permanent Park Preserve will sample a range of environments, in addition to an intensive sweep of the settlement area. Michael Bode has been consulted on the design and post-campaign monitoring schedule. A communication strategy is in draft, and information will be provided to the community in the coming weeks.

Termites

Termite activity around the settlement has been reported. While there is no evidence suggesting these termites are a new species to the island, investigations are underway to confirm this. A basic termite monitoring network around the settlement has been place for some time but has received renewed attention following recent reports.

A full island termite survey is being planned and will commence later in 2023. An expert from the WA Department of Primary Industry and Regional Development will attend the Island to advise on surveillance and treatment strategies, termite biology, economic impacts, and implications for LHI going forward and to build the capacity of biosecurity staff. The last full island termite survey was conducted in 1988 by Dr John Watson.

A community engagement plan is in development and will include advisory notices, a community survey, and delivery of information sessions.

Biosecurity dog demonstrations

The Biosecurity team have recommenced weekly biosecurity dog demonstrations at the aquatic club from 10am on a Tuesday. The demonstrations showcase the capability of the detection dogs and explain the important function they perform on the Island. The demonstration provides visitors with an opportunity to speak with a Biosecurity officer and learn more about island conservation. The sessions have been very well attended.

Biosecurity dogs

- Cocker Spaniel Willow is performing very well
- Spaniel Zuma (7 years) is to be operationally retired on medical grounds
- Spaniel Sebbi is performing well, but at 9 years of age is nearing end of working life
- Cocker spaniel Pepper was purchased by the LHIB as an older puppy in March. Pepper is unsuited for service as a detection dog. A replacement puppy has been secured (at no additional cost) and Pepper will be rehomed.
- An additional puppy will be sourced in coming months and developed over time to ensure a 4 dog complement from 2024, at which time both Zuma and Sebbi will be retired.
- Cocker Spaniel Emma from Austins Dog Training has supplemented the dog team for a 3 month period
- Kennel construction is being evaluated and options considered.

Birdon Biosecurity Management Plan

Significant investment has been made in the development of the Birdon Biosecurity Management Plan. This plan will underpin Birdon's biosecurity operations and is referenced

in the 3-year contract between Birdon and the LHIB. The last remaining operational issues have now been addressed and the plan is being finalised.

Qantas audit

A biosecurity audit of the Qantas freight facility and operational processes at Sydney Airport is underway. The audit follows many months of liaison with Qantas staff and aims to assess rodent baiting systems, the presence of a range of pest species and procedural management of biosecurity systems. The results of the audit will be reported and discussed with Qantas.

Resourcing and recruitment

- Team Leader Biosecurity is currently being recruited. This pivotal role will coordinate and anchor biosecurity operations through to June 2026.
- Brent Madden has accepted the role of Biosecurity Officer, moving across to the Biosecurity Team from the WEP field team.
- Authorized Officer and Dog Handler training has continued for staff.

3. Weed Management

Operations

Weed management and grid search efforts have been impacted this quarter, with Weed Eradication Program (WEP) field crews being seconded to the Myrtle Rust Response and the temporary closure of the PPP limiting access for weed control activities. Despite this, weed eradication work continued in locations proximal to the settlement, with strict hygiene protocols in place to avoid the spread of myrtle rust to vulnerable plant communities. Additional catchup work will be required next quarter, with a look to engage contract bush regeneration teams.

Volunteer Program

The WEP Volunteer Program recommenced in March, with a first intake of volunteers since 2018. Two skilled volunteers joined the team for a 4-week period, assisting with both the WEP work and the Myrtle Rust Response. Engaging volunteers has been an integral resourcing strategy since the program's inception in 2004. The volunteer program is mutually beneficial, allowing for skill-sharing between the local island workforce and mainland bush regenerators with extensive industry experience. Applications are being accepted for another volunteer intake in June/July.

Resourcing and recruitment

- Two new local Bush Regenerators have recently joined the WEP field team – Tasman Thompson and Nelson Retmook.
- Despite recruitment drives, full resourcing of the WEP team from the local labour pool has not been possible. Contractors will be engaged to assist in meeting grant targets prior to the close of the financial year.

4. Threatened plants

Operations

Preliminary results from flora surveys conducted under the North Coast Local Land Services Regional Land Partnerships Program: Critically Endangered Little Mountain Palm (*Lepidorrhachis mooreana*) project are indicating a positive recovery trajectory post eradication. Of the sites assessed to date, significant increases in population from baseline data are being reported.

Additional threatened plant recovery actions continue to be implemented according to the LHI Saving Our Species (SOS) program; now running a five-year contract period, with funding availability subject to yearly reporting.

5. Environmental Assessment

Operations

See business papers.

Property Inspections

The environment team continues to provide assessment services to the community on an as needs basis, generally for development and tree removal applications. This service is not currently charged.

Resourcing and recruitment

- The Team Leader World Heritage continues to provide basic environmental assessment service for low impact development proposals.

6. Land Administration

Operations

See business papers.

Bushfire Risk Management Planning

Under the Rural Fires Act 1997 a Bushfire Risk Management Committee (BFRMC) must be convened to prepare a Bushfire Risk Management Plan (BFRMP) for each area in NSW which is subject to the risk of bushfires. A BFRMP identifies assets at risk of bush fire in an area, which will include communities, buildings, infrastructure as well as culturally and environmentally significant locations. The plan then outlines strategies to protect those assets.

There is a statutory obligation to ensure that Lord Howe Island has a current:

- BFRMP and that this plan is reviewed every 5 years
- Fire Access and Fire Trail Plan (FAFT Plan)
- a s52 Operations Coordination Plan, requiring review every 2 years

The Current LHI BFRMP was developed in 2018 and approved in May 2019 and is due for renewal. The current s52 plan expired in April 2022. A draft FAFT Plan exists but has not been approved and requires review.

A BFRMC has been convened and under the guidance of the RFS will commence work on these strategic plans in the coming months, including community participation and public exhibition of drafts as they are developed.

Food Safety Inspections

An environmental health officer from the National Parks and Wildlife Service attended the Island from 15 April to 23 April 2023 under a secondment agreement to conduct food safety assessments for registered food businesses regulated by the *Food Act 2003* and premises inspections for a skin penetration business regulated by the *Public Health Act 2010*.

Thirty business inspections were undertaken across this period and any business requisitions have been advised via email from the environmental health officer. Where relevant,

businesses have been given 1 month for cleaning and easily achievable requisitions, and 3 months for structural requisitions. The follow up of these requisitions now rests with the LHIB.

Surrender of houses

The Bureau of Meteorology have identified that Met houses 1 and 2, located at 1 and 11 Anderson Road are surplus to their requirements. Following negotiation over time, the Bureau have agreed to surrender these houses to the LHIB, and a Deed of Surrender is in preparation. The Bureau have identified, minor remediation works prior to surrender and are seeking contractor assistance to complete.

7. Development Assessment and Land Use planning

Operations

See business papers.

Planning portal issues

Several issues have been encountered over the past months in relation to the identification of land parcels and the process of lodging and assessing development applications. These issues have confused and impacted communications with the community and resulted in delays to lodgement in some cases.

Through investigation, it has come to light that since 2017/2018 lots created by subdivision on Lord Howe Island had not been updated on the NSW cadastre, the GURAS database, the Spatial Viewer and were not correctly identified on the Planning Portal.

This is a critical planning issue - any development application and subsequent determination must be based on the correctly identified parcel.

This situation eventuated following internal structural and functional changes within the Department of Planning, and the fact that parcels on Lord Howe Island are Crown land that does not neatly fit within the Departments' data structure systems.

The issue has been resolved but has delayed lodgement of the two development applications included in the May 2022 Board papers.

Integrated strategic planning

A review of existing strategic plans and strategies has commenced alongside an assessment of the LHIB's compliance with statutory obligations, particularly under the *Environment Protection and Assessment Act 1979* and the *Local Government Act 1993*.

Resourcing and recruitment

- The LHIB contract for statutory planning services with All About Planning has expired. A procurement process to identify a service provider for statutory planning functions is urgently required. Prior to going to tender, the Manager Environment and Community Services will re-commence discussions with Port Macquarie Hastings Council on a potential co-contribution opportunity for in-demand planning resource.
- There have been challenges accessing a building certifier to provide assessment against the Building Code of Australia, specifically whether submitted development proposals achieve compliance and or present a non-compliance, as well as advice on appropriate Performance Solutions. This is an ongoing issue.

Board Meeting: May 2023 Agenda Number: 10 Rec No: ED23/2906.02 OPEN Attachment: B

8. Spatial and data management

Operations

A spatial and data strategy has been drafted and provides a framework to support operations across business units and provide an implementation roadmap to guide data collection and management actions, improve access to quality assured data and realise efficiencies in reporting. The strategy will be strategically and incrementally implemented as resourcing allows.

Resourcing and recruitment

Nil

Approval and contact

Approver	Position
Suzie Christensen	Chief Executive Officer
Preparer	Position
Paula Pollock	Senior Manager Environment and Community Services

LORD HOWE ISLAND BIOSECURITY UPDATE 09 – 10 MAY 2023 BOARD MEETING

Lord Howe Island Biosecurity Update 9 February 2022 to 28 April 2023.

Background

Routine plane and vessel checks at Port Macquarie (PMQ) and Lord Howe Island (LHI), rodent monitoring and six weekly checks remain critical tasks for the Biosecurity Team. Other key priorities progressed in this period have included improving biosecurity facilities and procedures at Port Macquarie points of departure, staff establishment and training and working closely with Birdon Shipping on refining biosecurity planning and procedures.

Biosecurity Inspection and Reporting Details

1. Rodent Report

Most recent confirmed rodent sign 12 August 2021.

Rat on a Rodent (ROAR) Notifications

Months	Reports	Investigations	Outcome
9 Feb 2023 – 28 April 23	4	4	No rodent evidence at either site

All reports are investigated intensively over a 7-day period.

Aircraft (other than the Island Trader) and Vessels Report

All vessels and aircraft arriving at Lord Howe Island were inspected.

Period	Aircraft			Vessels	
	Qantas	Private	Eastern	Private	Commercial
9 Feb 23 – 31 Mar 23	110	12	74	7	
% Met	100%	100%	100%	100%	

Island Trader Report

Four voyages occurred during this period. All voyages at both PMQ and LHI were thoroughly checked by the biosecurity team during loading and unloading activities.

Period	PMQ Inspections	LHI Inspections
9 Feb 23 – 28 Mar 23	4	4
% Met	100%	100%

Inspections at the PMQ Birdon site include inside and outside cargo storage areas and surrounds. The Island Trader is inspected both inside and outside the hold. A range of biosecurity risk materials continue to be identified and treated at PMQ. The most significant identifications during this period have included rats, mice, huntsman spider, grasshoppers, Eastern Water Skink, roaches, and various scat. The ongoing identification of biosecurity risk

Board Meeting: May 2023 Agenda Number: 10 Rec No: ED23/2906.03 OPEN Attachment: C

material at this site demonstrates a high risk and substantiates the efforts working with Birdon to attempt to reduce the risk of pest incursion on LHI.

Inspections on arrival at LHI are conducted on the jetty and surrounding cargo storage areas. Due to the high standard of inspections at PMQ by Tate Animals, limited biosecurity risk materials were detected on arrival. There were no detections throughout this period.

2. Biosecurity monitoring

Table 1 below provides a status update of the rodent biosecurity monitoring effort undertaken to date against the monitoring frequency set out in the Surveillance Plan used by Bode and Brown in their efficacy modelling of the surveillance network.

The camera array and static monitoring components have been fully active over the reporting period. The static monitoring network consists of two distinct networks of passive monitoring devices. The first network located around the Jetty and Airport is monitored on a weekly basis, whilst a second more geographically spread monitoring network is checked on a monthly basis. Dog searches have been occurring though not completely within a 6 weekly cycle. Best practice indicates a 6-10 weekly search is adequate, and contract dog teams continue to be used aimed at meeting the six weekly goal.

Device	Number of devices	Check frequency target	Status	Comments – Including Actual checks completed or status
Camera array	162	Monthly	Met	Images analysed by eVorta AI software (and human) <ul style="list-style-type: none"> February – 107,034 March – 94,219 April – still to be uploaded No rodents seen.
Static monitoring devices (kill traps, wax tags, bait stations, chew cards, tracking tunnels)	263	Monthly	Met	
Airport and Jetty static monitoring devices (kill traps, wax tags, bait stations, chew cards, tracking tunnels)	83	Weekly	Partially Met	Every 7 -14 days. If not weekly, then clustered around ship movements.
Dog searches	Full sweep of the settlement	Six weekly	Met	Searches completed as follows: 2023 <ul style="list-style-type: none"> January 11 – February 10 March 1 – 20 April 14 - 25

Table 1: Rodent biosecurity monitoring effort – February 2023 – April 2023

CEO BOARD REPORT

PROJECT REPORT

OPEN SESSION

Item

This report is a brief update of progress on current projects. The budget reflects the full spend of the project to date across the project's lifetime. Current year budget and expenditure is presented in the financial update (3.01).

IES

1. SCCF – Beach Access
2. SCCF – CBD Amenities
3. SCCF – Skate Park
4. SCCF – Aquatic Club
5. SCCF – Playground Upgrade
6. EOC
7. Solar Project (ARENA)
8. Roads Projects

ECS

12. Biosecurity NPP
13. Improved Biosecurity Measures (Training)
14. *Lagunaria* (Sallywood) Swamp Forest
15. Little Mountain Palm
16. Threatened Plant Monitoring & Survey
17. Conservation of LHI Stick Insect
18. Biodiversity Benefits Monitoring

CEO

9. Efficiency and Effectiveness Review
10. Lord Howe Island Festival
11. Southern Precinct Masterplan

Summary of Activities and Issues

	Project Title	Schedule	Budget	Resources	Overall RAG
IES	SCCF – Beach Access	R	G	A	R
	SCCF – CBD Amenities	R	G	A	R
	SCCF – Skate Park	R	G	A	R
	SCCF – Aquatic Club	R	G	A	R
	SCCF – Playground Upgrade	G	G	G	R
	EOC	R	G	A	R
	Solar Project (ARENA)	R	G	A	R
	Roads Projects	R	G	A	R
CEO	Efficiency and Effectiveness Review	R	G	A	A
	Lord Howe Island Festival	G	G	G	G
ECS	Biosecurity NPP	R	G	A	R
	Improved Biosecurity Measures (Training)	G	G	G	G
	<i>Lagunaria</i> Swamp Forest	G	G	G	G
	Little Mountain Palm	G	G	G	G
	Threatened Plant Monitoring & Survey	R	G	A	A
	Conservation of LHI Stick Insect	G	G	G	G
	Biodiversity Benefits Monitoring	G	G	G	G

R Red Project is likely to deliver late/over budget/has insufficient resourcing
A Amber Project has missed some targets but overall end date/budget is not at risk
G Green Project on track

1. SCCF - Beach Access

Project Name	Beach Access		30-Sep-23
Project Health	Schedule	An extension was approved to allow time for community consultation and the opportunity to consult Paul Nunari, Director Inclusive Infrastructure and Experience for DPE, to confirm best options for accessibility inclusivity on Lord Howe Island.	
	Budget	Project Budget: \$50,851.50	Current spend: \$11,987.10
	Resources	The number of current projects has meant dedicating sufficient time to each project has been difficult. The structure of the PMO is seeking to address this issue.	
Update	To enhance accessibility for locals and visitors with limited mobility, an all-terrain walker and wheelchair has been acquired that will enable them to access the natural environment and the beach. The project is currently in the final stages of obtaining legal approval for the hiring process. Once the equipment becomes available, a three-month trial period will be conducted, during which feedback will be gathered on the hiring process and the functionality of the equipment. Community consultation will seek feedback on the current equipment, to assist a decision on how to allocate the remaining funds available for this grant.		
Risks	Should additional planning be required if legal approval is not granted, there is a possibility of delay in the initial equipment hire. This delay could result in the community feedback stage being excluded due to time limitations, which may lead to dissatisfaction among community members regarding equipment options.		
Next Steps	Once an outcome from the legal department is received, the process will be communicated accordingly. The equipment is fully assembled and ready for use pending approval.		

2. SCCF – CBD Amenities

Project Name	CBD Amenities		
Project Health	Schedule	Proposed completion March 2021, planning stage reached March 2023	
	Budget	Project Budget: \$137,036	Current spend: \$6,190.69
	Resources	The number of current projects has meant dedicating sufficient time to each project has been difficult. The structure of the PMO is seeking to address this issue.	
Update	Whitehead Environmental Consultants have submitted the wastewater management report for the proposed public CBD amenities. Owing to the space limitations, a full flush toilet is not feasible as the required area for effluent disposal is unavailable. As a result, there are two viable options: a low-flush composting setup or a dry composting toilet setup. With this information confirmed, the planning process for the project has been initiated		

Board Meeting: May 2023 Agenda Number: 10 Rec No: ED23/2906.04 OPEN Attachment: D

Risks	Current and future delays will cause reputational risk to the LHIB as predicted delivery timeframe will be 2024.
	Issues with current load on wastewater system at the Community Hall cannot be managed and a suitable solution needs to be installed to take the pressure of the overloaded system.
Next Steps	Write options paper for available options including costing, positioning and DA requirements.

3. SCCF – Skate Park

Project Name	Skate Park		30-Jun-24
Project Health	Schedule	Revised completion date of June 2024, planning stage reached March 2023. Extension to completion date may be required dependent on potential design update.	
	Budget	Project Budget: \$744,325	Current spend: \$1,314.17
	Resources	The number of current projects has meant dedicating sufficient time to each project has been difficult. The structure of the PMO is seeking to address this issue.	
Update	Research is underway to potentially revamp the current skate park design. The original design, which was completed in 2014, could possibly benefit from the significant advancements in skate park design options and the availability of extra funding. This may allow a more suitable design for the skate park to suit Lord Howe Island.		
Risks	Should a redesign be confirmed, a new development application would be required, which may elicit unfavorable feedback from the community during the exhibition stage. This has the potential to result in the application being rejected and consequently cause delays in the completion of the project.		
Next Steps	To achieve a desirable design outcome, a Geotech assessment is necessary. Consequently, a visit from Geotech expert is being arranged to conduct a thorough assessment of the location for planning. The Geotech assessment will be discussed with the Skate Park committee to confirm continuation with current design or redesign.		

4. SCCF – Aquatic Club

Project Name	Aquatic Club		31-Oct-23
Project Health	Schedule	Completion scheduled for October, 2023.	
	Budget	Project Budget: \$50,000	Current spend: \$50,000
	Resources	The number of current projects has meant dedicating sufficient time to each project has been difficult. The structure of the PMO is seeking to address this issue.	

Board Meeting: May 2023 Agenda Number: 10 Rec No: ED23/2906.04 OPEN Attachment: D

Update	The completion of the project has been delayed owing to unforeseeable personal circumstances. All renovations have been completed, and an extension has been granted for the small amount of remaining budget, to acquire additional equipment.
Risks	Nil
Next Steps	Coordinate with Aquatic Club on purchases and submit completion report.

5. SCCF – Playground Upgrade

Project Name	Playground	31-Mar-23
Project Health	Schedule	Completed on time in March 2023
	Budget	Project Budget: \$166,400 Current spend: \$167,059.14
	Resources	N/A
Update	The final addition of the shade pergola has been constructed at the playground and project completion report submitted.	
Risks	Nil	
Next Steps	To facilitate the use of the pergola by families, a picnic table will be installed beneath it in the near future.	

6. EOC

Project Name	EOC	30-Jun-23
Project Health	Schedule	Extension request approved due to delay in Karera's availability to complete work on island.
	Budget	Project Budget: \$344,399 Current spend: \$271,411.51
	Resources	The number of current projects has meant dedicating sufficient time to each project has been difficult. The structure of the PMO is seeking to address this issue.

Board Meeting: May 2023 Agenda Number: 10 Rec No: ED23/2906.04 OPEN Attachment: D

Update	<p>The construction of the mobile generator and its custom-built trailer has been completed. Once transportation arrangements have been confirmed the generator can be registered and delivered to the intended destination on the island. A small shed to be built to house the generator at the Powerhouse site is in the planning stage.</p> <p>The first stage of the radio upgrade has been successfully completed, entailing the replacement of the VHF system with a UHF system and the installation of a new repeater on Transit Hill to enhance island-wide coverage.</p> <p>During Stage 1 implementation, the proposed network function was assessed, and options explored to include all LEMC agencies in the setup. All original radio holders were trained, and operational needs were discussed, reviewed, and implemented on-site wherever feasible. Any requirements that were not feasible in Stage 1 have been added to the second phase of the upgrade. The updated network is being tested and trialed for connectivity and programming, which will direct the planning for Stage 2. The project team is working closely with Karera to develop a communications strategy that is tailored to the unique challenges of the island, and we anticipate implementing Stage 2 in the coming months.</p>
Risks	<ul style="list-style-type: none"> • There have been difficulties in scheduling a site visit with Karera. • Due to the transport company's delayed response in confirming their capacity to transport the generator to the ship, there is apprehension that alternative transportation arrangements may need to be explored. The matter is being progressed as a priority.
Next Steps	For the radio upgrade active coordination is underway with Karera to finalise planning and procurement for stage 2 by the end of June. Diligent efforts are being made to ensure that this goal is achieved.

7. Solar Project

Project Name	ARENA Knowledge Sharing Plan		30-Jun-23
Project Name	Solar Project		30-Jun-23
Project Health	Schedule	LHIB's contribution has been delayed due to staff shortages. Currently liaising with Jacobs to discuss finalisation of LHIB's contribution to report.	
	Budget	Project Budget: N/A	Current spend: N/A
	Resources	Jacobs Consulting are engaged to complete plan with input from LHIB Project Officer. The number of current projects has meant dedicating sufficient time to each project has been difficult. The structure of the PMO is seeking to address this issue.	
Update	Jacobs Consulting is currently in the final stages of implementing the LHIB Knowledge Sharing Plan for ARENA (Australian Renewable Energy Agency). However, due to a recent turnover of staff, there were certain lapses in the project reporting. As a result, additional efforts were made to gather the required data for the reports, leading to a longer timeframe than initially anticipated.		
Risks	Nil		
Next Steps	Continue to engage with Jacobs to finalise LHIB outstanding contributions and acquit the grant.		

8. Roads Projects

Project Name	Roads Projects		30-Jun-2023
Project Health	Schedule	Variations are currently being processed for scope and schedule to align with limitations of funding.	
	Budget	Project Budget: \$3,041,795	Current spend: \$566,245.94
	Resources	This project is being managed jointly between the Project Office and MIES with support from TfNSW	
Update	<ul style="list-style-type: none"> After the recent failed tender, LHIB has negotiated with Transport for New South Wales to progress direct negotiation with a single source provider. All Island Services (AIS) have been engaged to complete baseline works on a section of Lagoon Rd. All-road activities must be conducted in dry weather to avoid the agent clumping. This has unfortunately caused the recent delays on Lagoon Rd. 		
Risks	<ul style="list-style-type: none"> Insufficient funding to carry out priority works program Community dissatisfaction over current state of roads and upgrades program Delays particularly weather coming into winter Australian Standards for PMQ applied to LHI – issues may arise with consistently meeting standards given our limitations and environment 		
Next Steps	<ul style="list-style-type: none"> A variation request is being developed to reduce the proposed scope. Roads have been prioritised based on financial, critical asset protection and public safety criteria. The following roads have been deemed as highest priority: <ul style="list-style-type: none"> Anderson Road (Middle Beach – Powerhouse) – The powerhouse is a critical piece of infrastructure. The road leading to it needs to be upgraded to ensure that emergency services can reach it in a timely manner. This reconstruction will require removal of vegetation at certain points. Anderson Road (Middle Beach to Mutton Bird) – There are two sections to be reconstructed, Anderson Rd is regarded as a main road and will need to be maintained. Skyline Drive / Mutton Bird Dr – These two roads have been identified as a potential public safety risk due to Mutton bird burrowing. These roads need to be addressed as some are at a critical failing point. Road guard is to be installed on the edges of these roads to avoid future collapses from Mutton Bird burrowing. Upgrade to these roads will exhaust the limit of our current funding and an application for FLR round 5 funding will be made to continue the remainder of the works. 		

9. Efficiency & Effectiveness Review

Project Name	E&E Review		30 Jun 25
Project Health	Schedule	Behind schedule on recruitment and delivery	
	Budget 22/23	Project Budget: \$1,516,736	Current spend: \$414,195

	<p>Resources Budget approval and recruitment delays have been restrictive.</p>
<p>Update</p>	<p>The budget and project plan have been developed and endorsed (with minor amendments) by the Board at its September meeting.</p> <p>A dedicated project office has been scoped and a draft structure and business case for the Project Management Office is being completed with assistance from the delivery office.</p> <p>IT Update: Phase one of the discovery process for our IT systems review has been completed. Phase two involves transition to the future state. Part 1 of the future state relates to cyber security, a critical issue identified in successive audits. Funding has been allocated by DRF to the LHIB cyber uplift to address these issues in relation to LHIB ICT landscape. A business case has been submitted to DPE corporate Systems and funding has been secured.</p> <p>OH&S Update: Board staff commenced use of DPE CAMMS risk management software in November 2022. All WHS events, hazards, near misses and injuries will be reported and managed in CAMMS going forward.</p> <p>Integrated planning has continued with the following plans being scoped and developed in conjunction with wider mapping of obligations and future planning requirements.</p> <ul style="list-style-type: none"> • A workforce strategy is in development with support from DPIE, feedback has been sought from staff. A leadership team, meeting to advance discussions around MyTalent plans and workforce planning was held in early March. • A communications plan is currently being drafted for both internal and external stakeholders, due to be completed by the end of April. • A policy and governance framework has been drafted to assist review of current LHIB policies against DPE policies and reduce duplication. • An Asset Management Plan has been created, including an asset management system. Priority works are being coordinated by a contractor who was contracted in April. • The Biodiversity Management committee have met and are progressing discussions on options for community engagement. • The critical weed response (including heliops) has been on hold due to the Myrtle Rust incident.
<p>Risks</p>	<ul style="list-style-type: none"> • Resourcing issues have impacted delivery. • Regulatory requirements need to be met before LEP and various other projects can officially commence. • Recruitment/ skills availability • Access to IT systems • Access to expertise and resources to conduct policy review
<p>Next Steps</p>	<ul style="list-style-type: none"> • Recruitment, tendering and setup of project management service as part of overall LHIB delivery Strategy. • Finalise and tender for scopes for outsourced projects (further dwelling allocation / accommodation demand, revenue review) • IT discovery and evaluation work to continue. • Workforce strategy to progress. • Asset Management systems updated, and priority works undertaken.

10. Lord Howe Island Festival

Project Name	Lord Howe Island Festival		30-Mar-23
Project Health	Schedule	Event completed Feb 2023	
	Budget	Project Budget: TBA	Current spend: TBA
	Resources	Project coordination outsourced to on island Events Management coordinator.	
Update	<p>2023 brought with it the first-ever staging of the Lord Howe Island Festival.</p> <p>The festival was made possible with a grant awarded to the Lord Howe Island Board by NSW Government as part of its 'Reconnecting Regional NSW - Community Events Program'. Additional sponsorship support was secured from Eastern Air Services, Lord Howe Island Brewery, Oxley Travel, Birdon and Lord Howe Island Tourism Association. Significant in-kind contribution was secured through artists performance free of charge.</p> <p>Held across a 10-day period in February 2023, the festival was strategically centered around Discovery Day to elevate the annual community celebrations.</p> <p>The Lord Howe Island Festival was a means of bringing our island's community together through a shared love of music, sport, dance, food and local adventure.</p> <p>It not only created economic opportunities for local business, but it also brought a high-caliber entertainment offering that incentivised community involvement and interaction across all age groups.</p> <p>From palm tree climbing to picnics at North Bay, ARIA Award winning artists to local band favourites, the Lord Howe Island Festival was nothing short of a huge success, ensuring there was something for everyone to celebrate our island community.</p>		
Risks	Nil		
Next Steps	Finalise project reporting and look at options for funding 2024.		

11. Southern Precinct Masterplan

Project Name	Southern Precinct Masterplan		30-Sept-23
Project Health	Schedule	On track	
	Budget	Project Budget: \$375,500	Current spend: \$137,461
	Resources	External	
Update	<ul style="list-style-type: none"> Business case developed for WMF 		
Risks	Nil at this stage of the project.		
Next Steps	Awaiting outcomes of business case review, to provide next steps for master planning including community engagement.		

12. Biosecurity NPP

Project Name	Biosecurity NPP		30-Jun-26
Project Health	Schedule	Behind schedule on recruitment and delivery. Budget reprofile to be undertaken to align with shipping timelines.	
	Budget	Project Budget: \$32,400,000	Current spend: \$2,424,117.06
	Resources	Recruitment delays have been restrictive.	
Update	<p>Preventive and responsive, protecting past investment - Biosecurity Program (Opex)</p> <ul style="list-style-type: none"> Team training continues as Biosecurity Officers visit the PMQ Birdon facility to do training on live invasive species and further understand processes in the Birdon operation. Cameras and AI have been purchased and are being prepared for install at high-risk sites used Thermal AI to enhance information collection and review. Island wide 6 weekly dog checks have been conducted according to schedule and data monitoring and mapping is continuing to be refined with a data management strategy developed, as well as registers and tools to assist with collection, management and storage. An emphasis on data collection and reporting has allowed for better analysis of effort and will feed into workforce planning. A review of surveillance network as 2-year intensive monitoring period approaches (Aug 2023) is underway with expert Eradication and biosecurity specialist including modelling by Bode (QUT). Team leader biosecurity recruitment progressing. A biosecurity announcement to Qantas passengers including an announcement on arrival has begun. A pest audit at Qantas freight facility has been agreed for late April. A number of biosecurity SOP's have been reviewed and finalised in March. <p>Long term security of maritime service strategy</p> <ul style="list-style-type: none"> Marine strategy completed and long term shipping strategy currently under review <p>Biosecurity - monitoring and response</p> <ul style="list-style-type: none"> Ongoing weed response and Myrtle Rust resources deployed In discussion with Marine Parks regarding sharing the cost of upgraded hi-res images of the Island. <p>Minor capital works</p> <ul style="list-style-type: none"> A second dog has been purchased and has been delivered to dog trainer Steve Austin for training prior to arrival on island in April, a third dog is being trialed in April, bringing our dog team up to 5. Minor capital works continue at our key stakeholder sites in PMQ that will improve risk profiles for both sites. Contract negotiations the Biosecurity Management Plan for our cargo vessel are at final signoff stage. <p>Major Capital Works</p> <ul style="list-style-type: none"> Mapping of key deliverables is progressing to determine timeframes for key project stages and resourcing required for major capital works and process upgrades. 		

Board Meeting: May 2023 Agenda Number: 10 Rec No: ED23/2906.04 OPEN Attachment: D

Risks	Resourcing issues significantly effecting delivery, shipping considerations impact ability to plan major capital works.
Next Steps	<ul style="list-style-type: none"> Finalisation of minor capital works at key stakeholder sites Team leader biosecurity recruited Review of existing and development of biosecurity SOP's Asset Management systems updated, and priority works undertaken Screening improvements planned for airport.

13. Improved Biosecurity Measures (Training)

Project Name	Improved Biosecurity Measures - Training		30-Jun-23
Project Health	Schedule	On schedule to be completed 30 June 2023.	
	Budget	Project Budget: \$123,151	Current spend: \$48,797
	Resources	No current issues.	
Update	<ul style="list-style-type: none"> Remote Area First Aid & Work Dog Remote First Aid (Complete) Birdon and live scent training (Complete x 2) Authorised Officer Training – Online (Complete) Authorised Officer Training - In person (Not complete – Dates being confirmed) Steve Austin - Handler Training (1 x complete, 1 x scheduled) Steve Austin - Advanced Training - Dog Trainer (1 x complete, 1 x scheduled) Steve Austin - Handler Training (Stage 2) – Certification (Scheduled) 		
Risks	Availability of trainers		
Next Steps	Schedule on island Biosecurity officer training with Fahri Fahri (DPI).		

14. Lagunaria (Sallywood)Swamp Forest (Pinetrees Reveg)

Project Name	Lagunaria Swamp Forest		01-Dec-25
Project Health	Schedule	Affected by Myrtle Rust Response	
	Budget	Project Budget: \$20,699	Current spend: \$0
	Resources	External	
Update	Work on the Sallywood Swamp Forest Revegetation project was forced to slow down due to the myrtle rust incursion. Weed suppression and minor maintenance at the site has continued thanks to the help of contractors. The priority now is to remove the large oleander patch in the middle of the plot so that additional plants can be planted as soon as possible.		
Risks	None identified		
Next Steps	Interpretive signage will be developed to place at the site. Additional fencing will be installed to exclude cattle so that the Sallywood Swamp Forest corridor connects with native vegetation on either side.		

Board Meeting: May 2023 Agenda Number: 10 Rec No: ED23/2906.04 OPEN Attachment: D

15. Little Mountain Palm

Project Name	Little Mountain Palm		30-Jun-23
Project Health	Schedule	On schedule to finish 30 Jun 23.	
	Budget	Project Budget: \$1,076,310	Current spend: \$944,290.8
	Resources	Resources slightly impacted by Myrtle Rust response but still on track due to external assistance/contractors.	
Update	Due to the Myrtle Rust response only 2 of the 9 sites were done in the last round of surveys (March 2023), the preliminary results for these sites are following the best anticipated trajectory. Further survey due to be carried out in June 23.		
Risks	Recruitment and resource availability - looking into using contractors as a substitute in the interim.		
Next Steps	Procuring contractors to finalise the work associated with this grant.		

16. Threatened Plant Monitoring & Survey

Project Name	Threatened Plant Monitoring & Survey		30-Jun-2026
Project Health	Schedule	Behind schedule due to Myrtle Rust Response	
	Budget	Project Budget: \$1,700,000	Current spend: \$262,656
	Resources	Resources unavailable due to Myrtle Rust Response	
Update	Myrtle rust response has impacted the deliverables in this grant. Limited weeding conducted, Helicopter operation cancelled and no surveys conducted in this period.		
Risks	Delayed delivery, impact to schedule. Providence petrels now nesting in key areas and prevent work for being conducted until September.		
Next Steps	Reinstate resources and continue ongoing delivery – review options for helicopter operations in September.		

17. Conservation of LHI Stick Insect

Project Name	Conservation of LHI stick Insect		30-Jun-23
Project Health	Schedule	On schedule	
	Budget	Project Budget: \$60,000	Current spend: \$26,581.93
	Resources	External builder contracted.	
Update	Construction of two new captive holding and breeding enclosures for the LHISI on Lord Howe Island. Discussions will contractor with regard to install July 2023.		
Risks	<ul style="list-style-type: none"> • Availability of suitably qualified specialist for installation of points on Balls Pyramid. • Suitable weather window being available over winter. 		

Board Meeting: May 2023 Agenda Number: 10 Rec No: ED23/2906.04 OPEN Attachment: D

Next Steps	Quote is being sort for installation of climbing rope and anchor points on Ball's Pyramid. to allow for more regular population surveys of the LHISI, collection of new individuals, and protection of important habitat on Ball's Pyramid (BP). Revised scope to allow for smallest possible footprint.
-------------------	--

18. Biodiversity Benefits Monitoring

Project Name	Biodiversity Benefits Monitoring		30-Jun-23
Project Health	Schedule	On track	
	Budget	Project Budget: \$350,000	Current spend: \$155,188.62
	Resources	External	
Update	<ul style="list-style-type: none"> Funding has been secured through an MoU with DPE EHG to complete monitoring to measure the environmental benefits post-rodent eradication program (REP). Five monitoring projects occurred before the REP (vegetation, invertebrates, Placostylus, little shearwater, and gecko) and these will be replicated over the next three years. Additional data will be collected during these projects to help inform analysis of changes to food webs on the island. Sampling has commenced for the invertebrate work. Little shearwater project will begin collecting data next month, and vegetation will commence shortly. Placostylus data collection was delayed due to myrtle rust and is postponed for another few months. 		
Risks	Weather & delays to schedule due to Myrtle Rust Response		
Next Steps	Ongoing monitoring and as information begins to accumulate for each project, presentations will be given to the community and interested tourists at either the museum or the public hall.		

Completed projects

1. Playground
2. Shipping Market Analysis
3. Waste Management Strategy
4. Restoring Blackburn Island (Phasmid translocation preparation)

Projects yet to commence

1. LHI Communications and Community Hall Upgrade (\$987,305)
2. Biosecurity NPP (CAPEX) – To be reprofiled.
3. Middle Beach Stairs – Grant review post Geotech report (June 23)
4. LRCI Phase 3 – Depot Pavement Renewal (Currently being reprofiled)

Approval and contact

Approver	Position
Suzie Christensen	Chief Executive Officer
Preparer	Position
Darcelle Matassoni	Senior Project Officer

Board Meeting - May 2023 - CHIEF EXECUTIVE OFFICERS REPORT

Board Meeting: May 2023 Agenda Number: 10 Rec No: ED23/2906.05 OPEN Attachment: E

Lease holding inspection schedule to September 2023

Date range	Inspection type	Description	Estimated time of visit	Estimated number of officers
April 19-26 May 3-10	Myrtle rust surveillance settlement	Part of myrtle rust response – may cease if no further spore is detected after the sixth round of fortnightly searches in the settlement.	10 -30 minutes (dependent on size and number of myrtaceous species)	2 people
April 14-25 May 26-June 9 July 7-21 August 18 –sept 1	6 weekly settlement searches	Rodent, snakes, frogs etc Required by the biosecurity monitoring protocol and in line with the Bode assessment	10min – 1 hour (Dependent on size)	1 plus detection canine. Any dog interest or detections could mean extra personnel/time
July 8-26	2-year Success check	Already included above in the 6 weekly settlement checks.	10min – 1 hour (Dependent on size)	1 plus detection canine. Any dog interest or detections could mean extra personnel/time
After September	Termites	Island-wide survey. Dates to be confirmed. Likely to focus on specific areas – property access requirements to be confirmed.	TBC	2 people
TBC	Weed inspections	Should be completed annually or bi-annually. No dates set for 2023, though most properties are overdue.	30 minutes – 1 full day	2 for inspection only, up to 5 for full grid search and treatment of weeds
After September	African Big-headed Ant	Success check. Not all properties – those in proximity to sites known to be previously infected and ports of entry (jetty, WMF, and airport)	10min – 1 hour (Dependent on size)	1-2 people plus detection canine. Any dog interest or detections could mean extra personnel/time
Before 30 June	Phytophthora	Not all properties – those in proximity to sites known to be infected or showing potential signs of infection	10 -30 minutes (dependent on size and proximity to sites known to be infected)	2 people Any detections could mean extra personnel/time

This page is intentionally blank to note verbal agenda item 11

Board Meeting: May 2023	Agenda Number: 12.01	Record Number: ED23/2534
--------------------------------	-----------------------------	---------------------------------

LORD HOWE ISLAND BOARD

BUSINESS PAPER

OPEN SESSION

Item

Owner Consents approved under Delegated Authority status report.

Recommendations

1. **Note** the information provided in this report

Current position

The Minister for the Environment has approved delegated authority regarding the issuing of owner 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.

No Owner Consent Applications were determined by the CEO since the last Board meeting in February 2023.

Attachments

Attachment	Title
Nil	

Approval and contact

Approver	Position
Suzie Christensen	Chief Executive Officer
Preparer	Position
Lynda Shick	Land & Property Officer

Board Meeting: May 2023	Agenda Number: 12.02	Record Number: ED23/2535
--------------------------------	-----------------------------	---------------------------------

LORD HOWE ISLAND BOARD

BUSINESS PAPER

OPEN SESSION

Item

Development Applications approved under Delegated Authority status report.

Recommendations

1. **Note** the information provided in this report.

Current position

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).

No development applications have been determined by the CEO since the last Board meeting in February 2023.

Attachments

Attachment	Title
Nil	

Approval and contact

Approver	Position
Suzie Christensen	Chief Executive Officer
Preparer	Position
Lynda Shick	Land & Property Officer

Board Meeting: May 2023	Agenda Number: 12.03	Record Number: ED23/3055
--------------------------------	-----------------------------	---------------------------------

LORD HOWE ISLAND BOARD

BUSINESS PAPER

OPEN SESSION

Item

Assessment Report – OC 2022.8 and DA2022.7.1

Recommendations

1. **Approve** DA2022.07 for a Proposed Tourist Accommodation incorporating alterations/ additions and conversion of existing dwelling as a 4 x bedroom guest house, construction of new transit lounge/new laundry and storage shed and construction of a replacement dwelling and new wastewater system on Lot 1 DP 1279044, No. 1 Ocean View Drive, Lord Howe Island, subject to the application of the conditions listed in the assessment report.
2. **Recommend** that OC2022.08 for Proposed Tourist Accommodation incorporating alterations/ additions and conversion of existing dwelling as a 4 x bedroom guest house, construction of new transit lounge/new laundry and storage shed and construction of a replacement dwelling and new wastewater system on Lot 1 DP 1279044, No. 1 Ocean View Drive, Lord Howe Island be approved.

Current position

On 16 December 2022, Owner Consent application OC2022.8 and Development Application DA2022.7.1 was lodged by Chad Wilson for:-

- Proposed Tourist Accommodation incorporating alterations and additions and conversion of existing dwelling as a guest house. Construction of new transit lounge/new laundry and storage shed and construction of a replacement dwelling and new wastewater system.

The development application was publicly exhibited from 20 December 2022 to 20 January 2023. No submissions were received.

An assessment report has been completed by the Board's independent planning consultant and is attached at A. The development application is to be determined by the Board.

The applicant has designed the development to the constraints of the site, and acquired land from a neighbouring lease holding to meet the requirements of the LEP in relation to site coverage.

Board Assessment

During assessment the interpretation and application of clause 22 Tourist Accommodation, staff accommodation and commercial premises was challenged by the applicant.

Clauses 23, 24 and 27 of the LEP refer to Gross Floor Area (GFA) in respect of permanent dwellings & dual occupancies. GFA is defined in the LEP as:

Page 1 of 2

'the sum of the areas of each floor of a building, including covered decks, garages and outbuildings, where the area of each floor is taken to be the area within the outer face of the external enclosing walls as measured at a height of 1,400 millimetres above each floor level excluding—

(a) columns, fin walls, sun control devices and any elements, projections or works outside the general line of the outer face of the external wall, and

(b) cooling towers, machinery and plant rooms and ancillary storage space and vertical air-conditioning ducts, and

(c) space for the loading and unloading of goods, and

(d) exempt development, commercial premises, public accommodation and uncovered decks'.

Clause 22 by contrast, does not reference GFA. The development assessment asserts that the purpose of Clause 22 is not to limit floor area but to establish a maximum site coverage control and minimum landscaped area control. In this way, clause 22 addresses the aims and objectives of the LEP, zoning controls and DCP to maintain the landscaped/vegetated character of the Island by applying limits to development footprints. Clause 22 is expressed as a minimum development standard.

In applying GFA, as defined, to clause 22 (1)(a), and excluding uncovered decks on the proposed structures, the occupied area of the allotment meets site coverage requirements. The applicant has designed to the application of GFA and contends that this application is consistent with other developments on LHI.

In applying clause 22 as written, without reference to GFA, the inclusion of uncovered decks, which are considered building structures and/or ancillary structures to proposed buildings, the proposal is non-compliant with site coverage limits. The planning assessment quantifies this non-compliance at 89.25m² and recommends conditioning a reduction of commercial site coverage.

Precedence

In terms of consistency with past decisions and how clause 22 of the LEP has been applied, it has been difficult to identify cases where varying applications of the clause was specifically approved and/or where this was determinative or critical.

Recommended

The Board's independent planning consultant presents that the required 89.25m² reduction can reasonably be achieved through incremental modifications in various locations of the proposal without materially affecting the integrity of the project.

Attachments

Attachment	Title
A	Assessment Report DA2022.7.1

Approval and contact

Approver	Position
Suzie Christensen	Chief Executive Officer
Preparer	Position
Paula Pollock	Senior Manager Environment & Community Services

Board Meeting: May 2023	Agenda Item: 12.03	File Reference: OC2022.08 & DA2022.07
--------------------------------	---------------------------	--

LORD HOWE ISLAND BOARD

BUSINESS PAPER

Planning Assessment Report

Summary Assessment Report

1 Item

OC2022.08 & DA2022.07 – Proposed Tourist Accommodation incorporating alterations/additions and conversion of existing dwelling as a 4 x bedroom guest house, construction of new transit lounge/new laundry and storage shed and construction of a replacement dwelling and new wastewater system, Lot 1 DP 1279044 (previously known as Lot 347 DP1156661, Prt Lot 201 DP 40354 & Prt Lot 69 DP 757515), No. 1 Ocean View Drive, Lord Howe Island.

2 Summary Assessment Report

Assessment Officer	Peter Chapman (AAP Consultant Planner)
Address/Property Description	Lot 1 DP 1279044, No. 1 Ocean View Drive, Lord Howe Island (previously known as Lot 347 DP1156661, Prt Lot 201 DP 40354 & Prt Lot 69 DP 757515)
Proposal	Proposed Tourist Accommodation incorporating alterations/additions and conversion of existing dwelling as a 4 x bedroom guest house, construction of new transit lounge/new laundry and storage shed and construction of a replacement dwelling and new wastewater system.
NSW Planning Portal No.	PAN-272766
DA No	DA2022.07
Applicant	Chad Wilson
Owner Consent Granted	OC2022.08 submitted and concurrently assessed with DA
Estimated Cost of Development	\$850,000.00
Site Inspection	Site inspections have been undertaken by Board officers
Zone	Zone 2 Settlement. The proposed development is permissible with consent from the LHI Board.
Significant Native Vegetation Map	Part of the lot contains mapped Significant Native Vegetation (SNV). Generally, the proposed development is to be located outside the mapped SNV area but advice received that some vegetation incorrectly mapped as SNV is to be removed which has been assessed for purposes of this DA as not impacting actual SNV.
Notification	The DA was placed on public exhibition from 20 December 2022 to 20 January 2023.
Submissions Received	The LHIB has advised no submissions were received.

Recommendation	a) That OC2022.08 for Proposed Tourist Accommodation incorporating alterations/ additions and conversion of existing dwelling as a 4 x bedroom guest house, construction of new transit lounge/new laundry and storage shed and construction of a replacement dwelling and new wastewater system on Lot 1 DP 1279044, No. 1 Ocean View Drive, Lord Howe Island be approved.
	b) That DA2022.07 for Proposed Tourist Accommodation incorporating alterations/ additions and conversion of existing dwelling as a 4 x bedroom guest house, construction of new transit lounge/new laundry and storage shed and construction of a replacement dwelling and new wastewater system on Lot 1 DP 1279044, No. 1 Ocean View Drive, Lord Howe Island be approved subject to the application of the conditions listed in the report.

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 exceed the above CEO delegations in relation to the value of the proposed work being \$850,000.00. Hence the OC and DA are referred to the LHIB for determination (rather than under the delegations of the CEO).

4 Site Description & History

NSW Planning Portal & Cadastral Updates on the Island

The site is identified as Lot 1 DP 1279044, No. 1 Ocean View Drive, Lord Howe Island. This is a re-subdivided lot which was the result of DA2021.07, approved 21st June 2021 to consolidate parts of two adjoining lots (Part 201 and Part 69) to provide additional land area needed for the subject development of this current DA.

The registration of the above re-subdivision with NSW Land Registry Services took place on the 3rd December 2021 with the new legal description of the subject site being Lot 1 DP 1279044. A copy of the registered DP 1279044 is provided on the following pages of this report.

During initial prechecks of the subject DA, it became apparent that the cadastral information on both the NSW Planning Portal and the NSW Six Maps online mapping tool had not been updated with the approved and registered deposited plan. Both were still showing the old Lot and DP's, boundary locations and areas, despite the new plan being registered 12 months prior.

As a consequence of the above, the subject application could not be accepted and registered to the new legal property description on the NSW Planning Portal. After a series of protracted enquiries to NSW Planning Portal support by both the LHIB admin and All About Planning, NSW Planning Portal support manually added the updated 'new' Lot and DP into the property description for the DA without the cadastral information being updated. This allowed the DA to be accepted and progressed.

Site

As illustrated in figures 1 and 2 (following), Lot 1 DP 1279044 has an irregular shape containing two existing detached dwellings, water tanks etc sited within an attractive landscaped setting as is typical for the Island.

The site is located opposite Hunter Bay at the northern end of the settlement area of the Island, between the Island Jetty and Settlement Beach. It is just west of Ocean View Apartments and shares (along with three other properties) vehicular access off Ocean View Drive with the Apartments.

To the north east, west and south the subject site is adjoined by residential properties, and to the north by Arajilla Retreat (tourist accommodation).

The site has a site area of 6,778m² and a (heavily vegetated) western frontage of just over 48m to Lagoon Road. Much of the site's topography is varied with a sloping nature and gullies present.

As is illustrated in figure 3 below, the site is zoned 2 Settlement under the LHI LEP 2010, and much of the site is mapped SNV with existing clearings for the two existing dwellings etc. As stated earlier, the proposed development is generally to be located outside the mapped SNV area but the assessment of the application has found that some vegetation incorrectly mapped as SNV is to be removed. For purposes of the DA this has been assessed as not impacting actual SNV (refer to internal referral comments in section 6 of this report).

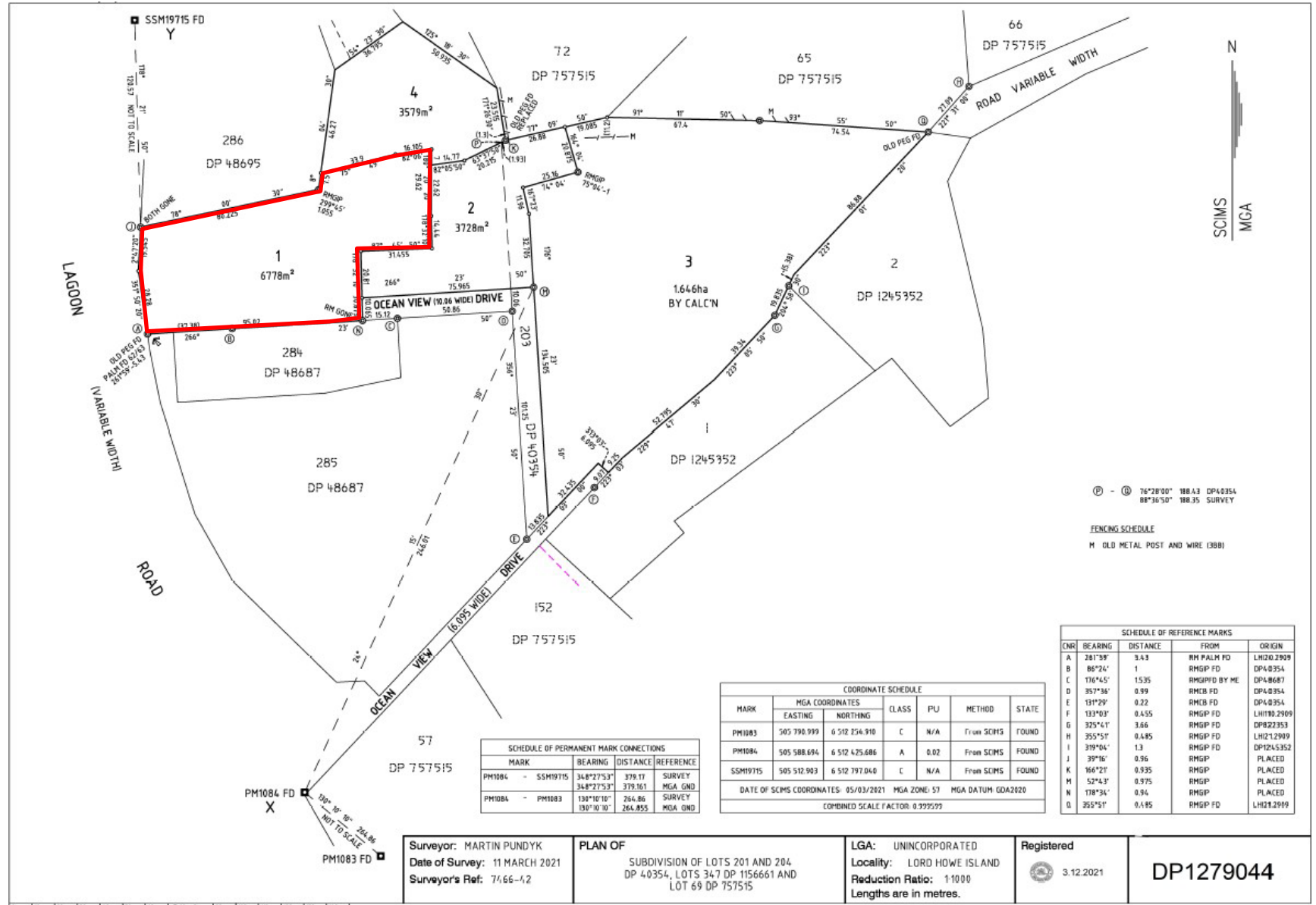
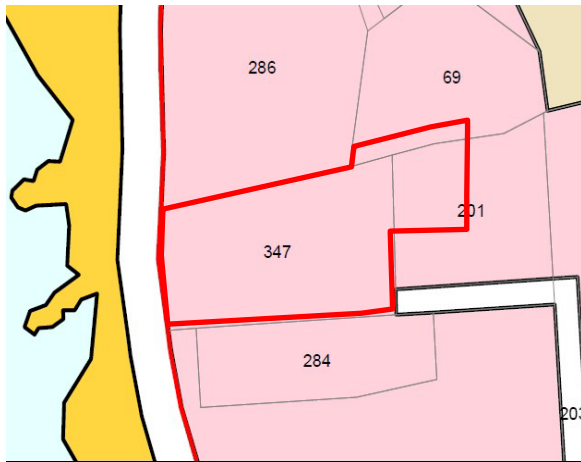


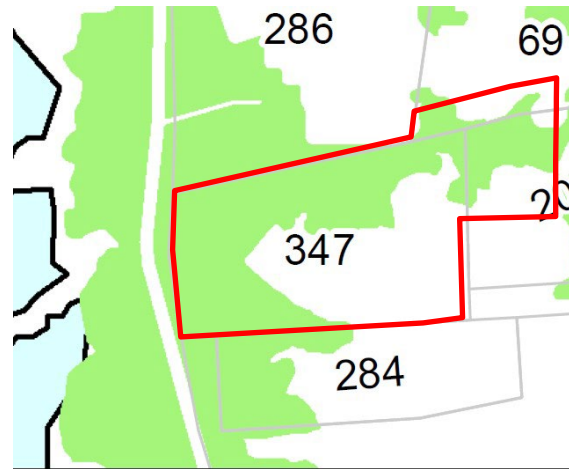
Figure 1: Registered Deposited Plan 1279044 with subject site highlighted



Figure 2: Subject site layout with existing & proposed development highlighted (SIX Maps)



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 3: LHI Mapping Extracts

5 Proposed Development

As already mentioned, the proposed development is for construction of tourist accommodation incorporating alterations/ additions and conversion of an existing dwelling as a 4 x bedroom guest house, construction of new transit lounge/new laundry and storage shed and construction of a replacement dwelling and new wastewater system.

Guest House

As detailed on the submitted plan extracts (ref following pages) the proposed tourist accommodation is to be within an existing dwelling that is to be converted to a tourist guest house with the following characteristics:

- Split level 1 and 2 storey in height taking advantage of the existing site levels
- Overall, 4 bedrooms with ensuites
- Ground floor level with kitchen, living, dining areas, 2 bedrooms with ensuites, front and rear large roofed outdoor deck areas and a laundry/ store.
- New part lower ground with 2 bedrooms and ensuites
- Part 2m and part 1m internal and external extensions on the ground floor level
- Fibre cement weatherboard cladding, timber framed windows and doors and a realigned, metal skillion roof (replacing the existing pitched roof)
- The front (western) corner of the proposed deck of the guest house will be just over 24m from the site's frontage with Lagoon Road and the same deck's northern corner will be approximately 17m from the site's northern (side) boundary.

The application confirms that 8 existing tourist bed licences will be transferred from Oceanview Apartments for the above 4 bedroom tourist accommodation. A condition ensuring this is in place prior to commencement of (and maintained during) operations should be applied to any approval issued for this DA.

Commercial Laundry & Store

Adjoining the new guest house an existing 3m x 3m shed is to be demolished and in its place a larger commercial laundry and store is proposed for the tourist accommodation (with a deck).

Transit Lounge

Connected to the Guest House via timber stairs and boardwalk and a proposed car park will be a new proposed transit lounge for guests. This will have the following characteristics:

- Single storey in height
- Have an internal lounge area with kitchenette and storage cupboards and an accessible bathroom
- Front, side and rear covered deck areas including an outdoor lounge area
- An outdoor (beach) shower
- Fibre cement weatherboard cladding, timber framed windows and doors and metal skillion roof matching the guest house
- The Transit Lounge will be 5m setback off the southern side boundary and around 27m to the site's frontage with Lagoon Road

Replacement Dwelling

A new dwelling is proposed to 'replace' the existing being converted in this application to a tourist guest house. This will be located towards the north eastern area of the site and will include the following:

- The dwelling will be single level, but due to the existing site topography, the dwelling itself will be raised between 1.5m to 2.2m above ground level at the southern elevation, with the proposed timber decking being up to 2.6m above natural ground. The northern elevation will essentially be at natural ground level
- Because of the above, a raised timber entry walkway will be required from the proposed carpark area for the dwelling,
- 3 bedrooms, plus a study are proposed and kitchen, living, and dining areas
- Partly covered decking on 3 sides
- It will have painted shadow-clad cladding, aluminium framed windows and doors and metal clad, multiple skillion roof lines
- It will have a minimum setback of 5.95m to the closest corner of the northern site boundary with predominant setbacks of 10.3m and 11.05m. To the closest corner in the southern boundary the proposed deck on the dwelling will be 7.2m.

Wastewater

The subject application also includes a new wastewater management system including a FujiClean ACE3000 Aerated Wastewater Treatment System and a surface laid, drip feed irrigation field split into 4 areas that are auto sequential in use. Part of the existing wastewater system will be incorporated as a catch tank for the new system.

The application submission has included signed letters of agreement that the applicant has obtained from the leaseholders immediately adjoining to the north and south of the subject site, to the proposed wastewater irrigation area extending within 20m (ie 1m) of the respective common site boundary.

Due to the varied and sloping topography of the site (mentioned earlier under the site description), much of the proposed building work is either split level, or raised above natural ground to varying degrees.

As can be seen in the aerial photo of the site (ref figure 2 earlier in report), the existing surrounding vegetation will effectively screen the bulk of the proposed development from the adjoining properties and the Lagoon Road frontage of the site.

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

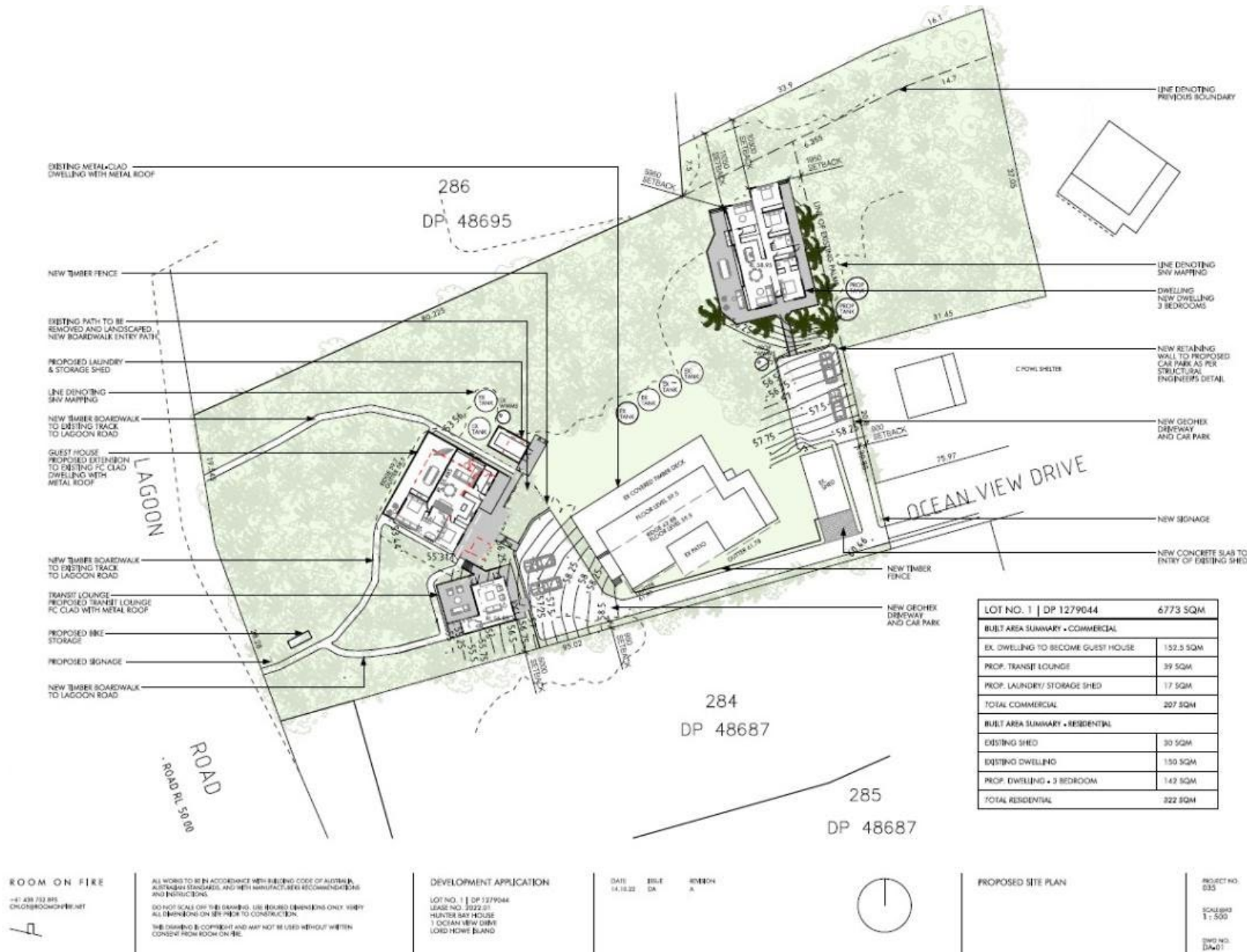


Figure 4: Submitted site layout plan

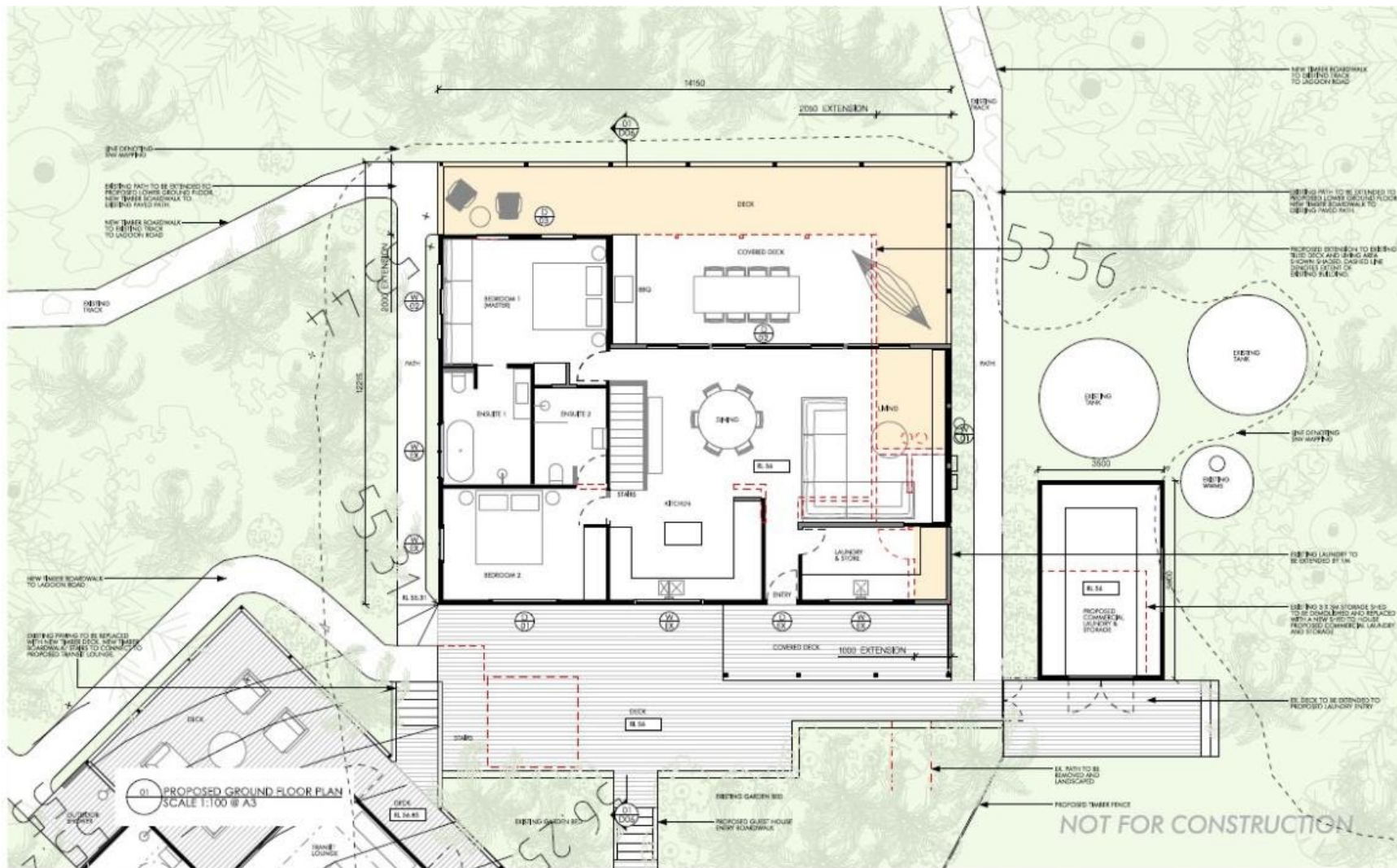


Figure 5: Proposed guesthouse ground floor plan

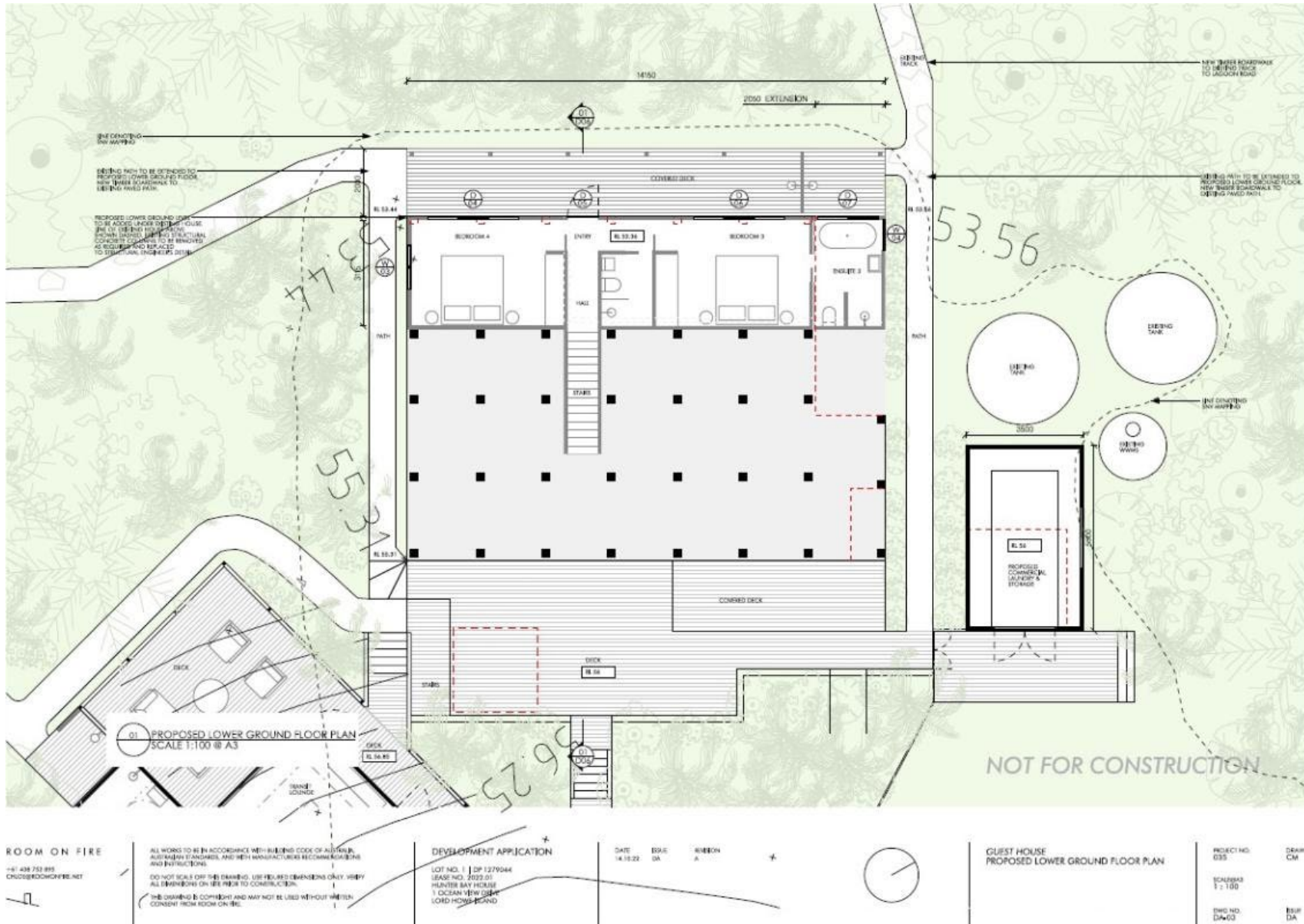
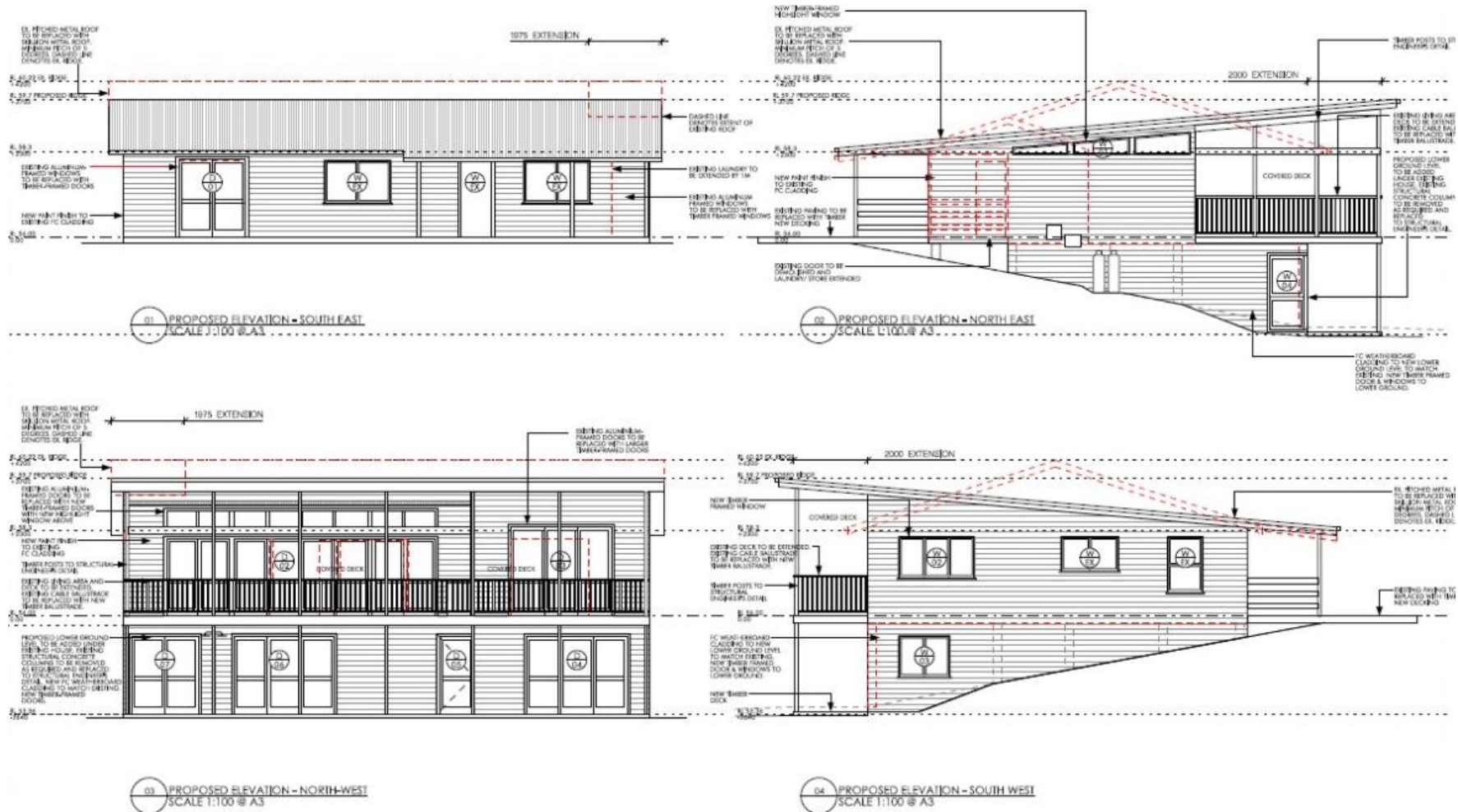


Figure 6: Proposed guest house lower ground floor plan



NOT FOR CONSTRUCTION

ROOM ON FIRE

+61 438 783 886
CHLOE@ROOMONFIRE.NET



ALL WORKS TO BE IN ACCORDANCE WITH BUILDING CODE OF AUSTRALIA, AUSTRALIAN STANDARDS AND WITH MANUFACTURERS RECOMMENDATIONS AND INSTRUCTIONS.
DO NOT SCALE OFF THE DRAWING. USE RELATED DIMENSIONS ONLY. VERIFY ALL DIMENSIONS ON SITE PRIOR TO CONSTRUCTION.
THIS DRAWING IS COPYRIGHT AND MAY NOT BE USED WITHOUT WRITTEN CONSENT FROM ROOM ON FIRE.

DEVELOPMENT APPLICATION

LOT NO. 1 | DP 1279044
LEASE NO. 8022/01
HUNTER BAY HOUSE
1 OCEAN VIEW DRIVE
LOCH INNES ISLAND

DATE 14.10.22 ISSUE DA REVISION A

**GUEST HOUSE
PROPOSED ELEVATIONS**

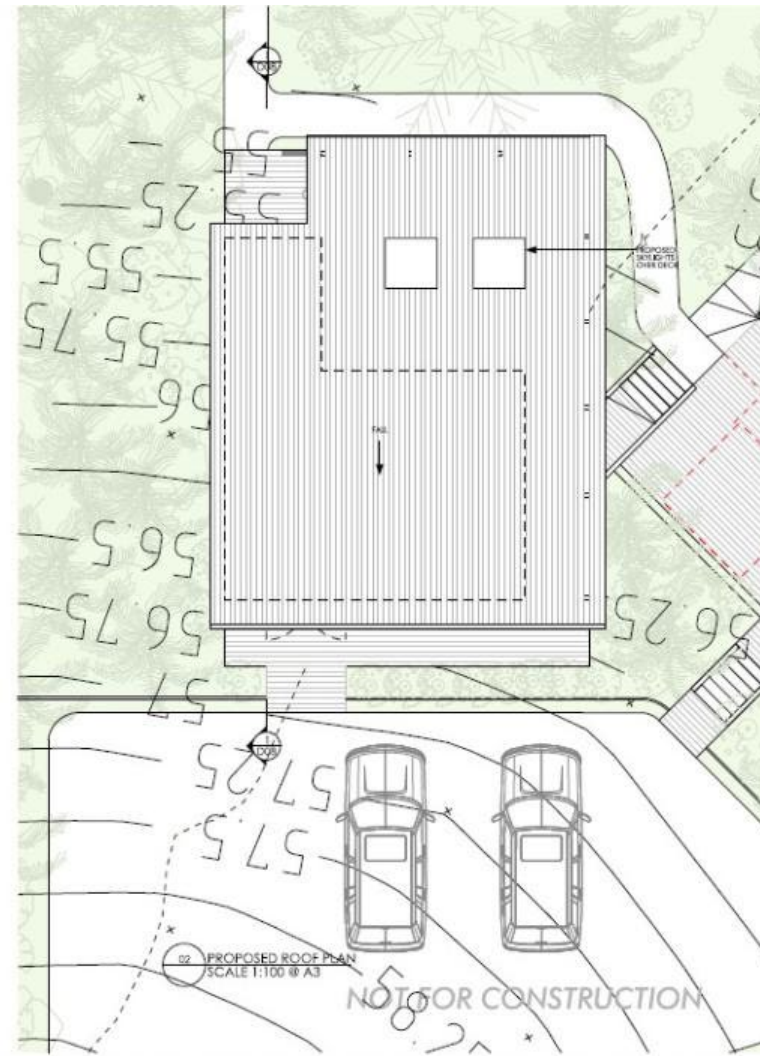
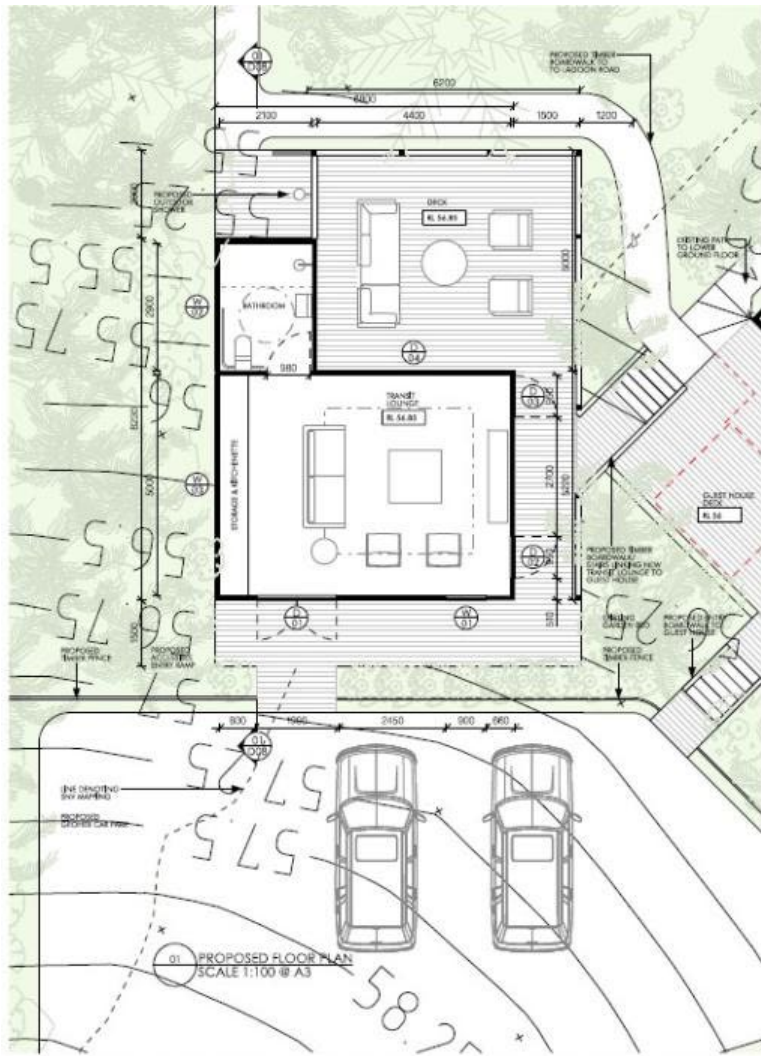
PROJECT NO. 035 DRAWN CM

SCALE/S 1:100

DWG NO. DA-05

BLUP DA

Figure 7: Proposed guesthouse elevations



ROOM ON FIRE
 TEL: 438 752 892
 CROSS@CROSSONLINE.NET
 A

ALL WORKS TO BE IN ACCORDANCE WITH BUILDING CODE OF AUSTRALIA, BUILDING STANDARDS, AND BEST MANUFACTURING RECOMMENDATIONS AND INSTRUCTIONS.
 DO NOT SCALE OFF THIS DRAWING. USE RELATED DIMENSIONS ONLY. VERIFY ALL DIMENSIONS ON SITE PRIOR TO CONSTRUCTION.
 THIS DRAWING IS COPYRIGHT AND MAY NOT BE USED WITHOUT WRITTEN CONSENT FROM ROOM ON FIRE.

DEVELOPMENT APPLICATION
 LOT NO. 1 | DP 1279044
 LEASE NO. 2022/01
 HUNTER BAY HOUSE
 1 OCEAN VIEW DRIVE
 LORD HOWE ISLAND

DATE: 14.08.22
 ISSUE: DA
 REVISION: A



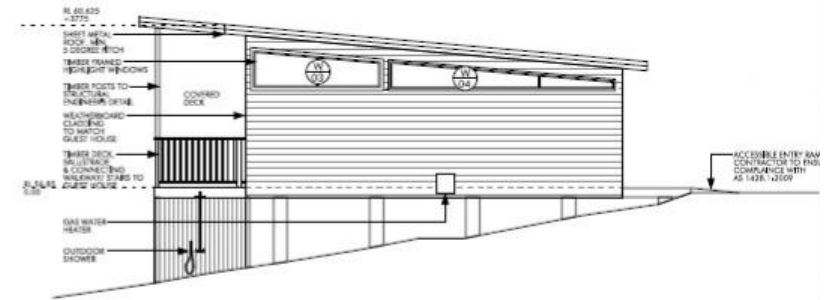
TRANSIT LOUNGE
 PROPOSED FLOOR PLAN & ROOF PLAN

PROJECT NO: 035
 DRAWN: CM
 SCALE: 1:100
 DWG NO: DA-07
 REV: DA

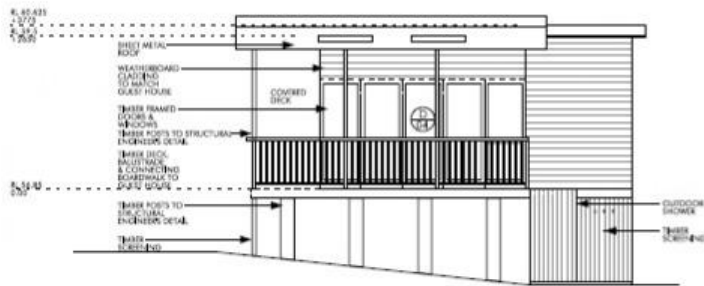
Figure 8: Proposed transit lounge floor & roof plans



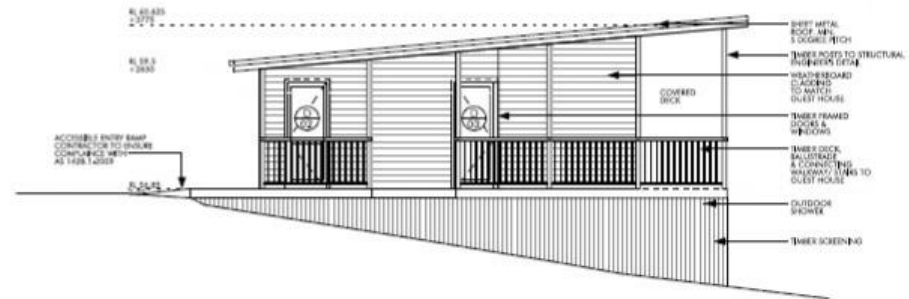
01 PROPOSED ELEVATION - EAST
SCALE 1:100 @ A3



02 PROPOSED ELEVATION - SOUTH
SCALE 1:100 @ A3



03 PROPOSED ELEVATION - WEST
SCALE 1:100 @ A3



04 PROPOSED ELEVATION - NORTH
SCALE 1:100 @ A3

NOT FOR CONSTRUCTION

ROOM ON FIRE
+61 438 753 895
CHLOE@ROOMONFIRE.NET

ALL WORKS TO BE IN ACCORDANCE WITH BUILDING CODE OF AUSTRALIA, AUSTRALIAN STANDARDS AND WITH MANUFACTURERS RECOMMENDATIONS AND INSTRUCTIONS.
DO NOT SCALE OFF THIS DRAWING. USE DIMENSIONS ONLY. VERIFY ALL DIMENSIONS ON SITE PRIOR TO CONSTRUCTION.
THIS DRAWING IS COPYRIGHT AND MAY NOT BE USED WITHOUT WRITTEN CONSENT FROM ROOM ON FIRE.

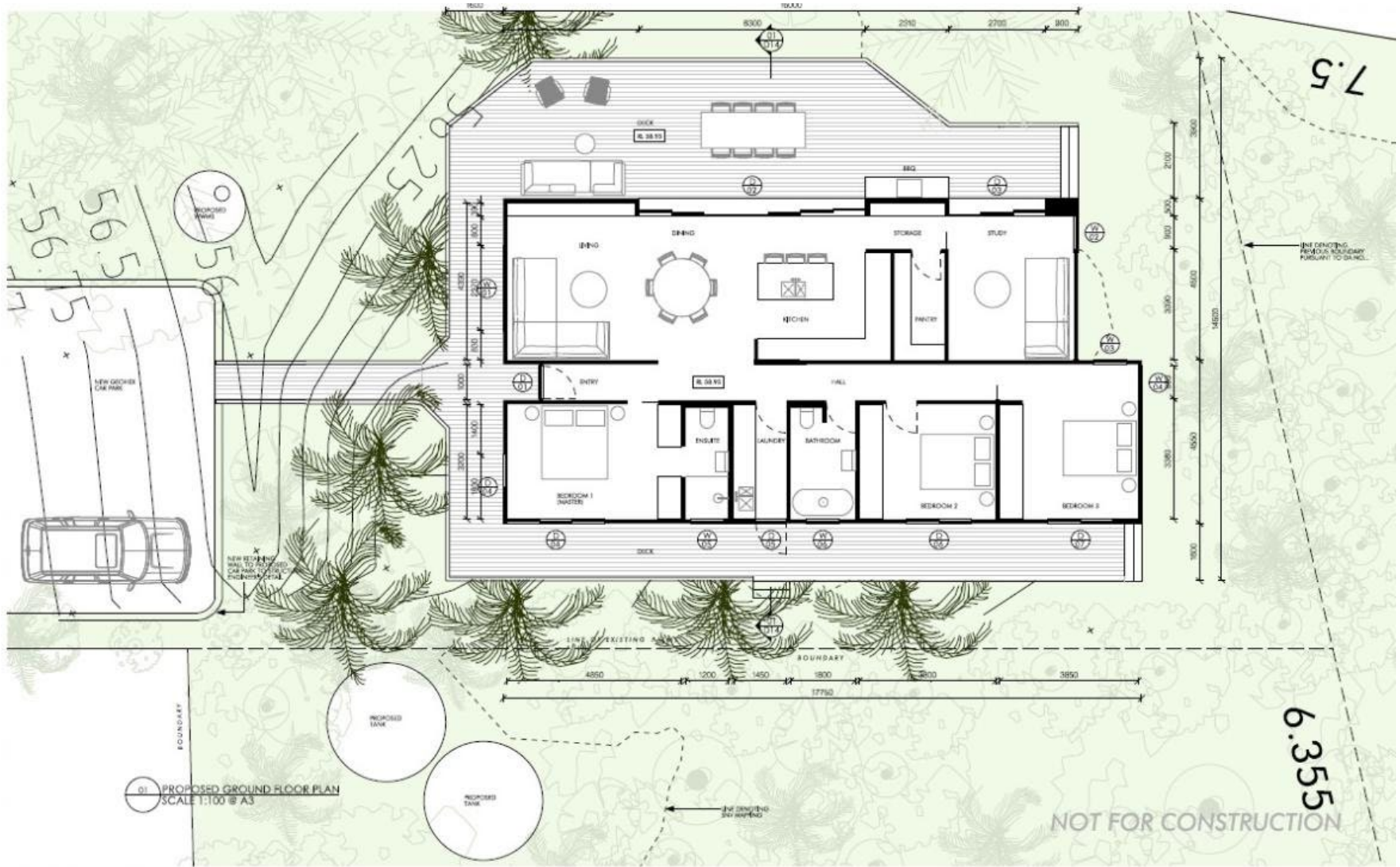
DEVELOPMENT APPLICATION
LOT NO. 1 | DP 1279044
LEASE NO. 2022.01
HUNTER BAY HOUSE
1 OCEAN VIEW DRIVE
LORD HOWE ISLAND

DATE 14.10.22 ISSUE 04 REVISION A

TRANSIT LOUNGE
PROPOSED ELEVATIONS

PROJECT NO. 035 DRAWN CM
SCALE: A3 1:100
DWG NO. DA-08 ISSUE DA

Figure 9: Proposed transit lounge elevations



ROOM ON FIRE
+61 438 783 895
CHLOE@ROOMONFIRE.NET

A

ALL WORKS TO BE IN ACCORDANCE WITH BUILDING CODE OF AUSTRALIA, AUSTRALIAN STANDARDS AND WITH MANUFACTURERS RECOMMENDATIONS AND INSTRUCTIONS.
DO NOT SCALE OFF THIS DRAWING. USE MEASUREMENTS ONLY. VERIFY ALL DIMENSIONS ON THE PLOT TO CONSTRUCTORS.
THIS DRAWING IS COPYRIGHT AND MAY NOT BE USED WITHOUT WRITTEN CONSENT FROM ROOM ON FIRE.

DEVELOPMENT APPLICATION

LOT NO. 1 | DP 1279044
LEASE NO. 3022.01
HUNTER BAY HOUSE
1 OCEAN VIEW DRIVE
LORD HOWE ISLAND

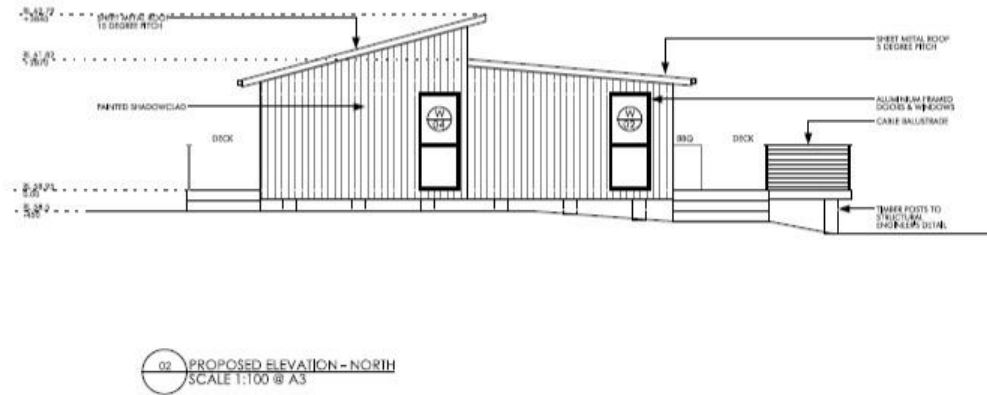
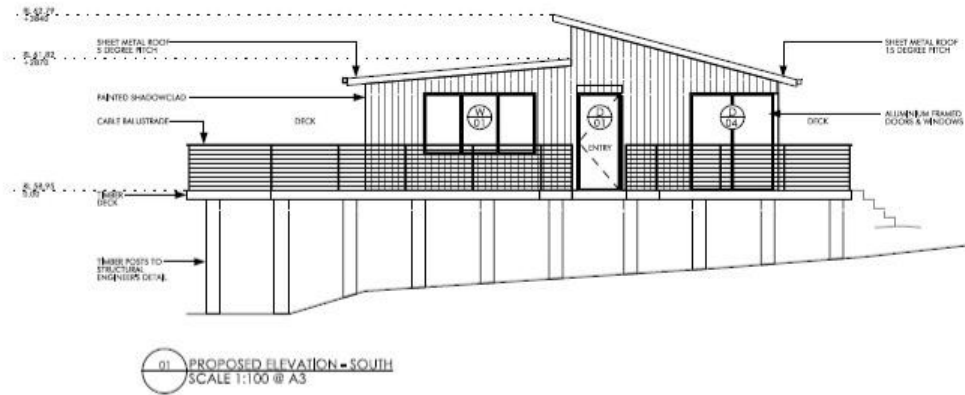
DATE 14.10.22 ISSUE 04 ARCHITECT ROOM ON FIRE



NEW DWELLING
PROPOSED GROUND FLOOR PLAN

PROJECT NO. 035 DRAWN CM
SCALE 1:100
DWG NO. DW 10 BLUE DA

Figure 10: Proposed replacement detached dwelling floor plan



NOT FOR CONSTRUCTION

ROOM ON FIRE
+61 438 752 885
CHLOE@ROOMONFIRE.NET



ALL WORKS TO BE IN ACCORDANCE WITH BUILDING CODE OF AUSTRALIA, AUSTRALIAN STANDARDS, AND WITH MANUFACTURERS RECOMMENDATIONS AND INSTRUCTIONS.
DO NOT SCALE OFF THIS DRAWING. USE FIGURED DIMENSIONS ONLY. VERIFY ALL DIMENSIONS ON SITE PRIOR TO CONSTRUCTION.
THIS DRAWING IS COPYRIGHT AND MAY NOT BE USED WITHOUT WRITTEN CONSENT FROM ROOM ON FIRE.

DEVELOPMENT APPLICATION

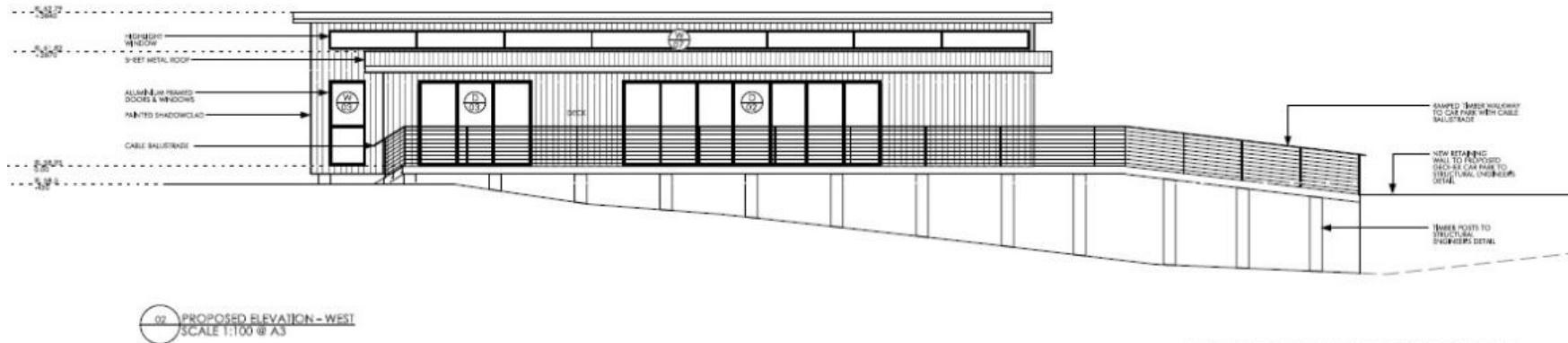
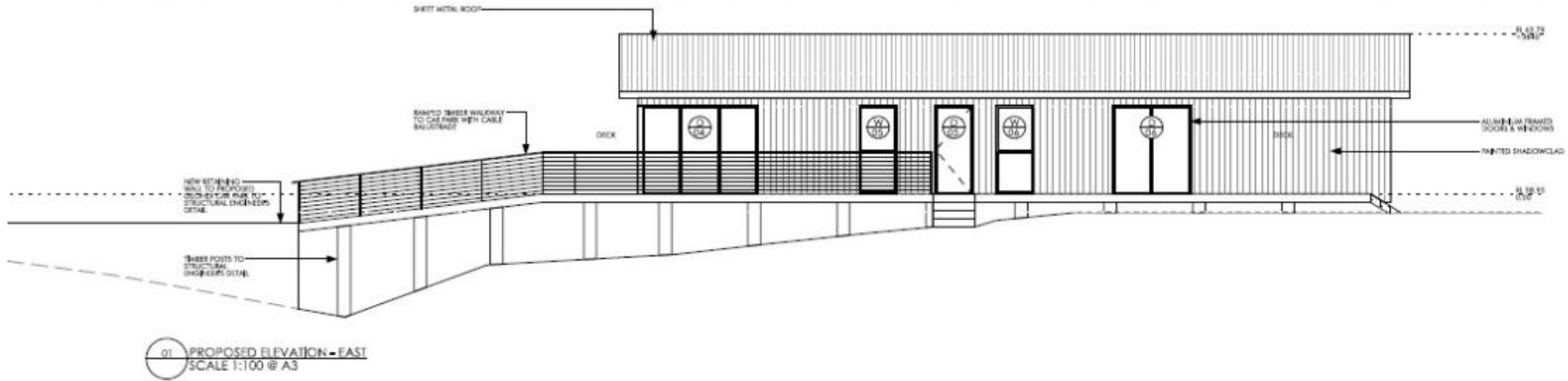
LOT NO. 1 | DP 1279044
LEASE NO. 2022.01
HUNTER BAY HOUSE
1 OCEAN VIEW DRIVE
LORD HOWE ISLAND

DATE 14.10.22 ISSUE DA REVISION A

NEW DWELLING
PROPOSED ELEVATIONS
NORTH & SOUTH

PROJECT NO. 035 DRAWN CM
SCALE(S) 1:100
DWG NO. DA-12 EBUF DA

Figure 11: Proposed replacement detached dwelling south & north elevations



NOT FOR CONSTRUCTION

ROOM ON FIRE
+61 438 783 885
CROSS@ROOMONFIRE.NET
A

ALL WORKS TO BE IN ACCORDANCE WITH BUILDING CODE OF AUSTRALIA, AUSTRALIAN STANDARDS AND WITH MANUFACTURERS RECOMMENDATIONS AND INSTRUCTIONS.
DO NOT SCALE OFF THIS DRAWING. USE MEASURED DIMENSIONS ONLY. VERIFY ALL DIMENSIONS ON SITE PRIOR TO CONSTRUCTION.
THIS DRAWING IS COPYRIGHT AND MAY NOT BE USED WITHOUT WRITTEN CONSENT FROM ROOM ON FIRE.

DEVELOPMENT APPLICATION
LOT NO. 1 | DP 1279044
LEASE NO. 3022.01
HUNTER BAY HOUSE
1 OCEAN VIEW DRIVE
LORD HOWE ISLAND

DATE 14.10.22 ISSUE 04 REVISED A

NEW DWELLING
PROPOSED ELEVATIONS
EAST & WEST

PROJECT NO. 035 DRAWN CM
SCALES 1:100
DWG NO. DA-13 REUP DA

Figure 12: Proposed replacement detached dwelling east & west elevations

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
<p>Team Leader Environment World Heritage (Cristina Venables)</p>	<p>Comment</p> <p>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 development consists of building a 150sqm commercial laundry and storage space, a 39sqm transit room and a new waste water management system. The development will result in the removal of minimal native vegetation that is located within established gardens only and will not result in the removal of habitat for threatened species.</p> <p>There is native vegetation in the Study area that is mapped as community 19 – Maulwood – Kentia Pal – Cotton-wood – Greybark lowland forest and community 12a – Kentia Palm Forest on coral sand and calcarenite.</p> <p>There is some native vegetation that will be removed as part of this proposal that has been incorrectly mapped as SNV, but has in fact been an established garden for multiple decades. It has therefore been assessed that this proposal will have no impact on the actual SNV extent.</p> <p>The subject site provides known or potential habitat for at least six threatened species being; LHI Gecko (<i>Christinus guentheri</i>), LHI Currawong (<i>Strepera graculina crissalis</i>), LHI Golden Whistler (<i>Pachycephala pectoralis contempta</i>), LHI Silvereye (<i>Zosterops lateralis tephroleura</i>), Lord Howe Woodhen (<i>Hypotaenidae sylvestris</i>) and LHI Placostylus (<i>Placostylus bivaricosus</i>).</p> <p>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.</p> <p>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 and shelters within cracks and cavities in trees and rocks. It is possible that LHI Gecko could be present within the existing building and could be detected during renovations. 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 and placed where they will be sheltered from</p>	<p>Noted & conditions incorporated into recommendation of this report.</p>

	<p>Woodhen or Currawongs.</p> <p>The Subject site includes areas mapped as modeled High Quality Habitat (A) & (B) for LHI Placostylus. This mapping is considered accurate where there is intact native vegetation. The LHI Placostylus favours forested habitats on calcarenite soils with a dense shaded canopy, continuity with large areas of vegetation and a thick moist leaf layer in which they can burrow during dry times. This habitat is present at the Subject site, although is restricted to bushland areas and does not include any areas to be impacted by this proposal (which comprises mown lawn).</p> <p>The plans show a proposed boardwalk network going through a section of SNV and in known or predicted habitat of at least six threatened species.</p> <p>A boardwalk through this area would result in some harm to SNV during the initial construction phase, and the boardwalk would result in some shading, which may inhibit plant growth directly beneath it. However, the alternative is that guests would inevitably cut through this area as it is the most direct route to the ocean. This would result in a greater environmental impact from multiple tracks being formed, damaging more plants, potentially damaging placostylus habitat, and increasing erosion. With a boardwalk in place, foot traffic is guided through on-site SNV and placostylus habitat, minimizing impact.</p> <p>However, there are two boardwalk routes proposed through the SNV between the accommodation and Lagoon Road. A single boardwalk is supported to further limit the impact to SNV and important habitat. Further, the single Boardwalk must be planned in consultation with the LHIB Team Leader Environment World Heritage, and constructed in accordance with their site specific specifications and requirements.</p> <p>A 5 Part Test of significance was not submitted with the DA as the proposal is located within an area supporting mown lawn and surrounded by established gardens. This assessment 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>Recommendations</p> <p>That the development be approved subject to.</p> <ul style="list-style-type: none"> • 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, LH Woodhen and kestrels etc. • All building materials and building activity are restricted to being stock piled on cleared open areas. • A single Boardwalk through SNV must be planned in consultation with the LHIB Team Leader Environment World Heritage, and constructed in accordance with their site specific specifications and requirements. 	
--	--	--

<p>External Building Assessment (Credwell Consulting)</p>	<p>For the purposes of the BCA, the building is described as follows:</p> <p>2.1 Classification</p> <table border="1"> <thead> <tr> <th data-bbox="384 304 459 331">Class</th> <th data-bbox="517 304 568 331">Use</th> <th data-bbox="975 304 1034 331">Area</th> </tr> </thead> <tbody> <tr> <td data-bbox="384 353 427 380">1a</td> <td data-bbox="517 365 866 427">Dwellings (Short term holiday accommodation)</td> <td data-bbox="975 365 1158 427">Each dwelling including decks</td> </tr> <tr> <td data-bbox="384 427 427 454">9b</td> <td data-bbox="517 427 850 490">Assembly Building – Transit Lounge</td> <td data-bbox="975 427 1082 490">Whole of building</td> </tr> <tr> <td data-bbox="384 490 411 517">8</td> <td data-bbox="517 490 887 517">Commercial Laundry & Storage</td> <td data-bbox="975 490 1082 553">Whole of building</td> </tr> <tr> <td data-bbox="384 553 443 580">10a</td> <td data-bbox="517 553 576 580">Shed</td> <td data-bbox="975 553 1082 616">Whole of building</td> </tr> </tbody> </table> <p>2.2 Rise in Storeys The Transit Lounge and Commercial Laundry buildings have a rise in storeys of one (1). This term does not apply to dwellings or shed.</p> <p>2.3 Type of Construction Given the classification of the top floor of the Transit Lounge (Class 9b) and the Commercial Laundry (Class 8) with the rise in storeys (one), the buildings required to be of Type C Construction. As it is located more than 3 m from the other buildings on the site no fire resistance level (FRL) is required for the building. This does not apply to dwellings or shed.</p> <p>2.4 Effective Height The effective height of the Transit Lounge and Commercial Laundry is calculated to be less than 0 m. This term does not apply to dwellings or shed.</p>	Class	Use	Area	1a	Dwellings (Short term holiday accommodation)	Each dwelling including decks	9b	Assembly Building – Transit Lounge	Whole of building	8	Commercial Laundry & Storage	Whole of building	10a	Shed	Whole of building	<p>Noted & conditions incorporated into recommendation of this report as required.</p> <p>Note: There is no bushfire prone land mapping on the Island, therefore NSW PfBP 2019 requirements do not apply.</p>
Class	Use	Area															
1a	Dwellings (Short term holiday accommodation)	Each dwelling including decks															
9b	Assembly Building – Transit Lounge	Whole of building															
8	Commercial Laundry & Storage	Whole of building															
10a	Shed	Whole of building															

2.5 Fire Compartments

For the purposes of the assessment outlined in this Report, the following fire compartments are assumed:

The whole of the Transit Lounge building is one fire compartment.
The whole of the Commercial Laundry building is one fire compartment.

2.6 Required Exits

For the purposes of the assessment outlined in this Report, the following are considered as the exits from the buildings:

The swing doors and path to open space on the eastern side of the Transit Lounge building.

The swing doors on the south-eastern side of the Commercial Laundry building.

2.7 Climate Zone

It is noted that Basix applies to the dwellings, and this is based on postcode.

Statement of Compliance

The architectural design documentation [as referred to in Annexure A of this (Building) report] has been assessed against the relevant provisions of the BCA and it is considered that the documentation complies or is capable of complying with the BCA.

Dwellings

[As detailed in Section 3 of this (Building) report], the following works / rectification listed below will be required to be provided in relation to the dwellings:

Item	Required details / certification	Status
1.	Surface water drainage Finished levels to be adjusted.	To be detailed on CC Plans
2.	Termite management systems Provided required subfloor clearance and access.	Works to be condition as part of Development Consent
3.	Footings, Slabs and Framing Structural Engineer's certification required.	Works to be condition as part of Development Consent
4.	Termite management systems Provided required subfloor clearance and access if materials are subject to termite attack.	Works to be condition as part of Development Consent
5.	Footings and Slabs & Framing Structural Engineer will need provide certification.	Works to be condition as part of Development Consent
6.	Installation of smoke alarms Positions to be detailed on CC Plans.	Works to be condition as part of Development Consent
7.	Bedroom Windows Finished levels to be adjusted.	To be detailed on CC Plans
8.	Bushfire Issues To be assessed as part of the DA.	To be assessed.

Transit Lounge and Commercial Laundry

[As detailed in Section 3 of this (Building) report], the following works / rectification listed below will be required to be provided in relation to the transit lounge and commercial laundry:

	Item	Required details / certification	Status	
	1.	Access to the commercial laundry Either the commercial laundry is to be fully accessible, or a concession is to be justified on safety grounds under Clause D3.4.	To be detailed at CC stage	
	2.	Access to buildings A compliant accessible car space, path and doorway is to be provided to the transit lounge.	To be detailed on CC Plans	
	3.	Accessible sanitary facilities & location of sanitary compartments The door and layout of the accessible sanitary facility in the transit lounge is to be updated to achieve compliance.	Works to be condition as part of Development Consent	
	4.	Portable fire extinguishers Both buildings are required to be provided with portable fire extinguishers.	To be detailed on CC Plans	
LHIB Surveyor Gary Millman.	The proposed construction on Lot 1 DP1279044 has been marked as per the plans on DA2022.7.1. The proposed replacement dwelling is set back in the north at least 10.3m at the closest point to the boundary and the NW corner of the building from the boundary corner is closer to 7m than 6m. The SE corner of the same building measures 9.2m to the boundary corner- (7m from its deck). The proposed altered tourist accommodation building has been marked, also the added decking on the NW side. The proposed laundry/storage shed has been marked only slightly forward of the plan in order to separate it from the septic system at the rear. The proposed transit lounge has been marked also at 5m set back from the boundary. (The western deck corners and the northern deck corner have also been marked as per the plan).			Noted. As confirmed under the assessment of the LHI LEP 2010, the proposed building setbacks comply.
LHIB Electrical Infrastruct. Greg Higgins	<p>This development application applies to both a new residential dwelling and a new commercial connection.</p> <p>The “proposed domestic dwelling” electrical application has been assessed and it is noted that this new service has a maximum demand of 25 amps and is an acceptable loads increase on the existing distribution system. This new single phase service is to be supplied via new consumer mains connected to Distribution Pillar No.303. The installation of new consumer mains is the responsibility of the customer.</p> <p>The “proposed commercial connection” electrical application has been assessed and it is noted that this electrical application relates to additional electrical load connected to an existing domestic dwelling (SN.180) and a subsequent change of classification from domestic to commercial service. The additional load has been assessed at 27 amps and is not an acceptable load increase on the existing distribution system. For the purpose of maximum demand assessments 1 double GPO is classified as 2 socket outlets.</p> <p>Subsequently the applicant has identified that 52 sockets outlets (26 Double GPO,s) are planned. This total number needs to be reduced to 40 socket outlets (20 Double GPO’s). This will reduce the assessed maximum demand to 22 amps which is an acceptable load increase on the existing distribution system. This existing single phase service (SN180) will now need to be supplied via new consumer mains connected to Distribution Pillar No.303. The installation of new consumer mains is the responsibility of the customer.</p>			Noted & conditions incorporated into recommendation of this report.

	<p><i>The application is approved subject to the following conditions: "Proposed Domestic Dwelling"</i></p> <p>All new wiring must be carried out by a licensed electrician to AS/NZS3000:2018 A signed "Notice of Electrical Works" form must be submitted to the LHIB Senior Electrical Officer within 10 days of installation completion. New customer consumer mains are to be installed from Distribution Pillar No. 303 at the applicants cost.</p> <p><i>"Proposed Commercial Connection" for SN180</i></p> <p>All new wiring must be carried out by a licensed electrician to AS/NZS3000:2018 A signed "Notice of Electrical Works" form must be submitted to the LHIB Senior Electrical Officer within 10 days of installation completion. New customer consumer mains are to be installed from Distribution Pillar No. 303 at the applicants cost. The customer will reduce the number of additional Double GPO's to 20 (40 socket outlets) The domestic tariff currently applied to SN180 will need to be converted to commercial rate.</p>																					
<p>Acting Manager Infrastructure & Engineering Brad Josephs</p>	<p>Wastewater: 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 FujiClean ACE 3000. The following table outlines the expected daily hydraulic load for the proposal:</p> <table border="1" data-bbox="373 1167 1214 1473"> <thead> <tr> <th>Source</th> <th>Number</th> <th>Lt/day</th> <th>Total Lt/day</th> </tr> </thead> <tbody> <tr> <td>Dwelling 1</td> <td>4 X bed = 5EP</td> <td>120</td> <td>600</td> </tr> <tr> <td>Dwelling 2</td> <td>3 X Bed = 4EP</td> <td>120</td> <td>480</td> </tr> <tr> <td>Proposed Tourist accom</td> <td>8pax</td> <td>150</td> <td>1200</td> </tr> <tr> <td colspan="3">Total Daily Hydraulic Load</td> <td>2280</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 2000m² assumes 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. Due to the large area of the irrigation area multiple soil samples were taken throughout the area which have resulted in a mixture sand, clay and basalt. As such the Phosphorus sorbtion value of sand has been</p>	Source	Number	Lt/day	Total Lt/day	Dwelling 1	4 X bed = 5EP	120	600	Dwelling 2	3 X Bed = 4EP	120	480	Proposed Tourist accom	8pax	150	1200	Total Daily Hydraulic Load			2280	<p>Noted & conditions incorporated into recommendation of this report.</p>
Source	Number	Lt/day	Total Lt/day																			
Dwelling 1	4 X bed = 5EP	120	600																			
Dwelling 2	3 X Bed = 4EP	120	480																			
Proposed Tourist accom	8pax	150	1200																			
Total Daily Hydraulic Load			2280																			

	<p>applied to the calculations as sand has the lowest values and thus produces the largest value for irrigation. Further soil samples and Phosphorus Sorption tests according to 'Soil Survey Standard Test Method C8-B-Psorb' in the future have the potential to reduce the irrigation area needed.</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> <p>Stormwater & Flooding: Current stormwater flows (onsite is) from the from East to West. The wastewater proposed system is currently 6m from the natural flow of water through the gully, thus I have no problem with its proposed location. Chad should have no problem with erosion in this gully area as the soil type is mainly exposed basalt with calcarenite underneath which is not prone to erosion, will have more of a problem getting the beams in. The retaining wall won't cause an excess of water as a small drainage gully is already present eastern side of the property. The driveways and carparks in the plan are proposed to be Geotech thus will not have an adverse effect on the stormwater drainage compared to hardstands. The driveway is to be angled towards the South thus forming natural drainage west. The commercial laundry aspect of the plan id only for guest linen and towels thus is incorporated within the 150l/person/day calculations. Soil type has been concluded as sand though due to the size of the area there are other soils presents. Sand was chosen as it provides the largest area, more soils testing will result in a smaller area in the future as phosphorus sorption is the current limiting factor on the area. Once Chad engages a structural engineer many of these structural and drainage issues will be addressed. The subject site is located outside the flood prone areas identified in the WMA Water, LHI Flood Study (November 2021).</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 Team Leader Environment World Heritage (ref section 5 of this report). This specialist assessment found that "A 5 Part Test of significance was not submitted with the DA as the proposal is located within an area supporting mown lawn and surrounded by established gardens. This assessment 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".

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 does not include a heritage item listed under the LHI LEP 2010, the application was not required to be referred to NSW Heritage as the Ministerial Heritage Exemption could be relied upon.

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 relevant LEP provisions, together with assessment and/or comment as required.

LEP 2010 compliance summary table:

LEP 2010		Complies Y/N	Comment
Part 1 Preliminary			
2	Commencement and Aims of Plan	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	Land to which plan applies	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	Who is the consent authority for this Plan?	Y	The Lord Howe Island Board (LHIB) is the relevant consent authority.
7	Maps	Y	Noted.
9	Exempt Development	N/A	The proposed works are not listed as Exempt Development within Schedule 1 of the LEP.
11	Matters that must be satisfied before development consent granted	Y	All relevant matters contained within Clause 11 are satisfied – refer to the cl. 11 assessment following.
Part 2 General Provisions applying in particular zones			
12	Land Use Zones	Y	The land is zoned Zone 2 Settlement.
14	Zone 2 Settlement	Y	The subject DA complies with the LEP zone objectives and is permissible with the consent of the LHIB.
Part 3 Special Provisions			
Division 1 Provisions for particular kinds of development			
22	<p>Tourist accommodation, staff accommodation and commercial premises</p> <p><i>(1) The consent authority must not consent to the erection, enlargement or extension of any building comprising, or ancillary to, tourist accommodation, staff accommodation or commercial premises on an allotment unless—</i></p> <p><i>(a) the total area of the allotment occupied by any existing or proposed buildings comprising, or ancillary to, the accommodation or premises is no more than 15 percent of the balance of the area of the allotment remaining after the minimum dwelling area is deducted from the total area of the allotment, and</i></p> <p><i>(b) it is proposed that at least 50 percent of the total area of the allotment be comprised of landscaped areas and that various species of plants that are native to the Island and common to the locality be retained or planted on at least 35</i></p>	Y & N	<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: 6,778m² (site area) – 5,000m² (min. dual occupancy dwell area) = 1,778m² x 15% = 266.7m² Max Permissible Site Coverage.</p> <p>The proposed site coverage (as relevant to cl.22(1a)) is: Proposed Guesthouse = 227.7m² Proposed Transit Lounge = 97.36m² Proposed Commercial Laundry/ Store = 30.85m² Total Site Coverage = 355.95m² (> than the 266.7m² max. thus not complying with the LEP by 89.25m²).</p> <p>NB: As a site coverage control, the above calculations include covered and uncovered deck areas proposed on the above structures (as distinct to Gross Floor Area which an LEP defined term which specifically excludes unenclosed decks and which is used for residential dwellings and dual occupancies in cls. 23, 24 and 27).</p> <p>The site coverage calculations for the proposed commercial development on the submitted plans do not include the proposed covered and uncovered deck areas on these structures (or the building wall thicknesses) and consequently there is a discrepancy between the calculations provided on the plans and those in this assessment.</p> <p>As a consequence of the above, a condition is included in the recommendation of this report that the total commercial site coverage of the development (including covered and uncovered decks & all building wall thicknesses) shall be</p>

	<p>percent of the total area of the allotment, and</p> <p>(c) the proposed development is carried out on a part of the allotment that does not have any significant native vegetation, and</p> <p>(d) the consent authority is satisfied that there is a demonstrated business need for the development.</p> <p>(2)</p> <p>(3).....</p> <p>(4) The consent authority must not consent to development for the purposes of tourist accommodation unless it is satisfied that the total number of persons permitted to be accommodated in all forms of tourist accommodation on the Island will be no more than 400 persons (excluding those under the age of 5 years) at any time.</p>		<p>reduced by 89.25m².</p> <p>It will not be onerous to achieve the above in this multi-faceted development which has a number of opportunities and options for (as necessary) incremental reductions to realise the obligatory requirement.</p> <p>In regards to cl. 22(1)(b), calculations undertaken for this assessment indicate that approximately 67% of the subject site will remain landscaped as is currently the case. A requirement is suitably included in the report conditions that species of plants that are native to the Island and common to the locality be retained or planted on at least 35 percent of the total site area with evidence of this to be included in the construction certificate submission.</p> <p>In reference to cl. 22(1)(c) and impacts on SNV, reference is made to the internal environmental comments discussed earlier in section 6, which include the assessment that: <i>“There is some native vegetation that will be removed as part of this proposal that has been incorrectly mapped as SNV, but has in fact been an established garden for multiple decades. It has therefore been assessed that this proposal will have no impact on the actual SNV extent.”</i> However, a boardwalk proposed for foot traffic, that links the development to lagoon road, is routed through SNV. Conditions have been included to manage impacts on the in-situ SNV from this aspect of the development.</p> <p>In regards to cl. 22(1)(d) & (4), the applicants have submitted a satisfactory business need for the proposed new tourist accommodation they seeking to establish with 8 existing tourist bed licences that are to be transferred from Oceanview Apartments - therefore without affecting compliance with the 400 maximum tourist limit.</p> <p>A condition ensuring this is in place prior to commencement of (and maintained during) operations is included in the recommendation of this report.</p>
24	<p>Concession for erection of certain dual occupancies</p> <p>(1) Despite clause 23 (1) (a) and (b), the consent authority may consent to the erection of a dwelling on an allotment even though the proposal does not conform to those provisions if—</p>	Y	<p>As mentioned in the description of the subject site and proposed development, there are two existing detached dwellings on the site, with the proposal including the conversion of one of these to a tourist guest house and the construction of a new dwelling to replace this. These two dwellings maintained on the site can be considered as a dual occupancy for the purposes of cl. 24 of the LHI LEP 2010.</p> <p>For these reasons the (2,500m² x 2=) 5,000m² dual occupancy minimum dwelling area of cl. 20(4) of the LEP has been used in the site coverage calculations of cl.22.</p>

	<p>(a) it is proposed that the dwelling be erected as part of a dual occupancy, and</p> <p>(b) it is proposed</p>		<p>In relation to cl. 24(1)(d), the combined GFA of the dual occupancy is 150m² (exist) +169m² (prop) = 319m² (using the LEP GFA definition), which complies with the 400m² maximum.</p> <p>Each of these dwellings will also have access to more than the 50m² required private open space area.</p>
--	---	--	--

	<p>that the dual occupancy be comprised of that dwelling (the new dwelling) together with a dwelling that already exists on the land (the existing dwelling), and</p> <p>(c) (Repealed)</p> <p>(d) the combined gross floor area of the proposed dual occupancy is no more than 400 square metres, and</p> <p>(e) it is proposed that each dwelling have at least 50 square metres of private open space at ground level.</p>		
26	Limit on number of dwellings to which consent may be given	Y	As outlined elsewhere in this assessment, the proposal is not increasing the number of residential dwellings on the site or the Island as a whole.
29	Maximum height of buildings: 7.5m	Y	The proposed guest house works has a max. height of 6.26m which is below the LEP specified maximum of 7.5m. The transit room will have a complying max height of 5.6m and the 'replacement' dwelling a complying max height of 4.79m.
Division 2 Provisions that apply to particular land			
32 (2)	<p>Setbacks of buildings in Zone 1, 2 or 5:</p> <ul style="list-style-type: none"> - 10m to a road frontage and - 5m all other boundaries 	Y	All components of the proposed development (as outlined in the detailed description of the proposal in section 5 of this assessment and as confirmed by LHIB surveyor (ref internal comments at section 6)), will comply with the 10m and 5m setback requirements of cl 32.

33	Landscaping to be carried out in Zone 2	Y	<p>As outlined elsewhere in this report, the proposed development will generally be screened by the established vegetation on the site and surrounding it.</p> <p>One component of the DA where this could be improved is the proposed driveway/ carparking areas which run 900mm and 950mm setback and parallel to part of the southern and eastern site boundaries. This is narrower than ideal as it will necessitate maintenance of landscaping on adjoining properties to provide adequate screening.</p> <p>It is recognised that the driveways and adjoining landscaping widths are constrained somewhat on the site by existing structures being retained.</p> <p>Nevertheless, a requirement has been included in the report conditions that the parking and manoeuvring areas at the end of each driveway are to be setback a minimum of 1.5m off the respective site boundaries</p>
----	---	---	--

			<p>and that specific professional landscaping plans/ details for planting designed to provide effective screening between the proposed driveways and parking/ manoeuvring areas and the site boundaries be provided with the CC and installed.</p> <p>With the above requirements implemented, it is established that the development will not have a <i>“significant adverse impact on the existing landscaped character and dispersed pattern of housing in that zone”</i> as required in the subject clause.</p>
38, 39, 40	Development Affecting Heritage Items	Y	<p>Refer to discussion provided earlier in section 7.2.2 regarding the Heritage Act.</p> <p>In regard to clause 40 of the LEP, there are no listed heritage items in the vicinity of the subject development.</p>

Division 4 Miscellaneous

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 2 weeks as per LHIB requirements with no submissions received.
42	Requirement for environmental report	NA	The proposal as outlined and assessed in this report is not likely to have a significant adverse impact on the environment, and is not for a 'public utility installation' or a 'public utility undertaking', therefore an 'environmental report' as per cl. 42 of the LEP 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
-----------------------	--------------	------------

<p>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></p>	<p>Y</p>	<p>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.</p>
<p>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></p>	<p>Y</p>	<p>The proposed development has been assessed within this report as being suitable for the site and environmentally appropriate with the implementation of various provisions for wastewater management along with appropriate requirements as included in the attached recommendation and conditions.</p>
<p>c) <i>No part of the proposed development:</i></p> <ul style="list-style-type: none"> 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> 	<p>Y</p>	<p>As outlined elsewhere in this assessment report the proposed development will not result in detrimental impacts on native vegetation or animals.</p> <p>As also mentioned earlier, the internal environmental assessment undertaken found that a <i>5 Part Test of significance was not submitted with the DA as the proposal is located within an area supporting mown lawn and surrounded by established gardens. This assessment 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.</i></p> <p>and</p> <p><i>There is some native vegetation that will be removed as part of this proposal that has been incorrectly mapped as SNV, but has in fact been an established garden for multiple decades. It has therefore been assessed that this proposal will have minimal impact on the actual SNV extent.</i></p> <p>Ecological conditions have been included in the report recommendation.</p>

<p>d) <i>Access is, or will be, available to the site of the proposed development and 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>Y</p>	<p>New vehicular driveways and parking areas are proposed (and shown on the submitted plans) for both the tourist guesthouse/ transit lounge and the replacement dwelling, both coming off the end of Ocean View Drive. These have been included in the ecological assessments undertaken for the DA as referenced at (c) above.</p> <p>A specific condition has been recommended regarding the construction of the proposed pedestrian accessways to and from the Lagoon Road frontage of the site, ensuring that minimal damage or removal of SNV, or significant impact on native plant or animal habitat occurs, and that these works are undertaken in accordance with the specifications and requirements of the LHIB Team Leader Environment World Heritage.</p>
<p>e) <i>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>	<p>Y</p>	<p>Refer to the assessment and condition recommended in the discussion of cl. 22(1)(b) LHI LEP 2010 earlier in this report section.</p>
<p>f) <i>The proposed development will not be adversely affected by any landform limitations, including flooding, landslip, unstable soils and steep slopes,</i></p>	<p>Y</p>	<p>As mentioned earlier in the description of the site, much of its topography is varied with a sloping nature and gullies present. The LHIB's Manager Infrastructure & Engineering has reviewed the plans and is satisfied with the proposal subject to the proposed work being undertaken in accordance with structural and geotechnical requirements/ specifications obtained and submitted with any CC submitted for the development.</p>
<p>g) <i>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>	<p>Y</p>	<p>There are no additional services required for the proposed development that requires financial outlay by the LHIB. Separate new consumer electrical connections/ mains for both the new tourist accommodation/ transit lounge and the replacement dwelling will be required but these will be paid for by the proponent.</p>
<p>h) <i>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>	<p>Y</p>	<p>The proposal will not result in a detrimental impact on the visual amenity of the subject site or the locality with the amendments included in the report conditions, (ref earlier discussion in sections 4 & 5, and the discussion of clauses 32 and 33, LHI LEP 2010).</p>
<p>i) <i>The proposed development will not cause any significant overshadowing of adjoining land,</i></p>	<p>Y</p>	<p>Due to the predominant 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>
<p>j) <i>The proposed development will not cause any significant reduction in the privacy of occupiers of adjoining land.</i></p>	<p>Y</p>	<p>Refer to the assessment of the proposal under clause 32(2), (Setbacks), and 33 LHI LEP 2010 and the amendments included therein.</p>

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
Part 1 Introduction			
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.
Part 2 Design Principles			
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 staff accommodation 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 development will incorporate access to natural light and ventilation complying with the DCP. A BASIX Certificate accompanied the DA for the subject dwelling.
2.8	Landscaping design	Y	The proposed works will not have a detrimental impact on the established site landscaping subject to implementation of the included recommendations.
2.9	Site access and parking	Y	Site parking and access will not change as a result of the proposed works subject to implementation of the included recommendations.

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 largely comply with all relevant provisions subject to the requirements and 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: There are no draft Planning Instruments relevant to the application.
 - 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	As assessed within the preceding report, the proposed development will not result in the removal of any actual 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 not 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	With the proposed amendments for the increased boundary setbacks to the proposed carparking/ manoeuvring areas and additional landscaping requirements to these and the driveways, 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 subject to the conditions applied in the report recommendation.

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

As confirmed earlier in this report, the DA was placed on public exhibition from 20 December 2022 to 20 January 2023, 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 Tourist Accommodation incorporating alterations/ additions and conversion of existing dwelling as a 4 x bedroom guest house, construction of new transit lounge/new laundry and storage shed and construction of a replacement dwelling and new 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 OC2022.08 for a Proposed Tourist Accommodation incorporating alterations/additions and conversion of existing dwelling as a 4 x bedroom guest house, construction of new transit lounge/new laundry and storage shed and construction of a replacement dwelling and new wastewater system on Lot 1 DP 1279044 (previously known as Lot 347 DP1156661, Prt Lot 201 DP 40354 & Prt Lot 69 DP 757515), No. 1 Ocean View Drive, Lord Howe Island be approved.
- b) That DA2022.07 for a Proposed Tourist Accommodation incorporating alterations/additions and conversion of existing dwelling as a 4 x bedroom guest house, construction of new transit lounge/new laundry and storage shed and construction of a replacement dwelling and new wastewater system on Lot 1 DP 1279044 (previously known as Lot 347 DP1156661, Prt Lot 201 DP 40354 & Prt Lot 69 DP 757515), No. 1 Ocean View Drive, 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 DA2022.07 as listed below and endorsed with the Lord Howe Island Board's stamp, except where amended by other conditions of consent.

- a) Completed DA Forms prepared by Chad Wilson, dated 30/05/2022.
- b) Statement of Environmental Effects Form prepared by Chad Wilson, (undated).
- c) The following plans submitted as part of the DA documentation:
 - Dwg Nos. DA-00 to DA-14, Rev: A, Dated: 14/10/22, prepared by Room On Fire.
- d) BASIX Certificate No. 1225039S_02, dated: 17th October 2022, prepared by Kara Lonergan.

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

2. Construction Certificate

Approved Building Class:

Class	Use	Area
1a	Dwellings (Short term holiday accommodation)	Each dwelling including decks
9b	Assembly Building – Transit Lounge	Whole of building
8	Commercial Laundry & Storage	Whole of building
10a	Shed	Whole of building

- a) the applicant must appoint a Principal Certifying Authority (PCA) and apply for a Construction Certificate for the proposed works via the NSW Planning Portal. No works can commence until a valid Construction Certificate for the works has been issued.
 - i. Given the nature of the subject site's topography and the proposed development, the Construction Certificate drawings shall be designed and accompanied by a certified structural and geotechnical engineering assessment and plans for the works.
 - ii. The PCA will ensure all necessary approvals are in place, conduct mandatory

inspections of the works as required and issue the Occupation Certificate certifying that the Staff Accommodation is suitable for occupancy as a Class 3 building.

- 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 Occupation 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 an Occupation Certificate the applicant is to ensure compliance with any/all conditions imposed by the Board as part of the Development Application / Construction Certificate approval process.

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

3. Building Code Amendments and Additional Information Requirements

The following amendments shall be undertaken/ information provided to ensure compliance with the Building Code of Australia. All stated requirements shall be detailed on the CC plans for the proposal:

Tourist Guesthouse and New Dwelling

a) Surface water drainage (BCA 3.1.3.3)

Surface water must be diverted away from the proposed tourist guesthouse and the new dwelling with the external finished surface surrounding the slab being drained to move surface water away from the building and graded to give a slope of not less than —

- (i) 25 mm over the first 1 m from the building in low rainfall intensity areas for surfaces that are reasonably impermeable (such as concrete or clay paving); or
- (ii) 50 mm over the first 1 m from the building in any other case.

The finished slab heights above external finished surfaces must be not less than —

- (i) 100 mm above the finished ground level in low rainfall intensity areas or sandy, well-drained areas; or
- (ii) 50 mm above impermeable (paved or concreted areas) that slope away from the building in accordance with (i); or
- (iii) 150 mm in any other case.

The current sections do not show compliant heights and this information is to be included in the Construction Certificate drawings.

b) Termite management systems (BCA 3.1.4.3 & Subfloor ventilation 3.4.1.2)

Either the primary building elements are to be not subject to termite attack or the construction is to comply with AS 3660.1 – 2000. This will apply to the portions of the decking also.

The subfloor spaces must achieve the required 400mm (and this is to be shown on the architectural drawings) and as required under this clause and AS 3660.1. To comply the sections will need to be updated and a 400mm clearance required where termite

management systems have been installed that need to be inspected.

c) Footings and slabs (BCA Part 3.2) & Framing (BCA Part 3.4)

A Structural Engineer shall provide certification determining compliance with BCA 2019 Volume 2 Amendment 1. The certification is to nominate the loadings, footings and the applicable Australian Standards for each of the components of the structure.

As the proposed guest house is to be joined to the existing structure the tie downs will be critical and this may require additional works to be undertaken on the existing footings and frame.

d) Installation of smoke alarms (BCA 3.7.5.5)

The proposed guest house & new dwelling are to be provided with a smoke alarm on each level that is interconnected and between the bedrooms and the rest of the house. To comply the smoke alarm will be required to be located as complying with AS 3786 – 2018.

e) Construction of wire balustrades (BCA 3.9.2.5)

The decking does not appear to be more than 4.0 m above the surrounding ground level so there will not be a restriction on the use of horizontal elements. Wire balustrades whilst permitted under 3.9.2.1 should be chosen with care as these will lose tension over time and become non-compliant.

f) Protection of openable windows – bedrooms (BCA 3.9.2.6)

The windows in the south western wall of Bedroom 1 of the Guest House must either be restricted to less than 125 mm opening or be provided with a protective screen complying with this clause.

Transit Lounge and Commercial Laundry

g) Fire Resistance (BCA Section C)

The transit lounge and commercial laundry appear to be located more than 3.0 m from other structures so no fire resistance level will be required to be achieved.

All materials used in the building will be required to comply with the fire hazard properties under Clause C1.10 and Specification C1.10.

h) General building access requirements & Exemptions (BCA clause D3.1 & D3.4)

The transit lounge and commercial laundry are required to be fully accessible (but a concession is likely to be able to be justified on safety grounds to part or all of the laundry under Clause D3.4).

As there are less than 4 dwellings on the site used for short-term holiday accommodation Table D3.1 does not require any of the dwellings to be accessible.

i) Access to buildings & Accessible carparking (BCA Clause D3.2 & D3.5)

Clause D3.1(a) requires:

- (a) An accessway must be provided to a building required to be accessible—
 - (i) from the main points of a pedestrian entry at the allotment boundary; and
 - (ii) from another accessible building connected by a pedestrian link; and
 - (iii) from any required accessible carparking space on the allotment.

An entrance to the transit lounge is required to have a clear opening of 850 mm, have level access (or a threshold ramp), have correct door hardware and have the required circulation space. It is expected that the double doors can be designed to be compliant.

An accessible carparking space is to be provided to AS/NZS 2890.6 but it need not be

identified with signage where there is a total of not more than 5 carparking spaces are provided on the site, so as to restrict the use of the carparking space only for people with a disability.

The path from the accessible car space into the transit lounge must have compliant grades and barriers (rail, or kerb).

j) Portable fire extinguishers (BCA Clause E1.6)

Both the transit lounge and commercial laundry are to be provided with a portable fire extinguisher to comply with Clause E1.6 and AS 2444 - 2001.

k) Accessible sanitary facilities & Restriction on location of sanitary compartments (BCA Clause F2.4 & F4.8)

The door to the accessible sanitary facility of the transit lounge does not have the required latch side clearance for a front on approach and the grab rail will not be able to be the 300 mm minimum length under AS 1428.1 - 2009.

Also, a sanitary compartment is not permitted to directly open to a kitchen in a Class 9b building so either an airlock or a screen is required to the door. This area will require some redesign which shall be indicated on the CC plans.

4. Ecology and Habitat

- a) If any live LHI Gecko or LHI Placostylus are detected during works they must be moved to similar habitat structures in the adjacent area (eg. 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, LH Woodhen and rodents.
- b) All building materials and building activity are restricted to being stock piled on cleared open areas.
- c) At least 35 percent of the total site area shall be retained or planted with species of plants that are native to the Island and common to the locality. Evidence of this including species and area calculations are to be included in the construction certificate submission.
- d) The construction of the proposed pedestrian accessway to and from the Lagoon Road frontage of the site shall be undertaken without damage or removal of mapped SNV, or significant impact on native plant or animal habitat. These works are to be undertaken in accordance with the specifications and requirements of the LHIB Team Leader Environment World Heritage.

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

5. Wastewater

- a) All plumbing work, including the disconnections and connections to the wastewater system, is to be undertaken by a licensed plumber.
- b) 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 complete wastewater treatment system and irrigation area and is satisfied that the installation and operation of the system meets the parameters of the strategy.

- c) The 2,000m² land application area shall be split into 5 x 400m² auto sequential irrigation plots with a 1m buffer to the lease boundaries and a 35mm buffer from the Lagoon high tide mark, to the specifications and requirements of the LHIB Manager Infrastructure & Engineering.
- d) The effluent land application area of 2,000m² assumes 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. Due to the large area of the irrigation area multiple soil samples were taken throughout the area which have resulted in a mixture sand, clay and basalt. As such the Phosphorus sorption value of sand has been applied to the calculations as sand has the lowest values and thus produces the largest value for irrigation. Further soil samples and Phosphorus Sorption tests according to 'Soil Survey Standard Test Method C8-B-Psorb' in the future have the potential to reduce the irrigation area needed.
- 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.

6. 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 structures are diverted to rainwater tank(s) as outlined in the application. The rainwater disposal is to be shown on the Construction Certificate Plans.

Reason: To ensure works are undertaken appropriately.

7. 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.

8. Electrical Services

- a) No excavation to be carried out until the site is inspected by the LHIB Senior Electrical Officer, ie. 'dial before you dig'.
- b) An Electrical Compliance Certificate shall be issued with, or before, the application for Occupancy Certificate for the approved development.
- c) "Proposed Domestic Dwelling"
 - i. All new wiring must be carried out by a licensed electrician to AS/NZS3000:2018
 - ii. A signed "Notice of Electrical Works" form must be submitted to the LHIB Senior Electrical Officer within 10 days of installation completion.
 - iii. New customer consumer mains are to be installed from Distribution Pillar No. 303 at the applicants cost.
- d) "Proposed Commercial Connection" for SN180
 - i. All new wiring must be carried out by a licensed electrician to AS/NZS3000:2018
 - ii. A signed "Notice of Electrical Works" form must be submitted to the LHIB Senior Electrical Officer within 10 days of installation completion.
 - iii. New customer consumer mains are to be installed from Distribution Pillar No. 303 at the applicants cost.
 - iv. The customer will reduce the number of additional Double GPO's to 20 (40 socket outlets)
 - v. The domestic tariff currently applied to SN180 will need to be converted to commercial rate.

9. 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.
- d) All construction is to be carried out and completed in accordance with the National Construction Code (NCC)/Building Code of Australia (BCA).
- e) The applicant is to ensure all Basix commitments are adhered to.

- f) The applicant is to ensure that all Mandatory/Critical Stage Inspections as outlined in the Construction Certificate are undertaken.

Reason: To ensure works are undertaken appropriately.

10. 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.

11. 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.

12. 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.

13. 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.

14. LHIB Issued Bed Licences

Prior to the issue of an occupation certificate and/or the commencement of the approved operations, LHIB approval shall be sought and issued for the transfer of eight (8) existing tourist bed licences from Oceanview Apartments (or other existing licenced tourist accommodation premises) for the approved 4 bedroom tourist accommodation. These transferred and approved bed licences shall be kept valid & in place during the operation of the approval.

15. Amendments to the Proposed Development

The proposed development shall be amended in compliance with the following requirements with specific details and information confirming same to be included on the CC plans:

- a) The proposed parking and manoeuvring areas at the end of each driveway within the site, are to be setback a minimum of 1.5m off the respective site boundaries. Specific professional landscaping plans/ details for planting designed to provide effective screening between the proposed driveways and parking/ manoeuvring areas and the site boundaries be provided with the CC and installed.
- b) To achieve compliance with cl. 22(1a) of the 2010 LEP, the total commercial site coverage of the development (including covered and uncovered decks & all building wall thicknesses) shall be reduced by 89.25m² (from the following current assessed calculations Guesthouse = 227.7m², Transit Lounge = 97.36m², Commercial Laundry/ Store = 30.85m², Total Commercial Site Coverage = 355.95m²).

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

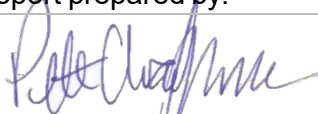
A matter of national environmental significance (NES) matter; or Commonwealth land without an approval from the Commonwealth Environment Minister.

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: 1st May 2023 LHI Consultant Town Planners All About Planning	Suzie Christensen Date: 1 May 2023 Chief Executive Officer Lord Howe Island Board

Board Meeting: May 2023	Agenda Number: 12.04	Record Number: ED23/3066
--------------------------------	-----------------------------	---------------------------------

LORD HOWE ISLAND BOARD

BUSINESS PAPER

OPEN SESSION

Item

Assessment Report – OC 2023.1.1 and DA2023.1.1

Recommendations

1. **Approve** an out of session determination for the development application DA2023.1.1.

Current position

On 20 April 2023, Owner Consent application OC2023.1.1 and Development Application DA2023.1.1 was lodged by Di Owens for:-

- Construct a one-bedroom tourist accommodation unit, transit lounge and install new wastewater system.

The development application was publicly exhibited from 21 April 2023 to 5 May 2023. An assessment report is being completed by the Board's independent planning consultant. The development application is to be determined by the Board.

Board Assessment

The lodgement of this development application was delayed due to issues with cadastral updates and the NSW Planning Portal. Board staff liaised at length with the Department of Planning to resolve the issues over a protracted period. Once lodged, the statutory assessment commenced, but it has not been completed in time for circulating papers prior to the May Board meeting.

Given the extenuating circumstances, the applicant has requested that this development application be considered out of session, likely the next few weeks, rather than waiting for the next Board meeting in September 2023. Management considers this to be a reasonable request considering the circumstances.

Attachments

Attachment	Title
Nil	

Approval and contact

Approver	Position
Suzie Christensen	Chief Executive Officer
Preparer	Position
Paula Pollock	Senior Manager Environment & Community Services

Board Meeting: May 2023	Agenda Number: 13.01	Record Number: ED23/1370
--------------------------------	-----------------------------	---------------------------------

LORD HOWE ISLAND BOARD

BUSINESS PAPER

OPEN SESSION

Item

Motor vehicle importation or transfer status report.

Recommendations

1. **Note** the information provided in this report.
2. **Note** the amendment to conditions of approval for replacement vehicles

Current position

Since the last Board meeting, ten (10) vehicle applications to import or transfer were determined by the Chief Executive Officer under the 'Vehicle Importation, Transfer and Use Policy'.

The table below shows the vehicle applications determined since the February 2023 Board meeting.

Applicant	Vehicle Type	Preferred Vehicle	Use	Variation to Applicant	Comment
Gower Wilson – LHI Fuels	Toyota Rav 4	N	Commercial	0	Approved 13/02/2023 - Replacement
Matthew Retmock	Ford Ranger Ute	N	Private	0	Approved 24/02/2023 – Replaced a commercial vehicle with a private vehicle
Pinetrees Lodge	Toyota Ute	N	Commercial	0	Approved 08/03/2023 - Replacement
Issac Bennett & Rebecca Harvey	Toyota Ute	N	Commercial	0	Approved 08/03/2023 - Replacement
Corey Davies	Toyota Hilux Twin Cab Ute	N	Private	0	Approved 30/03/2023 – Replacement
Issac Bennett	Boat Trailer	N	Private	0	Approved 30/03/2023 - Replacement
Damien Ball	Scooter	Y	Private	0	Approved 05/04/2023 - Replacement
Ed Rourke	Suzuki Station Wagon	N	Private	0	Approved 30/03/2023 - Replacement
Scott Matthew	Toyota Hilux Ute	N	Commercial	1	Approved 30/03/2023 – Transferred from Issac Bennett

Applicant	Vehicle Type	Preferred Vehicle	Use	Variation to Applicant	Comment
Suzie Christensen	Boat Trailer	N	Private	1	Approved 01/03/2023 at Feb 2023 Board Meeting – Transferred from Hank Bower

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

As at 13 April 2023

Registered Road Vehicles						
Essential	Commercial	Private	Hire	Plant & Equipment	Imported without approval	Total
34	122	176	8	25	61	426

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

Registered Road Vehicles						
Car/Utility	Bus	Motorcycle / Scooter	Truck	Plant & Equipment	Trailers	Total
197	31	37	15	41	105	426

At the June 2016 meeting it was requested that future reports include trends in regard 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 61 vehicles imported without approval prior to the current policy:

- 53 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.
- 4 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.
- 1 vehicle, a mobility scooter was imported without approval in 2023 (imported by Blue Lagoon Lodge – clarification required as to whether this is for guests)
- 7 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.

Vehicles Imported Without Approval – By Type						
Car/Utility	Bus	Motorcycle / Scooter	Truck	Plant & Equipment	Trailers	Total
4	0	7	5	6	39	61

COMPLIANCE AUDIT

In February 2023, the CEO requested that an audit of the vehicle register be undertaken to investigate any outstanding compliance issues.

There is a total of 49 vehicles awaiting removal. The replacements have been imported, however, the condition to remove the replaced vehicle has not been adhered to by the applicant.

Vehicles due for removal – By Type						
Car/Utility	Bus	Motorcycle / Scooter	Truck	Plant & Equipment	Trailers	Total
22	0	10	1	5	11	49

A number of other compliance issues were identified:-

- Owners – deceased;
- Owners - left island;
- Owners - moved premises;
- Others – such as non-removal of bull bar.

The Board has eight (8) vehicles due for removal which are Included in the above total, being one (1) truck, four (4) plant & equipment and three (3) trailers.

A plan is in development for the Board vehicles highlighted for removal and once the actioning of that plan has commenced:-

- A householder will be issued to the community reminding vehicle owners of their obligations.
- Compliance will be issued to the vehicle owners in breach of their conditions of approval.

Process improvements are in development and will be implemented to ensure stronger compliance with the Vehicle Importation, Transfer and Use Policy in the future.

Attachments

Attachment	Title
	Nil Attachments

Approval and contact

Approver	Position
Suzie Christensen	Chief Executive Officer
Preparer	Position
Lynda Shick	Land & Property Officer

Board Meeting: May 2023	Agenda Number: 14.01	Record Number: ED23/2533
--------------------------------	-----------------------------	---------------------------------

LORD HOWE ISLAND BOARD

BUSINESS PAPER

OPEN SESSION

Item

Quarterly Report - Status of public accommodation licence transfer applications

Recommendations

1. **Note** the quarterly report on status of public accommodation transfer applications approved at the December 2022 Board Meeting (Attachment A to this report).

Current position

At the December 2022 Board Meeting, the Board approved three (3) public accommodation licence transfer applications as follows: -

- Transfer of two licences from Kevin Wilson (Ocean View Apartments) to Ian Hutton
- Transfer of four licences from Lisa Makiiti and Rod Oxley (Lagoon Landing) to Kylie Owens and Rahnie Owens (Lagoon Landing) - COMPLETE
- Transfer of twelve licences from Diane Owens (Lorhiti) to Diane Owens, Fletcher Owens (Lorhiti) and Jessica Owens.

The Board Members requested that management provide a quarterly report on the status of each of the public accommodation licence transfer applications, including an update on the decommissioning of accommodation units where relevant.

Attachments

Attachment	Title
A	Report – Quarterly - Status of public accommodation licence transfer applications – Closed

Approval and contact

Approver	Position
Suzie Christensen	Chief Executive Officer
Preparer	Position
Lynda Shick	Land & Property Officer

Board Meeting: May 2023	Agenda Number: 14.02	Record Number: ED23/2530
--------------------------------	-----------------------------	---------------------------------

LORD HOWE ISLAND BOARD

BUSINESS PAPER

OPEN SESSION

Item

Request for approval for Fletcher Owens at Lorhiti to operate two public accommodation licences for Jessica Owens.

Recommendations

1. **Approve** the use of the two public accommodation licences in the name of Jessica Owens to operate from Unit 1 at Lorhiti Apartments until construction of Jessica Owens' own tourist accommodation apartment on PL1954.37 is complete on 1 February 2024. At this time, Unit 1, Lorhiti Apartments will be decommissioned immediately in accordance with development application DA2021.3.1 approved on 06/07/2021 and MDC2021.3.2 approved 16/12/2021.

Current position

At the December 2022 Board Meeting, the Board approved the transfer of (12) Public Accommodation Licences from Diane Owens at Lorhiti Apartments as follows:-

- *Approve the issue of a Public Accommodation Licence (2) in the name of Diane Owens for PL2021.01 for the maximum number of 2 persons, excluding children under five years of age, who may be accommodated at any one time;*
- *Approve the issue of a Public Accommodation Licence (8) in the name of Fletcher Owens, Lorhiti for PL2021.02 for the maximum number of 8 persons, excluding children under five years of age, who may be accommodated at any one time;*
- *Approve the issue of a Public Accommodation Licence (2) in the name of Jessica Owens for PL1954.37 for the maximum number of 2 persons, excluding children under five years of age, who may be accommodated at any one time;*
- *Approve the use of the two public accommodation licences in the name of Diane Owens to operate from Unit 2 at Lorhiti Apartments until the construction of Diane Owens' own tourist accommodation apartment is complete on Lot 1 of DP1261010. At this time Unit 2, Lorhiti will be decommissioned in accordance with the submitted development application DA2022.6.1.*

In light of the above resolutions, the public accommodation licences for Fletcher Owens, Lorhiti Apartments reduced from 12 to 8.

Unit 1 and Unit 2 at Lorhiti are pending decommissioning following the transfer of public accommodation licences approved at the December 2022 board meeting.

Unit 2 Lorhiti

At the December 2022 board meeting, the Board approved the use of Diane Owens' two (2) public accommodation licences from Unit 2, Lorhiti until the construction of her own tourist accommodation apartment is complete. At this time Unit 2, Lorhiti will be decommissioned and its use will cease immediately in accordance with the submitted development application DA2022.6.1 (if approved).

Unit 1 Lorhiti

As a result of the Board's resolutions at December 2022 board meeting, use of Unit 1 Lorhiti should have ceased immediately. A letter advising Fletcher Owens of this was sent on 5 January 2023 and an inspection of Unit 1 was arranged to confirm compliance.

On 10 February 2023, Fletcher advised that Unit 1 was still in use and the inspection was cancelled, as Fletcher and Jessica Owens intended to apply to the Board to use Jessica Owens' two (2) idle public accommodation licences in Unit 1 at Lorhiti until construction of her tourist accommodation unit on PL1954.37 is complete by 01/02/2024. The application was received from Fletcher Owens and Jessica Owens on 24 February 2022. (Attachment A).

Construction of Jessica Owens' tourist accommodation has commenced on PL1954.37, with a scheduled completion date of 01/02/2024. At this time, Unit 1, Lorhiti Apartments will be decommissioned, and its use will cease immediately in accordance with development application DA2021.3.1 approved on 06/07/2021 and MDC2021.3.2 approved 16/12/2021.

Attachments

Attachment	Title
A	Request for approval for Fletcher Owens at Lorhiti to operate 2 public accommodation licences for Jessica Owens – May 2023 – Open

Approval and contact

Approver	Position
Suzie Christensen	Chief Executive Officer
Preparer	Position
Paula Pollock	Senior Manager Environment & Community Services

Fletcher Owens **LOT 1, DP1261010**
78 Anderson Road
Lord Howe Island
NSW 2898

Jessica Owens
Kentia
Lord Howe Island
NSW 2898

10 February 2023

Suzi Christensen
Administration LHI Board- Lynda Shick
CEO Lord Howe Island Board
P.O. Box 5
Lord Howe Island
NSW 2898

AUTORISATION FOR FLETCHER OWENS TO USE 2 (TWO) TOURIST LICENSES HELD IN THE NAME JESSICA OWENS OPERATING FROM UNIT 1 AT LORHITI APARTMENTS ON **LOT 1, DP1261010 UNTIL** JESSICA OWENS HAS APPROVAL FINALISED FOR CONSTRUCTION OF A TOURIST APARTMENT ON Perpetual Lease No. 1954/37

I, Jessica Owens, authorise Fletcher Owens to use my 2 (two) tourist licenses to operate from Unit 1 at Lorhiti Apartments, Lord Howe Island until I have finalised construction of the tourist accommodation on my lease on 01 February 2024.

I, Fletcher Owens, request that I can use 2 (two) tourist licenses in the name of Jessica Owens to operate from Unit 1 at Lorhiti Apartments, Lord Howe Island until Jessica has finalised construction of tourist accommodation on her lease on 01 February 2024. At this time Unit 1 will be decommissioned in accordance with the submitted DA to Decommission unit 1.

Signed

Jessica Owens 

Fletcher Owens 

Date 24/2/2023

Board Meeting: May 2023	Agenda Number: 14.03	Record Number: ED23/2517
--------------------------------	-----------------------------	---------------------------------

LORD HOWE ISLAND BOARD

BUSINESS PAPER

OPEN SESSION

Item

Handley Review – Review of Compliance with Residency Condition of Perpetual Leases

Recommendations

Note: that a review has been undertaken.

Endorse: the plan provided to resolve each outstanding matter.

Current position

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.”

A review of residency status of all lessees was undertaken in late 2017 by the administration with advice from local Board members. This paper provides an update on the status of the residency on lease investigations.

Context

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. Investigations into non-compliance are prioritised according to the degree of non-compliance and the time the matter has been ongoing.

There are currently eight (8) investigations underway:-

- Three (3) compliance matters have been resolved since the December 2022 meeting.
- Two (2) new compliance matters have arisen since the December 2022 meeting.
- Four (4) letters have been issued as part of ongoing breaches.

A detailed overview of each matter is listed in Attachment A.

The Board’s resolution from the September 2022 stated:-

Page 1 of 2

Action: Management bring a substantive plan to resolve each of the residency compliance matters to the next board meeting. Matters are to be prioritised and decision made on what action is to be taken.

Please see Plan at Attachment A for prioritisation of investigations with suggested next steps.

Attachments

Attachment	Title
A	Review of Compliance with Residency Condition on Perpetual Leases – May 2023 - Closed

Approval and contact

Approver	Position
Suzie Christensen	Chief Executive Officer
Preparer	Position
Paula Pollock	Manager Environment & Community Services

Board Meeting: May 2022	Agenda Number: 14.4	Record Number: ED23/2769
--------------------------------	----------------------------	---------------------------------

LORD HOWE ISLAND BOARD

BUSINESS PAPER

OPEN SESSION

Item

Cattle on SL2011.01

Recommendations

1. **Note** The Lord Howe Island Board has investigated the various issues related to this matter.
2. **Approve** That the Administration pursue option 5 with Mr Fenton.
3. **Approve** Should an agreement be unable to be reached, progress option 1.

Current position

Mr Esven Fenton has written to the Board requesting an upgrade of a cattle grid on the public road intersecting his special lease SL2011.01 (Attachment A) to contain his livestock. The following information is relevant to the decision.

Financial

Purchase and installation of a new grid that meets standards is conservatively estimated at approximately \$9000 (direct costs materials, freight and internal labour). Alternatively, purchase and installation of a one-wire electric fence with two gates at the site is conservatively estimated at \$2430 materials and direct costs of internal labour (excluding freight).

Safety

The current grid appears have been built locally and not to a recognised standard. Gaps between the joists are a narrower gauge than is required to deter cattle from walking across the grid. While this may be ineffective for stock management, the public roads on lord Howe Island are dual purpose and standard grid widths pose a safety risk to cyclists. Secondly, stock straying onto roads are a risk to the public, whether travelling on foot, bicycle or in a vehicle. Accidents have occurred on island from both standard grids and hitting cattle at night. Further, complaints have been received by the Board regarding cattle on the roads. These safety risks are a liability for the Board and the leaseholder.

Environmental

Page 1 of 3

Cattle are straying from SL2011.01. The cattle grid on Lagoon Road near Capella Lodge and any temporary electric fencing that has been in place over time is not effectively containing stock. Unconstrained, the cattle can access and impact revegetation plots (an impact on public investment) and can access drainage lines which discharge into the Marine Park. Feedback has also been received about this matter.

Regulatory

Permission to graze cattle on crown land has been authorised via special lease SL2011.01. The current lease extension expires on 31st December 2023 (Attachment B). Conditions of the lease include compliance with a property plan, inclusive of stock exclusion from some areas and weed control. The plan is silent on the matter of exclusion from the public road or watercourses.

However, a broader range of NSW regulation, including Biosecurity legislation requires landholders to prevent stock from straying (Attachments C and D).

The *Dividing Fences Act 1991* (Attachment D) outlines a fair process for the appropriate contribution of owners to the erection and maintenance of fencing. However, section 25 *Application of Act to Crown and local authorities etc* states that the Act does not operate to impose any liability, or to confer any rights, with respect to dividing fences on: (a) the Crown, or (b) a council of a local government area, or any trustee or other person or body, in respect of land vested in (or under the care, control and management of) the council, trustee, person or body for the purposes of a public reserve, public park or such other public purposes as may be prescribed.

Put simply, all obligation for the containment of stock rests with the leaseholder and accepting any shared responsibility for same creates a precedent for ongoing liability for the Board on all special leases on the Island. The use of regulatory powers to enforce this also requires consideration of precedent. Such an act may create an expectation that enforcement would be similarly applied to other special leases subject of grazing.

Social

The unfenced paddock in question provides an access to tourists and locals alike to Johnson's beach via two dirt roads. The leaseholder does not wish to restrict people's access by fencing the public road.

Summary analysis

From a financial, safety, environmental and regulatory perspective, fencing the public road to exclude stock is the most viable option. Gates and signage can be provided to continue to enable public access. Access to Capella Bluff would remain open by way of the existing walking track and fence step over.

The Board has no responsibility to contribute to the cost of containing stock on a special lease, and the use of regulatory powers will be unpalatable.

Options

1. Advise Mr Fenton that the containment of stock on his special lease is his responsibility and that the Board has no immediate plans to replace the grid.
2. Replace the existing grid at Board expense with one that complies with stock exclusion standards.
3. Require the leaseholder to erect and maintain a fence to exclude stock through a variation to the special lease when it falls due for renewal at the end of December 2023.

4. Enter a cost sharing agreement with the leaseholder to erect a fence and two gates on the boundary of the lease. This would include the Board providing labour and the leaseholder paying for materials and freight.
5. Enter a cost sharing agreement with the leaseholder to erect a fence and two gates on the boundary of the lease, in exchange for agreement to exclude stock from the watercourse within the leased area and provision an off-stream watering point for stock. This would include the Board providing labour and the leaseholder paying for fencing materials and freight. The Board could pay for off-stream watering (tank, tough pump).

NB. In any option the responsibility for ongoing maintenance of all improvements will rest with the leaseholder.

Recommendation

- a. That the Administration pursue option 5 with Mr Fenton.
- b. Should an agreement be unable to be reached, progress option 1.

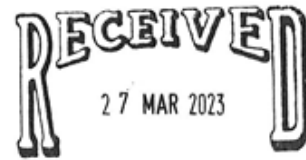
Attachments

Attachment	Title
A	Letter – Incoming – Received 27 March 2023 – Fenton Esven
B	SL2011.02 Lease Extension Agreement
C	Biosecurity Act 2015 - Straying Stock – Department Primary Industries
D	Dividing Fences Act 1991 – NSW Legislation

Approval and contact

Approver	Position
Suzie Christensen	Chief Executive Officer
Preparer	Position
Paula Pollock	Manager Environment and Community Services

Mr E Fenton
Mulley Drive
Lord Howe Island



Lord Howe Island Board

The Chairman
Lord Howe Island Board
Bowker Ave
Lord Howe Island

Dear Sir.

I have written to you because many years of addressing this problem to your admin. has only yielded words.

The problem is the cattle grid at Capella. I ask that it be made to the same specifications as all the other grids on the island, nothing more.

I have 5 growing male calves and as I predicted the first has challenged this grid, making himself a guest at Capella. They hunted him back and observed his return via the grid.

I had a conversation with Mathew Retmock and have shown him the problem.

The grid could be upgraded locally by removal of the square section beams and installing, readily available, I beams which are readily in their place,

I really do not feel responsible should animals escape and roam using the existing grid and believe that the responsibility has become yours.

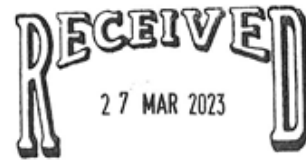
Thanking you I am yours faithfully

A handwritten signature in black ink, appearing to be "E. Fenton".

E. Fenton
27/3/2023

Attached 1 early letter. Dated 19/9/2009

Mr E Fenton
Mulley Dr.
Lord Howe Island 2898



Lord Howe Island Board

The CEO
The Lord Howe Island Board
Bowker Ave
Lord Howe Island 2898

Dear Sir,

Some of my cattle are escaping my lease via the cattle grid at the southern Capella boundary and once over that barrier the whole island is their oyster. They have so far ranged as far as the golf course paying visits to most residents in that area. The potential for property damage and a serious road accident is real.

The failure of this barrier became evident during the latter part of the renovation program of Capella Lodge. I initially asked the Board to remove the dirt/road material build up from the space under the grid and this was promptly done but was not successful in solving the problem.

I have since that time sought a solution and a lot has been offered but little delivered. The last offer was a new grid, but two ships have arrived : no grid.

I have been over this period containing the cattle to the eastern side of the road. Solves the problem but reduces the grazing by at least a third and cannot be sustained for any long period.

The grid is one of four at this end of the island. Three are effective one is not. A rough drawing of the differences is attached.

I ask for a greatly accelerated final solution and an immediate temporary change to the Capella grid. The problem is at least three months old already and the cattle cannot be constrained much longer.

Thanking you I am yours faithfully

E. Fenton
19/19/09

Record Number: ED21/9985
Enquiries: Lynda Shick

10 December 2021

Esven Fenton
C/- Post Office
LORD HOWE ISLAND NSW 2898

Dear Mr Fenton

RE: EXTENSION OF THE TERM OF SPECIAL LEASE

I am pleased to advise that the Minister for Energy and Environment, on the recommendation of the Lord Howe Island Board, has granted an extension of the term of your Special Lease for a period of 2 years expiring on 31 December 2023, pursuant to Section 22 of the *Lord Howe Island Act 1953* over the following area:

Special Lease No: 2011.02

Lease Description (Subject Lands): Portion 123, Lord Howe Island

Purpose of Lease: Grazing, palm plantation and revegetation

Total Area: 120,497 square metres

Chargeable Area: 65,037 square metres

The special lease will be subject to the boundary adjustments made to your lease on 7 July 2016 (copy attached). Special Lease Conditions, and Property Management Plan for the land signed by you on 10 December 2012 (copy attached) and

To accept the offer of a Special Lease over subject lands could you please complete the Statement of Acceptance provided below, date and sign each page and return the whole document to the Board within fourteen (14) days.

Should you require any further information please contact Lynda Shick on 6563 2066 extension 35.

Yours sincerely




Justin Sauvage
MANAGER ENVIRONMENT & COMMUNITY SERVICES

Statement of Acceptance of Special Lease:

I, (insert name) ESVEN KEITH FENTON agree to the extension of the term of the Special Lease for a period of 2 years expiring on 31 December 2023, pursuant to Section 22 of the *Lord Howe Island Act 1953* in accordance with the terms and conditions set out above and in the Property Management Plan and Special Lease Conditions for the leased area dated 7 July 2016 and 10 December 2012.

I have signed and dated each page of these documents to signify my agreement.

Signed:  Date: 14th JAN 2022

Our Ref: S/L 322
Enquiries: Lynda Shick



7 July 2016

Mr Esven Fenton
Mulley Drive
LORD HOWE ISLAND NSW 2898

Administrative Office
P.O. Box 5
Lord Howe Island 2898
Phone: 02 6563 2066
Facsimile: 02 6563 2127
Email: administration@lhib.nsw.gov.au

Dear Mr Fenton

SPECIAL LEASE 2011/02, LOT 123, DP757515, LORD HOWE ISLAND

I refer to various applications relating to the transfer of part of your Special lease to enable boundary adjustments to address encroachments by neighbours on your lease.

The Minister has now granted all necessary approvals and the amended details of your Special lease are as follows:

Special Lease No: 2011/02
Holder: Esven Keith Fenton
Purpose: Grazing, palm plantation, revegetation
Lot: 123, DP757515
Total area: 120,497 square metres
Chargeable area: 65,037 square metres

As per previous advice the term of your Special lease has been extended to 31 December 2017 pending review of all Special leases. The Board will be in contact with you regarding the review in due course.

If you require any additional information please contact Lynda Shick on 02 65632066.

Yours sincerely


Penny Holloway
CHIEF EXECUTIVE OFFICER

 14/1/22



Special Lease
2011.02

EL
10/12/12

Scale 1:4,000 @ A4

Special Lease 2011.02
Zone
A
C
D



10/12/12
Special Lease 2011.02





EL 14/1/22

PROPERTY MANAGEMENT PLAN

Special Lease No: 2011.02
Portion No: 123
Leaseholder: EK Fenton

Site description	Low lying paddocks, mostly cleared on lower slopes but some vegetation regrowth on steeper hillsides. Hillsides have southerly aspect. Landslips have occurred on steeper slopes. Remnant patch of <i>Lagunaria</i> in lower lying intermittent swamp. Drainage line defines southern boundary. Western portion of lease is adjacent to Lagoon foreshore.
Existing land use	Grazing, palm plantation, revegetation
Management priorities and responsibilities and timeframes. (see map attached)	<p>Leaseholder responsibilities:</p> <ul style="list-style-type: none"> • Maintain lease in accordance with LHIB lease conditions, including the control of pests and all declared noxious weeds. • Construct and maintain fencing to exclude stock from nature conservation area zone 'C' and plantation area zone 'D' as identified on map. • Maintain and extend plantation south of Portion 195 to stabilize slope and slip area • Exclude stock from land slide area south of Portion 300. • Continue to treat all noxious weeds on landslip site following removal of stock. • Undertake weed grid search through all zones. Treat all juvenile and mature Cherry Guava, Pittosporum Ochna and asparagus species. Treat using LHI Board approved methods • Maintain adequate ground cover and manage stocking numbers to a sustainable level
Issues/Threats	<ul style="list-style-type: none"> • Potential of spread of noxious weed from lease to Permanent Park Preserve • Landslip instability • Subject to the approval of a Development Application, the boundary will be realigned with adjoining Lot 4 of DP1133177 (Capella Lodge). The special lease will be modified following registration of survey plans with Land Titles Office.


 10/11/22

 14/1/22

Attachment C

LORD HOWE ISLAND BOARD SPECIAL LEASE CONDITIONS

The Lease conditions set out below shall apply to all Special Leases entered into under Section 22 of the Lord Howe Island Act 1953.

1. In these conditions the "Board" means the Lord Howe Island Board ; the Minister means the Minister administering the Lord Howe Island Act 1953 ; the Act means the Lord Howe Island Act 1953.
2. The rent for each year shall be paid in advance to the Board, on or before the 31st December of the year preceding that for which it is due.
3. The land leased is inclusive of any roads within its boundaries.
4. The land leased shall be used only for the purposes for which the lease is granted.
5. The lessee shall, within one (1) year from the date of notification in the Gazette of the granting of the lease, unless otherwise stated in the Property Management Plan, enclose the land leased, either separately or conjointly with other lands held in the same interest, with a substantial fence, and shall maintain such fence in efficient repair throughout the currency of the lease, unless it can be shown to the satisfaction of the Board that the requirements of adequate conservation and protection of timber cover, scrub and palms, or the regeneration thereof, are satisfactorily provided for on the land leased. The lessee shall when fencing the land leased and at any future time when required by the Board, provide and subsequently maintain convenient gates of access for the use of persons authorized to obtain timber or other material from such land. Gates shall be erected on roads within the land leased when and where directed by the Board for public use and together with approaches thereto shall be maintained in good order to the satisfaction of the Board. A turnstile shall be erected by the lessee at any point where a fence (constructed or to be constructed) crosses a pedestrian pathway on or within the boundaries of the land leased. Such turnstile shall be erected and maintained to the satisfaction of the Board.
6. The lessee shall hold and use the land leased bona fide in his or her own interest and shall not transfer (except by way of release of mortgage) sublet or otherwise in any way deal with the lease or any part thereof except with the consent in writing of the Minister first obtained.
7. Any improvements to the property of the Crown upon the land leased shall be kept in good repair throughout the currency of the lease, reasonable wear and tear excepted.

Handwritten signature and date: 21/11/22

Handwritten signature and date: 14/1/22

Attachment C

8. The right is reserved to the Minister to withdraw from the lease at any time and from time to time any land required for home sites or public purposes and the lessee shall not be entitled to any compensation except for the value of improvements as determined by the Board on the area so withdrawn, provided however that the lessee shall be entitled, subject to the approval of the Minister, to remove any movable improvements on the area so withdrawn.

9. Rights conferred upon the public in terms of any reservation in regard to the land leased are reserved.

10. The public shall have unrestricted right to the use of any defined or designed road, track or pedestrian pathway within the land leased and such use shall not be interfered with by the lessee.

11. The lessee shall throughout the currency of the lease effectually destroy or cause to be destroyed all noxious and environmental weeds as may from time to time be required to be destroyed by direction of the Board.

13. No building or structure shall be erected, nor shall any building or structure be altered, without the approval of the Board first obtained. All buildings or structures upon the land leased shall be maintained in good order and condition throughout the currency of the lease to the satisfaction of the Board.

14. No structure, except such gates as may be authorized, shall be erected or work undertaken on roads within the land leased. Such roads shall not be cultivated or used for any purpose not compatible with the use of the road by the Public

15. The right is reserved to the Board or any body or person authorized by it to enter upon the land leased with any material and equipment at any time and from time to time for the purpose of constructing and maintaining authorized works without interference or annoyance by the lessee.

16. The lessee shall not erect or effect within the site of any defined or designated easement any buildings, excavations or other works which shall interfere with the erection and maintenance of works envisaged in accordance with the purpose of such easement and compatible with the object thereof.

17. The lessee shall indemnify and keep indemnified the Crown from and against all actions, suits, claims and demands of whatsoever nature and all costs, charges and expenses which may be brought against him or which he may incur in respect of any accident or injury to any person or property which may arise out of the construction and maintenance of authorized works, notwithstanding that the conditions of this lease shall in all respects have been observed by the lessee or that any such accident or

 10/11/22

 14/1/22

Attachment C

injury shall arise from an act or thing which he may be licensed or compelled to do there under.

18. No bush, timber, trees, palms or vegetative material shall be interfered with by ring barking, cutting or otherwise cleared, unless under authority of the Board.

19. Notwithstanding the provisions of any other condition attached to the lease the lessee shall, unless authorized or otherwise directed, carefully preserve all bush, timber, trees, palms and vegetative material (excepting noxious plants) on the land leased, and shall within one (1) year from the date of notification in the Gazette of the granting of the lease or within such further period and under such conditions as may be approved by the Board, erect a substantial stock-proof fence so as to separate the cleared part or parts from the remainder of the land leased. Such fence shall be erected and maintained to the satisfaction of the Board and the lessee shall take all reasonable steps to prevent stock gaining access to the part or parts of the land leased which are covered by bush, timber, trees and palms.

20. No burning off shall be carried out except with the consent of and subject to such conditions as may be imposed by the Board.

21. The lessee shall not overstock the land leased either wholly or in part, the decision as to whether overstocking is occurring rests with the Board. Should the Board deem it necessary, at any time during the currency of this lease, to maintenance of pasture or preservation of the fertility of such land or for the prevention of erosion thereon, it may determine the maximum number of stock that may be pastured on such land or any specified part of such land and the lessee shall not permit this number to be exceeded.

22. The lessee shall, if and when directed by the Board, adopt and maintain on the land leased or any part or parts of it, such agricultural or pastoral practices and/or install such soil erosion control structures as it may specify in the interests of soil conservation and the mitigation or prevention of erosion.

23. The lessee shall refrain from agricultural and/or pastoral practices on the land leased or any part or parts of it, if and when directed by the Board in the interests of soil conservation and the mitigation or prevention of erosion.

24. The lessee shall at all times manage and use the land in accordance with the Property Management Plan for the leased area, as attached to this lease.

24. All minerals which the land contains are reserved and excepted to the Crown and such minerals and any stone, gravel, clay, shells or other material shall not be removed from the land leased except by the holder of a permit issued under authority of the Minister but the lessee may, with the approval of the Board, take from the land such stone, gravel, clay, shells or other material, for building or other purposes upon such land as may be required by him as lessee.

[Handwritten signature and date 14/1/22]

[Handwritten signature and date 14/1/22]

Attachment C

25. The right of entry by Commonwealth Authorities, their agents, servants, workmen and invitees at all times by day or by night to go, return, pass and repass on foot along over and upon any part of the land leased on which an electricity transmission line is now or may be constructed, is reserved for all purposes connected with effecting any necessary repair and maintenance for supply of electricity.

26. The public shall have unrestricted right of access over the land leased to the foreshores and such right shall not be interfered with by the lessee.

27. The right is reserved to the Board or persons authorized by the Board to enter upon the land leased for the purpose of carrying out any work on the area covered by the reservation for access, shelter, foreshore improvement and re-vegetation without interference or annoyance by the lessee.

28. All palm trees and the product thereof shall remain the property of the Crown, but the lessee shall have the sole right to collect palm seed from the land leased, provided that persons authorized by the Board may from time to time enter upon such land for the purpose of collection and removal of palm seed in such quantities as the Board may consider necessary and desirable. The lessee shall not be entitled to receive compensation for any palm seed collected and removed under authority of the Board.


29. The lessee shall not conduct upon the land leased any trade or activity which in the opinion of the Board is offensive or which may endanger the public health.

30. Any of these conditions may, on application by the lessee in the prescribed manner, and on the recommendation of the Board, be varied, modified or revoked by the Minister.

31. The land leased shall be used only for the purpose for which the lease is granted.

32. The lessee shall hold and use the land leased bona fide in the lessee's own interest and shall not transfer mortgage sublet or otherwise in any way deal with the land leased or any part thereof (except by way of release of mortgage) except with the consent in writing of the Minister is first had and obtained.

33. A breach of any of these conditions will render the lease liable to forfeiture.

 14/1/22

 10/1/22



BIOSECURITY ACT 2015

Straying stock

Straying Stock

Land managers have a responsibility to ensure their stock do not wander from their property onto other private land or public property. The *Dividing Fences Act 1991* defines what a sufficient dividing fence is and outlines the responsibilities of owners for doing fencing work.

Stock can create a biosecurity risk if they are allowed to wander; similarly they may become exposed to pests and diseases if they leave their property. Pests and diseases are managed using a variety of tools under the *Biosecurity Act 2015* depending on their risk, including a general biosecurity duty.

The general biosecurity duty requires a person dealing with biosecurity matter or a carrier and who knows or ought to know of the biosecurity risks associated with that biosecurity matter or carrier to take measures to prevent, minimise or eliminate the risk as far as reasonably practicable.

What is the biosecurity risk of straying stock?

If stock are infested or infected with diseases such as sheep lice and virulent footrot and wander from their home property to neighbouring properties, it is highly likely those diseases will spread to the stock on the neighbouring properties, impacting on animal health and welfare and subsequently production.

Stock also carry weed seeds in their coats and or gut. Straying stock pose a real risk to the spread of weeds between properties and weed control areas.

For more information visit

W www.dpi.nsw.gov.au/biosecurityact E biosecurity.legislation@dpi.nsw.gov.au

What is my responsibility?

All land managers have a general biosecurity duty to manage biosecurity risks that they know about, or could reasonably be expected to know about. Land managers would be expected to know about the biosecurity risks of their stock straying. Land managers can meet their general biosecurity duty by undertaking activities such as:

- Ensuring all boundary fences are sound and stock proof
- Regularly monitoring stock to keep track of their whereabouts and health status
- Managing pests and diseases in stock as soon as detected to prevent their spread
- Developing a farm biosecurity plan

What do I do if I see stray stock on public land?

- If the owner of the stock is known, notify the owner that their stock are straying so they can recover them
- Report the stray stock to the appropriate authority or land manager – Local Land Services or Local Government Ranger. This is particularly important if the stock appear to be unwell or obviously diseased

What do I do if there is stray stock on my land?

- Isolate the stray stock from your animals and keep them contained in a secure yard



BIOSECURITY ACT 2015

Straying stock

until they can be either returned to the owner or reported to local authorities for further action

- Examine the stock for signs of pests and disease. Consider contacting your Local Land Services if you need advice.
- Contact the owner of the stock if known, to arrange for them to be collected or returned.
- Do not just put them back in a neighbouring paddock without contacting the neighbour – this may inadvertently spread more risk.
- Monitor your stock and pastures that were exposed for a period of time for signs of pests or disease. For example, sheep lice infestations may take 4-5 months to be detected; virulent footrot may take weeks - months depending on weather conditions; weed seeds may take weeks - months to germinate depending on weather conditions.
- Contact your Local Land Services team, Local Control Authority (weeds) or private veterinarian for assistance if signs of a problem develop.

How do I stop my neighbour's stock from constantly coming onto my land?

- Ensure your boundary fences are stock proof for the type of stock contained
- Talk to your neighbour to develop an approach for how to handle stray stock and to discuss any repairs to boundary fencing. The *Dividing Fences Act 1991* can

assist these discussions by confirming obligations for landowners in relation to fencing. This may also include consideration of double fencing a boundary, planting tree lines or putting in stock laneways to create an additional buffer in high risk areas.

If the stock continue to stray, discuss the matter with a local authority (LawAccess NSW, Local Land Services, Local Government or NSW Police Stock Squad) about the available options.

For more information visit

W www.dpi.nsw.gov.au/biosecurityact E biosecurity.legislation@dpi.nsw.gov.au

Dividing Fences Act 1991 No 72



New South Wales

Status information

Currency of version

Current version for 1 July 2018 to date (accessed 20 April 2023 at 09:28)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced. See [Historical Notes](#)

Responsible Minister

Attorney General

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 27 February 2023.

Dividing Fences Act 1991 No 72 [NSW]

Dividing Fences Act 1991 No 72



New South Wales

Contents

Long title	4
Part 1 Preliminary	4
1 Name of Act.....	4
2 Commencement	4
3 Definitions	4
4 Determination as to “sufficient dividing fence”	5
5 Adjoining owners—land separated by road or watercourse	5
Part 2 Liability for fencing work	6
6 General principle—liability for fencing work.....	6
7 Contribution as between adjoining owners—generally.....	6
8 Contribution where negligent or deliberate act	6
9 Contribution when urgent fencing work is required	6
10 Fencing easements etc extinguished	7
Part 3 Procedure and implementation	7
11 Notice to carry out fencing work	7
12 Procedure when agreement not reached	7
13 Jurisdiction of Local Court or Civil and Administrative Tribunal.....	8
13A Jurisdiction of Land and Environment Court.....	8
14 Orders as to fencing work.....	9
15 Enforcement of agreements and orders	10
16 Substantial compliance sufficient	10
17 Application for order in absence of an adjoining owner.....	10
18 Procedure for defining boundary line.....	10
19 (Repealed).....	11
Part 4 Miscellaneous	11
20 Right to enter adjoining land	11
21 Service of notices	11
22 Time for service of notices—special provision.....	11

Dividing Fences Act 1991 No 72 [NSW]

23 Costs	12
24 Recovery of money payable	12
25 Application of Act to Crown and local authorities etc.....	12
26 Act not to affect agreements etc, retaining walls or other Acts.....	13
27 Regulations.....	13
28 Repeal of Dividing Fences Act 1951 No 8 etc	13
29 Savings, transitional and other provisions	13
30 (Repealed).....	13
Schedule 1 Savings, transitional and other provisions	13
Schedule 2 (Repealed).....	14
Historical notes	15

Dividing Fences Act 1991 No 72



New South Wales

An Act to provide for the apportionment of the cost of dividing fences; to repeal the *Dividing Fences Act 1951*; and to amend certain other Acts.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Dividing Fences Act 1991*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

In this Act:

adjoining owners means the owners of land on either side of a common boundary.

dividing fence means a fence separating the land of adjoining owners, whether on the common boundary of adjoining lands or on a line other than the common boundary.

fence means a structure, ditch or embankment, or a hedge or similar vegetative barrier, enclosing or bounding land, whether or not continuous or extending along the whole of the boundary separating the land of adjoining owners, and includes:

- (a) any gate, cattlegrid or apparatus necessary for the operation of the fence, and
- (b) any natural or artificial watercourse which separates the land of adjoining owners, and
- (c) any foundation or support necessary for the support and maintenance of the fence,

but does not include a retaining wall (except as provided by paragraph (c)) or a wall which is part of a house, garage or other building.

fencing work means:

- (a) the design, construction, replacement, repair or maintenance of the whole or part of a dividing fence, and
- (b) the surveying or preparation of land (including the trimming, lopping or removal of vegetation) along or on either side of the common boundary of adjoining lands for such a purpose,

Dividing Fences Act 1991 No 72 [NSW]

and includes:

- (c) the planting, replanting and maintenance of a hedge or similar vegetative barrier, and
- (d) the cleaning, deepening, enlargement or alteration of a ditch, embankment or watercourse that serves as a dividing fence.

lease includes a sublease and an agreement for a lease.

owner includes:

- (a) any person who jointly or severally (whether at law or in equity) is entitled to land for any estate of freehold in possession or who receives or is entitled to receive any rents and profits of the land, whether as beneficial owner, trustee, mortgagee in possession or otherwise, and
- (b) any person who is the holder of a lease (the unexpired term of which is not less than 5 years) when a notice to carry out fencing work in accordance with this Act is given by, or served on, that person, and
- (c) any Crown land manager of Crown managed land (within the meaning of the *Crown Land Management Act 2016*).

4 Determination as to “sufficient dividing fence”

In any proceedings under this Act, the Local Court or the Civil and Administrative Tribunal is to consider all the circumstances of the case when determining the standard for a sufficient dividing fence for the purposes of this Act, including the following:

- (a) the existing dividing fence (if any),
- (b) the purposes for which the adjoining lands are used or intended to be used,
- (c) the privacy or other concerns of the adjoining land owners,
- (d) the kind of dividing fence usual in the locality,
- (e) any policy or code relating to dividing fences adopted by the council of the local government area in which the adjoining lands are situated,
- (f) any relevant environmental planning instrument relating to the adjoining lands or to the locality in which they are situated,
- (g) in the case of a dividing fence affecting land the subject of a lease under the *Western Lands Act 1901*, any order in force under section 18A of that Act immediately before the repeal of that Act.

5 Adjoining owners—land separated by road or watercourse

- (1) The intervention of a road or watercourse between 2 parcels of land does not prevent:
 - (a) the owners of those parcels of land from being taken to be adjoining owners for the purposes of this Act, or
 - (b) a claim for contribution for fencing work being brought in respect of a fence on either side of the road or watercourse.

- (2) This section applies only if the fence has been used or, in the opinion of the Local Court or the Civil and Administrative Tribunal could reasonably be used, as a dividing fence by the owners of the land on either side of it.

Part 2 Liability for fencing work

6 General principle—liability for fencing work

- (1) An adjoining owner is liable, in respect of adjoining lands where there is no sufficient dividing fence, to contribute to the carrying out of fencing work that results or would result in the provision of a dividing fence of a standard not greater than the standard for a sufficient dividing fence.
- (2) This section applies whether or not a dividing fence already separates the adjoining lands.

7 Contribution as between adjoining owners—generally

- (1) Adjoining owners are liable to contribute in equal proportions to the carrying out of fencing work in respect of a dividing fence of a standard not greater than the standard for a sufficient dividing fence.
- (2) An adjoining owner who desires to carry out fencing work involving a dividing fence of a standard greater than the standard for a sufficient dividing fence is liable for the fencing work to the extent to which it exceeds the standard for a sufficient dividing fence.
- (3) An adjoining owner who desires to carry out the trimming, lopping or removal of vegetation (as referred to in paragraph (b) of the definition of *fencing work* in section 3) for a purpose other than the provision of a sufficient dividing fence is liable for the expenses of carrying out the work to the extent to which those expenses are attributable to work done for that other purpose.

8 Contribution where negligent or deliberate act

- (1) Despite section 7, an adjoining owner is liable for up to the whole cost of the fencing work required to restore a dividing fence that has been damaged or destroyed by a negligent or deliberate act of the owner or of a person who has entered the land concerned with the express or implied consent of the owner.
- (2) Any such dividing fence is to be restored to a reasonable standard, having regard to its state before the damage or destruction.
- (3) In determining an adjoining owner's liability under this section, it does not matter if the negligent or deliberate act concerned took place before the commencement of this section.

9 Contribution when urgent fencing work is required

- (1) This section applies to a dividing fence that has been damaged or destroyed (in whole or in part) and in the circumstances requires urgent fencing work.
- (2) If it is impracticable to serve a notice under section 11 in respect of a dividing fence to which this section applies, an adjoining owner may, without serving such a notice, carry out the urgent fencing work required to restore the dividing fence.
- (3) The other adjoining owner is liable for half the cost (or a greater proportion if section 8 applies)

Dividing Fences Act 1991 No 72 [NSW]

of the urgent fencing work.

- (4) Any such liability may be reviewed by the Local Court or the Civil and Administrative Tribunal on the application by that owner to the Court or the Tribunal within 1 month after the work has been completed (or within such later period as the Court or the Tribunal may allow).

10 Fencing easements etc extinguished

No obligation to perform fencing work arises or is taken to arise by prescription or implication under the common law.

Part 3 Procedure and implementation

11 Notice to carry out fencing work

- (1) An adjoining owner may require the other adjoining owner to contribute, under this Act, to the carrying out of fencing work by serving a notice in writing to that effect on the other owner.
- (2) The notice is to specify the following:
 - (a) the boundary line on which the fencing work is proposed to be carried out or, if it is impracticable to carry out fencing work on the common boundary of the adjoining lands, the line on which it is proposed to carry out the work,
 - (b) the type of fencing work proposed to be carried out,
 - (c) the estimated cost of the fencing work.
- (3) The owner serving the notice may propose that the cost of the fencing work is to be borne otherwise than in equal proportions. In such a case, the notice is to state the proposed proportions.
- (4) The description of land in a notice need not particularly define the land if it allows no reasonable doubt as to what land is referred to in the notice.
- (5) An adjoining owner is not liable to contribute to the cost of any fencing work in respect of a dividing fence:
 - (a) carried out before a notice under this section is served on the adjoining owner (unless section 9 applies or the notice is served in accordance with section 22), or
 - (b) carried out after the service of the notice on the adjoining owner and before agreement is reached by the adjoining owners concerning the fencing work (including the contributions to be made in respect of the work) or before the matter has been determined by the Local Court or the Civil and Administrative Tribunal.

12 Procedure when agreement not reached

- (1) Adjoining owners may attend a Community Justice Centre in an attempt to reach an agreement concerning the carrying out of fencing work (including the contributions to be made in respect of the work).
- (2) If adjoining owners do not agree (within 1 month after one of them has served a notice under

Dividing Fences Act 1991 No 72 [NSW]

section 11) as to the fencing work to be carried out, either owner may apply to the Local Court or the Civil and Administrative Tribunal for an order determining the manner in which the fencing work (if any) is to be carried out.

13 Jurisdiction of Local Court or Civil and Administrative Tribunal

- (1) The Local Court or the Civil and Administrative Tribunal has jurisdiction to hear and determine any matter arising under this Act.
- (1A) Despite subsection (1), only the Civil and Administrative Tribunal has jurisdiction to hear and determine matters affecting land the subject of a Western lands lease within the meaning of Schedule 3 to the *Crown Land Management Act 2016*.
- (2) An application under this Act that is pending in the Local Court or in the Civil and Administrative Tribunal may be transferred from the Court to the Tribunal, or from the Tribunal to a Court, if it appears to the tribunal to which the application was made that, having regard to the subject-matter of the application and the composition and nature of the other tribunal, it is more appropriate for the application to be determined by that other tribunal.
- (3) The Local Court or the Civil and Administrative Tribunal which has an application transferred to it under subsection (2) is to determine the application.
- (4) (Repealed)
- (5) The Local Court may refer the parties to proceedings under this Act to an arbitrator within the meaning of Part 5 of the *Civil Procedure Act 2005*, but only to the extent to which that Act provides for such proceedings to be so referred.

13A Jurisdiction of Land and Environment Court

- (1) The Land and Environment Court has jurisdiction to hear and determine matters arising under this Act in proceedings to which this section applies.
- (2) This section only applies if:
 - (a) application for the exercise of the jurisdiction is made in relation to proceedings under section 7 of the *Trees (Disputes Between Neighbours) Act 2006* that have been commenced but not determined, and
 - (b) the tree that is the subject of those proceedings:
 - (i) has caused, is causing, or is likely in the near future to cause damage to a dividing fence, or
 - (ii) is part of a dividing fence and has caused, is causing, or is likely in the near future to cause damage to the applicant's property or is likely to cause injury to any person.
- (3) The Land and Environment Court may, of its own motion or on an application by a party to an application under this Act that is before the Local Court or the Civil and Administrative Tribunal, transfer the application that is pending in the Local Court or in the Civil and Administrative Tribunal to the Land and Environment Court if:
 - (a) the application is relevant to proceedings under section 7 of the *Trees (Disputes Between*

Dividing Fences Act 1991 No 72 [NSW]

Neighbours) Act 2006 that have been commenced in the Land and Environment Court but have not been determined, and

- (b) the tree that is the subject of those proceedings:
 - (i) has caused, is causing, or is likely in the near future to cause damage to a dividing fence, or
 - (ii) is part of a dividing fence and has caused, is causing, or is likely in the near future to cause damage to the applicant's property or is likely to cause injury to any person, and
- (c) the Land and Environment Court is satisfied that there is sufficient reason for the application under this Act to be heard and determined by the Land and Environment Court.
- (4) An application that is transferred to the Land and Environment Court under subsection (3) is to be continued in the Land and Environment Court and determined by the Land and Environment Court as part of the related proceedings under section 7 of the *Trees (Disputes Between Neighbours) Act 2006*.
- (5) For the purposes of any proceedings to which this section applies, a reference to the Local Court in this Act (except sections 13 (2), (3) and (4) and 19 (2) and (3)) is taken to include a reference to the Land and Environment Court.

14 Orders as to fencing work

- (1) The Local Court or the Civil and Administrative Tribunal may, in respect of an application under this Act, make an order determining any one or more of the following:
 - (a) the boundary or line on which the fencing work is to be carried out, whether or not that boundary or line is on the common boundary of the adjoining lands,
 - (b) the fencing work to be carried out (including the kind of dividing fence involved),
 - (c) the manner in which contributions for the fencing work are to be apportioned or re-apportioned or the amount that each adjoining owner is liable to pay for that work,
 - (d) which portion of the dividing fence is to be constructed or repaired by either owner,
 - (e) the time within which the fencing work is to be carried out,
 - (f) the amount of any compensation (in the form of an annual payment to either of the adjoining owners) in consideration of loss of occupation of any land,
 - (g) that, in the circumstances, no dividing fence is required in respect of all or part of the boundary of the adjoining lands.
- (1A) Despite subsection (1), no order may be made for the carrying out of fencing work on a declared area of outstanding biodiversity value under the *Biodiversity Conservation Act 2016* without the consent of the Environment Agency Head (within the meaning of that Act).
- (2) The occupation of land on either side of a dividing fence, as a result of an order determining that fencing work is to be carried out otherwise than on the common boundary of the adjoining lands, is not taken to be adverse possession as against the owner or to affect the title to or

possession of the land, except for the purposes of this Act.

15 Enforcement of agreements and orders

- (1) If an agreement is reached by adjoining owners or an order is made by the Local Court or the Civil and Administrative Tribunal and an adjoining owner bound by the agreement or order fails within the required time to perform his or her part of the agreement or to comply with the order, the other adjoining owner:
 - (a) may carry out the fencing work as agreed on or as determined by the order, and
 - (b) may recover from the defaulting adjoining owner the amount agreed or ordered to be paid by that adjoining owner or (if the agreement or order does not specify the amount to be paid) half the cost of the fencing work carried out.
- (2) The *required time* is the time specified in the agreement or order or, if no time is specified, within 3 months after the making of the agreement or order.

16 Substantial compliance sufficient

- (1) Substantial compliance with the terms of any agreement or order referred to in section 15 is sufficient for the purposes of this Act.
- (2) However, the adjoining owner who carries out the fencing work is liable to the other adjoining owner for any defect or omission in the fencing work.

17 Application for order in absence of an adjoining owner

- (1) An adjoining owner may apply to the Local Court or the Civil and Administrative Tribunal for an order, in the absence of the other adjoining owner, authorising the carrying out of such fencing work as is specified in the order (including the manner in which contributions for the work are to be apportioned).
- (2) Such an order may only be made if the Court or the Tribunal is satisfied that the adjoining owner making the application has made reasonable inquiries but has been unable to ascertain the whereabouts of the other adjoining owner for the purposes of serving a notice under section 11.
- (3) An adjoining owner who carries out the fencing work authorised by the order and who later ascertains the whereabouts of the other adjoining owner:
 - (a) may serve a copy of the order on the other owner, and
 - (b) is entitled, after 1 month from the date of service, to recover from the other owner the proportion of that owner's contribution as specified in the order.
- (4) The adjoining owner served with a copy of an order under subsection (3) may, within 1 month after being served, apply to the Local Court or the Civil and Administrative Tribunal for a variation of the order and the Court or the Tribunal may vary the order in such manner as it thinks fit.

18 Procedure for defining boundary line

- (1) An adjoining owner may give notice in writing to the other adjoining owner of his or her

Dividing Fences Act 1991 No 72 [NSW]

intention to have the common boundary line defined by a registered surveyor if the owners do not agree on the position of the common boundary line for the purposes of carrying out fencing work.

- (2) The owner receiving the notice may, within 7 days after service of the notice:
 - (a) define the position of the common boundary line by pegs if satisfied as to its position, or
 - (b) employ a registered surveyor to define the common boundary line,and in either case is to inform the other adjoining owner in writing of what has been done.
- (3) The owner giving the notice may have the common boundary line defined by a registered surveyor if the owner to whom the notice is given has, within 1 month after service of the notice, defined the common boundary line by pegs or failed to have the common boundary defined by a registered surveyor.
- (4) If the common boundary line as defined by a registered surveyor is ascertained to be in the same position defined by pegs placed there by the owner receiving the notice, that owner is entitled to recover from the owner giving the notice any costs incurred.
- (5) In any other case when a registered surveyor has been employed, all reasonable expenses are to be paid in equal shares by the adjoining owners.
- (6) In this section, *registered surveyor* means a person registered under the *Surveying and Spatial Information Act 2002* as a surveyor.

19 (Repealed)

Part 4 Miscellaneous

20 Right to enter adjoining land

An adjoining owner who carries out fencing work under this Act (including the owner's employees or agents) may, at any reasonable time, enter on the land adjoining the dividing fence for the purpose of carrying out the work.

21 Service of notices

A notice under this Act is to be served on an adjoining owner by delivering it personally or sending it by post to the owner's usual or last known residential or business address.

22 Time for service of notices—special provision

- (1) The Local Court or the Civil and Administrative Tribunal may grant leave to serve a notice demanding contribution under this Act on an adjoining owner from whom contribution is sought up to 12 months after the fencing work concerned has been carried out.
- (2) Leave may be granted only if:
 - (a) the Court or the Tribunal is satisfied that the owner seeking to serve notice has mistakenly taken action in respect of the dividing fence under some other Act, or
 - (b) the Court or the Tribunal considers it to be just or equitable in the circumstances for leave to

Dividing Fences Act 1991 No 72 [NSW]

be granted.

23 Costs

In any proceedings under this Act, the Local Court or the Civil and Administrative Tribunal may award costs against either party.

24 Recovery of money payable

- (1) Any money which an adjoining owner is required or liable to pay under this Act may be recovered as a debt in a court of competent jurisdiction.
- (2) In any proceedings for the recovery of money, the certificate of the Local Court or the Civil and Administrative Tribunal as to the making and contents of any order under section 14 or 17 is evidence of the matters set out in the certificate.
- (3) The Tribunal may, on the application of an adjoining owner, make an order determining an amount that the other adjoining owner is required or liable to pay under this Act (other than an amount the subject of an order by the Local Court under this Act).
- (4) The amount (including any costs awarded against the other adjoining owner under section 23) may be certified by the principal registrar of the Civil and Administrative Tribunal.
- (5) A certificate given under subsection (4) must identify the person liable to pay the certified amount.
- (6) If a certificate given under subsection (4) is filed in the registry of a court having jurisdiction to give judgment for a debt of the same amount as the amount stated in the certificate, the certificate operates as such a judgment.

25 Application of Act to Crown and local authorities etc

- (1) This Act does not operate to impose any liability, or to confer any rights, with respect to dividing fences on:
 - (a) the Crown, or
 - (b) a council of a local government area, or any trustee or other person or body, in respect of land vested in (or under the care, control and management of) the council, trustee, person or body for the purposes of a public reserve, public park or such other public purposes as may be prescribed, or
 - (c) a roads authority (within the meaning of the *Roads Act 1993*) with respect to any public road, or
 - (d) an irrigation corporation within the meaning of the *Water Management Act 2000*, or
 - (e) an Aboriginal Land Council with respect to land reserved under Part 4A of the *National Parks and Wildlife Act 1974*, or
 - (f) Water NSW, but only with respect to the exercise of its functions in the Sydney catchment area (within the meaning of the *Water NSW Act 2014*).

Dividing Fences Act 1991 No 72 [NSW]

- (2) However, nothing in this Act prevents the Crown or any such council, trustee, person or body from entering into arrangements (other than those arising under this Act) to contribute to fencing work in respect of dividing fences.
- (3) In this section, *Crown* includes a statutory body representing the Crown.

26 Act not to affect agreements etc, retaining walls or other Acts

Nothing in this Act affects:

- (a) any covenant or any contract or agreement (other than an agreement arising under this Act) made between adjoining owners in respect of a dividing fence before or after the commencement of this Act, or
- (b) any law relating to retaining walls, easements of support or other rights of support in relation to land, or
- (c) provisions relating to fences or fencing work made by or under any other Act.

27 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

28 Repeal of [Dividing Fences Act 1951 No 8](#) etc

- (1) The *Dividing Fences Act 1951* is repealed.
- (2) The *Dividing Fences Regulations 1957* (and any other regulations under that Act) are repealed.

29 Savings, transitional and other provisions

Schedule 1 has effect.

30 (Repealed)

Schedule 1 Savings, transitional and other provisions

(Section 29)

Part 1 Preliminary

1A Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Dividing Fences and Other Legislation Amendment Act 2008
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

Dividing Fences Act 1991 No 72 [NSW]

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

1 Savings as to proceedings etc

- (1) The *Dividing Fences Act 1951* continues to operate in respect of any matter pending as a result of a notice served under that Act, an order made under section 11 of that Act or work completed under section 14 (2) (b) of that Act as if that Act had not been repealed by this Act.
- (2) Otherwise, this Act applies to and in respect of fencing work whether carried out before or after the commencement of section 28.

2 Construction of references

A reference in any other Act or in an instrument made under an Act or in any document to the *Dividing Fences Act 1951* is to be read as a reference to this Act, except as provided by clause 1 (1).

Part 3 Provision consequent on enactment of *Dividing Fences and Other Legislation Amendment Act 2008*

3 Order under section 14 specifying amount to be paid

The amendment made to section 14 (1) (c) by the *Dividing Fences and Other Legislation Amendment Act 2008* extends to proceedings begun before the commencement of that amendment, but not so as to affect any determination of a Local Court or local land board before that commencement.

Schedule 2 (Repealed)

Dividing Fences Act 1991 No 72 [NSW]

Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	LW	legislation website	Sch	Schedule
Cl	clause	No	number	Schs	Schedules
Cll	clauses	p	page	Sec	section
Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

Table of amending instruments

Dividing Fences Act 1991 No 72. Assented to 17.12.1991. Date of commencement, 1.2.1992, sec 2 and GG No 7 of 17.1.1992, p 243. This Act has been amended as follows:

- 1993** No 33 *Roads Act 1993*. Assented to 8.6.1993.
Date of commencement, 1.7.1993, sec 2 and GG No 73 of 1.7.1993, p 3343.
- 1994** No 32 *Statute Law (Miscellaneous Provisions) Act 1994*. Assented to 2.6.1994.
Date of commencement of the provision of Sch 1 relating to the *Dividing Fences Act 1991*, assent, Sch 1.
- No 41 *Irrigation Corporations Act 1994*. Assented to 2.6.1994.
Date of commencement of the provision of Sch 3 relating to the *Dividing Fences Act 1991*, 3.2.1995, sec 2 (1) and GG No 11 of 3.2.1995, p 581.
- 1995** No 101 *Threatened Species Conservation Act 1995*. Assented to 22.12.1995.
Date of commencement of Sch 6, 1.1.1996, sec 2 (1) and GG No 158 of 22.12.1995, p 8802.
- 1999** No 85 *Statute Law (Miscellaneous Provisions) Act (No 2) 1999*. Assented to 3.12.1999.
Date of commencement of Sch 4, assent, sec 2 (1).
- 2002** No 83 *Surveying Act 2002*. Assented to 29.10.2002.
Date of commencement, 25.6.2003, sec 2 and GG No 103 of 25.6.2003, p 5903.
- 2005** No 28 *Civil Procedure Act 2005*. Assented to 1.6.2005.
Date of commencement of Sch 5.14, 15.8.2005, sec 2 (1) and GG No 100 of 10.8.2005, p 4205.
- 2007** No 94 *Miscellaneous Acts (Local Court) Amendment Act 2007*. Assented to 13.12.2007.
Date of commencement of Schs 1.31, 2 and 3, 6.7.2009, sec 2 and 2009 (314) LW 3.7.2009.
- 2008** No 72 *Dividing Fences and Other Legislation Amendment Act 2008*. Assented to 28.10.2008.
Date of commencement, 1.2.2009, sec 2 and GG No 20 of 23.1.2009, p 392.
- No 73 *Water Management Amendment Act 2008*. Assented to 28.10.2008.
Date of commencement of Sch 7.1, assent, sec 2 (1).
- 2009** No 9 *Western Lands Amendment Act 2009*. Assented to 7.4.2009.
Date of commencement of Sch 3, assent, sec 2 (1).
- No 119 *Surveying Amendment Act 2009*. Assented to 14.12.2009.
Date of commencement, assent, sec 2.
- 2010** No 27 *Trees (Disputes Between Neighbours) Amendment Act 2010*. Assented to 26.5.2010.
Date of commencement of Sch 2, assent, sec 2 (1).

Dividing Fences Act 1991 No 72 [NSW]

	No 38	<i>National Parks and Wildlife Amendment Act 2010</i> . Assented to 15.6.2010. Date of commencement of Sch 3.1, 2.7.2010, sec 2 and 2010 (344) LW 2.7.2010.
2013	No 95	<i>Civil and Administrative Legislation (Repeal and Amendment) Act 2013</i> . Assented to 20.11.2013. Date of commencement, 1.1.2014, sec 2.
2014	No 74	<i>Water NSW Act 2014</i> . Assented to 11.11.2014. Date of commencement, 1.1.2015, sec 2 and 2014 (839) LW 19.12.2014.
2017	No 17	<i>Crown Land Legislation Amendment Act 2017</i> . Assented to 17.5.2017. Date of commencement of Sch 4.21, 1.7.2018, sec 2 (1) and 2018 (225) LW 1.6.2018.
2018	No 25	<i>Statute Law (Miscellaneous Provisions) Act 2018</i> . Assented to 15.6.2018. Date of commencement of Sch 3, 14 days after assent, sec 2 (1).

Table of amendments

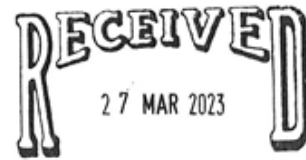
Sec 3	Am 2008 No 72, Sch 1 [1] [2]; 2009 No 9, Sch 3.4 [1]; 2013 No 95, Sch 8.9 [1]; 2017 No 17, Sch 4.21 [1].
Sec 4	Am 2007 No 94, Sch 1.31 [1]; 2009 No 9, Sch 3.4 [2]; 2013 No 95, Sch 8.9 [2]; 2017 No 17, Sch 4.21 [2].
Sec 5	Am 2007 No 94, Sch 1.31 [1]; 2013 No 95, Sch 8.9 [3].
Sec 7	Am 2008 No 72, Sch 1 [3].
Sec 9	Am 2007 No 94, Sch 1.31 [1]; 2013 No 95, Sch 8.9 [4].
Sec 11	Am 2007 No 94, Sch 1.31 [1]; 2013 No 95, Sch 8.9 [5].
Sec 12	Am 2007 No 94, Sch 2; 2013 No 95, Sch 8.9 [6].
Sec 13	Am 1994 No 32, Sch 1; 2005 No 28, Sch 5.14; 2007 No 94, Schs 1.31 [1] [2], 2, 3; 2009 No 9, Sch 3.4 [3]; 2013 No 95, Sch 8.9 [7]–[9]; 2017 No 17, Sch 4.21 [3].
Sec 13A	Ins 2010 No 27, Sch 2.1. Am 2013 No 95, Sch 8.9 [10].
Sec 14	Am 1995 No 101, Sch 6; 2007 No 94, Sch 1.31 [2]; 2008 No 72, Sch 1 [4]; 2013 No 95, Sch 8.9 [11]; 2018 No 25, Sch 3.5.
Sec 15	Am 2007 No 94, Sch 1.31 [1]; 2013 No 95, Sch 8.9 [12].
Sec 17	Am 2007 No 94, Sch 1.31 [1]; 2013 No 95, Sch 8.9 [13] [14].
Sec 18	Am 2002 No 83, Sch 2.6; 2009 No 119, Sch 2.8.
Sec 19	Am 2007 No 94, Schs 1.31 [1], 2. Rep 2013 No 95, Sch 8.9 [15].
Sec 22	Am 2007 No 94, Sch 1.31 [2]; 2013 No 95, Sch 8.9 [16] [17].
Sec 23	Am 2007 No 94, Sch 1.31 [1]; 2013 No 95, Sch 8.9 [18].
Sec 24	Am 2008 No 72, Sch 1 [5]; 2013 No 95, Sch 8.9 [19]–[21].
Sec 25	Am 1993 No 33, Sch 1; 1994 No 41, Sch 3; 2008 No 73, Sch 7.1; 2010 No 38, Sch 3.1; 2014 No 74, Sch 3.6.
Sec 26	Am 2008 No 72, Sch 1 [6].
Sec 30	Rep 1999 No 85, Sch 4.
Sch 1	Am 2008 No 72, Sch 1 [7] [8].

Dividing Fences Act 1991 No 72 [NSW]

Sch 2

Rep 1999 No 85, Sch 4.

Mr E Fenton
Mulley Drive
Lord Howe Island



Lord Howe Island Board

The Chairman
Lord Howe Island Board
Bowker Ave
Lord Howe Island

Dear Sir.

I have written to you because many years of addressing this problem to your admin. has only yielded words.

The problem is the cattle grid at Capella. I ask that it be made to the same specifications as all the other grids on the island, nothing more.

I have 5 growing male calves and as I predicted the first has challenged this grid, making himself a guest at Capella. They hunted him back and observed his return via the grid.

I had a conversation with Mathew Retmock and have shown him the problem.

The grid could be upgraded locally by removal of the square section beams and installing, readily available, I beams which are readily in their place,

I really do not feel responsible should animals escape and roam using the existing grid and believe that the responsibility has become yours.

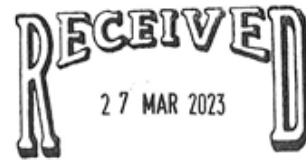
Thanking you I am yours faithfully

A handwritten signature in black ink, appearing to be "E. Fenton".

E. Fenton
27/3/2023

Attached 1 early letter. Dated 19/9/2009

Mr E Fenton
Mulley Dr.
Lord Howe Island 2898



Lord Howe Island Board

The CEO
The Lord Howe Island Board
Bowker Ave
Lord Howe Island 2898

Dear Sir,

Some of my cattle are escaping my lease via the cattle grid at the southern Capella boundary and once over that barrier the whole island is their oyster. They have so far ranged as far as the golf course paying visits to most residents in that area. The potential for property damage and a serious road accident is real.

The failure of this barrier became evident during the latter part of the renovation program of Capella Lodge. I initially asked the Board to remove the dirt/road material build up from the space under the grid and this was promptly done but was not successful in solving the problem.

I have since that time sought a solution and a lot has been offered but little delivered. The last offer was a new grid, but two ships have arrived : no grid.

I have been over this period containing the cattle to the eastern side of the road. Solves the problem but reduces the grazing by at least a third and cannot be sustained for any long period.

The grid is one of four at this end of the island. Three are effective one is not. A rough drawing of the differences is attached.

I ask for a greatly accelerated final solution and an immediate temporary change to the Capella grid. The problem is at least three months old already and the cattle cannot be constrained much longer.

Thanking you I am yours faithfully

E. Fenton
19/19/09

Record Number: ED21/9985
Enquiries: Lynda Shick

10 December 2021

Esven Fenton
C/- Post Office
LORD HOWE ISLAND NSW 2898

Dear Mr Fenton

RE: EXTENSION OF THE TERM OF SPECIAL LEASE

I am pleased to advise that the Minister for Energy and Environment, on the recommendation of the Lord Howe Island Board, has granted an extension of the term of your Special Lease for a period of 2 years expiring on 31 December 2023, pursuant to Section 22 of the *Lord Howe Island Act 1953* over the following area:

Special Lease No: 2011.02

Lease Description (Subject Lands): Portion 123, Lord Howe Island

Purpose of Lease: Grazing, palm plantation and revegetation

Total Area: 120,497 square metres

Chargeable Area: 65,037 square metres

The special lease will be subject to the boundary adjustments made to your lease on 7 July 2016 (copy attached). Special Lease Conditions, and Property Management Plan for the land signed by you on 10 December 2012 (copy attached) and

To accept the offer of a Special Lease over subject lands could you please complete the Statement of Acceptance provided below, date and sign each page and return the whole document to the Board within fourteen (14) days.

Should you require any further information please contact Lynda Shick on 6563 2066 extension 35.

Yours sincerely




Justin Sauvage
MANAGER ENVIRONMENT & COMMUNITY SERVICES

Statement of Acceptance of Special Lease:

I, (insert name) ESVEN KEITH FENTON agree to the extension of the term of the Special Lease for a period of 2 years expiring on 31 December 2023, pursuant to Section 22 of the *Lord Howe Island Act 1953* in accordance with the terms and conditions set out above and in the Property Management Plan and Special Lease Conditions for the leased area dated 7 July 2016 and 10 December 2012.

I have signed and dated each page of these documents to signify my agreement.

Signed:  Date: 14th JAN 2022

Our Ref: S/L 322
Enquiries: Lynda Shick



7 July 2016

Mr Esven Fenton
Mulley Drive
LORD HOWE ISLAND NSW 2898

Administrative Office
P.O. Box 5
Lord Howe Island 2898
Phone: 02 6563 2066
Facsimile: 02 6563 2127
Email: administration@lhib.nsw.gov.au

Dear Mr Fenton

SPECIAL LEASE 2011/02, LOT 123, DP757515, LORD HOWE ISLAND

I refer to various applications relating to the transfer of part of your Special lease to enable boundary adjustments to address encroachments by neighbours on your lease.

The Minister has now granted all necessary approvals and the amended details of your Special lease are as follows:

Special Lease No: 2011/02
Holder: Esven Keith Fenton
Purpose: Grazing, palm plantation, revegetation
Lot: 123, DP757515
Total area: 120,497 square metres
Chargeable area: 65,037 square metres

As per previous advice the term of your Special lease has been extended to 31 December 2017 pending review of all Special leases. The Board will be in contact with you regarding the review in due course.

If you require any additional information please contact Lynda Shick on 02 65632066.

Yours sincerely


Penny Holloway
CHIEF EXECUTIVE OFFICER

 14/1/22



Special Lease
2011.02

EL
10/12/12

Scale 1:4,000 @ A4

Special Lease 2011.02



Special Lease 2011.02





EL 14/1/22

PROPERTY MANAGEMENT PLAN

Special Lease No: 2011.02
Portion No: 123
Leaseholder: EK Fenton

Site description	Low lying paddocks, mostly cleared on lower slopes but some vegetation regrowth on steeper hillsides. Hillsides have southerly aspect. Landslips have occurred on steeper slopes. Remnant patch of <i>Lagunaria</i> in lower lying intermittent swamp. Drainage line defines southern boundary. Western portion of lease is adjacent to Lagoon foreshore.
Existing land use	Grazing, palm plantation, revegetation
Management priorities and responsibilities and timeframes. (see map attached)	<p>Leaseholder responsibilities:</p> <ul style="list-style-type: none"> • Maintain lease in accordance with LHIB lease conditions, including the control of pests and all declared noxious weeds. • Construct and maintain fencing to exclude stock from nature conservation area zone 'C' and plantation area zone 'D' as identified on map. • Maintain and extend plantation south of Portion 195 to stabilize slope and slip area • Exclude stock from land slide area south of Portion 300. • Continue to treat all noxious weeds on landslip site following removal of stock. • Undertake weed grid search through all zones. Treat all juvenile and mature Cherry Guava, <i>Pittosporum Ochna</i> and asparagus species. Treat using LHI Board approved methods • Maintain adequate ground cover and manage stocking numbers to a sustainable level
Issues/Threats	<ul style="list-style-type: none"> • Potential of spread of noxious weed from lease to Permanent Park Preserve • Landslip instability • Subject to the approval of a Development Application, the boundary will be realigned with adjoining Lot 4 of DP1133177 (Capella Lodge). The special lease will be modified following registration of survey plans with Land Titles Office.


 10/11/22

 14/1/22

Attachment C

LORD HOWE ISLAND BOARD SPECIAL LEASE CONDITIONS

The Lease conditions set out below shall apply to all Special Leases entered into under Section 22 of the Lord Howe Island Act 1953.

1. In these conditions the "Board" means the Lord Howe Island Board ; the Minister means the Minister administering the Lord Howe Island Act 1953 ; the Act means the Lord Howe Island Act 1953.
2. The rent for each year shall be paid in advance to the Board, on or before the 31st December of the year preceding that for which it is due.
3. The land leased is inclusive of any roads within its boundaries.
4. The land leased shall be used only for the purposes for which the lease is granted.
5. The lessee shall, within one (1) year from the date of notification in the Gazette of the granting of the lease, unless otherwise stated in the Property Management Plan, enclose the land leased, either separately or conjointly with other lands held in the same interest, with a substantial fence, and shall maintain such fence in efficient repair throughout the currency of the lease, unless it can be shown to the satisfaction of the Board that the requirements of adequate conservation and protection of timber cover, scrub and palms, or the regeneration thereof, are satisfactorily provided for on the land leased. The lessee shall when fencing the land leased and at any future time when required by the Board, provide and subsequently maintain convenient gates of access for the use of persons authorized to obtain timber or other material from such land. Gates shall be erected on roads within the land leased when and where directed by the Board for public use and together with approaches thereto shall be maintained in good order to the satisfaction of the Board. A turnstile shall be erected by the lessee at any point where a fence (constructed or to be constructed) crosses a pedestrian pathway on or within the boundaries of the land leased. Such turnstile shall be erected and maintained to the satisfaction of the Board.
6. The lessee shall hold and use the land leased bona fide in his or her own interest and shall not transfer (except by way of release of mortgage) sublet or otherwise in any way deal with the lease or any part thereof except with the consent in writing of the Minister first obtained.
7. Any improvements to the property of the Crown upon the land leased shall be kept in good repair throughout the currency of the lease, reasonable wear and tear excepted.

 21/11/22

 14/1/22

Attachment C

8. The right is reserved to the Minister to withdraw from the lease at any time and from time to time any land required for home sites or public purposes and the lessee shall not be entitled to any compensation except for the value of improvements as determined by the Board on the area so withdrawn, provided however that the lessee shall be entitled, subject to the approval of the Minister, to remove any movable improvements on the area so withdrawn.

9. Rights conferred upon the public in terms of any reservation in regard to the land leased are reserved.

10. The public shall have unrestricted right to the use of any defined or designed road, track or pedestrian pathway within the land leased and such use shall not be interfered with by the lessee.

11. The lessee shall throughout the currency of the lease effectually destroy or cause to be destroyed all noxious and environmental weeds as may from time to time be required to be destroyed by direction of the Board.

13. No building or structure shall be erected, nor shall any building or structure be altered, without the approval of the Board first obtained. All buildings or structures upon the land leased shall be maintained in good order and condition throughout the currency of the lease to the satisfaction of the Board.

14. No structure, except such gates as may be authorized, shall be erected or work undertaken on roads within the land leased. Such roads shall not be cultivated or used for any purpose not compatible with the use of the road by the Public

15. The right is reserved to the Board or any body or person authorized by it to enter upon the land leased with any material and equipment at any time and from time to time for the purpose of constructing and maintaining authorized works without interference or annoyance by the lessee.

16. The lessee shall not erect or effect within the site of any defined or designated easement any buildings, excavations or other works which shall interfere with the erection and maintenance of works envisaged in accordance with the purpose of such easement and compatible with the object thereof.

17. The lessee shall indemnify and keep indemnified the Crown from and against all actions, suits, claims and demands of whatsoever nature and all costs, charges and expenses which may be brought against him or which he may incur in respect of any accident or injury to any person or property which may arise out of the construction and maintenance of authorized works, notwithstanding that the conditions of this lease shall in all respects have been observed by the lessee or that any such accident or

 10/11/22

 14/1/22

Attachment C

injury shall arise from an act or thing which he may be licensed or compelled to do there under.

18. No bush, timber, trees, palms or vegetative material shall be interfered with by ring barking, cutting or otherwise cleared, unless under authority of the Board.

19. Notwithstanding the provisions of any other condition attached to the lease the lessee shall, unless authorized or otherwise directed, carefully preserve all bush, timber, trees, palms and vegetative material (excepting noxious plants) on the land leased, and shall within one (1) year from the date of notification in the Gazette of the granting of the lease or within such further period and under such conditions as may be approved by the Board, erect a substantial stock-proof fence so as to separate the cleared part or parts from the remainder of the land leased. Such fence shall be erected and maintained to the satisfaction of the Board and the lessee shall take all reasonable steps to prevent stock gaining access to the part or parts of the land leased which are covered by bush, timber, trees and palms.

20. No burning off shall be carried out except with the consent of and subject to such conditions as may be imposed by the Board.

21. The lessee shall not overstock the land leased either wholly or in part, the decision as to whether overstocking is occurring rests with the Board. Should the Board deem it necessary, at any time during the currency of this lease, to maintenance of pasture or preservation of the fertility of such land or for the prevention of erosion thereon, it may determine the maximum number of stock that may be pastured on such land or any specified part of such land and the lessee shall not permit this number to be exceeded.

22. The lessee shall, if and when directed by the Board, adopt and maintain on the land leased or any part or parts of it, such agricultural or pastoral practices and/or install such soil erosion control structures as it may specify in the interests of soil conservation and the mitigation or prevention of erosion.

23. The lessee shall refrain from agricultural and/or pastoral practices on the land leased or any part or parts of it, if and when directed by the Board in the interests of soil conservation and the mitigation or prevention of erosion.

24. The lessee shall at all times manage and use the land in accordance with the Property Management Plan for the leased area, as attached to this lease.

24. All minerals which the land contains are reserved and excepted to the Crown and such minerals and any stone, gravel, clay, shells or other material shall not be removed from the land leased except by the holder of a permit issued under authority of the Minister but the lessee may, with the approval of the Board, take from the land such stone, gravel, clay, shells or other material, for building or other purposes upon such land as may be required by him as lessee.

[Handwritten signature]
14/1/22

[Handwritten signature]
14/1/22

Attachment C

25. The right of entry by Commonwealth Authorities, their agents, servants, workmen and invitees at all times by day or by night to go, return, pass and repass on foot along over and upon any part of the land leased on which an electricity transmission line is now or may be constructed, is reserved for all purposes connected with effecting any necessary repair and maintenance for supply of electricity.

26. The public shall have unrestricted right of access over the land leased to the foreshores and such right shall not be interfered with by the lessee.

27. The right is reserved to the Board or persons authorized by the Board to enter upon the land leased for the purpose of carrying out any work on the area covered by the reservation for access, shelter, foreshore improvement and re-vegetation without interference or annoyance by the lessee.

28. All palm trees and the product thereof shall remain the property of the Crown, but the lessee shall have the sole right to collect palm seed from the land leased, provided that persons authorized by the Board may from time to time enter upon such land for the purpose of collection and removal of palm seed in such quantities as the Board may consider necessary and desirable. The lessee shall not be entitled to receive compensation for any palm seed collected and removed under authority of the Board.


29. The lessee shall not conduct upon the land leased any trade or activity which in the opinion of the Board is offensive or which may endanger the public health.

30. Any of these conditions may, on application by the lessee in the prescribed manner, and on the recommendation of the Board, be varied, modified or revoked by the Minister.

31. The land leased shall be used only for the purpose for which the lease is granted.

32. The lessee shall hold and use the land leased bona fide in the lessee's own interest and shall not transfer mortgage sublet or otherwise in any way deal with the land leased or any part thereof (except by way of release of mortgage) except with the consent in writing of the Minister is first had and obtained.

33. A breach of any of these conditions will render the lease liable to forfeiture.

 14/1/22

 14/1/22



BIOSECURITY ACT 2015

Straying stock

Straying Stock

Land managers have a responsibility to ensure their stock do not wander from their property onto other private land or public property. The *Dividing Fences Act 1991* defines what a sufficient dividing fence is and outlines the responsibilities of owners for doing fencing work.

Stock can create a biosecurity risk if they are allowed to wander; similarly they may become exposed to pests and diseases if they leave their property. Pests and diseases are managed using a variety of tools under the *Biosecurity Act 2015* depending on their risk, including a general biosecurity duty.

The general biosecurity duty requires a person dealing with biosecurity matter or a carrier and who knows or ought to know of the biosecurity risks associated with that biosecurity matter or carrier to take measures to prevent, minimise or eliminate the risk as far as reasonably practicable.

What is the biosecurity risk of straying stock?

If stock are infested or infected with diseases such as sheep lice and virulent footrot and wander from their home property to neighbouring properties, it is highly likely those diseases will spread to the stock on the neighbouring properties, impacting on animal health and welfare and subsequently production.

Stock also carry weed seeds in their coats and or gut. Straying stock pose a real risk to the spread of weeds between properties and weed control areas.

For more information visit

W www.dpi.nsw.gov.au/biosecurityact E biosecurity.legislation@dpi.nsw.gov.au

What is my responsibility?

All land managers have a general biosecurity duty to manage biosecurity risks that they know about, or could reasonably be expected to know about. Land managers would be expected to know about the biosecurity risks of their stock straying. Land managers can meet their general biosecurity duty by undertaking activities such as:

- Ensuring all boundary fences are sound and stock proof
- Regularly monitoring stock to keep track of their whereabouts and health status
- Managing pests and diseases in stock as soon as detected to prevent their spread
- Developing a farm biosecurity plan

What do I do if I see stray stock on public land?

- If the owner of the stock is known, notify the owner that their stock are straying so they can recover them
- Report the stray stock to the appropriate authority or land manager – Local Land Services or Local Government Ranger. This is particularly important if the stock appear to be unwell or obviously diseased

What do I do if there is stray stock on my land?

- Isolate the stray stock from your animals and keep them contained in a secure yard



BIOSECURITY ACT 2015

Straying stock

until they can be either returned to the owner or reported to local authorities for further action

- Examine the stock for signs of pests and disease. Consider contacting your Local Land Services if you need advice.
- Contact the owner of the stock if known, to arrange for them to be collected or returned.
- Do not just put them back in a neighbouring paddock without contacting the neighbour – this may inadvertently spread more risk.
- Monitor your stock and pastures that were exposed for a period of time for signs of pests or disease. For example, sheep lice infestations may take 4-5 months to be detected; virulent footrot may take weeks - months depending on weather conditions; weed seeds may take weeks - months to germinate depending on weather conditions.
- Contact your Local Land Services team, Local Control Authority (weeds) or private veterinarian for assistance if signs of a problem develop.

How do I stop my neighbour's stock from constantly coming onto my land?

- Ensure your boundary fences are stock proof for the type of stock contained
- Talk to your neighbour to develop an approach for how to handle stray stock and to discuss any repairs to boundary fencing. The *Dividing Fences Act 1991* can

assist these discussions by confirming obligations for landowners in relation to fencing. This may also include consideration of double fencing a boundary, planting tree lines or putting in stock laneways to create an additional buffer in high risk areas.

If the stock continue to stray, discuss the matter with a local authority (LawAccess NSW, Local Land Services, Local Government or NSW Police Stock Squad) about the available options.

For more information visit

W www.dpi.nsw.gov.au/biosecurityact E biosecurity.legislation@dpi.nsw.gov.au

Dividing Fences Act 1991 No 72



New South Wales

Status information

Currency of version

Current version for 1 July 2018 to date (accessed 20 April 2023 at 09:28)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced. See [Historical Notes](#)

Responsible Minister

Attorney General

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 27 February 2023.

Dividing Fences Act 1991 No 72 [NSW]

Dividing Fences Act 1991 No 72



New South Wales

Contents

Long title	4
Part 1 Preliminary	4
1 Name of Act.....	4
2 Commencement	4
3 Definitions	4
4 Determination as to “sufficient dividing fence”	5
5 Adjoining owners—land separated by road or watercourse	5
Part 2 Liability for fencing work	6
6 General principle—liability for fencing work.....	6
7 Contribution as between adjoining owners—generally.....	6
8 Contribution where negligent or deliberate act	6
9 Contribution when urgent fencing work is required	6
10 Fencing easements etc extinguished	7
Part 3 Procedure and implementation	7
11 Notice to carry out fencing work	7
12 Procedure when agreement not reached	7
13 Jurisdiction of Local Court or Civil and Administrative Tribunal.....	8
13A Jurisdiction of Land and Environment Court.....	8
14 Orders as to fencing work.....	9
15 Enforcement of agreements and orders	10
16 Substantial compliance sufficient	10
17 Application for order in absence of an adjoining owner.....	10
18 Procedure for defining boundary line.....	10
19 (Repealed).....	11
Part 4 Miscellaneous	11
20 Right to enter adjoining land	11
21 Service of notices	11
22 Time for service of notices—special provision.....	11

Dividing Fences Act 1991 No 72 [NSW]

23 Costs	12
24 Recovery of money payable	12
25 Application of Act to Crown and local authorities etc.....	12
26 Act not to affect agreements etc, retaining walls or other Acts.....	13
27 Regulations.....	13
28 Repeal of Dividing Fences Act 1951 No 8 etc	13
29 Savings, transitional and other provisions	13
30 (Repealed).....	13
Schedule 1 Savings, transitional and other provisions	13
Schedule 2 (Repealed).....	14
Historical notes	15

Dividing Fences Act 1991 No 72



New South Wales

An Act to provide for the apportionment of the cost of dividing fences; to repeal the *Dividing Fences Act 1951*; and to amend certain other Acts.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Dividing Fences Act 1991*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

In this Act:

adjoining owners means the owners of land on either side of a common boundary.

dividing fence means a fence separating the land of adjoining owners, whether on the common boundary of adjoining lands or on a line other than the common boundary.

fence means a structure, ditch or embankment, or a hedge or similar vegetative barrier, enclosing or bounding land, whether or not continuous or extending along the whole of the boundary separating the land of adjoining owners, and includes:

- (a) any gate, cattlegrid or apparatus necessary for the operation of the fence, and
- (b) any natural or artificial watercourse which separates the land of adjoining owners, and
- (c) any foundation or support necessary for the support and maintenance of the fence,

but does not include a retaining wall (except as provided by paragraph (c)) or a wall which is part of a house, garage or other building.

fencing work means:

- (a) the design, construction, replacement, repair or maintenance of the whole or part of a dividing fence, and
- (b) the surveying or preparation of land (including the trimming, lopping or removal of vegetation) along or on either side of the common boundary of adjoining lands for such a purpose,

Dividing Fences Act 1991 No 72 [NSW]

and includes:

- (c) the planting, replanting and maintenance of a hedge or similar vegetative barrier, and
- (d) the cleaning, deepening, enlargement or alteration of a ditch, embankment or watercourse that serves as a dividing fence.

lease includes a sublease and an agreement for a lease.

owner includes:

- (a) any person who jointly or severally (whether at law or in equity) is entitled to land for any estate of freehold in possession or who receives or is entitled to receive any rents and profits of the land, whether as beneficial owner, trustee, mortgagee in possession or otherwise, and
- (b) any person who is the holder of a lease (the unexpired term of which is not less than 5 years) when a notice to carry out fencing work in accordance with this Act is given by, or served on, that person, and
- (c) any Crown land manager of Crown managed land (within the meaning of the *Crown Land Management Act 2016*).

4 Determination as to “sufficient dividing fence”

In any proceedings under this Act, the Local Court or the Civil and Administrative Tribunal is to consider all the circumstances of the case when determining the standard for a sufficient dividing fence for the purposes of this Act, including the following:

- (a) the existing dividing fence (if any),
- (b) the purposes for which the adjoining lands are used or intended to be used,
- (c) the privacy or other concerns of the adjoining land owners,
- (d) the kind of dividing fence usual in the locality,
- (e) any policy or code relating to dividing fences adopted by the council of the local government area in which the adjoining lands are situated,
- (f) any relevant environmental planning instrument relating to the adjoining lands or to the locality in which they are situated,
- (g) in the case of a dividing fence affecting land the subject of a lease under the *Western Lands Act 1901*, any order in force under section 18A of that Act immediately before the repeal of that Act.

5 Adjoining owners—land separated by road or watercourse

- (1) The intervention of a road or watercourse between 2 parcels of land does not prevent:
 - (a) the owners of those parcels of land from being taken to be adjoining owners for the purposes of this Act, or
 - (b) a claim for contribution for fencing work being brought in respect of a fence on either side of the road or watercourse.

- (2) This section applies only if the fence has been used or, in the opinion of the Local Court or the Civil and Administrative Tribunal could reasonably be used, as a dividing fence by the owners of the land on either side of it.

Part 2 Liability for fencing work

6 General principle—liability for fencing work

- (1) An adjoining owner is liable, in respect of adjoining lands where there is no sufficient dividing fence, to contribute to the carrying out of fencing work that results or would result in the provision of a dividing fence of a standard not greater than the standard for a sufficient dividing fence.
- (2) This section applies whether or not a dividing fence already separates the adjoining lands.

7 Contribution as between adjoining owners—generally

- (1) Adjoining owners are liable to contribute in equal proportions to the carrying out of fencing work in respect of a dividing fence of a standard not greater than the standard for a sufficient dividing fence.
- (2) An adjoining owner who desires to carry out fencing work involving a dividing fence of a standard greater than the standard for a sufficient dividing fence is liable for the fencing work to the extent to which it exceeds the standard for a sufficient dividing fence.
- (3) An adjoining owner who desires to carry out the trimming, lopping or removal of vegetation (as referred to in paragraph (b) of the definition of *fencing work* in section 3) for a purpose other than the provision of a sufficient dividing fence is liable for the expenses of carrying out the work to the extent to which those expenses are attributable to work done for that other purpose.

8 Contribution where negligent or deliberate act

- (1) Despite section 7, an adjoining owner is liable for up to the whole cost of the fencing work required to restore a dividing fence that has been damaged or destroyed by a negligent or deliberate act of the owner or of a person who has entered the land concerned with the express or implied consent of the owner.
- (2) Any such dividing fence is to be restored to a reasonable standard, having regard to its state before the damage or destruction.
- (3) In determining an adjoining owner's liability under this section, it does not matter if the negligent or deliberate act concerned took place before the commencement of this section.

9 Contribution when urgent fencing work is required

- (1) This section applies to a dividing fence that has been damaged or destroyed (in whole or in part) and in the circumstances requires urgent fencing work.
- (2) If it is impracticable to serve a notice under section 11 in respect of a dividing fence to which this section applies, an adjoining owner may, without serving such a notice, carry out the urgent fencing work required to restore the dividing fence.
- (3) The other adjoining owner is liable for half the cost (or a greater proportion if section 8 applies)

of the urgent fencing work.

- (4) Any such liability may be reviewed by the Local Court or the Civil and Administrative Tribunal on the application by that owner to the Court or the Tribunal within 1 month after the work has been completed (or within such later period as the Court or the Tribunal may allow).

10 Fencing easements etc extinguished

No obligation to perform fencing work arises or is taken to arise by prescription or implication under the common law.

Part 3 Procedure and implementation

11 Notice to carry out fencing work

- (1) An adjoining owner may require the other adjoining owner to contribute, under this Act, to the carrying out of fencing work by serving a notice in writing to that effect on the other owner.
- (2) The notice is to specify the following:
 - (a) the boundary line on which the fencing work is proposed to be carried out or, if it is impracticable to carry out fencing work on the common boundary of the adjoining lands, the line on which it is proposed to carry out the work,
 - (b) the type of fencing work proposed to be carried out,
 - (c) the estimated cost of the fencing work.
- (3) The owner serving the notice may propose that the cost of the fencing work is to be borne otherwise than in equal proportions. In such a case, the notice is to state the proposed proportions.
- (4) The description of land in a notice need not particularly define the land if it allows no reasonable doubt as to what land is referred to in the notice.
- (5) An adjoining owner is not liable to contribute to the cost of any fencing work in respect of a dividing fence:
 - (a) carried out before a notice under this section is served on the adjoining owner (unless section 9 applies or the notice is served in accordance with section 22), or
 - (b) carried out after the service of the notice on the adjoining owner and before agreement is reached by the adjoining owners concerning the fencing work (including the contributions to be made in respect of the work) or before the matter has been determined by the Local Court or the Civil and Administrative Tribunal.

12 Procedure when agreement not reached

- (1) Adjoining owners may attend a Community Justice Centre in an attempt to reach an agreement concerning the carrying out of fencing work (including the contributions to be made in respect of the work).
- (2) If adjoining owners do not agree (within 1 month after one of them has served a notice under

Dividing Fences Act 1991 No 72 [NSW]

section 11) as to the fencing work to be carried out, either owner may apply to the Local Court or the Civil and Administrative Tribunal for an order determining the manner in which the fencing work (if any) is to be carried out.

13 Jurisdiction of Local Court or Civil and Administrative Tribunal

- (1) The Local Court or the Civil and Administrative Tribunal has jurisdiction to hear and determine any matter arising under this Act.
- (1A) Despite subsection (1), only the Civil and Administrative Tribunal has jurisdiction to hear and determine matters affecting land the subject of a Western lands lease within the meaning of Schedule 3 to the *Crown Land Management Act 2016*.
- (2) An application under this Act that is pending in the Local Court or in the Civil and Administrative Tribunal may be transferred from the Court to the Tribunal, or from the Tribunal to a Court, if it appears to the tribunal to which the application was made that, having regard to the subject-matter of the application and the composition and nature of the other tribunal, it is more appropriate for the application to be determined by that other tribunal.
- (3) The Local Court or the Civil and Administrative Tribunal which has an application transferred to it under subsection (2) is to determine the application.
- (4) (Repealed)
- (5) The Local Court may refer the parties to proceedings under this Act to an arbitrator within the meaning of Part 5 of the *Civil Procedure Act 2005*, but only to the extent to which that Act provides for such proceedings to be so referred.

13A Jurisdiction of Land and Environment Court

- (1) The Land and Environment Court has jurisdiction to hear and determine matters arising under this Act in proceedings to which this section applies.
- (2) This section only applies if:
 - (a) application for the exercise of the jurisdiction is made in relation to proceedings under section 7 of the *Trees (Disputes Between Neighbours) Act 2006* that have been commenced but not determined, and
 - (b) the tree that is the subject of those proceedings:
 - (i) has caused, is causing, or is likely in the near future to cause damage to a dividing fence, or
 - (ii) is part of a dividing fence and has caused, is causing, or is likely in the near future to cause damage to the applicant's property or is likely to cause injury to any person.
- (3) The Land and Environment Court may, of its own motion or on an application by a party to an application under this Act that is before the Local Court or the Civil and Administrative Tribunal, transfer the application that is pending in the Local Court or in the Civil and Administrative Tribunal to the Land and Environment Court if:
 - (a) the application is relevant to proceedings under section 7 of the *Trees (Disputes Between*

Dividing Fences Act 1991 No 72 [NSW]

Neighbours) Act 2006 that have been commenced in the Land and Environment Court but have not been determined, and

- (b) the tree that is the subject of those proceedings:
 - (i) has caused, is causing, or is likely in the near future to cause damage to a dividing fence, or
 - (ii) is part of a dividing fence and has caused, is causing, or is likely in the near future to cause damage to the applicant's property or is likely to cause injury to any person, and
- (c) the Land and Environment Court is satisfied that there is sufficient reason for the application under this Act to be heard and determined by the Land and Environment Court.
- (4) An application that is transferred to the Land and Environment Court under subsection (3) is to be continued in the Land and Environment Court and determined by the Land and Environment Court as part of the related proceedings under section 7 of the *Trees (Disputes Between Neighbours) Act 2006*.
- (5) For the purposes of any proceedings to which this section applies, a reference to the Local Court in this Act (except sections 13 (2), (3) and (4) and 19 (2) and (3)) is taken to include a reference to the Land and Environment Court.

14 Orders as to fencing work

- (1) The Local Court or the Civil and Administrative Tribunal may, in respect of an application under this Act, make an order determining any one or more of the following:
 - (a) the boundary or line on which the fencing work is to be carried out, whether or not that boundary or line is on the common boundary of the adjoining lands,
 - (b) the fencing work to be carried out (including the kind of dividing fence involved),
 - (c) the manner in which contributions for the fencing work are to be apportioned or re-apportioned or the amount that each adjoining owner is liable to pay for that work,
 - (d) which portion of the dividing fence is to be constructed or repaired by either owner,
 - (e) the time within which the fencing work is to be carried out,
 - (f) the amount of any compensation (in the form of an annual payment to either of the adjoining owners) in consideration of loss of occupation of any land,
 - (g) that, in the circumstances, no dividing fence is required in respect of all or part of the boundary of the adjoining lands.
- (1A) Despite subsection (1), no order may be made for the carrying out of fencing work on a declared area of outstanding biodiversity value under the *Biodiversity Conservation Act 2016* without the consent of the Environment Agency Head (within the meaning of that Act).
- (2) The occupation of land on either side of a dividing fence, as a result of an order determining that fencing work is to be carried out otherwise than on the common boundary of the adjoining lands, is not taken to be adverse possession as against the owner or to affect the title to or

Dividing Fences Act 1991 No 72 [NSW]

possession of the land, except for the purposes of this Act.

15 Enforcement of agreements and orders

- (1) If an agreement is reached by adjoining owners or an order is made by the Local Court or the Civil and Administrative Tribunal and an adjoining owner bound by the agreement or order fails within the required time to perform his or her part of the agreement or to comply with the order, the other adjoining owner:
 - (a) may carry out the fencing work as agreed on or as determined by the order, and
 - (b) may recover from the defaulting adjoining owner the amount agreed or ordered to be paid by that adjoining owner or (if the agreement or order does not specify the amount to be paid) half the cost of the fencing work carried out.
- (2) The *required time* is the time specified in the agreement or order or, if no time is specified, within 3 months after the making of the agreement or order.

16 Substantial compliance sufficient

- (1) Substantial compliance with the terms of any agreement or order referred to in section 15 is sufficient for the purposes of this Act.
- (2) However, the adjoining owner who carries out the fencing work is liable to the other adjoining owner for any defect or omission in the fencing work.

17 Application for order in absence of an adjoining owner

- (1) An adjoining owner may apply to the Local Court or the Civil and Administrative Tribunal for an order, in the absence of the other adjoining owner, authorising the carrying out of such fencing work as is specified in the order (including the manner in which contributions for the work are to be apportioned).
- (2) Such an order may only be made if the Court or the Tribunal is satisfied that the adjoining owner making the application has made reasonable inquiries but has been unable to ascertain the whereabouts of the other adjoining owner for the purposes of serving a notice under section 11.
- (3) An adjoining owner who carries out the fencing work authorised by the order and who later ascertains the whereabouts of the other adjoining owner:
 - (a) may serve a copy of the order on the other owner, and
 - (b) is entitled, after 1 month from the date of service, to recover from the other owner the proportion of that owner's contribution as specified in the order.
- (4) The adjoining owner served with a copy of an order under subsection (3) may, within 1 month after being served, apply to the Local Court or the Civil and Administrative Tribunal for a variation of the order and the Court or the Tribunal may vary the order in such manner as it thinks fit.

18 Procedure for defining boundary line

- (1) An adjoining owner may give notice in writing to the other adjoining owner of his or her

Dividing Fences Act 1991 No 72 [NSW]

intention to have the common boundary line defined by a registered surveyor if the owners do not agree on the position of the common boundary line for the purposes of carrying out fencing work.

- (2) The owner receiving the notice may, within 7 days after service of the notice:
 - (a) define the position of the common boundary line by pegs if satisfied as to its position, or
 - (b) employ a registered surveyor to define the common boundary line,and in either case is to inform the other adjoining owner in writing of what has been done.
- (3) The owner giving the notice may have the common boundary line defined by a registered surveyor if the owner to whom the notice is given has, within 1 month after service of the notice, defined the common boundary line by pegs or failed to have the common boundary defined by a registered surveyor.
- (4) If the common boundary line as defined by a registered surveyor is ascertained to be in the same position defined by pegs placed there by the owner receiving the notice, that owner is entitled to recover from the owner giving the notice any costs incurred.
- (5) In any other case when a registered surveyor has been employed, all reasonable expenses are to be paid in equal shares by the adjoining owners.
- (6) In this section, *registered surveyor* means a person registered under the *Surveying and Spatial Information Act 2002* as a surveyor.

19 (Repealed)

Part 4 Miscellaneous

20 Right to enter adjoining land

An adjoining owner who carries out fencing work under this Act (including the owner's employees or agents) may, at any reasonable time, enter on the land adjoining the dividing fence for the purpose of carrying out the work.

21 Service of notices

A notice under this Act is to be served on an adjoining owner by delivering it personally or sending it by post to the owner's usual or last known residential or business address.

22 Time for service of notices—special provision

- (1) The Local Court or the Civil and Administrative Tribunal may grant leave to serve a notice demanding contribution under this Act on an adjoining owner from whom contribution is sought up to 12 months after the fencing work concerned has been carried out.
- (2) Leave may be granted only if:
 - (a) the Court or the Tribunal is satisfied that the owner seeking to serve notice has mistakenly taken action in respect of the dividing fence under some other Act, or
 - (b) the Court or the Tribunal considers it to be just or equitable in the circumstances for leave to

Dividing Fences Act 1991 No 72 [NSW]

be granted.

23 Costs

In any proceedings under this Act, the Local Court or the Civil and Administrative Tribunal may award costs against either party.

24 Recovery of money payable

- (1) Any money which an adjoining owner is required or liable to pay under this Act may be recovered as a debt in a court of competent jurisdiction.
- (2) In any proceedings for the recovery of money, the certificate of the Local Court or the Civil and Administrative Tribunal as to the making and contents of any order under section 14 or 17 is evidence of the matters set out in the certificate.
- (3) The Tribunal may, on the application of an adjoining owner, make an order determining an amount that the other adjoining owner is required or liable to pay under this Act (other than an amount the subject of an order by the Local Court under this Act).
- (4) The amount (including any costs awarded against the other adjoining owner under section 23) may be certified by the principal registrar of the Civil and Administrative Tribunal.
- (5) A certificate given under subsection (4) must identify the person liable to pay the certified amount.
- (6) If a certificate given under subsection (4) is filed in the registry of a court having jurisdiction to give judgment for a debt of the same amount as the amount stated in the certificate, the certificate operates as such a judgment.

25 Application of Act to Crown and local authorities etc

- (1) This Act does not operate to impose any liability, or to confer any rights, with respect to dividing fences on:
 - (a) the Crown, or
 - (b) a council of a local government area, or any trustee or other person or body, in respect of land vested in (or under the care, control and management of) the council, trustee, person or body for the purposes of a public reserve, public park or such other public purposes as may be prescribed, or
 - (c) a roads authority (within the meaning of the *Roads Act 1993*) with respect to any public road, or
 - (d) an irrigation corporation within the meaning of the *Water Management Act 2000*, or
 - (e) an Aboriginal Land Council with respect to land reserved under Part 4A of the *National Parks and Wildlife Act 1974*, or
 - (f) Water NSW, but only with respect to the exercise of its functions in the Sydney catchment area (within the meaning of the *Water NSW Act 2014*).

Dividing Fences Act 1991 No 72 [NSW]

(2) However, nothing in this Act prevents the Crown or any such council, trustee, person or body from entering into arrangements (other than those arising under this Act) to contribute to fencing work in respect of dividing fences.

(3) In this section, *Crown* includes a statutory body representing the Crown.

26 Act not to affect agreements etc, retaining walls or other Acts

Nothing in this Act affects:

(a) any covenant or any contract or agreement (other than an agreement arising under this Act) made between adjoining owners in respect of a dividing fence before or after the commencement of this Act, or

(b) any law relating to retaining walls, easements of support or other rights of support in relation to land, or

(c) provisions relating to fences or fencing work made by or under any other Act.

27 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

28 Repeal of [Dividing Fences Act 1951 No 8](#) etc

(1) The *Dividing Fences Act 1951* is repealed.

(2) The *Dividing Fences Regulations 1957* (and any other regulations under that Act) are repealed.

29 Savings, transitional and other provisions

Schedule 1 has effect.

30 (Repealed)

Schedule 1 Savings, transitional and other provisions

(Section 29)

Part 1 Preliminary

1A Regulations

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Dividing Fences and Other Legislation Amendment Act 2008

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

Dividing Fences Act 1991 No 72 [NSW]

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

1 Savings as to proceedings etc

- (1) The *Dividing Fences Act 1951* continues to operate in respect of any matter pending as a result of a notice served under that Act, an order made under section 11 of that Act or work completed under section 14 (2) (b) of that Act as if that Act had not been repealed by this Act.
- (2) Otherwise, this Act applies to and in respect of fencing work whether carried out before or after the commencement of section 28.

2 Construction of references

A reference in any other Act or in an instrument made under an Act or in any document to the *Dividing Fences Act 1951* is to be read as a reference to this Act, except as provided by clause 1 (1).

Part 3 Provision consequent on enactment of *Dividing Fences and Other Legislation Amendment Act 2008*

3 Order under section 14 specifying amount to be paid

The amendment made to section 14 (1) (c) by the *Dividing Fences and Other Legislation Amendment Act 2008* extends to proceedings begun before the commencement of that amendment, but not so as to affect any determination of a Local Court or local land board before that commencement.

Schedule 2 (Repealed)

Dividing Fences Act 1991 No 72 [NSW]

Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	LW	legislation website	Sch	Schedule
Cl	clause	No	number	Schs	Schedules
Cll	clauses	p	page	Sec	section
Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

Table of amending instruments

Dividing Fences Act 1991 No 72. Assented to 17.12.1991. Date of commencement, 1.2.1992, sec 2 and GG No 7 of 17.1.1992, p 243. This Act has been amended as follows:

1993	No 33	<i>Roads Act 1993</i> . Assented to 8.6.1993. Date of commencement, 1.7.1993, sec 2 and GG No 73 of 1.7.1993, p 3343.
1994	No 32	<i>Statute Law (Miscellaneous Provisions) Act 1994</i> . Assented to 2.6.1994. Date of commencement of the provision of Sch 1 relating to the <i>Dividing Fences Act 1991</i> , assent, Sch 1.
	No 41	<i>Irrigation Corporations Act 1994</i> . Assented to 2.6.1994. Date of commencement of the provision of Sch 3 relating to the <i>Dividing Fences Act 1991</i> , 3.2.1995, sec 2 (1) and GG No 11 of 3.2.1995, p 581.
1995	No 101	<i>Threatened Species Conservation Act 1995</i> . Assented to 22.12.1995. Date of commencement of Sch 6, 1.1.1996, sec 2 (1) and GG No 158 of 22.12.1995, p 8802.
1999	No 85	<i>Statute Law (Miscellaneous Provisions) Act (No 2) 1999</i> . Assented to 3.12.1999. Date of commencement of Sch 4, assent, sec 2 (1).
2002	No 83	<i>Surveying Act 2002</i> . Assented to 29.10.2002. Date of commencement, 25.6.2003, sec 2 and GG No 103 of 25.6.2003, p 5903.
2005	No 28	<i>Civil Procedure Act 2005</i> . Assented to 1.6.2005. Date of commencement of Sch 5.14, 15.8.2005, sec 2 (1) and GG No 100 of 10.8.2005, p 4205.
2007	No 94	<i>Miscellaneous Acts (Local Court) Amendment Act 2007</i> . Assented to 13.12.2007. Date of commencement of Schs 1.31, 2 and 3, 6.7.2009, sec 2 and 2009 (314) LW 3.7.2009.
2008	No 72	<i>Dividing Fences and Other Legislation Amendment Act 2008</i> . Assented to 28.10.2008. Date of commencement, 1.2.2009, sec 2 and GG No 20 of 23.1.2009, p 392.
	No 73	<i>Water Management Amendment Act 2008</i> . Assented to 28.10.2008. Date of commencement of Sch 7.1, assent, sec 2 (1).
2009	No 9	<i>Western Lands Amendment Act 2009</i> . Assented to 7.4.2009. Date of commencement of Sch 3, assent, sec 2 (1).
	No 119	<i>Surveying Amendment Act 2009</i> . Assented to 14.12.2009. Date of commencement, assent, sec 2.
2010	No 27	<i>Trees (Disputes Between Neighbours) Amendment Act 2010</i> . Assented to 26.5.2010. Date of commencement of Sch 2, assent, sec 2 (1).

Dividing Fences Act 1991 No 72 [NSW]

	No 38	<i>National Parks and Wildlife Amendment Act 2010</i> . Assented to 15.6.2010. Date of commencement of Sch 3.1, 2.7.2010, sec 2 and 2010 (344) LW 2.7.2010.
2013	No 95	<i>Civil and Administrative Legislation (Repeal and Amendment) Act 2013</i> . Assented to 20.11.2013. Date of commencement, 1.1.2014, sec 2.
2014	No 74	<i>Water NSW Act 2014</i> . Assented to 11.11.2014. Date of commencement, 1.1.2015, sec 2 and 2014 (839) LW 19.12.2014.
2017	No 17	<i>Crown Land Legislation Amendment Act 2017</i> . Assented to 17.5.2017. Date of commencement of Sch 4.21, 1.7.2018, sec 2 (1) and 2018 (225) LW 1.6.2018.
2018	No 25	<i>Statute Law (Miscellaneous Provisions) Act 2018</i> . Assented to 15.6.2018. Date of commencement of Sch 3, 14 days after assent, sec 2 (1).

Table of amendments

Sec 3	Am 2008 No 72, Sch 1 [1] [2]; 2009 No 9, Sch 3.4 [1]; 2013 No 95, Sch 8.9 [1]; 2017 No 17, Sch 4.21 [1].
Sec 4	Am 2007 No 94, Sch 1.31 [1]; 2009 No 9, Sch 3.4 [2]; 2013 No 95, Sch 8.9 [2]; 2017 No 17, Sch 4.21 [2].
Sec 5	Am 2007 No 94, Sch 1.31 [1]; 2013 No 95, Sch 8.9 [3].
Sec 7	Am 2008 No 72, Sch 1 [3].
Sec 9	Am 2007 No 94, Sch 1.31 [1]; 2013 No 95, Sch 8.9 [4].
Sec 11	Am 2007 No 94, Sch 1.31 [1]; 2013 No 95, Sch 8.9 [5].
Sec 12	Am 2007 No 94, Sch 2; 2013 No 95, Sch 8.9 [6].
Sec 13	Am 1994 No 32, Sch 1; 2005 No 28, Sch 5.14; 2007 No 94, Schs 1.31 [1] [2], 2, 3; 2009 No 9, Sch 3.4 [3]; 2013 No 95, Sch 8.9 [7]–[9]; 2017 No 17, Sch 4.21 [3].
Sec 13A	Ins 2010 No 27, Sch 2.1. Am 2013 No 95, Sch 8.9 [10].
Sec 14	Am 1995 No 101, Sch 6; 2007 No 94, Sch 1.31 [2]; 2008 No 72, Sch 1 [4]; 2013 No 95, Sch 8.9 [11]; 2018 No 25, Sch 3.5.
Sec 15	Am 2007 No 94, Sch 1.31 [1]; 2013 No 95, Sch 8.9 [12].
Sec 17	Am 2007 No 94, Sch 1.31 [1]; 2013 No 95, Sch 8.9 [13] [14].
Sec 18	Am 2002 No 83, Sch 2.6; 2009 No 119, Sch 2.8.
Sec 19	Am 2007 No 94, Schs 1.31 [1], 2. Rep 2013 No 95, Sch 8.9 [15].
Sec 22	Am 2007 No 94, Sch 1.31 [2]; 2013 No 95, Sch 8.9 [16] [17].
Sec 23	Am 2007 No 94, Sch 1.31 [1]; 2013 No 95, Sch 8.9 [18].
Sec 24	Am 2008 No 72, Sch 1 [5]; 2013 No 95, Sch 8.9 [19]–[21].
Sec 25	Am 1993 No 33, Sch 1; 1994 No 41, Sch 3; 2008 No 73, Sch 7.1; 2010 No 38, Sch 3.1; 2014 No 74, Sch 3.6.
Sec 26	Am 2008 No 72, Sch 1 [6].
Sec 30	Rep 1999 No 85, Sch 4.
Sch 1	Am 2008 No 72, Sch 1 [7] [8].

Dividing Fences Act 1991 No 72 [NSW]

Sch 2

Rep 1999 No 85, Sch 4.