

LORD HOWE ISLAND BOARD

Application to Modify Development Consent

Date Received: 8/2/2021 MDC No: MDC2019.5.2

If there is insufficient room on this form to describe the proposed modification, please support your application with additional information. Where modifications of the consent involve alterations to the approved plans, one copy of the amended plans must be provided.

APPLICANT DETAILS

Mr Mrs Ms Other:

Name: TIMOTHY CRUIKSHANK

Organisation: DYNAMIC PHYSIOTHERAPY ABN: 71075433386

Postal Address: [REDACTED]

Telephone: [REDACTED] Fax:

Email: [REDACTED]

PROPERTY DETAILS

Portion/Lot No.: Part Lot 44 Lease No.: DP 757515

APPROVED DEVELOPMENT

Pursuant to Section 4.55 of the EPA Act 1979 application is hereby made to modify the following development consent.

Development Consent No.: DA 2019-05 Date Approved: 19/3/19

Description:

TYPE OF MODIFICATION

This application is made under Section 4.55 of the EPA Act 1979 as follows:

Minor S4.55 (1) – Indicate minor error, misdescription or miscalculation:

N/A

Minimal S4.55 (1A) – Give details of the proposed modification involving minimal environmental impact and the expected impacts:

Please see document attached

Other S4.55 (2) – Give details of the proposed modification, the expected impacts and the reasons for seeking these modifications. Provide evidence that the development (as to be modified) will remain substantially the same as the approved development. Please refer to relevant conditions of consent where appropriate:

Please see document attached

APPLICATION FEE

Estimated cost of the original development: \$125,000

Total fees lodged: \$937.50 Date: 8/02/2021 Receipt No.: 18087

APPLICANT/S OR APPLICANT’S AGENT DECLARATION

Have you or any associated persons with a financial interest in this application in the last two years made any political donations or given any gifts to any local Board Member or Board employee? Yes No

If you ticked yes please fill out a Political Donations and Gift Disclosure Statement.

IMPORTANT NOTICE: It is an offence under the EP&A Act 1979 if you fail to disclose reportable donations and gifts.

LEASEHOLDER AUTHORISATION

All leaseholder/s of the land must sign this application.

As the leaseholder/s of the above property, I/we consent to this application.

Signature: [Redacted] Signature:
Name: Tim CRUKSHANK Name:
Date: 11/11/20 Date:

APPLICANT AUTHORISATION

The applicant/s or the applicant’s agent must sign the application.

I apply for consent to carry out the development described in this application. I declare that all the information given is true and correct. I also understand that, if incomplete, the application may be delayed or rejected and more information may be requested within 21 days of lodgement.

Signature: [Redacted] Signature:
Name: Tim CRUKSHANK Name:
Date: 11/11/20 Date:

State the capacity in which you are signing if you are not the applicant:

To Whom It May Concern,

Dynamic Physiotherapy runs a mixed business out of the old post office site on the corner of Lagoon and Ned's Beach Rd. We have been in operation for the past 13 months. We provide employment to 7 residents of Lord Howe Island. We are looking to expand our operations to include small group and individual morning exercise classes as has been our plan prior to opening and as is in our DA. This will provide employment for another couple of residents. We have invested substantial sums of money into LHIB infrastructure which has vastly improved the look of the CBD.

Over the past 13 months we have endured some of the toughest business conditions experienced in recent memory. As a new business, this has been particularly damaging, as we have not qualified for much, if any, government support. We thank the LHIB for their support over the past 12 months which was particularly necessary with the island closure for 7 months of the 13. We continue to endure changes in rules and regulations under hospitality venues due to Co-Vid19 restrictions in NSW. These have added to the financial pressure of our first year of business. Both in equipment costs and in extra staffing costs.

We attempt with this MDC to address some concerns that both ourselves and the LHIB have highlighted. We hope to improve upon the services that we offer to the community of LHI and its visitors. We hope to streamline and correct our DA to continue to work with our landlord and the community at large.

These changes relate to the number of patrons permissible on site, the type of food we provide to LHI, our hours of operation and resolving the conflict between our DA and liquor license. Making these changes will allow Dynamic Physiotherapy to improve on its quality of service that it offers. This will continue to benefit the experience of people visiting and living on Lord Howe, whilst providing employment for residents and income for the LHIB.

Kind Regards

Tim Cruikshank
Director
Dynamic Physiotherapy Pty Ltd

Changes to be made to the Notice of Determination of Development Application under Environmental Planning and Assessment Act, 1979

Ref: DA2019-05

Conditions of Consent

1. Time Limited Consent.

Remove.

Reason:

The LHIB are the owners of the land on which the development resides. The requirement of the addition of the toilets outside of the building structure of the “old Post Office” means that Dynamic Physiotherapy Pty Ltd does not hold the lease over this new structure. The LHIB are currently exploring options to build this new amenity and it is our understanding that this will be not used exclusively for Dynamic Physiotherapy but for all businesses on the site including the boatshed’s. Dynamic Physiotherapy should not be held accountable for a DA or installation of toilets that are not housed within our lease, being delivered by the LHIB within a certain timeframe.

9. Health Amenity and Wastewater.

d) Replace with. For a Class 6 building servicing a maximum number of 70 people the landlord will provide a BCA compliant sanitary facility on site to satisfy all tenants on site, including Dynamic Physiotherapy Pty Ltd.

e) Replace with “All Greywater arising from the proposed bar/kitchen and day spa operations must utilise the existing septic system (on the subject site). This is to be all grey water associated with the new bar use and day spa and private and communal treatment room sinks.

f) Replace with. The maximum number of patrons using the site must not exceed the capacity of the Waste Water System.

Reason: The number of patrons was originally restricted to greater than a normal “small bar” primarily due to it’s impacts on the sanitary facilities provided. These facilities have demonstrated that they have had the capacity to accommodate the current development with extra capacity for an increase in numbers. These facilities are only to be improved upon with the installation of toilets by the landlord providing further capacities for these facilities.

10. Food Safety.

All food storage, preparation, display and handling and the design of areas in which food preparation, handling, display and storage take place, shall be undertaken in accordance with the Australian Standard for Food and Drink Premises (AS 4674—2004 Design, construction and fit-out of food premises) and relevant NSW Health Requirements. All food preparation will be conducted in approved food premises, the temperature and style of the food provided will be up to the discretion of the business and can be changed over time.

Reason: To protect public health, and ensure compliance with relevant standards for food preparation, display, storage and handling are maintained.

11. Water.

f) Replace with:

The landlord will supply the water for the site, in the case of water being insufficient for the site, Dynamic Physiotherapy will pay the costs associated with carting water from elsewhere in the ratio as defined by the water meters onsite.

Reason:

We have proven after a year of operation that the current supply has been ample for our use. 2020 has not been a normal year in any respect, however we have doubled the capacity for capturing water on site by doubling the roof catching capacity. This has improved the capacity of the existing onsite tanks to be sufficient.

20. Number of patrons.

Replace with:

Not more than seventy (70) patrons and staff of the proposed development shall be present on the subject site at any one time.

Any increase to the number of staff and patrons/customers on site at any one time will require a new development consent or modification of development consent.

Reason: The requested numbers are well under the maximum capacity for all small bars in NSW (120).

There is an outside deck area of 110m² and inside area of 60m². The very conservative ratio of 1 person for every 2m² of outside area and 1 person for every 4m² inside should be applied. This ratio, is the extremely conservative ratio employed under the Co-Vid19 pandemic, to give larger than normal spacing, for hospitality venues. This ratio allows for 55 people outside and 15 people inside, Or 70 people in total. The number of patrons was originally restricted primarily due to it's impacts on the sanitary facilities provided. These facilities have demonstrated that they have had the capacity to accommodate the current development with capacity for an increase in numbers. These facilities are only to be improved upon with the installation of toilets by the landlord providing further capacities for theses facilities.

All businesses on Lord Howe Island are inherently restricted in their number of patrons, due to the limitation on the number of people allowed to visit and reside on the island at any given time. Currently we are further restricted in the number of patrons allowed due to Co-vid19 restrictions. The Co-vid19 restrictions can fluctuate and diminish based upon outbreaks and need to be fluid, thus not tied to a DA

21. Plan of Management

Remove:

A restriction preventing the takeaway sales of liquor and that all liquor sold is to be opened and consumed on the premises

Replace with:

Dynamic Physiotherapy Pty Ltd will comply with all conditions set out in its accompanied Liquor Licence as determined by the LHIB

Reasoning:

Firstly the sale of liquor should be determined by and in line with, the liquor licence not the DA. Thus, referring to the liquor licence will allow this to occur. Three other “similar” businesses, surrounding the site, operate both a take away and on premises licence. Since Co-vid19 all bars have been able to supply liquor both on premises and take away. This has been enacted by the NSW and Federal government to allow the continuation of hospitality businesses in the event of any outbreak of Co-vid19 due to safety concerns. We have displayed that since March 2020 we have been operating with both a take away and on premises licence without an issue. The fear that the area adjacent to the site, would become a “beer garden”, has been shown to be not founded in fact. Limiting Dynamic Physiotherapy’s ability to sell take away whilst allowing other surrounding businesses and the landlord to do just that, would constitute a restriction of trade.

23. Hours of Operation.

Replace with:

The following maximum daily hours of operation are permitted for the proposed development:

- Dynamic Physiotherapy Pty Ltd will operate between 6am and 10pm, 7 days a week.
- Dynamic Physiotherapy Pty Ltd will only supply liquor in the hours described by the liquor licence under the same name.
- Special event trading hours to be permitted upon written approval by the LHIB.

Reasoning:


We have attempted to start morning yoga and small class fitness on the deck, however the demand is to have these services before other work commences. Thus, our clients are asking for 6 am to 7 am classes.

Currently we are closing at 8pm in Spring Autumn and Winter. All food and beverage businesses on LHI have a closing time of 10pm. Even surrounding take away mixed businesses have liquor licences till 10pm. Anchorage is currently providing 2 dinner sittings, due to co-vid regulations, one at 630 and the other at 730. They often run late with their second seating. We are providing a place for people to await their dinner sitting. Currently we are asking people to leave our business and wait on the street prior their dinner sitting. This is an example that shows that our current hours of operation are too restrictive and not in line with surrounding CBD businesses.

Our Liquor license should limit when we are able to sell liquor and our DA should allow the liquor license to operate.

LHIB Ref: DA2019.05
Enquiries: Justin Sauvage

17 June 2019

Tim Cruikshank


Dear Mr Cruikshank

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

I am writing in reference to your owner consent and development application for Change of use to an Allied Health Clinic, Day Spa and Food and Drink Premises (Bar), including alterations and additions, at Part Lot 44, DP 757515 (previous post office premises), fronting Neds Beach Road near its intersection with Lagoon Road, Lord Howe Island.

Pursuant to section 4.16(1)(a) and section 4.17 of the Environmental Planning & Assessment Act, notice is hereby given of the determination by the consent authority for Owner Consent OC2019.02 & Development Application DA2019-05.

Your application has been conditionally approved by the Board at the March 2019 Board meeting.

Date from which consent applies	:	19 March 2019
Date in which consent will lapse	:	19 March 2024
Proposed Development	:	OC2019.02 DA2019-05
Location	:	Part Lot 44, DP 757515 (previous post office premises)

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

CONDITIONS OF CONSENT

Owners Consent and Development Consent Recommendation (Conditional Approval)

That Owner Consent OC 2019-02 and DA 2019.05 at Part Lot 44, DP 757515 (ex-Post Office premises), fronting Neds Beach Road near its intersection with Lagoon Road, Lord Howe Island, for a Change of use to an Allied Health Clinic, Day Spa and Food and Drink Premises (bar), including associated alterations and additions, be approved subject to the following conditions and advisory notes:

1. Time Limited Consent

Pursuant to Section 4.17(1), NSW Environmental Planning & Assessment Act 1979, the subject development shall cease two (2) years from the issue of the occupation certificate/date of this consent unless the required onsite unisex disabled toilet facility (and if the existing waste water treatment system has insufficient capacity), a new/ upgraded onsite waste water management system as required by these imposed conditions, is approved, provided and constructed on the subject site within this timeframe.

A separate Owners Consent, Development Application and Construction Certificate, (accompanied by the appropriate plans and details) will be required for the unisex disabled toilet facility and new/ upgraded onsite waste water management system.

Reason: To ensure that appropriate sanitary facilities including a new waste water treatment facility for the subject development are provided on the subject site within two years, to relieve impacts of the additional waste water load on the Community Hall 's public toilet facilities.

2. Approved Plans and Supporting Documentation

The development is to be carried out in accordance with the plans and documentation provided with OC 2019-02 and DA 2019.05 as listed below and endorsed with the Lord Howe Island Board's stamp, except where amended by the conditions of this consent. To the extent of any inconsistency between the plans and conditions of consent, the imposed conditions of consent are to prevail.

- a) Completed DA Form prepared by Tim Cruikshank, dated 07/08/2018.
- b) Statement of Environmental Effects in the DA Form prepared by Tim Cruikshank, dated 07/08/2018
- c) The following revised plans prepared by Tim Cruikshank and attached to the applicants Additional Information Submission to the LHIB dated 9 November 2018:
 - Appendix 2 Revised Site Plan,
 - Appendix 3 Seating Plan
 - Appendix 4 Eastern Perspective
 - Appendix 5 Western Perspective
 - Appendix 6 Southern Perspective
 - Appendix 7 Exterior Changes Detailed on Plan
 - Appendix 8 Interior Layout of Equipment Detail
 - Appendix 9 Plan of Overall Dimensions of Proposed Works
 - ~~DA Floor Plan, Elevations and Perspective, - Deleted 31 May 2019~~

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

3. Amendments to Approved Development

The subject approved development shall be amended in the following manner. Plans and details confirming compliance with these requirements shall be submitted with the Construction Certificate for the proposal:

- a) The proposed dedicated disabled carparking space within Neds Beach Road adjoining the Tourism Association Information Bay shall be deleted.
- b) A new complying disabled access ramp into the premises shall be provided via the north-eastern end of the proposed rear deck, the ramp to be achieved within the proposed deck area, together with an associated pathway connection from the required ramp to connect to the existing paved area between the existing Co Op and the Old Post Office buildings. It is noted that at this location there will only be a minor difference in levels between the existing ground level and the proposed new deck which it is anticipated will facilitate viable provision of this access.
- c) All new windows and doors are to be vertically proportioned, painted timber framed windows and doors, consistent with the existing building style and complementary to the nearby heritage listed Community Hall. A window and door schedule is to be provided with the CC documentation which demonstrates consistency of all new windows and doors with this condition.
- d) Each of the two day spa/consulting rooms are to be provided with one hand wash facility consistent with the NSW Public Health standard, being provision of a minimum one hand wash basin per treatment room and it is noted that a minimum one additional communal wash facility for the treatment rooms is also required.

Reason: To ensure that relevant details and plans are prepared and assessed to ensure compliance with relevant legislation and desired design outcomes for the site.

4. Construction Certificate

The applicant is required to apply for a Construction Certificate for the proposed works. No works can commence until a valid Construction Certificate for the works has been issued.

If the applicant is proposing a Performance Solution for any requirements of the BCA/NCC, the relevant Performance Requirements must be determined in accordance with A0.7 of the BCA/NCC. A report outlining any proposed Performance Solutions must be compiled by an appropriate person and submitted with the application for a Construction Certificate.

In the application for a Construction Certificate the applicant is to provide **detailed structural engineering plans** for the works. All the structural plans are to address compliance with construction in Wind Zone A, and are to be certified by an appropriately qualified Structural Engineer in accordance with AS1170.2.

The applicant is to ensure the Construction Certificate Plans align with the approved Development Application Plans, as may be amended by any imposed condition of consent.

In the application for 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.

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

5. Ecology and Habitat

- a) If any live LHI Gecko or LHI Placostylus are detected during works they must be moved to similar habitat structures in the adjacent area (e.g. fallen timber within dense native vegetation etc) away from the development site so they can escape predation by predators such as LHI Currawong, LHI Woodhen and rodents.
- b) All construction and building materials are restricted to being stock piled on cleared open areas away from bushland.
- c) Damage to, or removal of Significant Native Vegetation is prohibited, as per Clause 11 of LEP 2010.

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

6. Access for People with a Disability

- a) The applicant is to ensure compliance with the Disability (Access to Premises – Buildings) Standards 2010 (DS) and the National Construction Code (NCC). Compliance includes, but not limited to:
 - o Access to and within all areas normally used by the occupants
 - o Doorway widths, access ramp gradients and facilities for personal hygiene
- b) Full disability access compliance will need to address the following clauses of the DS and NCC (aligned):
 - i.D3.1 to D3.12;
 - ii.F2.2; and
 - iii.F2.4.

Reason: To ensure access for persons with a disability is provided.

7. Safe Movement and Access

- a) Balustrading/barriers for the verandas and any walkways must be provided to prevent people from falling greater than 1m. Balustrading/barriers must be continuous and extend for the full length of the verandas and walkways where required. The balustrading is to be constructed to:
 - o Prevent people from falling through; and
 - o Be capable of restricting the passage of children; and
 - o Have the strength and rigidity to withstand the foreseeable impact of people and, where appropriate, the static pressure of people pressing against it.
- b) The balustrade/barrier construction is to be detailed in the structural engineering plans.
- c) The proposed transport service to and from the subject development shall be provided. The drop off and pick up of patrons shall only be undertaken in Neds Beach Road. No formal parking space is approved on Neds Beach Road. One of the existing parking spaces in this section of Neds Beach Road may be used to park a transport vehicle.
- d) No additional access stairs (or any other means) are to be provided to the development other than the existing front access ramp on Ned's Beach Road or the rear disabled access on the north-eastern end of the proposed rear deck (as required in these conditions).

Reason: To ensure the safety of patrons & others.

8. Fire Safety

- a) The applicant is to ensure that fire-fighting equipment is installed as per the requirements of the NCC for a Class 6 building and the intended use.
- b) The applicant is then to ensure that an Annual Fire Safety Statement for the Old Post Office Building is supplied to the Board as a record of the functionality and ongoing maintenance of any fire safety measures installed.

Reason: To ensure the resulting development is fire safe.

9. Health, Amenity & Wastewater

The (subject) Old Post Office Building is not currently connected to any wastewater treatment system. The current LHI Board owned and operated wastewater treatment system on the subject site does not have sufficient capacity to accommodate black water that may be generated from the subject development. Additionally, the existing Community Hall public toilets do not have spare capacity in peak demand periods.

The following wastewater requirements are consequently identified:

- a) At all times the development must be connected to a waste water treatment system with sufficient capacity to treat the volume of waste water generated on site.
- b) If the current waste water treatment system has insufficient capacity it must either be significantly upgraded, or a new waste water treatment system and associated effluent irrigation area is to be provided onsite.

The new or significantly upgraded system is required to be installed on site within 2 years of the issue of the occupation certificate for the subject premises, to accommodate the increase in daily hydraulic load.

Pursuant to Condition 1 of this development consent, if a suitable compliant toilet facility is not provided within 2 years of issue of the occupation certificate, then the approved use shall cease.

Also pursuant to Condition 1 of this development consent, a separate Owners Consent, Development Application and Construction Certificate, (accompanied by the appropriate plans and details) will be required for the unisex disabled toilet facility and new/ upgraded onsite waste water management system.

- c) Suitable sanitary facilities for personal hygiene must be provided in a convenient location within, or associated with, the new toilet/s.
- d) For a Class 6 building servicing a maximum number of 22 patrons (inclusive of 2 staff) at any one time, as outlined in the application, the NCC requirement is:
 - o a single uni-sex facility (comprising one closet pan, one washbasin and means for the disposal of sanitary towels) is to be provided within the development.
- e) All Greywater arising from the proposed bar/ kitchen and day spa operations must be connected to the existing septic system (on the subject site) upfront as part of the initial construction work. This is to be all grey water associated with the new bar use and day spa and private and communal treatment room sinks.

If the LHI Board decommissions the existing system on site, the sink connections shall be plumbed into the new waste water treatment system provided on site.

- f) A maximum 22 persons is permitted on site at any one time, to minimise the demand on the Community Hall's toilet facilities and to limit grey water generation at the subject site.

Reason: To ensure adequate public health and customer and staff amenity is maintained. In accordance with Condition 1 of this approval, the above requirements for provision of an on-site toilet facility may be deferred for up to 2 years from the date of occupation certificate approval, pending the provision and

construction of the required onsite toilet and a new/ upgraded onsite waste water management facility on the subject site and in light of the LHIB's advice that the proposed development may rely upon the LHI Community Hall toilets during this intervening time.

10. Food Safety

All food storage, preparation, display and handling and the design of areas in which food preparation, handling, display and storage take place, shall be undertaken in accordance with the Australian Standard for Food and Drink Premises (AS 4674—2004 Design, construction and fit-out of food premises) and relevant NSW Health Requirements. Details confirming compliance with these requirements shall be included in the Construction Certificate submission for the development.

Reason: To protect public health, and ensure compliance with relevant standards for food preparation, display, storage and handling are maintained.

11. Water

- a) The applicant is to ensure that all plumbing work, including all disconnections and connections to the wastewater system, are to be undertaken by a licensed plumber.
- b) The applicant is to ensure all stormwater from the new roof structures is diverted to existing rainwater tanks. The method of management of the stormwater is to be shown on the construction drawings.
- c) The applicant must demonstrate that the drinking water supplied to the premises will consistently meet the *Australian Drinking Water Guidelines 2011* and any subsequent amendments to the Guidelines.
- d) An appropriate drinking water management system, in compliance with NSW Health requirements and the *Public Health Act 2010* and Regulation 2012, is to be provided prior to the issue of the Construction Certificate.
- e) There is no potable water provided to the subject Old Post Office Building. If the development is approved additional potable water supply is to be provided onsite sufficient to cater for the subject requirements for a proposed bar and allied health and day spa uses. Certification from a qualified and experienced person confirming the adequacy of the proposed water supply shall be submitted with the Construction Certificate. Any potable water provided to the building will be required to meet the Australian Drinking Water Guidelines 2011 and any subsequent amendments to the Guidelines.
- f) The LHIB owned water tanks in the vicinity of the Old Post Office Building are not sufficient to provide ample potable supply for the proposed activities within the building. Additional water storage facilities are to be provided in accordance with Condition 11(e) above.

Reason: To ensure provision of essential utilities

12. Waste Management

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

13. Waste Management – Asbestos

If any material containing asbestos is found on site during the demolition/ construction process the material is to be removed and disposed of in accordance with WorkCover requirements. An

appropriately asbestos removalist must complete all asbestos works if they consist of the removal of more than 10m² of bonded asbestos and/or any friable asbestos.

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

14. Construction and Demolition

- a) No excavation is to be carried out until the site is inspected by the LHIB Senior Electrical Officer, i.e. 'dial before you dig'.
- b) All construction is to be carried out and completed in accordance with the National Construction Code (NCC).
- c) The applicant is to ensure that any electrical work must be carried out by an electrician and an **Electrical Compliance Certificate issued with, or before, the application for Occupancy Certificate** for the building additions and alterations.
- d) All works are to be undertaken in accordance with approved Construction Certificate documentation.
- e) Pre-Commencement meeting to be arranged with the LHIB staff (as Owner), and the Builder prior to any work commencing on site. If the applicant is nominating the Lord Howe Island Board as the Principal Certifying Authority, this meeting will constitute the pre-commencement and site set-out inspection.
- f) All demolition works shall be undertaken in accordance with Australian Standard AS 2601—1991: The Demolition of Structures.

Reason: To ensure works are undertaken appropriately and in a safe manner.

15. Inspections

The Principal Certifying Authority (PCA) will require the following mandatory inspections to be undertaken during development works:

- a) Pre-commencement and site set-out
- b) After the commencement of the excavation for, and before the placement of, the first footing
- c) Storm-water connections
- d) Final Inspection after the building work has been completed and prior to any Occupation Certificate being issued in relation to the building.

Please note: It is the applicant or their representative's responsibility to book inspections with the Lord Howe Island Board at least 48 hours prior. Failure to do so may result in a delay in the inspection being undertaken.

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

16. 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 leaseholders and/or occupiers associated with the construction of the approved works.

17. Notice of Commencement

Written notice must be given to the Lord Howe Island Board and the lessee of the adjoining portion 295 at least two (2) weeks prior to the commencement of building work.

Reason: This is a legislative requirement.

18. 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.

19. 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 and built setting of the subject locality.

- a) Painted, timber framed vertically proportioned windows and doors are to be used for the building renovations, in keeping with the existing built form and openings of the premises and in keeping with nearby historic building elements within the Powerhouse Park precinct.
- b) The new window fronting Neds Beach Road is to be timber vertically proportioned window consistent with the historic double hung timber window in that location.

Details of the selected materials and colours shall be submitted with the construction certificate application.

Reason: To ensure that the proposed development complements the surroundings and the style of the existing building.

20. Number of Patrons

Not more than twenty (22) patrons and staff of the proposed development shall be present on the subject site at any one time.

Any increase to the number of staff and patrons/customers on site at any one time will require a new development consent or modification of development consent.

Reason: To control impacts of the development and ensure compliance with the requirements for sanitary facilities.

21. Plan of Management

A Plan of Management is to be prepared by the applicant in conjunction with the LHIB staff and NSW Police and be submitted prior to the issue of an occupation certificate that includes the following matters:

- compliance with conditions of consent relevant to the operation of the development
- storage requirements for products to be held on-site,
- location and mechanisms for garbage bins, removal of waste and controlling litter
- compliance with preparation and food safety standard requirements
- compliance with the maximum number of allowable patrons and staff onsite, restriction of patrons to within the proposed development and not permitting them to spill outside of the building or proposed decks, control of Bar patrons including responsible service of alcohol, and the dispersal of patrons leaving the premises both during operating hours and after closing of business.
- traffic management including details of drop-off and pick up services
- live music events including procedures for notifying surrounding businesses and residents and noise compliance
- the hours of operation of the different mixed uses in the proposal and how they relate to each other.
- Applicable licencing requirements

- A restriction preventing the takeaway sales of liquor and that all liquor sold is to be opened and consumed on the premises

The Plan of Management shall be implemented for the lifetime of the approved use.

Reason: To ensure efficient and effective operation of the development and minimise potential amenity impacts on surrounding landuses.

22. Licencing Requirements

The Allied Health and Day Spa components of the development including those that are classified as 'skin penetration' procedures by NSW Health shall comply with all applicable NSW Health requirements and Australian Standards for licencing and registration, fitout of premises and carrying out of procedures.

Reason: To ensure the well being of patrons and that the development maintains compliance with NSW Government Health Standards and Requirements.

23. Hours of Operation and Maximum Staff and Patron/Customer Numbers

The following maximum daily hours of operation, and maximum staff employment and patron levels are permitted for the proposed development:

- The Licenced Bar (Sunset Drinks) will operate only between 12pm and 9pm (during summer) and 12pm and 8pm (during winter, autumn and spring). The shared Day Spa or Allied Health providers will operate on site between 7.00am to 6.00pm
- The proposed mixed use deck area may operate between 7am and 11.30am for yoga or Pilates classes as private one-on-one session or small group sessions with one instructor.
- A maximum of 22 persons are to be onsite at any one time to maintain compliance with sanitary facilities requirements of the BCA.

Reason: To protect the amenity of the surrounding landuses, control total number of persons on site at any one time and minimise impacts on adjacent public areas and street parking.

24. Amplified Music

No amplified music is permitted within the development after 7.00pm. A maximum of two amplified live music events are permitted to be held per month at the premises. Music levels at the premises should not be louder than the established background noise level at any boundary of the property. The premises operator is to notify all surrounding residents and businesses of any amplified event with a householder notice issued no less than 7 days prior to the event occurring.

Reason: To protect the amenity of the surrounding landuses and public areas.

25. Liquor Licence

The Bar component of the approved development shall not commence operation until a liquor licence from the LHIB is issued for the development and all conditions of this licence have been complied with.

ADVICE TO APPLICANT:

a) Commonwealth Environment Protection and Biodiversity Conservation Act 1999

The *Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)* provides that a person must not take an action which has, will have, or is likely to have a significant impact on: *A matter of national environmental significance (NES) matter; or Commonwealth land without an approval from the Commonwealth Environment Minister.*

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

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

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

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

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

Should you have any further enquiries regarding this matter please contact Justin Sauvage at the Board's office on (02) 6563 2066 extension 18.

Yours sincerely

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

Peter Adams
CHIEF EXECUTIVE OFFICER