

LORD HOWE ISLAND BOARD

BUSINESS PAPER

OPEN SESSION

Item

Transfer of twelve (12) Public Accommodation Licences from Owens Diane, Lorhiti to Diane Owens – Fletcher Owens and Jessica Owens

Recommendations

1. **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;
2. **Approve** the issue of a Public Accommodation Licence (8) in the name of Fletcher Owens, Lorhiti for PL2021.02 for the maximum number of 2 persons, excluding children under five years of age, who may be accommodated at any one time;
3. **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;
4. **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.

Current position

At the May 2020 Board Meeting, the Board endorsed the sale of Lorhiti, Lot 2 of DP1261010 from Diane Owens to Fletcher Owens with Diane Owens retaining Lot 1 of DP1261010. Subsequently, on 23 February 2021, the Minister approved the surrender and creation of two new perpetual leases for Diane Owens PL2021.01 and Fletcher Owens PL2021.02.

Currently twelve (12) Public Accommodation licences are held by Diane Owens for Lorhiti over her surrendered perpetual lease PL2015.02. Diane Owens is no longer the owner of Lorhiti and PL2015.02 no longer exists, therefore the reissue of licences is required.

No additional licences are being applied for, just the redistribution of the licences held by Diane Owens as a result of the sale of Lorhiti Apartments.

The public accommodation licences for Lorhiti do not automatically transfer as a result of the transfer by way of sale and is a completely separate process, assessed under the Tourist Accommodation Strategy Steps a) to e) listed above.

The Board has received an application for the transfer of twelve (12) Public Accommodation licences from Diane Owens, Lorhiti as follows (Attachment A) :-

- Two (2) licences to Diane Owens - PL2021.01;
- Eight (8) licences to Fletcher Owens at Lorhiti Apartments - PL2021.02; and
- Two (2) licences to Jessica Owens - PL1954.37.

Decommissioning of Unit 1 and Unit 2 at Lorhiti

It is proposed to reduce the public accommodation licences for Lorhiti from 12 to 8. In order to achieve this, Unit 1 and Unit 2 require decommissioning and change of use applications for the redundant tourist accommodation units.

- Unit 1 - has already been approved for decommissioned. On 16 December 2021 the Board approved the change of use of Unit 1 at Lorhiti Apartments to an additional transit room for Lorhiti guests due to Covid19 regulations.
- Unit 2 - a current owner consent and development application has been lodged and is in the process of being assessed by our external planners. Decommission Unit 2 Lorhiti and Change of Use Unit 2 Lorhiti from tourist accommodation to Assembly/ Meeting/Conference Room

Proposed Tourist Accommodation on PL2021.01 – Diane Owens

Diane Owens has applied to retain two (2) public accommodation licences on PL2021.01, with a view to operating her own tourist accommodation apartment on Lot 1 of DP1261010.

To date, no owner consent/development application has been lodged for the construction of a tourist accommodation apartment on Lot 1 DP1261010 for Diane Owens, however, she has advised that an application will be submitted after the transfer of licences is complete (Attachment A).

Diane Owens has applied to operate her two (2) public accommodation licences from Unit 2 at Lorhiti Apartments until approval and construction of her tourist apartment is complete (Attachment B)

Proposed Tourist Accommodation on PL1954.37 – Jessica Owens

Jessica Owens has an approved Development Application to construct a New Tourist Accommodation/onsite wastewater system/Transfer of two public accommodation licences from Diane Owens.

This development application was approved by the Board on 24 September 2021. The construction of the tourist accommodation has not yet commenced and the development application approval expires on 24 September 2026.

Site Inspection and Audit of Premises

As per c) of the Tourist Accommodation Strategy, an audit of Unit 1 and 2 Lorhiti Apartments was undertaken by Darcelle Matassoni on 25 November 2022.

Unit 1 and 2 are pending decommission following the transfer of bed licences and decision of the Board regarding use of Unit 2 by Diane until such a time as she is able to house the beds in her own accommodation (pending a DA process).

Unit 1 will then be decommissioned and become a transit room (MDC2021.3.2 - approved) and Unit 2 will be decommissioned and become an assembly/meeting/conference room (DA2022.6.1 - submitted).

Step a) to c) of the Tourist Accommodation Strategy shown below have been completed.

As per e) of the Tourist Accommodation Strategy, it is recommended that the existing Licence for Provision of Tourist Accommodation be cancelled and a new licence issued to reflect the increased / reduced number of accommodation units and increased / reduced number of people, excluding children under five years of age, who may be accommodated at any one time.

Background

The *Lord Howe Island Regulation 2014* states the following:

Part 4 Licensing of tourist accommodation and other commercial undertakings

48 Meaning of tourist accommodation

*In this Part, **tourist accommodation** means public accommodation that is provided predominantly for tourists to the Island as a commercial undertaking.*

49 Licensing of tourist accommodation and other commercial undertakings

(1) a Person must not-

- (a) provide tourist accommodation or carry on any other commercial undertaking on the Island, or*
- (b) use premises for the provision of tourist accommodation or for the carrying on of any other commercial undertaking,*

Except in accordance with a licence granted by the Board for that purpose.

(2) A licensee must not contravene a condition of the licensee's licence.

(3) A licensee must not, without reasonable excuse, refuse or fail to produce the licensee's licence for inspection on being requested to do so by the Board.

The Tourist Accommodation Strategy was adopted at the September 2015 Board Meeting. Its purpose is to assist in the enforcement of licence conditions post transfer. The current process for the transfer of Public Accommodation Licences is summarised below:

- a) The buyer and seller must apply to the Board to vary the accommodation licence/s,
- b) The buyer and seller must provide the Board with a floor plan showing the particulars of the premises to be licensed, including the room numbers, pre and post transfer,

- c) On receipt of the site plan, the Board will conduct an audit of the premises to ensure that they are currently compliant with their Licence for Provision of Public Accommodation,
- d) On satisfactory completion of steps 1 to 3 above, the matter will be referred to the Board for decision, and
- e) If approved by the Board, and subject to the conditions imposed by the Board, the existing Licence for Provision of Tourist Accommodation will be cancelled and a new licence issued to reflect the increased / reduced number of accommodation units and increased / reduced number of people, excluding children under five years of age, who may be accommodated at any one time.

Attachments

Attachment	Title
A	Letter – Application Transfer 12 public accommodation licences from Owens Diane Owens Lorhiti to Diane Owens – Fletcher Owens and Jessica Owens – 29 October 2022 - Open
B	Request for approval for Fletcher Owens at Lorhiti to operate 2 public accommodation licences for Diane Owens until the construction of her tourist accommodation apartment is complete – 29 October 2022 – Open

Approval and contact

Approver	Position
Suzie Christensen	Chief Executive Officer
Preparer	Position
Darcelle Matassoni	A/Manager Environment & Community Services

Diane Owens **LOT 1, DP1261010**

78 Anderson Road
Lord Howe Island
NSW 2898

Fletcher Owens **LOT 2, DP1261010**

78 Anderson Road
Lord Howe Island
NSW 2898

Jessica Owens **LOT 21 DP1169260 and LOT 22 DP757515**

29 October 2022

Suzi Christensen
CEO Lord Howe Island Board
PO Box 5
Lord Howe Island
NSW 2898

**TRANSFER 8 TOURIST LICENCES FROM DIANE OWENS, LOT 1, DP1261010
TO FLETCHER OWENS, LOT 2, DP1261010**

AND

**TRANSFER 2 TOURIST LICENCES FROM DIANE OWENS, LOT 1, DP1261010 TO JESSICA OWENS, LOT 21
DP1169260 and LOT 22 DP757515**

AND

RETAIN 2 TOURIST LICENCES FOR DIANE OWENS, LOT 1, DP1261010

Dear Suzi

THE SITUATION

I currently hold twelve (12) tourist licenses which are accommodated in six (6) tourist apartments at Lorhiti Apartments. There are 3 current applications in the LHIB system which I wish to withdraw (20-7-22, 19-01-21 and 24-1-22). This is requirement (a) New application to transfer tourist licenses.

I have sold Lorhiti Apartments to Fletcher Owens, however, the 12 tourist licenses remain in my name.

Unit 1 at Lorhiti Apartments has been approved to be decommissioned as a tourist apartment, with change of use to extension of the transit lounge, on 16 December 2021.

Unit 2 is in the process of decommissioning to a conference/meeting room for guests. This is on NSW planning portal pending processing and determination by Peter Chapman. Submitted on 8-2-22. It is unclear why this has not been processed. Fletcher Owens does not wish to withdraw this application.

THE PLAN

Diane Owens requests to transfer 8 (eight) of my 12 (twelve) tourist accommodation licenses to Fletcher Owens leaseholder **LOT 2 , DP1261010** known as "Lorhiti Apartments".

Diane Owens requests to transfer 2 (two) of my 12 (twelve) tourist accommodation licenses to Jessica Owens leaseholder **LOT 21 DP1169260 and LOT 22 DP757515** known as "Kentia".

Approval has been given to transfer 2 (two) tourist accommodation licenses to Jessica Owens, Leaseholder of Lot 21, DP1169260 (determined with approval for a tourist accommodation for Jessica Owens in 2021) This transfer to Jessica Owens will not take place until 01 February 2023.

I wish to retain 2 (two) tourist accommodation licenses in my name and operate a tourist accommodation business from my Lease, **LOT 1, DP1261010** with two (2) tourist licenses.

I wish to operate my 2 (two) tourist licenses from Lorhiti Apartments until approval and construction of my tourist apartment is finalised (see attached cover letter) signed.

(c) On receipt of the site plan please contact Fletcher Owens 6563 2081 E: fletcher@lorhiti.com for an inspection.

JUSTIFICATION

There will be no change to the tourist license numbers on Lord Howe Island.

A plan of the proposed decommissioned units (UNITS 1 and 2) is attached.

A proposed plan of my tourist accommodation will be submitted.

Surrendering my existing 12 tourist licenses and reissue of 8 licenses to Fletcher Owens, and 2 licenses to Jessica Owens and retaining 2 licenses in my name, will create no changes to the terms and conditions of my existing license.

For the transfer of licenses to proceed Unit 2 requires a change of use from tourist accommodation (Class 3) to Meeting/Conference room (Class 9b). Decommissioning Unit 1 has recently been approved from a Class 3 building to a Class 9b (Assembly building). An OC/DA has been submitted to NSW Planning portal awaiting processing.

There will be no structural change to Lorhiti Apartments building and units. There is no change to GFA.

Attached is a plan of the existing units and location of Units 1 and 2 in the building. Unit 2 will be decommissioned and change of use Unit 2 to meeting/conference room. Remaining Lorhiti units 3, 4, 5 and 6 will operate as usual with 8 tourist licenses (2 guests per unit).

Below is an email from LHIB administration indicating the process to transfer the tourist licenses:

The process for a transfer of accommodation licences is as follows:

- a) *The buyer and seller must apply to the Board to vary the accommodation licence/s,*
- b) *The buyer and seller must provide the Board with a floor plan showing the particulars of the premises to be licensed, including the room numbers, pre and post transfer,*
- c) *On receipt of the site plan, the Board will conduct an audit of the premises to ensure that they are currently compliant with their Licence for Provision of Public Accommodation,*
- d) *On satisfactory completion of steps 1 to 3 above, the matter will be referred to the Board for decision, and*
- e) *If approved by the Board, and subject to the conditions imposed by the Board, the existing Licence for Provision of Tourist Accommodation will be cancelled and a new licence issued to reflect the increased / reduced number of accommodation units and increased / reduced number of people, excluding children under five years of age, who may be accommodated at any one time.*

Under the current LEP redundant tourist accommodation may be used as staff accommodation for other non-tourist accommodation commercial activities; all that is required is development consent for a 'change of use'.

Thank you and best regards

Diane Owens

SIGNED

Diane Owens



Jessica Owens



Fletcher Owens



DATE:

29 October 2022

Ref: MDC2021.3.2
Enquiries: Justin Sauvage

24 December 2021

Mrs Diane Owens
PO Box 26
LORD HOWE ISLAND NSW 2898



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

Phone: 02 6563 2066
Facsimile: 02 6563 2127
Email: administration@lhib.nsw.gov.au

Dear Mrs Diane Owens

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

I am writing in reference to your application to modify development consent for MDC2021.3.2.

Pursuant to section 4.55 of the Environmental Planning & Assessment Act, notice is hereby given of the determination by the consent authority. Your application has been conditionally approved.

Proposed Development	MDC2021.3.2
Property Description	Lot: 2 DP: 1261010
Description of Proposed Development	Modification of unit 1 approved change of use from staff room, office, storage and utilities room to additional transit room. Proposed Change of use Unit 1 at Lorhiti Apartments to additional transit room for Lorhiti guests is required due to Covid19 regulations. The capacity of the current Transit room is only 4 people. There will be no increase in the total bed license count using Unit 1 as an alternative transit room
Date from which Consent Applies	16 December 2021
Date in which Consent will Lapse	16 December 2026

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

CONDITIONS OF CONSENT

That MDC2021.03.02 for minor amendments to approved Development Application No.2021.03 (dated: 06 July 2021) for *A Change of Use Unit 1 at Lorhiti Apartments From Tourist Accommodation to Additional Guest Transit Room. Decommission Unit 1*, at Lorhiti Lodge, Lot 2 DP 1261010, No. 78 Anderson Road, Lord Howe Island, be approved subject to the existing conditions of approval as amended by the following modified or new conditions:



WORLD HERITAGE AREA

Delete condition 3 and replace with the following:

3. BCA Compliance

The proposed change of use for Tourist Unit 1 will change the (BCA) Building Classification from the existing tourist unit - Class 3, to the proposed transit room being a Class 9b Assembly Building.

Before occupation of the building under the proposed new use, the applicant shall obtain and submit to the LHIB a copy of an Occupancy Certificate issued by a Private Certifying Authority (PCA) certifying that the building is suitable for occupancy as a Class 9b Assembly Building.

Delete Condition 5 and replace with the following:

4. Tourist Unit Decommissioning

The subject Unit 1 that is to be decommissioned from tourist accommodation use, shall only be used for the approved guest transit room and not any other use without the consent of the LHIB.

An inspection of the decommissioned tourist unit by appropriate LHIB Officer/s will be required to ensure the decommissioning of the tourist unit is done to the satisfaction of the Lord Howe Island Board prior to the issue of the occupation certificate/ commencement of the new use.

Reason: To ensure that the development is completed in accordance with the approval.

Delete Condition 8 - Fire Safety

Delete Condition 13 and replace with the following:

13. Inspections

During development works all inspections deemed required/ specified by the Principal Certifying Authority (PCA) shall be undertaken to the satisfaction of the PCA.

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

If you are dissatisfied with this determination you may have rights of appeal under the Environmental Planning and Assessment Act. These rights are set out below:

1. Section 8.9 of the Environmental Planning and Assessment Act confers on an applicant who is dissatisfied with the determination of the application the right to lodge an application with the Lord Howe Island Board for a review of such determination. Any such review must however be lodged within 28 days from this determination. Should a review be contemplated sufficient time should be allowed for Lord Howe Island Board to undertake public notification and other processes involved in the review of the determination. See Section 8.9 (7) for details of determinations not subject to review under Section 8.9.

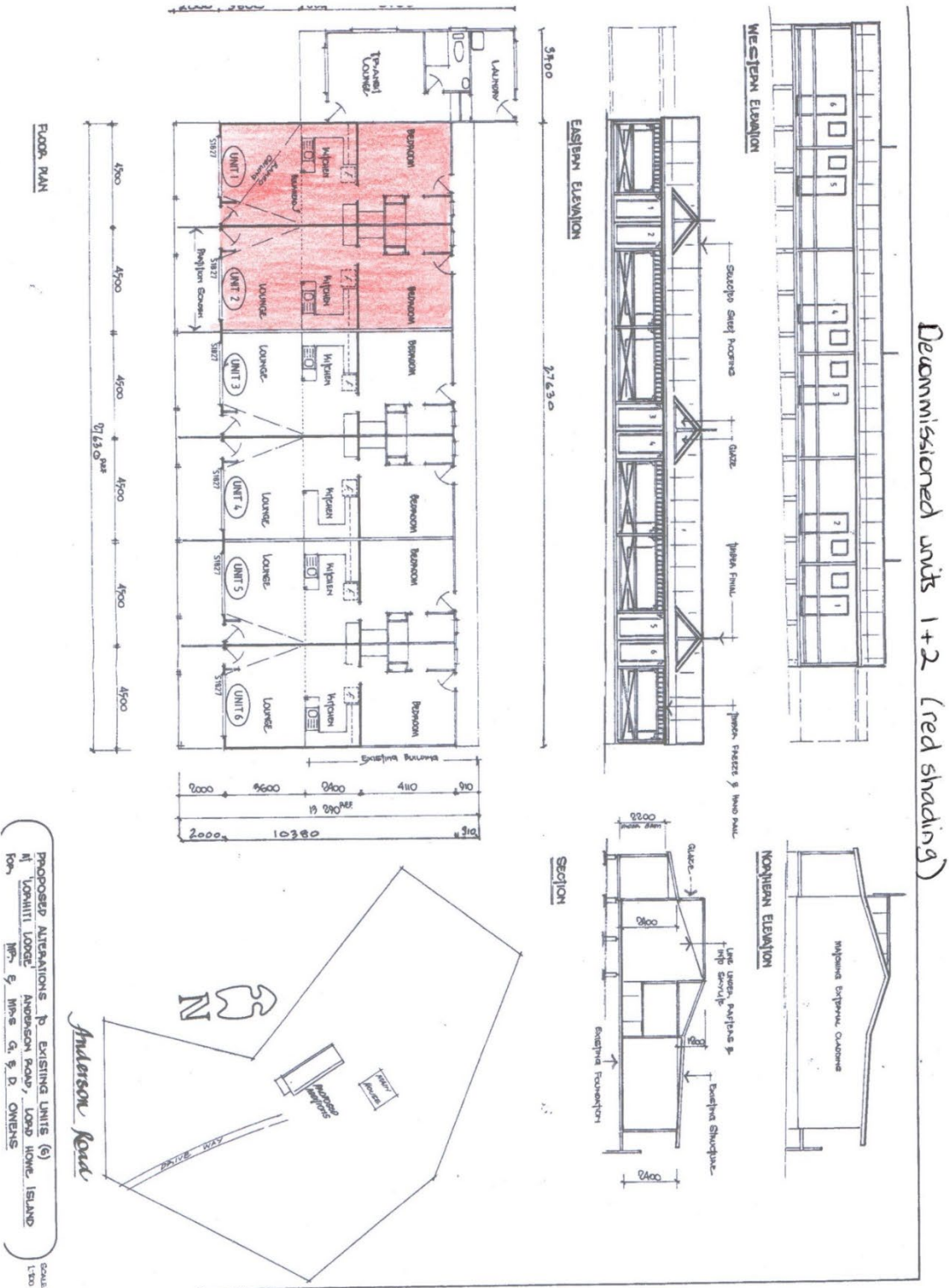
2. Part 8 (Appeals and Related Matters) of the Environmental Planning and Assessment Act confers on an applicant who is dissatisfied with the determination of the application a right of appeal to the Land and Environment Court. 4. This Section 4.55 modification does not extend the lapsing date of the original development consent.

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

Yours sincerely

A handwritten signature in black ink, appearing to read 'Suzie Christensen', with a long horizontal stroke extending to the right.

Suzie Christensen
CHIEF EXECUTIVE OFFICER



(b) Lorhiti Apartments existing Tourist accommodation on **LOT 2 , DP1261010 (Fletcher Owens)** showing Transit Lounge and Unit 1 combined (approved guest transit lounge). Unit 2 proposed to be decommissioned with change of use from Class 3 to Class 9b assembly and conference room.

Diane Owens **LOT 1, DP1261010**

78 Anderson Road
Lord Howe Island
NSW 2898

Fletcher Owens **LOT 1, DP1261010**

78 Anderson Road
Lord Howe Island
NSW 2898

29 October 2022

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

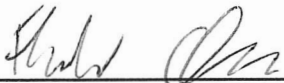
AUTORISATION FOR FLETCHER OWENS TO USE 2 (TWO) TOURIST LICENSES HELD IN THE NAME OF DIANE OWENS OPERATING FROM UNIT 2 AT LORHITI APARTMENTS ON LOT 1, DP1261010 UNTIL DIANE OWENS HAS APPROVAL TO CONSTRUCT AND FINALISED CONSTRUCTION OF A TOURIST APARTMENT ON LOT 1, DP1261010.

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

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

Signed

Diane Owens 

Fletcher Owens 

Date 29 October 2022