



Guideline: Dwelling Allocations July-November 2023

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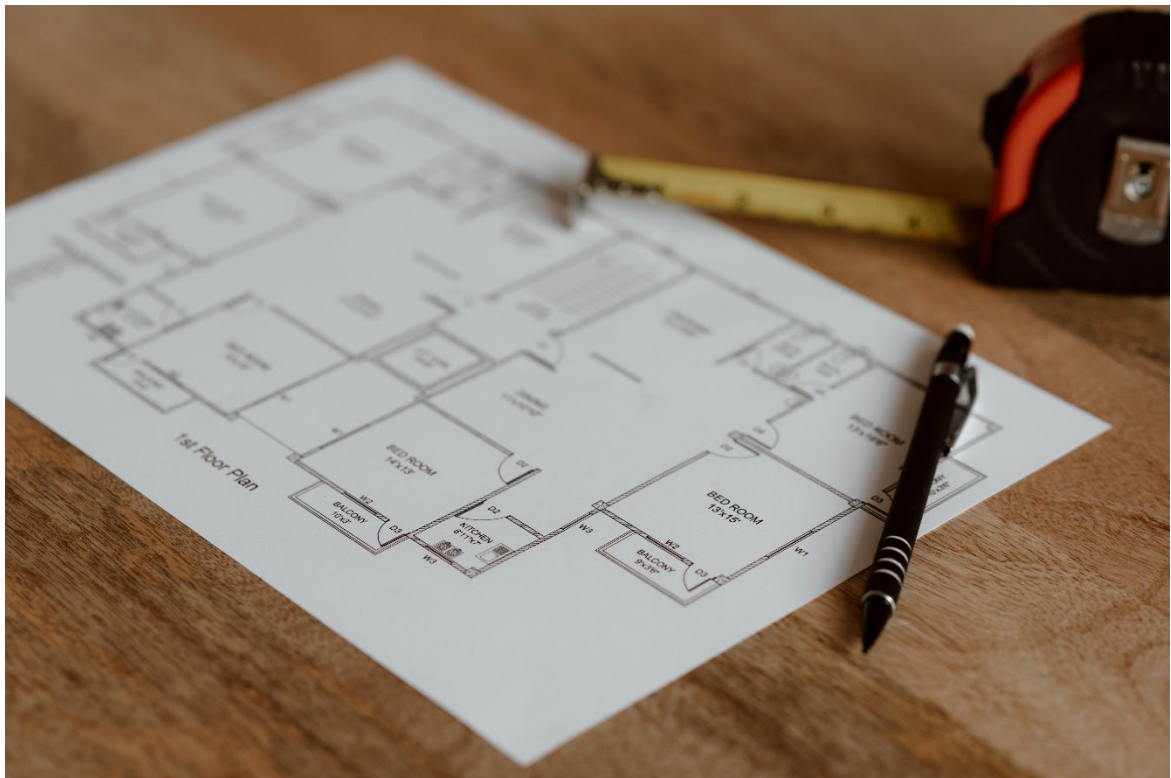


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HOW TO USE THIS DOCUMENT

This document has been developed to provide guidance for leaseholders and prospective lessees seeking to enter a ballot for a dwelling allocation. The document sets out:

- the eligibility criteria that must be met to enter the ballot
- information to assist applicants in preparing their applications
- details of the assessment approach to be taken in determining the ballot

INTRODUCTION

The Lord Howe Island (LHI) Board is a statutory authority established under the *Lord Howe Island Act 1953*. The Board reports directly to the NSW Minister for Environment and is charged with the care, control and management of the island, including the strategic and statutory planning functions that support sustainable development on the Island.

The Lord Howe Island Local Environment Plan (LEP) 2010 restricts the LHI Board to consenting to the development of more than 25 dwellings over a 20-year period.

In the current period, from 2005 to 2025, nine allocations have been made to date. Approval was given at the May 2023 meeting of the LHI Board for six dwelling allocations to be released.

The LHI Board recognises the need for residential housing and is committed to reviewing the release of a further 10 dwelling allocations in 2024-2025.

The Board will undertake important strategic planning work over the next 12 months, to look at demand and capacity. This work will inform strategies and policies, including future dwelling allocation release, and a review of the *Lord Howe Island Local Environment Plan (LEP) 2010* in 2024.

The process and eligibility criteria underpinning any future dwelling allocation release will be developed and approved by the LHI Board. Further information will be provided in 2024/2025.

THE BALLOT PROCESS


The LHI Board will offer six dwelling allocations through a public ballot, to be held in November 2023. The ballot will deliver housing opportunities for Islanders that are living on the Island community but do not currently own a residence. To be eligible to be granted Owner Consent to lodge a development application for the creation of a new dwelling, a person must have competed for and won the right to do so in this ballot.

The ballot is a standard, tested and transparent approach that has previously delivered dwelling allocations for the LHI community. A ballot will allow all eligible applicants to have an equal chance of securing the opportunity to build a new dwelling.

The dwelling allocations will enable eligible Perpetual Leaseholders and a person of the leaseholder's choice to jointly apply to build a new dwelling on an existing Perpetual Lease through sub-division or multiple occupancy of a property.

The application period will open on 31 July 2023, and applications will be accepted for 28 days through to 27 August 2023.

The dwelling allocation process is expected to run from July – November 2023, according to the following timeline:

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- Applications will open 31 July 2023
The ballot will be advertised on the LHIB website, community notice boards and through a community newsletter. Applications must be made on the prescribed form which will be made available on the LHIB website, and at the administration centre.
 - Applications will close 27 August 2023
 - OCM will commence review of applications in August 2023
 - Feedback provided on applications in September 2023
 - The ballot will be implemented in November 2023
All eligible applicants will be placed in a ballot, which will be drawn by an independent party alongside an appointed scrutineer in a public place. The first six eligible applicants to be drawn from the ballot will be allocated a dwelling allocation.
 - Formal notification of ballot outcomes will be made in November 2023.

The Board is not obliged to offer any or all of the dwelling allocations on offer through this ballot.

SUBMITTING AN APPLICATION

Applications for dwelling allocations will be open for 28 days, from 31 July 2023. Application forms can be accessed on the [LHI Board website](#), or at the LHI Board Administration Office.

Applications must be received by 5pm (AEST) on 27 August 2023.

Late applications will not be accepted.

Applications must include all supporting documentation that you wish to have taken into consideration to assess your eligibility to enter the ballot.

You may submit applications:

Via email to: rwaldersee@ocm.net.au

By post to: OCM
Robert Waldersee
Level 18, 1 Margaret Street
Sydney, NSW 2000

Please do not submit your application to the LHI Board Administration Office.

The LHI Board may seek to sight, verify original documents or original notarised copies of documents submitted in support of an application. If a request is made of an applicant to produce this information, and the documents are not provided, the application may be deemed ineligible.

If submitting your application by post, ensure that sufficient time is allowed for the delivery to be received by OCM before the application close time. If submitting by email, ensure that sufficient time is allowed to rectify any problems that could arise during the process of scanning and emailing.

You will receive a confirmation that your application has been received. Please provide a current email address on your application form for this purpose.

One-on-one application support has been available to the community since 13 June 2023. Board staff are available to discuss eligibility criteria and to answer questions in relation to the ballot process. Bookings can be made by calling the LHI Board Administration Office on 6563 2066 or emailing administration@lhib.nsw.gov.au.

ELIGIBILITY CRITERIA

Applications for dwelling allocations are to be a joint application between an existing perpetual leaseholder and a proposed new lessee. The following eligibility criteria apply to ballot entry:

- A. The proposed new lessee must have Islander status in accordance with the *Lord Howe Island Act 1953* and must be 18 years of age or older.
- B. The proposed new lessee must not currently hold, or have previously held, a Perpetual Lease on the island.
- C. The proposed new lessee must complete and occupy a dwelling on the new lease within 5 years of being granted the lease.
- D. The proposed new lessee must have their name added to the title of the lease (through subdivision, joint tenants or tenants in common) and comply with all associated residency conditions within a 5-year period of being granted the lease.
- E. Except in exceptional circumstances, as determined by the Board, the Board will not recommend to the Minister the transfer of any Perpetual Lease granted through this ballot process unless a ten (10) year period has expired since the date of issue of the original lease.
- F. A new dwelling created under this provision must be occupied by the person specified in the application as the proposed occupant.
- G. Any development, including sub-division, must be permissible under the Lord Howe Island Local Environment Plan (LEP).
- H. Applications will be limited to one proposal only per existing Perpetual Lease holder and one proposal only per proposed new lessee per allocation round period.

- I. The Perpetual Lease holder and the proposed new lessee or occupant of the dual/multiple occupancy must reside on the Island at the time the applications are sought.
- J. Successful applications will be non-transferable.
- K. A one-off, \$20,000 environment and services levy will apply to any dwelling created or constructed under this standard. This levy is payable within 12 months of the ballot being determined.
- L. A one-off administration levy of \$1200 is payable by all eligible successful applicants within 30 days of the ballot being determined.

The application form provides guidance against each criteria and advises where evidence is required to demonstrate compliance.

IMPORTANT ADDITIONAL INFORMATION REGARDING ELIGIBILITY CRITERIA

The following additional information is provided to support interpretation and assessment of eligibility criteria.

Leases on LHI: In accordance with the *Lord Howe Act 1953*, all land on the Island belongs to the Crown. The law does not allow freehold private ownership. Perpetual Leases for residential purposes and Special Leases for agricultural purposes are the two kinds of leases that can be granted to 'Islanders' by the NSW Minister for Environment.

A [Perpetual Lease](#) is ongoing and can be up to 2 hectares in area over Crown Land.

To be a [Lord Howe Islander](#) under the Act, a person must have:

- Resided on the Island continuously for the previous 10 years; or
- Resided on the Island immediately before 1 January 1982 and held, or have been closely related to someone who held, a permissive occupancy before 22 April 1954.

Dwellings on LHI: The LHI Local Environmental Plan (LEP) defines a dwelling as a room or suite of rooms occupied or used (or so constructed or adapted as to be capable of being occupied or used), as a separate domicile. A dwelling does not include (a) accommodation for seniors or people with a disability, or (b) tourist accommodation.

A dual occupancy means two dwellings, whether attached or detached, on a single allotment.

An existing building can become a dwelling, with Board consent for a new use of the building, but only in cases where the building was erected prior to 28 October 2005.

Partners of a perpetual lease holder: A partner of a Perpetual Lease holder, in a marriage or defacto relationship as defined by the Australian Taxation Office, is not eligible to apply for a dwelling allocation in this allocation round.

Tracking of residency: The Board receives regular reports on compliance with the condition of residence attached to perpetual leases established by the *Lord Howe Island Act 1953*. The Board also receives information on the Suspension of Condition of Residency on Perpetual Leases Policy and decides on applications to suspend the condition of residency attaching to a perpetual lease. Prospective and successful applicants must comply with residency conditions.

The *Lord Howe Island Act 1953* defines reside and residence to mean “a residing by the person referred to in the context continuously and in good faith on the land indicated by the context as his or her usual home, without other habitual residence.”

Suspension of residency: A lease holder can apply to the LHI Board to suspend the condition of residence applying to a perpetual lease. The LHIB [Suspension of the Condition of Residency on Perpetual Leases Policy](#) sets out the circumstances under which an application for a suspension of the condition of residency might be considered.

A lease holder can apply to sub-lease a perpetual lease, refer to the [Transfer of Perpetual Lease Policy](#).

Permissible development under the *Lord Howe Island Act 1953*. While submission of a compliant and supportable planning proposal is a future obligation, a basic assessment of each application submitted to this ballot will include confirmation that:

- The minimum area of each allotment proposed to support a new dwelling is at least 3,000 square metres.
- The minimum area of an allotment proposed to support a dual occupancy development is 5000 square metres.
- Allotments occupied by dual occupancies will not be able to be subdivided unless the total area of each proposed allotment is at least the minimum dwelling area. The minimum dwelling area for each dwelling on an allotment created from the subdivision of a dual occupancy or multiple dwellings is 3,000 square metres.

Applicants must be able to demonstrate that there is a constraint free area capable of supporting a dwelling and wastewater management system, and that practical and legal access to the proposed dwelling site is achievable.

Sublease: The requirement of a proposed new lessee to have not currently or previously held a perpetual lease on the Island does not extend to a sub-lease. Compliance with the condition of residency attached to perpetual leases may mean that retention of a sub-lease once a dwelling allocation has been awarded is not supported for a successful ballot applicant.

Lease valuation: Once a leaseholder/Islander decides to transfer a Perpetual leasehold interest on Lord Howe Island a few steps must be undertaken as outlined within the *Lord Howe Island Act 1953*.

Perpetual leaseholds are transferred at a value determined by the Valuer-General of New South Wales. This is undertaken by the issue of a Certificate of Valuation by the Valuer General. The

Valuer General will take into consideration unimproved land the subject of the lease, the fair market value of the improvements on the land at the commencement of the lease and of any improvements subsequently effected thereon with the approval of the Board.

The current leaseholder must order a valuation from the Valuer General. This process and personal negotiations between the Principal Applicant(s) and Co-applicant(s) is independent of the LHI Board and the ballot assessment process.

Age limitation: To apply for a dwelling allocation, the proposed new lessee must be 18 years of age or older. The *Lord Howe Island Act 1953* provides that a lease in perpetuity for residence may only be granted to an Islander of or above the age of 18 years. This is also in line with national standards for being approved for a home loan and ensures that the co-applicant can own and presently occupy their own property.

ASSESSMENT OF APPLICATIONS

The LHI Board has appointed OCM to advise on the ballot process, to receive and assess the applications, and to provide a scrutineer at the ballot. OCM is a specialist probity firm providing integrity advisory services to government.

The OCM contact is Robert Waldersee. Robert can be contacted directly at rwaldersee@ocm.net.au or by phone on 0458 285 485.

OCM will receive and hold all applications, and will:

- Check that each application was received before the closing time.
- Check that all questions and fields on the application form have been completed and the form signed.
- Check that all attachments and documents are complete.
- Request that the LHIB provide a report assessing applicants' residency against the criteria.
- Request that the LHIB provide a report on land suitability against the criteria.

OCM will then provide an interim eligibility assessment report to the LHI Board.

Applicants are strongly advised to exercise care in the preparation of their applications, ensuring they are fully and accurately completed, and that supporting documentation is included.

There will be a single window during the eligibility assessment where applicants will be provided with an opportunity to update their application. On completion of the interim eligibility assessment report, all applicants will be provided feedback on their application by OCM. Further information or clarification may be sought from applicants by OCM. Following receipt of this feedback, each applicant will have one week to resubmit the application form, correct errors and/or provide additional/different documents as necessary.

The one week following the feedback and request for clarification is the only period when additional information will be accepted.

DRAWING OF THE BALLOT

An independent party and appointed scrutineer will publicly draw the ballot at the Lord Howe Island Community Hall, to avoid any conflict of interest or bias.

The ballot will be drawn by Senior Constable Joel Merchant of NSW Police. The independent scrutineer will be Robert Waldersee of OCM.

The ballot will be public event to ensure a transparent and fair process.

ANNOUNCEMENT OF RESULTS

The public ballot will be held in November at the Lord Howe Island Community Hall. The first six applicants to be drawn will be eligible to be granted owners consent to lodge a development application for the creation of a new dwelling.

The exact date of the ballot will be confirmed in the coming weeks.

The results of the ballot will be published as a Householder, on community noticeboards and on the LHI Board's website.

SUCCESSFUL APPLICANTS

The first six applicants to be drawn will be eligible to be granted owners consent to lodge a development application for the creation of a new dwelling, subject to execution of a Deed.

The conditions attaching to the issue of the dwelling allocation will be set out in an enforceable Deed that must be executed prior to the formal dwelling allocation being made. The Deed will include the obligations agreed to in the application form, including;

- the named lessee
- the payment of a non-refundable \$1200 fee (ex GST) within 30 days of the ballot being determined to contribute to the costs associated with planning and running the ballot
- the non-refundable Environmental Services Levy of \$20,000 (ex GST) to be paid as a lump sum within 12 months of the ballot being determined
- the commitment to obtain planning approval, construct and occupy the dwelling within 5 years and the non-transfer of the lease for 10 years.

The Deed will set out the consequences of non-compliance, including possible forfeiture of payments and the dwelling allocation. The Deed will set out the limited circumstances under which the applicant may make a request for special consideration to vary the Deed and the process for doing so.

The next steps would see a successful ballot applicant prepare and lodge a Development Application (DA) through the NSW Planning Portal. The LHI Board will then assess the application for compliance with the LEP and other standards and determine the likely impacts of the proposal.

Applicants are encouraged to review information about the DA process [here](#).

Importantly, obtaining a dwelling allocation through the ballot process does not guarantee consent for the development proposal you are considering.

FAILURE TO COMPLY WITH ELIGIBILITY CRITERIA

Should any of the drawn six applicants fail to satisfy eligibility criteria and/or meet the obligations set out in the Deed, the allocation will be forfeited and reallocated by the LHI Board through a future public ballot. Those who were successful in the first ballot will not be eligible to re-enter subsequent ballots for the same six allocations.

The Deed will provide for force majeure events and set out the limited circumstances a case may be put to the LHI Board for consideration of a variation or extension of time to meet obligations.

ENVIRONMENTAL SERVICES LEVY

An Environmental Services Levy is a one-off, non-refundable payment applying to any dwelling created or constructed through this ballot. The levy is payable by successful applicants within 12 months of the ballot being determined. Once paid, the levy is non-refundable, including if eligibility criteria cannot be met, and the dwelling allocation is surrendered. It is in the interests of applicants to thoroughly research the development option they are considering, and to seek advice to satisfy themselves that a dwelling is achievable on the lot under the LEP before entering the Deed.

All development creates increased demand on services and infrastructure and local community assets. The purpose of the environment and services levy is to offset costs incurred by the Board in creating the dwelling allocation, in providing for community and public assets and in caring for the island environment.

The levy is separate and additional to annual rates charges and charges outlined in the LHI Board - fees and charges schedule advertised on the LHIB website. The levy is not required to be invested directly in the land subject of the dwelling allocation.

The environment and services levy that will be applied to each dwelling allocation is \$20,000 ex GST. The one-off levy is derived by applying CPI to the previously adopted levy of \$15,000 per new dwelling allocation established in 2010 during the previous ballot process.

FURTHER INFORMATION

Further information on the ballot process can be directed to:

- The LHI Board Administration Office on 6563 2066 or email administration@lhib.nsw.gov.au
- Robert Waldersee of OCM. Robert can be contacted directly at rwaldersee@ocm.net.au or by phone on 0458 285 485.

FEEDBACK AND COMPLAINTS PROCESS

If you wish to make a complaint or give feedback, please lodge an enquiry by contacting the LHI Board Administration Office by email: administration@lhib.nsw.gov.au. This is the best channel for feedback to be addressed and resolved quickly.

Putting your enquiry in writing helps to ensure that all aspects of your message are addressed, however complaints and feedback received via phone will also be addressed. For more information on LHI Board's complaints and feedback policy, please refer to the [Complaints and Allegations Policy \(2016\)](#).