

# LORD HOWE ISLAND BOARD

## OUT OF SESSION PAPER

### OPEN SESSION

#### Item

**Amendment** to a Board resolution consenting to transfer by way of sale 50% of PL1992.01 being Lot 313 of DP821319, from Richard James Shick and Debra Lee Smith.

#### Recommendations

1. **The Board recommend** to the Minister to approve the transfer by way of sale of a 25% share PL1992.01, being Lot 313 of DP821319 from Richard James Shick to Louis Sullivan Shick and Anna-Louise Francis Connor Hill as joint tenants.
2. **The Board recommend** to the Minister to approve the transfer by way of sale of a 25% share of PL1992.01, being Lot 313 of DP821319 from Debra Lee Smith to Daryl John Shick.
3. **Following the adoption of Recommendation 1, the Board recommend** to the Minister to approve the transfer by way of mortgage of a **100%** share of PL1992.01, being Lot 313 of DP821319 to the Commonwealth Bank of Australia.
4. **The Board recommend** to the Minister to approve the cancellation of the sublease from Debra Lea Smith and Richard James Shick to Louis Sullivan Shick DOC22/901785 (Attachment B).
5. **Note** the suspension of residency for Daryl John Shick over PL1992.01 approved for an indefinite period under *section 21(7A)* of the Act by the Minister on 7 February 2020 remains in force.

#### Current position

##### Board Assessment

The Board considered an out of session paper ED23/5969 on 23 August 2023 concerning an application for consent to transfer by way of sale 50% of PL1992.01 being Lot 313 of DP821319, from Richard James Shick and Debra Lee Smith as follows:

- Transfer of 25% share of PL1992.01 from Richard James Shick to Louis Sullivan Shick and Anna-Louise Francis Connor-Hill by way of sale as Joint Tenants;
- Transfer of 25% share of PL1992.01 from Debra Lea Smith to Daryl John Shick by way of sale;
- Transfer of 25% share of PL1992.01 from Louis Sullivan Shick and Anna-Louise Francis Connor-Hill by way of mortgage to Commonwealth Bank of Australia.

If completed the transfers would result in PL1992.01 being held as follows:-

- 25% share held by Louis Sullivan Shick and Anna-Louise Francis Connor Hill as joint tenants;

- 75% share held by Daryl John Shick as tenants in common with Louis Shick and Anna Connor-Hill

Following consideration of the paper, the Board resolved the following:

1. **The Board recommend** to the Minister to approve the transfer by way of sale of a 25% share PL1992.01, being Lot 313 of DP821319 from Richard James Shick to Louis Sullivan Shick and Anna-Louise Francis Connor Hill as joint tenants.
2. **Following the adoption of Recommendation 1, the Board recommend** to the Minister to approve the transfer by way of mortgage of a 25% share of PL1992.01, being Lot 313 of DP821319 from Louis Sullivan Shick and Anna-Louise Francis Connor-Hill to the Commonwealth Bank of Australia.
3. **The Board recommend** to the Minister to approve the cancellation of the sublease from Debra Lea Smith and Richard James Shick to Louis Sullivan Shick DOC22/901785 (Attachment B).
4. **The Board recommend** to the Minister to approve the transfer by way of sale of a 25% share of PL1992.01, being Lot 313 of DP821319 from Debra Lee Smith to Daryl John Shick.
5. **Note** the suspension of residency for Daryl John Shick over PL1992.01 approved for an indefinite period under *section 21(7A)* of the Act by the Minister on 7 February 2020 remains in force.

### Ministerial approval

On 19 October 2023 the Minister approved the applications for consent to transfer part PL1992.01 by way of sale and mortgage, as recommended by the Board (refer Attachment B).

### Mortgage

An issue has arisen in regard to the mortgager and their need to protect their investment and interest in the property they are lending against. The Commonwealth Bank of Australia (CBA) seeks the transfer by way of mortgage of a 100% share of PL1992.01 and have advised that they are unable to complete a limited mortgage over the property.

Mr D Shick is to hold a 75% share in the property and is guarantor for the CBA loan against the 25% share to be held by Mr L Shick and Ms Connor-Hill. The CBA request is supported by Mr D Shick, and an amended Form 5 will be prepared and submitted to expedite the the amendment of the Ministerial approval.

### Next steps

Requesting that the Board re-confirm support for the transfer, and approve the transfer by way of mortgage of a 100% share of PL1992.01, (as opposed to a 25% share). Amendment of the Ministerial approval can then follow, which will allow the CBA to settle.

### Attachments

| Attachment | Title   |
|------------|---|
| A          | Briefing Note - Approved - Decision - Transfer of 50% of Perpetual Lease 1992.01 by way of sale and mortgage - Signed 19 October 2023   |
| B          | Letter - Approval Minister - PL1992.01 Transfer by way of sale - Request F~r duty paid - Shick Richard - Shick Louis - Connor-Hill Anna |
| C          | Email - Incoming CBA - Transfer of 100% Mortgage - Transfer by way of sale Shick - 02 November 2023                                     |

|   |  |
|---|--|
| D | Letter - Incoming - Granting Approval to transfer by way of mortgage - Shick Daryl |
|---|--|

## Approval and contact

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

## Board Member Recommendation

| No.  | Recommendation           | Decision                   |
|------|--------------------------|----------------------------|
|      |                          | Supported OR Not Supported |
| Date | Result                   |                            |
| Date | Approved or Not Approved |                            |

|  |                                    |                                 |
|--|------------------------------------|---------------------------------|
| <b>Out of Session Paper:</b> August 2023 | <b>Date issued:</b> 23 August 2023 | <b>Record Number:</b> ED23/5969 |
|--|------------------------------------|---------------------------------|

# LORD HOWE ISLAND BOARD

## OUT OF SESSION PAPER

### OPEN SESSION

#### Item

Application for consent to transfer by way of sale 50% of PL1992.01 from Richard James Shick and Debra Lee Smith.

#### Recommendations

1. **The Board recommend** to the Minister to approve the transfer by way of sale of a 25% share PL1992.01, being Lot 313 of DP821319 from Richard James Shick to Louis Sullivan Shick and Anna-Louise Francis Connor Hill as joint tenants.
2. **Following the adoption of Recommendation 1, the Board recommend** to the Minister to approve the transfer by way of mortgage of a 25% share of PL1992.01, being Lot 313 of DP821319 from Louis Sullivan Shick and Anna-Louise Francis Connor-Hill to the Commonwealth Bank of Australia.
3. **The Board recommend** to the Minister to approve the cancellation of the sublease from Debra Lea Smith and Richard James Shick to Louis Sullivan Shick DOC22/901785 (Attachment B).
4. **The Board recommend** to the Minister to approve the transfer by way of sale of a 25% share of PL1992.01, being Lot 313 of DP821319 from Debra Lee Smith to Daryl John Shick.
5. **Note** the suspension of residency for Daryl John Shick over PL1992.01 approved for an indefinite period under *section 21(7A)* of the Act by the Minister on 7 February 2020 remains in force.

#### Current position

Perpetual Lease 1992.01, being Lot 313 of DP821319, is currently held by the following leaseholders as tenants in common:-

- Daryl John Shick – 50% share;
- Richard James Shick – 25% share;
- Debra Lea Smith – 25% share.

At the May 2022 Board Meeting the Board resolved to recommend to the Minister the transfer of Richard James Shick's 25% share and Debra Lea Smith's 25% share of PL1992 to Louis Sullivan Shick by way of sublease citing the following reason:-

- To comply with the residency requirements while we are off the island and until the sale of our shares to Louis Sullivan Shick and Daryl John Shick is finalised.

The Minister approved the sublease application on 25 October 2022. The sublease arrangement will be cancelled as a result of the consents to transfer by way of sale.

Daryl John Shick has an approved suspension of residency under *section 21(7A)* of the *Lord Howe Island Act 1953* (the Act), for an indefinite period approved by the Minister on 7 February 2020 over PL1992.01.

Since the leaseholders inherited PL1992.01 in 2020, it has been the intention of Richard James Shick and Debra Lea Smith to sell their shares within the family, to provide homes for family members that wish to remain on the island.

Applications to transfer by way of sale the 50% share of PL1992.01 from Richard James Shick and Debra Lea Smith have now been received. The proposed transfers are detailed below:-

- Transfer of 25% share of PL1992.01 from Richard James Shick to Louis Sullivan Shick and Anna-Louise Francis Connor-Hill by way of sale as Joint Tenants;
- Transfer of 25% share of PL1992.01 from Debra Lea Smith to Daryl John Shick by way of sale;
- Transfer of 25% share of PL1992.01 from Louis Sullivan Shick and Anna-Louise Francis Connor-Hill by way of mortgage to Commonwealth Bank of Australia.

If approved the transfers would result in PL1992.01 being held as follows:-

- 25% share held by Louis Sullivan Shick and Anna-Louise Francis Connor Hill as joint tenants
- 75% share held by Daryl John Shick as tenants in common with Louis Shick and Anna Connor-Hill

## Context

All land on Lord Howe Island vests to the Crown and may only be dealt with in accordance with the provisions of the Act.

Pursuant to *section 21* of the Act, the Minister is empowered to grant a lease of vacant Crown land for the purpose of residence. Leases granted pursuant to *section 21* of the Act are perpetual (*subsection 21(3)*) and may be held by more than one person as joint tenants or tenants in common (*subsection 21(2)*).

*Section 23* of the Act governs the transfer of perpetual leases, *Subsection 23(1a)* is pertinent in this case.

*Section 23(1)(a)* of the Act provides that “A lease under this Part may be transferred in the prescribed form and manner as to the whole or a part of the land comprised in the lease or may be sublet at any time, but the consideration for the transfer shall not exceed the fair market value of the interest of the transferor in the 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 and, in the case only of a lease of land used for commercial purposes, a sum for the goodwill of the business conducted thereon, being goodwill transferred to the transferee in connection with the transfer of the lease or accruing to the transferee in consequence thereof. Such fair market values and, as the case may require, such sum for goodwill shall be as determined by the Valuer-General.

*Section 3(1A) of the Act provides that ‘A lease may be transferred or subleased to 2 or more persons as joint tenants or tenants in common, but, for the purposes of any transfer or sublease to 2 or more persons who are not all Islanders, a reference in this Part (however expressed) to a person other than an Islander applies in respect of each transferee or sublessee who is not an Islander.*

*Section 23(4) of the Act provides that “The Board shall have an absolute discretion to recommend the granting or refusal of any application for consent under this section, but shall not recommend the granting of consent to a transfer or subletting to any person other than an Islander unless satisfied that there is no Islander who desires and is in a position to take a transfer or sublease, as the case may be, of the lease.”*

The Act does not give any further guidance as to what matters the Board should take into consideration when determining to accept or reject an application. The Board's Transfer of Perpetual Lease Policy adopted in March 2014 does not give any specific policy guidance other than to state in section 3.1:

*“The Board will consider the application in accordance with the Act”*

The proposed transfer is consistent with the relevant sections of the Act and the Lord Howe Island Transfer of Perpetual Lease Policy. Specifically:-

- The applicants have submitted applications in the prescribed form with statutory declarations and detailed timelines as evidence of islander status.
- Both Daryl John Shick and Louis Sullivan Shick satisfy the definition of an Islander under the Act.
- Anna-Louise Connor-Hill attains 10 year islander status on 7<sup>th</sup> September 2023.
- The contracts sale price listed on the prescribed form (Form 5) does not exceed the Valuer General valuation provided with the applications in accordance with s23(1)(a) of the Act.
- Contracts for sale have been entered into and are provided with the applications for consent to transfer, Forms 5.
- Neither Louis Sullivan Shick nor Anna-Louise Francis Connor-Hill currently hold a perpetual lease on Lord Howe Island.
- Daryl John Shick holds and lives on another lease on the island (PL1975.01) and has an approved suspension of residency for PL1992.01 as his second lease granted by the Minister under *section 21(7A)* of the Act on 7 February 2020, when the lease was inherited from his mother May Eleni Shick.
- Louis Sullivan Shick and Anna-Louise Connor-Hill currently reside on PL1992.01, therefore satisfying section 21(7) of the Act.

This paper recommends that the Board:-

- Endorse the applications to transfer 50% interest in PL1992.01 by way of sale.
- Endorse the application to transfer 25% interest in PL1992.01 by way of mortgage to Commonwealth Bank of Australia.

The transfer documents, islander status statutory declarations and contracts for sale, have been reviewed and it has been confirmed that all details provided are accurate and in accordance with the Act.

Noting that Anna-Louise Francis Connor-Hill will not attain 10 year islander status until the 7<sup>th</sup> September 2023. The recommendations will not be referred to the Minister for approval until after that date.

## Attachments

| Attachment | Title   |
|------------|---|
| A          | Statutory Declaration and timeline – 10 year islander – Connor-Hill Anna-Louise - <b>CLOSED</b> |

## Approval and contact

| Approver          | Position   |
|-------------------|--|
| Suzie Christensen | Chief Executive Officer                            |
| Preparer          | Position   |
| Paula Pollock     | Senior Management Environment & Community Services |

## Board Member Recommendation

| No. | Recommendation  | Decision  |
|-----|---|-----------|
| 1   | <b>The Board recommend</b> to the Minister to approve the transfer by way of sale of a 25% share PL1992.01, being Lot 313 of DP821319 from Richard James Shick to Louis Sullivan Shick and Anna-Louise Francis Connor Hill as joint tenants.  | Supported |
| 2   | <b>Following the adoption of Recommendation 1, the Board recommend</b> to the Minister to approve the transfer by way of mortgage of a 25% share of PL1992.01, being Lot 313 of DP821319 from Louis Sullivan Shick and Anna-Louise Francis Connor-Hill to the Commonwealth Bank of Australia. | Supported |
| 3   | <b>The Board recommend</b> to the Minister to approve the cancellation of the sublease from Debra Lea Smith and Richard James Shick to Louis Sullivan Shick DOC22/901785 (Attachment B).  | Supported |
| 4   | <b>The Board recommend</b> to the Minister to approve the transfer by way of sale of a 25% share of PL1992.01, being Lot 313 of   | Supported |

|                | DP821319 from Debra Lee Smith to Daryl John Shick.  |           |
|----------------|---|-----------|
| 5              | <b>Note</b> the suspension of residency for Daryl John Shick over PL1992.01 approved for an indefinite period under <i>section 21(7A)</i> of the Act by the Minister on 7 February 2020 remains in force. | Supported |
| Date           | Result  |           |
| 29 August 2023 | Approved  |           |



# LORD HOWE ISLAND BOARD

## OUT OF SESSION PAPER

### OPEN SESSION

#### Item

Application to transfer Special Lease 2011.11 by way of will – Estate of Raymond John Shick to Jack Campbell Shick

#### Applicant

Estate of Raymond John Shick to Jack Campbell Shick

#### Recommendations

1. **The Board recommends** that the Minister approve the transfer of special lease 2011.11, being Portion 125 of LHI 144, by way of will from the Estate of Raymond John Shick to Jack Campbell Shick subject to the existing conditions of the lease and amended property management plan with an expiry date of 31 December 2025 to coincide with the expiry date of all other special leases on Lord Howe Island.

#### Current position

Mr Raymond John Shick, the holder of Special Lease 2011.11, being Portion 125 of LHI 144 passed away on 5 October 2021. His will provided that all interest in Special Lease 2011.11 be left to his son, Jack Campbell Shick.

The executor of Mr Raymond Shick's estate, Mrs Judith Mary Shick, also passed away on 15 March 2023, before Mr Shick's estate was finalised in relation to the special lease. Special Lease 2011.11 is the only asset remaining unadministered for the Mr Shick's estate.

On 30 June 2023, the Board received a letter from Donovan Oates Hannaford, who act for Jack Shick requesting that Special Lease 2011.11 be transferred to Mr Jack Shick pursuant to the will of Mr Raymond John Shick. The letter advised that no Grant of Probate was applied for or issued having regard to the nature and size of the estate, as the cost of obtaining a Grant would be prohibitive and well in excess of the value of the estate.

Mr Jack Shick's legal representative has provided certified copies of the wills of Mr Raymond John Shick and Mrs Judith Mary Shick as evidence of the appointed executors and beneficiary in relation to Special Lease 2011.11.

The executors of the estate of Judith Mary Shick are Jack Campbell Shick and Cindy Charlton-Shick and administration of the estate of Raymond John Shick and Judith Mary Shick now falls to them.

Pursuant to s44A of the *Probate and Administration Act 1898*, Jack Shick and Cindy Charlton-Shick can sign the transfer of Special Lease 2011.11 and give effect to the terms of Raymond Shick's Will.

On 25 July 2023, the following documents were received to effect the transfer of SL2011.11:-

- Form 5 – Application to transfer SL2011.11 from the Estate of Raymond John Shick to Jack Campbell Shick
- Statutory Declaration – Heritage Islander – Jack Campbell Shick
- Form 3 – Application for special lease SL2011.11 and Property Management Plan. (Attachment A)

## Section 22 Special Leases

All land on Lord Howe Island is Crown land and may only be dealt with in accordance with the provisions of the *Lord Howe Island Act (1953)*

Pursuant to Section 22 of the *Lord Howe Island Act (1953)*, the Act requires that a special lease holder meet the following criteria:

- (1) Subject to this section the Minister may lease Crown lands for cultivation or grazing or cultivation and grazing or for such other purposes as the Minister on the recommendation of the Board may approve.
- (2) The term of a lease under this section may be fixed for any period not exceeding ten years, but such term may, on the recommendation of the Board, be extended by the Minister for such period as the Board may recommend.
- (3) A lease may only be granted under this section to the holder of a lease under section 21 (holder of a lease in perpetuity for the purposes of residence).
- (4) An application for a lease under this section shall be made to the Board in the manner and in or to the effect of the prescribed form.

Jack Campbell Shick meets the above criteria as follows:-

- Has submitted a Property Management Plan showing the existing and proposed land use as nature conservation, regeneration and agriculture for fruit and vegetables;
- Mr Shick is the holder of Perpetual Lease 1954.42; and
- Mr Shick has submitted the application to the Board in the prescribed form.

## Section 23 Transfers and subleases

Section 23(4B) of the Act provides direction with regard to the term and conditions for transfer of leases issued under section 22:-

- (ii) *where the original lease was a lease under section 22, the lease of the part so transferred and the residue so retained shall be each held for the balance of the term for which the original lease was held before the transfer,*
- (iii) *the lease of the part so transferred and the residue so retained shall, as from the transfer, be each held in all respects as a separate lease, but shall, subject to subsection (8) of section 21, or subsection (7) of section 22, as the case may require, and to section 25, be subject to such conditions, reservations or provisions as applied in respect of the original lease immediately before the transfer.*

All special leases are due to expire as at 31/12/2023, including SL2011.11 currently held by the estate of Raymond John Shick. Item 14.04 of the August 2023 board meeting seeks to recommend to the Minister the extension of all special leases to 31/12/2025 subject to the existing conditions of the leases.

Therefore it is recommended that the Minister approve the transfer of SL2011.11 from the estate of Raymond John Shick to Jack Campbell Shick subject to the existing conditions of the lease and amended property management plan with an expiry date of 31 December 2025 to coincide with the expiry date of all other special leases on Lord Howe Island.

## Attachments

| Attachment | Title  |
|------------|--|
| A          | Form 3 – SL2011.11 – Application for special lease and Property Management Plan – Jack Shick |

## Approval and contact

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

## Board Member Recommendation

| No.            | Recommendation  | Decision  |
|----------------|---|-----------|
| 1              | <b>The Board recommends</b> that the Minister approve the transfer of special lease 2011.11, being Portion 125 of LHI 144, by way of will from the Estate of Raymond John Shick to Jack Campbell Shick subject to the existing conditions of the lease and amended property management plan with an expiry date of 31 December 2025 to coincide with the expiry date of all other special leases on Lord Howe Island. | Supported |
| Date           | Result  |           |
| 30 August 2023 | Approved  |           |



**Form 3 Application for special leases**

Lord Howe Island Board  
(Clause 37 (2))

Lord Howe Island Act 1953, section 22

I, [full name] Jack Campbell Shuck apply for special lease for the purpose of  
[state use intended to be made of land] Nature Conservation, Regeneration  
+ Agriculture - fruits + vegetables

of the land described below (and shown on the accompanying sketch—required if the land is  
not a measured portion):

I have made the declaration on the back of this form.

Signed this 2nd day of August, 2023

Signature: [Signature]

Address: Portion 126, Lagoon Rd, Lord Howe Island  
NSW 2898

To the Chairperson,  
Lord Howe Island Board.

**Declaration by applicant**

I, [full name] Jack Campbell Shick, of [address], Portion 126  
Lagoon Rd, Lord Howe Island NSW 2898

solemnly declare and affirm that I am the applicant for a special lease of the land described on the front and that the answers to the questions in the Schedule are correct.

**Schedule**

|   |     |  |   |
|---|-----|--|---|
| 1 | (a) | Are you the holder of a lease in perpetuity for residence under section 21 of the <u>Lord Howe Island Act 1953</u> ?                     | Yes   |
|   | (b) | If you are not the holder at present, have you applied for such a lease?   |   |
| 2 | (a) | Are you already using the land the subject of this application?  | Yes, I have been caring for it since Dad died           |
|   | (b) | If so, for what purpose and for how long?  | Vegetable garden & revegetation of natives              |
| 3 |     | Are there any improvements on the land the subject of this application? Give brief particulars and estimated values of the improvements. | Yes, Further revegetation of natives, approx 500 plants |

I make this solemn declaration as to the above matters according to the law in this behalf made and subject to the punishment by law provided for any wilfully false statement in any such declaration.

Signature of Declarant: \_\_\_\_\_

Made before me at LORD HOWE ISLAND

this 2ND day of AUGUST, 20 23.

JUSTICE OF THE PEACE 250582

Signature of a Justice of the Peace, Commissioner for Affidavits or Notary Public:



**PROPERTY MANAGEMENT PLAN**

**Special Lease No:** 2011.11  
**Portion/Lot No:** 125  
**Leaseholder:** Jack Shick

Lord Howe Island Board

|  |   |
|--|---|
| Site description   | Portion 125 is adjacent to Lagoon foreshore. Soldiers Creek line terminates into an estuarine creek lined by a species of mangrove ( <i>Aegiceras corniculatum</i> ) that only occurs on the Island at this location.   |
| Existing and proposed land use                             | Nature conservation<br>Regeneration<br>Agriculture – fruits and vegetables  |
| Management priorities and responsibilities and timeframes. | <p>Leaseholder responsibility:</p> <ul style="list-style-type: none"> <li>• Repair and make good all boundary fences as required</li> <li>• Maintain lease in accordance with LHIB lease conditions, particularly for the control of pests and declared noxious weeds and other weeds identified under the LHI Weed Management Strategy 2016-25.</li> </ul> <p>LHIB responsibility:</p> <ul style="list-style-type: none"> <li>• Maintain regeneration program for mangroves within fenced off areas along the estuarine creek (i.e. Zone C).</li> <li>• Ensure electric fences for regeneration area are in good working order.</li> </ul> |
| Issues/Threats   | <p>Weed invasion</p> <p>Myrtle rust</p> <p>Phytophthora</p> <p>Water quality</p>  |

*Caroline*  
 Team Leader World Heritage  
 318123

*Jon*

3/8/23

**RECEIVED**  
03 AUG 2023

Lord Howe Island Board



Special Lease  
2011.11

Scale 1:1,000 @ A4

Special Lease 2011.11  
Zones  
A  
C  
DCD5



50012012

R. J. Shirk  
16.1.13.

JS 3/8/23

*Team leader World Heritage*  
318123



|  |                                    |                                 |
|--|------------------------------------|---------------------------------|
| <b>Out of Session Paper:</b> August 2023 | <b>Date Issued:</b> 20 August 2023 | <b>Record Number:</b> ED23/6002 |
|--|------------------------------------|---------------------------------|

# LORD HOWE ISLAND BOARD

## OUT OF SESSION PAPER

### OPEN SESSION

#### Item

Application to transfer a one third share of Special Lease SL2011.13 by way of will from the Estate of Barry Malcolm Thompson to Marie Thompson.

#### Applicant

Estate of Barry Malcolm Thompson to Marie Thompson

#### Recommendations

1. **The Board recommends** that the Minister approve the transfer of a one third share of Special Lease 2011.13, being Lot 214 of DP45693, from the Estate of Barry Malcolm Thompson to Marie Thompson subject to the conditions of the existing lease which expires on 31 December 2025 to coincide with the expiry date of all other special leases on Lord Howe Island.

#### Current position

Mr Barry Malcolm Thompson, the one third share holder of Special Lease 2011.13, being Lot 214 of DP45693 passed away on 6<sup>th</sup> March 2019. The other one third shareholders of this lease, being Mr Desmond Thompson and Mr Rodney Thompson.

The executor of the Estate of Barry Thompson is NSW Trustee & Guardian and the administration of the estate has been a long and protracted process.

On 18 April 2023, a letter was received from NSW Trustee & Guardian enclosing a copy of the Grant of Probate. As executor, NSW Trustee & Guardian has the legal authority to divest the estate of the late Barry Malcolm Thompson.

Under Clause 3.1 of the will, the deceased gifted all of his property to his surviving wife Marie Thompson.

On 3 July 2023, NSW Trustee & Guardian submitted the following documents to effect the transfer of a one third share SL2011.13 to the beneficiary Mrs Marie Thompson:-

- Form 5 – Application to transfer a one third share of SL2011.13 from the Estate of Barry Malcolm Thompson to Marie Thompson
- Statutory Declaration – 10 year islander – Marie Thompson
- The existing Property Management Plan signed by all parties including Marie Thompson and NSW Trustee & Guardian (Attachment A)



## Section 22 Special Leases

All land on Lord Howe Island is Crown land and may only be dealt with in accordance with the provisions of the *Lord Howe Island Act (1953)*.

Pursuant to Section 22 of the *Lord Howe Island Act (1953)*, the Act requires that a special lease holder meet the following criteria:

- (1) Subject to this section the Minister may lease Crown lands for cultivation or grazing or cultivation and grazing or for such other purposes as the Minister on the recommendation of the Board may approve.
- (2) The term of a lease under this section may be fixed for any period not exceeding ten years, but such term may, on the recommendation of the Board, be extended by the Minister for such period as the Board may recommend.
- (3) A lease may only be granted under this section to the holder of a lease under section 21 (holder of a lease in perpetuity for the purposes of residence).
- (4) An application for a lease under this section shall be made to the Board in the manner and in or to the effect of the prescribed form.

Marie Thompson meets the above criteria as follows:-

- NSW Trustee & Guardian have submitted a Property Management Plan showing the existing and proposed land use as nature conservation, kentia seed harvesting;
- Mrs Thompson is one third share holder of Perpetual Lease 1954.10 and sole holder of Perpetual Lease 1975.08; and
- Mrs Thompson has submitted the application to the Board in the prescribed form.

## Section 23 Transfers and subleases

Section 23(4B) of the Act provides direction with regard to the term and conditions for transfer of leases issued under *section 22*:-

- (ii) *where the original lease was a lease under section 22, the lease of the part so transferred and the residue so retained shall be each held for the balance of the term for which the original lease was held before the transfer,*
- (iii) *the lease of the part so transferred and the residue so retained shall, as from the transfer, be each held in all respects as a separate lease, but shall, subject to subsection (8) of section 21, or subsection (7) of section 22, as the case may require, and to section 25, be subject to such conditions, reservations or provisions as applied in respect of the original lease immediately before the transfer.*

All special leases are due to expire as at 31/12/2023, including SL2011.13 currently held by the Estate of Barry Malcolm Thompson, Desmond Thompson and Rodney Thompson as Tenants in Common. Item 14.04 of the August 2023 Board Meeting seeks to recommend to the Minister the extension of all special leases to 31/12/2025 subject to the existing conditions of the leases.

Therefore it is recommended that the Minister approve the transfer of a one third share of SL2011.13 from the Estate of Barry Malcolm Thompson to Marie Thompson subject to the existing conditions of the lease and amended property management plan with an expiry date of 31 December 2025 to coincide with the expiry date of all other special leases on Lord Howe Island.

## Attachments

| Attachment | Title                                |
|------------|--------------------------------------|
| A          | SL2011.13 - Property Management Plan |

## Approval and contact

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

## Board Member Recommendation

| No.            | Recommendation  | Decision  |
|----------------|---|-----------|
| 1              | <b>The Board recommends</b> that the Minister approve the transfer of a one third share of Special Lease 2011.13, being Lot 214 of DP45693, from the Estate of Barry Malcolm Thompson to Marie Thompson subject to the conditions of the existing lease which expires on 31 December 2025 to coincide with the expiry date of all other special leases on Lord Howe Island. | Supported |
| Date           | Result  |           |
| 29 August 2023 | Approved  |           |

# PROPERTY MANAGEMENT PLAN

Special Lease No: 2011.13  
Portion No: 214  
Lease Holder: B, D, & R, Thompson

|                       |   |
|-----------------------|---|
| Site description      | Portion 214 is mapped as significant native vegetation under the LHI Local Environmental Plan, 2010 and consists of largely undisturbed native vegetation which is of high conservation value.  |
| Existing land use     | Nature conservation, kentia seed harvesting   |
| Management priorities | <p>Current:<br/>Maintain lease in accordance with LHIB lease conditions, particularly for the control of pests and declared noxious weeds.<br/>Maintain sustainable harvesting regime.</p> <p>Future:<br/>Maintain sustainable harvesting regime.</p> |
| Issues/Threats        | Weed invasion from woody weeds, particularly Cherry Guava, Pittosporum, and Cotoneaster   |

*[Signature]*  
B. D. Thompson  
12.12.12

*[Signature]*  
D. K. Thompson  
12.12.12

*[Signature]*  
R. L. Thompson

*[Signature]* 28/10/22

*[Signature]* 4/11/22

*[Signature]*

FOR NEW TRUSTEE & GUARDIAN  
EXECUTOR OF THE ESTATE OF  
BARRY MALCOLM THOMPSON  
1/2/23

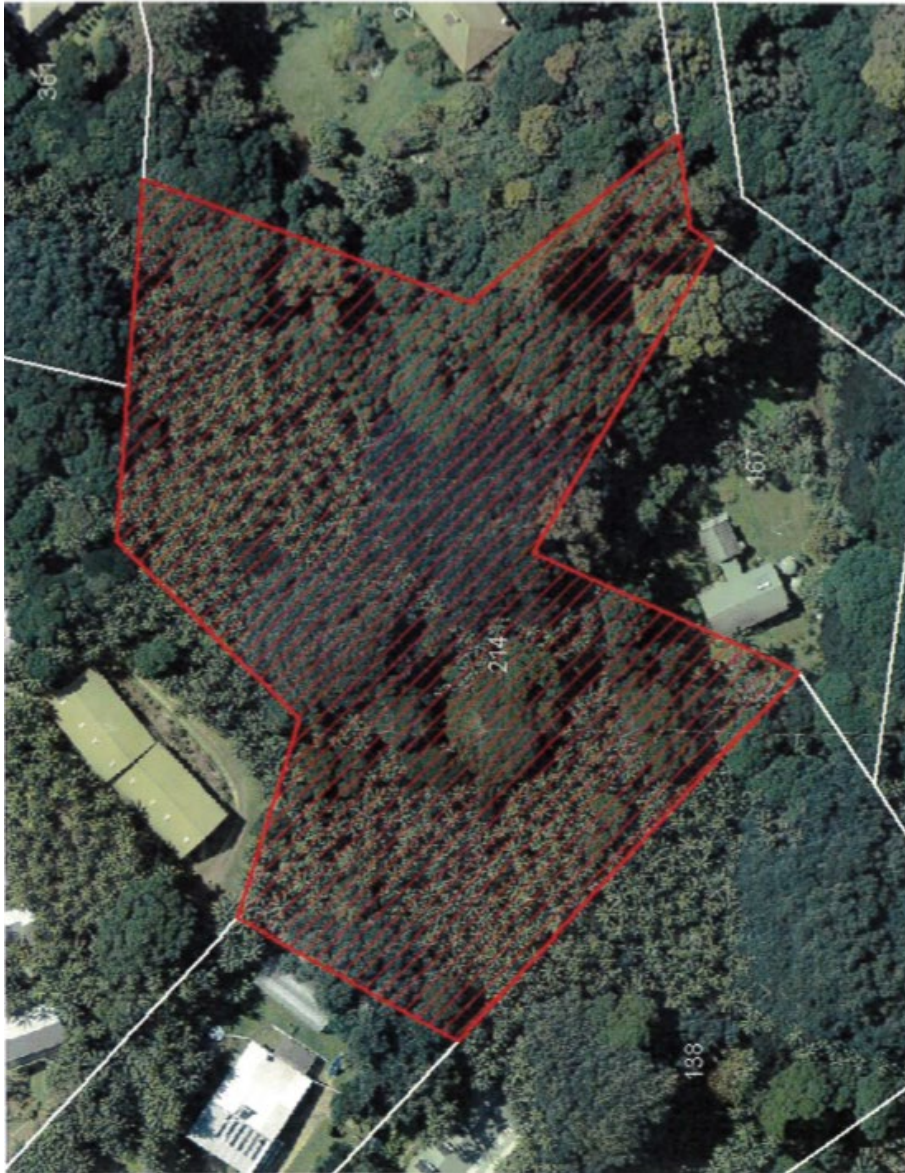


Special Lease  
2011.13

*B. M. Thompson*  
B.M. Thompson  
11/1/12  
*D. M. Thompson*  
D.M. Thompson  
11/1/12  
Scale 1:1,000 @ A4  
*B. M. Thompson*  
Special Lease 2011.13  
Zone C  
DOB



50d/2012  
11/1/12



*B. M. Thompson* 28/10/22

*D. M. Thompson* 4/11/22

*[Signature]*

FOR NEW TRUSTEE & GUARDIAN  
EXISTOR OF THE ESTATE OF  
BARRY MALCOLM THOMPSON  
11/2/23



# LORD HOWE ISLAND BOARD

## OUT OF SESSION PAPER

### OPEN SESSION

#### Item

Application to import a Commercial Use Vehicle under Exceptional Circumstances – Judy Riddle, Leanda Lei

#### Applicant

Judy Riddle, Leanda Lei

#### Recommendations

1. **Approve** the importation of a commercial use Toyota Hiace Bus under exceptional circumstance to replace Leanda Lei's current commercial use Toyota Hiace Bus CE72MY
2. **Note** an amendment to the Vehicle Importation Transfer and Use Policy to be tabled at the December 2023 Board Meeting to address the maximum size requirements for commuter buses.

#### Current position

On 10<sup>th</sup> July 2023, Judy Riddle applied to import a commercial Toyota Hiace 12-seater commuter bus as a replacement for Leanda Lei's current commercial use Toyota Hiace bus, CE72MY, under exceptional circumstance:

The bus exceeds the maximum allowable length and height for a commercial use vehicle as per Section 3.8 of the Vehicle Transfer and Use Policy: -

- a) Length 5330mm (not including tow ball);
- b) Width 1855mm (not including side mirrors); and
- c) Height 1815mm (not including roof racks, roll bars or headboard on the tray).

Dimensions of bus applied for:

- a) Length 5915mm – does not comply with policy;
- b) Width 1850mm – complies (with side mirrors 1950mm);
- c) Height 2280mm – does not comply with policy

#### Justification for application under Exceptional Circumstances

Judy Riddle has stated the Toyota Hiace Commuter Bus applied for has been in production since 2019 and is now the standard model. She is unable to obtain an exact like for like bus

as her current model is now out of production.

Leanda Lei requires a 12-seater bus for their tourist accommodation business which accommodates 40 persons to provide airport and restaurant transfers. If a replacement 12-seater bus is not approved, then in order to run her business effectively, she would need two smaller (8seater) buses which would not be in her interest or the interest of the island.

Arajilla was given approval outside of policy on 10/09/2019 by then CEO Peter Adams to import the same bus as Judy Riddle has applied for.

The new models of 12-seater commuter buses fall outside the size requirements of the current policy, and it is suggested that the vehicle policy is amended to address the issue.

The maximum size requirements for private and commercial vehicles were increased last in May 2017.

## Conclusion

Recommend approval of Judy Riddle's application under exceptional circumstances.

Note that an amendment to Vehicle Importation Transfer and Use Policy will be tabled at the December 2023 board meeting to address the maximum size requirements for commuter buses.

## Attachments

| Attachment | Title |
|------------|-------|
| NIL        |       |

## Approval and contact

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

## Board Member Recommendation

| No. | Recommendation   | Decision  |
|-----|--|-----------|
|     | 1. <b>Approve</b> the importation of a commercial use Toyota Hiace Bus under exceptional circumstance to replace Leanda Lei's current commercial use Toyota Hiace Bus CE72MY | Supported |
|     | 2. <b>Note</b> an amendment to the Vehicle Importation Transfer and Use Policy   | Supported |

|                |  |  |
|----------------|--|--|
|                | to be tabled at the December 2023 Board Meeting to address the maximum size requirements for commuter buses. |  |
| <b>Date</b>    | <b>Result</b>  |  |
| 29 August 2023 | Approved   |  |



# LORD HOWE ISLAND BOARD

## OUT OF SESSION PAPER

### OPEN SESSION

#### Item

---

Application to import a Commercial Use Vehicle under Exceptional Circumstances – Karen Giles – Ned’s Beach Hire

#### Applicant

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Karen Giles – Ned’s Beach Hire

#### Recommendations

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1. **Approve** the importation of a commercial use Suzuki Ignis GL to replace Ned’s Beach Hire current commercial use Toyota Yaris CA30PG and the retention of the private use vehicle, Honda Scooter KOW07 under exceptional circumstance.

#### Current position

---

Karen Giles currently has the following vehicles:

- Private Use Honda Scooter KOW07; and
- Commercial Use Toyota Yaris CA30PG.

On 20<sup>th</sup> July 2023, Karen Giles applied to import a commercial Suzuki Ignis GL as a replacement Ned’s Beach Hire’s current commercial use Toyota Yaris, CA30PG.

Karen’s application was refused on 10 August 2023 for the following reason:

- 1) There is insufficient justification to allow for approval of two separate vehicles to service your private and commercial needs as per ‘Section 7.1.2 and 8.2 of the Vehicle Importation Transfer & Use Policy’.

On 14 August 2023, Karen requested that the application and decision be reviewed by the full Board with attention to her justification to retain one private use vehicle and one commercial use vehicle under exceptional circumstance.

#### Justification for application under Exceptional Circumstances

In an email dated 14<sup>th</sup> August 2023, Karen Giles’ details her justification, the contents of which of which are below:

*I currently have a small Honda scooter as my private use vehicle. I use this daily to reduce petrol consumption and due to my residence, that is located at southern end of the Island.*

*I also have a small vehicle for commercial use which I use to transport goods and equipment to my business located at the Northern end of the Island Ned’s Beach Hire. I also use my vehicle for my on-call responsibilities for my employment by NSW Health as a RN to respond*



*to call outs either to present to the hospital or to the scene of any accident or retrieval if the ambulance has already been dispatched.*

*My daily use of a vehicle is my scooter due to cost of petrol and less impact on environment. I use my car only to transport equipment to my business attend to emergency call outs or if the weather is unsuitable to ride my scooter. Also to go to the WMF when required.*

*I check my business at least 2/3 times daily or prn on request and due to the cost of petrol and the location of my home using my scooter when I can is more affordable to my circumstances. I have numerous additional members of my family & friends at my home frequently and they have been assisting me to restore my home and business after my recent bereavement.*

*My original application on June 23rd was to replace my small commercial vehicle with another small vehicle that was preferred small vehicle size as per vehicle policy;*

*I was hoping to get an electric vehicle unfortunately the cost exceeded my budget at present. However now I am requesting review of the decision for me to remove one of my current vehicles off Island.*

The LHIB Vehicle Importation Transfer and Use Policy states:

#### **7.1.2 Vehicles for Commercial Use**

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

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

#### **8.1 Private Use**

*One (1) vehicle per approved dwelling.*

#### **8.2 Commercial Use**

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

#### **10.2c) Commercial Approval**

*A commercial vehicle cannot be used for private use where a person also has approval for a private vehicle (other than when the private use vehicle is a motor bike, motor scooter etc).*

### **Conclusion**

The retention and dual use of two vehicle is permissible as the private use vehicle is a scooter if the transport needs of the business cannot be met by a scooter. The applicant states that they cannot, as it is sometimes required to move goods and equipment. It is recommended to approve the replacement commercial use vehicle.

| Attachment | Title   |
|------------|---|
| A          | Letter – Refusal – Import – Commercial Use Vehicle – Giles Karen – August 2023 - Open   |
| B          | Supporting Letter – Vehicle Application – NSW Health – Giles Karen – August 2023 - Open |

## Approval and contact

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

## Board Member Recommendation

| No.            | Recommendation  | Decision  |
|----------------|---|-----------|
| 1              | <b>Approve</b> the importation of a commercial use Suzuki Ignis GL to replace Ned's Beach Hire current commercial use Toyota Yaris CA30PG and the retention of the private use vehicle, Honda Scooter KOW07 under exceptional circumstance. | Supported |
| Date           | Result  |           |
| 29 August 2023 | Approved  |           |

Record Number: ED23/4727.08  
Enquiries: Suzie Christensen

10 August 2023

Karen Giles  
Mountain Inn  
LORD HOWE ISLAND NSW 2898

[karen.giles.lhi@hotmail.com](mailto:karen.giles.lhi@hotmail.com)



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](mailto:administration@lhib.nsw.gov.au)

Dear Karen

## RE: APPLICATION TO IMPORT A COMMERCIAL USE VEHICLE

Further to your application requesting the importation of a commercial use vehicle, I respectfully advise that approval has been refused by the Board, for the following reason:

- 1) There is insufficient justification to allow for approval of two separate vehicles to service your private and commercial needs as per 'Section 7.1.2 and 8.2 of the Vehicle Importation Transfer & Use Policy'.

Accordingly, the following applies:

- 2) Advice is required within 28 days as to which vehicle you wish to retain. Either the Toyota Yaris, Registration Number CA30PG (commercial use vehicle) or the Honda Dio Scooter, Registration Number KOW07 (private use vehicle). Note that a private use vehicle can be used for commercial purposes and vice versa.
- 3) Evidence of removal of the either CA30PG or KOW07 must be supplied to the Board's Administration Office in the form of a Consignment Note from the shipping company. If you wish to apply to transfer either vehicle on island, please do so on the prescribed form 'Application to transfer a vehicle'. A verbal agreement to sell before receiving approval is a significant risk to the seller.

A failure to comply with the above conditions may result in the withdrawal of the approval/s, the issue of fines and confiscation of the vehicle under Part 8 of the *Lord Howe Island Regulation 2014*.

If you are dissatisfied with a decision made by the Lord Howe Island Board you may request an internal review. The internal review process aims to resolve disputes with applicants and assist in avoiding potentially expensive external review mechanisms. Internal Review requests must be submitted within 28 days of receiving written notification of the decision.

For further information please refer to the Review of Board Decisions Information Sheet, available on request or directly from the Board's [website](#). This Information Sheet also provides information in regard to the various mechanisms available to appeal and/or obtain further scrutiny of a decision, including via the NSW Land and Environment Court, the NSW Ombudsman and the NSW Independent Commission Against Corruption (ICAC).



WORLD HERITAGE AREA

Should you need further information regarding this matter, please contact the Board's administration office 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



**Health**  
South Eastern Sydney  
Local Health District

Ref: T23/41456

Karen Giles  
DOB: 04/03/1958  
Employee Number: 53044285  
P.O. Box 134  
Lord Howe Island  
NSW 2898

To whom it may concern

**ESSENTIAL WORKER**

I am writing to declare that Karen Giles is an essential worker and requires a new vehicle imported to support her in this role.

Karen is currently employed as a Registered Nurse at Gower Wilson Memorial Hospital on Lord Howe Island. This role requires Karen to be on-call after hours on a regular basis. When a call for medical assistant is received, Karen is required to make her way to the hospital and respond as directed. To ensure Karen can safely fulfil her role, she requires a reliable and safe vehicle.

Please contact me if you require any additional information. I can be reached via email:  
Norbert.pereira@health.nsw.gov.au.

Yours sincerely

Norbert Pereira  
**A/ Nurse Manager – Nursing & Midwifery Development & Design, SESLHD**  
**A/ Operations Manager – Gower Wilson Memorial Hospital, Lord Howe Island**

Date: 22 June 2023

Cc: Karen Giles, Registered Nurse, Gower Wilson Memorial Hospital

|  |                                    |                                 |
|--|------------------------------------|---------------------------------|
| <b>Out of Session Paper:</b> August 2023 | <b>Date issued:</b> 20 August 2023 | <b>Record Number:</b> ED23/6017 |
|--|------------------------------------|---------------------------------|

# LORD HOWE ISLAND BOARD

## OUT OF SESSION PAPER

### OPEN SESSION

#### Item

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Application to import a Commercial Use Vehicle under Exceptional Circumstances – Josh Owens

#### Applicant

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Josh Owens

#### Recommendations

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1. **Approve** the importation of a commercial use vehicle under exceptional circumstances to replace Josh Owens' current commercial use vehicle AI88UR with an extra condition stating importation of the new vehicle and removal of the old vehicle must occur on the same voyage, one-on, one-off.
2. **Advise** the applicant that a Sales Order/Consignment Note from Birdon must be provided to the Board, showing the voyage number and date of the importation and removal of the vehicles, **prior** to a conditional approval letter being issued to Josh Owens.
3. **Approve** the removal of Josh Owens' previous commercial use vehicle BD26NB from the Board's vehicle register.
4. **Approve** the retrospective approval of an unregistered trailer for Deon Nobbs.

#### Current position

---

On 25<sup>th</sup> July 2023, Josh Owens applied to import a commercial vehicle as a replacement for his current commercial use vehicle AI88UR under exceptional circumstances:

- a) he does not meet the private use eligibility criteria under Section 7.1.1 1a) of the Vehicle Importation, Transfer and Use Policy – has not resided on the island for a continuous period of 24 months at the time of application; and
- b) non-removal of a previous commercial use vehicle BD26NB.

#### Justification for his application under Exceptional Circumstances

##### **Section 7.1 Vehicles for Private Use**

4) *A person who can demonstrate exceptional circumstance which cannot be addressed by this policy. In such cases, the Board may exercise discretion, provided that the applicant has demonstrated that no viable alternative to the importation and use of a vehicle exists.*

### **Section 7.1.2 Vehicles for Commercial Use**

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

- Josh is the owner of Perpetual Lease 2015.01;
- Josh was absent from the island from approximately October 2020 to December 2022 and is unable to meet the private use eligibility in the policy.
- Josh's absence was to enable him to upskill and refresh his trade knowledge so that he could best service the island's plumbing needs on his return. He worked for 1 year as a plumber in Antarctica and 1 year in Perth.
- Josh maintained his business licence and worked sporadically on the island during this period of absence.
- The dimensions of the vehicle are under the maximum size allowable for a commercial use vehicle as per 3.8 of the policy.
- The vehicle Josh Owens wishes to import has a nudge bar. This is essential so that he can install a pipe rack to transport material for work purposes. 3.12 of the policy states that where the vehicle comes standard with a 'nudge bar' the CEO of the Board will take this into consideration when assessing a request to import a vehicle

Josh did not obtain approval to sublease or suspend the condition of residency for PL2015.01 while absent from the island. However, his absence could be construed as a permitted absence: -

The Act defines what is meant by residing on the Island as the Island is the person's home, continually and in good faith, at that time, with no other habitual residence. There are two exceptions where absence from the Island will not affect residency. A person will be regarded as having continued to reside on the Island if the person is only absent from their usual home on the Island:

- To attend an educational institution off the Island; or
- To gain employment experience off the Island where the periods of absence for this purpose do not total more than 10 years.

These absences are referred to as permitted absences.

### **Compliance Issue**

During the application assessment process, a compliance issue was identified. The vehicle register shows that Josh Owens currently has 2 x commercial vehicles on the island: -

- BD26NB – Commercial Toyota Hilux Ute, which, as part of Josh's conditional approval for AI88UR should have been removed from the island in 2015.
- AI88UR – Commercial Toyota Hilux Ute, which is Josh's current commercial vehicle.

Josh was asked to provide evidence of removal of the Toyota Hilux Ute BD26NB in the form of a consignment note from the shipping company.

On 3 August 2023, Josh submitted a NSW Statutory Declaration outlining the part removal and whereabouts of the remainder of BD26NB (**Attachment A**) summary as follows: -

- BD26NB was stripped for parts;
- The front section of BD26NB was taken off the island by the Fulton Hogan Barge in the island clean-up in 2015. Josh worked for Fulton Hogan on the airport re-seal

project and in the absence of evidence of its removal completed the statutory declaration;

- The tray of BD26NB was converted into a trailer which is unregistered and used on his private property only (photo supplied in Attachment A).

## Conclusion

Josh does reliably fill an ongoing need for plumbing services on the island and requires a working vehicle to carry out his business activities, that is not at question.

Recommend approval of Josh Owens application with extra conditions as detailed in the Recommendations 1-4.

## Attachments

| Attachment | Title  |
|------------|--|
| A          | Statutory Declaration – Status of Toyota Hilux BDN26NB |

## Approval and contact

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

## Board Member Recommendation

| No. | Recommendation   | Decision  |
|-----|--|-----------|
|     | 1. <b>Approve</b> the importation of a commercial use vehicle under exceptional circumstances to replace Josh Owens' current commercial use vehicle AI88UR with an extra condition stating importation of the new vehicle and removal of the old vehicle must occur on the same voyage, one-on, one-off. | Supported |
|     | 2. <b>Advise</b> the applicant that a Sales order/Consignment Note from Birdon must be provided to the Board, showing the voyage number and date of the importation and removal of the vehicles, <b>prior</b> to a conditional approval letter being issued to Josh Owens.                               | Supported |



|                |  |           |
|----------------|--|-----------|
|                | 3. <b>Approve</b> the removal of Josh Owens' previous commercial use vehicle BD26NB from the Board's vehicle register. | Supported |
|                | 4. <b>Approve</b> the retrospective approval of an unregistered trailer for Deon Nobbs.                                | Supported |
|                |  |           |
| <b>Date</b>    | <b>Result</b>  |           |
| 29 August 2023 | Approved   |           |

**Statutory Declaration**  
OATHS ACT 1900, NSW, EIGHTH SCHEDULE

I, JOSH OWENS, do solemnly and sincerely declare that  
[name of declarant]

My old ute Toyota Hilux rego BD26NB was stripped for parts. The front section was taken off island by Fulton Hogan Barge + in the island clean-up.

Dean Nobbs has converted the tray into a trailer which he only uses on private property.

and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1900*.

Declared at: LORD HOWE ISLAND on 3rd AUGUST 2023  
[place] [date]

[Signature]  
[signature of declarant]

in the presence of an authorised witness, who states:

I, AMY LOUISE HICKEY, a JUSTICE OF THE PEACE 250582  
[name of authorised witness] [qualification of authorised witness]

certify the following matters concerning the making of this statutory declaration by the person who made it: [\* please cross out any text that does not apply]

1. \*I saw the face of the person ~~OR \*I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification<sup>1</sup> for not removing the covering, and~~
2. \*I have known the person for at least 12 months ~~OR \*I have confirmed the person's identity using an identification document and the document I relied on was~~

[Signature]  
[signature of authorised witness]

[describe identification document relied on]  
3rd AUGUST 2023  
[date]

<sup>1</sup> The only "special justification" for not removing a face covering is a legitimate medical reason (at September 2018)



Tray of BD26NB used by Deon NoYs  
on private property only





Working for Fulton Hogan on the airstrip re-seal project

|  |                                    |                                 |
|--|------------------------------------|---------------------------------|
| <b>Out of Session Paper:</b> August 2023 | <b>Date issued:</b> 04 August 2023 | <b>Record Number:</b> ED23/5887 |
|--|------------------------------------|---------------------------------|

# LORD HOWE ISLAND BOARD

## OUT OF SESSION PAPER

### OPEN SESSION

#### Item

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Assessment Report – OC 2023.1.1 and DA2023.1.1.

#### Applicant

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Diane Owens

#### Recommendations

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1. **Approve** OC2023.1.1 for the proposed construction of a 1-bedroom tourist accommodation cabin, transit lounge, laundry and install new wastewater system on Lot 1 DP 1261010, Anderson Road, Lord Howe Island.
2. **Approve** DA2023.1.1 for the proposed construction of a 1-bedroom tourist accommodation cabin, transit lounge, laundry and install new wastewater system on Lot 1 DP 1261010, Anderson Road, Lord Howe Island, subject to the application of the conditions listed in the assessment report.

#### Current position

---

On 20 April 2023, Owner Consent application OC2023.1.1 and Development Application DA2023.1.1 was lodged by Diane 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. No submissions were received.

An assessment report has been prepared 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. Given the extenuating circumstances, the applicant requested that this development application be considered out of session. The Board considered the situation, and at the May 2023 meeting approved an out of session review and determination of this application.

The Board's independent planning consultant has assessed the development application regarding the provisions of Section 4.15 of the Environment Planning & Assessment Act 1979, the Lord Howe Island Local Environmental Plan 2010 and Development Control Plan 2005, and the relevant codes and policies of the Lord Howe Island Board.

The application for construction of a 1-bedroom tourist accommodation cabin, transit lounge, laundry and new wastewater system is supported subject to the application of a number of conditions (1-15) outlined in the assessment report.

Three key amendments included in the conditions relate to a required reduction in site coverage of the proposal, a rectification of the existing encroachments of the internal driveway onto adjoining properties, and the removal/rehabilitation of an unapproved pedestrian path through Significant Native Vegetation in the near vicinity of the proposed development.

## Attachments

| Attachment | Title  |
|------------|--|
| A          | Assessment Report - Final - OC2023.1.1 and DA2023.1.1 - Owens Diane - 19 July 2023 |

## Approval and contact

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

## Board Member Recommendation

| No.        | Recommendation   | Decision                              |
|------------|--|---------------------------------------|
| 1          | 1. <b>Approve</b> OC2023.1.1 for the proposed construction of a 1-bedroom tourist accommodation cabin, transit lounge, laundry and install new wastewater system on Lot 1 DP 1261010, Anderson Road, Lord Howe Island.   | Deferred to August 2023 Board Meeting |
| 2          | 1. <b>Approve</b> DA2023.1.1 for the proposed construction of a 1-bedroom tourist accommodation cabin, transit lounge, laundry and install new wastewater system on Lot 1 DP 1261010, Anderson Road, Lord Howe Island, subject to the application of the conditions listed in the assessment report. | Deferred to August 2023 Board Meeting |
| Date       | Result   |                                       |
| 10/08/2023 | Deferred to August 2023 Board Meeting  |                                       |

|                      |                    |                               |
|----------------------|--------------------|-------------------------------|
| Out of Session Paper | Month: August 2023 | File Reference: OC&DA2023.1.1 |
|----------------------|--------------------|-------------------------------|

# LORD HOWE ISLAND BOARD

## Out of Session Planning Assessment Report

Item: **OC&DA2023.1.1** – Construction of a 1 bedroom tourist accommodation cabin, transit lounge, laundry and install new wastewater system, at Lot 1 DP 1261010, Anderson Road, Lord Howe Island.

### 1 Summary Assessment Report

|  |   |
|--|---|
| <b>Assessment Officer</b>                | Peter Chapman – AAP Consultant Planner  |
| <b>Address/Property Description</b>      | Lot 1 DP 1261010, Anderson Road, Lord Howe Island   |
| <b>Proposal</b>                          | Construction of a 1 bedroom tourist accommodation cabin, transit lounge, laundry and install new wastewater system  |
| <b>DA No</b>                             | DA2023.1.1  |
| <b>Planning Portal Ref</b>               | PAN-300008  |
| <b>Applicant</b>                         | Mrs Diane Owens   |
| <b>Owner Consent Granted</b>             | Owners Consent application has been lodged and processed concurrently with the associated DA. The recommendation of this report includes a proposed resolution to issue the owners consent.   |
| <b>Estimated Cost of Development</b>     | \$400,000.00  |
| <b>Site Inspection</b>                   | Inspections of the subject site have been carried out by LHIB officers.   |
| <b>Zone</b>                              | Zone 2 Settlement. The proposed development is permissible with consent.  |
| <b>Significant Native Vegetation Map</b> | No Significant Native Vegetation (SNV) will be damaged or removed as part of this application.  |
| <b>Notification</b>                      | The DA was placed on public exhibition 21 April 2023 to 5 May 2023  |
| <b>Submissions Received</b>              | The LHIB has advised that no objections were received.  |
| <b>Recommendation</b>                    | <p>a) That OC2023.1.1 for the proposed construction of a 1 bedroom tourist accommodation cabin, transit lounge, laundry and install new wastewater system on Lot 1 DP 1261010, Anderson Road, Lord Howe Island be issued.</p> <p>b) That DA2023.1.1 for the proposed construction of a 1 bedroom tourist accommodation cabin, transit lounge, laundry and install new wastewater system on Lot 1 DP 1261010, Anderson Road, Lord Howe Island be approved subject to the application of the conditions listed in the report.</p> |



## **2 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:

1. The value of the development must not exceed \$2,000,000
2. 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.
3. The owner's consent must not relate to a proposed development application for the subdivision of land.
4. The OC must not relate to the creation of new residential dwellings.

### Development Application Delegations

The LHIB CEO and Chairperson have 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 delegations to the CEO due to the estimated cost of development being \$400,000.00. In addition the proposed development is indicated on the submitted plans as having a setback to (a non-formed section of) the Anderson Road reserve of 5m which doesn't comply with 10m setback requirement of the LHI LEP 2010. Accordingly the applications are being referred to the full LHIB for determination.

## **3 Site Description**

The subject site is legally described as Lot 1 DP 1261010, Lord Howe Island and was previously part of Lorhiti Lodge prior to a two lot subdivision of the property which was registered 9<sup>th</sup> March 2020. The lot is irregular in shape and has a site area of 3,735.5m<sup>2</sup>.

As can be seen in the aerial image of the site at Figure 1 the site has both heavily vegetated and existing cleared areas. The western one to two thirds of the site is not developed and is heavily vegetated with mapped SNV. The eastern area that includes the dwelling and other structures is within partially cleared land. This and the existing 2 Settlement zoning of the site is illustrated in Figures 2 and 3 (ref following pages of this report). The proposed tourist cabin is to be adjoining and partly within the mapped SNV on the site.

The eastern part of the site contains the following buildings and structures:

- The existing dwelling (that originally included the commercial restaurant for Lorhiti & other related uses prior to the part winding back of the tourist accommodation operations and the above mentioned subdivision of the site)
- A couple of sheds/ outbuildings and a number of water tanks



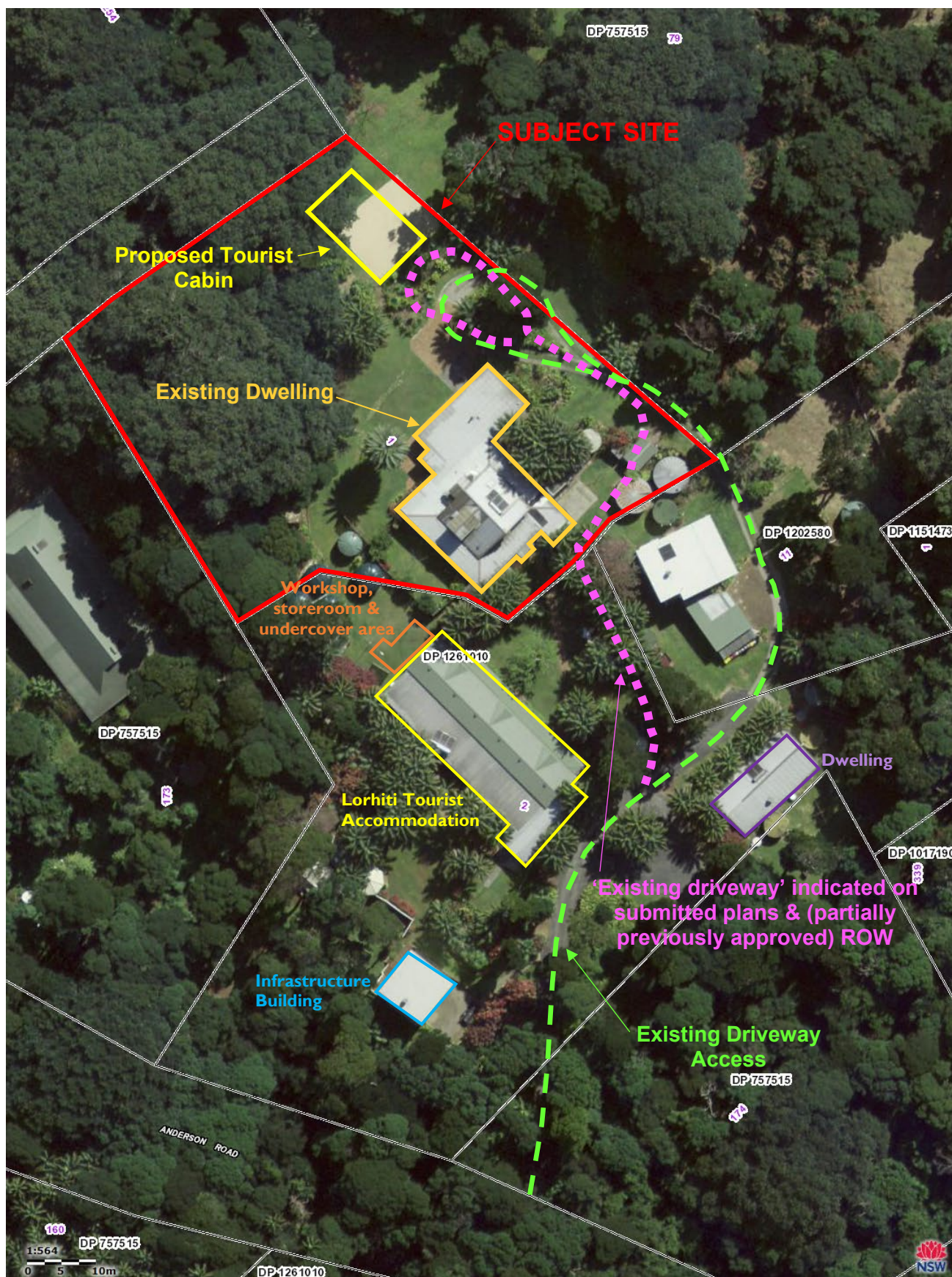


Figure 1: Aerial of subject site, proposed tourist cabin (in yellow), existing development, location of proposed development & surrounds



### *Vehicular Access and Rights of Way*

As indicated in figure 1 (previous page), the vehicular access to the subject site is currently physically provided via existing driveways and legal rights of way (ROW) over the (adjoining) Crown Land at Lot 174 and Lot 2 DP 1261010 from Anderson Road. Then however the existing driveway enters Lot 11 DP 1202580 and the (northern adjoining) Crown land Lot 79 DP 757515 (and straddles the boundary with the subject Lot 1) without the benefit of any further ROWs.

The submitted plans for the subject DA appear to misrepresent the route and location of the above existing driveway access. The plans incorrectly indicate that the driveway runs within Lot 2 to the north of the Lorchiti tourist accommodation units via an un-used ROW (approved in DP 1261010), directly into Lot 1 and then around the eastern and northern side of the main dwelling through two existing sheds. This is indicated in pink.

The above raises issues with parts of the existing access driveway to the subject site currently extending across Lot 11 and within the Crown owned Lot 79 without any legal provision for same. This is an issue which should be rectified as part of the current application process. Even if the subject application or project does not proceed, this is a compliance matter that should be considered for rectification.

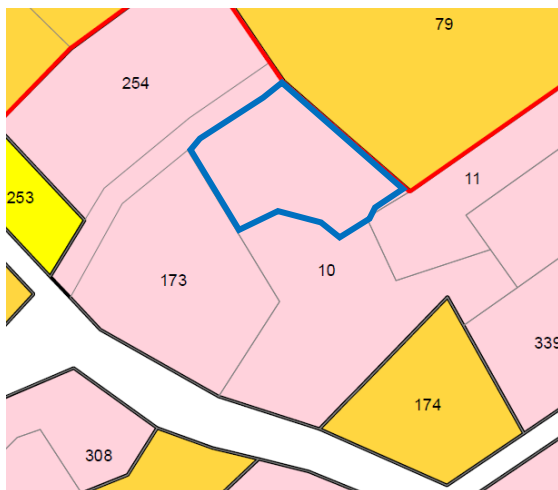


Figure 2: Extract from the Lord Howe Island Local Environmental Plan 2010 (LEP 2010) Zoning Map. Site boundaries outlined in blue.



Figure 3: Extract from the LEP 2010 SNV Map.

[The cadastral information on the LHI LEP zoning and SNV mapping plans have not been updated by NSW Planning & Environment]

### *3.1 Relevant Site History*

- DA2017.22 was an approved two lot subdivision of the original overall site known as Lot 10, DP 757515 into Lot 1 and the subject Lot 2 which was registered with NSW Land and Property Information 9<sup>th</sup> March 2020.
- Due to the previously advised issue relating to the cadastral information on the Island not being updated on both the NSW Planning Portal and NSW Six Maps with approved and registered deposited plans, the subject application could not be accepted and registered to the new legal property description on the NSW Planning Portal. After another series of protracted enquiries to NSW Planning

Portal support they again manually added the updated 'new' Lot and DP for the subject site into the property description for the DA on the Portal (as a work-around) without the cadastral information being updated. This allowed the DA to be accepted and progressed after some unfortunate delay.

#### **4 Proposed Development**

As noted earlier in this report, the proposed development is for construction of a 1 bedroom tourist accommodation cabin, transit lounge, laundry (all in one attached structure) and installation of a new wastewater system, at Lot 1 DP 1261010, Anderson Road, Lord Howe Island.

The specific details of the proposal are as follows:

- Construction of a detached tourist accommodation cabin consisting of 1 bedroom, ensuite, lounge/ dining areas, kitchen and laundry/ storage area, front and rear covered decks
- Attached to the tourist accommodation, the plans show a transit room with kitchenette, bathroom/ shower facilities, storage area and a separate WC
- A solar PV system is to be installed on the roof of the proposed cabin
- The cabin is to be of a single storey, light weight cladding and corrugated metal sheet roofing construction
- The proposal is to be located in the northern (rear) corner of the site with a 5m min. setback to the north eastern (rear) boundary and a setback of between 5m and 8.1m to the north western boundary with the unformed road reserve extending up from the intersection of Anderson Rd and Cemetery Rd.
- The cabin will also incorporate energy efficiency measures and construction as stipulated in a BASIX Certificate lodged with the application.
- The proposed wastewater system is a NSW Health accredited Taylex PABSNR-2000 Advance Secondary Nutrient Reduction Aerated Wastewater Treatment System. This will treat wastewater loads from both the proposed tourist cabin and the existing dwelling on the site.
- The WTS is to be installed to the south of the proposed tourist cabin. The system comes with its own visual alarm to alert of system malfunctions such as high water, aeration pump failure etc. The existing septic tank on the property will continue to be used as a catch tank as the natural South to North gradient of the land allows for gravity transfer to the proposed wastewater system. The treated effluent will be disinfected with chlorine prior to discharge to a 370m<sup>2</sup> irrigation field proposed in the existing SNV area of the site.
- The proposed tourist accommodation will utilise two LHIB authorised bed licences issued to the applicant most recently issued in January 2023. Approval was granted for these to be temporarily operated from Unit 2, Lorhiti until the subject works are complete.

The above is confirmed on the submitted plans accompanying the subject applications as extracted on the following report pages.

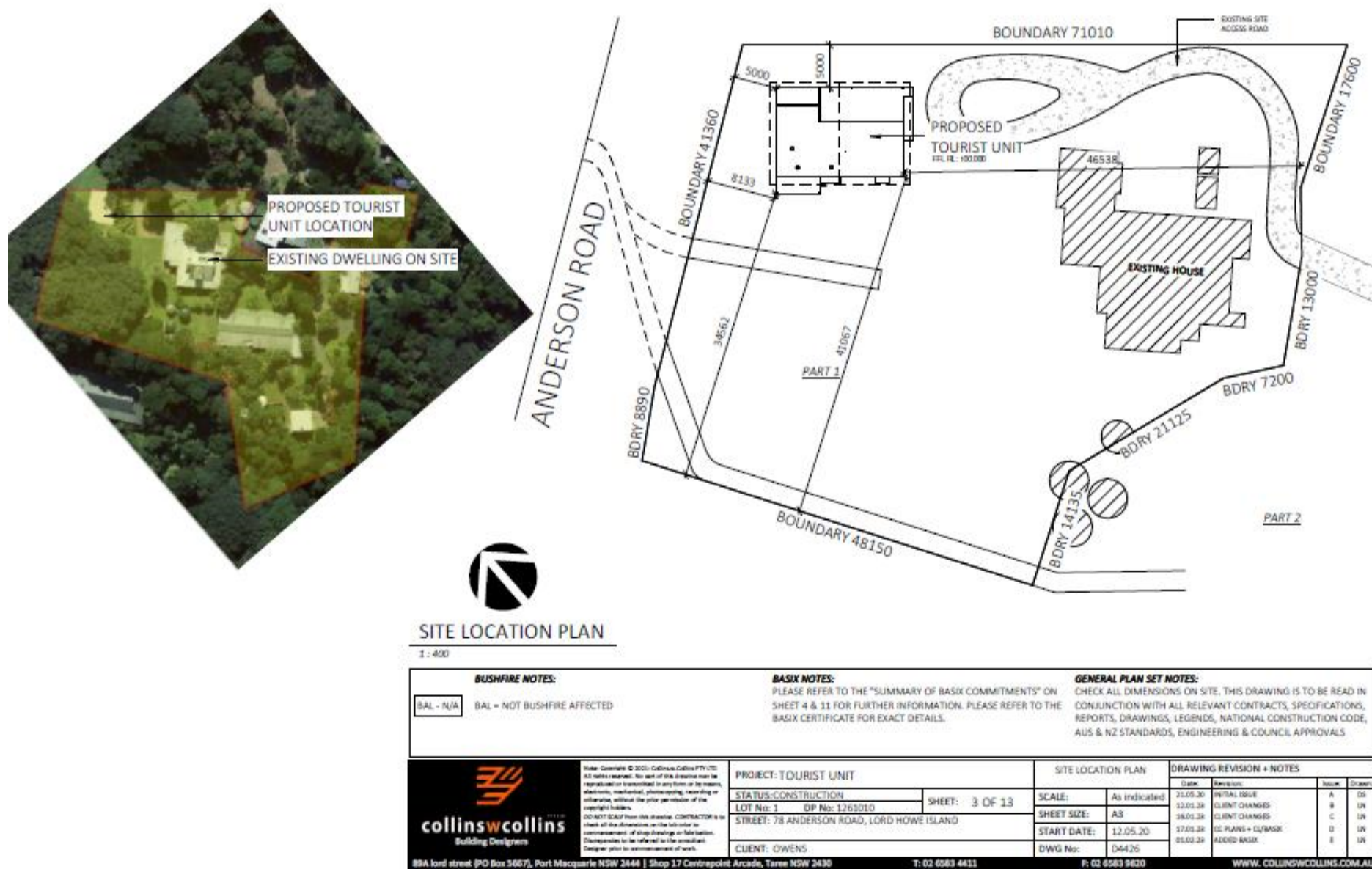
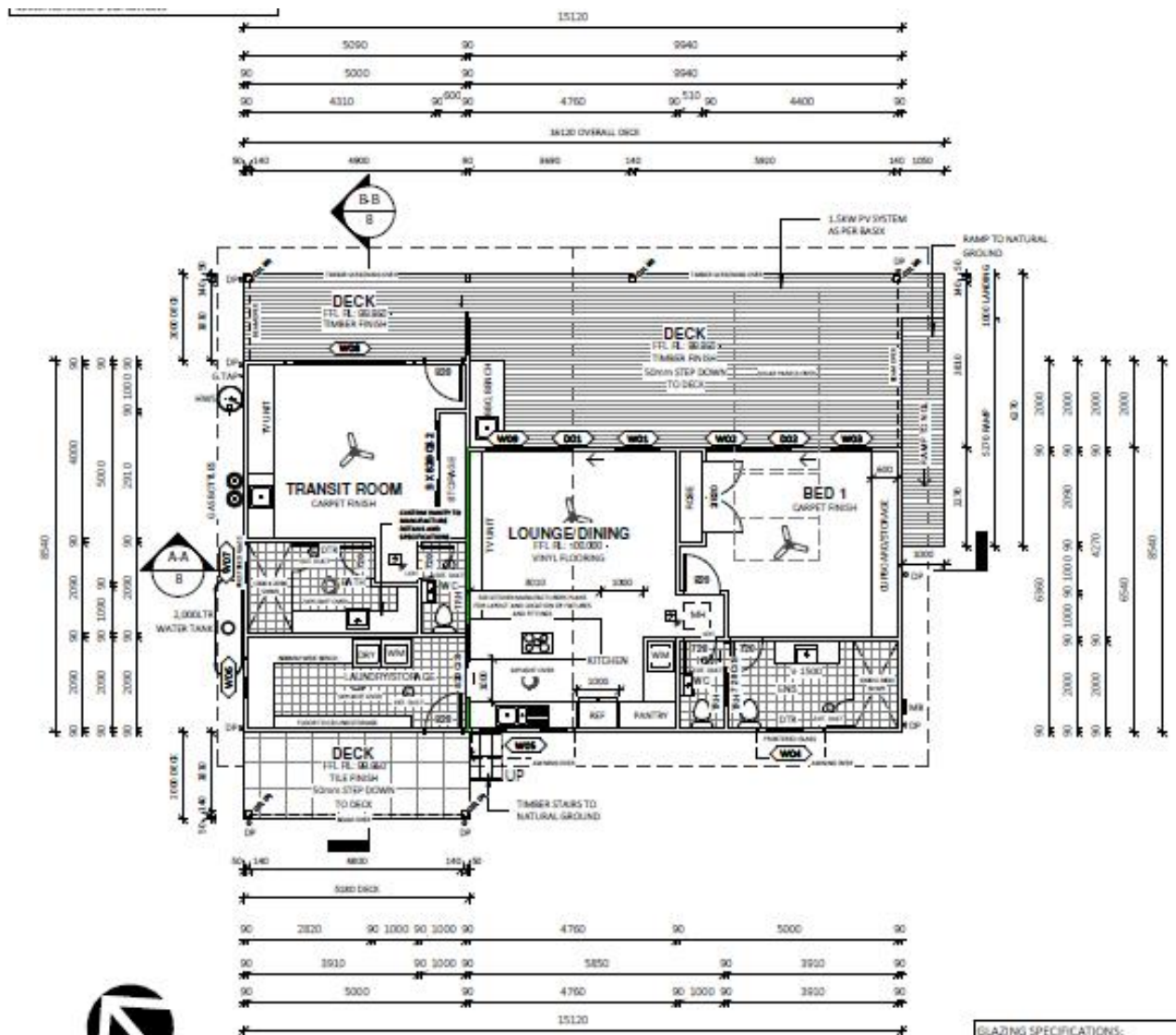


Figure 4 & following: Plans submitted with subject OC & DA





## PROPOSED FLOOR PLAN

1 : 200

| AREAS - ROOF AREAS   |                      |
|--|----------------------|
| Name   | Area                 |
| PROPOSED ROOF AREA   | 265.5 m <sup>2</sup> |
| TOTAL  | 265.5 m <sup>2</sup> |
| AREAS - FLOOR  |                      |
| *FLOOR AREA MEASURED FROM EXTERNAL FACE<br>*UPPER FLOOR AREA 5 EXCL. DECK STAIRS & VOIDS |                      |
| Name   | Area                 |
| NS DECK FLOOR AREA   | 46.1 m <sup>2</sup>  |
| PROPOSED FLOOR AREA  | 128.2 m <sup>2</sup> |
| NS DECK FLOOR AREA   | 20.4 m <sup>2</sup>  |
| NS TRANSIT DECK FLOOR AREA   | 30.8 m <sup>2</sup>  |
| TOTAL  | 176.0 m <sup>2</sup> |

### LEGEND

|      |   |
|------|---|
| DP   | SMOKE ALARMS TO AS 3786 AND SECTION 3.7.5 OF THE NCC BCA VOL 2. ALL ALARMS/DETECTORS ARE TO BE INTERCONNECTED. LOCATIONS ON PLANS ARE INDICATIVE. |
| GT   | INSTALLATION TO BE AS PER STANDARDS ABOVE, AND MANUFACTURERS SPECIFICATIONS.  |
| LOH  | DOWN PIPE LOCATION TO AS 3500   |
| MECH | MECHANICAL VENTILATION EXTERNALLY DUCTED TO NCC 3.8.7.3 & 3.8.7.4   |
| LOH  | GARDEN TAP LOCATION   |
| LOH  | LIFT OFF HINGE  |
| SR15 | 1800mm HIGH x 1500mm WIDE   |
| SD   | 820mm DOOR  |
| MH   | ACCESS MAN HOLE   |
| DR   | DOUBLE TOWEL RAIL   |
| TRH  | TOILET ROLL HOLDER  |

### CONSTRUCTION NOTES

**STAIRS, HANDRAILS & BALUSTRADE NOTES:**  
STAIRS TO COMPLY WITH SECTION 3.9.1.2, 3.9.1.3 & SECTION 3.9.1.5 & 3.9.1.4 SLIP RESISTANCE CLASSIFICATION TABLE IN ACCORDANCE WITH AS 4586.  
HANDRAIL HEIGHTS TO BE NO LESS THAN 2000mm FROM PROPOSED FINISHED FL. BALUSTRADES & HANDRAILS TO BE IN ACCORDANCE WITH 3.9.2.2 & 3.9.2.4 OF THE BCA.  
**WINDOW NOTES:**  
BEDROOM WINDOWS - WHERE THE FLOOR LEVEL OF A BEDROOM IS 2m OR MORE ABOVE THE SURFACE BENEATH, BEDROOM WINDOWS ARE TO COMPLY WITH VOL. 2 BCA PART 3.9.2.4.  
WINDOWS - WHERE THE FLOOR LEVEL IS 4m OR MORE ABOVE THE SURFACE BENEATH, WINDOWS ARE TO COMPLY WITH VOL. 2 BCA PART 3.9.2.7.  
BARRIER WITH A HEIGHT OF NOT LESS THAN 800mm ABOVE FLOOR & REQUIRED TO AN OPENABLE WINDOW TO COMPLY WITH VOL. 2 BCA PART 3.9.3.6(2) & 3.9.3.7(5).  
**WIND CATEGORY TO BE CONFIRMED PRIOR TO START OF CONSTRUCTION. IF 40 OR HIGHER, ENGAGED AREAS TO BRICKWORK AREAS ARE TO COMPLY WITH AS 4773.5-3000 & AS 4773.1-3010**

### GLAZING SPECIFICATIONS:

WINDOWS SPECIFIED USE WPCUW & SHOWN VALUES. WINDOWS AS SPECIFIED OR EQUIVALENT MUST BE INSTALLED ON SITE.  
STANDARD GLAZING: SINGLE CLEAR GLAZING WITH STANDARD ALUMINIUM FRAMES THROUGHOUT.  
WEATHER STRIPPING TO BE INSTALLED THROUGHOUT.  
PLEASE NOTE: ALL GLAZING IN BATHROOMS, ENCLITES, SPA ROOMS OR THE LIKE TO COMPLY WITH PART 3.6.4.5 OF THE BCA.  
BEDROOM WINDOWS - WHERE THE FLOOR LEVEL OF A BEDROOM IS MORE THAN 2m ABOVE THE SURFACE BENEATH, BEDROOM WINDOWS ARE TO COMPLY WITH VOL. 2 PART 3.9.2.4.  
**WINDOWS AND GLAZING TO COMPLY WITH:**  
**AS 4055** - WIND LOADS FOR HOUSING  
**AS 1398** - GLASS IN BUILDING - SELECTION & INSTALLATION  
**AS 2047** - WINDOWS & EXTERNAL DOORS IN BUILDING  
**AS 1170-Part 2** - WINDOWS  
**AS 3859** - CONSTRUCTION OF BUILDINGS IN BUSHFIRE PRONE AREAS  
THE STANDARDS REFERRED ABOVE ARE THE VERSION ADOPTED BY BCA AT THE TIME THE RELEVANT CONSTRUCTION CERTIFICATE OR COMPLYING DEVELOPMENT CERTIFICATE APPLICATION IS MADE.

### BUSHFIRE NOTES:

BAL - N/A BAL = NOT BUSHFIRE AFFECTED

### BASIX NOTES:

PLEASE REFER TO THE "SUMMARY OF BASIX COMMITMENTS" ON SHEET 4 & 11 FOR FURTHER INFORMATION. PLEASE REFER TO THE BASIX CERTIFICATE FOR EXACT DETAILS.

### GENERAL PLAN SET NOTES:

CHECK ALL DIMENSIONS ON SITE. THIS DRAWING IS TO BE READ IN CONJUNCTION WITH ALL RELEVANT CONTRACTS, SPECIFICATIONS, REPORTS, DRAWINGS, LEGENDS, NATIONAL CONSTRUCTION CODE, AUS & NZ STANDARDS, ENGINEERING & COUNCIL APPROVALS.

**collinswcollins**  
Building Designers

Drawn: [Name] 2023-05-01  
All rights reserved. No part of this drawing may be reproduced or transmitted in any form or by means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of the copyright holder.  
DO NOT SCALE from this drawing. CONTRACTOR to check all dimensions on the job prior to commencement of site works or fabrication. Discrepancies to be referred to the architect and Designer prior to commencement of work.

PROJECT: TOURIST UNIT  
STATUS: CONSTRUCTION  
LOT No: 1 DP No: 1265010 SHEET: 5 OF 13  
STREET: 78 ANDERSON ROAD, LORD HOWE ISLAND  
CLIENT: OWENS

PROPOSED FLOOR PLAN  
SCALE: As Shown  
SHEET SIZE: A3  
START DATE: 12.05.20  
DWG No: 04426

| DRAWING REVISION + NOTES |                     |       |       |
|--------------------------|---------------------|-------|-------|
| Date                     | Revision            | Issue | Drawn |
| 23.05.20                 | INITIAL ISSUE       | A     | DS    |
| 16.01.23                 | CLIENT CHANGES      | C     | LN    |
| 17.01.23                 | CC PLANS + CL/BASIX | D     | LN    |
| 01.02.23                 | ADDED BASIX         | E     | LN    |

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| EXTERNAL FINISHES |  |
|-------------------|--|
| LABE              | MATERIAL DESCRIPTION                   |
| CORR              | CORRUGATED METAL SHEET ROOFING (LIGHT) |
| WST               | SELECTED WOOD SHAKES                   |
| WST               | PULVICATED WOOD SHAKES WINDOW          |

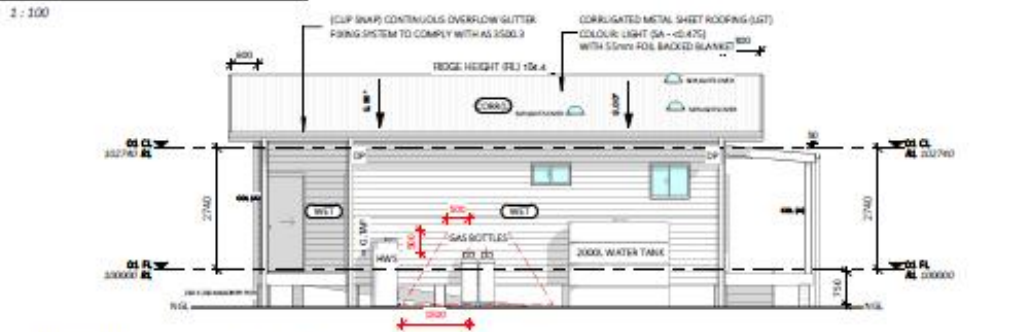
**LPG GAS BOTTLE STORAGE**

\*DISTANCE MEASURED FROM TOP OF ANY GAS BOTTLE  
ALL GAS BOTTLE STORAGE AND HANDLING IN ACCORDANCE WITH AS4586-2004



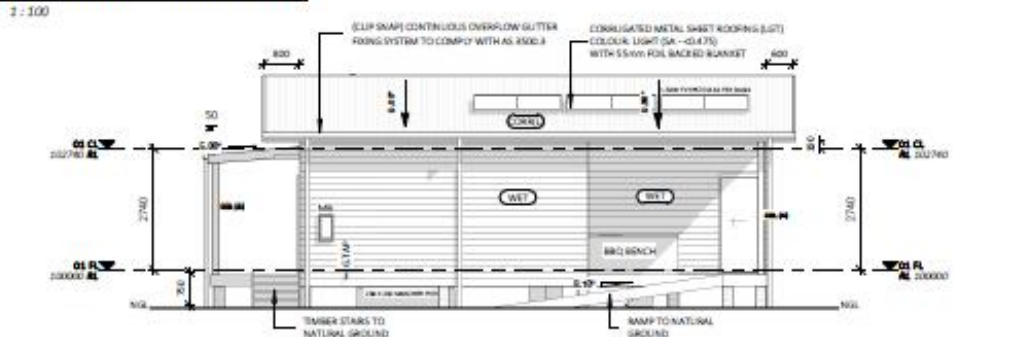
**NORTH EAST ELEVATION**

2 : 100



**NORTH WEST ELEVATION**

2 : 100



**SOUTH EAST ELEVATION**

2 : 100



**SOUTH WEST ELEVATION**

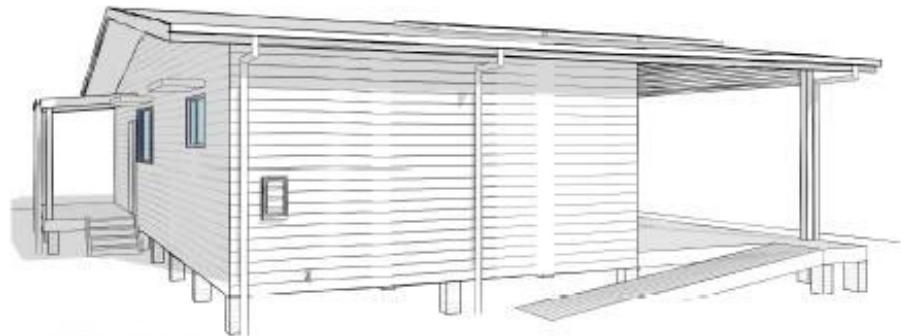
2 : 100

| BUSHFIRE NOTES: |                             | BASIX NOTES:   |  | GENERAL PLAN SET NOTES:   |  |
|-----------------|-----------------------------|--|--|---|--|
| BAL - N/A       | BAL = NOT BUSHFIRE AFFECTED | PLEASE REFER TO THE "SUMMARY OF BASIX COMMITMENTS" ON SHEET 4 & 11 FOR FURTHER INFORMATION. PLEASE REFER TO THE BASIX CERTIFICATE FOR EXACT DETAILS. |  | CHECK ALL DIMENSIONS ON SITE. THIS DRAWING IS TO BE READ IN CONJUNCTION WITH ALL RELEVANT CONTRACTS, SPECIFICATIONS, REPORTS, DRAWINGS, LEGENDS, NATIONAL CONSTRUCTION CODE, AUS & NZ STANDARDS, ENGINEERING & COUNCIL APPROVALS. |  |

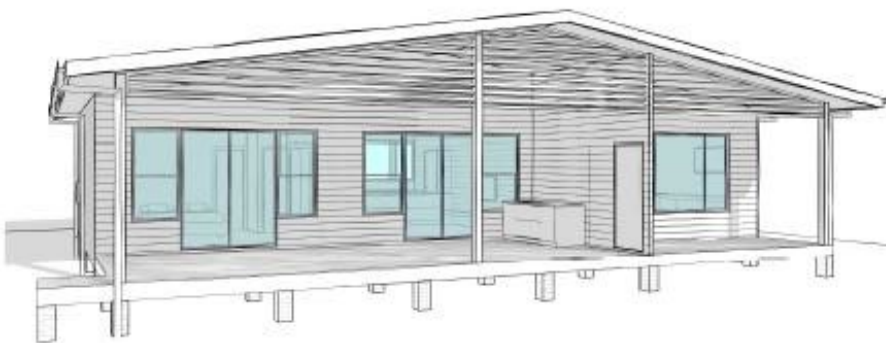
| PROJECT: TOURIST UNIT                      |                | ELEVATIONS           |                | DRAWING REVISION + NOTES      |             |
|--|----------------|----------------------|----------------|-------------------------------|-------------|
| STATUS: CONSTRUCTION                       | SHEET: 6 OF 13 | SCALE: As Shown      | DATE: 21.05.20 | REVISION: INITIAL ISSUE       | ISSUE: A DS |
| LOT No: 1 DP No: 1261010                   |                | SHEET SIZE: A3       | DATE: 16.01.23 | REVISION: CLIENT CHANGES      | ISSUE: C LN |
| STREET: 78 ANDERSON ROAD, LORD HOWE ISLAND |                | START DATE: 12.05.20 | DATE: 17.01.23 | REVISION: CC PLANS + CL/BASIX | ISSUE: D LN |
| CLIENT: OWENS                              |                | DWG No: 04426        | DATE: 01.02.23 | REVISION: ADDED BASIX         | ISSUE: E LN |



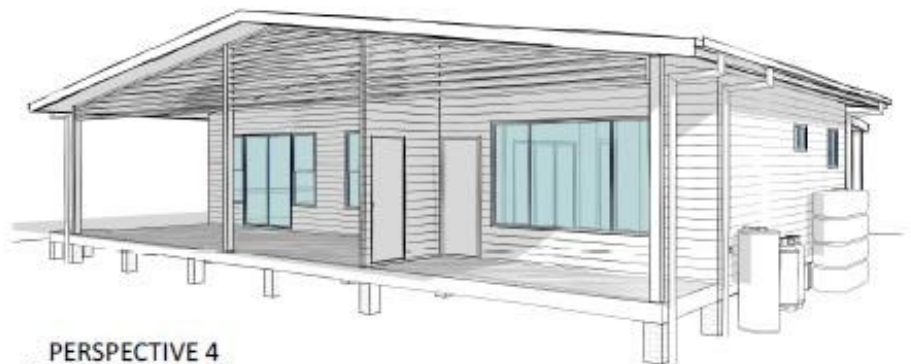
**PERSPECTIVE 1**



**PERSPECTIVE 2**



**PERSPECTIVE 3**



**PERSPECTIVE 4**

| collinswcollins<br>Building Designers   | <small>                     Note: Copyright © 2021 CollinswCollins Pty Ltd. All rights reserved. No part of this drawing may be reproduced or transmitted in any form or by means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of the copyright holder.<br/>                     DO NOT SCALE from this drawing. CONTRACTOR is to check all the dimensions on the job prior to commencement of work drawing or fabrication. Discrepancies to be referred to the consultant Designer prior to commencement of work.                 </small> | PROJECT: TOURIST UNIT                      |                 | PERSPECTIVES |          | DRAWING REVISION + NOTES |                     |       |       |
|---|--|--|-----------------|--------------|----------|--------------------------|---------------------|-------|-------|
|   |  | STATUS: CONSTRUCTION                       | SHEET: 10 OF 13 | SCALE:       | As Shown | Date                     | Revision            | Issue | Drawn |
| <small>                     88A Lord Street (PO Box 3607), Port Macquarie NSW 2444   Shop 17 Centrepark Arcade, Taree NSW 2430<br/>                     T: 02 6583 4433 F: 02 6583 9620 WWW.COLLINSWCOLLINS.COM.AU                 </small> |  | LOT No: 1                                  | BP No: 1362010  | SHEET SIZE:  | A3       | 21.05.20                 | INITIAL ISSUE       | A     | DS    |
|   |  | STREET: 78 ANDERSON ROAD, LORD HOWE ISLAND |                 | START DATE:  | 12.05.20 | 16.01.23                 | CLIENT CHANGES      | C     | LN    |
|   |  | CLIENT: OWENS                              |                 | DWG No:      | D4426    | 17.01.23                 | CC PLANS + CL/BASIX | D     | LN    |
|   |  |  |                 |              |          | 01.02.23                 | ADDED BASIX         | E     | LN    |



## 5 Referrals

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

### 5.1 Comments received from internal specialists

| Specialist  | Issue   | Comment                         |
|---|---|---------------------------------|
| Team Leader<br>World Heritage<br>(Cristina<br>Venables) | <p><b>Comment</b></p> <p>The study area is zoned Zone No. 2 – Settlement according to the <i>Lord Howe Island Local Environmental Plan 2010</i> (LEP). The objectives of this zone are:</p> <ul style="list-style-type: none"> <li>to provide opportunities for limited residential and commercial development, and</li> <li>avoid or minimize environmental damage and protect areas that <ul style="list-style-type: none"> <li>comprise significant habitat for species of animals that are native to the Island or</li> <li>have significant native vegetation.</li> </ul> </li> </ul> <p>The proposal is consistent with these objectives.</p> <p>The proposed development consists of building a 109.2sqm accommodation and transit room, with 56.4sqm of decking on the NE side of the building and 10.4sqm of decking on the SW side of the building. On-site sewer will be connected to existing septic disposal and additional wastewater irrigation will be installed in the adjoining SNV.</p> <p>There is native vegetation in the Study area that is mapped as community 12b – Banyan – Kentia Palm forest on coral sand and calcarenite – consistent with significant native vegetation (SNV). While the mapped extent of SNV (transparent green polygon in Figure 1) overlaps with the proposed development footprint, a site inspection confirmed that the vegetation present in this area is not SNV, or is heavily modified SNV. This is the result of a consent that was granted to Diane Owens in 2020 to prune a large banyan overhanging her established garden (ED20/1044.05). This tree will continue to require pruning to protect the new building, however should be pruned to the minimum extent required; to maintain the health of the tree and to maintain SNV extent.</p> <p>On 19 May 2023, the site was visited for a second time and the perimeter of the SNV near the proposed development was marked with a GPS (displayed as an orange line in Figure 1). The SNV layer needs to be updated in this location, and the proposed development will not result in harm or removal of any additional native vegetation, outside of the re-mapped extent (Figure 1).</p> | Noted & recommended accordingly |



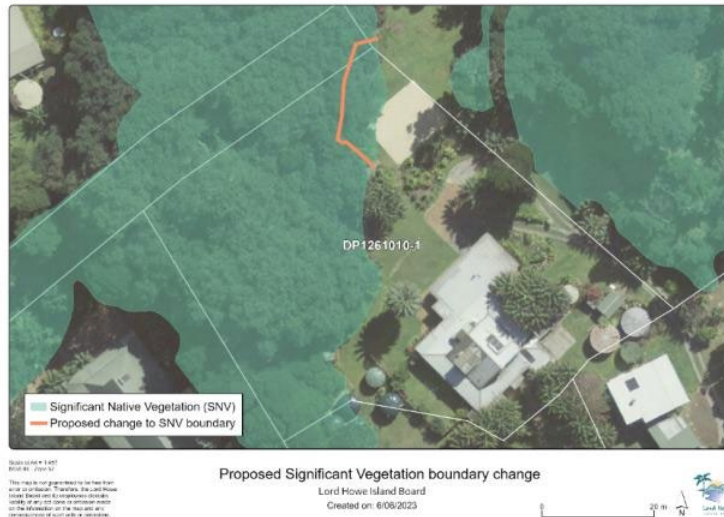


Figure 5. Lot 1 DP: 1261010 boundary, mapped significant native vegetation, and amended vegetation perimeter.

At this second site visit on 19 May 2023, additional clearing within the mapped SNV extent was observed. A path inside of and closely following the mapped orange line (Figure 1) has been created within the SNV. The path has been filled with wood chips, and a border of planted exotic species, (similar to *Tradescantia spathacea*), has been established.

This path should be removed and revegetated with native species characteristic of community 12b – Banyan – Kentia Palm forest on coral sand and calcarenite. No additional clearing of SNV should be undertaken in or around the proposed development on Lot: 1 DP: 1261010, be it for gardens, paths or other ancillary uses. The LEP is clear on the requirement to protect SNV. A condition of consent is recommended to reinforce the retention of SNV and lock in/timestamp the re-mapped boundary.

The proposed development is 5 meters from land within Zone 7 – Environment Protection. Clause 34 of the LEP states that when considering a development application within 10 meters of land within Zone 7, the consent authority must take into consideration:

- the desirability of restoring the land on which it is proposed that the development be carried out to its original state
- the need to encourage the growth of only plants that are native to the Island on the land on which it is proposed that the development be carried out.

Given the proximity of the proposed development to Zone 7 and SNV, any landscaping within the subject site should be natives or minimally invasive plants approved by the Lord Howe Island Board, to ensure the protection of the Islands environment and biodiversity.

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

The LHI Currawong, LHI Golden Whistler, LHI Silvereye and LH

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

Flesh-footed Shearwaters nest in burrows in forests on sandy soils from Ned's Beach to Clear Place. There are colonies in the study area, in vegetated areas, and care should be taken to not disturb any burrows, especially during nesting season between December – May.

The LHI Gecko is known to occur throughout the settlement of LHI where it can utilise human made structures and stockpiled 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 in the surrounding vegetation and could be detected during construction. Any animals detected during works must not be disturbed, or should 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 Woodhens or Currawongs.

The subject site includes areas mapped as modeled High Quality Habitat (A) for LHI Placostylus. This mapping is considered accurate where there is intact native vegetation. 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 in 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 and pavers).

Some of the plans submitted with the development application indicate proposed access roads or tracks, routed through SNV on lot 1. The addition of any other developments, activities including but not limited to structures, gardens, tracks or trails - beyond the tourist accommodation footprint subject of this application - is not supported as this would impact on SNV and important threatened species habitat.

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.

### **Recommendations**

That the development be approved subject to:

- 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

|  |  |                                   |
|--|--|-----------------------------------|
|  | <p>by predators such as LHI Currawong, LH Woodhen and kestrels etc.</p> <ul style="list-style-type: none"> <li>• All building activity and movements, including the stockpiling of materials, is restricted to cleared open areas so as not to damage or harm any native vegetation or animals, including flesh-footed shearwater burrows.</li> <li>• The removal and revegetation of a newly created path adjacent to the proposed development site within an area of SNV.</li> <li>• No additional removal, modification or damage to SNV as mapped in figure 1 on Lot: 1 DP: 1261010 is permitted, including for roads, tracks, gardens and structures.</li> <li>• Any potential sediment or run-off is captured and prevented from entering areas of significant native vegetation, threatened ecological communities, or threatened species habitat.</li> <li>• Garden landscaping surrounding the proposed development must consist of only natives or non-invasive plants approved by the Lord Howe Island Board to ensure the protection of the of the Islands environment and biodiversity.</li> </ul>  |                                   |
| External Building Assessment (Credwell Consulting) | <p><b>2 Building Description</b><br/>For the purposes of the BCA, the building is described as follows:</p> <p><b>2.1 Classification</b><br/><b>Class:</b> 1a<br/><b>Use:</b> Dwellings (Short term holiday accommodation including the transit lounge)<br/><b>Area:</b> dwelling including transit lounge and decks</p> <p><b>2.2 Rise in Storeys</b><br/>This term does not apply to dwellings.</p> <p><b>2.3 Type of Construction</b><br/>This does not apply to dwellings.</p> <p><b>2.4 Effective Height</b><br/>This term does not apply to dwellings.</p> <p><b>2.5 Fire Compartments</b><br/>This term does not apply to dwellings.</p> <p><b>2.6 Required Exits</b><br/>This term does not apply to dwellings.</p> <p><b>2.7 Climate Zone</b><br/>This term does not apply to dwellings. It is noted that Basix applies to the dwellings, and this is based on postcode.</p> <p><b>3 Matters for Further Consideration</b><br/><b>3.1 Surface water drainage 3.1.3.3</b><br/>The ground beneath suspended floors must be graded so that the area beneath the building is above the adjacent external finished ground level and surface water is prevented from ponding under the building— The current sections show no areas of ponding.</p> | Noted and recommended accordingly |

**3.2 Termite management systems 3.1.4.3 & Subfloor ventilation 3.4.1.2**

Either the primary building elements are not to be 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.

**3.3 Footings and slabs (Part 3.2) & Framing (Part 3.4)**

A Structural Engineer will need to 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.

**3.4 Installation of smoke alarms 3.7.5.5**

All dwellings are to be provided with smoke alarms that are interconnected. To comply the smoke alarm will be required to be located as shown below and certified as complying with AS 3786 – 2018.

**3.5 Condensation management 3.8.7**

Exhaust from a bathroom, sanitary compartment, or laundry must be discharged either direct to outside air or a ventilated roof space. The construction plans are to include details complying with this clause.

**3.6 Barriers to prevent falls 3.9.2.2**

A continuous barrier must be provided along the side of a trafficable surface such as the decks and path to the dwelling where it is possible to fall 1 m or more measured from the level of the trafficable surface to the surface beneath. Proposed finished floor levels have not been provided but the plans indicate these will be less than 1.0 m high.

**3.7 Construction of wet area floors — falls 10.2.12 (NCC2022)**

Where a floor waste is installed the minimum continuous fall of a floor plane to the waste must be 1:80; and the maximum continuous fall of a floor plane to the waste must be 1:50.

**3.8 Construction in bushfire-prone areas**

The location of the dwellings has not been assessed for bushfire compliance but the plans indicate that this is not applicable to this site.

**3.9 General building access requirements BCA Volume 1 Clause D3.1**

As there are less than 4 dwellings for short term holiday accommodation on the site they are not required to be accessible.

**4 Statement of Compliance**

The architectural design documentation as referred to in Annexure A of this 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 as outlined in Annexure B.

As detailed in Section 3 the following works / rectification listed below will be required to be provided in relation to the dwelling:

| Item | Required details / certification   | Status   |
|------|--|--|
| 1.   | <b>Termite management systems</b><br>Provided required subfloor clearance and access.  | Works to be condition as part of Development Consent |
| 2.   | <b>Footings, Slabs and Framing</b><br>Structural Engineer's certification required.  | Works to be condition as part of Development Consent |
| 3.   | <b>Subfloor ventilation systems</b><br>Provided required subfloor clearance is to be detailed.   | Works to be condition as part of Development Consent |
| 4.   | <b>Footings and Slabs &amp; Framing</b><br>Structural Engineer will need provide certification.  | Works to be condition as part of Development Consent |
| 5.   | <b>Installation of smoke alarms</b><br>Interconnection to be detailed on CC Plans.   | Works to be condition as part of Development Consent |
| 6.   | <b>Condensation management</b><br>Exhaust from a bathroom, sanitary compartment, or laundry must be discharged either direct to outside air. | To be detailed on CC Plans                           |
| 7.   | <b>Construction of wet area floors</b><br>Compliant falls are to be shown.   | To be detailed on CC Plans                           |
| 8.   | <b>Bushfire Issues</b><br>To be assessed as part of the DA.  | To be assessed.                                      |

Acting Manager  
Infrastructure &  
Engineering  
Brad Josephs

**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 Taylex PABSNR-2000. The following table outlines the expected daily hydraulic load for the proposal:

| Source        | Number | Lt/day | Total Lt/day |
|---------------|--------|--------|--------------|
| Main Dwelling | 4EP    |        | 480          |

Noted and recommended accordingly.

|  |  |         |  |            |
|--|--|---------|--|------------|
|  | 1 x Tourist Unit   | 2 x Pax |  | 300        |
|  | Total Daily Hydraulic Load   |         |  | <b>780</b> |
|  | <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 370m<sup>2</sup> assumes the soil type of calcarenite. 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 calcarenite the effluent land application area may be subject change.</p> <p>The effluent area is of sufficient size to house the irrigation area and the reasoning within the proposal, <i>'Buffer zones around the dwelling, as per the Strategy, reduce the availability of the area for irrigation and even if no vehicular access it would not provide the square meterage for the irrigation'</i>, is suitable for placement within SNV.</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> |         |  |            |
| LHIB<br>Surveyor Gary<br>Millman.                  | The proposed tourist accommodation unit & transit lounge has been staked as per the DA plans with the correct setbacks from the side boundaries. There are stakes at the NE deck corners, the western corner of the laundry (building corner) & the southern building corner. The eastern corner of bedroom 1 has not been mark as it is currently in dense garden vegetation. The other corners of the transit room meets deck have been staked.  |         |  |            |
| LHIB<br>Electrical<br>Infrastruct.<br>Greg Higgins | I have assessed DA2023.1.1 using a combination of load assessment and AS/NZS 3000.2018 and note that the proposed commercial development could result in a potential increase to the electrical system of 56 amps. This is in excess of the permissible 40 amp single phase limit. The customer will be required to reduce the number of GPO's ( socket outlets ) to a total of 40 in order to meet this single phase requirement. If the customer confirms the  |         |  |            |



|  |  |  |
|--|--|--|
|  | <p>need for the original 58 socket outlets they will require a 40 amp three phase service to be installed.</p> <p>At present there is no electrical supply to this specific site location. The existing services supplying Service No. 80 Diane Owens Residence and Service No.100 Lorhiti Lodge Units are not suitable to supply this additional installation. Load surveys, load balances and cable inspections on SN.80 and SN.100 indicate that the additional load assessed for the new installation if connected to either of these services could cause overloading, load imbalance and undervoltage resulting in localized supply interruptions.</p> <p>In order for the proposed customer electrical installation to proceed the following works will need to be undertaken. –</p> <ol style="list-style-type: none"> <li>1. New single phase or three phase underground consumer mains to be connected directly to Distribution Pillar No.210 on the adjacent Gail Cameron lease.</li> </ol> <p>The customer is responsible for the installation of new consumer mains.</p> <p>I would recommend the electrical installation identified in DA2023.1.1 be approved with the following conditions –</p> <ul style="list-style-type: none"> <li>- The works identified in 1. above be completed prior to any customer electrical installation works being undertaken.</li> <li>- The customer identify prior to the installation of new consumer mains the total number of socket outlets to be installed</li> <li>- The customer reduce the number of socket outlets by 18 to a total of 40 if the single phase consumer mains are installed This can be achieved by reducing the number of double socket outlets or converting double socket outlets to single socket outlets. For the purpose of this assessment a Double GPO is classified as 2 socket outlets.</li> <li>- An inspection be undertaken by the LHIB SEO prior to final connection of the installation confirming the installation complies with this assessment.</li> <li>- All electrical works must be completed by a licensed electrical contractor to AS/NZS 3000:2018</li> <li>- A signed Compliance Certificate – Electrical Works must be issued to both the customer and LHIB within 7 days of completing all electrical works and prior to the new installation being permanently energized.</li> <li>- Works must also comply with the current Lord Howe Island Electrical Service Rules.</li> </ul> |  |
|--|--|--|

## 6 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 in this report.

## **6.1 Commonwealth legislation**

### **6.1.1 *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 of 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.*

## **6.2 NSW legislation**

### **6.2.1 *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 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.

### **6.2.2 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 LHI 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.

## **6.3 Local Statutory Plans and Policies**

### **6.3.1 Lord Howe Island Local Environmental Plan 2010**

The LEP 2010 is the principal environmental planning instrument applying to the proposal.

The following summary table details the various LEP provisions relevant to the subject proposal with assessment and/or comment included as required.

**LEP 2010 compliance summary table:**

| LEP 2010 Clause           |   | Compliance Y/N | Comment   |
|---------------------------|---|----------------|---|
| <b>Part 1 Preliminary</b> |   |                |   |
| 2                         | Commencement and Aims of Plan               | Y              | Each of the aims of the LEP 2010 have been considered in the assessment of this application.<br><br>As assessed in this report, the proposed works 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 clause 11 assessment following.   |
| <b>Part 2 General Provisions applying in particular zones</b>    |   |                   |  |
| 12   | Land Use Zones  | Y                 | The land is zoned Zone 2 Settlement  |
| 14   | Zone 2 Settlement   | Y                 | Tourist accommodation and associated uses comply with the LEP zone objectives and are permissible with consent of the LHIB.  |
| <b>Part 3 Special Provisions</b>                                 |   |                   |  |
| <b>Division 1 Provisions for particular kinds of development</b> |   |                   |  |
| 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</i></p> | <p>Y</p> <p>Y</p> | <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:<br/> <math>3,735.5\text{m}^2</math> (site area) – <math>3,000\text{m}^2</math> (min. dwelling area) = <math>735.5\text{m}^2 \times 15\% = 110\text{m}^2</math> <b>Max Permiss. Site Coverage.</b></p> <p>The proposed site coverage (as relevant to cl.22(1a)) is: Proposed Tourist Cabin/ Transit Lge. &amp; Laundry = <math>176\text{m}^2</math><br/> <b>Total Site Coverage = <math>176\text{m}^2</math></b><br/> (&gt; than the <b><math>110\text{m}^2</math></b> max.) thus not complying with the LEP by <math>66\text{m}^2</math>.</p> <p>The recommendation of this report includes the application of a condition of development consent requiring the proposed work to be reduced in size by <math>66\text{m}^2</math> to achieve compliance with clause 22(1)(a) of the LEP.</p> <p>In regard to sub-clause 1(b), approx. <math>1,942\text{m}^2</math> or 52% of the site is landscaped area and approx. a minimum of <math>1,571\text{m}^2</math> or 42% of the site is retained with native plant species, thus complying with the LEP provision.</p> <p>In regard to sub-clause 1(c), the proposed work is not proposed within existing actual SNV vegetation, although it does partly extend within a mapped SNV area – refer to the internal comments from the LHIB's Team Leader World Heritage in section 5 of this report.</p> |

|  |  |                   |   |
|--|--|-------------------|---|
|  | <p><i>on at least 35 percent of the total area of the allotment, and</i></p> <p><i>(c) the proposed development is carried out on a part of the allotment that does not have any significant native vegetation, and</i></p> <p><i>(d) the consent authority is satisfied that there is a demonstrated business need for the development.</i><br/> <i>(2) .....</i><br/> <i>(3) .....</i></p> <p><i>(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.</i></p> | <p>Y</p> <p>Y</p> | <p>In regard to sub-clause 1(d), the LHIB can be satisfied that there is a well demonstrated/ documented business need for the proposed development based upon continuing visitor numbers to the Island.</p> <p>In regard to sub-clause 4, the proposal is to only utilise 2 x existing LHIB licenced tourist beds, thereby maintaining compliance with the 400 visitor limit in the LEP and the LHI Act.</p>   |
| 24   | Dual Occupancy Concessions   | N/A               |   |
| 26.  | Limit on number of dwellings to which consent may be given   | N/A               |   |
| 27(1)  | Enlargements or extensions of dwellings  | N/A               |   |
| 29   | Maximum height of buildings (7.5m)   | Y                 | As detailed on the submitted plans, the proposal will have a single storey form and an upper ridge height of 5.195m above natural ground, in compliance with clause 29 of the LEP.  |
| <b>Division 2 Provisions that apply to particular land</b> |  |                   |   |
| 32 (2)   | <p>Setbacks of buildings in Zone 1, 2 or 5:</p> <ul style="list-style-type: none"> <li>- 10m to a road frontage and</li> <li>- 5m all other boundaries</li> </ul>  | Y&N               | <p>As detailed in section 4 (of this report), regarding the description of the proposed development, it is to be located in the northern (rear) corner of the site with a 5m min. setback to the north eastern (rear) boundary and a setback of between 5m and 8.1m to the north western boundary with the unformed road reserve extending up from the intersection of Anderson Rd and Cemetery Rd.</p> <p>The 5m setback to the north eastern (rear) boundary complies with the LEP. However, the setback to the north western boundary (and the unformed road reserve) does not comply with the 10m requirement. The proposed 5m to 1.9m variation to this standard is supportable due to the following circumstances:</p> <ul style="list-style-type: none"> <li>• The road reserve that the proposal will front,</li> </ul> |

|     |   |   |   |
|-----|---|---|---|
|     |   |   | <p>is unformed, is itself well vegetated and is a dead end at the northern rear corner of the subject site. Therefore it does not operate as a regular public road, contains more vegetation than a formal road and (in this section) has no to little public usage,</p> <ul style="list-style-type: none"> <li>• Also generally speaking, the proposal is not located in a public or prominent location,</li> <li>• Also further in the above sense, the boundary to the unformed road reserve has some similar characteristics to a side site boundary rather than a road frontage,</li> <li>• Part of the internal setback of the proposed work to the unformed road reserve is currently screened by existing landscaping (in addition to that located within the road reserve),</li> <li>• The proposed work will have a low single storey form</li> <li>• In regard to potential internal privacy impacts to the proposed tourist accommodation from the road, the accommodation area will not be impacted by the reduced setback as these will face north east (being to the rear), with the transit lounge and laundry facing the road reserve.</li> </ul> <p>In light of the above, it is considered that the proposed setbacks to the north western boundary and the road reserve are acceptable and therefore a variation to the 10m LEP setback under clause 32(3) of the LEP can be granted.</p> |
| 33  | Landscaping to be carried out in Zone 2   | Y | Based upon the assessment of the subject proposal contained herein, it is considered that it will not have "a significant adverse impact on the existing landscaped character and dispersed pattern of housing in the zone".  |
| 34. | <p>Land Adjoining Zone 7 or 8.</p> <p>Following relevant matters to be considered for proposed development triggering cls. 34:</p> <p>(a) the desirability of restoring the land on which it is proposed that the development be carried out, as far as is possible, to its original natural state,</p> <p>(b) the need to encourage the growth of only plants that are native to the Island on the land on which it is proposed that the</p> | Y | <p>The adjoining Crown land to the rear of the subject site is zoned No. 7 - Environment Protection and the proposed development is proposed to be located within the 10m of the common boundary threshold of clause 34 of the LEP.</p> <p>Refer to the internal comments from the LHIB's Team Leader World Heritage in section 5 of this report which includes consideration of cls. 34 of the LEP, and appropriate requirements recommended to be applied in response.</p>  |

|  |   |  |  |
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|  | development be carried out,<br>(c) the need to prevent plants that are not native to the Island spreading to Zone 8 Permanent Park Preserve,<br>(d) the Lord Howe Island Board Vegetation Rehabilitation Plan, as adopted by the Board in March 2003 and amended from time to time. |  |  |
|--|---|--|--|

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

Clause 11 of the LHI 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   | COMPLIANCE Y/N                              | DISCUSSION   |
|---|---|--|
| a) <i>The proposed development is consistent with the aims of this plan and the objectives of any zone, as set out in the plan, within which the development is proposed to be carried out,</i>   | Y   | The subject site falls within Zone 2 – Settlement under the LEP 2010 and is consistent with the zone objectives.   |
| b) <i>There is an adequate area available for the disposal or treatment of any effluent treatment of any effluent treatment or disposal system and any such system will not have any adverse impact on groundwater quality,</i>   | Y   | The subject proposal includes the installation of a new onsite wastewater system which has been reviewed and found to be acceptable subject to the application of the conditions of consent included in the attached recommendation. Refer also to the internal referral comments in section 5 of this report. |
| c) <i>No part of the proposed development:</i><br>i. <i>will result in any damage to, or removal of, significant native vegetation, or</i><br>ii. <i>will have a significantly adverse impact on the habitat of any plants, or animals, that are native to the Island,</i>  | Y   | Refer to the internal comments from the LHIB's Team Leader World Heritage in section 5 of this report.   |
| 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><br>i. <i>result in any damage to, or the removal of, significant native vegetation, or</i><br>ii. <i>have a significantly adverse impact on the habitat of any plants, or animals, that are native to the Island,</i> | Y<br>(subject to application of conditions) | As outlined in the description of the subject site in section 3 (and in figure 1), the vehicular access to the subject site is currently physically provided via existing driveways and legal rights of way (ROW) over the (adjoining) Crown Land at Lot 174 and Lot 2 DP 1261010 from Anderson Road.          |

| CLAUSE 11 REQUIREMENT  | COMPLIANCE<br>Y/N                           | DISCUSSION   |
|--|---|--|
|  |   | <p>Then however the existing driveway enters Lot 11 DP 1202580 and the (northern adjoining) Crown land Lot 79 DP 757515 (and straddles the boundary with the subject Lot 1) without the benefit of any further ROWs.</p> <p>The submitted plans for the subject DA appear to misrepresent the route and location of the above existing driveway access. The plans incorrectly indicate that the driveway runs within Lot 2 to the north of the Lorhiti tourist accommodation units via an unused ROW (approved in DP 1261010), directly into Lot 1 and then around the eastern and northern side of the main dwelling through two existing sheds.</p> <p>The above raises issues with parts of the access driveway to the subject site currently extending across Lot 11 and the Crown owned Lot 79 without any legal provision for same. This is an issue for the site which should be rectified as part of the current application process. Even if the subject application does not proceed, this is a compliance matter that should be considered for rectification.</p> <p>To address the above, any approval of the subject DA should be conditional upon the driveway to (and within the subject Lot 1) being provided and constructed (partly) around the dwelling on Lot 1 and within the previously approved and registered ROW over Lot 2.</p> <p>Another option to be included in the conditions, if the applicant wants to keep most of the existing driveway, a ROW is legally created and registered over Lot 11 DP 1202580 for the length of the driveway within this Lot (to the benefit of Lot 1), and the remaining driveway length is relocated and constructed wholly within Lot 1 (to resolve the existing illegal encroachments within the adjoining Crown land).</p> |
| e) <i>Any proposed landscaping will provide various species of plants that are native to</i> | Y<br>(subject to application of conditions) | Refer to the ecological assessment and requirements contained in the   |



| CLAUSE 11 REQUIREMENT  | COMPLIANCE<br>Y/N | DISCUSSION   |
|--|-------------------|--|
| <i>the Island and common in the locality to enhance any significant native vegetation,</i>   |                   | internal referral in section 5 of this report and the proposed conditions.   |
| f) <i>The proposed development will not be adversely affected by any landform limitations, including flooding, landslip, unstable soils and steep slopes,</i>  | Y                 | The site is not located in any hazard area.  |
| 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>                                  | Y                 | No additional infrastructure services are required other than additional electrical which will be provided by the applicant (in accordance with and subject to LHIB approval). |
| 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> | Y                 | As assessed herein, the proposal will not have a significant adverse visual impact on the locality.  |
| i) <i>The proposed development will not cause any significant overshadowing of adjoining land,</i>   | Y                 | The proposal will have a low single storey scale and will not generate significant adverse overshadowing of adjoining land.  |
| j) <i>The proposed development will not cause any significant reduction in the privacy of occupiers of adjoining land</i>  | Y                 | No privacy issues will result. Refer also to the assessment provided under LHIB LEP 2010, clause 32(2) regarding setbacks.   |

### 6.3.2 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 Clause             |                        | Complies<br>Y/N | Comment   |
|---------------------------------|------------------------|-----------------|---|
| <b>Part 1 Introduction</b>      |                        |                 |   |
| 1.2                             | Plan Objectives        | Y               | The proposed works as assessed and recommended for amendment by condition in this report are consistent with the Plan objectives. |
| 1.4                             | Where does plan apply? | Y               | This DCP applies to the subject site.   |
| <b>Part 2 Design Principles</b> |                        |                 |   |
| 2.1                             | Introduction           | Y               | Noted.  |
| 2.2                             | Objectives             | Y               | The proposed works as assessed and recommended for condition in this report will be consistent with the DCP's design objectives.  |
| 2.3                             | Design Context         | Y               | The proposal as assessed in the report will be consistent with the character and nature of the site and locality.                 |
| 2.4                             | Bulk and Scale         | Y               | Refer to above comment in regard to 2.3, LHI DCP.   |
| 2.5                             | Building Forms         | Y               | Refer to above comment in regard to 2.3, LHI DCP.   |

|  |                              |   |  |
|--|------------------------------|---|--|
| 2.6                                      | Building Materials & Colours | Y   | Refer to above comment in regard to 2.3, LHI DCP.  |
| 2.7                                      | Energy and water efficiency  | Y   | The proposal has been accompanied by a BASIX certificate outlining various energy and water efficiency commitments that will have to be complied with in the design and construction of the project.               |
| 2.8                                      | Landscaping design           | Y   | Refer to above comment in regard to 2.3, LHI DCP, earlier comments in relation to LHI LEP 2010, clause 22(b) & (c) & the internal comments from the LHIB's Team Leader World Heritage in section 5 of this report. |
| 2.9                                      | Site access and parking      | Y<br>(subject to application of conditions) | Refer to above comment in regard to LHI LEP 2010, clause 11(d).  |
| <b>Part 3 Development Control Policy</b> |                              |   |  |
| 3.2                                      | Single Dwellings             | N/A   |  |

## 7 Environmental Effects

### 7.1 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 LHI LEP 2010 has been undertaken (see Section 6.3.1) and the proposed development was found to comply with all relevant provisions subject to the conditions of approval included in the recommendation of this report.
  - ii. any proposed instrument that is or has been the subject of public consultation under this Act  
*Comment:* None.
  - iii. any development control plan  
*Comment:* An assessment of the proposal against the LHI DCP 2005 has been undertaken in Section 6.3.2 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.
  - v. any coastal zone management plan (with the meaning of the Coastal Protection Act 1979)

*Comment:* There are no coastal zone management plans relevant to the application

- 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 proposal have been considered elsewhere in this section of the subject report. The table below provides further assessment of any likely impacts.

**Likely environmental impacts:**

| Potential Impacts                      | Proposal   |
|--|--|
| Access, Transport and Traffic          | The existing driveway access arrangements to the subject Lot 1 are partly over adjoining lot and Crown land without the required legal rights of access and not in accordance with previous determinations by the LHIB. Conditions of consent are included in the recommendation of this report to ensure this is rectified. |
| Public Domain, Visual and Streetscape  | The proposal will not impact on the public domain.   |
| Ecological                             | As assessed in this application the ecological impacts of the proposal are acceptable subject to the implementation of certain rectification works and associated recommended conditions of approval.  |
| Flood                                  | The site is not identified as flood affected.  |
| Heritage                               | The subject site is not listed as a heritage item.   |
| Views                                  | No view impacts are identified.  |
| Privacy                                | No privacy impacts are identified in respect of the proposal. Refer also to the assessment under the LHI LEP 2010, clause 32(2).   |
| 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.  |
| Construction                           | Potential impacts from will be minimised through the recommended conditions of the consent.  |

- c) The suitability of the site for the development

Having regard to its location, the preceding assessment and the recommended conditions of development consent, the site will adequately accommodate the proposal and is suitable for the site for the reasons outlined in this report.

- d) Any submissions made in accordance with this Act or the Regulations

No submissions were received.

- e) The public Interest

For the reasons outlined in the preceding assessment, it is considered that the proposal will be consistent with the public interest, subject to appropriate conditions included in the attached recommendation.

## 8 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 construction of a 1 bedroom tourist accommodation cabin, transit lounge, laundry and install new wastewater system, is considered to have Planning merit and is supported subject to the application of a number of conditions outlined in the following recommendation.

Three key amendments included in the conditions (arising from the preceding assessment) relate to a required reduction in site coverage of the proposal, a rectification of the existing encroachments of the internal driveway onto adjoining properties and the removal/rehabilitation of an unapproved pedestrian path through the established mapped SNV in the near vicinity of the proposed development.

## 9 Recommendation (Conditional Approval)

- a) That OC2023.1.1 for the proposed construction of a 1 bedroom tourist accommodation cabin, transit lounge, laundry and install new wastewater system on Lot 1 DP 1261010, Anderson Road, Lord Howe Island be issued.
- b) That DA2023.1.1 for the proposed construction of a 1 bedroom tourist accommodation cabin, transit lounge, laundry and install new wastewater system on Lot 1 DP 1261010, Anderson Road, Lord Howe Island be approved subject to the application of the following conditions:

### 1. Approved Plans and Supporting Documentation

The development is to be carried out in accordance with the plans and documentation provided with DA2023.1.1 as listed below and endorsed with the Lord Howe Island Board's stamp, except where amended by other conditions of consent.

- a) Completed DA Form prepared by Diane Owens, dated 24<sup>th</sup> January 2023
- b) Statement of Environmental Effects prepared by Diane Owens, dated 24<sup>th</sup> January 2023
- c) Architectural Plans prepared by Collins W Collins, Rev: E, dated: 1<sup>st</sup> February 2023.
- d) BASIX Certificate No. 1369694S, dated: 1<sup>st</sup> February 2023, prepared by Collins W Collins
- e) Onsite Wastewater Treatment System Details & Plans

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

### 2. Transfer of Bed Licences

The proposed tourist accommodation shall only accommodate two persons at any one time and only operate whilst two public accommodation licences are current and authorised by the Lord Howe Island Board.

Reason: To clarify the other related application requirements associated with the proposal.

### 3. 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 plans submitted with the Construction Certificate:

- a) To achieve compliance with cl. 22(1a) of the 2010 LEP, the total site coverage of the proposed development (including covered and uncovered decks & all building wall thicknesses) shall be reduced by 66m<sup>2</sup> (ie the Total Site Coverage detailed on the submitted plans of 176m<sup>2</sup> reduced down to a maximum of 110m<sup>2</sup>).
- b) The driveway to (and within the subject Lot 1 DP 1261010) shall be provided and reconstructed (partly) around the existing dwelling on Lot 1 and within the previously approved and registered ROW over Lot 2 DP 1261010.

Or alternatively, if the applicant wants to keep most of the existing driveway, a ROW is to be legally created and registered over Lot 11 DP 1202580 for the length of the driveway within this Lot (to the benefit of Lot 1), and the remaining driveway length relocated and reconstructed wholly within Lot 1 (to resolve the existing illegal encroachments within the adjoining Crown land (Lot 79 DP 757515).

In either of the above scenarios, the existing driveway area encroaching within the adjoining Crown land (Lot 79 DP 757515) shall be demolished and rehabilitated.

The chosen above rectifications regarding the driveway access shall be completed prior to the issue of the construction certificate for the proposed development.

Reason: To ensure that the development complies with the LHI LEP 2010 and that legal access to the subject site is provided .

### 4. Construction Certificate

#### Approved Building Class:

| BCA Class | Use   | Area  |
|-----------|---|---|
| 1a        | Dwellings (Short term holiday accommodation including the transit lounge) | dwelling including transit lounge and decks |

- 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.

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 proposed work is suitable for occupancy as a Class 1a 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 Occupancy Certificate for the building

can be issued.

- d) The applicant is to ensure that the Construction Certificate Plans are the same as the approved Development Application Plans (as amended by these conditions of development consent).
- e) Prior to the issuing of a Construction Certificate the applicant is to provide evidence of payment of a Long Service Levy as per section 34 of the Building and Construction Industry Long Service Payments Act 1986.
- f) If required prior to the issuing of a Construction Certificate the applicant is to provide evidence that the licensed contractor/builder undertaking the residential building work has taken out Home Warranty Insurance with the required minimum cover as per the Home Building Act 1989.
- g) Prior to the issuing of an Occupancy 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.

## **5. 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:

### **a) *Surface water drainage 3.1.3.3***

The ground beneath suspended floors must be graded so that the area beneath the building is above the adjacent external finished ground level and surface water is prevented from ponding under the building— The current sections show no areas of ponding.

### **b) *Termite management systems 3.1.4.3 & Subfloor ventilation 3.4.1.2***

Either the primary building elements are not to be 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 (Part 3.2) & Framing (Part 3.4)***

A Structural Engineer will need to 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.

### **d) *Installation of smoke alarms 3.7.5.5***

The dwelling is to be provided with smoke alarms that are interconnected. To comply the smoke alarm will be required to be located and certified as complying with AS 3786 – 2018.



e) *Condensation management 3.8.7*

Exhaust from a bathroom, sanitary compartment, or laundry must be discharged either direct to outside air or a ventilated roof space. The construction plans are to include details complying with this clause.

f) *Barriers to prevent falls 3.9.2.2*

A continuous barrier must be provided along the side of a trafficable surface such as the decks and path to the dwelling where it is possible to fall 1 m or more measured from the level of the trafficable surface to the surface beneath. Proposed finished floor levels have not been provided but the plans indicate these will be less than 1.0 m high.

g) *Construction of wet area floors — falls 10.2.12 (NCC2022)*

Where a floor waste is installed the minimum continuous fall of a floor plane to the waste must be 1:80; and the maximum continuous fall of a floor plane to the waste must be 1:50.

## 6. Ecology and Habitat

- a) If any live LHI Gecko or LHI Placostylus are detected during works they must be moved to similar habitat structures in the adjacent area (e.g. fallen timber within dense native vegetation, old dwellings/structures) away from the development site so they can escape predation by predators such as LHI Currawong, LH Woodhen and kestrels etc.
- b) All building activity and movements, including the stockpiling of materials, is restricted to cleared open areas so as not to damage or harm any native vegetation or animals, including flesh-footed shearwater burrows.
- c) The unapproved pedestrian path constructed through the established mapped SNV in the near vicinity of the proposed development that is filled with wood chips, and a border of planted exotic species, (similar to Tradescantia spathacea), shall be removed and rehabilitated with native species characteristic of community 12b – Banyan – Kentia Palm forest on coral sand and calcarenite.

This work shall be undertaken to the satisfaction of the LHIB Team Leader World Heritage prior to the issue of the Construction Certificate for the proposed development.

- d) No additional removal, modification or damage to the Significant Native Vegetation (including for roads, tracks, gardens and structures etc) on Lot: 1 DP: 1261010 shall be undertaken further to the LHIB inspection, observations & mapping dated 19 May 2023 (& as also illustrated in figure 5, Section 5.1 of the OC/DA assessment report for this approval).
- e) Any potential sediment or run-off shall be captured and prevented from entering areas of significant native vegetation, threatened ecological communities, or threatened species habitat.
- f) Garden landscaping surrounding the proposed development must consist of only natives or non-invasive plants approved by the Lord Howe Island Board to ensure the protection of the of the Islands environment and biodiversity.

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

## 7. 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 is diverted to existing rainwater tanks as outlined in the application or an appropriate absorption trench is to be provided. The method of management of the stormwater is to be shown on the construction drawings.

Reason: To ensure works are undertaken appropriately.

## 8. Wastewater Treatment

- a) The following table outlines the expected daily hydraulic load for the proposal:

| Source                     | Number  | Lt/day | Total Lt/day |
|----------------------------|---------|--------|--------------|
| Main Dwelling              | 4EP     |        | 480          |
| 1 x Tourist Unit           | 2 x Pax |        | 300          |
| Total Daily Hydraulic Load |         |        | <b>780</b>   |

- 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 wastewater treatment system and is satisfied that the installation and operation of the system meets the parameters of the strategy.
- c) The effluent land application area of 370m<sup>2</sup> assumes the soil type of calcarenite. 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 calcarenite the effluent land application area may be subject change.
- d) 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.
- e) 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.
- f) 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 ensure works are undertaken appropriately.

## 9. 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.

## **10. Construction**

- a) The applicant is to ensure that any electrical work must be carried out by a licensed electrician.
- b) All works are to be undertaken in accordance with approved Construction Certificate documentation.
- c) Pre-Commencement meeting to be arranged with the Owner, Builder and Board Personnel 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.
- d) No excavation is to be carried out until the site is inspected by the LHIB Senior Electrical Officer.

Reason: To ensure works are undertaken appropriately.

## **11. Electrical**

- a) In order for the proposed customer electrical installation to proceed the following works will need to be undertaken. –
  - i. New single phase or three phase underground consumer mains to be connected directly to Distribution Pillar No.210 on the adjacent Gail Cameron lease. The applicant is responsible for the installation of the new consumer mains.
  - ii. The works identified above shall be completed prior to any customer electrical installation works being undertaken.
- b) The applicant shall identify prior to the installation of new consumer mains the total number of socket outlets to be installed in the proposed development.
- c) The applicant shall reduce the number of proposed socket outlets by 18 to a total of 40 if the single phase consumer mains are installed. This can be achieved by reducing the number of double socket outlets or converting double socket outlets to single socket outlets. For the purpose of this assessment a Double GPO is classified as 2 socket outlets.
- d) An inspection shall be undertaken by the LHIB SEO prior to final connection of the installation confirming the installation complies with this assessment.
- e) All electrical works must be completed by a licensed electrical contractor to AS/NZS

3000:2018.

- f) A signed Compliance Certificate – Electrical Works must be issued to both the customer and LHIB within 7 days of completing all electrical works and prior to the new installation being permanently energized or otherwise before the application for the Occupancy Certificate for the proposal.
- g) All works must also comply with the current Lord Howe Island Electrical Service Rules.

## **12. 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.

## **13. Construction Hours**

To limit the impact of the development on adjoining owners, all construction work shall be restricted to the hours of 7.00am to 6.00pm Monday to Friday and 8.00am to 1.00pm Saturdays. No construction work shall take place on Sundays or Public Holidays.

Reason: To limit the potential for any loss of amenity to adjoining owners and/or occupiers associated with the construction of the approved works.

## **14. Notice of Commencement**

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

Reason: This is a legislative requirement.

## **15. Erection of construction signs**

A sign must be erected in a prominent position on any site on which building work, is being carried out:

- a) showing the name, address and telephone number of the principal certifying authority for the work, and
- b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- c) stating that unauthorised entry to the work site is prohibited.
- d) Any such sign is to be maintained while the building work is being carried out, but must be removed when the work has been completed,

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

## 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

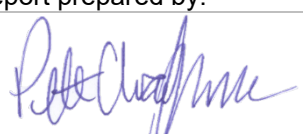
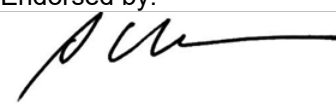
*A matter of national environmental significance (NES) matter; or Commonwealth land without an approval from the Commonwealth Minister for the Environment.*

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 the Commonwealth Department of Agriculture, Water and the Environment 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.

|   |  |
|---|--|
| Report prepared by:   | Endorsed by:   |
|          |            |
| Peter Chapman<br>Date: 19th July 2023<br>LHI Consultant Town Planners<br>All About Planning | Suzie Christensen<br>Date: 04 August 2023<br>Chief Executive Officer<br>Lord Howe Island Board |

|                                 |                           |                          |
|---------------------------------|---------------------------|--------------------------|
| Out of Session Paper: July 2023 | Date issued: 21 July 2023 | Record Number: ED23/4187 |
|---------------------------------|---------------------------|--------------------------|

# LORD HOWE ISLAND BOARD

## OUT OF SESSION PAPER

### OPEN SESSION

#### Item

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Process for Dwelling Allocation – second clarification of eligibility criteria

#### Recommendations

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1. **Approve** the amendment to eligibility criteria for dwelling allocations condition e) and h)

#### Issue

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##### Eligibility Criteria for Dwelling Allocations

Further to recent amendments approved by the Board (in bold below), the requirement for the following additional amendments (in red) to eligibility criteria for dwelling allocations have been identified.

The amendments are proposed to provide greater clarity to the relevant criteria and ensure intended outcomes are achieved.

---

Applications for dwelling allocations are to be a joint application between the existing perpetual lease holder and the proposed new lessee. The following criteria apply:

- 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 or 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 in



accordance with this policy **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 P/L 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
- 

## Current position and next steps

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Probity advisory firm OCM have reviewed documentation, including the application form, criteria, and explanatory notes, along with the proposed process. They will oversee the application and assessment process and make a recommendation report to the Board prior to the ballot being drawn. OCM will also provide an independent scrutineer to oversee the draw.

The final criteria, explanatory notes, FAQ's and application form will be made available on the 31<sup>st</sup> July, when the application period will now open.

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

## Board Member Recommendation

---

| No.        | Recommendation  | Decision  |
|------------|---|-----------|
| 1          | <b>Approve</b> the amendment to eligibility criteria for dwelling allocations condition e) and h) | Supported |
| Date       | Result  |           |
| 25/07/2023 | Approved  |           |

|                                 |                           |                          |
|---------------------------------|---------------------------|--------------------------|
| Out of Session Paper: July 2023 | Date issued: 19 July 2023 | Record Number: ED23/5536 |
|---------------------------------|---------------------------|--------------------------|

# LORD HOWE ISLAND BOARD

## OUT OF SESSION PAPER

### OPEN SESSION

#### Item

Application to transfer of a private use boat trailer from Brad Palmer to Suzie Christensen

#### Applicant

Suzie Christensen

#### Recommendations

1. **Approve** the transfer of a private use boat trailer from Brad Palmer to Suzie Christensen.
2. **Approve** an additional condition - Approval will be terminated at the cessation of employment with the Lord Howe Island Board.

#### Current position

On 24 May 2023 Brad Palmer applied to transfer a private use boat trailer to Suzie Christensen. Ms Christensen meets the private use eligibility criteria under *Section 7.1.1(3)* of the Vehicle Importation, Transfer and Use Policy (Attachment A).

- At February 2023 Board meeting the Board approved Ms Christensen to transfer a trailer to herself from Hank Bower. This new trailer will replace the previous.
- Ms Christensen is a current Lord Howe Island Board employee with 18 months service;
- Ms Christensen resides in an approved dwelling at Government House;
- Ms Christensen has a current tenancy agreement from 05/12/2021 to 4/12/2023;
- Ms Christensen's demonstrated need for the vehicle includes the transport and storage of her boat.
- The maximum size requirements for private use vehicles do not apply to boat trailers as they are designed specifically to accommodate the length and width of the associated boat (*Section 3.7* of the Policy).

#### Conclusion

The policy is silent in relation to who has delegation to determine vehicle applications where the applicant is the Chief Executive Officer (CEO) of the Lord Howe Island Board. *Section 9* of the Policy details the referral of vehicle applications by the CEO to the Chairperson, who will determine the matter in consultation with the Board.

It is recommended that the Board approve the application with an additional condition detailed in Recommendation 2 above.

## Attachments

| Attachment | Title  |
|------------|--|
| A          | Policy – Vehicle Importation Transfer and Use – Reviewed February 2023 |
|            |  |
|            |  |

## Approval and contact

| Approver         | Position                                       |
|------------------|--|
| Michael Chalmers | Senior Manager Business and Corporate Services |
| Preparer         | Position                                       |
| Chelsea Holden   | Executive Assistant                            |

## Board Member Recommendation

| No.          | Recommendation   | Decision  |
|--------------|--|-----------|
| 1            | <b>Approve</b> the transfer of a private use boat trailer from Brad Palmer to Suzie Christensen.                                     | Supported |
| 2            | <b>Approve</b> an additional condition - Approval will be terminated at the cessation of employment with the Lord Howe Island Board. | Supported |
| Date         | Result   |           |
| 20 July 2023 | Approved   |           |

# LORD HOWE ISLAND BOARD

## OUT OF SESSION PAPER

### OPEN SESSION

#### Item

---

Process for Dwelling Allocation – clarification of eligibility criteria

#### Recommendations

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1. **Approve** the amendment to eligibility criteria for dwelling allocations condition d) and i)

#### Current position

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##### Eligibility Criteria for Dwelling Allocations

The requirement for the following amendments (underlined and in bold) to eligibility criteria for dwelling allocations have been identified. The amendments are proposed to provide greater clarity to the relevant criteria and ensure intended outcomes are achieved.

---

Applications for dwelling allocations are to be a joint application between the existing perpetual lease holder and the proposed new lessee. The following criteria apply:

- 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 or 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 in accordance with this policy 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 P/L holder 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 amendments will assist with communicating requirements to interested parties. A schedule of definitions and evidence requirements along with the form and workbook are being developed. These will be available by 1 July when the application period opens.

One-on-one sessions with community members commence from Tuesday 13<sup>th</sup> June 2023.

## Approval and contact

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

## Board Member Recommendation

| No.        | Recommendation  | Decision  |
|------------|---|-----------|
| 1          | <b>Approve</b> the amendment to eligibility criteria for dwelling allocations condition d) and i) | Supported |
| Date       | Result  |           |
| 09/06/2023 | Approved  |           |