

# **LORD HOWE ISLAND BOARD**

## **Business Paper**

### **OPEN SESSION**

#### **ITEM**

Memorandum of Understanding, LHIB and Invasive Species Council

#### **RECOMMENDATION**

That the draft Memorandum of Understanding between the Invasive Species Council (ISC) and the Lord Howe Island Board (LHIB) be endorsed for execution.

#### **BACKGROUND**

Memoranda of Understanding have been developed where necessary in order to document the way in which the LHIB and various stakeholders work together and in partnership both on Lord Howe Island and in other locations.

A memorandum of understanding (MOU) is non-binding in that it is not a legal contract. However, it provides a good way of identifying the benefits and expected outcomes of working in partnership as well as the mutual expectations of the parties to the MOU. An MOU is two-way in that there must be benefits to both parties involved in the partnership.

The LHIB already has memoranda of understanding with a number of organisations, including:

- The Port Macquarie Hastings Council
- The LHI Tourism Association
- The Office of Environment and Heritage, Science Division
- LHI Marine Parks

In 2016, an investigation was conducted by the LHIB (Weed Eradication Program) to find an appropriate mechanism to accept philanthropic donations for conservation projects on Lord Howe Island.

Identified options were assessed against key drivers for Lord Howe Island conservation fundraising. The LHIB was reluctant to receive donations directly and based on the legal advice we received at the time, a stand alone collection mechanism was considered to be the best option.

With this in mind, we explored the options of joining with a partnering agency to collect funds on our behalf and the option of establishing a 'Protecting Paradise LHI Trust'.

The following list of agencies were considered as they have Deductible Gift Recipient (DGR) status and are positively aligned with the conservation goals we would fundraise for:

- LHI Museum
- Friends of Lord Howe
- Paddy Pallin Foundation
- Invasive Species Council (ISC)

The possibility of creating a 'Protecting Paradise LHI Trust', was also reviewed; this trust would be specifically set up to collect funds for local conservation projects and would be facilitated by a community appointed trust board, but could not be run by the LHIB.

Following the review process it was determined that a combination of both partnerships with aligned organisations and a 'Protecting Paradise LHI Trust' to collect funds directly would best meet our fundraising needs.

The 'Protecting Paradise LHI Trust' concept was advanced following a review of what others had already done in this area. It was determined that Bendigo Bank – Community Sector Banking (<https://www.communityenterprise.foundation.com.au>) was the mechanism that would allow us to begin to collect donations, the bank account we investigated would also provide the administration and reporting needed for a not-for-profit organisation at a standard fee of 3%, alleviating the need for specialised resourcing.

This bank account application was made and is 95% complete; it remains in draft awaiting the commencement of our DGR status, which will take approx. 1 year to obtain. DGR status would need to be obtained, to authenticate the trust. A generous offer was made by one of our supporting agencies in providing support through the legal process, this is yet to commence. With the re-invigoration of the need for a fundraising mechanism this offer has been followed up and steps to begin this process are being put in place.

## **CURRENT POSITION**

2018 has seen a reinvigoration of the need for a fundraising mechanism, a trust is still identified as the best long term goal for fundraising collection and will be progressing in the background over the next year. However fundraising for the REP and WEP programs will be necessary during the trust set up time and will inevitably need a separate collections portal.

2018/2019 fundraising needs to be supported by a partner agency with DGR status, a collection mechanism, key fundraising reach and expertise. To meet this requirement, the ISC was re-engaged as one appropriate partner agency and brought up to speed on the requirements on the upcoming 2018/2019 fundraising needs.

It was recognised that the goals and needs of the LHIB and ISC positively aligned and therefore we sought to begin negotiating a MoU with ISC to assist with a donation collection portal, collaborative support, and raising funds through the ISC network.

Shared objectives of the LHIB and the ISC include:

- Eradicating invasive species from Lord Howe Island, including rodents and weeds;
- Restoring the natural ecosystems of Lord Howe Island impacted by invasive species; and
- Implementing and maintaining an effective ecologically based biosecurity system for Lord Howe Island.

ISC have prepared a draft MoU having sought legal advice on auspicing arrangements related to their DGR status. The Draft MoU is attached (Attachment A) for LHIB endorsement prior to execution.

It should be noted that the MOU is non binding, not exclusive and does not make a commitment to any financial contribution from the LHIB to the ISC. However, joint projects may be identified through the MOU, which could lead to agreement about a financial contribution for a specific project. A project plan is required to be developed for any joint project, and the financial arrangements would be an essential part of any plan.

There is benefit for the LHIB in entering into the MOU with the ISC to assist with fundraising for conservation projects and the draft MOU is therefore supported.

### **RECOMMENDATION**

That the draft Memorandum of Understanding between the LHIB and the Invasive Species Council be endorsed for execution.

**Prepared:** Darcelle Matassoni, Project Communications Coordinator

**Endorsed:** Peter Adams, Chief Executive Officer

**Attachments:**

Attachment A: Draft Memorandum of Understanding – LHIB and Invasive Species Council

## Memorandum of Understanding / Partnership Agreement

between

**Invasive Species Council (ISC)**

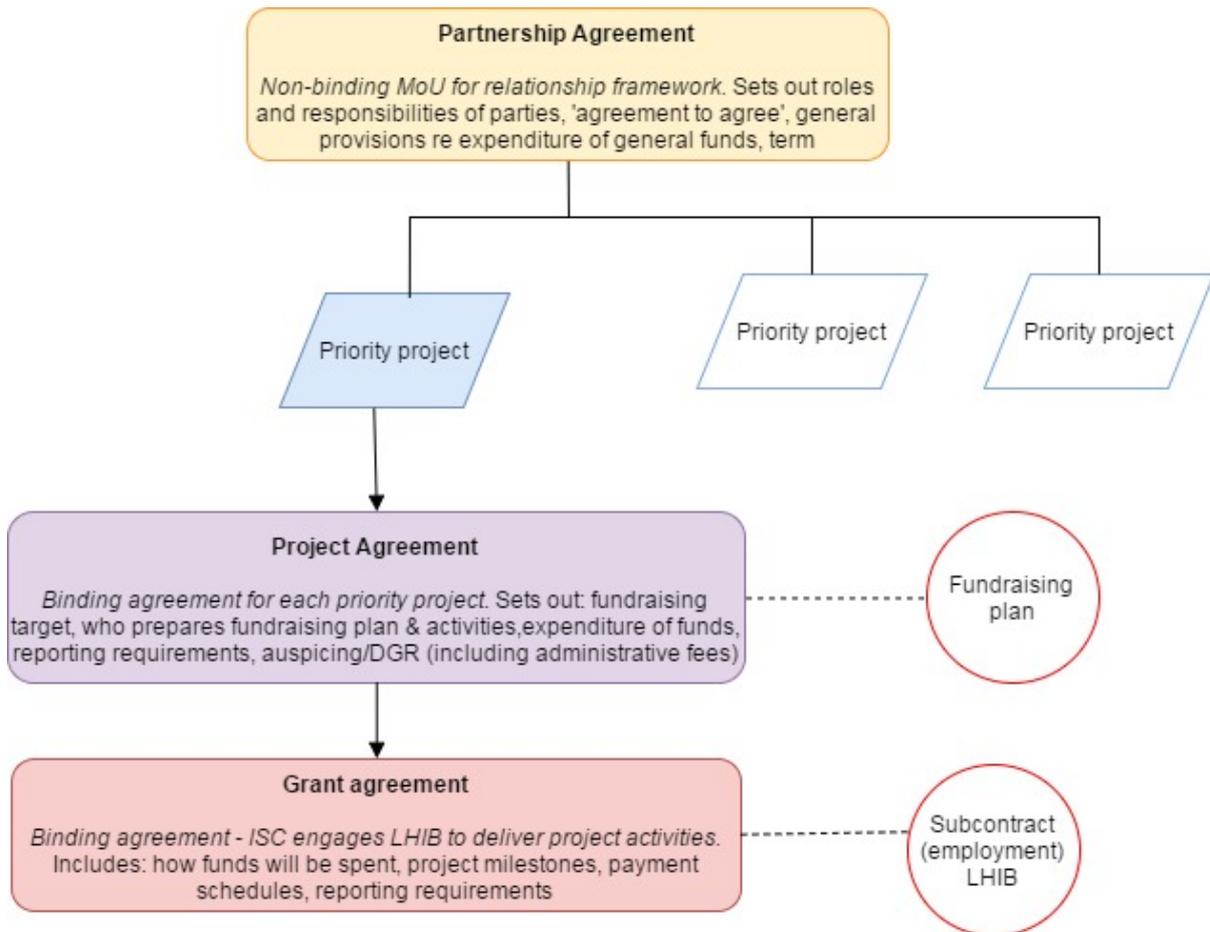
and

**Lord Howe Island Board (LHIB)**

**CONFIDENTIAL**

Version 2, 4 September 2018

### Proposed framework



## 1. Parties

**Invasive Species Council Inc. (ISC) ABN 27 101 522 829**  
PO Box 166, Fairfield VIC 3078

**AND**

**Lord Howe Island Board (LHIB) ABN 33 280 968 043**  
PO Box 5, Lord Howe Island, NSW, 2898

## 2. Background and term

- 2.1. This is a non-binding Memorandum of Understanding (**MOU**) between Invasive Species Council (**ISC**) and the Lord Howe Island Board (**LHIB**).
- 2.2. The MOU will apply from [#date#] and will continue to apply until [#date/] or until termination by either party on the giving of three months' written notice to the other.

## 3. Purpose and scope

- 3.1. ISC and LHIB are committed to maintaining a positive and cooperative working relationship.
- 3.2. ISC and LHIB agree to work together to progress the shared objectives (**project objectives**) of:
  - 3.2.1. Eradicating invasive species from Lord Howe Island, including rodents and weeds;
  - 3.2.2. Restoring the natural ecosystems of Lord Howe Island impacted by invasive species; and
  - 3.2.3. Implementing and maintaining an effective ecologically based biosecurity system for Lord Howe Island.

3.3. [#insert details of any timelines to achieve these goals and objectives#]

## 4. Roles and responsibilities

- 4.1. ISC agrees to:

- 4.1.1. Pursuant to any project agreement set out in clause 6 below, auspice joint projects when DGR status is a prerequisite for applying or receiving funding.
- 4.1.2. Receive donations from Australian taxpayers to support projects consistent with the project objectives either in accordance with project agreements or generally.
- 4.1.3. Distribute funds received in accordance with any project agreement.
- 4.1.4. Separately account for funds raised under this MoU or any specific project agreement through its accounting system.
- 4.1.5. Carry out any administrative and regulatory requirements of donations.
- 4.1.6. On request from LHIB, provide a report on the balance and any income and expenditure under this MoU within a nominated period.

4.2. LHIB agrees to:

- 4.2.1. Fund a professional fundraising program to resource joint projects.
- 4.2.2. Provide additional resources for fundraising and other specialist input to develop and implement the fundraising plan.
- 4.2.3. Under any grant agreement set out in clause 7 below, provide to ISC regular reports on the status of any project subject to an agreement.
- 4.2.4. Assist with donor communication on request from ISC.

4.3. Jointly, the parties agree to:

- 4.3.1. Develop a list of priority projects.
- 4.3.2. Enter into project agreements in relation to agreed priority projects in accordance with clause 5 below.
- 4.3.3. Enter into grant agreements in relation to activities arising under project agreements in accordance with clause 6 below.

## 5. Project agreements

- 5.1. For each priority project that the parties agree will proceed, the parties will enter into a legally binding agreement (**project agreement**) that will include:
  - 5.1.1. Fundraising target(s).
  - 5.1.2. Responsibility for preparing a fundraising plan.
  - 5.1.3. Responsibility for conducting fundraising activities.

5.1.4. How funds will be expended

5.1.5. Auspicing arrangements if required

5.1.6. Administrative and other costs (including administrative costs payable to ISC in furtherance of an auspicing arrangement)

5.1.7. A list of other agreements (such as grant agreements discussed below at clause 6) required to deliver the project.

## 6. Grant agreements

6.1. If LHIB is engaged by ISC to carry out activities under the project agreement:

6.1.1. prior to the distribution of funds to LHIB, the parties will enter into a grant agreement (consistent with the project agreement) that will set out:

6.1.1.1. How funds will be spent (including whether additional staff will be hired to carry out the activities)

6.1.1.2. Project milestones

6.1.1.3. Payment schedules

6.1.1.4. Reporting requirements.

6.1.2. ISC will seek to ensure that reporting requirements in any grant agreement align with other LHIB reporting requirements for related work.

## 7. Funding from other sources

7.1. If ISC receives **tied** donations from donors that are consistent with the project objectives but are outside the scope of the priority projects:

7.1.1. ISC will liaise with the LHIB to determine how best to deliver the wishes of the donor.

7.1.2. ISC retains the final say in the use of this funding.

7.2. If ISC receives **untied** donations from donors from general fundraising in support of the project objectives:

7.2.1. ISC and LHIB will seek to jointly determine where to direct funds

7.2.2. If no agreement is reached, ISC will direct funds at its discretion to one of the priority projects or to activities consistent with the project objectives.

7.2.3. ISC retains the final say in the use of this funding.

7.3. For work to be carried out by the LHIB, a grant agreement under clause 6 will be prepared.

7.4. ISC will retain 5% of received donations under this clause as a fee for its direct costs related to receiving and administering donations and the intangible value of its DGR status and reputation.

7.5. An alternative payment formula to clause 7.4 may be agreed in writing by both parties.

## 8. Intellectual property

8.1. The parties retain their respective ownership of all intellectual property rights in its materials which were in existence at the date of execution of this MOU or which were or are developed independently of this agreement (background IP)

8.2. ISC grants LHIB a limited, non-exclusive, royalty-free licence during the term of the MOU to use ISC background IP solely for the purpose and to the extent necessary to perform this agreement.

8.3. LHIB grants ISC a limited, non-exclusive, royalty-free licence during the term of the MOU to use LHIB background IP solely for the purpose and to the extent necessary to perform this agreement.

8.4. All intellectual property rights in any material created specifically as part of this agreement vest jointly in ISC and the LHIB (Project IP). The parties grant each other a non-exclusive, royalty free, irrevocable, transferable licence to use the Project IP solely for the purpose and to the extent necessary to perform this agreement.

8.5. Any agreed use of the name, logo or other intellectual property rights of the parties, including such property licensed to the parties, must be in a manner and on terms that a party may not damage the other party's reputation

## 9. Termination

9.1. The term of this MoU is from xxx until xxx.

9.2. The term may be extended with the written agreement of both parties. If this MoU is extended, the terms of this agreement will continue unless varied and agreed in writing by the parties.

9.3. This MoU may be terminated by either party by providing three months written notice.

9.4. Upon termination, if ISC retains undistributed funds received in furtherance of the project objectives, ISC can, at its absolute discretion, determine to:

- 9.4.1.            Distribute the funds to LHIB via a grant agreement
- 9.4.2.            Distribute the funds on activities consistent with the wishes of the donor
- 9.4.3.            Return the funds to the donor.

**10. Variation**

10.1.        This MoU may be varied by written agreement by the parties.

**11. Execution clause [include]**