

LORD HOWE ISLAND BOARD

Business Paper

OPEN SESSION

ITEM

Renewal of Special Lease 2011.08

RECOMMENDATION

If the modification to consent MDC2020.01 considered at this Board meeting is endorsed in such a way that Lot 101 DP757515 is no longer required for the Hybrid Renewable energy Project that:

1. The Board seek the Minister's approval for the extension of the Special Lease 2011.08 from 1 January 2020, or any subsequent date upon receiving Ministerial approval until 31 December 2021 subject to the existing conditions of the lease.

Alternate Resolution:

If the MDC2020.01 is refused or amended in such a way that lot 101 is required to be available to install solar panels for the Hybrid Renewable Energy Project that:

1. The Board recommend to the Minister to refuse renewal of special lease 2011.08 on the 31 December 2019.
2. Following Ministerial consent to not renew the lease, the Board undertake the necessary actions to determine the compensation payable to the existing lease holder under section 12 of the *Lord Howe Island Act 1953*.

BACKGROUND

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 (the Act). Pursuant to Section 22 of the Act, the Minister may grant Special Leases for agriculture or other uses to perpetual leaseholders on the recommendation of the Board. Attachment A – Special Lease Information Sheet provides an overview of Special Leases on Lord Howe Island.

Special Lease 2011.08 located on Lot 101 DP757515 is a 49 070m² special lease with a chargeable area of only 14 910 m². The Special Lease is currently held by Gower Wilson. Approximately 30% of the lease area consists of grazing land with the remaining 70% consisting of significant native vegetation. The lease is due to expire on 31 December 2019. The chargeable lease area is used predominantly for the purpose of grazing dairy cattle.

On 24 November 2015 the Board determined DA2016.02 – Installation of Ground Mounted Solar Panels and Associated Infrastructure, granting conditional approval. This approval,

among other things granted development consent for the installation of photovoltaic solar panels on Lot 101. In order to do this Special Lease 2011.08 would need to either be cancelled or significantly modified.

CURRENT POSITION

At the December 2019 Board meeting, concurrent to this paper, the Board will consider a Modification to Consent (MDC) to modify DA2016.02. Among other things this MDC includes a modification that moves the solar panels originally proposed for Lot 101 to be installed only in Lot 230. This will result in Lot 101 no longer being required for the installation of solar panels. Approval of this element of the MDC will allow for continued use of Lot 101 for agricultural purposes under Special Lease 2011.08.

As Special Lease 2011.08 expires on the 31 December 2019 it is proposed that the Board write to the Minister requesting that the Minister extend the expiry date for the Special Lease granted to Wilson Gower for a further two years, with the lease expiry date set for 31 December 2021. This extension is proposed for the same reasons set out in the September Board Paper "Business Paper – 10((viii) Proposed extension to the term of Special Leases" which was adopted by the Board at the September 2019 Board meeting.

If the Board does not resolve to adopt the changes proposed in MDC2020.01 Lot 101 will be required for the installation of solar panels as per the existing development consent for DA2016.02 granted in December 2015. In this scenario compensation may be payable to the lease holder as set out in section 22(12) of the Act.

RECOMMENDATION

If the modification to consent MDC2020.01 considered at this Board meeting is endorsed in such a way that Lot 101 DP757515 is no longer required for the Hybrid Renewable energy Project that:

2. The Board seek the Minister's approval for the extension of the Special Lease 2011.08 from the 1 January 2020, or any subsequent date upon receiving Ministerial approval until 31 December 2021 subject to the existing conditions of the lease.

Alternate Resolution:

If the MDC2020.01 is refused or amended in such a way that Lot 101 is required to be available to install solar panels for the Hybrid Renewable Energy Project that:

3. The Board recommend to the Minister to refuse renewal of special lease 2011.08 on the 31 December 2019.
4. Following Ministerial consent to not renew the lease the Board undertake the necessary actions to determine the compensation payable to the existing lease holder under section 12 of the *Lord Howe Island Act 1953*.

Prepared: Justin Sauvage Manager Environment and Community Services.

Endorsed: Peter Adams Chief Executive Officer

Attachments:

Attachment A: Special Lease Information Sheet – December 2019 – Open

Attachment B: Special Lease Map – December 2019 - Open



LORD HOWE ISLAND BOARD

PLAIN LANGUAGE GUIDE TO THE LORD HOWE ISLAND ACT

Information Sheet 6: Special Leases on Lord Howe Island

What are Special Leases?

Under the *Lord Howe Island Act 1953* (the Act), all land on the island is NSW Crown Land. The Act does not allow freehold private ownership of land.

Instead, the Act provides for Perpetual Leases for Islanders to reside on, and Special Leases for other uses. While Special Leases may be granted for a wide range of purposes, they have almost exclusively been granted for agricultural purposes such as cultivation and grazing. The zoning of land under the Lord Howe Island Local Environmental Plan 2010 would play a significant role in determining where, and for what purpose, a Special Lease can be issued.

The issuing, transfer or subleasing of Special Leases is strictly controlled and constrained by the Act. These provisions date back to 1953 and were designed to protect the interests of Islanders and to prevent speculation and trading in island land.

Is there a Register of Special Leases?

Yes. The Lord Howe Island Board keeps a register containing particulars of leases granted under the Act. It may be inspected by the public at the Island office of the Board.

Who can be granted a new special lease?

New Special Leases can only be granted to a person who holds a Perpetual Lease on the Island. For more information about Perpetual Leases, see the fact sheet entitled "Perpetual Leases". You do not need to be an Islander to be granted a Special Lease, but you do need to hold a Perpetual Lease.

What is the term of a Special Lease?

A Special Lease may be granted for up to 10 years and may be extended with Ministerial approval upon the recommendation of the Board.

Can a Special Lease be cancelled or not renewed?

Yes, in specific circumstances which are strictly controlled by the Act. For example, if the land is required for home sites or for public purposes during the term of the lease, the Minister may withdraw from the lease on the recommendation of the Board.

A Special Lease may not be renewed if the land the Minister, on the recommendation of the Board, determines that it is required for housing or another public purpose.

Compensation may be claimed by the Special leaseholder in these circumstances. The amount of compensation is determined by the Valuer-General, subject to any regulations under the Act, and is subject to appeal in the Land and Environment Court.

The Act states that compensation may be paid for the loss of the land and the loss of the improvement on the land.

Compensation for the loss of the land is calculated based on the unexpired period of the lease. If the unexpired portion of the lease is less than 5 years, then the unexpired portion of the lease is to be calculated at 5 years.

In other circumstances, a Special Lease could be cancelled if, for example, the holder does not pay the rent or fails to comply with any condition applying to the lease.

If the holder of a perpetual lease forfeits that lease, any Special Lease held by that person is automatically forfeited.

In this circumstance, the Minister may waive or reverse forfeiture where it appears to the Minister, after a report from the Board, that there are good and sufficient reasons to do so. The Minister may waive or reverse the forfeiture absolutely or on conditions.

The holder of a Special Lease may surrender the whole or part of the land in the lease. The holder must complete a surrender form available from the Board's Island office and the surrender will take effect on the day of its acceptance by the Minister on the recommendation of the Board.

What is the Rent for a Special Lease?

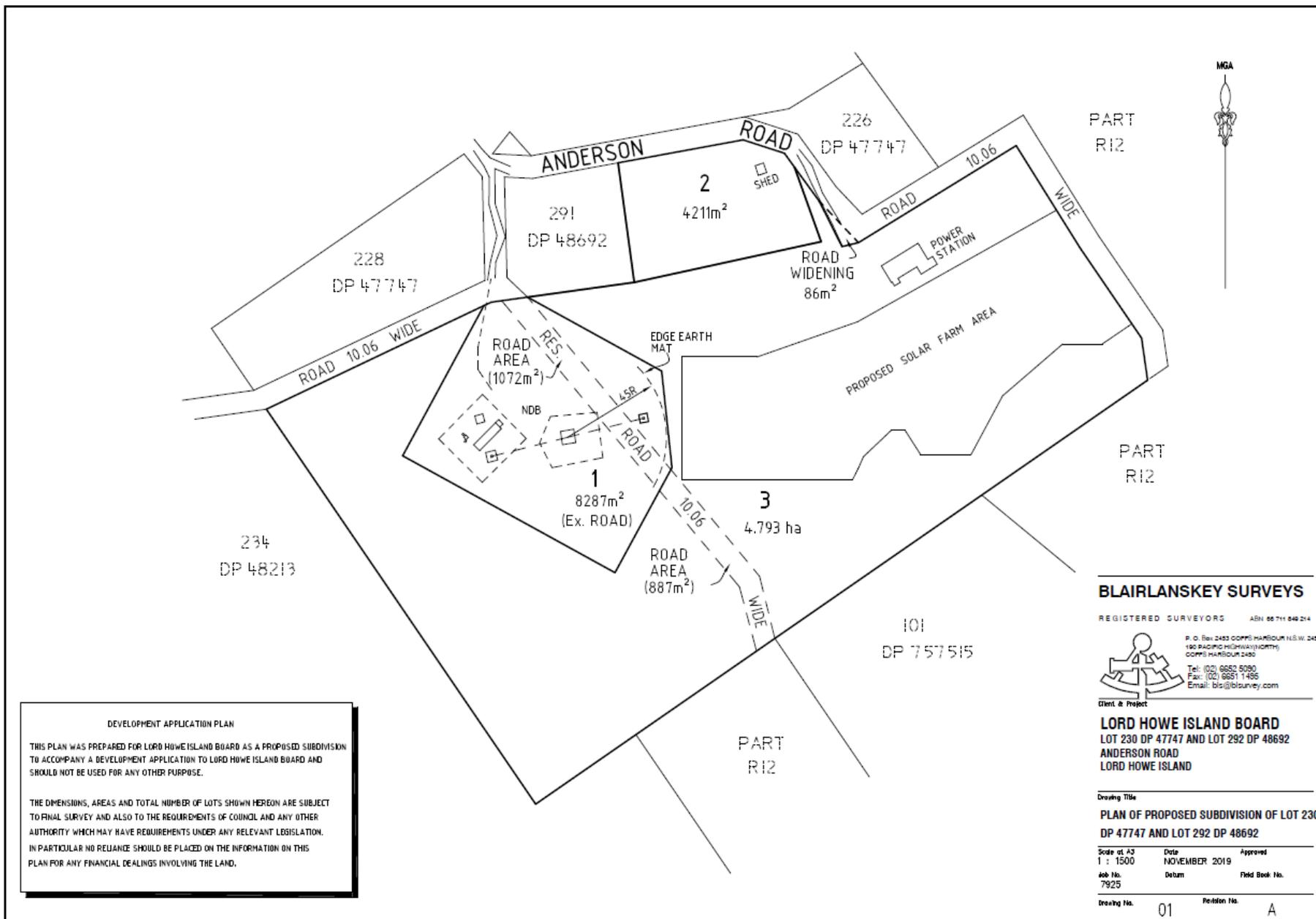
The annual rent for a Perpetual Lease is payable in advance. The amount is determined from time to time by the Board in accordance with the *Lord Howe Island Regulation 2014*. The Regulation imposes a maximum annual rent that the Board may determine, based on a flat dollar amount plus an amount per square metre of land comprised in lease. Generally, the Board may make a new determination of the annual rental every three or more years. The maximum amounts (both the fixed amounts and the amounts per square metre of land) are increased on 1 September each year in accordance with the Consumer Price Index.

Other legal fact sheets forming part of this series include the following titles:

- Information Sheet 1: History of the Lord Howe Island Act 1953
- Information Sheet 2: NSW and Commonwealth Laws on Lord Howe Island
- Information Sheet 3: Owning and Inheriting Land on Lord Howe Island
- Information Sheet 4: Who is a Lord Howe Islander?
- Information Sheet 5: Perpetual Leases on Lord Howe Island
- Information Sheet 7: Permissive Occupancies on Lord Howe Island



Figure 1 Construction Footprint approved under DA2016.02



DEVELOPMENT APPLICATION PLAN

THIS PLAN WAS PREPARED FOR LORD HOWE ISLAND BOARD AS A PROPOSED SUBDIVISION TO ACCOMPANY A DEVELOPMENT APPLICATION TO LORD HOWE ISLAND BOARD AND SHOULD NOT BE USED FOR ANY OTHER PURPOSE.

THE DIMENSIONS, AREAS AND TOTAL NUMBER OF LOTS SHOWN HEREON ARE SUBJECT TO FINAL SURVEY AND ALSO TO THE REQUIREMENTS OF COUNCIL AND ANY OTHER AUTHORITY WHICH MAY HAVE REQUIREMENTS UNDER ANY RELEVANT LEGISLATION. IN PARTICULAR NO RELIANCE SHOULD BE PLACED ON THE INFORMATION ON THIS PLAN FOR ANY FINANCIAL DEALINGS INVOLVING THE LAND.

BLAIRLANSKEY SURVEYS

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Client & Project

LORD HOWE ISLAND BOARD
 LOT 230 DP 47747 AND LOT 292 DP 48692
 ANDERSON ROAD
 LORD HOWE ISLAND

Drawing Title

**PLAN OF PROPOSED SUBDIVISION OF LOT 230
 DP 47747 AND LOT 292 DP 48692**

Scale of A3 1 : 1500	Date NOVEMBER 2019	Approved
Job No. 7925	Datum	Field Book No.
Drawing No. 01	Revision No.	A

Figure 2 Revised Subdivision Plan showing revised lot boundaries for 291 - now identified as lot 2 and revised location for solar farm area.