

# LORD HOWE ISLAND BOARD

## Business Paper

### OPEN SESSION

#### ITEM

Proposal to make the Lord Howe Island Board a Planning Proposal Authority

#### RECOMMENDATION

That the Board write to Planning Industry and Environment supporting amendments to the Environmental Planning and Assessment Act to become a Planning Proposal Authority.

#### BACKGROUND

The Lord Howe Island Act provides for the application of the Environmental Planning and Assessment Act. Currently when preparing an amendment to the Local Environment Plan (LEP) the Board prepares a planning proposal. The LEP stage 1 amendments is an example of a planning proposal recently prepared by the Board. However the Board is unable to submit the planning proposal direct to the Department of Planning, Industry and Environment (DPIE), rather DPIE forward the planning proposal to the Planning Secretary who is delegated to submit the planning proposal on behalf of the Board. This is predominantly an administrative step and does not appear to add any value to the planning process and slows the application process down.

#### CURRENT POSITION

The Lord Howe Island Board is not currently identified as a local planning proposal authority. Below is a bullet point summary of the legislative context for the proposed changes:

- Lord Howe Island is not a local government area under the Local Government Act 1993.
- Councils are constituted under the Local Government Act for each local government area (section 219 of the Local Government Act). Section 15A (2) of the Lord Howe Island Act 1953 does not provide that the Board is taken to be a council of a local government comprising the Island. Section 15A(2)(b) states that the Board is taken to be a council over a certain 'area' of land, but not for a local government area.
- The Board is therefore not a planning proposal authority in accordance with Section 3.32(1)(a) of the Environmental Planning and Assessment Act 1979 (the Act).
- The Minister could direct that the Board is a planning proposal authority, provided it is prescribed by the regulations (section 3.32(1)(b) of the Act).
- There are currently no planning proposal authorities prescribed in the Environmental Planning and Assessment Regulation 2000, so an amendment to the regulation

would be needed to prescribe that the Board is a planning proposal authority (this is one of the matters being considered in the current Regulation amendment).

- The current approach has been that under Section 3.32(2)(e) of the Act, the Minister may direct that the Secretary of the Department of Planning, Industry and Environment is the planning proposal authority where the proposed instrument is to apply to an area that is not within a local government area.

Planning staff from the Grafton office of Planning Industry and Environment are in the process of preparing a submission to cabinet to amend the Environmental Planning and Assessment Regulation to include Lord Howe Island as a local planning proposal authority. Board staff have been advised that there will be a formal consultation process once the amendments have been considered by Cabinet.

The practical implications for the Board becoming a planning proposal authority are as follows:

#### **Public exhibition**

As a planning proposal authority the Board would conduct the public exhibition of a planning proposal which would normally require the placement of an advertisement in the local newspaper, display of the proposal at physical locations nominated by the Board and display of the proposal on the Board's website.

#### **Government Agency Consultation**

As a planning proposal authority the Board would conduct the consultation with state and/or federal government agencies as required by the Gateway determination for a planning proposal. This would involve writing to the agencies providing a copy of the proposal and reviewing the comments made by the agency.

#### **Consideration of Submissions**

As a planning proposal authority the Board would consider the matters raised in submissions to a planning proposal during public exhibition. A report would need to be prepared for the Board on the matters raised in the submissions and whether any changes to the proposal are recommended. The Board would then resolve how to proceed with the proposal being whether to amend the proposal or request that the proposed LEP amendments be made as exhibited.

The primary advantage of the Board being a planning proposal authority is that it will streamline the approval process for amendments to the LEP. Currently, the Planning Secretary acts as the planning proposal authority on behalf of the Board. The Department, upon receiving a planning proposal from the Planning Secretary (on behalf of the Board) then issues instructions to the Planning Secretary on what steps need to be undertaken to satisfy the Department. This is known as a Gateway determination, and the instructions usually include matters such as specific public consultation activities, and requests for specific additional studies relevant to the proposal.

The planning proposal authority is then responsible for carrying these actions out. Currently this is the Planning secretary, who liaises with the Board to undertake the community consultation and directs the Board to undertake the relevant studies and community consultation.

In practice, as the Planning Secretary directs the Board as to what consultation activities need to be undertaken and the Board then undertakes the consultation, the resource implications for the actual consultation process will be about the same.

The Board will incur an additional resource burden in having to collate the consultation results and prepare a report to the Department on the outcome. The cost of this is partly counterbalanced by the opportunity the Board would gain from being able to review the consultation feedback and if desired amend planning proposal or address community concerns. This would be done prior to sending the consultation feedback back to the Department.

Under the proposed arrangement the Board will be able to issue the planning proposal direct to the Department who will then make a Gateway determination and issue the instructions direct to the Board. This significantly streamlines the process.

The other advantage of becoming a Planning Proposal Authority is that it gives the Board the ability to receive or reject third party planning proposals – ie from a lease holder or developer. Under the current situation the only way a third party can request consideration of a planning proposal is for them to approach the Department directly and request that the Planning Secretary submits the planning proposal. This means the Board has in theory no input into the acceptances or rejection process, although in practice it would be highly unusual for the Secretary to not consult with the Board. The overall benefits of being able to accept planning proposals is unclear, as to date, there have been very few third party planning proposals presented to the Board for consideration.

If the Board were to be delegated as planning proposal authority it would also open the opportunity for the Board to become a plan making authority. This role would see the Board responsible for making the new plans including the maps. This is not a compulsory role and many Council's frequently decline to take on this role when pursuing LEP amendments due to the expense and controversies that inevitably arise when a LEP map is amended. It is anticipated that for the foreseeable future that the Department will continue to take on the local plan making authority role.

### **Alternatives**

The Board could write to DPIE and request that the Board not be made a planning proposal authority. So far the Grafton Office of DPIE have indicated that they are keen for the Board to have input into this decision making process, however there is no statutory obligation on DPIE or the State Government to honour our concerns. If the Board were to not be made a planning proposal authority the process for LEP amendments would remain the same as they currently are. This means that each proposal will be delayed by the several weeks or more for the time it takes for the Department to appoint the Planning Secretary, and the Board would have less opportunity to manage the community consultation process or amend a planning proposal in response to community consultation.

### **Conclusion**

As a planning proposal authority the Board will have the opportunity to streamline the process of submitting and preparing a planning proposal. The Board will incur an additional resource burden in having to collate and review all community consultation reports and detailed studies, but this burden is offset by the greater control the Board gains over the process. As a planning proposal authority the Board does not gain any additional autonomy over determining the final outcome of a planning proposal but it does gain some opportunity to influence the kinds of planning proposals that are presented to the Department for determination.

## **RECOMMENDATION**

That the Board write to Planning Industry and Environment supporting amendments to the Environmental Planning and Assessment Act to become a Planning Proposal Authority.

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