



Office of  
Local Government

# **LORD HOWE ISLAND REGULATION REVIEW**

## **REGULATORY IMPACT STATEMENT**

April 2014

## PROPOSED

### LORD HOWE ISLAND REGULATION 2014

#### SUMMARY

The Regulatory Impact Statement for the proposed Lord Howe Island Regulation 2014 discusses alternative approaches to achieving the objectives of the Lord Howe Island Regulation 2004, including:

- allowing this Regulation to lapse without being remade (the 'base case' scenario);
- remaking the Regulation as it currently is; or
- amending the Regulation as proposed.

Alternative mechanisms, other than regulation, were also considered.

The objective of the *Lord Howe Island Act 1953* (the LHI Act) and the Lord Howe Island Regulation 2004 (the Regulation) is to provide for the care, control and management of Lord Howe Island (LHI) to protect its unique values and the interests of its residents.

Generally, the Regulation is considered to be the most cost effective means of achieving the objectives of the *Lord Howe Island Act 1953* compared to having no-regulation or to using non-regulatory means. The proposed Regulation, however, includes some minor changes that aim to improve its operation and achieve its objective.

The proposed changes include:

- Improvements to clarity and security during Board elections.
- An increase in the cap on rent for leases to reflect inflation (not the rent amounts, but the maximum that can be charged).
- New offences for non-compliance with licence conditions, including licences for tourist accommodation.
- Provision that fruit and vegetables are permitted to be imported, and mulch is not permitted to be imported without Board approval.
- Expansion of current restrictions on cats and goats to include pigs, rabbits, foxes, rats, mice, snakes, cane toads.
- Removal of regulation of noxious weeds because this is covered in the Noxious Weeds Act.
- Improvements to protection of the Permanent Park Preserve modelled on the National Parks and Wildlife Regulation 2009.
- Protection for the Rentz's strong stick insect (*Davidrentzia valida*).
- Improvements to the regulation of anchoring vessels to remove the exemption LHI residents have from the requirement to get Board approval to anchor a vessel that is greater than 5 metres in length, to improve protection of the fragile Lagoon ecosystem.
- Provision for the responsible service of alcohol modelled on Part 5 of the *Liquor Act 2007*.

The proposed Regulation will be on public exhibition until 30 May 2014. Copies of the Regulation can be obtained from the Office of Local Government website: [www.dlg.nsw.gov.au](http://www.dlg.nsw.gov.au) or from the Lord Howe Administration Building, Bowker Street Lord Howe Island or telephone 02 4428 4100.

## CONTENTS

PROPOSED .....	1
LORD HOWE ISLAND REGULATION 2014 .....	2
SUMMARY .....	2
1. INTRODUCTION .....	5
Purpose of the Regulatory Impact Statement (RIS) .....	5
Consistency with the Better Regulation Principles – summary statement ..	5
Consultation .....	6
2. CARE, CONTROL AND MANAGEMENT OF LORD HOWE ISLAND ...	6
The Island.....	6
The <i>Lord Howe Island Act 1953</i> .....	7
The Lord Howe Island Regulation 2004 .....	8
3. OPTIONS ASSESSED .....	9
Part 1: Preliminary .....	9
Option 1 – no regulation.....	9
Option 2 – existing Regulation .....	9
Option 3 – proposed Regulation .....	9
Other alternatives considered .....	10
Costs and Benefits.....	10
Part 2: Elections .....	10
Option 1 – no regulation.....	10
Option 2 – existing Regulation .....	10
Option 3 – proposed Regulation .....	10
Alternatives considered.....	11
Costs and benefits .....	11
Part 3: Leases .....	11
Option 1 – no regulation.....	11
Option 2 – existing Regulation .....	12
Option 3 – proposed Regulation .....	12
Alternatives considered.....	12
Costs and benefits .....	12
Part 4: Licensing of tourist accommodation and other commercial undertakings.....	13
Option 1 – no regulation.....	14
Option 2 – existing Regulation .....	14
Option 3 – proposed Regulation .....	14
Alternatives considered.....	14
Costs and benefits .....	15
Part 5: Protection of the environment .....	16
Option 1 – no regulation.....	16
Option 2 – existing Regulation .....	17
Option 3 – proposed Regulation .....	17
Alternatives considered.....	18
Costs and benefits .....	18
Part 6: Motor vehicles.....	19
Option 1 – no regulation.....	19
Option 2 – existing Regulation .....	19
Option 3 – proposed Regulation .....	19
Alternatives considered.....	19
Costs and benefits .....	20

Part 7: Mooring.....	20
Option 1 – no regulation.....	20
Option 2 – existing Regulation.....	20
Option 3 – proposed Regulation.....	20
Alternatives considered.....	20
Costs and benefits.....	20
Part 8: Miscellaneous.....	20
Option 1 – no regulation.....	21
Option 2 – existing Regulation.....	21
Option 3 – proposed Regulation.....	22
Alternatives considered.....	22
Costs and benefits.....	22
Schedules.....	24
4. SUMMARY OF COSTS AND BENEFITS.....	25
5. CONCLUSION.....	27
APPENDIX 1.....	29
Summary of proposed changes to the Regulation.....	29

## 1. INTRODUCTION

The *Subordinate Legislation Act 1989* provides for the staged repeal of statutory rules, including regulations, every five years. The aim of this process is to improve the quality of regulatory proposals and to assess the economic and social impacts of the Regulations and alternative options before they are introduced. This helps to ensure that Regulations have continuing relevance and provide the best approach to meet the policy objectives.

The Lord Howe Island Regulation 2004 (the Regulation) is made under the LHI Act and is due to lapse on 1 September 2014.

### **Purpose of the Regulatory Impact Statement (RIS)**

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This report is a Regulatory Impact Statement (RIS) for the proposed Lord Howe Island Regulation 2014. Before a new Regulation can be made, its estimated costs and benefits must be assessed, and public consultation undertaken, to ensure that the new Regulation provides the best approach for achieving the objectives. The RIS must justify the proposed Regulation by showing that it provides the greatest net benefit or least cost to the community compared with its alternatives, including the option of not proceeding with any action and allowing the Regulation to lapse.

### **Consistency with the Better Regulation Principles – summary statement**

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New regulations must comply with the NSW Government's *Guide To Better Regulation* and its Better Regulation Principles.

While some changes are proposed in the draft Lord Howe Island Regulation 2014, these are minor or machinery in nature, and do not represent a major new regulatory initiative. The Regulation is subordinate legislation and a period of review, required every 5 years, is built into the legislative process. The draft LHI Regulation will be scheduled for review again in 2019.

Alternative options to the proposed Regulation were considered as part of the review. These included: allowing the Regulation to lapse without being remade (the 'base case' scenario); remaking the Regulation as it currently is; amending the Regulation as proposed; as well as non-regulatory options.

Costs and benefits of each proposed option were assessed, and the proposed Regulation is considered to be the most cost effective and efficient means of achieving the objectives. Hence it is considered that the Regulation is both effective and proportional to its importance and its impact.

As part of the review, the Regulation was also examined for clarity, effectiveness and consistency with other legislation, where relevant, to ensure that the Regulation is achieving its objectives, avoids unnecessary duplication, and is not complicated to implement.

The review of the Regulation as a part of the staged repeal program, in conjunction with the application of the Better Regulation Principles, demonstrates the New South Wales Government's commitment to simplify, reform or consolidate existing regulation. The proposed Regulation is the most effective means for achieving its objectives.

## Consultation

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The proposed regulation mainly affects residents and visitors to Lord Howe Island. There is also a broad range of stakeholders who may consider themselves affected by the proposed Regulation, including many recreational user groups, conservation groups and businesses. The most appropriate means of consultation with such a wide range of stakeholders is through the required public exhibition process for the draft Regulation and RIS, which must be for a minimum period of 28 days.

Copies of the proposed Regulation and RIS will be provided to key stakeholders, including (but not limited to) the Lord Howe Island Board, Marine Parks Advisory Committee, environment groups and tourism groups.

The Office of Local Government welcomes submissions from all interested parties and will carefully consider all matters raised and make any necessary amendments to the proposed Regulation before any new provisions commence on or before 1 September 2014. A notice calling for submissions from the public will be published in the NSW Government Gazette, the *Sydney Morning Herald*, *Daily Telegraph*, *Lord Howe Island Community Bulletin* and *Lord Howe Island Signal*.

## 2. CARE, CONTROL AND MANAGEMENT OF LORD HOWE ISLAND

### The Island

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Lord Howe Island is located 760 kilometres north east of Sydney in the Pacific Ocean. It is 11 kilometres long and between 0.3 and 2 kilometres wide, with a coral reef lagoon on the south west side. It is 1,455 hectares in area, of which only 398 hectares is the lowland settlement area. It is believed to be the remnant of a large shield volcano and has a diverse landscape with mountains, valleys, hills, lowland areas and sea cliffs. It lies at the same latitude as Port Macquarie and has a moderate climate.

In recognition of its outstanding biodiversity, uniqueness and international importance, it was inscribed on the World Heritage List in 1982. Known as the Lord Howe Island Group, the site consists of the main island and smaller outlying groups of islands and rocks, including the 551-metre-high pinnacle of Balls Pyramid which is 23 kilometres south of the main island. Three-quarters of the Island is protected in the Lord Howe Island Permanent Park Preserve.

The Island's unique marine environment is protected in the Lord Howe Island Marine Park. The lagoon, which is bounded by the western shore of Lord Howe Island and a fringing reef, is popular because of its natural beauty and is used by a variety of boat users including fishers, sea-kayakers, dive operators and sightseers.

The Island has a small permanent residential community of about 350 people. Many residents can trace their ancestry back to the original settlers of the Island, while others who have come to the Island for work or other reasons have made the Island their home. European settlement started in 1834 and there is no evidence of earlier human habitation.

This permanent residential community is supported by the unique property rights regime provided for under the LHI Act, which includes the definition of an Islander,

the requirement for leases to be offered to Islanders before non-Islanders, the Valuer-General's determination of lease prices, and the condition of perpetual leases that it must be the lease holder's primary place of residence.

The Island attracts scientists seeking to learn more about its endemic species and tourists wanting to experience the Island lifestyle and appreciate its spectacular beauty.

The Island receives over 16,000 visitors annually. Tourism is the largest industry on the Island and the biggest employer. The number of tourists on the Island at any one time is capped at 400 in the LHI Local Environment Plan, which minimises stress on infrastructure and environmental impact and maximises amenity.

### **The Lord Howe Island Act 1953**

The *Lord Howe Island Act 1953* (the LHI Act) provides for the care, control and management of Lord Howe Island to protect its unique values and the interests of its residents. The LHI Act is supported by the Lord Howe Island Regulation 2004 (the Regulation), and contains provisions that deal with the following topics:

- governance of the Island – the constitution, powers and functions of the Lord Howe Island Board (the Board) and the role of the Minister for the Environment (NSW)
- election and appointment of members to the Board to represent the Island community
- administration of all land on the Island, including the creation and management of leases, reserves and parks
- licensing of all businesses on the Island
- importation and use of motor vehicles on the Island
- construction and use of moorings on the Island
- importation of animals and birds to the Island and the keeping of livestock
- importation of seeds and plants to the Island
- sale and consumption of alcohol on the Island
- waste treatment and management on the Island.

Unlike some Acts, the LHI Act does not contain specific objective provisions that state the objectives of the Act. However, the original long title to the Act sets clear objectives:

*'An Act to make provision for the care, control and management of Lord Howe Island; to constitute a Lord Howe Island Board and an Island Committee and to define their respective powers, authorities, duties and functions; to make provision relating to the tenure of land upon the said Island; to validate certain matters; and for purposes connected therewith.'*

#### **'Care, control and management'**

'Care, control and management' means looking after both the settlement area and the Island's unique environment, particularly the Lord Howe Island Permanent Park Preserve. For the settlement area, it means providing the Island community with appropriate services and facilities, and supporting the wellbeing of Island residents and visitors. For the Island's unique environment, it means protecting

the permanent park preserve, the Island's species and ecosystems and the Island's World Heritage values; and supporting a sustainable tourism industry.

***'Constitute a Lord Howe Island Board'***

To 'constitute a Lord Howe Island Board' means providing appropriate governance for the Island community for the care, control and management of the Island – both the community living in the settlement area, and the Island's unique environment.

***'Make provision relating to tenure of land'***

All land on the Island is vested in the Crown. To 'make provisions relating to tenure of land' is about having rules controlling the ownership of leases so the interests of Islanders who have made Lord Howe Island their home are accounted for.

Under the LHI Act, the Lord Howe Island Board manages the Island's affairs subject to the control and direction of the Minister. The Board's custodial duties and powers are greater in some respects than those of local councils. The Board's charter provides guidance on achieving the Act's objectives at a more detailed operational level.

The LHI Act can be accessed at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

## **The Lord Howe Island Regulation 2004**

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The LHI Regulation deals with the following matters:

- **Part 1 Preliminary** – commencement of the regulation, process for applications and approvals, and the application of the Local Government Act.
- **Part 2 Elections** – election of the Lord Howe Island Board.
- **Part 3 Leases** – application for a lease, transfer, sublease and surrender of leases, and the annual rent for leases.
- **Part 4 Licensing of tourist accommodation and other commercial undertakings** – the Board's power to license commercial activity.
- **Part 5 Protection of the environment** – regulates the removal of natural substances, particularly coral and vegetation, the importation of seeds, plants and animals, the collection of stag beetles, and the keeping of goats in the settlement area, and makes provision for waste management activities.
- **Part 6 Motor vehicles** – regulates the importation of and use of motor vehicles.
- **Part 7 Mooring** – regulates the establishment and use of moorings in the lagoon.
- **Part 8 Miscellaneous** – regulates various activities, including the sale and consumption of alcohol on the Island, the tourist levy, the use of public reserves, camping and firearms activities, and use of the Island Airport.
- **Schedule 1** – standard forms for electoral nominations and applications relating to leases.



- **Schedule 2** – schedule of fees for administration of leases.
- **Schedule 3** – noxious plants.
- **Schedule 4** – penalty notice offences.

### 3. OPTIONS ASSESSED

The review considered three options for managing Lord Howe Island. Additional options or alternatives are considered where relevant.

**Option 1 (Base case):** the base case - allowing the Regulation to lapse and having no regulation.

**Option 2:** keeping the Regulation in its current form.

**Option 3:** proposing a new regulation.

There may be different costs and benefits associated with each option. Any costs that are avoided under a remake of either the current or proposed Regulation options, are considered benefits of undertaking that option. Likewise, any benefits that are foregone under a remake of either the current or proposed Regulation options, are considered costs of undertaking that option.

When assessing the costs and benefits of all options, alternatives based on: non-regulatory approaches like information campaigns, self-regulation or LHI Board policy approaches; the application of charges or subsidies; or creating financial liability for the detrimental effects of activity have been considered where relevant.

The assessment of each option is presented in the order of each part of the Lord Howe Island Regulation 2004 (the Regulation).

#### Part 1: Preliminary

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Part 1 of the Regulation defines terms, sets processes for applications and approvals, applies certain provisions in the *Local Government Act 1993* to give the Board the same powers as a council with respect to the making and determination of applications for approvals, and sets the process for lodging applications for land tenure, leases and commercial licences (tourist accommodation and other undertakings).

#### Option 1 – no regulation

This part of the Regulation supports other parts of the Regulation and is therefore considered in conjunction with other parts below. Without this part of the Regulation, there would be less clarity and certainty in how other provisions in the Regulation would be applied.

#### Option 2 – existing Regulation

This part of the Regulation supports other parts of the Regulation and, in that capacity, is effective at achieving the policy objectives.

#### Option 3 – proposed Regulation

There are no changes proposed to this part of the Regulation.

## **Other alternatives considered**

A policy approach was considered as an alternative to the Regulation. However, certainty and consistency provided in the Regulation provides a benefit with no cost.

## **Costs and Benefits**

The provisions in Part 1 of the Regulation are not considered to result in any significant costs or benefits.

## **Part 2: Elections**

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The election provisions of the Regulation establish the process for electing members to the LHI Board, including preparing a roll, nominating candidates, printing ballot papers, arranging a polling place, pre poll and postal voting, and scrutinising the vote count.

The role of the Lord Howe Island Board is similar to the role of local government within the rest of NSW, which is to provide the legal framework for an effective, efficient, environmentally responsible and open system of local government, as outlined in section 7 of the *Local Government Act 1993*. In general, an open system of government is a public good.

### **Option 1 – no regulation**

Without a regulation, a similar but non-statutory process would be followed, which would incur the same costs.

### **Option 2 – existing Regulation**

The Regulation provides a clear and certain process for elections and is effective in achieving the policy objectives.

However, there is some confusion about the validity of a vote for a number of candidates that is less than the total number of vacancies. For example, consider an election with five candidates running for four Board vacancies: A vote in which an elector votes for only one, two or three candidates, would still be valid under the Regulation, yet there is a perception that such a vote would be invalid. This needs to be clarified to ensure an equitable process for elections.

There is also concern that the Regulation inadequately ensures that a vote remains anonymous in a small island community.

### **Option 3 – proposed Regulation**

To clarify the procedure of elections and ensure a secret ballot, it is proposed that the Regulation:

- clarify that in contested elections for more than one vacancy, electors are able to vote for any number of candidates, up to the number of candidates to be elected, and require this to be reflected in the directions on the ballot paper; and
- amend provisions relating to postal and pre poll voting and ballot papers to ensure that a vote remains secret and to make the procedure of elections consistent with Electoral Commission procedures. It is clearer if the returning officer initials the front of the ballot paper instead of the back.

The language in this part of the proposed Regulation has also been improved.

### **Alternatives considered**

A non-statutory process, for example, commissioning the Elections NSW to hold the elections based on best practice and policy, was considered. However, such a process would remove the certainty for that the current process brings and may involve additional administrative costs to ensure the elections are undertaken in a fair and transparent way. A non-statutory process would remove the penalties that are currently in place, which help to ensure the secrecy of the ballot and security for the election process.

### **Costs and benefits**

Elections would still occur without a Regulation, which means options 2 and 3 impose no additional costs over the base case. Therefore, the election provisions in the Regulation do not result in any significant costs or benefits.

### **Part 3: Leases**

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The LHI Act provides that all the land on the Island belongs to the Crown, but provides for the creation of leases, subject to conditions. Perpetual leases are for residential purposes and can also be used for commercial purposes. Special leases are for agricultural or other uses. The LHI Act sets up a complex property rights regime in which Islanders, as defined by the LHI Act, have preference for new and transferred leases, and the price of a lease is set by the Valuer General. This is a key feature of the LHI Act which aims to achieve the objective of supporting a permanent Island community and to make provisions relating to tenure of land by controlling the ownership of leases so the interests of Islanders who have made Lord Howe Island their home are accounted for.

The lease provisions in the Regulation establish the administrative process for applying for, transferring and surrendering a lease, and set a time limit for appeals to the Land and Environment Court. Information required as part of an application for a lease include personal details such as marital status, the age and sex of children, other land holdings, and Islander status, according to the definition in the LHI Act. This part of the Regulation also sets the maximum annual rent for a lease based on the area of the land, currently set at \$150 plus \$0.215 per square metre of land for a perpetual lease and \$50 plus \$0.017 per square metre of land for a special lease. The power to set rents in regulations was introduced into the Act in 2004. When this power was introduced, it was the intention that the setting of lease rentals will take into account advice from the Valuer-General as well as the budgetary circumstances of the Board and the Island community.<sup>1</sup> Rent is discounted for eligible pensioners.

### **Option 1 – no regulation**

Without the certainty that a regulated cap on rent provides, the Board would have the power to increase rents substantially, which would limit the ability for some Island residents to remain living on the Island, therefore undermining the important objective of the unique property rights regime which is established by the LHI Act - supporting a permanent Island community.

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<sup>1</sup> Second reading speech, Lord Howe island Amendment Bill 2004.

Also, without a regulation the details the Board needs for lease applications and lease transfers would not be clearly specified and so both the Board and applicants would face higher transaction costs from dealing with an uncertain perpetual lease system. In particular, without a time limit on appeals to the Land and Environment Court, costs of disputes in the administration of leases would be likely to rise.

### **Option 2 – existing Regulation**

The lease provisions of the Regulation are an effective means of achieving the policy objectives. However, the cap on annual rent for leases has not been increased since 1994 and has not kept pace with the increasing costs of providing goods and services on the Island.

### **Option 3 – proposed Regulation**

A cap on rent is an important way of achieving the objective of the Act, namely supporting a permanent Island community. This is similar to the provision the LHI Act, which requires the Valuer-General to set the fair market value for the price for the transfer of a perpetual lease.

To improve financial sustainability and provide essential services and protect the unique environment well into the future, the Board needs to have the option of increasing lease rents to help meet increasing costs.

The proposed Regulation increases the cap on rent to reflect increasing prices since 1994, and allows for the cap to be increased in the future in line with changes in the Consumer Price Index. This change does not increase the amount of rents currently paid, but enables the Board to increase rents in the future, in accordance with the LHI Act. Importantly, this provides an option for the Board to increase revenue in the future to enable it to provide essential services on the Island.

### **Alternatives considered**

Without amending the LHI Act, the only way a cap on rent can be set, is via the Regulation. Therefore, no other alternatives for this were considered. Non-statutory alternatives to application forms were rejected because they did not offer the same level of legal certainty, consistency and equity offered by Option 2 and 3 and would have had the same costs.

### **Costs and benefits**

#### ***Prescribed forms for leases***

The details of what is to be included in a lease application are stipulated in the Regulation. This avoids additional administration costs associated with working out what details are needed in applications, and avoids costs to the Board from following up incomplete applications. These costs are not considered significant and have not been quantified. More importantly, by having a prescribed form for applications for leases, legal certainty, consistency and equity in the lease application process are assured. In a small Island community, this contributes to good governance, and reduces the risk of inequitable treatment by the Board of lease applicants.

## **Rent**

The Board receives annual rent for leases of \$100,000, and spends approximately \$20,000 per year directly related to the billing and collection of the annual rent on leases on the Island. Significantly higher costs are incurred in carrying out lease management and administration functions, such as valuations, transfers and record keeping. These additional costs total about \$40,000.

Rents are set by the Board, and are currently at the maximum allowable under the Regulation. If rents were changed in the future by the Board, they would consider all of the economic and social costs and benefits of the change before doing so. The proposed Regulation does not change the annual rent for leases; it merely increases the prescribed cap on rents. This reflects the rising costs of goods and services that are paid by the Board in providing services to leaseholders, including provision and maintenance of public utilities such as tourist facilities, roads, electricity and sewage, the airport, environmental management of the Preserve, regulation of building and development, and administration of leases and licences. Raising the cap on the annual rent for leases under Option 3 provides the Board with the added flexibility of increasing the Island's revenue-base should it need to do so in the future.

The payment of the annual rent for leases ensures the ongoing residence of Islanders and provides them with the means by which to continue living on the Island. Of the total annual rent paid for leases (\$100,000), part goes towards the cost of managing and administering leases on the Island (\$60,000), with the Board retaining a surplus (\$40,000).<sup>2</sup> The cost to Islanders of the annual rent on leases is likely to underestimate the true benefits from living as a resident on LHI.

## **Part 4: Licensing of tourist accommodation and other commercial undertakings**

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Part 4 of the Regulation enables the LHI Board to manage all commercial activities on the Island through a licensing system. For most businesses operating on the Island, this is a routine application for permission to operate on the Island. For tourist accommodation businesses, however, the Board includes licence conditions that require a minimum standard of accommodation and the payment of an annual licence fee of \$666 for each person licensed to be accommodated. The fee for a tourist accommodation licence has been both contentious for the Island community and extensively reviewed. This fee reflects a fair and equitable return for the granting of a restricted and exclusive right to provide accommodation services on the Island.

The Lord Howe Island Local Environmental Plan (LEP) specifies a limit on the number of tourists permitted on the Island at any one time, currently 400. This limit is based on the ability of the Island and its infrastructure to sustain people without imposing unacceptable risks to human health and the environment. There is also a limit in the LEP on the number of new residential houses allowed to be constructed. These limits preserve the unique Lord Howe Island amenity for both residents and tourists.

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<sup>2</sup> Rent from leases (\$100,000) less the Boards administration costs (\$60,000).

### **Option 1 – no regulation**

Without the Regulation, the LHI Board would lose the effective tool used to achieve the limit of tourists to 400 at any one time, which is set by the Lord Howe Island Local Environment Plan, under the *Environmental Planning and Assessment Act 1979*.

### **Option 2 – existing Regulation**

The licensing provisions of Part 4 of the Regulation are generally effective at achieving the policy objective. However, non-compliance with commercial licences is an ongoing problem and there are no offence provisions in the Regulation, which limits the Board's ability to manage commercial activities on the Island.

Left unaddressed, non-compliance is likely to continue, which would cause stress on infrastructure, particularly waste management, creating risks to human health and the environment, while also detracting from the Island's unique atmosphere.

### **Option 3 – proposed Regulation**

To improve compliance, the proposed Regulation includes offences for non-compliance with the conditions of commercial licences. The offence would be a penalty notice amount of \$330 with a maximum penalty set at 50 units, currently \$5,500. This is consistent with other offences in the Regulation. The offence provisions would serve as a deterrent and reduce the likelihood of non-compliance in the future. The additional profit to be made by providing tourist accommodation without a licence (or exceeding the number for which an operator is licensed) would likely be in the order of \$100 to \$300, depending on the type of accommodation and the rates charged. The penalty offence notice for this is \$330. If there were multiple offences, the Board could consider prosecution, in which case the maximum penalty would be \$5,500. The profits made by breaching the licence conditions would be taken into account in any prosecution.

### **Alternatives considered**

The Regulation outlines the procedure by which commercial activities on the Island are managed by the Board. There are other possible legislative alternatives including applying provisions in the *Environmental Planning and Assessment Act 1979*. However, such legislative amendments would not enable the Board to limit the number of tourists staying on the Island. These alternatives were not considered able to adequately achieve the objective.

An alternative to regulating commercial operations on LHI would be to regulate visitors instead. This could be achieved by holding an auction for a fixed number of visitor permits, with prices determined by visitors' willingness to pay to visit the Island. This approach would ensure that the limited access to LHI yields the maximum economic benefit to the Islands visitors. In addition, the Board could reserve a number of permits for non-recreational visits (e.g. scientific, educational or service provision purposes). However, while this approach would maximise the economic benefits from visitation, it would reduce access for many who could not afford to out-bid wealthier potential visitors. For this reason, the current system of access allowed to LHI, which is comparatively equitable, was considered preferable.

## Costs and benefits

### *Tourist licences*

Limiting the number of tourist accommodation licences is one way that the Board can meet the 400 tourists limit, and by doing so, preserve the unique natural environment valued by tourists. Actions by the Board to meet the tourists limit in the LEP are considered outside the scope of the Regulation. The economic costs and benefits of limiting the number of tourists visiting the Island have, therefore, not been included in this analysis.

The Business Licence fee for public accommodation providers is \$250 per year, generating total revenue of \$5,000 per year<sup>3</sup>. The major revenue from public accommodation providers is generated from accommodation fees - about \$266,000 per year (\$666 per bed multiplied by 400 beds). The cost of administering the fees is estimated at approximately \$40,000 per annum. This does not include management time spent by the CEO and senior managers on correspondence and negotiating and liaising with licensees regarding fees paid. This is difficult to quantify, but is likely to be significantly higher.

**Table 1: Accommodation providers and number of guests allowed at any one time**

<b>Name</b>	<b>Service Units</b>
CAPELLA LODGE	18
WAIMARIE	4
PINETREES	85
MARY CHALLIS COTTAGES	4
LEANDA LEI	40
OCEANVIEW	37
ARAJILLA RETREAT	22
MILKY WAY	18
BLUE LAGOON	32
G WILSON, P & A MURRAY, K STOKES &	49
EARLS ANCHORAGE	10
PANDANUS APARTMENTS	12
BROKEN BANYAN	12
HIDEAWAY	13
LORHITI LODGE	12
EBBTIDE	9
HOWEANA APARTMENTS	4
THE TREEHOUSE	2
BEACHCOMBER LODGE	15
BOWKER BEACH HOUSE	2
	400

Licensing of tourist accommodation and commercial undertakings results in costs to the Board in administering the licensing scheme (\$60,000 per year mentioned

<sup>3</sup> Fee of \$250 X 20 accommodation providers = revenue of \$5,000 per annum.

above), as well as assessing licence applications, and monitoring and enforcing licence conditions (estimated to cost about \$40,000 per year).

Tourist accommodation and commercial undertakings on the Island also incur costs from applying for licences (excluding the licence fee) and complying with licence conditions. These costs have are expected to be small (estimated at approximately \$1,000 per annum)<sup>4</sup> and hence have not been included in the analysis. For example, applying for a licence involves filling out a short application form and effort involved in complying with licence conditions, such as meeting a certain hospitality standard, would be applied for reasons other than compliance, such as general good business. Further, any administrative costs to businesses are also likely to be far outweighed by the benefits from trading on the Island.

Licensing tourist accommodation and commercial undertakings provides benefits from only allowing appropriate commercial activities to be undertaken on the Island. There is also the benefit from a higher standard of tourist accommodation being provided on the Island. These provisions enhance visitor experiences and help maintain Lord Howe Island's reputation as a high quality tourist destination.

The Board obtains revenue from tourist accommodation licences (\$266,000) and Business Licences (\$5,000), and incurs less from administering licences (\$60,000) and assessing, monitoring and enforcing licences (\$40,000). The nominal value of the annual licence fees are a financial transfer, they are included in this analysis for completeness.

### ***Offences for non-compliance***

There will be no additional costs associated with the introduction of offences for non-compliance with licence conditions, because the Board already inspects commercial properties. However, the opportunity to impose a financial penalty is expected to improve compliance, which will, in turn, help meet the policy objectives, in particular by protecting the unique values of the Island and the interests of residents.

## **Part 5: Protection of the environment**

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The LHI Act and its Regulation are the primary tools for protecting the unique and fragile environment of the Island, particularly its World Heritage values. Notably the *Native Vegetation Act 2003* and its regulation do not apply to Lord Howe Island.

Part 5 of the Regulation protects the environment by controlling the removal of natural substances, particularly coral and vegetation, and the importation of seeds, plants and animals. It also regulates the collection of stag beetles, which are endemic to the Island and sought after by collectors, threatening current in situ populations. It also makes provision for the LHI Board's waste management activities. Importantly, Part 5 also creates offences for non-compliance.

### **Option 1 – no regulation**

Without the Regulation, the Board would have minimal power to control activities that risk serious and irreversible damage to the Island's natural values. For example: inappropriate collection of stag beetles could place their population at

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<sup>4</sup> Based on 19 licensees x 1 hour per licence x \$41 per hour; using NSW average weekly earnings 'ordinary time' of \$1,421.10 (ABS 2014) and 25% on-costs.



risk; the importation of pest and weed species could potentially be catastrophic for the Island's native plants and animals; and removing the restrictions on keeping goats could lead to the re-establishment of a damaging feral population. Removing the LHI Board's powers regarding waste management would risk pollution damage to human health and the Island's natural values.

### **Option 2 – existing Regulation**

The Regulation is generally effective at achieving the policy objectives. However, provision for environmental protection was found to be inadequate. In managing the Preserve, the Board has limited power to control damaging or risky behaviour, taking animals that may spread weeds into the Preserve, or regulating the use of fire, compared to that for other protected areas in NSW. The Rentz strong insect (*Davidrentzia valida*) is in high demand amongst collectors, which is threatening its survival in the wild. However, invertebrates are not protected under the NPW Act, and it is not listed under the Threatened Species Act 1995. Current rules on import and export of organic material are not practical and do not necessarily match the risk posed by their unregulated importation to the Island environment. Only cats and goats are totally banned from being imported to the Island, however, pigs, rabbits, foxes, rates, mice, snakes and cane toads all pose the same level of risk to the Island's natural values. There is currently an exemption for Island residents from the requirement for Board approval to anchor a vessel greater than 5 metres in length in the Lagoon. Vessels of this size pose threats to the fragile Lagoon ecosystem.

The review of the Regulation also revealed unnecessary duplication with the Noxious Weeds Act.

### **Option 3 – proposed Regulation**

While the Regulation was found to be generally effective at achieving the policy objective, the following improvements are proposed.

#### ***LHI Permanent Protected Preserve***

The Preserve is a reserve created under the LHI Act and is very similar to a national park created under the *National Parks and Wildlife Act 1974*. Under section 15B of the LHI Act, a plan of management for the Preserve must be prepared and implemented in accordance with the provisions of Part 5 of the NPW Act as if the Preserve were a national park.

To reduce the risk of threats posed by human activity in the Preserve and to provide a safe and enjoyable environment for visitors, it is proposed that the Regulation be amended to give the Board similar powers to the National Parks and Wildlife Service to regulate the conduct of visitors to the Preserve.

These proposed changes make up the new Part 6 of the proposed Regulation, and are based on the relevant sections of the *National Parks and Wildlife Regulation 2009* that relate to the regulation of inappropriate or damaging behaviour, restrictions on taking animals into the Preserve, lighting of fires, and activities that risk harm to the unique environment. These proposed changes do not change current dog walking opportunities on the Island.

#### ***Protection of invertebrates***

The Island has very unique invertebrate fauna and two species of invertebrate (stag beetles) are specifically protected by the existing LHI Regulation. However,

the Rentz's strong stick insect (*Davidrentzia valida*) is highly valued by collectors, but is not protected. This species is protected in the proposed Regulation.

### ***Importation of seeds and plants***

Under the Regulation, Board approval must be granted for the importation of any seed or plant or parts thereof (except for palm plants or seeds which may not be imported). It is proposed that this clause be amended to provide that mulch cannot be imported without Board approval and to clarify that low risk plant material such as fruit and vegetables for human consumption can be imported without the need for Board approval.

### ***Importation of animals***

The Regulation does not permit cats or goats to be brought onto the Island. It is proposed that this list be expanded to include other potentially damaging pest species such as pigs, rabbits, foxes, rats, mice, snakes and cane toads.

The intention of regulating the keeping of goats, particularly the requirement that males be incapable of reproduction, is to stop the goat population from increasing and posing environmental risks. However, the Regulation does not prohibit artificial insemination. It is therefore proposed that semen from species that are prohibited from being brought onto the Island is also prohibited.

### ***Noxious plants***

The Regulation controls noxious plants. However, the *Noxious Weeds Act 1993* (NW Act) is the primary instrument for managing weeds and has a comprehensive listing process, for specific places, including on LHI. Under the NW Act the local control authority for land within Lord Howe Island is the Lord Howe Island Board. This gives the Board extensive powers in relation to controlling noxious weeds.

To remove the unnecessary duplication, it is proposed that the noxious weeds provisions be removed. Four species of noxious weed that are listed in the Regulation, but not listed under the Noxious Weeds Act, are in the process of being added.

### **Alternatives considered**

A policy approach with improved community and visitor education about the values of the natural environment and the importance of protecting it from damage or removal was considered likely to reduce the risk of damage to environmental values of the Island. However this approach relies on voluntary good will of residents, with no consequence to act as a deterrent if improved education was not effective. Because the risks of not achieving the environment protection objectives of the LHI Act are potentially irreversible, policy and education approaches were considered inadequate.

### **Costs and benefits**

There are administrative costs to the Board in managing Part 5 of the Regulation, totalling approximately \$670,000. The Board undertakes regular compliance activities and assessment of applications to: clear vegetation; collect invertebrates; import plants and animals; and keep goats. The Board incurs significant costs associated with managing waste collection services on the Island. However, waste collection is an essential function that would continue without the Regulation, and so similar costs would be incurred under the Base Case.

Increasing protection for the Preserve in the proposed Regulation would not bring any increasing costs because the Board already undertakes compliance and assessment activity – the proposed changes only provide additional penalties to improve compliance, which may reduce costs in the longer term.

The costs incurred by the Board under Part 5, and the new Part 6 of the Regulation help to ensure the protection of the unique LHI environment. The quality of the natural environment is a significant reason why many tourists visit the Island, and by doing so support local businesses. Spending by visitors to LHI in 2006-07 was estimated to generate output worth \$14.3 million and support the equivalent of 74 jobs (Driml 2010). Inadequate protection risks serious and irreversible damage to the Island's natural values. Although it is difficult to quantify the benefits from the Board's actions under Part 5 of the Regulation, the importance of maintaining the natural environment for the Island's tourism industry is significant (TRA 2008).

## **Part 6: Motor vehicles**

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The motor vehicle provisions help the Board to manage vehicles on the Island. Board approval is required to import a vehicle and the Board can seize vehicles imported unlawfully. It is general Board policy that residents are entitled to a vehicle, as are businesses if there is a valid business case. Drivers and riders are required to produce a driver's licence on the direction of an officer of the LHI Board.

### **Option 1 – no regulation**

Without the Regulation, the Board would have no power to manage motor vehicles on the Island. Uncontrolled importation and use of motor vehicles would undermine the Island's peaceful atmosphere and put excessive pressure on the Island road system. It would also increase the risks of accidents on narrow roads that are shared by vehicles, cyclists, pedestrians and animals.

### **Option 2 – existing Regulation**

The current provisions are effective in controlling motor vehicles on the Island and achieving the objectives of the LHI Act. However, a review of the Regulation found that the Board's power to require a driver or rider to produce a driver's licence is unnecessary.

### **Option 3 – proposed Regulation**

Clause 94 of the Regulation allows the Board to direct the driver or rider of a motor vehicle to produce his or her driver licence. This overlaps with police powers and does not assist the Board with the management of motor vehicles. It is therefore excluded from the proposed Regulation.

### **Alternatives considered**

The use of administrative or policy tools to control vehicles was considered. Such an approach would rely on the voluntary good will of residents and could easily be ignored, with no consequence. Given the importance of motor vehicle management for safety and preserving the Island's unique and peaceful community, this option was rejected because it was considered to be inadequate.

## **Costs and benefits**

The motor vehicle provisions in the Regulation involve insignificant administrative costs only, which are outweighed by the utility benefits of minimising vehicles on the Island.

## **Part 7: Mooring**

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The mooring provisions help the Board to manage boats on the Island by regulating the number and location of moorings, which helps to prevent damage to the marine ecosystem. Residents can apply for a private mooring, while visitors can apply to use one of the 16 Board moorings.

### **Option 1 – no regulation**

Without the Regulation, there would be no mechanism for the Board to manage the mooring and anchoring of vessels in the lagoon. Uncontrolled placement of moorings can cause navigation hazards and damage fragile marine ecosystems.

### **Option 2 – existing Regulation**

The existing Regulation is effective at achieving the policy objectives. Mooring is permitted to give residents and visitors reasonable water access for recreational and commercial purposes. To protect environmental values, the Regulation enables the Board to control the number and location of permanent moorings. Controlled moorings protect the environment from impacts of anchors dragging across coral reefs and the sea floor.

### **Option 3 – proposed Regulation**

No changes to the mooring provisions have been proposed.

## **Alternatives considered**

The use of administrative or policy tools to control moorings, similar to that considered for vehicles, were considered. Such an approach would rely on the voluntary good will of residents and tourists and could easily be ignored, with no consequence. Alternatively, the powers of the *Marine Parks Act 1997* could be relied on to regulate mooring. However, the marine park laws are not specifically designed for the unique circumstances of Lord Howe Island and would not be as effective. These options were rejected because they would increase the risk of irreversible damage to the Island's marine conservation values.

## **Costs and benefits**

The mooring provisions cost the Board approximately \$25,000 per year in maintenance and staff costs (e.g. administration and bookings). Although revenue from mooring activities is slightly less than \$25,000 this is essentially a financial transfer.

Strict control of moorings, particularly larger boats, is essential for protecting the fragile marine ecosystem, particularly in the Lord Howe Island Lagoon. The benefits of preventing irreversible damage to the Lagoon's marine park values and the Island's world heritage values cannot be quantified.

## **Part 8: Miscellaneous**

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Part 8 regulates various activities to help meet the policy objective by assisting the Board to carry out its functions, including: the removal of items from the Preserve and crown land; regulating camping, firearm use, alcohol sale and consumption;

airport and wharf management; human waste management; powers of entry; procedure for Board meetings; charging tourists; and penalties.

### **Option 1 – no regulation**

Without the Regulation, the Board would not have effective tools for dealing with specific threats to the environment and community. Specifically, without these miscellaneous provisions, the Board would not have powers to:

- Direct a person to move an object on public land that is detrimental to the use of land, which would reduce the Board's current ability to protect the environment and public safety.
- Regulate camping on Crown land, which would reduce the Board's current ability to regulate all tourist accommodation and protect the Island's quiet and peaceful atmosphere.
- Regulate the use of firearms on the Island, which would pose a risk to public safety, as well as the Island's quiet and peaceful atmosphere.
- Regulate the movement of people at the Island's airport, which would risk the safe management of people and airline staff.
- Direct someone in charge of a vessel at a wharf, which would reduce the Board's current powers to control vessels and protect public safety and the Island's unique marine environment.
- Control sewage storage and treatment, which would pose a risk to human health and the Island's sensitive groundwater and marine environment.
- Enter commercial properties to ensure compliance with licence conditions, which may reduce compliance with planning laws on the Island and pose a risk to the Island's quiet atmosphere.
- Charge penalties for offences, which may reduce compliance with regulations that are designed to protect the Island's unique values and support a significant tourist industry.

This part of the Regulation contains the powers to regulate the sale and distribution of alcohol and prohibit drinking of alcohol in public areas, along with the powers to charge a fee on tourists. The costs and benefits of these provisions are discussed below in more detail.

Also, without this part of the Regulation, certain governance provisions in the *Local Government Act 1993* relating to procedures for Board meetings and codes of conduct would not apply, which would threaten good governance in the small Island community.

### **Option 2 – existing Regulation**

The miscellaneous provisions in Part 8 contribute to achieving the policy objective, specifically the management of Lord Howe Island in the interests of all of its residents.

However, the review of the Regulation identified a lack of power for authorities or licensees to remove people from premises and prevent excessive consumption of alcohol as the Liquor Act does not apply to LHI. This is because the LHI Act and

regulations specifically provide for the regulation of liquor on the Island. Hence, there is limited power for authorities or licensees to remove people from licensed premises and prevent excessive consumption of alcohol.

### **Option 3 – proposed Regulation**

The existing Regulation is effective in achieving the policy objectives. However, to improve safety, it is proposed to provide the Board with powers to prevent excessive consumption of alcohol modelled on Part 5 of the *Liquor Act 2007*, which applies to the rest of NSW, including: prevention of excessive consumption of alcohol; ability for a person to enter into a self-exclusion agreement; provide that an authorised person can ban a person from entering a licensed premises.

Together with the powers in the current Regulation to regulate the sale and distribution of alcohol and prohibit drinking of alcohol in public areas, the alcohol related provisions are proposed to form a new Part 7 in the proposed Regulation.

### **Alternatives considered**

A policy approach was considered as an alternative to the Regulation. However, these specific provisions and associated offences for non-compliance are important in securing the objectives of ensuring safety for the Island's community and its visitors, as well as maintaining the Island's peaceful atmosphere, and a policy approach was considered less likely to achieve those objectives and was therefore rejected.

### **Costs and benefits**

Apart from the liquor provisions and the charge on tourists (see below), the miscellaneous provisions in the Regulation are not considered to result in any significant costs or benefits.

The loss of delegated powers for Board members under the base case of no regulation (Option 1) would result in a situation where activities currently carried out by the Board would need to be undertaken by representatives from various government departments. For example, the base case would require a greater presence of aviation staff at the airport, more police to maintain public safety, and more rangers and environment officers to ensure appropriate protection of the Preserve. These functions would otherwise be undertaken by the Board at a similar labour cost. However, having various government representatives present on the Island for limited periods of time would be likely to reduce compliance and result in higher travel and accommodation costs than if these functions had been undertaken by Board members. Given that ten Board employees currently perform these functions, the avoided travel and accommodation costs of the current and proposed Regulation have been estimated at approximately \$122,000 per annum.<sup>5</sup> The benefits from improved compliance are difficult to determine and have not been quantified.

### ***Liquor***

The liquor provisions give a monopoly to the Board to import, sell and distribute alcohol on the Island. The Board currently imports alcohol to the Island and

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<sup>5</sup> Costs to other government departments from an average of 64 visits per annum = 64 x (cost of return flight \$1,100 + (4 day visit at \$200 per night)) = \$122,000.

operates a liquor store on the Island. The Board also licenses businesses, such as restaurants and resorts, to sell alcohol on the Island.

The Board operates its liquor store for a profit. It has access to cheap shipping rates via its State Contract shipping arrangements.

Residents and visitors are able to bring alcohol onto the Island for their personal use. Most residents arrange for some alcohol to be shipped to the Island along with their groceries on a regular basis.

Traditionally a monopoly would be expected to restrict the quantity of goods available to consumers and to inflate prices compared to a competitive market where consumers would otherwise have paid lower prices and consumed more of the good. However, the effect of the Board's monopoly on liquor is unlikely to be significant for a number of reasons. As the Board has access to preferential shipping rights which lower the cost of importing alcohol, the Board has the potential to sell alcohol at prices lower than potential private businesses. This suggests that consumers would gain limited (if any) discount from having private businesses supply liquor on the Island. In addition, there is little evidence that the quantity of alcohol being consumed on the Island is restricted by the Board's monopoly. Finally, the net profit from the Board's alcohol sales is modest, at around \$330,000 per annum (LHIB 2012). These factors suggest that any deadweight loss from the Board's monopoly is unlikely to be large, and has therefore not been quantified.

Under option 1 (no Regulation), businesses other than the Board could acquire, store, sell and distribute alcohol on the Island. However, businesses would also incur higher shipping costs than those faced by the Board. Private supply of liquor under Option 1 would be expected to generate a similar amount of economic profit for private businesses as is currently made by the Board (approximately \$330,000 per year). Therefore, the proposed Regulation involves no additional benefit (economic profit) over the base case. As mentioned above, any cost (deadweight loss) from the Board's monopoly on liquor is expected to be small.

Introduction of provisions for the responsible service of alcohol that apply in the rest of NSW are unlikely to result in any significant costs – since there is little additional effort required to refuse service but will have social and health benefits to patrons. Responsible service of alcohol is also a requirement of the license issued by the Board. There may also be wider social benefits from controlling the sale of liquor, given that alcohol consumption is generally higher in smaller communities, and the well-known social issues that result from alcohol consumption (Department of Health 2001).

### ***Charge on tourists***

The charge on tourists provisions allow the Board to charge tourists to the Island a maximum of \$50 per tourist. With 16,000 tourists, the annual revenue to the Board from the tourist charge is \$800,000 per year.

The airline that flies to the Island collects the charge on tourists and passes this on to the Board, using existing payment processes. Tourists arriving to the Island via boat pay the charge as a portion of their mooring fees paid to the Board. Charging tourists, therefore, does not result in any significant collection costs.

## Schedules

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- **Schedule 1:** prescribes the forms that are to be used to nominate a candidate for election to the Board and applications relating to leases. This is not considered to result in any significant costs or benefits.
- **Schedule 2:** prescribes the fees that are to be paid for the administration of leases. The costs and benefits of the lease provisions of the Regulation are discussed in the context of Part 3 (Leases) of the Regulation.
- **Schedule 3:** lists noxious plants and repeats part of the Noxious Weeds Act 1993. This duplication will be removed in the proposed Regulation.
- **Schedule 4:** prescribes the penalties for offences. The costs and benefits of penalties are discussed in the context of the relevant offence.



#### 4. SUMMARY OF COSTS AND BENEFITS

**Table 2: Annual costs and benefits compared to the Base Case (Option 1)**

Benefits	Option 2: Current Regulation	Option 3: Proposed Regulation	Alternative options
<b>Part 3 – Leases</b>			
<ul style="list-style-type: none"> <li>Legal certainty, equity and transparency of having prescribed forms for lease applications</li> </ul>	<i>Unquantified (intangible benefits)</i>	<i>Unquantified (intangible benefits)</i>	<i>Board prescribed form rejected because it reduced the benefits in a small Island community</i>
<ul style="list-style-type: none"> <li>Fees paid to Board</li> </ul>	\$100,000	\$100,000	<i>Foregoing revenue rejected because it would limit Board's ability to provide essential services</i>
<ul style="list-style-type: none"> <li>Increasing cap on rent to give greater flexibility to increase future revenue</li> </ul>	<i>Unquantified (intangible future benefit)</i>	<i>Unquantified (intangible future benefit)</i>	<i>Not increasing or reducing rent rejected because it would limit Board's ability to provide essential services</i>
<b>Part 4 – Licensing of tourist accommodation and other commercial undertakings</b>			
<ul style="list-style-type: none"> <li>Accommodation licence fee revenue to Board</li> </ul>	\$5,000	\$5,000	<i>Unquantified - Permit system (maximum willingness to pay from visitors)</i>
<ul style="list-style-type: none"> <li>Accommodation (bed) fee revenue to Board</li> </ul>	\$266,000	\$266,000	
<ul style="list-style-type: none"> <li>Compliance with accommodation provisions</li> </ul>	Moderate	Improved	
<b>Part 5 – Protection of the Environment</b>			
<ul style="list-style-type: none"> <li>Red-tape from importing fruit &amp; vegetables</li> </ul>	Moderate	Improved	<i>Policy and voluntary compliance rejected because it increased risk of non-compliance and associated irreversible damage to natural environment</i>
<ul style="list-style-type: none"> <li>Protection of native animals from better quarantine</li> </ul>	Moderate	Improved	
<b>Part 7 – Mooring</b>			
<ul style="list-style-type: none"> <li>Mooring fees paid to Board</li> </ul>	\$25,000	\$25,000	<i>Unquantified</i>
<ul style="list-style-type: none"> <li>Impact on lagoon from moorings</li> </ul>	Adequate	Adequate	<i>Policy and voluntary compliance rejected because it increased risk of non-compliance and associated irreversible damage to natural environment</i>
<b>Part 8 – Miscellaneous</b>			

• Avoided travel and accommodation costs	\$122,000	\$122,000	<i>Alternative rejected because it was a higher cost for less benefit</i>
• Health and social benefits from responsible service of alcohol	<i>Unquantified</i>	<i>Unquantified</i>	<i>Alternative of not introducing provisions rejected because it would remove benefit</i>
• Revenue to the Board from charge on tourists	\$800,000	\$800,000	<i>Alternative of not charging fee rejected because it would limit Board's ability to provide essential services and protect environment values and tourist assets</i>
<b>Total Benefits</b>	<b>\$1,318,000</b>	<b>\$1,318,000</b>	<b>Unquantified</b>

<b>Costs</b>	<b>Option 2: existing Regulation</b>	<b>Option 3: Proposed Regulation</b>	<b>Alternative options</b>
<b>Part 3 – Leases</b>			
• Cost of lease fees to Islanders	\$100,000	\$100,000	<i>Foregoing revenue rejected because it would limit Board's ability to provide essential services</i>
• Admin costs to Board	\$60,000	\$60,000	<i>Non considered</i>
<b>Part 4 - Licensing of tourists and commercial undertakings</b>			
• Accommodation Business Licence fee cost to Industry	\$5,000	\$5,000	<i>Unquantified - set-up costs for permit scheme</i>
• Accommodation fee cost to Industry	\$266,000	\$266,000	<i>Foregoing revenue rejected because it would limit Board's ability to provide essential services</i>
• Admin costs to Industry	\$1,000	\$1,000	<i>Foregoing revenue rejected because it would limit Board's ability to provide essential services</i>
• Admin costs to Board	\$40,000	\$40,000	<i>Non considered</i>
<b>Part 5 – Protection of the Environment</b>			
• Management costs to the Board	\$670,000	\$670,000	<i>Non considered</i>
<b>Part 7 – Mooring</b>			
• Board costs	\$25,000	\$25,000	<i>Unquantified</i>
<b>Part 8 – Sale and consumption of alcohol</b>			
• Economic cost from the Boards liquor monopoly	<i>Minor</i>	<i>Minor</i>	<i>Unquantified</i>

• Cost to visitors from charge on tourists	\$800,000	\$800,000	<i>Unquantified</i>
<b>Total Costs</b>	<b>\$1,967,000</b>	<b>\$1,967,000</b>	<b><i>Unquantified</i></b>

<b>Net Benefit (Cost)</b>	<b>(\$649,000)</b>	<b>(\$649,000)</b>	<b><i>Unquantified</i></b>
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The Lord Howe Island Regulation is estimated to result in a net cost to the community of approximately \$649,000 per annum compared to the base case of no regulation. Option 2 (the current Regulation) and Option 3 (the amended Regulation) both result in the same quantifiable costs. However, Option 3 reflects an improvement on Option 2 by providing better outcomes for protection of the LHI environment. While these intangible benefits have not been quantified, they suggest a preference for Option 3 over Option 2, given that both options impose similar net costs.

The Lord Howe Island Board faces a unique set of challenges in recovering the costs of providing essential services to its community and in protecting the Island's unique natural environment and World Heritage values. Challenges include the geographical isolation of the Island and the lack of a system of rates (used by most local councils). Without the Regulation, the Board would face considerable difficulty in maintaining essential services for its residents. The Board's ability to obtain revenue from commercial operations reduces the net cost to the NSW community. The Lord Howe Island Board are currently reviewing strategies to improve their funding system.

## 5. CONCLUSION

The Regulation provides an efficient and effective means of supporting the LHI Act and achieving its objective to provide for the care, control and management of Lord Howe Island to protect its unique values and the interests of its residents. However, some minor changes have been proposed to reduce duplication, remove unnecessary provisions and improve the Board's ability to meet the objectives of the LHI Act.

The review found that the Regulation provides:

- Clear and consistent procedures for elections to the LHI Board, supporting good governance on the Island;
- Clear and consistent procedures for administration of leases, including record keeping and rents;
- A clear licensing regime to regulate commercial activity on the Island, which helps to ensure and provides an essential tool for maintaining the cap on tourist accommodation at or below 400 beds;
- Strong environment protection for the Island's unique environment, including its World Heritage values;
- Regulation of various activities, including use of motor vehicles, moorings and the sale and consumption of alcohol, to maintain the Island's unique character and protect its natural values.

- Provides powers for the Board to raise revenue to enable it to provide essential services and environment protection.

The review identified minor changes to the process for elections, provisions for protecting the environment, and regulation of the sale and consumption of alcohol, which would improve the operation of the essential functions outlined above. These changes are summarised in appendix 1.

To ensure that the most efficient and effective option for achieving the set of policy objectives was chosen, a suite of alternatives were considered as part of the review.

Overall, the base case option of allowing the Regulation to lapse and not replacing it, was rejected because the lack of regulation of a broad range of activities would have posed a risk to the peaceful Island atmosphere, the safety of the Island community and the protection of its unique environment. This would significantly reduce the ability for the Board to meet the objectives of the LHI Act.

Non-regulatory alternatives were also considered. Policy approaches were considered inadequate as these would rely on the voluntary good will of residents and could easily be ignored, with no consequence, thus identifying the potential for irreversible environmental damage and the need for offence provisions to deal with non-compliance. The introduction of financial liabilities were not considered appropriate because it is not possible to quantify the costs of irreversible environmental damage and it is likely that an overly complex system would be expensive to administer, with no guaranteed benefit.

The review found that, besides the proposed Lord Howe Island Regulation 2014, there were no alternative options that would effectively and efficiently meet the objective of the LHI Act and provide powers for the Board to exercise proper care, management and control of the Island.

To enable the Island community and other stakeholders to comment and further improve the proposed Regulation, the proposed Regulation is being publicly exhibited. All submissions will be thoroughly considered. Please refer to the details below.

**Appendix 1:** Summary of proposed changes to the Regulation

**Appendix 2:** References

**Appendix 3:** Proposed Lord Howe Island Regulation 2009

## Summary of proposed changes to the Regulation

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It is proposed that the new Regulation:

### ***Elections***

- Clarify that, in elections for more than one vacancy, voters are able to vote for any number of candidates up to the number of vacancies on the Board, and require this to be reflected in the directions on the ballot paper (for example, this clarifies that a vote recorded on a ballot paper for a single candidate, in an election where multiple candidates are running for multiple vacancies, would be valid).
- Improve secrecy for postal and pre poll voting and ballot by requiring ballot papers to be placed in a secret outer envelope, ensuring that only the returning officer sees the inner envelope where the voters details are recorded.
- Require returning officers to initial on the front of the ballot paper (instead of the back).

### ***Leases and licences***

- Increase the cap on rent that the Board may charge under the LHI Act to reflect inflation since 1994 and enable to Board to increase the cap to reflect the Consumer Price Index.
- Provide for offences for non-compliance with licence conditions, including licences for tourist accommodation.

### ***Environment protection***

- Improve protection of the LHI Permanent Park Preserve modelled on parts of the National Parks and Wildlife Regulation 2009 relating to: regulation of inappropriate or damaging behaviour; taking animals into the Preserve; lighting fires; and interference with management of the Preserve.
- Protect the Rentz's strong stick insect (*Davidrentzia valida*).
- Provide that mulch cannot be imported without Board approval and fruit and vegetables for human consumption can.
- Expand the current ban on the importation of animals to include pigs, rabbits, foxes, rats, mice, snakes and cane toads, as well as the semen of these animals.
- Remove duplication for the regulation of noxious weeds between the Regulation and the *Noxious Weeds Act 1993*, by removing noxious weeds provisions.
- Remove the exemption that Island residents have from the requirement to have Board approval to anchor a vessel greater than 5 metres in the Lord Howe Island Lagoon.

### **Community**

- Introduce regulations for the responsible service of alcohol, modelled on Part 5 of the *Liquor Act 2007*, including: prevention of excessive consumption of alcohol; ability for a person to enter into a self-exclusion agreement; provide that an authorised person can ban a person from entering licensed premises.
- Remove Board's power to direct the driver of a vehicle to produce a driver's licence.

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