

LORD HOWE ISLAND BOARD POLICY

TITLE	Development Assessment Policy		
DATE ADOPTED	August 2013	AGENDA ITEM	8ii August 2013
CURRENT VERSION	N/A	AGENDA ITEM	N/A
REVIEW	3 years	FILE REFERENCE	PL0001
ASSOCIATED LEGISLATION	<i>Environmental Assessment and Planning Act 1979</i> <i>Lord Howe Island Local Environmental Plan 2010</i> <i>Lord Howe Island Development Control Plan 2005</i> <i>Lord Howe Island Act 1953</i> <i>Lord Howe Island Regulation 2014</i>		
ASSOCIATED POLICIES	Dwelling Allocation and Entitlement Policy Land Asset Disposal Policy Permissive Occupancy Policy		

1 Introduction

The Lord Howe Island Board (LHIB) is committed to an efficient and effective development assessment service to achieve a natural, cultural and built environment that reflects the desired character for Lord Howe Island.

2 Objectives

The LHIB assess development applications based on their merit with regard to the provisions of the *Environmental Planning and Assessment Act 1979* (EP&A Act), the *Lord Howe Island Local Environmental Plan, 2010* (LEP) and the *Lord Howe Island Development Control Plan, 2005* (DCP) and other relevant LHIB policies.

This policy aims to deliver a consistent development assessment service within reasonable timeframes and to communicate the procedures the LHIB will undertake to assess development applications.

3 Policy

3.1 Pre-Lodgement Consultation

There is no mandatory requirement for a pre-lodgement meeting prior to making an Owner Consent or Development application. However, pre-lodgement meetings are encouraged by the Board to ensure applicants furnish accurate and appropriate information within requested timeframes so an informed, proper and timely assessment can be made of the application.

The following points set out the nature of and limitations on the pre-lodgement advice that the LHIB provides:

- The LHIB does not have a fee associated with pre-lodgement advice.
- Any request for pre-lodgement advice will be recorded.
- Appropriate records will be kept of pre-lodgement meetings that document the advice provided to potential applicants or their representatives.
- Written records of pre-lodgement advice will be provided to the potential applicant.
- Documents including pre-lodgement meetings and written advice will be kept on the appropriate file relating to the proposed development.
- Pre-lodgement advice will not contain assurances on compliance with the LEP, DCP etc or on merit assessment outcomes.

3.1.1 Services Provided by the LHIB

The LHIB provides a detailed guide and checklist for applicants to complete before lodging the application. Information is issued to applicants at Owner Consent stage and is provided on LHIB's website regarding the development assessment process.

The Manager Environment & Community Development and the Planning Consultant are generally available between the hours of 8:30am and 4:30pm each business day in order to assist the public with planning enquiries and lodgement requirements.

The LHI Local Environmental Plan, 2010 and LHI Development Control Plan, 2005 are freely available on Board's website and printed copies are available, with charge.

The LHIB will develop 'standard conditions of development consent' which will be made available on the LHIB website.

3.2 Owner's Consent

Before lodging a Development Application, applicants must obtain 'Owner's Consent'.

Under Clause 49(3) of the Environmental Planning and Assessment 2000 (EP&A Reg):

'a development application made by a lessee of Crown land may only be made with the consent in writing given by or on behalf of the Crown'.

In the case of Lord Howe Island, the Crown is considered to be the Minister responsible for the *Lord Howe Island Act 1953*, being the NSW Minister for the Environment.

The Owner Consent process enables an assessment of the permissibility of a development and an assessment of the provisions of the LEP relating to allotment size (CI 21), site coverage (CI22), gross floor area (CI23, 24 & 27) and setbacks (CI32) prior to lodgement of a Development Application.

The process also allows the Board to confirm compliance with a number of policies (including Land Asset Disposal Policy, Permissive Occupancy Policy, and Dwelling Allocation and Entitlement Policy) and provisions of the *Lord Howe Island Act 1953* and *Lord Howe Island Regulation 2014* relating to tourist accommodation and licensing.

The Owner Consent process has also been used to clarify a number of legal matters including the definition of a proposal (e.g. whether the proposal relates to a dwelling, staff accommodation or commercial premise). In the future, particularly for proposals on vacant crown land, the Owner

Consent process may be used to undertake an assessment of whether there are any prudent and feasible alternatives to the carrying out of the proposed development.

Owners Consent is not required for proposals by the Lord Howe Island Board or s96 modification applications.

3.3 Lodgement of a Development Application

- The LHIB will have a schedule of fees for different categories of development applications. Division 1 of the *EP&A Reg* sets the maximum fee for development applications.
- The Board will have in place procedures for verifying an applicant's cost estimates for building and associated works.
- The LHIB has developed a standard checklist to ensure all relevant information is lodged with an Owner Consent application or Development Application.
- The LHIB will issue an acknowledgement letter to the applicant advising of the DA number and date that the fees / application was lodged; advising the applicant to place pegs; contact person and phone number.

3.4 Assessment

The Planning Consultant will undertake a preliminary assessment of applications within seven (7) days of the application being lodged to ensure that the information is adequate.

3.4.1 Illegible or Unclear Development Applications

Clause 51 of the *EP&A Reg* provides that the LHIB may reject a development application within 7 days after receiving it if the application is illegible or it is unclear as to the development consent sought, or the development application does not contain any information, or is not accompanied by any document, specified in Part 1 of Schedule 1 of the Regulations.

Where a development application is illegible or unclear, the applicant will be notified in writing within 7 days of lodgement of the application and advised the application has been rejected and the reasons for refusal.

An application that has been rejected is taken to have never been made and all documentation submitted to LHIB and a full refund of application fees will be returned to the applicant in this circumstance.

3.4.2 Requests for Amendments to Proposal

Clause 54 of the *EP&A Reg* allows the LHIB to request additional information about the proposed development to allow for the proper consideration of the application. The LHIB will require any additional information to be provided within 21 days.

The LHIB will apply 'stop the clock' provisions where appropriate until:

- All necessary information is received, or
- The applicant notifies the LHIB the information will not be provided, or
- The application is determined.

If the requested information has not been received at the LHIB within 21 days of the original letter

the development application will be determined on the information available and may be formally refused unless an extension of time has been granted.

The LHIB will only agree to a further extension of time if it is satisfied that genuine extenuating circumstances have prevented the provision of additional information. For this to occur the applicant is required to submit in writing their reasons for seeking a further extension and stipulate a possible timeframe.

3.4.3 Accepting Amended Applications

Should an amended application be received prior to determination, the LHIB will consider whether the changes are substantial in relation to the original application. Should the amended application involve substantial change, the LHIB may reject the amended application and determine the original proposal.

3.4.4 Internal Referral of Development Applications

Development applications will often require referral to other Units within the LHIB, seeking expert input. Such circumstances will generally be, but not be limited to, the following:

- LHIB Surveyor: to confirm site is pegged accurately.
- Environment – World Heritage Officer: to assess Significant Native Vegetation, *Threatened Species Conservation Act*, *Environment Protection & Biodiversity Conservation Act* and landscaping requirements.
- Senior Environmental Health Officer: to assess food, and other health related requirements.
- Manager Infrastructure Engineering Services / Senior Electrical Officer: to assess Building Code Australia requirements, traffic, wastewater, drainage, engineering aspects and electrical.
- Manager Environment Community Development / Chief Executive Officer: to assess Heritage, community development, crown land proposals.
- OEH Legal: to provide legal certainty of policy and legislative requirements.

All internal expert advice will be placed on the appropriate file relating to the proposed development.

The LHIB will contact the applicant to arrange access to the lease for the purpose of an inspection of the proposed development.

When required, LHIB officers will meet to consider each development application where an internal referral has been issued. This panel will typically meet within 14 days of the lodgement of an application. The minutes of these meetings will be recorded and placed on the relevant file.

3.4.5 External Referrals

In some circumstances an application may require referral for comment or concurrence from another approval body or relevant party. Such referrals will be issued in accordance with the requirements under:

- Section 91 of the *Environmental Planning and Assessment Act 1979* (“Integrated Development”);
- Section 57 (1) and 57 (2), of the *Heritage Act, 1977*;

- Section 19 & 20 of the *Marine Parks Act, 1997*; and
- Any other legislation.

All external advice received will be placed on the appropriate file relating to the proposed development.

3.4.6 Advertising / Notification

The LHIB has no relevant development control plan that deals with public notification.

Clause 41 of the LEP provides that the following development is advertised development:

- a) Development for the purposes of public utility installations,
- b) Development for the purposes of public utility undertakings,
- c) Development that, in the opinion of the consent authority, is likely to have a significantly adverse impact on the environment.

As soon as practicable after a development application is lodged, the LHIB will give written notice and cause notice of the application in the local newspaper in accordance with Division 7 of the *EP&A Reg.* The advertisement will include all required statutory and LHIB policy information.

Development Applications are publicly notified for a minimum period of 14 days (30 days for integrated developments).

The LHIB has developed a streamlined assessment process for minor developments that, in the opinion of the Board, are of minimal social and environmental impact. These applications will not be publicly notified, however adjoining leaseholders will be provided with written notice and given seven (7) days to comment.

The LHIB will place a copy of the advertisement on the appropriate file relating to the proposed development.

The LHIB will place a sample of the notification letter and record all addresses on the appropriate file relating to the proposed development.

The notification letter will include all statutory and LHIB policy requirements.

3.4.7 Submissions

All submissions received are placed on the relevant file.

The LHIB will acknowledge all submissions in writing, and where clarification is needed liaise with objectors to a proposed development.

The application is to be determined after the closing date for submissions.

3.4.8 Development Assessment Reports

The development assessment report will be completed in a standard format, and will consider:

- Statutory compliance

- Merit considerations under section 79c of the EP&A Act
- Consideration under any other relevant Acts or legislation
- Relevant submissions

The Draft Development Assessment Report prepared by the Planning Consultant will be reviewed by the relevant Manager and CEO prior to determination.

In the case of a refusal recommendation, this must be fully justified should the matter later be reviewed in the Land and Environment Court.

4 Determination

4.1 Reporting and Delegations

4.1.1 Approval or Refusal under 'Delegated Authority':

The Minister has authorised the LHIB CEO and Chairperson to grant consent to the lodgement (i.e. Owner Consent) of development applications subject to the following conditions:

- a) The value of the development must not exceed \$2,000,000.
- b) The DA must comply with the current Planning Instrument.
- c) The development application must not relate to the subdivision of land or the erection of a new dwelling.

The LHIB CEO and Chairperson has delegation to grant consent to development applications subject to the following conditions:

- a) The stated value of the development is greater than \$150,000 as calculated by the Board.
- b) No more than three (3) written objections are received within 14 days of public exhibition.
- c) The development application must not relate to the subdivision of land or the erection of a new dwelling.
- d) The application has not been called up for full Board determination by any Board Member.

All LHIB DAs are to be determined by the full Board. All DAs on vacant crown land are to be determined by the full Board.

4.1.2 Approval or Refusal by the Board

Applications which exceed the delegation of the CEO and Chairperson will be determined by the appointed and elected Board members either Out of Session (Closed) or at an Open meeting. The public interest test under the Government Information (Public Access) Act (the GIPA Act) should be applied to determine whether a matter is held in Open or Closed session.

Board members may also request that particular applications are considered at a Board meeting.

The Consultant Town Planner will prepare an assessment report assessing the proposal, and this will be reviewed by the Manager Environment & Community Development and the CEO.

The Board meeting agenda is finalised at least one (1) week prior to the meeting date and the assessment reports are available on Board's website.

Correspondence will be issued to the applicant and submitters advising of the date of the meeting

where the application will be considered.

4.2 Post-Determination Notification

The applicant and objectors will be advised of the determination of an application within 21 days of that decision.