

# LORD HOWE ISLAND BOARD POLICY

<b>TITLE</b>	<b>Mooring Management Policy</b>		
<b>DATE ADOPTED</b>	March 2011	<b>AGENDA ITEM</b>	9 (iv) March 2011
<b>CURRENT VERSION</b>	March 2016	<b>AGENDA ITEM</b>	8 (ii) March 2016
<b>REVIEW</b>	5 years	<b>FILE REFERENCE</b>	PO0004 AM0016
<b>ASSOCIATED LEGISLATION</b>	<i>Lord Howe Island Act 1953</i> <i>Lord Howe Island Regulation 2014</i> <i>Threatened Species Conservation Act 1996</i> <i>Environmental Planning and Assessment Act 1979</i> <i>Marine Estate Management Act 2014</i>		
<b>ASSOCIATED POLICIES</b>	N/A		

## 1 Policy Overview

The Lord Howe Island Board (LHIB) has developed this policy to guide its management of moorings in the Lord Howe Island (LHI) lagoon, in accordance with the provisions of the Lord Howe Island Act 1953 and the Lord Howe Island Regulation 2014 (LHI Regulation).

The intent of the policy is to ensure that the use and operation of moorings in the lagoon is undertaken safely, effectively and equitably. The LHIB recognises that moorings in the lagoon and their effective management make a significant contribution to the economic, social and environmental values of the island. The LHIB, in adopting this policy, has made every endeavour to ensure that these values are protected and, where possible, enhanced.

In relation to the commercial use of Public Day Use Moorings, the LHIB has made provision for limited priority use by operators of specific moorings. The LHIB has done this to provide some surety and stability to operators, without creating a restricted or closed trading environment. Priority use will in no way confer or imply any exclusive use of any public recreation mooring by a commercial operator.

By agreement with the Marine Parks Authority (MPA), any Public Day Use Mooring location, as identified by the MPA, may be installed with multiple moorings. Only one mooring may be allocated under the policy's priority use provisions. The other moorings may be provided to ensure that, notwithstanding restrictions on allocation of priority use to prevent exclusive use of any public recreation mooring, all locations are able to be utilised freely by the public and all approved commercial operators. Use of this second mooring will be on a first come first served basis, subject to the Commercial Operator Use Protocols established under this policy.

Private Mooring will not be located within a Public Recreation Mooring location, as identified by the MPA.

## **2 Definitions**

### **Private Mooring**

A mooring which is owned and maintained by a private individual or organisation and is used to temporarily or permanently secure a vessel.

### **Load Line**

A mooring which is owned and maintained by a private individual or organisation and is used to periodically secure a vessel while loading passengers or equipment from the shore.

NOTE: A load line must not be used as a Private Mooring.

### **Public Temporary Mooring**

A mooring used to temporarily secure Visiting Vessels for the duration of their stay, or where a Local Vessel needs temporary use of a mooring for a valid reason.

### **Public Day Use Mooring**

A mooring used to temporarily secure vessels at a Public Day Use Mooring location, as identified by the MPA.

### **Commercial Operator**

A Commercial Operator is a person who undertakes a commercial use of a mooring in the LHI lagoon.

### **Commercial Use**

To sell or hire, attempt to sell or hire, expose for sale, hire or profit or solicit for sale, hire or profit any article, thing or service to any person, or conduct, or assist in the conduct of, any amusement, entertainment, instruction, performance or activity for money or other consideration of any kind.

### **Non-Commercial use**

Any use which is not a commercial use.

### **Continuous History of Use**

Where an operator can establish continuous and regular use of a location, which has a 50 meter radius of a current or proposed Public Day Use Mooring, for a period of at least 24 months prior to the date of application for priority use.

### **Priority Use**

A commercial operator who has Priority Use of a mooring may access the mooring at the times specified in their approval for the purpose of carrying out their commercial operation. Other operators must not use the mooring if its use is required by the Priority Operator at the times specified in their approval and must depart and give access to the mooring if required to do so by the Priority Operator.

NOTE (A): Priority use does not confer or imply exclusive use by any operator.

Priority use will normally be allocated on the basis of one hour per vessel per business.

### **Priority Operator**

A person who has approved Priority Use for a particular mooring.

### **Use of a Mooring**

Reference to use of a mooring in this policy refers to the attaching of a vessel within the meaning of

Clause 90 of the LHI Regulation.

### **The LHI Regulation**

Means the *Lord Howe Island Regulation 2014*.

## **3 Mooring Types**

### **3.1 Private Moorings**

#### **3.1.1 Use**

Private moorings may be used to secure Local Vessels not in use, unless under special circumstances and agreed to by the LHIB. These moorings must not be used for commercial activities, other than where the operator of the vessel has a licence under Clause 49 of the LHI Regulation which specifically covers that commercial activity (for example the operator must have a licence to conduct commercial snorkelling activities from the boat on the mooring).

#### **3.1.2 Location and Condition**

All new private moorings will be within designated mooring areas:

- a) For deeper drafted vessels – within the area bounded by an arc drawn 300 metres from the centre of Blackburn Island to the north through the west;
- b) For shallower drafted vessels – between the Far Rocks and the Aquatic Club shed and a line offset from the high water mark by 250 metres.

Existing private moorings outside the designated areas may, subject to the agreement of the LHIB, be permitted where the owner can demonstrate to the satisfaction of the LHIB a continuous and regular history of lawful use exceeding 2 years.

All private moorings must meet the following criteria:

- a) Be of a design certified by a recognised marine engineer, architect or surveyor. NOTE: All Private Moorings constructed and installed after 16 March 2005, the date of adoption of the previous mooring policy, will comply with this condition. Any Private Mooring constructed and installed prior to that date will either be certified as per Condition a), or the owner will indemnify the LHIB and the Minister and all other relevant parties in relation to the mooring. Such an indemnification will be made on the prescribed form, provided by the LHIB;
- b) Have a centre of swing location specified by latitude and longitude (WGS84) to within 3 decimal places of a minute of latitude and the location provided to the LHIB after installation of the mooring;
- c) Have a radius of maximum swing circle (measured from the stern of the vessel when secured by the bow to the centre of swing) not to exceed 25 metres in designated area 2 and 35 metres in designated area 1 or other approved areas;
- d) Be subject to a written inspection and maintenance schedule approved by the LHIB.

Private Moorings will not be located within a Public Recreation Mooring location, as identified by the MPA.

Delegation to give or withdraw approval under clauses 89 and 90 of the LHI Regulation for construction and/or use of a Private Mooring or Load Line will be held by the LHIB Chairperson and the LHIB Chief

Executive Officer.

## **3.2 Load Lines**

### **3.2.1 Use**

Load Line moorings may be used to secure Local Vessels periodically while loading and unloading passengers and equipment from shore, unless under special circumstances and agreed to by the LHIB. These moorings must not be used as a Private Mooring.

### **3.2.2 Location and Condition**

All new Load Line moorings will be within the designated mooring area for shallower drafted vessels between the pontoon mooring and the Aquatic Club shed and a line offset from the high water mark by 50 metres seaward.

Existing Load Line moorings outside the designated area may, subject to the agreement of the LHIB, be permitted where the owner can demonstrate to the satisfaction of the LHIB a continuous and regular history of lawful use exceeding 2 years.

All Load Line moorings must meet the following criteria:

- a) Be of a design certified by a recognised marine engineer, architect or surveyor. NOTE: All Load Line moorings constructed and installed after 16 March 2005, will comply with this condition. Any Load Line mooring constructed and installed prior to that date will either be certified as per Condition a), or the owner will indemnify the LHIB and the Minister and all other relevant parties in relation to the mooring. Such an indemnification will be made on the prescribed form, provided by the LHIB;
- b) Be subject to a written inspection and maintenance schedule approved by the LHIB.

### **3.2.3 Approval of Construction and Use**

Construction and use of Private Moorings and Load Lines will be subject to the Environmental Planning and Assessment Act 1979 where applicable, and the provisions of Clauses 89 and 90 of the LHI Regulation. Approval under the LHI Regulation, if issued, will be issued in accordance with condition c) below.

In accordance with the LHI Regulation, the LHIB will reserve the right not to re-issue an approval for use of a Private Mooring or Load Line and to cancel any approval at any time.

Where the LHIB does not approve the use of a Private Mooring or Load Line, the owner will remove the mooring if directed to do so by the LHIB within the time frame set by the LHIB for its removal. The LHIB may not give approval to construct or use a Private Mooring or Load Line unless it is satisfied that all of the conditions below are met:

- a) The application has been received on the prescribed form;
- b) Any relevant consents, approvals or concurrences required under relevant legislation including the Environment Planning and Assessment Act 1979 have been obtained;
- c) The applicant has provided documentary evidence to the LHIB that the mooring complies with the Private Mooring criteria a) to d) and the Load Line criteria a) & b) set out above under Location and Condition;

- d) The applicant has agreed in writing that they will remove their mooring apparatus from the lagoon if directed to do so by the LHIB;
- e) That where commercial use of a mooring is required, a licence has been obtained under Clause 49 of the LHI Regulation.

Without the Board foregoing of any right under Clause 90 (2) of the LHI Regulation, an approval issued is an ongoing approval. The Board reserves the right to review mooring approvals and allocation at any time;

The LHIB recognises that use of Private Moorings or Load Lines may be crucial to the viability of some commercial operations. The LHIB also recognises that some Private Moorings and Load Lines may have significant inter-generational value.

Where a commercial operation which relies on a particular mooring is transferred through sale or inheritance, the LHIB, without forgoing any right under the LHI Regulation, will not unreasonably withhold the issuing of a new approval to use the mooring to the person taking over the business, provided that, in the opinion of the LHIB, the person purchasing or inheriting the operation is:

- a) Of good character;
- b) Is financially viable and not a bankrupt;
- c) Has all of the relevant approvals, insurances and permits required to undertake such a business.

Where a private vessel is transferred by will or sale, and use of the vessel is dependent on use of a specific Private Mooring or Load Line, and there is no intention of commencing a commercial operation using the mooring, the LHIB, without forgoing any right under the LHI Regulation, will not unreasonably withhold the issuing of a new approval to use the mooring to the person inheriting or purchasing the vessel or use thereof.

Delegation to give or withdraw approval under clauses 89 and 90 of the LHI Regulation for construction and/or use of a Private Mooring or Load Line will be held by the LHIB Chairperson and the LHIB Chief Executive Officer.

### **3.3 Public Temporary Moorings**

Public Temporary Moorings will be used to temporarily secure Visiting Vessels for the duration of their stay or where the LHIB is satisfied that a Local Vessel needs temporary use of a mooring for a valid reason. A valid reason may be where a holder of an approved private mooring is:

- a) Undertaking essential maintenance or repairs to a private mooring;
- b) Undertaking installation, construction or relocation of a private mooring;
- c) Restricted by the tide to access a private mooring.

18 public moorings have been installed and maintained by the LHIB to a certified standard. Local recreational vessels may attach to Public Temporary Moorings for up to two hours. This concession does not apply to commercial operators. Visiting Vessels will have priority for the use of Public Temporary Moorings. Fish cleaning is prohibited while attached to a Public Temporary Mooring.

Use of Public Temporary Moorings will be subject to the provisions of Clause 90 of the LHI Regulation and approval under that Regulation will be issued for a period not exceeding 14 days, except under special circumstances as determined by the LHIB.

It is the responsibility of the master of the vessel using a public mooring to ensure they have obtained the relevant approvals for the use of a mooring.

It is the responsibility of the master of the vessel to assure themselves that a mooring allocated to them is suitable for their needs.

Approval to use a mooring under Clause 90 of the LHI Regulation will only be issued through the use of the prescribed form: Approval to Attach a Vessel to a Public Temporary Mooring in the Lagoon.

Delegation to give or withdraw approval for up to 14 days use of a Public Temporary Mooring under Clause 90 of the LHI Regulation will be held by the LHIB Chairperson, LHIB Chief Executive Officer, LHIB Ranger and an Officer of NSW Roads and Maritime Service, as agreed to by the LHIB. The LHIB Chief Executive Officer will have delegation to issue an approval in excess of 14 days.

### **3.4 Public Day Use Moorings**

Public Day Use Moorings may only be used to temporarily secure vessels at popular recreational locations. These locations will be identified by the MPA. These moorings will be placed, managed and maintained by the MPA for public use.

Subject to a Priority Schedule approved by the LHIB, Public Day Use Moorings will be used on a first come first served basis.

All persons using these moorings will require approval under Clause 90 of the LHI Regulation.

#### **3.4.1 Non-Commercial Use**

Persons using Public Day Use Moorings for non-commercial use will be deemed to have approval from the LHIB under Clause 90 of the LHI Regulation provided:

- a) That they do not attach a vessel to a particular mooring for a period greater four (4) hours in any twenty-four (24) hour period;
- b) That they cease use of the mooring immediately if use of that mooring is required by a Commercial Operator who is approved by the LHIB to use the mooring.

Use of these moorings for non-commercial use will be exempt from the LHIB's mooring permit fee.

#### **3.4.2 Commercial Use**

Commercial Operators will require approval from the LHIB to use a Public Day Use Mooring for commercial use under Clause 90 of the LHI Regulation.

An approval will be issued to a Commercial Operator to use a Public Day Use Mooring for commercial use under Clause 51 (Duration of Licences) of the LHI Regulations which states:

“Except during any period of suspension, a licence continues to be in force until such time as it is cancelled or in the case of a licence that is granted for a specific term, when that term expires.”

The LHIB may not give approval to a Commercial Operator to use a Public Day Use Mooring for commercial purposes unless satisfied that the following conditions have been met:

- a) The application is on the prescribed form;
- b) Any relevant consents, approvals or concurrences for the commercial activity have been obtained;
- c) That the applicant has current approval to operate the proposed commercial operation under Clause 49 of the LHI Regulation;
- d) That the applicant has a current permit from the NSW Marine Park Authority (MPA) to undertake a commercial activity within the LHI Marine Park (LHIMP);
- e) That Clause 90 approval under this part of the policy applies to all Public Day Use Moorings within the lagoon, subject to any Priority Use which may be applied to a mooring managed by the LHIB;
- f) That Commercial Operators abide by any condition set by the LHI MPA in relation to the use of moorings;
- g) That the LHIB may apply Priority Use to the use of a mooring or moorings in accordance with the Priority Use Provisions set out in this policy and that the Operator agrees to abide by these provisions;
- h) That Commercial Operators using Public Day Use Moorings make every endeavour to abide by the following protocols:
  - All Commercial Operators using Public Day Use Moorings will be aware of each other's schedules and make their best endeavour not to be at the same site at the same time;
  - Commercial Operators will ensure there is adequate day to day inter-operator communication, such as sharing of schedules, to reduce conflict of operation;
  - Commercial Operators will stay in regular radio contact by monitoring and making initial contact on VHF Channel 12, and then, if required, switching to another working channel;
  - Commercial Operators will provide a consistent safety and environmental briefing to all customers to ensure that public risk and impacts on the environment are minimised;
  - Where diving/snorkelling occurs consecutively, for example at Comet's Hole, operators will use the standard operating procedures, but in addition, will make radio contact at 100 meters for a situation report;
  - The LHIB reserves the right to levy a mooring use fee for commercial use of these moorings;
  - All Commercial Operators using Public Day Use Moorings must abide by the conditions stated in their approval.

### **3.4.3 Priority Use Provisions**

The LHIB will, at its discretion, allocate Priority Use (see Definitions) to a Commercial Operator for use of a particular Public Day Use Mooring in accordance with the following provisions:

- a) To be eligible for Priority Use, Operators must have a current permit to operate in the LHIMP from the NSW MPA and a current approval under Clause 49 of the LHI Regulations to undertake the proposed commercial activity;
- b) Approvals, including Priority Use, will only be granted if the applicant has no outstanding fees and charges payable to the LHIB and has complied with all lawful directives and orders of the LHIB;
- c) In considering whether it grants an application for Priority Use of a particular mooring, the LHIB may take into account the following factors:
  - Whether the applicant has a demonstrated historic use of the location;
  - The environmental sustainability of the proposed operation;
  - Equity of access for all commercial operators;
  - Appropriate utilization of the mooring;
  - Safety and environmental record of the applicant;

- Experience in providing tourism services and
  - In accordance with Clause 4 of the LHI Regulation, the LHIB will also take into account relevant the provisions of the Local Government Act 1995.
- d) In allocating priority use to successful applicants the LHIB may not necessarily allocate priority use at times identical to the demonstrated historic use;
  - e) Use of Public Day Use Moorings will be limited to 1 hour per vessel per business, capped at two (2) vessels;
  - f) Allocation of Priority Use will be at the discretion of the LHIB;
  - g) Operators must operate on a regular basis and will lose priority if the allocated mooring is not, in the opinion of the LHIB, used on a regular basis for the purpose for which Priority Use was allocated;
  - h) A licence will be issued to use a Public Day Use Mooring to a commercial operator for Priority Use Under Clause 51 (Duration of Licences) of the LHI Regulation which states:
 

“Except during any period of suspension, a licence continues to be in force until such time as it is cancelled or, in the case of a licence that is granted for a specific term, when that term expires”;
  - i) The LHIB reserves its rights under Clause 90 (2) of the LHI Regulation to revoke permission at any time for use of a mooring or Priority Use of a mooring;
  - j) Multiple functional moorings may be provided by the MPA at all key locations, as agreed between the MPA and the LHIB, subject to safety and distance-off considerations. Proposed distance off between moorings is a minimum of 50 meters radius around each mooring;
  - k) Only one mooring per location to be allocated on a Priority Use basis;
  - l) Only one mooring per Operator is to be allocated on a Priority Use basis;
  - m) Moorings not allocated under Priority Use, or where use is not required by an Operator to whom priority use has been granted, will be available for use to all approved Operators and operate on a first come, first served basis subject to the use protocols set out in the policy;
  - n) Where Priority Use is allocated to an Operator, the Operator will pay to the LHIB a Priority Use Fee per vessel per annum, in addition to any standard fee for commercial use of a Public Day Use Mooring;
  - o) Allocation of priority use will be issued in accordance with Clause 90 of the LHI Regulation and will be set out in an Operator’s Priority Use, which will be provided to all Commercial Operators approved by the LHIB to use a Public Day Use Mooring and
  - p) All users of Public Day Use Moorings will be required to abide by Priority Use established by the LHIB.

The LHIB may in its discretion allocate exclusive commercial use of a Public Day Use Mooring to a Commercial Operator for a specified period. Where the LHIB allocates exclusive commercial use of a Public Day Use Mooring it will do so in strict accordance with the standard governance procedures and legal requirements for the allocation of an exclusive use of a public resource, e.g. by competitive tender which maximises financial and other benefits to the LHIB.

Delegation to give or withdraw approval for use of a Public Day Use Mooring, under clause 90 of the LHI Regulation, other than allocation of Priority Use, will be held by the LHIB Chief Executive Officer.

Delegation to allocate Priority Use will be given to a selection committee established by the LHIB Chief Executive Officer and comprising of, as a minimum:

- a) The LHIB Chief Executive Officer
- b) The Manager LHI MPA
- c) Two Board members to be nominated by the Chairperson