

# LORD HOWE ISLAND BOARD INTERNAL PROCEDURE

<b>TITLE</b>	<b>Procedure for Access to Leasehold Land</b>		
<b>DATE ADOPTED</b>	March 2014		
<b>REVISED</b>	July 2018	<b>REVIEW</b>	2 years
<b>FILE REFERENCE</b>	GF804		
<b>ASSOCIATED LEGISLATION, POLICIES &amp; PROCEDURES</b>	LHIB Complaints and Allegations Policy		

## 1 Introduction

The Lord Howe Island Board may need to access leasehold land to carry out a range of functions as described under various pieces of legislation. This procedure outlines the powers of entry of the Board and the rights of leaseholders in this situation.

### 1.1 Purpose of the Procedure

To clarify the procedures relating to the access of perpetual leases, special leases, permissive occupancies and LHIB residences.

### 1.2 Application of the Procedure

The procedure applies to all Lord Howe Island Board staff, contractors and volunteers accessing leasehold land for the purpose of exercising the functions of the Board.

The procedure does not in any way limit powers provided under legislation for investigation / compliance purposes such as those shown in Appendix A.

## 2 Procedure

- a) The Board will compile and maintain a register of leaseholders who provide voluntary consent for access to leases on an ongoing basis for approved projects.
- b) The authorised officer will contact the leaseholder by telephone, email or in person and seek consent for entry to the premises. A minimum of 24 hours notice will be provided with the exception of emergencies, high risk or urgent matters as approved by the CEO. For island wide projects such as the wooden survey, the Board may choose to go directly to step 4 and issue a form letter to each leaseholder sent by post.
- c) The authorised officer will record the time, date, details of the discussion and outcome by way of a file note or use of a communication log.
- d) Should the leaseholder refuse consent, then a written notice of the intention to enter the premise will be issued the day before (at least 24 hours prior to entry). The notice must

include all relevant information as specified in s199 of the LG Act. An example is provided in Appendix B. The letter may be sent by post or preferably hand delivered.

- e) The authorised officer must be in possession of an authority and produce the authority if required to do so by the owner or occupier of the premises.
- f) Authorised officers must not enter or search residential premises without prerequisite approvals.
- g) Where feasible and safe to do so, leaseholders may accompany authorised persons during their inspections. Leaseholders should advise the principal contact officer prior to the field team's visit.
- h) Complaints in relation to a project should be lodged and managed in accordance with the LHIB Complaints and Allegations Policy.

The above procedure lists the minimum requirements for accessing leasehold land, and island-wide programs should include further notification requirements such as posting on the Board website, notification in the Signal, Community Bulletin, notice boards, community hall blackboard etc, as outlined in a communication plan.

### **3 Associated Policies, Procedures and Checklists**

- LHIB Complaints and Allegations Policy

### **4 Procedure Review**

The Procedure shall be reviewed at 2 years from the date of approval in accordance with the timeframe specific in the procedure. The procedure may however be reviewed and amended anytime within this period as required.

### **5 Approval**



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**CHIEF EXECUTIVE OFFICER**

23 July 2018

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**Date**

## APPENDIX A

### Lord Howe Island Regulation, 2014 / Local Government Act, 1993:

- Clause 99 of the *Lord Howe Island Regulation, 2014* provides powers for persons authorised by the Board to enter any premises for the purpose of enabling the Board to exercise its functions. The provisions of Part 2 of Chapter 8 (section 201 excepted) of the [Local Government Act 1993](#) apply.
- Section 191(1) of the *Local Government Act, 1993* (LG Act) provides powers for persons authorised by a council (in this case the Board) to enter any premises for the purpose of enabling the Board to exercise its functions. Section 191(2) states *entry may only be made at any reasonable hour in the daytime or at any hour during which business is in progress or is usually carried on at the premises.*
- Section 191A of the LG Act states: *without limiting section 191, a council employee (or other person) authorised by a council may enter any premises to carry out water supply work, sewerage work or stormwater drainage work on or under the premises.*
- Section 192 of the LG Act allows an authorised person to inspect, take measures, samples, photographs and require persons to answer questions.
- Section 193 of the LG Act outlines notification requirements prior to the entry of premises:
  - 1) *Before a person authorised to enter premises under this Part does so, the council must give the owner or occupier of the premises written notice of the intention to enter the premises.*
  - 2) *The notice must specify the day on which the person intends to enter the premises and must be given before that day.\*\**
  - 3) *This section does not require notice to be given:*
    - a) *if entry to the premises is made with the consent of the owner or occupier of the premises, or*
    - b) *if entry to the premises is required because of the existence or reasonable likelihood of a serious risk to health or safety, or*
    - c) *if entry is required urgently and the case is one in which the general manager has authorised in writing (either generally or in the particular case) entry without notice, or*
    - d) *if entry is made solely for the purpose of reading a meter or other device for measuring:*
      - a. *the supply of water to the premises from the council's water mains, or*
      - b. *the discharge of sewage or other waste matter from the premises into the council's sewer mains.*
- a) \*\* The Board will also need to comply with the requirements of written authority set out in s199 of the LG Act (see below).
- Section 196 of the LG Act provides that the Board must take care to do as little damage as possible.
- Section 199 of the LG Act states that the authorised officer must be in possession of an authority and produces the authority if required to do so by the owner or occupier of the premises. The authority must be a written authority which is issued by the Board which:
  - a. states that it is issued under this Act; and
  - b. gives the name of the person to whom it is issued, and
  - c. describes the nature of the powers conferred and the source of the powers, and
  - d. states the date (if any) on which it expires, and

- e. describes the kind of premises to which the power extends, and
  - f. bears the signature of the general manager.
- Section 200 of the LG Act states that powers of entry cannot be used in relation to residential premises except:
    - a) with the permission of the occupier
    - b) if entry is necessary for the purpose of inspecting work being carried out under an approval, or
    - c) under the authority conferred by a search warrant.
  - Clause 50 of the *Lord Howe Island Regulation 2014* provides powers in relation to inspections of licensed premises including tourist accommodation and other commercial undertakings
  - The *Energy Operators (Powers) Act 1979* places an obligation on users to provide safe access for meter reading at all reasonable times.

**Standard conditions of perpetual leases:**

- Condition 15 of the standard lease conditions for perpetual leases allows the Board or a person authorised by the Board to enter leasehold land for the purpose of constructing and maintaining authorised works.

**Standard conditions of special leases:**

- Condition 10: The public shall have unrestricted right to the use of any defined or designed road, track or pedestrian pathway within the land leased and such use shall not be interfered with by the lessee.
- Condition 15: The right is reserved to the Board or any body or person authorised by it to enter upon the land leased with any material and equipment at any time and from time to time for the purpose of constructing and maintaining authorised works without interference or annoyance by the lessee.
- Condition 25: The right of entry by Commonwealth Authorities, their agents, servants, workmen and invitees at all times by day or by night to go, return, pass and repass on foot along over and upon any part of the land leased on which an electricity transmission line is now or may be constructed, is reserved for all purposes connected with effecting any necessary repair and maintenance for supply of electricity.
- Condition 26: The public shall have unrestricted right of access over the land leased to the foreshores and such right shall not be interfered with by the lessee.
- Condition 27: The right is reserved to the Board or persons authorised by the Board to enter upon the land leased for the purpose of carrying out any work on the area covered by the reservation for access, shelter, foreshore improvement and re-vegetation without interference or annoyance by the lessee.

**Standard conditions of permissive occupancies:**

- Condition 6: The public shall, unless otherwise agreed to by the Board in this agreement, have unrestricted right to the use of any defined or designed road, track or pedestrian pathway within the land and such use shall not be interfered with by the occupant.

- Condition 9: The right is reserved to the Board or any body or person authorised by it to enter upon the land with any material and equipment at any time and from time to time for the purpose of constructing and maintaining authorised works or any other purpose approved by the Board without interference or annoyance by the occupant.

#### **Other Legislation:**

Lord Howe Island Board employees are appointed as ‘authorised officers’ under a range of legislation including, but not limited to:

- *Environmental Planning & Assessment Act, 1979*
- *Protection of the Environment Operations Act 1997 (POEO Act),*
- *Environment Protection and Biodiversity Conservation Act 1999*
- *Threatened Species Conservation Act 1995 (TSC Act)*
- *National Parks and Wildlife Act 1974 (NPW Act)*
- *Animal Diseases and Animal Pests (Emergency Outbreaks) Act 1991*
- *Noxious Weeds Act, 1993*
- *Food Act 2003 and Food Regulation 2010*

Authorised officers may exercise powers to determine whether there has been a contravention of the above legislation. These powers include the power to enter premises, excluding parts of premises used only for residential purposes. Once officers have lawfully entered premises, they have powers to examine and inspect articles, take samples, take photographs and audio or video recordings, and seize items reasonably believed to be connected with an offence.

#### **Access to residential premises:**

In the absence of the permission of the leaseholder to enter the residential premises, a search warrant will generally be needed for this purpose. Depending on what kind of offence is being investigated, different search warrant powers under different legislation are relevant.

- To investigate potential threatened species offences under the *National Parks and Wildlife Act 1974 (NPW Act)*, authorised officers under Chapter 7 of the *Protection of the Environment Operations Act 1997 (POEO Act)* and s 156B of the NPW Act can apply for a search warrant under the POEO Act.
- To investigate potential offences under the *Environmental Planning and Assessment Act 1979 (EP&A Act)*, including the contravention of the terms of a development consent, persons authorised by the Board under the EP&A Act can apply for a search warrant under that Act.
- To investigate potential offences under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*, Board staff can apply for a monitoring warrant or a search warrant under that Act, **but only if** the relevant Commonwealth and NSW Ministers have entered into an arrangement for the Board staff to be “authorised officers” under the EPBC Act. (Alternatively, the Commonwealth could issue the Board a notice to produce any information the Board has obtained through investigations under NSW legislation, if the Commonwealth Minister reasonably believes this information is relevant for the purposes of investigating an offence against the EPBC Act.)

The three separate warrants can all be used at the same time.

## APPENDIX B

Ref: [Enter File Reference e.g. EDXX/X]  
Enquiries: [Enter Officer Name]

[Date]

[Name]  
[Address]  
LORD HOWE ISLAND NSW 2898

Dear [Name e.g. Mr Name]

### **RE: [INSERT REFERENCE IN CAPITAL LETTERS]**

The Lord Howe Island Board (LHIB) in consultation with Qantaslink has developed a Bird and Animal Hazard Management Plan for the LHI Aerodrome. The plan outlines a range of management strategies to provide a safe operating environment for all aircraft utilising the Aerodrome.

In accordance with the Plan and a license issued by the NSW Office of Environment & Heritage, the Board will be erecting 10-15 kilometers of bunting on Blinky dune at 5m grids to discourage the birds from nesting within the flight path of the Aerodrome.

Clause 107 of the *Lord Howe Island Regulation, 2004* provides powers for persons authorised by the Board to enter any premises for the purpose of enabling the Board to exercise its functions. This letter is issued under Clause 107 of the *LHI Regulation, 2004*, and Section 193 of the *Local Government Act, 1993* as formal notice of the intention to enter Special Lease XXX to deliver materials to the site. Approximately 6-8 staff employed by the Board will need to enter your lease.

Work will be conducted between 7am and 4pm on Thursday 6 September 2012, subject to suitable weather.

Should you require any further information please contact David Kelly on (02) 6563 2066 extension 18.

Yours sincerely

Name  
CHIEF EXECUTIVE OFFICER