



PLANNING PROPOSAL

Rezoning from Zone 5 Special Uses to Zone 2 Settlement

Part Portion 279 & Part Portion 30, Off Middle Beach Road, Lord Howe Island

For and on behalf of: **Lord Howe Island Board**

September 2013

ALL ABOUT **PLANNING**

Table of Contents

INTRODUCTION	1
SUBJECT SITE	2
1 OBJECTIVES OR INTENDED OUTCOMES	4
2 EXPLANATION OF PROVISIONS	5
3 JUSTIFICATION	5
SECTION A – NEED FOR THE PLANNING PROPOSAL	5
SECTION B – RELATIONSHIP TO STRATEGIC PLANNING FRAMEWORK.	6
SECTION C – ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACT	7
SECTION D – STATE AND COMMONWEALTH INTERESTS	9
4 MAPS	10
5 COMMUNITY CONSULTATION	10
6 TIMEFRAMES	10
CONCLUSION	11

Attachments

- Proposed Amendment to Lord Howe Island Local Environmental Plan 2010 Land Zoning Map on Part Portion 279 & Part Portion 30 off Middle Beach Road, Lord Howe Island

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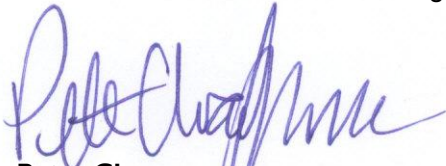
AAP Reference: 2013 – 022

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In preparing this report, All About Planning Pty Ltd has used and relied on data, plans and information provided by the Lord Howe Island Board and other parties as detailed in this document. Except as otherwise stated, the accuracy and completeness of the information provided to All About Planning Pty Ltd for this assessment has not been independently verified.

For and on behalf of All About Planning Pty Ltd.



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ALL ABOUT PLANNING



INTRODUCTION

In November 2012 the Lord Howe Island Board (LHIB) has resolved to cease the large scale production of Kentia Palm seedlings and to cease operation of the Board's Nursery located on Part Portion 279 off Middle Beach Road, Lord Howe Island. Part Portion 30 is identified to be transferred from Perpetual Lease to the LHIB.

An amendment to the Lord Howe Island Local Environmental Plan 2010 (LHI LEP 2010) is needed to enable the use of the land for a variety of purposes given the highly restrictive nature of the current zone. The Board has sought Expressions of Interest from the Lord Howe Island community in respect of the future use of the site. To date two expressions of interest have been received, both of which involve private commercial use of the site.

An adjacent Part Portion 30 is also included in the subject rezoning. This part portion is currently held under Perpetual Lease by T. Douglas for residential purposes. The rezoning of the rear part of this portion is being pursued because the Lord Howe Island Board recognises the inappropriateness of retaining a Special Uses zone over part of this site, especially when the adjacent nursery portion is to be rezoned Settlement and the other part of this Portion 30 is already zoned Settlement. This Special Uses area of Portion 30 was zoned such in 2010 based on a proposed land exchange between the leaseholder and the LHIB when the nursery was operational.

This Planning Proposal has been prepared on behalf of the Lord Howe Island Board and in accordance with the NSW Department of Planning and Infrastructure's "A Guide to Preparing Local Environmental Plans (October 2012)".

This report addresses the following matters as detailed by the NSW Department of Planning and Infrastructure:

- The objectives and intended outcomes of the proposed instrument
- An explanation of the provisions that are to be included in the proposed instrument
- The justification for those objectives, outcomes and the process for their implementation
- Maps, where relevant, to identify the intent of the planning proposal and the area to which it applies
- Details of the community consultation that is to be undertaken on the planning proposal.

SUBJECT SITE

The site of the proposed rezoning is known as Part Portion 279 & Part Portion 30, off Middle Beach Road, Lord Howe Island. The site has been utilised as a Palm Nursery operated by the Board. Part Portion 30, immediately adjacent to the nursery site, has historically and is still being used for settlement purposes. This land is identified to be transferred from the Perpetual Lease to the LHIB in 2013.

Portion 279 and Portion 30 currently have two zonings under the LHI LEP 2010 as identified on the following zoning plan extract, showing the north-west portion of these sites being Zone 2 Settlement and the remainder currently Zone 5 Special Uses. The subject planning proposal only relates to the Zone 5 Special Uses area of the subject site which consists of Part Portion 279: 33,587m² and Part Portion 30: 2,435m² (total Zone 5 Special Uses area to be rezoned: 36,022m²).

Portion 279 is heavily vegetated on its perimeter as shown on the aerial photo over the page. The buildings associated with the nursery operations are generally centred on the site and to the north.

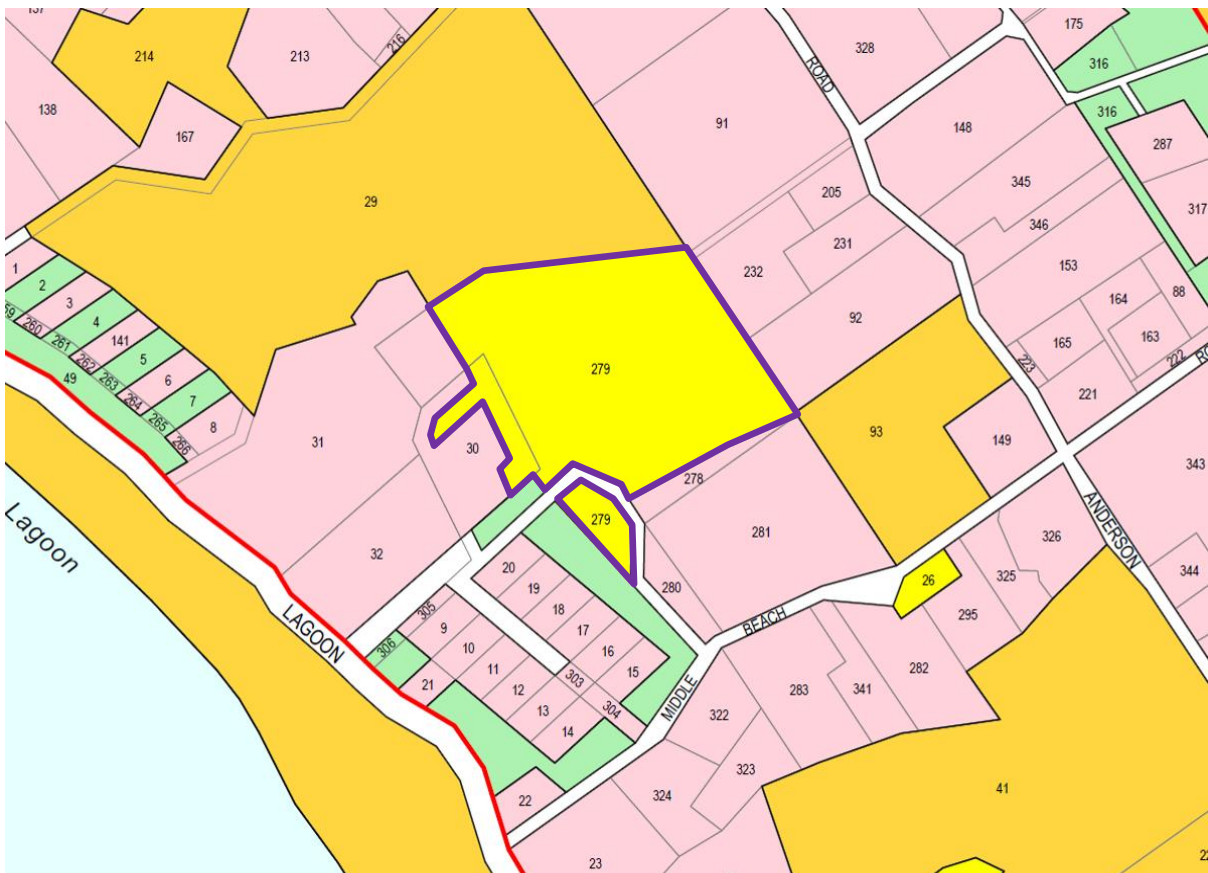


Figure 1: Zoning of the site under the LHI LEP 2010 with site highlighted in purple

Planning Proposal

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Scale 1:2,000 @ A4

Red: For use in 2013 (see map legend for details)
Yellow: For use in 2014 (see map legend for details)




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11 May 2013
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Below is an extract from the Significant Vegetation Map contained within the LHI LEP 2010 which reflects the above vegetation pattern.

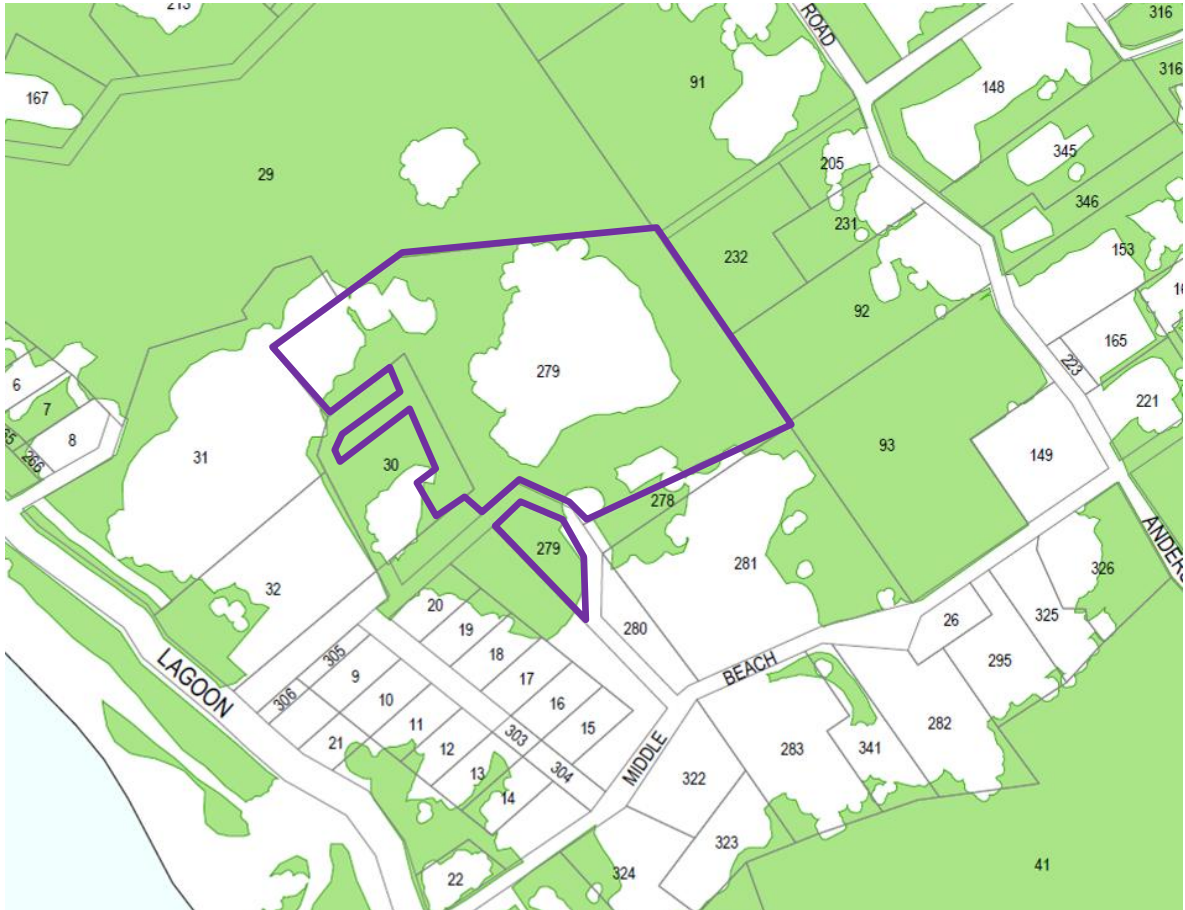


Figure 3: Extract from the LHIB Significant Vegetation Map with the site highlighted in purple

Included in the attachments to this submission are some site photographs of Portion 279 and Portion 30.

I OBJECTIVES OR INTENDED OUTCOMES

The subject proposed amendment to the LHI LEP 2010 is required to allow different and private use of the site. The Board has sought Expressions of Interest for the future use of the site and the current Zone 5 Special Uses zoning restricts the use of the land significantly.

The proposal to rezone Part Portion 30 is to remove an inappropriate existing Special Uses zone over this land which is leased and used for settlement purposes.

The proposed rezoning to Zone 2 Settlement is proposed as it is consistent with the zoning of the majority of surrounding land and provides good flexibility for the Lord Howe Island Board to consider a variety of possible future uses for the previous nursery site.

It is envisaged that following the subject rezoning, the successful lessee of the nursery site will submit a development application for the proposed land use as required.

2 EXPLANATION OF PROVISIONS

The proposed outcome will be achieved by amending the Lord Howe Island LEP 2010 Land Zoning Map by rezoning Part Portion 279 and Part Portion 30, off Middle Beach Road, Lord Howe Island in accordance with the proposed zoning map (refer attachment 1).

It is proposed that the final zoning map for gazettal will be prepared by the Grafton Office of the NSW Department of Planning, on behalf of the Lord Howe Island Board.

3 JUSTIFICATION

Section A – Need for the planning proposal

Q1. Is the planning proposal a result of any strategic study or report?

The proposed rezoning is not the result of any broader planning strategy or strategic report.

There is no need to undertake a broader strategic study or report in the circumstances.

Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Consideration has been given to alternative uses of the land under the current Zone 5 Special Uses controls. However, the site is restricted considerably by the current zoning. Nursery operations on the site are only permissible as a “*premises of public activity*” and which by definition must be operated by a public authority. As the public nursery operations are to cease and the land is to be leased independent of the Lord Howe Island Board to a private operator/party, (ie. will no longer be operated by the Board or a public authority) there is no viable or acceptable alternative to the proposed rezoning.

The current LHI LEP was only gazetted in 2010 and no routine set of amendments are planned to take place in the immediate future. The LHIB is currently undertaking a number of background studies to inform a review of the LEP and this is still at least 2 years away from completion.

Q3. Is there a net community benefit?

The Board has resolved that there is no longer a need for the Palm Nursery as it is not economically viable to continue public operations.

The proposed site zoning could be utilised by the Board in accordance with the current zoning in a highly restricted manor. However, as a result of the change of zoning to be compatible with the surrounding zoning, it is anticipated that a more suitable and viable land use can be achieved on the site. The Board is currently considering the Expressions of Interest received for the site, with both options proposed to date indicating they would contribute to the island economy and tourism, which will have an overall net positive community benefit.

Section B – Relationship to strategic planning framework.

Q4. Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

No regional or sub-regional development strategies (or draft strategies) apply to Lord Howe Island. Nevertheless the proposal has site specific merit on the basis that it will allow the use of the land in keeping with the surrounding settlement zoning of the area and will facilitate the establishment of viable land uses at the nursery site.

In the absence of applicable regional or sub-regional planning strategies, the proposal has merit as:

- It does not introduce any new or additional land uses to that which are already present on the surrounding sites and maintains the existing relationship of land uses and ensures compatible zonings between the subject and surrounding sites,
- No new or (future) potential land use conflicts would be created,
- It does not negatively impact on world heritage values. By its nature the planning proposal will not impact on the natural environment, environmental values, resources or hazards. The site contains mapped significant vegetation around the perimeters (as shown on the map above), however a large area remains for any future use of the site and in any case, the LHI LEP 2010 specifically prohibits damage to, or removal of SNV.
- The planning proposal will not create a demand for any additional services or infrastructure,

- The planning proposal is quite simple and involves a minor zoning map amendment only. The level of information provided with this planning proposal will enable the plan making process to be completed within a quick time and with little additional investigation.

Q5. Is the planning proposal consistent with a council's local strategy or other local strategic plan?

The Lord Howe Island Board (LHIB) does not have a local strategy relevant to the proposed LEP amendment. The Lord Howe Island Local Environmental Plan 2010 is the key strategic planning document for the island community.

The proposed rezoning will ensure any future development on the site will be consistent with the provisions and objectives of the LHI LEP 2010 and more specifically the Zone 2 Settlement objectives which ensure the future land use of the site is consistent with the surrounding development and viable use of the site can be established.

Q6. Is the planning proposal consistent with applicable State Environmental Planning Policies?

There are no relevant State Environmental Planning Policies (SEPPs) which apply to Lord Howe Island or which are applicable to the subject planning proposal.

Q7. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

There are no Section 117 Ministerial Directions which either apply to Lord Howe Island or are applicable to the subject planning proposal.

It is relevant to note that in preparing the LHI LEP 2010, the NSW Department of Planning granted an exemption to Lord Howe Island from conforming to the Standard LEP template, due to the island's unique controls, zones and world heritage status.

Section C – Environmental, Social and Economic Impact

Q8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

There is no critical habitat and no Endangered Populations listed on Lord Howe Island under the TSC Act. There are 2 Endangered Ecological Communities (EEC) present on the Island: Sallywood Closed Swamp Forest, which occurs on flood prone flats and the Gnarled Mossy Cloud Forest which is confined to the plateaus of the southern mountains. Saltmarsh in the North Coast bioregion is listed as an EEC, although it

is uncertain whether this listing applies to LHI. There are no EEC's within the vicinity of the planning proposal, therefore it is considered likely that the proposed actions will not impact on any EEC.

As stated earlier the central area of Portion 279 is cleared, it has been intensively used as a nursery for some time and does not provide high quality habitat for threatened species. This area is large enough to allow development to occur on the site within that area. As the vegetated remainder of the site including the vegetation on Part Portion 30 is mapped as significant native vegetation, no additional clearing will be permissible or possible.

On the above basis, the Lord Howe Island Board considers it is unlikely that the proposal will impact on any area of mapped SNV, any critical habitat or threatened species, populations or ecological communities, or their habitats.

The future use of the nursery site will be the subject of an assessment of its environmental impacts as part of any development application required (including a 7 Part Test under the Threatened Species Conservation Act 1995 as required).

Q9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

There are no other likely environmental effects of the planning proposal which have not already been addressed in this assessment.

Q10. Has the planning proposal adequately addressed any social and economic effects?

The site is not identified as having historical significance under Schedule 2 – Heritage Items of the Lord Howe Island Board's Local Environmental Plan and consequently the subject planning proposal is not required to be referred to the NSW Heritage Office by the Lord Howe Island Board.

There are no items or places of Aboriginal cultural heritage on Lord Howe Island.

The rezoning proposal will not have a negative impact on existing social infrastructure such as the LHI school, hospital, existing retail development or have any other negative social or economic effects.

There will be a likely positive social impact as a result of the proposed change of zoning due to the resultant consistent nature of the zoning to the surrounding area and the new opportunities from the expected new land use of the site.

The future use will be required to meet the objectives of the LHI Act 1953 and the LHI LEP 2010 in the assessment of any development applications for the site.

There is adequate information available to complete the LEP within a short timeframe without the need to obtain additional information or studies.

Section D – State and Commonwealth Interests

Q11. Is there adequate public infrastructure for the planning proposal?

In view of the small area proposed for rezoning and the overall minor nature of the subject planning proposal no demand for any additional public infrastructure or services will result. The site is already accessible by a gravel road. Electricity, phone, internet and tank water are also already available.

Q12. What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?

Section 57 (1) of the Heritage Act 1977 requires that all applications to carry out development on Lord Howe Island, (the entire island being listed in the State Heritage Register), be referred to and granted concurrence by the NSW Heritage Office. This provision is overridden however by the operation of Section 57 (2), in the circumstance of the Minister issuing a Heritage Exemption Order.

In 2005 the NSW Minister for Planning issued such an order providing for an exemption to refer all development applications to the Heritage Office, instead requiring referral of only those applications involving a Heritage item as listed in Schedule 2 of the LHI REP 2005 (as amended). The current request is for a Planning Proposal to allow the rezoning of land, rather than a development application. Accordingly, it is still to be confirmed if a referral to the NSW Heritage Office is required.

Section 12 of the EPBC Act 1999 requires approval from the Commonwealth of actions that involve a significant impact on a declared world heritage property. It is considered unlikely that any negative impact will result from the proposed rezoning, however referral to the Commonwealth will be undertaken if necessary.

In light of the above, the following State and Commonwealth agencies will be consulted post LEP Gateway determination, in the preparation of the subject planning proposal:

- NSW Heritage Office - Listed State Heritage Item: Lord Howe Island (if required)
- Commonwealth Department of Sustainability, Water, Environment, Population and Communities (if required)

4 MAPS

Zoning map extracts and aerial photographs have been included in the description of the site earlier in this report.

Attachment I contains a map showing the proposed amendment to the Lord Howe Island Local Environmental Plan 2010 Land Zoning on Part Portion 279 and Part Portion 30 off Middle Beach Road, Lord Howe Island.

No additional maps are required to support the planning proposal.

5 COMMUNITY CONSULTATION

If a positive gateway determination is issued then community consultation will be undertaken in accordance with the EPA Act 1979 requirements for low impact planning proposals – being an exhibition period of 14 days (and associated requirements).

The Lord Howe Island Board seeks the Director General of Planning's approval/ delegation to undertake the above community consultation of the subject planning proposal under section 57(2), EPA Act.

6 TIMEFRAMES

Due to the small scale and minor nature of the subject planning proposal, the level of information already available on the proposal and the absence of any potential significant impacts, a minimal timeframe is envisaged for the preparation of the associated LEP amendment.

The referrals to state and commonwealth agencies are likely to involve the most time however the Department's benchmark timeframe of 6 months is achievable.

CONCLUSION

This planning proposal has outlined and assessed a proposed amendment to the LHI LEP 2010 to allow a alternative uses of the land given that the Board has resolved to cease nursery operations on the site and given the inconsistent Special Uses zoning on part of adjacent Portion 30.

The Board has sought Expressions of Interest for the future use of the nursery site and the current Zone 5 Special Uses provisions poses a significant and unreasonable restriction on the future use of the nursery site.

The Lord Howe Island Board recommends the subject rezoning proposal to the LEP Gateway Review Panel.

Attachment I- Proposed Zoning Map



Planning Proposal

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 **Rezone from Zone 5
Special Uses to Zone
2 Settlement**

Scale 1:2,000 @ A4

 Part of the 279 quantity covered Special Use
 Part of the 30 quantity covered Special Use



Attachment 2- Site Photos



Above and Below: Lord Howe Island Kentia Palm Nursery, Photographs taken May 2012





Above: Large Lord Howe Island Kentia Palms for sale at the nursery



Above: Existing main dwelling & cottage on Portion 30



Above: View from existing Settlement zoned part of Nursery site on Part Portion 279 looking into existing Special Uses zone of Nursery



Above: Existing vehicle access road through Part Portion 279 at nursery site, which forms part of subject Planning Proposal



Above: Existing Settlement zoned Part of Nursery Site, adjacent to but not subject to current Planning Proposal



Above: Existing nursery structures on Portion 279