

Lord Howe Island LEP 2010 - Wastewater Management Systems

Proposal Title : Lord Howe Island LEP 2010 - Wastewater Management Systems

Proposal Summary : The planning proposal seeks to amend provisions under the Lord Howe Island Local Environmental Plan (LHI LEP) 2010 relating to the permissibility of wastewater management systems on Lord Howe Island.

The proposal seeks to amend the LHI LEP 2010 by:

- including a definition for wastewater management systems;
- listing wastewater management systems as exempt development when installed on land in Zone 2 Settlement; and
- permitting wastewater management systems with development consent in Zone 1 Rural, Zone 5 Special Uses, Zone 6 Recreation and Zone 7 Environment Protection.

PP Number : PP_2014_LHOWE_002_00 Dop File No : 14/15583

Proposal Details

Date Planning Proposal Received :	12-Sep-2014	LGA covered :	Lord Howe Island
Region :	Northern	RPA :	Director General, Department of
State Electorate :	PORT MACQUARIE	Section of the Act :	55 - Planning Proposal
LEP Type :	Policy		

Location Details

Street :
 Suburb : City : Postcode :
 Land Parcel : All land in Zone 1 Rural, Zone 2 Settlement, Zone 5 Special Use, Zone 6 Recreation and Zone 7 Environment Protection

DoP Planning Officer Contact Details

Contact Name : Luke Blandford
 Contact Number : 0266416612
 Contact Email : luke.blandford@planning.nsw.gov.au

RPA Contact Details

Contact Name : David Kelly
 Contact Number : 0265632066
 Contact Email : Dave.Kelly@lhib.nsw.gov.au

DoP Project Manager Contact Details

Contact Name : Jim Clark
 Contact Number : 0266416604
 Contact Email : jim.clark@planning.nsw.gov.au

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Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	N/A	Consistent with Strategy :	N/A
MDP Number :		Date of Release :	
Area of Release (Ha) :	0.00	Type of Release (eg Residential / Employment land) :	N/A
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0

The NSW Government
Lobbyists Code of
Conduct has been
complied with : **Yes**

If No, comment : **The Department of Planning and Environment's Code of Practice in relation to communications and meetings with lobbyists has been complied with to the best of the Region's knowledge. The Northern Region has not met with any lobbyists in relation to this proposal, nor has the Northern Region been advised of any meeting between other Departmental Officers and lobbyists concerning the proposal.**

Have there been
meetings or
communications with
registered lobbyists? : **No**

If Yes, comment :

Supporting notes

Internal Supporting
Notes : **RELEVANT PLANNING AUTHORITY**
The Department's legal branch provided advice regarding the identity of the relevant planning authority for amending the LHI LEP 2010 (File S09/01397). This advice is summarised below.

In accordance with section 54(1) of the Environmental Planning and Assessment Act (the Act) 1979, the Board is not a relevant planning authority for the purposes of finalising the LEP amendment, because:

- Lord Howe Island (LHI) is not a local government area under section 15A of the Lord Howe Island Act; and
- No regulation has been made to prescribe the Board as a relevant planning authority.

Under Section 54(2) of the Act, the Minister may direct that the Secretary of the Department of Planning and Environment is the relevant planning authority.

It is recommended that the Minister appoint the Secretary as the relevant planning authority to allow progression of this LEP amendment. Given the requirement for this direction it is also recommended that the Minister issue the Gateway Determination for this proposal.

External Supporting
Notes :

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : The objectives and intended outcomes of the proposal are provided and adequately expressed.

The proposal seeks to amend the provisions of LHI LEP 2010 as they apply to waste management systems. It seeks to list wastewater management systems as 'exempt development' in Zone 2 Settlement and permit them 'with development consent' in Zone 1 Rural, Zone 5 Special Use, Zone 6 Recreation and Zone 7 Environment Protection. This will enable a simplified and more efficient process for upgrading waste management systems on the Island.

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : The planning proposal provides a clear explanation of the provisions to achieve the objectives and intended outcomes. The proposed amendments/provisions to be included in the LEP can be summarised as:

1. Add the following definition for 'wastewater management systems' into the Dictionary:

- Wastewater Management Systems means a device for holding, treating, transferring and disposing of human faecal matter, and urine and wastewater associated with kitchen, laundry and ablution activities, including a septic tank, septic closet, collection wells, composting toilet, aerated wastewater treatment system, greywater treatment and diversion system, constructed wetland treatment system, biological filter system and aerobic sand and textile filter systems; and associated land application areas.

2. Add 'wastewater management systems' into Column 1 of Schedule 1 - Exempt Development. The following conditions are proposed to be added into Column 2 of Schedule 1 - Exempt Development:

- Must be installed on land within Zone 2 Settlement
- Must be used for domestic purposes only.
- Treatment and disposal areas must not be identified as mapped significant native vegetation.
- Treatment and disposal areas must not be identified as flood hazard.
- Must comply with the Lord Howe Island On-site Wastewater Management Strategy.

(Approval of the Board would still be required for 'wastewater management systems' in the Zone 2 Settlement area in accordance with Section 98 of the Lord Howe Island Regulation (LHI Reg) 2014).

3. Add 'wastewater management systems' into Subclause 3 of the following LEP Clauses:

- Clause 13 - Zone 1 Rural
- Clause 15 - Zone 5 Special Uses
- Clause 16 - Zone 6 Recreation
- Clause 17 - Zone 7 Environment Protection

(This would permit wastewater management systems within the above listed zones with development consent).

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA :

* May need the Director General's agreement

1.2 Rural Zones

2.1 Environment Protection Zones

2.3 Heritage Conservation

3.1 Residential Zones

4.3 Flood Prone Land

6.1 Approval and Referral Requirements

Is the Director General's agreement required? **No**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **No**

d) Which SEPPs have the RPA identified?

e) List any other matters that need to be considered :

In addition to the s117 Directions nominated by the RPA, the following Directions also apply:

- **2.2 Coastal Protection**
- **2.4 Recreation Vehicle Areas**
- **3.2 Caravan Parks and Manufactured Home Estates**
- **3.3 Home Occupations**
- **3.4 Integrating Land Use and Transport**
- **6.2 Reserving Land for Public Purposes**
- **6.3 Site Specific Provisions**

In accordance with Clause 8 of the LHI LEP 2010, only SEPP (Building Sustainability Index: BASIX) 2004 applies.

An assessment of the applicable directions and SEPPs is provided within the 'Assessment' section of this planning report.

Have inconsistencies with items a), b) and d) being adequately justified? **N/A**

If No, explain : **No inconsistencies have been identified. See the 'Assessment' section of this planning team report.**

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment : **None of the proposed amendments require modification to any map sheet under LHI LEP 2010.**

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **The Lord Howe Island On-site Wastewater Management Strategy was prepared by the Board in consultation with the residents of the Island to guide the installation and upgrading of all wastewater management strategies on Lord Howe Island. It was publicly exhibited between May-June of 2012 and adopted by the Board in April 2013.**

The planning proposal seeks to amend the LHI LEP 2010 to simplify the assessment and approval process for installing and maintaining wastewater management systems on the Island to ensure the goals and actions of the Lord Howe Island On-site Wastewater Management Strategy can be achieved.

The planning proposal indicates that a 14 day exhibition period would be undertaken. The planning proposal has indicated that community consultation would be undertaken in accordance with the Gateway requirements. It indicates that a public notice would be placed in the local newspaper and on the Board's website and/or the Department's website.

It is considered a 14 day exhibition period is appropriate given that the Lord Howe Island On-site Wastewater Management Strategy has already been subject to considerable community consultation and that the proposal is consistent with this Strategy.

It is appropriate that the Board undertake community consultation given the matter is of local significance. However a copy of the planning proposal will also need to be exhibited by the Department since the Secretary is to be the relevant planning authority.

Additional Director General's requirements

Are there any additional Director General's requirements? **Yes**

If Yes, reasons : **The Secretary will be the RPA for this proposed LEP Amendment. There are no additional requirements in addition to those recommended in this planning report.**

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment : **The planning proposal generally satisfies the adequacy criteria by:**
1. Providing appropriate objectives and intended outcomes;
2. Providing a suitable explanation of the provisions proposed to achieve the outcomes;
3. Providing an adequate justification for the proposal;
4. Outlining a proposed community consultation program including public exhibition; and
5. Providing a project timeframe which suggests completion within 4 months.

PROJECT TIMELINE

The project timeline anticipates the planning proposal will be submitted for legal drafting in November/December 2014 (approximately 3-4 months). However because of the requirement to appoint DP&E as the RPA and that the Board meets only every three months it is considered that a 6 month time frame for completion of the planning proposal be provided.

The planning proposal package should be updated prior to exhibition to include this project timeline.

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : **LHI LEP 2010 was notified on 12 March 2010. The Minister 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.**

Assessment Criteria

Need for planning proposal :

The Board has identified the upgrading of all wastewater management systems on the Island as a key local infrastructure project, to ensure the Island's unique values are maintained. The Lord Howe Island On-site Wastewater Management Strategy was released in April 2013 and will guide the installation and upgrading of all wastewater management systems on the Island.

The current process for obtaining approval to install and upgrade wastewater management systems on the Island however involves:

- 1. obtaining landowner's consent (all land on the Island is vested in the Crown and is the responsibility of the Board);**
- 2. obtaining the Board's consent through a development application process; and**
- 3. obtaining the Board's approval under section 98 of the LHI Reg 2014.**

There are also often issues with land use permissibility (this is discussed further below).

The Board has proposed to amend the provisions under the LEP to improve the efficiency of the assessment framework for installing and maintaining wastewater management systems on the Island, to ensure the goals of the Lord Howe Island On-site Wastewater Management Strategy can be realised.

The proposed LEP amendments are discussed below.

INSERTING A DEFINITION OF WASTEWATER MANAGEMENT SYSTEMS INTO THE LEP

Wastewater management systems are currently not defined under the LHI LEP 2010.

The proposed definition for 'wastewater management systems' differs to the definition of 'sewerage systems' under the Standard LEP template. While the LHI LEP 2010 is not a Standard LEP and therefore an alternative definition can be considered, the use of a Standard LEP definition may be more appropriate.

The Board has confirmed that the proposed definition for 'wastewater management systems' has been drafted to ensure it covers the range of wastewater treatment systems being used on the Island.

The planning proposal clearly identifies what is being proposed and is therefore suitable for community consultation. The actual drafting of the definition for 'wastewater management systems' can be addressed at legal drafting stage.

LISTING WASTEWATER MANAGEMENT SYSTEMS AS EXEMPT DEVELOPMENT IN THE ZONE 2 SETTLEMENT AREA

Unless specified as exempt development under the LHI LEP 2010, all development in the Zone 2 Settlement area is permissible with the consent of the Board. This includes the installation of wastewater management systems. As noted above, in addition to obtaining development consent for the installation of wastewater management systems, approval of the Board is also required under section 98 of the LHI Reg 2010.

The Board considers the current process for gaining approval to install wastewater management systems that are of minimal environmental impact to be onerous and not cost effective. The planning proposal therefore seeks to simplify this process by making wastewater management systems exempt in the Zone 2 Settlement area. This would remove the requirement for obtaining development consent under a development application process. The Board would still oversee and approve the installation of all wastewater management systems in the Zone 2 Settlement area in accordance with section 98 of the LHI Regs 2014. This would provide the Board with an opportunity to ensure all proposed wastewater management systems in the Zone 2 Settlement area are of 'minimal environmental impact'.

Section 76(2) of the EP&A Act defines 'exempt development' as development that is of minimal environmental impact. As listed under the 'Explanation of Provisions' section of this Planning Team Report, the Board has proposed to include development standards in the LEP to only exempt wastewater management systems in the Zone 2 Settlement that would be of minimal environmental impact. In particular, the standards require compliance with the Lord Howe Island On-site Wastewater Management Strategy, which contains strict controls for the installation, maintenance and reporting of all wastewater management systems on the Island. The Strategy also requires a Risk Assessment to be undertaken for all new systems to determine if they are of low, medium or high risk to the environment. Where a proposed wastewater management system is not classed as low risk and does not comply with these standards, it would not be considered exempt development and therefore would require assessment through a development application process.

Under the Infrastructure SEPP a public authority can undertake the installation of sewerage treatment plants in 'residential zones' without development consent. The Infrastructure SEPP does not apply to Lord Howe Island however. As discussed above, all land on the Island is the responsibility of the Board and the Board will oversee and approve the installation of all wastewater management systems on the Island. The

proposed LEP amendment is considered to be consistent with the existing planning framework for the rest of the State.

PERMITTING WASTEWATER MANAGEMENT SYSTEMS WITH DEVELOPMENT CONSENT IN ZONE 1 RURAL, ZONE 5 SPECIAL USES, ZONE 6 RECREATION AND ZONE 7 ENVIRONMENT PROTECTION

Wastewater management systems are currently not permitted in Zone 1 Rural, Zone 5 Special Uses, Zone 6 Recreation and Zone 7 Environment Protection. A wastewater management system can only be approved in these zones where it can be considered ancillary to a land use that is permissible in that zone (Clause 11 of LHI LEP 2010). Wastewater management systems are regularly required to be installed and maintained in these zones however to service development in the Zone 2 Settlement area. This is because of land use constraints on the Island (ie. developable land is limited because all native vegetation on the Island is protected and cannot be removed).

Permitting wastewater management systems with development consent in the Zone 1 Rural, Zone 5 Special Use, Zone 6 Recreation and Zone 7 Environment Protection will provide a more simplified and streamlined approval process. The LHI LEP 2010 and Lord Howe Island On-site Wastewater Management Strategy contain a range of provisions that will guide and control the installation of all wastewater management systems, to ensure minimal environmental impact.

There may be a case that the installation of wastewater management facilities on the Island could be considered an undertaking on behalf of the Board, as all land on the Island is the responsibility of the Board, and therefore could be defined as a 'public utility undertaking' under the LHI LEP 2010. A public utility undertaking is permissible with consent in Zone 1 Rural, Zone 5 Special Use, Zone 6 Recreation and Zone 7 Environment Protection. In this regard an amendment to the land use table for these zones may not be required.

It is noted that the Board does not support this approach, raising concern that it is inconsistent with the established development processes on the Island. The Board therefore seeks to amend the provisions under the LEP to permit wastewater management systems in these additional zones.

Consistency with strategic planning framework :

REGIONAL STRATEGY

There are no regional strategies applicable to LHI. The LHI LEP 2010 is the principal strategic planning instrument for the Island. The proposal is not inconsistent with the aims and strategies of the LHI LEP 2010.

STATE ENVIRONMENTAL PLANNING POLICIES

In accordance with Clause 8 of the LHI LEP 2010, only SEPP (Building Sustainability: BASIX) 2004 applies to the Island. The proposal is not inconsistent with this SEPP. No other SEPPs apply to the Island.

SECTION 117 DIRECTIONS

The following s117 Directions are applicable to the proposal:

1.2 Rural Zones, 2.1 Environmental Protection Zones, 2.2 Coastal Protection, 2.3 Heritage Conservation, 2.4 Recreation Vehicle Areas, 3.1 Residential Zones, 3.2 Caravan Parks and Manufactured Home Estates, 3.3 Home Occupations, 3.4 Integrating Land Use and Transport, 4.3 Flood Prone Land, 6.1 Approval and Referral Requirements, 6.2 Reserving Land for Public Purposes, 6.3 Site Specific Provisions.

The proposal is considered to be consistent with all applicable s117 Directions.

Environmental social economic impacts :

No significant adverse environmental, social or economic impacts have been identified as potentially resulting from the proposal.

The LHI LEP 2010 and Lord Howe Island On-site Wastewater Management Strategy contain a range of provisions to guide and control the installation and management of wastewater

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management systems on the Island, to ensure minimal environmental impacts. Considering the Island's unique environmental qualities, consultation with the Office of Environment and Heritage should be undertaken.

'Exempting' wastewater management systems in the Zone 2 Settlement Area and permitting them 'with development consent' in Zone 1 Rural, Zone 5 Special Use, Zone 6 Recreation and Zone 7 Environment Protection will provide a more efficient approval process, benefiting the Island community.

Assessment Process

Proposal type : **Routine** Community Consultation Period : **14 Days**

Timeframe to make LEP : **9 months** Delegation : **DG**

Public Authority Consultation - 56(2) (d) : **Office of Environment and Heritage**

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Planning Proposal - Cover Letter.pdf	Proposal Covering Letter	Yes
Planning Proposal.docx	Proposal	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:

- 1.2 Rural Zones**
- 2.1 Environment Protection Zones**
- 2.3 Heritage Conservation**
- 3.1 Residential Zones**
- 4.3 Flood Prone Land**
- 6.1 Approval and Referral Requirements**

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Additional Information : The planning proposal should proceed as a "routine" planning proposal, however the Minister's approval is required to appoint the Secretary as the relevant planning authority.

Accordingly, the following direction is required to be agreed to by the Minister and included on the letter supporting the Gateway Determination.

In accordance with section 54(2)(e) of the Environmental Planning and Assessment Act 1979, I have determined to appoint the Secretary of the Department of Planning and Environment as the relevant planning authority to finalise this matter.

The following conditions should be included on the Gateway Determination:

1. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:
 - a. the planning proposal is classified as low impact as described in A Guide to Preparing LEPs (Department of Planning & Environment 2013) and must be made publicly available for a minimum of 14 days; and
 - b. the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of A Guide to Preparing LEPs (Department of Planning & Environment 2013).

2. Consultation is required with the NSW Office of Environment and Heritage (Heritage and Environment Issues) under section 56(2)(d) of the Environmental Planning and Assessment Act:

The NSW Office of Environment and Heritage is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 21 days to comment on the proposal.

3. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge the relevant planning authority from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission).

4. The timeframe for completing the LEP is to be 6 months from the week following the date of the Gateway determination.

Supporting Reasons : The reasons for the above recommendations for the planning proposal are as follows:

1. Lord Howe Island is not a LGA and no regulation has been made to prescribe the LHI Board as a relevant planning authority for the purposes of section 54(1)(b) of the EP&A Act.
2. The proposal is consistent with the provisions of the relevant planning strategies.

Signature:



Printed Name:

JIM CLARK

Date:

26 September 2014

