

Lord Howe Island LEP 2010 – Rezoning of part of Portions 123 and 176 Lagoon Road for Capella Lodge.

Proposal Title :	Lord Howe Island LEP 2010 – Rezoning of part of Portions 123 and 176 Lagoon Road for Capella Lodge.		
Proposal Summary :	The planning proposal seeks to amend the Lord Howe Island LEP 2010 (LHI LEP 2010) by rezoning approximately 903 square metres of portion 123 from Zone 1 Rural to Zone 2 Settlement, and 87 square metres of portion 176 from Zone 5 Special Uses to Zone 2 Settlement, to enable encroachments from structures associated with Capella Lodge on Lot 4 DP 1133177 to be rectified.		
PP Number :	PP_2014_LHOWE_001_00	Dop File No :	14/02079

Proposal Details

Date Planning Proposal Received :	07-Feb-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 :	Spot Rezoning		

Location Details

Street :	Lagoon Road		
Suburb :	Lord Howe Island	City :	Postcode : 2898
Land Parcel :	Part of Portions 123 and 176		

DoP Planning Officer Contact Details

Contact Name :	Paul Garnett
Contact Number :	0266416607
Contact Email :	paul.garnett@planning.nsw.gov.au

RPA Contact Details

Contact Name :	David Kelly
Contact Number :	0265632066
Contact Email :	david.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

Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	N/A	Consistent with Strategy :	N/A

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MDP Number :	0	Date of Release :	
Area of Release (Ha) :	0.10	Type of Release (eg Residential / Employment land) :	Residential
No. of Lots :	1	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 :

If No, comment :

Have there been meetings or communications with registered lobbyists? :

If Yes, comment :

Supporting notes

Internal Supporting Notes : The planning proposal was received on 24 January 2014 however additional information was sought to clarify the land to which the proposal applied. This additional information was received on the 7 February 2014.

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 Director General is the relevant planning authority.

It is recommended that the Minister appoint the Director General 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 Statement of objectives adequately describes the intention of the planning proposal. The proposal seeks to amend the LHI LEP 2010 by rezoning the subject land to Zone 2 Settlement. This is necessary to facilitate the correction of encroachments from structures associated with Capella Lodge, and to enable the construction of a new sewage treatment facility for the tourist accommodation.

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The encroachments and new sewage treatment facility will be addressed with future development applications once the land has been rezoned.

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

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

Comment : The explanation of provisions adequately addresses the intended method of achieving the objectives of the planning proposal. The proposal seeks to amend the LEP by altering the zoning map to apply a Zone 2 Settlement zone to the relevant parts of portions 123 and 176.

Justification - s55 (2)(c)

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

b) S.117 directions identified by RPA :

1.2 Rural Zones

* May need the Director General's agreement

2.1 Environment Protection Zones

2.2 Coastal Protection

2.3 Heritage Conservation

3.1 Residential Zones

3.4 Integrating Land Use and Transport

6.1 Approval and Referral Requirements

6.2 Reserving Land for Public Purposes

6.3 Site Specific Provisions

Is the Director General's agreement required? **Yes**

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

d) Which SEPPs have the RPA identified?

SEPP (Building Sustainability Index: BASIX) 2004

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

In accordance with Clause 8 of the LHI LEP 2010, only SEPP BASIX applies to the Island. No other SEPPs apply.

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

See the assessment section of his report.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

The planning proposal contains maps which adequately show the site, the current zone and the proposed zone.

An amendment to the Settlement Map of the LHI LEP 2010 will be required and will be prepared by the Department prior to exhibition.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

The planning proposal has indicated a 14 day community consultation period is proposed. This is considered to be adequate given that the proposal is considered to be a low impact planning proposal in accordance with the Department's 'A Guide to Preparing a LEP'.

It is appropriate that the Lord Howe Island Board (the Board) undertake the 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 Director General is to be the relevant planning authority.

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Additional Director General's requirements

Are there any additional Director General's requirements? Yes

If Yes, reasons : The Director General will be the RPA for the 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 satisfies the adequacy criteria by;

1. Providing appropriate objectives and intended outcomes.
2. Providing a suitable explanation of the provisions proposed for the LEP to achieve the outcomes.
3. Providing an adequate justification for the proposal.
4. Outlining a proposed community consultation program.
5. Providing a project time line

Time Line

The planning proposal includes a project timeline which estimates the completion of the planning proposal within 6 months because of the minor nature of the proposed amendment. However because the Board meets only every three months it is considered that a 9 month time frame for completion of the planning proposal is more appropriate.

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 proposal is not a result of a strategic study or report. The planning proposal seeks to rezone the subject land to facilitate the rectification of encroachments by structures associated with the tourist accommodation, Capella Lodge.

The planning proposal seeks to rezone approximately 903 square metres (sqm) of portion 123 and 85 sqm of portion 176 which contain encroachments from structures associated with Capella Lodge which is located on the adjoining Lot 4 DP 1133177.

That part of portion 123 which is proposed to be rezoned from Zone 1 Rural to Zone 2 Settlement, contains a number of water tanks, sheds, fencing and clothes lines for Capella Lodge. The owners of Capella Lodge also intend to install a new onsite sewage treatment system on this land once it is rezoned.

That part of portion 176 which is proposed to be rezoned from Zone 5 Special Uses to Zone 2 Settlement, contains a covered walkway that is attached to Capella Lodge.

The existing Rural and Special Use zones that currently apply to the land do not permit development for tourist accommodation. The Board has indicated that it is not prepared to deal with development applications for the encroachments until the land is rezoned, as it would mean acceptance of arguments about the ancillary nature of the proposed prohibited development. The Board will also not consider a development application for a new sewage treatment system unless the land is rezoned and the lot and lease boundaries for Capella Lodge revised. This approach is considered to be appropriate.

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Consistency with strategic planning framework :

Given the restrictive nature of the Rural and Special Use zones and the Board's position, the proposed LEP amendment is the best means of achieving the intent of the planning proposal.

Regional Strategy.

There are no regional strategies applicable to LHI. The LHI LEP 2010 is the principle strategic planning instrument for the Island. The proposal is not inconsistent with the LHI LEP 2010 for the following reasons;

- it will not facilitate additional development of the site, seeking only to rectify existing encroachments and provide for an upgraded sewage treatment facility which will lessen the impact of the development on the environment.
- it is not inconsistent with the strategies of clause 2(3) of the LHI LEP 2010 as it will not introduce new land uses or planning controls to the LEP that are inconsistent with existing planning controls.
- It will not have an adverse impact on the World Heritage values of LHI.
- It will not have an adverse impact on the significant native vegetation of the Island.
- It will facilitate certainty for an existing tourist accommodation development which is important to the economic wellbeing of the Island.

SEPPs

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 LHI.

S117 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, 3.1 Residential Zones, 3.2 Caravan Parks and Manufactured Home Estates, 3.3 Home Occupations, 3.4 Integrating Land Use and Transport, 6.1 Approval and Referral Requirements, 6.2 Reserving Land for Public Purposes, and 6.3 Site Specific Provisions.

Of the above s117 Directions the proposal is considered to be inconsistent with Direction 1.2.

Direction 1.2 Rural Zones is relevant to the planning proposal. The direction provides that a planning proposal must not rezone land from a rural zone to a residential zone. The planning proposal seeks to rezone 903sqm of land from Zone 1 Rural to Zone 2 Settlement.

The direction provides that a planning proposal may be inconsistent with the direction if the inconsistency is justified by a strategy or is of minor significance. The land to be rezoned from Rural to Settlement is only 903sqm in area and is already occupied by structures associated with the Capella Lodge tourist accommodation. Therefore the inconsistency is considered to be of minor significance and is justified in accordance with the terms of the direction.

Direction 6.2 Reserving Land for Public Purposes is relevant to the planning proposal. The direction provides that a planning proposal must not create, alter or reduce existing zonings for public purposes without the approval of the Director General and the relevant public authority. The planning proposal will rezone 85sqm of Zone 5 Special Use land which is currently used for a communications tower to Zone 2 Settlement to enable the encroachment of a covered walkway over the land to be rectified. In this instance the Board is the relevant public authority and its approval is implied in the endorsement of the planning proposal. It is recommended that the Director General agree to the reduction of the Zone 5 Special Use land in this instance.

The proposal is otherwise consistent with S117 Directions.

Environmental social economic impacts :

The proposed rezoning will not have any adverse impact on any significant native vegetation. The subject land is currently developed with a covered walkway, water tanks, sheds and clothes drying facilities for Capella Lodge. An assessment was conducted which concluded there will be no significant adverse impact on critical habitat or

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threatened species, populations or ecological communities or their habitats.

The LHI LEP 2010 maps areas along the boundary of portion 176 as significant native vegetation. However the land in this location which is proposed to be rezoned already contains a covered walkway and no further building works are proposed.

There is no significant native vegetation mapped on that part of portion 123 that is proposed to be rezoned.

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 Lagoon Road Lord Howe Island - Capella Lodge.pdf	Proposal	Yes
Lord Howe Island Board Report - Capella Lodge Planning Proposal.docx	Determination Document	Yes
Lord Howe Island Board Cover letter - Capella Lodge Planning Proposal.pdf	Proposal Covering Letter	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage :

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S.117 directions:

- 1.2 Rural Zones
- 2.1 Environment Protection Zones
- 2.2 Coastal Protection
- 2.3 Heritage Conservation
- 3.1 Residential Zones
- 3.4 Integrating Land Use and Transport
- 6.1 Approval and Referral Requirements
- 6.2 Reserving Land for Public Purposes
- 6.3 Site Specific Provisions

Additional Information : The Planning Proposal should proceed as a "routine" Planning Proposal however the Minister's approval is required to appoint the Director General 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 Director General of the Department of Planning and Infrastructure 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 & Infrastructure 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 & Infrastructure 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 9 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.

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Capella Lodge.**

Signature:



Printed Name:

STEPHEN MURRAY

Date:

13 FEBRUARY 2014