



New South Wales

# Lord Howe Island Local Environmental Plan 2010

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning, make the following local environmental plan under the *Environmental Planning and Assessment Act 1979*. (S09/01066-1-MA)

TONY KELLY, MLC  
Minister for Planning

## 2010 No 88

Lord Howe Island Local Environmental Plan 2010

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Clause 1 Lord Howe Island Local Environmental Plan 2010

Part 1 Preliminary

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# Lord Howe Island Local Environmental Plan 2010

under the

Environmental Planning and Assessment Act 1979

## Part 1 Preliminary

### 1 Name of Plan

This Plan is *Lord Howe Island Local Environmental Plan 2010*.

### 2 Commencement and aims of Plan

- (1) This Plan commences on the day on which it is published on the NSW legislation website.
- (2) The aims of this Plan are as follows:
  - (a) to conserve the World Heritage values of Lord Howe Island and to restore or enhance lost or disturbed natural resources of the Island,
  - (b) to conserve and facilitate the management of the marine environment of the Island and the resources of that environment,
  - (c) to protect threatened species, populations and ecological communities, and their habitats,
  - (d) to encourage the ecologically sustainable use of resources,
  - (e) to encourage community appreciation of the World Heritage values of the Island,
  - (f) to enhance the wellbeing and welfare of individuals and the Island's community by pursuing economic development that safeguards the welfare of future generations,
  - (g) to facilitate the proper management, development and conservation of the Island's World Heritage natural environment, the Island's cultural heritage and the Island lifestyle,
  - (h) to identify suitable land for the provision of housing and community services for the Island's population while acknowledging suitable land for these purposes is limited,
  - (i) to enable, on the limited land available for agriculture, sustainable agriculture (that is, agriculture that contributes to the

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Island's economy and also protects the biological and physical resource base on which it depends),

- (j) to ensure that public utility undertakings are carried out on the Island in a manner that minimises any environmental impact on the Island of those undertakings,
  - (k) to acknowledge the importance of tourism to the Island economy and permit future development of tourism within limits,
  - (l) to ensure that tourism on the Island does not adversely affect the lifestyle of residents, or the World Heritage environmental qualities, of the Island, but enables visitors and residents to enjoy the Island,
  - (m) to ensure the conservation of relics, specified heritage items and the heritage significance of those relics and heritage items (including the settings of those heritage items).
- (3) The strategies of this Plan that are directed at achieving these aims are as follows:
- (a) to apply general land use controls to land within each zone and special provisions for particular kinds of development or for development on particular land,
  - (b) to identify suitable land for future housing opportunities and limit the total number of future dwellings,
  - (c) to identify significant native vegetation by a map and to ensure that development does not result in its removal,
  - (d) to require the advertising of any development application for development that, in the consent authority's opinion, is likely to have a significantly adverse impact on the environment,
  - (e) to require consideration of possible adverse environmental, economic or social impacts in advance of development.

### **3 Land to which Plan applies**

This Plan applies to Lord Howe Island (the *Island*), which is the Island defined in section 3 (1) of the *Lord Howe Island Act 1953*.

### **4 Definitions**

The Dictionary at the end of this Plan defines words and expressions for the purposes of this Plan.

### **5 Notes**

Notes in this Plan are provided for guidance and do not form part of this Plan.

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### 6 Consent authority

Subject to the Act, the Board is the consent authority for the purposes of this Plan.

### 7 Maps

- (1) A reference in this Plan to a map is a reference to a map deposited in the office of the Board.
- (2) Any such maps are to be kept and made available for public access in accordance with arrangements approved by the Minister.
- (3) For the purposes of this Plan, a map may be in, and may be kept and made available in, electronic or paper form, or both.

### 8 Relationship with other environmental planning instruments

- (1) This Plan repeals *Lord Howe Island Regional Environmental Plan 2005*.
- (2) A State environmental planning policy (other than *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*) made before this Plan takes effect does not apply to the land to which this Plan applies.
- (3) A State environmental planning policy made after this Plan takes effect does not apply to the land to which this Plan applies unless the policy expressly provides otherwise.
- (4) To avoid doubt, *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* does not apply to the land to which this Plan applies.

### 9 Exempt development

- (1) Development listed in Column 1 of Schedule 1 that is of minimal environmental impact is exempt development if:
  - (a) it complies with any development standards, and any other requirements, that are specified opposite it in Column 2 of that Schedule, and
  - (b) it does not require the removal of any significant native vegetation, and
  - (c) it does not contravene a condition of development consent applying to the land, and
  - (d) it complies with any deemed-to-satisfy provisions of the *Building Code of Australia* that are of relevance to the development, and
  - (e) it does not restrict any vehicular access to or from the site of the development, and

- (f) it is not carried out on land that is within Zone 8 Permanent Park Preserve or Zone 9 Marine Park, unless the carrying out of the development on such land is expressly provided for in Column 1 of Schedule 1, and
- (g) it is not carried out on land that is critical habitat (within the meaning of the *Threatened Species Conservation Act 1995* or Part 7A of the *Fisheries Management Act 1994*), and
- (h) it is not proposed to be carried out on the site of:
  - (i) any heritage item within the meaning of Division 3 of Part 3, or
  - (ii) any item subject to an interim heritage order under the *Heritage Act 1977*, and
- (i) it is not carried out on land that is, or is part of, a wilderness area (within the meaning of the *Wilderness Act 1987*).

**Note.** Section 76 (2) of the *Environmental Planning and Assessment Act 1979* states that an environmental planning instrument may provide that development of a specified class or description that is of minimal environmental impact is exempt development.

- (2) Development listed in Column 1 of Schedule 1 that is not exempt development because it fails to comply with subclause (1) may be carried out with the consent of the consent authority.

#### **10 Development not prohibited, or otherwise restricted, by this Plan**

- (1) Nothing in this Plan prohibits, requires development consent for, or otherwise restricts, the following:
  - (a) exempt development that is identified in clause 9 (1),
  - (b) the use by the Crown of any building that was in existence, and was under the control of the Crown, on the commencement of this Plan,
  - (c) the carrying out of the following by or on behalf of a roads authority (within the meaning of the *Roads Act 1993*):
    - (i) the maintenance or repair of a road, of a traffic device (including a traffic calming device and a device for guiding vehicular traffic or regulating parking) or of bank stabilisation works,
    - (ii) works associated with the maintenance and repair of a road (including sealing, landscaping, gutter works and drainage works),

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Part 1 Preliminary

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- (d) the carrying out of the following by persons carrying out public utility undertakings on land comprised in those undertakings:
    - (i) any development required for the purposes of those undertakings that includes the reconstruction, alteration, maintenance and repair of ways, wharves, works and plant,
    - (ii) the reconstruction or alteration of any existing building for any purpose related to the undertaking,
  - (e) the carrying out of environmental protection works by or on behalf of the Board.
- (2) Subclause (1) (d) does not apply to the following:
- (a) the construction of a new building or a new work, such as an airport, wharf or way, that is related to a public utility undertaking,
  - (b) the erection, reconstruction or alteration of a building so as to materially affect its design or external appearance,
  - (c) the formation or alteration of any means of access to a road.
- (3) In this clause, *environmental protection works* means any works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation, and includes vegetation restoration works, wetland protection works, erosion protection works, dune restoration works and the like.

### 11 Matters that must be satisfied before development consent granted

The consent authority must not consent to the carrying out of development unless it is satisfied of the following matters (to the extent that they are of relevance to the proposed development):

- (a) the proposed development is consistent with the aims of this Plan and the objectives of any zone, as set out in this Plan, within which the development is proposed to be carried out,
- (b) there is an adequate area available for the disposal or treatment of any effluent arising from the proposed development by an appropriate effluent treatment or disposal system and any such system will not have any adverse effect on groundwater quality,
- (c) no part of the proposed development:
  - (i) will result in any damage to, or the removal of, significant native vegetation, or
  - (ii) will have a significantly adverse impact on the habitat of any plants, or animals, that are native to the Island,



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- (d) access is, or will be, available to the site of the proposed development and the provision of any such access will not:
    - (i) result in any damage to, or the removal of, significant native vegetation, or
    - (ii) have a significantly adverse impact on the habitat of any plants, or animals, that are native to the Island,
  - (e) any proposed landscaping will provide various species of plants that are native to the Island and common in the locality to enhance any significant native vegetation,
  - (f) the proposed development will not be adversely affected by any landform limitations, including flooding, landslip, unstable soils and steep slopes,
  - (g) adequate services in respect of the proposed development can be provided without significant additional cost to the Board or the community of the Island,
  - (h) the appearance of the proposed development (when considered by itself or in conjunction with existing buildings and works) will not have any significantly adverse impact on the locality,
  - (i) the proposed development will not cause any significant overshadowing of adjoining land,
  - (j) the proposed development will not cause any significant reduction in the privacy of occupiers of adjoining land.

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Part 2 General provisions applying in particular zones

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## Part 2 General provisions applying in particular zones

### 12 Land use zones

For the purposes of this Plan, land is within a zone specified below if the land is shown on the map in the manner described below in relation to the zone:

Zone 1 Rural—coloured light brown and edged in black

Zone 2 Settlement—coloured pink and edged in black

Zone 5 Special Uses—coloured yellow and edged in black

Zone 6 Recreation—coloured light green and edged in black

Zone 7 Environment Protection—coloured orange and edged in black

Zone 8 Permanent Park Preserve—coloured dark green and edged in black

Zone 9 Marine Park—coloured light blue and edged in black

**Note.** There is no land zoned as Zone 3 Business or Zone 4 Industrial on the Island.

### 13 Zone 1 Rural

- (1) The objectives of Zone 1 Rural are as follows:
  - (a) to enable sustainable agriculture,
  - (b) to encourage the availability of Island grown products for both the local population and for tourists,
  - (c) to provide a rural ambience in areas near Zone 2 Settlement,
  - (d) to ensure that agricultural activities are not in conflict with the protection of the natural environment.
- (2) Except as otherwise provided by this Plan, development for the purposes of any of the following may be carried out on land within Zone 1 Rural without the consent of the consent authority:
  - (a) agriculture (other than buildings ancillary to agriculture and other than aquaculture or intensive agriculture),
  - (b) vegetation restoration.
- (3) Except as otherwise provided by this Plan, demolition and development for the purposes of any of the following may be carried out on land within Zone 1 Rural only with the consent of the consent authority:
  - (a) buildings (other than dwellings) ancillary to agriculture,
  - (b) intensive agriculture,
  - (c) public utility installations,
  - (d) public utility undertakings,

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- (e) roads,
  - (f) rural industries.
- (4) Except as otherwise provided by this Plan, development is prohibited on land within Zone 1 Rural unless it may be carried out under subclause (2) or (3).

**14 Zone 2 Settlement**

- (1) The objectives of Zone 2 Settlement are as follows:
- (a) to provide opportunities for limited residential and commercial development that maintains the dispersed housing pattern of the settlement area and is in sympathy with existing development in relation to the following:
    - (i) setbacks,
    - (ii) building mass and style,
    - (iii) visual amenity,
    - (iv) landscaped character,
  - (b) to ensure that any development is only permitted in locations where, in the consent authority's opinion:
    - (i) the development will not involve unacceptable infrastructure costs for the Board or the community of the Island, and
    - (ii) there is an adequate area available for the treatment or disposal of any effluent arising from the proposed development by an appropriate effluent treatment or disposal system, and
    - (iii) the land is capable of supporting the proposed development and is suitable in terms of the land's physical constraints (such as vulnerability to erosion, slip or flooding), and
    - (iv) the development (including any effluent treatment or disposal system referred to in subparagraph (ii)) will not adversely affect groundwater quality,
  - (c) to avoid or minimise environmental damage and protect areas that:
    - (i) comprise significant habitat for species of animals that are native to the Island, or
    - (ii) have significant native vegetation.

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Clause 15 Lord Howe Island Local Environmental Plan 2010

Part 2 General provisions applying in particular zones

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- (2) Except as otherwise provided by this Plan, development for the purposes of home businesses or vegetation restoration may be carried out on land within Zone 2 Settlement without the consent of the consent authority.
- (3) Except as otherwise provided by this Plan, any other development may be carried out on land within Zone 2 Settlement only with the consent of the consent authority.

### 15 Zone 5 Special Uses

- (1) The objectives of Zone 5 Special Uses are as follows:
  - (a) to provide utility services that are essential to the community's needs in a manner that is in sympathy with the World Heritage values of the natural environment of the Island,
  - (b) to maintain efficient services (such as education, health and transport services and the administration of the Island) and associated infrastructure.
- (2) Except as otherwise provided by this Plan, development for the purposes of vegetation restoration may be carried out on land within Zone 5 Special Uses without the consent of the consent authority.
- (3) Except as otherwise provided by this Plan, demolition and development for the purposes of any of the following may be carried out on land within Zone 5 Special Uses only with the consent of the consent authority:
  - (a) accommodation for seniors or people with a disability,
  - (b) airports,
  - (c) cemeteries,
  - (d) depots,
  - (e) dwellings, erected by or on behalf of the Board, for the accommodation of staff of the Board,
  - (f) education facilities,
  - (g) fuel storage depots,
  - (h) hospitals,
  - (i) places of assembly,
  - (j) premises of a public authority,
  - (k) public utility installations,
  - (l) public utility undertakings,
  - (m) roads,
  - (n) telecommunications facilities.

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- (4) Except as otherwise provided by this Plan, development is prohibited on land within Zone 5 Special Uses unless it may be carried out under subclause (2) or (3).

**16 Zone 6 Recreation**

- (1) The objectives of Zone 6 Recreation are as follows:
- (a) to set aside land for open space,
  - (b) to provide opportunities for the passive and active enjoyment of open space areas,
  - (c) to provide utility services that are essential to the community's needs in a manner that is in sympathy with the World Heritage values of the natural environment of the Island.
- (2) Except as otherwise provided by this Plan, development for the purposes of vegetation restoration may be carried out on land within Zone 6 Recreation without the consent of the consent authority.
- (3) Except as otherwise provided by this Plan, demolition and development for the purposes of any of the following may be carried out on land within Zone 6 Recreation only with the consent of the consent authority:
- (a) boatsheds,
  - (b) clubs,
  - (c) public utility installations,
  - (d) public utility undertakings,
  - (e) recreation areas,
  - (f) roads,
  - (g) telecommunications facilities.
- (4) Except as otherwise provided by this Plan, development is prohibited on land within Zone 6 Recreation unless it may be carried out under subclause (2) or (3).

**17 Zone 7 Environment Protection**

- (1) The objectives of Zone 7 Environment Protection are as follows:
- (a) to protect areas that may be vulnerable to erosion or that are a habitat, or corridor, for animals that are native to the Island or significant native vegetation,
  - (b) to protect the scenic amenity of land in the zone,

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Clause 18 Lord Howe Island Local Environmental Plan 2010

Part 2 General provisions applying in particular zones

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- (c) to restore lost or disturbed natural resources, particularly if this may enhance the World Heritage values of the natural environment of the Island,
  - (d) to provide utility services that are essential to the community's needs in a manner that is in sympathy with the World Heritage values of the natural environment of the Island.
- (2) Except as otherwise provided by this Plan, development for the purposes of vegetation restoration may be carried out on land within Zone 7 Environment Protection without the consent of the consent authority.
- (3) Except as otherwise provided by this Plan, demolition, subdivision and development for the purposes of any of the following may be carried out on land within Zone 7 Environment Protection only with the consent of the consent authority:
  - (a) observation platforms,
  - (b) public utility installations,
  - (c) public utility undertakings,
  - (d) roads,
  - (e) telecommunications facilities,
  - (f) the control of erosion,
  - (g) walking tracks.
- (4) Except as otherwise provided by this Plan, development is prohibited on land within Zone 7 Environment Protection unless it may be carried out under subclause (2) or (3).

### 18 Zone 8 Permanent Park Preserve

- (1) The objective of Zone 8 Permanent Park Preserve is to protect and maintain the Permanent Park Preserve.
- (2) Except as otherwise provided by this Plan, development for any purposes may be carried out on land within Zone 8 Permanent Park Preserve without the consent of the consent authority.

**Note.** Environmental assessment in respect of development that is permissible without consent may be required under Part 5 of the *Environmental Planning and Assessment Act 1979*.

Further, any operations undertaken in the Permanent Park Preserve must be in accordance with any plan of management for the Permanent Park Preserve in force under Part 5 of the *National Parks and Wildlife Act 1974* (as applied by section 15B of the *Lord Howe Island Act 1953*).

**19 Zone 9 Marine Park**

- (1) The objectives of Zone 9 Marine Park are as follows:
  - (a) to protect marine ecosystems, habitats and species within Lord Howe Island Marine Park,
  - (b) to protect the scenic amenity of the Marine Park,
  - (c) to permit appropriate uses, such as fishing and tourism, that are consistent with any zoning plan for the Marine Park made under Division 1A of Part 3 of the *Marine Parks Act 1997*.
- (2) Except as otherwise provided by this Plan, demolition and development for the purposes of any of the following may be carried out on land within Zone 9 Marine Park only with the consent of the consent authority:
  - (a) breakwaters,
  - (b) dredging that is for navigation purposes and, in the consent authority's opinion, is minor,
  - (c) jetties,
  - (d) land reclamation,
  - (e) platforms,
  - (f) pontoons,
  - (g) public utility installations,
  - (h) public utility undertakings,
  - (i) ramps (solid or suspended),
  - (j) slipways,
  - (k) stairs,
  - (l) wharves.
- (3) Except as otherwise provided by this Plan, development is prohibited on land within Zone 9 Marine Park unless it may be carried out under subclause (2).

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Clause 20 Lord Howe Island Local Environmental Plan 2010

Part 3 Special provisions

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### Part 3 Special provisions

#### Division 1 Provisions that apply to particular kinds of development

##### 20 Interpretation

- (1) A reference in this Division to a building that is ancillary to tourist accommodation, staff accommodation or commercial premises does not include a reference to water storage facilities, human waste storage or treatment facilities (such as septic tanks) or exempt development.
- (2) A reference in this Division to a dwelling includes a reference to staff accommodation that is a dwelling.
- (3) A reference in this Division to staff accommodation does not include a reference to staff accommodation that is a dwelling.
- (4) In this Division:  
*minimum dwelling area*, in relation to an allotment, means the area calculated by allowing:
  - (a) 3,000 square metres for any proposed or existing dwelling (except an existing dwelling referred to in paragraph (b)) on the allotment, or
  - (b) 2,500 square metres for any existing dwelling on the allotment that was part of a dual occupancy or multiple dwellings immediately before 28 October 2005.

##### 21 Subdivision

- (1) Despite clause 13, land within Zone 1 Rural may be subdivided with the consent of the consent authority, but only if the area of each proposed allotment is at least 2 hectares.
- (2) The consent authority must not consent to the subdivision of land within Zone 2 Settlement unless:
  - (a) the area of each proposed allotment (except for an allotment referred to in paragraph (b) or (c)) is at least 3,000 square metres, or
  - (b) if there are one or more existing dwellings (but no existing tourist accommodation, staff accommodation or commercial premises) on a proposed allotment—the total area of the allotment is at least the minimum dwelling area, or
  - (c) if there is existing tourist accommodation, staff accommodation or commercial premises on a proposed allotment—the total area occupied by any existing buildings comprising, or ancillary to,



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the accommodation or premises is no more than 15 percent of the balance of the area of the allotment remaining after the minimum dwelling area is deducted from the total area of the allotment.

- (3) Despite subclauses (1) and (2) and anything to the contrary in Part 2, land may be subdivided with the consent of the consent authority if:
  - (a) the consent authority is satisfied that the purpose of the proposed subdivision is to make a minor boundary adjustment between adjoining allotments, and
  - (b) the proposed subdivision will not divide the land into a greater number of allotments than already exist.
- (4) Despite any other provision of this Plan, land may be subdivided with the consent of the consent authority for the purposes of a public utility undertaking, public utility installation, premises of a public authority or recreation area.

**22 Tourist accommodation, staff accommodation and commercial premises**

- (1) The consent authority must not consent to the erection, enlargement or extension of any building comprising, or ancillary to, tourist accommodation, staff accommodation or commercial premises on an allotment unless:
  - (a) the total area of the allotment occupied by any existing or proposed buildings comprising, or ancillary to, the accommodation or premises is no more than 15 percent of the balance of the area of the allotment remaining after the minimum dwelling area is deducted from the total area of the allotment, and
  - (b) it is proposed that at least 50 percent of the total area of the allotment be comprised of landscaped areas and that various species of plants that are native to the Island and common to the locality be retained or planted on at least 35 percent of the total area of the allotment, and
  - (c) the proposed development is carried out on a part of the allotment that does not have any significant native vegetation, and
  - (d) the consent authority is satisfied that there is a demonstrated business need for the development.
- (2) Subclause (1) does not apply to the rebuilding of any part of a building that comprises, or is ancillary to, tourist accommodation, staff accommodation or commercial premises.
- (3) The consent authority must not consent to development for the purposes of staff accommodation that is ancillary to tourist accommodation

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Clause 23 Lord Howe Island Local Environmental Plan 2010

Part 3 Special provisions

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unless the land on which the development is proposed to be carried out is the subject of the same lease as the tourist accommodation.

- (4) The consent authority must not consent to development for the purposes of tourist accommodation unless it is satisfied that the total number of persons permitted to be accommodated in all forms of tourist accommodation on the Island will be no more than 400 persons (excluding those under the age of 5 years) at any time.

- (5) In this clause:

**lease** means:

- (a) a lease granted and in force under section 21 (Leases in perpetuity for residence) or section 22 (Special leases) of the *Lord Howe Island Act 1953*, or
- (b) a permission to occupy Crown lands granted and in force under section 31A (Permissive occupancies) of that Act, or
- (c) a permissive occupancy of Crown lands in force under section 31A (Permissive occupancies) of that Act.

**Note.** Under the *Lord Howe Island Regulation 2004*, the carrying out of a commercial undertaking, including the provision of public accommodation provided predominantly for tourists as a commercial undertaking, requires a licence granted by the Board.

### 23 Erection of dwellings

- (1) The consent authority must not consent to the erection of one or more dwellings on an allotment unless:
- (a) the gross floor area of each proposed dwelling is no more than 300 square metres, and
  - (b) the total area of the allotment is at least the minimum dwelling area, and
  - (c) the total area of the allotment occupied by any existing or proposed buildings comprising, or ancillary to, tourist accommodation, staff accommodation or commercial premises is no more than 15 percent of the balance of the area of the allotment remaining after the minimum dwelling area is deducted from the total area of the allotment, and
  - (d) it is proposed that at least 50 percent of the total area of the allotment be comprised of landscaped areas and that various species of plants that are native to the Island and common to the locality be retained or planted on at least 35 percent of the total area of the allotment, and
  - (e) the proposed dwelling or dwellings are erected on a part of the allotment that does not have any significant native vegetation.

- (2) A reference in subclause (1) to the granting of consent to the erection of a dwelling includes a reference to the granting of consent to a new use referred to in clause 25.

#### **24 Concession for erection of certain dual occupancies**

- (1) Despite clause 23 (1) (a) and (b), the consent authority may consent to the erection of a dwelling on an allotment even though the proposal does not conform to those provisions if:
- (a) it is proposed that the dwelling be erected as part of a dual occupancy, and
  - (b) it is proposed that the dual occupancy be comprised of that dwelling (*the new dwelling*) together with a dwelling that already exists on the land (*the existing dwelling*), and
  - (c) it is proposed that the new dwelling be occupied by the children, siblings, parents, grandparents or grandchildren of those proposing to reside in the existing dwelling, and
  - (d) the combined gross floor area of the proposed dual occupancy is no more than 400 square metres, and
  - (e) it is proposed that each dwelling have at least 50 square metres of private open space at ground level.
- (2) A reference in subclause (1) to the granting of consent to the erection of a dwelling includes a reference to the granting of consent to a new use referred to in clause 25.
- (3) This clause does not apply in relation to a dwelling, erected by or on behalf of the Board, for the accommodation of staff of the Board.

**Note.** Allotments occupied by dual occupancies will not be able to be subdivided under clause 21 (2) unless the total area of each proposed allotment is at least the minimum dwelling area. The minimum dwelling area for each dwelling on the proposed allotment created from the subdivision of a dual occupancy or multiple dwellings is 3,000 square metres.

#### **25 New use of a building as a dwelling**

The consent authority must not consent to a new use of a building as a dwelling unless the building was erected prior to 28 October 2005.

#### **26 Limit on number of dwellings to which consent may be given**

- (1) In any period, consent may be granted for the erection of no more than the total number of dwellings determined by the Board and approved by the Director-General in respect of that period for the purposes of this clause.
- (2) Regardless of the total number of dwellings determined for the purposes of subclause (1), consent may be granted for the erection of no more

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Clause 27 Lord Howe Island Local Environmental Plan 2010

Part 3 Special provisions

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than a total of 25 dwellings during a period of 20 years commencing on 28 October 2005.

- (3) This clause does not apply in relation to the rebuilding of a lawfully erected dwelling.
- (4) A reference in subclauses (1) and (2) to the granting of consent to the erection of a dwelling includes a reference to the granting of consent to a new use referred to in clause 25.

### 27 Enlargements or extensions of dwellings

- (1) The consent authority must not consent to the enlargement or extension of a dwelling on an allotment unless:
  - (a) the proposed gross floor area of the dwelling is no more than 300 square metres, and
  - (b) the proposed enlargement or extension will not result in the removal of any significant native vegetation, and
  - (c) it is proposed that at least 50 percent of the total area of the allotment be comprised of landscaped areas and that various species of plants that are native to the Island and common to the locality be retained or planted on at least 35 percent of the total area of the allotment.
- (2) Despite subclause (1) (a), the consent authority may consent to the enlargement or extension of a dwelling having a proposed gross floor area that is more than 300 square metres if:
  - (a) the dwelling forms part of a dual occupancy, and
  - (b) it is proposed that the dwelling be occupied by the children, siblings, parents, grandparents or grandchildren of those proposing to reside in the other dwelling, and
  - (c) the proposed combined gross floor area of the dual occupancy is no more than 400 square metres.
- (3) This clause does not apply to the rebuilding of any part of a dwelling.

### 28 Accommodation for seniors or people with a disability

- (1) Despite clauses 14 and 15, development for the purposes of accommodation for seniors or people with a disability may only be carried out, on land within Zone 2 Settlement or Zone 5 Special Uses, by or on behalf of the Board.
- (2) In this clause:  
*accommodation for seniors or people with a disability* means a hostel or residential care facility.

**hostel** means residential accommodation that is, or is intended to be, used permanently as accommodation for seniors or people with a disability where:

- (a) meals, laundering, cleaning and other facilities are provided on a shared basis, and
- (b) at least one staff member is available on site 24 hours a day to provide management services.

**people with a disability** means people of any age who, as a result of an intellectual, physical, psychiatric or sensory impairment, either permanently or for an extended period, have substantially limited opportunities to enjoy a full or active life.

**residential care facility** means residential accommodation that is, or is intended to be, used permanently as accommodation for seniors or people with a disability and that includes:

- (a) meals and cleaning services, and
- (b) personal care or nursing care, or both, and
- (c) appropriate staffing, furniture, furnishings and equipment for the provision of that accommodation and care.

**seniors** means people aged 55 years or more.

## 29 Maximum height of buildings

- (1) Despite anything to the contrary in Part 2 or any other provisions of this Part, the erection of a building that has a height of more than 7.5 metres above natural ground level is prohibited.
- (2) Subclause (1) does not apply to the erection of:
  - (a) a building for the purposes of public utility undertakings, and
  - (b) aerials, masts or communication structures.

## 30 Advertisements or signs

- (1) Despite anything to the contrary in Part 2, the placement or erection of an advertisement or sign may be carried out, but only with the consent of the consent authority.
- (2) Despite subclause (1), the placement or erection of the following kinds of advertisements or signs is prohibited:
  - (a) any advertisement or sign placed or erected on land within Zone 6 Recreation, Zone 7 Environment Protection, Zone 8 Permanent Park Preserve or Zone 9 Marine Park,
  - (b) any advertisement or sign that promotes an event and is placed on public property.

## **2010 No 88**

Clause 31 Lord Howe Island Local Environmental Plan 2010

Part 3 Special provisions

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### **31 Vegetation restoration**

Development for the purposes of vegetation restoration must be carried out in accordance with the *Lord Howe Island Board Vegetation Rehabilitation Plan*, as adopted by the Board in March 2003.

## **Division 2 Provisions that apply to particular land**

### **32 Setbacks of buildings in Zone 1, 2 or 5**

- (1) This clause applies to land within Zone 1 Rural, Zone 2 Settlement or Zone 5 Special Uses.
- (2) Any building proposed to be erected on an allotment of land to which this clause applies must comply with the following requirements:
  - (a) if the allotment has one boundary adjoining a road—the building must be erected at least 10 metres from that boundary and at least 5 metres from any other boundary of the allotment,
  - (b) if the allotment has more than one boundary adjoining a road—the building must be erected at least 10 metres from one of those boundaries and at least 5 metres from any other boundary of the allotment,
  - (c) in any other case—the building must be erected at least 5 metres from any boundary of the allotment.
- (3) Despite subclause (2), a proposed building (including any alteration to, or any enlargement or extension of, an existing building) that does not comply with the requirements set out in subclause (2) may be erected with the consent of the consent authority on land to which this clause applies if, in the consent authority's opinion, compliance with the requirements would be unreasonable (for example, because of the physical constraints of the land) or unnecessary.

### **33 Landscaping to be carried out in Zone 2**

The consent authority must not consent to the carrying out of any development on land within Zone 2 Settlement unless it is satisfied that there will be no significantly adverse impact on the existing landscaped character and dispersed pattern of housing in that zone.

### **34 Land adjoining Zone 7 or 8**

- (1) Despite anything to the contrary in Part 2 or the other provisions of this Part, development consent is required for development that is proposed to be carried out:
  - (a) within 10 metres of land within Zone 7 Environment Protection,  
or

- (b) within 20 metres of land within Zone 8 Permanent Park Preserve.
- (2) In determining a development application for development referred to in subclause (1), the consent authority must take into consideration any of the following matters that are of relevance to the proposed development:
  - (a) the desirability of restoring the land on which it is proposed that the development be carried out, as far as is possible, to its original natural state,
  - (b) the need to encourage the growth of only plants that are native to the Island on the land on which it is proposed that the development be carried out,
  - (c) the need to prevent plants that are not native to the Island spreading to Zone 8 Permanent Park Preserve,
  - (d) the *Lord Howe Island Board Vegetation Rehabilitation Plan*, as adopted by the Board in March 2003 and amended from time to time.

### 35 Foreshore development

- (1) Despite anything to the contrary in Part 2 or the other provisions of this Part, development on the foreshore area is prohibited.
- (2) Despite subclause (1), development on the foreshore area may be carried out with consent if, in the consent authority's opinion:
  - (a) the proposed development is in the public interest and does not significantly reduce public access to the foreshore, and
  - (b) the bulk and scale of the proposed development will not detract from the visual amenity of the foreshore area, and
  - (c) the proposed development addresses any need to restore lost or disturbed plants that are native to the Island, particularly if restoring those plants may enhance visual amenity, and
  - (d) there is a demonstrated Island community-based, or marine-based, business need for it, and
  - (e) the proposed development will not be adversely affected by, or adversely affect, coastal processes, and
  - (f) in the case of proposed development involving the erection of a structure—the purpose of that structure could not practicably be fulfilled by an existing structure, and
  - (g) in the case of development proposed to be carried out on land that is also within Zone 9 Marine Park—the proposed development is not inconsistent with any advice about the development that is provided to the consent authority by the Marine Parks Authority.

## 2010 No 88

Clause 36 Lord Howe Island Local Environmental Plan 2010

Part 3 Special provisions

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- (3) In this clause:  
*foreshore area* means the land between the Foreshore Building Line as shown on Sheet 2 of the map and the mean high water mark.

### 36 Unzoned land

- (1) Development that may be carried out with or without the consent of the consent authority, under Part 2 or any other provisions of this Part, on land in a zone adjoining unzoned land may be carried out with the consent of the consent authority on the unzoned land.
- (2) The carrying out of any other development on unzoned land is prohibited.
- (3) The consent authority must not consent to development on unzoned land unless it is satisfied that the proposed development will not have a significantly adverse impact on the amenity of the locality and the future pattern of development of land in any adjoining zone.
- (4) In this clause:  
*unzoned land* means land that is not within a zone listed in clause 12.

### 37 Land adjacent to Blinky Beach—airport uses

Despite anything to the contrary in Part 2, development on land shown hatched black on the map may be carried out for any purpose associated with airports with the consent of the consent authority.

## Division 3 Heritage conservation

### 38 Definitions

In this Division:

*heritage item* means a place, building, tree or work listed in Schedule 2.

*heritage significance* means historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic value.

*maintenance*, in relation to a heritage item, means the ongoing protective care of the item. It does not include alterations (such as extensions or additions) or the introduction of new materials or technology.

*relic* means any deposit, object or material evidence (including human remains) that relates to the settlement or use of the Island and is more than 50 years old.

**Note.** An item identified by this Plan as a heritage item may also be a relic. Therefore, consideration should be given, in particular cases, to whether any of the clauses in this Division applying to relics (such as clause 39 (1) (f)) apply to such heritage items as well as to relics that are not identified by this Plan as heritage items.



**39 Development affecting heritage items**

- (1) Despite anything to the contrary in Part 2, the following development may be carried out only with the consent of the consent authority:
- (a) wholly or partially destroying, dismantling or defacing a heritage item,
  - (b) altering a heritage item by making structural or non-structural changes to its exterior, such as to its detail, fabric, finish or appearance,
  - (c) altering a heritage item by making structural changes to its interior,
  - (d) moving the whole or any part of a heritage item,
  - (e) erecting a building on, or subdividing, land on which a heritage item is located,
  - (f) disturbing or excavating any land, while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed.
- (2) Development consent is not required by this clause if:
- (a) in the consent authority's opinion:
    - (i) the proposed development is of a minor nature or consists of maintenance of the heritage item, and
    - (ii) the proposed development would not adversely affect the heritage significance of the heritage item, and
  - (b) the proponent has notified the consent authority in writing of the proposed development and the consent authority has advised the proponent in writing before any work is carried out that:
    - (i) the consent authority is satisfied that, in its opinion, the proposed development meets the criteria set out in paragraph (a) (i) and (ii), and
    - (ii) development consent is not otherwise required by this Plan.
- (3) Development consent is not required by this clause for the following development in a cemetery or burial ground if there will be no disturbance to human remains or to relics in the form of grave goods:
- (a) the creation of a new grave or monument,
  - (b) the excavation or disturbance of land for the purpose of carrying out conservation or repair of monuments or grave markers.

## 2010 No 88

Clause 40 Lord Howe Island Local Environmental Plan 2010

Part 3 Special provisions

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### 40 Assessment

- (1) Before granting consent required by clause 39, the consent authority must consider the extent to which the carrying out of the proposed development may adversely affect the heritage significance of the heritage item concerned or (in the case of development referred to in clause 39 (1) (f)) the relic concerned.
- (2) For the purposes of subclause (1), the consent authority must consider a statement that addresses the following issues:
  - (a) the heritage significance of the item or relic as part of the environmental heritage of the Island,
  - (b) any impact that the proposed development may have on the heritage significance of the heritage item and its setting (including any landscape or horticultural features) or the relic,
  - (c) any measures proposed to conserve the heritage significance of the item and its setting or the relic,
  - (d) whether any site known to contain relics (or any other site that, in the opinion of the consent authority, potentially contains relics) may be adversely affected by the proposed development,
  - (e) the extent to which the carrying out of the proposed development may affect any historically significant allotment boundaries, including historically significant curtilages and roads.
- (3) The statement is to address other issues relating to the heritage significance of the item or relic concerned if the consent authority or proponent is aware of such issues.
- (4) The consent authority may also determine that it is necessary for a conservation management plan to be prepared in relation to the heritage item or relic concerned.
- (5) In this clause:

***conservation management plan*** means a document, prepared in accordance with the requirements of the Department of Planning in relation to such plans, that identifies conservation policies and management mechanisms that are appropriate to enable the heritage significance of a heritage item or relic to be retained.

### Division 4 Miscellaneous

#### 41 Development applications required to be advertised

The following development is advertised development:

- (a) development for the purposes of public utility installations,
- (b) development for the purposes of public utility undertakings,

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- (c) development that, in the opinion of the consent authority, is likely to have a significantly adverse impact on the environment.

#### 42 Requirement for environmental report

- (1) The consent authority must not consent to the following development unless it has considered an environmental report containing the matters specified in Schedule 3:
- (a) development for the purposes of public utility installations,
  - (b) development for the purposes of public utility undertakings,
  - (c) development that, in the opinion of the consent authority, is likely to have a significantly adverse impact on the environment.
- (2) An environmental report is not required to be prepared in relation to development referred to in subclause (1) if the development is designated development.
- Note.** Under section 78A of the *Environmental Planning and Assessment Act 1979*, a development application for designated development must be accompanied by an environmental impact statement.
- (3) An environmental report is not required to be prepared in relation to development referred to in subclause (1) (b) if the development involves the subdivision of land and the relevant public utility undertaking already exists.
- (4) An environmental report is not required to be prepared under subclause (1) (c) if:
- (a) in the opinion of the consent authority, the significantly adverse impacts that the development is likely to have on the environment is comprised exclusively of impacts on:
    - (i) land that is, or is part of, critical habitat, or
    - (ii) threatened species, populations or ecological communities, or their habitats, and
  - (b) a species impact statement has been prepared in relation to the proposed development and, in the opinion of the consent authority, those impacts are comprehensively addressed by the species impact statement.

## 2010 No 88

Lord Howe Island Local Environmental Plan 2010

Schedule 1 Exempt development

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### Schedule 1 Exempt development

(Clause 9)

**Note.** Publications referred to in this Schedule, including Australian Standards, may be inspected at the office of the Board.

<b>Column 1</b>	<b>Column 2</b>
<b>Development</b>	<b>Development standards and other requirements</b>
<b>Advertisement or sign</b>	(a) Must not cover any mechanical ventilation vents. (b) Must not be internally illuminated.
Advertisement or sign behind a shop window	No additional requirements.
Advertisement or sign on a vehicle or trailer	(a) The vehicle or trailer must primarily be used for the conveyance of goods or passengers. (b) The vehicle or trailer must not be parked solely for the purposes of advertising or promotion.
Business identification sign	(a) Not more than one for each business premises concerned. (b) Must be installed on the land from which the business is operating. (c) Must not exceed 0.9 square metre. (d) If on premises with an awning—the advertisement or sign must be located below the level of the awning. (e) If installed on premises without an awning—the top of the advertisement or sign must be located less than 2 metres above ground level. (f) Must not cover more than 20 percent of the area of the front of any building from which the business is operating.
Navigation sign (including a public notice erected on, or placed in, Zone 8 Permanent Park Preserve or Zone 9 Marine Park)	Must be installed by or on behalf of a public authority.

Column 1	Column 2
Development	Development standards and other requirements
Public notice (including a public notice erected on, or placed in, Zone 8 Permanent Park Preserve or Zone 9 Marine Park)	Must be installed by or on behalf of a public authority.
Replacing an advertisement, or sign (but not any part of an advertisement or a sign that is a structure)	Advertisement or sign must relate to the purpose for which the land on which it is placed is used.
Temporary advertisement or sign relating to an event	<ul style="list-style-type: none"> <li>(a) Must not exceed 5 square metres.</li> <li>(b) Must not be installed more than 28 days before the subject event.</li> <li>(c) Must be removed within 48 hours after the subject event.</li> <li>(d) Limit of 2 per event.</li> </ul>
Tourist directory sign (including a tourist directory sign erected on, or placed in, Zone 8 Permanent Park Preserve or Zone 9 Marine Park)	Must be installed by or on behalf of a public authority.
<b>Aerial or antenna</b>	<ul style="list-style-type: none"> <li>(a) Must be installed on land within Zone 1 Rural, Zone 2 Settlement or Zone 5 Special Uses.</li> <li>(b) If roof mounted—topmost point must not be more than 3.5 metres above topmost point of roof.</li> </ul>
<b>Awning or patio (not enclosed)</b>	<ul style="list-style-type: none"> <li>(a) Must be located on land within Zone 2 Settlement.</li> <li>(b) Maximum area of 10 square metres.</li> <li>(c) Must comply with following setbacks: <ul style="list-style-type: none"> <li>(i) if allotment on which awning or patio is to be installed has one boundary adjoining a road—must be installed at least 10 metres from that boundary and at least 5 metres from any other boundary of the allotment,</li> </ul> </li> </ul>

## 2010 No 88

Lord Howe Island Local Environmental Plan 2010

Schedule 1 Exempt development

Column 1	Column 2
Development	Development standards and other requirements
<b>Barbecue</b>	<ul style="list-style-type: none"><li>(ii) if allotment has more than one boundary adjoining a road—awning or patio must be installed at least 10 metres from one of those boundaries and at least 5 metres from any other boundary of allotment,</li><li>(iii) in any other case—awning or patio must be installed at least 5 metres from any other boundary of allotment.</li><li>(d) Roof water must be disposed of without causing nuisance to adjoining premises.</li><li>(a) Must be installed on land within Zone 2 Settlement.</li><li>(b) Maximum area of 2 square metres.</li><li>(c) Maximum height, including any chimneys, of 1.8 metres.</li><li>(d) Must not be installed in any location visible at street level.</li></ul>
<b>Building alterations (external)</b>	<ul style="list-style-type: none"><li>(a) Non-structural alterations to the exterior of a building only, such as painting, cement rendering, cladding, attaching fittings and decorative work.</li><li>(b) Any recladding must not change roof shape or increase building footprint.</li><li>(c) Any new windows to be offset to any windows in building on adjoining property.</li><li>(d) Must not reduce light or ventilation to the building.</li><li>(e) Structural support members must not be removed.</li><li>(f) Colour selection of materials used must be compatible with the neighbourhood.</li></ul>

Column 1	Column 2
Development	Development standards and other requirements
<b>Building alterations (internal)</b>	<ul style="list-style-type: none"> <li>(a) Must not affect the load-bearing capacity of any load-bearing component of the building.</li> <li>(b) May be made to lawfully completed buildings only.</li> <li>(c) Does not include any conversion of non-habitable rooms to habitable rooms.</li> <li>(d) Does not include any change to configuration of rooms whether by removal of existing walls or partitions or by other means.</li> <li>(e) Does not include any alterations that result in change in classification of building concerned under the <i>Building Code of Australia</i>.</li> <li>(f) Does not include fit out of commercial kitchen or of any business premises, such as a restaurant or cafe, intended to be used for preparation and consumption of food.</li> <li>(g) Must not reduce window arrangements for light and ventilation, reduce doorways for egress or enclose internal open living space.</li> <li>(h) Must not compromise fire safety or affect accessibility to a fire exit from any part of the building.</li> </ul>

## 2010 No 88

Lord Howe Island Local Environmental Plan 2010

Schedule 1 Exempt development

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<b>Column 1</b>	<b>Column 2</b>
<b>Development</b>	<b>Development standards and other requirements</b>
<b>Cabana, cubby house, garden shed, gazebo, green house or bird aviary</b>	<ul style="list-style-type: none"><li>(a) Must be erected on land within Zone 1 Rural or Zone 2 Settlement.</li><li>(b) Maximum area of 10 square metres.</li><li>(c) Maximum height of 2.4 metres.</li><li>(d) Must not be erected in any location visible at street level.</li><li>(e) No more than one of each per allotment.</li><li>(f) No internal plumbing.</li><li>(g) Roof water must be disposed of without causing nuisance to adjoining premises.</li><li>(h) Must not be used for dwelling or for commercial premises.</li></ul>
<b>Clothes hoist or line</b>	<ul style="list-style-type: none"><li>(a) Must be installed on land within Zone 2 Settlement or Zone 5 Special Uses.</li><li>(b) Must be installed to manufacturer's specifications.</li><li>(c) Must not be visible from street.</li></ul>
<b>Demolition of a structure</b>	<ul style="list-style-type: none"><li>(a) Must comply with AS 2601—2001, <i>The demolition of structures</i>.</li><li>(b) The erection of the structure would be exempt development under this Plan.</li></ul>
<b>Domestic solid fuel or oil heater</b>	<ul style="list-style-type: none"><li>(a) Must be installed on land within Zone 2 Settlement.</li><li>(b) Fireplace must be installed in accordance with manufacturer's instructions.</li></ul>
<b>Driveway or pathway</b>	<ul style="list-style-type: none"><li>(a) Must be of structurally sound and stable construction and have adequate reinforcement.</li><li>(b) Must not be elevated or suspended above natural ground level.</li><li>(c) Stormwater must not be directed by the driveway or pathway onto adjoining property.</li></ul>



Column 1	Column 2
Development	Development standards and other requirements
<b>Fabric shade structure</b>	<ul style="list-style-type: none"> <li>(a) Must be erected on land within Zone 1 Rural, Zone 2 Settlement or Zone 5 Special Uses.</li> <li>(b) Maximum area of 20 square metres.</li> <li>(c) On land within Zone 2 Settlement must not be erected in any location visible at street level.</li> </ul>
<b>Flagpole</b>	<ul style="list-style-type: none"> <li>(a) Maximum height of 6 metres.</li> <li>(b) Must not extend into any obstacle height limitation surface (as identified on the map marked "Lord Howe Airport Existing Obstacle Limitation Surfaces" deposited in the office of the Board) surrounding the Lord Howe Island Airport.</li> </ul>
<b>Mooring</b> (including on land within Zone 9 Marine Park)	Must be located in accordance with permission obtained under the <i>Marine Parks Act 1997</i> and <i>Lord Howe Island Act 1953</i> .
<b>Park or street furniture</b> (comprising seats, bins, picnic tables or shelters)	<ul style="list-style-type: none"> <li>(a) Construction must be carried out by or on behalf of the Board.</li> <li>(b) Must be installed on land under the control of the Board.</li> </ul>
<b>Playground equipment</b>	<ul style="list-style-type: none"> <li>(a) In the case of residential use—a maximum height of 2.5 metres.</li> <li>(b) In the case of non-residential use—a maximum height of 2.5 metres and maximum ground coverage of 10 square metres.</li> <li>(c) Must be designed, fabricated and installed in accordance with AS 1924.2—1981, <i>Playground equipment for parks, schools and domestic use, Part 2: Design and construction—Safety aspects</i>.</li> </ul>

## 2010 No 88

Lord Howe Island Local Environmental Plan 2010

Schedule 1 Exempt development

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<b>Column 1</b>	<b>Column 2</b>
<b>Development</b>	<b>Development standards and other requirements</b>
<b>Ramp for persons with a disability</b>	(a) Maximum height of 1 metre. (b) Grade must comply with AS 1428.1—2001, <i>Design for access and mobility, Part 1: General requirements for access—New building work</i> and be a maximum of 1:14.
<b>Satellite dish</b>	Installation and use must be in accordance with the <i>Satellite Earth-Station Dish Policy</i> , adopted by the Board on 13 December 1996.
<b>Telecommunications facility</b> (comprising microcell installation, in-building coverage installation, pit, manhole, underground equipment shelter or housing, underground conduit or cable, public pay phone cabinet or booth, pillar, roadside cabinet, pedestal or external equipment shelter)	Must be carried out by or on behalf of a public authority.
<b>Water tank</b> (including on land within Zone 6 Recreation, Zone 7 Environment Protection or Zone 8 Permanent Park Preserve if carried out by or on behalf of the Board)	(a) Materials must be non-reflective and muted, natural tones. (b) Any storm water or overflow from water tank must be directed away from any neighbouring property.

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## Schedule 2 Heritage items

(Clause 38)

- Baxter house, Lagoon Road, Portion 158.
- Boatsheds, Lagoon Road, Government Reserve.
- Cargo shed related to wharf, Lagoon Road, Government Reserve.
- Family cemetery at “Pinetrees”, Lagoon Road, Portion 236.
- Government House, Bowker Avenue, Portion 37.
- House (formerly teacher’s residence and formerly G Nichols’ house), Lagoon Road, Portion 12.
- “Janetville”, King’s house, Lagoon Road, Portion 127.
- “Kentia” (formerly house of A Christian), Lagoon Road, Portion 111.
- Main cemetery, Cemetery Road, part Portion 76.
- Old Settlement Beach area, beyond northern end of Lagoon Road, including Portions 74, 75, 275 and 276.
- Pair of mature Norfolk Island pine trees, Lover’s Bay, Government Reserve, Lagoon Road.
- “Palmhaven”, Garton house, south end of Anderson Road, Portion 161.
- Public hall, corner Lagoon Road and Ned’s Beach Road, Portion 61.
- Soldier Creek area, being the site of Johnson’s farm and 1882 Commissioner’s Camp, Lagoon Road, Portions 126 and 123.
- Stone-lined drains on golf course, Lagoon Road, Portions 118, 120 and 299.
- Thompson family cemetery, off Ocean View Drive, Portion 55.
- Thompson house, Ned’s Beach Road, Portions 199 and 209.
- Traces of T B Wilson’s house, Lagoon Road, Portion 285.
- War Memorial, Lagoon Road, Portion 35.
- World War I Memorial, Lagoon Road, Portion 36.

## 2010 No 88

Lord Howe Island Local Environmental Plan 2010

Schedule 3 Contents of environmental report

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### Schedule 3 Contents of environmental report

(Clause 42)

- 1 A statement summarising the contents of the environmental report.
  - 2 A statement of the objectives of the proposed development.
  - 3 An analysis of the proposed development, including the following:
    - (a) a full description of the proposed development,
    - (b) details of any existing development that may be superseded by the proposal,
    - (c) a general description of the environment that, in the opinion of the consent authority, is likely to be adversely affected by the proposed development,
    - (d) a detailed description of any aspects of the environment that, in the opinion of the consent authority, are likely to be significantly adversely affected by the proposed development, including an assessment of whether there is any significant native vegetation that is likely to be significantly adversely affected by the proposed development,
    - (e) the likely impacts of the proposed development on the environment, having regard to the following:
      - (i) the nature and extent of the proposed development,
      - (ii) the nature and extent of any building or work associated with the proposed development,
      - (iii) the way in which any such building or work is proposed to be designed, constructed and operated,
      - (iv) any rehabilitation measures to be undertaken in connection with the proposed development,
    - (f) a full description of the measures proposed to mitigate any adverse impacts of the proposed development on the environment.
- Note.** The matters to be included in item 3 (e) might include any of the following that are of relevance to the proposed development:
- (a) the likelihood of soil contamination arising from the proposed development,
  - (b) any impact of the proposed development on plants, or animals, that are native to the Island,
  - (c) the likelihood of air, noise or water pollution arising from the proposed development,
  - (d) any impact of the proposed development on the health of people in the neighbourhood of the proposed development,

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- (e) any hazards arising from the proposed development,
  - (f) any impact of the proposed development on traffic in the neighbourhood of the proposed development,
  - (g) any impact of the proposed development on local climate,
  - (h) any social or economic impacts of the proposed development,
  - (i) any visual impact of the proposed development on the scenic quality of land in the neighbourhood of the proposed development,
  - (j) any impact of the proposed development on soil erosion and the silting up of rivers or lakes,
  - (k) any impact of the proposed development on any heritage significance, within the meaning of Division 3 of Part 3, of the land on which it is proposed to carry out the proposed development.
- 4** A compilation (in a single section of the environmental report) of the measures referred to in item 3 (e) (iv).
- 5** The reasons justifying the carrying out of the proposed development in the manner proposed, having regard to biophysical, economic and social considerations and the principles of ecologically sustainable development.
- 6** A list of any approvals that must be obtained under any other Act or law before the proposed development may lawfully be carried out.
- 7** An assessment of the compatibility of the proposal with the World Heritage values of the Island.
- 8** A detailed evaluation of the visual impact of the proposed development and measures to be taken to reduce any detrimental visual impact, including the extent to which vegetation may be used to restore a natural landscape character.
- 9** A detailed evaluation of any adverse impact of the proposed development upon a locality, place or building having aesthetic, anthropological, archaeological, architectural, cultural, historical, scientific or social significance or other special value for present or future generations.
- 10** Justification for the proposal in terms of:
- (a) the aims of the *Lord Howe Island Local Environmental Plan 2010*, and
  - (b) any objectives of the zone in which the proposed development is proposed to be carried out as set out in that plan, and
  - (c) any relevant development controls that are set out in that plan.
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## 2010 No 88

Lord Howe Island Local Environmental Plan 2010

Schedule 3 Contents of environmental report

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- 11** An assessment of whether there are any feasible alternatives to the carrying out of the proposed development, having regard to its objectives (as set out in item 2), and including:
- (a) the consequences of not carrying out the proposed development, and
  - (b) the reasons justifying the carrying out of the proposed development.
- 12** For the purposes of item 5, the *principles of ecologically sustainable development* are as follows:
- (a) the precautionary principle—namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. In the application of the precautionary principle, public and private decisions should be guided by:
    - (i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and
    - (ii) an assessment of the risk-weighted consequences of various options,
  - (b) inter-generational equity—namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,
  - (c) conservation of biological diversity and ecological integrity—namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,
  - (d) improved valuation, pricing and incentive mechanisms—namely, that environmental factors should be included in the valuation of assets and services, such as:
    - (i) polluter pays—that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement, and
    - (ii) the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste, and
    - (iii) environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.

## Dictionary

(Clause 4)

**accommodation for seniors or people with a disability**—see clause 28.

**agriculture** includes horticulture, floriculture, hydroponics and the use of land for any purposes of animal husbandry, including the keeping or breeding of livestock, poultry or bees.

**airport** means an airport for use by members of the public.

**allotment** means:

- (a) a lot in a current plan (within the meaning of the *Conveyancing Act 1919*), or
- (b) a portion held or occupied under:
  - (i) a lease granted and in force under section 21 (Leases in perpetuity for residence) or section 22 (Special leases) of the *Lord Howe Island Act 1953*, or
  - (ii) a permission to occupy Crown lands granted and in force under section 31A (Permissive occupancies) of that Act, or
  - (iii) a permissive occupancy of Crown lands in force under section 31A (Permissive occupancies) of that Act.

**aquaculture** means the cultivation of fish or other organisms (including plants) of the sea, estuarine or fresh waters for the purposes of harvesting the fish or other organisms or their progeny for commercial purposes.

**Board** means the Board constituted under Division 1 of Part 2 of the *Lord Howe Island Act 1953*.

**boatshed** means a building or place used for marine-based commercial uses and the maintenance and storage of boats and related materials, but that is not intended for, nor capable of, habitation.

**business identification sign** means a sign, not internally illuminated, that, in respect of any place or premises to which it is affixed, contains one or more of the following:

- (a) a reference to the identity or a description of the place or premises,
- (b) a reference to the identity or a description of any person residing or carrying on an occupation at the place or premises,
- (c) particulars of any occupation carried on at the place or premises,
- (d) such directions or cautions as are usual or necessary relating to the place or premises or the occupation carried on at the place or within the premises,
- (e) particulars or notifications required or permitted to be displayed under any State or Commonwealth Act,
- (f) particulars relating to the goods, commodities or services dealt with or provided at the place or premises,

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- (g) particulars of any activities held or to be held at the place or premises,
- (h) a reference to an affiliation with a trade, professional or other association relevant to the business conducted at the place or premises.

**cemetary** means a building or place where human remains are permanently deposited or disposed of, and includes a crematorium and ancillary buildings such as chapels, mortuaries and interment walls.

**club** means a building, including the premises of a club that holds a club licence under the *Liquor Act 2007*, that is used by persons associated, or by a body incorporated, for social, literary, political, sporting, athletic or other lawful purposes whether of the same or of a different kind.

**commercial premises** means a building or place, used as an office or for other business or commercial purposes (other than for a home business) and includes a restaurant or shop, but does not include a club, a depot, a fuel storage depot, a hospital, accommodation for seniors or people with a disability, a place of assembly, a place of public worship or tourist accommodation.

**depot** means a building or place used mainly for the storage of any plant, machinery, motor vehicles or stock of materials or spare parts used in the course of any one business or industrial undertaking or public utility undertaking, but does not include any part of the building or place used for sale by retail, wholesale or otherwise.

**dual occupancy** means 2 dwellings, whether attached or detached, on a single allotment.

**dwelling** means a room or suite of rooms occupied, or used (or so constructed or adapted as to be capable of being occupied or used), as a separate domicile, but does not include:

- (a) accommodation for seniors or people with a disability, or
- (b) tourist accommodation.

**education facility** means a building used as a school, college, technical college, academy, lecture hall, gallery or museum, but does not include a building used wholly or principally as an institution or child care centre.

**fuel storage depot** means a building or a place used for the bulk storage of petrol, oil, petroleum or other inflammable liquid.

**gross floor area** means the sum of the areas of each floor of a building, including covered decks, garages and outbuildings, where the area of each floor is taken to be the area within the outer face of the external enclosing walls as measured at a height of 1,400 millimetres above each floor level excluding:

- (a) columns, fin walls, sun control devices and any elements, projections or works outside the general line of the outer face of the external wall, and
- (b) cooling towers, machinery and plant rooms and ancillary storage space and vertical air-conditioning ducts, and



- (c) space for the loading and unloading of goods, and
- (d) exempt development, commercial premises, public accommodation and uncovered decks.

**height**, in relation to a building, means the distance measured vertically from any point on the building (not being a vent, aerial, flagpole or chimney or the like) to the natural ground level immediately below that point.

**home business** means a business carried out in an existing dwelling or existing ancillary building on the same allotment, but only if:

- (a) the business is undertaken by an occupant of the dwelling, and
- (b) not more than one employee (being an employee who is not an occupant of the dwelling) is employed on the premises at any one time, and
- (c) only goods or products manufactured on the premises, or goods or products ancillary to the services offered on the premises, are sold on the premises directly to the public.

**hospital** means a building or buildings where medical, surgical or psychiatric treatment is provided to people who are ill or injured and who are accommodated overnight or longer on the premises, whether or not day patients are also treated there.

**intensive agriculture** means any form of agriculture involving the intensive housing, feeding (generally of a product that is not produced on the land on which the intensive agriculture is carried out) or slaughtering of animals and includes an abattoir, a cattle feedlot, an intensive piggery, a poultry farm or an intensive aquaculture farm.

**Island**—see clause 3.

**landscaped area** of an allotment means any part of the allotment that is not occupied by a building, driveway, parking area, clothes drying area, covered walkway or pergola, and includes any part of the allotment used for a swimming pool or open air recreation facility.

**multiple dwellings** means 3 or more dwellings, whether attached or not, that each have private open space at ground level.

**natural ground level**, in relation to a site, means the level of the site as if the land comprising the site were undeveloped and did not include any fill.

**place of assembly** means a public hall, theatre, cinema, music hall, concert hall, dance hall, open-air theatre, drive-in theatre, music bowl or any other building of a like character used as such and whether used for the purposes of commercial gain or not.

**place of public worship** means a building or place used for the purposes of religious worship or ceremony by a congregation or religious group, whether or not the building or place is also used for counselling, social events, instruction or religious training.

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***premises of a public authority*** means premises used by a public authority to carry out its functions and includes buildings used by a public authority for business or commercial purposes.

***public utility installation*** means a building or work used for a public utility undertaking, but does not include a building used:

- (a) principally for administration or as business premises, or
- (b) as a showroom, or
- (c) as a workshop, or
- (d) as a depot.

***public utility undertaking*** means any of the following undertakings, or uses associated with those undertakings, carried on by, or on behalf of, the Board or any government agency acting under any Commonwealth or State Act:

- (a) water transport, air transport or wharf undertakings,
- (b) undertakings for the supply of water, hydraulic power, electricity or gas or the provision of sewerage or drainage services,
- (c) the provision of waste disposal, waste transfer or waste recycling services,
- (d) communications installations, fuel storage depots or meteorological stations,
- (e) public health, information or education facilities.

***recreation area*** means:

- (a) a children's playground, or
- (b) an area used for sporting activities or sporting facilities, or
- (c) an area used by a public authority to provide recreational facilities for the physical, cultural or intellectual welfare of the community, or
- (d) an area used by a body of persons associated for the purposes of the physical, cultural or intellectual welfare of the community to provide recreational facilities for those purposes,

but does not include a racecourse, a showground or the premises of a club whether or not licensed under the *Liquor Act 2007*.

***road*** means a public way intended for vehicular and pedestrian travel, including a bridge and a causeway.

***rural industry*** means the handling, treating, processing or packing of primary products, and includes the servicing in a workshop of plant or equipment used for rural purposes on the Island.

***sign*** means a display of symbols, messages or other devices for conveying information, instructions, directions or the like, whether or not the display involves the erection of a structure or the carrying out of a work.

***significant native vegetation*** means vegetation on land that is identified as having significant native vegetation on Sheet 3 of the map.

**staff accommodation** means a building or buildings providing for the accommodation of persons directly employed in connection with tourist accommodation or a commercial operation, but does not include a building or place providing for the accommodation of persons directly employed in connection with accommodation for seniors or people with a disability.

**telecommunications facility** has the same meaning as **facility** has in the *Telecommunications Act 1997* of the Commonwealth.

**temporary advertisement or sign** means an advertisement or sign displayed for not more than 2 months that:

- (a) announces any local event of governance, religious, educational, cultural, political, social or recreational character or relates to any temporary matter in connection with such an event, and
- (b) does not include any advertising of a commercial nature (other than the name of the event's sponsor).

**the Act** means the *Environmental Planning and Assessment Act 1979*.

**the map** means the map consisting of 3 sheets marked "Lord Howe Island Local Environmental Plan 2010".

**tourist accommodation** means a building or buildings providing for the accommodation of tourists, including holiday cabins, guest-houses and lodges.

**Note.** Recreation facilities and restaurants may be ancillary to tourist accommodation. Accordingly, they may be subject to provisions expressed to apply to development for the purposes of tourist accommodation or to buildings ancillary to tourist accommodation.

**tourist directory sign** means an advertisement or sign erected by the Board or another public authority and the purpose of which is to direct the attention of the public to services, activities, features or facilities likely to be of interest especially to tourists.

**vegetation restoration** means the maintenance or rehabilitation of natural areas, including by weed eradication and erosion control and by revegetation of corridors and other areas with species of plants that are native to the Island and common in the locality.