

PLANNING PROPOSAL

Rezoning from Zone 1 Rural and Zone 5 Special Uses to Zone 2 Settlement

Part Portions 123, & 176 Lagoon Road, Lord Howe Island

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

May 2013

ALL ABOUT **PLANNING**

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- Proposed Amendment to Lord Howe Island Local Environmental Plan 2010 Land Zoning Map on Part Portions 123 and 176. Lagoon Road, Lord Howe Island

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AAP Reference: OP2013 – 001

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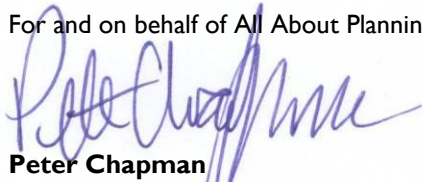
This report has been prepared in accordance with an agreement between All About Planning Pty Ltd and the Lord Howe Island Board.

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

This report by All About Planning Pty Ltd should be read in conjunction with the following documents:

- Capella Lodge Gateway Planning Proposal – prepared by Andrew Martin Planning, (December 2012)

For and on behalf of All About Planning Pty Ltd.



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INTRODUCTION

The Lord Howe Island Board (LHIB) has received a rezoning application from Capella Lodge – a tourist accommodation provider located on Lot 4, DP 1133177 Lagoon Road, Lord Howe Island.

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

Lord Howe Island is a world heritage listed place, recognised as an outstanding example of oceanic islands of volcanic origin, containing unique flora and fauna as well as the world's most southerly true coral reef. It is an area of spectacular and scenic landscapes and provides important breeding grounds for colonies of seabirds. Tourism is a significant aspect of the island's economy.

The subject proposed amendment to the LHI LEP 2010 is needed to correct a number of historical physical encroachments onto two adjoining properties to the rear and north of the Capella Lodge Tourist Accommodation, being water tanks, a waste water system, a cloths line and a covered walkway.

Following the subject rezoning the owners of Capella Lodge propose to submit a development application for a boundary adjustment, (the agreement of the owners of the two adjoining properties has been obtained), in order to rectify these historical encroachments. The owners also intend to lodge a development application to install a new superior onsite sewerage disposal system within the rearmost area affected by the proposed LEP amendment.

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

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

SUBJECT SITE

The site of the proposed rezoning is Part Portion 123 and Part Portion 176, Lagoon Road, Lord Howe Island. These part portions immediately adjoin Lot 4, DP 1133177 on which Capella Lodge Tourist Accommodation is located. These three landholdings have the following zonings under the LHI LEP 2010 (as depicted in Figure 1):

- Lot 4 (Portions 142 and 197), DP 1133177 is (already) zoned Zone 2 Settlement,
- Part of Portion 123 is zoned Zone 1 Rural, and
- Part of Portion 176 is zoned Zone 5 Special Uses.

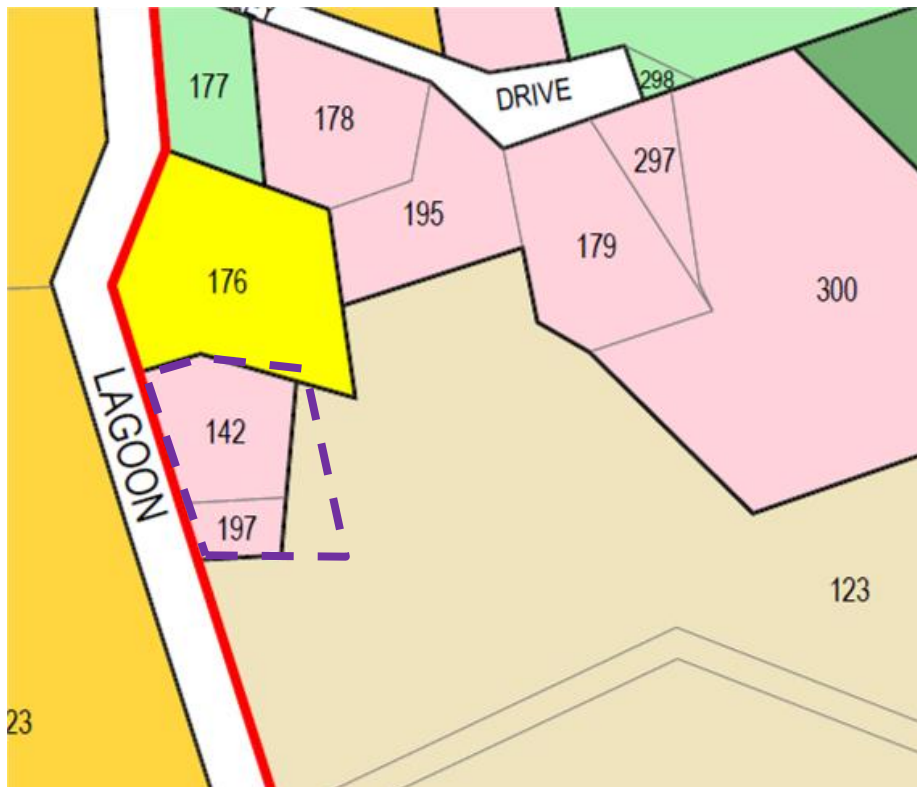


Figure 1: Extract from the LHI LEP 2010 Zoning Maps with site highlighted in purple

Lot 4, DP 1133177 is an irregular shaped block and is occupied by Capella Lodge which includes a main building with reception, shop and restaurant and a separate row of accommodation units and associated outbuildings (as depicted in figure 2 below). All vegetation on the site around these buildings has been planted as part of the landscaping for the Lodge.



Above: Capella Lodge

As can be seen in Figures 1 and 3, Part Portion 123 is located immediately to the rear (east) of Lot 4. 903m² of Portion 123 is subject to this application. This area of Portion 123 is occupied by a number of water tanks of various sizes, a couple of sheds, some fencing and a clothes line for Capella Lodge.

Part Portion 176 is immediately located to the north of Lot 4 with two areas of 48m² and 37m². It is currently occupied by a covered walkway which is attached to the Lodge.



Figure 2: Cadastral map of the subject sites highlighted in purple.

The Capella site is held under Perpetual Lease 1959.10 (over Lot 4 of DPI 133177). The combined site area of Lot 4 including the proposed additional 903m² of Portion 123 and 48m² of Portion 176, will be 4,262m². Access is via Lagoon Road.

As depicted in Figure 4 (below), Lot 4 does not contain any mapped significant native vegetation but parts of Portions 123 and 176 do contain mapped significant native vegetation. However, the area of Portion 123 the subject of this rezoning proposal does not include any mapped SNV. Even though there is mapped SNV near the existing common boundary between Lot 4 and Portion 176 there is no construction or work proposed within the area of Portion 176 encompassed by the proposed boundary adjustment.

The remaining sections and discussion of this report has been prepared in accordance with the requirements of the NSW Department of Planning and Infrastructure's "A Guide to Preparing Local Environmental Plans (October 2012)".

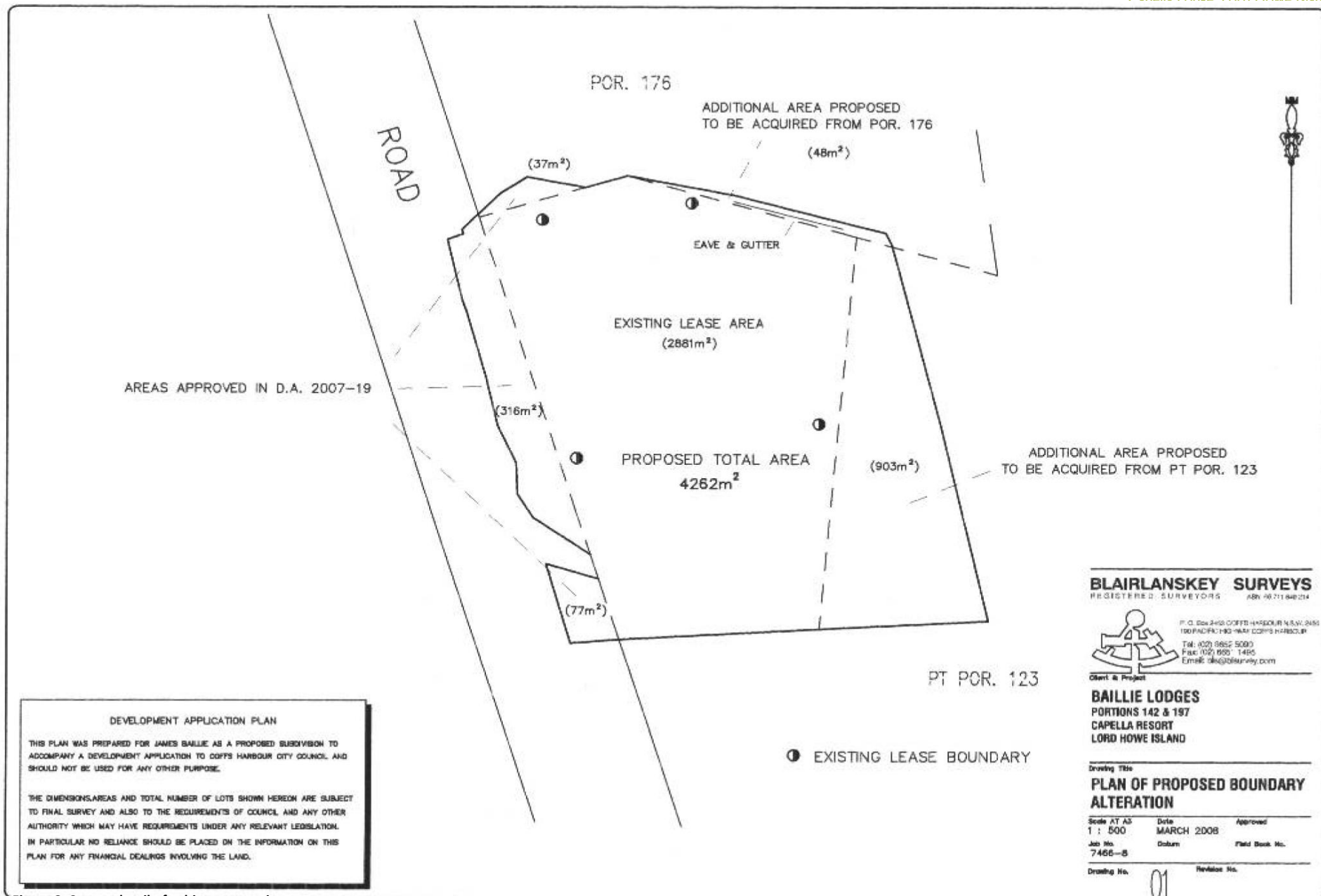


Figure 3: Survey detail of subject properties



Figure 4: Extract from Significant Vegetation Map with site highlighted in purple



Above: Existing Covered Walkway and Cloths Line for Capella Lodge



Above: Existing Water Tanks and North Eastern Corner of Capella Lodge viewed from Portion 176

I OBJECTIVES OR INTENDED OUTCOMES

As stated in the introduction to this report the subject proposed amendment to the LHI LEP 2010 is required to correct existing and historical encroachments on the immediately adjoining properties to the rear and north of the Capella Lodge Tourist Accommodation, Lagoon Road, Lord Howe Island.

Following this LEP amendment will be a boundary adjustment that the leaseholders of Capella Lodge intend to undertake in agreement with the owners of the two adjoining properties, to rectify these encroachments.

Further, the Lord Howe Island Board has advised the proponent that they will not consider a development application in respect of Capella Lodge on land that is not zoned for Settlement purposes nor on land that falls outside Capella's lease and lot boundaries. A sewage treatment facility and other development associated with a tourist facility is prohibited under the LHI LEP 2010 under the current rural zoning of Portion 123 and the Special Use zoning of Portion 176.

A recent Owners Consent issued by the Lord Howe Island Board on 28th March 2013 states in respect of a proposed new sewage treatment system for Capella:

"The LHIB cannot accept or consider a Development Application for a new sewage treatment facility on the affected parts of the subject site until such time as a Development Application for the boundary adjustment is approved and a rezoning of the land to Zone 2 Settlement is determined and gazetted."

2 EXPLANATION OF PROVISIONS

The proposed outcome will be achieved by amending the Lord Howe Island LEP 2010 Land Zoning Map on Part Portion 123, and Part Portion 176, Lagoon Road, Lord Howe Island in accordance with the proposed zoning map (refer attachment 1).

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

3 JUSTIFICATION

Section A – Need for the planning proposal

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

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

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

There is no viable or acceptable alternative to the proposed rezoning. The Board is not prepared to deal with the encroachments by way of a Development Application, as this necessitate they accept arguments about the ancillary nature of the proposed prohibited development. Furthermore, the Board would also have to be prepared to process a development application for Capella which falls on land outside Capella's own lease area and lot boundary. The Board has confirmed it will not support such an approach, as it leaves the issue of an inconsistent zoning and physical encroachments at Capella Lodge unresolved and which is also expected to be an ongoing issue for the proponent, adjacent property owners and the Lord Howe Island Board.

The current Lord Howe Island LEP was only gazetted in 2010 and no routine sets of amendments are planned to take place in the immediate future.

Q3. Is there a net community benefit?

There is no direct community benefit from the proposed LEP amendment however the resolution of historical boundary encroachments is in the public interest where it is done in with the agreement of all effected leaseholders (as is the case in this instance).

A community and environmental benefit that will indirectly result from the proposal is that it will allow the installation of a new onsite sewerage disposal system for Capella Lodge which will further minimise the likelihood of ground water contamination and the Lord Howe Island Lagoon to occur.

Section B – Relationship to strategic planning framework.

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

No regional or sub-regional strategies (or draft strategies) apply to Lord Howe Island. Nevertheless the proposal has site specific merit on the basis that it will rectify two existing historical boundary encroachments and therefore facilitate the economic and orderly development of the site and allow for the future installation of a new (latest technology) onsite sewerage treatment system.

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

- It does not introduce any new or additional land uses to that which is already present on the subject sites and maintains the existing relationship of land uses and zonings (Zone 2 Settlement, Zone 1 Rural and Zone 5 Special Uses) between the sites,

- No new or (future) potential land use conflicts would be created,
- It does not negatively impact on world heritage values. By its nature the planning proposal will not impact on the natural environment, environmental values, resources or hazards. The area of Portion 123 affected by this proposal does not include any mapped SNV and even though there is mapped SNV near the existing common boundary between Lot 4 and Portion 176 there is no work proposed within the area of Portion 176 encompassed by the proposal.
- Other than the (future) installation of a new onsite sewerage disposal system that is proposed by the applicants, the planning proposal will not create a demand for any additional services or infrastructure,
- The planning proposal is quite simple and involves a minor zoning map amendment only. The level of information provided with this planning proposal will enable the plan making process to be completed within a quick time and without much additional investigation.

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

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

The proposed rezoning will ensure new development at Capella Lodge will be consistent with the provisions and objectives of the LHI LEP 2010. In particular, the proposal will allow the installation of a new onsite sewerage disposal system for the existing tourist accommodation lodge in accordance with the policy and strategic objectives of the LHIB.

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

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

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

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

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

Section C – Environmental, Social and Economic Impact

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

The applicant has recently submitted a 7 Part Test for the proposed rezoning, which confirms that no significant impact on any critical habitat or threatened species, populations or ecological communities, or their habitats will occur. The subject area of Portion 123 is cleared and does not provide high quality habitat for threatened species. As noted elsewhere no additional work is proposed on the subject area of Portion 176.

There is no critical habitat and no Endangered Populations listed on Lord Howe Island under the TSC Act. There are 2 Endangered Ecological Communities (EEC) present on the Island: Sallywood Closed Swamp Forest, which occurs on flood prone flats and the Gnarled Mossy Cloud Forest which is confined to the plateaus of the southern mountains. Saltmarsh in the North Coast bioregion is listed as an EEC, although it is uncertain whether this listing applies to LHI. There are no EEC's within the vicinity of the planning proposal, therefore it is considered likely that the proposed actions will not impact on any EEC.

Furthermore, it is noted that the proposal will not impact on any area of mapped Significant Native Vegetation. Lot 4 does not contain any mapped significant native vegetation but parts of Portions 123 and 176 both do. The area of Portion 123 affected by this proposal does not include any mapped SNV and is in the order of 60 metres away from the closest SNV. On Portion 176 even though there is mapped SNV near the existing common boundary with Lot 4 there is no work proposed within the area of Portion 176 encompassed by the proposal.

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

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

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

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

Portion 123 is listed as a heritage item under the Lord Howe Island LEP 2010, with the following description:

“Soldier Creek area, being the site of Johnson’s farm and 1882 Commissioner’s Camp, Lagoon Road, Portions 126 and 123.”

The Lord Howe Island Community Based Heritage Study includes the following description for this heritage item:

“The Soldiers Creek area on Lord Howe Island is of historical significance as one of the early sites of permanent human settlement on the Island. It has historical and associational significance at a local level as it retains important archaeological evidence of hand cut drainage ditches and a basalt cobble slope....”

Based on available historical maps for the area including those detailed in the LHI Heritage Study, it is understood that the above archaeological items are positioned south of the area which is the subject of this rezoning proposal. The location of the significant archaeological items is positioned down on the more level and flatter areas of Portions 123 and 126. On this basis and given that no additional construction work is proposed (other than a future replacement of an existing onsite sewerage disposal system) it is not envisaged that the proposal will have any negative impact on the heritage significance of the said listed item.

Nevertheless in view of the heritage listing, the existence of items of archaeological significance and the listing of the whole of Lord Howe Island on the NSW State Heritage Register, the subject planning proposal will be referred to the NSW Heritage Office.

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

The proposal will not have any negative or positive impact on existing social infrastructure such as schools, hospitals or existing retail centres or any other social or economic effect.

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

Section D – State and Commonwealth Interests

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

In view of the small area proposed for rezoning and the overall minor nature of the subject planning proposal no demand for any additional public infrastructure or services will result.

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

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

In 2005 the NSW Minister for Planning issued such an order providing for an exemption to refer all development applications to the Heritage Office, instead requiring referral of only those applications involving a Heritage item as listed in Schedule 2 of the LHI REP 2005 (as amended). Due to part of the subject site including a listed heritage item within the LHI LEP 2010 a referral to the NSW Heritage Office is required and will also be undertaken.

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

- NSW Heritage Office – Listed Heritage Item Portions 123 & 126, Lord Howe Island LEP 2010
- Listed State Heritage Item: Lord Howe Island

4 COMMUNITY CONSULTATION

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

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

5 TIMEFRAMES

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

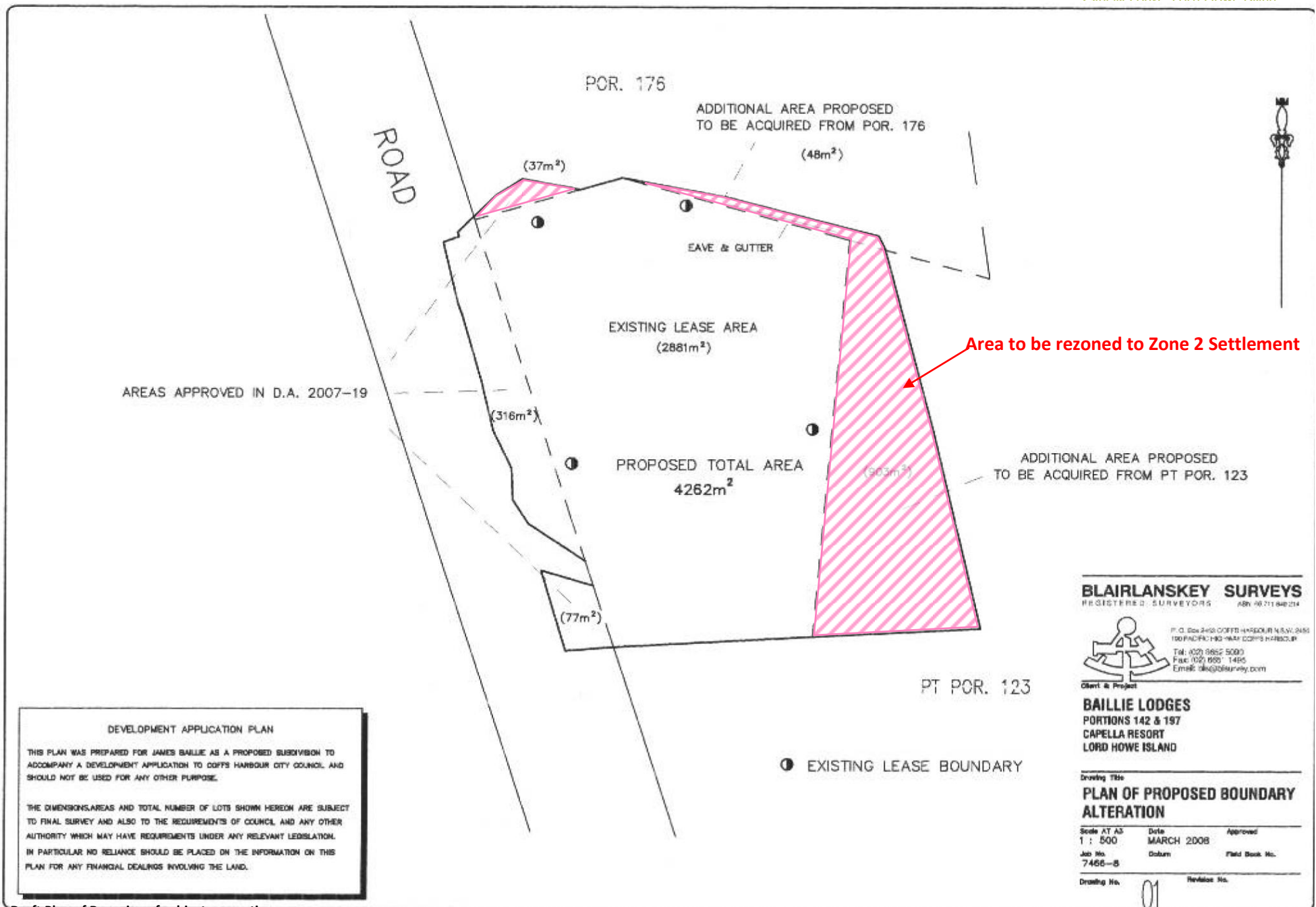
The referrals to state agencies are likely to involve the most time whoever the Department's benchmark timeframe of 6 months is achievable.

6 CONCLUSION

This planning proposal has outlined and assessed a proposal for a minor rezoning to correct existing historical encroachments on the immediately adjoining properties to the rear and north of the Capella Lodge Tourist Accommodation. The subject adjoining land being Part Portions 123 & 176, Lagoon Road, Lord Howe Island.

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

Attachment I - Proposed Zoning Map



Draft Plan of Rezoning of subject properties