

# NIRC at the Crossroads

**Submission to the Joint Standing Committee on the  
National Capital and External Territories  
Norfolk Island Regional Council  
March 2023**





**Front Cover Images:**

**Unsustainable waste disposal practice of dumping waste into to the surrounding Marine Park.  
The practice ceased in 2021 after NIRC was placed under Administration.**

# NORFOLK ISLAND

Regional Council

20 March 2023

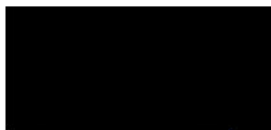
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Dear Secretary,

## **Submission to the Inquiry into Norfolk Island Regional Council**

This document is NIRC's submission to the Joint Standing Committee Inquiry into Norfolk Island Regional Council. We would be happy to meet with the Joint Standing Committee to elaborate and to respond to any questions.

Yours faithfully



**Mike Colreavy**  
**ADMINISTRATOR**

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**Andrew Roach**  
**GENERAL MANAGER**

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## BACKGROUND

Norfolk Island has a history of ‘on again’ / ‘off again’ occupation – from early Polynesian settlement, to being an outlying penal settlement and back-up source of food for the First Fleet settlement in Sydney, to a penal settlement, to settlement by descendants of the HMS Bounty mutineers transferred from Pitcairn Island, then eventually to the arrival of other settlers who chose to live among the natural beauty here and to enjoy the relaxed lifestyle of this picturesque South Pacific Island.

Various governance models for Norfolk Island have evolved over time. Currently, Norfolk Island Regional Council (NIRC) shares centre stage along with the Australian Government. NIRC has its statutory basis in the *Local Government Act 1993 (NSW) (NI)* – applied legislation of the Commonwealth. Occasional governance reviews have included a Royal Commission, external audits, a Public Inquiry, and now a Joint Standing Committee review - all more or less examining measures for governing a small, remote community of only 2,200 people. Settling the governance model will deliver significant strategic opportunities – among these will be lower cost of living, improved community infrastructure and services including telecommunications, and developing new tourism markets that are currently overlooked due to the conservative approach taken by successive Island governments. The Island’s governance structure has been particularly challenging since NIRC’s inception in July 2016. NIRC and the future governance arrangements for Norfolk Island are now at the crossroads with the Australian Government needing to decide what direction will deliver a better future! A concerted commitment between the Australian Government and Norfolk Island residents to a model that works is needed, otherwise more years of uncertainty and stifled progress will follow.

### **1. What Led to This Review?**

The immediate triggers for the current review were:

- Dissatisfaction with a perceived loss of democracy and ‘say’ in local decision-making, particularly after the dismissal of NIRC’s elected governing body; and
- An unpopular revenue model reliant on land rates and charges.

### **2. Perceived Loss of Democracy**

Prior to the current period of administration, NIRC’s governing body comprised five elected councillors. The atmosphere among the councillors was combative from the outset. At the inaugural council meeting, one of the councillor’s opening remarks challenged the legitimacy of the Council as established by the Commonwealth Government.

In 2016, electors installed a governing body for NIRC that was divided from the outset, and that subsequently made several irresponsible financial decisions that led NIRC to the brink of insolvency. Consequently, NIRC struggled to perform adequately. The combative atmosphere that developed among the councillors was disruptive. On top of that, the pandemic exposed NIRC's poor financial controls and deficient management systems. These were exacerbated by high rates of professional staff turnover and an inability to attract experienced local government practitioners.

External Audits conducted by Grassroots Connections <sup>1</sup> and Nexia Australia, <sup>2</sup> had identified 113 short-to-medium term improvements that would be required for the NIRC model to become sustainable. NIRC failed to adopt any of these before it went into Interim Administration. In December 2020, when NIRC was on the verge of insolvency, it was placed into Interim Administration. Then a Public Inquiry, conducted by Commissioner Caroline McNally, drew important 'Overall Conclusions' about NIRC, including reflecting on the unwillingness of the (then) elected governing body to address the revenue shortfalls that happened each year from NIRC's inception, despite their power to do so.<sup>3</sup>

In December 2021, NIRC was placed under (full) Administration for three years (until 5<sup>th</sup> December 2024) by the responsible Minister. This is a temporary arrangement to allow time for the organisation to rectify its governance deficiencies, to start rehabilitating its failed asset base, and to develop a sound financial position. Council dismissals in other Australian jurisdictions are inevitably followed by community discontent about the perceived 'loss of democracy'. It is no different on Norfolk Island. The knowledge that there is an Administration in place that is transparently working towards implementing necessary reforms should provide confidence that by the scheduled Administration end-date - December 2024 - local democracy will be restored. Instead, sustained disruptive tactics by agitators on Island attempt to undermine NIRC's reform program in a deliberate attempt to cause it to fail.

### **3. Unpopular Property-Based Revenue Model**

A segment of the Island population clings to a belief that, in 1856, Queen Victoria ceded Norfolk Island to the Pitcairners unencumbered, and consequently that property-based rates and charges, perceived to be 'rents', are 'ultra vires'. Some people even express a belief that Norfolk Island is a sovereign nation, or a British Colony, over which the Commonwealth Government has no regulatory powers.

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<sup>1</sup> Grassroots Connections Australia Pty Ltd, *Norfolk Island Regional Council Independent Governance and Financial Audit – Report for the Commonwealth Department of Infrastructure, Transport, Regional Development and Communications*. 15 November 2020

<sup>2</sup> Nexia Australia, *Norfolk Island Regional Council – Independent Audit of Financial Performance on Behalf of the Department of Infrastructure, Transport, Regional Development and Communications*. 30 October 2020

<sup>3</sup> C McNally, *Final Report of the Public Inquiry into the Norfolk Island Regional Council*, 4 November 2021. <https://www.infrastructure.gov.au/sites/default/files/documents/nirc-public-inquiry-final-report.pdf> at Page 170.

## RECOMMENDATIONS

1. That, at the end of the current period of Administration:
  - (a) a new Board Structure be established, replacing NIRC's councillor framework, as detailed in this submission. or
  - (b) If a Board Structure is not supported by the Joint Standing Committee:
    - i. NIRC continue to operate as a local government authority under applied 'State' legislation with provision for a governing body of 'councillors'; and
    - ii. The applied local government legislation for Norfolk Island be amended to align with the Local Government Act 2009 (QLD), to allow for a transition to regulation by the Queensland State Government.
2. That to continue raising equitable contributions to local services from residents, NIRC's present revenue framework including property-based rates and charges, and other fees for service, be retained in line with remote councils across Australia.



## ADDRESSING THE TERMS OF REFERENCE

### **1. *Alternative approaches to property-based taxation revenue collection (land rates) that are appropriate and equitable for the Norfolk Island community.***

As mentioned before, a segment of the Norfolk Island population clings to a belief that in 1856 Queen Victoria ceded Norfolk Island to the Pitcairners unencumbered, and consequently that property-based rates and charges, perceived to be ‘rents’, are ‘ultra vires’. Some people even express a belief that Norfolk Island is a sovereign nation, or a British colony, over which the Commonwealth Government has no regulatory powers. However, Australian case law has established that Norfolk Island is part of the Commonwealth of Australia.<sup>4</sup>

The application of the *Local Government Act 1993 (NSW) (NI)* and the revenue framework for councils embodied in it are not inappropriate for Norfolk Island and should be no less successful here than they are in other councils around the nation. Similarly, Queensland local government legislation could also be successfully applied in lieu of that of NSW if Queensland was to become NIRC’s regulator.

Some Norfolk Islanders treat ‘land’ as wealth to be passed down to the next generation, apparently believing that liability to pay property rates and charges is a sinister plot between NIRC and the Commonwealth to eventually take the land away from them, by selling it for overdue rates. By comparison, many Mainland agricultural land holders also endeavour to pass their land down to the next generation, paying rates and charges on it, and with it rarely sold for overdue rates.

NIRC’s revenue framework has matured in line with its needs. Property-based rates were increased in 2021-2022 and 2022-2023 from their initial very low base to levels that aim to ensure an equitable contribution from property-owners to local services. The Commonwealth has agreed to pay a \$1M subsidy to cushion the effect of the rates and waste management charge increases in 2022-2023 and 2023-2024.

Virtually everyone on Norfolk Island inhabits land in some way. The vast majority of the population can be classified as either property owners, tenants (or their family members), or visitors. Where land is tenanted, or is visitor accommodation, property-based rates and charges for which the property owner is liable can be recovered from the tenant through rents. This is in-step with other remote councils across Australia.

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<sup>4</sup> Berwick Ltd. v. Gray, (1976) 133 CLR 603

Although unpopular with some people on Island, the current mix of a property-based revenue framework (general rates, sewerage and waste management charges) which works effectively for more than 500 local councils across Australia to fund local services, together with appropriate levels of user fees and charges (e.g., airport, electricity, Telecom) is appropriate for Norfolk Island and should be retained. The existing revenue framework is relatively simple to administer and does not require the implementation of a new, more complex, taxation regime, or give rise to a 'black' economy.

***2. Whether the categorisation of NIRC as a 'Rural Council', for the purposes of the Local Government Act 1993 (NSW) (NI) results in an appropriate quantum of funding given the geographic remoteness and population density of Norfolk Island.***

This question is currently irrelevant to NIRC. Early in NIRC's time, it challenged the inequity of funding calculated through the Financial Assistance Grants model. NIRC engaged KPMG (paid for by the Department) to assess a better model of funding. The result of this process increased NIRC's funding to nearly four times what a normal Rural Council would receive. NIRC has benefitted from this significant increase for more than four years now. NIRC could have its own category definition and it would not make any difference in the current FAGs funding models.

***3. The impact of limiting access to state-partner grants on the financial sustainability of the NIRC.***

This is not a major problem for NIRC. Proven during the pandemic, NIRC worked directly with the Department to distribute funds similar to state-partner grants for businesses across the Island. NIRC had the mechanism to distribute quickly, by utilising the Service Delivery Agreement that was already in place. This mechanism could be expanded while the Island remains within the Territories Division.

With regards to NIRC's access to state-partner grants, it would actually be worse off than under the current arrangements. A review of the grants received by NIRC over the past 3 years would show a disproportionate amount per head of population to any other jurisdiction in Australia. A good example of this is the distribution of Roads to Recovery Program. NIRC received a grand sum of \$88K per year for 4 years. The paperwork required cost almost a quarter of this grant each year, just to be compliant and assessed in line with similar councils in Australia.

NIRC is not significantly disadvantaged while ever its requests for sympathetic consideration of 'State' type funding requests, are supported by Commonwealth funding approvals, as at present.

#### **4. The relationship between property-based taxation and the delivery of commensurate local government services.**

NIRC's existing property-based rates and charges raise \$3M (including the current \$1M subsidy from the Department) which is intended to contribute to the annual cost of the following local services:

<b>Service</b>	<b>Ordinary Rates &amp; Charges</b>	<b>Existing Commonwealth Funding</b>	<b>Commonwealth Special Subsidy FY 2022/23</b>
Road maintenance and improvements	\$689,393	\$625,759	\$84,848
Workshop/Depot	\$147,727	\$134,091	\$18,182
Parks maintenance and improvements	\$172,348	\$156,440	\$21,212
Library & Radio Station operation	\$123,106	\$111,742	\$15,152
Tourism	\$493,426	\$444,968	\$60,606
Waste Management	\$1,455,000		\$800,000
Council Admin & Governance Costs	-	\$5,000,000	-
Sub total	<b>\$3,080,990</b>	<b>\$6,473,000</b>	<b>\$1,000,000</b>
<b>TOTAL</b>	<b>\$10,553,990</b>		

Rating does not even cover the full costs of these operations. They rely heavily on the Financial Assistance Grant and cross subsidy from profit from the Liquor Bond. The cost of Administration staff is not included above and is funded fully by the Commonwealth Grants received annually. This is not reflective of similar jurisdictions in Australia.

Although unpopular with some people, NIRC's rates and charges are fair and equitable, comparable to other remote councils around Australia, and they should be retained.

## **5. The resilience and sustainability of current and alternative revenue approaches, noting the impact of COVID-19 on Norfolk Island's economy.**

NIRC is heavily reliant on the profit derived from the Liquor Bond. On average, the profit made from liquor sales is \$2M and above. This revenue source is used to cross subsidise normal local government services, such as community grants, parks maintenance, road maintenance, library services and administrative services. Changes to liquor importation licensing that are currently underway will reduce this revenue stream.

NIRC has several business units which are now self-funding under administration, including the funding of depreciation, for electricity services, telecom services, and the airport operations. Improving the financial operations of these business units, and quarantining the funds from these operations, will allow the renewal of assets when they fall due. A good example of the need to put this in place during the period of Administration was the airport upgrade that had occurred in the lead up to it, where NIRC signed contracts for \$48M, but only had funding in place for \$43M. A mythical "airport reserve" was cited by a Councillor to fund the difference.

Waste Management remains a costly operation, as segments of the community reject paying for the cost waste management. This has arisen from the cessation of dumping waste into the Ocean when NIRC was placed under Administration. Once a sea freight facility that can cater for containerisation is operational on Norfolk Island, waste management costs will reduce significantly.

Under Administration, waste management costs have been lowered by engaging industry leading waste management experts Revolve Your World, without this engagement, operational costs would be nearly \$1M higher per annum.

NIRC is fast transitioning towards financial sustainability under the current revenue arrangements. When the rates and waste charges subsidies expire in 2024-2025, the Commonwealth will need to be resolute in supporting NIRC's Revenue Policy to maintain the increases that are now in place.

Changes to liquor licensing arrangements now underway on Island will reduce revenue streams from the Liquor Bond.



## **6. The current governance model that supports the NIRC under the Local Government Act 1993 (NSW) (NI).**

With an appropriately skilled management and governing body, the current governance model under the *Local Government Act 1993 (NSW) (NI)* would suit Norfolk Island. In 2020, when NIRC's governing body failed to exercise its governance responsibilities and govern competently, the statutory framework provided the necessary remedy in the following sequence:

- interim administration
- public inquiry
- dismissal by the Minister
- period of administration to rectify the organisation, and
- scheduled reinstatement of an elected governing body by December 2024.

### **Understanding What Caused NIRC to Fail**

It was the behaviour and incompetent decision-making of NIRC's governing body that caused NIRC to topple – not the statutory framework. The ultimate remedy was embodied in the statutory framework. Concerns about loss of democracy will be automatically resolved when an elected governing body is reinstated in December 2024.

When NIRC approached insolvency in December 2020, it was placed into Interim Administration. The Public Inquiry, conducted by Commissioner Caroline McNally, made important '*Overall Conclusions*' about NIRC, including reflecting on the unwillingness of the (then) elected governing body to address the revenue shortfalls that happened each year from NIRC's inception, despite their power to do so.<sup>5</sup> An awareness of these '*Overall Conclusions*' is essential to understanding NIRC's governance shortfalls and to designing a way forward from here. The '*Overall Conclusions*' of the *Report of the Public Inquiry into the Norfolk Island Regional Council*<sup>6</sup> were as follows:<sup>7</sup>

#### **"Chapter 9 – Overall Conclusions**

<sup>5</sup> C McNally, Ibid at Page 170.

<sup>6</sup> C McNally, Ibid. Pages 170 to 174.

<sup>7</sup> C McNally, Ibid. Pages 170 to 174.

592. *This Inquiry has investigated the management record of the Norfolk Island Regional Council, its governing body, and key staff in accordance with the ToR. The evidence was focused upon a number of decisions that displayed the ability of the NIRC and governing body to effectively manage the finances and assets of the Council.*
593. *In Chapter 5 (of the Report) the evidence focused on financial management from the time the Council was established on 1 July 2016 with a particular emphasis on the lack of action taken by the governing body on the revenue side in response to well understood challenges. That Chapter commenced with an understanding of the background and context to Council's financial position, which was not strong; and that was clearly recognised when Council staff came to prepare the first long term financial plan that was ultimately adopted in December 2016.*
594. *The plan recognised the financial situation facing Council was unsustainable, a matter that needed to be addressed in a responsible and prudent manner. As a result, it proposed, and the governing body adopted, a cost recovery approach, described as 'optimistic but achievable.' That approach sought to ensure that the cost of the core services of telecommunications, electricity, sewage, waste, and the airport were met and funded through their operations, including provision for asset renewal.*
595. *Asset renewal was critical since Council's assets were mainly in a poor to very poor condition with nearly all critical assets approaching their end of useful life. At best, they required significant maintenance; at worst, they were physically unsound and beyond rehabilitation. The cost of maintaining ageing assets was significant and although poorly understood, the cost of replacing them well exceeded the existing cash reserves. Against this background, the \$9.4 million cash reserve that the Council inherited from the Administration, although probably sufficient to fund continuing operations, was not sufficient to enable the NIRC to repair, maintain and replace the assets and infrastructure that were also inherited.*
596. *The Audit Committee gave the same message: that in an 'efficient responsible Council deficits in operations should 'be paid for by the setting of special rates, fees and charges and through productivity efficiencies.' The fundamental matter to emerge from Chapter 5 is that the governing body, despite the repeated advice of Council staff and the Audit Committee, was never prepared to implement the essential element of the plan.*
597. *Another failure to deliver effective financial and asset management is also reflected in the failure to establish a rates target. Whilst one can understand the reluctance of the governing body to embrace rates on Norfolk Island, that did not excuse them from giving effect to the principles of sound financial management prescribed by the applied Local Government Act 1993 (NSW) (NI). The end result of Council's rates policy was that rates levied on the proportion of total revenues was always under 5%, not 10% which the Audit Committee recommend, and which the former chair of the Audit Committee said, in her evidence to the Inquiry, is comparable to the rates levied by other councils. Although extra income of this order would not have solved all of the Council's financial problems, it would have made Council more sustainable over the long term.*
598. *Council's own source revenue (as a percentage of total revenue) decreased from 81.7% in 2016-2017 to around 70% in 2019-2020. Meaningful action was not taken by the governing body to reverse that trend.*
599. *In all of these critical funding areas, outlined in detail in Chapter 5, the governing body of the NIRC failed to deliver effective financial and asset management.*
600. *The Mayor, Ms Adams, recognised the governing body's reluctance to increase rate revenue when she said that Norfolk Islanders view land as a part of their heritage and that it was 'an anathema that they're paying rates'. But she added: '...on the other side of the coin we have to pay our way. I understand that. I understand that, and that's a very difficult one for the Council.*

601. *In my (the Commissioner's) opinion, the governing body was reluctant to raise sufficient own source revenue to pay their way and thereby enable, or at least move towards enabling a truly balanced budget to be achieved. One result of this was that in the case of the net operating result for operations each year, excluding capital grants and unusual items, proposed capital expenditure was regularly carried forward owing to Council having insufficient funds in that year to complete capital works. This ongoing inability to fund capital work was ultimately used to justify proceeding with the roads project, which followed and asserted under spend of \$1.9 million in the total roads' capital budget over the first three years of the Council.*
602. *Further, even though the NIRC was nevertheless able to develop a long-term resourcing and financial strategy, once it became clear that the assumptions underpinning those plans were not going to be achieved (in particular the assumed level of capital grant funding and level of own source revenue obtained through the business units and other fees and charges) the NIRC and governing body failed to take action to correct the situation. This is most clearly reflected in Council's failure to respond when Council was unable to secure the projected capital expenditure grants contained in the plan that included \$5 million per annum for necessary capital replacement works.*
603. *Without that funding, there was little scope in the Long-Term Financial Plan to enable the sort of asset repair, renewal and replacement that was required given the state of the Council's assets and infrastructure. Against that background, action was required by the governing body to consider options to increase its own source revenue sources and to make appropriate adjustments to its long-term strategy.*
604. *The focus of Chapter 6 was the Council's management of its assets, all of which the Council's 2016 Infrastructure Asset Management Plan assessed as 'fair', 'poor' or 'very poor', meaning that at best the assets required 'significant maintenance' (if in 'fair' condition) and at worst, as already noted above, were 'physical [sic] unsound and/or beyond rehabilitation' (if in 'very poor' condition).*
605. *The Council's asset management plans, adopted in December 2016, were deficient in several respects. Among other things, they lacked detailed costing against individual assets and a sufficient level of detail to guide and inform asset maintenance and management decision-making. As Chapter 6 acknowledges, the absence of comprehensive and detailed information as at 1 July 2016 about the status of its assets posed a significant challenge for the NIRC in developing asset management plans and strategies. The difficulty is that the Council's 2019 asset management plans continued to be deficient. As at that time, the constraints present in 2016 - the absence of information regarding the assets and the time pressure to complete the asset management plans - were no longer present. The plans could and should have been more advanced.*
606. *The Council adopted a strategy to address the poor state of the assets. It was underpinned by a number of assumptions. Those assumptions were not born out. The problem was compounded by less than expected revenue and departures by the NIRC from the long-term financial strategies adopted by it. This resulted in the deferral of critical work. In the result, the Council's assets remain, by and large, in a state of disrepair.*
607. *Chapter 7 (Council's Cash Crisis (2019 through to January 2021) follows on from the problems identified in each of Chapters 5 (Financial that Performance Management and Reporting) and 6 (Asset Management) and focuses upon the collapse of the Council's cash position following the decisions about the airport and roads projects. At the broadest level of generality, these decisions of the governing body bring into focus the failure to engage with the revenue problems and a failure to assess and manage financial risk that were well known and understood by the governing body.*
608. *In the case of the airport, the 2016 plan for how repairs could be at least partially funded was never implemented. The plan forecast repairs as costing \$20 million, and proposed that a fund of \$6 million be established from airport operations. This meant that when it became necessary to urgently fund a project with a Council funded component in the range of roughly \$5 to 6 million, there were no funds in the airport business enterprise to do so, meaning a*

significant component of the project cost not covered by the Commonwealth would have to be funded by the Council.

609. *Although from an air safety and the broader community and economic perspectives, there is no basis to criticise the decision to proceed with the airport project, there were multiple financial risks to the Council that were not identified. The most significant of these can be seen in the proposal to seek a loan from either the Commonwealth or from another source to fund the balance of the project after allowing for the Commonwealth's grant funding of \$43 million. Leaving aside the way in which that aspect of the proposal was described, (i.e., funded through a loan from the 'Norfolk Island Airport Government Business Enterprise' when that was not what was intended) when Council agreed to commit itself to the contract for the balance, no steps had been taken to ascertain that such a loan was available in any event; key staff assumed that such a loan would or could be taken out. While I accept that staff believed that a loan could be obtained, the risk that it would not be was ignored.*
610. *As events transpired, contrary to the governing body's resolution, no loan was even sought, let alone obtained. The result was that the balance due under the contract was met from Council's cash reserves.*
611. *When the governing body came to make the decision to proceed with the airport project based on some form of loan, the risk that the project might end up drawing upon Council's limited cash reserves was not identified or engaged with. Further, Council and the governing body failed to view the project in terms of Council's risk management policy and the Capital Expenditure Guidelines in force under the applied LG Act. To make matters worse, when budgeting for the project in the context of the 2019/20 budget, the cost was described as being limited to \$44.8 million, with the NIRC's exposure limited to a loan of around \$2 million, when it was almost certain that the total cost was likely to be substantially in excess of that due to the cost of meeting relevant biosecurity requirements.*
612. *Further, as time passed and the opportunity arose to apply \$5.065 million to the replacement and reseal of 9.037 kilometres of roads from Council's cash reserves, the governing body failed to follow up with the Council concerning the process of funding the shortfall. It did not query the proposed airport contract loan arrangements and the impact on the future budget, particularly when other significant decisions were being made over the following 12 months, including entering into the roads contract.*
613. *Insofar as the roads project itself was concerned, although the Norfolk Island community would benefit substantially from the expenditure on roads, the consequences of failing to proceed with the project in July 2019 do not compare to the threats posed by a failure to proceed with the runway project. The road works were not so essential as to require the further diminution of Council's cash reserves. Although the decision to proceed with the project was the result of an underspend on roads by the Council over the preceding three years, the opportunity presented by Boral having the relevant machinery on the Island during the airport project did not warrant the deviation from the roads budget.*
614. *When it is also recalled that the decision to proceed with the roads contract was made on the false assumption that the NIRC would meet any shortfall in the airport contract through a loan, the deficiencies in the governing body's failure to properly manage these two projects is readily apparent.*
615. *Council's failure to engage with its Audit Committee and apply its risk management policy in considering these critical decisions allowed the combined effect of both the airport and roads decisions to seriously impair Council's, financial stability as Chapter 7 describes.*
616. *Although the COVID-19 pandemic magnified the effect of these decisions on the Council's financial position, it was not the primary cause, particularly in light of Council's failure to take necessary steps to raise revenue to fully recover its costs and maintain sufficient cash reserves to provide for contingencies."*



The purposes of the *Local Government Act 1993 (NSW) (NI)*, contained in S.7 provide a legal framework, set out powers and responsibilities, provide for democratic elections, and provide for accountability, sustainability, flexibility, and effectiveness. S.7 provides as follows:

***“7 Purposes of Act***

*The purposes of this Act are as follows:*

- (a) to provide the legal framework for the system of local government for New South Wales,*
- (b) to set out the responsibilities and powers of councils, councillors and other persons and bodies that constitute the system of local government,*
- (c) to provide for governing bodies of councils that are democratically elected,*
- (d) to facilitate engagement with the local community by councils, councillors and other persons and bodies that constitute the system of local government,*
- (e) to provide for a system of local government that is accountable to the community and that is sustainable, flexible and effective.”*

The essential ‘purpose’ of the Local Government Act 1993 (NSW) (NI) is to set out the responsibilities and powers of the council and councillors, and to provide for a ‘democratically elected’ Council that engages with the local community and that constitutes the system of local government.

The local government model is the most democratic model available to Norfolk Island. Under this model, at the conclusion of the period of Administration in December 2024, an elected governing body will be reinstated. All enrolled electors, including property owners and rate-paying lessees, can vote for their preferred candidates. This avoids preferential candidate selection and promotes equality among voters on Island.

Under Chapter 3 of the Local Government Act 1993 (NSW) (NI), NIRC is bound by a set of guiding principles aimed at facilitating the local community to be strong, healthy, and prosperous. The following extracts from Chapter 3 (Sections 8, 8A, 8B, & 8C provide:

***“Chapter 3 Principles for local government***

***8 Object of principles***

*The object of the principles for councils set out in this Chapter is to provide guidance to enable councils to carry out their functions in a way that facilitates local communities that are strong, healthy, and prosperous.*

***8A Guiding principles for councils***

- (1) **Exercise of functions generally:** *The following general principles apply to the exercise of functions by councils—*
- (a) *Councils should provide strong and effective representation, leadership, planning and decision-making.*
  - (b) *Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.*
  - (c) *Councils should plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.*
  - (d) *Councils should apply the integrated planning and reporting framework in carrying out their functions so as to achieve desired outcomes and continuous improvements.*
  - (e) *Councils should work co-operatively with other councils and the State government to achieve desired outcomes for the local community.*
  - (f) *Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.*
  - (g) *Councils should work with others to secure appropriate services for local community needs.*
  - (h) *Councils should act fairly, ethically and without bias in the interests of the local community.*
  - (i) *Councils should be responsible employers and provide a consultative and supportive working environment for staff.*
- (2) **Decision-making:** *The following principles apply to decision-making by councils (subject to any other applicable law)—*
- (a) *Councils should recognise diverse local community needs and interests.*
  - (b) *Councils should consider social justice principles.*
  - (c) *Councils should consider the long term and cumulative effects of actions on future generations.*
  - (d) *Councils should consider the principles of ecologically sustainable development.*
  - (e) *Council decision-making should be transparent and decision-makers are to be accountable for decisions and omissions.*
- (3) **Community participation:** *Councils should actively engage with their local communities, through the use of the integrated planning and reporting framework and other measures.”*

**“8B Principles of sound financial management**

*The following principles of sound financial management apply to councils—*

- (a) *Council spending should be responsible and sustainable, aligning general revenue and expenses.*
- (b) *Councils should invest in responsible and sustainable infrastructure for the benefit of the local community.*
- (c) *Councils should have effective financial and asset management, including sound policies and processes for the following—*

- (i) *performance management and reporting,*
  - (ii) *asset maintenance and enhancement,*
  - (iii) *funding decisions,*
  - (iv) *risk management practices.*
- (d) *Councils should have regard to achieving intergenerational equity, including ensuring the following—*
- (i) *policy decisions are made after considering their financial effects on future generations,*
  - (ii) *the current generation funds the cost of its services.”*

Under Administration, NIRC is fast transforming towards financial sustainability. This will be achieved by the end of the scheduled period of Administration in December 2024 when the organisation can be handed over to an elected governing body in a sound financial position.

**“8C Integrated planning and reporting principles that apply to councils**

*The following principles for strategic planning apply to the development of the integrated planning and reporting framework by councils—*

- (a) *Councils should identify and prioritise key local community needs and aspirations and consider regional priorities.*
- (b) *Councils should identify strategic goals to meet those needs and aspirations.*
- (c) *Councils should develop activities, and prioritise actions, to work towards the strategic goals.*
- (d) *Councils should ensure that the strategic goals and activities to work towards them may be achieved within council resources.*
- (e) *Councils should regularly review and evaluate progress towards achieving strategic goals.*
- (f) *Councils should maintain an integrated approach to planning, delivering, monitoring and reporting on strategic goals.*
- (g) *Councils should collaborate with others to maximise achievement of strategic goals.*
- (h) *Councils should manage risks to the local community or area or to the council effectively and proactively.*
- (i) *Councils should make appropriate evidence-based adaptations to meet changing needs and circumstances.”*

Decisions made during the period of Administration about revenue models, reductions in employment costs, asset management, introducing better management practices, and a practical approach to service delivery, are positioning NIRC’s

operations to become comparable to those of mainland councils. Only existing levers have been used to transition NIRC's trajectory towards sustainability. These decisions have relied on the statutory principles set out above.

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One of the greatest challenges for any future elected governing body will be to accept professional guidance from management; to take responsibility for making difficult, sometimes unpopular decisions; not to cave in to the agenda of a very vocal minority, and to stop weaponising disruption to prevent change.

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## **7. Alternative approaches to local government and local representation utilised across Australia.**

Existing arrangements for NIRC's governing body are embodied in s.222 and 223 of the *Local Government Act 1993 (NSW) (NI)* which provide as follows:

### **“222 Who comprise the governing body?”**

*The elected representatives, called “councillors”, comprise the governing body of the council.*

### **223 Role of governing body**

- (1) *The role of the governing body is as follows—*
- (a) *to direct and control the affairs of the council in accordance with this Act,*
  - (b) *to provide effective civic leadership to the local community,*
  - (c) *to ensure as far as possible the financial sustainability of the council,*
  - (d) *to ensure as far as possible that the council acts in accordance with the principles set out in Chapter 3 and the plans, programs, strategies and policies of the council,*
  - (e) *to develop and endorse the community strategic plan, delivery program and other strategic plans, programs, strategies and policies of the council,*
  - (f) *to determine and adopt a rating and revenue policy and operational plans that support the optimal allocation of the council's resources to implement the strategic plans (including the community strategic plan) of the council and for the benefit of the local area,*
  - (g) *to keep under review the performance of the council, including service delivery,*
  - (h) *to make decisions necessary for the proper exercise of the council's regulatory functions,*
  - (i) *to determine the process for appointment of the general manager by the council and to monitor the general manager's performance,*
  - (j) *to determine the senior staff positions within the organisation structure of the council,*
  - (k) *to consult regularly with community organisations and other key stakeholders and keep them informed of the council's decisions and activities,*
  - (l) *to be responsible for ensuring that the council acts honestly, efficiently and appropriately.*
- (2) *The governing body is to consult with the general manager in directing and controlling the affairs of the council.”*

### **Proposed Board Structure**

NIRC's failure by 2020 was directly attributable to the governing body's lack of willingness and capability to exercise its responsibilities. It is submitted that a more effective and sustainable model for the delivery of services would be under a Board structure that requires members of the governing body to hold formal AICD recognition. Appointed members (including the Chair) would already hold AICD recognition. 'Elected' members would have (around) 12 months after their election to obtain this recognition.

With a change of name to the ‘Norfolk Island Government Board’, reporting to the Commonwealth Territories Minister, the Board, comprising ‘members’, instead of ‘councillors’, would operate either under an adapted *Local Government Act 1993 (NSW) (NI)*, or the Queensland version thereof, or under a new Act combining relevant provisions from the State jurisdiction(s) with other relevant provisions similar to the *Lord Howe Island Board Act 1953 (NSW)* (e.g., a Norfolk Island Government Board Act 2024).

The suggested Board structure could comprise five members as follows:

- Chair – The Island Administrator (appointed)
- Two appointed independent specialists, AICD recognised, with business management skills and experience  
(Legal/Accounting/Planning/Governance/Tourism)
- Two elected members - AICD recognised who reside on Norfolk Island

The Board members could have 3-year terms, with no more than three terms to be served by an individual. To allow for continuity, one independent member and one elected member could rotate at year 3, and the second independent member and elected member could rotate at year 4. All Board members would be required to hold (or in the case of the elected members, obtain) Australian Institute of Company Directors Graduate recognition.

The Board could meet quarterly (for example February, May, August & November), with the May meeting to be held in Canberra to coincide with the Commonwealth Budget adoption. The elected Board members would also be provided with supported offices so that constituents could meet with them to discuss issues, like State MP’s. This would improve the connection to community.

The operational structure could look like this:

<b>Chief Executive Officer</b>				
Finance/Corporate	Economic Development	Infrastructure	Planning & Development	State Services
Finance IT Governance Insurance Customer Service	Tourism Kingston Agriculture development Airport	Roads Parks Sporting Electricity Ports Mgmt	Planning Building Regulations Reserves Land Mgmt	Education Health Policing

Services that would be removed from the current model are:

- Courts – transferred to the ACT court system
- Telecom – sold to an Australian provider
- Liquor Bond – sold to a commercial operator

The Board can receive additional community input by establishing six advisory committees, each with five members, generally from the local community, with specific interests in portfolio outcomes as follows:

- Audit Risk and Improvement Committee
- Business, Innovation and Tourism Advisory Committee
- Infrastructure Advisory Committee
- Environmental Management Advisory Committee
- State Service Advisory Committee
- Cultural Advisory Committee

The Board would also maintain a presence in either Brisbane (existing office for NIRC) or Canberra to have professional staff to manage back of house operations. This will ensure the Board is well serviced by experienced staff that are not willing to live in a remote community.

Setting some smart goals for the new organisation, success would meet the following performance measures:

- Reduced reliance on Government Grants
- Secure local revenue streams and lower outstanding debt from customers
- Controlled population growth
- Improved service delivery such as waste management, power generation
- Innovative solutions around renewables and environmental initiatives
- Reduced complaints from the community about services

Significant opportunity presents itself in this new model for sustainable service delivery to a community that has been through significant change over the past 40 years. While a Board will have frameworks to operate within, removing some of the constraints of the more conservative Local Government model would enable the Board to be agile and responsive to the needs of the community, while removing the growing burden of reliance on the Australian Government.

Strategically, the best outcome for this remote island would be to stop “tinkering” with older models that are resource intensive for small and remote communities and take the opportunity to build a “bespoke” solution with less constraints to meet the needs of not only its residents, but thousands of visitors per year. When trying to assess the best strategic outcome for this small, remote community, often old thinking and conservatism has become so ingrained that good decisions have become lost in the debate. Norfolk Island has had years of investigations, inquiries, commissions and

failed models, the money spent on these processes could have fixed many of the problems that have caused considerable community angst.

A small, but vocal, section of the community wants to return to the “old days” of semi-self-government but evidenced in the ANAO assessment, that model would continue to struggle to match the quality of services currently provided to the community.

Local Government Authorities work effectively across more than 500 LGAs in Australia. The major point of difference between most of these organisations and NIRC is that NIRC has only been operating for 6 years and doesn't have the maturity of other LGAs, many of which have evolved for over 100 years. The Board model would work on Island, but it will continue to require some external resourcing for many years to come, until maturity levels are achieved.

A Board model offers an opportunity to move on from the past. It removes most of the constraints and conservatism of a Local Government model, and it provides the community with skills-based representation that is more likely to attract better candidates due to the professional nature of a qualified Board. Requiring members to hold qualifications such as AICD and University degrees, will equip the Board to operate 'strategically' for the benefit of the community.

## **8. *Whether alternative approaches sustainably achieve the key outcomes of local government.***

A Board would be more strategic, outcomes focussed, and have reduced costs operationally. This would in turn reduce reliance on Government funding and continue to maximise user charges appropriately. The Board would be more agile to adapt innovation to operations that will reduce costs.

Lord Howe Island Board operates under its own Act and an adapted NSW Local Government Act and reports to the NSW Office of Local Government.

Reporting either to the Territories Division of the Department, or if through the transitional program, to Queensland's Department of Local Government, a Board structure would provide significant benefits and achieve the key outcomes of the current local government model.

## **9. Whether alternative approaches equitably increased local representation and decision making**

Compared with the NIRC model, the proposed Board model would reduce local representation to two members. There are approximately 950 voters on Norfolk Island. The proposed Board structure provides a representative model of 1 elected person per 190 voters to 1 per 425 voters. This is considered to be sufficient and workable. The elected Board members could also operate an access office for the community, with support staff, to manage the day-to-day interactions with the community.

The proposed Board structure provides a representative model of 1 elected person per 425 voters. This compares favourably to other similar sized jurisdictions in Australia.

## **10. Whether alternative approaches would appropriately support the additional functions the NIRC provides on behalf of the Commonwealth**

The Board structure would provide agility for innovation, flexibility to deliver programs the Commonwealth cannot for state-type functions, and reduce the liability that NIRC currently imposes on the Commonwealth because of a lack of support from the local community to meet reasonable living costs similar to other jurisdictions.

The Board structure would support no less functions that NIRC currently provides, and more.

NIRC and the future governance arrangements for Norfolk Island are now at the crossroads with the Australian Government about to decide what direction will deliver a better future! The Joint Standing Committee's consideration of this submission is appreciated.



