

8 January 2021

The Hon Nola Marino  
Assistant Minister for Regional Development and Territories  
Federal Member for Forrest  
PO Box 2028  
BUNBURY WA 6231

Dear Assistant Minister | Nola,

### **NOTICE OF INTENTION TO SUSPEND NORFOLK ISLAND REGIONAL COUNCIL**

I refer to your (undated) letter received by me on Tuesday 15 December 2020, in which you give notice of your intention to suspend the Norfolk Island Regional Council (NIRC) under section 439I (stet) for a period of three months. I provide the following submission for your consideration and to give context to this issue prior to any decision you make. Attached is a letter of support from the Council of Elders and the Norfolk Island People for Democracy.

**I believe the following submission provides you with information and evidence to keep the Council in place.**

I preface the following remarks by saying Council continues to commit towards an environment of cooperation, collaboration, and partnership with the Commonwealth; and that our actions to date are always focussed on our vision - to be "the Best Small Island in the World".

### **Regulation 413E Suspension criteria: section 438J Local Government (General) Regulation 2005**

#### **1. *Suspension criteria (a) - whether the council has failed to comply with its legislative responsibilities, standards or guidelines***

Assistant Minister, to give context to where we find ourselves today and to address suspension criteria (a) let us first consider the genesis of the Audit Reports on which you have relied to make your Notice of Intention to suspend the Council for three months. Accordingly, I invite your attention to the Mayoral Minute 2020/84 unanimously agreed 24 June 2020 detailed in full below; and the attached terms of reference for the audits prepared by the General Manager and agreed by Council. This initiative clearly demonstrates Council's awareness of issues and our determination to obtain the reports to create a blueprint to address these issues promptly and become a strong regional council.

**I reiterate – it was the Norfolk Island Regional Council that requested the two audits with the firm intention to address and action the findings.**

## Mayoral Minute 2020/84 unanimously agreed by Council 24 June 2020

### Background

“Council for some months now has been addressing financial challenges in developing the 2020/21 Operational Plan primarily resulting from decisions by previous management and which have been further magnified by the effects of the COVID-19 pandemic. Whilst the Council is still receiving community submissions on the Operational Plan, recently highlighted financial exigencies now require Council to take decisive action to ensure Council is able to continue to deliver services; and to adopt a ‘reduced business as usual’ plan on 30 June. Whilst this will allow Council to continue in a reduced capacity during these times of austerity, I believe it is imperative that this elected Council provide a newly elected Council with a list of recommendations to allow them to start their term on the best possible footing.

**“To recap. This, the first Norfolk Island Regional Council, has had to address many challenges throughout its term, and in particular the following challenges in the past 6 months:**

- Council has been provided poor information in many of their decision making processes by previous management.
- The ‘State Disconnect’ and the resulting systemic and structural deficiencies in the arrangements between NIRC and the Commonwealth as our “State”.
- Existing contractual obligations will exhaust NIRC’s entire cash position and our financial position for 30 June 2021 will be zero cash in reserve.
- NIRC’s revenue streams are so reliant on the Tourism economy; and a review must be undertaken to improve resilience and sustainability.
- Existing NIRC governance systems are inadequate, and financially unsustainable.
- NIRC employees require training and support to make sure our systems are operationally efficient.

“Unless substantial change is achieved in our operational program, and the Islands economy recovers sufficiently, NIRC’s future remains uncertain. Councillors and I as Mayor believe it is now time to act, and to provide an incoming Council with a clear pathway to success, allowing them an opportunity to either drive change or accept what we have.’

“With that in mind I now propose the following:

### ‘THAT –

1. Council instructs the General Manager as a matter of priority to bring to Council for its endorsement terms of reference (**see attached**) for the engagement of an appropriate consultant to conduct a full independent governance and financial audit of NIRC operations; and that the General Manager requests the Commonwealth Government to meet the audit cost.
2. The terms of reference include legislative, regulatory and policy framework amendments to improve the operation of NIRC, with an underlying principle of reduction of service delivery cost and red tape.
3. In calling for this review/audit, Council acknowledges that these actions have been taken to ensure a stronger future for the Island through sustainable revenue sources, expenditure management and a pathway towards less reliance on Commonwealth funding.
4. Council lead the communication locally as this must be an Island driven initiative.’

“Notwithstanding Council resolution 2020/56 of 20 May 2020 Council now requests the election be delayed by two months or to a later date if deemed necessary by the Commonwealth to allow for the review/audit to be undertaken and a report received and adopted by the existing Council to allow the newly elected Council to enter their term unburdened by this process.”.

Clearly Assistant Minister, the terms of reference endorsed by Council at its Extraordinary Council meeting on 3 July 2020 demonstrate – at the very least - Council’s awareness of the need for the performance audit to ‘determine whether the Council is carrying out its activities effectively, economically and efficiently and in compliance with all relevant laws.’

It is disappointing Assistant Minister that blame is being levelled solely at Council in Suspension Criteria (a) - for perceived short comings in compliance with legislative responsibilities - when in fact it is the Council, and not the ‘Regulator or the State Partner’, that recognised and called for the independent External Audits completed by Grassroots Connections and Nexia Australia; and brought the Commonwealth’s attention to the significant flaws and short comings in the governance model for NIRC imposed on Norfolk Island in 2016.

Council acknowledges the dire financial position it is facing. However, it needs to be acknowledged that the Council has always been open and transparent with the community and the Commonwealth around this issue, reporting regularly at its monthly meeting, and through its media channels. It is regrettable that the external audit highlights many faults on the Departments interactions with Council, its guidance, regulation, and lack of coordination for service delivery, asset renewal and transfer. Council’s financial position was exposed through the pandemic in part due to this lack of leadership from our ‘state partner’.

## **2. Suspension criteria (b) - whether there are significant risks facing the council that are not being addressed**

I invite your attention Assistant Minister to the following comments by Grassroots at page 8 of their final report which I brought to your attention in my letter to you of 23 November 2020 and to your Departmental Officers on 4 December 2020:

“The analysis undertaken for this Audit Report has highlighted that significant legacy issues were inherited by NIRC upon its establishment. It is recommended that these issues (as detailed in this Audit) be addressed as a matter of urgency as significant financial challenges and environmental non-compliances continue to exist.

‘Whilst it appears it was the expectation of the Commonwealth for NIRC to take responsibility for these issues, NIRC does not have sufficient funding capacity for the issues to be addressed in a timely manner. Consequently, there is an urgent need for a long-term funded strategic and financial plan to be developed in a collaborative manner between NIRC and the Commonwealth.

‘This will help deliver –

- a more robust financial outcome;
- ensure greater compliance with established environmental and public health standards; and
- prioritise infrastructure and service projects to meet identified community needs.

‘To be effective, the plan must include the allocation of responsibilities, actions and delivery timeframes’.”

With respect Assistant Minister the conclusion you have drawn in your letter re suspension criteria (b) would seem to have overlooked the fact made clear by Grassroots that Council does not have sufficient funding capacity for the issues to be addressed in a timely manner and that there is an urgent need for a long-term funded strategic and financial plan to be developed in a collaborative manner between NIRC and the Commonwealth. I pose to you Minister that this is just further evidence of the significant flaws and short comings in the governance model for NIRC imposed on Norfolk Island in 2016.

**3. Suspension criteria (c) – previous intervention attempts**

It is noted that you are placing little weight on this criterion.

**4. Suspension criteria (d) - whether council business is being disrupted and the council failing to exercise its functions**

- During the pandemic Council has been proactive, taking several steps to ensure operationally we continue to deliver services to our community. This included making 23 positions redundant in June 2020 which generated annual savings of \$2M.
- Council thanks the Department of Infrastructure, Transport, Regional Development and Communication for its short-term emergency funding provided during the month of December 2020 to secure payment of its employees' salaries.
- Council's 9-point action plan adopted in February 2020, as stated in the external reports, is the basis of a strong strategic plan delivery for important services for water security, freight, renewable energy, and environmental management. The short-term funding provided by the Department will see Council through the short-term financial stress, and Council can make the necessary decisions to cut expenditure and raise additional revenue to deliver these projects.
- To address the financial matters raised in your letter, Council in November developed a program that will cut approximately \$8M from its operational budgets. This is approximately one third of its current work force and programs. Whilst it could be argued that these cuts have the potential to place Council back on a sustainable path over a period of 3 years Council acknowledges that this is an extreme measure which will have a serious negative impact on the community and the economy. You have acknowledged in your letter of 3 December, that this 'requires careful consideration, in particular the impact on the Norfolk Island community, and needs to be assessed against other options for improving the financial situation of the Council'. We too support that view.

**5. Suspension criteria (e) - whether the appointment of an interim administrator is necessary in the opinion of the Minister, to restore the proper or effective functioning of the council**

- Councillors have developed an extremely good working relationship with the General Manager who only commenced in January 2020. During this time, we have developed a much-needed open communication platform that did not previously exist, and Councillors can now make more informed decisions. This has been highlighted in the external audit reports and should not be undone by suspending the Council.
- Furthermore, the Grassroots Report (p.40) notes that leadership at the Mayor and Councillor level is fundamental to enabling the elected and organisational arms to unite and develop a culture focussed on the future.
- Council fails to see what an administrator can provide that an elected Council cannot provide its community during these times of austerity, and believes it has the ability and commitment to make the decisions necessary to deliver change required to develop the model of governance that has been imposed.
- Removing local representation to deliver the blueprint of change identified from the external audits would be detrimental to the Islands long term support of this governance model.
- Removing local representation does not provide the ability for the governance model to mature, as each step of the process provides experience, learnings, and opportunities for Councillors.

**6. Suspension criteria (f) – whether there is a pattern of poor or inappropriate behaviour by one or more councillors that has not been rectified.**

I agree with your assessment that there is no evidence or proof of poor or inappropriate behaviour by Councillors and note your intention to not propose to place any weight on this consideration.

**7. Suspension criteria (g) – whether an ordinary election of councillors occurs within 3 months after the making of the order**

I do not agree with your proposal to not place any weight on this consideration. Council has worked closely with you to determine the new election date of 13 March 2021, with the main reason for this date being picked to allow NIRC to receive the findings of the two audit reports and provide the incoming Council with a clear pathway forward. Council has every confidence in the plan to proceed with the election on 13 March 2021; for the community to maintain local representation; and the ability for Norfolk Islanders to make changes for the betterment of our community.

**8. Suspension criteria (h) - any other matter that, in the opinion of the Minister, is relevant to the suspension of the council**

- Most recently the Council resolved to call for a Royal Commission into finding a better governance model for Norfolk Island. This request has been dismissed by you Minister.
- It needs to be acknowledged that the external audit highlights many faults on the Departments interactions with Council, its guidance, regulation, and lack of coordination for service delivery, asset renewal and transfer. Council's financial position was exposed through the pandemic in part due to this lack of leadership from our "Regulator".
- I invite your attention to the request from myself to your senior departmental officers at our meeting on 4 December 2020 that – in addition to addressing the legacy issues inherited by the Council in 2016 - it would be helpful if the following disabilities that are 'peculiar' to the Norfolk Island Regional Council were addressed, namely –
  - Financial Assistance Grant – the inability for the NSW Local Government Grants Commission "to make a comparative financial assistance grant assessment for Norfolk Island on the same basis as NSW Local Government bodies". KPMG were engaged as consultants to find a solution
  - Land Transfer Ordinance 2016 (Cth). Who is responsible for funding upgrading the roads to 'an acceptable standard' under the Commonwealth commitment that there be no disadvantage to the Norfolk Island Regional Council from the transfer of the roads from the Commonwealth to Council.
  - The 'State Disconnect' where Norfolk Island is not eligible for any NSW State Government competitive grant funding
  - Land rates – "Council has a relatively small ratepayer base and the capacity to generate significant revenue through rates is implausible" (Rates consultant Lucas Scarpin)
  - The 'democratic deficiency' where laws of another State, in particular NSW, are applied as Commonwealth law without representation by Norfolk Island into the making and subsequent amendment of those laws by the State or Territory law making body.

## To conclude

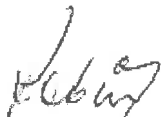
Notwithstanding your invitation for NIRC to make a submission is a legislative requirement under the Act, as the author of the submission I wish to make a few concluding remarks. My time in government is coming to a close and it has been an honour to serve the Norfolk Island People as their Mayor in the first Norfolk Island Regional Council.

The last four plus years, whilst rewarding for me personally, have been challenging for NIRC – and particularly for the governing body – as it dealt with – and continues to deal with - the significant flaws and short comings – not of NIRC's making - in the governance model for NIRC imposed on Norfolk Island in 2016.

I am confident Nola that in arriving at your decision on whether or not to suspend the Council that your decision will align with the oft quoted aphorism - ***Not only must Justice be done; it must also be seen to be done.***"

I look forward to your favourable response.

Yours faithfully,



Robin Adams

**MAYOR**

Norfolk Island Regional Council

Cc: Mr Eric Hutchinson, Administrator  
Councillors  
Mr Andrew Roach, General Manager

Attachments: 2

**Norfolk Island Regional Council**  
**Terms of Reference: Independent Governance and Financial Audit of**  
**NIRC Operations**

**1. Introduction**

The Norfolk Island Regional Council (Council) commenced on 1 July 2016 and consists of five Councillors who are elected for a four-year term. The Council is unique in that it provides local government services, runs several business enterprises and is contracted to provide Commonwealth funded state services such as: land titles registration, motor vehicle and drivers licensing, courts and legal services, companies registration and ports management.

The Council operates under the imposed NSW local government framework, comprising the *Local Government Act 1993 (NSW) (NI)* (applied Local Government Act) and the *Local Government (General) Regulation 2005 (NSW)(NI)*, as well Norfolk Island continued laws.

The day to day management of Council is the responsibility of the General Manager who reports to the Councillors. The General Manager is supported by seven managers. The current General Manager commenced in January 2020, and through a series of internal reviews, and addressing challenges that have arisen due to the Covid-19 pandemic, Council's financial position has exposed a number of flaws in the operation of the Council.

On 24 June 2020, Council resolved that there should be a full audit of the finances and governance of the Council's operations (**Attachment A**). The relevant audit powers under the applied Local Government Act sit with the Commonwealth Minister responsible for Norfolk Island and her delegates.

**2. Consultancy Engagement**

A suitably qualified consultant is sought to conduct a performance audit, under Division 2A and Division 3 of Part 3 of Chapter 13 of the applied Local Government Act to cover governance, financial and operational matters as set out below under Scope of Audit, and where appropriate provide advice on possible improvements to Council arrangements. The findings of the audit will be presented in a draft and final report as set out under Deliverables.

Under the applied Local Government Act, a performance audit is to determine whether the Council is carrying out its activities effectively, economically and efficiently and in compliance with all relevant laws.

The Contract Manager is Ms Nicole Pearson, Assistant Secretary, Norfolk Island and ACT/NT Branch in the Department of Infrastructure, Transport, Regional Development and Communications (Department). The key contact officer for the Council is the General Manager, Mr Andrew Roach.

NIRC will provide open access to all Council sites, records, computer systems, and access to NIRC staff during onsite visits. Arrangements for conducting the audit and accessing information may also be set out in the contract. A reference list is included at **Attachment B**.

**3. Scope of Audit**

The provider is to consider and advise on the matters set out below in its report.

**a. Council Governance and Operations**

- Areas where the Council is encountering challenges administering continued laws, such as planning laws, and the priority areas for reform.
- Council's policies and procedures, in particular the extent to which they align with the requirements of the applied NSW local government framework
- The optimal efficient staffing structure to meet Council's business delivery requirements.
- Council reporting arrangements, including the optimal arrangements for:

- meeting the requirements of the applied local government framework;
- reporting against performance indicators set by the Department under the Service Delivery Agreement with the Council;
- ensuring open and transparent reporting to provide better community access to information.
- Suitability of Council IT systems for meeting legislative requirements.
- Effectiveness of communication arrangements between Council and the Department regarding the Service Delivery Agreement and other Department initiatives.
- Record keeping of statutory appointments and arrangements for delegations to staff and statutory office holders.

#### **b. Financial Performance**

- The financial performance of the Council for the following financial years: 2016-17; 2017-18; 2018-19; 2019-20, with consideration of the 2015 – 2016 final Administration Audit.
- Council’s cash position, considering contractual commitments, overruns, legal disputes and Covid-19 impacts.
- The minimum level of working capital the Council should maintain.
- Current asset management plans and identification of any financial gap in the minimum accepted standard of assets (road, water, wastewater, buildings, footpaths, ancillary road assets, stormwater).
- Council’s ledger structure and its effectiveness, including the use of work orders.
- Moving the budgeting process from spreadsheets to a web-based solution.
- Possible improvements to the Civica Local Government System and the use of the following models to optimise the efficiency of the Council’s operations, being the Plant Asset system, the distribution of overheads, Stores system, Online Ordering, Purchase Cards, Operation of external trust accounts held by Council, Payroll System, and Asset Management

#### **c. Financial Sustainability**

- Council’s revenue raising abilities, including the role of user charges and land-based rating systems.
- How revenue raising could be structured to provide a sustainable revenue base, including providing the ability to minimise the effects of catastrophic events.
- The financial position of Council’s government business enterprises, including electricity provision, telecommunications and liquor bond, and optimal ownership, management and service delivery arrangements of these enterprises.
- The current fire service arrangement to the community and airport, including the relative cost to Council.
- Consideration given to the challenge of “State disconnect” for matters like, not being able to access the Small Grants, and other economic stimulus opportunities that existed in recent months during the pandemic

### **4. Deliverables and Proposed Timeline**

The provider will produce a draft report and a final report. The draft report will be available to NIRC and DITRDC for comment, with comments to be taken into account in producing a final report.

The report/s will include the findings on the matters outlined in the Scope of audit, and where appropriate recommendations. The report should also identify particular areas or matters that would benefit from further work or analysis.

The following indicative timeline is proposed:

- Terms of Reference agreed by Council – by 4 July 2020
- Consultant/s engaged – by 11 July 2020
- Consultant/s commence – No later than 20 July.



- Draft report due – No later than 11 September
- Final Report due – No later than 21 September
- Council consider report recommendations (Extraordinary meeting) – 30 September

**Attachment A**

**MAYORAL MINUTE FOR 24 JUNE 2020  
INDEPENDENT GOVERNANCE AND FINANCIAL AUDIT OF NIRC OPERATIONS**

**BACKGROUND**

Council for some months now has been addressing financial challenges in developing the 2020/21 Operational Plan primarily resulting from decisions by previous management and which have been further magnified by the effects of the COVID-19 pandemic. Whilst the Council is still receiving community submissions on the Operational Plan, recently highlighted financial exigencies now require Council to take decisive action to ensure Council is able to continue to deliver services; and to adopt a “reduced business as usual” plan on 30 June. Whilst this will allow Council to continue in a reduced capacity during these times of austerity, I believe it is imperative that this elected Council provide a newly elected Council with a list of recommendations to allow them to start their term on the best possible footing.

**To recap. This, the first Norfolk Island Regional Council, has had to address many challenges throughout its term, and in particular the following challenges in the past 6 months:**

- Council has been provided poor information in many of their decision making processes by previous management.
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Unless substantial change is achieved in our operational program, and the Islands economy recovers sufficiently, NIRC’s future remains uncertain.

Councillors and I as Mayor believe it is now time to act, and to provide an incoming Council with a clear pathway to success, allowing them an opportunity to either drive change or accept what we have.

With that in mind, I now propose the following:

THAT –

- i. Council instructs the General Manager as a matter of priority to bring to Council for its endorsement terms of reference for the engagement of an appropriate consultant to conduct a full independent governance and financial audit of NIRC operations; and that the General Manager request the Commonwealth Government to meet the audit cost.
- ii. The terms of reference include legislative, regulatory and policy framework amendments to improve the operation of NIRC, with an underlying principle of reduction of service delivery cost and red tape.
- iii. In calling for this review/audit, Council acknowledges that these actions have been taken to ensure a stronger future for the Island through sustainable revenue sources, expenditure management and a pathway towards less reliance on Commonwealth funding.
- iv. Council lead the communication locally as this must be an Island driven initiative.

Notwithstanding Council resolution 2020/56 of 20 May 2020 Council now requests the election be delayed by two months or to a later date if deemed necessary by the Commonwealth to allow for the review/audit to be undertaken and a report received and adopted by the existing Council to allow the newly elected Council to enter their term unburdened by this process

## **Reference Material**

- NIRC Operational Plan 2020/21
- NIRC Strategic Community Plan and other NIRC plans
- NIRC Policies and Procedures
- Australian National Audit Office report 2018
- Submission from Mayor of NIRC to ANAO report 2018 – Ms Robin Adams
- IT Report on Network – February 2020
- Balmoral Report into Wastewater improvements
- 2019 CGC and KPMG reports and others on the department's website: <https://www.regional.gov.au/territories/publications/index.aspx>.
- Norfolk Island Advisory Council 2015/16  
<https://webarchive.nla.gov.au/awa/20160629170839/http://pandora.nla.gov.au/pan/156846/20160630-0255/www.norfolkislandadvisorycouncil.nf/2016/06/20/niac-final-report/index.html>