



NORFOLK ISLAND PLAN 2002

PERIODIC REVIEW 2021

DISCUSSION PAPER FOR COMMUNITY CONSULTATION



July 2021

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INTRODUCTION

BACKGROUND

The *Planning Act 2002* (NI) (the Act) provides that there will be a Norfolk Island Plan (section 7) and for the review of the Plan to be initiated every five years (section 17(2)). Following the previous periodic review, the current Norfolk Island Plan 2002 (as amended) commenced 12 March 2010. Since then, 12 variations have been made: 8 to allow specified development at specific sites; and 4 rezonings.

The prescribed five-year period for the initiation of a Plan review came up on 10 March 2015. The periodic Plan review was put on hold during the establishment of the Norfolk Island Regional Council and the associated transition of procedures and responsibilities and legislative changes.

Amendments were made to the *Planning Act 2002* (NI) and related legislation in October 2018 including the transition of functions formerly performed by the Norfolk Island Planning and Environment Board (NIPE) to the Norfolk Island Regional Council (NIRC). Council resolved in February 2019 to take action to commence the review of the Plan.

On 26 July 2021, the Administrator, as the Minister's delegate, agreed to commence the Plan Review under section 17(3) of the Act and determined the manner for the conduct of the Review under section 17(4) of the Act. The 'Manner for the conduct of the NI Plan Review' will guide the NI Plan Review and is attached.

AIM OF THIS DISCUSSION PAPER

The aim of this Discussion Paper is to identify the general scope for the NI Plan Review and to facilitate discussion and public comment on the effectiveness of the Plan as required under section 17(3) of the Act.

It is planned that the current review will focus on 'housekeeping matters' with the expectation that a major review of the NI Plan would take place following the outcome of the current Public Inquiry into the Norfolk Island Regional Council and relevant studies currently progressing including the Environmental Assessment, the Population Strategy and the CSIRO Water Resource Assessment. It is anticipated these studies will inform and guide a broad overhaul of Norfolk Island land use planning strategies that would be reflected and implemented through a new statutory land use plan for Norfolk Island.

While awaiting the outcomes of the Public Inquiry and conclusions of those studies, it is necessary to proceed with the 'periodic review' of the NI Plan as a 'housekeeping' review; because the review is more than five years overdue and there are various matters that are recommended for update and review to make the current NI Plan more workable and effective in the meantime and to reflect current community aspirations and priorities.

GENERAL SCOPE OF THE REVIEW

The range of issues proposed for consideration during the review of the Plan include -

- Changes and updates to reflect the October 2018 amendments to the *Planning Act 2002* (NI) and subsequent repeal of the *Norfolk Island Planning and Environment Board Act 2002*

- Recognise Norfolk Island Regional Council's role in implementing the NI Plan
- Changes resulting from the introduction of Development Control Plans for Kingston and Arthur's Vale Historic Area; and the current review of existing Development Control Plans such as for Water Resources
- Update various definitions and procedures; and
- Correct drafting errors and general housekeeping matters.

WHO CAN MAKE A SUBMISSION

Any person is entitled to make a submission to comment on the effectiveness of the current Plan in promoting the objectives of the *Planning Act 2002 (NI)*.

PERIOD FOR PUBLIC COMMENT & CLOSING DATE FOR SUBMISSIONS

Public comments must be received by Monday 30 August 2021. The current Norfolk Island Plan and supporting maps and development control plans can be viewed at 'Planning and Development - Planning Instruments' at Council's website <http://www.norfolkisland.gov.nf/planning-and-development-planning-instruments>. Hard copies of the current Norfolk Island Plan and maps are available at Customer Care and the Planning and Building Office at Kingston.

SUBMISSION REQUIREMENTS

Submissions must be made in writing (email is acceptable) and delivered to the Council by

1. Email to planning@nirc.gov.nf; or
2. Post to the General Manager, PO Box 95 Norfolk Island 2899; or
3. Hand delivery to Customer Care.

All submissions must reference as the subject 'Submission – 2021 Review of the Norfolk Island Plan 2002'. Submissions must clearly indicate the names, postal address or e-mail of person(s) making the submission.

If you have any questions in the first instance please email your query to planning@nirc.gov.nf or phone 23595.

REVIEW OF DEFINITIONS

PURPOSE DEFINITIONS

It is necessary to review various definitions for activities listed in Cl. 117 - The purpose definitions. The purpose definitions enable the categorisation of use and development of land and facilitate identification of suitable land use and development for each zone. Some definitions need to be updated to reflect contemporary society and practices and some require corrections as a result of previous reviews. Some examples are as follows.

‘Earthworks’ and ‘Filling’

- ‘Filling’ is referred to as a distinct use or development in the *Planning Regulation 2004* (NI) but is not identified or defined in Cl. 117 – The purpose definitions. Provisions of the Plan that refer to ‘filling’ are therefore ambiguous.

‘Residence – Accommodation Unit’

- Review the need for differentiation between *Residence –Accommodation Unit – Low Density* and *Residence – Accommodation Unit – Medium Density*.
- Update the definition to reflect modern ‘short term accommodation’ options such as single residence ‘holiday homes’ and /or ‘Air BnB’ accommodation; and ‘cabin’ and ‘backpacker’ accommodation options.

Distinction between commercial activities in Business and Mixed Use Zone

- Review definitions of *Shop* and *Business Premises*.
- Consider extent of difference between a *Shop* and *Business Premises* as defined in Cl. 117 of the NI Plan; particularly in the Business and Mixed Use Zone. Based on the current definitions, to change the use of premises from retail only to premises with an ‘office’ set up selling products (e.g. financial products, real estate; IT, tours); requires development approval for change of use.
- Often there is little difference between retail and business services; consider whether it is necessary for different definitions. Consider modernizing the commercial activity definitions to reflect contemporary business models and provide flexibility in the central business area.

‘Tourist Facility’

- Clarify distinction between definitions for ‘*Tourist Facility*’, ‘*Home occupation*’ or ‘*Home industry*’. Some grey areas have been identified that potentially result in incompatible land use activities for residence based tourist attractions and facilities.

‘Educational Establishment’

- The definition is quite broad and includes galleries, museums, training and tuition / classes for groups; potentially limits and restricts small business; small scale training and classes; where ‘*Educational Establishment*’ is a prohibited use in a zone.
-

- Review definition to update and reflect contemporary tuition models, provide more flexible provision for galleries and the like. Consider separate definition to address small scale tuition and training facilities.

‘Home Occupation’ and ‘Home Industry’

- Review to avoid misinterpretation mistaken application of the use; for example clarify that potentially hazardous or offensive industries and activities are not included in the definition.

‘Public Building’

- Definition needs to be updated; does not address diversity of professional, business or commercial government / public community activities; e.g. ‘government’ information services and facilities such as government funded family and community services with professional consulting services; home & aged care services offices / premises.

Other definitions for consideration

- New industries and activities have shown gaps in the range of definitions in Cl. 117; e.g. there is no definition available in the current NI Plan to accurately address ‘pub’; ‘boutique bar’; ‘entertainment facility’ (not specifically for tourists), temporary ‘pop up shop’; ‘community centre’, ‘community facility’.
- Consider the need for introduction of new and additional ‘purpose definitions’ where gaps have been identified, for example –

‘Community Facility

means a building or place:

- a) owned or controlled by a public authority or non-profit community organisation, and*
- b) used for the physical, social, cultural or intellectual development or welfare of the community,*

but does not include an educational establishment, hospital, retail premises, place of public worship or residential accommodation.’

(Source: NSW Standard LEP Instrument)

‘Pub’; ‘Bar’

These activities / uses could be added to the existing definition of ‘Food Premises’ in Cl. 117; for example

‘FOOD PREMISE *means the Use or Development of Land for the preparation and/or sale of food and drink to the public. The term includes but is not limited to the activities listed in the Table of Food Premises. The term does not include a Resort or Shop.*

TABLE OF FOOD PREMISES

- *Café*
- *Fast Food Shop*
- *Kiosk*
- *Mobile Kiosks*
- *Milk Bar*
- *Restaurant*
- *Snack Bar*
- *Take Away Food Shop*
- *Tea Gardens*
- *Tea Rooms*
- **Pub**
- **Small bar**

(Source: NSW Standard LEP Instrument)

‘Entertainment facility

means a theatre, cinema, music hall, concert hall, dance hall and the like, but does not include a Pub or registered club.

(Source: NSW Standard LEP Instrument)

ADMINISTRATIVE DEFINITIONS

There is a need to review various administrative definitions described in Cl. 114 - The Administrative Definitions and consider the introduction of new definitions. Some examples are as follows.

‘Top of Cliff’

- *Top of Cliff* is defined by the line shown on the Official Plan. Concern expressed by previous surveyor that the definition allows buildings to be constructed in positions that potentially destroy the visual beauty of the coastline and a suggestion made that the definition of ‘*Top of Cliff*’ should be reviewed to ensure that the ‘cliff tops’ remain free of buildings.

‘Building Height’

- Review to clarify how it is measures and avoid ambiguity, for example to clarify reference to ‘existing ground level’ and ‘highest point on a building’.

Examples of potential new definitions

‘Temporary use of land’

- Suggested to provide for the temporary use of land if the use does not compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land.
- Temporary period would be specified and conditions specified to manage the temporary use might include, for example,

- the temporary use will not prejudice the subsequent carrying out of development on the land
- the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood
- the temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land
- at the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.

(Source: NSW Standard LEP Instrument)

‘Mobile structures

- Suggest there is need to define and address ‘temporary structures’ and ‘mobile structures’ – caravans, mobile food stalls and the like; shipping containers etc.

General terminology applied throughout the Plan

- Update to reflect legislative and administrative changes, e.g. change references to ‘executive member’ to ‘Minister’; ‘Administration’ to ‘Norfolk Island Regional Council’; delete references to ‘Norfolk Island Planning and Environment Board’ and recognise Norfolk Island Regional Council’s role in implementation of the NI Plan.

PART B2 - OVERLAYS

COASTAL ENVIRONMENT OVERLAY AND BUFFER

Cl. 49(d) – Coastal Overlay Provisions

- Editorial correction -reference to ‘Coastal Environment Provisions “*apply in accordance with Cl 9A*” – need to be deleted and reworded – Cl. 9A no longer exists; update to reflect the current clause and intent.
- Review controls over activities, use and development that is permitted in the 0-50m setback and then 50-100m setback and the categorisation of such activities; also in conjunction with the review of the definition for ‘*Top of Cliff*’.

HERITAGE OVERLAY

Cl.73-77

- It is necessary to review the provisions of the Heritage Overlay, for example to consider –
 - consistency of terminology with, for example, ‘KAVHA Heritage Management Plan’ (HMP) and KAVHA DCP No. 7
 - Clarify application of provisions that exempt certain activities in the Heritage Overlay from the need for development approval; current provisions are not clearly explained and open to misinterpretation
 - Consistency with other legislation (e.g. *Heritage Act 2002 (NI)*) and instruments
 - Reword to reflect current KAVHA arrangements and structure; and current HMP and DCP

- Reintroduction of heritage and conservation incentive clauses.

Cl. 100 - Work that may only be carried out with granting of development approval

- Review this clause to consider adding any development at land covered by the Coastal Environment Overlay and Heritage Overlay to make clear that the Overlay provisions override any other planning controls and all use and development that is not prohibited is permissible with consent.

PART B1 ZONING SCHEME

GENERAL REVIEW OF TABLES OF USE OR DEVELOPMENT FOR EACH ZONE.

- Generally, for each Zone: review the Table of Use and Development for currency and relevance; giving consideration to the need for plan amendments over recent years to accommodate specific use and development.

RESIDENTIAL CLASS OF USE OR DEVELOPMENT IN BUSINESS ZONE

- Currently all forms of residential class use or development is prohibited in Business Zone.
- There is increasing demand for residential use in the Business Zone.
- There is residential use in the zone already (existing / historical use rights).
- Consider allowing residential use such as shop top / rear housing, terraces, apartments, town houses.

SPECIAL USE ZONE – REFERENCE TO PARTICULAR SPECIAL USE ON THE ZONING MAP

- Review need to refer to a specific type of ‘Special Use’ in the Zoning Map – e.g. ‘Special Use – Hospital’ – wording appears to limit use of that public land to that purpose; possibly restrictive; e. g. DCA Circle – the land is specifically zoned for ‘Special Use – Residence’; However Table of Use and Development specifies the specific use shown on the Zoning Map as an option. The specific reference to a particular use on the Zoning Map is inconsistent with Table of Use and Development and seems redundant/ unnecessary.

AIRPORT ZONE

- Permitted uses and developments – could be broadened to make better use of land near the Airport Terminal for private sector airport activities; e.g. allow commercial activities; currently *Business Premises* and *Shop* are prohibited activities in the Airport Zone.
- Review in light of the Airport Masterplan.
- Airport Zone applies to all land in in Pn 183; (118 ha.s) with the exception of an area at DCA Circle zoned Special Use – (Residences). Land in the Zone is used for a range of activities and purposes and not only for ‘airport’ related activities. Consider further splitting the zone to reflect other activities at Pn 183 and better enable flexible use of that land; for example, for private commercial activities and industry; Council and government

activities (Waste Management Centre, Roads Depot, Bureau of Meteorology). Review concurrently with Airport DCP 5.

REDUCE ZONES

Combine Business Zone with Mixed Use Zone

- Consider combining the Business and Mixed Use Zones. The distinction of a Business Zone in a small central area with a limited range of permitted activities may now be superfluous and restrictive. Combining the two zones so that all use and development allowed in the Mixed Use Zone would also be allowed in the small central area currently zoned Business would provide greater flexibility and opportunity for improved land use and management. The extension of the Mixed Use Zone to cover the area currently zoned Business would also facilitate residential use and development and contribute towards meeting demand for housing.
- Over recent years retail has diminished in the Business Zone area and a number of premises formerly used for shops are now used for office type activities or vacant. Greater flexibility in use may assist in overcoming vacant premises issue as there would be more scope for use than currently allowed under the Business Zoning.

Review need for Light Industry Zone and possibly combine with Mixed Use Zone

- The Light Industry Zone currently applies to a relatively small area of land between Burnt Pine and the Airport Terminal. The area is characterised as mixed use. It is suggested that the need for a specific Light Industry Zone be reviewed as the current zoning is restrictive and does not reflect the significant level of residential class use in that Zone which is a prohibited use or development in the Zone. Extension of the Mixed Use Zone to include the area currently zoned Light Industry would provide greater flexibility and opportunity for improved land use and management and more accurately reflect current land use and demand for residential use near the central business area.

EXEMPT USE AND DEVELOPMENT

Activities that are exempt from requiring the grant of development approval

Review the list of activities in Cl. 101 Activities that are exempt from requiring the grant of development approval; including the thresholds for exemption; some examples are as follows:

- Cl. 101(s) - Clarify what is meant by '*temporary sporting cultural or social event*' - what is considered 'temporary'; this may be clarified with the introduction of a specific administrative definition of 'temporary use of land'.
- Cl. 101(p) – Review building height thresholds – e.g. under current provisions a 5.5 m high shade house does not require development approval, but other buildings with a height greater than 3.5 m require development approval.
- Consider the need for clarification of meaning and reference to '*farm buildings*', '*shade house*'; '*agricultural buildings / sheds*' to ensure the intent of the exemptions are correctly applied.
- Review and check consistency with exemptions from building approval listed in Schedule 1 of the *Building Regulations 2004 (NI)*
- Review with reference to NSW State Policy for 'Exempt & Complying Development' with a view to applying similar provisions as relevant.

- Consider possibility of a separate development control plan for ‘activities that are exempt from the need for development approval’ to replace Cl. 101 Activities that are exempt from requiring the grant of development approval; in the NI Plan.

VARIATION OF DEVELOPMENT STANDARDS

- The NI Plan currently allows for variation of some development standards with justification, as specified in the ‘Development Standards’ for each relevant zone. Where no variation provisions are available, it is necessary to apply to vary the NI Plan to accommodate a specific use or development.
- It is suggested that the system to vary development standards be reviewed and clarified with consideration for consistent criteria to assess applications to vary standards; similar to the single mechanism provided in Clause 4.6 of the NSW Standard Instrument LEP Exceptions to development standards.

30 July 2021

ATTACHMENT - MANNER FOR THE CONDUCT OF THE NORFOLK ISLAND PLAN REVIEW.

STAGE 1 - INITIAL COMMUNITY CONSULTATION

1. **Seek the Minister's agreement to initiate the Plan Review (section 17(3))**
2. **Seek the Minister's determination to the manner in which the periodic review is conducted (section 17(4) of the Act).**
3. **Preparation of a Discussion / Scoping Paper, to consider:**
 - a. Matters in the Plan that have been identified as needing review, such as the roles of the Norfolk Island Regional Council, updated definitions and procedures, correcting drafting errors.
 - b. The effectiveness of the Plan in promoting the objects of the Act under Section 3 of the Act.

The Scoping / Discussion Paper would be available to all stakeholders to assess the proposed scope of the Plan Review and facilitate the preliminary invitation for public comment on the effectiveness of the Plan, required under Section 17(3) of the Act.

4. **Invitation for public comment on the effectiveness of the Plan.**
 - a. The Plan Review is formally initiated through a notice published in the Gazette by the Minister to invite public comment on the effectiveness of the Plan in promoting the objects of the *Planning Act 2002* under Section 3.
 - b. Allow a period of four (4) weeks for comments to be made.
 - c. The overall aim of this initial step is to consider changes that may need to be made to the Plan and gain an indication of the scope of the review; which would assist in drafting proposed amendments to the Plan.

STAGE 2 – PREPARE DRAFT PLAN AMENDMENTS

5. **Review of Initial Comments, Report and Prepare Draft Amendments**
 - a. Review submissions, comments received.
 - b. Identify the key issues that the broader community considers need to be revised to enable the objects of the Act to be achieved.
 - c. Report to Council on the scope and nature of comments received; develop responses to issues raised; and recommended amendments to the Plan. Although this is not a statutory requirement under the Act, it is appropriate to seek the Council's comments on draft amendments to the Plan prior to the submission of recommended amendments to the Minister, given the Council is representative of the community.

6. Seek the Minister's agreement to public consultation on the Draft Plan Amendments.

- a. Refer the Report to Council, the Draft Plan Amendments and comments and recommendations from the Council to the Minister; with recommendations to enable the Draft Plan Amendments to proceed to public consultation, in accordance with Section 9(1) of the Act.

STAGE 3 – COMMUNITY CONSULTATION ON THE DRAFT PLAN AMENDMENTS

7. Public exhibition and invitation for public submissions of Draft Plan Amendments

- a. The Minister invites public submissions on the draft Plan Amendments, through notice published in the Gazette, in accordance with Section 11(1) of the Act.
- b. The community is invited to consider specific proposed changes to the Plan and also has an opportunity to raise matters not yet included in the proposed amendments.
- c. The Minister can take any other measures, in addition to public exhibition of proposed amendments, to ascertain public opinion about the draft plan and to respond to those opinions (Section 11(3) of the Act).
- d. Details on other measures the Minister may wish to take to ascertain public opinion on the draft Plan may be developed at a later stage, depending on the response to the initial invitation for comment and the extent of the proposed amendments.

STAGE 4 – PREPARE AND FINALISE AMENDED NORFOLK ISLAND PLAN

8. Review of public submissions and consideration of possible alterations to the Draft Plan Amendments.

- a. Review public submissions and comments received.
- b. Consider the need for alterations to the Draft Plan Amendments as exhibited; to take into account community / stakeholder views and opinions expressed in response to the invitation for public comments on the Draft Plan Amendments.
- c. Prepare a Report on Public Consultation with recommendations in response to key issues raised and whether any changes should be made to the Draft Plan Amendments as exhibited.
- d. Prepare a final Draft Plan to be recommended as the Amended Norfolk Island Plan 2002.

9. Refer the Report on Public Consultation and final draft Plan to be recommended as the Amended Norfolk Island Plan 2002 to the Norfolk Island Regional Council.

- a. Although this is not a statutory requirement under the Act, it is appropriate to seek the Council's comments and recommendations on the recommended Amended Norfolk Island Plan 2002 prior to the submission of the recommended amendments to the Minister, given the Council is representative of the community.
- b. The Council may make recommendations on the final draft Plan, before the draft Amended Norfolk Island Plan 2002 is referred to the Minister with recommendations to approve the Amended Norfolk Island Plan 2002.

10. Seek Ministerial approval to the final draft amendments to the Norfolk Island Plan

- a. The Report on Public Consultation, the recommended draft Amended Norfolk Island Plan 2002; and recommendations from the Council are submitted to the Minister, with

the recommendation to approve the amendments to the Norfolk Island Plan (Section 12 of the Act).

11. Enable commencement of the approved Amended Norfolk Island Plan 2002.

- a. The Minister's decision on the Amended Norfolk Island Plan 2002 is published in the Gazette; and if approved, the approved Amended Plan becomes the Norfolk Island Plan in place of the previous Norfolk Island Plan. (Sections 12 and 13 of the Act).

Determined 26 July 2021