



Public Inquiry into the Norfolk Island Regional Council

General Practice Direction

General

1. This practice direction relates to the conduct of the Public Inquiry into the Norfolk Island Regional Council (**Inquiry**). It should be read in conjunction with the *Local Government Act 1993* (NSW) (NI) (**Act**) and the Terms of Reference. It varies the General Practice Direction dated 3 May 2021 by amending paragraphs 4 and 5. It replaces the General Practice Direction dated 3 May 2021.
2. This practice direction is intended to provide guidance as to the procedures the Commissioner intends to adopt in the ordinary course of the Inquiry. Where the Commissioner thinks it is appropriate to do so, the procedures outlined below may be dispensed with or varied.
3. In this practice direction:

Inquiry Email Address means NIRCpublicinquiry@infrastructure.gov.au

Inquiry Postal Address means GPO Box 594 CANBERRA ACT 2601

Inquiry Website means https://www.regional.gov.au/territories/norfolk_island/public-inquiry-nirc/

Venue and sitting times of the Public Hearings:

4. The Inquiry will hold public hearings on Norfolk Island in the week commencing Monday 31 May 2021. The hearings will be held at South Pacific Resort Hotel, Taylors Road, Burnt Pine Norfolk Island 2899. The Inquiry will also hold hearings in Sydney. It is anticipated that those hearings will be held the week commencing 7 June 2021. Further details of the Sydney hearings will be made available on the Inquiry website. Should it be necessary to hold any additional hearings, after the hearings in Sydney, details of those hearings will also be made available on the Inquiry website.
5. The usual hours for the hearings on Norfolk Island will be from 9am to 1pm (with a 20 minute break between 11:30am and 11:50am), and from 2pm to 5pm. However, on Friday 4 June 2021, the Inquiry will sit for half a day (between 9am and 11:30am). On any hearing day, the Commissioner may extend the sitting hours beyond the scheduled end time at her discretion.

Duration of the hearings:

6. The hearings will commence on Monday 31 May 2021 and continue until Friday 4 June 2021.

Legal representation and authorisation to appear:

Application for legal practitioner to represent a witness while giving evidence

7. Where a legal practitioner seeks authorisation to appear before the Inquiry for the limited purpose of representing an individual while that individual is giving evidence at the hearings, an application is to be made orally immediately prior to the individual being called to give evidence and will be then determined by the Commissioner.

Applications for authorisation to appear in all other cases

8. Paragraphs 9 to 14 apply in any case other than that described in paragraph 7 above.
9. Any person, including any legal practitioner, wishing to obtain authorisation to appear at the hearings should apply in writing to the Inquiry in the form of the application annexed to this practice direction.

Any such application should be sent by email to the Inquiry Email Address or by post to the Inquiry Postal Address in sufficient time so that it is received by close of business Friday 14 May 2021.

10. The Commissioner will make a ruling on the application and notify the applicant of her decision.
11. The hearings are unlikely to be delayed for the purpose of considering and determining an application for authorisation which is not the subject of a written application provided in accordance with paragraph 9.
12. However, nothing in this practice direction prevents a person from seeking authorisation to appear at any time before or during the hearings if something occurs which leads the person to believe that the person's interests may be materially affected. Such an application should address the matters identified in the form of the application annexed to this practice direction and will be determined at a time considered appropriate by the Commissioner.
13. Unless the Commissioner otherwise determines, any authorisation to appear granted by the Commissioner is on the following conditions:
 - (a) Authorisation may be withdrawn by the Commissioner or made subject to altered or additional limitations or conditions at any time.
 - (b) The nature and extent of the participation of the authorised person in the hearings is subject to the Commissioner's control from time to time.
 - (c) The authorised person has no automatic right to examine any witness. Amongst other things, the Commissioner may, depending on the circumstance at the relevant time, direct that there should be no examination of a particular witness by the authorised person, or that any examination shall be limited as a topic, time or otherwise.
 - (d) The authorised person is expected to follow the practice and other directions of, and rulings from, the Commissioner, and not to disrupt proceedings.
 - (e) The authorised person is expected to ensure that the topic of proceedings is limited and focused on the Inquiry related topics outlined within the Terms of Reference.
14. The Commissioner will determine the nature and extent of any other conditions attaching to any grant of authorisation taking into account all relevant considerations.

Prior notification required to be given of certain matters:

15. Any person, including any legal practitioner, authorised by the Commissioner to appear at the hearings and any legal practitioner to whom paragraph 7 applies (**Authorised Person**), who proposes that any person be called as a witness (whether to give evidence in rebuttal of the evidence of another witness, or otherwise), must make a written application to the Inquiry, identifying the person by name, providing short reasons why the person should be called to give evidence and attaching a copy of a statement, signed by that person, setting out the evidence that person would give to the Inquiry. The Commissioner will make a ruling on the application and notify the applicant of her decision at a time she considers appropriate.
16. Each Authorised Person should give the Inquiry written notice of the following matters as soon as possible:
 - (a) If the Authorised Person proposes that Counsel Assisting call any person as a witness to give evidence at the hearings: a copy of a statement, signed by that person, whose name must also be clearly printed, setting out the evidence that person would give if called to give evidence;

- (b) Any issues of law which the Authorised Person proposes to raise accompanied by a short outline of submissions; and
 - (c) Any procedural matter the Authorised Person proposes to raise (including, by way of example only, any objections to evidence, confidentiality issues, non-publication concerns and administrative arrangements) accompanied by a short outline of submissions.
17. Written notice provided under paragraph 16 should clearly state the identity of the Authorised Person and should be sent by email to the Inquiry Email Address or by post to the Inquiry Postal Address so that it is received by no later than 19 May 2021.

Conduct of the Hearings – Witnesses:

- 18. Subject to the control of the Commissioner, Counsel Assisting will determine which witnesses are called at the hearings and the order in which they are called and examined. It may on some occasions be necessary to call some witnesses to give evidence on more than one occasion.
- 19. Prior to the commencement of the hearings, the Inquiry will publish on the Inquiry Website a list of witnesses who are to give evidence.
- 20. Reasonable endeavours will be made to indicate the likely order that witnesses will be called, but circumstances may lead to witnesses being called in a different order than listed on the Inquiry Website.
- 21. Any person granted leave to give evidence, or who has been summoned to give evidence at any hearing, may in addition seek leave to provide a witness statement to the Inquiry relevant to the Terms of Reference. Witnesses are encouraged to prepare statements in advance of the particular matters that they wish to be covered in their evidence at the Inquiry. All such statements are to be lodged with the Inquiry at least 7 days prior to the date upon which the witness is due to give evidence. Where a witness has provided a written statement, a copy of that statement will be made available to any person the Commissioner or Counsel Assisting considers may be substantially and directly interested or affected by the evidence prior to that witness being called at the hearing, and will be placed on the Inquiry website.
- 22. All witnesses will be called to give evidence by Counsel Assisting, and then examined by Counsel Assisting. If leave is granted by the Commissioner, the witness may then be examined by or on behalf of any person considered by the Commissioner to have a sufficient interest to do so. If leave is granted by the Commissioner, the witness may then be examined by his or her own legal representative. If leave is granted, Counsel Assisting may then re-examine the witness. Counsel Assisting should be given as much notice as possible in the event that a person proposes to seek leave to question a witness.
- 23. If a witness seeks to respond to evidence by way of reply they should, in the first instance, proceed by way of a witness statement setting out the matters that the witness wishes to raise.
- 24. Given the limited number of hearing days, any person who is granted leave to examine a witness will be expected to proceed with that examination without delay after the witness has first been examined by Counsel Assisting. There should be no expectation that there will be any adjournment after the witness has been examined before further examination by other persons takes place.
- 25. The Commissioner may impose time limits on the length of any examination and may limit the topics upon which a witness may be examined. The Commissioner will not allow a witness to be examined multiple times on the same topic unless good reason for doing so can be demonstrated.

Conduct of the Hearings – documents:

- 26. Subject to the control of the Commissioner, Counsel Assisting will determine which documents are tendered, and the time at which they will be tendered.
- 27. Prior to the commencement of the hearings, or prior to any particular witness being examined, the Inquiry may provide to persons that may be directly interested or affected by the subject matter of the

Inquiry with copies of certain documents that will be or are likely to be tendered as exhibits in the hearings.

28. Any person wishing to tender a document must notify the Inquiry by providing a copy of the document prior to the commencement of the hearings. Subject to the control of the Commissioner, Counsel Assisting will decide whether or not to tender the document. An application may be made directly to the Commissioner to tender a particular document if the above procedure has been complied with.

Production of documents

29. The following relates to the production of documents to the Inquiry in answer to a Summons or otherwise. A person's obligations in relation to the production of documents in response to an exercise of the Inquiry's powers under the Act are governed by the Act and the general law, and nothing in the practice direction modifies those obligations.
30. The Inquiry requires documents be produced electronically, unless it specifies that hard copy documents are to be produced. Any person seeking to produce documents in hard copy format should communicate in advance with the Inquiry.
31. In circumstances where persons are producing only a small number of electronic documents or do not propose to use a document management database, all electronic documents should be produced electronically in their original format. That is, in the file format in which they exist on the system or systems of the person producing the documents. For example, Microsoft Outlook emails are to be produced as .msg files and Microsoft Word documents are to be produced as .doc or .docx files.
32. Where an electronic copy does not already exist, hard copy material should be scanned and rendered directly to Portable Document Format (PDF). Such renderings should be machine-readable and word-searchable.
33. Persons producing electronic documents must ensure they produce all parts of the document. For example, where the electronic file is an email chain, all parts of that chain should be produced, and where the electronic file is an email with an attachment, both the email and its attachment should be produced.
34. Persons required to produce electronic documents should not convert the original electronic documents to paper for the purposes of production. Persons required to produce hard copy documents should produce a copy of the original hard copy document, unless specifically required to produce the original document.

Confidentiality

35. Where a person wishes to claim confidentiality in respect of any information or documents provided to the Inquiry, and wishes to apply for a direction to be made in that regard, the following procedure applies.
36. The person should clearly denote the pages, or the part of the page, containing information or documents over which confidentiality is claimed in the following manner:
 - (a) where confidentiality is claimed over an entire document, the document should be marked clearly with the word 'Confidential' on the first page of the document and all following pages;
 - (b) where confidentiality is claimed over particular pages in a document, those pages should be marked clearly with the word 'Confidential'; and
 - (c) where confidentiality is claimed over part of a page or particular words or phrases in a document, the relevant parts of the page or words or phrases in the document should be identified to the Inquiry.
37. The person should provide an accompanying note stating with particularity:

- (a) the basis for the claim of confidentiality and the direction sought; and
- (b) to whom confidentiality is said to be owed.

38. The Commissioner will:

- (a) maintain confidentiality over the subject matter of the application pending the determination of the application;
- (b) decide the application on the papers or notify the person or their representative if a hearing is required prior to such a decision being made; and
- (c) notify the person or their representative in writing of the decision.

Publication of Transcript

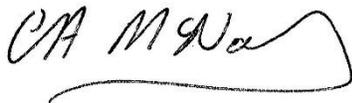
39. A transcript of each day's proceedings will be available from the Inquiry Website. The Inquiry will endeavour to upload the transcript of each day's proceedings by the following day.

Submissions

40. At the conclusion of the evidence, orders will be made for the making of written submissions. Counsel Assisting will make submissions first. An opportunity will then be given to any person whom the Commissioner considers is directly interested or potentially materially affected by those submissions to make their own submissions in writing.

41. Limits will be placed on the length of any written submissions.

Dated: 14 May 2021

A handwritten signature in black ink, appearing to read 'CA McNally', with a long horizontal flourish underneath.

Ms Carolyn McNally
Commissioner

Norfolk Island Regional Council Public Inquiry
Application for authorisation to appear

<u>Part 1 – Name and contact details</u>	
Name:	<i>[Name of the person seeking authorisation to appear, or the name of the person who proposes to be represented by a legal practitioner (as the case may be)].</i>
Address:	
Contact person:	
Telephone:	
Fax:	
Email:	
<u>Part 2 – Name and contact details of legal practitioner</u>	
Details of counsel (if applicable):	
Name:	
Address:	
Telephone:	
Fax:	
Email:	
Details of solicitor(s):	
Name:	
Address:	
Contact person:	
Telephone:	
Fax:	
Email:	
<u>Part 3 – Terms of Reference</u>	

<p>Which particular term or Terms of Reference does the person in question claim to have an interest?</p>
<p><u>Part 4 – Nature and extent of interest</u></p>
<p>In respect of each Term of Reference identified in answer to Part 3, what is the nature and extent of the person’s asserted interest in that matter?</p>
<p><u>Part 5 – Assistance to the Inquiry</u></p>
<p>a) Will the person appearing, or to be represented, be in a better position to assist the Inquiry if authorisation to appear is granted? If so, how?</p>
<p>b) Please specify precisely the nature and extent of any assistance that will be provided to the Inquiry if authorisation is granted.</p>
<p><u>Part 6 – Conflicts</u></p>
<p>In the case of an application for authorisation for a legal practitioner to appear, does the practitioner (and in the case of Counsel, his or her instructing solicitors) act for any other person in relation to the Inquiry and the matters it is inquiring into? If so, what information can be provided to the Inquiry such as to enable the Commissioner to determine whether it is appropriate for authorisation to be granted?</p>
<p><u>Part 7 – Submissions</u></p>
<p>What submissions do you wish to make, and what other matters do you wish to rely upon, in support of the application for authorisation?</p>