



Norfolk Island Planning and Environment Board Act 2002

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NORFOLK ISLAND PLANNING AND ENVIRONMENT BOARD ACT 2002

TABLE OF PROVISIONS

Section

PART 1 — PRELIMINARY

1. Short title
2. Commencement
3. Interpretation

PART 2 — NORFOLK ISLAND PLANNING AND ENVIRONMENT BOARD

Division 1 — Establishment, functions and powers

4. Establishment
5. Functions
6. Constitution of the Board
7. Appointment of members
8. Delegates members
9. Term of appointment
10. Remuneration
11. Resignation
12. Disqualification from office
13. Termination of appointments
14. Attendance at Board meetings etc, by delegate members
15. Secretary of the Board

Division 2 — Procedure

16. Meeting procedure
17. Disclosure of interest
18. Records of Board proceedings
19. Recommendations of the Board
20. Public consultation and representation

PART 3 — MISCELLANEOUS

21. Protecting members from liability
22. Guidelines for Board meetings
23. Regulations



Norfolk Island Planning and Environment Board Act 2002

An Act to provide for the establishment, authorities, functions, powers and duties of the Norfolk Island Planning and Environment Board, and for related purposes.

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Norfolk Island Planning and Environment Board Act 2002*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the Gazette.

(2) The remaining provisions commence on a day, or respective days, fixed by the Administrator by notice in the Gazette.

Interpretation

3. In this Act, unless the contrary intention appears —

“Board” means the Norfolk Island Planning and Environment Board established by section 4 and, in relation to a particular matter, constituted under section 6 for that matter;

“Chairperson” means the member of the Board appointed Chairperson of the Board under subsection 7(2);

“delegate member” means a person appointed under paragraph 7(1)(b);

“development application” means an application for development approval under Part 5 of the *Planning Act 2002*;

“environment” includes all aspects of humankind’s surroundings whether affecting them as individuals or in their social groupings;

“heritage adviser” means a heritage adviser appointed under section 22 of the *Heritage Act 2002*;

“heritage item” has the same meaning as in the *Heritage Act 2002*;

“heritage proposal” means a proposal by the Minister to make the Heritage Register or to vary the Heritage Register under the *Heritage Act 2002*;

“member” means —

(a) a permanent member or specialist member of the Board; or

(b) in the absence of a permanent member of the Board a delegate member representing a member at a meeting of the Board as requested by the Chairperson; or

(c) a delegate member when not representing a member;

“permanent member” means a permanent member of the Board appointed under paragraph 7(1)(a);

“Plan” means the Norfolk Island Plan under the *Planning Act 2002*;

“Secretary” means the Secretary of the Board appointed under section 15;

“specialist member” means a specialist member of the Board appointed

under paragraph 7(1)(c).

PART 2 — NORFOLK ISLAND PLANNING AND ENVIRONMENT BOARD

Division 1 — Establishment, functions and powers

Establishment

4. The Norfolk Island Planning and Environment Board is established by this Act.

Functions

- 5. (1)** The function of the Board is to —
- (a) give advice and make recommendations to the Minister on —
 - (i) matters referred to the Board by the Minister under section 99 of the *Planning Act 2002* or section 32 of the *Heritage Act 2002*; and
 - (ii) the effectiveness or otherwise of the *Planning Act 2002* and other Acts administered by the Minister to achieve the objects of those Acts; and
 - (iii) any other matters within the portfolio of the Minister referred to the Board by the Minister; and
 - (iv) all development applications for permissible (with consent) use or development; and
 - (v) all heritage proposals; and
 - (vi) on any matters referred to the Board by resolution of the Legislative Assembly related to planning and environment of Norfolk Island or any other matter; and
 - (b) to carry out such other functions as the Board is given by this or any other enactment.
- (2)** The Board shall only give advice or a recommendation on a matter pursuant to subparagraph 5(1)(a)(ii) —
- (a) as part of advice or a recommendation given on a matter referred to the Board by the Minister; or
 - (b) if the Minister refers a matter to the Board for such advice or recommendation.
- (3)** Notwithstanding subsection 5(2), the Board may recommend to the Minister matters for referral to the Board.
- (4)** The Board has power to do all things necessary or convenient to be done in relation to the performance of its functions.

(5) The performance of a function or the exercise of a power by the Board is not invalid only because there is a vacancy in the membership of the Board, or a vacancy in the office of Chairperson.

(6) For subparagraph 5(1)(a)(vi) —

“matters referred to the Board by resolution of the Legislative Assembly related to planning and environment of Norfolk Island” include matters concerning —

- (a) conservation of the natural environment, landscape beauty and cultural and built heritage of Norfolk Island;
- (b) whether physical works and other activities are or will be in harmony with the natural environment;
- (c) preservation of the way of life and quality of life of the people of Norfolk Island;
- (d) proposed or possible destruction of, damage to and degradation of the natural environment, landscape beauty and cultural and built heritage of Norfolk Island;
- (e) the likely effect of proposed or possible physical works and other activities on human health or safety;
- (f) management, development and conservation of the natural and man-made resources of Norfolk Island for the social and economic welfare of the community and a better environment; and
- (g) the orderly and economic use and development of land on Norfolk Island and provision of utility and community services and facilities.

Constitution of the Board

6. (1) The Board shall comprise —

- (a) for development applications that are required to be referred to it under the *Planning Act 2002* – the permanent members;
- (b) for heritage matters listed pursuant to section 26 of the *Heritage Act 2002* and referred to it – the permanent members and one heritage adviser nominated by the Chairperson;
- (c) for other matters referred to it under the *Planning Act 2002* – the permanent members and such number of specialist members as the Chairperson nominated; or
- (d) for all other matters – the permanent members and such number of specialist members as the Chairperson nominates.

(2) In making a nomination under subsection 6(1), the Chairperson shall take into account the particular expertise and experience of the specialist member and the interests represented by the specialist member relevant to the matter under consideration by the Board.

Appointment of members

7. (1) The Minister shall, by notice published in the Gazette, appoint —
- (a) 5 permanent members of the Board;
 - (b) 5 delegate members to be available upon request to represent permanent members in accordance with section 9;
 - (c) specialist members of the Board.
- (2) The permanent members of the Board shall recommend to the Minister which one of the permanent members he should appoint as Chairperson of the Board.
- (2A) The Minister may or may not accept the recommendation of the permanent members to appoint a particular permanent member as Chairperson.
- (3) However, a member of the Legislative Assembly cannot be appointed or remain the Chairperson.
- (4) Before making an appointment of members of the Board, the Minister may invite nominations for appointment as members of the Board, by notice published in the Gazette indicating how, where and when the nominations are to be made.
- (5) Failure to comply with subsection 7(4) does not affect the validity of an appointment of a member.
- (6) A heritage adviser, on nomination pursuant to paragraph 6(1)(b) becomes, without further appointment, in relation only to the matters listed pursuant to section 26 of the *Heritage Act 2002* for which the nomination was made, a member of the Board.

Term of appointment

8. A member holds office for 3 years, or for such lesser period as is specified in the instrument of appointment, and is eligible for re-appointment subject to this Division.

Delegate members

9. (1) Each delegate member —
- (a) is entitled to receive notice of meetings of the Board; and
 - (b) may, on a roster basis, be requested by the Chairperson, in the absence of a permanent member, to attend and vote at a meeting of the Board as the delegate for that permanent member.
- (2) The Chairperson shall prepare a roster for the delegate members by allocating each delegate member a number from 1 to 5 so that each delegate member shall, in rotation, be requested to attend at meetings of the Board in the absence of a permanent member and in the case of the inability of a delegate member to attend a meeting the next delegate member in rotation shall be requested to attend.
- (3) The delegate member shall at meetings so attended, exercise powers, authorities and discretions vested in or otherwise exercisable by the permanent member represented at the meeting by the delegate member.

- (4) The appointment of a delegate member ceases —
- (a) upon resignation in writing delivered to the Minister; or
 - (b) upon the expiration of the term of his or her appointment; or
 - (c) upon failure to attend 3 consecutive meeting of the Board when requested by the Chairperson to attend; or
 - (d) upon termination of the appointment in accordance with section 14.

Voting powers of specialist members

10. Each specialist member has a right to vote at meetings of the Board to which they are appointed.

Remuneration

11. (1) The Minister may, by instrument, determine an amount of remuneration for members by way of a sitting fee.

(2) The Minister may determine an amount of remuneration for heritage advisers by way of payment for professional services in addition to a sitting fee.

Resignation

12. A member may resign from office by writing signed by the member and given to the Minister.

Disqualification from office

13. (1) Subsection 13(2) applies where the notice of appointment specified that a member is a member because the person —
has a specified qualification; or
is a member of a specified organisation.

- (2) The appointment of the person ceases if the person —
- (a) ceases to hold the qualification; or
 - (b) ceases to be a member of the organisation.

Termination of appointments

14. (1) The Minister may terminate the appointment of a member for any of the following reasons —

- (a) inability;
- (b) inefficiency;
- (c) misbehaviour;
- (d) physical or mental incapacity;
- (e) failure to comply with section 17;
- (f) the member no longer represents interests specified in the notice of appointment as interests the member represents.

(2) Before terminating the appointment under subsection 14(1), the Minister shall give the member a reasonable opportunity to respond to the allegations forming the basis of the proposed termination.

(3) Despite subsections 14(1) and 14(2), the Minister may terminate the appointment of a permanent member who is absent, except on leave granted by the Board, from 3 consecutive Board meetings.

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Secretary of the Board

15. The Chief Executive Officer shall, by instrument, appoint an officer or employee of the Administration other than a member of the Board to be the Secretary of the Board.

*Division 2 — Procedure***Meeting procedure**

16. (1) The Board shall meet —
- (a) as determined by the Board;
 - (b) as convened by the Chairperson; and
 - (c) as determined by the Minister.
- (2) However, the Board must meet at least four times a year.
- (3) Board meetings shall be presided over by —
- (a) the Chairperson; or
 - (b) in the absence of the Chairperson — an acting Chairperson elected by the members present from among their number.
- (4) A quorum for any meeting of the Board is —
- (a) if no specialist members are required to be present at the meeting – 3 members of whom at least 2 must be permanent members; or
 - (b) if a specialist member or members must, in accordance with subsection 6(1), be in attendance – 3 members of whom at least 2 must be permanent members and also the requisite number of specialist members.
- (5) Decisions of the Board shall be made by a majority vote.
- (6) In all other matters, the procedure of the Board shall be as decided by the Minister or, to the extent not decided by the Minister, as decided by the Board.
- (7) The Board, at its discretion, may allow —
- (a) any person to attend a meeting of the Board; or
 - (b) a person, other than a member, to make a comment or a submission at a Board meeting.

Disclosure of interest

17. (1) A member who has a direct or indirect interest in a matter about to be considered, or being considered, by the Board at a meeting of the Board shall, as soon as possible after that interest has come to the knowledge of the member, disclose the nature of the interest to the Board.

(2) A member disclosing an interest shall not participate in the consideration by the Board of the relevant matter, or in a recommendation made by the Board about the matter.

(3) However, the delegate member for the member may attend and participate at the meeting provided the delegate member does not have an interest which prevents the delegate member attending or participating under subsection 17(2).

(4) A disclosure of interest shall be recorded in the minutes of any meeting at which the relevant matter is considered.

(5) In this section —

“interest”, in relation to a matter, includes the holding of a position by a member as an officer of a body corporate (whether or not the member is a shareholder of the body) which has an interest in the matter.

Records of Board proceedings

18. (1) The Secretary shall keep minutes of the Board's proceedings.

(2) As soon as practicable after a meeting of the Board, the Secretary shall deliver to the Minister a copy of the minutes of the meeting.

Recommendations of the Board

19. (1) Recommendations or advice provided by the Board to the Minister or the Legislative Assembly shall be accompanied by a copy of the material considered by the Board, or a summary of the material.

(2) The Board shall make its recommendations or provide its advice to the Minister or the Legislative Assembly on a matter in the time specified by the Minister or the Legislative Assembly when referring the matter to the Board or a later time agreed by the Minister or the Legislative Assembly.

Public consultation and representation

20. The Board, at its discretion, may —

- (a) invite public submissions about any matter being considered by the Board, by causing to be published in the Gazette a notice that the Board is considering the matter and inviting public comment on the matter; and
- (b) accept submissions on any matter made in writing or in person at meetings of the Board.

PART 3 — MISCELLANEOUS**Protecting members from liability**

21. (1) A member or heritage adviser is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection 21(1) prevents a civil liability attaching to the member, the liability attaches instead to the Administration.

Guidelines for Board meetings

22. The Minister may issue guidelines for the conduct of meetings of the Board including rules for the matters to be included in the minutes of the Board and the rostering of delegate members.

Regulations

23. (1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters —

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations may prescribe penalties not exceeding 10 penalty units for a contravention of the regulations.

NOTES

The *Norfolk Island Environment and Planning Board Act 2002* as shown in this consolidation comprises Act No. 4 of 2003 and amendments as indicated in the Tables below.

Enactment	Number and year	Date of commencement	Application saving or transitional provision
<i>Norfolk Island Planning and Environment Board Act 2002</i>	4, 2003	15.8.2003	
<i>Norfolk Island Planning and Environment Board (Amendment) Act 2005</i>	15, 2005	15.7.2005	

[Previously consolidated as at 18 July 2005]

<i>Interpretation (Amendment) Act 2012</i> <i>[to substitute throughout — Commonwealth Minister for Minister; and to substitute Minister for executive member]</i>	14, 2012	28.12.12	
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[Previously consolidated as at 8 August 2013]

Ordinance	Registration	Commencement	Application, saving and transitional provision
Norfolk Island Continued Laws Amendment Ordinance 2015 (No. 2, 2015) (now cited as Norfolk Island Continued Laws Ordinance 2015 (see F2015L01491))	17 June 2015 (F2015L00835)	18 June 2015 (s 2(1) item 1)	Sch 1 (items 344, 345)
as amended by			
Norfolk Island Continued Laws Amendment (2016 Measures No. 2) Ordinance 2016 (No. 5, 2016)	10 May 2016 (F2016L00751)	Sch 4 (item 42): 1 July 2016 (s 2(1) item 4)	—

Table of Amendments

ad = added or inserted am = amended rep = repealed rs = repealed and substituted

Provisions affected	How affected
3	am 15, 2005; Ord No 2, 2015 (as am by Ord No 5, 2016)
7	am 15, 2005
9	rs 15, 2005
14	am 15, 2005
16	am 15, 2005
22	am 15, 2005