



Public Inquiry into the Norfolk Island Regional Council

**FINAL REPORT**  
**Carolyn McNally**  
**4 NOVEMBER 2021**



## Public Inquiry into the Norfolk Island Regional Council

4 November 2021

The Hon Nola Marino MP  
Assistant Minister for Regional Development and Territories  
Parliament House Canberra ACT 2600

Dear Minister,

I was appointed, as commissioner, by you on 9 February 2021, pursuant to the *Local Government Act 1993* (NSW) (NI) to hold a public inquiry into the Norfolk Island Regional Council (NIRC) in accordance with specified Terms of Reference.

I am now pleased to present you with the final report of the Inquiry.

The final report makes findings in respect of Council's financial and asset management that respond to the Terms of Reference.

In conducting the Inquiry, I have heard from many people and groups, including the Council and its governing body, who have a strong interest in improving the economic sustainability of Norfolk Island while also preserving its unique culture and heritage.

I would like to express my sincere thanks to all the people who contributed their time, knowledge and insights to the Inquiry. I hope that the findings in this report contribute to ensuring Norfolk Island's long-term financial sustainability.

Yours sincerely,

A handwritten signature in cursive script, reading 'Carolyn McNally'.

Carolyn McNally  
Commissioner

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## Chapter 1: Introduction and overview

1. The public inquiry into the Norfolk Island Regional Council (the **Inquiry**) was commissioned by the Assistant Minister for Regional Development and Territories, the Hon Nola Marino MP, on 10 February 2021, following the suspension of the governing body of the Norfolk Island Regional Council (the **Council** or the **NIRC**) on 5 February 2021 and pursuant to s 438U of the *Local Government Act 1993* (NSW) (NI) (the **applied LG Act**). This report is provided to the Assistant Minister against specific Terms of Reference (at **Appendix A**), which focus, at their broadest level, on the effective management of the NIRC's finances and assets.
2. This Inquiry was initiated following the deterioration of the financial position of the Council and, in particular, its projected cash position that became apparent in the first half of 2020 at about the same time as the COVID-19 pandemic impacted upon Norfolk Island. Within a month of the declaration of a State of Emergency on 17 March 2020 and the Island going into lockdown, it became clear that the Council's existing cash reserves were likely to be exhausted by the end of the calendar year. As events transpired, the impact of COVID-19 on the revenue of the Council meant that the Council's overall cash position was insufficient for the Council to operate as a going concern.
3. As will be seen, this fact was to a significant degree the consequence of decisions made in connection with the funding of two major projects then underway: the resurface and reseal of the Norfolk Island Airport runway (the **airport project**) and the resurfacing of 9 kilometres of the Island's road network (the **roads project**). Ultimately, the position was reached whereby the Commonwealth was required to provide urgent funding of \$3 million in December 2020 to ensure that the Council could continue to operate as a going concern.<sup>1</sup>
4. This Inquiry was required to examine, amongst other things, the financial and asset management of the Council, which was established in July 2016. For the reasons explained in Chapter 4, the key time period under consideration is 23 September 2016 (when new legislation came into effect) to 5 February 2021 (when the Council was suspended), referred to as the **Defined Period**. Many of the submissions, including from people on the Island, raised concerns that restricting the examination to financial and asset management from July 2016 (when the Council commenced operations) would not show the true and full picture of the challenges facing the Council. Evidence was presented of the deteriorated state of

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<sup>1</sup> Exhibit 2, Statement of Andrew Roach, AROA.WSTA.001.0004\_0006.



the assets that became the responsibility of the Council at its commencement, the importance of local democracy in respect of decision making as it relates to the operation of the Island, the lack of a State government to support the Council with funding and services that State governments generally provide to regional councils and their communities, and the history and culture of the Island. This Inquiry recognises all these matters as important matters of context and has taken these issues into consideration in its findings against the Inquiry's Terms of Reference (**ToR**).

5. Numerous previous reviews have addressed Norfolk Island's governance and its ability to achieve financial self-sufficiency, given its relative population and isolation (almost 1,500kms from the Australian mainland). Many of these reviews identified issues and themes that will also be discussed in this report, including the difficulties in raising sufficient revenue locally to effectively deliver a wide range of services, the higher-than-average costs in delivering services and maintaining associated infrastructure, and the need for continued financial assistance from the Commonwealth.
6. The range of services that the Council provides for the Island are as unique as the Island itself, and the challenges for the Island today are similar in many ways to the challenges of the past. Norfolk Island is a very remote community that has a relatively small population. This inevitably means that the Council's ability to raise sufficient revenue to deliver the full range of services that are needed will continue to be a struggle without significant government support, particularly in respect of updating and replacing major infrastructure.
7. The current governance model that has been chosen is a local government model: specifically, the local government model that is in place in the State of New South Wales. Under this model, many of the face to face services provided for the benefit of the Norfolk Island community, the major exceptions being health and education, are delivered by a local council under the framework of the legislation that governs traditional local government services.
8. However, unlike other councils, the NIRC also delivers services usually delivered by state governments (such as marine search and rescue, motor vehicle and land titles registration) as well as by commercial operators (such as telecommunications, stevedoring and airport services). The NIRC is required to maintain critical infrastructure and deliver day-to-day municipal services for its community of approximately 1,750 people, as well as an ongoing flow of tourists.

9. Of note is the role of the Council in ensuring there is an ongoing connection to the Australian mainland through regular air services, which are important in terms of access to vital medical services, tertiary education, and raising revenue through tourism (tourism being the main income stream for the Island). No other regional council, including those managing other isolated or remote communities and territories, has the same level of responsibility for the provision of this wide range of essential services. At various stages throughout the Defined Period, certain business units (like telecommunications, electricity and the airport) operated at a surplus, but for the most part, as this report demonstrates, from the time of Council's inception, its business functions ran at a loss and had to be cross subsidised by other Council revenue. The performance of the business units over the Defined Period is discussed further in Chapter 5.
10. The financial management of the Council is a complex undertaking and is inextricably linked to effective asset management and replacement. Also important is the backdrop against which the Council needs to make its decisions; in particular, the significant and ongoing challenges faced by the Council in managing services and assets for this remote external territory, including the ongoing pressures of providing the inhabitants with reliable, affordable and up-to-date services similar to those that other Australians expect and enjoy.
11. The Inquiry considered, in the context of the requirements of the applied LG Act, how well-prepared the Council was to meet its obligations of providing services to the community of Norfolk Island, and then how the governing body and the senior Council staff responded to a range of challenges as they unfolded.
12. The performance of the Council in respect of its financial and asset management is considered in respect of two periods of time and the two critical decisions previously referred to. The period leading up to the decision in February 2019 to proceed with the airport project was a period in which the Council and its governing body constantly struggled to implement effective and responsible financial management and failed, on a number of occasions, to take steps that would have enhanced the sustainability of the Council. As will be seen, the decision to proceed with the airport project at an anticipated cost of around \$49 million, of which only \$43 million was funded by the Commonwealth with significant uncertainty as to where the balance would come from, set in train a sequence of events that all contributed to the outcome that resulted in late 2020.
13. This report examines the period following the decision to proceed with the airport project, from the beginning of March 2019 until 5 February 2021. This was a time when the Council

lost its General Manager and Chief Financial Officer, the second critical decision was made to fund roadworks costing just over \$5 million from Council's cash reserves, the COVID-19 pandemic struck and the Council was faced with making some very significant decisions to address some critical infrastructure issues and deal with the impact of the pandemic. The processes and policies established and decisions taken during the first period were tested in the second period.

14. This report sets out the findings of the Inquiry into the NIRC against the ToR, and in doing so, considers the related policy and legislative requirements against which the Council's governing body, the General Manager and senior staff needed to operate. Chapters 5, 6 and 7 address the Council's actions and activities from July 2016 to February 2021 to consider its financial performance, asset maintenance and management, key funding decisions and the Council's approach to risk management as they relate to the ToR for the Inquiry.
15. Relevant actions taken or not taken, including the advice provided as well as the information that was drawn upon or should have been drawn upon to inform those actions, are considered. The findings are made in respect of the Council as a whole (both senior staff and the governing body) and those specific to the governing body.
16. This report details the factors and events that led to a situation in which there were insufficient financial reserves to meet some of the significant contractual commitments that were made in 2019, and in turn meant that the Council could not meet its financial obligations, let alone withstand any unexpected economic impacts such as the COVID-19 pandemic.

## Chapter 2: Historical and geographic context

### History, geography and people

17. Norfolk Island is a remote and isolated island located around 1,600 km northeast of Sydney.<sup>2</sup> As presently understood, the history of Norfolk Island dates back to the 13<sup>th</sup> and 14<sup>th</sup> centuries, when there was, for an unknown period, Polynesian settlement.<sup>3</sup> An uninhabited Norfolk Island was rediscovered by Captain Cook in 1774, and was then occupied primarily as a penal colony between 1788 and 1855.<sup>4</sup> Between 1844 and 1856 Norfolk Island formed part of the colony that was until 1856 known as Van Diemen's Land.<sup>5</sup>
18. From 1856, the Island was constituted as a 'distinct and separate Settlement' of the British Crown, administered by a Governor of Norfolk Island, which office was exercised by the Governor of New South Wales.<sup>6</sup> Many people in the present community trace their history and connection to the Island to 194 individuals who arrived from Pitcairn Island in 1856, who were descendants of Tahitians and the HMAV Bounty mutineers.<sup>7</sup>
19. In 1897, the office of the Governor of Norfolk Island was abolished and although responsibility for the administration of Norfolk Island was vested in the Governor of New South Wales, the Island was not made a part of New South Wales and remained a separate British possession. On the Federation of the Commonwealth in 1901, responsibility for the administration of Norfolk Island was vested in the Governor of the State of New South Wales.
20. In 2016, there were 1,748 people living on Norfolk Island.<sup>8</sup> Around one in five of these people (19 per cent) were children aged under 16 years, 57 per cent were adults aged 16 to 64

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<sup>2</sup> Department of Infrastructure, Transport, Regional Development and Communications, *Norfolk Island* (webpage) <<https://www.infrastructure.gov.au/territories-regions-cities/territories/norfolk-island>>.

<sup>3</sup> Atholl Anderson and Peter White, 'Prehistoric Settlement on Norfolk Island and its Oceanic Context' (2001) 27 *Records of the Australian Museum, Supplement* 135, pp 135–141 <<https://doi.org/10.3853%2Fj.0812-7387.27.2001.1348>>.

<sup>4</sup> Alan Kerr, *A Federation in These Seas* (Attorney General's Department, 2009), p 121 <[https://www.infrastructure.gov.au/sites/default/files/migrated/territories/publications/files/A\\_Federation\\_in\\_These\\_Seas\\_Part\\_2.pdf](https://www.infrastructure.gov.au/sites/default/files/migrated/territories/publications/files/A_Federation_in_These_Seas_Part_2.pdf)>.

<sup>5</sup> Alan Kerr, *A Federation in These Seas* (Attorney General's Department, 2009), p 122 <[https://www.infrastructure.gov.au/sites/default/files/migrated/territories/publications/files/A\\_Federation\\_in\\_These\\_Seas\\_Part\\_2.pdf](https://www.infrastructure.gov.au/sites/default/files/migrated/territories/publications/files/A_Federation_in_These_Seas_Part_2.pdf)>.

<sup>6</sup> Australian Waste Lands Act 1855.

<sup>7</sup> Alan Kerr, *A Federation in These Seas* (Attorney General's Department, 2009), p 122 <[https://www.infrastructure.gov.au/sites/default/files/migrated/territories/publications/files/A\\_Federation\\_in\\_These\\_Seas\\_Part\\_2.pdf](https://www.infrastructure.gov.au/sites/default/files/migrated/territories/publications/files/A_Federation_in_These_Seas_Part_2.pdf)>.

<sup>8</sup> Australian Bureau of Statistics, *2016 Census of Population and Housing: General Community Profile, Norfolk Island* (Catalogue No 2001.0, 2016), Table G 01a. Note: the last census with

years, and almost one-quarter (24 per cent) were aged 65 years and over.<sup>9</sup> Approximately four in five people living on Norfolk Island were Australian citizens.<sup>10</sup>

### **Norfolk Island: an external territory of the Commonwealth**

21. Since 1 July 1914, Norfolk Island has been an external territory under the authority of the Commonwealth of Australia.<sup>11</sup> In 1957, the *Norfolk Island Act 1957* established an Administrator to govern the territory on behalf of the Commonwealth. The 1957 legislation was subsequently repealed and replaced by the *Norfolk Island Act 1979*. This was a significant event in the history of Norfolk Island and its people, as they were granted limited self-government under the elected Norfolk Island Legislative Assembly. The Assembly had the power to pass, amend and repeal laws. For over three decades (between 1979 and 1 July 2015), the Norfolk Island Legislative Assembly enjoyed what Mr Nobbs described as a 'modicum of self-government'.<sup>12</sup>

### **Transition to local government**

22. Amendments to the *Norfolk Island Act 1979* in 2015 provided for the abolition of the Legislative Assembly, and the introduction of a system of local government based on legislation in NSW, which led to the creation of the Norfolk Island Regional Council. As part of this change, Norfolk Island was integrated into the Australian taxation and social security systems,<sup>13</sup> though remained exempt from indirect taxes including the goods and services tax, excise duties and customs duties.<sup>14</sup> Commonwealth immigration, biosecurity and employment laws and the superannuation guarantee were extended to Norfolk Island.<sup>15</sup>
23. The reforms also meant that, for the first time, land rates were required to be made and levied on an annual basis.<sup>16</sup>

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data available is the 2016 Australian census. Data from the 2021 Australian census is not yet available.

<sup>9</sup> Australian Bureau of Statistics, 2016 Census of Population and Housing: General Community Profile, Norfolk Island (Catalogue No 2001.0, 2016), Table G 04.

<sup>10</sup> Australian Bureau of Statistics, 2016 Census of Population and Housing: General Community Profile, Norfolk Island (Catalogue No 2001.0, 2016), Table G 01a.

<sup>11</sup> *Norfolk Island Act 1913* (Cth); 20210915 Letter from RGS Law to Solicitors Assisting the Inquiry, RGS.SUB.001.0001\_0002.

<sup>12</sup> Exhibit 7, Submission of Chris Nobbs dated 7 May 2021, CNOB.PSUB.002.0002\_0002.

<sup>13</sup> Explanatory Memorandum to the Norfolk Island Legislation Amendment Bill 2015.

<sup>14</sup> Explanatory Memorandum to the Norfolk Island Legislation Amendment Bill 2015.

<sup>15</sup> Explanatory Memorandum to the Norfolk Island Legislation Amendment Bill 2015.

<sup>16</sup> *Local Government Act 1993* (NSW) (NI), s 494.

24. From July 2015 to June 2016, in the lead up to the establishment of the NIRC, an Advisory Council, comprised of five Norfolk Islanders, provided advice to the Minister on the governance functions of the new council, the legal framework for Norfolk Island and the Administration's support needs as it transitioned to a regional council structure.<sup>17</sup>
25. The transition period was overseen by an Executive Director, Mr Peter Gesling. His role was to:<sup>18</sup>
- a. be the delegate of the Minister for all operational decisions undertaken by the former Administration of Norfolk Island;
  - b. support the CEO of the Administration, the General Manager of the Norfolk Island Government Tourist Bureau, and the Director of the Norfolk Island Hospital Enterprise in meeting their responsibilities to the community;
  - c. recommend what functions should remain in the new Council; and
  - d. assist the community to understand the structure of the new Council.

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<sup>17</sup> Norfolk Island Advisory Council, *Final Report* (report, June 2016), <<http://pandora.nla.gov.au/pan/156846/20160630-0255/www.norfolkislandadvisorycouncil.nf/2016/06/20/niac-final-report/index.html>>.

<sup>18</sup> Exhibit 11, Administration of Norfolk Island Summary of 2015–16 budget, NIRC.PUB.008.0004\_0001.

### Chapter 3: Local government on Norfolk Island - the NIRC and its governing body

26. The legal framework for the system of local government on Norfolk Island is to be found in the applied LG Act. The applied LG Act has been in force within the external territory of Norfolk Island since 1 July 2016 by dint of ss 15 and 18A of the *Norfolk Island Act 1979*.<sup>19</sup>
27. The Inquiry's ToR focus upon the NIRC *and* its governing body. Each term has a distinct legal meaning discussed in detail below.

#### The NIRC

28. The NIRC is a council constituted by s 219 of the applied LG Act for the area of Norfolk Island.<sup>20</sup> It is a body politic that has the legal capacity and powers of an individual.<sup>21</sup> It exercises its functions through, among others, councillors, employees, agents and its committees.<sup>22</sup> Like all other local government councils, the NIRC is a legal entity separate from the governing body, its General Manager and employees.

#### The governing body

29. NIRC's governing body is comprised of elected representatives called councillors.<sup>23</sup> The role of the governing body, as described in s 223 of the applied LG Act, includes to:
- a. direct and control the affairs of the Council in accordance with the applied LG Act;<sup>24</sup>
  - b. ensure, as far as possible, the financial sustainability of the Council;<sup>25</sup>
  - c. 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 of the Council and for the benefit of the local area;<sup>26</sup>
  - d. keep under review the performance of the Council, including service delivery;<sup>27</sup> and

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<sup>19</sup> See also: *Norfolk Island Applied Laws Ordinance 2016* (Cth), sch 4.

<sup>20</sup> *Local Government Act 1993* (NSW) (NI), ss 204A, 219.

<sup>21</sup> *Local Government Act 1993* (NSW) (NI), s 220(1).

<sup>22</sup> *Local Government Act 1993* (NSW) (NI), s 355.

<sup>23</sup> *Local Government Act 1993* (NSW) (NI), s 222.

<sup>24</sup> *Local Government Act 1993* (NSW) (NI), s 223(1)(a).

<sup>25</sup> *Local Government Act 1993* (NSW) (NI), s 223(1)(c).

<sup>26</sup> *Local Government Act 1993* (NSW) (NI), s 223(1)(f).

<sup>27</sup> *Local Government Act 1993* (NSW) (NI), s 223(1)(g).

- e. determine the process for appointment of the General Manager by the Council and to monitor the General Manager's performance.<sup>28</sup>
30. There were, during the period under review, five elected Councillors (including a Mayor and Deputy Mayor), all of whom were elected to four year terms on 28 May 2016.<sup>29</sup> The Councillors of the NIRC during the period 1 July 2016 to 5 February 2021 were:<sup>30</sup>
- a. Robin Adams (Mayor);<sup>31</sup>
  - b. John McCoy (Deputy Mayor);<sup>32</sup>
  - c. Rod Buffett;
  - d. David Porter; and
  - e. Lisle Snell.
31. By s 232 of the applied LG Act, each Councillor is required to:
- a. be an active and contributing member of the governing body;
  - b. make considered and well informed decisions as a member of the governing body;
  - c. participate in the development of the integrated planning and reporting framework;
  - d. represent the collective interests of residents, ratepayers and the local community;
  - e. facilitate communication between the local community and the governing body;
  - f. uphold and represent accurately the policies and decisions of the governing body; and
  - g. make all reasonable efforts to acquire and maintain the skills necessary to perform the role of a councillor.
32. Councillors are accountable to the local community for the performance of the Council.<sup>33</sup>
33. With the exception of Mr Buffett, each of the Councillors had varying degrees of experience in representative government at the time they were elected as members of the governing body. **Appendix C** contains a biography of the people relevant to this Inquiry, including the Councillors, and describes their particular experience.

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<sup>28</sup> *Local Government Act 1993* (NSW) (NI), s 223(1)(i).

<sup>29</sup> Exhibit 1, Annual Report 2016–2017, NIRC.PUB.001.0135\_0014.

<sup>30</sup> Exhibit 1, 20160706 Extraordinary Meeting of Council Minutes, NIRC.PUB.001.0001\_0001.

<sup>31</sup> Exhibit 1, 20160706 Extraordinary Meeting of Council Minutes, NIRC.PUB.001.0001\_0002.

<sup>32</sup> See: Exhibit 1, 20160706 Extraordinary Meeting of Council Minutes, NIRC.PUB.001.0001\_0001 –\_0002. See also: Exhibit 1, 20170908 Extraordinary Council Meeting Minutes, NIRC.PUB.001.0108\_0001.

<sup>33</sup> *Local Government Act 1993* (NSW) (NI), s 232(2).



## The General Manager

34. The applied LG Act also establishes the office of the General Manager and describes the responsibilities of that role. For present purposes, those responsibilities include:
- a. conducting the day-to-day management of the Council in accordance with the strategic plans, strategies and policies for the Council;<sup>34</sup>
  - b. implementing decisions of the Council;<sup>35</sup> and
  - c. preparing, in consultation with the mayor and governing body, the Council's community strategic plan, resourcing strategy (for instance, the long-term financial plan) and operational plan.<sup>36</sup>
35. The applied LG Act requires the NIRC to appoint a person to be its General Manager.<sup>37</sup> The process of such appointment and the monitoring of the General Manager's performance forms part of the role of the governing body.<sup>38</sup>
36. From 1 July 2016 to 13 September 2019, Ms Eva Liselotte (Lotta) Jackson was the General Manager.<sup>39</sup> Prior to this appointment, Ms Jackson held roles including Manager at Woollahra Municipal Council, Director of Corporate and Community Services at Glen Innes Severn Council and General Manager for Tenterfield Shire Council.<sup>40</sup>
37. From 13 September 2019 to 5 January 2020, Bruce Taylor held the position of Interim General Manager.<sup>41</sup> Mr Taylor is the current Manager of Services for the NIRC,<sup>42</sup> and was also involved in the previous Administration of Norfolk Island from 2003 where he held financial and asset related roles.<sup>43</sup>
38. The current General Manager, Andrew Roach, was appointed on 6 February 2019.<sup>44</sup> He has 30 years' experience working in local government across Australia and previously held the position of Chief Executive Officer or General Manager at three regional councils, namely

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<sup>34</sup> *Local Government Act 1993* (NSW) (NI), s 335(a).

<sup>35</sup> *Local Government Act 1993* (NSW) (NI), s 335(b).

<sup>36</sup> *Local Government Act 1993* (NSW) (NI), s 335(e).

<sup>37</sup> *Local Government Act 1993* (NSW) (NI), s 334(1).

<sup>38</sup> *Local Government Act 1993* (NSW) (NI), s 223(1)(i).

<sup>39</sup> Exhibit 1, 20190821 Ordinary Council Meeting Minutes, NIRC.PUB.001.0233\_0003.

<sup>40</sup> Lotta Jackson (LinkedIn, 25 October 2021) <<https://www.linkedin.com/in/lotta-jackson-38a90a168/>>.

<sup>41</sup> Exhibit 1, 20190821 Ordinary Council Meeting Minutes, NIRC.PUB.001.0233\_0031.

<sup>42</sup> Exhibit 1, 20210224 Ordinary Council Meeting Minutes, NIRC.PUB.001.0295.

<sup>43</sup> Transcript, 31 May 2021, pp 74.42–75.4.

<sup>44</sup> Exhibit 1, 20200106 Extraordinary Council Meeting Minutes, NIRC.PUB.001.0254\_003.

Blayney Shire Council, Port Macquarie Hastings Council and Southern Downs Regional Council. Mr Roach also held the position of Chief Financial Officer at Ipswich City Council.<sup>45</sup>

### Decision making

39. The Councillors, both in their individual capacity and collectively as the governing body, fulfil their roles by making decisions, called resolutions, on behalf of the NIRC. This report refers to numerous resolutions that involved the governing body exercising control over, and thereby managing, the finances and assets of the Council.
40. Governing body resolutions were made by majority vote at ordinary Council meetings, held at least 10 times each year, each in a different month,<sup>46</sup> as well as ad-hoc extraordinary meetings, held at the request of at least two Councillors.<sup>47</sup>
41. NIRC meetings were required to be held in accordance with the NIRC's code of meeting practice.<sup>48</sup> Consistent with this code, the governing body was presented with a business paper prior to each Council meeting.<sup>49</sup> The business papers for each meeting contained reports prepared by the administrative staff of the Council and by its advisory committees, which ordinarily included explanatory notes and proposed recommendations to the governing body so as to inform their decision-making. The governing body would then vote on resolutions concerning the subject matter proposed in these reports. The governing body could also raise issues at Council meetings by mayoral minutes or by notice of motion (to be submitted in writing by Monday, 4:30pm the week preceding the Council meeting, six business days before the meeting is to be held).<sup>50</sup>
42. NIRC meetings were open to the public and usually broadcast on local island radio. They were also recorded, with copies of the recordings available to be downloaded from the NIRC web-site along with the relevant business papers, agenda and minutes of previous meetings. However, when commercial in confidence items were discussed, the meetings moved into a confidential session. That was the case in relation to both the airport project contract and the roads project contract.

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<sup>45</sup> Exhibit 2, Statement of Andrew Roach, AROA.WSTA.001.0004.

<sup>46</sup> *Local Government Act 1993* (NSW) (NI), s 365.

<sup>47</sup> *Local Government Act 1993* (NSW) (NI), s 366.

<sup>48</sup> *Local Government Act 1993* (NSW) (NI), s 360(5).

<sup>49</sup> *Local Government Act 1993* (NSW) (NI), s 360(5); Exhibit 11, 20160921 Norfolk Island Regional Council Code of Meeting Practice, NIRC.001.004.0082; Exhibit 1, 20190626 Attachment 3 Ordinary Meeting, NIRC.PUB.001.0225.

<sup>50</sup> Exhibit 1, 20190626 Attachment 3 Ordinary Meeting, NIRC.PUB.001.0225\_0005, \_0014; 20210915 Letter from RGS Law to Solicitors Assisting the Inquiry, RGS.SUB.001.0001.

43. With effect from 5 February 2021, the NIRC was suspended and Mr Mike Colreavy appointed to act as its interim administrator.<sup>51</sup> The suspension and appointment were made pursuant to ss 438I and 438M respectively of the applied LG Act.
44. The suspension of the Council means that persons holding civic office, namely the Mayor and other Councillors, are unable to exercise any of their functions under the applied LG Act.<sup>52</sup> During the period of their appointment, the interim administrator has 'all the functions of the Council, including all the functions of a councillor and the mayor'.<sup>53</sup>

### Organisational structure

45. The NIRC's organisational structure determines the senior staff positions and the roles and reporting lines for those senior staff.<sup>54</sup> In the period 1 July 2016 to 5 February 2021, the NIRC was organised in two ways.
46. From 1 July 2016 to 30 June 2020, the General Manager oversaw three group managers (Services, Corporate/CFO, and Organisational Development)<sup>55</sup> as well as economic development programs, tourism, library and heritage management and museum services.<sup>56</sup> Figure 1 below sets out the full organisational structure during this period.
47. The Responsible Accounting Officer position, who provided information to Councillors on NIRC's financial position, sat within the Group Manager Corporate/CFO stream, and was variously filled by Mr John van Gaalen, Mr Shane Nankivell, Mr Robert Carlesso, Mr Phillip Wilson and Mr Alistair Innes-Walker. More information on each of these people is provided in **Appendix C**.

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<sup>51</sup> The order by which the NIRC was suspended is dated 3 February 2021. But it is expressed to commence 'upon publication in the Gazette'. It was published on 5 February 2021. See: Minister for Infrastructure, Transport and Regional Development, *Suspension of Norfolk Island Regional Council*, (Gazette No. C2021G00102, 3 February 2021).

<sup>52</sup> *Local Government Act 1993* (NSW) (NI), s 438L(2)(a).

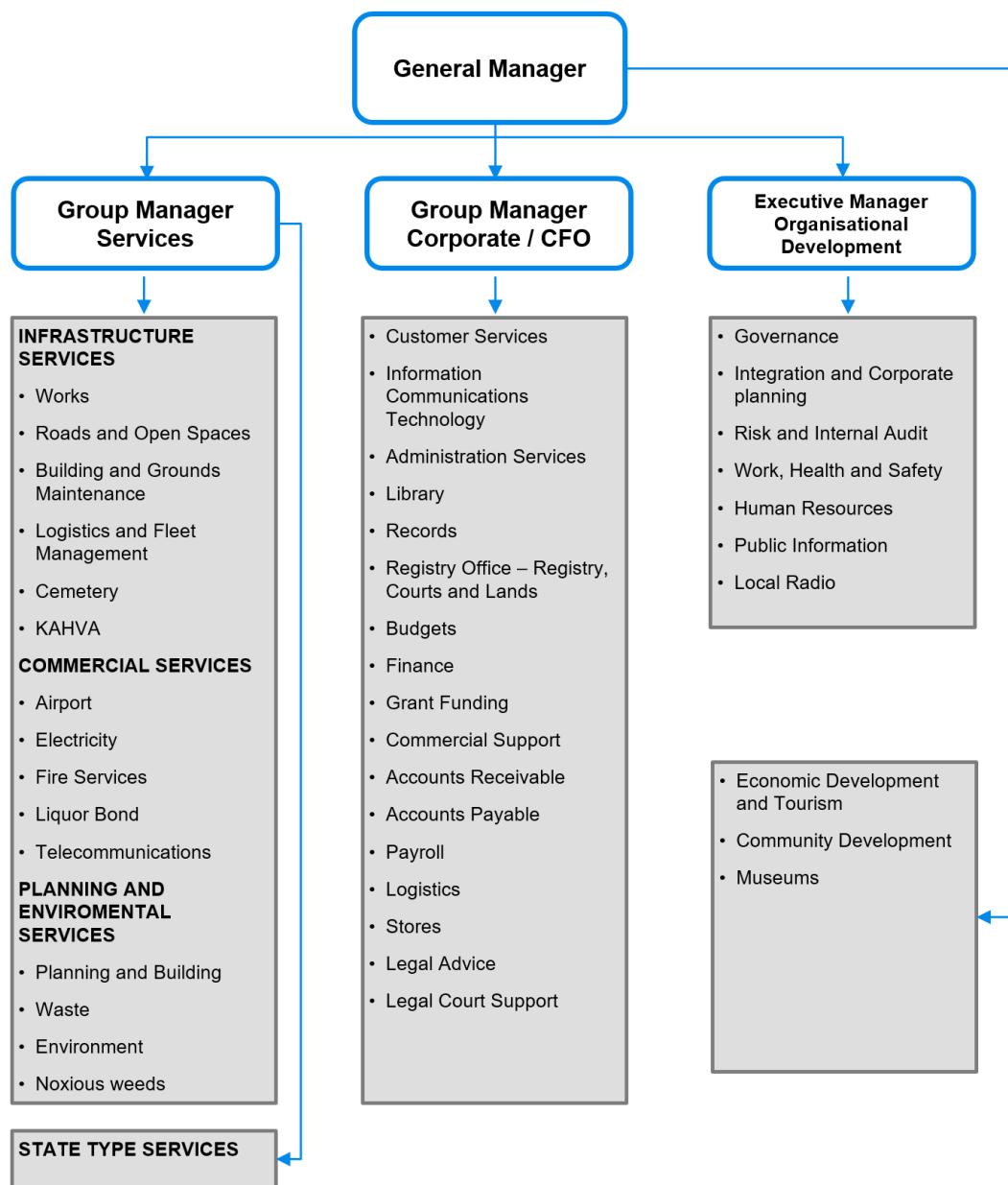
<sup>53</sup> *Local Government Act 1993* (NSW) (NI), s 438M(5).

<sup>54</sup> *Local Government Act 1993* (NSW) (NI), s 332.

<sup>55</sup> Exhibit 1, Annual Report 2016–2017, NIRC.PUB.001.0135\_0024; Exhibit 1, 20200601 Agenda Extraordinary Meeting, NIRC.PUB.001.0266\_0011.

<sup>56</sup> Exhibit 1, Annual Report 2016–2017, NIRC.PUB.001.0135\_0023.

**Figure 1. NIRC organisational structure: 1 July 2016 to 30 June 2020**



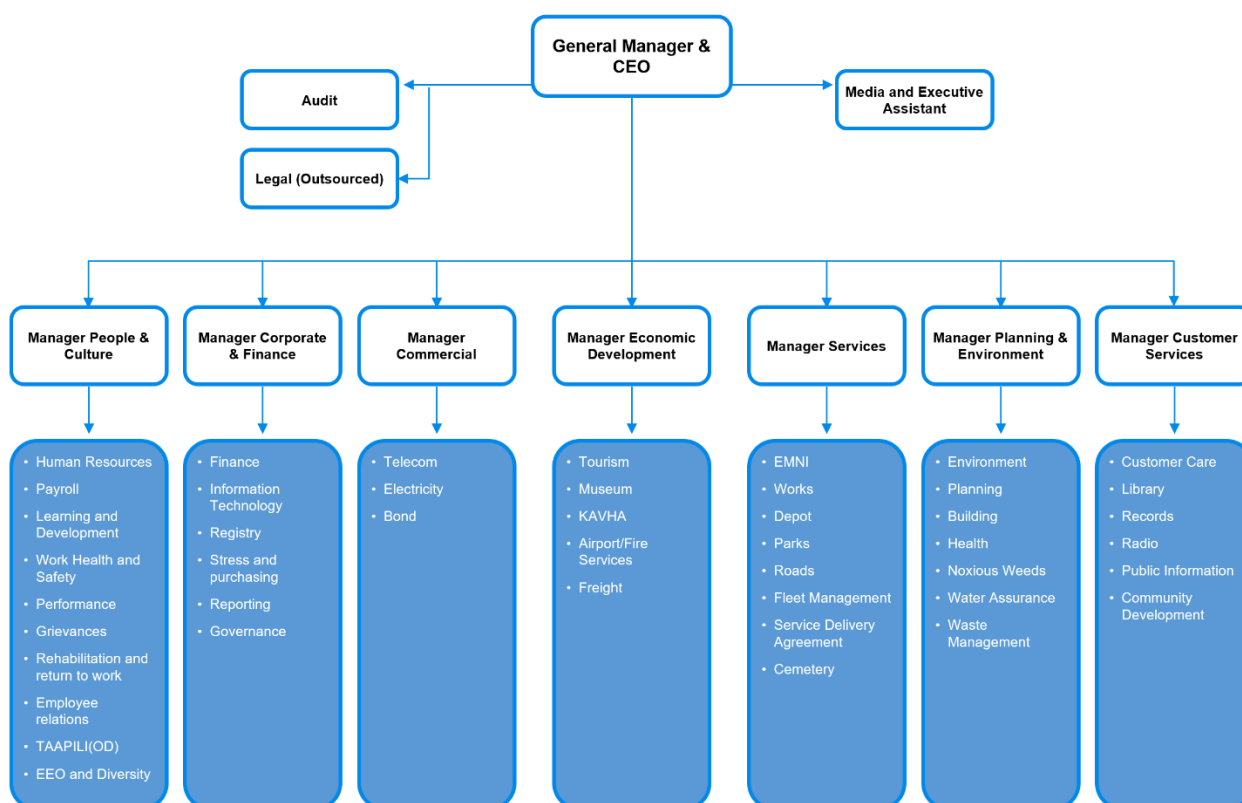
48. On 1 July 2020, in response to the 'precarious fiscal position' facing the Council,<sup>57</sup> the General Manager, Mr Roach, proposed an organisational restructure. According to Mr Roach, the rationale behind the restructure was to allow for 'more direct reports to the General Manager [and] more direct input into the operation of the Council', and resulted in savings of \$2.2 million through redundancies for 20 permanent roles.<sup>58</sup>

<sup>57</sup> Exhibit 1, 20200601 Agenda Extraordinary Meeting, NIRC.PUB.001.0266\_0008.

<sup>58</sup> Exhibit 1, 20200601 Agenda Extraordinary Meeting, NIRC.PUB.001.0266\_0008.

49. Figure 2 shows the new organisational structure which took effect from 1 July 2020.<sup>59</sup> As the figure shows, under the new organisational structure there were seven managers reporting to the General Manager, and significantly, the Council's internal audit function was outsourced.

**Figure 2. NIRC organisational structure: 1 July 2020 to 5 February 2021**



### The Audit Committee

50. An important feature of the governance of the NIRC that is not expressly referred to in the structure described above is the Audit Committee of the Council. As will be seen, this committee of three, made up of a Councillor and two independent members with relevant expertise, was active in providing advice to the Council decision making process.
51. Although the applied LG Act did not at any relevant time oblige the Council to have an internal audit function,<sup>60</sup> since 2010 the NSW Office of Local Government (the **OLG**) Internal Audit Guidelines have recommended an internal audit framework as a component of good governance to manage risks, and to improve the Council's efficiency and effectiveness,

<sup>59</sup> Exhibit 1, 20200601 Agenda Extraordinary Meeting, NIRC.PUB.001.0266\_0011.

<sup>60</sup> c.f. *Local Government Amendment (Governance and Planning) Act 2016*, sch 1, item 41, which commenced on 20 August 2021.

consistent with the guiding principles for local government and effective financial and asset management.<sup>61</sup> The same guidelines also recommend that an audit committee be employed as a means of providing independent oversight and monitoring of a local council's processes, including reviewing the council's audited annual financial reports and ensuring the council's key internal controls are appropriate for achieving its goals and objectives.<sup>62</sup> The guidelines suggest that internal audit functions should be proactive, focusing on the organisation's high-risk areas, including assessing whether systems critical to program delivery are operating efficiently and effectively.<sup>63</sup>

52. At its second Council meeting in August 2016, the governing body resolved to establish an independent Audit Committee<sup>64</sup> and adopted an Audit Committee charter modelled on the sample audit charter published by the OLG.<sup>65</sup> The objective of the Audit Committee was to provide independent assurance and assistance to the NIRC on risk management, control, governance, and external accountability responsibilities.<sup>66</sup>
53. The charter provided for the Committee to report directly to the NIRC (in particular, to the General Manager) and for a Councillor to be a voting member of the Audit Committee.<sup>67</sup> It also provided for the committee to meet quarterly, consistent with the recommendations of the OLG for a 'small' local council.<sup>68</sup>
54. The Audit Committee was allocated responsibility for:<sup>69</sup>
  - a. reviewing whether a sound and effective approach had been followed by the NIRC in developing strategic risk management plans for major projects or undertakings;

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<sup>61</sup> Office of Local Government, Department of Premier and Cabinet, *Internal Audit Guidelines* (guidelines, September 2010) <<https://www.olg.nsw.gov.au/wp-content/uploads/Internal-Audit-Guidelines-September-2010.pdf>>.

<sup>62</sup> Office of Local Government, Department of Premier and Cabinet, *Internal Audit Guidelines* (guidelines, September 2010), p 29 [4.4.2] <<https://www.olg.nsw.gov.au/wp-content/uploads/Internal-Audit-Guidelines-September-2010.pdf>>.

<sup>63</sup> Office of Local Government, Department of Premier and Cabinet, *Internal Audit Guidelines* (guidelines, September 2010), p 17 <<https://www.olg.nsw.gov.au/wp-content/uploads/Internal-Audit-Guidelines-September-2010.pdf>>.

<sup>64</sup> Exhibit 1, 20160817 Ordinary Meeting of Council Minutes, NIRC.PUB.001.0020\_0006.

<sup>65</sup> Office of Local Government, Department of Premier and Cabinet, *Internal Audit Guidelines* (guidelines, September 2010), p 53 appendix 2 <<https://www.olg.nsw.gov.au/wp-content/uploads/Internal-Audit-Guidelines-September-2010.pdf>>.

<sup>66</sup> Exhibit 1, 20160817 Attachment 10 Ordinary Meeting, NIRC.PUB.001.0031\_0003.

<sup>67</sup> Exhibit 1, 20160817 Attachment 10 Ordinary Meeting, NIRC.PUB.001.0031.

<sup>68</sup> Office of Local Government, Department of Premier and Cabinet, *Internal Audit Guidelines* (guidelines, September 2010), pp 28–29 [4.3]–[4.4.1] <<https://www.olg.nsw.gov.au/wp-content/uploads/Internal-Audit-Guidelines-September-2010.pdf>>.

<sup>69</sup> Exhibit 1, 20160817 Attachment 10 Ordinary Meeting, NIRC.PUB.001.0031\_0004–\_0005.

- b. satisfying itself that there was a performance management framework within the NIRC linked to organisational objectives and outcomes; and
  - c. reviewing the Council's annual financial reports, external audit opinions, and internal audit plan, resources and recommendations (including their implementation by the NIRC).
55. Council records indicate that the Audit Committee was intended to oversee the Council's internal audit team and provide a means of assurance that appropriate governance activities and audit processes had been established by the Council,<sup>70</sup> provide a forum for the discussion of operational problems and issues affecting the Council, and make recommendations to the Council for improvements in that regard.<sup>71</sup>
56. The Audit Committee was empowered to obtain information, consult with external auditors, and compel NIRC staff or Councillors to attend meetings (amongst other measures). During the Defined Period, the Audit Committee made use of this authority to request additional reports and information from the NIRC on 46 occasions.
57. The Audit Committee was initially made up of Ms Kelly McFadyen as Chairperson, Mr Chris Gallagher, as the second independent member, and Mr Rod Buffett as the Councillor member. Councillor Buffett held his role from the inception of the Audit Committee until the NIRC's suspension. Ms McFadyen resigned from the Audit Committee in June 2018, and Ms Katherine (Katie) Sexton was appointed in October 2018 and remains as Chairperson.
58. The Audit Committee meeting minutes and agendas show that the first Audit Committee, chaired by Ms McFadyen, and the second Audit Committee, chaired by Ms Sexton, had a slightly different emphasis. While the first Audit Committee focused quite intently on the Council's financial decision-making, the second Audit Committee placed a greater focus on examining and reviewing NIRC policies and shifted towards operationally focused recommendations. In particular, there was a greater interest on the part of the second Audit Committee in work health and safety and compliance.

### **Internal risk and audit role**

59. An internal risk and audit role was included in the organisational structure for the Council in its 2016/17 Operational Plan. On 23 November 2016, at the inaugural Audit Committee meeting, the Audit Committee resolved to 'draft an Internal Audit Plan for delivery in Q3 and

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<sup>70</sup> Exhibit 1, 20160817 Agenda Ordinary Meeting, NIRC.PUB.001.0022\_0017.

<sup>71</sup> Exhibit 1, 20160817 Agenda Ordinary Meeting, NIRC.PUB.001.0022\_0017.



Q4 16/17' and to 'develop an Internal Audit Charter as soon as practicable'. Accordingly, the importance of an internal audit role was recognised by the Council from an early stage.

60. However, for most of the period from 1 July 2016 the internal risk and audit role was vacant.<sup>72</sup> The first officer left the role in early 2017 and had been primarily preoccupied in her time with attending to legacy matters from the former Administration and employment related matters, with the consequence that there was limited advancement in the NIRC's internal risk and audit position during that time.<sup>73</sup>
61. The difficulties caused by there not being an internal audit officer were repeatedly noted by the Audit Committee in its minutes.<sup>74</sup> The internal audit plan, although first presented in late 2016, was not finalised and adopted until mid-2018.<sup>75</sup> As a result, for nearly two years, risk management strategies and a risk management framework for the Council's operations were underdeveloped or missing entirely.<sup>76</sup>

### Local government in remote and isolated communities

62. It is important to recognise that although in most communities local government plays a central role as a 'place shaper' and a reflection of the priorities and values of the area's residents,<sup>77</sup> this is particularly pronounced in remote and isolated communities like Norfolk Island.<sup>78</sup>

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<sup>72</sup> Transcript, 9 June 2021, pp 394.15–30, 449.20–39, 450.28–46; Transcript, 11 June 2021, pp 612.39–613.18.

<sup>73</sup> Exhibit 11, Email from Lotta Jackson to Kelly McFadyen dated 22 February 2017, KMC.F.001.001.0040; Exhibit 11, 20170222–24 Email exchange between Lotta Jackson and Kelly McFadyen, KMC.F.001.001.0166; Exhibit 1, 20170308 Audit Committee Meeting Minutes, NIRC.PUB.001.0078\_0007.

<sup>74</sup> Exhibit 1, 20170510 Audit Committee Meeting Minutes, NIRC.PUB.001.0088\_0007; Exhibit 1, 20170308 Audit Committee Meeting Minutes, NIRC.PUB.001.0078\_0007; Exhibit 1, 20180228 Audit Committee Meeting Minutes, NIRC.PUB.001.0136\_0006; Exhibit 1, 20180530 Audit Committee Meeting Minutes, NIRC.PUB.001.0147\_0013.

<sup>75</sup> Exhibit 11, 20161123 Audit Committee Meeting Minutes extract, NIRC.007.007.0004; Exhibit 1, 5.1 Internal Audit Plan, NIRC.001.006.0004; Transcript, 9 June 2021, p 394.23–30.

<sup>76</sup> Exhibit 1, 20160720 Attachment 7 Ordinary Meeting, NIRC.001.006.0013\_0005; Exhibit 1, 20170315 Agenda Ordinary Meeting, NIRC.PUB.001.0078\_0007; Exhibit 1, 20180530 Audit Committee Meeting Minutes, NIRC.PUB.001.0147\_0005.

<sup>77</sup> Roberta Ryan, Catherine Hastings, Ron Woods, Alex Lawrie and Bligh Grant, *Why Local Government Matters* (full report, June 2015), p i  
<<https://www.uts.edu.au/sites/default/files/WhyLocalGovernmentMatters-FullReport.pdf>>.

<sup>78</sup> Catherine Hastings, Liana Wortley, Roberta Ryan and Bligh Grant, 'Community Expectations for the Role of Local Government in Regional Australia: Meeting the Challenges of 'Slow Burn' (2016) 22(1) *Australasian Journal of Regional Studies* 158, pp 158, 171  
<<https://www.anzrsai.org/assets/Uploads/PublicationChapter/AJRS-22.1-pages-158-to-180.pdf>>.



63. Remote and isolated places often face different and sometimes more significant demographic, social, economic and infrastructure challenges than other local areas. Examples of these challenges are comparatively low economic growth rates, ageing populations, and difficulties in attracting and retaining adequately skilled staff.<sup>79</sup> These communities may also place more importance on local government delivering services that focus on long-term development and sustainability of the community than their urban counterparts, who may be more comfortable with the state delivering these services.<sup>80</sup> Remote and isolated communities are also likely to feel a greater degree of social connectedness, and place more importance on the sense of 'community'.<sup>81</sup>
64. One limitation common to all local councils is that their revenue is limited by population and typically subject to legislative restrictions on what they can charge for services. For remote and isolated communities, however, the small population size relative to geographic distribution means that local government is often dependent on Commonwealth and/or state subsidies to provide the necessary services, rather than own source revenue alone.<sup>82</sup> In the case of Norfolk Island, the only subsidies received are those from the Commonwealth; there are no state subsidies.
65. The challenges of remoteness and size also mean that these communities are unable to capitalise on economies of scale, meaning local government is called upon to deliver services 'atypical' for local government.<sup>83</sup> Such challenges are further accentuated for island

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<sup>79</sup> Catherine Hastings, Liana Wortley, Roberta Ryan and Bligh Grant, 'Community Expectations for the Role of Local Government in Regional Australia: Meeting the Challenges of 'Slow Burn' (2016) 22(1) *Australasian Journal of Regional Studies* 158, p 159  
<<https://www.anzrsai.org/assets/Uploads/PublicationChapter/AJRS-22.1-pages-158-to-180.pdf>>.

<sup>80</sup> Catherine Hastings, Liana Wortley, Roberta Ryan and Bligh Grant, 'Community Expectations for the Role of Local Government in Regional Australia: Meeting the Challenges of 'Slow Burn' (2016) 22(1) *Australasian Journal of Regional Studies* 158, p 158  
<<https://www.anzrsai.org/assets/Uploads/PublicationChapter/AJRS-22.1-pages-158-to-180.pdf>>.

<sup>81</sup> Catherine Hastings, Liana Wortley, Roberta Ryan and Bligh Grant, 'Community Expectations for the Role of Local Government in Regional Australia: Meeting the Challenges of 'Slow Burn' (2016) 22(1) *Australasian Journal of Regional Studies* 158, p 166  
<<https://www.anzrsai.org/assets/Uploads/PublicationChapter/AJRS-22.1-pages-158-to-180.pdf>>.

<sup>82</sup> Lyndon Megarrity, *Local government and the Commonwealth: an evolving relationship* (research paper No 10, 31 January 2011)  
<[https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1011/11RP10](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1011/11RP10)>; Exhibit 7, Statement of Chris Nobbs and attachments, CNOB.PSUB.001.0003.

<sup>83</sup> Morton Consulting Services, *Role and Expectations of Rural-Remote and Indigenous Local Government* (report, February 2012), p 4  
<[https://www.uts.edu.au/sites/default/files/1329283363\\_Role\\_Expectations\\_Rural-Remote\\_Councils\\_Report\\_ACELG\\_Feb2012.pdf](https://www.uts.edu.au/sites/default/files/1329283363_Role_Expectations_Rural-Remote_Councils_Report_ACELG_Feb2012.pdf)>; Productivity Commission, *Assessing Local*

councils, where geographic isolation requires that services be provided by local councils if they are to be provided at all.<sup>84</sup>

### **Norfolk Island and other remote parts of Australia**

66. While other remote and isolated parts of Australia share common elements with Norfolk Island, including some aspects of governance and legislative frameworks, none have a comparable responsibility for the provision of state-type services.
67. The principal difference between Norfolk Island and the islands that comprise the equally remote Indian Ocean Territories is in the way state-type and commercial services are funded and delivered. On Norfolk Island, the NIRC is contracted to deliver some state-type services, including motor vehicle and land titles registrations, and fire and marine search and rescue.<sup>85</sup> By contrast, the relevant councils on Christmas and Cocos (Keeling) Islands are not responsible for any service delivery, with some state-type services such as child protection, education, and fire and emergency services directly delivered by the relevant WA Government agencies, and some delivered by the Commonwealth.<sup>86</sup>
68. In relation to commercial services, the NIRC operates several 'business units', including the Norfolk Island International Airport, power generation and supply and telecommunications. Norfolk Island also owns and operates the local liquor bond.<sup>87</sup> By contrast, in the Indian Ocean Territories, the Australian Government supplies electricity<sup>88</sup> and contracts out airport management.<sup>89</sup>
69. In their review of the cost of services on Norfolk Island, the Commonwealth Grants Commission noted that states with off-grid communities similar in size to Norfolk Island provide subsidies to reduce electricity prices to those communities, and that without these

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*Government Revenue Raising Capacity* (research Report, April 2008), ch 2  
<<https://www.pc.gov.au/inquiries/completed/local-government/report/localgovernment.pdf>>.

<sup>84</sup> Exhibit 7, Submission of Chris Nobbs dated 7 May 2021, CNOB.PSUB.002.0002.

<sup>85</sup> Exhibit 11, 20160624 Service Delivery Agreement, NIRC.002.001.0001\_0002; 20210827 Commonwealth submission in response to Counsel Assisting submissions, COMM.SUB.001.0001\_0003.

<sup>86</sup> Department of Infrastructure, Regional Development and Communities, *Service Delivery Arrangements Indian Ocean Territories 2019–20* (annual report, March 2021), p 6  
<[https://www.infrastructure.gov.au/sites/default/files/migrated/territories/publications/files/iot\\_sda\\_annual\\_report\\_2019-20.pdf](https://www.infrastructure.gov.au/sites/default/files/migrated/territories/publications/files/iot_sda_annual_report_2019-20.pdf)>.

<sup>87</sup> Exhibit 11, Grassroots Connections Australia, Norfolk Island Regional Council Independent Governance and Financial Audit (final report, 15 November 2020), GRC.PUB.001.0001\_0112.

<sup>88</sup> 20210827 Commonwealth submission in response to Counsel Assisting submissions, COMM.SUB.001.0001\_0003.

<sup>89</sup> Exhibit 11, Grassroots Connections Australia, Norfolk Island Regional Council Independent Governance and Financial Audit (final report, 15 November 2020), GRC.PUB.001.0001\_0112.

'state-type subsidies', the price of electricity on Norfolk Island would continue to be much higher than in comparable communities.<sup>90</sup>

70. The Commonwealth does not currently provide any subsidies to Norfolk Island to offset the costs of electricity generation.<sup>91</sup> In its submission, the Department of Infrastructure, Transport, Regional Development and Communities advised that it was exploring the possibility of subsidising electricity in a manner similar to the Indian Oceans Territories.<sup>92</sup> It advised that discussions had commenced between the Department and the Council, and that this was subject to further analysis and approval through the Commonwealth Budget Process. The Department has also, more generally, acknowledged that there are several operations within the responsibility of the NIRC that do not 'sit well' with the local council model.<sup>93</sup>

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<sup>90</sup> Commonwealth Grants Commission, *2019 Norfolk Island Inquiry* (final report, November 2019), p 26 <[https://www.cgc.gov.au/sites/default/files/norfolk\\_island\\_inquiry\\_2019\\_final\\_report.pdf](https://www.cgc.gov.au/sites/default/files/norfolk_island_inquiry_2019_final_report.pdf)>.

<sup>91</sup> Commonwealth Grants Commission, *2019 Norfolk Island Inquiry* (final report, November 2019), p 82 <[https://www.cgc.gov.au/sites/default/files/norfolk\\_island\\_inquiry\\_2019\\_final\\_report.pdf](https://www.cgc.gov.au/sites/default/files/norfolk_island_inquiry_2019_final_report.pdf)>.

<sup>92</sup> 20210827 Commonwealth submission in response to Counsel Assisting submissions, COMM.SUB.001.0001\_0003.

<sup>93</sup> 20210827 Commonwealth submission in response to Counsel Assisting submissions, COMM.SUB.001.0001\_0003.

## Chapter 4: Legislative Framework and the Inquiry's Terms of Reference

71. The ToR of this Inquiry focus direct attention on the functions conferred on the NIRC by ss 21, 22, 23 and 24 of the applied LG Act, the guiding principles set out in Chapter 3 that relate to effective financial and asset management (including, in particular, s 8B(c)) as well as aspects of the role of the governing body set out in s 223. The NIRC includes the administrative structure of the Council (the officers of the Council).
72. ToR 1 focuses on the management by the NIRC and its governing body of the finances of the NIRC. That directs attention to the NIRC's handling or control of the Council's pecuniary resources. Whilst ToR 1 is expressly directed to the '*finances* of the NIRC' (rather than the finances and *assets* of the NIRC),<sup>94</sup> financial and asset management are inextricably interconnected – not least because, as will appear in later chapters of this report, the condition of a council's assets is related to, and affected by, its finances.
73. ToR 2 is not confined in the same way as ToR 1 is to management of the finances of the NIRC. ToR 1 focuses on both the NIRC and its governing body. In contrast, ToR 2 refers only to the governing body.
74. There is some overlap between ToR 1 and ToR 2. ToR 2 in part focuses attention on whether the governing body of the NIRC has, in the Defined Period, ensured 'so 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, as they relate to effective financial and asset management'. One of the principles in Chapter 3 is that embodied in s 8B(c), relating to effective financial and asset management. However, s 223(1)(d) also embraces s 8B in its entirety as well as s 8A(f), which expressly relates to asset management and provides that 'councils should manage lands and other assets so that current and future local community needs can be met in an affordable way'.

### The applied LG Act

#### Chapter 5 and the functions of councils

75. Chapter 5 of the applied LG Act describes, in general terms, the functions of a council. Specifically, by s 21 of the applied LG Act, a 'council has the functions conferred or imposed on it by or under [the] Act'. Section 22 provides that it also has the functions conferred or imposed on it by or under any other Act or law, and s 23 provides that the Council may 'do all such things as are supplemental or incidental to, or consequential on, the exercise of its

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<sup>94</sup> c.f. *Local Government Act 1993* (NSW) (NI), s 8B(c).

functions'. Finally, by s 24, the Council may 'provide goods, services and facilities, and carry out activities, appropriate to the current and future needs within its local community and of the wider public, subject to [the] Act, the regulations and any other law'.

### **Section 8B: principles of sound financial management**

76. Chapter 3 of the applied LG Act includes a number of principles, the stated object of which are to 'provide guidance to enable councils to carry out their functions in a way that facilitates local communities that are strong, health and prosperous'.<sup>95</sup>
77. Section 8B in particular sets out principles of sound financial management that apply to councils. It provides:

#### **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.

78. Although ToR 1 focuses specifically on paragraph (c) of s 8B, ToR 2 directs attention to s 8B in its entirety.
79. Two terms warrant further elaboration.

### **Performance management and reporting**

80. Performance management and reporting refers to the process by which an organisation monitors its progress against its overall strategy and makes adjustments to that strategy to achieve its desired outcomes. It involves:

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<sup>95</sup> *Local Government Act 1993* (NSW) (NI), s 8.

- a. regularly comparing actual results against projected results;
  - b. reviewing the financial impact of unforeseen events; and
  - c. taking action to minimise the impact of unforeseen events on budgeted outcomes.
81. Regular financial performance management of that kind provides a mechanism for the Council to achieve the planned financial state (budget outcome) at year end and, in particular, to maintain a financial position (including sufficient working capital) to meet the service delivery outcomes required for the Norfolk Island community. Sound performance management and reporting provides the basis for accountability and continuous improvement.

## **Risk management**

82. Risk management refers, in the present context, to the identification of financial risks associated with the multiple decisions that the Council and governing body were required to make; in particular decisions about the budget and major project expenditure. In the course of this Inquiry, it arises directly in the context of the funding decisions made in connection with the airport and roads projects, which are addressed in Chapter 7. As will be seen, despite Council having adopted a risk management policy in September 2018, it was not addressed or engaged with in relation to either of those decisions.<sup>96</sup>

## **Section 223 and the role of the governing body**

83. ToR 2 – which is confined to the governing body of the NIRC – directs attention to s 223. That provision defines the role of the governing body.<sup>97</sup> Specifically, ToR 2 directs attention to ss 223(1)(d) and 223(1)(l) of the applied LG Act.<sup>98</sup> Those sections provide that:

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

- (1) The role of the governing body is as follows—

....

- (d) to ensure as far as possible that the council acts in accordance with the principles in Chapter 3 and the plans, programs, strategies and policies of the council;

...

<sup>96</sup> Exhibit 1, 2.13 – Risk Management Policy, NIRC.PUB.001.0167.

<sup>97</sup> This provision applied to the NIRC in its presently relevant form from 23 September 2016: *Local Government Amendment (Governance and Planning) Act 2016*, sch 1 [3] together with s 2 and the proclamation published on 23 September 2016, available at: [http://classic.austlii.edu.au/au/legis/nsw/num\\_reg/lgaapa2016cp2016588l23s2016814/](http://classic.austlii.edu.au/au/legis/nsw/num_reg/lgaapa2016cp2016588l23s2016814/).

<sup>98</sup> *Local Government Act 1993* (NSW) (NI), s 223(1)(d).

- (l) to be responsible for ensuring that the council acts honestly, efficiently and appropriately;

...

- 84. For the purposes of the Inquiry, those provisions are only relevant insofar as they relate to effective financial and asset management. Sections 223(1)(c) and (1)(g) also have a bearing on – and assist in giving content to – what constitutes ‘effective financial and asset management’ since they required the Council to ensure as far as possible ‘the financial sustainability of the council’ and likewise to ‘keep under review the performance of the council’.

### **The time period under consideration in the ToR**

- 85. The guiding principles in s 8B of the applied LG Act engaged by the ToR are contained within Chapter 3 of the applied LG Act, which came into force on 23 September 2016.<sup>99</sup> However, if matters that occurred before 23 September 2016 have a bearing upon – and are therefore rationally connected to – conduct on or after 23 September 2016, those events are also within the ToR.
- 86. The date the suspension came into effect (and the interim administrator was appointed) effectively establishes the last date that is under consideration.<sup>100</sup> So the logical end point of the relevant period for the ToR is the date the suspension came into effect (i.e. 5 February 2021).
- 87. The ‘Defined Period’ for the ToR, therefore, is 23 September 2016 to 5 February 2021.

### **‘In accordance with’ and ‘complied with’**

- 88. The words ‘in accordance with’ in the ToR are used in the sense of *consistently with* or *in harmony with*. ToR 1 requires an evaluative judgment as to whether in the Defined Period the NIRC and its governing body, in exercising its functions pursuant to ss 21, 22, 23 and 24, *in fact* managed the finances of the NIRC consistently with s 8B(c).
- 89. The words ‘complied with’ in ToR 2, like the words ‘in accordance with’ in ToR 1, require an evaluative judgment. Namely, has the governing body fulfilled its obligations under, or done that which is required by, ss 223(1)(d) and (1)(l)?

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<sup>99</sup> *Local Government Amendment (Governance and Planning) Act 2016 No 38* (NSW), s 2(1) together with the proclamation published on 23 September 2016, available at: <[http://classic.austlii.edu.au/au/legis/nsw/num\\_reg/lgaapa2016cp2016588l23s2016814/](http://classic.austlii.edu.au/au/legis/nsw/num_reg/lgaapa2016cp2016588l23s2016814/)>.

<sup>100</sup> Minister for Infrastructure, Transport and Regional Development, *Suspension of Norfolk Island Regional Council*, (Gazette No. C2021G00102, 3 February 2021).

## Policies, processes, plans, programs and strategies

90. ToR 1 directs attention to whether or not the Council has had in place 'sound policies and processes' for the following as they relate to effective financial and asset management:
- a. performance management and reporting;
  - b. asset maintenance and enhancement;
  - c. funding decisions; and
  - d. risk management practices.
91. On 1 July 2016, all policies of the former Administration of Norfolk Island automatically transitioned to the Council, and continued in force as policies of the Council from that time until the Council declared the Administration policies obsolete or otherwise replaced them.<sup>101</sup> It was intended that the Council would review the policies of the former Administration and identify which of those were still required under the local government model and/or whether those policies should be modified to suit the requirements of the NIRC.<sup>102</sup> The NIRC was otherwise required by the applied LG Act to develop and implement any further policies and processes as required for effective financial and asset management.
92. The NIRC prepared, and the governing body adopted, a range of policies relevant to the Council's operations, including policies of a kind that had not previously been in place under the Administration and others which revised or replaced the Administration's policies.<sup>103</sup> **Appendix D** is a list of policies and process/procedural documents produced to the Inquiry by the NIRC.
93. The reference to 'plans, programs, strategies and policies' in ToR 2 is a reference to instruments of that kind relating to effective financial and asset management. As regards 'policies', s 223(1)(d) intersects with s 8B(c). The plans, programs and strategies that the provision alludes to are, at least, those plans, programs and strategies which constitute part of the integrated planning and reporting framework, addressed below, that touch on financial and asset management.

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<sup>101</sup> Exhibit 1, Annual Report 2016–2017, NIRC.PUB.001.0135\_0052–\_0053. See also: *Norfolk Island Legislation Amendment Act 2015* (Cth), item 366.

<sup>102</sup> Exhibit 1, Annual Report 2016–2017, NIRC.PUB.001.0135\_0052.

<sup>103</sup> See for example: Exhibit 1, 20161221 Agenda Ordinary Meeting, NIRC.PUB.001.0072\_0124; Exhibit 1, 20160720 Agenda Ordinary Meeting, NIRC.PUB.001.0007\_0016.



## Framework within which the NIRC was required to manage its finances and assets

94. The NIRC was required by Chapter 13, Part 2 of the applied LG Act to develop and endorse a suite of strategic planning documents (known as the 'integrated planning and reporting framework'), which are supplemented by the guidelines and manuals developed by the OLG.<sup>104</sup> The applied LG Act gives the guidelines statutory force.<sup>105</sup> The statute also envisages the issuance of 'further material' (such as the OLG manuals) that provide additional guidance, although those documents cannot impose further requirements.
95. The specific planning documents that the NIRC was required to develop and endorse under the applied LG Act were:
- a. a community strategic plan identifying the main priorities and aspirations for the future of Norfolk Island, covering a period of at least 10 years from when the plan is endorsed.<sup>106</sup> The community strategic plan is required to establish strategic objectives together with strategies for achieving those objectives;<sup>107</sup>
  - b. a resourcing strategy comprised of long-term financial planning, workforce management planning and asset management planning instruments.<sup>108</sup> Together, these plans detail the provision of resources required to implement the strategies established by the community strategic plan, again covering a period of at least 10 years;<sup>109</sup>
  - c. a delivery program which sets out the principal activities to be undertaken by the NIRC to implement the strategies established by the community strategic plan within the resources available under the resourcing strategy;<sup>110</sup>
  - d. an operational plan detailing the activities to be engaged in by the Council during the year as part of its delivery program covering that year.<sup>111</sup> The operational plan must also include a statement of the NIRC's revenue policy for the year covered by the operational plan.<sup>112</sup>

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<sup>104</sup> *Local Government Act 1993* (NSW) (NI), ss 8A, 8C, 406; Exhibit 1, Integrated Planning and Reporting Guidelines, OLG.PUB.001.0001.

<sup>105</sup> *Local Government Act 1993* (NSW) (NI), ss 406(2)–(4); *Interpretation Act 1987* (NSW) (NI), s 38A.

<sup>106</sup> *Local Government Act 1993* (NSW) (NI), s 402(1).

<sup>107</sup> *Local Government Act 1993* (NSW) (NI), s 402(2).

<sup>108</sup> *Local Government Act 1993* (NSW) (NI), s 403(2).

<sup>109</sup> *Local Government Act 1993* (NSW) (NI), s 403(1).

<sup>110</sup> *Local Government Act 1993* (NSW) (NI), s 404(1).

<sup>111</sup> *Local Government Act 1993* (NSW) (NI), s 405(1).

<sup>112</sup> *Local Government Act 1993* (NSW) (NI), s 405(2).

96. The NIRC was also required to prepare the following documents:

- a. a detailed annual budget<sup>113</sup> which must be included in the Council's operational plan and which sets out statements containing:<sup>114</sup>
  - i. a detailed estimate of the Council's income and expenditure;
  - ii. each ordinary rate and special rate proposed to be levied;
  - iii. each charge proposed to be levied;
  - iv. the types of fees proposed to be charged by the Council, and in some cases, the amount of each such fee;<sup>115</sup>
  - v. the Council's proposed pricing methodology for determining the prices of goods and fees for services provided by it;
  - vi. any proposed borrowings (other than internal borrowing), the sources from which they are proposed to be borrowed, and the means by which they are proposed to be secured.
- b. quarterly budget review statements which summarise the Council's financial position at the end of each quarter,<sup>116</sup> accompanied by a report by the responsible accounting officer, based on the financial position set out in the statement, setting out:<sup>117</sup>
  - i. whether the financial position of the Council is satisfactory; and
  - ii. if the financial position of the Council is not satisfactory, recommendations for remedial action;
- c. annual reports which must also contain a copy of the Council's audited financial reports.<sup>118</sup>

### **What did effective financial and asset management require on Norfolk Island?**

97. The following inferences or conclusions can be drawn from the statutory scheme as to the requirements of effective financial and asset management.

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<sup>113</sup> *Local Government (General) Regulation 2005* (NSW), cls 201, 202.

<sup>114</sup> See: *Local Government (General) Regulation 2005* (NSW), cls 201(1)(a)–(f).

<sup>115</sup> The Council was required to specify the amount of those fees set out in Division 2 of Part 10 of Chapter 15 of the *Local Government Act 1993* (NSW) (NI).

<sup>116</sup> *Local Government (General) Regulation 2005* (NSW), cl 203(1).

<sup>117</sup> *Local Government (General) Regulation 2005* (NSW), cl 203(2)(a)–(b).

<sup>118</sup> *Local Government Act 1993* (NSW) (NI), s 428(4)(a).

98. First, and foremost, the express object (referred to above) of the principles in Chapter 3, including effective financial and asset management, 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'.<sup>119</sup> The NIRC had an obligation to meet the legitimate needs of the Norfolk Island community. Effective financial and asset management is a means of achieving that ultimate end.
99. Second, effective financial and asset management must proceed from a complete and proper understanding of the overall financial resources of the council, and its assets, on an ongoing basis. Reliable and up to date information is a key ingredient. In particular, the governing body of a council must have and maintain a clear understanding of the financial resources of the council, its assets, its cash position, its revenue sources, and necessary expenditure, not only in the present but looking ahead to the medium to long term.
100. Third, it involves both a forward and backward looking approach. As appears above, councils are required under the integrated planning and reporting framework to put in place plans and strategies to manage their finances and assets. That is the forward looking aspect. The backward looking aspect is to keep under constant review the council's implementation of those plans and strategies.
101. Fourth, it directs attention both to revenue raising and expenditure. Revenue needs to rise to meet expenditure, and expenditure needs to be responsible so as not to exceed revenue, and deplete a council's cash reserves.
102. Fifth, it requires an active engagement with issues, problems or challenges that arise over time.
103. Sixth, it requires decision-making relating to financial and asset management to be robust and considered; the consequences or potential consequences in the short, medium and long term of both action and inaction must be thought-through, and appropriate provision made for known future financial obligations and the risk of unknown urgent calls on a council's finances.

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<sup>119</sup> *Local Government Act 1993* (NSW) (NI), s 8.

## Chapter 5: Financial and performance management and reporting

### Introduction and context

104. This chapter describes the overall financial performance of the Council over time up to the end of financial year 2019. It examines what it did and did not do, including in response to Audit Committee recommendations. It also examines the adequacy of the NIRC's policies and plans relating to financial and performance management as well as the extent to which they were followed or implemented through the decisions of the governing body.
105. I return to the Council's management of its finances in financial years 2018/19 and 2019/20 in Chapter 7. In that chapter, I consider the airport and roads projects. I also focus in that chapter on how the governing body failed to identify and engage with the long term financial risks, particularly those to the Council's cash position, associated with those projects. Chapter 7 also addresses the failure of the Council or governing body to engage with the Audit Committee and take advantage of its expertise when it came to each of the projects.

### The lead up to 1 July 2016

106. During the transition period from the Administration to the establishment of the NIRC on 1 July 2016, Mr Gesling's priorities were to:<sup>120</sup>
- a. develop a funding model to sustain the new regional council into the future;
  - b. develop the organisational framework for the regional council, including the structure of business activities such as Norfolk Telecom, Norfolk Island Electricity and the liquor bond;
  - c. work with Administration staff to implement a revised staffing structure to efficiently and effectively support the needs of the NIRC;
  - d. ensure that the organisational framework supported a seamless transition of federal and state-type services to the Australian Government from 1 July 2016; and
  - e. organise and run the elections for the NIRC before 30 June 2016.
107. In addition, Mr Gesling oversaw the development of the Council's inaugural Community Strategic Plan and Operational Plan, and the conduct of community consultation sessions for these plans.<sup>121</sup> While work on these documents began during Mr Gesling's tenure, they were in draft form for the new Council's consideration after its commencement in July

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<sup>120</sup> Exhibit 11, Administration of Norfolk Island Summary of 2015–16 budget, NIRC.PUB.008.0004\_0001.

<sup>121</sup> Transcript, 11 June 2021, p 585.16–26.

2016.<sup>122</sup> It was the NIRC's responsibility to finalise and adopt the documents, which it did within the mandated date.

108. Mr Gesling's evidence was that a draft Operational Plan and budget were developed during the transition period in consultation with the acting CEO, Mr Taylor,<sup>123</sup> but said that some of the information used to develop the draft budget was not 'clear'.<sup>124</sup> He said that discussions during the transition period as to the projected financial position under the Operational Plan and budget were largely driven by the Commonwealth and the parameters as to what level of funding the Commonwealth was or was not prepared to make available to the NIRC.<sup>125</sup>
109. Although it was originally intended that a sustainable funding model would be developed in the course of that transition year, Mr Gesling's evidence was that there was not enough time available to complete that task.<sup>126</sup> In his final report prepared in November 2016, Mr Gesling observed that there was also a need for an ongoing reform program within the NIRC to ensure the sustainability of the Island, including consideration as to whether to restructure responsibility for services not typically provided by a local council.<sup>127</sup>
110. Referencing assets, Mr Gesling pointed specifically to a lack of data about the water assurance scheme, where there 'was no real clear knowledge of the condition of that at the time we were doing the report'.<sup>128</sup> Mr Gesling said that the people developing the draft budget were required to make judgements about the allowance for assets, which 'had to be firmed up over time'.<sup>129</sup>
111. Mr Gesling was originally appointed with an intention of him remaining in a consultative capacity during the first year of the new Council's operation.<sup>130</sup> He left in late 2016 as he 'wasn't being called on',<sup>131</sup> though he acknowledged that 'it wasn't really my place to ... demand that or expect that'.<sup>132</sup>

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<sup>122</sup> Transcript, 11 June 2021, p 585.9–30.

<sup>123</sup> Transcript, 11 June 2021, p 585.41–47.

<sup>124</sup> Transcript, 11 June 2021, p 586.13–14.

<sup>125</sup> Transcript, 11 June 2021, pp 589.47–590.10, 592.3–10.

<sup>126</sup> Transcript, 11 June 2021, p 592.12–41.

<sup>127</sup> Exhibit 9, Executive Director Norfolk Island Report 2015/2016, PGES.001.001.0001\_0004, \_0024; Transcript, 11 June 2021, pp 593.35–594.40, 595.1–45.

<sup>128</sup> Transcript, 11 June 2021, p 586.21–25.

<sup>129</sup> Transcript, 11 June 2021, p 586.24–25.

<sup>130</sup> Transcript, 11 June 2021, p 587.23–36.

<sup>131</sup> Transcript, 11 June 2021, p 587.32–36.

<sup>132</sup> Transcript, 11 June 2021, p 588.19–21.

## Policies and plans related to financial and performance management

112. The former Administration's policies and guidelines were transferred to the NIRC.<sup>133</sup> These remained in force on and from 1 July 2016, and the Council continued to use them with the intention that they be later reviewed to determine whether they should be deemed obsolete or modified to suit the requirements of the NIRC.<sup>134</sup>
113. In response to a summons issued by Solicitors Assisting the Inquiry, the NIRC stated it had no documented policies or procedures for performance management and reporting, other than an acknowledgment of the reporting requirements as set out in the applied LG Act itself.<sup>135</sup> Nonetheless, on 21 December 2016, the NIRC adopted an investment policy which provided some guidance for risk and performance management. It listed those forms of investment instruments that Council had approved and prohibited, along with investment guidelines. It also established the policy objective that Council's investments would be allocated to 'ensure there is sufficient liquidity to meet all reasonably anticipated cash-flow requirements' and to achieve the 'best investment returns' within the agreed investment framework. The policy also required Council to be handed a written monthly investment report.<sup>136</sup>
114. One notable omission from the investment policy (and the NIRC's policies and processes more generally) was the absence of guidance as to the minimum available working capital which should be maintained by the NIRC. Put simply, minimum working capital is the minimum amount of current assets (i.e. cash) that a council should maintain to fund day-to-day operations and provide a buffer for any other unforeseen and unbudgeted expenditures, such as emergencies. Auditing firm Nexia Australia suggested the minimum amount of working capital for the NIRC should be \$7 million.<sup>137</sup>
115. In the absence of a formal policy, in their evidence, Councillors demonstrated an inconsistent understanding of what the minimum available working capital should have been. The record of Council meetings, on the other hand, does not indicate that this issue was ever discussed prior to the cash flow crisis, which became apparent in April 2020. During the hearings, the

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<sup>133</sup> Exhibit 1, Annual Report 2016–2017, NIRC.PUB.001.0135\_0052. See: *Norfolk Island Legislation Amending Act 2015*, item 366.

<sup>134</sup> Exhibit 1, Annual Report 2016–2017, NIRC.PUB.001.0135\_0052.

<sup>135</sup> Exhibit 11, 20210416 Norfolk Island Regional Council response to Summons to Produce No. NIRC/1, schedule item 1(a), NIRC.001.001.0002; Exhibit 11, 20210416 Norfolk Island Regional Council response to Summons to Produce No. NIRC/1, schedule item 1(e), NIRC.001.001.0005.

<sup>136</sup> Exhibit 1, 3.04 – Investment Policy, NIRC.PUB.001.0196\_0006.

<sup>137</sup> Exhibit 9, Nexia Australia, Norfolk Island Regional Council Independent Audit of Financial Performance, NXA.PUB.001.0001\_0021.

suspended Councillors and Council staff gave the following evidence about the amount Council should hold:

- a. Mr Snell explained that when he was the Chief Minister for the Norfolk Island Legislative Assembly, he was 'very concerned if [working capital] dropped below \$3 million';<sup>138</sup>
- b. Mr McCoy stated that he 'believed that the Council should not erode its reserves'<sup>139</sup> and that while he did not have a set figure, it should be 'at least 12 months' worth of funds'.<sup>140</sup> He explained this amount would exceed \$3 million a year, as \$3 million would equate to Council staff wages for 12 months;<sup>141</sup>
- c. Mr Buffett's evidence was that he was not told how much Council was required to leave as unrestricted cash to fund daily operations;<sup>142</sup>
- d. Mr Wilson's figure was considerably higher: '[y]ou're looking at \$8 million ... rule of thumb, it's nice to have 10 [million]';<sup>143</sup> and
- e. Mr Roach agreed with Nexia Australia's recommendation of \$7 million in minimum working capital.<sup>144</sup>

116. The absence of a specified figure limited the utility of the investment policy of ensuring 'there is sufficient liquidity to meet all reasonably anticipated cash-flow requirements'<sup>145</sup> and prevented the Councillors from gaining a proper understanding about the adequacy of the NIRC's resources when it came to making decisions regarding urgent asset maintenance and enhancement. A specific figure would have been a useful yardstick for the governing body when it came to making decisions that it knew would draw upon cash reserves.

117. The NIRC had two plans that guided their decisions relating to financial and asset management. These were the Long Term Financial Plan and the Operational Plan.<sup>146</sup> These plans were developed each year by Council. Each draft Operational Plan was placed on public exhibition for at least 28 days prior to adoption, to allow the community an opportunity to provide feedback on the proposed initiatives.<sup>147</sup> Staff who had previously occupied a

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<sup>138</sup> Transcript, 3 June 2021, p 274.14–27.

<sup>139</sup> Transcript, 2 June 2021, p 188.26–27.

<sup>140</sup> Transcript, 2 June 2021, p 188.29.

<sup>141</sup> Transcript, 2 June 2021, p 188.34.

<sup>142</sup> Transcript, 1 June 2021, p 166.1–5.

<sup>143</sup> Transcript, 10 June 2021, p 531.4–17.

<sup>144</sup> Transcript, 31 May 2021, p 39.38–43.

<sup>145</sup> Exhibit 1, 3.04 – Investment Policy, NIRC.PUB.001.0196\_0006.

<sup>146</sup> Exhibit 1, 20161221 Ordinary Meeting of Council Minutes, NIRC.PUB.001.0069\_0012; Exhibit 1, 20160817 Ordinary Meeting of Council Minutes, NIRC.PUB.001.0020\_0003.

<sup>147</sup> See: s 405(3) of the applied LG Act. The relevant plans are: Exhibit 1, 20160817 Ordinary Meeting of Council Minutes, NIRC.PUB.001.0020\_0003; Exhibit 1, 20170419 Ordinary Council



position within the Administration of Norfolk Island, including Mr Taylor, contributed to the development of these plans.

118. The Long Term Financial Plan is a 10-year forecast describing the Council's current financial position, outlining strategies for improving its financial position, and measuring its performance against standard financial indicators. It provides a basis for future decision-making and models the Council's performance against three 'scenarios', comparing the outcomes.<sup>148</sup>
119. The Council developed, and the Councillors adopted, Long Term Financial Plans<sup>149</sup> in a manner consistent with the applied LG Act. A key theme of this chapter is the extent to which successive Long Term Financial Plans were followed by the Council, affecting their utility as a strategic planning tool.
120. Likewise, in accordance with the applied LG Act, the Council also produced an annual Operational Plan outlining its strategic direction, revenue policy, the budget and the schedule of fees and charges for that year.<sup>150</sup> As will be shown below, the budgeted end of year results predicted each year were always substantially different to the Council's actual results and financial decisions agreed to in the Operational Plans were at times not acted upon by the Council, which had an impact on the projected financial outcomes.

## The Council's financial performance

### NIRC's starting position

121. On 1 July 2016, the assets and liabilities of the Administration became the assets and liabilities of the NIRC (subject to the operation of any transitional rule which vested an asset or liability in the Commonwealth).<sup>151</sup> The financial position inherited by the Council was not strong. In 2015/16, the end of year result for the Administration was a deficit of \$1.304 million,

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Meeting Minutes, NIRC.PUB.001.0083\_0009; Exhibit 1, 20180516 Ordinary Council Meeting Minutes, NIRC.PUB.001.0144\_0012; Exhibit 1, 20190417 Ordinary Council Meeting Minutes, NIRC.PUB.001.0202\_0009.

<sup>148</sup> See for example: Long Term Financial Plan 2017–2026, NIRC.PUB.001.0070\_0010–\_0027.

<sup>149</sup> Exhibit 1, Long Term Financial Plan 2017–2026, NIRC.PUB.001.0070; Exhibit 1, Long Term Financial Plan 2018–2027, NIRC.PUB.001.0095; Exhibit 1, Long Term Financial Plan 2019–2028, NIRC.PUB.001.0151; NIRC; Exhibit 1, Long Term Financial Plan 2020–2029, NIRC.PUB.001.0218.

<sup>150</sup> Exhibit 1, Operational Plan 2016–2017, NIRC.PUB.001.0046; Exhibit 1, Operational Plan 2017–2018, NIRC.PUB.001.0121; Exhibit 1, Operational Plan 2018–2019, NIRC.PUB.001.0191; Exhibit 1, Operational Plan 2019–2020, NIRC.PUB.001.0217; Exhibit 1, Operational Plan 2020–2021, NIRC.PUB.001.0269.

<sup>151</sup> *Norfolk Island Legislation Amendment Act 2015*, sch 2 pt 2, items 358 and 359, together the definition of 'final transition time' (in item 356 of sch 2 pt 2) and s 2; c.f. *Norfolk Island Legislation Amendment Act Transitional Rule 2016* (No 1), s 8.



and a consolidated deficit of \$785,939.<sup>152</sup> Additionally, the Administration's cash reserve result at the end of the year (i.e. 30 June 2016) was approximately \$9.4 million.<sup>153</sup>

122. The NIRC also inherited a large asset base from the Administration,<sup>154</sup> the majority of which did not comply with the relevant standards for asset management that were current at the time (PAS 55),<sup>155</sup> and were either at or well past their end-of-life functionality.<sup>156</sup> This is detailed further in Chapter 6.
123. The liabilities transferred to the NIRC from the Administration were in the order of \$14 million, the most significant of which was an outstanding loan taken out by the Administration in 2005 to fund repairs to the airport runway.<sup>157</sup> As of 30 June 2016, the balance of that loan was \$11.4 million.<sup>158</sup>
124. The NIRC also inherited the budget prepared during the transition period which projected a budget deficit of \$4.266 million.<sup>159</sup>
125. Although the Council was newly established, it possessed a body of corporate knowledge passed down from the Administration through many staff as well as the three members of the governing body who held roles within it. That being said, the General Manager and the key financial and accounting staff (Mr van Gallen and Mr Nankivell) were all new to the Island. As described below, they quickly came to understand the issues and the challenges facing the Council.

## Revenue overview

126. Table 1 shows NIRC's budgeted and actual revenue across own source and Commonwealth sources for each of the first four years of the Council's operations.

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<sup>152</sup> Exhibit 11, Australian National Audit Office, Independent Report of Norfolk Island's Financial Statements 2015–16 (audited financial statements, 11 May 2017), DIRD.PUB.001.0001\_0007.

<sup>153</sup> Exhibit 11, Australian National Audit Office, Independent Report of Norfolk Island's Financial Statements 2015–16 (audited financial statements, 11 May 2017), DIRD.PUB.001.0001\_0008.

<sup>154</sup> Exhibit 1, 20170510 Audit Committee Meeting Agenda, NIRC.PUB.001.0089\_0014.

<sup>155</sup> Exhibit 1, Integrated Planning and Reporting Manual for local government in NSW, OLG.PUB.001.0002\_0079. Note: As of September 2021, the OLG recommends that asset management standards comply with 'ISO 55000 Standards for Asset Management'. See Office of Local Government, *Integrated Planning and Reporting Handbook for Local Councils in NSW* (September 2021), p 51 <<https://www.olg.nsw.gov.au/wp-content/uploads/2021/09/Integrated-Planning-and-Reporting-Handbook.pdf>>.

<sup>156</sup> Exhibit 1, Long Term Financial Plan 2017–2026, NIRC.PUB.001.0070\_0011.

<sup>157</sup> Exhibit 11, Australian National Audit Office, Independent Report of Norfolk Island's Financial Statements 2015–16 (audited financial statements, 11 May 2017), DIRD.PUB.001.0001\_0006, \_0008.

<sup>158</sup> Exhibit 1, Operational Plan 2016–2017, NIRC.PUB.001.0046\_0026.

<sup>159</sup> Exhibit 1, Operational Plan 2016–2017, NIRC.PUB.001.0046\_0028.

127. The NIRC has two primary revenue streams – own source and grant revenue. Grant funding was either specifically allocated for the delivery of state-type services or took the form of other Commonwealth grants. Optimising these revenue streams, and ensuring that they exceeded expenditure, was critical to ensuring the long-term sustainability of Norfolk Island.
128. Own source revenue refers to income received from the Council's business units, and fees, rates and charges directly levied by the Council on individuals, properties and businesses on, or operating in, Norfolk Island. 'Other revenues' referred to in Table 1 includes income from rentals, insurance claim recoveries, general sales, tourism sales, liquor bond sales, fuel sales, Kingston and Arthurs Vale Historic Area (KAVHA) sales and entry fees, and tanalith services.<sup>160</sup> The most significant portion of 'other revenues' in 2016/17 were liquor bond sales of \$3.949 million and KAVHA sales and entry fees of \$284,826.<sup>161</sup>

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<sup>160</sup> 'Tanalith' services refers to a form of wood treatment used on the Island.

<sup>161</sup> Exhibit 1, Annual Report 2016–2017, NIRC.PUB.001.0135\_0135.

**Table 1. NIRC income against budget across all sources: 2016/17–2019/20<sup>162</sup>**

Revenue	2016/17		2017/18		2018/19		2019/20	
	Budget <sup>163</sup>	Actual	Budget	Actual	Budget	Actual	Budget	Actual
<b>Own source revenue</b>								
Rates and Annual Charges	650,000	1,153,807	1,180,000	1,643,868	1,200,000	1,602,917	1,751,000	1,381,731
User Charges and Fees	18,730,000	12,241,595	16,161,000	13,852,853	13,155,000	13,984,166	14,547,000	12,279,466
Interest and Investment Revenue	200,000	247,051	120,000	298,592	240,000	398,227	243,000	258,792
Other Revenues	870,000	4,570,378	4,930,000	5,045,957	5,071,000	5,320,410	5,058,000	4,566,223
<b>Total own source revenue</b>	<b>20,450,000</b>	<b>18,212,831</b>	<b>22,391,000</b>	<b>20,841,270</b>	<b>19,666,000</b>	<b>21,305,720</b>	<b>21,599,000</b>	<b>18,486,212</b>
<b>Commonwealth revenue</b>								
Grants for operating purposes (comprising) <sup>164</sup>	3,884,000	4,096,276	8,241,000	5,600,073	7,283,534	6,901,639	10,826,626	8,170,464
Financial Assistance and other grants	N/A	2,129,398	4,420,000	2,564,038	3,849,320	4,294,883	4,497,041	4,382,452
Service Delivery Funding	N/A	1,966,878	3,821,000	3,036,035	3,434,214	2,606,756	6,329,585	3,788,012
Grants for capital purposes	-	-	3,075,000	-	4,936,000	13,500,000	50,000,000	40,608,346
<b>Total Commonwealth revenue</b>	<b>3,884,000</b>	<b>4,096,276</b>	<b>11,316,000</b>	<b>5,600,073</b>	<b>12,219,534</b>	<b>20,401,639</b>	<b>60,826,626</b>	<b>48,778,810</b>
Rental Income	-	-	-	-	-	-	-	598,052
Other income	-	-	-	-	-	-	-	-
Net gains from disposal of assets	-	47,389	-	-	-	-	-	-
<b>Total Income from continuing operations</b>	<b>24,334,000</b>	<b>22,346,496</b>	<b>33,707,000</b>	<b>26,441,343</b>	<b>31,885,534</b>	<b>41,707,359</b>	<b>82,425,626</b>	<b>67,863,074</b>

<sup>162</sup> Exhibit 1, Operational Plan 2016–2017, NIRC.PUB.001.0046\_0028; Exhibit 1, Annual Report 2016–2017, NIRC.PUB.001.0135\_0118, \_0136; Exhibit 1, Operational Plan 2017–2018, NIRC.PUB.001.0121\_0041, \_0045; Exhibit 1, Annual Report 2017–2018, NIRC.PUB.001.0181\_0176, \_0189; Exhibit 1, Operational Plan 2018–2019, NIRC.PUB.001.0191\_0056, \_0059; Exhibit 1, Annual Report 2018–2019, NIRC.PUB.001.0251\_0192, \_0205; Exhibit 1, Operational Plan 2019–2020, NIRC.PUB.001.0217\_0058, \_0059; Exhibit 1, 2019–2020 Draft Financial Statements, NIRC.001.002.0001\_0006, \_0020; Exhibit 11, Draft NIRC General Purpose Financial Statements for the year ended 30 June 2020, NIRC.003.002.0010\_0006, \_0020; c.f. 20210915 Enclosure to RGS Law Letter to Solicitors Assisting the Inquiry, RGS.SUB.001.0002.

<sup>163</sup> All budget figures in Table 1 are taken from the budget within the Council's Operational Plans: Exhibit 1, Operational Plan 2016–2017, NIRC.PUB.001.0046; Exhibit 1, Operational Plan 2017–2018, NIRC.PUB.001.0121; Exhibit 1, Operational Plan 2018–2019, NIRC.PUB.001.0191; Exhibit 1, Operational Plan 2019–2020, NIRC.PUB.001.0217.

<sup>164</sup> Note: a break down of 'grants for operating purposes' is not stated within the Council's 2016–2017 budget.

129. Table 1 shows that the projected total income from continuing operations during the Defined Period consistently deviated from the projected result. For 2016/17, 2017/18 and 2019/20, the end of year result for total income was less than the budget forecast, while for 2018/19, it was substantially higher than was budgeted. The reasons for these deviations are described below.

### Expenditure overview

130. Table 2 shows NIRC's budgeted and actual expenditure across the same period.<sup>165</sup>

**Table 2. NIRC expenditure against budget: 2016/17–2019/20 budgeted and actual**

Expenditure	2016/17		2017/18		2018/19		2019/20	
	Budget	Actual	Budget <sup>41</sup>	Actual	Budget <sup>41</sup>	Actual	Budget <sup>41</sup>	Actual
Employee benefits	8,912,000	7,316,160	10,322,000	9,078,727	9,643,000	10,252,968	12,982,000	11,663,687
Borrowing costs	-	-	-	-	-	-	-	-
Materials and contracts	12,701,000	5,964,747	10,323,000	9,041,606	12,482,000	8,096,996	7,847,000	8,264,277
Depreciation and amortisation	5,748,000	4,605,144	4,958,000	4,847,004	4,813,000	4,841,048	4,844,000	4,624,074
Other expenses	1,239,000	4,608,246	3,121,000	3,450,245	-	4,903,629	6,696,000	5,010,293
Net losses from disposal of assets	-	-	-	-	-	-	-	10,067,019
<b>Total expenditure from continuing operations</b>	<b>28,601,000</b>	<b>22,494,297</b>	<b>28,724,000</b>	<b>26,417,582</b>	<b>26,938,000</b>	<b>28,094,641</b>	<b>32,369,000</b>	<b>39,629,350</b>

131. As with revenue, Table 2 shows that the actual expenditure during the Defined Period routinely deviated from the budgeted amounts. For 2016/17 and 2017/18, the actual end of year result for total expenditure from continuing operations was less than budget forecasts, while for 2018/19 and 2019/20, the actual end of year result for total expenditure was substantially higher than was budgeted.<sup>166</sup>

<sup>165</sup> Exhibit 1, Operational Plan 2016–2017, NIRC.PUB.001.0046\_0028; Exhibit 1, Annual Report 2016–2017, NIRC.PUB.001.0135\_0118; Exhibit 1, Operational Plan 2017–2018, NIRC.PUB.001.0121\_0041; Exhibit 1, Annual Report 2017–2018, NIRC.PUB.001.0181\_0176; Exhibit 1, Operational Plan 2018–2019, NIRC.PUB.001.0191\_0056; Exhibit 1, Annual Report 2018–2019, NIRC.PUB.001.0251\_0192; Exhibit 1, Operational Plan 2019–2020, NIRC.PUB.001.0217\_0059; Exhibit 1, 2019–2020 Draft Financial Statements, NIRC.001.002.0001\_0006.

<sup>166</sup> In 2019/20, the variance between budgeted and actual expenditure results was substantially greater due to the \$10 million loss from disposal of assets, associated with the removal of the 'old' asphalt during the resurface of the airport runway. The airport runway had been classified as a 'Road' for the purpose of the financial statements. The book value of the 'old' asphalt was \$11.1 million. As at 30 June 2020, 90% of the old asphalt had been removed, which equated to \$10 million, as reflected on the financial statements. See: Exhibit 11, Norfolk Island Regional Council, normal adjusting journal entries, year ending 30 June 2020, NIRC.015.001.0017; Exhibit 11, 20200630 Runway assets identified in asset register, NIRC.015.001.0016; Exhibit

132. The variations in budgeted and actual results for total expenditure throughout the Defined Period are explained in detail below.

### Overall performance

133. Table 3 sets out the budgeted and actual operating results.<sup>167</sup>

**Table 3. Budgeted and actual operating results, 2016/17–2019/20**

Operating results	2016/17		2017/18		2018/19		2019/20	
	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual
Net operating result from continuing operations	(4,266,000)	(137,801)	4,983,000	23,761	4,947,000	13,612,718	50,056,000	28,233,724
Net result/loss from discontinued operations	-	(1,391,242)	-	-	-	-	-	-
Net operating result for the year	(4,266,000)	(1,529,043)	4,983,000	23,761	4,947,000	13,612,718	50,056,000	28,233,724
Net operating result for the year before capital grants	(4,266,000)	(1,529,043)	1,908,000	23,761	11,000	112,718	56,000	(12,374,622)

134. Table 3 shows that for 2016/17 and 2019/20, the Council operated at a significant deficit before capital grants, while for 2017/18 and 2018/19, it achieved a modest surplus. In the case of 2016/17, the \$1,391,242 loss was attributable to the net loss from the sale of the fuel business previously operated by the Norfolk Island Administration. The decision to sell the fuel business was made by the transition administration and was therefore not attributable to the NIRC.<sup>168</sup>

135. As for the revenue and expenditure results, Table 3 shows the projected net operating results during the Defined Period was routinely and substantially different from the actual results. For 2016/17 and 2018/19, the actual net operating results before capital grants exceeded budget projections, while for 2017/18 and 2019/20, the net operating results before capital grants was far less than what the budget projected.

11, 20210106 Email from Kieren Moss to Alistair Innes–Walker, NIRC.015.001.0004; Exhibit 11, 20210113 Email from Jake Hadfield to Alistair Innes–Walker, NIRC.015.001.0005.

<sup>167</sup> Exhibit 1, Operational Plan 2016–2017, NIRC.PUB.001.0046\_0028; Exhibit 1, Annual Report 2016–2017, NIRC.PUB.001.0135\_0118; Exhibit 1, Operational Plan 2017–2018, NIRC.PUB.001.0121\_0041; Exhibit 1, Annual Report 2017–2018, NIRC.PUB.001.0181\_0176; Exhibit 1, Operational Plan 2018–2019, NIRC.PUB.001.0191\_0056, \_0192; Exhibit 1, Annual Report 2018–2019, NIRC.PUB.001.0251\_0192; Exhibit 1, Operational Plan 2019–2020, NIRC.PUB.001.0217\_0059; Exhibit 11, Draft NIRC General Purpose Financial Statements for the year ended 30 June 2020, NIRC.003.002.0010\_0006.

<sup>168</sup> Exhibit 1, Annual Report 2016–2017, NIRC.PUB.001.0135\_0118, \_0158.

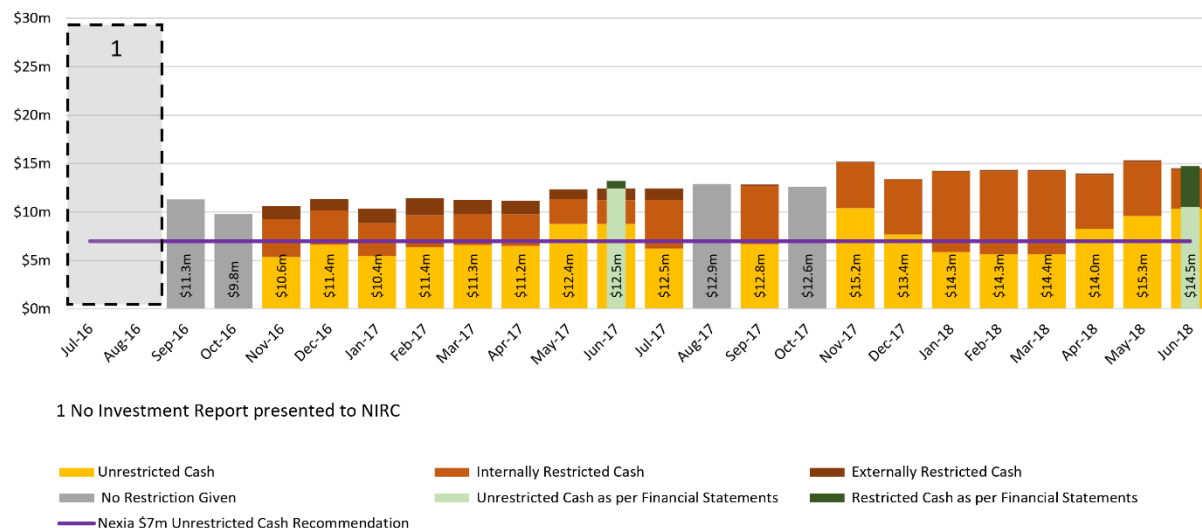
## The cash position of the NIRC

136. The cash position of a council is fundamental to its long-term financial sustainability. Dissipation of the overall cash position is a strong indicator that spending has not been responsible and sustainable and/or that there has been a failure to have kept the financial performance of the organisation under review. Similarly, it is an indication that there has been a failure to have regard to or apply appropriate financial risk management policies, processes or procedures.
137. Although the NIRC's income statements (illustrated in Tables 1 to 3 above) for the four years ended 30 June 2020 give an indication of the revenue performance of the Council (and show the significant effects of COVID-19 on the yearly performance of the Council in the year ended 2019/20) they do not fully illustrate the cash position of the NIRC over time.
138. Figure 3 shows the NIRC's cash position from July 2016 to 30 June 2018. Data underpinning Figure 3 was derived primarily from investment reports presented at monthly Council meetings,<sup>169</sup> with the exception of September 2016, which was derived from the quarterly budget review statement. The investment reports were generally presented one month in arrears; that is, they showed the available cash at the end of the previous month.

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<sup>169</sup> Exhibit 1, 20161019 Agenda Ordinary Meeting, NIRC.PUB.001.0058\_0037; Exhibit 1, 20161116 Ordinary Council Meeting, NIRC.PUB.001.0067\_0097; Exhibit 1, 20161221 Agenda Ordinary Meeting, NIRC.PUB.001.0072\_0149; Exhibit 1, 20170215 Agenda Ordinary Meeting, NIRC.PUB.001.0077\_0139, \_0145; Exhibit 1, 20170315 Agenda Ordinary Meeting, NIRC.PUB.001.0082\_0070; Exhibit 1, 20170419 Agenda Ordinary Meeting, NIRC.PUB.001.0086\_0159; Exhibit 1, 20170517 Agenda Ordinary Meeting, NIRC.PUB.001.0093\_0140; Exhibit 1, 20170628 Agenda Ordinary Meeting, NIRC.PUB.001.0097\_0188; Exhibit 1, 20170719 Agenda Ordinary Meeting, NIRC.PUB.001.0103\_0080; Exhibit 1, 20170816 Agenda Ordinary Meeting, NIRC.PUB.001.0105\_0112; Exhibit 1, 20170920 Agenda Ordinary Meeting, NIRC.PUB.001.0115\_0145; Exhibit 1, 20171018 Agenda Ordinary Meeting, NIRC.PUB.001.0118\_0062; Exhibit 1, 20171115 Agenda Ordinary Meeting, NIRC.PUB.001.0120\_0262; Exhibit 1, 20171220 Agenda Ordinary Meeting, NIRC.PUB.001.0129\_0104; Exhibit 1, 20180221 Agenda Ordinary Meeting, NIRC.PUB.001.0133\_0283, \_0269; Exhibit 1, 20180321 Ordinary Council Meeting Agenda, NIRC.PUB.007.0001\_0133; Exhibit 1, 20180418 Agenda Ordinary Meeting, NIRC.PUB.001.0143\_0071; Exhibit 1, 20180516 Agenda Ordinary Meeting, NIRC.PUB.001.0145\_0205; Exhibit 1, 20180627 Agenda Ordinary Meeting, NIRC.PUB.001.0154\_0199; Exhibit 1, 20180718 Agenda Ordinary Meeting, NIRC.PUB.001.0158\_0101.

**Figure 3. NIRC's cash position as presented in investment reports, July 2016 to June 2018**



139. Figure 3 demonstrates that the Council's cash position was relatively stable from July 2016 to June 2018, increasing moderately during this period.

140. The latter half of the Council's tenure was the period in which the problems resulting from the Council's financial and asset management decisions became critical. During this time, the Council's cash position was depleted such that the NIRC could not meet its short- or long-term financial liabilities. The key events which led to the deterioration of the Council's cash position from July 2018 are covered in detail in Chapter 7.

### Chronology of funding decisions and financial performance

141. The NIRC had several reporting mechanisms critical to monitoring and managing financial performance.

142. Two of the key financial reports prepared by Council staff were the Quarterly Budget Review Statements (**QBRs**) and investment reports. Investment reports were presented to the governing body in the business papers prepared for monthly Council meetings, and QBRs were presented to the governing body quarterly in business papers. They were also provided to the Audit Committee in advance of the quarterly Audit Committee meetings.

143. The QBRs reported on the Council's operational and capital expenditure, and compared the actual financial position of the Council at the end of the reporting period with the forecasted budget as described in that year's Operational Plan. Generally, the QBRs also included the Responsible Accounting Officer's assessment of whether the NIRC's financial position was



satisfactory or unsatisfactory. If it was unsatisfactory, remedial actions were suggested.<sup>170</sup> Each QBRS covered a three-month period and were presented to Council for the financial year quarters ending 30 September, 31 December, 31 March and 30 June.

144. The investment reports were (or were supposed to be) presented at each ordinary Council meeting. Each investment report described the balance of cash or cash equivalent assets across the Council's various bank and term deposit accounts, including a breakdown of the Council's restricted versus unrestricted cash position. In one investment report, Mr Nankivell described externally restricted cash as cash that 'must be spent on the purpose for what it was raised or received and cannot be used for any other purpose',<sup>171</sup> as opposed to internally restricted cash which was 'deemed to be required by the Council in either the current budget or for future years'.<sup>172</sup> As the term suggests, unrestricted cash had no restrictions on what it could be spent on, but is available to be applied towards day-to-day operational costs, such as paying staff salaries.
145. In addition to these more frequent reports, the Council also used the Long Term Financial Plans and Operational Plans to forecast its financial position over time and to recommend actions to ensure financial sustainability. These plans, the QBRS and the investment reports should have been utilised by the Councillors to inform their financial decision-making, but as explained below and in Chapter 7, this did not always occur.

### Early warnings and concerns

146. In November 2016, the first QBRS was presented to the Councillors for the period ending 30 September 2016. The report forecast an increase in the budget deficit for the period ending 30 June 2017 from \$4.266 million to \$5.346 million, largely based on the loss of income from various revenue streams.<sup>173</sup> The report also noted the NIRC's:
- ... five main business enterprises being Electricity, Telecom, Airport, Sewerage and Waste Management are all running a deficit with a combined total deficit of \$3.5 million. In an efficient and financially responsible Council, these should be paid for by the setting of special rates, fees and charges and through productivity efficiencies.<sup>174</sup>
147. At the first meeting of the Audit Committee on 23 November 2016, chaired by Ms McFadyen, the Committee expressed its concern at the state of the NIRC's budget and financial position

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<sup>170</sup> See for example: Exhibit 1, 20171115 Agenda Ordinary Meeting, NIRC.PUB.001.0120\_0244.

<sup>171</sup> Exhibit 1, 20161221 Agenda Ordinary Meeting, NIRC.PUB.001.0072\_0149.

<sup>172</sup> Exhibit 1, 20161221 Agenda Ordinary Meeting, NIRC.PUB.001.0072\_0149.

<sup>173</sup> Exhibit 1, 20161116 Ordinary Council Meeting Agenda, NIRC.PUB.001.0067\_0079.

<sup>174</sup> Exhibit 1, 20161116 Agenda Ordinary Meeting, NIRC.PUB.001.0067\_0080.



as presented in the QBRS for the period ending 30 September 2016. Its recommendation was that the NIRC:<sup>175</sup>

undertake those necessary actions to bring the budget to at least a breakeven position as soon as possible, as the existing financial position is not sustainable over the long term.

148. At the Council meeting on 21 December 2016, the governing body resolved to simply *note* this recommendation, rather than take any positive steps to action the recommendation.<sup>176</sup>

### **Council adopts its first Long Term Financial Plan**

149. At the same meeting, the governing body considered and adopted the first 2017–2026 Long Term Financial Plan for the NIRC. This Plan expressly recognised that the financial situation facing Council was unsustainable and proposed a series of measures to ensure a small surplus in the first year and 'an ability to meet the minimum asset renewal required'.<sup>177</sup> The Plan proposed a fully costed approach to the finances of the Council, 'based upon the principle of full cost allocation to each service with a strong focus on asset renewal'.<sup>178</sup>

150. The Plan necessarily involved the cost of telecommunications, electricity, sewage, waste and the airport being met and funded through operations and included provision for asset renewal described as 'optimistic but achievable'.<sup>179</sup> It expressly recognised 'that all of the core services provided ... are fully costed and those costs in turn charged to the appropriate users'.<sup>180</sup> The Plan included the following warning:<sup>181</sup>

Although short term pain will be felt by some and frustration felt by many, Council must act in the long-term interest of the community and also think of future generations that will need to rely on Council's infrastructure to a certain quality of life. Planning for asset renewal is an intergenerational task and one generation cannot avoid situations or decisions to the detriment of the community's children and in turn their children. Unfortunately, this has not occurred in the past and now drastic action is required.

151. Council endorsed what was described as the 'Fully Costed' scenario contained within it.<sup>182</sup> However, as will be seen, the governing body failed to make decisions to give effect to a

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<sup>175</sup> Exhibit 1, 20161123 Audit Committee Meeting Minutes, NIRC.001.006.0013\_0004; Exhibit 1, 20161221 Ordinary Meeting of Council Minutes, NIRC.PUB.001.0069\_0004.

<sup>176</sup> Exhibit 1, 20161221 Ordinary Council Meeting Minutes, NIRC.PUB.001.0069\_0004.

<sup>177</sup> Exhibit 1, Long Term Financial Plan 2017–2026, NIRC.PUB.001.0070\_0016.

<sup>178</sup> This principle was stated and adopted in subsequent Long Term Financial Plans: Exhibit 1, Long Term Financial Plan 2018–2027, NIRC.PUB.001.0095\_0010; Exhibit 1, Long Term Financial Plan 2019–2028, NIRC.PUB.001.0151\_0010; Exhibit 1, Long Term Financial Plan 2020–2029, NIRC.PUB.001.0218\_0010.

<sup>179</sup> Exhibit 1, 20161221 Agenda Ordinary Meeting, NIRC.PUB.001.0072\_0171, \_0183.

<sup>180</sup> Exhibit 1, 20161221 Agenda Ordinary Meeting, NIRC.PUB.001.0072\_0183.

<sup>181</sup> Exhibit 1, Long Term Financial Plan 2017–2026, NIRC.PUB.001.0070\_0028.

<sup>182</sup> Exhibit 1, 20161221 Ordinary Council Meeting Minutes, NIRC.PUB.001.0069\_0012.

cost recovery approach; the end result being that to varying degrees, the Council's business units required funding from other sources.

152. The Plan was also based upon a number of assumptions and premises that were never realised, such as:

- a. a \$3.3 million increase in grants and contributions for operating purposes between 2016/17 and 2017/18 (from \$3.8 million to \$7.1 million), with this amount increasing in each subsequent year to reach \$8.1 million by 2025/26;<sup>183</sup>
- b. that in 2018, grants and contributions of \$9 million would be received for capital purposes, and \$5 million<sup>184</sup> would be received in each subsequent year to 'help fund renewal of critical assets';<sup>185</sup> and
- c. a one-off \$4 million capital grant in 2017/18 would be received to upgrade waste services.<sup>186</sup>

153. Critically, the Plan recognised that significant airport repairs (costing approximately \$20 million) would be required in 2020/21. The Plan proceeded on the basis that \$6 million of this amount would be funded from Council's cash reserves, set aside from a proposed surplus in airport operations during 2017/18 to 2019/20, with the additional \$14 million coming from Commonwealth loans.<sup>187</sup> As events transpired, the cost of the repair work was well in excess of \$20 million and the Council never set aside any money from the airport's operations as contemplated by the Plan.

154. At the same meeting, Councillors received their first investment report showing a breakdown of restricted and unrestricted cash as at 30 November 2016. The investment report noted a total cash balance of \$10.6 million, with unrestricted cash totalling \$5.3 million. A portion of the report (labelled Figure 4) is reproduced below.<sup>188</sup>

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<sup>183</sup> Exhibit 1, 20161221 Agenda Ordinary Meeting, NIRC.PUB.001.0072\_0173.

<sup>184</sup> Exhibit 1, 20161221 Agenda Ordinary Meeting, NIRC.PUB.001.0072\_0173.

<sup>185</sup> Exhibit 1, 20161221 Agenda Ordinary Meeting, NIRC.PUB.001.0072\_0171.

<sup>186</sup> Exhibit 1, 20161221 Agenda Ordinary Meeting, NIRC.PUB.001.0072\_0171.

<sup>187</sup> Exhibit 1, 20161221 Agenda Ordinary Meeting, NIRC.PUB.001.0072\_0171.

<sup>188</sup> Exhibit 1, 20161221 Agenda Ordinary Meeting, NIRC.PUB.001.0072\_0149.

**Figure 4. Extract of investment report showing breakdown of restricted and unrestricted cash, November 2016.**

<u>Restricted Funds</u>	<u>Description</u>	<u>Value (\$000's)</u>
<u>Externally Restricted</u>	Sewerage	0
	Waste	78
	Commonwealth SDA	1,258
<b>Total</b>		<b>1,336</b>
<u>Internally Restricted</u>	Capital Projects 16/17	3,939
<b>Total</b>		<b>3,939</b>
<u>Unrestricted</u>		5,349
<b>Grand Total</b>		<b>10,624</b>

155. On 8 March 2017, the Audit Committee met and discussed the second QBRS, which projected a deficit of \$5.27 million.<sup>189</sup> That QBRS recommended a number of changes to the revised budget based upon a forecast reduction of \$400,000 in electricity revenue as well as an increase in waste levy revenue of \$150,000 due to an increase in imports.<sup>190</sup> In response, the Audit Committee passed a resolution stating it was 'still of the opinion that Council should be undertaking actions to reduce the projected budget deficit of \$5.27M for 2016/2017 financial year'.<sup>191</sup>
156. The Audit Committee also recommended that 'Council adopt a target of at least 10% rate revenue of total revenue by 2021' in relation to ordinary rate revenue.<sup>192</sup>
157. These Audit Committee recommendations came before the Councillors for adoption on 19 April 2017. Council staff had proposed that 'the minutes of the Audit Committee meeting held on 8 March 2017 be received and the following recommendations be adopted' (emphasis added). However, in both cases the governing body passed amended resolutions that only went so far as to note the recommendations, not adopt them.<sup>193</sup>

<sup>189</sup> Exhibit 1, 20170308 Audit Committee Meeting Minutes, NIRC.PUB.001.0078\_0005.

<sup>190</sup> Exhibit 1, 20170215 Agenda Ordinary Meeting, NIRC.PUB.001.0077\_0126.

<sup>191</sup> Exhibit 1, 20170308 Audit Committee Meeting Minutes, NIRC.PUB.002.0078\_0006.

<sup>192</sup> Exhibit 1, 20170308 Audit Committee Meeting Minutes, NIRC.PUB.001.0078\_0008.

<sup>193</sup> Exhibit 1, 20170419 Ordinary Council Meeting Minutes, NIRC.PUB.001.0083\_0005.

158. The Council never employed a rate target along the lines suggested by the Audit Committee at any stage within the Defined Period. This was despite ongoing advice from the Audit committee about overall financial sustainability. Had the NIRC implemented the Audit Committee's recommendation to adopt the 10 per cent rate target in 2017/18, they could have received approximately \$1.3 million per annum in rating revenue in addition to the \$1.2 million already levied, or \$5.2 million to June 2021.<sup>194</sup>
159. Further, although the Councillors were warned from a very early stage to undertake actions to reduce the budget deficit, it was not clear from the evidence that any actions were undertaken to heed these warnings. As will be seen, the implementation of a cost recovery approach to the Council's five main business units did not happen.

## 2017/18 Plans

160. On 28 June 2017, the Councillors adopted the Operational Plan for 2017/18, including the budget for 2017/18, and adopted the 2018–2027 Long Term Financial Plan.<sup>195</sup> The 2017/18 Operational Plan optimistically forecast a budget surplus of \$4.98 million based largely upon an increase in other revenues of more than \$4 million and an increase in grants for operating purposes of just over \$4.4 million.<sup>196</sup>
161. Under the 2017/18 Operational Plan, and consistent with the 2018–2027 Long Term Financial Plan, electricity usage tariffs were proposed to increase from 62 cents to 68 cents per kilowatt hour.<sup>197</sup> Mr Gallagher gave evidence that such an increase would have contributed \$400,000 to the budget.<sup>198</sup>
162. Despite having advised the community about the planned tariff increase during the 2017/18 Operational Plan's public exhibition period, the governing body determined not to increase the usage tariffs, resolving at the 19 July 2017 Council meeting to maintain the tariff at 62 cents.<sup>199</sup> There was no discussion during this meeting or in subsequent meetings that year about ways to recoup or otherwise recover the amount that would have been received had Council proceeded with the planned increase, nor was there any discussion as to the Council's plans for full cost recovery.

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<sup>194</sup> Exhibit 1, Operational Plan 2017–2018, NIRC.PUB.001.0121\_0037, \_0041; Exhibit 1, Operational Plan 2018–2019, NIRC.PUB.001.0191\_0050, \_0056; Exhibit 1, Operational Plan 2019–2020, NIRC.PUB.001.0217\_0051, \_0059; Exhibit 1, Operational Plan 2020–2021, NIRC.PUB.001.0269\_0049, \_0055.

<sup>195</sup> Exhibit 1, 20170628 Ordinary Council Meeting Minutes, NIRC.PUB.001.0094\_0009–\_0010.

<sup>196</sup> Exhibit 1, 20170628 Attachment 1 Ordinary Meeting, NIRC.PUB.001.0098\_0041.

<sup>197</sup> Exhibit 1, Operational Plan 2017–2018, NIRC.PUB.001.0121\_0039.

<sup>198</sup> Transcript, 9 June 2021, p 424.15–23.

<sup>199</sup> Exhibit 1, 20170719 Ordinary Council Meeting Minutes, NIRC.PUB.001.0101\_0009.

163. On 17 August 2017, the Audit Committee was presented with the 2018–2027 Long Term Financial Plan.<sup>200</sup> Notwithstanding the Council's optimism concerning the budget, the Audit Committee once again expressed a concern about action that was required in respect of the Council's revenue. In particular, it noted with concern the Council's decision not to increase electricity fees and charges for 2017/18, as previously adopted by Council on 21 December 2016 as part of its 'fully costed scenario', would result in the Council's electricity business unit increasing its deficit in 2017/18. The Audit Committee expressed concern that this decision would have a significant negative impact on 'not only the current 2017/18 electricity budget, but the long term financial plan which was adopted using the "fully costed scenario"'.<sup>201</sup>
164. A motion was moved by both Mr Gallagher and Ms McFadyen, seconded by Mr Buffet, and passed in these terms:<sup>202</sup>
- a) That Council note the Audit and Risk Committee's concerns that Council's decision not to increase the electricity fees and charges for 2017/2018 as previously adopted by Council on 21 December 2016 'Fully Costed Scenario' will result in Council's electricity business unit increasing the deficit in 2017/2018 from \$123K to \$533K which must have a significant negative impact on not only the current 2017/2018 electricity budget but the long term financial plan which was developed using the 'Fully Costed Scenario'. The Audit and Risk Committee is of the view that deficits of this magnitude are not sustainable and action should be taken to rectify the situation.
  - b) That the five (5) business units Income and Expenditure information be highlighted and headed as 'Business Units' at each quarterly budget review.
  - c) That Council document how it will mitigate its key financial risks at the first quarterly financial report.
- (Emphasis added.)
165. The minutes further record that the Audit Committee expressed its view 'that the LTFP for 2018–2027 does not represent the long-term financial position of NIRC' and its concerns that 'the budgeted net result for 2017–2018 of \$1.9 million had already significantly eroded' and therefore 'sought to understand what action Council intended to take to avoid a deficit result'.<sup>203</sup>
166. The Audit Committee's message to the Council was clear. The governing body's actions did not give effect to the principle of cost recovery explicitly set out in the Long Term Financial

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<sup>200</sup> Exhibit 1, 20170817 Audit Committee Meeting Minutes, NIRC.PUB.001.0106\_0004.

<sup>201</sup> Exhibit 1, 20170817 Audit Committee Meeting Minutes, NIRC.PUB.001.0106\_0004.

<sup>202</sup> Exhibit 1, 20170817 Audit Committee Meeting Minutes, NIRC.PUB.001.0106\_0004.

<sup>203</sup> Exhibit 1, 20170817 Audit Committee Meeting Minutes, NIRC.PUB.001.0106\_0004.

Plan and 2017/2018 Operational Plan and budget. Indeed, the governing body took steps to *not* implement the electricity charge that was adopted in the 2017/18 Operational Plan.

167. On 20 September 2017, when the minutes of the August Audit Committee meeting came before the Councillors, Ms Adams moved, Mr Snell seconded and the governing body passed a resolution that had the effect of, once again, noting the Audit Committee's recommendation.<sup>204</sup>
168. Despite the grave recommendation that action should be taken to rectify the forecast deficit, and that deficits of that magnitude were 'not sustainable',<sup>205</sup> the governing body elected to merely *note* the position and recommendation.
169. The governing body was clearly aware that steps needed to be taken to implement a policy of full cost recovery, but it did not act to do so.

#### **QBRS as at 30 September 2017**

170. On 15 November 2017, Mr Carlesso (the CFO at the time) provided the September QBRS to the governing body, which reflected a deficit of \$1.128 million, compared to the previously forecast surplus of \$1.9 million.<sup>206</sup> This was the first QBRS to break down revenue and expenditure for each of the five business units, in accordance with an Audit Committee recommendation on 17 August 2017 that was adopted by Council.<sup>207</sup>
171. The QBRS showed that of the five business enterprises, three (waste, airport and sewerage) were operating at a deficit, while telecommunications and electricity were operating at a surplus; although the surplus in electricity was due in part to fuel costs for August and September being excluded from expenditure figures.<sup>208</sup>
172. Mr Carlesso's opinion was that the NIRC's projected financial position as at 30 June 2018 was unsatisfactory, following a decrease in budgeted income resulting from the decision not to increase the electricity tariff. There was also a loss of \$35,000 due to a delay in the implementation of a solar access fee to 1 October 2017. The budget also assumed that the NIRC would receive \$4.42 million in Financial Assistance Grant funding, but the funding ultimately approved by the Commonwealth was \$2.45 million, resulting in a reduction in budget income of \$1.97 million.<sup>209</sup>

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<sup>204</sup> Exhibit 1, 20170920 Minutes of Ordinary Council Meeting, NIRC.PUB.003.0001\_0008.

<sup>205</sup> Exhibit 1, 20170920 Minutes of Ordinary Council Meeting, NIRC.PUB.003.0001\_0008.

<sup>206</sup> Exhibit 1, 20171115 Ordinary Council Meeting Agenda, NIRC.PUB.001.0120\_0242.

<sup>207</sup> Exhibit 1, 20170817 Audit Committee Meeting Minutes, NIRC.PUB.001.0106\_0005.

<sup>208</sup> Exhibit 1, 20171115 Ordinary Council Meeting Agenda, NIRC.PUB.001.0120\_0241.

<sup>209</sup> Exhibit 1, 20171115 Ordinary Council Meeting Agenda, NIRC.PUB.001.0120\_0250.

173. Minutes from the same Council meeting record that the Councillors simply noted the income adjustments.<sup>210</sup> No other discussion or actions were recorded.
174. On 28 November 2017, when the Audit Committee reviewed the September QBRs, it discussed its concerns about 'Council's financial viability' and considered that information should be provided to the Council on the five business units 'that enables informed decision making'. The Committee recommended that:<sup>211</sup>
- ... Council be advised by Council staff of recommended actions to be adopted by Council for the 2018/2019 financial year to ensure that the five (5) Business Units of Council are raising sufficient revenue to cover all expenses associated with each of those business units.
175. On 20 December 2017, this Audit Committee recommendation came before the Councillors.<sup>212</sup> It would have had the effect of requiring Council staff to advise the Councillors of recommended actions to be adopted to ensure the NIRC's business enterprises were raising sufficient revenue to cover their expenses.
176. The governing body took a different approach, resolving to request that staff review all of the Council's income and expenditure, including the five business enterprises, and provide the Council with 'options to remedy this situation'.<sup>213</sup>
177. During the oral hearings of the public inquiry, the Councillors and Council staff were unable to identify any options that were subsequently proposed or taken up in response to this resolution.<sup>214</sup> Furthermore, despite a Resolution Register Task List in May 2018 stating this resolution was 'complete',<sup>215</sup> there was nothing in the documents provided to the Inquiry or in the publicly available records of the Council to show that Council staff did in fact review the NIRC's income and expenditure (including the five business enterprises) and provide the Councillors with options to address the fact that the Council was spending more money than it was receiving.

### **QBRs as at 31 December 2017**

178. On 21 February 2018, Mr Wilson, the new CFO, provided a further 'unsatisfactory' opinion for the Council's second QBRs for the period ending 31 December 2017. He noted an increase to the projected deficit to \$1.996 million, up \$868,000 from the previous quarter's

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<sup>210</sup> Exhibit 1, 20171115 Ordinary Council Meeting Minutes, NIRC.PUB.001.0119\_0012.

<sup>211</sup> Exhibit 1, 20171128 Audit Committee Meeting Minutes, NIRC.PUB.001.0124\_0003.

<sup>212</sup> Exhibit 1, 20171220 Ordinary Council Meeting Minutes, NIRC.PUB.001.0128\_0008.

<sup>213</sup> Exhibit 1, 20171220 Ordinary Council Meeting Minutes, NIRC.PUB.001.0128\_0009.

<sup>214</sup> Transcript, 9 June 2021, p 414.16–39; Transcript, 10 June 2021, pp 518.16–21, 516.23–39; Transcript, 11 June 2021, p 617.15–24.

<sup>215</sup> Exhibit 1, 20180516 Agenda Ordinary Meeting, NIRC.PUB.001.0145\_0139.



deficit of \$1.128 million, reflecting revenue reductions for the airport, waste and sewerage services.<sup>216</sup>

179. On 28 February 2018, following their review of this QBRS, the Audit Committee once again noted the 'unsustainable' deficit, endorsing Mr Wilson's opinion that the projected position for 30 June 2018 would be unsatisfactory and that actions should be undertaken to rectify the situation.<sup>217</sup> The Audit Committee again noted that some of the business enterprises had projected deficits and recommended that 'Council ensures when determining the 2018/19 budget that these businesses are at least self-funding by adequate user charges'.<sup>218</sup>
180. In addition, the Audit Committee recommended that prior to placing the 2018/19 Operational Plan on public exhibition, the Council should 'test the validity of the income and expenditure assumptions to mitigate the risk of significant budget adjustments and reporting of accurate financial forecasts'.<sup>219</sup> As will be seen below, the validity of assumptions relating to the recovery of rates and charges was not tested, meaning that Operational Plans consistently demonstrated optimistic rates and charges recovery and consequent reduced income compared with what had been forecast.
181. At the same meeting, the Audit Committee reviewed a report on the Council's implementation of its recommendations going back to November 2016.<sup>220</sup> The report confirmed that the majority of its recommendations were simply 'noted' by the governing body or 'reported' at a Council meeting (without further action).<sup>221</sup> Whilst many 'noted' recommendations were not substantive in nature, others were. For example, the implementation report indicated that the NIRC had taken action to refine its asset management plans following a recommendation by the Audit Committee to improve the governance of its assets by determining the community's risk appetite.<sup>222</sup> Despite so recording, the improvement in the asset management plans did not materialise.<sup>223</sup>
182. On 18 April 2018, Council again 'noted' the Audit Committee's recommendations from the 28 February meeting.<sup>224</sup> Separately to the Audit Committee's implementation report referred to above, the NIRC had in place a reporting system in which staff reported to the Councillors

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<sup>216</sup> Exhibit 1, 20180221 Ordinary Council Meeting Agenda, NIRC.PUB.001.0133\_0274.

<sup>217</sup> Exhibit 1, 20180228 Audit Committee Meeting Agenda, NIRC.PUB.001.0136\_0004.

<sup>218</sup> Exhibit 1, 20180228 Audit Committee Meeting Agenda, NIRC.PUB.001.0136\_0004.

<sup>219</sup> Exhibit 1, 20180228 Audit Committee Meeting Agenda, NIRC.PUB.001.0136\_0005.

<sup>220</sup> Exhibit 1, 20180228 Audit Committee Meeting Agenda, NIRC.PUB.001.0137\_0013–\_0016.

<sup>221</sup> Exhibit 1, 20180228 Audit Committee Meeting Agenda, NIRC.PUB.001.0137\_0013.

<sup>222</sup> Exhibit 1, 20180228 Audit Committee Meeting Agenda, NIRC.PUB.001.0137\_0013.

<sup>223</sup> See: Exhibit 1, Building Asset Management Plan 2020–2029, NIRC.009.002.0048\_0006; Exhibit 1, Fleet Asset Management Plan 2020–2029, NIRC.PUB.001.0213\_0007; Exhibit 1, Infrastructure Asset Management Plan 2020–2029, NIRC.PUB.001.0214\_0007; Exhibit 1, Roads Asset Management Plan 2020–2029, NIRC.PUB.001.0215\_0006.

<sup>224</sup> Exhibit 1, 20180418 Ordinary Council Meeting Agenda, NIRC.PUB.001.0143\_0011.



on their implementation of the Council's resolutions, generally on a quarterly basis.<sup>225</sup> In May 2018, that report to the NIRC indicated that there were six 'outstanding' tasks for the NIRC arising from resolutions of the governing body which had 'noted' the recommendations of the Audit Committee. These related to the:<sup>226</sup>

- a. finalisation of the External Audit Plan and Interim Management Report;
- b. need to address the missing internal audit and risk function (noting that this role was not filled full time until July 2019, some twelve months later);
- c. missed opportunity for the Audit Committee to review 2017/2018 financial statements prior to their submission;
- d. request by the Audit Committee for a copy of Audit Clearance report;
- e. request by the Audit Committee for business unit EOFY actuals; and
- f. need to update the Audit Committee charter in light of legislative changes.

183. This, together with the February 2018 implementation report provided to the Audit Committee, suggests that there was some degree of engagement by the Council with the Audit Committee's recommendations, even where formally the Council had resolved only to 'note' those recommendations. This engagement was not, however, directed at the critical concerns of the Audit Committee: the sustainability of the Council's financial position and the departures by the Council from its long-term strategic plans.

184. Adding to the Council's failure to engage with the critical concerns of the Audit Committee, throughout the Audit Committee's tenure, there were significant lags in the provision of information to it. It was typical, for example, that the financial reports given to it would be a report as to the Council's position some 2–3 months prior rather than its position at a date closer to the date of the Audit Committee's meeting.<sup>227</sup> In some cases, the actual position as at that date was substantially different to what was presented to the Audit Committee.

185. One example is that the position conveyed to the Audit Committee in March 2017 was that the Council was facing a \$5.27 million deficit at financial year end.<sup>228</sup> The true position as at

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<sup>225</sup> Exhibit 1, 20170215 Agenda Ordinary Meeting, NIRC.PUB.001.0077\_0072; Exhibit 1, 20170517 Agenda Ordinary Meeting, NIRC.PUB.001.0093\_0101.

<sup>226</sup> Exhibit 1, 20180516 Agenda Ordinary Meeting, NIRC.PUB.001.0145\_0107.

<sup>227</sup> See for example: Exhibit 1, 20180228 Audit Committee Meeting Minutes, NIRC.PUB.001.0136\_0003; Exhibit 1, 20190218 Audit Committee Meeting Agenda, NIRC.PUB.001.0189\_0022; Exhibit 1, 20200226 Audit Committee Meeting Agenda, NIRC.PUB.001.0259\_0185.

<sup>228</sup> Exhibit 1, 20170510 Audit Committee Meeting Agenda, NIRC.PUB.001.0089\_0008, \_0012.

30 June 2017, however, was that the Council achieved a \$1.5 million deficit.<sup>229</sup> This meant that the Audit Committee's observations and recommendations were out of sync with the true position of the NIRC, limiting the effectiveness of the Audit Committee as an internal audit measure. There is no evidence that, in light of such variance, consideration was given to increasing the frequency of the reporting to the Audit Committee (or indeed to the Council itself).

186. A similar issue concerned delays in the provision of the agenda papers, and other relevant reports, to the Audit Committee, with a number of significant matters being the subject of verbal reports (including, in some cases, quarterly budget reviews).<sup>230</sup> This too hindered the capacity of the Audit Committee to review the material put before it and to perform its internal audit functions.

187. Against this background, on 30 June 2018, Ms McFadyen resigned from her position as Chair of the Audit Committee. Reflecting on this decision, Ms McFadyen said there were a number of reasons, including that 'recommendations of the Committee were in the most part not adopted by Council'.<sup>231</sup> While Ms McFadyen noted that it was 'entirely within Council's remit to choose to agree or disagree or adopt the minutes or the recommendations of the Committee',<sup>232</sup> it was:<sup>233</sup>

somewhat disheartening, and watching Norfolk Island Regional Council continue to deteriorate financially, you know, really took away the sense of fulfilment of the role.

188. During her evidence, Ms McFadyen recalled that:<sup>234</sup>

...in 2018 as I was leaving I made a prediction that within two years the Norfolk Island Regional Council would not be a going concern and it's with disappointment that that prediction was somewhat accurate and that's why we find ourselves here today.

## First QBRS for 2018/19

189. The first quarter QBRS for 2018/19 was presented at the 21 November 2018 Council meeting, reflecting the Council's financial performance at 30 September 2018. The results for this period were optimistic, reporting a surplus of \$652,753 for the first quarter, and a projected end-year result of a \$15,000 surplus, slightly higher than the projected surplus of

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<sup>229</sup> Exhibit 1, 20180228 Audit Committee Meeting Minutes, NIRC.PUB.001.0136\_0003. Note: in the 2016/2017 financial statements the income and expenses for the discontinued Norfolk fuel business were separated out as an accounting measure, which understated the true deficit position.

<sup>230</sup> Transcript, 9 June 2021, p 428.8–17.

<sup>231</sup> Transcript, 9 June 2021, p 395.33–34.

<sup>232</sup> Transcript, 9 June 2021, p 395.34–36.

<sup>233</sup> Transcript, 9 June 2021, p 395.37–40.

<sup>234</sup> Transcript, 9 June 2021, p 396.3–7.

\$11,000.<sup>235</sup> Consistent with these results, Mr Wilson reported the Council's position was likely to be 'satisfactory' at year end.<sup>236</sup> That being said, the five business units were operating at a loss of \$19,417, which was less than what had been forecast in the budget (projected to be a deficit of \$162,835).<sup>237</sup>

190. Minutes from the 18 February 2019 Audit Committee meeting, now chaired by Ms Sexton, provide very little commentary on the QBRS, recommending simply that the Audit Committee noted the information presented to it in the QBRS.<sup>238</sup>

## **Second QBRS for 2018/19**

191. On 20 February 2019, the governing body considered the second QBRS for the 2018/19 financial year, reflecting the Council's performance as at 31 December 2018.<sup>239</sup> Mr Wilson provided an optimistic forecast, showing a surplus for the second quarter in excess of \$1 million and projecting a year end result of a surplus of \$35,000.<sup>240</sup> Mr Wilson described the financial position at 30 June 2019 as 'likely to be satisfactory'<sup>241</sup> but, again, the assessment of the business enterprise performance was less positive, with the deficit position of the businesses increasing significantly from the last quarter's deficit result of \$19,417,<sup>242</sup> to a deficit of \$336,623 for the period ending 31 December 2018.<sup>243</sup>

## **Third QBRS for 2018/19**

192. The third QBRS for 2018/19 was presented to the Councillors on 15 May 2019 and reported a surplus of \$906,500 with a projected year-end result of a \$53,000 surplus, higher than the original budget surplus of \$11,000 and up from the second quarter forecast of a \$35,000 surplus.<sup>244</sup> In the report, Mr Wilson described the likely financial position at the end of the year as 'satisfactory'.<sup>245</sup> Despite this optimistic projection, the results for the business enterprises were worse than the previous quarter, having incurred total losses of \$807,200.<sup>246</sup>

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<sup>235</sup> Exhibit 1, 20181121 Agenda Ordinary Meeting, NIRC.PUB.001.0178\_0116.

<sup>236</sup> Exhibit 1, 20181121 Agenda Ordinary Meeting, NIRC.PUB.001.0178\_0118.

<sup>237</sup> Exhibit 1, 20181121 Agenda Ordinary Meeting, NIRC.PUB.001.0178\_0130.

<sup>238</sup> Exhibit 1, 20190218 Audit Committee Meeting Minutes, NIRC.PUB.001.0188\_0005.

<sup>239</sup> Exhibit 1, 20190220 Agenda Ordinary Meeting, NIRC.PUB.001.0193\_0189.

<sup>240</sup> Exhibit 1, 20190220 Agenda Ordinary Meeting, NIRC.PUB.001.0193\_0190.

<sup>241</sup> Exhibit 1, 20190220 Agenda Ordinary Meeting, NIRC.PUB.001.0193\_0193.

<sup>242</sup> Exhibit 1, 20181121 Agenda Ordinary Meeting, NIRC.PUB.001.0178\_0130.

<sup>243</sup> Exhibit 1, 20190220 Agenda Ordinary Meeting, NIRC.PUB.001.0193\_0206.

<sup>244</sup> Exhibit 1, 20190515 Attachment Ordinary Meeting, NIRC.PUB.001.0208\_0004.

<sup>245</sup> Exhibit 1, 20190515 Attachment Ordinary Meeting, NIRC.PUB.001.0208\_0007.

<sup>246</sup> Exhibit 1, 20190515 Attachment Ordinary Meeting, NIRC.PUB.001.0208\_0019.

193. The Audit Committee reviewed the third QBRS on 29 May 2019<sup>247</sup> and noted, 'with concern', the business enterprises were resulting in 'significant deficits' and recommended that 'action should be undertaken to bring these units to at least a break even position'.<sup>248</sup> The Audit Committee noted that the 'Waste Services Unit is estimated to have a deficit of \$846K this year compared to a budget deficit of \$252K, an increased deficit of \$594K'.<sup>249</sup>
194. In response, when the Councillors met on 26 June 2019, they 'endorsed' the Audit Committee's recommendation.<sup>250</sup> In the same meeting, however, the Councillors reviewed the 2019/20 Operational Plan and adopted it subject to four changes, two of which related to waste services, specifically:<sup>251</sup>
- a. the removal of charges related to 'disposal of vehicles'; and
  - b. the omission of three proposed 'green waste disposal' charges.
195. The governing body also resolved to increase the proposed 'waste levy imported motor vehicles' fee from \$100 to \$150 per cubic metre, with the new fee to apply when legislation was approved to achieve it.<sup>252</sup> The business papers and minutes for this meeting do not indicate that the effect on the budget was known or considered.<sup>253</sup>
196. During the same meeting, when the Councillors endorsed the Audit Committee's recommendation to bring the business units, and waste services 'in particular', into a breakeven position, they also, counterintuitively, carried motions that had the effect of reducing the Council's income by reducing proposed charges for rights of pasturage, and removing the proposed disposal of vehicle fees and three proposed green waste disposal charges.<sup>254</sup>

### **Budget versus actuals as at 30 June 2019**

197. By the time the Audit Committee met on 20 August 2019, Mr Wilson had prepared results for the entire financial year, recording variances from the original budget for the year ending 30 June 2019. This report showed the NIRC had recorded a surplus of \$59,856 for the

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<sup>247</sup> Exhibit 1, 20190529 Audit Committee Meeting Agenda, NIRC.PUB.001.0210\_0030–\_0033.

<sup>248</sup> Exhibit 1, 20190529 Audit Committee Meeting Minutes, NIRC.PUB.001.0209\_0007.

<sup>249</sup> Exhibit 1, 20190529 Audit Committee Meeting Minutes, NIRC.PUB.001.0209\_0007.

<sup>250</sup> Exhibit 1, 20190626 Ordinary Council Meeting Minutes, NIRC.PUB.001.0216\_0009.

<sup>251</sup> Exhibit 1, 20190626 Ordinary Council Meeting Minutes, NIRC.PUB.001.0216\_0014.

<sup>252</sup> Exhibit 1, 20190626 Ordinary Council Meeting Minutes, NIRC.PUB.001.0216\_0014.

<sup>253</sup> See: Exhibit 1, 20190626 Agenda Ordinary Meeting, NIRC.PUB.001.0222\_0164–\_0165;  
Exhibit 1, 20190626 Ordinary Council Meeting Minutes, NIRC.PUB.001.0216\_0014.

<sup>254</sup> Exhibit 1, 20190626 Ordinary Council Meeting Minutes, NIRC.PUB.001.0216\_0014.

2018/19 financial year, noting the figures were 'preliminary and un-audited results, subject to change pending the final audit to be conducted in September'.<sup>255</sup>

198. Despite this, Mr Wilson's report on the five business enterprises again showed unfavourable results. Figure 5 is an extract of his report to the Audit Committee on 20 August 2019.<sup>256</sup>

**Figure 5. Extract of business unit financial performance for period ending 30 June 2019**

Financial Performance		FY 18/19			FY 19/20
GL	Account Description	Actual	Original Budget	Variance	
3400	Waste	(748,892)	(252,663)	(496,229)	(403,958)
2190	Airport	119,014	0	119,014	133,672
3300	Sewer	(114,486)	0	(114,486)	26,112
2440	Telecom	(15,743)	46,000	(61,743)	13,921
2430	Electricity	(125,300)	43,000	(168,300)	0

199. In his report, Mr Wilson noted that in December 2016, the Council had adopted the 'fully costed scenario' and that all of the business units, apart from waste, had performed better than budgeted.<sup>257</sup> The Audit Committee corrected this statement, noting in fact only *one* of the business units, namely the airport, had performed better than budgeted.<sup>258</sup>

### **Conclusion: implementation of the cost recovery aspects of the Long Term Financial Plan**

200. On any view, the position reached by the end of the 30 June 2019 financial year did not reflect any meaningful implementation of the fully costed scenario previously adopted in December 2016. The record demonstrates a governing body that was not willing to set appropriate fees and charges for the services that were delivered by these business units. This, in turn, meant that other income of the Council was required to meet the shortfalls generated by each business unit.
201. Ms Adams' submissions appear to take issue with the proposition that the business units ought to have been self-funded<sup>259</sup> by challenging the proposition that the Norfolk Island

<sup>255</sup> Exhibit 1, 20190820 Audit Committee Meeting Agenda, NIRC.PUB.001.0231\_0060.

<sup>256</sup> Exhibit 1, 20190820 Audit Committee Meeting Agenda, NIRC.PUB.001.0231\_0031.

<sup>257</sup> Exhibit 1, 20190820 Audit Committee Meeting Agenda, NIRC.PUB.001.0231\_0031.

<sup>258</sup> Exhibit 1, 20190820 Audit Committee Meeting Minutes, NIRC.PUB.001.0230\_0004.

<sup>259</sup> 20210916 Further submissions of Robin Adams in response to Counsel Assisting submissions, RADA.SUB.001.0002\_0005.

population should have been charged an amount necessary to recover the costs of the services provided by the Council's business units. That argument falls away when it is recalled that the governing body, of which she was a member and the leader, adopted cost recovery as a feature or element of the Long Term Financial Plan in December 2016. Cost recovery was a persistent feature of each subsequent Plan over the next four years.<sup>260</sup> The problem is that the governing body was never prepared to implement that principle.

202. If anything, Ms Adams' submissions on this issue would seem to confirm that, at least from her perspective, as the Mayor of the Council, she was reluctant to take action to implement a critical feature of the Council's Long Term Financial Plan, namely that the costs of the Council's business units were to be recovered by appropriately set fees and charges. The record, outlined above, would strongly suggest that Ms Adams' position in this regard was echoed by the other members of the governing body. Nothing in the evidence suggests that any other members of the governing body took a different view. It is therefore open to find, and I do so find, that during this period the governing body was resistant to introducing measures so as to ensure that the NIRC's business enterprises were raising sufficient revenue to at least cover the costs.

### **The governing body's record in relation to raising revenue from rates**

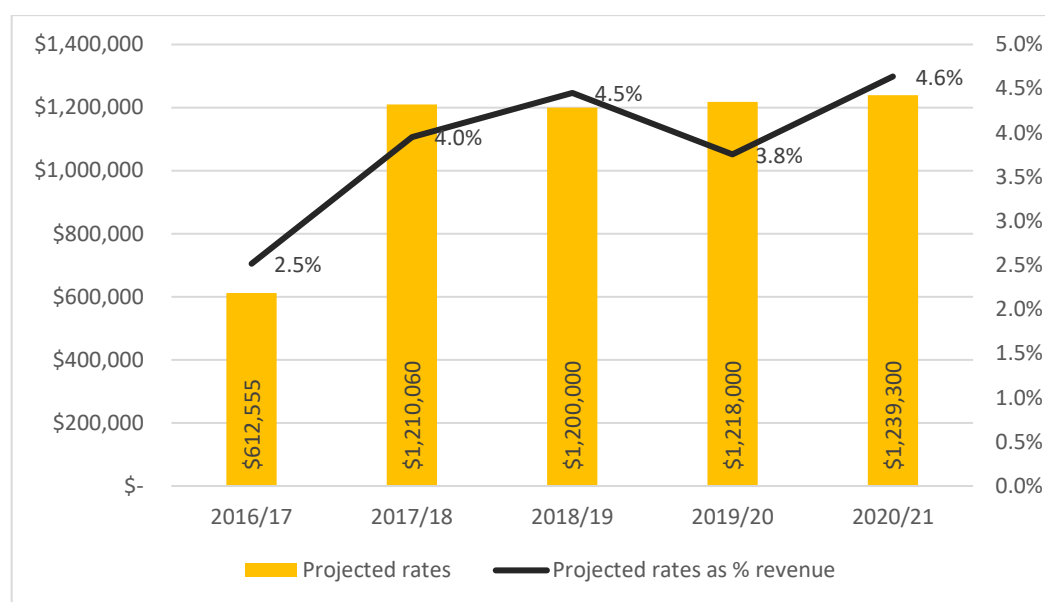
203. Fees and charges were only one aspect of the NIRC's revenue that the governing body were able to control. The Council also had the ability to raise rates as a means of meeting these costs.
204. As has been seen, the Audit Committee provided advice concerning the setting of rates and the establishment of a rate target as a means of taking action on the revenue side. In the following section, the governing body's record on the question of rates is addressed.
205. Section 491 of the applied LG Act provides that rates are one of the means whereby councils can derive income. Under s 494 of the applied LG Act, the Council was required to 'make and levy an ordinary rate for each year on all rateable land in its area'. Section 513A of the applied LG Act, unique to Norfolk Island, required the rates set by the Council to be sufficient to ensure the total of ordinary rates levied on all rateable land was \$500,000 for the year ending 30 June 2017 and \$1,000,000 for each subsequent year.
206. Ordinary rates include rates for residential land, farmland, business premises, and the absentee land-owner levy. Annual charges include charges for waste services, sewerage

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<sup>260</sup> Exhibit 1, Long Term Financial Plan 2018–2027, NIRC.PUB.001.0095\_0010; Exhibit 1, Long Term Financial Plan 2019–2028, NIRC.PUB.001.0151\_0010; Exhibit 1, Long Term Financial Plan 2020–2029, NIRC.PUB.001.0218\_0010.

services, and other services which are not detailed within the annual financial statements.<sup>261</sup> Figure 6 shows the rates and total revenue from continuing operations as represented in the Operational Plans for each year from 2016/17 to 2020/21.<sup>262</sup> The black line shows the proportion of projected total revenue from continuing operations (excluding capital grants), to be derived from ordinary rates. The figure shows that the NIRC met and exceeded the requirement to levy the amounts set in the applied LG Act in the four years to 30 June 2020.<sup>263</sup>

**Figure 6. Ordinary rates as a proportion of total revenue: 2016/17–2020/21**



207. It is to be recalled that as early as March 2017, the Audit Committee made a recommendation that the NIRC increase its rating revenue to at least 10 per cent.<sup>264</sup> In her evidence, Ms McFadyen explained that the 10 per cent recommendation was made because:<sup>265</sup>

... the rate revenue that was set was not sufficient to cover the expenditure of the council ... a benchmark of around 10% is what is equivalent to other

<sup>261</sup> Exhibit 1, Annual Report 2016–2017, NIRC.PUB.001.0135\_0133; Exhibit 1, Annual Report 2017–2018, NIRC.PUB.001.0181\_187; Exhibit 1, Annual Report 2018–2019, NIRC.PUB.001.0251\_0202; Exhibit 1, 2019–2020 Draft Financial Statements, NIRC.003.002.0001\_0017.

<sup>262</sup> Exhibit 1, Operational Plan 2016–2017, NIRC.PUB.001.0046\_0024; Exhibit 1, Operational Plan 2016–2017, NIRC.PUB.001.0046\_0028; Exhibit 1, Operational Plan 2017–2018, NIRC.PUB.001.0121\_0037, \_0041; Exhibit 1, Operational Plan 2018–2019, NIRC.PUB.001.0191\_0050, \_0056; Exhibit 1, Operational Plan 2019–2020, NIRC.PUB.001.0217\_0051, \_0059; Exhibit 1, Operational Plan 2020–2021, NIRC.PUB.001.0269\_0049, \_0055.

<sup>263</sup> Note: the figures for 2020/21 have not yet been released.

<sup>264</sup> Exhibit 1, 20170308 Audit Committee Meeting Minutes, NIRC.PUB.001.0078\_0008.

<sup>265</sup> Transcript, 9 June 2021, p 406.28–35.



benchmarks set by other New South Wales local government councils and would be a reasonable rate as a benchmark to set for the rates revenue.

208. Ms McFadyen saw increasing rate revenue as one way of funding urgently needed asset maintenance and enhancement, given that the poor state of the assets necessarily demanded additional investment. Her evidence was that 'because their infrastructure is in such a deteriorated state, that they will need some level of additional investment to get them to a base level to start with'<sup>266</sup> and that increasing rates was 'one way in which you could actually come up with reasonable fees and charges to maintain those assets.'<sup>267</sup>
209. Despite the Audit Committee's advice, the Council did not take any action to increase rates in accordance with this recommendation. Had the Council achieved a rate target of 10% by 30 June 2021 it would have effectively doubled the amount of revenue from rates and delivered around \$1.3–\$1.4 million in extra revenue per annum. Over the remaining years to 2020/21, this could have increased the Council's total revenue by approximately \$5.2 million. The question as to why the governing body took no heed of this advice, particularly given that it came from the Audit Committee, assumes some significance when the financial management of the NIRC is being considered.

#### **Attitudes to rates on Norfolk Island**

210. Councillors and Council staff gave evidence at the public hearings about the community's opposition to raising revenue through rates. Mr Snell said that 'extracting' revenue from some of the Islanders 'would have been impossible without dire consequences to their way of life and to the culture and traditions of this place'.<sup>268</sup> When considering whether to increase fees and charges, Mr Snell said that he and the other Councillors were always mindful of the community's ability to pay increased charges.<sup>269</sup> That being said, Council did not commission a study to assess the likely impact of raising rates and charges on the community.<sup>270</sup> At the same time, Ms McFadyen gave evidence that the Audit Committee made no 'specific' recommendations to the Council to conduct a benchmark study of the community's ability to pay, but that the Audit Committee had expressed concerns around the 2018/19 Operational Plan and whether the assumptions in that plan were fully tested.<sup>271</sup> Mr Snell agreed that impact studies 'should have been done of what the transition arrangements were in 2015 [and] of how it was going to impact on the community of [the] Island'.<sup>272</sup>

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<sup>266</sup> Transcript, 9 June 2021, p 417.15–18.

<sup>267</sup> Transcript, 9 June 2021, p 416.32–24.

<sup>268</sup> Transcript, 3 June 2021, p 260.21–24.

<sup>269</sup> Transcript, 3 June 2021, p 260.26–28.

<sup>270</sup> Transcript, 3 June 2021, p 288.23–25.

<sup>271</sup> Transcript, 9 June 2021, p 409.23–37.

<sup>272</sup> Transcript, 3 June 2021, p 260.17–19.



211. To be fair, the high cost of living on Norfolk Island is widely acknowledged. Transport costs alone represent a significant burden on getting any and all supplies to the Island, whether by air or by sea. Reduced capacity and competition in sea freight is placing further cost pressure on the price of all supplies from the mainland. These issues were all reflected in a 2012 report by consulting firm ACIL Tasman<sup>273</sup> and the Commonwealth Grants Commission in 2019.<sup>274</sup> Mr Nobbs' submission to the Inquiry also addressed the issue.<sup>275</sup>
212. On the question of principle, Mr McCoy and Ms Adams' evidence was that land rates were not appropriate on Norfolk Island because of the traditional idea that land was not so much 'owned' by individuals but rather handed down through generations.
213. As Mr McCoy put it:<sup>276</sup>
- As a Norfolk Islander, I don't see land as an asset, it's something that we enjoy whilst we occupy that property to pass on to try and maintain and to pass on to future generations; it's - I guess it's matrimonial land, it is not a consumable.
214. According to Ms Adams:<sup>277</sup>
- In the eyes of the Norfolk Islander, and I can only generalise, the land is heritage land and in the minds of the grassroots Islanders Norfolk Island was gifted by Queen Victoria to the Island people, the land was gifted; that may not be the case at law, but it's the story that's handed down over time.
215. Ms Adams did acknowledge the tension for Council, stating:<sup>278</sup>
- Land to the Norfolk Islanders is heritage lands and it's an anathema that they're paying rates, but 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.
216. Mr Snell also explained that:<sup>279</sup>
- Whilst I objected to the increase in the land rate, I had to agree to it because it was a form of revenue to keep the Island going as a source of revenue.
217. Mr Roach said that it was made clear to him during his initial interview for the position of General Manager with members of the governing body that 'rates [were] not seen as the correct method for raising revenue on the Island'.<sup>280</sup>

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<sup>273</sup> ACIL Tasman, *Norfolk Island economic development report* (report, March 2012), p 15 <[https://www.infrastructure.gov.au/sites/default/files/migrated/territories/publications/files/Norfolk\\_Island\\_EDR\\_2012.pdf](https://www.infrastructure.gov.au/sites/default/files/migrated/territories/publications/files/Norfolk_Island_EDR_2012.pdf)>.

<sup>274</sup> Commonwealth Grants Commission, *2019 Norfolk Island inquiry* (final report, November 2019), p x–xi <[https://www.cgc.gov.au/sites/default/files/norfolk\\_island\\_inquiry\\_2019\\_final\\_report.pdf](https://www.cgc.gov.au/sites/default/files/norfolk_island_inquiry_2019_final_report.pdf)>.

<sup>275</sup> Exhibit 7, Submission of Chris Nobbs dated 7 May 2021, CNOB.PSUB.002.0002\_0007, \_0008.

<sup>276</sup> Transcript, 2 June 2021, p 182.31–35.

<sup>277</sup> Transcript, 3 June 2021, p 294.42–47.

<sup>278</sup> Transcript, 3 June 2021, p 348.25–30.

<sup>279</sup> Transcript, 3 June 2021, p 290.4–23.

<sup>280</sup> Transcript, 31 May 2021, p 45.7–8.

## **Conclusions: Council's action/inaction on rates**

218. It follows that it is open to find, and I do so find, that the governing body resisted increasing rate revenue based on their collective philosophical opposition to the concept of the NIRC being funded through the rating mechanisms. There are two aspects to this opposition: firstly, the ability of the community to meet the cost of rates and charges without experiencing hardship and, secondly, the broader question of principle as to whether rates were a legitimate means of funding local government services on the Island.
219. However, as each of Ms Adams and Mr Snell correctly conceded,<sup>281</sup> rates are a form of revenue that provides a basis to provide the Island with services that are essential to the community. This is true in all parts of Australia, where many people with a close affinity to their land, similar to that of the Pitcairn community on Norfolk, pay rates as part of a social contract to ensure that the council services are available to the whole community. Further, regardless of whether the governing body agreed with the concept of rates, the applied LG Act requires raising revenue through rates and charges. Decisions made in that regard need to be made consistently with the principle in s 8B(d) of the applied LG Act: that councils should have regard to achieving intergenerational equity by ensuring that policy decisions are made after considering the financial effects on future generations and that the current generation funds the cost of its services. By resisting increases in rates revenue, the Council deprived itself of significant revenues it could have used to strengthen its cash reserves to meet its financial liabilities over this period.

## **Council's other revenue problems**

220. The governing body's approach to both the setting of fees and charges associated with each of the Council's business units cannot be explained by reference to the overall health of the other revenue sources available to Council. Each of those sources of revenue had their own particular difficulties.
221. As explained above, the NIRC's two primary revenue streams are own source and Commonwealth revenue. Optimising these revenue streams, and ensuring they exceeded expenditure, was clearly critical to ensuring the long-term sustainability of Norfolk Island.
222. Not only did the governing body's reluctance to take action to raise revenue referable to the Council's business units impact upon the budget, there were other problems on the revenue side that placed pressure on Council's budget position.
223. These problems are addressed in this part.

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<sup>281</sup> Transcript, 3 June 2021, pp 290.16–19, 348.27–32.

## Absence of a state partner

224. The first of these lies in the fact that unlike most other regional councils, the NIRC has no 'state partner', meaning the NIRC was not eligible for other grants funded through a state government that would be available, in the ordinary course, to a council in the state context. This situation was described by Ms Adams and Grassroots as 'the state disconnect'.<sup>282</sup> Mr Porter's evidence was that in one year there was around \$4.8 million in state-type grants that Council could not access.<sup>283</sup> In its report, Grassroots estimated that with a state partner, NIRC had the potential to access around \$2 million in grants each year.<sup>284</sup>

## Funding from the Commonwealth

225. At the same time, however, the NIRC did receive grant funding from the Commonwealth Government under the Financial Assistance Grants. The Council was also eligible to apply for other Commonwealth-funded grants.<sup>285</sup>
226. Funding from the Commonwealth was delivered through two main mechanisms: as touched on above, through Financial Assistance Grants (**FAG**) and through a Service Delivery Agreement (**SDA**).
227. As can be seen in Figure 7, the NIRC had an increasing reliance on Commonwealth grant funding as a proportion of total income, accounting for approximately 18 to 30 per cent of total income from 2016/17 to 2019/20.<sup>286</sup>

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<sup>282</sup> Transcript, 3 June 2021, p 299.45; Exhibit 11, Grassroots Connections Australia, Norfolk Island Regional Council Independent Governance and Financial Audit (final report, 15 November 2020), GRC.PUB.001.0001\_0148.

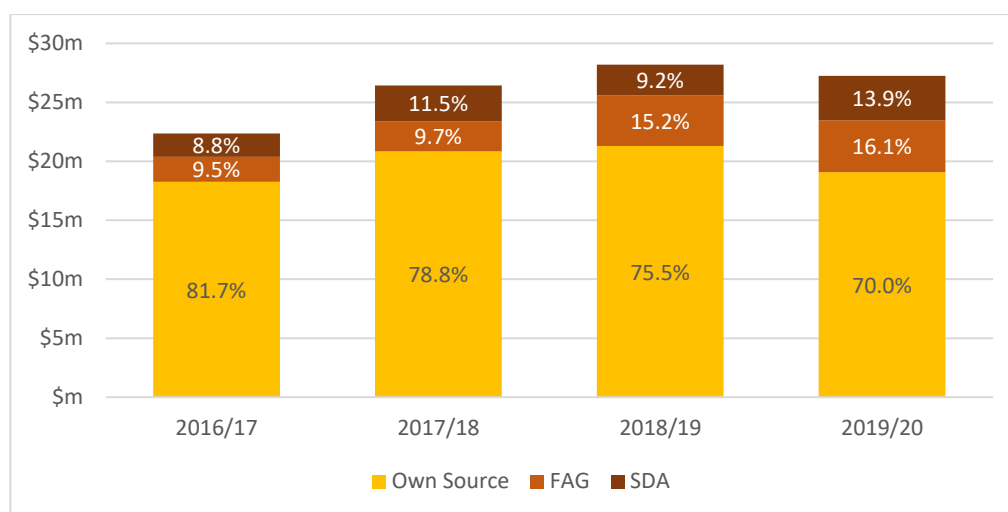
<sup>283</sup> Transcript, 2 June 2021, p 223.24–26.

<sup>284</sup> Exhibit 11, Grassroots Connections Australia, Norfolk Island Regional Council Independent Governance and Financial Audit (final report, 15 November 2020), GRC.PUB.001.0001\_0150.

<sup>285</sup> Transcript, 2 June 2021, p 223.27–29.

<sup>286</sup> Exhibit 1, Annual Report 2016–2017, NIRC.PUB.001.0135\_0133–\_0136; Exhibit 1, Annual Report 2017–2018, NIRC.PUB.001.0181\_0186–\_0189; Exhibit 1, Annual Report 2018–2019, NIRC.PUB.001.0251\_0202–\_0205; Exhibit 1, 2019–2020 Draft Financial Statements, NIRC.001.002.0001\_0017–\_0020.

**Figure 7. NIRC revenue sources as a percentage of total revenue (excl. capital grants) 2016/17–2019/20**



### **Financial Assistance Grant**

228. FAG funding is untied, meaning local governments are able to spend the funding on local priorities. This funding represents the largest single source of grant revenue for local governments, comprising an average of 37 per cent of all grant revenue in 2017/18 across the states.<sup>287</sup> The grant amount is determined by two categories:<sup>288</sup>

- a. a 'general purpose' funding component distributed on a per capita basis according to principles of horizontal equalisation, which aims to ensure that each local governing body is able to function at a standard not lower than the average standard of other local governing bodies. This means that different areas with the same population may receive higher or lower financial assistance grants depending on the cost of service provision; and
- b. an 'identified local roads component', which is allocated to governing bodies on the basis of the relative needs of each local governing body for roads expenditure and to preserve its roads-related assets. In calculating the amount, relevant considerations include the length, type and usage of roads in each area.

<sup>287</sup> Commonwealth Grants Commission, *2019 Norfolk Island Inquiry* (final report, November 2019) p 19 <[https://www.cgc.gov.au/sites/default/files/norfolk\\_island\\_inquiry\\_2019\\_final\\_report.pdf](https://www.cgc.gov.au/sites/default/files/norfolk_island_inquiry_2019_final_report.pdf)>.

<sup>288</sup> Department of Infrastructure, Transport, Regional Development and Communications, *National principles for the allocation of grants under the Local Government (Financial Assistance) Act 1995* (webpage, 30 March 2017) <<https://www.regional.gov.au/local/assistance/national-principles-allocation-of-grants.aspx>>.

229. The initial 'general purpose' grant amounts allocated to Norfolk Island for 2016/17 and 2017/18 were modelled on the amount received by Brewarrina Shire in north-western NSW.<sup>289</sup> After 'extensive' lobbying of the Commonwealth by the Mayor and Ms Jackson for a fair calculation of the FAG amount in 2018/19,<sup>290</sup> the grant amount was recalculated based on a KPMG report on remote island disadvantages.<sup>291</sup> As Figure 7 shows, the value of the FAG increased approximately 108 per cent from \$1.92 million in 2016/17 to \$3.99 million in 2019/20.<sup>292</sup>
230. That being said, FAG funding was not enough to cover the NIRC's major capital expenditure. In December 2016, Council staff had identified a need for additional grant funding of \$9 million in 2017/18, \$5 million in each subsequent year, and a one-off \$4 million capital grant to upgrade the waste service in 2017/18, to help fund renewal of critical assets that were significantly deteriorated.<sup>293</sup> This funding was not already included within the FAG amount, and meant the Council did not have the resources to commence the sort of asset renewal program the Island required. The records show grant funding never achieved these levels, and the governing body took no action to respond to this fact other than to defer asset renewal and replacement, as detailed further in Chapter 6.

### *Service Delivery Agreement Funding*

231. SDA funding is derived from the contractual arrangements between the NIRC and the Commonwealth, whereby the NIRC receives funding from the Commonwealth to deliver 'state-type' services, including ports management, motor vehicle and land titles registrations, and fire and marine search and rescue.<sup>294</sup>
232. The SDA also included provision for asset maintenance as it was relevant to delivering the state-type service, stating in paragraph 4.2(b):<sup>295</sup>

<sup>289</sup> Commonwealth Grants Commission, *2019 Norfolk Island Inquiry* (final report, November 2019), p 19 <[https://www.cgc.gov.au/sites/default/files/norfolk\\_island\\_inquiry\\_2019\\_final\\_report.pdf](https://www.cgc.gov.au/sites/default/files/norfolk_island_inquiry_2019_final_report.pdf)>.

<sup>290</sup> Exhibit 1, Annual Report 2017–2018, NIRC.PUB.001.0181\_0008.

<sup>291</sup> KPMG, *Analysis of remote island disadvantages – Norfolk Island* (report, December 2017), cited in Commonwealth Grants Commission, *2019 Norfolk Island Inquiry* (final report, November 2019), p 19 <[https://www.cgc.gov.au/sites/default/files/norfolk\\_island\\_inquiry\\_2019\\_final\\_report.pdf](https://www.cgc.gov.au/sites/default/files/norfolk_island_inquiry_2019_final_report.pdf)>.

<sup>292</sup> Exhibit 1, Annual Report 2016–2017, NIRC.PUB.001.0135\_0136; Exhibit 1, 2019–2020 Draft Financial Statement, NIRC.001.002.0001\_0020.

<sup>293</sup> Exhibit 1, Long Term Financial Plan 2017–2026, NIRC.PUB.001.0070\_0018; Exhibit 1, 20161221 Agenda Ordinary Meeting, NIRC.PUB.001.0072\_0154; 20210827 Commonwealth submission in response to Counsel Assisting submissions, COMM.SUB.001.0001\_0003.

<sup>294</sup> Exhibit 11, 20160624 Service Delivery Agreement, NIRC.002.001.0001\_0002.

<sup>295</sup> Exhibit 11, 20160624 Service Delivery Agreement, NIRC.002.001.0001\_0004.

The Commonwealth will be responsible for providing funding for repairs and maintenance to assets used in delivery services and where agreed, funding the replacement of assets that are no longer suitable for completing the services.

233. As discussed in Chapter 6, the NIRC could have relied on this provision to seek funding for asset maintenance as it related to the delivery of those state-type services, but did not, meaning assets related to SDA service provision were either not maintained or enhanced to a sufficient standard or that asset maintenance was funded, unnecessarily, by the NIRC.

### **The Civica financial system**

234. Well-maintained financial systems are a key enabler of accurate and timely financial reporting. It was decided in the transition period that the Council would purchase a new accounting system called Civica.<sup>296</sup> Civica was 'turned on' at the NIRC in February 2017.<sup>297</sup>
235. The Civica Local Government System is one of two major local government software suppliers in Australia and includes the foundational systems to run a normal local government authority.<sup>298</sup> Civica includes modules to automate and integrate information within local government organisations such as land information, finance, HR and payroll, and asset management and reporting.<sup>299</sup>
236. During the public hearings, Council staff reported that Civica was complex and difficult to use for people who did not have previous experience with the system.<sup>300</sup> While staff were provided with Civica training when the Council was established, high staff turnover meant that many of the modules were not used,<sup>301</sup> or were not used correctly.<sup>302</sup> This led a contractor, hired by Mr Roach, to find significant errors by Council staff in using the system.<sup>303</sup>
237. Other staff suggested that Civica was not set up correctly in the first place,<sup>304</sup> making it extremely difficult for staff to 'make sense of the information you could get out of it'.<sup>305</sup> Mr Wilson, who had previously held financial accounting roles in state governments and within NIRC from October 2017 to January 2020, suggested that Civica was not fit for purpose for

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<sup>296</sup> Transcript, 9 June 2021, p 377.12–15.

<sup>297</sup> Transcript, 31 May 2021, p 90.4–5.

<sup>298</sup> Transcript, 31 May 2021, p 58.30–36.

<sup>299</sup> CIVICA, *State and Local Government* (webpage) <<https://www.civica.com/en-au/sector-pages/state-local-government/>>.

<sup>300</sup> Transcript, 31 May 2021, p 79.4–8; Transcript, 9 June 2021, p 378.15–18; Transcript, 10 June 2021, p 504.21–27; Transcript, 1 June 2021, p 113.30–36.

<sup>301</sup> Transcript, 31 May 2021, pp 58.43–47, 59.1.

<sup>302</sup> Transcript, 1 June 2021, pp 116.44–47, 117.2–5.

<sup>303</sup> Transcript, 31 May 2021, p 59.3–13.

<sup>304</sup> Transcript, 1 June 2021, p 118.41–44.

<sup>305</sup> Transcript, 1 June 2021, p 119.1–3.

a small council such as the NIRC. He indicated that Civica required 12 servers and dedicated IT professionals 'to keep the system going',<sup>306</sup> while in contrast, NIRC 'only had one and a helper'.<sup>307</sup>

238. Mr Nielsen described the impact that poor implementation of the Civica system had on the timeliness of financial reporting as follows:<sup>308</sup>

A. There was an inability to access the information in any meaningful way. There was a whole layer of functionality in Civica that had never been set up. There's an area above, if you like, the GL accounts called - and it's a hierarchy. So, you can install the hierarchy so you can see what departments look like, what cost centres look like, what the whole of the council would look like, and that hierarchy can be connected to a product called Biz which gives you a much better view of that hierarchy and gives you the ability to drill down through the system down to the transactions that was missing from the system.

Q. Is that sort of capability normally evident in local government functions elsewhere, in your experience?

A. Yes.

Q. What sort of data were you prevented from accessing or obtaining because of the state of the accounts?

A. The data was there but it was difficult to extract.

Q. How long did it take you to extract it?

A. I probably spent a week figuring out how to get the data out of the system that I needed.

239. The Nexia and Grassroots reports noted similar issues with the Civica system in addition to the issues described above. Nexia's observations as to the Civica related difficulties included:<sup>309</sup>

- a. labour intensive manual input and calculation of timesheets and leave accruals;
- b. depreciation being calculated on assets that no longer existed; and
- c. inaccuracies in bank reconciliations.

240. The poor implementation, maintenance and under-utilisation of Civica contributed to the NIRC not having timely access to accurate financial records. Mr Taylor said the 'biggest

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<sup>306</sup> Transcript, 1 June 2021, p 509.46.

<sup>307</sup> Transcript, 1 June 2021, p 509.47.

<sup>308</sup> Transcript, 1 June 2021, p 113.13–36.

<sup>309</sup> Exhibit 9, Nexia Australia, Norfolk Island Regional Council: Independent Audit of Financial Performance on behalf of the Department of Infrastructure, Transport, Regional Development and Communications (final report, 30 October 2020), NXA.PUB.001.0001\_0041. See also: Grassroots Connections Australia, Norfolk Island Regional Council Independent Governance and Financial Audit (final report, 15 November 2020), GRC.PUB.001.0001\_0021.



single problem' was 'that you just couldn't get information out of it simply'.<sup>310</sup> Mr Taylor said he raised Civica as a problem with Ms Jackson who told him to, 'work it out with the CFO'.<sup>311</sup>

## Staff turnover

241. The high turnover, especially among financial staff,<sup>312</sup> contributed to a loss of organisational knowledge which affected the implementation of financial processes, including effective use of the Civica system. Eight people were employed in the role of Responsible Accounting Officer during the Defined Period.<sup>313</sup> This critical role covered the provision of investment reports and the QBRs to the Council.
242. Mr Roach said the turnover was 'higher than I've seen in other council areas', adding: 'you lose institutional memory quite quickly, and procedure and process are the first things to suffer, and so, there's lot of systems within Civica we pay for that we don't use.'<sup>314</sup> The effect of this loss of institutional memory was evident in the lack of financial reporting to Council towards the end of 2019, when Mr Wilson went on medical leave and consequently resigned in January 2020.<sup>315</sup> From then until May 2020, when Mr Nielsen was appointed as interim Finance Manager,<sup>316</sup> the Council received no investment reports detailing the breakdown of cash balances.
243. According to Mr Taylor, problems with Civica were a contributor to high turnover among Council staff. His evidence was that 'I can understand why there was big turnover when you started a new system [meaning the local government model] and then eight months in you changed your accounting system [to Civica]'.<sup>317</sup>
244. Mr PJ Wilson (Team Leader of Waste and Environment, NIRC) said that, in his view, turnover was high because the legal framework, and policies and procedures in place, were different from local government elsewhere.<sup>318</sup>

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<sup>310</sup> Transcript, 31 May 2021, p 79.7–8.

<sup>311</sup> Transcript, 31 May 2021, p 80.13–14.

<sup>312</sup> Transcript, 31 May 2021, p 41.42.

<sup>313</sup> The following individuals acted in the role of Responsible Accounting Officer: John van Gaalen, Shane Nankivell, James Gauvin, Robert Carlesso, Phillip Wilson, Andrew Roach, Roger Nielsen and Alistair Innes–Walker. Source: analysis of all investment reports presented to Council over the Defined Period.

<sup>314</sup> Transcript, 31 May 2021, p 58.43–59.1.

<sup>315</sup> Transcript, 10 June 2021, pp 528.32–38, 541.44–542.4; Transcript, 11 June 2021, p 574.31–33; Transcript, 1 June 2021, p 111.44–112.9. See Exhibit 1, 20200219 Agenda Ordinary Meeting, NIRC.PUB.001.0257\_0096; Exhibit 1, 20200318 Agenda Ordinary Meeting, NIRC.PUB.001.0261; Exhibit 1, 200520 Agenda Ordinary Meeting, NIRC.PUB.001.0263.

<sup>316</sup> Transcript, 1 June 2021, p 112.24–27.

<sup>317</sup> Transcript, 31 May 2021, p 90.6–9.

<sup>318</sup> Transcript, 1 June 2021, p 135.11–17.



245. Turnover and the difficulties in attracting suitably qualified staff also affected the quality of reports provided to the Audit Committee. Ms Sexton said:<sup>319</sup>

In terms of the papers and the general items that we were given, the quality of the papers was probably not to the level that we would have liked to have seen in terms of the items that were addressed according to the annual work plan that the committee has, but also in the papers themselves on occasion, you know, they were in excess of 200 or so pages; sometimes they were late in being provided to us which is, again, just a reflection of, I guess, the work commitments that people had and the lack of resources.

## Conclusions

246. The challenges faced by the incoming Council on 1 July 2016 were substantial. The inherited cash position was, in effect, limited to the cash that was left over following the closure of the former Administration's books. This starting cash position did not reflect, nor was it based upon, any considered assessment of the capital base required to constitute a council with the breadth of responsibilities of the NIRC. Council's cash base was not sufficient to meet the substantial capital expenditure required to maintain, replace and renew a tired asset base, particularly repairs to the Norfolk Island Airport.
247. At the same time, the NIRC assumed the liabilities of the Administration upon its commencement. Critically, Mr Gesling had been unable to develop a sustainable funding model during the transition period. That being said, the Long Term Financial Plan adopted by Council in December 2016 would seem to have been prepared with an understanding of these matters and with a view towards putting the Council on a sustainable footing into the future.
248. Ms Adams, in her submissions, refers to 'other matters' that Counsel Assisting identified as contributing to the overall conclusion that the NIRC and the governing body failed to provide effect financial and asset management. One of those other matters was the Council's cash position when it was established. She goes on to submit that the Council was 'set up in an impossible situation', citing again a 'cash position that did not account for depreciation of, and need to replace, substantial infrastructure in a short period of time'.<sup>320</sup> She says:<sup>321</sup>

The cash position in July 2016 was not sufficient for the NIRC to repair, maintain and replace the assets and infrastructure, and ... this ultimately meant the Council was set up to fail. It was almost inevitable that the Council would find itself in a position with a depleted cash reserve, as it did in 2020 after the Airport and Roads Contract. The cash position and the state of the infrastructure caused enormous strain on the cash reserves of the Council, meaning when the Council was required to fund the shortfall from the Commonwealth grant for the Airport

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<sup>319</sup> Transcript, 9 June 2021, p 455.16–27.

<sup>320</sup> 20210916 Further submissions of Robin Adams in response to Counsel Assisting submissions, RADA.SUB.001.0002.

<sup>321</sup> 20210916 Further submissions of Robin Adams in response to Counsel Assisting submissions, RADA.SUB.001.0002\_0003.

project and Roads Contract, the cash reserves were depleted (from both a condition and depreciation allowance point of view).

249. Ms Adams contends that I ought to put 'greater weight' on the impact of the 'other matters' addressed in Counsel Assisting's submissions.
250. As appears above, I acknowledge and accept that the Council faced substantial challenges when it was established on 1 July 2016. But that consideration only serves to reinforce my conclusion that the Council fell short of managing the Council's finances effectively. Its role was to address those challenges. In my opinion, however, it decided in several important respects not to.
251. Viewed in the context of the challenges the Council faced, effective financial management required, at the very least, optimising each of the revenue streams available to the NIRC, whether external or internal. It also required the Council, having adopted and published a financial plan, to take action to implement it. The evidence outlined above reveals that the governing body was unwilling to implement that plan. More specifically, it indicates that rather than requiring the Council's business units to meet the costs associated with funding its operations, the governing body was looking to other revenue, and in particular external sources of revenue as a means of meeting expenditure.
252. It did not take long for the challenges that faced or were likely to face the Council to become well understood. During the first six months following the establishment of Council, the governing body had the benefit of advice from the Responsible Accounting Officers and the Audit Committee that identified many of the problems that the Council would encounter and which gave them clear direction about what needed to be done from a financial management perspective. That advice was primarily directed to ways in which the NIRC could improve and optimise its revenue position.
253. In three critical areas, the governing body was dilatory in taking action to increase own source revenue.
254. First, Council was aware from at least September 2016 of the deficit position of the NIRC's five main business enterprises. Over time, the governing body failed to take action to rectify this issue. This flew in the face of a central aspect of the Long Term Financial Plan that was adopted in December 2016, namely that a cost recovery approach would be applied to the Council's business operations.<sup>322</sup> In place of implementing the cost recovery approach, the

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<sup>322</sup> The 'fully costed' approach adopted in the 2016 Long Term Financial Plan formed the basis for each scenario proposed in each subsequent Long Term Financial Plan: Exhibit 1, Long Term Financial Plan 2018–2027, NIRC.PUB.001.0095\_0010; Exhibit 1, Long Term Financial Plan 2019–2028, NIRC.PUB.001.0151\_0010; Exhibit 1, Long Term Financial Plan 2020–2029, NIRC.PUB.001.0218\_0010.

governing body allowed losses to continue to accumulate in a number of individual business units in the hope that they would be able to be cross-subsidised from other Council revenues.

255. In the case of the electricity charges, having endorsed the Council's 2017/18 Operational Plan in June 2017, which included increasing the electricity charges to contribute \$400,000 to the budget,<sup>323</sup> and having advised the community of the proposed increase, the governing body decided to retain the tariff at 62 cents. The Audit Committee raised its concerns about such decisions increasing deficits and recommended that the Council rectify the situation. However, no additional revenue was identified and the 2017/18 Operational Plan was not amended to reflect this situation.
256. Second, the governing body was reluctant to increase rates as a means of improving revenue. Consequently, the ordinary rates levied remained largely static at just over \$1.2 million and under 5 per cent of total projected revenue per annum. However, it should be noted that the Council did meet the requirement of s 513A of the applied LG Act, in that rates made by the Council were sufficient to ensure that the total of ordinary rates levied on all rateable land for 2016/17 was \$500,000 and from 2017/18 was at least \$1,000,000.
257. However, had the Council achieved a rate target of 10 per cent in accordance with the Audit Committee's recommendation, it could have been applied to pay expenses or used to bolster Council's cash reserves in the years following the Audit Committee's recommendation to 2020/21. Income of this magnitude could have made a significant contribution to the Council's ability to meet its liabilities over that period.
258. Councillors were opposed to increasing rates as they believed the community did not have the ability to meet the cost without experiencing hardship. However, whilst the Council sought expert advice on the establishment of the rates system, no economic analysis was ever commissioned as to the likely impacts of raising rates and charges in the community. Seeking and then representing community views is an important component of council decision-making, but it is not the only consideration, particularly when it means the cost of delivering services cannot be met; especially in circumstances where proposed increases in charges are included as a source of revenue and approved in Operational Plans.
259. Council was, however, successful in getting FAG income increased for 2018/19 onwards, after extensive lobbying of the Commonwealth for a fairer calculation of the grant amount.
260. Whilst Councillors understood that they needed additional funding to implement the 2017/18 Operational Plan that they had approved, they did not take adequate steps to understand the minimum amount of capital required to fund Council's day-to-day operations so that this amount was explicit when making key funding decisions. Individual Councillors gave

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<sup>323</sup> Exhibit 1, 20171115 Agenda Ordinary Meeting, NIRC.PUB.001.0120\_0240.

differing evidence regarding the minimum cash reserves that the Council needed on an ongoing basis. This evidence illustrates the benefit that could have been obtained by having a policy or guideline in place that established the necessary level of minimum capital required to fund the NIRC's unique set of responsibilities.

261. Third, Council took no action to implement that portion of the Long Term Financial Plan that would have set aside \$6 million over four years from Norfolk Island Airport operations to enable airport runway repairs that were anticipated as being necessary to be in 2020/21.

## Chapter 6: Asset management

### Introduction

262. This section considers the actions of the NIRC and governing body during the Defined Period in respect of its assets, and the extent to which they acted in a manner consistent with the principles and requirements of effective financial and asset management. As noted in Chapter 4, the NIRC and governing body's decisions as they relate to asset management (including the principles, policies and processes adopted in respect of asset maintenance, enhancement, funding, performance and risk) are relevant to both ToR 1 and ToR 2.
263. Financial and asset management on Norfolk Island are interconnected. Whilst the funding decisions and commitments made in respect of asset maintenance and renewal have implications for the Council's finances, the converse is also true: meaning the extent of asset maintenance and renewal was impaired by the state of the Council's finances. The circumstances surrounding the most consequential financial and asset decisions (the airport project and the roads project) are dealt with separately in Chapter 7.
264. Upon transfer to the NIRC in 2016, assets critical to maintaining quality of life on Norfolk Island – its roads, the airport, sewerage and waste management, electricity and telecommunications – were in a poor state. The value of the assets was unclear, and asset revaluations increased the line-item depreciation and amortisation on NIRC's financial statements. Whilst this was recognised by the NIRC, the limitations on the NIRC's revenue bases and its other financial commitments meant that it could not afford the significant expenditure required for the repair and replacement of those assets. Without significant external investment or a shift in responsibility for certain asset classes, the NIRC is unlikely to be in a position to adequately fund asset maintenance and renewal to bring its ageing assets to a standard accepted across most other parts of Australia.
265. While the NIRC did make some good decisions in relation to asset management, which have improved quality of life on Norfolk Island, the Inquiry heard evidence suggesting ineffective asset management. In particular, the NIRC had inadequate asset management plans, which cannot be wholly explained by the poor records it inherited from the former Administration or the tight timeframes it had in 2016 to prepare those plans. Contributing to this was an absence of suitably qualified personnel, a lack of understanding of the purpose and utility of the asset management plans (and similar strategic planning documents of this kind), and not prioritising the time required to improve these plans. As discussed in Chapter 7, the

decisions made by the NIRC in respect of two critical assets of the Island (the airport and roads) further highlight the deficiencies in asset management.

### **The state of the assets upon transfer to the NIRC**

266. On 1 July 2016, the majority of assets that had been purchased, maintained and operated by the Administration of Norfolk Island became assets and liabilities of the NIRC.<sup>324</sup> At this time, the NIRC also acquired some assets that had previously been owned by the Commonwealth, including roads and certain public reserves and land parcels.<sup>325</sup> Other assets, including the hospital, police and education buildings, that had been formally owned and operated by the Administration were transferred to the Commonwealth.<sup>326</sup>
267. The intention for these asset transfers was to reflect the change in responsibility for delivery of certain services, and to ensure that ownership for an asset rested with the level of government responsible for related services.<sup>327</sup>
268. The transition in governance structure from the Administration to the NIRC had financial consequences for the NIRC. Responsibility for maintenance and replacement of the majority of the assets received by the NIRC remained as it had been under the Administration. In this respect, whilst certain Councillors took the view that the Commonwealth ought to have provided funding referable to the transferred assets (in particular, the transferred roads<sup>328</sup>), senior staff within the NIRC and majority of the governing body understood that responsibility was to remain as it had been under the Administration.<sup>329</sup> However, even though the level of responsibility did not change, the *standard* at which such maintenance and replacement was expected to occur did increase.
269. Prior to the transition, the Administration had operated under its own building codes and standards. From 1 July 2016, the NIRC was expected to transition those assets to a higher

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<sup>324</sup> By force of the *Norfolk Island Legislation Amendment Act 2015*, sch 2 pt 2, items 358 and 359, together the definition of 'final transition time' (in item 356 of sch 2 pt 2) and s 2; c.f. *Norfolk Island Legislation Amendment Act Transitional Rule 2016* (No 1), s 8.

<sup>325</sup> Exhibit 11, 20160628 Norfolk Island Land Transfer Ordinance 2016, NIRC.005.002.0002\_0017.

<sup>326</sup> Exhibit 11, 20160628 Norfolk Island Land Transfer Ordinance 2016, NIRC.005.002.0002\_0017. See also: *Norfolk Island Land Transfer Ordinance 2016*, s 4.

<sup>327</sup> Exhibit 11, 20161011 Letter from Robyn Fleming to Robin Adams, NIRC.005.002.0002\_0005.

<sup>328</sup> Transcript, 3 June 2021, pp 336.32–340.39, 340.11–343.33; 20211008 Submissions of Robin Adams in response to Counsel Assisting submissions, RADA.SUB.001.0004\_0008–\_0010.

<sup>329</sup> Transcript, 31 May 2021, p 89.6–12; Transcript, 3 June 2021, pp 223.16–30, 276.2–14; Transcript, 11 June 2021, pp 591.19–592.10; Exhibit 11, 20160608 Letter from Robyn Fleming to Peter Gesling, NIRC.005.002.0002\_0002.

standard (the PAS 55).<sup>330</sup> The NIRC acknowledged that this would require 'start-up capital' from an external source<sup>331</sup> and that, until such funding was made available, the NIRC would seek (and could only seek) to maintain the assets as per the Administration's standards with the goal of keeping them 'functional'.<sup>332</sup> The NIRC did not, in its first five years of operation, receive sufficient funding to undertake such improvements.

270. The financial effects of the change in standards were exacerbated by the poor state of assets upon transfer. The Council's 2016 Infrastructure Asset Management Plan assessed existing assets as generally 'fair', 'poor' or 'very poor', meaning that at best the assets required 'significant maintenance' (if in 'fair' condition) and at worst were 'physical [sic] unsound and/or beyond rehabilitation' (if in 'very poor' condition).<sup>333</sup> A number of assets in the 'poor' or 'very poor' category were critical to the provision of essential services to the Island and to NIRC's business units, including sewerage and waste management infrastructure, telecommunications infrastructure, electricity infrastructure, roads and the airport.

271. In recognition of this, the NIRC noted in its first Long Term Financial Plan that:<sup>334</sup>

... virtually all assets are non-compliant with Australian standards and are at, or well past their end of life functionality. This in turns reduces the reliability and functionality of critical assets associated with communications, sanitation, transportation and energy production. As a result, the quality of life for the Norfolk Island community will continue to further deteriorate over the planning period and the capital required to renew and replace the assets will continue to grow.

272. While the condition of assets was known at a general level, the asset-related records and information which the NIRC received from the Administration were either not clear, or were in interim or draft forms,<sup>335</sup> and were described by the NIRC as 'non-existent or in the best case poorly kept and maintained'.<sup>336</sup> As a result, NIRC staff found it necessary to make their own judgements about allowances for assets, with the view to 'firming up' those assessments over time.<sup>337</sup>

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<sup>330</sup> Exhibit 1, Integrated Planning and Reporting Manual for local government in NSW, OLG.PUB.001.0002\_0079.

<sup>331</sup> Exhibit 1, Building Asset Management Plan 2016–2026, NIRC.009.002.0047\_0009.

<sup>332</sup> Exhibit 1, Building Asset Management Plan 2016–2026, NIRC.009.002.0047\_0009, \_0011.

<sup>333</sup> Exhibit 1, Infrastructure Asset Management Plan 2016, NIRC.003.004.0021\_0009.

<sup>334</sup> Exhibit 1, Long Term Financial Plan 2017–2026, NIRC.PUB.001.0070\_0011.

<sup>335</sup> Transcript, 11 June 2021, p 586.13–25.

<sup>336</sup> Exhibit 1, Long Term Financial Plan 2017–2026, NIRC.PUB.001.0070\_0006.

<sup>337</sup> Transcript, 11 June 2021, p 586.13–25.

## NIRC's critical assets

### Roads

273. The Norfolk Island road network spans some 78 kilometres of roads, and is also comprised of bridges, culverts and drainage assets. At the time of the asset transfer, about 50 per cent of the roads were in 'poor' condition.<sup>338</sup> The Inquiry heard evidence that during the Defined Period, certain capital works relating to the roads could not be undertaken due to a lack of equipment and primary materials.<sup>339</sup>
274. In September 2015, the engineering consulting firm Worley Parsons delivered a roads audit and strategy report, finding that 'many roads are on the brink of accelerated deterioration', and that 'the situation will become worse in the not-too-distant future unless focus is shifted and funds are provided to address roads that are about to fail significantly'.<sup>340</sup>
275. The report identified that 30km of the roads were rated as 'condition 2: urgent attention needed' with an approximate restoration cost in the order of \$10-15 million.<sup>341</sup> Some of the roads identified as 'condition 2' were the subject of works in 2019 and 2020, as discussed further in Chapter 7.<sup>342</sup> The report further identified that due to deferral of remedial works to address road surface failures (caused by the breakdown of the bitumen seal), reconstruction of the pavement layer immediately below was now required.<sup>343</sup> Worley Parsons also noted that the equipment available on the Island to attend to the roads was inadequate.<sup>344</sup>

### Airport

276. The Norfolk Island International Airport is a critical asset on Norfolk Island, because it is the only reliable link to the mainland, and the means of facilitating the Island's primary source of

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<sup>338</sup> Transcript, 31 May 2021, p 85.3.

<sup>339</sup> Transcript, 31 May 2021, pp 86.37–87.38; Transcript, 11 June 2021, pp 590.34–591.17; Exhibit 1, 20190417 Agenda Ordinary Meeting, NIRC.PUB.001.0203\_0139 –\_0140.

<sup>340</sup> Exhibit 11, WorleyParsons, Norfolk Island Roads Audit and Strategy Report (report, 1 September 2015), NIRC.007.001.0259\_0018.

<sup>341</sup> Exhibit 11, WorleyParsons, Norfolk Island Roads Audit and Strategy Report (report, 1 September 2015), NIRC.007.001.0259\_0005.

<sup>342</sup> Exhibit 11, WorleyParsons, Norfolk Island Roads Audit and Strategy Report (report, 1 September 2015), NIRC.007.001.0259\_0042.

<sup>343</sup> Exhibit 11, WorleyParsons, Norfolk Island Roads Audit and Strategy Report (report, 1 September 2015), NIRC.007.001.0259\_0005.

<sup>344</sup> Exhibit 11, WorleyParsons, Norfolk Island Roads Audit and Strategy Report (report, 1 September 2015), NIRC.007.001.0259\_0005.



income: tourism.<sup>345</sup> At the time of the transition, it was known that the airport would imminently require major refurbishment works to place it on a commercial footing. In December 2016, the NIRC assessed the airport car park and airport hardstand as being in 'very poor' condition; that is, physically unsound and/or beyond rehabilitation.<sup>346</sup> The airport beacon, airport fencing, runways and taxiway were assessed as being in 'fair' condition, indicating that significant maintenance was required.<sup>347</sup> In general, the airport was assessed as having a useful life of 2 years.<sup>348</sup>

277. In addition to the poor state of the asset, the NIRC had inherited a large debt in relation to previous airport works.<sup>349</sup> For these reasons, the NIRC described the airport as a 'major concern for the Council'.<sup>350</sup> The actions the NIRC took to address this concern and the resulting financial consequences are detailed in Chapter 7.

### **Sewerage and waste management**

278. Like the airport, waste and sewerage infrastructure on Norfolk Island were identified at an early stage as a key issue for and concern of the community,<sup>351</sup> having been graded as 'very poor'.
279. The sewerage treatment plant in particular was in urgent need of complete replacement.<sup>352</sup> The Administration had in this regard received a report from Advisian in January 2016 concerning the sewerage network, which identified that there had been severe erosion and corrosion of the existing asset infrastructure.<sup>353</sup> The report further noted that there was not the necessary equipment on the Island to undertake the required inspections, beyond a visual inspection of accessible areas, and the state of assets in inaccessible areas could not be reported on.<sup>354</sup>

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<sup>345</sup> Transcript, 2 June 2021, p 185.9–10.

<sup>346</sup> Exhibit 1, Infrastructure Asset Management Plan 2016, NIRC.003.004.0021\_0009.

<sup>347</sup> Exhibit 1, Infrastructure Asset Management Plan 2016, NIRC.003.004.0021\_0010.

<sup>348</sup> Exhibit 1, Infrastructure Asset Management Plan 2016, NIRC.003.004.0021\_0013; Exhibit 1, Building Asset Management Plan 2016–2026, NIRC.009.002.0047\_0013.

<sup>349</sup> Exhibit 1, Operational Plan 2016–2017, NIRC.PUB.001.0046\_0026.

<sup>350</sup> Exhibit 1, Long Term Financial Plan 2017–2026, NIRC.PUB.001.0070\_006.

<sup>351</sup> Exhibit 1, Community Strategic Plan 2016–2026, NIRC.PUB.001.0036\_0014.

<sup>352</sup> Transcript, 31 May 2021, p 63.13–15; Transcript, 1 June 2021, p 123.44–47.

<sup>353</sup> Exhibit 11, Advisian, Norfolk Island Sewerage Network Preliminary Condition Assessment Report, January 2016, COMM.001.006.0078\_0007, \_0041.

<sup>354</sup> Exhibit 11, Advisian, Norfolk Island Sewerage Network Preliminary Condition Assessment Report, January 2016, COMM.001.006.0078\_0015.

280. In June 2015, the Administration had received a report from A.Prince Consulting concerning the waste management system.<sup>355</sup> From that report, A.Prince, in partnership with Eco Norfolk, prepared a Waste Management Strategy Implementation Plan 2015/16,<sup>356</sup> the implementation of which was endorsed by Peter Gesling during the transition period.<sup>357</sup> That report identified that the Administration's waste management practices had been disadvantaged by geographic and financial constraints and other unique challenges faced by Norfolk Island, including limited available funding and skilled personnel.<sup>358</sup> It recommended that steps be taken to upgrade the waste management centre to process comingled recycling and crushed glass via a sorting line, and that the Administration purchase a multipurpose baler to bale residual waste, metal and recycling for export.<sup>359</sup> That did not occur prior to the transfer of these assets to the NIRC.

## Electricity

281. Electricity on Norfolk Island is supplied through a combination of diesel generators and photovoltaic/solar power, which the Administration installed in around 2009 and which the NIRC inherited responsibility for. In July 2015, a report prepared by SGS Economics and Planning identified that the existing asset infrastructure was at risk of failure and causing prolonged power outages.<sup>360</sup> The risk of failure was due to an inability to modernise the ageing generators, and the inability of the electricity grid to handle additional power generated by solar.
282. In its asset review conducted in late 2016, the NIRC identified 'electricity' as having a useful life of one year.<sup>361</sup> In particular, it graded the power station engines and accessories as being in 'very poor' condition,<sup>362</sup> and the switchboards, cables and substation transformers as being in 'poor' condition.<sup>363</sup> The Inquiry heard evidence from Mr McCoy, Mr Nankivell and Mr Taylor that the electricity generators inherited by the NIRC were 'beyond their use by

<sup>355</sup> Exhibit 1, 20161116 Attachment 1 Ordinary Meeting, NIRC.PUB.001.0068\_0003.

<sup>356</sup> Exhibit 1, 20161116 Agenda Ordinary Meeting, NIRC.PUB.001.0067\_0061.

<sup>357</sup> Exhibit 1, 20161116 Agenda Ordinary Meeting, NIRC.PUB.001.0067\_0061.

<sup>358</sup> Exhibit 1, 20161116 Attachment 1 Ordinary Meeting, NIRC.PUB.001.0068\_0014, \_0091.

<sup>359</sup> Exhibit 1, 20161116 Attachment 1 Ordinary Meeting, NIRC.PUB.001.0068\_0011, \_0091.

<sup>360</sup> SGS Economics and Planning, *Norfolk Island Economic Development Strategy* (report, July 2015), p 8

<[https://www.infrastructure.gov.au/sites/default/files/migrated/territories/publications/files/SGS\\_Norfolk\\_Island\\_Economic\\_Development\\_Strategy\\_Action\\_Plan.pdf](https://www.infrastructure.gov.au/sites/default/files/migrated/territories/publications/files/SGS_Norfolk_Island_Economic_Development_Strategy_Action_Plan.pdf)>.

<sup>361</sup> Exhibit 1, Infrastructure Asset Management Plan 2016, NIRC.003.004.0021\_0013.

<sup>362</sup> Exhibit 1, Infrastructure Asset Management Plan 2016, NIRC.003.004.0021\_0009.

<sup>363</sup> Exhibit 1, Infrastructure Asset Management Plan 2016, NIRC.003.004.0021\_0009, \_0010.

life',<sup>364</sup> because they were purchased by the Administration second-hand and the Administration had serviced them twice beyond their useful life.<sup>365</sup>

## Telecommunications

283. As at 1 July 2016, Norfolk Island's telecommunications system was limited to a 2G network which had been built in 2007. A report by GQI Consulting in 2015 identified that the equipment used by this system '[was] technologically obsolete and [was] likely to need upgrading in the next 2 to 3 years to prevent a major loss of service'<sup>366</sup> and 'to guarantee reliable mobile services and provide similar standards of mobile coverage and services available on the Australian mainland'.<sup>367</sup>
284. That report recommended that a 4G technology mobile network be deployed on Norfolk Island, while allowing the 2G mobile network to be decommissioned after a short transition period.<sup>368</sup> GQI Consulting estimated the cost of doing so would be \$3.7 million.<sup>369</sup> The report also recommended upgrades to the radio site infrastructure; including the antenna, cables and mounting, power supply and batteries, and optical fibre.

## The value of the assets

285. In addition to reports as to the condition of the Island's assets, there have been three reports estimating asset values and replacement costs:
- a. In June 2015, property valuers Preston Rowe Paterson reported that the value of the Administration's assets as at 30 June 2015 was \$63,702,734, with a replacement cost of \$245,917,440;<sup>370</sup>

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<sup>364</sup> Transcript, 2 June 2021, p 213.23–27.

<sup>365</sup> Transcript, 31 May 2021, pp 76.45–77.2; Transcript, 2 June 2021, p 213.23–27; Transcript, 10 June 2021, p 483.31–37.

<sup>366</sup> Exhibit 11, 4G solution for Norfolk Island' Grant Project Risk Management Plan, December 2017, NIRC.003.004.0009\_0109.

<sup>367</sup> Exhibit 11, 4G solution for Norfolk Island' Grant Project Risk Management Plan, December 2017, NIRC.003.004.0009\_0109.

<sup>368</sup> Exhibit 11, 4G solution for Norfolk Island' Grant Project Risk Management Plan, December 2017, NIRC.003.004.0009\_0109.

<sup>369</sup> Exhibit 11, 4G solution for Norfolk Island' Grant Project Risk Management Plan, December 2017, NIRC.003.004.0009\_0118.

<sup>370</sup> Exhibit 1, PRP Deliverable Asset Register Summary at 30 June 2015, NIRC.007.002.0013. Note: not including hospital assets of \$4,193,527.

- b. In June 2016, the asset advisory group Australis reported that the value of those assets as at 30 June 2016 was \$110,950,568,<sup>371</sup> with a replacement cost of \$193,119,490;<sup>372</sup>
  - c. In January 2021, Australis assessed the asset value (as at 30 June 2020) as \$153,540,884, with an estimated replacement cost of \$241,979,245.<sup>373</sup>
286. Evidently, there was substantial variance in the value of the assets reported in these assessments – in each case an increase in excess of \$40 million. The difference between the two Australis valuations is attributable to the airport and road projects undertaken in 2020 and 2021, in which more than \$50 million was invested in those assets, which in turn increased their useful life assessments and value. Those capital works are discussed in greater detail in Chapter 7.
287. The difference between the 2015 Preston Rowe Paterson and 2016 Australis valuations is likely due to a change in asset valuation methodology. In 2015, the assets were valued according to a 'cost less' depreciation basis. Australis, in contrast, undertook the valuation on a 'fair value' approach,<sup>374</sup> which focused upon the likely replacement costs. The fair value methodology, required by the NSW's OLG, demands that assets be valued by reference to their market price.
288. The revaluations, which placed a higher replacement cost on NIRC's assets, did not affect the NIRC's cash position, though they did increase the line-item depreciation and amortisation on NIRC's financial statements. Depreciation is not a cash expense that NIRC incurred in the same way as for expenses (such as employee wages). Rather, depreciation is a means of recognising the value of an asset's useful lifespan that is consumed in a year and expensing that consumption in the same year. Recognising consumption in this way is also a useful measure of the expected future renewal costs and allowed NIRC to smooth asset renewal in their financial statements over time. The problem for the NIRC, as explained in this chapter, was that the accumulated depreciation and the amount quarantined each year was inadequate to fund asset renewal before those assets reached end of life.

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<sup>371</sup> Exhibit 1, Australis Asset Advisory Group Fair Value Report for Building and Infrastructure Assets, NIRC.002.001.0008\_0046, \_0047.

<sup>372</sup> Exhibit 1, Australis Asset Advisory Group Fair Value Report for Building and Infrastructure Assets, NIRC.002.001.0008\_0046, \_0047.

<sup>373</sup> Exhibit 11, Australis, Fair Value Report Norfolk Island Regional Council (report, 22 January 2020), NIRC.012.002.0108\_0046, \_0047.

<sup>374</sup> Exhibit 1, Australis Asset Advisory Group Fair Value Report for Building and Infrastructure Assets, NIRC.002.001.0008\_0009.

## The principles of effective asset management

289. The applied LG Act required the NIRC to 'manage lands and other assets so that current and future local community needs can be met in an affordable way'<sup>375</sup> and to 'invest in responsible and sustainable infrastructure'.<sup>376</sup> In particular, the NIRC was required to develop and act in accordance with sound policies and processes for asset maintenance and enhancement to ensure that its spending and investment was responsible, sustainable, and forward looking.<sup>377</sup>
290. The NIRC was also required to follow the integrated planning and reporting framework requirements developed by the OLG.<sup>378</sup> Together, the legislative requirements and guidelines are designed to enable councils and the local community to establish strategic objectives and identify actions to achieve those objectives, within their resource constraints. Regular public reporting on progress against these objectives ensures accountability in government decision making. Primary responsibility for the planning process rests with the mayor and the general manager, assisted by the councillors and senior staff.<sup>379</sup>
291. The integrated planning and reporting framework required the preparation of three asset management-related documents (discussed further below):
- a. an asset management *policy*,<sup>380</sup>
  - b. an asset management *strategy*,<sup>381</sup> and
  - c. an asset management *plan*.<sup>382</sup>
292. These three planning documents serve complementary purposes, and supplement other performance management and reporting documents required under the applied LG Act (as discussed previously in Chapter 4). In short, the more generalised *policy* should set a broad

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<sup>375</sup> *Local Government Act 1993* (NSW) (NI), s 8A(1)(f).

<sup>376</sup> *Local Government Act 1993* (NSW) (NI), s 8B(b).

<sup>377</sup> *Local Government Act 1993* (NSW) (NI), s 8B.

<sup>378</sup> *Local Government Act 1993* (NSW) (NI), ss 8A, 8C, 406; Exhibit 1, Integrated Planning and Reporting Guidelines, OLG.PUB.001.0001.

<sup>379</sup> Exhibit 1, Integrated Planning and Reporting Manual for local government in NSW, OLG.PUB.001.0002\_0010.

<sup>380</sup> Exhibit 1, Integrated Planning and Reporting Manual for local government in NSW, OLG.PUB.001.0002\_0081.

<sup>381</sup> Exhibit 1, Integrated Planning and Reporting Manual for local government in NSW, OLG.PUB.001.0002\_0082.

<sup>382</sup> Exhibit 1, Integrated Planning and Reporting Manual for local government in NSW, OLG.PUB.001.0002\_0087.

framework as to how and why asset management is to be undertaken by a council, the *strategy* in turn identifies how asset management fits within the community strategic plan and long-term service delivery needs and goals of the local community, and the *plan* outlines the specific actions and allocations of resources to develop and deliver the goals identified in the asset management strategy.<sup>383</sup> Together they ought to both guide asset management decisions of councils and inform the community of the approach and priorities of council.

293. In preparation of these documents, it is expected that a council would:<sup>384</sup>

- a. identify the critical assets for a council's operations, and the community's accepted service standards for those assets. Councils with responsibility for water supply and sewerage are also expected to develop 20–30-year plans to manage those critical assets, though no plans of that kind were produced by the NIRC;<sup>385</sup>
- b. develop risk management strategies for the council's critical assets, and specific actions to improve the council's asset management capability, meet projected resources requirements, and implement the strategies in the community strategic plan within the expected time and resource constraints;
- c. identify the existing condition of assets;
- d. incorporate lifecycle costing and performance measurement strategies to maximise economic efficiency and sustainability in asset planning, and accountability measures to track their delivery. Lifecycle costing considers the costs of acquisition, operation, maintenance, renewal and disposal, and should guide investment decisions by councils;
- e. identify organisational responsibility for asset management, key performance measures, audit and review procedures, long-term goals and community needs relating to council assets, and funding sources; and

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<sup>383</sup> Exhibit 1, Integrated Planning and Reporting Manual for local government in NSW, OLG.PUB.001.0002\_0081–\_0088.

<sup>384</sup> Exhibit 1, Integrated Planning and Reporting Manual for local government in NSW, OLG.PUB.001.0002\_0015, \_0081, \_0093.

<sup>385</sup> Exhibit 1, Integrated Planning and Reporting Manual for local government in NSW, OLG.PUB.001.0002\_0082. Note: the OLG Manual refers to the *Best Practice Management of Water Supply and Sewerage Guidelines 2007* and *NSW Reference Rates Manual for Valuation of Water Supply, Sewerage and Stormwater Assets 2007* to guide councils that have responsibility of water supply and sewerage.

- f. report to the community periodically on its achievements against the operational plan and community strategic plan.<sup>386</sup>
294. As set out below, contrary to those requirements and expectations, the NIRC failed to adopt a consistent strategy across the three documents, and in a number of instances departed from them shortly after they were adopted by the Council or delayed in developing and adopting them. As a matter of practice, the preparation and endorsement of these documents appeared to be treated by the NIRC and governing body as a formal bureaucratic requirement rather than an ongoing strategic planning tool.

### **Asset management policy**

295. An asset management policy should be the foundational planning document for a council's asset base. It should set out the broad framework for undertaking asset management in a structured and coordinated way. It should, in particular, outline why and how asset management will be conducted, provide a clear direction for asset management, and define key principles that underpin asset management by the council, such as the key performance measures to be applied and the organisation of asset management responsibilities and relationships.<sup>387</sup> This is in turn intended to guide the preparation of a council's asset management strategies and plans, which themselves should support and implement the policy.
296. The Council inherited an asset management policy from the previous Administration, though replaced it with an asset accounting policy in April 2017.<sup>388</sup> Neither of those documents established a framework of the kind envisaged in the OLG guidelines nor provided any detailed guidance as to asset management and maintenance.
297. It was not until June 2018 that the NIRC adopted an asset management policy<sup>389</sup> in which it set out a 'framework' to determine the nature and direction of asset management within the NIRC.<sup>390</sup> That framework in turn was to apply to 'all Council activities, to assets owned by

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<sup>386</sup> Exhibit 1, Integrated Planning and Reporting Manual for local government in NSW, OLG.PUB.001.0002\_0133.

<sup>387</sup> Exhibit 1, Integrated Planning and Reporting Manual for local government in NSW, OLG.PUB.001.0002\_0081–\_0082.

<sup>388</sup> Exhibit 1, 3.07 – Asset Accounting Policy, NIRC.PUB.001.0232; Exhibit 1, 20170419 Ordinary Council Meeting Minutes, NIRC.PUB.001.0083\_0011.

<sup>389</sup> Exhibit 1, 4.04 – Asset Management Policy, NIRC.PUB.001.0153.

<sup>390</sup> Exhibit 1, 4.04 – Asset Management Policy, NIRC.PUB.001.0153.



[the NIRC] throughout their lifecycle, including disposal'<sup>391</sup> and 'to any internal or external projects or activities undertaken to address asset management (e.g. public works or projects funded by grants)'.<sup>392</sup> Whilst delayed, the policy itself was suitable in establishing the requirements of the overall asset management *framework*, including setting out requirements for the asset management strategy and plans,<sup>393</sup> and allocating responsibility to various NIRC staff to ensure that the policy was successfully implemented.<sup>394</sup> As detailed further in Chapter 7, however, it does not appear any regard was had to that policy in making certain critical asset decisions.

## Asset management strategy

298. The asset management strategy was supposed to describe the current status of Council's asset management practices (processes, asset data and information systems) including the risk and condition appetites of the NIRC (and by extension the Island's community). The strategy was further supposed to outline specific actions the Council should take to improve or enhance their asset management capability (i.e., a gap analysis), referencing resourcing requirements, timeframes and specific actions to achieve the Council's strategic objectives.<sup>395</sup> The strategy was described as an 'essential element' of a council's resourcing strategy in the OLG's Integrated Reporting and Planning Manual.<sup>396</sup>
299. The NIRC did not develop a formal document recording an asset management strategy at any time during the Defined Period, despite reference to the strategy being made in its asset management policy adopted in June 2018.<sup>397</sup> Specifically, the asset management policy indicated that responsibility for developing the asset management strategy lay with the General Manager, and that the strategy would reflect required funding.<sup>398</sup> Whilst elements of an asset management strategy were reflected in the asset management plans, as discussed below, the absence of a separate formal document meant there were no policies or strategies in place to ensure there was adequate funding available to undertake asset

<sup>391</sup> Exhibit 1, 4.04 – Asset Management Policy, NIRC.PUB.001.0153\_0002.

<sup>392</sup> Exhibit 1, 4.04 – Asset Management Policy, NIRC.PUB.001.0153\_0002.

<sup>393</sup> Exhibit 1, 4.04 – Asset Management Policy, NIRC.PUB.001.0153\_0004.

<sup>394</sup> Exhibit 1, 4.04 – Asset Management Policy, NIRC.PUB.001.0153\_0005.

<sup>395</sup> Exhibit 1, Integrated Planning and Reporting Manual for local government in NSW, OLG.PUB.001.0002\_0082.

<sup>396</sup> Exhibit 1, Integrated Planning and Reporting Manual for local government in NSW, OLG.PUB.001.0002\_0081.

<sup>397</sup> Exhibit 1, 4.04 – Asset Management Policy, NIRC.PUB.001.0153\_0006.

<sup>398</sup> Exhibit 1, 4.04 – Asset Management Policy, NIRC.PUB.001.0153\_0005.



maintenance, enhancement and renewal, or to assist in managing conflicting maintenance priorities and/or financial resource constraints.

### **Asset management plans**

300. An asset management plan should detail the current condition of each asset, incorporate a high-level schedule for when the assets will require maintenance and renewal, and include a costed lifecycle. The management plans are required to encompass all assets under a council's control, identify service standards, and contain details of long term projects for maintenance, rehabilitation, and replacement costs.<sup>399</sup> These plans, when aggregated, should form the starting point for informing both long-term financial planning and more detailed annual budgets and operational plans.<sup>400</sup>

### **2016 asset management plans**

301. In December 2016, NIRC finalised four asset management plans – one each for Buildings, Fleet, Infrastructure, and Roads. Those plans broadly followed the suggested structure given by the OLG.<sup>401</sup> However, as noted, at the time of being finalised, the NIRC had not yet adopted its asset management policy,<sup>402</sup> or an asset management strategy.
302. The absence of these documents limited the ability of the NIRC to prepare asset management plans in line with the OLG framework. The 2016 asset management plans lack detailed costing against individual assets, with figures instead generally given in aggregate terms. The plans also failed to adequately detail a 10-year capital upgrade and new works program. These omissions limited the ability of the NIRC to forecast the necessary costs of capital expenditure, operational expenditure and ongoing maintenance, and to identify specific assets against which costs might be incurred. Similarly, the asset management plans did not include a schedule of renewal for the assets identified as end-of-life or approaching end-of-life. The absence of such a schedule meant that the asset management plans were of little assistance as an asset replacement plan or long-term planning tool,

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<sup>399</sup> Exhibit 1, Integrated Planning and Reporting Guidelines, OLG.PUB.001.0001\_0013.

<sup>400</sup> Exhibit 1, Integrated Planning and Reporting Manual for local government in NSW, OLG.PUB.001.0002\_0087.

<sup>401</sup> Exhibit 1, Integrated Planning and Reporting Manual for local government in NSW, OLG.PUB.001.0002\_0096.

<sup>402</sup> Note: this policy was not adopted until June 2018. See: Exhibit 1, 4.04 – Asset Management Policy, NIRC.PUB.001.0153.

despite that being the precise purpose of asset management plans. The absence of that replacement strategy was a noted concern of the NIRC's Audit Committee.<sup>403</sup>

303. These deficiencies may be highlighted by a comparison between the asset management plans of the NIRC and those of Lachlan Shire Council, whose plans were used by the OLG in its guideline documents.
304. Figure 8 below shows extracts of the NIRC's 2016 asset management plan, specifically the asset condition profile and asset valuations.<sup>404</sup> The asset condition profile represents asset conditions in the aggregate, grouping together, for example, all waste management building assets and allocating a single condition rating of 'fair'. The plan likewise calculates the replacement cost and depreciation expense of the assets in a global figure, rather than by reference to each asset separately, for example, the value and depreciation expense of the airport buildings.

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<sup>403</sup> Transcript, 9 June 2021, pp 401.45–402.16.

<sup>404</sup> Exhibit 1, Building Asset Management Plan 2016–2026, NIRC.009.002.0047\_0010.

**Figure 8. NIRC building asset management plan (2016)**

#### 5.4 Asset condition profile

The condition profiles of our assets are shown below in table and figure

Condition	Very good	Good	Fair	Poor	Very poor
Airport			✓		
Library		✓			
Fire services	✓				
Communications				✓	
Public works depot				✓	
Liquor bond			✓		
Tourism information centre			✓		
Health and Quarantine			✓		
Waste Management				✓	
Emergency service	✓				
Lighterage				✓	
Radio station				✓	
Electricity				✓	
Fuel depot ball bay				✓	

#### 5.5 Asset valuations

The value of assets recorded in the asset register as of 30 of June 2016 as summarised below

Current replacement cost	\$67,099,500
Annual Depreciation Expense per year (16)	\$988,773

305. Figure 9, by contrast, shows the Lachlan Shire plan.<sup>405</sup> This plan lists each asset separately, outlining the known service performance deficiencies for particular buildings. The plan also provides a breakdown of the asset conditions (1 through 5) as against asset value, and a profile weighting of that classes of asset condition. For example, the plan shows that around half of all buildings in Lachlan Shire have a condition rating of 3 or 'fair', and that the replacement cost of these assets collectively is around \$31 million.

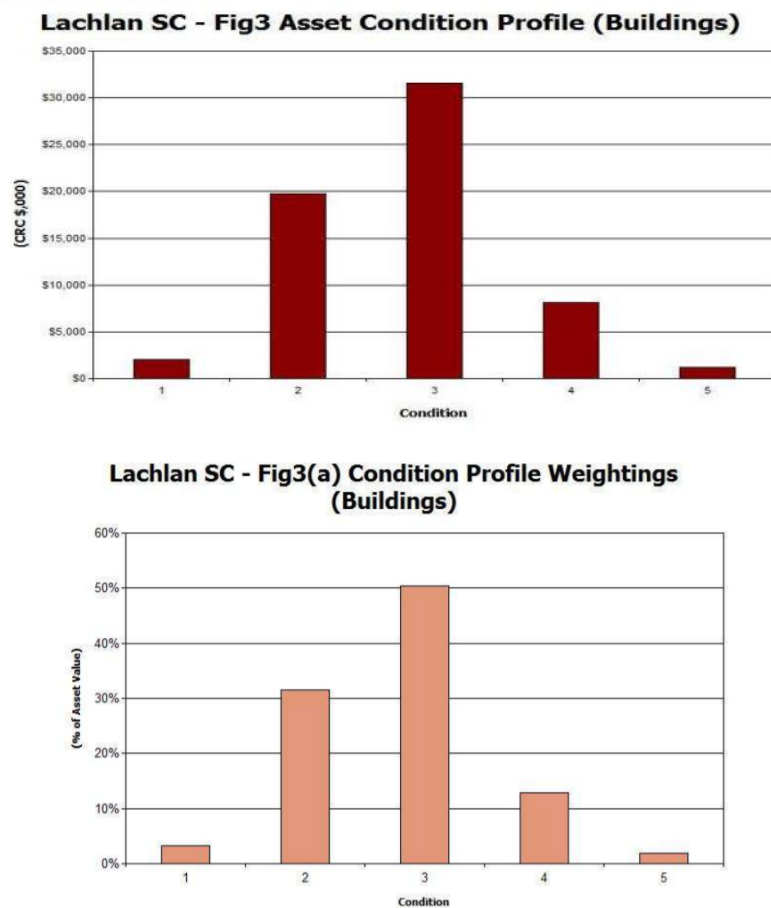
<sup>405</sup> Lachlan Shire Council, *Building Asset Management Plan* (27 June 2012), pp 30–33 <<https://www.lachlan.nsw.gov.au/f.ashx/AM4SRRC-AMP-Buildings-June-2012-Final.pdf>>.

**Figure 9. Lachlan Shire asset management plan**

Table 5.1.2: Known Service Performance Deficiencies

Specific Locations	Service Deficiency
SRA Rugby League Ladies and Men's Toilets and change rooms (numerous separate buildings) Condobolin	Reached the end of their useful life, structural cracking, drainage/plumbing regularly blocked, not up to modern day community levels of service for quality
Specific Locations	Service Deficiency
SRA Memorial Hall Condobolin	Close to reaching the end of its useful life, structural issues with flooring and roof structure, fails community and technical levels of service expectations
SRA grounds Show Buildings, Horse Stables etc Condobolin	Close to reaching the end of its useful life, structural issues with flooring and roof structure, fails community and technical levels of service expectations
SRA grounds Racetrack Buildings Condobolin	Most have reached the end of their useful life, structural issues, fails community and technical levels of service expectations
Memorial Park Toilets Condobolin	Close to reaching the end of its useful life, planned upgrade to commence shortly however no disabled access available and this is unfunded, fails community and technical levels of service expectations
Community Centre Condobolin	Major structural works required on rear wall, stormwater drainage works, disabled lift required to allow disabled access to first floor, fails community and technical levels of service expectations

**Figure 3: Asset Condition Profile**



Asset condition information is to be further refined with more detailed inspections.

306. The deficiencies in the 2016 asset management plans were acknowledged by the NIRC at the time, and were attributed primarily to the limited information the NIRC received on commencement as to the extent of its assets, their state, the necessary tasks to be undertaken to improve their state, and the likely costs of undertaking such tasks.
307. Ms Jackson's evidence in this regard was that '[she was not] aware of any' asset management procedures on the Island at the time she commenced her role in June 2016.<sup>406</sup> When asked about what information was used when preparing the asset management plans, Mr Taylor said that 'if you read those [asset management plans], they're quite basic because we didn't have asset registers'.<sup>407</sup>
308. Mr Nankivell, the inaugural Finance Manager for NIRC, also gave evidence that:
- The transition team for the Administration had undertaken a valuation previously; however, ... [t]he information that we obtained from the previous valuation didn't componentise assets, so we were of the view that it wasn't compliant with the accounting standards and it wasn't good enough for our asset management that we needed to do and the information we needed.<sup>408</sup>
309. The absence of comprehensive and detailed information about the status of its assets posed a significant challenge for the NIRC in developing its own plans and strategies. The requirement to complete asset maintenance and management policies and plans effectively from scratch within a short period of time was understandably a significant constraint in 2016.

### **2019 asset management plans**

310. In accordance with the requirements of the applied LG Act, the NIRC undertook a review of its asset management plans in 2019. At that time, the constraints present in 2016 (namely, the absence of information regarding the assets and the time pressure to complete the asset management plans) were no longer present, which meant that the plans could and should have been more advanced. Yet, the revised versions largely mirror the 2016 versions, and certain critical features remain absent from them.
311. Critically, the 2019 plans continued to lack detail on the actual assets to be replaced or major renewal works to be undertaken over the next 10 years. They also lacked detailed cost projections for such capital projects. For example, whilst the 2019 plans included an analysis of the trend in buildings capital expenditure, there was no information indicating the estimated cost over time, which would ordinarily be present on the y-axis (see Figure 10

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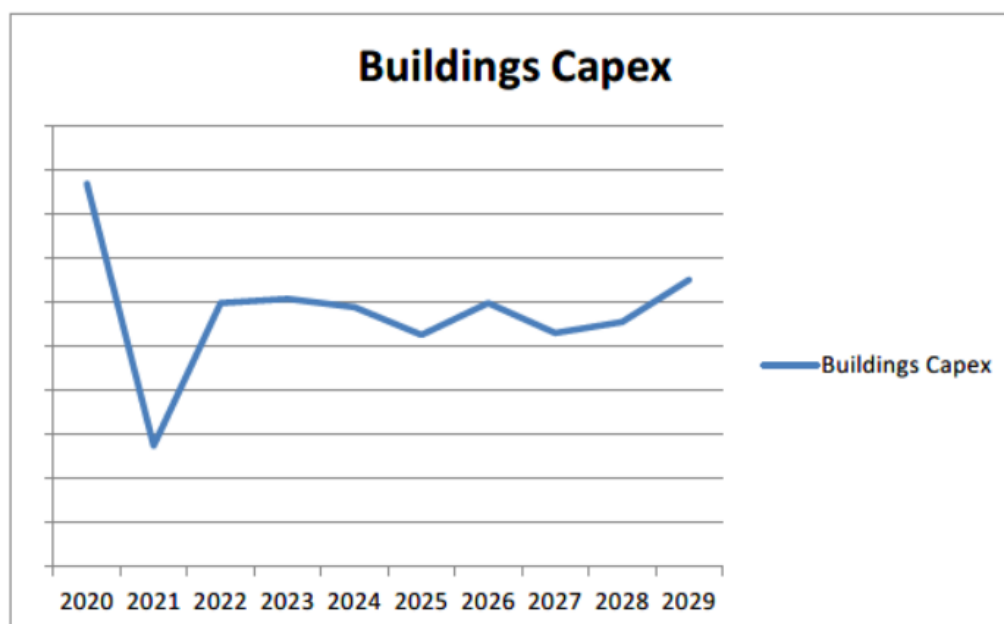
<sup>406</sup> Transcript, 11 June 2021, p 610.23–26.

<sup>407</sup> Transcript, 31 May 2021, p 75.41–42.

<sup>408</sup> Transcript, 10 June 2021, pp 474.43–475.10.

below).<sup>409</sup> The reasons for this omission are not clear. However, it is evident that no steps were taken to correct it, despite the plans being presented to and approved by the NIRC. The absence of this information limits the plan's utility as a record of the NIRC's planning and is unhelpful for the local community as a means of information sharing.

**Figure 10. NIRC building asset management plan (2019)**



312. The 2019 plans showed some improvements over the previous plans for fleet and roads. The 2019 fleet asset management plan included more detail on the NIRC's current assets, as well as their condition, value, and those assets approaching (or at) end-of-life. The fleet plan was therefore a more useful management tool because it allowed the NIRC to more comprehensively understand its current asset position. From that understanding, it could develop strategies for managing maintenance and renewal requirements.

313. The 2019 roads asset management plan sets out four road projects with corresponding budgets, as well as a 10-year capital expenditure and maintenance/rehabilitation schedule against a rating methodology.<sup>410</sup> The 10-year plan assumed a total expenditure of approximately \$9.8 million spread generally evenly across that 10-year period.<sup>411</sup> While an

<sup>409</sup> Exhibit 1, Building Asset Management Plan 2020–2029, NIRC.009.002.0048\_0013.

<sup>410</sup> Exhibit 1, Roads Asset Management Plan 2020–2029, NIRC.PUB.001.0215\_0019, \_0026, \_0027.

<sup>411</sup> Exhibit 1, Roads Asset Management Plan 2020–2029, NIRC.PUB.001.0215\_0026, \_0027.

improvement over the 2016 plan, the 2019 plan did not incorporate a funding strategy for that expenditure, nor identify the proposed source of those funds.<sup>412</sup> Further, as explored in more detail in Chapter 7, within a few weeks of adopting that plan in June 2019,<sup>413</sup> the NIRC substantially departed from it and approved roads-related expenditure of \$5.065 million in financial years 2019/20 and 2020/21. This equated to more than half the planned expenditure over 10 years, and more than double the planned expenditure for those two financial years.<sup>414</sup> There is no evidence that the NIRC sought to amend its asset management plan in light of this decision.

314. The 2016 asset management plans had foreshadowed an intention to incorporate further community consultation on service levels and costs of service provision in future versions of the plans.<sup>415</sup> They also referred to an ongoing asset audit process which would be used to complete the 10-year capital upgrade and new works program.<sup>416</sup> For these reasons, the 2016 plans reported that it was 'unrealistic' to estimate expenditure over a 10-year planning period.<sup>417</sup> Yet, almost identical statements appear in the 2019 asset management plans.<sup>418</sup> The 2019 plans likewise note that future versions would investigate customer

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<sup>412</sup> Exhibit 1, Roads Asset Management Plan 2020–2029, NIRC.PUB.001.0215\_0030.

<sup>413</sup> Exhibit 1, 20190626 Ordinary Council Meeting Minutes, NIRC.PUB.001.0216\_0018.

<sup>414</sup> Exhibit 1, 20190717 Ordinary Council Meeting Minutes, NIRC.PUB.001.0227\_0022; c.f. Exhibit 1, Roads Asset Management Plan 2020–2029, NIRC.PUB.001.0215\_0026.

<sup>415</sup> Exhibit 1, Building Asset Management Plan 2016–2026, NIRC.009.002.0047\_0007; Exhibit 11, Fleet Asset Management Plan 2016, NIRC.001.001.0012\_0041; Exhibit 1, Infrastructure Asset Management Plan 2016, NIRC.003.004.0021\_0006; Exhibit 1, Roads Asset Management Plan 2016–2026, NIRC.009.002.0044\_0007.

<sup>416</sup> Exhibit 1, Building Asset Management Plan 2016–2026, NIRC.009.002.0047\_0018; Exhibit 11, Fleet Asset Management Plan 2016, NIRC.001.001.0012\_0052; Exhibit 1, Infrastructure Asset Management Plan 2016, NIRC.003.004.0021\_0018; Exhibit 1, Roads Asset Management Plan 2016–2026, NIRC.009.002.0044\_0021.

<sup>417</sup> Exhibit 1, Building Asset Management Plan 2016–2026, NIRC.009.002.0047\_0017; Exhibit 11, Fleet Asset Management Plan 2016, NIRC.001.001.0012\_0051; Exhibit 1, Infrastructure Asset Management Plan 2016, NIRC.003.004.0021\_0017; Exhibit 1, Roads Asset Management Plan 2016–2026, NIRC.009.002.0044\_0020.

<sup>418</sup> Exhibit 1, Building Asset Management Plan 2020–2029, NIRC.009.002.0048\_0015; Exhibit 1, Fleet Asset Management Plan 2020–2029, NIRC.PUB.001.0213\_0019; Exhibit 1, Infrastructure Asset Management Plan 2020–2029, NIRC.PUB.001.0214\_0018; c.f. Exhibit 1, Roads Asset Management Plan 2020–2029, NIRC.PUB.001.0215\_0030 which does not say it is 'unrealistic' to estimate expenditures over a 10 year planning period.

expectations,<sup>419</sup> and that asset registers were still to be completed,<sup>420</sup> being the same statements that had appeared in the 2016 versions.

315. The failure to progress such matters over the previous three years is unexplained and, together with the continued lack of detail in the asset management plans, suggests that the NIRC still does not know the full extent of the expenditure required to maintain its assets. The continued lack of information indicates a failure on NIRC's part to act in accordance with the asset management and performance management principles espoused in the applied LG Act and OLG integrated planning and reporting framework.
316. The fact that such deficiencies and limitations remain indicates that NIRC's asset management failures cannot be wholly explained or excused by the transfer of the Administration's poor information and records. Rather, it suggests that the deficiencies are attributable to an absence of suitably qualified personnel, a lack of understanding of the purpose and utility of the asset management plans, and/or a lack of prioritising (or ability to prioritise) the time required to improve these plans. This is consistent with the findings of the Grassroots audit, which found a number of significant internal challenges within the NIRC, including a lack of project management and technical capability and capacity, and under-resourcing.<sup>421</sup>
317. Whichever of these is the ultimate reason for the deficiencies in asset management planning, they reveal (and I find that there were) systemic failures of asset management on Norfolk Island. Enduring improvements are unlikely without external assistance, both in personnel and funding, alongside a commitment within the NIRC to implementing reform.

### **NIRC's asset management decisions: Strategy to address poor state of assets**

318. As highlighted above, the NIRC was aware of the poor state of the Island's assets from an early stage. In 2016, Councillors and the NIRC staff knew that, without urgent and significant investment, the capital required to renew and replace the NIRC's assets would continue to

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<sup>419</sup> Exhibit 1, Building Asset Management Plan 2020–2029, NIRC.009.002.0048\_0006; Exhibit 1, Fleet Asset Management Plan 2020–2029, NIRC.PUB.001.0213\_0007; Exhibit 1, Infrastructure Asset Management Plan 2020–2029, NIRC.PUB.001.0214\_0007; Exhibit 1, Roads Asset Management Plan 2020–2029, NIRC.PUB.001.0215\_0006.

<sup>420</sup> Exhibit 1, Building Asset Management Plan 2020–2029, NIRC.009.002.0048\_0016; Exhibit 1, Fleet Asset Management Plan 2020–2029, NIRC.PUB.001.0213\_0020; Exhibit 1, Infrastructure Asset Management Plan 2020–2029, NIRC.PUB.001.0214\_0019; Exhibit 1, Roads Asset Management Plan 2020–2029, NIRC.PUB.001.0215\_0031.

<sup>421</sup> Exhibit 11, Grassroots Connections Australia, Norfolk Island Regional Council Independent Governance and Financial Audit (final report, 15 November 2020), GRC.PUB.001.0001\_0036.



grow, and the reliability and functionality of the critical assets would continue to decline.<sup>422</sup> It was also evident that grant funding would be required to undertake such capital works, but that there would be limitations on the NIRC's ability to access that funding.<sup>423</sup> The NIRC was concerned that available funding levels would be insufficient in the medium term to maintain the assets in their existing state.<sup>424</sup> There was, in this respect, a frank acknowledgment that the assets inherited by the NIRC were in a 'critically deteriorated state'.<sup>425</sup>

319. The NIRC was faced with three alternatives:

- a. spending large sums to replace the failing (or already failed) assets in a short timeframe;
- b. spending large (and increasing) sums to maintain the assets in their present state for as long as possible; or
- c. spending only the funds available to it, resulting in the further decline of the assets and likely critical failure in a short period.

320. NIRC acknowledged that the results from the last of these alternatives would be catastrophic.<sup>426</sup>

321. The strategy adopted in late 2016 was to:

- a. seek Commonwealth assistance, by way of capital grants, to short-track funding for the urgent needs of Norfolk Island;
- b. seek Commonwealth assistance, by way of an increase in the annual financial assistance grants, to fund ongoing operational and maintenance expenses associated with (amongst other matters) the assets;
- c. adopt a 'break even' position for the core business services associated with the critical assets, namely telecommunications, electricity, sewage, waste, and the airport, so that

<sup>422</sup> Exhibit 1, Long Term Financial Plan 2017–2026, NIRC.PUB.001.0070\_0011; Exhibit 1, Building Asset Management Plan 2016–2026, NIRC.009.002.0047\_0005.

<sup>423</sup> Exhibit 1, Long Term Financial Plan 2017–2026, NIRC.PUB.001.0070\_0006.

<sup>424</sup> Exhibit 1, Building Asset Management Plan 2016–2026, NIRC.009.002.0047\_0005; Exhibit 11, Fleet Asset Management Plan 2016, NIRC.001.001.0012\_0039; Exhibit 1, Roads Asset Management Plan 2016–2026, NIRC.009.002.0044\_0005; Exhibit 1, Infrastructure Asset Management Plan 2016, NIRC.003.004.021\_0004.

<sup>425</sup> Exhibit 1, Long Term Financial Plan 2017–2026, NIRC.PUB.001.0070\_0017.

<sup>426</sup> Transcript, 3 June 2021, pp 251.24–254.46; Exhibit 1, 20161221 Agenda Ordinary Meeting, NIRC.PUB.001.0072\_0154.

own source revenue (primarily user charges) was able to fund the operation and renewal of those assets; and

- d. seek a further loan from the Commonwealth to fund the critical airport renewal to take place in 2020/2021.<sup>427</sup>

322. NIRC also acknowledged that non-revenue related avenues should be pursued to improve efficiencies in asset management.

323. The 2017–2026 Long Term Financial Plan assumed, perhaps optimistically, that the NIRC would receive annual capital grants of at least \$5 million from the Commonwealth to fund renewal of critical assets, in addition to at least \$7 million in other grants and contributions for operating purposes from 2018.<sup>428</sup> The plan also assumed that the annual surplus in operating result derived from running the business enterprises on a fully-costed basis would increase the NIRC's cash reserves, which could be used to fund future asset projects, including the foreshadowed airport project.<sup>429</sup>

324. These assumptions were not borne out. The level of external funds were not received at the level assumed by the NIRC (in some cases because it did not apply for the necessary grants, in others because the grant applications were unsuccessful<sup>430</sup>). Further, as described in more detail in Chapter 5, the breakeven model adopted for the business enterprises was not achieved. In addition, the NIRC faced certain unbudgeted capital expenditures (including the purchase of replacement generators to secure the Island's electricity supply).<sup>431</sup> This meant that funds were not available to the NIRC to undertake the planned projects or to build its cash reserves.

### **Consistent underspend on capital due to revenue shortfalls**

325. Despite these known revenue constraints, NIRC's Operational Plans continued to make provision for substantial capital expenditure. Yet each year, the actual expenditure on capital works was substantially less than budgeted for, as may be seen in Figure 11 below, which

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<sup>427</sup> Exhibit 1, Long Term Financial Plan 2017–2026, NIRC.PUB.001.0070\_0016–\_0017; Exhibit 1, 20161221 Agenda Ordinary Meeting, NIRC.PUB.001.0072\_0154.

<sup>428</sup> Exhibit 1, Long Term Financial Plan 2017–2026, NIRC.PUB.001.0070\_0018.

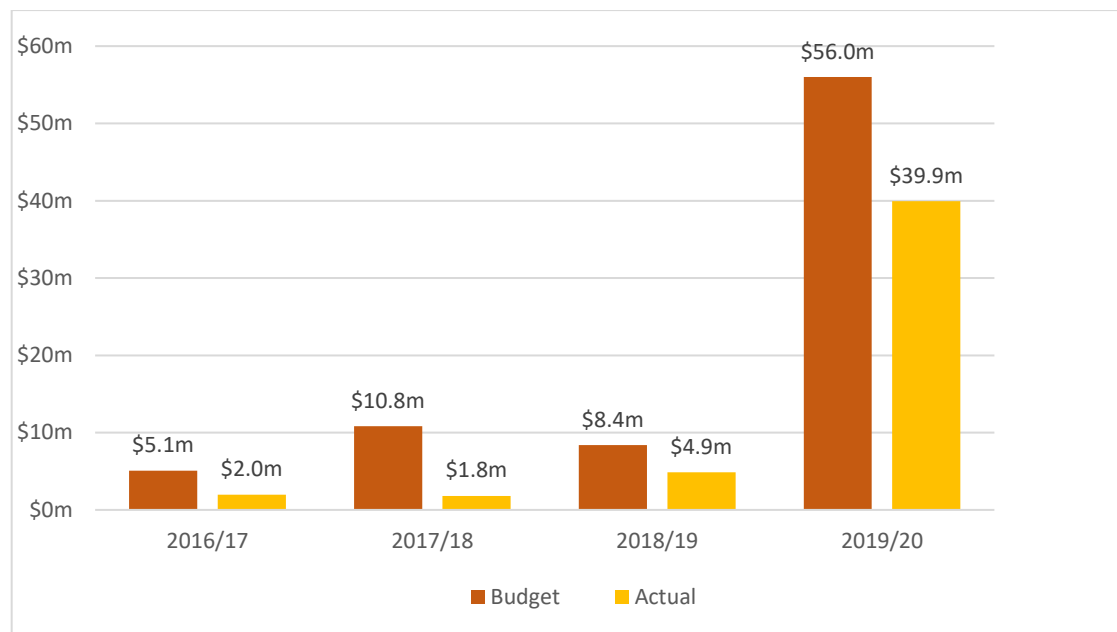
<sup>429</sup> Exhibit 1, Long Term Financial Plan 2017–2026, NIRC.PUB.001.0070\_0016–\_0017.

<sup>430</sup> See for example: Exhibit 1, 20170816 Ordinary Council Meeting Minutes, NIRC.PUB.001.0104\_0013; Exhibit 1, 20190220 Agenda Ordinary Meeting, NIRC.PUB.001.0193\_0312.

<sup>431</sup> Exhibit 1, 20171018 Ordinary Council Meeting Agenda, NIRC.PUB.001.0118\_0030; Exhibit 1, 20171220 Ordinary Council Meeting Minutes, NIRC.PUB.001.0128\_0019.

shows that in 2017/18 the NIRC budgeted \$10.8 million on capital, though spent only a fraction of this: \$1.8 million.<sup>432</sup>

**Figure 11. Actual against budgeted capital expenditure: 2016/17 to 2019/20**



326. Neither the NIRC's annual reports nor its Operational Plans provided a reason for these underspends,<sup>433</sup> other than an acknowledgment in the 2020-2021 Operational Plan (adopted on 30 June 2020) that certain capital works would be deferred due to COVID-19 related revenue difficulties.<sup>434</sup>

<sup>432</sup> Exhibit 1, Annual Report 2016–2017, NIRC.PUB.001.0135\_0073; Exhibit 1, Operational Plan 2017–2018, NIRC.PUB.001.0121\_0046; Exhibit 1, Annual Report 2017–2018, NIRC.PUB.001.0181\_0095; Exhibit 1, Operational Plan 2018–2019, NIRC.PUB.001.0191\_0060; Exhibit 1, Annual Report 2018–2019, NIRC.PUB.001.0251\_0102; Exhibit 1, Operational Plan 2019–2020, NIRC.PUB.001.0217\_0063, Exhibit 1, 2019–2020 Draft Financial Statements, NIRC.001.002.0001\_0010.

<sup>433</sup> Exhibit 1, Annual Report 2016–2017, NIRC.PUB.001.0135\_0073; Exhibit 1, Annual Report 2017–2018, NIRC.PUB.001.0181\_0095; Exhibit 1, Annual Report 2018–2019, NIRC.PUB.001.0251; Exhibit 1, Operational Plan 2017–2018, NIRC.PUB.001.0121; Exhibit 1, Operational Plan 2018–2019, NIRC.PUB.001.0191; Exhibit 1, Operational Plan 2019–2020, NIRC.PUB.001.0217.

<sup>434</sup> Exhibit 1, Operational Plan 2020–2021, NIRC.PUB.001.0269\_0004.

327. Records from the NIRC and Audit Committee meetings confirm that the reason for the asset underspend was less than expected revenue. The reduced revenue resulted in decisions to defer critical infrastructure works, in favour of financing operational expenses shortfalls.<sup>435</sup>
328. There is no evidence that, prior to the mandated time for review of the asset management plans in mid-2019, the NIRC adjusted its asset management plans and broader strategy in light of its inability to obtain the level of funding on which the plans had been based. Asset related decisions were reported upon in revisions to and updates on the annual operational plans. However, compared with asset management plans, operational plans are not as useful for long-term financial forecasting and strategic planning. There is also little evidence of information-sharing taking place between staff responsible for financial decisions and those responsible for asset decisions, including of the necessary adjustments to be made to asset management strategy given less than expected revenue.<sup>436</sup>

### **Inadequate use of SDA provisions for asset maintenance**

329. There is also no evidence that the NIRC considered using the SDA in preparing its asset management plans and broader resourcing strategy. As detailed in Chapter 5, under the SDA, the NIRC was responsible for delivering state-type services.<sup>437</sup> The Commonwealth in turn was required to provide 'funding for repairs and maintenance to assets used in delivery services and where agreed, funding [for] the replacement of assets that are no longer suitable for completing the services' (as per paragraph 4.2(b) of the SDA).<sup>438</sup>
330. The NIRC did not access this provision to fund the maintenance, management or replacement of key assets that supported the delivery of SDA services and which had been identified as deteriorating.<sup>439</sup> The absence of any apparent consideration by the NIRC to use

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<sup>435</sup> See for example: Exhibit 1, 20171128 Audit Committee Meeting Agenda, NIRC.PUB.001.0125\_0054, \_0067; Exhibit 1, 20180516 Agenda Ordinary Meeting, NIRC.PUB.001.0145\_0184, \_0186; Exhibit 1, 20180530 Audit Committee Meeting Agenda, NIRC.PUB.001.0148\_0194, \_0196, \_0203; Exhibit 1, 20200520 Agenda Ordinary Meeting, NIRC.PUB.001.0263\_0551, \_0552; Exhibit 1, 20200527 Audit Committee Meeting Agenda, NIRC.PUB.001.0264\_0086.

<sup>436</sup> Transcript, 31 May 2021, pp 78.33–41, 79.32–80.4; Transcript, 11 June 2021, pp 610.27–611.29.

<sup>437</sup> Exhibit 11, 20160624 Service Delivery Agreement, NIRC.002.001.0001\_0003, \_0014.

<sup>438</sup> Exhibit 11, 20160624 Service Delivery Agreement, NIRC.002.001.0001\_0004.

<sup>439</sup> The highest the evidence rises is a recognition that accountable reconciliation procedures relating to cargo arriving in Norfolk is relevant to the 'FAG with the Commonwealth in relation to Lighterage and other related services': Exhibit 1, 20200520 Ordinary Council Meeting Minutes, NIRC.PUB.001.0262\_0044; Exhibit 1, 20200624 Minutes of Meeting of Council,

the SDA in this manner suggests either a misunderstanding by the NIRC of the extent of its entitlements under the SDA, or a failure in strategic financial planning. Notably, the apparent understanding of the current General Manager was that – contrary to the terms of the SDA – the capital costs associated with maintenance and renewal of assets were not recoverable under the SDA.<sup>440</sup> Conversely, the Inquiry did not identify any evidence of the Commonwealth raising this issue with the Council.

331. One of the services the NIRC could have considered for additional funding under the SDA was ports management, including managing the unloading and loading of ships.<sup>441</sup> On Norfolk Island, this is done primarily by way of lighterage. In October 2017, NIRC approved a contract totalling \$134,400 (exclusive of material costs) for the construction of two new lighter boats.<sup>442</sup> The NIRC's 2017/18 budget included a provision of \$250,000 for new lighters,<sup>443</sup> and the Operational Plan for 2018/19 included \$173,000 in capital expenditure with \$77,000 in reserve.<sup>444</sup>
332. In February 2019, the NIRC also approved a budget allocation of \$1.3 million for new mobile cranes to improve ports management,<sup>445</sup> reflected in a variation to the 2018/19 and 2019/20 budgets.<sup>446</sup> Ultimately part of that budget allocation was expended – on the purchase of a crane and lighters (totalling approximately \$1,000,000<sup>447</sup>) – but the Council resolved to defer the purchase of the second crane at a confidential meeting.<sup>448</sup> Whilst the NIRC engaged with the Commonwealth on funding an upgrade to Cascade Wharf, there is no evidence that it sought to utilise the SDA to fund (or partly fund) the lighter boats and mobile cranes, despite them being an essential capital item required to perform the agreement.

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NIRC.PUB.001.0267\_0006. Despite the reference to grants, this comment was made in the context of *service charges*, not asset management.

<sup>440</sup> Exhibit 2, Statement of Andrew Roach, AROA.WSTA.001.0004\_0014.

<sup>441</sup> Exhibit 11, 20160624 Service Delivery Agreement, NIRC.002.001.0001\_0025.

<sup>442</sup> Exhibit 1, 20171018 Ordinary Council Meeting Minutes, NIRC.PUB.001.0116\_0015; Exhibit 1, 20181121 Attachment 1 Ordinary Meeting, NIRC.PUB.001.0179\_0061–\_0062.

<sup>443</sup> Exhibit 1, 20171115 Agenda Ordinary Meeting, NIRC.PUB.001.0120\_0251.

<sup>444</sup> Exhibit 1, 20180516 Attachment Ordinary Meeting, NIRC.PUB.001.0146\_0065; Exhibit 1, 20190515 Attachment Ordinary Meeting, NIRC.PUB.001.0208\_0011.

<sup>445</sup> Exhibit 1, 20190201 Extraordinary Council Meeting Minutes, NIRC.PUB.001.0186\_0005.

<sup>446</sup> Exhibit 1, 20191218 Agenda Ordinary Meeting, NIRC.PUB.001.0253\_0115.

<sup>447</sup> Exhibit 1, 20190220 Agenda Ordinary Meeting, NIRC.PUB.001.0193\_0197; Exhibit 1, 20200520 Agenda Ordinary Meeting, NIRC.PUB.001.0263\_0557; Exhibit 1, 20191218 Agenda Ordinary Meeting, NIRC.PUB.001.0253\_0115; Exhibit 1, 20190918 Agenda Ordinary Meeting, NIRC.PUB.001.0241\_0121; Exhibit 1, Annual Report 2018–2019, NIRC.PUB.001.0251\_0101; Exhibit 1, 20200520 Agenda Ordinary Meeting, NIRC.PUB.001.0263\_0557.

<sup>448</sup> Exhibit 1, 20191030 Extraordinary Council Meeting Minutes, NIRC.PUB.001.0250\_0036; Exhibit 1, 20200520 Agenda Ordinary Meeting, NIRC.PUB.001.0263\_0557.

## Consequences for asset maintenance

333. By reason of such revenue shortfalls, throughout the Defined Period – with the exception of the roads and airport projects, discussed further in Chapter 7 – there was inadequate investment into asset maintenance, renewal and replacement. At the end of the Defined Period, the assets largely remained in a 'fair' condition, although fewer were in a 'poor' state, and urgent asset renewals remain a priority.
334. Without substantial capital investment to replace the failing assets and ongoing funding to meet maintenance and operational costs, the Island's asset position will continue to decline, and improvements will only occur at the point of critical and emergent failure. There is no capacity within the NIRC to fund substantial capital investment in its assets, nor to continue funding the high maintenance and operational costs associated with assets that are close to or past their operating life.

## Good decisions

335. The NIRC made asset investments that contributed to sustainability on Norfolk Island. In October 2018, and in response to the A.Prince consulting report on waste management described above,<sup>449</sup> the Council purchased a high-density baler which compacted and baled waste, permitting efficient shipping for recycling and disposal.<sup>450</sup> At the same time, the NIRC also purchased a mini sort line, which allowed for greater efficiencies within the waste management centre, and in so doing, introduced technology that was 'standard ... across many recycling facilities in mainland Australia'.<sup>451</sup> In December 2017, Council resolved to award a tender for the design and construction of an aerating and composting facility,<sup>452</sup> which processed the Island's organic waste. The compost was processed and available for sale to the local community, and any surplus was said to be used to regenerate the Island's roadsides and reserves.<sup>453</sup>
336. In response to the GQI Consulting report on telecommunications described above, in September 2018, the NIRC signed a grant agreement with the Commonwealth, whereby the

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<sup>449</sup> Exhibit 1, 20161116 Attachment 1 Ordinary Meeting, NIRC.PUB.001.0068\_0011, \_0092.

<sup>450</sup> Exhibit 1, 20171018 Ordinary Council Meeting Agenda, NIRC.PUB.001.0118\_0030.

<sup>451</sup> Exhibit 1, 20171018 Ordinary Council Meeting Agenda, NIRC.PUB.001.0118\_0030.

<sup>452</sup> Exhibit 1, 20171220 Ordinary Council Meeting Minutes, NIRC.PUB.001.0128\_0019.

<sup>453</sup> Norfolk Island Regional Council, 'Waste management's hotrot composting system has arrived' (media release, 2 November 2018)  
<[http://www.norfolkisland.gov.nf/sites/default/files/docs/NIRC/MediaReleases/2018\\_11\\_02%20MR%20-%20Delivery%20Of%20The%20Composter\\_0.pdf](http://www.norfolkisland.gov.nf/sites/default/files/docs/NIRC/MediaReleases/2018_11_02%20MR%20-%20Delivery%20Of%20The%20Composter_0.pdf)>.

Commonwealth would provide funding of \$3.45 million to install a 4G telecommunications network on Norfolk Island, replacing the aged 2G mobile network.<sup>454</sup> NIRC's stewardship of this grant agreement and their own contribution of \$1.15 million was critical for improving the community's access to the global web-based economy and no doubt enabled community members to communicate more reliably, and at lower cost, with off-Island friends and family, among other benefits.

337. In August 2020, NIRC awarded a tender to install a battery energy storage system to address issues in solar oversupply and to reduce diesel usage.<sup>455</sup> This decision was intended to reduce the risks associated with unreliable and insecure energy supply posed by the ageing electricity infrastructure NIRC inherited upon its commencement and the dependency on diesel generators, and to in turn reduce the cost of supplying electricity to the Island.<sup>456</sup> Testing of the battery system began in February 2021 and senior staff have estimated potential average savings of \$1,000 per day in reduced diesel consumption.<sup>457</sup>

## Conclusions

338. Many of the asset management decisions made by the NIRC are explained, at least in part, by the poor state of assets it inherited upon commencement. Almost all assets were nearing the end of their life. The NIRC was aware of the state of those assets and of the need for urgent spending, but did not have the necessary cash reserves nor secure funding sources to do anything more than maintain their existing state.
339. The NIRC did have a long-term strategy for ensuring adequate asset maintenance, renewal and replacement, by way of the fully costed scenario it adopted in 2016, which is discussed in more detail in Chapter 5. Consistent with that plan, it may have been possible for the NIRC to fund annual maintenance of its assets, while at the same time increasing its cash reserves to assist with funding future renewal and replacement projects in the long-term. Equally, given the relative size and geographic isolation of Norfolk Island, the state of the inherited assets, the limited avenues of external funding, and the obligations imposed on the NIRC to bring its assets up to relevant Australian asset management standards, that plan may have been overly optimistic.

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<sup>454</sup> Exhibit 1, 20181017 Agenda Ordinary Meeting, NIRC.PUB.001.0175\_0035.

<sup>455</sup> Exhibit 1, 20200819 Ordinary Meeting of Council Minutes, NIRC.PUB.001.277\_0054; Transcript, 2 June 2021, p 211.26–47.

<sup>456</sup> Transcript, 2 June 2021, pp 213.40–214.9.

<sup>457</sup> Exhibit 1, 20210224 Agenda Ordinary Meeting, NIRC.PUB.001.0296\_0359; Exhibit 1, 20210407 Agenda Ordinary Meeting, NIRC.PUB.004.0001\_0087.



340. In practice, however, throughout the Defined Period, the NIRC consistently and significantly departed from its planned capital expenditure and did not adjust those plans when assumptions underpinning them, such as the level of grant funding and other revenue, did not materialise.
341. The decisions of the governing body and NIRC during the Defined Period further suggest an incomplete understanding of their obligations and entitlements relevant to asset management. This was mainly reflected in inadequate asset management plans and policies; in particular the lack of detail in the updated 2019 plans that were prepared by Council staff and then adopted by the NIRC.
342. It is important that the NIRC work towards having up to date asset management data to inform not only decision making by the Council but to enable its ability to properly plan and to fully clarify its funding requirements when seeking financial support for necessary asset upgrades. The limitations of the NIRC's financial resources mean that, unless there is significant external investment or a shift in responsibility for certain asset classes, nothing is likely to change.
343. It is also essential that maintenance requirements for the upgrade of the Island's critical assets are clearly understood and that the NIRC adopts and follows a forward-looking strategy, which appropriately accounts for the eventual need to replace those assets against available funding. Any funding strategy developed in this regard – to the extent it rests on external sources – should then be agreed with the Commonwealth, including clarifying whether the SDA provides for asset maintenance and upgrade where it is essential to delivering SDA services.<sup>458</sup>
344. The NIRC did make some good asset renewal decisions that avoided some critical asset failures, improved quality of life on Norfolk Island and likely reduced the need for even larger future investments. Overall, however, I find that the decisions (and omissions) of the NIRC and its governing body evidence a failure to manage the finances and assets of the NIRC in accordance with the principles of effective financial and asset management and the requirements of Chapter 3 and s 223 of the applied LG Act.

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<sup>458</sup> Noting in this regard the comments made by the Commonwealth in submissions to the Inquiry that there is now *daily* liaison with the NIRC in relation to SDA deliverables and *fortnightly* meetings to discuss financial issues. It is important that such collaboration directs attention to *asset* management in addition to *financial* management. See: 20210827 Commonwealth submission in response to Counsel Assisting submissions, COMM.SUB.001.0001\_0004.



## **Chapter 7: Council's Cash Crisis (2019 through to January 2021)**

### **Overview**

345. Chapter 5 dealt with the financial performance of the NIRC from the end of the transition period through until the end of 2018. It focussed on the decisions taken by the governing body in the face of advice from the Audit Committee and staff that had the effect of failing to optimise the revenue of the NIRC. It describes how, without the benefit of a sustainable funding model prepared during the transition period, by December 2016, Council was able to develop a Long Term Financial Plan that was underpinned by a policy to recover costs in respect of the various services provided to and for the benefit of the Island population. This was a direct response to concerns expressed and recognised at that time about the ongoing viability of the Council. The chapter tracks the reluctance of Council to give effect to that policy and to take other action on the revenue side, in particular through the rating system, with the result that Council became more and more dependent upon external sources of revenue as a means of sustaining the five principal business operations.
346. Without a sustainable funding model as a starting point, the NIRC's opening cash balance was constituted, effectively, by the amount of cash left over by the Administration as of midnight on 30 June 2016. From July 2018, the NIRC was able to maintain, as Figure 12 demonstrates, an unrestricted cash balance of around \$10 million through until the beginning of 2019. Although this may, at least in part, be explained by the Council's assumption of liability for a loan from the Commonwealth to the Administration for earlier runway repairs carried out in 2007, the Council's investment policy did not include any provisions or guidance about the minimum available working capital or cash which should be maintained by the NIRC.
347. The focus of this chapter is upon how two major expenditure decisions taken during the course of 2019 had the effect of depleting Council's cash reserves and forced urgent action throughout 2020.

### **Council's cash position**

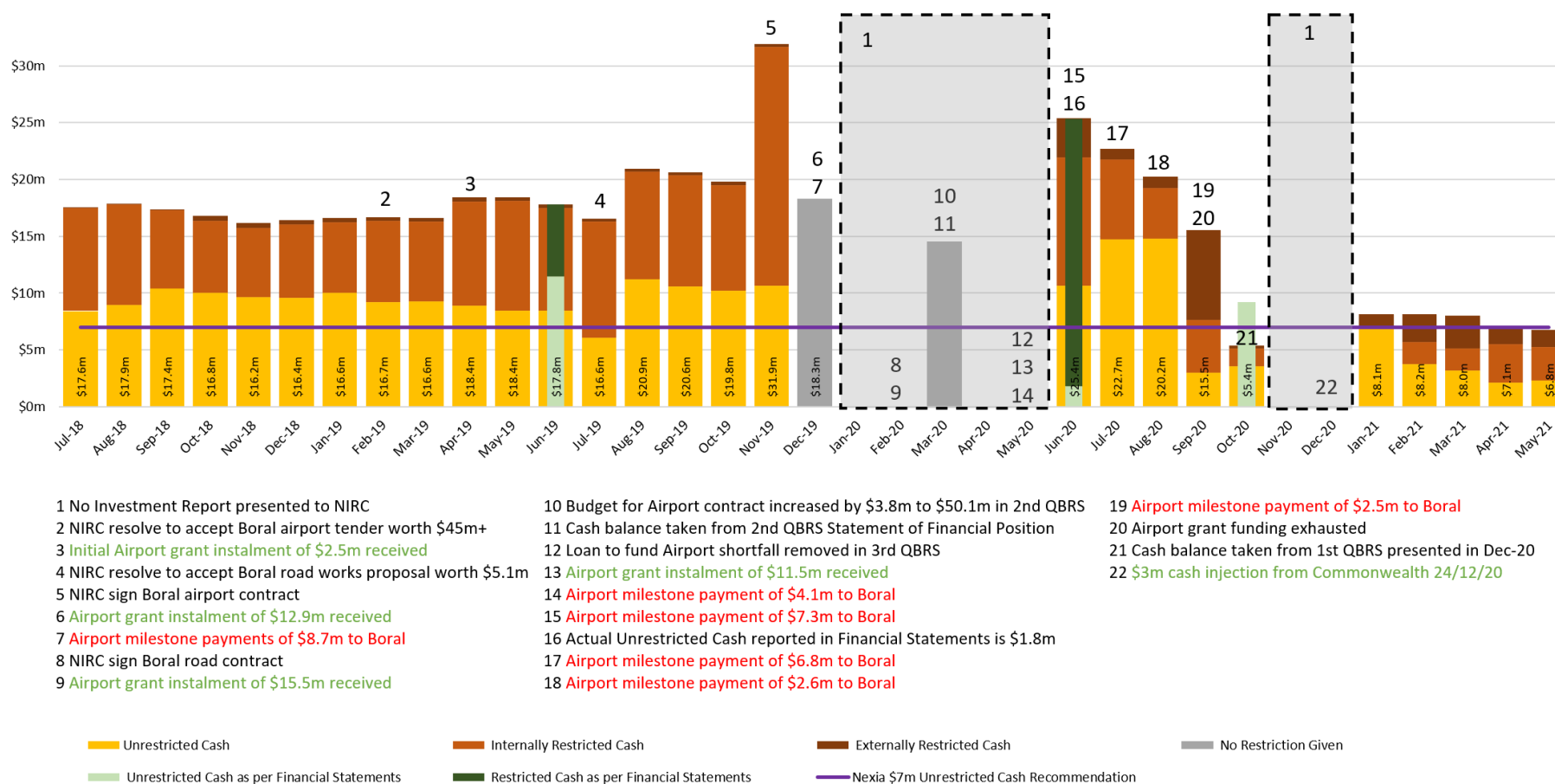
348. As will be seen, from January to November 2019, the Council's cash balance was on a moderate upward trajectory. However, from December 2019 to December 2020, the Council's total cash balance and unrestricted cash position (the pool of funds from which the Council financed its day-to-day operations) fell, to the point that the Council was unable to meet its financial liabilities in the short and longer term. The fall was substantial: investment reports documented a reduction from around \$10 million to \$3.57 million from January 2019 to October 2020, following the final milestone payment to Boral.

349. Ultimately, the Council was unable to afford to pay its day-to-day operating costs or to cover the costs of its five business units, which, as Chapter 5 demonstrates, ran at an annual loss in aggregate. When this outcome became apparent in around April 2020, following the appointment of Mr Roach, the governing body resolved in June 2020 to engage Nexia Australia and Grassroots Connections Australia to conduct an external audit of the NIRC.<sup>459</sup>
350. The Council's overall cash position from 1 July 2018 is shown in Figure 12.

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<sup>459</sup> Exhibit 1, 20200624 Minutes of Meeting of Council, NIRC.PUB.001.0267\_0004.

**Figure 12. NIRC's cash position as presented in investment reports: July 2018 to May 2021<sup>460</sup>**



<sup>460</sup> Exhibit 1, 20161019 Agenda Ordinary Meeting, NIRC.PUB.001.0058\_0037; Exhibit 1, 20161116 Ordinary Council Meeting, NIRC.PUB.001.0067\_0097; Exhibit 1, 20161221 Agenda Ordinary Meeting, NIRC.PUB.001.0072\_0149; Exhibit 1, 20170215 Agenda Ordinary Meeting, NIRC.PUB.001.0077\_0139, \_0145; Exhibit 1, 20170315 Agenda Ordinary Meeting, NIRC.PUB.001.0082\_0070; Exhibit 1, 20170419 Agenda Ordinary Meeting, NIRC.PUB.001.0086\_0159; Exhibit 1, 20170517 Agenda Ordinary Meeting, NIRC.PUB.001.0093\_0140; Exhibit 1, 20170628 Agenda

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Ordinary Meeting, NIRC.PUB.001.0097\_0188; Exhibit 1, 20170628 Agenda Ordinary Meeting, NIRC.PUB.001.0103\_0080; Exhibit 1, 20170816 Agenda Ordinary Meeting, NIRC.PUB.001.0105\_0112; Exhibit 1, 20170920 Agenda Ordinary Meeting, NIRC.PUB.001.0115\_0145; Exhibit 1, 20170920 Agenda Ordinary Meeting, NIRC.PUB.001.0118\_0062; Exhibit 1, 20171115 Agenda Ordinary Meeting, NIRC.PUB.001.0120\_0262; Exhibit 1, 20171220 Agenda Ordinary Meeting, NIRC.PUB.001.0129\_0104; Exhibit 1, 20180221 Agenda Ordinary Meeting, NIRC.PUB.001.0133\_0283, \_0269; Exhibit 1, 20180321 Ordinary Council Meeting Agenda, NIRC.PUB.007.0001\_0133; Exhibit 1, 20180418 Agenda Ordinary Meeting, NIRC.PUB.001.0143\_0071; Exhibit 1, 20180516 Agenda Ordinary Meeting, NIRC.PUB.001.0145\_0205; Exhibit 1, 20180627 Agenda Ordinary Meeting, NIRC.PUB.001.0154\_0199; Exhibit 1, 20180718 Agenda Ordinary Meeting, NIRC.PUB.001.0158\_0101.

351. The figure demonstrates that in January 2019, the Council held \$16.6 million in cash or cash equivalents, of which \$10 million was identified by the Council as unrestricted. There followed a period where the Council's unrestricted cash balance was on a moderate upward trajectory until November 2019. In November 2019, there was a sharp increase in overall Council funds. However, this increase was associated with the Council's receipt of the second instalment of \$12.9 million<sup>461</sup> of the Commonwealth's grant for the airport project. Whilst these funds might appear to have buoyed the Council's overall cash position to over \$30 million, they were restricted funds, meaning they did not assist the NIRC's ability to meet its financial liabilities, as any spending of the grant funds was restricted to eligible project expenditure.
352. The financial review report for 31 October 2020, the last available data for calendar year 2020 prepared for the December Council meeting showed the lowest cash balance since the Council commenced in 2016 (\$5.35 million in cash and investments, of which \$3.57 million was unrestricted<sup>462</sup>). At this point, the Council did not have the funds required to meet its day-to-day operations. This was later verified by the independent external auditor Nexia. Nexia recommended that the Council adopt a minimum working capital metric of \$7 million (discussed further below).<sup>463</sup>
353. It is against this background that the critical funding decisions made by the governing body must be understood.

### **The Norfolk Island Airport pavement repair and resurfacing project**

354. Any analysis of the circumstances surrounding the airport project must start with an understanding of six key matters.
355. First, it needs to be understood that there is no more important item of infrastructure on Norfolk Island than the airport. It is the principal means by which the Norfolk Island people are connected to the Australian mainland and the gateway through which tourists, who constitute the single largest contribution to the Norfolk Island economy, come to the Island. Statistics concerning passenger movements bear this out. For example, in 2017/18 the airport processed 41 medical evacuation flights, 72 general aviation flights, 285 regular

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<sup>461</sup> Exhibit 11, 20191121 Remittance advice from Commonwealth to NIRC, NIRC.010.002.0002\_0003.

<sup>462</sup> Exhibit 1, 20201216 Agenda Ordinary Meeting, NIRC.PUB.001.0293\_0089.

<sup>463</sup> Exhibit 9, Nexia Report, Norfolk Island Regional Council Independent Audit of Financial Performance, NXA.PUB.001.0001\_0022.

public transport flights, 22 military flights and 32,941 passengers of whom 86 per cent were visitors.<sup>464</sup>

356. Mr Porter expressed the importance of the airport in these terms:<sup>465</sup>

-- that 2 kilometres of asphalt ..... that's our access to Australia, it's our economic lifeline, and it's our social lifeline, so we have to have it and we'll just have to live with the consequences of not being able to afford it. There was no alternative.

357. Second, the NIRC recognised by as early as November/December 2016, that the airport would require major refurbishment works in around 2020/21.<sup>466</sup> As events transpired, the work was required slightly earlier.

358. Third, there was significant sensitivity within the community, including outright opposition from some sectors, concerning the importation of rock to the Island that was essential to the airport project. The basis of this concern lay in a perceived danger that importing rock would bring pests and disease to the Island. There were protests in the lead-up to the signing of the contract in October 2019 once it became clear that the airport project would proceed in this way. Staff, particularly the General Manager, Ms Jackson, were placed under considerable pressure. The pressure was so great that it contributed to the resignation of Ms Jackson in September 2019, within months of her reappointment.<sup>467</sup>

359. Fourth, the Audit Committee was not asked to consider any aspect of the airport project.<sup>468</sup>

360. Fifth, it was whilst the airport project was underway that the COVID-19 pandemic occurred. On 17 March 2020, a State of Emergency was declared by the Territory Administrator, Mr Eric Hutchinson.<sup>469</sup> The lockdown, and attendant quarantine arrangements that followed, ultimately triggered, in the case of the airport contract, approximately \$1 million in liquidated damages that were not capable of being forecast when the contract was entered into.<sup>470</sup> It also resulted in a marked reduction in Council revenue as Table 1 demonstrates.

361. Sixth, by the time of the airport project's conclusion, the total cost had reached \$47.83 million.<sup>471</sup> Whilst the vast bulk of this expenditure was met with the assistance of the single Commonwealth grant of \$43 million, the balance of the project, some \$4.83 million, was

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<sup>464</sup> Exhibit 1, Annual Report 2017–2018, NIRC.PUB.001.0181\_0034.

<sup>465</sup> Transcript, 2 June 2021, p 230.7–12.

<sup>466</sup> Exhibit 1, Long Term Financial Plan 2017–2026, NIRC.PUB.001.0070\_006.

<sup>467</sup> Transcript, 11 June 2021, p 608.29–33.

<sup>468</sup> Transcript, 9 June 2021, pp 442.12–443.32, 454.20–31.

<sup>469</sup> Exhibit 1, 20200318 Ordinary Council Meeting Minutes, NIRC.PUB.001.0260\_0004.

<sup>470</sup> Exhibit 1, 20200318 Ordinary Council Meeting Minutes, NIRC.PUB.001.0260\_0004; Exhibit 4, 20210301 Project contract variance summary, NIRC.011.002.0009.

<sup>471</sup> 20210407 Ordinary Council Meeting Agenda, NIRC.PUB.004.0003\_0002.

ultimately funded by the NIRC from its cash reserves. Further, the final cost included the following the principal variations:<sup>472</sup>

- a. \$3,735,497 for biosecurity measures taken in connection with the importation of aggregate and equipment to Norfolk Island from the mainland;
- b. \$1,003,558 relating to a COVID-19 claim made by Boral, reflecting costs associated with complying with isolation requirement for crew;<sup>473</sup> and
- c. \$1,839,768 on account of the Waste Management Levy that was set-off against the balance owing under Boral's tax invoice dated 22 September 2020.<sup>474</sup>

## Council's applicable capital expenditure and risk management guidelines

### *Relevant Capital Expenditure Guidelines*

362. Section 23A of the applied LG Act required the NIRC to take 'any relevant guidelines issued under [that] section *into consideration* before exercising any of its functions'.<sup>475</sup> In December 2010, Capital Expenditure Guidelines (**Guidelines**) were issued pursuant to s 23A. Part 10 of the Guidelines established a series of minimum requirements that councils were recommended to undertake 'as part of their internal control processes for all material or high risk capital expenditure projects, irrespective of the funding source'.<sup>476</sup>
363. Relevant elements of the Guidelines include part 10.6, which focuses upon a consideration of the financial implications of project costs from a 'whole of life' perspective and included in the long term financial plan.<sup>477</sup> In the case of a council borrowing funds, it stated that the 'council must comply with Part 12, Chapter 15 of the [applied LG] Act and with the Ministerial Borrowing Order'.<sup>478</sup>

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<sup>472</sup> Exhibit 4, 20210301 Project contract variance summary, NIRC.011.002.0009.

<sup>473</sup> Exhibit 4, 20200428 Letter from Chris Jeffery to Alistair Innes-Walker re revised claim for delay costs (COVID-19), NIRC.011.003.0047.

<sup>474</sup> Exhibit 11, 20200922 Tax invoice from Boral to NIRC, NIRC.011.002.0002\_0106.

<sup>475</sup> See also: *Interpretation Act 1987* (NSW) (NI), s 38A.

<sup>476</sup> Office of Local Government, Department of Premier and Cabinet, *Capital Expenditure Guidelines* (December 2010), p 9 <<https://www.olg.nsw.gov.au/wp-content/uploads/Capital-Expenditure-Guidelines-2010.pdf>>.

<sup>477</sup> Office of Local Government, Department of Premier and Cabinet, *Capital Expenditure Guidelines* (December 2010), p 12 <<https://www.olg.nsw.gov.au/wp-content/uploads/Capital-Expenditure-Guidelines-2010.pdf>>.

<sup>478</sup> Office of Local Government, Department of Premier and Cabinet, *Capital Expenditure Guidelines* (December 2010), p 12 <<https://www.olg.nsw.gov.au/wp-content/uploads/Capital-Expenditure-Guidelines-2010.pdf>>.

364. In the case of internal loans, the Guidelines stated that the Council 'must obtain Ministerial approval and comply with s 410(3) and s 410(4) of the [applied LG] Act'.<sup>479</sup> More generally, it is recommended that the Council identify 'any potential increase in council's actual or prospective expenditures, whether in terms of one-off capital amounts or recurrent expenditures', including debt servicing.<sup>480</sup> The Guidelines also recommended that a council consider the 'possible inability of council to discharge its Charter obligations to provide adequate, equitable and appropriate services and facilities for the community'.<sup>481</sup>
365. The Guidelines go on to state that:<sup>482</sup>
- It is expected that in the capital expenditure review there will be a higher level of accuracy in relation to estimated costs than the preliminary business case. It is expected that the cost estimate in the capital expenditure review will be within 5% of the final cost.
- When calculating future costs it is appropriate that project costs are indexed based on prudent and reasonable assumptions. These assumptions should be documented and able to be provided on request or provided as part of the project's capital expenditure review.
366. Finally, the Guidelines go on to recommend that a council undertake public consultation and engagement processes.<sup>483</sup>
367. Part 11 of the Guidelines also provide additional and more stringent requirements in the case of projects where the expenditure exceed \$10 million (excluding GST). Those requirements extend to a report on all financial implications and an appropriate risk management plan.<sup>484</sup> In particular, the risk management planning extends across 10 risk domains:<sup>485</sup> investment/planning, design, demand/market, management/operations, reputation,

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<sup>479</sup> Office of Local Government, Department of Premier and Cabinet, *Capital Expenditure Guidelines* (December 2010), p 12 <<https://www.olg.nsw.gov.au/wp-content/uploads/Capital-Expenditure-Guidelines-2010.pdf>>.

<sup>480</sup> Office of Local Government, Department of Premier and Cabinet, *Capital Expenditure Guidelines* (December 2010), p 12 <<https://www.olg.nsw.gov.au/wp-content/uploads/Capital-Expenditure-Guidelines-2010.pdf>>.

<sup>481</sup> Office of Local Government, Department of Premier and Cabinet, *Capital Expenditure Guidelines* (December 2010), p 13 <<https://www.olg.nsw.gov.au/wp-content/uploads/Capital-Expenditure-Guidelines-2010.pdf>>.

<sup>482</sup> Office of Local Government, Department of Premier and Cabinet, *Capital Expenditure Guidelines* (December 2010), p 13 <<https://www.olg.nsw.gov.au/wp-content/uploads/Capital-Expenditure-Guidelines-2010.pdf>>.

<sup>483</sup> Office of Local Government, Department of Premier and Cabinet, *Capital Expenditure Guidelines* (December 2010), p 13 <<https://www.olg.nsw.gov.au/wp-content/uploads/Capital-Expenditure-Guidelines-2010.pdf>>.

<sup>484</sup> Office of Local Government, Department of Premier and Cabinet, *Capital Expenditure Guidelines* (December 2010), pp 16–17 <<https://www.olg.nsw.gov.au/wp-content/uploads/Capital-Expenditure-Guidelines-2010.pdf>>.

<sup>485</sup> Office of Local Government, Department of Premier and Cabinet, *Capital Expenditure Guidelines* (December 2010), pp 17–18 <<https://www.olg.nsw.gov.au/wp-content/uploads/Capital-Expenditure-Guidelines-2010.pdf>>.



compliance, completion/construction, environmental, OH&S and other risk. The completion/construction risk is expressed to engage with the 'risk that the proposed project will not be completed in accordance with the specifications and within the stipulated timeframe and/or budget'.<sup>486</sup> In assessing such a risk, 'consideration will need to be given to the potential external and financial impacts of such outcomes'.<sup>487</sup>

368. As will be seen, the NIRC did not refer to or apply the essential elements of the guidelines when it came to the airport project.

### *Relevant risk management policies and guidelines*

369. On 8 August 2018, the Audit Committee considered a draft risk management policy, a draft risk management framework, and draft risk management procedures<sup>488</sup> and resolved to recommend that the Council adopt the risk management policy, framework, and procedures.<sup>489</sup> These documents were to form 'the foundation of [the Council's] risk management practices organisation-wide into the future'.<sup>490</sup>
370. On 19 September 2018, consistent with the Audit Committee's recommendation, the Council resolved to adopt both the risk management policy and procedures, and the risk management framework.<sup>491</sup> The risk management policy is based on the risk management framework resources prepared by the Queensland Department of Education and the Australian Standard on Risk Management – Principles and Guidelines.<sup>492</sup> Clause 7 of the Policy was in these terms:<sup>493</sup>

#### 7. Policy

Council's policy is to have a formal system of risk identification and management in place across, the full scope of its operations. The system has six (6) key elements: establishing a risk appetite benchmark, understanding our risk environment and assessing, responding, reporting and governing

<sup>486</sup> Office of Local Government, Department of Premier and Cabinet, *Capital Expenditure Guidelines* (December 2010), p 18 <<https://www.olg.nsw.gov.au/wp-content/uploads/Capital-Expenditure-Guidelines-2010.pdf>>.

<sup>487</sup> Office of Local Government, Department of Premier and Cabinet, *Capital Expenditure Guidelines* (December 2010), p 18 <<https://www.olg.nsw.gov.au/wp-content/uploads/Capital-Expenditure-Guidelines-2010.pdf>>.

<sup>488</sup> Exhibit 1, 20180808 Audit Committee Meeting Agenda, NIRC.PUB.001.0162\_0058–\_0070.

<sup>489</sup> Exhibit 1, 20180808 Audit Committee Meeting Minutes, NIRC.PUB.001.0161\_0006.

<sup>490</sup> Exhibit 1, 20180808 Audit Committee Meeting Agenda, NIRC.PUB.001.0162\_0058.

<sup>491</sup> Exhibit 1, 20180919 Agenda Ordinary Meeting, NIRC.PUB.001.0170\_100–\_110; Exhibit 1, 20180919 Ordinary Council Meeting Minutes, NIRC.PUB.001.0168\_0014. See also: Exhibit 1, 2.13 – Risk Management Policy, NIRC.PUB.001.0167.

<sup>492</sup> Exhibit 1, 2.13 – Risk Management Policy, NIRC.PUB.001.0167\_0004.

<sup>493</sup> Exhibit 1, 2.13 – Risk Management Policy, NIRC.PUB.001.0167\_0002–\_0004.

risk. The system supports continuous improvement in all Council endeavours and requires the involvement of all staff.

371. The policy approaches the assessing of risk in these terms:<sup>494</sup>

III. Assessing risk

Risk is assessed using a standard risk assessment process which involves the following steps: (1) establish the context; (2) identify the risk; (3) analyse the risk; (4) evaluate the risk; and (5) treat the risk.

372. It is also relevant to draw out element 4 - responding to risk - which identifies a number of ways in which it is possible to respond to an identified risk.<sup>495</sup> This includes the preparation of an action plan 'to identify existing controls, propose further/future strategies to mitigate risks and set timeframes for implementation'.<sup>496</sup> The action plan is then 'monitored and updated'.<sup>497</sup> Finally, governing risk (element 6) relevantly provides for risk to be 'subject to executive management oversight'.<sup>498</sup>

373. It is to be observed that Council's enterprise risk management framework expressly identifies financial sustainability as a strategic risk.<sup>499</sup>

374. Finally, Council's risk management procedure sets out a 5 step approach as a means of responding to risk that involves:<sup>500</sup>

- a. establishing the context;
- b. identifying the risk;
- c. analysing the risk;
- d. evaluating the risk; and
- e. treating the risk.

## **Background – The need for runway repair**

### ***Previous runway repairs***

375. The Administration was required to carry out substantial runway refurbishment works between 2005 and 2007.<sup>501</sup> These works were substantially funded by a \$12 million loan

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<sup>494</sup> Exhibit 1, 2.13 – Risk Management Policy, NIRC.PUB.001.0167\_0003.

<sup>495</sup> Exhibit 1, 2.13 – Risk Management Policy, NIRC.PUB.001.0167\_0003.

<sup>496</sup> Exhibit 1, 2.13 – Risk Management Policy, NIRC.PUB.001.0167\_0003.

<sup>497</sup> Exhibit 1, 2.13 – Risk Management Policy, NIRC.PUB.001.0167\_0003.

<sup>498</sup> Exhibit 1, 2.13 – Risk Management Policy, NIRC.PUB.001.0167\_0004.

<sup>499</sup> Exhibit 1, 2.13 – Risk Management Policy, NIRC.PUB.001.0167\_0005, \_0006.

<sup>500</sup> Exhibit 1, 20180919 Agenda Ordinary Meeting, NIRC.PUB.001.0170\_0107.

<sup>501</sup> Exhibit 1, 20180221 Agenda Ordinary Meeting, NIRC.PUB.001.0133\_0039.

taken out by the former Administration the liability for which vested in the NIRC on 1 July 2016.<sup>502</sup> That loan appeared in the 30 June 2017 audited accounts as an unsecured liability of \$11 million.<sup>503</sup> Subject to certain conditions regarding timing, interest was not payable on this loan.<sup>504</sup> Ultimately, this loan was waived by the Commonwealth in April 2019 at the time the Commonwealth's commitment to the 2019–2020 resurface was finalised.<sup>505</sup>

376. As previously indicated, the need for further airport refurbishment works was addressed in the Long Term Financial Plan adopted by the NIRC on 21 December 2016.<sup>506</sup> That plan forecast a cost of \$20 million, funded through \$6 million of the Council's cash reserves and a \$14 million loan from the Commonwealth.<sup>507</sup> It was anticipated that this loan would be repaid interest free over 20 years, as had occurred with the loan associated with the airport's 2005–2007 upgrade; although it was noted that such a loan would 'have a significant impact on Council's cash-flow and operating results.'<sup>508</sup>

377. The Long Term Financial Plan went on to state that:<sup>509</sup>

The ability to fully fund the airport is a difficult proposition for the Council. There are restrictions on the airport revenue and the current infrastructure is poor. Additional net revenue in excess of \$1.5m in user fees and charges is not realistic in the short term. A combination of modestly increased fees, efficiencies within the expenditure budget and Government support is needed. Funds will also be needed for critical runway upgrades that are expected to be required within 3 to 4 years.

In order to fund the upgrade, restricted cash of \$6m (that will be set aside in 2017/2018 to 2019/2020) will be used with an expected loan from the Commonwealth for a further \$14m ... In order for Council to continue to be able to provide an airport service to the community it has forecast that an additional \$1m in user fees and charges will need to be raised in 2021/2022 upon completion of the refurbishment of the runway, taxiway and apron. Having a fully funded and commercially viable airport (even with the assistance of grants) is crucial to the ongoing financial sustainability of the Regional Council.

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<sup>502</sup> By *Norfolk Island Legislation Amendment Act 2015* (Cth), s 359(2), at the final transition time, the liability ceased to be a liability of the Administration and becomes a liability of the Norfolk Island Regional Council without any conveyance, transfer or assignment; Exhibit 1, Operational Plan 2016–2017, NIRC.PUB.001.0046\_0026.

<sup>503</sup> Exhibit 1, Annual Report 2016–2017, NIRC.PUB.001.0135\_0145.

<sup>504</sup> Exhibit 11, 20030728 Loan Agreement between Commonwealth of Australia and Administration of Norfolk Island, NIRC.009.001.0002.

<sup>505</sup> Exhibit 1, 20161221 Ordinary Meeting of Council Minutes, NIRC.PUB.001.0069\_0013.

<sup>506</sup> Exhibit 1, 20161221 Ordinary Meeting of Council Minutes, NIRC.PUB.001.0069\_0013; Exhibit 1, Long Term Financial Plan 2017–2018, NIRC.PUB.001.0070.

<sup>507</sup> Exhibit 1, Long Term Financial Plan 2017–2026, NIRC.PUB.001.0070\_0016 –\_0017.

<sup>508</sup> Exhibit 1, Long Term Financial Plan 2017–2026, NIRC.PUB.001.0070\_0017.

<sup>509</sup> Exhibit 1, Long Term Financial Plan 2017–2026, NIRC.PUB.001.0070\_0017.

378. Further, in adopting the Fully Costed recovery scenario identified in this plan, the governing body rejected what was described as an alternative 'ideal scenario' involving the transfer of the heavy financial burden of the airport to the Commonwealth.<sup>510</sup>
379. Despite the Council's plan to do so, it never set aside any money from the airport's operations to build up reserves for future airport refurbishment works.

### *2017 – CASA identifies deformities in the runway*

380. In December 2017, the Civil Aviation and Safety Authority (**CASA**) identified deformities in the airport runway and aprons, making it unsuitable for the commercial aircraft that service the Island.<sup>511</sup>
381. The seriousness of this situation saw the engagement of an expert, Dr Greg White of Airport Pavement Engineering Specialists Pty Ltd, in January 2018, to advise the NIRC on the recommendation of CASA and the Office of Transport Security.<sup>512</sup>
382. On 9 January 2018, Dr White reported to Mr Castrisos (Airport Operations Manager) in these terms:<sup>513</sup>

The general aircraft pavement surface is now 11 years old and is at the end of its serviceable life. Resurfacing, combined with long term rectification of all localised distress, is required without delay and the necessary planning and investigations should commence immediately to allow the works to be performed in the first half of 2019. In the meantime, operationally critical maintenance is required to be scoped and performed in the first half of 2018, including training and supply of repair materials and equipment to the airport operations staff. Unless the short and long term works are performed in the recommended timeframes, there is a high that areas of pavement will become unsuitable for aircraft traffic. If this is allowed to occur, the local industry is not well equipped to urgently affect suitable repairs and it is possible that the unserviceable areas of pavement will need to remain closed for a significant period of time, with significant impact on all airport operations.

(Emphasis added.)

<sup>510</sup> Exhibit 1, Long Term Financial Plan 2017–2026, NIRC.PUB.001.0070\_0022.

<sup>511</sup> Exhibit 11, Civil Aviation Safety Authority, Norfolk Island International Airport Surveillance Report (report, 20 December 2017), NIRC.011.001.0001.

<sup>512</sup> Exhibit 4, 20190220 Briefing report presented to Council in relation to the tender responses for the Project, NIRC.020.001.0002\_0004; Exhibit 11, 20180109–05 Email exchange between Lotta Jackson, Mike Castrisos, Greg White and Juanita Swyneburg, NIRC.007.004.0001\_0013.

<sup>513</sup> Exhibit 11, 20170109 Letter from Greg White to Mike Castrisos, NIRC.007.004.0001\_0007. Note: although the letter bears the date 2017, it would appear from the contents and context that it should bear the date 9 January 2018.

## Preliminary risk assessment of delaying the airport project

383. A further risk assessment was carried out in connection with delaying the runway resurfacing from the anticipated 2019–2020 time frame to a 2021–2023 program; it concluded that, by applying a CASA risk assessment matrix, the risk for delaying the resurfacing of the operational areas of the airport was 'level 9, catastrophic'.<sup>514</sup> Relevant risk was identified across 4 key categories: Aviation Safety, Compliance, Business, and Financial. In terms of aviation safety, the risk was expressed in these terms:<sup>515</sup>

Potential for multiple fatal aviation safety occurrences causing multiple fatalities (3 or more) due to a major issue of compliance and aviation safety regulations leading unsafe aviation operations

### Scenario

- a. A piece of the runway surface breaks loose and is ingested into the engine on take-off with potential for flameout and crash.
- b. Runway fragment breaks off on landing and strikes the aircraft rendering it unserviceable.
- c. Runway fragments break off and need repair prior to operations resuming, estimated 7-10 days of runway closure.

It should be noted here that runway closure will ultimately affect all commercial, civilian and medical evacuation flights, there may be approval for military flights only.

384. The report recognised the possibility of a catastrophic air safety event as reflected in the following graphic from the report:<sup>516</sup>

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<sup>514</sup> Exhibit 4, 20190220 Attachment 2 to Briefing report presented to Council in relation to the tender responses for the Project, NIRC.020.001.0006.

<sup>515</sup> Exhibit 4, 20190220 Attachment 2 to Briefing report presented to Council in relation to the tender responses for the Project, NIRC.020.001.0006\_0001.

<sup>516</sup> Exhibit 4, 20190220 Attachment 2 to Briefing report presented to Council in relation to the tender responses for the Project, NIRC.020.001.0006\_0002.

**Figure 13. Preliminary risk assessment for delaying the airport project**

<u>Assessed risk level.</u>	
Using the Australian Civil Aviation Safety Authority matrix the risk for delaying the resurfacing of the operational areas of Norfolk Island International Airport is:	
<b>9 Catastrophic</b>	
Aviation safety	3 + 5 = 8
Compliance	4 + 5 = 9
Business	3 + 5 = 8
Financial	3 + 5 = 8

		<u>Risk Matrix</u>					
		Insignificant 0	Minor 1	Moderate 2	Major 3	Severe 4	Catastrophic 5
Almost Certain	5	5	6	7	8	9	10
Likely	4	4	5	6	7	8	9
Possible	3	3	4	5	6	7	8
Unlikely	2	2	3	4	5	6	7
Rare	1	1	2	3	4	5	6
Extremely Rare	0	0	1	2	3	4	5

385. In terms of the compliance risk, the authors assessed that it was 'likely' that a 'catastrophic' event would occur; meaning the runway would become unserviceable or that the airport could lose regulatory approval from CASA to operate, thereby preventing air travel to and from the Island. The matrix also demonstrated catastrophic business and financial risks associated with delaying the project. Risk mitigation strategies proposed included resurfacing the runway as soon as possible and, in the interim, carrying out a range of inspection and maintenance measures using equipment with funds allocated from the 2018/19 budget.<sup>517</sup>

### Tendering for the airport project

386. In a pre-tender meeting held on 27 July 2018, Dr White provided an estimate as to the cost of the airport project in the range of \$35–43 million, depending on whether the rock needed was brought onto the Island or not.<sup>518</sup>

<sup>517</sup> Exhibit 4, 20190220 Attachment 2 to Briefing report presented to Council in relation to the tender responses for the Project, NIRC.020.001.0006\_0003.

<sup>518</sup> Transcript, 31 May 2021, p 100.33–45; Exhibit 11, 20210705 Statement of Alistair Innes–Walker, AINN.000.001.0001; Exhibit 11, 20210705 Annexure A to statement of Alistair Innes–

387. In September 2018, Regional Procurement issued a tender on behalf of the NIRC which closed on 18 December 2018.<sup>519</sup> The Tender Preliminaries expressly referred to two 'Rock Source Options' depending upon 'quarry permits':<sup>520</sup>
- a. Option 1, which assumed sourcing crushed aggregate from Norfolk Island itself; and
  - b. Option 2, which assumed the need for imported crushed aggregate.
388. The Preliminaries then referred to the biosecurity requirements for all imported plant, equipment and materials in the following terms.<sup>521</sup>

**Figure 14. Biosecurity requirements noted in the Preliminaries**

**Biosecurity for imported plant, equipment and materials**

Norfolk Island is a separate biosecurity zone from mainland Australia.

All plant and equipment must be 'free from biosecurity hazards', generally meaning it must be completely cleaned of all soil, dirt, seeds, fauna and flora.

All imported materials must be 'free from biosecurity hazards'. Consideration should be given to a 'pathways assessment' requiring the source, processing and storage of all materials to be documented to allow certification of freedom from biosecurity hazards to be granted. This requirement will be material and source specific and must reflect the risk associated with different materials types (eg. cement versus sand).

There are no designated biosecurity decontamination facilities on Norfolk Island and consideration should be given to pre-shipping inspection/clearance. The Australian Government's Department of Agriculture and Water Resources is the biosecurity authority and is available to perform inspections/clearances at a cost.

389. In a 20 November 2018 addendum to the Tender, the Council removed Option 1 (on-Island rock crushing)<sup>522</sup> based on advice that there was insufficient volume extractable from Cascade Quarry to meet the demand of the airport project and that the timeframe to re-develop the quarry would significantly impact the delivery of the project.<sup>523</sup>
390. Mr McCoy gave evidence that he was aware that the 20 November 2018 addendum was issued prior to the closing of the tender date.<sup>524</sup> This meant that it was not possible for tenderers to rely *exclusively* upon on-Island rock for the airport project and that at least some

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Walker, AINN.000.001.0002; Exhibit 11, 20210705 Annexure B to statement of Alistair Innes–Walker, AINN.000.001.0003.

<sup>519</sup> Exhibit 4, 20180914 Invitation to Tender, NIRC.017.001.0184.

<sup>520</sup> Exhibit 4, 20180914 Invitation to Tender, NIRC.017.001.0184.

<sup>521</sup> Exhibit 11, Norfolk Island Pavement Repair and Resurfacing Preliminaries, NIRC.017.001.0185.

<sup>522</sup> Exhibit 11, 20210624 Norfolk Island Regional Council response to summons to produce No. NIRC/25, schedule item 3, NIRC.025.001.0001; Exhibit 11, 20181128 Addendum to airport project tender, NIRC.017.001.0017.

<sup>523</sup> Exhibit 11, NIRC.025.001.0002\_0003, 20181121 Letter from Greg White to Alan Buckley; Exhibit 11, NIRC.025.001.0002\_0007, 20181121 Letter from Basil Natoli to Alan Buckley.

<sup>524</sup> Transcript, 2 June 2021, p 193.9–11.



rock for the project would need to be imported, thereby necessitating biosecurity treatment with its significant attendant cost.

### The tender responses

391. Three responses to the tender were received.<sup>525</sup> One response, dated 17 December 2018 from Boral, the eventual winner, priced Option 2 at \$44,898,007.<sup>526</sup> Although no price was given by Boral for Option 1, the tender response detailed potential savings that might be achieved in the event of Option 1 proceeding as compared to the Option 2 price.<sup>527</sup>
392. Boral's tender allowed for the bulk transport of aggregate from the mainland to Norfolk Island under Option 2 but made it clear that it *could not include* in its price the cost of biosecurity treatment. This was on the basis that the Department of Agriculture and Water Resources (**DAWR**) was unable to confirm any specific requirement at the time of the tender. Boral merely estimated the full biosecurity treatment of the aggregate could cost around \$4.2 million.<sup>528</sup>
393. Councillors Adams, Snell and McCoy were afforded an opportunity to review the tenders in the office of Ms Jackson.<sup>529</sup> This was about an hour in the case of Adams and Snell and 20 minutes in the case of Mr McCoy.<sup>530</sup>

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<sup>525</sup> Exhibit 11, 20181218 Record of Tender Submission, NIRC.017.006.0023.

<sup>526</sup> Exhibit 4, 20181117 Boral Tender Response for airport resurfacing project, NIRC.011.002.0004\_0012.

<sup>527</sup> Exhibit 4, 20181117 Boral Tender Response for airport resurfacing project, NIRC.011.002.0004\_0019.

<sup>528</sup> Exhibit 4, 20181117 Boral Tender Response for airport resurfacing project, NIRC.011.002.0004\_0020–\_0021.

<sup>529</sup> Transcript, 11 June 2021, p 622.38–41.

<sup>530</sup> Transcript, 3 June 2021, pp 265.11–32, 328.40–45; Transcript, 2 June 2021, p 196.42–46.



## Tender evaluation

394. On 19 December 2018, an eight-member tender evaluation panel was established, comprised of Ms Jackson,<sup>531</sup> Mr Taylor,<sup>532</sup> Mr Innes-Walker,<sup>533</sup> Mr Peter Salafia,<sup>534</sup> Dr White,<sup>535</sup> Mr Buckley,<sup>536</sup> Mr Anthony Allan<sup>537</sup> and Ms Michelle Partland.<sup>538</sup>
395. On 13 February 2019, the then Department of Industry, Innovation and Science (**DIIS**) released grant opportunity guidelines for a one-off grant payable over three years to the NIRC for the resurface of the airport runway.<sup>539</sup> The grant provided through the DIIS was stated to be '100% of eligible project costs *up to a maximum of \$43 million*.'<sup>540</sup> Although this advice was provided after receipt of Boral's tender and was clearly incapable of covering Boral's tender price (even exclusive of biosecurity costs), there was no evidence to suggest that the NIRC sought to revisit the calculation of the grant amount with either DIIS or the then Commonwealth Department of Infrastructure, Regional Development and Cities, given their external administration responsibilities and their ongoing and regular relationship with the Council.

## The February briefing provided to councillors

396. On 16 January 2019, the tender evaluation panel met and agreed to make a recommendation to the governing body that Boral be awarded the airport contract.<sup>541</sup> Then, on 19 February 2019, the General Manager prepared a briefing note for the Council meeting

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<sup>531</sup> Exhibit 11, 20181218 Conflict of interest declaration and confidentiality agreement signed by Lotta Jackson, NIRC.017.001.0043.

<sup>532</sup> Exhibit 11, 20181218 Conflict of interest declaration and confidentiality agreement signed by Bruce Taylor, NIRC.017.001.0041.

<sup>533</sup> Exhibit 11, 20181218 Conflict of interest declaration and confidentiality agreement signed by Alistair Innes-Walker, NIRC.017.001.0040.

<sup>534</sup> Exhibit 11, 20190109 Conflict of interest declaration and confidentiality agreement signed by Peter Salafia, NIRC.017.001.0045.

<sup>535</sup> Exhibit 11, 20181218 Conflict of interest declaration and confidentiality agreement signed by Greg White, NIRC.017.001.0042.

<sup>536</sup> Exhibit 11, 20190110 Conflict of interest declaration and confidentiality agreement signed by Alan Buckley, NIRC.017.001.0039.

<sup>537</sup> Exhibit 11, 20181218 Conflict of interest declaration and confidentiality agreement signed by Anthony Quinn Allan, NIRC.017.001.0046.

<sup>538</sup> Exhibit 11, 20181218 Conflict of interest declaration and confidentiality agreement signed by Michelle Partland, NIRC.017.001.0044.

<sup>539</sup> Exhibit 4, 20190220 Attachment 5 to Briefing report presented to Council in relation to the tender responses for the Project, NIRC.020.001.0005.

<sup>540</sup> Exhibit 4, 20190220 Attachment 5 to Briefing report presented to Council in relation to the tender responses for the Project, NIRC.020.001.0005\_0004.

<sup>541</sup> Exhibit 4, 20190220 Attachment 1 to Briefing report presented to Council in relation to the tender responses for the Project, NIRC.020.001.0007\_0002 –\_0003.

that was scheduled to take place the following day. The briefing note included as attachments:

- a. the tender evaluation report prepared by Regional Procurement;<sup>542</sup>
- b. the Risk Assessment prepared by Dr White and Mr Allan;<sup>543</sup>
- c. an e-mail from CASA to Ms Jackson dated 7 December 2018;<sup>544</sup>
- d. a note regarding acceptance of tenders under s 178 of the *Local Government (General) Regulation 2005* (NSW);<sup>545</sup> and
- e. the DIIS grant opportunity guidelines.<sup>546</sup>

397. The purpose of the briefing note was to enable the Council to approve the successful tender for the 'Airport Pavement and Repair Resurfacing Project'. The tender evaluation report indicated that Boral was clearly the best tenderer.

398. This briefing note included the following summary of the biosecurity position:<sup>547</sup>

Boral has indicated in their submission that their price does not include treatment of bulk aggregate and sand for transport to Norfolk Island. This is because Biosecurity is assessed according to how 'clean' the material is at the source and how the importer will mitigate any risks of contamination. Boral, in lieu of knowing the accurate cost at this stage, has estimated an amount of \$4,200,000.00 to cover such a cost, should it be required. We will work with Boral and biosecurity to source the cleanest material source possible to minimise the biosecurity risk, and therefore reduce the cost.

(Emphasis added.)

399. It was then stated that because of this additional financial cost, Dr White had identified a range of potential savings. As will be seen, none of these savings were progressed.

400. As far as the financial implications of the airport project were concerned, the briefing note stated that the Council had budgeted for \$2 million in that year's budget for the planning and

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<sup>542</sup> Exhibit 4, 20190220 Attachment 1 to Briefing report presented to Council in relation to the tender responses for the Project, NIRC.020.001.0007.

<sup>543</sup> Exhibit 4, 20190220 Attachment 2 to Briefing report presented to Council in relation to the tender responses for the Project, NIRC.020.001.0006.

<sup>544</sup> Exhibit 4, 20190220 Attachment 3 to Briefing report presented to Council in relation to the tender responses for the Project, NIRC.020.001.0004.

<sup>545</sup> Exhibit 4, 20190220 Attachment 4 to Briefing report presented to Council in relation to the tender responses for the Project, NIRC.020.001.0003.

<sup>546</sup> Exhibit 4, 20190220 Attachment 5 to Briefing report presented to Council in relation to the tender responses for the Project, NIRC.020.001.0005.

<sup>547</sup> Exhibit 4, 20190220 Briefing report presented to Council in relation to the tender responses for the Project, NIRC.020.001.0002\_0003.

preparation of the airport project, but that only \$500,000 had been committed at that point of time. The note went on:<sup>548</sup>

The cost of the project, from the recommended tenderer is \$44.898 million. The Assistant Minister for Regional Development and Territories advises that Commonwealth Funds are available for this project.

Council has been informed that the amount of funding available is \$43 million, and for this funding to be available, a set of conditions must be met, starting with the support of the elected body. The funding guidelines specifically states:

'You must provide evidence from your Elected Members that the project is supported, can be completed within specification and that the Council will meet any costs of the project not covered by grant funding.

We cannot waive the eligibility criteria under any circumstances'.

Therefore, Council (the elected members) is required to be supportive of the project and be prepared to pay for any funding shortfall. Boral's costing is close to the available grant funding, and it is anticipated that negotiations will be possible to find savings. This will minimise the cost to Council and, it is recommended that any such outlay by Council, will be in the form of a loan held by the airport.

The cost of not resealing the runway would be measured against the situation of being unable to land passenger, freight and medical evacuation aircraft. Also see Risk Assessment with the rated risk as 9 'Catastrophic'.

(Emphasis added.)

401. On this basis, Ms Jackson proposed a recommendation that had, in substance, three elements: that the governing body support the project; Boral be awarded the tender; and the NIRC commit to contribute any shortfall, over and above the funding provided by the Commonwealth, by way of a loan from the 'Norfolk Island International Airport Government Business Enterprise'. The note did not otherwise clarify how the Norfolk Island Airport would cover additional costs or how a loan would operate between the Council and the airport.
402. The following observations can be made about this briefing note:
- a. The note made it reasonably clear that the anticipated airport project cost of \$44.898 million did not include the costs of the biosecurity measures that were going to be necessary if rock was to be imported. The note referred to savings that could be considered as a means of responding to any increased cost. It is hard to accept that anyone who read this note could have understood that the biosecurity cost would be picked up by Boral and not the Council;
  - b. Although the air-safety risk assessment was comprehensive, there was no risk assessment analysis concerning the likely financial effect of the airport project including, in particular, the likely effect on the cash position of the Council over the

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<sup>548</sup> Exhibit 4, 20190220 Briefing report presented to Council in relation to the tender responses for the Project, NIRC.020.001.0002\_0005.

course of the project. Further, no reference was made and seemingly no attention was given to the obligations on the Council to consider its decision in the context of the relevant elements of the Capital Expenditure Guidelines (referred to above at paragraphs 362 to 368);

- c. There was little to no detail to explain the stated loan from the Airport Government Business Enterprise. The resolution in effect proposed that the shortfall be funded by a loan from one arm of the NIRC to another. Council could not have borrowed the shortfall from itself. Precisely where the money was to come from was not clear; and
- d. It made no reference to how the project was to be reconciled with Council's other planning document and in particular the Long Term Financial Plan, including the failure to set aside funds in accordance with that plan previously referred to.

### **The Council's meetings on 20 and 22 February 2019**

403. Council held a scheduled meeting on 20 February 2019,<sup>549</sup> where it noted an investment report for 31 January 2019,<sup>550</sup> a portion of which is extracted in Figure 15 which stated that the Council's cash position on 31 January 2019 included approximately \$10 million in unrestricted funds.<sup>551</sup>

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<sup>549</sup> Exhibit 1, 20190220 Ordinary Council Meeting Minutes, NIRC.PUB.001.0192.

<sup>550</sup> Exhibit 1, 20190220 Ordinary Council Meeting Minutes, NIRC.PUB.001.0192\_0011.

<sup>551</sup> Exhibit 1, 20190220 Agenda Ordinary Meeting, NIRC.PUB.001.0193\_0185.

**Figure 15. Extract of investment report, showing cash broken down into restricted and unrestricted amounts, February 2019**

<u>Restricted Funds</u>	<u>Description</u>	<u>Value (\$000's)</u>
<u>Externally Restricted</u>		
	Security Deposits	55
	Iven 'Toon' Buffet Enviro Fund	100
	Legal Aid	117
	Workers Comp	88
<b>Total</b>		<b>360</b>
<u>Internally Restricted</u>		
	Capital Projects 18–19	5,566
	Employee Leave Reserves	418
	Curator of Deceased Estates	238
<b>Total</b>		<b>6,222</b>
<u>Unrestricted</u>		<b>10,014</b>
<b>Grand Total</b>		<b>16,596</b>

1. Security deposits consists of \$31k of Telecom customer bonds, \$24k other customer retentions.

2. Capital Projects 18–19 \$5.566 million is the revised Q1 budget capital expenditure \$8.944 million less \$3.378 million year-to-date actual capital expenditure.

404. Council reconvened on 22 February 2019 to consider the airport project at which point the NIRC resolved, among other things, to conditionally accept Boral's Tender.<sup>552</sup> The meeting was held in closed session owing to the commercial sensitivity of the project. Relevant officers present included Ms Jackson, Mr Taylor and Mr Wilson. Consistent with previous practice, the deliberations of the governing body and the staff present were not recorded, nor were they broadcast on local Island radio. The only accounts of the discussions that took place are to be found in the minutes of the meeting and the recollections of those present.

405. The minutes record that Mr Snell moved, and Mr Buffett seconded, the resolution prepared by Ms Jackson.<sup>553</sup> The resolution was in these terms:<sup>554</sup>

That

1. Council, the Elected Members, supports the Airport Pavement Repair and Reconstruction Design and Construct (D&C) Project;
2. Council approves Boral Resources (QLD) Pty Ltd to be awarded contract SPT171819NIRC as the Single Source supplier to Norfolk

<sup>552</sup> Exhibit 1, 20190220 Ordinary Council Meeting Minutes, NIRC.PUB.001.0192\_0018.

<sup>553</sup> Exhibit 10, Metadata for the briefing paper for the airport pavement repair and resurfacing project, INQ.001.001.0005.

<sup>554</sup> Exhibit 1, 20190220 Ordinary Council Meeting Minutes, NIRC.PUB.001.0192\_0020.

Island Regional Council for the Airport Pavement Repair and Reconstruction D&C Project;

3. Council contributes any shortfall of funding for the project, over and above the funding provided by the Commonwealth of Australia, by way of a loan from the Norfolk Island International Airport Government Business Enterprise.

406. Subsequently, Mr Buffett moved an amendment, seconded by Mr McCoy, in these terms:<sup>555</sup>

That the wording to No 2 be amended to read:

2. Council accepts Boral Resources (QLD) Pty Ltd to be awarded contract SPT171819NIRC as the Single Source supplier to Norfolk Island Regional Council for the Airport Pavement Repair and Reconstruction D&C Project on condition:
  - a) That the option to use local rock is fully explored by Boral;
  - b) That Council seeks Ministerial approval to expedite extractive industries at the existing Cascade Reserve and Youngs Road quarry site;
  - c) If that expedited Ministerial approval cannot be obtained by 31 March 2019 then the recommended tender will proceed;
  - d) That the scope of work be negotiated to minimise any grant-funding shortfall.

407. The final resolution passed was in these terms:<sup>556</sup>

**Figure 16. Resolution awarding Boral the airport project contract as passed by the governing body**

<b>RESOLUTION 2019/29</b>	
Moved:	Cr Lisle Snell
Seconded:	Cr Rod Buffett
That	
1.	Council, the Elected Members, supports the Airport Pavement Repair and Reconstruction Design and Construct (D&C) Project;
2.	Council accepts Boral Resources (QLD) Pty Ltd to be awarded contract SPT171819NIRC as the Single Source supplier to Norfolk Island Regional Council for the Airport Pavement Repair and Reconstruction D&C Project on condition: <ol style="list-style-type: none"><li>a) That the option to use local rock is fully explored by Boral;</li><li>b) That Council seeks Ministerial approval to expedite extractive industries at the existing Cascade Reserve and Youngs Road quarry site;</li><li>c) If that expedited Ministerial approval cannot be obtained by 31 March 2019 then the recommended tender will proceed;</li><li>d) That the scope of work be negotiated to minimise any grant-funding shortfall.</li></ol>
3.	Council contributes any shortfall of funding for the project, over and above the funding provided by the Commonwealth of Australia, by way of a loan from the Norfolk Island International Airport Government Business Enterprise.
<b>CARRIED</b>	

<sup>555</sup> Exhibit 1, 20190220 Ordinary Council Meeting Minutes, NIRC.PUB.001.0192\_0020.

<sup>556</sup> Exhibit 1, 20190220 Ordinary Council Meeting Minutes, NIRC.PUB.001.0192\_0021.

### *The recollection of the governing body*

408. The members of the governing body and the administrative staff of the Council provided varying recollections of the discussions in relation to the airport project at this meeting.
409. Ms Adams' recollection was that she understood that the \$4.2 million estimated for biosecurity in the briefing paper was not included in Boral's price,<sup>557</sup> but that she understood this to mean that the cost would not be borne by the NIRC.<sup>558</sup> This recollection was inconsistent with a subsequent Mayoral Minute dated 28 October 2020 that she was stated to have authored<sup>559</sup> (although Ms Adams disputes that she wrote it, saying instead that it was prepared for her by Mr Roach).<sup>560</sup> That minute estimated the total cost of the project to be \$48 million. When this was put to Ms Adams, she maintained that she was of the view that the Council was not obliged to pay the \$4.2 million for biosecurity.<sup>561</sup>
410. Mr Snell said that the tender was approved on the basis that the option of local rock was explored.<sup>562</sup> Mr Snell agreed that on 19 February 2018, the unrestricted cash available to the NIRC was about \$10 million.<sup>563</sup> Mr Snell's recollection was that the Councillors knew of the \$4.2 million biosecurity cost but did not know that the NIRC would be responsible for paying it.<sup>564</sup> Mr Snell said that Boral should have paid for it.<sup>565</sup> He said that although the briefing paper for that meeting mentions the \$4.2 million, Councillors were not aware that Boral was in consultation with the administrative staff of the Council in respect of this cost.<sup>566</sup> His view was that the Council's potential exposure from the airport project would not exceed \$8 million.<sup>567</sup> On that basis, it can be inferred that he understood the project cost could have been as high as \$51 million.
411. When asked about the NIRC's capacity to meet the potential overruns from the airport project, Mr Snell explained that the Norfolk Island Airport was going to lend money to the Council on its earnings and that the NIRC could access.<sup>568</sup>

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<sup>557</sup> Transcript, 3 June 2021, p 333.4–23.

<sup>558</sup> Transcript, 3 June 2021, p 330.10–12.

<sup>559</sup> Exhibit 1, 20201028 Ordinary Meeting of Council Minutes, NIRC.PUB.001.0286\_0003.

<sup>560</sup> Transcript, 3 June 2021, p 335.12–15.

<sup>561</sup> Transcript, 3 June 2021, p 335.29–39.

<sup>562</sup> Transcript, 3 June 2021, p 272.26–30.

<sup>563</sup> Transcript, 3 June 2021, p 262.35–38.

<sup>564</sup> Transcript, 3 June 2021, p 267.3–6.

<sup>565</sup> Transcript, 3 June 2021, p 267.11–16.

<sup>566</sup> Transcript, 3 June 2021, p 267.21–25.

<sup>567</sup> Transcript, 3 June 2021, p 275.39–47.

<sup>568</sup> Transcript, 3 June 2021, p 273.19.23.



... what was available to us in unrestricted cash back in the budget of 2018/19; the unrestricted cash at that time was, in my documents here - it could have changed a bit, this is a draft document - was \$11,474,000.

412. Mr Snell went on to explain that:<sup>569</sup>

... we thought we had a buffer, a cash buffer and we thought that, all things being equal, we would be able to service a loan to cover any overruns. Now, we were hoping there would not be any overruns.

413. Referencing the minimum amount of cash that should be readily accessible to fund the ongoing business of government, Mr Snell also explained that, when he was the Chief Minister in the former Norfolk Island Legislative Assembly, he was 'very concerned if it dropped below \$3 million'.<sup>570</sup> In light of this, Mr Snell confirmed that he was not concerned about the NIRC's cash position at the time the governing body resolved to award Boral the tender for the airport project because the NIRC had approximately \$10 million in the bank.<sup>571</sup>

414. Mr McCoy's evidence was that he understood the \$4.2 million for biosecurity costs fell outside of the tender and the Commonwealth's funding.<sup>572</sup> He recounted that the anticipated cost of the airport project at the time of the 20 February 2019 meeting was around \$48 million.<sup>573</sup>

415. Mr McCoy also stated that he queried Mr Wilson about how the airport would fund a loan. He recalled that Mr Wilson stated that the NIRC made an adjustment in the Long Term Financial Plan to include an extra \$20 million which could be used to meet the shortfall.<sup>574</sup> He also recalled that senior staff proposed that the NIRC could meet the shortfall with a loan from airport operations, although he did not know how such an arrangement would operate.<sup>575</sup>

416. Mr Buffett recalled that he thought the project would cost approximately \$40 million and said that he did not know the Commonwealth's grant was capped at \$43 million.<sup>576</sup> He later said there was a possibility that the NIRC might have to pay extra money over and above the contract, although he could not recall a specific figure.<sup>577</sup>

417. Mr Porter was not present at the 22 February 2019 meeting.<sup>578</sup> Despite that, he was very interested in the project and read the business paper from Bundaberg, where he was at that

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<sup>569</sup> Transcript, 3 June 2021, p 273.29–33.

<sup>570</sup> Transcript, 3 June 2021, p 274.14–27.

<sup>571</sup> Transcript, 3 June 2021, p 274.32.

<sup>572</sup> Transcript, 2 June 2021, p 192.6–12.

<sup>573</sup> Transcript, 2 June 2021, p 201.34–37.

<sup>574</sup> Transcript, 2 June 2021, p 197.19–45.

<sup>575</sup> Transcript, 2 June 2021, p 198.8–19.

<sup>576</sup> Transcript, 1 June 2021, p 143.35–42.

<sup>577</sup> Transcript, 1 June 2021, p 144.14–36.

<sup>578</sup> Exhibit 1, 20170220 Ordinary Council Meeting Minutes, NIRC.PUB.001.0192\_0002.



time.<sup>579</sup> He said that 'he kept abreast of the development and of the argument, because there was a great passion on the Island about rock'.<sup>580</sup>

418. He recalled being provided with advice from both Mr Wilson and Ms Jackson that the NIRC could meet its share of the funding required and that the NIRC had a mechanism to fund the shortfall of about \$4-5 million.<sup>581</sup> He also recalled being provided with reports that stated a 'loan mechanism could be put in place'.<sup>582</sup> Mr Porter was asked how the Airport Government Business Enterprise could provide a loan. He responded that in the absence of cash on hand, it would secure the services of either government or corporate loan facilities.<sup>583</sup> He also stated that it was his understanding that the biosecurity costs were within Boral's tender price, but it soon became apparent that was not the case.<sup>584</sup>
419. Mr Porter observed that when funding large projects on Norfolk Island, the Commonwealth does not undertake any 'risk assessment as to whether the shortfall can be funded by the local authority', including the implications 'if we don't do the project... [or] if the Council can't afford it'.<sup>585</sup> When asked about whether it was the Council's responsibility to undertake some form of risk analysis on the question of affordability, he said that responsibility rested with the Commonwealth, but went on to add:<sup>586</sup>

[A]t the end of the day we had a process, we had advice from our Council, from our chief financial officer and from the CEO, we could meet our share of the funding, we could activate that airport loan. I know there's lots of technical issues around that, but we're not accountants. We were told by our chief financial officer and by our General Manager that we had a mechanism to fund the shortfall, and a significant shortfall over and above. Like, we were talking initially only probably, depending on the biosecurity arrangements, we were probably only talking about a shortfall of \$4 million or \$5 million.

### *The recollection of Council staff*

420. Ms Jackson, the General Manager at the time, recounted that in relation to the total cost of the project, she knew that there was \$2 million the NIRC was required to pay and that there was risk of an additional \$4.2 million for biosecurity costs that may be required, but that was

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<sup>579</sup> Transcript, 2 June 2021, p 232.19–26.

<sup>580</sup> Transcript, 2 June 2021, p 232.19–26.

<sup>581</sup> Transcript, 2 June 2021, p 230.29–34.

<sup>582</sup> Transcript, 2 June 2021, p 231.32–39.

<sup>583</sup> Transcript, 2 June 2021, pp 231.41–47, 232.1–2.

<sup>584</sup> Transcript, 2 June 2021, p 235.22–27.

<sup>585</sup> Transcript, 2 June 2021, pp 229.23–47, 230.1.

<sup>586</sup> Transcript, 2 June 2021, pp 230.29–47, 231.1–2.

not finalised at the time.<sup>587</sup> Ms Jackson confirmed that she was aware of this risk in February 2019.<sup>588</sup>

421. According to Ms Jackson, the wording concerning a loan in paragraph 3 of the final resolution was intended to describe the NIRC taking

... a loan, hopefully from the Commonwealth, and if the Commonwealth wouldn't lend the money, go to a commercial bank, but it would be funded by the airport as an entity; that's what that is saying.<sup>589</sup>

422. Ms Jackson said there had been no approach to the Commonwealth as at February 2019 about such a loan.<sup>590</sup> She went on to say that although the Council had not previously taken out a loan, she had experience of 'commercial loans in other councils'.<sup>591</sup> She said that it was, 'reasonable ... and financially responsible to take out a loan for such a thing rather than use cash reserves'.<sup>592</sup>

423. Mr Wilson's recollection was that he understood the total cost of the project was going to be \$45 million.<sup>593</sup> He stated that of this amount, \$43 million would come from the Commonwealth's grant, and that the Council would borrow the shortfall of \$2 million from the Commonwealth.<sup>594</sup>

424. Mr Wilson said that he had no recollection of seeing the tenders for the project and that the \$2 million figure was based on the files he was given from other Council officers.<sup>595</sup> An email from Mr Taylor to Mr Wilson on 27 April 2018 indicates that Mr Taylor asked Mr Wilson to add \$2,000,000 into the capital budget for 2018/19 for the 'airport runway reseal'.<sup>596</sup> On 31 January 2019, a further email from Mr Taylor to Mr Wilson stated that '[n]o reductions have been made in the \$2,000,000 on the reseal ... it will be spent next year'.<sup>597</sup> On that basis, a line item for \$2 million was included in the capital budget for 2019/2020 under the funding source 'loan'.<sup>598</sup> Notwithstanding its inclusion in the budget, there are no documents that explain where this figure is derived from.<sup>599</sup>

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<sup>587</sup> Transcript, 11 June 2021, p 625.25–42.

<sup>588</sup> Transcript, 11 June 2021, pp 632.43–47, 633.1–3.

<sup>589</sup> Transcript, 11 June 2021, p 629.22–26.

<sup>590</sup> Transcript, 11 June 2021, p 635.7.

<sup>591</sup> Transcript, 11 June 2021, p 638.32.

<sup>592</sup> Transcript, 11 June 2021, p 630.43.

<sup>593</sup> Transcript, 10 June 2021, p 537.35–41.

<sup>594</sup> Transcript, 10 June 2021, pp 537.43–538.1, 571.29–34.

<sup>595</sup> Transcript, 11 June 2021, p 564.22–42.

<sup>596</sup> Exhibit 11, 20180427 Email from Bruce Taylor to Phillip Wilson, NIRC.025.002.0002.

<sup>597</sup> Exhibit 11, 20190131 Email from Bruce Taylor to Phillip Wilson, NIRC.025.002.0003.

<sup>598</sup> Exhibit 1, Operational Plan 2019–2020, NIRC.PUB.001.0217\_0062.

<sup>599</sup> Exhibit 11, 20210628 Norfolk Island Regional Council response to summons to produce NIRC/25, schedule item 7, NIRC.025.002.0001.

425. Mr Taylor recalled that the \$4.2 million for biosecurity costs was exclusive from Boral's tender price and that any such risk would be borne by the Council.<sup>600</sup> He did not recall any discussion at the 22 February 2019 meeting in relation to the risk of proceeding with the airport project to the Council's cash position.<sup>601</sup> When asked to explain what was meant by the loan contained in paragraph 3 in the final resolution, Mr Taylor could not explain the source of the wording and did not believe that he had drafted it. He stated that the Airport did not have any 'separate bank account with a pile of cash that it was going to lend to Council.'<sup>602</sup> His recollection was that the indication from Mr Wilson was to the effect that the project was 'able to be financed'.<sup>603</sup>
426. Further insight as to the meaning of paragraph 3 of the final resolution, which corroborates Ms Jackson's evidence, is to be found in a response to a query provided to the Commonwealth by Mr Innes-Walker on 1 April 2019. Mr Innes-Walker said:<sup>604</sup>
- Q1. Provide a brief description on the ability of the Norfolk Island International airport Government Business Enterprise to be able to raise loans for any shortfall in project funds?
- [A:] The Norfolk Island Regional Council (NIRC) is the Legal Entity that, if required, would be raising external loans for any shortfall in project funds. It is more likely, but not guaranteed, that the NIRC will be able to provide these funds from existing cash at bank. In any event, external or internal capital and interest costs would then be on charged to the Regional Council International Airport Government Business Enterprise (GBE). Currently the GBE has the financial capacity to cover P&I repayments based on predicted surplus trends but any future unfunded commitments will be underwritten by the NIRC.
427. The end result was that when the governing body and Council staff sat down to consider the project on 20 and 22 February 2019, although they understood the pressing need for the project to go ahead from an air safety and compliance perspective, they must have understood that there was a very real risk that the costs of the shortfall could have been as much as \$6 or \$7 million and that if the proposed loan from or through the airport, or any other form of finance, could not be secured then the Council was going to have to fund the shortfall from cash reserves. Further, this information was presented to the governing body two days after they 'noted' the investment report as at 31 January 2019, which indicated the Council only had \$10 million in unrestricted cash to fund its day-to-day operations.<sup>605</sup>

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<sup>600</sup> Transcript, 11 June 2021, p 578.14–40.

<sup>601</sup> Transcript, 31 May 2021, p 97.16–25.

<sup>602</sup> Transcript, 31 May 2021, p 96.8–44.

<sup>603</sup> Transcript, 31 May 2021, p 98.8–18.

<sup>604</sup> Exhibit 4, 20190401–02 Email exchange between Department of Infrastructure and Alistair Innes Walker, NIRC.007.001.0098\_0002.

<sup>605</sup> Exhibit 1, 20190220 Agenda Ordinary Meeting, NIRC.PUB.001.0193\_0185.

428. Ms Jackson submits that the evidence demonstrates that Council 'would be able to get a loan from the Commonwealth, and failing this, from a commercial bank.'<sup>606</sup> In the case of a loan from the Commonwealth, her submission states that this was on the basis that 'the Commonwealth had written off the Council's previous loan it was assumed or inferred that the Council could probably borrow from them again.'<sup>607</sup>
429. That submission must make allowance for the fact that the conditions of the grant made it clear that the extent of the Commonwealth contribution was \$43 million<sup>608</sup> and that no approach had been made to the Commonwealth as a means of funding any shortfall. It was not self-evident that, having provided grant funding of \$43 million, the Commonwealth would have therefore approved a loan for the balance.
430. Ms Jackson also submits that the prospects of a loan would have been enhanced by reason of the second QBRS for 2018/19<sup>609</sup> which was before Council at the 20 February 2019 meeting and which provided an optimistic forecast with a year-end surplus of \$35,000. Mr Wilson predicted that the financial position as at 30 June 2019 was 'likely to be satisfactory'.<sup>610</sup> There were, however, matters for concern in the accounts at that time. In this respect, it is to be observed that the business units remained problematic and that although the airport was showing a surplus of \$182,269, waste, sewage and electricity recorded deficits of \$353,819, \$93,576 and \$302,121 respectively, with Telecom showing a surplus of \$230,624.<sup>611</sup>

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<sup>606</sup> 20210915 Submissions of Lotta Jackson in response to Counsel Assisting submissions, LJAC.SUB.001.0001\_0004.

<sup>607</sup> 20210915 Submissions of Lotta Jackson in response to Counsel Assisting submissions, LJAC.SUB.001.0001\_0004.

<sup>608</sup> Exhibit 4, 20190220 Attachment 5 to Briefing report presented to Council in relation to the tender responses for the Project, NIRC.020.001.0005\_0004, \_0005.

<sup>609</sup> Exhibit 1, 20190220 Agenda Ordinary Meeting, NIRC.PUB.001.0193\_0193.

<sup>610</sup> Exhibit 1, 20190220 Agenda Ordinary Meeting, NIRC.PUB.001.0193\_0192.

<sup>611</sup> Exhibit 1, 20190220 Agenda Ordinary Meeting, NIRC.PUB.001.0193\_0206.

**Figure 17. Extract from second QBRs for NIRC 2018/19**

FY 18/19				
Q2 1/7/2018 to 31/12/2018				
BU Business Unit				
Summary				
Total Operating Performance		FY 18/19		
Account	Account Description	Q2 Actual	Revised Annual Budget	Variance
3400	Waste Services	(353,819)	(251,614)	(102,205)
2190/1	Airport	182,269	276,410	(94,141)
3300	Sewer	(93,576)	55,250	(148,826)
2440	Telecom	230,624	(262,940)	493,564
2430	Electricity	(302,121)	(97,180)	(204,941)

431. Whilst there is no reason to doubt that Ms Jackson may have believed that a loan was possible or even assumed that one would be achieved, nothing was done to bring it about, either whilst she was the General Manager, whilst Mr Taylor was the interim General Manager or when Mr Roach took up that role. Further, although Ms Jackson may have genuinely believed that such a loan was achievable, since no loan was applied for, the actual likelihood of securing a loan was purely speculative.
432. Further, in her evidence Ms Jackson's explained the budgeting process in these terms:<sup>612</sup>
- ...we budgeted what we knew; what we didn't know we would have to deal with when we knew, and we would have to deal with that in line with whatever resolution we had or we would have to go back to council and ask for another resolution. At this point in time any overruns would have to be a loan, so we had that resolution, so that was an avenue that we had as Plan B, so to speak.
433. The problem with that explanation is that the loan was not expressed to be plan B, but plan A; given that the resolution provided that Council would fund any shortfall by such a loan.
434. Ms Jackson also said that when the time came to secure a loan, she would have fulfilled the resolution of Council.<sup>613</sup> In this respect the submission made on her behalf goes on to state that she was no longer at the Council when the time came to secure the loan. On this argument, the time for securing the loan would only arise once it became clear what the cost was. I do not accept that argument.
435. In my opinion, the Council's Risk Management Procedures and the Capital Expenditure Guidelines required Council to identify the risk of Council not being able to secure a loan and the consequences if that were not the case. Where Council was being asked to fund the shortfall by taking out a loan, particularly where no commercial loan had been taken out

<sup>612</sup> Transcript, 11 June 2021, pp 627.47–628.7.

<sup>613</sup> Transcript, 11 June 2021, p 629.9–10.

before and where the Commonwealth was already contributing \$43 million to the project, the Council needed to understand the risk to its finances and ultimate cash position, if no such loan was in fact secured.

436. Furthermore, the governing body itself needed to turn its mind to and engage with this issue.
437. Further, once Council resolved to proceed with funding the shortfall by way of a loan, steps were required to implement that resolution, even if only to confirm that a loan could be achieved. In my opinion, and whilst I have no doubt that Ms Jackson intended to implement that resolution, it would not appear that anything had been done to advance the matter. This was critical because subsequent decisions, and in particular the roads project, were predicated on the airport project being funded by a loan and not directly drawing upon Council's cash reserves.

## **Subsequent events**

### ***The grant agreement and the waiver of the earlier airport loan***

438. On 1 April 2019, the NIRC lodged an application for the Commonwealth grant of \$43 million. The application included a project budget describing eligible expenditure of \$44,918,007 but without referring to the likely risk that Option 2 would lead to a further significant increase in the cost of the project.<sup>614</sup> On 3 April 2019, the grant application was approved,<sup>615</sup> and on 4 April 2019, Ms Jackson signed the grant agreement.<sup>616</sup> A public announcement was made on 5 April 2019.<sup>617</sup>
439. On 3 April 2019, the Commonwealth notified the Council that the outstanding loan balance of \$10.9 million referable to the earlier resurfacing of the airport runway had been waived. The letter indicated that this action would 'support the Norfolk Island Regional Council in its ability to invest future loan repayments into other Council priorities.'<sup>618</sup>

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<sup>614</sup> Exhibit 11, 20190401 Commonwealth grant application number RNIA000001, NIRC.003.006.0002.

<sup>615</sup> Exhibit 11, Application summary for Norfolk Island Regional Council Resurface of Norfolk Island Airport project, NIRC.010.002.0007.

<sup>616</sup> Exhibit 4, 20190404 Grant agreement between the Commonwealth and the Council, NIRC.003.004.0002.

<sup>617</sup> Exhibit 11, 20190405 NIRC Media release re confirmation of grant funding for the Norfolk Island airport resurfacing project, NIRC.003.008.0005\_0015.

<sup>618</sup> Exhibit 11, 20190403 Letter from Department of Infrastructure to Lotta Jackson, NIRC.007.003.0009.

### *Testing of rock on Norfolk Island and execution of the contract with Boral*

440. Boral was subsequently engaged to investigate the viability of procuring rock from a potential reserve of aggregate located at the former Cascade Quarry. On 29 March 2019, representatives from Boral attended a meeting with the governing body in relation to that investigation.<sup>619</sup> On 8 April 2019, Boral wrote to the Council to clarify certain information provided by its representatives on 29 March 2019 in respect of the volume of aggregate attainable from the reserve and the necessary timeframe to extract rock from the reserve. The letter stated:<sup>620</sup>

**Figure 18. Extract of email dated 8 April 2019 to the NIRC**

#### **Conclusions**

- There is insufficient time, in Boral's opinion, to receive approval for the DA and EIS by NIRC for the quarry (3 months) and achieve key target dates (05/07/2019)
- Typical timeframes for a DA and EIS for a new quarry would typically be 12-24 months without objections or multiple years with sensitive receptors or objectors based on Boral's experience
- The capacity for the local crushers to manufacture the specified grading of materials as per the new specification is unknown and may not be possible
- The use of local rock will require the pre-blending of 14,000 tonnes of aggregate (local and imported 10 & 14mm)
- Should the local rock option be used, NIRC will have to provide a storage area for the 12,000 tonnes of by-product
- The use of local aggregate would be subject to approval by NIRC's technical consultant
- NIRC will incur additional cost, either directly or as a variation for:
  - The use of local aggregates
  - Boral's pre-blending cost
  - The crushing and associated transport cost of 12,000 tonne of by-product

441. On 9 April 2019, Ms Jackson wrote to Boral to give notice of the Council's acceptance of the tender for 'Option 2 (Imported Crushed Aggregate)'.<sup>621</sup>

442. On 5 June 2019, Boral wrote to Mr Innes-Walker to provide its final report on the potential reserve of aggregate located at the former Cascade Quarry and alternative sites.<sup>622</sup> This report indicated that the material failed 'to meet the standard for manufacturing asphalt in this airport application'.<sup>623</sup> From this point in time, the previously remote prospect that rock could be sourced from Island sources was clearly out of the question, meaning the project could only go ahead with imported rock and its attendant biosecurity costs.

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<sup>619</sup> Exhibit 11, 20190408 Letter and covering email from Boral Asphalt to Lotta Jackson, NIRC.025.001.0004.

<sup>620</sup> Exhibit 11, 20190408 Letter and covering email from Boral Asphalt to Lotta Jackson, NIRC.025.001.0004.

<sup>621</sup> Exhibit 11, 20190409 Letter from Lotta Jackson to Andrew Boyd, NIRC.003.002.0005\_0082.

<sup>622</sup> Exhibit 4, 20190605 Letter from Chris Jeffery to Alistair Innes-Walker (together with enclosures), RADA.PSUB.005.0030\_0005.

<sup>623</sup> Exhibit 4, 20190605 Letter from Chris Jeffery to Alistair Innes-Walker (together with enclosures), RADA.PSUB.005.0030\_0005.



443. Despite the significance of this issue to the overall cost of the project, particularly given the projected cost for biosecurity, the record does not suggest that the matter was brought back before the Council prior to the execution of the main construction contract with Boral on 18 October 2019.<sup>624</sup> It should also be observed that the contract itself preserved the exclusion referable to biosecurity costs referred to in the original tender, valued at \$4.2 million.<sup>625</sup> The contract was signed in October 2019.<sup>626</sup>

*Progress reporting to the Commonwealth and the flagging of biosecurity costs*

444. On 8 November 2019, Mr Innes-Walker wrote to the Commonwealth in relation to the cost of the project. He stated:<sup>627</sup>

I have included \$3M for additional Biosecurity costs incurred by Boral over and above the allocation for Biosecurity costs in the tender price (Note Boral had included an estimate of \$4.2M for additional biosecurity costs as a tender qualification). These additional costs have arisen because of stricter Biosecurity requirements on importing rock onto Norfolk Island being imposed by the relevant Government department. I believe these can legitimately be considered as eligible costs.

445. Attached to this correspondence was a document which projected the total project expenditure to remain at \$44,918,007. Critically, this document set out six funding milestones for the project including an NIRC contribution of \$1,918,007 being made towards the conclusion of the project, i.e. for the last two milestones and the final report, in the last quarter of the 2020 FY and the first quarter of the 2021 FY.<sup>628</sup>

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<sup>624</sup> Exhibit 4, 20200123 Progress Report for the Project for the period ending 31 December 2019 (Aileron), NIRC.012.001.0026\_0004.

<sup>625</sup> Exhibit 4, 20191101 Norfolk Island airport construction contract between Boral and the Council, NIRC.003.002.0005\_0557.

<sup>626</sup> Exhibit 4, 20191101 Norfolk Island airport construction contract between Boral and the Council, NIRC.003.002.0005\_0421.

<sup>627</sup> Exhibit 4, 20191108 Email from Alistair Innes-Walker to Tim Cotter, NIRC.007.001.0073.

<sup>628</sup> Exhibit 4, 20191108 Attachment to email from Alistair Innes-Walker to Tim Cotter, NIRC.007.001.0074\_0002.



**Figure 19. Airport project projected total project expenditure and milestones**

**Airport Pavement Repair & Reconstruction Design & Construct (D&C) Project**

Awarded Tenderer: Boral Resources (QLD) Pty Ltd

Tender Price Summary:

Separable Portion	Description	Value
1	Logistics & Preliminaries	18,202,628
2	Design	561,467
3	AGL and Pavement works	23,083,890
4	Grooving	710,981
5	Demobilisation & Completion	2,339,041
Total		\$ 44,898,007

Milestone \$ :

Milestone	Period	\$	Grant Funding	NIRC Funding (note 1)	Check
(note 2) 1	31/4/19 - 30/6/19	2,500,000	2,500,000		2,500,000
2	1/7/19 - 30/9/19	7,500,000	7,500,000		7,500,000
3	1/10/19 - 31/12/19	8,500,000	8,500,000		8,500,000
4	1/1/20 - 31/3/20	7,500,000	7,500,000		7,500,000
(note 3) 5	1/4/20 - 30/6/20	16,000,000	15,700,000	300,000	16,000,000
(note 4) 6	1/7/20 - 30/9/20	2,918,007	870,000	1,598,007	2,468,007
(note 5)	Final Report		430,000	20,000	450,000
Total		\$ 44,918,007	\$ 43,000,000	\$ 1,918,007	\$ 44,918,007

446. This framework did not include the biosecurity cost. That being said, it provided the basis for some form of forward cash flow analysis to be undertaken by the Council and the likely effect of these payments on the cash position of the Council. There is no evidence to suggest that any such analysis was ever undertaken. Further, once it became clear that the Commonwealth was not going to fund the biosecurity costs for the project, it would have been prudent to revise and update any such analysis, so as to identify when calls were likely to be made on Council for the balance.
447. In my opinion, the governing body needed to know what the cash position was likely to be after each payment. Once the biosecurity cost was identified, that needed to be factored into the analysis as well.
448. On 19 November 2019, the NIRC provided a quarterly progress report to the Commonwealth which forecast a rise in the total project expenditure to \$47,619,450 which was largely attributable to anticipated biosecurity costs.<sup>629</sup>
449. On 20 February 2020, in a subsequent progress report, Mr Innes-Walker said that project expenditure was, 'broadly in line with the activity budget in the grant agreement?' but forecast a further increase in total project expenditure; this time to \$48,568,150 due to biosecurity costs and inclement weather.<sup>630</sup>
450. On 26 March 2020, Mr Innes-Walker wrote to the Department of Industry in respect of the impact of the State of Emergency on Norfolk Island in response to the COVID-19

<sup>629</sup> Exhibit 4, 20191119 Progress report from the Council to the Commonwealth, NIRC.003.004.0002\_0071.

<sup>630</sup> Exhibit 4, 20200220 Progress report from the Council to the Commonwealth, NIRC.003.004.0002\_0064.

pandemic.<sup>631</sup> In that email, he estimated the biosecurity costs for the project to be around \$4 to 4.5 million.<sup>632</sup>

451. On 14 April 2020, Boral wrote to Mr Innes-Walker setting out the background to the biosecurity requirements associated with importing sand and aggregate under the contract and confirming that the additional measures were necessary to meet requirements imposed by DAWR.<sup>633</sup> The letter stated:<sup>634</sup>

It is envisaged that the following sequence of events will clearly show the additional measures and controls that Boral were required to meet for the import requirements and assist the NIRC in seeking addition Commonwealth funding to cover the impacts of the Department of Agriculture and Water (DAWR) requirements.

452. The letter described the various processes and controls necessary and attached a summary of the time and costs impacts. The letter closed with the following statement:<sup>635</sup>

It is Boral's desire that NIRC are not adversely impacted by these additional costs and commit to providing any assistance required to support NIRC's claim for additional Commonwealth funding to cover these unforeseen variation costs.

453. Mr Innes-Walker's evidence was that the purpose of the letter was to secure additional funding from the Commonwealth.<sup>636</sup> However, no further formal request for funding was in fact sought from the Commonwealth or elsewhere.
454. Later, in April 2020, Boral wrote to Mr Innes-Walker outlining its claim for the delay costs associated with COVID-19 isolation requirements, which were in the sum of \$1,003,558.<sup>637</sup>
455. On 28 April 2020, in a progress report to the Commonwealth, Mr Innes-Walker stated that the total project expenditure was now \$48,258,360.<sup>638</sup>

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<sup>631</sup> Exhibit 4, 20200326 Email chain between Alistair Innes-Walker and Tim Cotter re biosecurity and COVID-19 costs, NIRC.007.008.0003\_0001–\_0002.

<sup>632</sup> Exhibit 4, 20200326 Email chain between Alistair Innes-Walker and Tim Cotter re biosecurity and COVID-19 costs, NIRC.007.008.0003\_0002.

<sup>633</sup> Exhibit 4, 20200414 Letter from Chris Jeffery to Alistair Innes-Walker re supporting information for biosecurity variation, NIRC.012.001.0039.

<sup>634</sup> Exhibit 4, 20200414 Letter from Chris Jeffery to Alistair Innes-Walker re supporting information for biosecurity variation, NIRC.012.001.0039.

<sup>635</sup> Exhibit 4, 20200414 Letter from Chris Jeffery to Alistair Innes-Walker re supporting information for biosecurity variation, NIRC.012.001.0039\_0003.

<sup>636</sup> Transcript, 31 May 2021, p 103.19–44.

<sup>637</sup> Exhibit 4, 20200428 Letter from Chris Jeffery to Alistair Innes-Walker re revised claim for delay costs (COVID-19), NIRC.011.003.0047.

<sup>638</sup> Exhibit 4, 20200514 Progress report from the Council to the Commonwealth, NIRC.003.004.0002\_0056.

456. The works themselves were completed in the second half of 2020<sup>639</sup> and the last payment under the contract was made on 26 February 2021.<sup>640</sup>
457. At this point it is necessary to pause to consider the events as they occurred referable to the other major funding decision made during this period: the roads project.

## **The Boral roads contract**

### **Introduction**

458. On 17 July 2019, roughly 4 months after agreeing to fund the airport project, the governing body unanimously resolved to fund the resurface of 9.037 kilometres of the Island's roads at a cost of \$5.065 million, to be paid using the Council's existing cash reserves.<sup>641</sup> As will be seen, this decision represented a significant change to the Council's recently adopted roads budget.<sup>642</sup>
459. Committing over \$5 million from Council's existing cash reserves in this way exposed its already limited cash reserves to considerable risk without the benefit of the sort of risk analysis demanded by the Council's risk management policy.
460. As will be seen, the rationale for this decision, as explained by Council officers and the governing body, was that they entered into the roads contract on the understanding that any shortfall in relation to the airport project would be financed by a loan.

### **Context**

461. Any analysis of the circumstances surrounding the roads project must start with an understanding of the following five key matters.
462. First, as discussed in Chapter 6, the condition of the roads on Norfolk Island at the time they were transferred to the NIRC was almost universally poor. No visitor to the Island or resident could deny the uniformly low quality of the road system, nor could they deny that significant works were required to improve it. In June 2019, the Council adopted the 2019 Roads Asset Management Plan.<sup>643</sup> This plan identified a 10-year capital investment plan for roadworks

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<sup>639</sup> Exhibit 4, 20200821 Letter from Chris Jeffery to Kieren Moss re application for practical completion of the Project, NIRC.007.001.0070.

<sup>640</sup> Exhibit 11, 20210226 Remittance advice from NIRC to Boral, NIRC.011.002.0002\_0139.

<sup>641</sup> Exhibit 1, 20190717 Ordinary Council Meeting Minutes, NIRC.PUB.001.0227\_0022.

<sup>642</sup> Exhibit 9, Report re: additional road maintenance – asphalt works, NIRC.023.001.0002.

<sup>643</sup> Exhibit 1, 20190626 Ordinary Council Meeting Minutes, NIRC.PUB.001.0216\_0018; Exhibit 1, Roads Asset Management Plan 2020–2029, NIRC.PUB.001.0215.

on the Island which projected total expenditure of approximately \$9.8 million<sup>644</sup> over that 10-year period.

463. Second, one of the barriers to carrying out roadworks on the Island has been the lack of equipment and infrastructure needed to carry out necessary upgrades.<sup>645</sup> Boral's proposal to resurface a portion of the roads, whilst plant and equipment associated with the airport project were on the Island, represented an opportunity that was not likely to arise again for some time. In short, there was a need for the works and an ability for that need to be partially met.
464. Third, the proposal extended to only 9.037 of the 79 kilometres of roads on the Island;<sup>646</sup> meaning that a large proportion of the roads remain in a condition that would be totally unacceptable in virtually all mainland contexts.
465. Fourth, this decision was made just over 4 months after the Council decided to proceed with the airport project. As has been seen at paragraph 389 above, by 17 July 2019 there was no room to doubt that resurfacing the airport demanded the importation of rock from the mainland due to the unsuitability of the on-Island rock supply.<sup>647</sup> It therefore followed that the Council and its governing body knew, or at least ought to have known, that the significant biosecurity costs previously discussed were going to have to be met by the Council in respect of the airport project.
466. Fifth, like the airport project, the Audit Committee was not consulted in relation to the decision to proceed with this project.<sup>648</sup>

#### **Background: early interest from Boral in facilitating a 'road maintenance program'**

467. As early as 17 November 2018, Boral had flagged that it was 'open' to negotiate with the NIRC in respect of what it referred to as a 'road maintenance program'.<sup>649</sup> Thereafter, on 14 May 2019, having won the airport project tender, Boral wrote to the Council proposing a significant opportunity for the NIRC and the community to improve the local roads whilst Boral's equipment was on the Island.<sup>650</sup> Mr Innes-Walker explained that there was going to

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<sup>644</sup> Exhibit 1, 20190626 Ordinary Council Meeting Minutes, NIRC.PUB.001.0216\_0018; Exhibit 1, Roads Asset Management Plan 2020–2029, NIRC.PUB.001.0215\_0026–\_0027.

<sup>645</sup> Transcript, 31 May 2021, p 87.24–26.

<sup>646</sup> Exhibit 11, 20190702 Quote from Boral re Road rehabilitation works on Norfolk Island, NIRC.012.002.0127\_0017.

<sup>647</sup> Exhibit 4, 20190605 Letter from Chris Jeffery to Alistair Innes–Walker (together with enclosures), RADA.PSUB.005.0030\_0005.

<sup>648</sup> Transcript, 9 June 2021, pp 443.34–47, 456.14–34.

<sup>649</sup> Exhibit 4, 20181117 Boral Tender Response for airport resurfacing project, NIRC.011.002.0004\_0002.

<sup>650</sup> Exhibit 9, Letter from Boral Asphalt to the Council dated 14 May 2019, NIRC.007.001.0192.

be a period of time after the relevant Boral machinery had finished asphaltting and grooving the runway, but before the equipment was transported back to the mainland, that the equipment would otherwise be idle.<sup>651</sup>

468. Meetings were held between Boral and Council staff on 19 and 21 June 2019,<sup>652</sup> which led to the preparation of a formal quotation<sup>653</sup> from Boral on 2 July 2019 priced at \$5,571,907 under cover of a letter of that date.<sup>654</sup>

#### **17 July 2019 briefing paper**

469. In advance of the ordinary meeting scheduled for 17 July 2019, the governing body were presented with a business paper.<sup>655</sup> Included in this business paper was an investment report on the Council's finances as at 30 June 2019, prepared by Mr Wilson, which was 'noted' by the governing body at the 17 July 2019 meeting.<sup>656</sup> Figure 20 is an extract from this investment report, which stated that the Council's cash position as at 30 June 2019 included \$9.36 million in restricted and \$8.46 million in unrestricted funds.<sup>657</sup>

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<sup>651</sup> Transcript, 31 May 2021, p 106.3–11.

<sup>652</sup> Exhibit 11, 20190619 Minutes of meeting between Boral and NIRC, NIRC.012.002.0127\_0014; Exhibit 11, 20190621 Minutes of meeting between Boral and NIRC, NIRC.012.002.0127\_0011.

<sup>653</sup> Exhibit 11, 20190702 Quote from Boral re Road rehabilitation works on Norfolk Island, NIRC.012.002.0127\_0018.

<sup>654</sup> Exhibit 11, 20190702 Letter from Chris Jeffery to Alistair Innes–Walker, NIRC.012.002.0127\_0009.

<sup>655</sup> Exhibit 1, 20190717 Agenda Ordinary Meeting, NIRC.PUB.001.0228.

<sup>656</sup> Exhibit 1, 20190717 Agenda Ordinary Meeting, NIRC.PUB.001.0228\_0131; Exhibit 1, 20190717 Ordinary Council Meeting Minutes, NIRC.PUB.001.0227\_0013.

<sup>657</sup> Exhibit 1, 20190717 Agenda Ordinary Meeting, NIRC.PUB.001.0228\_0133.

**Figure 20. Extract of investment report, showing cash broken down into restricted and unrestricted amounts, July 2019**

<u>Restricted Funds</u>	<u>Description</u>	<u>Value (\$000's)</u>
<u>Externally Restricted</u>		
	Security Deposits	54
	Iven 'Toon' Buffet Enviro Fund	100
	Legal Aid	105
	Workers Comp	45
<b>Total</b>		<b>304</b>
<u>Internally Restricted</u>		
	Capital Projects 18/19	5,662
	Airport Runway Resurface Grant	2,500
	Employee Leave Reserves	450
	Curator of Deceased Estates	170
	Environment Study Grant	275
<b>Total</b>		<b>9,057</b>
<u>Restricted</u>		<b>9,361</b>
<u>Unrestricted</u>		<b>8,456</b>
<b>Grand Total</b>		<b>17,817</b>

1. Security deposits consists of \$29K of Telecom customer bonds, \$25K other customer retentions.

2. Capital Projects 2018–2019 \$5.662 million is the revised Q3 budget capital expenditure of \$10.375 million less \$4.713 million year-to-date actual capital expenditure.

470. The briefing paper also included a report prepared by Mr Taylor, titled 'Additional road maintenance - Asphalt works' which made the following case for the proposal.<sup>658</sup>

471. First, it was put that Council's 2019 Road Asset Management Plan<sup>659</sup> made provision for:<sup>660</sup>

... operating expenditure of \$2.0 million per annum over the next ten years, in the knowledge that only \$1.0 million can be achieved/expended due to the limitations of equipment currently available on island. Expenditure of the equivalent of \$2.0 million per annum can be achieved through one-off projects such as the attached Boral proposal, purchase of new equipment or a combination of both.

472. Second, it was put that cash flow as at 1 July 2019 was higher than budgeted, at \$15.3 million as opposed to \$9.165 million.<sup>661</sup> This figure is at odds with the extract of the July 2019 investment report at Figure 20 and would seem to be derived, at least in part, from the proposition that Council had failed to spend \$5,662,000 on capital projects in 2018/19 and that therefore these funds should be regarded as available for use.<sup>662</sup> At the same time,

<sup>658</sup> Exhibit 9, Report re: additional road maintenance – asphalt works, NIRC.023.001.0002.

<sup>659</sup> Exhibit 1, Roads Asset Management Plan 2020–2029, NIRC.PUB.001.0215\_0030.

<sup>660</sup> Exhibit 9, Report re: additional road maintenance – asphalt works, NIRC.023.001.0002.

<sup>661</sup> Exhibit 9, Report re: additional road maintenance – asphalt works, NIRC.023.001.0002\_0003.

<sup>662</sup> Exhibit 1, 20190717 Agenda Ordinary Meeting, NIRC.PUB.001.0228\_0133.

however, the investment report classified those funds as being internally restricted and were therefore not included in the unrestricted funds for 1 July 2019 (which was \$8,456,000).<sup>663</sup>

473. Third, it was put that given that the funding for the project was spread over two years, it was 'achievable' by advancing road expenditure over that period. The note continued:<sup>664</sup>

This would be within acceptable parameters of the Long Term Financial Plan that projects total road expenditure over the 10-year period is \$20.933 million.

474. It should however be observed that the idea of advancing future funds did not and could not add to the cash held at the relevant time.

475. Fourth, it was put that the Council had underspent as against the overall roads capital budget by \$1.9 million in each of the previous three years.<sup>665</sup> Although true, as noted later in this chapter, the underspend was largely attributable to a diversion of those funds to cover deficits in the operational budget and was not readily available for the Council to use.

476. Nevertheless, on these bases the paper asserted that cash was 'available to commit to this project and funds budgeted in future years could be brought forward'.<sup>666</sup>

477. The resolution proposed by NIRC staff was in these terms:

**Figure 21. Proposal to the governing body in relation to the Boral roads project**

<b>RECOMMENDATION</b>	
That Council approve the expenditure of a total of \$5.065 million in the 2019/20 and 2020/21 Budget years for Boral to reseal 9.037 kilometres of roads using their asphalt plant whilst it is on island for the runway reseal project.	
Roads to be resealed are:	
Airport carpark	Carpark
Taylor's Road	Max's to Chinese Restaurant
The Village	The Village
Taylor's Road	WMC to Leagues Club
Douglas Drive	sections Ferny Lane to St Barnabas Chapel
Ferny Lane	sections Douglas Drive to Longridge Road
New Farm Road	Ferny Lane to Captain Quintal Drive
Anson Bay Road	St Barnabas Chapel to Pistol Club

<sup>663</sup> Exhibit 1, 20190717 Agenda Ordinary Meeting, NIRC.PUB.001.0228\_0133.

<sup>664</sup> Exhibit 9, Report re: additional road maintenance – asphalt works, NIRC.023.001.0002\_0003.

<sup>665</sup> Transcript, 11 June 2021, p 615.18–36; Exhibit 9, Report re: additional road maintenance – asphalt works, NIRC.023.001.0002\_0003.

<sup>666</sup> Exhibit 9, Report re: additional road maintenance – asphalt works, NIRC.023.001.0002\_0003.



## The 17 July 2019 meeting

478. At the 17 July 2019 ordinary meeting, the governing body unanimously resolved to approve the expenditure for the roads project. The resolution was passed in these terms:<sup>667</sup>

**Figure 22. Resolution approving the Boral roads project as passed by the governing body**

<b>RESOLUTION 2019/141</b>	
Moved: Cr David Porter	
Seconded: Cr Rod Buffett	
1. Under section 55(3)(i) of the <i>Local Government Act 1993 (NSW)(NI)</i> Council approve the expenditure of a maximum of \$5.065 million in the 2019/20 and 2020/21 Budget years from existing cash reserves from the Council's General Fund for Boral to reseal 9.037 kilometres of roads using their asphalt plant whilst it is on island for the runway reseal project.	
2. The asphalt mix will be achieved using the scalpings from the Runway Reseal Project.	
3. Roads to be resealed are:	
Airport carpark	Carpark
Taylor's Road	Max's to Chinese Restaurant
The Village	The Village
Taylor's Road	WMC to Leagues Club
Douglas Drive	sections Ferry Lane to St Barnabas Chapel
Ferry Lane	sections Douglas Drive to Longridge Road
New Farm Road	Ferry Lane to Captain Quintal Drive
Anson Bay Road	St Barnabas Chapel to Pistol Club
<b>UNANIMOUS</b>	
<b>CARRIED</b>	

479. The final resolution included a reference to s 55 of the applied LG Act, a requirement that 'scalpings'<sup>668</sup> from the runway project were to be used, and that the expenditure was to come from 'existing cash reserves'.

480. I do not make any adverse finding in respect of the decision not to take the project to tender as s 55(1) of the applied LG Act would have ordinarily required, in light of the exception afforded by ss 55(3)(i) given the remoteness of the Island and the fact that the relevant equipment was only going to be on the Island for the duration of the airport project. That being said, those reasons ought to have been stated in the resolution and weren't.

481. The recollections of the governing body and Council staff are important to understanding the underlying rationale behind approving this expenditure, particularly when it involved a significant call on Council's cash reserves.

<sup>667</sup> Exhibit 1, 20190717 Ordinary Council Meeting Minutes, NIRC.PUB.001.0227\_0022.

<sup>668</sup> Note: scalpings are the offcuts created by the removal of the old runway surface; Transcript, 2 June 2021, p 203.16–26.



## The understanding of the governing body

482. Mr Buffett's recollection was that, at the time of the decision, the Council's cash reserves were around \$9 million. He said that on the basis of the July 2019 investment report, 'we were told that it would be within what we could afford.'<sup>669</sup> When asked whether, in coming to consider the decision to approve the roads project contract, he considered the risk of a deterioration of the Council's cash position, he said:<sup>670</sup>

No, I didn't because we were relying on the information coming from head office on how we were financially and otherwise.

...

But you must understand that we – when this was put to us, we do question it, we do question it from time to times, and obviously we - I'm not sure what would have gone into the conversation about that, but we would have then, I'd say, basically ensured that there was more to come to back this up.

483. When asked whether he ever queried or was told how much should be left as unrestricted cash to fund the Council's day-to-day operations, Mr Buffett said, 'I don't believe so, no.'<sup>671</sup>

484. Mr McCoy's evidence about the affordability of the project was in these terms:<sup>672</sup>

But when this opportunity was presented and seeing the pile of scalpings from the previous overlay, you know, we thought, well, we do have the funds; we were guided in good faith that we could cover the costs. I did ask -- whether we would drain our reserves. Now, we were told and in good faith we can fund this project.

485. He recalled that at the 17 July 2019 meeting, the governing body was told by Council staff that 'we have sufficient funds in reserves to cover the cost of the project.'<sup>673</sup> He said there was no movement amongst Councillors to negotiate on the price of the contract or whether they could get more roadworks done for the same price.<sup>674</sup> His evidence in this regard was that Councillors were not involved in the discussions with Boral and asserted that he had to take 'in good faith what you're being told by the operational arm'.<sup>675</sup>

486. In relation to the impact of the contract on the Council's cash position, Mr McCoy recalled that he said to the whole Council at the meeting that entering into the roads contract with Boral would 'erode our cash reserves.'<sup>676</sup> He recalled that when this was raised with Mr Wilson, Mr Wilson said words to the effect of 'we can continue because we've got the cash

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<sup>669</sup> Transcript, 1 June 2021, p 151.38–46.

<sup>670</sup> Transcript, 1 June 2021, pp 152.18–20, 164.31–36.

<sup>671</sup> Transcript, 1 June 2021, p 166.2–5.

<sup>672</sup> Transcript, 2 June 2021, pp 203.44–204.4.

<sup>673</sup> Transcript, 2 June 2021, pp 204.47–205.1.

<sup>674</sup> Transcript, 2 June 2021, pp 207.44–208.14, 208.1–19.

<sup>675</sup> Transcript, 2 June 2021, pp 207.44–208.14, 208.1–19.

<sup>676</sup> Transcript, 2 June 2021, pp 208.36–209.3.

flow coming in and we're investing in these particular projects that will not require funds in the future.<sup>677</sup>

487. When it was put to him that the Council's decision in relation to the roads project placed the long-term financial sustainability of the Council at risk, he responded in these terms:<sup>678</sup>

Well, that is probably debatable. At that time our tourism numbers were increasing, revenue into Council was increasing, so you know, and as I had intimated earlier we had invested in projects that would not require funding for a fair period of time; it was indicated that the long-term financial plan, we can manage this possible eroding of the council reserves.

488. Mr Porter's recollection was that the governing body understood the financial implications of both the roads and airport projects, but this was based on reserves of around \$17 million or \$18 million.<sup>679</sup> However, when asked to consider the cost of the roads project in light of the exposure of the Council's cash position from the airport project, he stated that if the airport project was to be funded by a loan:<sup>680</sup>

-- it was not going to be a current liability, it was a contingent liability, it had to be - the repayments would have had to have been met as and when they fell due; it wasn't going to affect our unrestricted cash other than to the extent that you couldn't replenish your unrestricted cash if you were retiring loans, of course, but that was something that was going to be done over 15 or 20 years.

489. When asked whether he was aware that no such loan was taken out, he said that:<sup>681</sup>

It was probably, to my mind, not really ever mentioned again, it disappeared. And I recall questioning that at the next budget and my recollection of that was that we had been able to weather that storm, we were over that, we wouldn't need - we could fund it ourselves, we had the reserves and the resources to fund it ourselves. It was going to be tight, we all knew that, and obviously if we hadn't have spent that \$5 million our crisis in COVID would have been averted by, what, four months only.

490. Mr Snell said that he was not concerned about the NIRC's cash position at the time the governing body resolved to award Boral the tender for the airport project because the NIRC had approximately \$10 million in the bank.<sup>682</sup> He went on to explain that he received assurance from Council staff that 'we were in a healthy position financially' and that he relied on comments and information from Ms Jackson.<sup>683</sup>

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<sup>677</sup> Transcript, 2 June 2021, p 209.5–34.

<sup>678</sup> Transcript, 2 June 2021, p 210.13–19.

<sup>679</sup> Transcript, 2 June 2021, p 238.1.

<sup>680</sup> Transcript, 2 June 2021, pp 238.41–239.1.

<sup>681</sup> Transcript, 2 June 2021, p 239.5–14.

<sup>682</sup> Transcript, 3 June 2021, p 274.32.

<sup>683</sup> Transcript, 3 June 2021, p 274.29–36.

491. He ultimately agreed however with the proposition that, with the benefit of hindsight, entering into the roads project was not a good idea.<sup>684</sup>
492. It was then put to Mr Snell that he voted to approve the \$5 million for the roads project after having already assumed a risk of potentially \$8 million from the airport project when, at the time, the NIRC's unrestricted cash position was around \$10–11 million.<sup>685</sup> When asked why he voted to put the NIRC in that position, Mr Snell said that he relied on the information that was put before him in the briefing paper, which indicated that the project would be able to be financed by the Council's cash reserves.<sup>686</sup>
493. When Ms Adams was asked why she voted to approve \$5 million for the roads project after already exposing the Council to the financial risk of the airport project, she said that that she thought that part of the \$5 million for the roads would be obtained from the Commonwealth,<sup>687</sup> because in her opinion: 'it wasn't [the Council's] responsibility to fund for Boral to do those roads.'<sup>688</sup> This position was re-iterated in Ms Adams's submissions in response to those of Counsel Assisting.<sup>689</sup> She also said that she did not seek to negotiate the price of the roads project contract because it was an 'operational matter'.<sup>690</sup>

#### **The understanding of Council staff**

494. Mr Taylor's recollection of the discussion at the 17 July 2019 meeting was that it was considered as a positive move in terms of outcome.<sup>691</sup> He could not recall and did not believe any discussion took place about the potential of the project to affect the budget or the cash position of the Council.<sup>692</sup> Mr Taylor did not otherwise regard the contract as having any particular risk associated with it on the basis, as he put it, that 'the financial implications indicated that it was able to be financed.'<sup>693</sup> He said that this information came from Mr Wilson.<sup>694</sup>

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<sup>684</sup> Transcript, 3 June 2021, p 277.31–33.

<sup>685</sup> Transcript, 3 June 2021, p 278.14–22.

<sup>686</sup> Transcript, 3 June 2021, pp 274.29–278.47.

<sup>687</sup> Transcript, 3 June 2021, pp 336.34–47, 337.35–338.45.

<sup>688</sup> Transcript, 3 June 2021, p 340.15–22.

<sup>689</sup> 20210915 Submissions of Robin Adams in response to Counsel Assisting submissions, RADA.SUB.001.0001\_0011–\_0013.

<sup>690</sup> Transcript, 3 June 2021, p 342.26–28.

<sup>691</sup> Transcript, 31 May 2021, p 97.45–46.

<sup>692</sup> Transcript, 31 May 2021, p 98.1–6.

<sup>693</sup> Transcript, 31 May 2021, p 98.10–11.

<sup>694</sup> Transcript, 31 May 2021, p 98.15–18.

495. Ms Jackson's position on reconciling the recommendation to proceed with the roads project given the Council's cash position at the end of June 2019 was illustrated in the following exchange:<sup>695</sup>

- Q. Come July, Boral present a \$5 million contract to resurface 9 kilometres of the roads. That was outside the budget, the budget did not have cash to fund that, and the resolution that deals with that refers to council using its cash reserves.
- A. Yes, we had cash at the time.
- Q. You see, at the end of January the cash position was about \$10 million in unrestricted funds. If you accept the risk that the airport would cost an extra six, seven, \$8 million, and on top of the \$5 million that was in the Boral roads contract, the only way, absent a loan, that those two contracts could be paid for was out of council's cash reserves?
- A. The aim was to get a loan, and that was what the resolution said, so as officers we implement the resolution of council. If it says a loan, you endeavour to get a loan. And in this instance with the roadworks, there was cash in unrestricted. Internally restricted can also be modified by council resolution.

496. However, no steps were taken to obtain any such loan.

497. Ms Jackson was also asked about the notion in the business paper that there was an underspend on roads in the Council's capital budget of \$1.9 million over the 3 preceding years. The following exchange occurred:<sup>696</sup>

- Q. The underspend on roads meant that those funds were effectively used for other purposes?
- A. That's correct.
- Q. Presumably, that means keeping the budget as close to neutral as possible?
- A. That's always the aim, not to have a deficit.
- Q. It's not as though that \$1.9 million had accrued somewhere in some sort of designated account for road funding?
- A. No, although one could argue that part of ... our cash reserves could be set aside for that. Unrestricted funds could have been restricted for that purpose, one could have said that.
- Q. But you didn't?
- A. No.

498. Ms Jackson resigned effective 13 September 2019. Mr Wilson's last day on the Island was in December 2019, at which point he took leave in relation to a serious health condition that led to his resignation in January 2020.<sup>697</sup>

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<sup>695</sup> Transcript, 11 June 2021, p 636.20–39.

<sup>696</sup> Transcript, 11 June 2021, p 615.18–36.

<sup>697</sup> Transcript, 10 June 2021, p 503.19–30.

## The events leading to the Nexia and Grassroots Reports

499. Mr Roach was appointed General Manager of the Council on 6 January 2020.<sup>698</sup> Mr Roach set about developing a strategic plan for the NIRC for the next three years and in so doing, consulted with the governing body and senior NIRC staff.<sup>699</sup> He soon identified there were issues with reconciling financial information and the production of correct and appropriate financial reports and set about reviewing financial data, which ultimately required the engagement of a contract accountant to review the Council's finances.<sup>700</sup>
500. At that time, the most recent report on the status of the NIRC's financial accounts and cash position had been prepared by Mr Wilson in respect of the first quarter of 2019/20 (i.e., as at 30 September 2019) which projected that the NIRC would achieve a small surplus for financial year 2019/2020 of \$79,960.<sup>701</sup> The most recent investment report prepared for the December 2019 Council meeting indicated that the cash and cash equivalents held by the Council as at 30 November 2019 was \$31.932 million, of which \$260,000 was subject to external restrictions and \$21.033 million was internally restricted.<sup>702</sup>

## COVID-19 and the declaration of a State of Emergency on 17 March 2020

501. As a consequence of the COVID-19 pandemic, a State of Emergency was declared by the Island's Administrator, Mr Hutchinson, on 17 March 2020.<sup>703</sup> The Island went into lockdown, and a travel ban from and to the Island was imposed. Tourism, being the Island's primary source of income, was substantially affected.<sup>704</sup>
502. On 17 March, and again on 19 March 2020, Mr Roach met with the governing body to discuss the State of Emergency. At both of those meetings the question of federal government funding and financial relief was discussed.<sup>705</sup> Mr Roach's notes of the second

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<sup>698</sup> Exhibit 2, Statement of Andrew Roach and annexures, AROA.WSTA.001.0004\_0003; Exhibit 1, 20200106 Extraordinary Council Meeting Minutes, NIRC.PUB.001.0254\_003.

<sup>699</sup> Transcript, 31 May 2021, p 32.2–32; Exhibit 2, Statement of Andrew Roach, AROA.WSTA.001.0004\_0017.

<sup>700</sup> Transcript, 31 May 2021, pp 32.28–45, 33.2–29.

<sup>701</sup> Exhibit 1, 20191218 Agenda Ordinary Meeting, NIRC.PUB.001.0253\_0108.

<sup>702</sup> Exhibit 1, 20191218 Agenda Ordinary Meeting, NIRC.PUB.001.0253\_0134.

<sup>703</sup> Exhibit 2, Statement of Andrew Roach and annexures, AROA.WSTA.001.0004\_0003; Exhibit 1, 20200318 Ordinary Council Meeting Minutes, NIRC.PUB.001.0260\_0004.

<sup>704</sup> Transcript, 2 June 2021, p 185.9–10.

<sup>705</sup> Exhibit 11, 20200317–19 Council phone in meeting notes by Andrew Roach, NIRC.025.004.0002.

meeting record further discussions as to the short- and medium-term financial implications of the emergency.<sup>706</sup>

503. On 18 March 2020, Mr Roach presented the governing body with a nine point strategic action plan for 2020–2024 intended to complement and facilitate the realisation of the previously adopted long-term community strategic plan developed in 2016.<sup>707</sup> One of the stated goals related to the sustainability of the Council, with Mr Roach proposing 'focused lobbying' of the Commonwealth to demonstrate the NIRC's desire to 'head towards self-sustainability'.<sup>708</sup> Amongst other targets, the plan also foreshadowed action being taken to secure funding for a wastewater treatment plan upgrade, movement towards 100% renewable energy by 2024, engagement with the Commonwealth to fund port development, and the completion of detailed asset management plans to inform financial planning.<sup>709</sup>
504. In the period of January 2020 to May 2020, Council staff were unable to provide the governing body with any investment reports. This meant it was not possible for the governing body to see the effect of their critical decisions on the Council's unrestricted and restricted cash balances during this period.
505. The second quarterly budget review report authored by Mr Roach was presented to the governing body on 18 March 2020 (reporting on the position as at 31 December 2019), and predicted a substantially greater surplus of \$1.11 million.<sup>710</sup> This report was prepared personally by Mr Roach and without the benefit of any other suitably qualified accounting staff within the NIRC.<sup>711</sup> It is likely that the report was prepared before the declaration of the State of Emergency. It can be inferred that it did not take into account the likely effects of COVID-19.
506. There were obviously problems with the accounts at that time: the governing body were advised of an increase in the airport pavement reseal budget, from \$45 million to \$50.2 million, yet at the same time they were told that Council 'remains in a strong financial position', and that the 'projected year end result is satisfactory' with a projected 'cash balance of \$2.227 million at 30 June 2020'.<sup>712</sup>

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<sup>706</sup> Exhibit 11, 20200317–19 Council phone in meeting notes by Andrew Roach, NIRC.025.004.0002\_0002.

<sup>707</sup> Exhibit 1, 20200318 Agenda Ordinary Meeting, NIRC.PUB.001.0261\_0087; Exhibit 2, Statement of Andrew Roach, AROA.WSTA.001.0004\_0017.

<sup>708</sup> Exhibit 1, 20200318 Agenda Ordinary Meeting, NIRC.PUB.001.0261\_0087.

<sup>709</sup> Exhibit 1, 20200318 Agenda Ordinary Meeting, NIRC.PUB.001.0261\_0092 –\_0100.

<sup>710</sup> Exhibit 1, 20200318 Agenda Ordinary Meeting, NIRC.PUB.001.0261\_0112.

<sup>711</sup> Transcript, 31 May 2021, p 32.39–45; Exhibit 2, Statement of Andrew Roach, AROA.WSTA.001.0004\_0020.

<sup>712</sup> Exhibit 1, 20200318 Agenda Ordinary Meeting, NIRC.PUB.001.0261\_0113, \_0114.

507. Shortly after this, Mr Nielsen was engaged by Mr Roach for a period of 8 weeks to reconstitute the financial accounts of the NIRC,<sup>713</sup> complete the third quarterly budget review, ascertain the true cash position of the NIRC, assist in the preparation of the 2020/2021 budget and consider options for an asset management system for the NIRC.<sup>714</sup>
508. Mr Nielsen arrived on the Island on 18 April 2020. He was required to self-isolate for a period of two weeks because of the pandemic, but he was set up in a house with an office and began work on 21 April 2021.<sup>715</sup>
509. Mr Nielsen's recollection of the state of the financial records at the time of his appointment echoed that of Mr Roach; i.e., that they were in a state of 'disarray'<sup>716</sup> and that the NIRC lacked the capabilities (both in terms of personnel and accounting systems) that would normally be evident in local government.<sup>717</sup>
510. When the Council's financial position was eventually understood, the situation was problematic and required immediate action.
511. No formal council meeting was held in April 2020 during lockdown. However, on 9, 16 and 23 April 2020, Mr Roach and the governing body met and discussed the financial position of the Council and major projects, including the airport project and the roads project, but no formal reports were provided until the Council meeting of 20 May 2020.<sup>718</sup> It also appears that, in the course of those meetings, there was discussion as to the possibility of support funding from the Department of Infrastructure.<sup>719</sup>
512. Mr Snell stated that he objected to the roads project at some time after April 2020, when 'it became very obvious to [the governing body], prior to the commencement of the upgrading of the roads that Norfolk Island was in a dire financial situation'.<sup>720</sup> By that stage however, the contract had been signed and the Council was committed to the project.
513. On 28 April 2020, in a report to the Department of Infrastructure, Mr Roach informed the Commonwealth that 76 NIRC casual staff had received their last pay and had been 'retained on the books' although they had been advised that there was no work until further notice<sup>721</sup>

<sup>713</sup> Transcript, 31 May 2021, pp 40.45–41.24, 104.43–105.6; Transcript, 1 June 2021, p 112.2–9.

<sup>714</sup> Transcript, 31 May 2021, pp 40.45–41.24, 104.43–105.6; Transcript, 1 June 2021, p 112.2–9.

<sup>715</sup> Transcript, 1 June 2021, p.112.24–33.

<sup>716</sup> Transcript, 1 June 2021, pp 112.39–113.9.

<sup>717</sup> Transcript, 31 May 2021, p 59.3–16; Transcript, 1 June 2021, pp 117.40–118.33.

<sup>718</sup> Exhibit 11, 20200409 Council meeting notes by Andrew Roach, NIRC.025.004.0003; Exhibit 11, 20200416 Councillor meeting notes by Andrew Roach, NIRC.025.004.0004; Exhibit 11, 20200423 Council meeting notes by Andrew Roach, NIRC.025.004.0005; NIRC.PUB.001.0263.

<sup>719</sup> Exhibit 11, 20200423 Council meeting notes by Andrew Roach, NIRC.025.004.0005.

<sup>720</sup> Transcript, 3 June 2021, pp 277.12–14, 277.30.

<sup>721</sup> Exhibit 2, Statement of Andrew Roach and annexures, AROA.WSTA.001.0004\_0013.



and that a plan was being developed to offer 20-24 redundancies in an effort to find approximately \$2 million in savings.<sup>722</sup>

514. On the same day, Boral made a claim for liquidated damages arising from COVID-19 related delays in the airport project. The total of this claim was \$1,003,558.<sup>723</sup>

515. When, on 28 April 2020, the Commonwealth asked Mr Roach for information regarding 'cost overruns' to the airport reseal directly the result of COVID-19 to 30 June 2020, Mr Roach wrote:<sup>724</sup>

Total cost overruns to the airport reseal directly the result of COVID-19 to 30 June 2020? Due to the manner in which Council signed the contract we have two aspects. The secured amount that is wholly funded from the Commonwealth is \$43M. This amount is subject to liquidated damages due to COVID-19 delays. This is at approximately \$140K per day. There is a claim negotiation occurring now for a number of days & additional costs such as accommodation (approximately \$3.7M). The second part of the contract is at Councils risk. It represents the biosecurity costs associated with treating the rock that came to the Island, and the return of equipment. That is somewhere between \$3-\$4M. There is an additional \$2-\$3M in additional works also agreed. Council also engaged Boral to complete some road works whilst on Island which represents a spend of \$5M. The total costs to be borne by Council is \$10-\$12M. This will wipe out Councils reserves. Decisions all made before I arrived!

516. In the same email, Mr Roach estimated the total lost revenue associated with COVID-19 to 30 June 2020 as being around \$5.291 million.<sup>725</sup>

517. Mr Roach's email concluded:<sup>726</sup>

If Council cannot find the additional revenue, and we meet all our commitments for the airport and additional roads (contracted), then our financial position will be precarious. I am confident we can work our way out of this situation, but that will mean significant cuts to recurrent expenditure, so that Council can have a sound financial position. That will mean achieving reasonable surpluses for the next 5 years to provide certainty for the next economic challenge for the island. Jobs will need to be shed, primarily from the white collar area, to achieve this. That being said, NIRC's asset base is tired. The commitment for the roads is a great outcome, the airport upgrade and the 4G install are positive. But NIRC's real challenge is the power generation and distribution. These assets are really tired, so much so, that the transformers (6KVW) on the Island are almost impossible to source as the rest of the world are on larger ones (11KVW). The electricity network would cost \$10-\$12M to upgrade to a decent standard, which given our financial predicament, is now even further away than ever.

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<sup>722</sup> Exhibit 2, Statement of Andrew Roach and annexures, AROA.WSTA.001.0004\_0013.

<sup>723</sup> Exhibit 4, 20200428 Letter from Chris Jeffery to Alistair Innes-Walker re revised claim for delay costs (COVID-19), NIRC.011.003.0047\_0003.

<sup>724</sup> Exhibit 11, 20200424 Email from Andrew Roach to Department of Infrastructure, NIRC.018.001.0019.

<sup>725</sup> Exhibit 11, 20200424 Email from Andrew Roach to Department of Infrastructure, NIRC.018.001.0019\_0002.

<sup>726</sup> Exhibit 11, 20200424 Email from Andrew Roach to Department of Infrastructure, NIRC.018.001.0019\_0002.

(Emphasis added.)

518. In the ensuing months, the continuing impact of COVID-19 and the measures taken by the NIRC to extend financial relief to the community overtook the strategic action plan and became the focus of increasingly frequent meetings between Mr Roach, NIRC staff, and the governing body.<sup>727</sup>
519. For example, on 20 May 2020, the governing body resolved to provide a COVID-19 community support package to the community including a discount on electricity, waste, and telecommunication fees and charges and reduction in land rates.<sup>728</sup> That measure was estimated to equate to approximately \$500,000 in forgone revenue for the Council.
520. Mr Roach's evidence was that those discussions also concerned the governance framework in which the NIRC operated and mechanisms for reform to improve the financial and broader performance of the Council.<sup>729</sup>
521. On 20 May 2020, the Council was presented with the third quarterly budget report for financial year 2019/2020 (prepared by Mr Nielsen), which projected a year end budget deficit of \$486,000 compared to an original predicted end of year result of a \$57,000 surplus.<sup>730</sup> The adjustment was reported as being due largely (although not entirely) to COVID-19 related adjustments, including the financial assistance that the NIRC had resolved to provide to the community.<sup>731</sup> Council was not presented with a report at that meeting as to the state of its cash reserves.
522. However, on 27 May 2020, Mr Roach held a briefing with the governing body, at which he reported that the NIRC was facing a cash deficit of \$7.3 million.<sup>732</sup> On 1 June 2020, at an extraordinary Council meeting, Mr Roach presented a proposed organisational restructure for the NIRC and Operational Plan for 2020/2021, in response to the 'dire financial position facing the Council'.<sup>733</sup> The proposed organisational structure, which the governing body resolved to adopt, resulted in savings of \$2.2 million through 'redundancies for 20 permanent roles'.<sup>734</sup>

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<sup>727</sup> Transcript, 31 May 2021, p 38.1–22.

<sup>728</sup> Exhibit 1, 20200520 Agenda Ordinary Meeting, NIRC.PUB.001.0263\_0550, \_0573.

<sup>729</sup> Transcript, 31 May 2021, p 38.37–45.

<sup>730</sup> Exhibit 1, 20200520 Agenda Ordinary Meeting, NIRC.PUB.001.0263\_0550.

<sup>731</sup> Exhibit 1, 20200520 Agenda Ordinary Meeting, NIRC.PUB.001.0263\_0549.

<sup>732</sup> Exhibit 2, Statement of Andrew Roach, AROA.WSTA.001.0004\_0020; Transcript, 31 May 2021, pp 38.47–39.18.

<sup>733</sup> Exhibit 1, 20200601 Agenda Extraordinary Meeting, NIRC.PUB.001.0266\_0008–\_0014.

<sup>734</sup> Exhibit 1, 20200601 Agenda Extraordinary Meeting, NIRC.PUB.001.0266\_0008.

## Mr Roach's meeting with Council on 17 June 2020

523. On 17 June 2020 Mr Roach met with the governing body and proposed that an external statutory audit be undertaken of the NIRC pursuant to the applied LG Act.<sup>735</sup> Mr Roach's evidence was that, at that meeting, a query was raised and discussed by at least three Councillors as to whether the proposed audit should be a full forensic audit, focusing in particular on the biosecurity costs associated with the airport project and responsibility for funding those costs.<sup>736</sup> A separate point discussed at that meeting, specifically raised by Mr Roach, was the prospect that the Councillors would face suspension or dismissal should improvements not be made to the NIRC's financial position.<sup>737</sup> Mr Roach's recollection in this regard, based on his notes of the meeting,<sup>738</sup> was that the majority of the Councillors (including Ms Adams, Mr McCoy and Mr Snell) rejected the suggestion that the NIRC could be voluntarily placed into a period of administration.<sup>739</sup> There were also discussions at that meeting as to whether the NIRC could obtain other advantages in exchange for agreeing to an external audit process, such as improvements relating to electricity and freight to reduce the cost of living.<sup>740</sup>
524. Ultimately, on 23 June 2020, Mr Roach made a formal recommendation to the governing body that an independent, external audit be conducted into the Council's operations.<sup>741</sup> This was intended to encompass the NIRC's operations, finances and governance, and be a vehicle whereby the NIRC could obtain external advice on possible improvements to the Council's systems and processes.<sup>742</sup>
525. At the 24 June 2020 Council meeting, councillors discussed the many challenges they had faced throughout their term, and in particular the challenges in the past six months.<sup>743</sup> The challenges included:
- a. that the Council had been provided with poor information in many of their decision making processes;

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<sup>735</sup> Transcript, 31 May 2021, p 37.33–46.

<sup>736</sup> Transcript, 31 May 2021, pp 51.31–52.21, 53.2–8.

<sup>737</sup> Transcript, 31 May 2021, pp 53.37–56.21.

<sup>738</sup> Exhibit 3, Shorthand notes of conversation Mr Roach had with Councillors, AROA.WSTA.002.0001\_0004.

<sup>739</sup> Transcript, 31 May 2021, pp 53.37–56.21.

<sup>740</sup> Transcript, 31 May 2021, p 53.17–32.

<sup>741</sup> Exhibit 2, Statement of Andrew Roach, AROA.WSTA.001.0004\_0003, \_0027, \_0028.

<sup>742</sup> Exhibit 2, Statement of Andrew Roach, AROA.WSTA.001.0004\_0003, \_0027, \_0028.

<sup>743</sup> Exhibit 1, 20200624 Minutes of Meeting of Council, NIRC.PUB.001.0267\_0004.

- b. the 'state disconnect' and the resulting systemic and structural deficiencies in the arrangements between the Council and the Commonwealth as their 'state'; and
  - c. that existing contractual obligations would exhaust the Council's entire cash position, and the financial position for 30 June 2021 would be zero in cash reserves.
526. At that meeting, a unanimous resolution of the Council instructed Mr Roach to engage, as he had proposed, a full independent governance and financial audit of NIRC operations.<sup>744</sup> Council also resolved to request a delay in the upcoming elections (due to be held by 12 September 2020<sup>745</sup>) to allow for the audit report to be received and adopted by the existing Council, thereby allowing the newly elected Council to 'enter their term unburdened by this process'.<sup>746</sup>
527. In July 2020, the Councillors agreed on the terms of reference for the audit.<sup>747</sup> Broadly, the terms of reference covered the Council's governance and operations, financial performance and financial sustainability.<sup>748</sup> Two firms, Nexia Australia and Grassroots Connections Australia, were contracted to undertake the audit.

### **The 2020 Nexia Report**

528. Nexia was contracted to conduct the financial performance component of the external audit. Under the applied LG Act, the purpose of 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.<sup>749</sup>
529. Nexia reviewed the Council's income statements for the period 2016/17 to 2018/19, as well as the draft financial statements for 2019/20 and forecasts in the Operational Plan for 2020/21, and compared the Council's operating results and performance against six industry benchmarks.<sup>750</sup> They found that while the Council showed a modest surplus before capital items in both 2017/18 and 2018/19, there was a significant deterioration in 2019/20, reflected

<sup>744</sup> Exhibit 1, 20200624 Minutes of Meeting of Council, NIRC.PUB.001.0267\_0004.

<sup>745</sup> Exhibit 1, 20200520 Minutes of Meeting of Council, NIRC.PUB.001.0262\_0025.

<sup>746</sup> Exhibit 1, 20200624 Minutes of Meeting of Council, NIRC.PUB.001.0267\_0005.

<sup>747</sup> Exhibit 1, 20200703 Agenda Extraordinary Meeting, NIRC.PUB.001.0275\_0006; Exhibit 1, 20200703 Minutes of Extraordinary Meeting of Council, NIRC.PUB.001.0272\_0003.

<sup>748</sup> Exhibit 11, Grassroots Connections Australia, Norfolk Island Regional Council Independent Governance and Financial Audit (final report, 15 November 2020), GRC.PUB.001.0001\_0032.

<sup>749</sup> Exhibit 9, Nexia Report, Norfolk Island Regional Council Independent Audit of Financial Performance, NXA.PUB.001.0001\_0007.

<sup>750</sup> Note: Financial performance for 2016/17, 2017/18 and 2018/19 was determined using audit financial statements, while 2019/20 figures were informed by the draft financial statement and 2020/21 by the Operational Plan. Findings for 2019/20 and 2020/21 were based on the best available data, but should be interpreted with caution and may be updated by sources used in this Inquiry.

in a deficit of \$1.8 million.<sup>751</sup> Nexia noted that achieving a net surplus before capital items is advisable to provide sufficient funds for day-to-day operations and to maintain and renew infrastructure, property, plant and equipment.

530. Nexia made a number of findings referable to the matters under consideration in this Chapter. In particular, Nexia found that the Council:

- a. failed the 'operating performance ratio' benchmark in three of the five years, meaning that operating expenditure exceeded operating revenue in three out of five years;<sup>752</sup>
- b. met the 'own source operating revenue ratio' benchmark in three of the five years, meaning that, across those years, the Council funded more than 60 per cent of its operations from own sources rather than through operating grants and contributions;<sup>753</sup>
- c. met the 'unrestricted current ratio' benchmark across each of the five years, meaning that across all periods, the Council had enough unrestricted funds available to meet operating costs. Nexia however cautioned that the unrestricted current ratio included cash that is subject to internal restrictions, and noted that the unrestricted current ratio is expected to drop significantly for 2021 as the Council's funds are depleted;<sup>754</sup>
- d. was debt-free, so Nexia did not provide commentary on the 'debt service cover ratio';<sup>755</sup>
- e. failed the 'rates and annual charges outstanding percentage' in four of the five years, showing a history of high outstanding rates and charges. In 2020/21, Nexia estimated that up to 30 per cent of collectible revenue from rates and charges would be outstanding – three times higher than the industry benchmark of 10 per cent;<sup>756</sup> and

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<sup>751</sup> Exhibit 9, Nexia Report, Norfolk Island Regional Council Independent Audit of Financial Performance, NXA.PUB.001.0001\_0009.

<sup>752</sup> Exhibit 9, Nexia Report, Norfolk Island Regional Council Independent Audit of Financial Performance, NXA.PUB.001.0001\_0013.

<sup>753</sup> Exhibit 9, Nexia Report, Norfolk Island Regional Council Independent Audit of Financial Performance, NXA.PUB.001.0001\_0013.

<sup>754</sup> Exhibit 9, Nexia Report, Norfolk Island Regional Council Independent Audit of Financial Performance, NXA.PUB.001.0001\_0014.

<sup>755</sup> Exhibit 9, Nexia Report, Norfolk Island Regional Council Independent Audit of Financial Performance, NXA.PUB.001.0001\_0014.

<sup>756</sup> Exhibit 9, Nexia Report, Norfolk Island Regional Council Independent Audit of Financial Performance, NXA.PUB.001.0001\_0015.

- f. met the 'cash expense cover ratio' in four out of five years, meaning that across most financial years, the Council was able to continue paying its immediate expenses for the next three months without additional cash.<sup>757</sup>

## Cash position

531. In reviewing Council's restricted and unrestricted cash position over the five financial years in light of its contractual commitments, project overruns, legal disputes and anticipated impacts of the COVID-19 pandemic, it found that the Council maintained a reasonably high level of unrestricted cash levels until 30 June 2020, when the cash available to fund day-to-day operations dropped to \$646,000 — down from \$11.5 million for 2019.<sup>758</sup> On 30 June 2020, the Council held \$25.3 million in cash and investments, but most of the funds were committed to specific projects and liabilities, as shown in this extract from the Nexia report.<sup>759</sup>

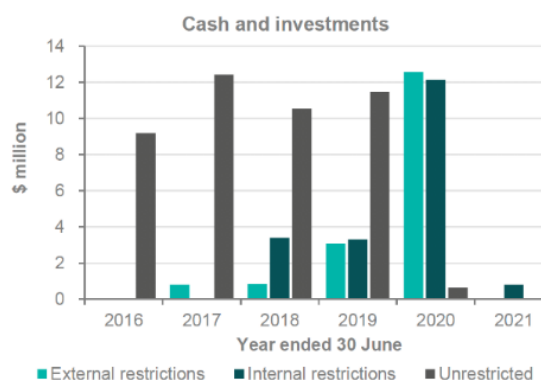
**Figure 23. Extract of Nexia Australia report regarding cash and investments**

**Exhibit 10: Cash and investments 2016-2021**

Cash and Investments	1 July 2016	2017	2018	2019	2020	2021
	\$000	\$000	\$000	\$000	\$000	\$000
External Restrictions	-	798	841	3,056	12,562	-
Internal Restrictions	-	-	3,396	3,294	12,129	799
Unrestricted	9,191	12,425	10,536	11,473	646	-
<b>Total cash and investments</b>	<b>9,191</b>	<b>13,223</b>	<b>14,773</b>	<b>17,823</b>	<b>25,337</b>	<b>799</b>

**Exhibit 11: Cash and investments 2016-2021**

- External restrictions include unspent specific purpose grants and funds held in trust.
- Balances are internally restricted due to Council policy or decisions for forward plans including works program.
- Unrestricted balances provide liquidity for day-to-day operations.



532. The Council's adopted budget for 2020/21 projected total cash of only \$799,000 as at 30 June 2021, which Nexia considered would not cover current trust balances and employee

<sup>757</sup> Exhibit 9, Nexia Report, Norfolk Island Regional Council Independent Audit of Financial Performance, NXA.PUB.001.0001\_0015.

<sup>758</sup> Exhibit 9, Nexia Report, Norfolk Island Regional Council Independent Audit of Financial Performance, NXA.PUB.001.0001\_0019.

<sup>759</sup> Exhibit 9, Nexia Report, Norfolk Island Regional Council Independent Audit of Financial Performance, NXA.PUB.001.0001\_0017.

leave entitlements. Nexia noted that the cash position had the potential to be worse as the full impact of the COVID-19 pandemic was not fully known.<sup>760</sup>

533. Nexia cited the roads project, as well as overruns from the airport project and the Future Proofing Telecommunications project, which incurred a budget overrun of \$710,000 and a total cost to the Council of \$1.86 million, as being relevant to the dire state of the Council's cash reserves as at 30 June 2020.<sup>761</sup>
534. Nexia noted that when approving these contracts 'Council may not have fully understood the implications for Council's finances and how any *potential overruns on these projects would be funded*'.<sup>762</sup> Nexia ultimately concluded that 'it is clear that these projects have exhausted Council's cash reserves'.<sup>763</sup>
535. In respect of the Council's cash position, and in light of its finding that overruns on major projects had contributed greatly to the depreciation of those cash reserves, Nexia recommended that:<sup>764</sup>
- a. Council take steps to ensure that it fully understands the short- and long-term financial implications of projects before approving projects;
  - b. Future project budgets include an appropriate allowance for contingencies (and identify how such contingencies were to be funded); and
  - c. Project budgets be carefully monitored and managed by the Council.

### Working capital

536. Nexia reviewed the Council's net current assets at its commencement on 1 July 2016, and at 30 June for each year from 2017 to 2021 (projected). The net current assets were adjusted to account for budgeted loan repayments and externally and internally restricted net assets. The resulting measure is the 'available working capital', or the funds the Council requires to

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<sup>760</sup> Exhibit 9, Nexia Report, Norfolk Island Regional Council Independent Audit of Financial Performance, NXA.PUB.001.0001\_0018.

<sup>761</sup> Exhibit 9, Nexia Report, Norfolk Island Regional Council Independent Audit of Financial Performance, NXA.PUB.001.0001\_0018.

<sup>762</sup> Exhibit 9, Nexia Report, Norfolk Island Regional Council Independent Audit of Financial Performance, NXA.PUB.001.0001\_0019.

<sup>763</sup> Exhibit 9, Nexia Report, Norfolk Island Regional Council Independent Audit of Financial Performance, NXA.PUB.001.0001\_0019.

<sup>764</sup> Exhibit 9, Nexia Report, Norfolk Island Regional Council Independent Audit of Financial Performance, NXA.PUB.001.0001\_0020.



fund day-to-day operations, including financing its debtors and inventories, with a buffer against unforeseen and unbudgeted expenditures.<sup>765</sup>

537. Although available working capital was not subject to an industry benchmark due to its dependence on local-area and specific circumstances, Nexia suggested that the NIRC should maintain a 'significant buffer' given the Council's responsibility for business units typically outside the remit of local councils,<sup>766</sup> and the fact that the Council is also contracted to provide Commonwealth funded state services.<sup>767</sup>
538. In calculating the minimum working capital that the Council should maintain to fund day-to-day operations with a buffer, Nexia reviewed, for each year from 2018 to 2020, the Council's receivables, inventories, and unfunded bonds, deposits and retentions. Each of these values were summed. Nexia then added a 50 per cent buffer to the total value.
539. Across the three years, the average calculated minimum working capital was \$6.8 million. Nexia rounded this figure up, suggesting that the NIRC should maintain a minimum available working capital balance of \$7 million.<sup>768</sup>
540. Nexia in turn reviewed the Council's available working capital over the six periods (at commencement and at 30 June for each year from 2017 to 2021) and found that the Council met the threshold in all years except 2020 and 2021.<sup>769</sup>
541. On 23 November 2020, Ms Adams wrote to the Assistant Minister seeking urgent bridging finance of \$8 million from the Commonwealth to 'continue to pay employees, meet financial obligations, replenish cash reserves and assist in the delivery of the outcomes from the two external audits over the next 6-12 months' (referring to the Nexia and Grassroots reports).<sup>770</sup> On 16 December 2020, the Department of Infrastructure wrote to Mr Roach in response to Ms Adams' letter, advising that the Commonwealth was willing to provide short-term assistance to the NIRC to continue paying staff and suppliers and to avoid any disruption to the delivery of services.<sup>771</sup> The Department of Infrastructure provided \$3 million to the NIRC through a variation of the existing SDA. That figure was made up of funding of \$1.2 million

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<sup>765</sup> Exhibit 9, Nexia Report, Norfolk Island Regional Council Independent Audit of Financial Performance, NXA.PUB.001.0001\_0021.

<sup>766</sup> For example: land titles registration, motor vehicle and drivers licensing, companies registrations and ports management.

<sup>767</sup> Exhibit 9, Nexia Report, Norfolk Island Regional Council Independent Audit of Financial Performance, NXA.PUB.001.0001\_0021.

<sup>768</sup> Exhibit 9, Nexia Report, Norfolk Island Regional Council Independent Audit of Financial Performance, NXA.PUB.001.0001\_0022.

<sup>769</sup> Exhibit 9, Nexia Report, Norfolk Island Regional Council Independent Audit of Financial Performance, NXA.PUB.001.0001\_0022.

<sup>770</sup> Transcript, 3 June 2021, p 311.21–29.

<sup>771</sup> Transcript, 3 June 2021, p 311.31–34.

being brought forward from the existing 2020/21 SDA, and from a further \$1.8 million of funding being brought forward from the 2021/22 SDA.<sup>772</sup> Subsequently, it was ascertained that the \$3 million was characterised as a one off grant.

542. On 7 April 2021, the Council was advised of the total costs of the airport pavement repair and reconstruction project. This report stated that the total project expenditure was \$47.83 million.<sup>773</sup> As the Council did not seek any form of external finance above and beyond the \$43 million Commonwealth grant, the \$4.83 million of expenditure in excess of this grant was paid for out of Council's unrestricted cash.

## Conclusions

### The airport project

543. In my opinion, there was a fundamental need for the Council and the governing body to proceed with the airport project. The regulatory and air safety considerations justifying the project were compelling because of the potential for a range of catastrophic outcomes. The airport is undoubtedly the most critical asset to Norfolk Island. It is the Island's lifeline to mainland Australia.
544. Had it ceased to operate, the impact on the Island would have been devastating. From that perspective, the relevant risks were identified and the need for urgent repairs and the risks associated with failing to proceed with those repairs were well understood. I therefore find that the governing body and the NIRC were justified, as a matter of principle, in deciding to bring forward and proceed with the airport runway resurfacing and resealing contract. In all of the circumstances, that decision is not susceptible to reasonable criticism.
545. Decisions made about how the project was to be funded are a different matter. In this respect financial management failed and the risk assessment and management process failed by not addressing or embracing the risk to the financial position of the Council and in particular its cash position in the longer term from the way in which the works were to be funded.
546. The evidence disclosed numerous problems in the way in which the Council and the governing body approached the question of how the project was to be funded. The first of these problems can be traced back to the failure of the Council and governing body to implement the measures in the first Long Term Financial Plan referable to the airport, outlined in paragraph 153 above. Those measures involved setting aside \$6 million from airport operations revenue to establish a fund to pay for a portion of the \$20 million that was

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<sup>772</sup> Transcript, 3 June 2021, pp 311.43–312.3.

<sup>773</sup> Exhibit 1, 20210407 Ordinary Council Meeting Agenda, NIRC.PUB.004.0003\_0002.

then anticipated as the cost of the project. That aspect of the plan, like others previously discussed, was never followed.

547. When significant deformities in the runway were observed by CASA in 2017, no funds were set aside. Despite the implications in Dr White's January 2018 report, again, no further funds were set aside.
548. This represents a substantial failure on the part of the Council and the governing body to act in accordance with the plans of the Council as they related to effective financial management. No-one picked up that this critical aspect of the Plan was not being followed and no-one did anything about that fact. To the extent that this was the result of the overall performance of Council's business units, it represents a further basis to criticise the governing body for its failure to address the revenue side of Council's operations.
549. The second of these problems stems from the failure of Council and the governing body to view the funding of the project in terms of Council's risk management policy or procedures. In this respect it is to be recalled that the advice provided to the governing body as part of its decision about proceeding with the airport contract referred to Council contributing any shortfalls of funding for the project by way of a loan from the 'Norfolk Island International Airport Government Business Unit'. Ms Jackson's evidence was that this contemplated a loan from the Commonwealth or perhaps a commercial lender, once the full costs of the contract were known.
550. There were multiple financial risks associated with this critical aspect of the project which included:
- a. the risk of obtaining loan funding from the Commonwealth or alternative commercial sources and what the consequences would be if it could not;
  - b. the risk to Council's cash position over time in the light of the Council's other commitments, whether viewed in terms of a loan (i.e., having regard to the loan commitments) or through cash reserves;
  - c. the corresponding risk that if the shortfall was not capable of being met through a loan, the likelihood, as proved to be the case, that the project would need to draw upon the Council's cash reserves. It was most unlikely that the Commonwealth would be providing a loan to Council for the project shortfall given the term of the \$43 million grant which required the Council to be responsible for funding the balance of the project costs itself.

551. I accept that Ms Jackson believed that a loan from either the Commonwealth or a commercial lender was achievable. I also accept that seeking to fund the shortfall, including the biosecurity costs, by way of a loan was a legitimate pathway to explore.
552. But it was necessary also to consider the risk to Council's finances if a loan was not, or could not be, secured. In my opinion, any reasoned application of the five step process for the assessment of risk under Council's risk management policy was likely to identify that risk. The evidence does not reveal any application of that policy to the financial risks of that project. Had they been applied they would have, at the very least, required the Council to:
- a. establish the context prior to any final decision being made on the tender;
  - b. identify that the cost of the project was uncertain and that there was a significant risk that the cost of the project to the NIRC would exceed by a significant amount the level of funding to be received from the Commonwealth;
  - c. address the likelihood of the Council being able to obtain a loan from either the Commonwealth or a third party lender to cover the shortfall;
  - d. identify that there were issues about the biosecurity risk and associated financial risks if that risk materialised;
  - e. identify that the airport was incapable of taking out such a loan given that it was not an independent entity from the NIRC; and
  - f. identify that if the shortfall was required to be met by the NIRC that this would be required to be funded from its cash reserves.
553. The processes contemplated by the Capital Expenditure Guidelines referred to in paragraph 362 above would no doubt have yielded a comparable approach. Had that approach been followed, it would seem far more likely that many of the issues associated with the project would have been identified and given at least some scrutiny.
554. Either way, the risks that were realised as the project developed, with the exception of the COVID-19 risk, should have been identified. Had the policy, procedures and guidelines been applied or considered, the Council and its governing body would have turned their minds to the financial implications of project costs from a 'whole of life' perspective and the risk of the project not running according to its budget.
555. I accept Ms Jackson's submission to the effect that she believed that a loan would be possible. However, the simple fact is: the risk that such a loan could not be achieved does not appear to have been explored in any of the documentation surrounding the proposal.

556. Council and its governing body did not take any steps to determine whether the Council could obtain sources of finance to cover the shortfall of the project or consider the risk that the Council could not actually obtain a loan. As events developed over time, no action was taken to obtain a loan.
557. Whether the funding commitment was viewed in terms of a loan or through calls on Council's cash reserves, the project demanded both the governing body and Council turn their minds to when and how various payments were to be made and their overall effect on the financial position of Council over time.
558. By the time the full extent of Council's exposure was ascertained, COVID-19 had intervened and the only way in which the balance could be paid was from Council's cash reserves.
559. In my opinion, prior to making the decision to proceed with the airport project the governing body did not take adequate steps to understand the effect of the project on Council's overall financial position or to understand the long-term implications of the decision for its financial position. The 19 February 2019 briefing paper, read in conjunction with the grant guidelines, made clear that the Commonwealth's grant would be capped at \$43 million and that the total cost of the project could expose the Council to liabilities as much as \$8 million.
560. I am of the opinion that senior Council staff and the governing body did not apply appropriate principles of sound financial management in identifying and managing the risk of the well understood and likely additional costs that emerged prior to and during the life of the project. The Council has a responsibility under the applied LG Act to exercise its functions in accordance with that Act. It is required to follow the principles of sound financial management, which encompass spending that is responsible and sustainable, aligning general revenue and expenses, considering long term financial implications, and managing risks.
561. I am also of the opinion that the Council failed to make adequate provision in the 2019/20 budget for the likely cost of the project. It was neither effective, efficient nor appropriate for the effect on the budget to be described as being limited to \$44.8 million, with the NIRC's exposure limited to a loan of around \$2 million,<sup>774</sup> 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.
562. Further, once the risk of a significant biosecurity cost was realised in around June 2019, the issue was not brought back to the governing body, nor was the progress in obtaining external finance ever clarified or revisited. The governing body did not follow up with the Council concerning the process of funding the shortfall, including by querying whether a loan had

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<sup>774</sup> Exhibit 1, Operational Plan 2019–2020, NIRC.PUB.001.0217\_0062.

been applied for and if not, why not, particularly when other significant decisions were being made over the following 12 months, including the roads project.

563. Finally, neither the Council nor the governing body took steps to engage with the Audit Committee concerning the funding implications of the project. There was much to be gained by bringing the Audit Committee into the conversation about this project.
564. As a direct result, the Council was ultimately forced to commit further cash reserves of \$4.8 million which eventually placed at serious risk its ability to finance its day-to-day operations and meet any other large financial commitment. That risk ultimately required the injection of \$3 million from the Commonwealth to enable the Council to continue as a going concern.
565. Senior Council staff never raised the issues of the funding shortfall with the Commonwealth, either in respect of the risk to Council finances or in respect of the possibility that a loan may be required from the Commonwealth or elsewhere to cover the shortfall.
566. I accept the submissions of Counsel Assisting that the governing body's decision to fund the airport project in the manner in which it did was made without the required focus and attention being given as to precisely what the resolution passed by them would mean and the likely practical effect that it would have on the financial position of the Council and, critically, its cash position over time. The decision was made without regard or reference to Council's recently established risk management policy or relevant Capital Expenditure Guidelines. This occurred against a background whereby the governing body had failed to give effect to the essential elements of its long term financial and asset management plans without the sort of follow up and oversight that ought to have been employed.

### **The Boral roads project**

567. Although the repairs effected by the roads project may be seen to have made a significant difference to the Norfolk Island community given the overall poor state of the road system, the consequences of not proceeding with that project in July 2019 do not compare with the critical urgency associated with the resurfacing of the airport runway. I agree with the submission of Counsel Assisting that although the works made a significant improvement to the roads on the Island, it could not be said that the works were essential.
568. The decision to proceed with the roads project and to consequently spend \$5 million from cash reserves would seem to have been based upon the assumption that a loan would fund any airport project shortfall. However, the status of that loan was never revisited by the governing body or Council staff in the context of considering the affordability of the roads project.

569. Viewed in these terms, the decision to proceed with the roads project was based on a false premise and made no allowance about what would happen in the event that such a loan was not possible. There is nothing to suggest that that possibility was addressed prior to 17 July 2019. Prudence required that it should have been.
570. The risk analysis in respect of the impact of the roads project on the Council's financial position was inadequate. In particular, the business paper for the roads project proposal focused on the Council's overall cash balance being at \$15.3 million, compared to a budgeted figure of \$9.165 million<sup>775</sup> and did not draw a distinction between the restricted and the unrestricted cash needed to fund the project. In fact, as at 30 June 2019, the Council's unrestricted cash reserves were only \$8.456 million.<sup>776</sup> Council did not identify that an amount of around \$4 million for the biosecurity costs for the airport project needed to come from unrestricted cash, and that day-to-day operational expenditure (such as for staff salaries) are also funded from unrestricted cash reserves.
571. Although the business paper placed emphasis on an underspend of \$1.9 million annually on roads over the three years prior to the decision,<sup>777</sup> the failure to spend on roads did not achieve a cash reserve to spend later. Rather, monies allocated to roads were used to balance the Council's budget each year. The ongoing reliance on operational funds to fund capital upgrades was never considered.
572. Further, although the project was said to be 'within acceptable parameters of the Long Term Financial Plan that projects total road expenditure over the 10-year period [as] \$20.933 million',<sup>778</sup> the Council could only spend money that it had in existing reserves. In simple terms, the Council did not have the cash to bring forward monies it budgeted for in the future without a loan or sufficient additional revenue.
573. All of this occurred without any policy or discussion regarding the minimum unrestricted cash balance required for the Council to fund its day-to-day operations. Without this information, the Council and its governing body must have had a limited understanding of the impact of this decision on the overall financial health of the Council.
574. It is apparent that the decision was made to take advantage of the opportunity before the Council from the presence of Boral's equipment on the Island and the scalping from the airport project. However, unlike the airport resurface, there was no immediate urgency, from a safety or economic perspective, that demanded the roads contract be entered into at that point in time. By resolving to approve the expenditure to enter into the agreement with Boral

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<sup>775</sup> Exhibit 9, Report re: additional road maintenance – asphalt works, NIRC.023.001.0002\_0003.

<sup>776</sup> Exhibit 1, 20190717 Agenda Ordinary Meeting, NIRC.PUB.001.0228\_0133.

<sup>777</sup> Exhibit 9, Report re: additional road maintenance – asphalt works, NIRC.023.001.0002\_0003.

<sup>778</sup> Exhibit 9, Report re: additional road maintenance – asphalt works, NIRC.023.001.0002\_0003.



in July 2019, the Council and its governing body unnecessarily exposed the Council to an additional financial risk of around \$5 million.

575. In light of the inadequate financial risk analysis in the 17 July 2019 business paper, it is understandable that the members of the governing body proceeded on the basis that the Council had adequate funds to proceed with the roads project. Despite this, with the airport decision fresh in their minds and it being clear that importation of rock to the Island for that purpose was necessary, together with its attendant costs, they ought to have taken steps to properly inform themselves of the risk the Council was assuming. For example, they ought to have known or have taken steps to ascertain whether the Council had put in place, or had taken necessary steps to secure or progress, the loan to meet the costs of the airport project in accordance with the approved Council decision. Had this been the case, the governing body would have been aware that the Council's unrestricted cash reserves were exposed to as much as \$8 to \$9 million from the airport project and other commitments. This knowledge would have undoubtedly affected their perception of the Council's risk appetite to pay around \$5 million for road repairs out of unrestricted cash reserves.
576. The governing body's decisions to proceed with these two major infrastructure contracts took place within five months of each other and ultimately required the Council to find around \$9 million over and above its usual operating expenditure, with most of this money being required in a single financial year. This was also against a backdrop that would mean the Council would likely exceed its unrestricted cash balance of around \$8 to \$9 million.
577. Only a few weeks before the decision to approve expenditure for the roads project, the Council adopted the 2019 Roads Asset Management Plan, which made sensible plans for capital expenditure of \$9.8 million over a 10-year period on roads. The Council's decision on 17 July 2019 was a substantial deviation from this plan, approving expenditure of more than half of this budgeted expenditure over a two-year period. Had the Council acted in accordance with that plan, it would not have assumed such a large financial risk at a time when the Council's cash reserves were already under strain.

### **Council's overall cash position**

578. Against this background, the emergence of the COVID-19 pandemic and the public health response, involving as it did, the lockdown of the Island, effectively cutting off its principal source of income, was only going to make the cash position worse. The declared State of Emergency in March 2020 and the resulting travel ban resulted in a significant decrease in revenue from the airport business unit, due to the reduction in flights and visitors to the Island and the shortfall in other revenue associated with tourism that accompanied the travel ban.

579. In response to the economic difficulties caused by the pandemic to the Island, the Council offered community support packages and relief in the form of reductions in fees, charges and rates. This further reduced revenue and compounded the financial difficulties faced by the Council. The new General Manager estimated that the COVID-19 pandemic was likely to reduce the Council's revenue by around \$5.29 million. Further, the response to the pandemic quickly consumed the Council's priorities. Initially, this occurred in the context of accounts that were in a poor state which ultimately required reconstitution.
580. That being said, although the difficulties in managing the financial (in particular revenue) consequences of COVID-19 were unforeseen and for that matter incapable of being anticipated, the same cannot be said about the likely effect of the airport project and roads project.
581. Although the likely effect of those two decisions was, for the reasons outlined above, entirely predictable, there is no evidence that any NIRC officer or member of the governing body turned their mind to the events as they transpired or sought to understand what those consequences might be. There was no discussion about when and how the biosecurity cost might arise. It was not even accounted for in Council's budget for 2019/20, even though it must have been understood as likely to arise during the course of that year.
582. The primary reason for the cash position faced by Council during the course of 2020 was the combined effect of the extra expenditure on the airport project and the commitment to the roads project. Had the consequences of the airport project been fully understood, with proper provision made for them in Council's budget and Long Term Financial Plan, it seems unlikely that the roads project could have reasonably been approved. This represents a clear failure of financial and asset management.
583. Council and the governing body ought to have known, at all times, where they stood and what the cash consequences from the airport project were likely to have been. The roads project was no different.
584. At the broadest level of generality, Council had no capacity to protect its financial position if the decision in relation to the airport project was made without regard to the following matters: whether a loan was capable of being taken out in respect of the funding shortfall; if a loan was to be taken out, how much it was for and what the terms of the loan were; and if a loan could not be secured, what was likely to be extent of the call on Council's cash reserves. Those matters were not followed up in advance of the decision regarding the road project.

585. In this respect, Council's financial management broke down. When that breakdown occurred at the same time as the effects of the COVID-19 pandemic were being felt, the combined effect ultimately placed the viability of the Council in jeopardy.

## Chapter 8: Epilogue

586. On 5 February 2021, an order made by the Assistant Minister came into effect, suspending the Norfolk Island Regional Council for three months and appointing an interim administrator in its place.<sup>779</sup> During the suspension, the day-to-day functions of the Council continue, and staff continue to perform their roles under the direction of the General Manager, Mr Roach. Any person holding civic office, namely the Mayor and other Councillors, were and remain suspended. In effect, the governing body are unable to exercise any of their functions under the applied LG Act, are not entitled to be paid, and cannot use the Council facilities.<sup>780</sup>
587. The initial period for suspension has been extended twice: once in April 2021,<sup>781</sup> and again in August 2021.<sup>782</sup> As at the date of this report, Mr Colreavy remains as the interim administrator of the Council.
588. On 24 February 2021, Mr Colreavy, the interim administrator, held his first Council meeting.<sup>783</sup> During that meeting, he resolved to accept all 113 recommendations as presented in the Nexia and Grassroots independent audit reports commissioned by the Council.<sup>784</sup>
589. In the business paper prepared for the 7 April 2021 meeting, the Council was presented with a 'forward program detailing the Business Papers to be tabled at [NIRC] meetings for the period April 2021 to July 2021 concerning the implementation of the External Audit Findings as adopted by Council on 24 February 2021'.<sup>785</sup> The program prioritised recommendations that were assessed by staff as being feasible in the next 1 to 12 months, noting that work was also continuing on recommendations assessed as 'medium and long term'.<sup>786</sup> The Council noted this report at the 7 April 2021 meeting.<sup>787</sup>
590. One of the initiatives that Council staff identified was to establish a program of fortnightly meetings between the NIRC and the Department of Infrastructure, Transport, Regional

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<sup>779</sup> Minister for Infrastructure, Transport and Regional Development, *Suspension of Norfolk Island Regional Council*, (Gazette No. C2021G00102, 3 February 2021).

<sup>780</sup> *Local Government Act 1993* (NSW) (NI), s 438L.

<sup>781</sup> Hon Nola Marino MP, 'Extension of the temporary suspension of the Norfolk Island Regional Council' (media release, 29 April 2021) <<https://minister.infrastructure.gov.au/marino/media-release/extension-temporary-suspension-norfolk-island-regional-council>>.

<sup>782</sup> Hon Nola Marino MP, 'Suspension of the Norfolk Island Regional Council' (media release, 1 August 2021) <<https://minister.infrastructure.gov.au/marino/media-release/suspension-norfolk-island-regional-council-0>>.

<sup>783</sup> Exhibit 1, 20210224 Ordinary Council Meeting Minutes, NIRC.PUB.001.0295\_0002.

<sup>784</sup> Exhibit 1, 20210224 Ordinary Council Meeting Minutes, NIRC.PUB.001.0295\_0004.

<sup>785</sup> Exhibit 1, 20210407 Ordinary Meeting Agenda, NIRC.PUB.004.0001\_0065.

<sup>786</sup> Exhibit 1, 20210407 Ordinary Meeting Agenda, NIRC.PUB.004.0001\_0066.

<sup>787</sup> Exhibit 1, 20210407 Ordinary Meeting Minutes, NIRC.PUB.004.0002\_0006.

Development and Communities.<sup>788</sup> In its reply to the Counsel Assisting submissions, the Department noted that over the past few months they had observed a shift in their relationship with the Council towards a more collaborative relationship.<sup>789</sup>

591. Implementation of all of the external audit recommendations will be costly. Mr Roach's evidence during the hearings was that preliminary costings suggested that implementing the recommendations would require 'in excess of \$44 million'.<sup>790</sup> He agreed that implementing the recommendations would be contingent on having the funds to do so, and that the Council did not currently have sufficient funds.<sup>791</sup>

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<sup>788</sup> Exhibit 1, 20210407 Ordinary Meeting Agenda, NIRC.PUB.004.0001\_0066.

<sup>789</sup> 20210827 Commonwealth submission in response to Counsel Assisting submissions, COMM.SUB.001.0001\_0004.

<sup>790</sup> Transcript, 31 May 2021, p 68.15–17.

<sup>791</sup> Transcript, 31 May 2021, pp 70.8–71.13.

## Chapter 9: Overall conclusions

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, the evidence focused on financial management from the time the Council was established on 1 July 2016 with a particular emphasis upon 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; a matter 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 that 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'.<sup>792</sup> 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.<sup>793</sup>
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 aging 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 and financially responsible Council' deficits in Council's business operations should 'be paid for by the setting of special rates, fees and charges and through productivity efficiencies.'<sup>794</sup> The fundamental matter to emerge from Chapter 5 is that the governing body, despite the

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<sup>792</sup> Exhibit 1, 20161221 Agenda Ordinary Meeting, NIRC.PUB.001.0072\_0183.

<sup>793</sup> Exhibit 1, 20161221 Agenda Ordinary Meeting, NIRC.PUB.001.0072\_0171.

<sup>794</sup> Exhibit 1, 20161116 Agenda Ordinary Meeting, NIRC.PUB.001.0067\_0080.

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 LG Act. The end result of Council's rates policy was that rates levied as a 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 2016/17 to around 70% in 2019/20. 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'.<sup>795</sup>
601. In my 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 an asserted underspend 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

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<sup>795</sup> Transcript, 3 June 2021, p 348.25–30.



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 borne 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 follows on from the problems identified in each of Chapters 5 and 6 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.

# Appendices

## Appendix A: Terms of Reference

### Public inquiry into Norfolk Island Regional Council – terms of reference

To inquire and report to the Assistant Minister for Regional Development and Territories (Minister) with respect to whether, in exercising its functions pursuant to sections 21, 22, 23 and 24 of the *Local Government Act 1993* (NSW) (NI) (Act):

- the NIRC and its governing body, since 2016, have managed, and are managing, the finances of the NIRC in accordance with the guiding principle in section 8B(c) of the Act to have effective financial and asset management, including sound policies and processes for the following:
  - performance management and reporting, as they relate to effective financial and asset management;
  - asset maintenance and enhancement, as they relate to effective financial and asset management;
  - funding decisions, as they relate to effective financial and asset management;
  - risk management practices, as they relate to effective financial and asset management.
- the governing body of the NIRC has, since 2016, complied with its obligations under sections 223(1)(d) and (l), to:
  - (1)(d) 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, as they relate to effective financial and asset management; and
  - (1)(l) be responsible for ensuring that the council acts honestly, efficiently and appropriately, in relation to effective financial and asset management.

The Commissioner may make findings as the Commissioner sees fit having regard to the terms of reference.

## **Appendix B: The Approach of the Inquiry**

### **Establishment of the Inquiry**

- B1. On 5 February 2021, the Honourable Nola Marino MP, Assistant Minister for Regional Development and Territories and Parliamentary Secretary to the Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development, ordered the suspension of the Council and appointed Mr Mike Colreavy as Interim Administrator for the term of the Council's suspension.
- B2. On 9 February 2021, the Assistant Minister, under s 438U of the applied LG Act, issued an Instrument of Appointment appointing Ms Carolyn McNally as Commissioner to hold a public inquiry and to produce a report with respect to matters relating to the NIRC as set out in the ToR.

### **Assistance to the Commissioner**

- B3. Mr Paul Bolster acted as Counsel Assisting the Inquiry, together with Ms Kathleen Morris. Mr Bolster and Ms Morris were supported by HWL Ebsworth Lawyers.
- B4. PricewaterhouseCoopers (PwC) provided independent advice on the Council's financial, performance and asset management.
- B5. Ms Ann-Maree Pike from the Department of Infrastructure, Transport, Regional Development and Communities provided administrative support.

### **Visits to the Island and advertising the Inquiry**

- B6. On 13 to 15 April 2021, the Commissioner and Inquiry staff conducted community sessions on Norfolk Island to seek the input of the NIRC and the Norfolk Island community relevant to the ToR. Members of the public were notified of these meetings through *The Norfolk Islander* newspaper, *Norfolk News* email distribution, *Norfolk Radio* and posters at the Customer Care building. Figure 24 is a copy of an advertisement published in *The Norfolk Islander*.

Figure 24. Advertisement published in The Norfolk Islander, March 2021

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## Public Inquiry into Norfolk Island Regional Council

### **Commissioner's visit to Norfolk Island**

A formal, independent Public Inquiry into the Norfolk Island Regional Council (NIRC) has been established.

The Inquiry's Terms of Reference focus on whether the NIRC and its governing body have performed their financial and asset management roles in accordance with relevant provisions of the *Local Government Act 1993* (NSW) (NI).

The Inquiry seeks the involvement and input of the NIRC and the Norfolk Island community relevant to the Terms of Reference.

Ms Carolyn McNally has been appointed as the Inquiry's Commissioner.  
**The Commissioner and Inquiry staff will visit Norfolk Island on 13–15 April 2021 to conduct community sessions to inform lines of inquiry relevant to the Terms of Reference.**

The sessions are:

9:00am to 11:00am, 14 April, Governor's Lodge  
11:30am to 13:30pm, 14 April, Governor's Lodge  
3:00pm to 5:00pm, 14 April, Governor's Lodge  
5:30pm to 7:30pm, 14 April, Governor's Lodge

**Due to room capacity, you must register to attend a session. To register your interest please email:**

**NIRCpublicinquiry@infrastructure.gov.au by 6 April 2021.**

A second visit, consisting of formal hearings, will be held in the future.  
Further information regarding the inquiry and the Terms of Reference may be found on the website below:

[https://www.regional.gov.au/territories/norfolk\\_island/public-inquiry-nirc/](https://www.regional.gov.au/territories/norfolk_island/public-inquiry-nirc/)

For any other inquiries please contact the Secretariat:

E: NIRCpublicinquiry@infrastructure.gov.au

M: NIRC Public Inquiry, Office of the Commissioner, GPO Box 594, Canberra, ACT, 2601

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- B7. On 13 April 2021, two sessions were held with the Councillors, the General Manager and the NIRC senior staff. On 14 April 2021, four public meetings were held. On 15 October 2021, an all-staff Council meeting occurred.
- B8. The sessions were chaired by the Commissioner and focussed on the scope of the ToR, the ways that the public could engage with the Inquiry, the purpose of the upcoming public hearings, and the importance of procedural fairness in arriving at findings.

### **Inquiry website**

- B9. A webpage was created for the Inquiry. The webpage contains a General Practice Direction, information about the Inquiry such as a factsheet and frequently asked questions



about the Inquiry, information about the public submissions and hearings process and includes a copy of the ToR. The webpage also provides contact details so that members of the public could contact Inquiry staff.

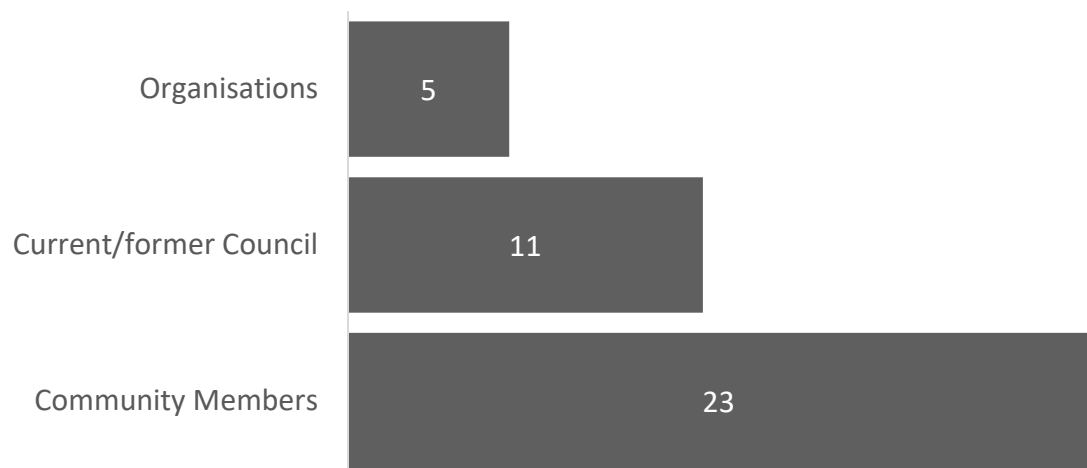
- B10. The webpage also hosts transcripts for each day of the public hearings, videos of each day of the public hearings that were conducted off-Island, and hosts links to download each Exhibit that was tendered as evidence during the course of the Inquiry.
- B11. The Inquiry webpage is available at <<https://www.infrastructure.gov.au/territories-regions-cities/territories/norfolk-island/governance-administration/public-inquiry>>.

## Process by which the Inquiry gathered information

### Public submissions

- B12. The Inquiry received information from the public through submissions. Submissions took the form of written statements and were submitted by individuals or organisations about an issue or issues relevant to the Inquiry's terms of reference. Often, a submission included one or more documents in support of the claims the person or organisation was making.
- B13. The Inquiry received 77 public submissions inclusive of 617 documents from 39 different people and organisations. Some people and organisations provided more than one submission.
- B14. Figure 25 below shows the breakdown of respondents to the Inquiry's calls for public submissions. Twenty three community members provided one or more submissions, indicating a high level of community engagement with the Inquiry. The Inquiry received submissions from 11 people formerly or currently working at the Council, and from five organisations.

**Figure 25. Profile of people and organisations who provided a submission to the Inquiry**



- B15. The submissions were used to guide the Inquiry staff's legal and financial analysis and helped determine the scope of the Inquiry. For example, many of the documents which accompanied the submissions (around 22%) related to the airport pavement and reseal project. A sizeable minority related to rates (12%) and electricity charges (12%), while only a few related to rubbish and waste (2%).

## Summonses

- B16. The legislation underpinning the Inquiry empowered the Commissioner to issue summonses to a person to give evidence, or to produce to the Inquiry any document in the person's custody or control.<sup>796</sup> On 12 May 2021, the Minister issued the *Norfolk Island Applied Laws Amendment (2021 Measures No. 1) Rules 2021*. That instrument had the effect of adding s 27A to Schedule 4 of the Norfolk Island Applied Laws Ordinance 2016, which in turn provided that the powers and functions conferred on the Commissioner by s 438U of the applied LG Act 'may be exercised and performed, for the purposes of any inquiry under this section, in and outside the Territory of Norfolk Island'. This empowered the Commissioner to call witnesses and to compel the production of documents from people and organisations not residing on Norfolk Island.
- B17. The Inquiry issued 36 summonses to produce to relevant parties and received more than 3,000 documents in response. Each of these documents was reviewed, and many were central to informing the scope and evidentiary base for the Inquiry. Many of these documents formed part of tender bundles, which were presented as evidence at the public hearings and subsequently relied upon by counsel assisting in their written submissions.

## Hearings

- B18. Public hearings were held on Norfolk Island at the South Pacific Resort Hotel on Taylors Road from Monday, 31 May 2021 to Friday, 4 June 2021, and in Sydney at the Registrar General's Building on Prince Albert Road from Wednesday, 9 June 2021 to Friday, 11 June 2021. Transcripts of the public hearings were made available on the Inquiry website as soon as possible following each day's proceedings. The Sydney hearings were live streamed to ensure residents of Norfolk Island had open and transparent access. Video recordings of the Sydney hearings were also published on the Inquiry website.

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<sup>796</sup> *Local Government Act 1993* (NSW) (NI), s 438U; *Royal Commissions Act 1923* (NSW) (NI), s 8.

## Appendix C:       Dramatis personae

- C1. In this section we identify the relevant persons who had the capacity to affect the financial and asset management of the NIRC. They are arranged in broad chronological order by reference to their particular relationship with and history on Norfolk Island.
- C2. **Robin Eleanor Adams** was, prior to the suspension of council, the Mayor of the NIRC, appointed on 1 July 2016.<sup>797</sup> Ms Adams was a member of the previous Norfolk Administration. She was a clerk for the Norfolk parliament for 26 years,<sup>798</sup> a speaker of the Norfolk Island Parliament from 2010–2013, and the Minister for Cultural Heritage and Community Services from 2013–2015. Ms Adams is a descendent of Fletcher Christian of HMAV Bounty and currently lives on Norfolk Island.<sup>799</sup>
- C3. **Lisle Dennis Snell** was, prior to the suspension of council, a councillor of the NIRC, appointed on 1 July 2016.<sup>800</sup> He has over 40 years' experience in politics. Prior to this role, Mr Snell was a member of the 1<sup>st</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> Legislative Assembly of Norfolk Island, and was additionally the Chief Minister for the 14<sup>th</sup> (and final) Legislative Assembly. Mr Snell was born on Norfolk Island and is a Pitcairn descendent.<sup>801</sup>
- C4. **Alan John McCoy** was, prior to the suspension of council, the Deputy Mayor of the NIRC, appointed on 1 July 2016. Prior to this role, Mr McCoy was a member of the 10<sup>th</sup> and 11<sup>th</sup> Legislative Assembly of Norfolk Island. In this time, he held office for a short period as Minister for Health and Environment.<sup>802</sup> Mr McCoy is a seventh generation Pitcairn descendant and has spent the majority of his life living on Norfolk Island. He is a qualified carpenter and joiner.<sup>803</sup>
- C5. **Roderick Charlton Buffet** was, prior to the suspension of council, a councillor of the NIRC.<sup>804</sup> He was appointed councillor on 1 July 2016 and had no prior involvement with the previous Administration of Norfolk Island.<sup>805</sup> Mr Buffet was additionally a member of the Audit Committee for the NIRC since its inception in late 2016.<sup>806</sup> He has been back and forth from

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<sup>797</sup> Transcript, 3 June 2021, pp 292.40–45, 293.10–13.

<sup>798</sup> Transcript, 3 June 2021, p 293.23–27.

<sup>799</sup> Norfolk Island Regional Council, *Mayor Robin Adams* (webpage) <<http://www.norfolkisland.gov.nf/mayor-robin-adams>>.

<sup>800</sup> Transcript, 3 June 2021, p 251.16–22.

<sup>801</sup> Norfolk Island Regional Council, *Councillor Lisle Snell* (webpage) <<http://www.norfolkisland.gov.nf/councillor-lisle-snell>>.

<sup>802</sup> Transcript, 2 June 2021, p 175.11–29.

<sup>803</sup> Norfolk Island Regional Council, *Deputy Mayor John McCoy* (webpage) <<http://www.norfolkisland.gov.nf/deputy-mayor-john-mccoy>>.

<sup>804</sup> Transcript, 1 June 2021, p 137.24–26.

<sup>805</sup> Transcript, 1 June 2021, p 138.4–6.

<sup>806</sup> Transcript, 1 June 2021, p 160.3–5.

Norfolk Island and the Australian mainland since he was 4 years old.<sup>807</sup> By trade, Mr Buffet is an electrician and electrical field mechanic, with experience on Norfolk Island and in Queensland.<sup>808</sup>

- C6. **David Raymond Porter** was, prior to the suspension of council, a councillor of the NIRC, appointed on 1 July 2016.<sup>809</sup> Prior to this role, Mr Porter was a member of the 14<sup>th</sup> (final) Legislative Assembly of Norfolk Island.<sup>810</sup> Mr Porter was born in Bundaberg, Queensland and moved to Norfolk Island in 2007.<sup>811</sup> He was an elected member of Bundaberg local council from 1994 to 2007.<sup>812</sup> Mr Porter had been a licensed building contractor from 1978. During his time on Bundaberg Council, he continued to operate his building business, specialising in commercial and industrial building projects and civil engineering projects.<sup>813</sup>
- C7. **Peter Gregory Gesling** was appointed by the Commonwealth as the Executive Director during the transition period in 2015–16 on Norfolk Island.<sup>814</sup> Mr Gesling has a Bachelor's Degree in Civil Engineering, a Master's Degree in Business Administration and Management, and an Associate's Degree in Town Planning.<sup>815</sup> Prior to taking on his role on Norfolk Island, he worked at Port Stephens local council for 25 years. He started as the Director of Engineering Services, and then held the role of CEO for 16 years.<sup>816</sup>
- C8. **Bruce Gloster Taylor**<sup>817</sup> is the current Manager Services for the NIRC.<sup>818</sup> Prior to an organisational restructure in June 2020, Mr Taylor had held the position of Group Manager – Services since the Council's inception on 1 July 2016.<sup>819</sup> Mr Taylor was also appointed as Interim General Manager after Ms Jackson resigned in September 2019,<sup>820</sup> and held this position until January 2020 when Mr Roach was formally appointed to the position.<sup>821</sup> Mr Taylor was also involved in the previous Administration of Norfolk Island from 2003,<sup>822</sup> which

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<sup>807</sup> Transcript, 1 June 2021, p 137.37–44.

<sup>808</sup> Transcript, 1 June 2021, p 138.24–32.

<sup>809</sup> Transcript, 2 June 2021, p 216.25–28.

<sup>810</sup> Transcript, 2 June 2021, pp 216.47–217.2.

<sup>811</sup> Transcript, 2 June 2021, p 216.33–42.

<sup>812</sup> 20210915 Letter from RGS Law to Solicitors Assisting the Inquiry, RGS.SUB.001.0001\_0002.

<sup>813</sup> 20210915 Letter from RGS Law to Solicitors Assisting the Inquiry, RGS.SUB.001.0001\_0002.

<sup>814</sup> Transcript, 11 June 2021, p 581.33–42.

<sup>815</sup> Peter Gesling (LinkedIn, 26 October 2021) <<https://www.linkedin.com/in/peter-gesling-563bb710/?originalSubdomain=au>>.

<sup>816</sup> Transcript, 11 June 2021, p 582.21–24.

<sup>817</sup> 20210915 Letter from RGS Law to Solicitors Assisting the Inquiry, RGS.SUB.001.0001\_0002.

<sup>818</sup> Exhibit 1, 20210224 Ordinary Council Meeting Minutes, NIRC.PUB.001.0295.

<sup>819</sup> Exhibit 1, 20160706 Extraordinary Meeting of Council Minutes, NIRC.PUB.001.0001; Transcript, 31 May 2021, p 74.31–26.

<sup>820</sup> Exhibit 1, 20190918 Extraordinary Council Meeting Minutes, NIRC.PUB.001.0237.

<sup>821</sup> Transcript, 31 May 2021, p 74.28–47.

<sup>822</sup> Transcript, 31 May 2021, p 74.42–75.4.

included holding financial and asset related roles.<sup>823</sup> He had no local government experience before joining the NIRC.<sup>824</sup>

- C9. **Eva Liselotte (Lotta) Jackson** was the General Manager of the NIRC from 1 July 2016<sup>825</sup> to 13 September 2019.<sup>826</sup> Ms Jackson has a Master of Business Administrations, a Bachelor and Master of Arts, and a Graduate Diploma in Psychology.<sup>827</sup> She has prior experience in local government, including holding the role of Manager for Woollahra Municipal Council, Director of Corporate and Community Services for Glen Innes Severn Council, and General Manager for Tenterfield Shire Council.<sup>828</sup> Ms Jackson was re-appointed by Council at the conclusion of her first term on 30 June 2019 however not long after that she resigned during the period in which there was controversy on the Island over the source of aggregate for the Airport Runway Project.
- C10. **John van Gaalen** was the Group Manager Commercial Hub (Chief Financial Officer) for the NIRC from 1 July 2016<sup>829</sup> to April 2017.<sup>830</sup> Mr van Gaalen moved to Norfolk Island in 2016 to take on this role.<sup>831</sup> Prior to this, he had roughly seven years' experience in local government. He held positions within councils in the northwest of Tasmania, where he was a Director of Corporate Services. Mr van Gaalen was additionally a Finance Manager for Richmond Council, a large council in London, England.<sup>832</sup>
- C11. **Shane David Nankivell**<sup>833</sup> was the Manager of Finance for the NIRC from 1 July 2016<sup>834</sup> to May 2017, when he took the position as Acting Group Manager (Corporate / CFO).<sup>835</sup> Mr Nankivell acted in this position until August 2017.<sup>836</sup> Prior to his role at the NIRC, he worked at Broken Hill City Council for approximately 5 years, where he held roles such as Financial Accountant and Finance Manager. Mr Nankivell is currently the Budget Manager at the Department of Attorney-General and Justice, Northern Territory.<sup>837</sup>

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<sup>823</sup> Transcript, 31 May 2021, p 75.2–4.

<sup>824</sup> Transcript, 31 May 2021, p 82.6–9.

<sup>825</sup> Transcript, 11 June 2021, p 599.34–46.

<sup>826</sup> Transcript, 11 June 2021, p 604.1–5.

<sup>827</sup> Transcript, 11 June 2021, p 601.24–26.

<sup>828</sup> Lotta Jackson (LinkedIn, 25 October 2021) <<https://www.linkedin.com/in/lotta-jackson-38a90a168/>>.

<sup>829</sup> Transcript, 9 June 2021, p 371.39–46.

<sup>830</sup> Exhibit 1, Council meeting minutes, NIRC.PUB.001.0083.

<sup>831</sup> Transcript, 9 June 2021, p 372.38–43.

<sup>832</sup> Transcript, 9 June 2021, p 373.1–21.

<sup>833</sup> Transcript, 10 June 2021, p 466.21–23.

<sup>834</sup> Transcript, 10 June 2021, p 467.15–16.

<sup>835</sup> Exhibit 1, 20170517 Ordinary Council Meeting Minutes, NIRC.PUB.001.0090\_0002.

<sup>836</sup> Exhibit 11, 20170811 Farewell to Shane Nankivell media release, NIRC.PUB.008.0003.

<sup>837</sup> Transcript, 10 June 2021, p 466.32–42.

- C12. **Peter John (PJ) Garde Wilson** has been with the NIRC since 1 July 2016, originally as the Health and Water Officer, and now as the Team Leader for Waste and Environment for the NIRC. Mr PJ Wilson was previously a member of the Norfolk Island Advisory Committee during the transition from the Administration of Norfolk Island to the NIRC.<sup>838</sup>
- C13. **Kelly McFadyen** was the chair of the inaugural Audit Committee for the NIRC. She was appointed on 19 October 2016 and resigned in May 2018.<sup>839</sup> Ms McFadyen holds a Master's Degree in Risk Management, and a Diploma in Company Directorship. She has held positions in Risk Management and Governance for the NSW Government and is currently the Executive Director for Corporate Services in the Parliament of NSW.<sup>840</sup>
- C14. **Christopher Peter Gallagher** was a member of the inaugural Audit Committee for the NIRC<sup>841</sup> and held this role for approximately 4 years. He was appointed in 2016 with Ms McFadyen and resigned in October 2020. Mr Gallagher has nearly 40 years' experience in local government, mainly in the finance area. In the last seven years before his retirement, and before taking on his role on the NIRC Audit Committee, he was the General Manager of Lockhart Shire Council. Additionally, Mr Gallagher had been a member of the Audit Committees of Wagga City Council<sup>842</sup> and Tenterfield Shire Council.<sup>843</sup>
- C15. **Robert Bernard Carlesso** was the Group Manager (Corporate / CFO) for the NIRC from September 2017 to February 2018.<sup>844</sup> Mr Carlesso has experience in the semi-public service in Victoria in water industries, where he has held roles such as Chief Financial Officer.<sup>845</sup>
- C16. **Phillip James Wilson** was employed as a Financial and Management Accountant for the NIRC in October 2017 to April 2018.<sup>846</sup> He was later appointed as the Group Manager (Corporate / CFO) from April 2018 to January 2020.<sup>847</sup> Prior to starting his role at the NIRC, Mr Wilson had 10 years' experience in financial accounting areas within state government, in a variety of government departments.<sup>848</sup>

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<sup>838</sup> Transcript, 1 June 2021, p 121.16–34.

<sup>839</sup> Transcript, 9 June 2021, pp 391.25–43, 394.10.

<sup>840</sup> Kelly McFadyen (LinkedIn, 26 October 2021) <<https://www.linkedin.com/in/kelly-mcfadyen-52233829/?originalSubdomain=au>>.

<sup>841</sup> Transcript, 9 June 2021, p 418.18–20.

<sup>842</sup> Transcript, 9 June 2021, p 418.14–45.

<sup>843</sup> Transcript, 9 June 2021, pp 418.47–419.2.

<sup>844</sup> Exhibit 1, 20170920 Extraordinary Council Meeting Minutes, NIRC.PUB.001.0110; Transcript, 10 June 2021, p 485.17.

<sup>845</sup> Transcript, 10 June 2021, p 485.8–26.

<sup>846</sup> 20210827 Letter from Mills Oakley to Solicitors Assisting the Inquiry, PHWI.SUB.001.0001.

<sup>847</sup> Transcript, 10 June 2021, p 501.25–40.

<sup>848</sup> Transcript, 10 June 2021, p 505.10–23.



- C17. **Alan Keith Buckley** was employed by the NIRC from December 2017 to December 2019<sup>849</sup> as the Manager of Infrastructure and Services.<sup>850</sup> He holds Diplomas in infrastructure, technical services, air conditioning, civil, mechanical services and airport.<sup>851</sup> Mr Buckley also has 30 years' experience in the military in construction engineering<sup>852</sup> and previous experience in a local government setting on Mornington Island, QLD and in a local corporation in Arnhem Land, NT.<sup>853</sup>
- C18. **Alistair Ronald Innes-Walker** is the current Manager of Corporate and Finance (Chief Financial Officer) for the NIRC. He commenced in this role on 3 June 2020.<sup>854</sup> Mr Innes-Walker previously held the role of Manager of Commercial Services for the NIRC, starting in February 2018,<sup>855</sup> though he occasionally acted in the Group Manager (Services) role.<sup>856</sup>
- C19. **Katherine Holcomb Sexton** is the current chair of the Audit Committee for the NIRC,<sup>857</sup> appointed in August 2018. Ms Sexton was born on Norfolk Island and still has family that reside on the Island.<sup>858</sup> Ms Sexton holds post graduate qualifications in risk management and has experience working with Victorian and Tasmanian councils.<sup>859</sup> She additionally has prior experience working for the previous Administration of Norfolk Island in the early 2000s, where she held the position of Research Assistant for Corporate and Community Services for three years.<sup>860</sup>
- C20. **Andrew Blair Roach** is the current General Manager of the NIRC, appointed on 6 January 2020.<sup>861</sup> He has 29 years of local government experience on the Australian mainland, including governance and financial management roles.<sup>862</sup> His experience includes Chief Executive Officer roles at Blayney Shire Council, and Port Macquarie Hastings Council in

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<sup>849</sup> Transcript, 10 June 2021, p 544.25–32.

<sup>850</sup> Transcript, 10 June 2021, p 545.38–40.

<sup>851</sup> Transcript, 10 June 2021, pp 544.44–545.1.

<sup>852</sup> Transcript, 10 June 2021, p 545.8–20.

<sup>853</sup> Transcript, 10 June 2021, p 544.34–42. Note: Mr Buckley did not specify the capacity in which he worked in Queensland and NT councils.

<sup>854</sup> 20210915 Letter from RGS Law to Solicitors Assisting the Inquiry, RGS.SUB.001.0001\_0002.

<sup>855</sup> Transcript, 31 May 2021, p 99.33–45.

<sup>856</sup> See, for example: Exhibit 1, 20181207 Extraordinary Council Meeting Minutes, NIRC.PUB.001.0182; Exhibit 1, 20190417 Ordinary Council Meeting Minutes, NIRC.PUB.001.0202.

<sup>857</sup> Transcript, 9 June 2021, p 445.35–42.

<sup>858</sup> Transcript, 9 June 2021, p 446.24–34. Note: Ms Sexton did not specify in what capacity she worked in the Victorian and Tasmanian councils.

<sup>859</sup> Transcript, 9 June 2021, p 447.2–14.

<sup>860</sup> Transcript, 9 June 2021, p 446.36–47.

<sup>861</sup> Transcript, 31 May 2021, p 30.11–13.

<sup>862</sup> Transcript, 31 May 2021, p 31.5–9.

New South Wales, and in Southern Downs Regional Council and Ipswich City Council in Queensland.<sup>863</sup>

- C21. **Roger James Nielsen** was appointed as the Interim Finance Manager/Contract Accountant<sup>864</sup> from 18 April 2020.<sup>865</sup> Mr Nielsen was appointed by Andrew Roach to assist with a number of financial matters in relation to the Council, as there was no Chief Financial Officer of the NIRC at this time.<sup>866</sup> He held this position for 3 months.<sup>867</sup> Mr Nielsen did not have any previous experience with the NIRC or former Administration of Norfolk Island before taking on this role.<sup>868</sup>

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<sup>863</sup> Andrew Roach (LinkedIn, 26 October 2021) <[www.linkedin.com/in/andrew-roach-5181a840/?originalSubdomain=au](https://www.linkedin.com/in/andrew-roach-5181a840/?originalSubdomain=au)>.

<sup>864</sup> Transcript, 1 June 2021, p 111.24–34.

<sup>865</sup> Transcript, 1 June 2021, p 112.24–27.

<sup>866</sup> Transcript, 1 June 2021, p 111.36–38.

<sup>867</sup> Transcript, 1 June 2021, p 111.40–47.

<sup>868</sup> Transcript, 1 June 2021, p 112.11–14.

## Appendix D: Policies, procedures and processes

Policies and procedures/processes identified by the Council as relevant to the Terms of Reference and produced in response to summonses<sup>869</sup>

	Document	Date adopted	Doc ID
1.	<b>3.07 Asset Accounting Policy</b>	19 April 2017	Exhibit 11, NIRC.001.001.0005_0003 to NIRC.001.001.0002_0015 Exhibit 11, NIRC.001.004.0016
2.	<b>3.08 Information Technology Policy</b>	16 August 2017	Exhibit 11, NIRC.001.001.0002_0016 to NIRC.001.001.0002_0017
3.	<b>4.04 Asset Management Policy</b>	27 June 2018	Exhibit 11, NIRC.001.001.0002_0018 to NIRC.001.001.0002_0023; Exhibit 11, NIRC.001.001.0012_0162 to NIRC.001.001.0012_0167
4.	<b>2.07 Grant Programs Policy</b>	19 July 2017	Exhibit 11, NIRC.001.001.0002_0024 to NIRC.001.001.0002_0026
5.	<b>3.04 Investment Policy</b>	21 December 2016	Exhibit 11, NIRC.001.001.0002_0027 to NIRC.001.001.0002_0033
6.	<b>3.11 Overdue Rates Debt Recovery Policy</b>	17 July 2019	Exhibit 11, NIRC.001.001.0002_0034 to NIRC.001.001.0002_0035
7.	<b>1.07 Expenditure Authority in Emergencies Policy</b>	18 September 2019	Exhibit 11, NIRC.001.001.0002_0036 to NIRC.001.001.0002_0037
8.	<b>2.02 Gifts and Benefits Policy</b>	19 October 2016	Exhibit 11, NIRC.001.001.0002_0038 to NIRC.001.001.0002_0041 Exhibit 11, NIRC.001.004.0007
9.	<b>2.04 Fraud and Corruption Policy</b>	19 April 2017	Exhibit 11, NIRC.001.001.0002_0042 to NIRC.001.001.0002_0053 Exhibit 11, NIRC.001.004.0008

<sup>869</sup> Summons to produce NIRC/1, summons to produce NIRC/5; and see also the correspondence from the Solicitors Assisting the Inquiry to the Council dated 11 May 2021.

10.	<b>2.05 Work, Health &amp; Safety Policy</b>	17 May 2017	Exhibit 11, NIRC.001.001.0002_0054 to NIRC.001.001.0002_0055  Exhibit 11, NIRC.001.004.0009
11.	<b>2.12 Business Continuity Planning Policy</b>	19 September 2018	Exhibit 11, NIRC.001.001.0002_0056 to NIRC.001.001.0002_0059
12.	<b>2.13 Risk Management Policy and Framework<sup>870</sup></b>	19 September 2018	Exhibit 11, NIRC.001.001.0002_0060 to NIRC.001.001.0002_0065
13.	<b>3.03.1 Purchasing Procedure</b>	3 June 2019	Exhibit 1, NIRC.001.001.0005_0002 to NIRC.001.001.0005_0010
14.	<b>3.03.2 Tendering Procedure</b>	26 June 2019	Exhibit 1, NIRC.001.001.0005_0011 to NIRC.001.001.0005_0016
15.	<b>Standard Operating Guideline for Petty Cash Reimbursement Request</b>	10 July 2019	Exhibit 11, NIRC.001.001.0005_0017 to NIRC.001.001.0005_0018
16.	<b>Standard Operating Guideline for Staff Expense Reimbursement Request</b>	10 July 2019	Exhibit 11, NIRC.001.001.0005_0019 to NIRC.001.001.0005_0020
17.	<b>Standard Operating Guideline for Payment of Supplier Invoices</b>	10 July 2019	Exhibit 11, NIRC.001.001.0005_0021 to NIRC.001.001.0005_0022
18.	<b>Policies and Procedures Registry</b>		Exhibit 11, NIRC.001.001.0007 Exhibit 11, NIRC.001.001.0008 Exhibit 11, NIRC.001.001.0009 Exhibit 11, NIRC.001.003.0002
19.	<b>Delivery Program 2016-2020</b>	19 October 2016	Exhibit 11, NIRC.001.001.0011_0002 to NIRC.001.001.0011_0019

<sup>870</sup> Note: although not provided, Council also adopted a risk management procedure at the time it adopted its risk management policy and framework. See: Exhibit 1, 20180919 Agenda Ordinary Meeting, NIRC.PUB.001.0170\_0106.

20.	<b>Operational Plans:</b>  <b>2016-2017</b>  <b>2017-2018</b>  <b>2018-2019</b>  <b>2019-2020</b>  <b>2020-2021</b>	2016-2017: 26 September 2016  2017-2018: 16 November 2017  2018-2019: 20 February 2019  2019-2020: 26 June 2019  2020-2021: 30 June 2020	<b>2016-2017:</b> Exhibit 11, NIRC.001.001.0011_0020 to NIRC.001.001.0011_00109  <b>2017-2018:</b> Exhibit 11, NIRC.001.001.0011_0110 to NIRC.001.001.0011_0197  2018-2019: Exhibit 11, NIRC.001.001.0011_0198 to NIRC.001.001.0011_0321  <b>2019-2020:</b> Exhibit 11, NIRC.001.001.0011_0322 to NIRC.001.001.0011_0458  <b>2020-2021:</b> Exhibit 11, NIRC.001.001.0011_0459 to NIRC.001.001.0011_0592
21.	<b>Long Term Financial Plans:</b>  <b>2017-26</b>  <b>2018-27</b>  <b>2019-28</b>  <b>2020-29</b>	2017-26: 21 December 2016  2018-27: 28 June 2017  2019-28: 27 June 2018  2020-29: 26 June 2019	<b>2017-2026:</b> Exhibit 11, NIRC.001.001.0011_0593 to NIRC.001.001.0011_0620  <b>2018-2027:</b> Exhibit 11, NIRC.001.001.0011_0621 to NIRC.001.001.0011_0649  <b>2019-2028:</b> Exhibit 11, NIRC.001.001.0011_0650 to NIRC.001.001.0011_0679  <b>2020-2029:</b> Exhibit 11, NIRC.001.001.0011_0680 to NIRC.001.001.0011_0709
22.	<b>Asset Management Plans:</b>  <b>Buildings</b>  <b>Fleet</b>  <b>Infrastructure</b>  <b>Roads</b>	Buildings: 21 December 2016; 26 June 2019  Fleet: 21 December 2016; 26 June 2019	<b>Buildings 2016:</b>  Exhibit 11, NIRC.001.001.0012 to NIRC.001.001.0012_0018

		<p>Infrastructure: 21 December 2016; 26 June 2019</p> <p>Roads: 21 December 2016; 26 June 2019</p>	<p><b>Buildings 2020–2029:</b> Exhibit 11, NIRC.001.001.0012_0019 to NIRC.001.001.0012_0034</p> <p><b>Fleet 2016:</b> Exhibit 11, NIRC.001.001.0012_0035 to NIRC.001.001.0012_0052</p> <p><b>Fleet 2020–2029:</b> Exhibit 11, NIRC.001.001.0012_0053 to NIRC.001.001.0012_0072</p> <p><b>Infrastructure 2016:</b> Exhibit 11, NIRC.001.001.0012_0073 to NIRC.001.001.0012_0090</p> <p><b>Infrastructure 2020–2029:</b> Exhibit 11, NIRC.001.001.0012_0091 to NIRC.001.001.0012_0109</p> <p><b>Roads 2016:</b> Exhibit 11, NIRC.001.001.0012_0110 to NIRC.001.001.0012_0130</p> <p><b>Roads 2020–2029:</b> Exhibit 11, NIRC.001.001.0012_0131 to NIRC.001.001.0012_0161</p>
23.	<b>1.01 Councillor Access to Information and Interaction with Staff Policy</b>	20 July 2016	Exhibit 11, NIRC.001.004.0002
24.	<b>1.02 Payment of Expenses and Provision of Facilities to Councillors Policy</b>	20 July 2016	Exhibit 11, NIRC.001.004.0003
25.	<b>1.03 Oversight of the General Manager by the Mayor Policy</b>	17 August 2016	Exhibit 11, NIRC.001.004.0004
26.	<b>1.04 Media Policy</b>	20 July 2016	Exhibit 11, NIRC.001.004.0005

27.	<b>1.05 Community Donations Policy</b>	17 August 2016	Exhibit 11, NIRC.001.004.0006
28.	<b>2.06 Bullying and Harassment in the Workplace Policy</b>	17 May 2017	Exhibit 11, NIRC.001.004.0010
29.	<b>3.01 Access to Financial Management Systems Policy</b>	15 March 2017	Exhibit 11, NIRC.001.004.0011
30.	<b>3.02 Hardship Policy</b>	15 February 2017	Exhibit 11, NIRC.001.004.0012
31.	<b>3.03 Procurement Policy</b>	19 October 2016	Exhibit 11, NIRC.001.004.0013
32.	<b>3.05 Corporate Credit Card Policy</b>	21 December 2016	Exhibit 11, NIRC.001.004.0014
33.	<b>3.06 Complaints Handling Policy</b>	19 April 2017	Exhibit 11, NIRC.001.004.0015
34.	<b>200401 Administration Policy and Guidelines</b>	November 2003	Exhibit 11, NIRC.001.004.0017 Exhibit 11, NIRC.001.004.0018
35.	<b>200402 Internet and Email Usage Policy</b>	2004, revised September 2004	Exhibit 11, NIRC.001.004.0019
36.	<b>200402 Internet and Email Usage Employee Form of Acknowledgement</b>	2004	Exhibit 11, NIRC.001.004.0020
37.	<b>200403 Emergency Evacuation Procedures</b>	January 2004	Exhibit 11, NIRC.001.004.0021
38.	<b>200405 Personal Protective Equipment Policy</b>	30 July 2004	Exhibit 11, NIRC.001.004.0022
39.	<b>200407 Procurement of Goods and Services Policy</b>	September 2004	Exhibit 11, NIRC.001.004.0023

40.	<b>200408 Guidelines for Assessment of Sports Promotion Applications</b>	10 September 2004	Exhibit 11, NIRC.001.004.0024
41.	<b>200901 Maintenance and Repair of Footpaths Policy</b>	23 January 2009	Exhibit 11, NIRC.001.004.0025
42.	<b>200902 Warning Signs as Remote Supervision Policy</b>	23 January 2009	Exhibit 11, NIRC.001.004.0026
43.	<b>200903 Trees and Tree Root Management Policy</b>	23 January 2009	Exhibit 11, NIRC.001.004.0027
44.	<b>200904 Document and Record Management Policy</b>	18 September 2009	Exhibit 11, NIRC.001.004.0028
45.	<b>200906 Infection and Health Control Policy</b>	18 September 2009	Exhibit 11, NIRC.001.004.0029
46.	<b>200907 OH&amp;S Training and Competence Policy</b>	18 September 2009	Exhibit 11, NIRC.001.004.0030
47.	<b>200908 - Contractor Management Policy</b>	18 September 2009	Exhibit 11, NIRC.001.004.0031
48.	<b>200912 Management and Protection of Hearing Policy</b>	18 September 2009	Exhibit 11, NIRC.001.004.0032
49.	<b>200913 Hazardous Substances and Dangerous Goods Policy</b>	18 September 2009	Exhibit 11, NIRC.001.004.0033
50.	<b>200914 Construction Site Safety Policy</b>	18 September 2009	Exhibit 11, NIRC.001.004.0034
51.	<b>200915 Safe Working in Confined Spaces Policy</b>	18 September 2009	Exhibit 11, NIRC.001.004.0035
52.	<b>200916 Height Safety and Prevention of Falls Policy</b>	18 September 2009	Exhibit 11, NIRC.001.004.0036



53.	<b>200917 Workplace Amenities Policy</b>	18 September 2009	Exhibit 11, NIRC.001.004.0037
54.	<b>200918 Plant and Equipment Safety Policy</b>	18 September 2009	Exhibit 11, NIRC.001.004.0038
55.	<b>200919 Office Health and Safety Policy</b>	18 September 2009	Exhibit 11, NIRC.001.004.0039
56.	<b>200920 - Portable Equipment Electrical Safety Policy</b>	18 September 2009	Exhibit 11, NIRC.001.004.0040
57.	<b>200921 Return to Work Program Policy</b>	18 September 2009	Exhibit 11, NIRC.001.004.0041
58.	<b>200922 Relocating Buildings Containing Asbestos Policy</b>	26 October 2009	Exhibit 11, NIRC.001.004.0042
59.	<b>201001 Event Risk Management Policy</b>	1 March 2010	Exhibit 11, NIRC.001.004.0043
60.	<b>201002 Management of Work Experience Students Policy</b>	1 March 2010	Exhibit 11, NIRC.001.004.0044
61.	<b>201402 IT Security User Password Policy</b>	1 March 2010	Exhibit 11, NIRC.001.004.0045
62.	<b>201403 Information Technology Bring Your Own Device (BYOD) Interim Policy</b>	April 2014	Exhibit 11, NIRC.001.004.0046
63.	<b>201404 Asset Management Policy</b>	18 July 2014	Exhibit 1, NIRC.001.004.0047
64.	<b>201405 FMIS New User Access Request Form</b>	2014	Exhibit 11, NIRC.001.004.0048

65.	<b>201405 Financial Management Information System Access Policy</b>	2014	Exhibit 11, NIRC.001.004.0049 Exhibit 11, NIRC.001.004.0052
66.	<b>201405 Financial Management Information System Access Policy</b>	30 July 2014	Exhibit 11, NIRC.001.004.0050 Exhibit 11, NIRC.001.004.0051
67.	<b>201407 Fraud and Corruption Risk Management Policy</b>	22 July 2014	Exhibit 11, NIRC.001.004.0053
68.	<b>201408 Studies Assistance Policy</b>	16 September 2014	Exhibit 11, NIRC.001.004.0054
69.	<b>201409 Contract Register and Disclosure Policy</b>	4 March 2015	Exhibit 11, NIRC.001.004.0055
70.	<b>201411 Management and Use of the ANI Facebook Page Policy</b>	2 February 2016	Exhibit 11, NIRC.001.004.0056
71.	<b>201412 Radio Norfolk Programming Policy</b>	4 March 2015	Exhibit 11, NIRC.001.004.0057
72.	<b>201413 Use of the Administration's Motor Vehicle Fleet Policy</b>	2 February 2016	Exhibit 11, NIRC.001.004.0058
73.	<b>201413 Application for approval of commuter use, outside normal working hours use and private use</b>	2014	Exhibit 11, NIRC.001.004.0059
74.	<b>201502 Complaints Handling Policy</b>	23 March 2015	Exhibit 11, NIRC.001.004.0060
75.	<b>201502 Appendix 1, Customer Complaint Form and Procedure</b>	March 2015	Exhibit 11, NIRC.001.004.0061

76.	<b>201502 Appendix 2, How the Administration of Norfolk Island will deal with your Complaint</b>	March 2016	Exhibit 11, NIRC.001.004.0062
77.	<b>201502 Appendix 3, Complaints Procedure</b>	March 2016	Exhibit 11, NIRC.001.004.0063
78.	<b>201502 Appendix 4, Complaints Handling Flowchart</b>		Exhibit 11, NIRC.001.004.0064
79.	<b>201502 Appendix 5, Customer Complaint Management Form</b>		Exhibit 11, NIRC.001.004.0065
80.	<b>201502 Appendix 6, Customer Feedback Form</b>		Exhibit 11, NIRC.001.004.0066
81.	<b>201503 New Employee Probation Policy</b>	15 May 2015	Exhibit 11, NIRC.001.004.0067
82.	<b>201503 Employee Probationary Form</b>		Exhibit 11, NIRC.001.004.0068
83.	<b>201503 New Employee Probation Policy</b>	15 May 2015	Exhibit 11, NIRC.001.004.0069
84.	<b>201504 Reimbursement of Recreational Travel Allowance Policy</b>	10 June 2015	Exhibit 11, NIRC.001.004.0070
85.	<b>201506 Safe Asbestos Removal and Disposal Practices Policy</b>	11 June 2004	Exhibit 11, NIRC.001.004.0071
86.	<b>201507 Goods Donated as Sponsorship for Local Events or Functions Policy</b>	16 September 2015	Exhibit 11, NIRC.001.004.0072

<b>87.</b>	<b>201509 Ex-Gratia Payments Policy</b>	14 July 2015	Exhibit 11, NIRC.001.004.0073
<b>88.</b>	<b>201509 Application for Ex-Gratia Payment Form</b>	14 July 2015	Exhibit 11, NIRC.001.004.0074
<b>89.</b>	<b>201510 Norfolk Telecom Making Calls Using the Alternate Telephone Number Range Policy</b>	25 September 2015	Exhibit 11, NIRC.001.004.0075
<b>90.</b>	<b>201511 Registration and Code of Conduct for Lobbyists Interim Policy</b>	26 August 2015	Exhibit 11, NIRC.001.004.0076
<b>91.</b>	<b>201512 Application and Acquittal Process for Business Travel and Allowances Policy</b>	5 October 2015	Exhibit 11, NIRC.001.004.0077
<b>92.</b>	<b>201513 Provision of Advice and Services by the Legal Services Unit Policy</b>	2 February 2016	Exhibit 11, NIRC.001.004.0078
<b>93.</b>	<b>201515 Recognition of Service Policy</b>	13 December 2015	Exhibit 11, NIRC.001.004.0079
<b>94.</b>	<b>201516 Secondary Employment Policy</b>	13 December 2015	Exhibit 11, NIRC.001.004.0080
<b>95.</b>	<b>201518 Use of Personal Social Media by Staff under the Code of Conduct Policy</b>	2 February 2016	Exhibit 11, NIRC.001.004.0081
<b>96.</b>	<b>20160921 Norfolk Island Regional Council Code of Meeting Practice</b>	21 September 2016	Exhibit 11, NIRC.001.004.0082
<b>97.</b>	<b>201601 Reimbursement of Consultants and Contractors</b>	6 April 2016	Exhibit 11, NIRC.001.004.0083

	<b>Out of Pocket Expenses Policy</b>		
<b>98.</b>	<b>201606 Radio Norfolk Election Broadcasting Policy</b>	5 May 2016	Exhibit 11, NIRC.001.004.0084
<b>99.</b>	<b>Community Donations Policy</b>	17 August 2016	Exhibit 11, NIRC.001.004.0085
<b>100.</b>	<b>Councillor and Staff Gifts and Benefits Declaration Form</b>	September 2016	Exhibit 11, NIRC.001.004.0086
<b>101.</b>	<b>Gifts and Benefits Register</b>	January 2016	Exhibit 11, NIRC.001.004.0087
<b>102.</b>	<b>Pasturage Rights Policy</b>	December 2011	Exhibit 11, NIRC.001.004.0088
<b>103.</b>	<b>Administration of Norfolk Island Selection Advisory Panel Guidelines 2014</b>	2014	Exhibit 11, NIRC.001.004.0089
<b>104.</b>	<b>Sports Grants Policy</b>	21 December 2016	Exhibit 11, NIRC.001.004.0090
<b>105.</b>	<b>Statement of Business Ethics</b>	19 October 2016	Exhibit 11, NIRC.001.004.0091
<b>106.</b>	<b>Determining if Employment in the Public Service is going to be Ongoing, Fixed or Casual Policy</b>	16 February 2015	Exhibit 11, NIRC.001.005.0002
<b>107.</b>	<b>Determining the Recognition of Continuity of Service and Transfer of Leave Benefits for Public Service Employees between Ongoing, Fixed Period and Casual Engagements Policy</b>	16 February 2015	Exhibit 11, NIRC.001.005.0003

<b>108.</b>	<b>Determining the Retention of an Employee's Ongoing Status When Temporarily Engaged in a Fixed Period Position within the Public Service Policy</b>	16 February 2015	Exhibit 11, NIRC.001.005.0004
<b>109.</b>	<b>New Employee Probation Policy</b>	15 May 2015	Exhibit 11, NIRC.001.005.0005
<b>110.</b>	<b>2.01.1 Creating and Maintaining Policies and Procedures Procedure</b>	6 February 2017	Exhibit 11, NIRC.005.001.0020_0002 to NIRC.005.001.0020_0007
<b>111.</b>	<b>2.07.01 External Grant Management Procedure</b>	18 August 2017	Exhibit 11, NIRC.005.001.0021_0002 to NIRC.005.001.0021_0005