

Consultation Name: Updated fire control laws for Norfolk Island

This submission is submitted in response to a call for public comment re Draft Norfolk Island fire control exposure draft from the Department of Infrastructure, Transport, Regional Development and Communications (Advertised August 2022).

Subject: Exposure Draft - Norfolk Island fire control – Norfolk Island Continued Laws Amendment (Fire Control) Ordinance 2022)

From: Ron Ward,

Norfolk Island is generally recognised as being rural in nature, subtropical and substantially different to Australia with regards to climate, vegetation and fire risk factors. Norfolk Island's existing fire management legislation has proven adequate to date, with its provisions for fire bans having been used in the latter part of most summers since its enactment. Among the population there are very different views regarding the use and tolerance of fire.

Long term Norfolk people have generally used fire responsibly for generations while many newer settlers, used to Australia's often harsh, dry and volatile conditions are fearful of any open fire. Some of these have tried to use their perception of danger as justification for greater controls.

Most long-term Norfolk Island residents would use open fires as a land management tool to some extent. While large-scale clearing projects could function under the proposed permit scheme, it is the regular small scale burn operator that will be needlessly impacted by the passage of this legislation as it stands.

It is my firm belief that this issue is not urgent and should be postponed until there is a locally elected governing body familiar with local practices and conditions to deliberate and refine this draft legislation.

That said, please find my comments (in italics) adjacent to the relevant clauses of the draft:

22 (3) The Chief Fire Control Officer must arrange to have the particulars of the fire danger period broadcast, published, or otherwise communicated to the public, in such manner as the Chief Fire Control Officer thinks fit. ***Comment: This needs to be better defined both for clarity of purpose and to remove ambiguity for the relevant officer.***

23 Fires to clear land (1) A person must not clear land in an area by burning except in accordance with: (a) the requirements of subsection (3); or (b) a direction under subsection 25(1); or (c) subsection 19(2) (power to light fire on land); or (d) the Public Reserves Act 1997 or the Environment Protection and Biodiversity Conservation Regulations 2000 (Cth). Penalty: 50 penalty units or imprisonment for 1 year, or both. (2) For the purposes of subsection (1), clearing land includes clearing land to create or maintain a firebreak. Requirements for using permit to clear land (3) The requirements of this subsection are: (a) the person must hold a permit to light, use and maintain a fire in the open air in the area for the purposes of clearing land; and (b) the person must have taken reasonable steps to give the Chief Fire Control Officer, and each owner of land adjoining the land on which the fire is lit, 24 hours notice that the fire is to be lit; and (c) a person who is 18 or older must attend the fire at all times while it is alight; and (d) the burning must not be undertaken during a total fire ban or fire danger period in the area. ***Comment: The requirement to give notice to an adjoining owner is cumbersome and of dubious benefit, possibly appropriate for large scale clearing works but not applicable to smaller, regular green-waste fires. While most neighbours on Norfolk Island would as a matter of courtesy discuss such actions where necessary, forcing neighbours to communicate in some circumstances would be complicated or impossible and should not become a legal requirement.***

23B Burning green waste (1) A person must not burn green waste in the open air in an area except in accordance with: (a) the requirements in subsection (3) or (5); or (b) a direction under subsection 25(1); or (c) subsection 19(2) (power to light fire on land); or (d) the Public Reserves Act 1997 or the Environment Protection and Biodiversity Conservation Regulations 2000 (Cth). Penalty: 50 penalty units or imprisonment for 1 year, or both. (2) Subsection (1) does prohibit burning green waste for a purpose other than disposing of the waste. Note: A defendant bears an evidential burden in relation to the matter in this subsection: see section 58 of the Criminal Code 2007. Requirements for burning green waste other than in an incinerator (3) The requirements of this subsection are: (a) either: (i) the person must hold a permit to light, use and maintain a fire in the open air in the area for the purpose of disposing of green waste; or (ii) the fire must not exceed 4 cubic metres; and (b) the person must have taken reasonable steps to give the Chief Fire Control Officer, and each owner of land adjoining the land on which the fire is lit, 24 hours notice that the fire is to be lit; and (c) a person who is 18 or older must attend the fire at all times while it is alight; and EXPOSURE DRAFT EXPOSURE DRAFT Amendments Schedule 1 Norfolk Island Continued Laws Amendment (Fire Control) Ordinance 2022 9 (d) the green waste must not be burnt during a total fire ban or fire danger period in the area. Note 1: If the permit is issued subject to conditions, the person must also comply with the conditions when lighting, using or maintaining the fire. Failure to comply is an offence: see section 26A. Note 2: Owner includes occupier: see section 5. (4) Notice for the purposes of paragraph (3)(b) does not have to be in writing. **Comments: 1. Format of required permit is not defined – i.e can a person conducting regular burning obtain a permit for such activity or would a new one need to be sought for each day of lighting? 2. The requirement that fire must not exceed 4 cubic metres – is this intended to mean the fire itself or the pre-fired material to be burned? 4 cubic metres is too restrictive in many instances even if this refers to pre fired material. 3. Requiring a person to remain with a fire “while it is alight” is appropriate for fires close to houses or other infrastructure but would preclude the use of fire for large-scale burning of cleared material as the intense heat and solid material typically managed in these projects takes many days and nights to burn out. These projects require choosing the right conditions for the burn, active management until the initial bulk is burned, timely and appropriate management once the burn has passed its peak active phase. (this highlights the difference between Norfolk Is and Australian burning conditions where Australia’s typical conditions would mostly require constant monitoring) Suggest that the requirement for notifying adjoining neighbours and the requirement for constant monitoring whilst alight be subject to a distance factor i.e if the fire is to be lit within 50 metres (or such meterage as deemed apt) of that neighbours house or other structures. For the under 4 cubic metre fires the requirement to give 24 hours notice to neighbours and CFO is cumbersome and would often prevent using ideal conditions. Suggestion: Rather than cumbersome one-off permits, a licence system for burn operators be implemented, this could be points based along similar lines to drivers licences that serves to ensure a consistent operating standard, licence only issued upon passing a competency test, points not recoverable.**

Division 4—Obligations relating to fires at all times 24 Uncontrolled fires must be notified and extinguished (1) The owner of land must, immediately after becoming aware - an uncontrolled fire on the land or on adjoining land, notify the Chief Fire Control Officer of the fire. Penalty: 25 penalty units or imprisonment for 6 months, or both. (2) If there is an uncontrolled fire on land, the owner of the land must use all available means to bring the fire under control. Penalty: 25 penalty units or imprisonment for 6 months, or both.

Comment: While it is incumbent upon all persons to report an uncontrolled fire, placing an onus on a landowner to notify the chief fire officer of an uncontrolled fire on an adjoining land imposes unreasonable responsibility, this seems trivial until the penalties for non-compliance are factored in. How can a landowner be expected to know the bounds of their adjoining neighbours land? Does this imply a responsibility for the adjoining land but free to ignore fire on the portion beyond?

Please note I see no issue with the total fire ban provisions and fire danger period provisions and all concerns raised relate to times not subject to these high risk periods.

For your convenience I include also my submission on this topic of the 7th November 2020, please do not hesitate to seek clarification on any details raised in any of this material.

Thanking you for your attention to this submission,

Ron J Ward

Submitted on 5 September 2022