

ADDITIONAL SUBMISSION BY AUSTRALIAN CONSERVATION FOUNDATION TO
JOINT STANDING COMMITTEE ON THE NATIONAL CAPITAL AND EXTERNAL
TERRITORIES. TERM OF REFERENCE CONCERNING NORFOLK ISLAND. FOR
PRESENTATION TO PUBLIC HEARING ON 28TH MARCH, 2003

Introduction

SUBMISSION 41

1. ACF's original submission was made in August, 2002. Since then there have been some important developments. Therefore in this additional submission we will reiterate the main points taking account of these significant developments including the approval by the Norfolk Island Legislative Assembly of an amended statutory plan.

2. The first point we would like to reemphasise is that ACF has worked consistently to protect the nationally important environmental features of Norfolk Island since the late 1960s when it presented a conservation blueprint for the Territory. Some 36 years later, and with the benefit of our national perspective and decades of involvement with Norfolk Island, ACF believes the freeholding of Crown Lease land would cause serious damage to the Norfolk Island environment and that the new statutory plan, if given Commonwealth assent, would significantly reduce the standard of environmental protection for the Territory as a whole, adversely affecting more than just the areas that are currently Crown lease. These two moves could be summed up as a recipe of privatisation and reduced regulation, a thoroughly bad mix!. Another general point is that in a situation where a partnership approach between the Commonwealth and the Norfolk Island Government is essential the Commonwealth should be doing more.

Proposal to Freehold the Crown Leasehold

3. The proposal to freehold the Crown Leasehold has a long history beginning in 1990 with a report by the federal Department of Arts, Sport, Environment Tourism and Territories (DASET) which recommended retention of the leasehold. For most of the time since 1990 the main driving force has been self determination. Until quite recently the proposal was to transfer ownership of leasehold from the Commonwealth to the Norfolk Island Government. The comments of Justice Nimmo and the National Capital Authority on the benefits of keeping the Crown Leasehold in Commonwealth ownership are stated in item 11 and 12 of our initial submission (pages 3-4). They include benefits for retention of nationally important features and for farming. Commonwealth ownership can continue to deliver these benefits because it provides the best possible guarantee that these lands will be managed for the protection of their nationally significant values. Private ownership combined with a locally oriented plan controlling subdivision would expose them to almost certain fragmentation. At stake are the buffer areas of the national park, the coastal fringe, the visual setting of the Kingston Arthurs Vale Historic Area (KAVHA), and the rural landscapes. Most of these values are contained within the 9 areas, mostly Commonwealth land, which the ACF nominated for the Register of the National Estate (RNE) in 1996 (see map)



The ACF has a very strong concern about the effects of further fragmentation of Norfolk Island's on the rural areas, a concern shared by many Norfolk Islanders. Hence the two year old moratorium on subdivision of freehold. For the same reasons there has been a policy of no subdivision of Crown leasehold for decades. It is this policy which has resulted in the survival of the Island's large lots. It is also important to understand that the existence of these large lots, located mainly in the western and northern parts of the Island, has been used as justification for the past incremental fragmentation of the freehold areas. "Don't worry the rural atmosphere will survive on the Crown Leasehold" has been the mantra for years. Freeholding the Crown leasehold and replacing the 'no subdivision' policy with a 4 hectare minimum lot size would very much be a case of 'having your cake and eating it'.

5. At the hearing on Norfolk Island on 18th February Peter Davidson told the Committee that the increase in the minimum lot size from for the Rural Zone from 2 hectares to 4 hectares in the latest version of the new statutory plan would mean only one or two more blocks could be subdivided; "one or two - if that", he said. The meaningful comparison for leasehold is between the present 'no subdivision' policy and the 4 hectares minimum if freeholding occurs. The National Capital Authority tenure map for leasehold land shows 34 Crown Leasehold lots over 8 hectares. These would clearly have a potential for subdivision if they become freehold and if the new plan is assented to by the Commonwealth. We tender a copy of the relevant map from the 1997 Planning Report which shows these areas marked in green. Seven are in the National Park buffer area. Two are wholly within KAHVA. Four others straddle the KAHVA boundary. Hence as far as the leasehold is concerned these moves would result in at least the potential for another 34 lots. The figure is bigger because several of the lots are over 12 hectares (one is 20 hectares. The local Minister says there is potential for an extra 52 lots.

6. A case for freeholding could perhaps be made for some areas in the central part of the Island which have no nationally important environmental values. It has been said by the Department of Transport and Regional Service (DOTARS) that some areas may not be transferred if it can be shown that they have national environmental values. The two lots in KAVHA are excluded already and the 4 lots which straddle the boundary of KAHVA have been excluded from the first round. Unfortunately, the official means of determining which areas have national environmental values have not been developed and yet the Department still intends to go ahead with the freeholding. There has been a study (unpublished) of the flora and fauna aspects by Helman and Gilmour but no assessments of the cultural landscape values in spite of a requests for assessments by the Australian Heritage Commission, the Environment Minister and ourselves. Why not? ACF has investigated some of these values for its Register of the National Estate (RNE) nominations and the results are in the Heritage Commission's data base for the 9 sites which are on the indicative list.

7. While the benefits of continued Commonwealth ownership are clearcut and have been attested to in several reports no sound

argument for the freeholding has been advanced. The spuriousness of the claims by federal Ministers that freeholding would place Norfolk Islanders in the same situation as mainlanders is shown by a comparison with the situation in the Australian Capital Territory. On Norfolk there are as good arguments for retaining land as leasehold as there are in the Australian Capital Territory and in the States.

The Statutory Plan

8. The completion of a new statutory plan to replace the existing plan gazetted in 1997 is one of the prerequisites for the freeholding. The previous Territories Minister, Senator Macdonald, said it is the planning scheme not who owns the land which should determine land use. The length of time it took to develop and approve a plan - 29 years - is a clear indication of local hesitation that has existed about the pros and cons of planning. The plan which came into force in 1997 would have been reviewed and revised in the normal course of events but the development of a new plan was in fact driven by the land initiative.

9. The 1997 gazetted plan was a compromise document but contained some good points from the national standpoint including protection of the coast and protection of the KAVHA visual setting. Its main failing was the lack of any special protection for the rural landscapes. However, instead it did, as mentioned, recommend continued Commonwealth ownership of the Crown leasehold and a continuation of the policy ban on subdivision. The strengths of the 1997 plan resulted from the contributions of officers of the National Capital Authority who worked on its preparation. The new plan was developed with the help of officers from DOTARS on the basis that some environmental features would need to be sacrificed and it was made very clear to us that the plan was to represent only the local viewpoint. Hence it is not surprising that it has wound back the clock on key environmental measures in the existing plan that had worked well.

10. Since our August submission the Legislative Assembly has (October, 2002) approved a third version of the new plan. The final version of the plan introduces a 4 hectare minimum lot size for subdivision in the rural zone which would apply to the freeholded Crown Leasehold. This compares with the 10 hectares recommended in the first version of the new plan. The final version also will, if given assent, eliminate the coastal protection zone and the protection for the visual setting of KAVHA. In our submission (item 22) we identified four main aspects of the national environment which we believe would be adversely affected if the new plan was given assent: 1) the indigenous flora and fauna, including high quality remnant vegetation; 2) the coastline; 3) KAVHA; and 4) the associative rural landscapes.

11. Currently ownership of Crown leases is limited to Norfolk Islanders, one per individual or family. If the leasehold is freeholded and the new plan given assent non Norfolk Islanders will be able to purchase one or more lots of these lots and develop buildings on them including in parts of the current

coastal protection zone.

Heritage Protection

12. The Foundation has worked hard over the years to secure land for addition to the National Park with partial success. The areas which would make good additions have been identified. In the meantime we and others such as the National Park Advisory Committee have recommended their treatment as a buffer zone. It is an indication of how hostile the approach of the new plan is to conservation that the modest proposals for planning protection of these values were described by the planning team as "draconian".

13. In the case of the coast the existing plan provides for a no building zone 50 metres from the top of the cliffs or break of slope. This applies to all buildings. Also, the portion of a lot in the coastal protection area is excluded from the lot size when calculating minimum subdivision levels. There is lesser protection for a further 50 metres. ACF had argued for the whole 100 metres to be subject to the no building rule. Nevertheless, the zone has worked well. The main argument put in the Assembly for amending the plan to remove this zone was to stop public access but the freeing up of the subdivision restrictions were probably also attractive to members of the Assembly. The move in favour of individual property rights is an enormous break with the tradition of public access which has existed since 1856 and with the still earlier government approach to coastal protection which dates from 1794. It is perhaps symbolic of the giving of priority to private property rights over the traditional community right of access that in the debate in the Legislative Assembly public access to the coast was characterised as "public encroachment".

14. The Australian Convict Places Site is on Australia's World Heritage indicative list and according to the authors of the basic report on the site's values, Pearson and Marshall, KAVHA is not only indispensable to such a nomination but is the only one which would have a chance of inclusion on its own. In the 1998 referendum the Norfolk Island Government campaigned against a 'yes' vote on the grounds that World Heritage listing would result in an increase of Canberra's power. The latest version of the new plan not only removes the protection for the visual setting but changes the KAHVA Board's function to a purely advisory one.

15 A good deal of confusion exists over these two matters as a result of the non gazettal of the KAHV Viewshed Area on the map accompanying the 1997 gazetted plan. This confusion is unnecessary because, as ACF has ascertained, clause 6 of the Rural Area section of the Plan was gazetted, is clear in its intention, and has been applied until recently. It reads as follows:

6. Protection of Visual Setting of Kingston And Arthurs Vale Historic Area (KAVHA)

The Rural Area which can be seen from public vantage points in the Kingston and Arthur's Vale Historic Area is subject to the *Australian Heritage Commission Act 1975*. Accordingly, development within this area is subject to special consideration to ensure that it does not detract from the visual setting of KAVHA. Detailed consideration needs to be given to the siting of buildings and to appropriate landscaping in conjunction with a KAVHA Management Board approval.

So it is clear, as the current plan states, that the KAVHA Management Board is intended to be an approval body and the question of what is the "visual setting" is clearly explained. There is no reference in the clause to a Viewshed Area and the non gazettal of such an area ought not to affect the Board's exercise of its clearly stated responsibilities.

15. This whole matter has become very pertinent with recent decisions of the local Minister to approve building development in the visual setting. I table a photograph showing one house which was approved at lot 57a4. This site (the house has since burnt down) is visible from the public vantage point at Point Hunter. I also table four photographs of a recently approved development at lot 81f showing its visibility from three viewing points and from the main settlement. It is significant, we believe, that in deciding to approve this last development the local Minister sought justification in the provisions of the new plan not yet assented to rather than the existing plan. This proposal is now to be the subject of an assessment under the EPBC Act. This is another indication of the rush to apply a new regime which places the interests of residents above the national interest and another reason for retaining Commonwealth controlled Crown Leasehold and the current plan. The Foundation supports the resumption of Crown leasehold in KAVHA and the visual setting of KAVHA for public reserve purposes as foreshadowed in the 1990 DASETT report.

16. With regard to the heritage of the rural areas Norfolk Island has what are probably the oldest agricultural lands in Australia still in use for that purpose. The Australian Heritage Commission believes they have high associative values with KAVHA. The best of these areas are included in the ACF's nominations for the RNE. In 1994 the Heritage Commission decided to defer their assessment in favour of joint assessment with the Norfolk Island Government.

17. The establishment of a local heritage system was first proposed in 1972. Even if one is ever implemented it will be inappropriate for assessing and protecting national values. The AHC's decision has effectively given the Norfolk Island Government a veto power enjoyed by no other State or Territory Government.

18. Another undesirable consequence of freeholding is that it would make the areas in the ACF nomination no longer eligible for consideration and inclusion on the Commonwealth List proposed to

be established under the new national heritage legislation.

Conclusion

19. ACF believes your enquiry has come at a crucial stage in Norfolk Island's history. The partnership arrangement that has delivered so much is in danger of breaking down. It is clear already from events such as the approval of permits in the KAVHA visual setting that the outcome will be a great loss of Norfolk Island's distinctive assets, which are the very life blood of its tourist industry. ACF urges your Committee to recommend against the freeholding of the Crown leases and to recommend against the granting of assent to the proposed new statutory plan. We further urge you to recommend that the Commonwealth work to gain agreement on the retention of the coastal protection zone and the existing provisions for the protection of the authenticity of KAVHA and to carry out the long overdue assesment of our RNE nominations forthwith.

20. Finally, we would like to finish with a few comments about the philosophic approach to Norfolk Island's future. The new plan was based on a conflict view of conservation and development in which a balance is struck between them and some additional forms of development are accommodated at environmental cost. The Foundation has a very different approach. It believes that in the concept of best or optimum use the objectives of conservation and development will be in harmony. In the case of Norfolk Island a policy which gives high priority to environmental protection will benefit all in the long run. What is needed is a proactive approach, in which the land is not seen simply as a museum piece but as a living and evolving landscape. Agriculture, fishing and forestry are basic activities and need assistance. They can all contribute to the welfare of the tourist industry which needs to take greater advantage of Norfolk Island's unique assets, instead of allowing them to be lost to sectional interests. The highly developed sense of community was once one of Norfolk Island's greatest strengths. It is much needed now as is the continuing commitment of the Commonwealth to the guarding and development of the Territory's future.

FAX MESSAGE**FROM****PEAK ENVIRONMENTAL ENTERPRISES**

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FROM:

GEOFF MOSLEY

JOINT STANDING COMMITTEE ON NATIONAL CAPITAL & EXTERNAL TERRITORIES

FAX NUMBER

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DATE

9/4/03

NUMBER OF PAGES (INCLUDING THIS)

5

SUBJECT

ENQUIRY INTO NORFOLK ISLAND

Message

Please find attached some corrections to the Acts additional submission to the above enquiry which I spoke to at the hearing

I do not yet have the answers to Senator Hogg's question but am working on it.

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Proposal to Freehold the Crown Leasehold

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