



NOTICE OF SPECIAL COUNCIL MEETING

To: Mayor Jan-Claire Wisdom

Councillor Ian Bailey
Councillor Kirrilee Boyd
Councillor Nathan Daniell
Councillor Pauline Gill
Councillor Chris Grant
Councillor Linda Green
Councillor Malcolm Herrmann
Councillor John Kemp
Councillor Leith Mudge
Councillor Mark Osterstock
Councillor Kirsty Parkin
Councillor Andrew Stratford

Notice is hereby given pursuant to the provisions under Section 82 of the *Local Government Act 1999* that a Special meeting of the Council will be held on:

Tuesday 9 August 2022
36 Nairne Road Woodside
7.30pm

Business of the meeting:

1. Establishment of Boundary Change Committee

A copy of the Agenda for this meeting is supplied under Section 83 of the Act.

Meetings of the Council are open to the public and members of the community are welcome to attend. Public notice of the Agenda for this meeting is supplied under Section 84 of the Act.

Andrew Aitken
Chief Executive Officer



AGENDA FOR SPECIAL COUNCIL MEETING

**Tuesday 9 August 2022
36 Nairne Road Woodside
7.30pm**

ORDER OF BUSINESS

1. COMMENCEMENT

2. OPENING STATEMENT

Council acknowledges that we meet on the traditional lands and waters of the Peramangk and Kaurna people. They are Custodians of this ancient and beautiful land and so we pay our respects to Elders past, present and emerging. We will care for this country together by ensuring the decisions we make will be guided by the principle that we should never decrease our children's ability to live on this land.

3. APOLOGIES/LEAVE OF ABSENCE

3.1. Apology

3.2. Leave of Absence

- Cr Chris Grant 29 July to 26 September 2022, approved by Council 26 July 2022

4. DECLARATION OF INTEREST BY MEMBERS OF COUNCIL

5. PRESIDING MEMBER'S OPENING REMARKS



6. BUSINESS OF THE MEETING

6.1. Establishment of Boundary Change Committee

1. *That the report be received and noted.*
2. *To adopt the draft Boundary Change Committee Terms of Reference, as contained in Appendix 4 and to authorise the CEO to make any minor amendments recommended by Council's legal advisers.*
3. *To determine that the method of selecting the Boundary Change Committee Members to be by an indicative vote to determine the preferred persons for the four (4) Committee Member positions, and the Presiding Member position utilising the process set out in this Agenda report.*
4. *To adjourn the Council meeting for the purposes of seeking nominations for and, if necessary, conducting an indicative vote to determine the preferred persons for the Boundary Change Committee Member roles and for the meeting to resume once the results of the indicative vote have been declared.*
5. *To appoint Mayor Wisdom, Cr, Cr, Cr and Cr as Members of the Boundary Change Committee for a term to commence from 9 August 2022 and conclude at the conclusion of the Council Term.*
6. *To appoint as the Presiding Member of the Boundary Change Committee for a term to commence from 9 August 2022 and conclude at the conclusion of the Council Term.*
7. *To authorise the Chief Executive Officer to determine the date of the first Boundary Change Committee meeting.*

7. CONFIDENTIAL ITEM

Nil

8. CLOSE SPECIAL COUNCIL MEETING

**ADELAIDE HILLS COUNCIL
SPECIAL COUNCIL MEETING
Tuesday 9 August 2022
AGENDA BUSINESS ITEM**

Item:	6.1
Responsible Officer:	Lachlan Miller Executive Manager Governance & Performance Office of the CEO
Subject:	Establishment of Boundary Change Committee
For:	Decision

SUMMARY

The Campbelltown City Council (the 'CCC') boundary change proposal (the 'Proposal') regarding the suburbs of Woodforde and Rostrevor has been in progress since CCC lodged their Stage 1 Submission with the Local Government Boundaries Commission (the 'Commission') on 22 January 2019.

At its 26 July 2022 meeting, Council resolved to establish a Boundary Change Committee (the 'Committee') to provide oversight for Council's future actions in relation to the Proposal contingent on Council receiving advice that the Commission had determined to inquire into the CCC Proposal.

On 30 July 2022, the AHC Mayor received email correspondence from the Commission's Chair that, amongst other matters, the Commission had '...determined that an inquiry into the Proposal may proceed in accordance with section 31 of the Act and *Guideline 4 – Investigations of General Proposals Initiated by Councils*'.

As the 'trigger' for the establishment of the Committee has occurred, the purpose of this report is for Council to consider a draft Terms of Reference (TOR) for the Committee to ensure that it is established legally and effectively.

Once the TOR for the Committee is settled, Council will need to determine the Committee membership and also the calling of the first meeting.

RECOMMENDATION

Council resolves:

- 1. That the report be received and noted.**
- 2. To adopt the draft *Boundary Change Committee Terms of Reference*, as contained in Appendix 4 and to authorise the CEO to make any minor amendments recommended by Council's legal advisers.**

3. To determine that the method of selecting the Boundary Change Committee Members to be by an indicative vote to determine the preferred persons for the four (4) Committee Member positions, and the Presiding Member position utilising the process set out in this Agenda report.
4. To adjourn the Council meeting for the purposes of seeking nominations for and, if necessary, conducting an indicative vote to determine the preferred persons for the Boundary Change Committee Member roles and for the meeting to resume once the results of the indicative vote have been declared.
5. To appoint Mayor Wisdom, Cr, Cr, Cr and Cr as Members of the Boundary Change Committee for a term to commence from 9 August 2022 and conclude at the conclusion of the Council Term.
6. To appoint as the Presiding Member of the Boundary Change Committee for a term to commence from 9 August 2022 and conclude at the conclusion of the Council Term.
7. To authorise the Chief Executive Officer to determine the date of the first Boundary Change Committee meeting.

1. **BACKGROUND**

The CCC boundary change proposal regarding the suburbs of Woodforde and Rostrevor has been in progress since CCC lodged its Stage 1 Submission with the Commission in 22 January 2019.

A summary of the boundary change process and the actions and decisions in 2022 of the Commission, CCC and AHC are contained in the AHC Agenda Item 11.1 from the 26 July 2022 meeting (**Appendix 1**).

Boundary Change Oversight Regime

Agenda Item 11.1 was a Motion on Notice by Cr Osterstock seeking to clarify the oversight regime for AHC's future actions in relation to the boundary change proposal should the Commission determine that the CCC proposal can proceed to Stage 3.

At the 26 July 2022 meeting, Cr Osterstock did not move the motion as contained in Item 11.1 (**Appendix 1**) and instead moved a different motion which was considered by the Council with the following resolution:

11.1 Campbelltown City Council Boundary Reform Proposal Oversight by S41 Committee – Cr Mark Osterstock

Moved Cr Mark Osterstock
S/- Cr Nathan Daniell

179/22

1. That in the event that the Local Government Boundaries Commission, following their consideration of Campbelltown City Council's (CCC) Stage 2 submission, determines to inquire into the proposal further, pursuant to the provisions of Section 41 of the Local Government Act 1999, Council resolves that it will establish a Committee of Council to be known as the Boundary Change Committee.
2. The objectives for the Committee will be to oversee (including yet not limited to Council's response to the proposal) and advise Council of any actions that the Committee deems appropriate in responding to the proposal.
 - 2.1 The Committee will comprise 5 elected members, including the Mayor, one being the Presiding Member.
 - 2.2 The Committee may co-opt, or make use of the services of any other person (in an advisory capacity) for the purpose of investigating or deliberating on any specific matter or on any other temporary basis.
 - 2.3 A budget allocation of \$10,000 (exclusive of GST), will be made to enable the Committee to seek external advice in order to assist the Committee in fulfilling its objectives.
 - 2.4 The Chief Executive Officer will allocate appropriate human resources to ensure that reports, agendas, notices of meetings and minutes of the Committee are recorded and managed in accordance with legislative compliance requirements. Other professional human resources will be allocated as required. Any Council employee attending will have no voting rights.
3. That the Chief Executive Officer prepare Terms of Reference (TOR) for Council's consideration, that incorporates the aforementioned, in order to facilitate the Committee's establishment.
4. That upon Council receiving advice from the Local Government Boundaries Commission that it has determined to inquire into the CCC proposal further, the Chief Executive Officer will prepare a report, incorporating TOR, facilitating the establishment of the Committee, to be presented to Council as soon as practicable and if this requires a Special Meeting of Council, a Special Meeting of Council is authorised.

Carried

Boundary Commission Inquiry Determination

On 30 July 2022, the AHC Mayor received email correspondence from the Commission's Chair (**Appendix 2**) advising the following key matters:

- That the Commission had considered CCC's Proposal and had '...formed the view that the Proposal meets the requirements of Guideline 3 and the principles contained under section 26 of the Act'.
- On that basis the Commission had '...therefore determined that an inquiry into the Proposal may proceed in accordance with section 31 of the Act and *Guideline 4 – Investigations of General Proposals Initiated by Councils.*'

- A cost estimate for the conduct of the Inquiry will be prepared and provided to CCC for consideration following the 2022 Local Government Election. The Inquiry will only proceed if the ‘new’ CCC provides a clear direction to do so including agreeing to fund the Inquiry as per the cost estimate.
- The Commission had prepared an overview of the matters that should be inquired into (the ‘Inquiry Plan’), see **Appendix 3**. The Commission invites AHC’s comment on the document by 29 August 2022.

The Commission’s 29 July 2022 correspondence triggers the provision of the above Council resolution (Res 179/22) and the balance of this report deals with the establishment of the Boundary Change Committee as per the resolution.

A draft Boundary Change Committee (the ‘Committee’) Terms of Reference (the ‘TOR’) consistent with the provisions of Resolution 179/22 is at **Appendix 4**.

2. ANALYSIS

➤ Strategic Management Plan/Functional Strategy/Council Policy Alignment

Strategic Plan 2020-24 – A brighter future

Goal 5	A Progressive ORGANISATION
Objective O4	We actively represent our community
Priority O4.3	Advocate to, and exert influence with, our stakeholders on behalf of our community to promote the needs and ambitions of the region
Priority O4.4	Explore council boundary reform options that best serve the community.
Objective O5	We are accountable, informed, and make decisions in the best interests of the whole community
Priority O5.1	Enhance governance structures and systems to prudently adapt to changing circumstances and meet our legislative obligations

➤ Legal Implications

Council boundary reform provisions are contained within Chapter 3 - Constitution of councils, Part 2 – Reform proposals of the *Local Government Act 1999* (the “Act”). The current iteration of these provisions came into effect on 1 January 2019.

Section 41 of the Act provides for the establishment of committees by councils. Key provisions applying to committees are:

- A committee may be established for the following functions:
 - To assist the council in the performance of its functions;
 - To inquire into and report to council on matters within the ambit of the council’s responsibilities;
 - To provide advice to council;
 - To exercise, perform or discharge delegated powers functions or duties.

- Membership is determined by the council and may consist of persons who are not members of the council (i.e. independents or Council Officers);
- Council must appoint the presiding member or make provision for the appointment;
- The establishment of a committee does not derogate from the power of the council to act in a matter; and
- Council must, when establishing a committee, determine the reporting and other accountability requirements that are to apply to the committee.

Meeting procedure for a s41 committee is as set out in the Act and in Parts 1, 3 and 4 of the *Local Government (Procedures at Meetings) Regulations 2013* (the ‘Regulations’). Insofar as the Act, the Regulations, or these Terms of Reference do not prescribe the procedure to be observed in relation to the conduct of a meeting of a committee, the committee may determine its own procedure.

The draft Committee TOR at **Appendix 4** satisfies the applicable requirements of the Act and the Regulations. Council’s legal advisers, KelledyJones, have been engaged to provide advice in relation to the draft TOR however this had not been finalised at the time of agenda compilation. Any changes recommended will be advised at the meeting.

Sections 73 and 74 of the Act set out the provisions regarding Material Conflicts of Interest. Council Member membership of the Boundary Change Committee in the Committee Member and the Presiding Member roles under the Committee’s TOR, may possibly constitute a personal benefit under s73 of the Act.

Sections 75 and 75A of the Act set out the provisions regarding Actual and Perceived Conflicts of Interest. A Council Member seeking to be appointed to a Committee may in actuality, or could be perceived by an impartial person to, have a conflict between their personal interests and the public interest that might lead to a decision that is contrary to the public interest.

Therefore a Council Member seeking to be appointed to a Committee Member role could have a Material, Actual or Perceived Conflict of Interest and would need to consider declaring the interest and leave the Chamber prior to the discussion of the matter under s74(1) or s75A(2), as appropriate. However the Council Member may stay in the chamber and participate during an adjournment and informal gathering.

Council’s *Information or Briefing Sessions Policy* created under s90A of the Act sets out the provisions for the conduct of an Information or Briefing Session.

➤ **Risk Management Implications**

Having clear and consistent roles and functions for Council and its committees will assist in mitigating the risk of:

Poor governance practices occur which lead to a loss of stakeholder (i.e. customer and regulator) confidence and/or legislative breaches.

Inherent Risk	Residual Risk	Target Risk
Extreme (5C)	Low (3E)	Low (3E)

Note that there are many other controls that assist in mitigating this risk.

Undertaking a strategic and robust approach to boundary alignment will assist in mitigating the risk of:

Realignment of Council boundaries (whether acquisition or relinquishment) leading to financial, resource allocation, social and representation changes

Inherent Risk	Residual Risk	Target Risk
High (2B)	Medium (3C)	Medium

➤ **Financial and Resource Implications**

The resource implications of Committee meetings could be approx. 20 hours/meeting depending on the agenda reports required. Depending on the frequency of meetings, servicing this requirement is likely to result in delays in the completion of other Governance and Performance activities and deliverables given that the required skillsets are not easily obtainable in the market.

The financial implications associated with establishing the Committee are as follows:

- If a Presiding Member is appointed who is not currently in receipt of a Mayoral, Deputy Mayoral or Presiding Member allowance, the cost will be \$4,800 per annum;
- If meals are provided for each meeting, the cost will be approximately \$200 per meeting;
- Depending on the Council Officers required to attend each meeting, overtime costs could be approximately \$200 per meeting; and
- An estimate for additional Governance resourcing cannot be calculated without greater clarity on meeting frequency and Committee business.

The above costs are not currently provided for in the 2022-23 budget. A budget review would be required, and this would likely reduce the Council's budgeted surplus.

To be clear and, as distinct from the above, the potential outcomes of the boundary reform proposal could have significant financial and resource implications.

➤ **Customer Service and Community/Cultural Implications**

While the establishment of the Committee is not a requirement to the Council dealing appropriately with the boundary change proposal, the community may gain a degree of comfort from the specific focus and resourcing of the Committee.

To be clear and, as distinct from the above, the potential outcomes of the boundary reform proposal could have significant community implications.

➤ **Sustainability Implications**

There are no direct sustainability implications from the establishment of the Committee.

To be clear and, as distinct from the above, the potential outcomes of the boundary reform proposal could have significant sustainability implications.

➤ **Engagement/Consultation conducted in the development of the report**

Consultation on the development of this report was as follows:

Council Committees: Not Applicable

Council Workshops: Council has had many workshops on the matter of the CCC Boundary Reform proposal but has not specifically workshopped the formation of the Boundary Change Committee.

Advisory Groups: Not Applicable

External Agencies: South Australian Local Government Boundaries Commission
Kelledy Jones Lawyers

Community: Not Applicable

➤ **Additional Analysis**

Committee Business and Timing

Once the Committee is established, the first order of ‘Committee business’ will be to consider the Inquiry Plan proposed by the Commission in its 29 July 2022 letter (see Background section and **Appendix 3**). The Commission is seeking a response by 29 August 2022.

While the normal course of business for the Committee will be to make recommendations to Council for consideration. The Commission’s tight timeframe allied with the need to develop agenda items and call meetings for the Committee meeting may preclude, in a practical sense, the normal process occurring given that the Ordinary Council meeting is 23 August 2022.

Clause 4.3.1 in the draft TOR provides for the above circumstance, as follows:

4.3 Where information is required to be provided to the Boundaries Commission or an associated party in a timeframe that does not reasonably allow:

4.3.1 The Committee to make a recommendation to Council, the Committee has the delegation to approve the provision of the requested information directly to the requesting party. A report will be provided to the next meeting of the Council on the exercising of this delegation; or

If Council is comfortable with clause 4.3.1 being utilised for the provision of the response to the Commission by 29 August 2022, the Committee agenda would be sent to all Council Members and they would have the opportunity to provide input to the response. While not intending to pre-empt the Committee’s position on the response, it is likely that the final wording of the response will be developed following the Committee meeting in consultation with the Committee Presiding Member.

An indicative date for the Committee meeting is 25 August 2022.

Indicative Voting Process for Determining Council Appointed Positions

Due to the potential implications of the Material Conflict of Interest provisions under s73 (see Legal Implications above) regarding the appointment of Committee Members and the Presiding Member, it is proposed that the Council adjourn the meeting for the purposes of seeking nominations for and, if necessary, conducting an indicative vote (Indicative Voting Process) to determine the preferred persons for the role of Committee Member.

As the Indicative Voting Process involves discussion of a matter that is, or is intended to be, part of the agenda for a formal meeting of the Council or Council Committee, it is an Information or Briefing Session for the purposes of s90A and the *Information and Briefing Sessions Policy* (the Policy). As an Information or Briefing Session, the Chief Executive will conduct the meeting in accordance with the Policy.

The proposed Indicative Vote Process below is based on the Appointments to Positions Process contained in Clause 4.7 Council's *Code of Practice for Code of Practice for Council Meeting Procedures* with modifications to suit the legislative requirements of the conflict of interest and informal gatherings provisions.

The proposed Indicative Voting Process is:

- a) With the adjournment of the Council meetings and the subsequent commencement of the Information or Briefing Session, the Chief Executive Officer calls for self-nominations for the positions of Boundary Committee Member.
- b) If the number of nominees is equal to or less than the number of positions (i.e. four), no election will be required. If the number of nominees is greater, an election will be necessary.
- c) The CEO (or another Council staff member) will be appointed as the Returning Officer and may enlist other Council staff to assist with the conduct of the vote and the count.
- d) The method of voting will be by secret ballot utilising the preferential counting system
- e) Each Council Member (including the Mayor) shall have one vote.
- f) Ballot papers will be provided to each Council Member.
- g) The nominee's names will be drawn to determine the order on the ballot paper.
- h) Each nominee will have two (2) minutes to speak to the Session in support of the candidacy. The speaking order will be as listed on the ballot paper.
- i) Completed ballot papers will be collected by the Returning Officer and the count will be undertaken in a separate room with an observer [another Council Member (not being a nominee for the position being determined) or an Officer] present.
- j) In the event of a tie, the result will be decided by the Returning Officer drawing lots, the candidate first drawn being the candidate excluded.
- k) After all votes have been counted, the Returning Officer shall formally declare the result of the election (i.e. the preferred person).
- l) The ballot papers will be shredded.
- m) Once the membership of the Committee is known, the above process will then be repeated for the purpose of selecting the Presiding Member.

Proposed Chronology of Events

The mechanics are relatively complicated due to the legislative provisions regarding conflict of interest and informal gatherings.

The following chronology has been based on guidance from the LGA regarding the election of Council Members to Committee and Presiding Member positions:

- I. Firstly Council needs to determine the membership composition of the Committee by adopting the draft Terms of Reference, in its current or amended form. Council would give effect to this by dealing with Recommendation 2 (or a variant) at this time.
- II. Council can then consider the process that it will use to choose the preferred persons for the Boundary Change Committee Member positions. Council would give effect to this by dealing with Recommendation 3 (or a variant) at this time.
- III. Having decided the method, Council will then have to adjourn the meeting to enable the process to be undertaken. Council would give effect to this by dealing with Recommendation 4 (or a variant) at this time.
- IV. Once the Indicative Voting Process has been completed the Council meeting will resume in accordance with the previous resolution.
- V. Upon resumption, any Council Members who nominated for the Committee Member positions and believe that they have a conflict of interest will need to make the appropriate declarations and actions.
- VI. Council can then resolve for the preferred persons to be appointed as the Boundary Committee Members for an identified term. Council would give effect to this by dealing with Recommendation 5 (or a variant) at this time.
- VII. Once this matter is resolved, the Members who have declared Conflicts of Interest and left the Chamber can return to the Chamber.
- VIII. With the membership settled, any Council Members who nominated for the Presiding Member position and believe that they have a conflict of interest will need to make the appropriate declarations and actions.
- IX. Council can then resolve for the preferred person to be appointed as the Boundary Committee Presiding Member for an identified term. Council would give effect to this by dealing with Recommendation 6 (or a variant) at this time.
- X. Once this matter is resolved, the Members who have declared Conflicts of Interest and left the Chamber can return to the Chamber.
- XI. The final matter to be considered is the arrangements for the calling of the first meeting. Council would give effect to this by dealing with Recommendation 7 (or a variant) at this time.

3. OPTIONS

Council has the following options:

- I. To receive and note the report (Recommended)
- II. In relation to the draft *Boundary Change Committee Terms of Reference*:
 - a. To adopt the draft *Boundary Change Committee Terms of Reference*, with or without changes. Doing so will enable the Committee to be legally and appropriately established (Recommended) An authorisation to the CEO is recommended to make minor amendments resulting from the outstanding legal advice; or
 - b. Not adopt the draft *Boundary Change Committee Terms of Reference* in any form. Doing so would be in breach of s41 of the CAT and make the Committee ultra vires (Not Recommended).
- III. In relation to the Boundary Change Committee Membership:
 - a. To follow the process set out in this report for the selection of Members. Doing so will enable the Committee membership to be appointed in a robust and legislatively-compliant manner (Recommended); or
 - b. To utilise an alternate process to determine membership. Doing so could result in a breach of legislation and/or an unfair process (Not Recommended).
- IV. In relation to the calling of the first meeting of the Boundary Change Committee:
 - a. To authorise the CEO to call the first meeting of the Committee. Doing so will enable the meeting to be called when agenda items are ready for consideration (Recommended) or
 - b. Council determine a date for the first meeting of the Committee. Doing so may result in less robust information coming to the Committee for consideration (Not Recommended).

4. APPENDICES

- (1) Adelaide Hills Council Report – Item 11.1, 26 July 2022
- (2) South Australian Boundaries Commission correspondence – 29 July 2022 – *Campbelltown City Council Stage 2 Boundary Change General Proposal*
- (3) South Australian Boundaries Commission correspondence – 29 July 2022 – *Campbelltown City Council General Proposal – Outline of matters to be investigated*
- (4) *Boundary Change Committee - draft Terms of Reference*

Appendix 1

Adelaide Hills Council Report – Item 11.1, 26 July 2022

**ADELAIDE HILLS COUNCIL
ORDINARY COUNCIL MEETING
Tuesday 26 July 2022
AGENDA BUSINESS ITEM**

Item: 11.1 Motion on Notice

Originating from: Cr Mark Osterstock

Subject: Campbelltown City Council Boundary Reform Proposal - Oversight by CEO Performance Review Panel

1. MOTION

I move that:

1. That Council amends the Terms of Reference for the CEO Performance Review Panel [the Panel], Section 3, Special Functions, to include the following:
 - 3.1.6 – Other matters as determined by Council.
2. That all matters relating to the issue of the Campbelltown City Council's Boundary Reform Proposal [Woodforde and Rostrevor] become the responsibility and function of the CEO Performance Review Panel, with a view to the Panel making recommendations to Council for consideration, and action, as the case may be.
3. That Council authorizes the Panel to be able to seek legal, and or other advice, [up to a maximum of \$10,000.00 GST exclusive] in respect to matters relating to Campbelltown City Council's Boundary Reform Proposal, in consultation with the CEO and/or his delegate.
 - a. Any legal, and or other advice, sought by the Panel in this way will be reported to Council at the earliest available meeting (which may be conducted 'in confidence' for this purpose pursuant to the provisions of the *Local Government Act 1999*).
 - b. The legal advice will also be provided to the CEO [or his delegate] at the earliest opportunity in the event of his absence.
 - c. The procurement of legal and or other advice must be conducted in accordance with Council's *Procurement Policy* although procedural elements of the Procurement Framework may not, due to urgency, be able to be complied with contemporaneously.
4. That the CEO Performance Review Panel Terms of Reference be amended, as the case may be, to give effect, if necessary, to the aforementioned resolutions.

2. BACKGROUND

This matter is of such significance, for obvious reasons, to Adelaide Hills Council and its community, that, in my view, it warrants the management and oversight by Elected Members, in order to manage, oversee and respond to this issue going forward.

My view is that the management and oversight of this issue is best served through a committee process, in order to assist Council in the performance of its functions and duties in managing this matter, and the making of appropriate recommendations to Council for consideration, and action as the case may be. This motion seeks to achieve these desired outcomes.

3. OFFICER'S RESPONSE – Lachlan Miller, Executive Manager Governance & Performance

➤ Strategic Management Plan/Functional Strategy/Council Policy Alignment

Strategic Plan 2020-24 – A brighter future

Goal 5 A Progressive ORGANISATION

Objective O4 We actively represent our community

Priority O4.3 Advocate to, and exert influence with, our stakeholders on behalf of our community to promote the needs and ambitions of the region

Priority O4.4 Explore council boundary reform options that best serve the community.

Objective O5 We are accountable, informed, and make decisions in the best interests of the whole community

Priority O5.1 Enhance governance structures and systems to prudently adapt to changing circumstances and meet our legislative obligations

All parts of the Motion have the potential to contribute to the achievement of the above strategic priorities.

➤ Legal Implications

Council boundary reform provisions are contained within Chapter 3 - Constitution of councils, Part 2 – Reform proposals of the *Local Government Act 1999* (the "Act"). The current iteration of these provisions came into effect on 1 January 2019.

Collectively these provisions establish the Boundaries Commission of South Australia (the "Commission") as the body that receives, assesses and makes recommendations to the Minister for Local Government on proposals developed in accordance with principles set out in the Act and procedures developed by the Commission.

There are two categories of proposal: Administrative Proposals (these are minor boundary adjustments to correct anomalies and to facilitate a development that has been granted authorisation under the *Planning, Development and Infrastructure Act 2016*) and General Proposals (which are all proposals that are not Administrative Proposals - in practice these are for the more substantial council boundary changes and amalgamations). Proposals can be initiated by one of more councils, the public, the Minister or either House of Parliament.

In accordance with s27(2) of the Act, the Commission has prepared and published a series of guidelines for the purposes of processing reform proposals.

As this report deals with a General Proposal submitted by a council, subsequent information will focus on the processes associated with this form of proposal only.

The following is a brief overview of the General Proposal process as contained in the Commission's guidelines:

Stage 1 *Submission by the initiating council containing brief overview of the reform proposal*

- The Commission reviews the submission and if it considers it has merit it will advise the initiating council that they can refer a Stage 2 proposal to the Commission.

Stage 2 *Detailed submission by the initiating council addressing the 12 principles set out in s26 and the additional requirements of the application guidelines*

- The Commission reviews the proposal against the principles and guidelines and will advise the initiating council:
 - That the proposal lacks merit (and will not be continued in its current form); or
 - That additional information is required to establish merit; or
 - The proposal has merit.
- Where the Commission determines that a proposal has merit it will advise the initiating council that the Commission intends to (independently) inquire into the proposal, the initiating council will be provided with an estimate of the cost of the independent inquiry and will need to resolve to process (and fund the inquiry).

Stage 3 *Inquiry by Commission-appointed investigators into the merits of the proposal*

- The investigators will assess the proposal against the s26 principles, financial and resource implications, extent of community support, employment implications, etc.
- Affected councils are able to make submissions to the investigators and to provide information to assist inquiry, as requested.

Stage 4 *The Commission prepares a reform Proposal Report and this is provided to the Minister and is published on the Commission's website*

- The Minister may request consideration of suggestions for report resubmission, if resubmitted the revised report is also a public document
- If the Minister accepts the recommendations, it is sent to the Governor for proclamation and comes into effect

If the CCC Proposal proceeds to Stage 3, all parts of the Motion, in particular Part 3, have the potential to contribute to AHC's submissions to the Boundaries Commission Inquiry.

CEO Performance Review Panel

The CEO Performance Review Panel (CEOPRP) is established under s41 of the Act. These committees can be established under that section for the following functions:

- To assist the council in the performance of its functions;
- To inquire into and report to council on matter within the ambit of the council’s responsibilities;
- To provide advice to council;
- To exercise perform or discharge delegated powers functions or duties.

Council has one other s41 committee being the Audit Committee which is required to be established under s126 of the Act and has mandated functions. In contrast, the CEOPRP has been established at the discretion of Council (i.e. no legislative requirement). As such it is within the Council’s powers to amend the Terms of Reference (TOR) as proposed in Motion Parts 1 & 4.

Section 41 committees operate under a TOR or Charter which encapsulates the key elements of that committee’s function as required under section 41 and to give practical effect to the operation of the committee. The CEOPRP’s TOR is at **Appendix 1**.

The role of the CEOPRP as set out in the Terms of Reference is as follows:

2. ROLE

2.1 The Council is responsible for the selection, remuneration and management of the Chief Executive Officer (CEO). The overall role of the Panel is to provide advice to Council on matters relating to the performance and development of the CEO.

➤ **Risk Management Implications**

Having clear and consistent roles and functions for Council and its committees will assist in mitigating the risk of:

Poor governance practices occur which lead to a loss of stakeholder (i.e. customer and regulator) confidence and/or legislative breaches.

Inherent Risk	Residual Risk	Target Risk
Extreme (5C)	Low (3E)	Low (3E)

Note that there are many other controls that assist in mitigating this risk.

Undertaking a strategic and robust approach to boundary alignment will assist in mitigating the risk of:

Realignment of Council boundaries (whether acquisition or relinquishment) leading to financial, resource allocation, social and representation changes

Inherent Risk	Residual Risk	Target Risk
High (2B)	Medium (3C)	Medium

All Parts of the Motion have the potential to contribute to the achievement of the above strategic priorities.

➤ **Financial and Resource Implications**

The financial implications associated with amending the Terms of Reference to include responsibility for boundary reform (i.e. Motion Parts 1, 2 & 4) would involve costs associated with meals and sitting fees for any additional meetings (approx. \$600/meeting), which are not currently provided for in the 2022-23 budget. A budget review would be required, and this would likely reduce the Council's budgeted surplus.

The resource implications of additional CEOPRP meetings would be approx. 20 hours/meeting depending on the agenda reports required. Servicing this requirement is likely to result in delays in the completion of other Governance and Performance activities and deliverables.

The financial implications associated with the allocation of \$10,000 for legal/professional advice (i.e. Motion Part 3) is not currently provided for in the 2022-23 budget. A budget review would be required, and this would likely reduce the Council's budgeted surplus.

The resource implications associated with engaging, briefing and managing a legal/professional services provider would be approx. 20 hours depending on the complexity of the matters involved. Servicing this requirement is likely to result in delays in the completion of other Governance and Performance activities and deliverables.

To be clear and, as distinct from the above, the potential outcomes of the boundary reform proposal could have significant financial and resource implications.

➤ **Customer Service and Community/Cultural Implications**

Amending the CEOPRP TOR to include responsibility for boundary reform and engaging legal/professional advice (i.e. Motion Parts 1, 2, 3 & 4) would have negligible customer service/community implications.

To be clear and, as distinct from the above, the potential outcomes of the boundary reform proposal could have significant community implications.

➤ **Sustainability Implications**

Amending the CEOPRP Terms of Reference to include responsibility for boundary reform and engaging legal/professional advice (i.e. Motion Parts 1, 2, 3 & 4) would have negligible sustainability implications.

To be clear and, as distinct from the above, the potential outcomes of the boundary reform proposal could have significant sustainability implications.

➤ **Engagement/Consultation conducted in the development of the report**

Consultation on the development of this report was as follows:

Council Committees: Not Applicable

Council Workshops: Council has had many workshops on the matter of the CCC Boundary Reform proposal but has not specifically discussed the parts proposed in this Motion on Notice.

Advisory Groups: Not Applicable

External Agencies: South Australian Local Government Boundaries Commission (Boundaries Commission) - in relation to the status of the CCC proposal and the boundary reform process.

Community: Not Applicable

4. ANALYSIS

CEO Performance Review Panel

The CEOPRP commenced in its current form in February 2014. At the time, it was quite innovative being both a s41 Committee and having an Independent Member, characteristics that the remainder of the sector is only now beginning to replicate.

Clause 1 of the TOR clarifies that the CEOPRP does not have an executive power or authority to implement actions, nor does it have any delegated financial responsibility.

Clause 3 of the TOR (**Appendix 1**) defines the functions of the CEOPRP as: to determine and monitor the annual performance targets for the CEO under his Employment Agreement; to review the CEO's performance against the Performance Targets and position description; to identify development opportunities; and to review the remuneration and conditions of employment.

Clause 5 of the TOR requires that the Independent Member shall have recent and relevant skills and experience in fields related to the role and functions of the Panel.

The meeting schedule of the Panel is largely driven by the CEO Performance and Remuneration Review Schedule adopted by Council. The final Ordinary Meeting for this Council term is scheduled for 4 August 2022. Any additional meetings will need to be called as Special Meetings.

In summary, this is a committee that is tightly focussed on the CEO's performance, development, and remuneration under the provisions of his Employment Agreement.

Status of CCC Boundary Reform Proposal

The matter of the CCC Boundary Reform proposal has been the subject of many agenda reports and Motion on Notices (MON) to Council since CCC lodged their Stage 1 Submission on 22 January 2019. It is not intended to recap these for the purposes of this MON.

Throughout the 3.5 year journey the Council has been provided with updates on the status of the proposal and, where necessary, has resolved for actions to take place, examples include commissioning a resident's survey and correspondence to CCC, the Boundaries Commission and GAROC. Council Members have also received regular timely email correspondence from the Administration regarding the status of the proposal.

Since the last fulsome update in early 2021, there has been little progress by CCC until recently. The following is a summary of recent events (which were all communicated contemporaneously to Council Members via email):

- | | |
|---------------|--|
| 14 April 2022 | CCC lodged their Stage 2 Proposal, under delegation, to the Boundaries Commission. As it was made under delegation there were no reports provided to CCC in the lead up as the AHC Administration monitors all CCC agendas. |
| 9 May 2022 | Mayor Wisdom wrote to the Boundaries Commission Chair seeking to make a submission and/or attend their upcoming meeting when they were to consider the CCC Stage 2 proposal. |
| 11 May 2022 | Boundaries Commission Chair declined to permit Mayor Wisdom to make a submission or attend the Commission's 18 May 2022 meeting. |
| 18 May 2022 | Boundaries Commission met to consider the CCC Stage 2 proposal. |
| 6 June 2022 | Boundaries Commission Chair wrote to CCC Mayor requesting, by 30 June 2022, further information regarding the advantages and disadvantages of the Proposal and seeking a clear cadastral and topographic map. The Chair advised that consideration of the Proposal was deferred until the requested information was provided. The Chair also advised that when the requested information is provided that the Commission will determine whether to progress to a Stage 3 Inquiry and anticipates that any Inquiry would likely be undertaken following the 2022 local government election. |
| 28 June 2022 | CCC Mayor wrote to Boundaries Commission Chair providing the requested Supplementary Information. |
| 15 July 2022 | AHC Mayor wrote to the Boundaries Commission Chair outlining key concerns regarding the CCC Supplementary Information. |
| 20 July 2022 | Boundaries Commission met to consider the CCC Supplementary Information and the AHC correspondence. |

Overseeing the Council's response to the CCC Boundary Reform Proposal

As set out in the Legal Implications section above, prior to a Stage 3 Inquiry, an affected council (such as AHC) has little to no role in the formal boundary reform process as set out by the Boundaries Commission procedures.

If following its consideration of the CCC Stage 2 Proposal and Supplementary Information, the Commission determines that the proposal is not sufficiently meritorious to proceed to a Stage 3 Inquiry, the matter is effectively finished and there is no further work for AHC to do.

If however the Commission does determine to proceed to an Inquiry, AHC will have its opportunity (but also the legal obligation) to provide the requested information to the Commission-appointed independent Investigator(s). This information is expected to be considerably detailed to enable the Investigator to assess the proposal against the Principles contained in S26 of the *Local Government Act 1999* (**Appendix 2**).

While the actual mechanics of this process is not known, it is anticipated that it will initially involve the preparation of a submission covering many avenues of inquiry related to the Principles and then be direct follow-ups and clarifications between the Investigator and the Administration on specific elements. On a practical level, while the initial submission of information could be reviewed by an oversight body it is unlikely that any of these bodies would be providing much of the actual technical input to the submission or be able to meet with the required frequency to deal with the follow-ups and clarifications.

If the CCC proposal progresses to a Stage 3 Inquiry, it is entirely reasonable and appropriate that AHC's submissions and associated information provision is monitored/overseen by the Council or a delegate. There are three broad options for an oversight body and each will be briefly analysed:

- Council (the elected body)
- Repurposed s41 Committee
- Working Group

Council

As the premier body with responsibility for all of the entity's roles, functions and obligations, the Council is the ultimate oversight body. To date the Council has overseen, directed and monitored the AHC actions associated with the CCC Proposal.

The key perceived advantages of the Council having (continuing) this role is that it is entirely consistent with its purpose and membership, it meets regularly and can/does conduct Special Meetings on short notice, as required. It can make decisions in its own right and does not need a delegation or to refer matters elsewhere for decision.

The key perceived disadvantages of the Council having this role is that there may be a need for frequent updates or decisions resulting in the cost and resource implications of conducting meetings. This can be mitigated via email updates and utilising existing gatherings (such as workshops) to conduct Special Meetings as required. Further, Council Meeting procedure does not easily lend itself to collaborative submission development although meeting procedures can be suspended as required.

Repurposed s41 Committee

As per the MON Part 2 it is proposed that the CEOPRP, via an amended TOR (Parts 1 & 4) so that:

‘..the issue of the Campbelltown City Council’s Boundary Reform Proposal [Woodforde and Rostrevor] become the responsibility and function of the CEO Performance Review Panel, with a view to the Panel making recommendations to Council for consideration, and action.’

The key perceived advantages of the CEOPRP having this role is the belief that a committee structure strikes a better balance between prudent oversight (involving some Council Members) and flexibility/agility (through more flexible meeting arrangements).

The key perceived disadvantages of the CEOPRP having this role are that it’s a committee established for a specific purpose and its membership (including the Independent Member) have been specifically selected and appointed to fulfil that purpose. The proposed amendment is inconsistent with the core purpose and membership. Further, needing to provide advice to Council for decision may not be sufficiently timely. As identified in the Financial and Resource Implications section above, there would be costs and resource implications associated with additional CEOPRP meetings.

Working Group

A Working Group (similar to the Community & Recreation Facility Framework Working Group) could be established to provide oversight on matters activities associated with the CCC proposal.

The key perceived advantages of a Working Group having this role are the potential flexibility and agility of such a Group without restrictive meeting procedure nor costs associated with sitting fees.

The key perceived disadvantages of the Working Group having this role are that they (i.e. working and advisory groups) have no official status (although would be subject to the provisions relating to Information or Briefing Sessions), cannot be delegated powers from Council, cannot provide direction to staff, and all matters would need to be referred to Council for decision. Further, needing to provide advice to Council for decision may not be sufficiently timely. There would also be costs and resource implications associated with conducting Working Group meetings.

Timing of any oversight arrangement changes

The Boundaries Commission met on 20 July 2022 to consider the CCC Supplementary Information and the outcome of the meeting was not known at the time of agenda compilation. However, as advised by the Boundaries Commission in its 6 June 2022 correspondence, should the decision be made for an Inquiry be undertaken, it would likely be undertaken following the 2022 local government election.

As such, the timing of any changes to the oversight arrangements prior to the election need to be considered as there would be minimal work undertaken (and oversight required) prior to the appointment of an Investigator and the commencement of the Inquiry.

Funds to provide for the engagement of legal/professional advice

If the Commission does determine to proceed to an Inquiry, it would be prudent to have a budget allocation to engage legal/professional advice, as and when required. This advice could be utilised both in terms of the technical content of AHC's submissions but also in relation to the processes of the Boundaries Commission. As identified in the Financial and Resource Implications section above, any such budget allocation is not currently provided for and would impact the Council's surplus.

If the other Parts of the MON are not supported by Council, the wording of Part 3 will need to be amended to be stand-alone.

5. APPENDICES

- (1) *CEO Performance Review Panel Terms of Reference*
- (2) *Local Government Act 1999 extract - s26 Principles*

APPENDIX 1

APPENDIX 1

Appendix 1

CEO Performance Review Panel Terms of Reference

ADELAIDE HILLS COUNCIL

CEO Performance Review Panel



TERMS OF REFERENCE

1. ESTABLISHMENT

- 1.1 The CEO Performance Review Panel (the Panel) of Council is established under Section 41 of the *Local Government Act 1999* (the Act).
- 1.2 The Panel does not have executive powers or authority to implement actions in areas which management has responsibility and does not have any delegated financial responsibility. The Panel does not have any management functions and is therefore independent from management.

2. ROLE

- 2.1 The Council is responsible for the selection, remuneration and management of the Chief Executive Officer (CEO). The overall role of the Panel is to provide advice to Council on matters relating to the performance and development of the CEO.

3. SPECIFIC FUNCTIONS

- 3.1 The function of the Panel is to provide advice to Council on the CEO's performance and development, including the following matters:
 - 3.1.1 Determining the Performance Targets for the forthcoming 12 month performance period;
 - 3.1.2 Monitoring the progress on the CEO's agreed Performance Targets for the current 12 month performance period;
 - 3.1.3 Reviewing the CEO's performance over the preceding 12 month performance period, in particular the performance against the agreed Performance Targets and position description requirements;
 - 3.1.4 Identifying development opportunities for the CEO; and
 - 3.1.5 Reviewing the remuneration and conditions of employment of the CEO.

4. OTHER MATTERS

The Panel shall:

- 4.1 Have access to reasonable resources in order to carry out its duties, recognising the constraints within Council's Budget;
- 4.2 Be provided with appropriate and timely training, both in the form of an induction programme for new members and on an ongoing basis for all members;

- 4.3 Give due consideration to laws and regulations of the Act;
- 4.4 Where the Panel is required to act jointly with or to obtain the concurrence of the CEO in the performance of its functions, the Council expects that both parties will negotiate and consult in good faith to achieve the necessary objectives; and
- 4.5 At least once in its term, review its own performance and terms of reference to ensure it is operating at maximum effectiveness and recommend changes it considers necessary to the Council for approval.

5. MEMBERSHIP

- 5.1 The Panel will comprise five (5) members as follows:
 - 5.1.1 Mayor and Deputy Mayor;
 - 5.1.2 Two (2) Council Members ; and
 - 5.1.3 One (1) Independent Member.
- 5.2 All members of the Panel will be appointed by the Council.
- 5.3 The Independent Member of the Panel shall have recent and relevant skills and experience in fields related to the role and functions of the Panel.
- 5.4 It is desirable for the Council Members to be appointed to the Panel to have a sound understanding of the role and functions of the Panel.
- 5.5 In considering appointments to the Panel, Council should give consideration to the diversity of the membership.
- 5.6 Appointments to the Panel shall be for a period of up to three (3) years.
- 5.7 Members of the Committee are eligible for reappointment at the expiration of their term of office.

6. SITTING FEES

- 6.1 The applicable Remuneration Tribunal (or its successor) Determination outlines the applicable allowance for Council Members on the Panel.
- 6.2 The Independent Member is to be paid a sitting fee as determined by Council for attendance at meetings and authorised training sessions. Council may determine a higher sitting fee for the presiding member.

7. PRESIDING MEMBER

- 7.1 The Council will appoint the Presiding Member of the Panel.
- 7.2 The Council authorises the Panel to determine if there will be a Deputy Presiding Member of the Committee and, if so, authorises the Panel to make the appointment to that position for a term determined by the Panel.
- 7.3 If the Presiding Member of the Panel is absent from a meeting the Deputy Presiding Member (if such position exists) will preside at that meeting. If there is no position of Deputy

Presiding Member, or both the Presiding Member and the Deputy Presiding Member of the Panel are absent from a meeting of the Panel, then a member of the Panel chosen from those present will preside at the meeting until the Presiding Member (or Deputy Presiding Member, if relevant) is present.

7.4 The role of the Presiding Member includes:

7.4.1 overseeing and facilitating the conduct of meetings in accordance with Act and the *Local Government (Procedures at Meetings) Regulations 2013* (the Regulations); and

7.4.2 Ensuring all Panel members have an opportunity to participate in discussions in an open and encouraging manner.

8. REPORTING RESPONSIBILITIES

8.1 For the purposes of Section 41(8) of the Act, the Panel's reporting and accountability requirements are:

8.1.1 The minutes of each Panel meeting will be included in the agenda papers of the next ordinary meeting of the Council;

8.1.2 The Presiding Member will attend a meeting of the Council at least once per annum to present a report on the activities of the Panel;

8.1.3 The panel shall make whatever recommendations to the Council it deems appropriate on any area within its terms of reference where in its view action or improvement is needed; and

8.1.4 The Presiding Member may attend a Council meeting at any time that the Presiding Member sees fit to discuss any issue or concern relating to the Panel's functions. Depending on the nature of the matter, this may be held in confidence in accordance with Section 90 of the Act and staff may be requested to withdraw from the meeting.

9. MEETING PROCEDURE

9.1 Meeting procedure for the Panel is as set out in the Act, Parts 1, 3 and 4 of the Regulations. Insofar as the Act, the Regulations, or these Terms of Reference do not prescribe the procedure to be observed in relation to the conduct of a meeting of the Panel, the Panel may determine its own procedure.

9.2 In accordance with Section 90(7a), one or more panel members may participate in the meeting by telephone or other electronic means provided that members of the public can hear the discussion between all Panel members.

9.3 Only members of the Panel are entitled to vote in Panel meetings. Unless otherwise required by the Act not to vote, each member must vote on every matter that is before the Panel for decision.

9.4 Council Employees may attend any meeting as observers or be responsible for preparing papers for the Panel.

10. SECRETARIAL RESOURCES

- 10.1 The Chief Executive Officer shall provide sufficient administrative resources to the Panel to enable it to adequately carry out its functions.

11. FREQUENCY OF MEETINGS

- 11.1 The Panel shall meet at appropriate times and places as determined by the Panel. A special meeting of the Committee may be called in accordance with the Act.
- 11.2 If after considering advice from the CEO or delegate, the Presiding Member of the Panel is authorised to cancel the respective Panel meeting, if it is clear that there is no business to transact for that designated meeting.

12. NOTICE OF MEETINGS

- 12.1 Notice of the meetings of the Panel will be given in accordance with Sections 87 and 88 of the Act. Accordingly, notice will be given:

12.1.1 To members of the Panel by email or as otherwise agreed by Panel members at least 3 clear days before the date of the meeting; and

12.1.2 To the public as soon as practicable after the time that notice of the meeting is given to members by causing a copy of the notice and agenda to be displayed at the Council's offices and on the Council's website.

12.2 PUBLIC ACCESS TO MEETINGS & DOCUMENTS

- 12.3 Members of the public are able to attend all meetings of the Panel, unless prohibited by resolution of the Panel under the confidentiality provisions of Section 90 of the Act.
- 12.4 Members of the public have access to all documents relating to the Panel unless prohibited by resolution of the Panel under the confidentiality provisions of Section 91 of the Act.

13. MINUTES OF MEETINGS

- 13.1 The Chief Executive Officer shall ensure that the proceedings and resolutions of all meetings of the Panel, including recording the names of those present and in attendance are minuted and that the minutes otherwise comply with the requirements of the Regulations.
- 13.2 Minutes of Panel meetings shall be circulated within five days after a meeting to all members of the Panel and will (in accordance with legislative requirements) be available to the public.

APPENDIX 1

Appendix 2

Local Government Act 1999 extract - s26 Principles

Principles for Boundary Reform Proposals

The *Local Government Act 1999* provides the following guidance to the Boundaries Commission on matters to be considered when arriving at recommendations regarding reform proposals

26—Principles

- (1) The Commission should, in arriving at recommendations for the purposes of this Chapter (but taking into account the nature of the proposal under consideration), have regard to—
 - (a) the objects of this Act; and
 - (b) the roles, functions and objectives of councils under this Act; and
 - (c) the following principles:
 - (i) the resources available to local communities should be used as economically as possible while recognising the desirability of avoiding significant divisions within a community;
 - (ii) proposed changes should, wherever practicable, benefit ratepayers;
 - (iii) a council should have a sufficient resource base to fulfil its functions fairly, effectively and efficiently;
 - (iv) a council should offer its community a reasonable range of services delivered on an efficient, flexible, equitable and responsive basis;
 - (v) a council should facilitate effective planning and development within an area, and be constituted with respect to an area that can be promoted on a coherent basis;
 - (vi) a council should be in a position to facilitate sustainable development, the protection of the environment and the integration of land use schemes;
 - (vii) a council should reflect communities of interest of an economic, recreational, social, regional or other kind, and be consistent with community structures, values, expectations and aspirations;
 - (viii) a council area should incorporate or promote an accessible centre (or centres) for local administration and services;
 - (ix) the importance within the scheme of local government to ensure that local communities within large council areas can participate effectively in decisions about local matters;
 - (xi) residents should receive adequate and fair representation within the local government system, while over-representation in comparison with councils of a similar size and type should be avoided (at least in the longer term);
 - (xii) a scheme that provides for the performance of functions and delivery of services in relation to 2 or more councils (for example, a scheme for regional governance) may improve councils' capacity to deliver services on a regional basis and therefore offer a viable and appropriate alternative to structural change; and

- (d) the extent and frequency of previous changes affecting the council or councils under this Chapter or the repealed Act.
- (2) The Commission should, so far as is relevant, give preference to structural changes that enhance the capacity of local government to play a significant role in the future of an area or region from a strategic perspective.

APPENDIX 1

Appendix 2

*South Australian Boundaries Commission
correspondence – 29 July 2022 –
Campbelltown City Council Stage 2 Boundary
Change General Proposal*

29 July 2022

Mayor Jan-Claire Wisdom
Adelaide Hills Council
PO Box 44 WOODSIDE SA 5244

By email: jcwisdom@ahc.sa.gov.au

Dear Mayor Wisdom

Campbelltown City Council Stage 2 Boundary Change General Proposal

I write to inform you that the South Australian Local Government Boundaries Commission (the Commission) has received a council initiated Stage 2 Boundary Change General Proposal (the Proposal) from the Campbelltown City Council. The Proposal relates to a boundary change between the Campbelltown City Council and the Adelaide Hills council in the areas of Rostrevor and Woodforde.

At its meetings on 18 May 2022 and 20 July 2022, the Commission considered the Campbelltown City Council's Proposal. Your correspondence of 15 July 2022 was noted by the Commission.

As you are aware, the process by which the Commission deals with boundary change proposals under Chapter 3 Part 2 of the *Local Government Act 1999* (the Act) is set out in the nine guidelines that the Commission has published on this matter.

When discussing a proposal, the Commission gives close consideration to the requirements of *Guideline 3 – Submitting a Proposal to the Commission* and the principles contained under section 26 of the Act. These principles are of fundamental importance to boundary change proposals and ultimately form the basis of any recommendation that the Commission may make to the Minister.

The Commission formed the view that the Proposal meets the requirements of Guideline 3 and generally aligns with the section 26 principles. The Commission therefore determined that an inquiry into the Proposal may proceed in accordance with Section 31 of the Act and *Guideline 4 – Investigations of General Proposals Initiated by Councils*.

I must emphasise that the Commission's determination to inquire into the Proposal does not mean that the Proposal has been recommended to proceed. A recommendation to the Minister regarding this Proposal can only be made once the Commission has conducted and considered the findings of an inquiry.

Section 31(1)(b) of the Act enables the Commission to appoint one or more investigators to conduct the inquiry. It is expected that the inquiry into the Proposal will require the appointment of a number of specialised investigators, given the extensive potential impact that the proposal may have on affected councils.

The appointment of investigators will be undertaken in accordance with the Act, and with *Guideline 5 – Appointment of Investigators for General Proposals*. As s 31(2) of the Act makes clear, the Commission must seek to ensure, as far as is reasonably practicable that the qualifications, knowledge, expertise and experience of a particular investigator are relevant to the inquiry for which the investigator is being appointed.

Given this, an overview of the matters that the Commission is of the view should be inquired into for this proposal is attached. **The Commission invites your Council to comment on this document to assist the Commission to formulate an estimate of costs** that is as accurate as possible. I would appreciate it if any comments could be provided by **29 August 2022**.

In accordance with s 31 (2)(b) of the Act, the Commission must also consult with councils affected by the proposal on the proposed appointment of investigators. While the Commission will therefore consult with your Council before formally appointing investigators, you may also wish make comments on these appointments at this stage.

In accordance with *Guideline 8 - Costs*, the Commission's next step will be to obtain a cost estimate for the inquiry. It is anticipated that this will be provided to the Campbelltown City Council for its consideration following the conclusion of the 2022 periodic local government elections. As you may be aware, the inquiry will only proceed if the Campbelltown City Council provides a clear direction to do so, when it has considered this cost estimate.

I also note that, if the inquiry proceeds, engagement and consultation for an inquiry will be undertaken with the engagement principles and the mandatory requirements outlined in *Guideline 9 – Engagement and Consultation*. As part of the inquiry, an engagement and communications plan will be developed which will outline how the engagement process will proceed.

I take this opportunity to emphasise that this engagement will be extensive, and involve affected councils and their communities to ensure that the Commission is fully informed of all views. Equally, it is essential that the affected communities have the opportunity to make their views known to the Commission in the context of full information about the potential impacts of the Proposal, as these are detailed through the Commission's inquiry.

The Commission understands that the Adelaide Hills Council may wish to keep your community informed about the Proposal and the inquiry process.

If your Council does choose to provide information to your community regarding the Proposal, the Commission requests that you clarify that the Commission is an independent statutory authority that will undertake its own consultation to ensure that it fully understands the informed views of all affected communities on any proposed boundary change before it makes a recommendation to the Minister.

Accordingly, as noted above, both your Council and community will be closely engaged with any inquiry that may proceed.

This will provide an opportunity for your Council to provide submissions to the Commission that may include the matters the Council has raised in previous correspondence to date.

As part of any inquiry, the Commission or the investigator(s) may request additional information from your Council in accordance with section 32A(1) of the Act and Guideline 4. This will allow the Commission to obtain the information it believes relevant to assist in undertaking the inquiry. The Commission would appreciate your Council's assistance with providing this information in a timely manner.

To assist the Commission in finalising this Proposal, please nominate a staff member in your Council who can act as the primary contact person for the Commission while considering the Proposal.

I also advise that, under the Commission's publication policy, the information about the Proposal has been made available at— www.dit.sa.gov.au/local-government/boundaries-commission.

Thank you for your Council's co-operation in this matter. If you have further questions, please contact the Commission on 7109 7164 or boundaries.commission@sa.gov.au.

Yours sincerely



Rob Donaldson

CHAIR

SOUTH AUSTRALIAN LOCAL GOVERNMENT BOUNDARIES COMMISSION

Attachment: Outline of matters to be investigated – Campbelltown City Council Boundary Change General Proposal Inquiry Plan

Appendix 3

*South Australian Boundaries Commission
correspondence – 29 July 2022 –
Campbelltown City Council General Proposal –
Outline of matters to be investigated*

South Australian Local Government Boundaries Commission
Campbelltown City Council General Proposal – Outline of matters to be investigated

The following five areas will form the basis of the inquiry:

1. Financial matters
2. Land use and planning matters
3. Council employee matters
4. Representation matters
5. Community and service matters

The Commission must also design and deliver an engagement plan in accordance with Guideline 9 as part of the inquiry. The engagement plan will take the five above mentioned areas into consideration to ensure that the affected councils and communities are provided with the opportunity to make their views known on all relevant matters.

The matters detailed below will be fully investigated in relation to the affected councils. The role and performance of similar (but not affected) councils may be included or referenced in the inquiry, so far as it informs the Commission’s recommendations to the Minister for Local Government.

1. Financial Matters

Item number	Requirement	Reference in the Local Government Act/ Guideline	Matters that the investigation must cover
1	Financial implications	S 31(3)(b)(i)	<ul style="list-style-type: none"> • Potential impact on operating revenue for affected councils, analysing impact on: <ul style="list-style-type: none"> ○ general rates ○ service charges ○ other fees and charges ○ grants (particularly Financial Assistance Grants). ○ any other relevant operating revenue • Potential impact on operating expenses for all affected councils. • Future financial impacts (short and long-term) on all affected councils’ operating budgets if a boundary change was implemented. • Analysis of estimated total revenue against estimated total expenditure for affected councils.

Item number	Requirement	Reference in the Local Government Act/ Guideline	Matters that the investigation must cover
2	Division of assets and liabilities: land and buildings, plant & equipment, cash, investments, interests in any 'business activities', debtors	Guideline 4	<ul style="list-style-type: none"> • Identification of all council owned assets and liabilities and those in the care, control and management of each affected council. • Identify impacts that the division/loss of these assets may have both financially and in service provision for the affected councils. • Identify any issues for the affected communities that would remain as a result of the division/loss of assets. • Identify any impacts of the transfer of these assets on affected councils, including operating budgets / asset management in the context of each council's Long-term Financial Plan.
3	Impact of any significant contracts (e.g. waste management)	Guideline 4	<ul style="list-style-type: none"> • Identify all significant contracts held by the affected councils, and any impacts of the proposal on them.
4	Assessment of any significant differences in rating policies of the councils involved, the impacts on ratepayers and how these are to be addressed in both the short and longer term.	Guideline 4	<ul style="list-style-type: none"> • Identify changes in rates that may apply to rateable properties within the affected areas based on the affected councils' current rating policy. • Identify any impact of rating changes on ratepayers, and any suitable measures to address impacts in the short to medium term if necessary.
5	Assessment of any significant differences in fees and charges of the councils	Guideline 4	<ul style="list-style-type: none"> • Identify all fees and charges currently in place for affected councils, and the impact on councils and ratepayers from any necessary changes to these.
6	Existing grant arrangements relevant to affected area (including both Financial Assistance Grants and specific grants)	General Refer 31 (3)(b)(i)	<ul style="list-style-type: none"> • Identify any existing grant agreements that would be affected by this proposal. • Identify any infrastructure or general projects that have received grant funding and are not yet completed, and propose measures to transfer acquittal or reporting requirements if necessary.
7	Impact on any property based services (eg CWMS)	General Refer 31 (3)(b)(i)	<ul style="list-style-type: none"> • Identify property based services offered by affected councils, and the impact that a boundary change may have on the management of these services (including consideration of any applicable service charge or rate).

Item number	Requirement	Reference in the Local Government Act/ Guideline	Matters that the investigation must cover
8	Assessment of any significant differences in service levels provided by the councils	Guideline 4	<ul style="list-style-type: none"> Assess the service levels provided by affected councils and identify any impact that a boundary change may have on the delivery of services to ratepayers and councils. Propose any measures to address differences in service provision across affected areas in the short to medium term.

2. Land use and planning matters

Item number	Matter	Reference in the Act/ Guideline	Matters that the investigation must cover
1	Potential conflicts that may arise from existing patterns of land use if the proposal was implemented	Guideline 4	<ul style="list-style-type: none"> Identify any significant conflicts in land use patterns, including any potential interface issues with future or existing growth areas. Identify any land management issues that may arise with a transfer of areas– e.g. open space, stormwater, significant easements. Review and identify any significant differences in planning policies between the affected councils Identify any variances in development controls that may impact on development/growth if a council boundary change was implemented. Identify current or previous planning studies and outcomes that are relevant to the affected councils/areas, including demographic, growth projections, infrastructure needs/demands. Identify any existing or potential environmental impacts that should be considered. Assess the capacity of the affected councils to manage significant future growth areas. Identify any existing infrastructure deeds that may be affected by a boundary change. Assess how the affected councils could facilitate effective and sustainable planning, development and protection of the environment if a boundary change was implemented, having particular regard to the Adelaide Hills Face Zone management. Consider the impact of any existing land management agreements.

3. Council Employee Matters

Item number	Matter	Reference in the Act/ Guideline	Matters that the investigation must cover
1	The impact on the various rights and interests of any council employees affected by the general proposal	Section 31(3) (b)(v)	<ul style="list-style-type: none"> • Identify the rights and interests of council employees affected by the proposal. • Identify any significant difference in any work place agreements or conditions such as an enterprise bargaining agreement. • Propose arrangements that may need to put in place in the short to medium term to manage any impact on employees.
2	Implications for council employees, including any proposed transfer of staff and conditions of employment	Guideline 4 Refer 31(3)(b)(v)	<ul style="list-style-type: none"> • Identify any workforce or human resourcing issues that may result from a boundary change, including any need for transfer of staff. • Assess conditions of employment in affected councils, identify any impact of a boundary change and propose any arrangements that may be necessary to manage this.

4. Representation Matters

Item number	Matter	Reference in the Act/ Guideline	Matters that the investigation must cover
1	Impact on internal structure and representation of councils, and how this will be dealt with in the short and longer term	Guideline 4	<ul style="list-style-type: none"> • Identify the current representation for all areas impacted by the proposal • Recommend the future of representation of all areas that may be affected by a boundary change, with particular attention to any impact on ward quotas within affected councils • Consider any previous structural changes or reviews relating to the affected councils, and whether these have any impact or relevance to potential change arising from this Proposal. • Consider the most recent representation review completed for each council.

5. Community and Services

Item number	Matter	Reference in the Act/ Guideline	Matters that the investigation must cover
1	Community of interest	S 26(vii) and related s 26 principles	<ul style="list-style-type: none"> • Advise on community members' identification as members of a particular local and/or regional community • Identify any economic communities of interest that may be affected if a boundary change was implemented and what impact this might have • Assess whether a council boundary change would result in a significant division within an existing community
2	Ability of communities to access council services and relevant communication issues between councils and communities	Guideline 4	<ul style="list-style-type: none"> • Assess how community members in affected areas access and use services and facilities provided by their own or nearby councils • Identify any impact on this access that may arise from a boundary change • Assess current activities and engagement between affected communities and councils, including participation in local decision making, and identify any impact that a boundary change may have on these relationships • Identify existing relationships between affected councils and social, recreational and sporting groups, and the impact that a boundary change may have on this relationship or the operation of the group. • Determine if all affected councils would be in a position to offer its communities a reasonable range of services delivered on an efficient, flexible, equitable and responsive basis if a boundary change was implemented

Engagement requirements

The Commission must undertake engagement into the inquiry to meet both the requirements of the *Local Government Act 1999* (the Act) and Guideline 9.

Legislative and Guideline requirements

Section 31(3)(b) of the Act requires the Commission to consider—

- The extent of support for the general proposal within the affected community
- The extent of support for the general proposal of any council affected by the general proposal

Section 27(3)(b) of the Act requires that the Commission's guidelines must specify requirements relating to consultation that must be undertaken for the purposes of inquiries, including consultation with the community, councils affected by the proposal and entities that represent the interest of council employees affected by the proposal.

Accordingly, the Commission's Guideline 9 outlines the Commission's approach to consultation and engagement. This requires the Commission to design an Engagement Plan aligning with the engagement principles in the Guideline, and that is tailored to the engagement necessary to each Proposal.

Requirements for the inquiry

To meet the Commission's requirements, it is proposed that an investigator will be appointed to—

1. Design an Engagement Plan for the Commission's approval in relation to the Campbelltown City Council's proposal. This Engagement Plan must be in accordance with Section 31(3) of the Act and Guideline 9. This will be designed in consultation with affected councils and based on the four Engagement Principles.
2. Deliver the approved Engagement Plan and provide a report to the Commission, in accordance with s 31(4)(b) of the Act.

Appendix 4

Boundary Change Committee - draft Terms of Reference

ADELAIDE HILLS COUNCIL

Boundary Change Committee



TERMS OF REFERENCE

1. ESTABLISHMENT

- 1.1 The Boundary Change Committee (the 'Committee') of Council is established under Section 41 of the *Local Government Act 1999* (the 'Act').
- 1.2 The Committee does not have executive powers or authority to implement actions in areas which management has responsibility.
- 1.3 The Committee and its Members do not have any delegations except as provided for in this Terms of Reference.

2. ROLE

- 2.1 The overall role of the Committee will be to assist Council to fulfil its role and functions by providing advice in relation to the operation and implications of Chapter 3 – Constitution of councils, Part 2 – Reform proposals of the Act associated with the Campbelltown City Council Woodforde/Rostrevor boundary change proposal.

3. SPECIFIC FUNCTIONS

- 3.1 Within the context of the role of the Committee, its specific functions are:
 - 3.1.1 To review and provide advice to Council regarding any correspondence or reports produced by the South Australian Boundaries Commission (the 'Boundaries Commission');
 - 3.1.2 To oversee and provide advice to Council on:
 - 3.1.2.1 The development of submissions to the Boundaries Commission or its associated parties; and
 - 3.1.2.2 The development of communications strategies to the affected residents and ratepayers.
 - 3.1.3 To seek legal and/or other professional advice to enable the Committee to discharge its role and functions within the limits of its applicable financial delegation;

4. OTHER MATTERS

- 4.1 The Committee shall:
 - 4.1.1 Have access to reasonable resources in order to carry out its duties, recognising the constraints within Council's Budget;
 - 4.1.2 Be provided with appropriate and timely training, both in the form of an induction programme for new members and on an ongoing basis for all members;

- 4.1.3 Have delegated financial responsibility as resolved by Council in Resolution 179/22 and any subsequent resolutions. Any procurement activity resulting from the Committee's use of its delegation will be undertaken by the Administration. For clarity, individual Committee Members do not have any authority to commit Council funds.
 - 4.1.4 At least once in each full term, review its own performance and terms of reference to ensure it is operating at maximum effectiveness and recommend changes it considers necessary to the Council for approval.
 - 4.1.5 Upon being provided notification by the Boundaries Commission and/or the Minister for Local Government that the Campbelltown City Council Woodforde/Rostrevor boundary change proposal has either been withdrawn or will not be proceeding in a timely manner, the Committee will provide advice to the Council on the continuance of the Committee.
- 4.2 The Principal Member of Council will be the principal spokesperson for the Committee and for all matters associated with the Campbelltown City Council Woodforde /Rostrevor boundary change proposal. Consistent with clause 4.1 of the *Council Member Conduct Policy*, the Principal Member may delegate this role to another Council Member or Officer on agreed terms.
- 4.3 Where information is required to be provided to the Boundaries Commission or an associated party in a timeframe that does not reasonably allow:
- 4.3.1 The Committee to make a recommendation to Council, the Committee has the delegation to approve the provision of the requested information directly to the requesting party. A report will be provided to the next meeting of the Council on the exercising of this delegation; or
 - 4.3.2 The Committee to meet to consider the requested information, the Committee Presiding Member has the delegation, following consultation with the Mayor (or the Deputy Mayor if the Mayor is the Presiding Member) and CEO, to approve the provision of the requested information directly to the requesting party. A report will be provided to the next meeting of the Committee on the exercising of this delegation.

5. MEMBERSHIP

- 5.1 The Committee will comprise five (5) members as follows:
- 5.1.1 Mayor (or the Deputy Mayor in the absence of the Mayor);
 - 5.1.2 Four (4) Council Members; and
- 5.2 All members of the Committee will be appointed by the Council.
- 5.3 It is desirable for the Council Members to be appointed to the Committee to have a sound understanding of provisions of Chapter 3, Part 2 of the Act and the Campbelltown City Council Woodforde/Rostrevor boundary change proposal.
- 5.4 In considering appointments to the Committee, Council should give consideration to the diversity of the membership.

- 5.5 Appointments to the Committee shall be for a period of up to three (3) years however will expire at each periodic local government election.
- 5.6 Members of the Committee are eligible for reappointment at the expiration of their term of office.

6. SITTING FEES

- 6.1 The applicable Remuneration Tribunal (or its successor) Determination outlines the applicable allowance for Council Members on the Committee.

7. PRESIDING MEMBER

- 7.1 The Council will appoint the Presiding Member of the Committee.
- 7.2 The Council authorises the Committee to determine if there will be a Deputy Presiding Member of the Committee and, if so, authorises the Committee to make the appointment to that position for a term determined by the Committee (not exceeding the term of that Member).
- 7.3 If the Presiding Member of the Committee is absent from a meeting the Deputy Presiding Member (if such position exists) will preside at that meeting. If there is no position of Deputy Presiding Member, or both the Presiding Member and the Deputy Presiding Member of the Committee are absent from a meeting of the Committee, then a member of the Committee chosen from those present will preside at the meeting until the Presiding Member (or Deputy Presiding Member, if relevant) is present.
- 7.4 The role of the Presiding Member includes:
- 7.4.1 overseeing and facilitating the conduct of meetings in accordance with the Act and the *Local Government (Procedures at Meetings) Regulations 2013* (the Regulations); and
 - 7.4.2 Ensuring all Committee members have an opportunity to participate in discussions in an open and encouraging manner.

8. REPORTING RESPONSIBILITIES

- 8.1 For the purposes of Section 41(8) of the Act, the Committee's reporting and accountability requirements are:
- 8.1.1 The minutes of each Committee meeting will be included in the agenda papers of the next ordinary meeting of the Council;
 - 8.1.2 The Presiding Member will attend a meeting of the Council at least once per annum to present a report on the activities of the Committee;
 - 8.1.3 The Committee shall make whatever recommendations to the Council it deems appropriate on any area within its terms of reference where in its view action or improvement is needed; and
 - 8.1.4 The Presiding Member may attend a Council meeting at any time that the Presiding Member sees fit to discuss any issue or concern relating to the Committee's functions. Depending on the nature of the matter, this may be held in confidence in

accordance with Section 90 of the Act and staff may be requested to withdraw from the meeting.

9. MEETING PROCEDURE

- 9.1 Meeting procedure for the Committee is as set out in the Act, Parts 1, 3 and 4 of the Regulations. Insofar as the Act, the Regulations, or these Terms of Reference do not prescribe the procedure to be observed in relation to the conduct of a meeting of the Committee, the Committee may determine its own procedure.
- 9.2 In accordance with Section 90(7a) of the Act, one or more Committee members may participate in the meeting by telephone or other electronic means provided that members of the public can hear the discussion between all Committee members.
- 9.3 Only members of the Committee are entitled to vote in Committee meetings. Unless otherwise required by the Act not to vote, each member must vote on every matter that is before the Committee for decision.
- 9.4 Council Employees may attend any meeting as observers, to provide advice and/or be responsible for preparing papers for the Committee.
- 9.5 The Committee can request and/or engage other persons or organisations to make presentations and/or provide advice and/or respond to questions.

10. SECRETARIAL RESOURCES

- 10.1 The Chief Executive Officer shall provide sufficient administrative resources to the Committee to enable it to adequately carry out its functions.

11. FREQUENCY OF MEETINGS

- 11.1 The Committee shall meet at least four times a year at appropriate times and places as determined by the Committee. A special meeting of the Committee may be called in accordance with the Act.
- 11.2 If after considering advice from the CEO or delegate, the Presiding Member of the Committee is authorised to cancel the respective Committee meeting, if it is clear that there is no business to transact for that designated meeting.

12. NOTICE OF MEETINGS

- 12.1 Notice of the meetings of the Committee will be given in accordance with Sections 87 and 88 of the Act. Accordingly, notice will be given:
- 12.1.1 To members of the Committee by email or as otherwise agreed by Committee members; and
- 12.1.2 To the public as soon as practicable after the time that notice of the meeting is given to members by causing a copy of the notice and agenda to be displayed at the Council's principle office and on the Council's website.

12.2 PUBLIC ACCESS TO MEETINGS & DOCUMENTS

- 12.3 Members of the public are able to attend all meetings of the Committee, unless prohibited by resolution of the Committee under the confidentiality provisions of Section 90 of the Act.
- 12.4 Members of the public have access to all documents relating to the Committee unless prohibited by resolution of the Committee under the confidentiality provisions of Section 91 of the Act.

13. MINUTES OF MEETINGS

- 13.1 The Chief Executive Officer shall ensure that the proceedings and resolutions of all meetings of the Committee, including recording the names of those present and in attendance are minuted and that the minutes otherwise comply with the requirements of the Regulations.
- 13.2 Minutes of Committee meetings shall be circulated within five (5) days after a meeting to all members of the Committee and will (in accordance with legislative requirements) be available to the public.

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