

Mr David Bagshaw
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Re: Preliminary information for potential proposal

Dear Mr Bagshaw

Thank you for your letter of 5 December 2019 requesting preliminary information in regards to a potential change to council boundaries in the 5049 coastal community.

As you are aware, the *Local Government Act 1999* (the Act) establishes the Boundaries Commission (the Commission) as the independent body that assesses and investigates boundary change proposals. Under the Act, the Commission must prepare and publish proposal guidelines. The Commission has released nine Guidelines on the Office of Local Government (OLG) website—www.dpti.sa.gov.au/local_govt/boundary_changes—that apply to both proposals referred to the Commission and how the Commission undertakes its role dealing with proposals.

I note that you have reviewed the guidelines.

Proposals to alter the boundaries of 2 or more councils to incorporate land within the area of a council into the area of another council can be referred to the Commission by a range of bodies, including by a council or councils or by the prescribed percentage (at least 10%) or number of 'eligible electors'. Eligible electors are defined in section 27(1) of the Act, however, in general terms, for such proposals, eligible electors are the electors in the area proposed to be moved or those in the council that would receive the area.

As you are aware, Guideline 6 covers proposals initiated by members of the public and sets out requirements to be followed by eligible electors and the Commission in regards to a public initiated proposal.

I am advised that an officer from OLG has provided preliminary information to Mr Ric Bierbaum regarding a number of questions relating to a potential proposal which may be initiated by the Marino community. I understand that it was suggested that your Association write to the Commission outlining any questions you may have, so that the Commission could clarify the boundary change process to inform your Association's consideration of developing a proposal.

Section 26 of the Act sets out the principles that the Commission must have regard to when assessing a potential proposal, investigating a proposal that they have accepted, and when making any recommendations to the Minister. For this reason, people, groups or bodies considering a council boundary change are required to consider these principles as they prepare a potential proposal.

While the specific content of any proposal will, of course, reflect the specific circumstances of the community that progresses it, the general purpose of a boundary change is to change council boundaries to better reflect 'communities of interest'. If a community holds a view that its local social, economic and service needs are better met by a council that is different to the one in which they are located, the boundary change process offers an opportunity for this to be fully—and independently—considered by the Commission.

It's important to note that dissatisfaction with the services provided by a council is not sufficient reason to make a proposal to the Commission. For example, people may be unhappy with the rates that a council imposes. This is not a reason for changing council area but is something that should be discussed directly with the relevant council.

Your correspondence asked a series of specific questions, under your questions I provide the following information—

- 1. In considering the boundary change or merger options, what would the target audiences be for any survey to determine community interest/preference?*
- 2. Who would conduct that and how? Who pays for it? Who says when it would happen?*
- 3. 10% support of electors/residents may be an administrative prerequisite for the commission for consideration of an application. We believe that there would need to be much stronger evidence of support (51%?) for the community to endorse either option. This would obviously need to be ratified before any 'Stage 1 Proposal' would be made.*

As set out in Guideline 6, the first step in the boundary change process is for eligible electors to determine whether a proposal is the best way to proceed and discuss the matter with as many people as possible within the community to determine whether there is sufficient support for a proposal to proceed.

It is not a requirement of the guidelines to undertake a survey to determine a potential community of interest or identifying the community's preference. If your Association wishes to undertake such a survey then this is at your discretion.

However, the requirement of obtaining at least 10% support from eligible electors is a requirement of the guidelines, this support should provide some clarity of preference to your Association. If your Association wishes to obtain a higher percentage of support for the proposal, this is again, not a requirement, but at the discretion of your Association.

Subject to the guidelines, how a proposal is developed and community support for it is generated is a matter for those proposing the boundary change. However, careful

consideration needs to give to the section 26 principles to ensure that a boundary change best meets the aspirations and needs of your community.

You should also contact your council to confirm the required number of eligible electors with respect to a proposal. Each eligible elector must complete and sign the declaration form attached at the end of the Guideline. You should contact the relevant council to verify the eligibility of each elector making the proposal and such certification from the council CEO must be included in the proposal referred to the Commission.

4. What would our procedural, financial and legal options and obligations be in applying for and sponsoring either of these scenarios?

Under the Act, once a proposal is referred to the Commission it is the Commission's role to deal with it, including any investigation and community consultation.

The Commission are not able to provide the Association with financial or legal advice.

5. What would the obligations of councils be (to this Association and the community) in the process of making application to the Commission?

Other than confirming the number and certifying eligible electors as discussed above, there are no requirements or obligations on a council to the Association or the community in developing a potential proposal or a general proposal to the Commission. If a council wishes to offer support to the Association or the community that is at the council's discretion.

As part of its investigation of a proposal the Commission or an investigator conducting an inquiry have a range of powers under section 32A of the Act. These powers provide the ability for an inquiry to be fully informed of all relevant matters and to be provided with necessary information, including to require information and documentation from councils affected by the proposal. A person or council have obligations under section 32A and must not refuse or fail to comply with a requirement.

6. What is the status of the transfer, ownership and maintenance of council assets and provision of services in the application and change process?

Council boundary changes are implemented by the Governor making a proclamation under section 9 of the Act. Section 10 of the Act includes the matters that may be included in such proclamations. Under section 10(6) proclamations related to altering the boundaries of two or more councils may make provision for the transfer, apportionment, settlement or adjustment of property, assets, income, rights, liabilities or expenses as between the relevant councils.

To inform any proclamation, an inquiry would consider the financial implications and impact on resources that a proposal is likely to have on any council affected by it. An inquiry into a proposal would utilise the necessary powers to understand the nature of any relevant matters.



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- 7. Are Councils obligated to meet promised asset improvements (eg Marino board walk improvements, Marino community hall redevelopment, Kingston Park coast path improvements etc) if there is a change to or merger of council boundaries?*

These matters would be for the community to discuss with the relevant council.

8. *Is it permissible to put conditions on changes? le could the application made by our Association to the Commission be conditional on the affected councils meeting certain requirements of the community eg that Councils continue to undertake announced and budgeted activities? That planning requirements are met or changed? That promised lower council rates would be delivered?*

As discussed above, dissatisfaction with the services provided by, or the rates applied by a council is not sufficient reason to make a proposal to the Commission.

Proposals to the Commission cannot be made conditionally. Once a proposal is referred to the Commission, it is responsible for making the decision whether or not to investigate the proposal and for dealing with the proposal. The Commission may refuse to inquire into a proposal in certain circumstances, however, could still determine to inquire into a proposal if the referring body was no longer supportive of it.

When considering proposals, the Commission gives close attention to the principles contained under section 26 of the Act. These principles are of fundamental importance to boundary change proposals and form the basis of its inquiry and of any recommendation that the Commission makes to the Minister.

As part of any inquiry into a general proposal, the Commission will undertake a thorough and independent investigation of all aspects of the proposal before making recommendations to the Minister. This will include comprehensive community engagement and a full consideration of the impact of any boundary change on all affected councils, particularly where that change is significant.

Under section 31 of the Act, an inquiry into a general proposal must specifically consider the extent of support for the general proposal (in particular) and boundary reform in the area (in a general sense) within the community affected by the general proposal. Ultimately, the nature of the recommendations that the Commission makes to the Minister will reflect our view on what is best for the community in that area.

Following the Commission's recommendations to the Minister, the Minister may determine that a proposal not proceed, or that it should proceed and forward it to the Governor with a recommendation that a proclamation be made. As discussed above, such a proclamation may address a number matters related to the relevant councils.

I am advised that that the City of Holdfast Bay (the Council) carried a motion at its 27 August 2019 meeting to investigate community support for the realignment of boundaries for the suburbs of Marino and Glengowrie and support an application/s to the Commission for a boundary realignment for these suburbs, through the provision of administrative assistance to a community group that chooses to submit a proposal to the Commission.

I emphasise, however, that any decision to submit a proposal to the Commission as a proposal submitted by members of the public must be a decision of the relevant community body. As noted above, a council or councils may submit a proposal to the Commission, if it is of the view that a boundary change would be of benefit to its community.

You may also wish to note that the Commission must liaise directly with nominated eligible electors in regard to any publicly initiated proposal.

Importantly, neither the Commission nor OLG can directly assist in the preparation of, or community support for, a proposal. This is vitally important due to our responsibility to impartially and independently assess all material that is submitted to us.

If your Association has further specific questions regarding the process, I encourage to discuss these directly with OLG. If you have further questions, please contact Mr Thomas Rossini in the OLG on 7109 7443, or thomas.rossini@sa.gov.au.

I trust that this information provides greater clarity regarding the role of the Commission and the boundary proposals process.

Yours sincerely



Bruce Green
Chair, SA Local Government Boundaries Commission

20 March 2020