

Extra Ordinary Meeting

Meeting Date: Tuesday, 03 December, 2019

Location: Council Chambers, City Administrative Building, Bridge Road, Nowra

Time: At the conclusion of the Development & Environment Committee meeting

Membership (Quorum - 7)

All Councillors

Please note: The proceedings of this meeting (including presentations, deputations and debate) will be webcast and may be recorded and broadcast under the provisions of the Code of Meeting Practice. Your attendance at this meeting is taken as consent to the possibility that your image and/or voice may be recorded and broadcast to the public.

Agenda

1. Apologies / Leave of Absence

2. Declarations of Interest

3. Notices of Motion / Questions on Notice

Notices of Motion / Questions on Notice

CL19.357 Rescission Motion - CL19.351 Ward Boundary Adjustments - Outcome of Public Exhibition 1

CL19.358 Notice of Motion - CL19.351 Ward Boundary Adjustments - Outcome of Public Exhibition 2

4. Reports

CEO Group

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CL19.357 Rescission Motion - CL19.351 Ward Boundary Adjustments - Outcome of Public Exhibition

HPERM Ref: D19/418459

Submitted by: Clr Mitchell Pakes
Clr Joanna Gash
Clr Greg Watson

Purpose / Summary

The following Rescission Motion, of which due notice has been given, is submitted for Council's consideration.

Recommendation

That Council rescind the Motion relating to Item CL19.351 of the Council Meeting held on Tuesday 26 November 2019.

Background

The following resolution was adopted at the Ordinary Council Meeting held Tuesday 26 November 2019 (MIN19.879).

That Council:

1. *Pursuant to the provisions of Section 211 of the Local Government Act 1993, adopt the variations to its current wards as exhibited and outlined in the draft Ward Boundary Plan outlined as Attachment 1 to the report.*
2. *Ensure that the Ward Boundary adjustments are clearly communicated to electors in the lead-up to the 2020 Local Government Elections.*

Note by the CEO

The CEO has provided a separate report advising of advice received and options available to the Council.

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CL19.358 Notice of Motion - CL19.351 Ward Boundary Adjustments - Outcome of Public Exhibition

HPERM Ref: D19/418471

Submitted by: Clr Mitchell Pakes
Clr Greg Watson
Clr Andrew Guile

Purpose / Summary

The following Notice of Motion, of which due notice has been given, is submitted for Council's consideration.

Recommendation

That Council provide options to keep Nowra in Ward 2.

Note by the CEO

This Notice of Motion will be dealt with if the preceding Rescission Motion is carried.

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CL19.359 Ward Boundary Adjustments - Options available to Council

HPERM Ref: D19/420233

Section: Human Resources, Governance & Risk

Approver: Stephen Dunshea, Chief Executive Officer

Attachments: 1. Ward Boundary Adjustment - Alternate Plans (councillors information folder) [↗](#)

Reason for Report

This report outlines information to be considered by the Council when considering the Rescission Motion (CL19.357) on the Agenda of this meeting.

Recommendation

That the information on Ward Boundary Adjustments be received for information when considering the Rescission Motion (CL 19.357)

Options

1. Proceed with the Proposal which had been Publicly exhibited and resolved position of the Council (MIN 19.879)

Implications:

- There is no limitation to Council completing adjustment at this time and the NSW Electoral Commission has advised that councils are recommended to keep their variances within quota if possible.
- The adopted Plan reflects the less than 10% variance required under the Act.
- The adopted Plan meets the aims of the previous Council resolution (MIN18.374) to adjust boundaries to ensure no suburbs are split.

2. Not proceed to adjust Ward Boundaries until after the September 2020 Elections

Implications:

- This would be contrary to a previous resolution of the Council to review and adjust ward Boundaries prior to the 2020 Election but would be permissible under the legislation.
- Sanctuary Point would remain split as would some other suburbs.
- The 2020 Election will have a significant variation of elector numbers between Wards.
- The Council decision would need to be clearly communicated to the Community.

3. **Adopt a new Ward Boundary model before 9 December 2019**

Implications: Should Council decide that an alternate Plan is preferable, Council would need to have all revisited mapping completed, the Plan would need to meet the variance limit of 10% and then Council would need to resolve to adopt a new Plan and submit the

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new Plan by the deadline of 9 December 2019 . There is no extension available on the 9 December 2019 deadline, and if not met there would be no adjustment until after the 2020 Election.

Council may wish to adjourn the Extra-Ordinary Meeting for a Workshop to discuss options provided in the Councillors Information Folder.

Background

At the Council Meeting held on 26 November 2019 the Council considered report CL19.351 – Ward Boundary Adjustments and resolved at which time it made the following resolution (MIN19.879).

That Council:

1. *Pursuant to the provisions of Section 211 of the Local Government Act 1993, adopt the variations to its current wards as exhibited and outlined in the draft Ward Boundary Plan outlined as Attachment 1 to the report.*
2. *Ensure that the Ward Boundary adjustments are clearly communicated to electors in the lead-up to the 2020 Local Government Elections.*

This resolution is subject to the Rescission Motion (CL19.357) on the Agenda of this meeting.

Following debate on the item at the Ordinary Meeting, clarification was sought from the Office of Local Government (OLG) and the NSW Electoral Commission (NSWEC) on several points raised in the debate, and further research has been undertaken. The findings of these enquiries are outlined below:

Q1: Can the Minister give the Council an exemption to not undertake a Ward Boundary Adjustment?

A: Both the OLG and NSWEC have advised that the Minister for Local Government does not have authority to give an exemption to a Ward Boundary adjustment which is required under Section 211 of the Local Government Act.

Q2: Can the Council be granted an extension to the 9 December 2019 deadline to make application for adjustments.

A: The NSW Electoral Commission advised that there is no opportunity for extension. Any applications must be made to the NSWEC by 9 December 2019 to come into effect for the 2020 Local Government election

Q3: Is Shoalhaven City Council required under legislation to lodge a Ward Boundary adjustment for the 2020 Election?

A: No

It has been confirmed by both the OLG and the NSWEC that as the Council commenced the process for Ward Boundary Adjustments based on Council resolution and not as a result of identification of not meeting required variances, the adjustments are not compulsory at this time.

The process was commenced following the Ordinary Meeting of the Council held on 25 September 2018 at which time the Council considered a Notice of Motion from Councillor Proudfoot and resolved (MIN18.374)

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"That:

1. *Council staff undertake a full review of the three ward boundaries with a view, to in some way, correcting anomalies such as the situation at Sanctuary Point, where the boundary cuts the township down the middle.*
2. *The results of the review together with possible scenarios be the topic of a Councillor Workshop in order to progress a way forward."*

The Council commenced the adjustments process under Section 211(3) of the Local Government Act which was not compulsory. The Compulsory adjustment would be required if (Under Clause 211.2) of the Act if:

- a) Council became aware that a further adjustment was required during the last term (i.e. prior to 11 September 2016) AND
- b) This was still the situation at end first term i.e. September 2017.

The Enrolment at 1 August 2016 did not have the variation which would trigger the compulsory adjustment.

Shoalhaven	Enrolment 01/08/2016	Enrolment 21/02/2017	
WARD 1	24592	23630	
WARD 2	26377	27374	
WARD 3	27085	27128	
Total	78054	78132	
Difference Highest - Lowest	2493	3744	
% Variation	9.20%	13.68%	

However, notwithstanding the lack of legal obligation to adjust boundaries in this circumstance, the Council has undertaken several workshops, and endorsed a Ward Boundary Model both prior to and after an extensive public consultation process. Also, the NSWEC has advised that Councils are strongly encouraged to keep their Ward Boundaries within quota as this represents the most equitable system and supports the '1 Vote- 1 Value' principle.

Should Council not submit a Ward Boundary adjustment application by 9 December 2019 there will be a reasonably significant variance between Wards with Ward 3 Councillors representative of approximately 3800 more electors than Ward 1 (on current figures).

Q4: Is it too late to adjust the Ward Boundary plan that was publicly advertised.

A: Although the time frame is extremely difficult it may be able to be achieved before the 9 December 2019. To do so would require the following:

1. The Council would need to provide a clear direction of the adjustments to be made. Some alternative options for Boundary adjustments to Nowra and surrounds within the allowable variances have been prepared by staff for consideration and are provided as **Attachment 1 in the Councillors Information Folder**.
2. Detailed mapping would need to be undertaken to create a Ward Boundary Plan which meets the requirements of less than 10% variation.

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3. Council would need to resolve to agree to the new Plan
4. The plan would need to be completed and submitted by staff

If Councillors are of a mind to discuss alternate boundary adjustments prior to determining the Rescission Motion, the Extraordinary meeting may be adjourned to workshop possible alternate plans. Relevant staff will be in attendance to assist with GIS mapping at the Workshop. Then, at the conclusion of the workshop the Extra- Ordinary Council meeting could re-convene for the Council to resolve the matter.

Relevant Legislation:

The Relevant Provisions of the Local Government Act 2019, in relation to Ward Boundary adjustments are as follows:

“ 210 Division of areas into wards

- (1) *The council may divide its area into divisions, called "wards".*
- (2) *The council may abolish all wards.*
- (3) *The council may alter ward boundaries.*
- (4) *The council may name or rename a ward.*
- (5) *A council must not divide an area into wards or abolish all wards unless it has obtained approval to do so at a constitutional referendum.*
- (6) *A by-election held after an alteration of ward boundaries and before the next ordinary election is to be held as if the boundaries had not been altered.*
- (7) *The division of a council's area into wards, or a change to the boundaries of a ward, must not result in a variation of more than 10 per cent between the number of electors in each ward in the area.*

210A Consultation, public notice and exhibition of proposals regarding ward boundaries

- (1) *Before dividing a council's area into wards or altering a council's ward boundaries, the council must--*
 - (a) *consult the Electoral Commissioner and the Australian Statistician to ensure that, as far as practicable, the proposed boundaries of its wards correspond to the boundaries of appropriate districts (within the meaning of the Electoral Act 2017) and census districts, and to ensure that the proposed boundaries comply with section 210(7), and*
 - (b) *prepare and publicly exhibit a plan detailing the proposed division or alteration (the "**ward boundary plan**").*
- (2) *The council must give public notice of the following--*
 - (a) *the place at which the ward boundary plan may be inspected,*
 - (b) *the period for which the plan will be exhibited (being a period of not less than 28 days),*
 - (c) *the period during which submissions regarding the ward boundary plan may be made to the council (being a period of not less than 42 days after the date on which the ward boundary plan is placed on public exhibition).*
- (3) *The council must, in accordance with its notice, publicly exhibit the ward boundary plan together with any other matter that it considers appropriate or necessary to better enable the plan and its implications to be understood.*
- (4) *Any person may make a submission to the council regarding the ward boundary plan within the period referred to in subsection (2)(c).*
- (5) *The council must consider submissions made in accordance with this section.*

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211 Ward boundaries

- (1) *The council of an area divided into wards must keep the ward boundaries under review.*
- (2) *If--*
 - (a) *during a council's term of office, the council becomes aware that the number of electors in one ward in its area differs by more than 10 per cent from the number of electors in any other ward in its area, **and***
 - (b) *that difference remains at the end of the first year of the following term of office of the council, the council must, as soon as practicable, alter the ward boundaries in a manner that will result in each ward containing several electors that does not differ by more than 10 per cent from the number of electors in each other ward in the area.*
- (3) *Nothing in subsection (2) prevents a council that has become aware of the discrepancy referred to in subsection (2)(a) from altering its ward boundaries before the end of the first year of the following term of office of the council.”*

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CL19.360 Tender - Construction of Nowra Sails Shelter - Wharf Road, Nowra

HPERM Ref: D19/419508

Section: Project Delivery & Contracts

Approver: Peter Knill, Project Delivery & Contracts - Section Manager

Reason for Report

To confirm future direction from Council regarding the tender for Construction of the Nowra Sails Shelter – Wharf Road, Nowra.

Recommendation

That:

1. Council note that no conforming tender submissions were received.
2. In accordance with Regulation 178(3)(e) of the Local Government (General) Regulation 2005, Council enter into negotiations with any person with a view to entering into a contract for the construction of the Nowra Sails Shelter, the subject matter of tender.
3. Council authorise the Chief Executive Officer (Director Assets & Works) to negotiate and execute the contract documents and any other associated documents on behalf of Council in accordance with cl 165 of the Local Government Regulation.

Options

1. Council accept the recommendation.

Implications: A contractor for the works can be sought in a timely manner allowing the construction of the Nowra Sails Shelter to commence sooner than if fresh applications were invited.

2. Council amend the recommendation

Implications: Amending the recommendation to undertake alternate options under regulation 178(3) such as postponing or cancelling the proposed contract, inviting fresh tenders will result in additional costs and time delays in commencing the construction of the Nowra Sails Shelter.

Background

Council called Tenders for Construction of the Nowra Sails Shelter, Wharf Road, Nowra on 2 November 2019. The tender closed at 10.00am on 26 November 2019.

No conforming tenders were received and pursuant to Regulation 178(3) of the *Local Government (General) Regulations 2005* Council must resolve to undertake the next steps with respect to the proposed contract.

These next steps may include postponement or cancellation of the proposal for the contract; invitation of fresh applications; entering into negotiations; or Council carrying out the requirements of the proposed contract.

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Having received no conforming tenders it is recommended that Council proceed with direct negotiations with companies or other parties interested in undertaking the works within the project estimated cost.

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LOCAL GOVERNMENT AMENDMENT (GOVERNANCE & PLANNING) ACT 2016

Chapter 3, Section 8A Guiding principles for councils

(1) Exercise of functions generally

The following general principles apply to the exercise of functions by councils:

- (a) Councils should provide strong and effective representation, leadership, planning and decision-making.
- (b) Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.
- (c) Councils should plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- (d) Councils should apply the integrated planning and reporting framework in carrying out their functions so as to achieve desired outcomes and continuous improvements.
- (e) Councils should work co-operatively with other councils and the State government to achieve desired outcomes for the local community.
- (f) Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.
- (g) Councils should work with others to secure appropriate services for local community needs.
- (h) Councils should act fairly, ethically and without bias in the interests of the local community.
- (i) Councils should be responsible employers and provide a consultative and supportive working environment for staff.

(2) Decision-making

The following principles apply to decision-making by councils (subject to any other applicable law):

- (a) Councils should recognise diverse local community needs and interests.
- (b) Councils should consider social justice principles.
- (c) Councils should consider the long term and cumulative effects of actions on future generations.
- (d) Councils should consider the principles of ecologically sustainable development.
- (e) Council decision-making should be transparent and decision-makers are to be accountable for decisions and omissions.

(3) Community participation

Councils should actively engage with their local communities, through the use of the integrated planning and reporting framework and other measures.

Chapter 3, Section 8B Principles of sound financial management

The following principles of sound financial management apply to councils:

- (a) Council spending should be responsible and sustainable, aligning general revenue and expenses.
- (b) Councils should invest in responsible and sustainable infrastructure for the benefit of the local community.
- (c) Councils should have effective financial and asset management, including sound policies and processes for the following:
 - (i) performance management and reporting,
 - (ii) asset maintenance and enhancement,
 - (iii) funding decisions,
 - (iv) risk management practices.
- (d) Councils should have regard to achieving intergenerational equity, including ensuring the following:
 - (i) policy decisions are made after considering their financial effects on future generations,
 - (ii) the current generation funds the cost of its services

Chapter 3, 8C Integrated planning and reporting principles that apply to councils

The following principles for strategic planning apply to the development of the integrated planning and reporting framework by councils:

- (a) Councils should identify and prioritise key local community needs and aspirations and consider regional priorities.
- (b) Councils should identify strategic goals to meet those needs and aspirations.
- (c) Councils should develop activities, and prioritise actions, to work towards the strategic goals.
- (d) Councils should ensure that the strategic goals and activities to work towards them may be achieved within council resources.
- (e) Councils should regularly review and evaluate progress towards achieving strategic goals.
- (f) Councils should maintain an integrated approach to planning, delivering, monitoring and reporting on strategic goals.
- (g) Councils should collaborate with others to maximise achievement of strategic goals.
- (h) Councils should manage risks to the local community or area or to the council effectively and proactively.
- (i) Councils should make appropriate evidence-based adaptations to meet changing needs and circumstances.