



COUNCIL AGENDA & REPORTS

for the Special meeting

Wednesday 8 December 2021
at 5.00pm

in the Colonel Light Room,
Adelaide Town Hall



Members - The Right Honourable the Lord Mayor, Sandy Verschoor (Presiding)
Deputy Lord Mayor, Councillor Abrahamzadeh
Councillors Couros, Donovan, Hou, Hyde, Khera, Knoll,
Mackie, Martin, Moran and Snape.

1. Acknowledgement of Country

At the opening of the Council Meeting, the Lord Mayor will state:

'Council acknowledges that we are meeting on traditional Country of the Kurna people of the Adelaide Plains and pays respect to Elders past and present. We recognise and respect their cultural heritage, beliefs and relationship with the land. We acknowledge that they are of continuing importance to the Kurna people living today.

And we also extend that respect to other Aboriginal Language Groups and other First Nations who are present today.'

2. Acknowledgement of Colonel William Light

Upon completion of the Kurna Acknowledgment, the Lord Mayor will state:

'The Council acknowledges the vision of Colonel William Light in determining the site for Adelaide and the design of the City with its six squares and surrounding belt of continuous Park Lands which is recognised on the National Heritage List as one of the greatest examples of Australia's planning heritage.'

3. Apologies and Leave of Absence

Nil

4. Reports for Council (Chief Executive Officer's Reports)

Strategic Alignment – Enabling Priorities

4.1. Representation Review Report [2018/04004] [Page 2]

5. Closure

Representation Review Report

ITEM 4.1 08/12/2021
Council

Strategic Alignment - Enabling Priorities

Program Contact:

Mick Petrovski
Manager Governance

2018/04004

Public

Approving Officer:

Amanda McIlroy, Chief Operating
Officer

EXECUTIVE SUMMARY

Section 12 (4) of the *Local Government Act 1999 (SA)* (the Act) requires each council to undertake a representation review every eight years, with the precise timing of each review determined by the Minister for Local Government.

At its meeting on 13 October 2020, Council appointed Helen Dyer of Holmes Dyer Pty Ltd (the Consultant) as the suitably qualified person pursuant to section 12(5) of the Act to undertake the review, and officially initiated the Representation Review process.

Two six-week public consultation periods were undertaken on an options paper prepared for each consultation, the first providing six options, and the second providing three possible options, (two that had been part of the first round of consultation and a third option that focussed on identifying key areas of growth within the city). The Results of both rounds of consultation were presented to Council.

At its meeting 14 September 2021, Council requested the Administration prepare the draft Representation Review Report and include Option 3 (from the previous Options Paper) as Council's preferred option identifying key areas of growth within the city.

The draft Representation Review Report undertook a legislated three-week public consultation period starting 9:00am on Friday, 24 September 2021 and closing 5:00pm Friday, 15 October 2021.

The Council at its meeting 26 October 2021 endorsed the final Representation Review Report (the Report) which was submitted to the Electoral Commissioner on the 29 October 2021.

On 2 December 2021 the Chief Executive Officer received a letter from the Electoral Commissioner advising that he has assessed the Report and determined that the requirements of section 12 of the Act have not been satisfied.

This report informs Council that, due to the timeframes involved, it is not possible to provide a detailed response that would satisfy those parts of section 12 identified by the Commissioner as not having been sufficiently addressed, and details why pursuant to section 12(19)(b) of the Act, the Chief Executive Officer must refer the matter to the Electoral Commissioner for determination.

RECOMMENDATION

THAT COUNCIL

1. Receives the advice from the Electoral Commissioner as shown in Attachment A to Item 4.1 on the Agenda for the Special meeting of the Council held on 8 December 2021, referring the Representation Review Report back to Council for further action.
2. Notes the Chief Executive Officer's draft response is a mandatory referral letter to the Electoral Commissioner, as shown in Attachment B to Item 4.1 on the Agenda for the Special meeting of the Council held on 8 December 2021, advising that the City of Adelaide is unable to complete a revised Representation Review Report by 5:00pm on 10 December 2021.

IMPLICATIONS AND FINANCIALS

City of Adelaide 2020-2024 Strategic Plan	Strategic Alignment – Enabling Priorities
Policy	Not as a result of this Report.
Consultation	The Representation Review process required a minimum of two rounds of public consultation as per section 12(7) and (9) of the Act. During the review City of Adelaide completed three rounds of public consultation.
Resource	The Team Leader Corporate Governance assisted the Consultant during the multi-staged process.
Risk / Legal / Legislative	This review was conducted in accordance with Section 12 of the Act. An independent consultant delivered the options paper and final Representation Review report on behalf of Council.
Opportunities	Changes to the City of Adelaide Council composition and or wards may provide for updated representation.
21/22 Budget Allocation	\$60,000 reserved for the two statutory public consultations, legal services and contingency relating to the representation review process. \$20,000 additional for further consultancy, public consultation and marketing as approved by Council 6 July 2021.
Proposed 22/23 Budget Allocation	Not as a result of this Report.
Life of Project, Service, Initiative or (Expectancy of) Asset	Not as a result of this Report.
21/22 Budget Reconsideration (if applicable)	Not as a result of this Report.
Ongoing Costs (eg maintenance cost)	Not as a result of this Report.
Other Funding Sources	Not as a result of this Report.

DISCUSSION

Background

1. Section 12 (4) of the *Local Government Act 1999* (SA) (the Act) requires Council to undertake a review of all aspects of its composition and the division (or potential division) of the Council area into wards (the Representation Review).
2. The Notice of Determination of Relevant Period for section 12 (4) of the Act was published by the Minister in the SA Government Gazette on 1 August 2019. The Notice indicated that the City of Adelaide (CoA) is required to undertake a review during the period of June 2020 - October 2021. In light of the impending changes to Representation Reviews due to the Local Government Reform process, CoA delayed the start of the Review until further information was announcement regarding legislative commencement dates.
3. A Representation Review is a mechanism for examining the existing composition and electoral structure, assessing the advantages and disadvantages of various options available for the composition and structure of the elected Council, and ensuring that structures will be in place to ensure effective and efficient governance to meet future community needs.
4. A Representation Review also gives the community an opportunity to have input into the optimum number of elected representatives on Council and the structure of the Council that best meets the needs of the community.
5. At a meeting of The Committee on 15 September 2020, a presentation was provided to Council Members to illustrate the Representation Review process and requirements under the Act.
6. At its meeting on 13 October 2020, Council appointed Helen Dyer of Holmes Dyer Pty Ltd (the Consultant) as the suitably qualified person pursuant to section 12(5) of the Act to prepare the Representation Review Options Paper for the CoA.
7. The consultants, along with CoA staff, held individual meetings with each Council Member in October 2020 to understand ward modelling they would like considered as part of the representation review process. This modelling was analysed to see if they would comply with the requirements of the Act
8. At its meeting 9 March 2021 Council noted the draft Options Paper, with six proposals, ready for public consultation activities. The six-week consultation period commenced on 11 March 2021.
9. Results of the public consultation were presented to The Committee on 15 June 2021. The community consultation feedback indicated support for a reduction in the number of Council Members while maintaining a three Ward structure, as broadly reflected in Option 2 in the Options Paper.
10. Following feedback received at The Committee meeting, a CEO Briefing was held with Council Members on 29 June 2021, to discuss alternate modelling proposals submitted by Council Members. The briefing provided an opportunity for Council Members to further discuss in detail the consultant's Option 2 (from the Options Paper), along with an 'All Area' model and an 'adapted' three Ward model.
11. A Special Council meeting was held on 6 July 2021 for Council to consider the process for progressing the Representation Review and Council resolved as follows:

'That Council:

 1. *Approves Process 2, as outlined in Item 4.1 on the Agenda for the Special meeting of the Council held on 6 July 2021 noting that Administration will, with the consultant, develop a new Options Paper, taking into consideration further modelling proposals presented by Members, for presentation to Council on 13 July 2021.*
 2. *Approves an additional \$20,000 be allocated to resource the preparation of the new Options Paper and the additional public consultation requirements.*
 3. *Notes that, subject to Council approval of the revised Options Paper on 13 July 2021, a six-week public consultation period and associated activities will be undertakes.'*
12. The revised Representation Review Options Paper, with three options proposed, underwent a six-week mandatory community consultation between 16 July 2021 – 27 August 2021.
13. During the consultation period, a Community Workshop was conducted on 10 August 2021 in the Adelaide Town Hall. Five members of the community attended.

14. Consultation results on the revised Representation Review Options Paper were presented during a CEO Briefing to Council Members on 7 September 2021. Consultation results indicated strong support for Option 2 in the Paper.
15. At its meeting 14 September 2021, Council was formally presented with advice on the outcomes of the consultation. Council determined that the Administration prepare the draft Representation Review Report with its preferred option (being Option 3 from the previous Options Paper) for public consultation.
16. The draft Representation Review Report undertook a legislated three-week public consultation period starting at 9am on Friday, 24 September 2021 and closing 5pm Friday 15 October 2021. The consultation process also included convening a Special meeting of Council to hear public representations on the draft report.
17. The Special meeting of Council took place on 19 October 2021. Nine people spoke, all opposed to Option 3, while also speaking in favour of Option 2 from the previous Options Paper.
18. The outcomes of the draft Representation Review Report consultation process were provided to Council at its meeting 26 October 2021, advising that:
 - 18.1. There were 269 people who participated in the consultation.
 - 18.2. Three-quarters of respondents either strongly disagreed or disagreed with Council's preferred three Ward structure, and that it would provide inadequate representation:
 - 18.2.1. 75% of respondents either strongly disagreed or disagreed with the proposal
 - 18.2.2. 20% of respondents either strongly agreed or agreed with this option.
19. It should be noted that there was positive public engagement in Council's process throughout the three consultations undertaken:
 - 19.1. Consultation on the first Options Paper – 89 respondents
 - 19.2. Consultation on the revised Options Paper – 261 respondents
 - 19.3. Consultation on the draft Representation Review Report – 269 respondents.

Submission to Electoral Commissioner

20. Council at its meeting 26 October 2021 endorsed the Representation Review Report with its preferred option and requested the Chief Executive Officer submit the Report to the Electoral Commissioner in accordance with section 12(12) of the Act.
21. The Chief Executive Officer submitted the Report to the Electoral Commissioner (Link 1 view [here](#)) on Friday 29 October 2021 which, to that date, fulfilled Council's legislative obligations to submit a completed Review to the Electoral Commissioner within the gazetted deadline.
22. Section 12(13) of the Act describes the Electoral Commissioner's role is to:

'On receipt of a Report, the Electoral Commissioner must determine whether the requirements of this section have been satisfied and then –

 - (a) *If of the opinion that the requirements have been satisfied – give an appropriate certificate; or*
 - (b) *If of the opinion that the requirements have not been satisfied – refer the matter back to the council together with a written explanation of the reasons for not giving a certificate under this section'*
23. On 2 December 2021 the Chief Executive Officer received a letter (**Attachment A**) from the Electoral Commissioner advising that he has assessed the Report and determined that the requirements of section 12 of the Act have not been satisfied which include:
 - 23.1. Section 12(8a)(a) of the Act requires the Council to include in the Report information on the public consultation and a response to the issues raised.
 - 23.2. Section 12(8a)(b) of the Act requires the Council to include in the Report an analysis of how the proposed option related to the principles of two key issues being the desirability of reflecting communities of interest, and the topography of the area of each ward affected by the proposal.
 - 23.3. Section 12(8a)(c) of the Act requires the Council to provide reasons for not adopting an option that was preferred following each of the consultation periods.
 - 23.4. Section 12(3) of the Act establishes that the purpose of conducting a representation review is to determine whether the community would benefit from an alteration to the composition or ward structure of Council and put forward a proposal that sufficiently addresses the benefits for its community.

24. The Commissioner, in accordance with section 12(13)(b) of the Act, has now referred the matter back to Council to take action, as it deems appropriate, regarding the feedback provided. This includes making an alteration to the Report and referring it back to the Electoral Commissioner. However, any alteration that is not minor in nature must undergo further public consultation as required by section 12(17) of the Act.
25. The Electoral Commissioner has sought “*sufficient reasoning for [Council] not adopting Option 2, the model most preferred following each of the consultation periods*”. This is in the context of his determination that “*Council has not put forward a proposal that sufficiently addresses benefits for its community through adopting the proposal submitted in the report*”.
26. Council’s support for Option 3 as its preferred option was focussed on:
 - 26.1. Projections for future population growth and managing the tolerances given the lower levels of growth in the north as compared to areas south of the River Torrens.
 - 26.2. Decreasing the number of Council Members which had been consistently supported during all three rounds of community consultation.
 - 26.3. Wards to remain within the desired quota for a longer period.
27. To adequately address the issues raised through the community consultation and continue to advocate for Council’s preferred option it will likely require amending Council’s preferred option in fundamental aspects such as:
 - 27.1. Possible ward boundary adjustment.
 - 27.2. Possible area/ward councillor number adjustments.
28. Even a seemingly minor amendment which maintains the overall direction of Council’s preferred option will nonetheless require a new round of public consultation.
29. The complexity of resolving the differences between the options 2 and 3 and responding to issues raised through the consultation process means that Council cannot fully respond to the matters raised by the Electoral Commissioner and submit a revised Report before 5:00pm on Friday 10 December 2021.
30. Pursuant to section 12(19)(b) of the Act, if Council “*fails to take action if a matter is referred back to the Council by the Electoral Commissioner*” the Chief Executive Officer must refer the matter to the Electoral Commissioner. If the Chief Executive Officer fails to do so, this constitutes an offence against the Act.
31. The Electoral Commissioner may then, pursuant to section 12(20) of the Act, take such action as deemed appropriate, including giving effect to a proposal which could have been carried into effect by the Council. Any costs incurred by the Electoral Commissioner in doing this, will be recoverable by Council.
32. Under the circumstances, Council’s available option is to acknowledge that, due to the prevailing time constraints, it cannot take appropriate action in response to the Commissioner, and the only reasonable course of action is for the Chief Executive Officer to submit a letter (**Attachment B**) to the Electoral Commissioner to inform him of this.
33. This action will fulfil the Chief Executive Officer’s legal obligation to refer the matter to the Electoral Commissioner. If the Chief Executive Officer fails to do so, there is a maximum penalty of \$2,500.
34. To summarise:
 - 34.1. Council’s final Representation Review Report was not certified by the Electoral Commissioner.
 - 34.2. The Electoral Commissioner provided reasons as to why the Report was not certified which included that the Council did not sufficiently articulate in the Report to him Council’s responses to submissions and argue why the Council prefers its proposal to others, regardless of the negative responses received during the three rounds of public consultation completed.
 - 34.3. To respond to the Electoral Commissioner’s letter would require Council to make fundamental changes to its Report and therefore undergo further public consultation.
 - 34.4. There is not enough time to undertake public consultation and submit the revised Report to the Electoral Commissioner by 5 pm on 10 December 2021.
 - 34.5. Throughout the Representation Review process several Council Members have consistently expressed concern with a legislated process which potentially places them in a position where they are conflicted, and that responsibility for the process and the decision should better rest with the Electoral Commissioner.

- 34.6. If Council fails to take appropriate action the Chief Executive Officer must refer the matter back to the Electoral Commissioner. The Electoral Commissioner's costs are recoverable by Council.
- 34.7. Therefore, the only option is for the Chief Executive Officer to refer the matter back to the Electoral Commissioner to determine the outcome of the Review.

DATA AND SUPPORTING INFORMATION

Link 1 – Representation Review – Final Representation Review Report

ATTACHMENTS

Attachment A – Letter received 2 December 2021 from the Electoral Commissioner

Attachment B – Chief Executive Officer letter to the Electoral Commissioner

- END OF REPORT -

In reply please quote:
ECSAF21/00210

2 December 2021

Ms Clare Mockler
Chief Executive Officer
City of Adelaide
25 Pirie Street
ADELAIDE SA 5000

Level 6, 60 Light Square
Adelaide SA 5000
GPO Box 646
Adelaide SA 5001
T +61 8 7424 7400
W ecsa.sa.gov.au
ABN 99 891 752 468

Via email only: C.Mockler@cityofadelaide.com.au
A.McIlroy@cityofadelaide.com.au

For the attention of Amanda McIlroy, Acting Chief Executive Officer

Dear Ms Mockler

On Friday 29 October 2021, I received the Representation Review Report submitted by the City of Adelaide (the Council).

I have assessed the Council's report and determined that the requirements of section 12 of the *Local Government Act 1999* (the Act) have not been satisfied. The reasons for this decision are outlined as follows:

1. Section 12(8a)(a) of the Act requires the Council to include in the Review Report information on the public consultation and a response to the issues raised. I have determined that the Council has not adequately provided such information nor sufficiently addressed the issues raised by the responses.
2. Section 12(8a)(b) of the Act requires the Council to include in the Review Report an analysis of how the proposed option relates to the principles under section 26(1)(c) and matters under section 33. I have determined that the Council has not provided sufficient analysis on how this proposal relates to two key issues, being the desirability of reflecting communities of interest, and the topography of the area and of each ward affected by the proposal.
3. Section 12(8a)(c) of the Act requires the Council to provide reasons for not adopting an option that was presented in the Options Paper. I have determined that the Council has not provided sufficient reasoning for not adopting Option 2, the model most preferred following each of the consultation periods.
4. Section 12(3) of the Act establishes that the purpose of conducting a representation review is to determine whether the community would benefit from an alteration to the composition or ward structure of the Council. Based on the weight of opinion demonstrated through the submissions from the public consultation periods, and the lack of reasoning to not adopt any alternative option, I have determined that the Council has not put forward a proposal that sufficiently addresses benefits for its community through adopting the proposal submitted in the report.

I am now referring this matter back to the Council in accordance with section 12(13)(b) of the Act. The Council may consider the reasons I have provided above and take action as it determines appropriate. This includes making an alteration to the report and referring it back to me. However, any alteration that is not minor in nature must undergo further public consultation per section 12(17).

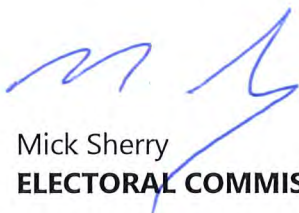
Given the requirement of subsection (18)(a) that publication of the relevant notice must occur prior to 1 January 2022, I specify Thursday 23 December 2021 as the latest date upon which a notice must be published, as this is the last date for publishing a Gazette prior to 1 January 2022. Therefore, there is not sufficient time to undertake additional public consultation.

If the Council fails to take appropriate action, as the CEO you must refer the matter to me. To enable my office to finalise this representation review, I request that you provide a response, or a revised report endorsed by the Council, by no later than 5pm Friday 10 December 2021.

If I determine that the proposal in the revised report cannot be certified, or if the Council fails to take appropriate action, I reserve my right to give effect to a proposal that could have been carried into effect by the Council under section 12(20) of the Act.

If you require further clarification, please contact my office via Olivia Hanna (Olivia.Hanna@sa.gov.au).

Yours sincerely



Mick Sherry
ELECTORAL COMMISSIONER

Enquiries: Jess Dillion 8203 7168

9 December 2021

Mr Mick Sherry
Electoral Commissioner
Electoral Commission of South Australia
GPO Box 646
ADELAIDE SA 5001

Karna Country
25 Pirie Street, Adelaide
GPO Box 2252 Adelaide
South Australia 5001
T +61 (08) 8203 7203
F +61 (08) 8203 7575
W cityofadelaide.com.au
ABN 20 903 762 572

Dear Mr Sherry

I refer to your letter dated 2 December 2021 regarding the City of Adelaide (CoA) Representation Review (the "Review").

Council, at a Special meeting on Wednesday, 8 December 2021, considered the content of your letter, referring the Review back to the Council and advising that the Review report did not satisfy the requirements of the *Local Government Act 1999* (the Act).

Council noted that making any alteration to the Report, that responds in a way that will lead to satisfying some of the issues raised in the consultations previously undertaken by Council, is likely to require changes that are not minor in nature.

This would cause the need for further consultation and, given the current time constraints, Council cannot take appropriate action to satisfy section 12 of the Act.

Therefore, I am referring this matter to you pursuant to *Section 12 (19)* of the Act, because the CoA is unable to submit an amended and completed Review report to you by 10 December 2021.

If your office has any questions in relation to this matter, please ask your officers to contact Jess Dillion on 8203 7168.

Yours sincerely

Clare Mockler
Chief Executive Officer