



**ORDINARY COUNCIL MEETING**

**LATE ITEMS**

**20 DECEMBER 2022**

## LATE ITEMS

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## 4 NOTICES OF MOTION/NOTICES OF RESCISSION

### 4.1 NOTICE OF MOTION - TIMELY TREE REMOVAL AND USAGE

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RECORD NUMBER: 2022/2505

I, **CR GLENN FLOYD** wish to move the following Notice of Motion at the Council Meeting of 20 December 2022:

#### MOTION

- 1 That Council undertake, in a timely manner, the removal of fallen trees in public spaces.**
- 2 If Council has no plans for further utilisation of dead/fallen trees in public spaces, then Council may donate tree segments and work in conjunction with organisations such as The Mens Shed to turn these trees into such things as Park benches (painted blue) or furniture, play toys and other structures for local schools/day care centres etc.**

#### BACKGROUND

While setting up the Mr Perfect BBQ in Cook park in early December near the Cnr of Clinton and Kits Streets, it was noticed by people that the fallen tree was still hanging over the fence. After numerous conversations with concerned members of the public it was concluded that trees like this one and others in the area eg. the large gum tree at the top of Hill St near the Northern Distributor Rd, could be utilised for such projects benefiting the city instead of being left to rot.

Signed Cr Glenn Floyd

#### STAFF COMMENT

When trees or limbs fail across Orange they are normally the result of a storm, saturated ground conditions or high wind event with multiple sites across Orange. In such circumstances the fallen trees / limbs are assessed to determine danger to the public and degree of accessibility to allow for removal of trees (ground conditions).

Trees and Limbs are then removed in order of risk and/or service level of facility within which they have failed, with highest risk removed first.

Due to size of limbs and trees the most effective way for removal is to cut up the tree / limb and chip it. Preparing and moving large barrels of trees or limbs is problematic due to size, weight, and shape and cost (eg. crane hire and float) and they are often not suitable for milling. However, we do it on occasion when suitable. Council is often approached by representatives of multiple not for profit organisations and individuals wishing to gain access to timber from failed trees for its value in producing woodwork products. For equity and transparency Council places salvageable timbers on Gumtree Market Place where they are sold.

The Gum adjacent to the Hill Street roundabout is low risk and had wet ground conditions which precluded access by heavy vehicles. With the ground conditions improving but still very wet it is scheduled for removal in early 2023. We will also assess the Gum for possibility of milling.

#### FINANCIAL, POLICY AND GOVERNANCE IMPLICATIONS

Nil

## 5 GENERAL REPORTS

### 5.6 CONSULTATION ON REVIEW OF THE LOCAL GOVERNMENT BOUNDARIES COMMISSION

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RECORD NUMBER: 2022/2574

AUTHOR: David Waddell, Chief Executive Officer

#### EXECUTIVE SUMMARY

The Minister for Local Government has initiated an independent review of the New South Wales Local Government Boundaries Commission.

The Boundaries Commission's role is to examine and report any matter referred to it in relation to the boundaries of local government areas in NSW. These matters include proposals for the constitution, amalgamation, de-amalgamation and alteration of boundaries of local government areas.

A discussion paper (attached) has been released to outline the current composition, function and processes of the Boundaries Commission and invites submissions for improvement suggestions.

The original deadline for submissions has been extended to 10 January 2023.

#### LINK TO DELIVERY/OPERATIONAL PLAN

The recommendation in this report relates to the Delivery/Operational Plan strategy "16.1. Work in partnership with other Councils, regional organisations and State and Federal Governments".

#### FINANCIAL IMPLICATIONS

Nil

#### POLICY AND GOVERNANCE IMPLICATIONS

Nil

#### RECOMMENDATION

**That Council determine whether to make a submission to the Local Government Boundaries Commission, and if so, determine on what aspects.**

#### FURTHER CONSIDERATIONS

Consideration has been given to the recommendation's impact on Council's service delivery; image and reputation; political; environmental; health and safety; employees; stakeholders and project management; and no further implications or risks have been identified.

#### ATTACHMENTS

- 1 OLG Circular - Consultation on Review of the LG Boundaries Commission, D22/80795 [↓](#)
- 2 Discussion Paper - Review into the LG Boundaries Commission, D22/80798 [↓](#)





## Circular to Councils

<b>Circular Details</b>	Circular No 22-34 / 10 November 2022 / A833081
<b>Previous Circular</b>	N/A
<b>Who should read this</b>	Councillors / General Managers / All council staff
<b>Contact</b>	Policy Team / 02 4428 4100 / <a href="mailto:olg@olg.nsw.gov.au">olg@olg.nsw.gov.au</a>
<b>Action required</b>	Response to OLG

### Consultation on review of the Local Government Boundaries Commission

#### What's new or changing

- The Minister for Local Government has initiated an independent review of the New South Wales Local Government Boundaries Commission (Boundaries Commission).
- Dr Juliet Lucy has been appointed to carry out the review. Dr Juliet Lucy has legal experience with a strong focus on administrative and public law.
- A discussion paper has been released to outline the current composition, function and processes of the Boundaries Commission and to invite submissions seeking suggestions for improvement. The discussion paper is available [here](#).
- The independent reviewer's findings and recommendations will be provided to the Minister at the end of March 2023.

#### What this will mean for your council

- Anyone, including councils, individual councillors, council staff and members of the public, can make submissions in response to the discussion paper.
- Information on how to make submissions is contained in the discussion paper.
- Submissions close **5.00 pm 16 December 2022**.

#### Key points

- The Boundaries Commission's role is to examine and report on any matter referred to it in relation to the boundaries of local government areas in NSW. These matters include proposals for the constitution, amalgamation, de-amalgamation and alteration of boundaries of local government areas.
- The review's terms of reference are available [here](#).

#### Where to go for further information

- Further information about the review of the Boundaries Commission is available on the OLG website [here](#).
- For more information, contact the Office of Local Government's Policy Team on 02 4428 4100 or by email at [olg@olg.nsw.gov.au](mailto:olg@olg.nsw.gov.au).

**Melanie Hawyes**  
Deputy Secretary, Crown Lands and Local Government

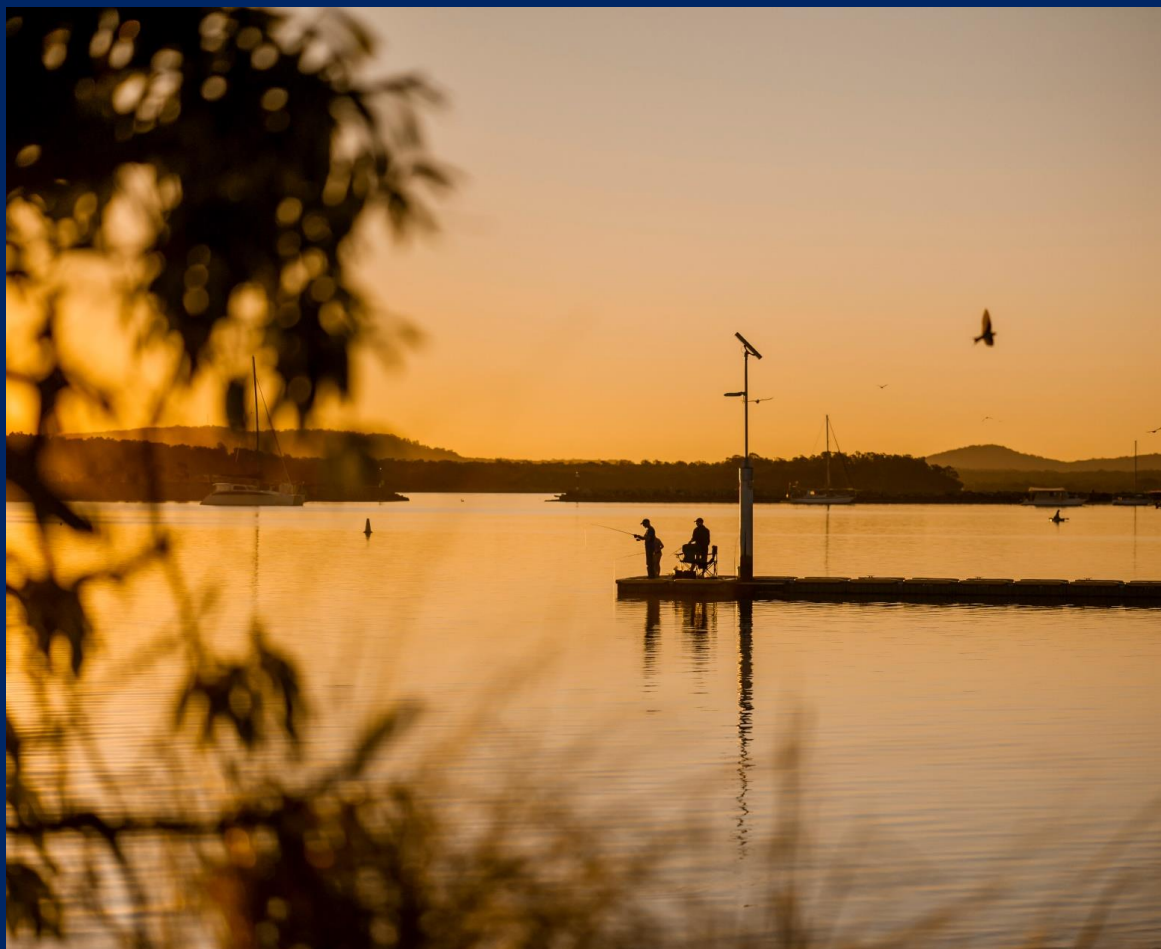
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# Review into the Local Government Boundaries Commission

Discussion Paper

November 2022





# Acknowledgement of Country

The Department of Planning and Environment acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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## About the review

The Minister for Local Government has commissioned an independent review into the NSW Local Government Boundaries Commission (the review).

The review will examine the composition, function and processes of the NSW Local Government Boundaries Commission (Boundaries Commission) established under the *Local Government Act 1993* (Act) and the *Local Government (General) Regulation 2021* (Regulation), with the aim of identifying areas for improvement. The review will also include an examination of similar frameworks used in other jurisdictions for any lessons they may offer for improving the New South Wales framework.

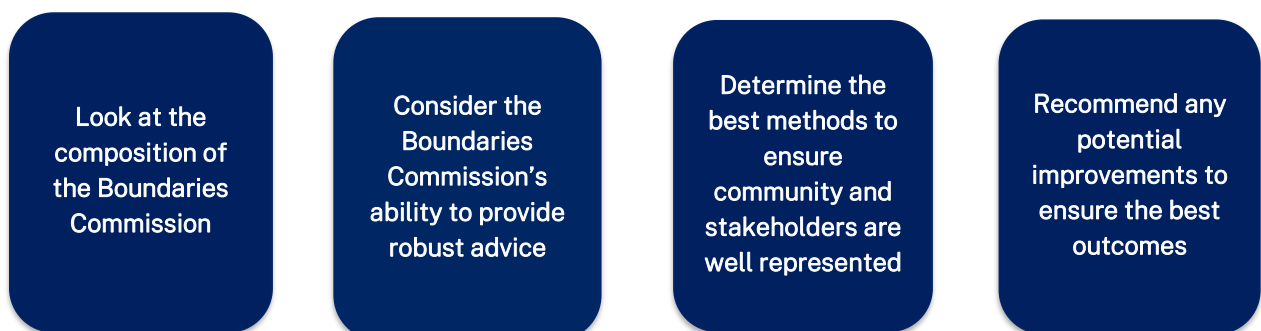
This discussion paper has been prepared to outline the current framework and to invite submissions identifying areas for improvement, together with suggestions for the practical application of those improvements.

All stakeholders are invited to respond to this discussion paper, including community members, councils and joint organisations, individual councillors and council staff, professional and employee representative organisations, local government industry stakeholder groups and key NSW Government agencies and other related stakeholders.

The review will be undertaken by an independent consultant, Dr Juliet Lucy, whose legal experience has a strong focus on administrative and public law. Dr Lucy will author the final report canvassing options for improvement and making recommendations accordingly. Administrative support for the reviewer will be provided through the Office of Local Government (OLG) for coordination purposes.

The independent reviewer's findings and recommendations will be provided to the Minister.

The objectives of the review are to:



A copy of the terms of reference is included as Attachment 1 to this discussion paper. Further information about the review and the Boundaries Commission is available on the OLG [website](#).

## Who may make submissions?

We want meaningful feedback and anyone is welcome to offer comment about how the Boundaries Commission can best carry out its role, how we can ensure good decision making when a proposal is put forward and how we can identify any potential improvements.

To assist formulate submissions that will be informative to the review and that can be compiled in a way that facilitates analysis, targeted questions have been asked at key points in this discussion paper.

While this discussion paper has been developed to encourage feedback in response to the targeted questions, we welcome any further, general feedback in connection with the terms of reference at Attachment 1.

The views of all stakeholders will be considered in identifying options for improvement.

### **Submissions are due by 5PM 16 December 2022**

Submissions can be made using the online feedback form or in a separate written submission. Further information about how to make a submission is provided in Attachment 2 to this discussion paper.

### **Terminology**

References in the Act and in this discussion paper to both the 'Department' and the 'Office of Local Government' include the 'Department of Planning and Environment'. The Office of Local Government forms part of that Department.

The Act refers to the 'Departmental Chief Executive.' The Departmental Chief Executive's functions include to nominate one of the commissioners on the Boundaries Commission and, if requested to do so, to report to the Minister on proposals to amalgamate councils or alter the boundaries of councils. The 'Deputy Secretary, Crown Lands and Local Government' performs the role of 'Departmental Chief Executive'.

### **The case for review and recent demerger determinations**

In July 2021, the (then) Minister announced the review into the Boundaries Commission. The announcement coincided with the release of the Boundaries Commission reports into the two elector proposals, Snowy Valleys Council and the initial proposal for Cootamundra-Gundagai Regional Council.

When the Minister released the two elector proposals in 2021, the Minister confirmed that the current boundaries of these councils would remain in place, meaning that the councils would not demerge. At the time, the Boundaries Commission's examinations of the Cootamundra-Gundagai Regional Council and Snowy Valleys Council demerger elector proposals resulted in conflicting outcomes and recommendations.

It should be noted that recently, on 24 August 2022, based on a new proposal by Cootamundra-Gundagai Regional Council as a business case to demerge the 'new' Council formed in 2016, the Minister made the decision to support the de-amalgamation, based on consideration of the reports published by the Boundaries Commission in July 2022. As was the case in 2021, the Boundaries Commission put forward to the Minister a majority report and a dissenting report; however, on this occasion, the majority report recommended the de-amalgamation.

The diverse findings of the Boundaries Commission and the Minister's subsequent determinations in 2021 and 2022 indicate that the Boundaries Commission has an ability to provide robust and thorough

advice to the Minister. Nevertheless, this discussion paper and the review will explore opportunities to improve this process.

This Review does not seek to review or appeal the previous recommendations of the Boundaries Commission or examine past decisions of the Minister.

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## The role of the Local Government Boundaries Commission

The Boundaries Commission is an independent statutory authority constituted under section 260 of the Act. While the Boundaries Commission reports to the Minister, it is not subject to the direction of either the Minister or OLG. The funding for the work of the Boundaries Commission and its secretariat however is derived from OLG's recurrent funding.

The Boundaries Commission's role is to examine and report on any matter referred to it by the Minister in relation to the boundaries of local government areas in NSW. These matters include proposals for the constitution, amalgamation, or alteration of boundaries of local government areas. Amendments made to the Act in 2021 expanded the role of the Boundaries Commission to examine and report to the Minister in relation to proposals for de-amalgamation of 'new' councils formed in 2016 and 2017. These 'new' councils were formed as a result of decisions in 2016 and 2017 to amalgamate some former council areas.

The Boundaries Commission is also responsible, where a matter has been referred to the Deputy Secretary of OLG for examination and report, to review that report and provide comments to the Minister.

The Boundaries Commission's report assists the Minister in considering whether or not to make a recommendation to the Governor regarding the proposal. The Minister may recommend that a proposal be implemented, with or without modifications, or may decline to recommend that the proposal be implemented. In respect of constitutional matters, such as amalgamations, de-amalgamations and boundary alterations, the Governor acts of the advice of his or her Ministers.

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## Composition of the Boundaries Commission

Under section 261 of the Act, four commissioners are appointed to the Boundaries Commission by the Governor of NSW for a five-year term.

The Boundaries Commission is balanced with equal representation from within the local government sector and outside the sector.

Of the four commissioners:

- one member, the Chairperson, is nominated by the Minister for Local Government,
- a second member is an OLG officer nominated by the OLG Deputy Secretary, and
- the third and fourth members are councillors appointed from a panel comprising members nominated by Local Government NSW.

The Local Government NSW nominated panel, which selects two of the four commissioners, consists of 8 councillors. The Act provides the Minister with the ability to determine the process for nomination of panel members. Currently, however, the Minister does not specify a process for Local Government NSW to follow. In practice, Local Government NSW forms the panel of 8 councillors (usually 4 metro and 4 regional councillors) after seeking nominations from councillors through an Expression of Interest process.

In the event that an insufficient number of nominations (less than 8) have been made to the Local Government NSW-formed panel, the Governor may appoint a commissioner on the recommendation of the Minister.

Commissioners are eligible for reappointment however the [NSW Boards and Committees Guidelines](#) provides that, as good practice, members should not serve more than two consecutive terms on a board. The reappointment for Boundaries Commissioners must also be consistent with the [Public Service Commission's Appointment Standards – Boards and Committees in the NSW Public Sector](#).

### Selection credentials and eligibility criteria

There are no selection credentials or eligibility criteria for the appointment of commissioners in the Act, other than those listed above. This means that the commissioners are not required to hold any particular technical skills or experience.

The Boundaries Commission, however, has the ability to engage external resources to assist it with its workload and to provide needed skills and experience.

In practice, the selection, recommendation and approval of candidates for the positions of commissioner of the Boundaries Commission have been based on the following criteria.

Role	Eligibility Criteria
The Chairperson (Ministerial nomination)	<ul style="list-style-type: none"> <li>• The ability to respond to significant, complex and novel challenges with a high level of resilience and persistence,</li> <li>• Expertise in public administration,</li> <li>• The ability to rapidly understand and solve complex issues,</li> <li>• A high standard of professional accountability and integrity, and</li> <li>• Experience in identifying contentious issues, directing discussions and debates, and steering parties towards effective resolution.</li> </ul>
The Deputy Secretary's nomination	<ul style="list-style-type: none"> <li>• The ability to respond to significant, complex and novel challenges with a high level of resilience and persistence,</li> <li>• Expertise in public administration,</li> <li>• The ability to rapidly understand and solve complex issues,</li> </ul>

- A high standard of professional accountability and integrity, and
- Status as an employee of OLG.

The two Councillor representatives

- Hold nomination on a panel of 8 councillors by the executive of Local Government NSW,
- Provide certain information to enable the completion of the required documentation.

The review is considering if commissioners should hold certain technical skills or experience and if additionally, each member should be required to hold different skill sets to complement each other. These might include functional knowledge or skills in areas such as public administration, asset management, risk management, internal and external auditing, financial or economic analysis, management control frameworks, internal financial controls, legal or governance (including planning, reporting and oversight).

There is no legislative requirement that regional and metropolitan areas are represented on the Boundaries Commission and the commonly-applied eligibility criteria do not make reference to this factor.

## Remuneration

Commissioners, with the exception of the Departmental representative, are remunerated for their role on the Boundaries Commission. The remuneration is in accordance with the [NSW Government Boards and Committees remuneration framework](#). Commissioners are also entitled to reimbursement of associated expenses, such as travel expenses and a subsistence allowance. At present, the remuneration of Boundaries Commission members is as follows:

- Chair - \$50,000 pa
- Sitting members \$25,000 pa
- Department member - unpaid

The remuneration is paid on an annual basis and paid regardless of the number of reviews, if any, conducted in a year.

The Act enables commissioners to hold employment outside of the Boundaries Commission.

## Meeting procedures

The Boundaries Commission determines the procedure for the calling of meetings. This means that the Boundaries Commission meets on a needs basis and is not required to meet a specified number of times per year.

The Chairperson is required to preside over the meetings and provide the necessary executive functions.

A quorum of a minimum of two commissioners (including the chairperson) is required for a Boundaries Commission meeting. Any decisions made need to be supported by a majority of votes cast at a meeting. In the event of an equality of votes, the Chairperson has a casting vote.

Importantly, commissioners are not entitled to vote on any question relating to the boundaries of the council area for which the commissioner is a councillor. In this situation, the commissioner is treated as being absent with the leave of the Minister for the period of examination or inquiry. While not explicitly stated in the Act, it is expected that the commissioner would be removed from reviewing the proposal in which the commissioner has a perceived or actual conflict of interest.

### Have your say - Questions 1 to 3



1. Do you think the criteria currently being applied ensure that the commissioners have the skills and experience needed to appropriately undertake their role? If not, what skills or experience do you suggest should form part of the eligibility criteria?
2. Should the criteria for individual commissioner appointments be varied to ensure a complementary and wider range of skills and experience on the Boundaries Commission? If so, what balance of skills and experience need to be represented?
3. Do you think there should be a requirement that both metropolitan and regional or rural councillors should be represented? If so, should there be a minimum number of regional or rural councillors?

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### How does the Boundaries Commission provide advice?

The Boundaries Commission's role is to examine and report on any proposal referred to it, in relation to the boundaries of local government areas in NSW. This includes proposals for the amalgamation, de-amalgamation or alteration of boundaries of local government areas.































**5.7 COUNCILLOR LEAVE**

RECORD NUMBER: 2022/2582  
AUTHOR: David Waddell, Chief Executive Officer

**EXECUTIVE SUMMARY**

In accordance with Council's Code of Meeting Practice and Local Government Act 1993, Councillors who are unable to attend a Council Meeting should ask Council for a Leave of Absence to be granted. This report seeks Leave approval for Cr Jason Hamling, Mayor for the period 19 December 2022 to 1 March 2023.

**LINK TO DELIVERY/OPERATIONAL PLAN**

The recommendation in this report relates to the Delivery/Operational Plan strategy "17.1. Provide representative, responsible and accountable community governance".

**FINANCIAL IMPLICATIONS**

Nil

**POLICY AND GOVERNANCE IMPLICATIONS**

Application in accordance with the adopted Code of Meeting Practice and Local Government Act 1993.

**RECOMMENDATION**

**That Council grant a Leave of Absence to Cr Jason Hamling, Mayor, for the period 19 December 2022 to 1 March 2023.**

**FURTHER CONSIDERATIONS**

Consideration has been given to the recommendation's impact on Council's service delivery; image and reputation; political; environmental; health and safety; employees; stakeholders and project management; and no further implications or risks have been identified.

**SUPPORTING INFORMATION**

Cr Jason Hamling (Mayor) seeks approval for a Leave of Absence for the period 19 December 2022 to 1 March 2023 for the purpose of personal/family leave.

Council Meeting Dates during the period of Leave include: 20 December 2022, 7 February 2023 & 21 February 2023.

In accordance with Council's Code of Meeting Practice and the Local Government Act, Councillors who are unable to attend a Council Meeting should ask Council for a Leave of Absence to be granted. Section 5 of the Code does not prevent a Councillor from making an apology for a meeting, however an acceptance of such an apology does not constitute the granting of leave for the purposes of the Code of Act.

The request for leave should, if practicable, identify the dates of meetings from which the Councillor will be absent and the grounds on which the leave is being sought. The Council must act reasonably when considering to grant a Councillor's request for a leave of absence.