



Report to General Manager

Attachments:

1. OLG letter – 1/11/19
 2. Map - Amended two Ward proposal
 3. Council Historian memo – Ward names
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SUBJECT: Ward Boundaries – amended proposal for 2020 election

AUTHOR: Ian Curry, Manager Governance and Committee Services

ENDORSED BY: Margaret Palmer, Director Corporate Services

EXECUTIVE SUMMARY:

At its meeting on 23 September 2019, Council considered a report submitted to the Governance and Finance Committee regarding the Ward boundaries and resolved:

1. *THAT Option 1 be selected as Council's preferred option for the revised North Sydney Council Ward boundaries.*
2. *THAT the NSW Electoral Commission be advised of Council's resolution.*
3. *THAT a further report be submitted to Council following public advertising of the approved option.*

Option 1 made minor boundary alterations to the current three ward structure to ensure the number of electors in each remained within quota.

After submitting the proposed boundaries to the NSW Electoral Commission (NSWEC), Council was advised that, due to the result of the 2012 and 2017 referendum regarding the election of the Mayor by Councillors, Council will continue to have ten (10) civic offices or councillor positions (including the Mayor) at the next election and not nine (9) as previously thought. As there must be an equal number of Councillors in each ward and the Mayor is no longer to be elected by all the electors of the Local Government area, it is necessary to alter the number of wards.

FINANCIAL IMPLICATIONS:

Council has received a cost estimate from NSWEC of \$491,557 (excl GST) to conduct the 2020 Council elections. This quote was provided prior to the advice regarding the number of councillors to be elected and is subject to change should extra costs be incurred, such as the preparation of new electoral rolls.

Council Staff will attempt to minimise the actual cost in consultation with NSWEC as more detailed planning takes place and bookings for polling places are finalised.

RECOMMENDATION:

1. **THAT** Council note the advice from the OLG regarding the number of civic offices to be elected at the 2020 elections and the need to alter the ward structure.
 2. **THAT** Council endorse the revised two (2) Ward boundary proposal attached to this report.
 3. **THAT** Council name the proposed two new Wards North and South.
 4. **THAT** The proposed two (2) ward structure be placed on public exhibition in accordance with s210(A) of the Local Government Act.
 5. **THAT** A further report be provided to Council to consider any submissions received.
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LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

Direction: 5. Our Civic Leadership

Outcome: 5.3 Community is informed and consulted

BACKGROUND

At the 2012 Council elections, the following question was asked:

Currently North Sydney Council has four wards and 12 councillors (three per ward), plus the popularly elected mayor, elected for a four year term. Do you favour a reduction in the number of wards from four to three and the number of councillors from 13 to 10, inclusive of the popularly-elected mayor?

The 2012 Constitutional Referendum was passed 69.99% in favour to 30.01% against and the changes took effect from the 2017 election.

The following question was asked at the 2017 Council elections:

Do you favour election of the Mayor by Councillors for a term of two years?

The 2017 Constitutional Referendum was passed 52.43% in favour to 47.57% against and the changes will take effect from the 2020 election.

At its meeting on 23 September 2019, Council resolved:

- 1. THAT Option 1 be selected as Council's preferred option for the revised North Sydney Council Ward boundaries.*
- 2. THAT the NSW Electoral Commission be advised of Council's resolution.*
- 3. THAT a further report be submitted to Council following public advertising of the approved option.*

Option 1 above, minor boundary alterations to the current three ward structure to ensure the number of electors in each remained within quota.

Legislative Requirements

As required by s. 210 of the *Local Government Act 1993* (LGA), Council may vary the number of Wards or Ward boundaries, subject to:

- Consultation with the Electoral Commissioner (s. 210 LGA)
- Public exhibition (28 days), consideration of submissions (after 42 days) (s. 210(A) LGA)

No more than a 10% variation in voter numbers is permitted between Wards (s. 210(7) LGA).

The same number of Councillors are to be elected for each Ward. The Mayor is to be excluded when determining that number if they are elected by the local government area (s.281)

Any decision to change the Mayoral election process (councillors elect or public elect) can only be determined by a constitutional referendum (s. 228 & 229 LGA)

Any decision to increase or decrease the number of councillors must be by a constitutional referendum (s. 224 LGA)

While Council can vary the number of Wards, a constitutional referendum is required before Wards can be abolished (s. 210(5) LGA)

CONSULTATION REQUIREMENTS

Community engagement will be undertaken in accordance with Council's Community Engagement Protocol and s210(A) LGA.

SUSTAINABILITY STATEMENT

The sustainability implications are of a minor nature and did not warrant a detailed assessment.

DETAIL

Current situation

Following the Council resolution in September, the Ward boundary proposal was submitted to NSWEC for concurrence of the Electoral Commissioner. While the proposal was initially accepted, the NSWEC advised the General Manager that they had asked OLG for clarification regarding Council's number of civic offices (ie.councillors) as a result of the 2017 referendum question.

The response from OLG to NSWEC indicated that the 2017 referendum result means that Council has retained the pre-existing 10 civic offices with the Mayor now to be elected from among that number. As a result, the only way Council can comply with the requirement under section 280(2) for the same number of councillors to be elected for each Ward is by changing the number of Wards. This can be done without the need for approval at a constitutional referendum.

This advice was confirmed by a letter from the Deputy Secretary, Local Government, Planning and Policy (OLG) dated 1 November 2019 (Attachment 1). This advice was distributed to all Councillors on the date of receipt.

At a Councillor Briefing on 4 November 2019, councillors were presented with two (2) options for a two-Ward boundary proposal, a North/South option and an East/West option. The North/South option is considered to be the preferred option as it results in less variation in numbers between Wards than the East/West option (5.38% compared with 8.1%) and allows for expected future population growth in the northern sector of the LGA.

Councillors present supported the North/South option attached to this report (Attachment 2).

Councillors requested that a separate opinion on the advice from OLG be sought from Senior Counsel. The Senior Counsel advice has been distributed separately and confidentially to Councillors in accordance with Council's usual practice with legal advice. Senior Counsel concurred with the OLG advice.

As time is of the essence, NSWEC has been provided with a copy of the preferred North/South option and, pending a resolution of Council, has given its approval.

Although OLG and NSWEC originally required Council to have finalised its Ward boundaries by 9 December 2019, the General Manager has advised OLG in writing that, subject to adoption by Council, the proposed two ward structure will be placed on Public Exhibition as early as practicable in the week commencing 18 November 2019. Due to the minimum Public Exhibition and submission period required by section 210 of the LGA, the final ward structure for the 2020 elections will not be adopted until February. Nevertheless, NSWEC will be able to plan on the basis of the exhibited proposal with a reasonable degree of certainty. The letter also acknowledges that any additional cost borne by NSWEC as a result of any changes to the exhibited ward structure will be passed on to Council.

Naming of Wards

The proposed two ward structure effectively dissects the Local Government area into a North and South Ward and at the briefing on 4 November it was proposed that they be named accordingly. At the request of Councillors, consultation was subsequently undertaken with Council's Historian, Dr Ian Hoskins. Attachment 3 refers.

The proposed amendment to the Ward boundaries and progressively decreasing the number of Wards has effectively resulted in the existing and proposed new Wards having reduced association to historic area names. The conclusion from Council's Historian to continue an association with the Tunks name and to introduce a new name to recognise the long serving and highly respected Mayor Ted Mack; has merit. However as pointed out in the Memorandum, the association with William Tunks will continue to be maintained through the naming of Tunks Park and likewise the continued association with Ted Mack, will be continued through the Ted Mack Civic Park.

Given that the Ward boundaries will need to be adjusted with future development and population changes in accordance with electoral quota requirements, it would be logical to utilise the simple, more generic titles North and South Ward while continuing to respect the aforementioned long term Mayors through their association with the parks that are less likely to have their boundaries changed.

5 O'Keefe Avenue NOWRA NSW 2541
Locked Bag 3015 NOWRA NSW 2541

Our Reference: A678106
Your Reference:
Contact: Doug Friend
Phone: 02 4428 4201

Mr Kenneth Gouldthorp
General Manager
North Sydney Council
PO Box 12
NORTH SYDNEY NSW 2059

By email: Ken.Gouldthorp@northsydney.nsw.gov.au

Dear Mr Gouldthorp

I am writing in relation to correspondence between North Sydney Council and the NSW Electoral Commission (NSWEC) about the need for the Council to review its ward structure to ensure compliance with the requirements of the *Local Government Act 1993* (the Act).

The Office of Local Government (OLG) understands that there have been two constitutional referenda that have made changes to the Council's constitution in recent years.

The first, held in 2012, approved a proposal for a reduction in the number of wards from 4 to 3 and a reduction in the number of councillors from 13 to 10 *"inclusive of the popularly elected mayor"*.

At the 2017 election, a second constitutional referendum was held at which the following question was put: *"Do you favour election of the Mayor by councillors for a term of two years?"*. The proposal to change the method of election for the mayor was approved by the community.

Section 224(3) of the Act provides that a council cannot change the number of councillors without obtaining approval for the change at a constitutional referendum.

Unlike the 2012 referendum, the community was not asked at the 2017 referendum to approve a reduction in the number of councillors. Given the question asked, the effect of the approval of the 2017 referendum was simply to change the method of election for the mayor. Because the community was not asked to approve a reduction in councillor numbers, the referendum outcome cannot be construed as having this consequence.

Nor can the outcome of the 2017 referendum be construed as having the consequence of reducing councillor numbers by implication as has been suggested. The mayor of a council is, for the purposes of the Act, also a councillor of that council. In particular:

- the dictionary to the Act defines "councillor" as *"a person elected or appointed to civic office and includes a mayor"*, and
- section 224(1) provides that the mayor is included in determining the number of councillors.



Because a popularly elected mayor also holds civic office as a councillor for the purposes of the Act, approval for the alteration of the method of election for the mayor at a constitutional referendum cannot, on its own, have the effect of automatically removing the civic office occupied by the mayor as a councillor, thereby reducing the total number of councillors in a council. For this to occur, a separate question would need to be put and approved for there to be a corresponding reduction in councillor numbers.

Absent such a question being put and approved at the 2017 referendum, as of the 2020 election, the Council continues to have 10 councillors, with the office of mayor to be elected by councillors from among that number.

If the Council wishes to reduce councillor numbers from 10 to 9, then a separate question will need to be put at a constitutional referendum to that effect. If approved, the reduction in councillor numbers will take effect at the next ordinary council election. Given the logistics involved, it is difficult to see how this could occur prior to the September 2020 election.

Absent approval at a further referendum to reduce councillor numbers, the Council now needs to take immediate steps to review its ward structure ahead of the September 2020 election to ensure that it complies with section 280(2) of the Act. This requires the same number of councillors to be elected for each ward. Given that the Council now has 10 councillors and no longer has a popularly elected mayor, the only way this can be done is by altering the number of wards. This can be done without the need for approval at a constitutional referendum by following the process prescribed in section 210A of the Act.

OLG has recently provided guidance on the process for reviewing and determining ward boundaries in [Circular 19-24 - Ward boundary and name changes](#). As noted in the circular, councils must review their ward boundaries and notify the NSWEC of any finalised changes to ward boundaries and/or names before **9 December 2019**. It is therefore important that the Council takes immediate action to address this issue.

Your cooperation in this matter is appreciated. I would ask that you advise me with 14 days of the date of this letter of the steps the Council is proposing to take to ensure compliance with section 280(2) of the Act.

Yours sincerely

Tim Hurst
Deputy Secretary,
Local Government, Planning and Policy

1/11/19

cc Steve Robb, Director Customer Service & Relationship Management, NSW Electoral Commission, email: Steve.Robb@elections.nsw.gov.au

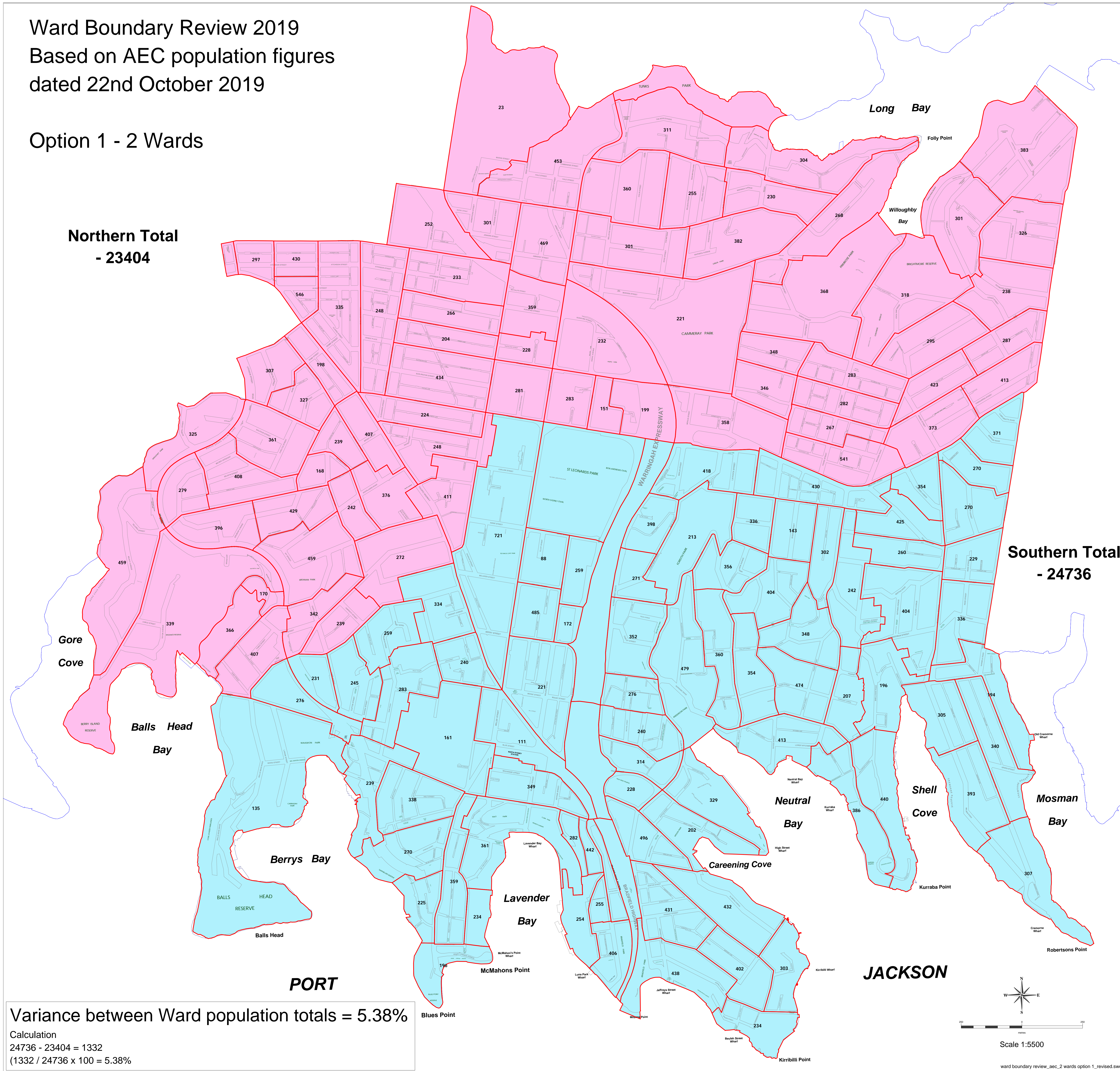
Ward Boundary Review 2019

Based on AEC population figures dated 22nd October 2019

Option 1 - 2 Wards

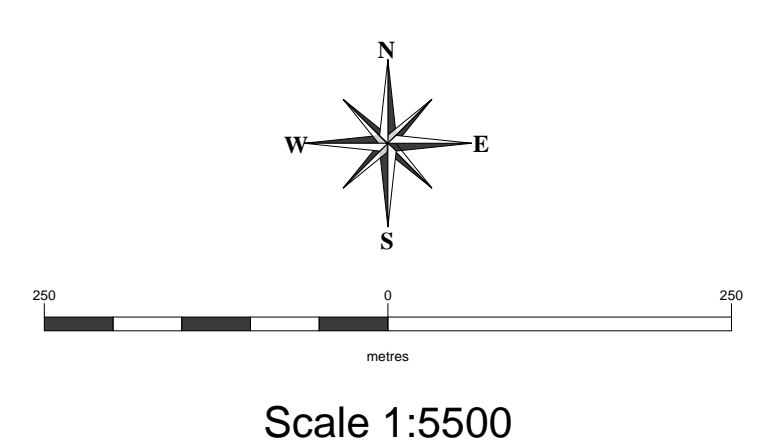
Northern Total
- 23404

Southern Total
- 24736



Variance between Ward population totals = 5.38%

Calculation
 $24736 - 23404 = 1332$
 $(1332 / 24736 \times 100 = 5.38\%)$





M E M O R A N D U M

TO: Ken Gouldthorp, General Manager, North Sydney Council
Cc. Ian Curry

FROM: Ian Hoskins, Council Historian

DATE: 12 November 2019

RE: **Historical implications of redrawing ward boundary 2019**

North Sydney Council has had various wards since its establishment in 1890 after the amalgamation of the Boroughs of St Leonards, East St Leonards and Victoria. From that year until the 1951 the area was divided into five wards: Tunks, Warringa, Kirribilli, Victoria and Belmore. Of these Victoria retained the name of the original Borough which in turn had been named after Queen Victoria. Belmore was named after a New South Wales Governor. Only Tunks Ward was named after a local person, William Tunks. He was the highly respected first Mayor of St Leonards (and indeed the area in the absence of a Mayor of the earlier established East St Leonards) serving for 15 years in that capacity to 1882 just a year before he died, and the Member for St Leonards from 1864-1874.

In 1951 East Ward was added. By 1968 Warringa Ward had been abolished. East Ward was essentially renamed Cremorne in 1993 and Kirribilli absorbed to leave four wards. A referendum in 2012 led to the abolition of Cremorne Ward so that Tunks, Victoria and Wollstonecraft remained which is the current configuration.

The rearranged and ever-decreasing mosaic of wards has not always respected pre-existing associations. The current Victoria Ward, for instance, bears no relationship to the original ward of that name.

The proposed division of the LGA into North and South Wards simply bifurcates the area geographically. The suggested names North and South are sensible and easy to understand.

It will, however, be unfortunate to lose the enduring association with William Tunks, the area's first Mayor and a man still highly regarded by those who know of his works - not least his defence of public space against private encroachment. There has been 129 years of continuous commemoration through the name of Tunks Ward.

If the name Tunks is retained for the northern ward, where currently Tunks Park is a major landmark, then it would be appropriate to call the southern area 'Mack Ward' by way of commemorating Ted Mack, who like William Tunks, was a long-serving highly-respected Mayor and parliamentary representative. Ted Mack, of course, passed away in 2018. Ted Mack Civic Park has recently been re-named in his memory, a parallel to Tunks Park. If this was considered a possibility, it would be advisable to consult Wendy Mack and the family.