

## CONFIDENTIAL DECISION REPORT

<b>Report Title:</b>	<b>Feedback on Essential Services Commission of SA (ESCOSA) proposed Framework and Approach - s122 Strategic Management Plan Advice Scheme</b>
<b>Item No:</b>	<b>8.1</b>
<b>Date of Meeting:</b>	<b>17 May 2022</b>
<b>Author:</b>	<b>Sam Johnson, Chief Executive Officer</b>
<b>Attachments:</b>	<b>1. ESCOSA draft Framework and Approach 2. LGA consultation paper - LG Equip ESCOSA Update 21 April 2022 3. LG Equip Section 122 – Strategic Management Plans (Rates Oversight Scheme) as at 11 April 2022</b>

That Council:

1. Orders (pursuant to the provisions of Section 90(2) of the Local Government Act 1999), that the public, with the exception of the following Council Staff – Sam Johnson, Chief Executive Officer, Jacqui Kelleher, Director Community & Corporate Services, Brenton Daw, Director Infrastructure & Regulatory Services, and Kathryn Crisp Executive Assistant be excluded from attendance at the meeting to discuss agenda report 8.1 - *Feedback on Essential Services Commission of SA (ESCOSA) proposed Framework and Approach - s122 Strategic Management Plan Advice Scheme* concerning the Essential Services Commission (ESCOSA) Submission.
2. Is satisfied that, pursuant to Section 90(3)(j) of the Act, the information to be received, discussed or considered in relation to this agenda item is information provided by the LGA in relation to proposed advocacy and sector wide submission in response to the Essential Services Commission of SA 'Draft Framework and Approach' that the LGA has requested be kept confidential at this stage. The disclosure of this information would, on balance, be contrary to the public interest because it is in the public interest for the Council to be able to communicate on a confidential basis with the LGA about proposed sector advocacy and thereby act cooperatively with the LGA in achieving positive outcomes for the local government sector.
3. Is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed by the need to keep the information or discussion confidential.

*For resolution after consideration of the matter:*

That Council:

1. having considered agenda report 8.1 - *Feedback on Essential Services Commission of SA (ESCOSA) proposed Framework and Approach - s122 Strategic Management Plan Advice Scheme* in confidence under Section 90(2) and (3)(j) of the Act, the Council, pursuant to Section 91(7) of the Act orders that the report, attachments, discussions and minutes relating to this agenda item, be retained in confidence until 30 June 2022 or until such time as the information is made publicly available by the Local Government Association of SA (LGA) and that this order be reviewed annually; and
2. delegates, Pursuant to section 91(9)(c) of the Local Government Act 1999, the Chief Executive Officer the power to revoke this order in whole or part.

### 1. EXECUTIVE SUMMARY

This report presents to Council the Local Government Association (LGA) Consultation Paper on the scheme proposed by the Essential Services Commission of SA (ESCOSA) for the provision of advice in accordance with section 122 of the *Local Government Act 1999*. The purpose of the report is to seek a resolution of Council to provide feedback to ESCOSA in relation to the proposed scheme.

## 2. RECOMMENDATION

That Council:

1. receives and notes the report;
2. endorses the Local Government Association (LGA) advocacy position in relation to the scheme established in section 122 of the Local Government Act 1999 under which the Essential Services Commission of SA (ESCOSA) will provide advice to councils in relation to strategic management plans; and
3. notes the following concerns in response to the ESCOSA proposed framework and approach:
  - a) the scope of information requested by ESCOSA should be directly relevant to and used for the purpose of provision of advice regarding councils Long-Term Financial Plan, Infrastructure and Asset Management Plans and total revenue sources, in accordance with the requirements of section 122 of the Local Government Act 1999;
  - b) the first four (4) years of operation of the scheme should be used to set a baseline for each council and then, using a risk-based approach, the scope of the review could be scaled up for a particular council if a need is identified. This is consistent with ESCOSA's espoused "better regulation" approach, which it describes as being risk-based, proportionate to the problem that is being addressed and subject to continuous improvement and monitoring;
  - c) the period for which historical data is provided should reflect the timeframe anticipated within the proposed scheme, ie four years, and a request for historical information for a longer period is not supported.
  - d) the costs associated with the proposed scheme are far in excess of what was anticipated, and the scope of the proposed scheme should be reduced to address the unreasonable costs;
  - e) the removal of the discretion provided in the Local Government Act 1999 for Council to determine the reasonable assumptions to be used in the development of the Long-term Financial Plan is strongly rejected. These assumptions may include consideration of the Local Government Price Index (which accounts for the costs of items usually purchased by councils as opposed to CPI which accounts for the costs of items usually purchased by households), endorsed Enterprise Bargaining Agreements, the ABS wage price index and other actual cost factors which collectively provide a more accurate representation of inflation pressures to be considered by Council;
  - f) the use of the term 'CPI constrained' will lead to unreasonable criticism of councils that justifiably increase rates greater than CPI and will have a practical effect of capping council rates to the CPI rate. 'Rate capping' was not supported by Parliament. The assertion that councils should be CPI constrained is rejected.

## 3. RELEVANT CORE STRATEGIES/POLICIES

DCMR Community Plan 2021-2031  
6.3 Enact Strong Governance  
6.4 Provide Financial Sustainability

#### 4. BACKGROUND

On 30 April 2022, the new 'strategic management plan advice scheme'<sup>1</sup> established under section 122 of the *Local Government Act 1999* (the Local Government Act) will commence. This scheme requires the designated authority (the Essential Services Commission of SA (ESCOSA)), on a four yearly rotating schedule, to review a range of council strategic management planning documents and provide advice to the council. The councils to be reviewed in each year of the cycle is determined by ESCOSA. The District Council of Mount Remarkable is scheduled for year four (4) of the first four year cycle of the scheme. The ESCOSA advice is that Council's response must be published in both the draft and adopted Annual Business Plan.

The strategic management plan advice scheme was approved by Parliament as part of the *Statutes Amendment (Local Government Review) Act 2021*. The State Government argued that the sector would benefit from a robust framework for financial accountability. The arrangements were ultimately supported by the local government sector as an alternative to rate capping.

#### 5. DISCUSSION

ESCOSA has released its draft Framework & Approach (**Attachment 1**) for the strategic management plan advice scheme and called for submissions by 27 May 2022. The LGA will be making a sector wide submission to ESCOSA and has called for initial administrative feedback by 13 May 2022 to inform development of that submission. The LGA is encouraging councils to make a formal submission direct to ESCOSA and has prepared a Consultation Paper to assist councils with providing a submission. A copy of the Confidential LGA Consultation Paper – LG Equip ESCOSA Update 21 April 2022 is provided as **Attachment 2**.

The LGA has identified a number of concerns with the ESCOSA DFA in the Consultation Paper and intends to advocate strongly on behalf of the sector in response to those. Of particular note are the following:

1. **Scope of the review:** The scheme established in section 122 focus ESCOSA on the Long-term Financial Plan (LTFP) and Infrastructure and Asset Management Plans (IAMP), in particular any changes to those documents and revenue sources. The proposed information requests from ESCOSA extend beyond the minimum requirements as per the *Local Government (Financial Management) Regulations 2011* to the full suite of information available in the Model Financial Statements and seeks historical information dating back to 2007/08, far in excess of what is reasonable.
2. **Increased in projected costs:** the increase in scope adopted by ESCOSA has led to a significant increase in projected costs for the scheme. Indications given in Parliament by then Minister Chapman were a scheme that would cost in the order of \$20,000 per council, however ESCOSA have suggested the cost per council will be approximately \$52,000.

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<sup>1</sup> The scheme inserted into section 122 of the *Local Government Act 1999* is the negotiated alternative to the originally proposed rate capping approach and has historically been referred to as the 'rates oversight scheme'.

3. **Impact on discretion to determine assumptions used to develop LTFFP:** The LGA strongly objects to any removal of the discretion available within the *Local Government Act 1999* to determine reasonable assumptions to be used in the development of the LTFFP. The scheme established in section 122 does not authorise ESCOSA to constrain councils to any particular indices. In attempting to only give weight to one inflation index and discounting any others, ESCOSA inappropriately limit the discretion bestowed upon councils under the *Local Government Act 1999*. The LGA has significant concerns regarding the use of the phrase ‘CPI constrained’, which implies that councils should limit their rate increases to CPI and no more. The practical effect of the use of this expression will result in councils being judged and criticised in relation to a measure that ESCOSA have deemed appropriate when in fact this is a matter for each council to determine.

The Strategic Management Plan Advice scheme is established in section 122 of the *Local Government Act 1999* and commenced on 30 April 2022 with the first round councils required to provide information to ESCOSA by 30 September 2022. Whilst there may be value to councils in receiving high level advice on strategic management plans, the DFA proposed by ESCOSA is overly onerous in terms of information provision by council and the costs are far in excess of what was anticipated. A copy of the LGA’s LG Equip Information Sheet – Section 22 – Strategic Management Plans (Rates Oversight Scheme) is at **Attachment 3**.

A submission to ESCOSA setting out concerns with the proposed DFA is warranted and the recommendation proposes a submission for Council’s consideration.

## 6. ANALYSIS OF OPTIONS

### Option 1:

That Council:

1. receives and notes the report;
2. endorses the Local Government Association (LGA) advocacy position in relation to the scheme established in section 122 of the Local Government Act 1999 under which the Essential Services Commission of SA (ESCOSA) will provide advice to councils in relation to strategic management plans; and
3. notes the following concerns in response to the ESCOSA proposed framework and approach:
  - g) the scope of information requested by ESCOSA should be directly relevant to and used for the purpose of provision of advice regarding councils Long-Term Financial Plan, Infrastructure and Asset Management Plans and total revenue sources, in accordance with the requirements of section 122 of the Local Government Act 1999;
  - h) the first four (4) years of operation of the scheme should be used to set a baseline for each council and then, using a risk-based approach, the scope of the review could be scaled up for a particular council if a need is identified. This is consistent with ESCOSA’s espoused “better regulation” approach, which it describes as being risk-based, proportionate to the problem that is being addressed and subject to continuous improvement and monitoring;
  - i) the period for which historical data is provided should reflect the timeframe anticipated within the proposed scheme, ie four years, and a request for historical information for a longer period is not supported.

- j) the costs associated with the proposed scheme are far in excess of what was anticipated, and the scope of the proposed scheme should be reduced to address the unreasonable costs;
- k) the removal of the discretion provided in the Local Government Act 1999 for Council to determine the reasonable assumptions to be used in the development of the Long-term Financial Plan is strongly rejected. These assumptions may include consideration of the Local Government Price Index (which accounts for the costs of items usually purchased by councils as opposed to CPI which accounts for the costs of items usually purchased by households), endorsed Enterprise Bargaining Agreements, the ABS wage price index and other actual cost factors which collectively provide a more accurate representation of inflation pressures to be considered by Council;
- l) the use of the term 'CPI constrained' will lead to unreasonable criticism of councils that justifiably increase rates greater than CPI and will have a practical effect of capping council rates to the CPI rate. 'Rate capping' was not supported by Parliament. The assertion that councils should be CPI constrained is rejected.

## 7. RECOMMENDED OPTION

Option 1 is the recommended option.

## 8. POLICY IMPLICATIONS

### 8.1 Financial/Budget

Nil

### 8.2 Staffing/Work Plans

This activity will be accommodated within existing work plans.

### 8.3 Environmental / Social / Economic

Nil

### 8.4 Stakeholder Engagement

Nil

## 9. REPORT CONSULTATION

Discussions were held with Council Leadership Team.

## 10. REPORT AUTHORISERS

Sam Johnson	Chief Executive Officer
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