

TONBRIDGE & MALLING BOROUGH COUNCIL
ELECTORAL REVIEW WORKING GROUP

19 July 2016

Report of the Chief Executive

Non Delegated

1 COMMUNITY GOVERNANCE REVIEW 2016

To consider the responses to the consultation concerning the Community Governance Review of the Kings Hill parish boundary, and to determine and agree the final proposal to be submitted for approval and publication by the General Purposes Committee.

1.1 Introduction

1.1.1 Members will recall that, at the meeting of 6 January 2016, the Terms of Reference (ToR) for the Community Governance Review were agreed. These were published the day after General Purposes (1 February, published 2 February), signifying the formal start of the Review. A copy of the ToR is attached at **Annex 1**.

1.1.2 At that same meeting, Members agreed the Draft Proposals on which a public consultation commenced on 2 February 2016. A copy of the Draft Proposals is attached at **Annex 2**.

1.2 Overview of the CGR process

1.2.1 The stages of the CGR are as follows;

- 1) The Council publishes its Terms of Reference. *Completed February 2016*
- 2) The Council publishes its Draft Proposals, and a formal consultation commences. *Consultation closed 9 May 2016*
- 3) The Council, taking into account the results of the consultation, makes a decision on the outcome of the CGR. *This meeting, and GP this autumn.*
- 4) The Council then publishes the Final Proposals.
- 5) The formal Re-organisation Order is then made.
- 6) Any changes to parish boundaries take effect at the next scheduled elections in May 2019.

1.3 Legislative Requirements for a CGR

1.3.1 The Local Government and Public Involvement in Health Act 2007 (LGPIH) and statutory guidance set out the requirements for a CGR. These include that the Council must;

- draw up Terms of Reference (ToR) for the review, specifying the area/s under review and any consequential matters that need to be considered.
- consult local government electors for the area under review and any other person or body (including a local authority) who appears to have an interest in the review.
- have regard to the need to secure that community governance within the area under review “reflects the identities and interests of the community in that area, and is effective and convenient”.
- take into account any representations received in connection with the review.
- publish recommendations as soon as practicable after making them and take steps to ensure that those who may be interested in the review are informed of those recommendations.

1.3.2 Subject to these duties, it is for the Council to decide how to undertake the review.

1.3.3 It is important to note that the two statutory criteria for determining a CGR are set out in the LGPIH. The LGPIH states (part 4, chapter 3, paragraph 93) that

“The principal council must have regard to the need to secure that community governance within the area under review —

(a) reflects the identities and interests of the community in that area, and

(b) is effective and convenient.”

1.4 Draft Proposals

1.4.1 As set out in **Annex 2**, there were three proposals set out for consultation, all regarding the boundaries of Kings Hill parish:

Proposal A1 – that the parish boundary between Kings Hill and East Malling & Larkfield parishes be amended to include the area marked A1 on the map at **Annex 3**.

Proposal A2 –that the parish boundary between Kings Hill and East Malling & Larkfield parishes be amended such that the area marked A2 on the map at **Annex 3** remain within East Malling & Larkfield parish.

Proposal B – that the parish boundary between Kings Hill and Wateringbury parishes marked B on the map at **Annex 3** remain within Wateringbury.

1.5 Consultees

1.5.1 The following organisations and individuals were sent a written copy of the proposal and invited to respond:

- all householders directly affected by the change – (none in this case).
- the three parish councils (Kings Hill, Wateringbury, and East Malling & Larkfield).
- local Borough Councillors for the affected wards.
- Kent County Council, and local County Councillors.
- local political parties.
- the Member of Parliament.
- the Electoral Commission.
- Liberty Property Trust.
- Kings Hill Golf Club.

1.6 Responses to the consultation

- 1.6.1 During the consultation period, a total of 22 responses were received, including several on behalf of households (rather than individuals) and a petition comprising 59 signatures. Members should note this level of response, compared to previous CGRs (Leybourne Chase in 2013, 11 respondents; all parishes in 2008, 17 respondents) particularly given that there are no residential properties contained within any of the areas under consideration.
- 1.6.2 A summary of the responses received can be found at **Annex 4** and the detailed responses are included at **Annex 5**. Members will note that these documents, in their redacted state, will be published after the conclusion of the Review.
- 1.6.3 It is a requirement of a CGR to consult. Members are therefore asked to read all of the responses to the consultation and give them due consideration.
- 1.6.4 Within the responses received, there were a number of recurring themes, as well as specific comments Members will need to be aware of. These are outlined below. For convenience, I have split responses down by the three proposal areas.
- 1.6.5 **Area A1**

- 1) In considering the Draft Proposals prior to the consultation, Members were advised:

Area A1 is currently part of East Malling & Larkfield parish (East Malling parish ward). This area includes the allotment site, the Kings Hill sports park and pitches, and land identified through the Kings Hill Phase 3 Masterplan as being allocated as 'Amenity Green Space'. Therefore this land is already, or very soon will be, used by residents of the parish of Kings Hill. It is accessible by road via Kings Hill parish, and is designed to serve the residents of that community. There are no residential properties in this area, and the only commercial properties are the Sports Park itself. KHPC have expressed a wish to use this as a facility for the Parish Council itself in future. I advise that area A1 does meet the two statutory criteria.

Representatives from Wateringbury parish council have expressed concern that a transfer of land from any parish to Kings Hill should not open up access routes that would add to traffic and congestion in surrounding roads. The planning application that formed the basis of the development of Kings Hill was approved subject to no vehicular access being granted through Wateringbury or East Malling, and the outcome of the CGR itself would not affect that. The western end of Teston Road is currently in Kings Hill, with the remainder in Wateringbury. That situation will not change as part of this CGR.

- 2) The consultation document stated:

The Borough Council proposes that the parish boundary between Kings Hill and East Malling & Larkfield parishes be amended to include the area marked A1 on the map within Kings Hill.

- 3) Of the 22 responses, five did not comment upon this proposal. Of the remainder, five supported the proposal, one supported it subject to clarifications, one raised concerns without expressing a final view, and ten were opposed to it. It is notable that East Malling & Larkfield Parish Council support this proposal, albeit with some reluctance, as they recognise that the statutory criteria have been met. Kings Hill Parish Council also support this proposal.

	Number of respondents	Notes
Support the proposal, such that area A1 becomes part of Kings Hill parish	5	Includes East Malling & Larkfield Parish Council, and Kings Hill Parish Council.
Object to this proposal, such that area A1 remains within East Malling & Larkfield	10	
Support subject to clarifications	1	
Raised concerns but no final view expressed	1	
No comment	5	
Total	22	

- 4) In more detail, the objections and concerns are as follows:

- (i) A number of residents were opposed to the draft proposal for this area, citing concerns about development that they consider will take place if the land is labelled as 'Kings Hill parish'. There is a strength of feeling amongst residents that the development of Kings Hill would continue into what is currently green open space, to the detriment of the local communities.

However, Members should note the two statutory criteria which must be used to adjudicate in a Community Governance Review: *“The principal council must have regard to the need to secure that community governance within the area under review — (a) reflects the identities and interests of the community in that area, and (b) is effective and convenient.”*

The possible future development of a plot of land is not a material concern of a CGR. In any case, this land is identified through the Kings Hill Phase 3 Masterplan as being allocated as 'Amenity Green Space' and not allocated for residential or commercial development.

Whilst residents may have concerns about future development in their local area, the crux of this part of the CGR is whether the possible redrawing of the boundary around Area A1 will meet the statutory criteria better than leaving them unchanged. Therefore I recommend that Members note these concerns, but consider that they of themselves cannot affect the decision about the future boundary of Kings Hill parish.

- (ii) Teston Parish Council submitted a detailed response to the consultation. Members are asked to read this (response 14 in **Annex 5**). Their main concern is thus:

We are strongly opposed to more vehicles being released onto Malling Road and Wateringbury Road via a re-opened Teston Road. This proposed boundary change must only increase the probability of such re-opening, as, presumably, Kings Hill Parish would press for a road link to the east of their Parish, rather than being restricted to Ashton Way / Malling Road along its western boundary.

As noted above, Members must consider only the statutory criteria when determining the outcome of a CGR – namely whether the possible redrawing of the boundary around Area A1 will meet the statutory criteria better than leaving them unchanged. The possible future re-opening of a road, which is opposed by a number of parish councils and local residents, is not a material concern. In addition, the revised boundary still leaves a portion of the Teston Road in East Malling & Larkfield Parish; it would be for the highways authority, in consultation with TMBC, to determine if a road is to be reopened not the local parish council; and the access routes to Kings Hill parish are subject to planning conditions. Therefore I recommend that Members note these concerns, but consider that they of themselves cannot affect the decision about the future boundary of Kings Hill parish.

Teston Parish Council have also raised issues with the consultation process and the Draft Proposals:

[a] "the Sports Ground is commercial. It is far from restricted to use by Kings Hill Parish residents..." This is correct. However, the area includes the allotment site, the Kings Hill sports park and pitches, and land identified through the Kings Hill Phase 3 Masterplan as

being allocated as 'Amenity Green Space'. It is accessible to vehicular traffic only via Kings Hill parish.

[b] "While...there are no residential properties within area A1, the nearby properties potentially most affected by activities at the Sports Park are in East Malling & Larkfield Parish." This is also correct. However, parish boundaries should reflect the identities and interests of the local community (as per the statutory criteria for the CGR). Any issues of noise or nuisance emanating from the Sports Park and affecting residents would be dealt with through the normal enforcement activities regardless of the parish in which the residents live. Planning decisions are made by the planning authority, not the parish councils, and the views of affected residents and concerned parish councils are considered when determining planning applications regardless of which side of a parish boundary line they live.

[c] "We are not aware that consultation has been as legislated", as Teston Parish Council were not directly contacted to engage in the consultation. The parish boundaries under consideration concern Kings Hill Parish Council and East Malling & Larkfield Parish Council. Teston Parish Council, in a neighbouring District, does not share this boundary under review. Therefore they were not identified as having an interest in the review. However, the consultation documents were sent to those named in paragraph 1.5, and copies published on our website where any interested party could view and download them. Until receiving their response to the consultation, Teston Parish Council did not contact us to raise any concern or to ask for further details or engage with Officers regarding this consultation in any way. I am therefore satisfied that the statutory consultees were contacted, and that Teston Parish Council, whilst not deliberately excluded from the initial consultee list, did not appear to have an interest in the review but nonetheless did have the opportunity to engage with it, and indeed did so by responding to the consultation. In my opinion, therefore, the consultation was conducted as per the requirements of the LGPIH Act 2007.

[d] "This proposal would fail on criterion 4(b) [the statutory criteria that community governance is effective and convenient]" because "the closest adjacent residential properties are in East Malling & Larkfield Parish." As noted above, the nearest residential properties are within East Malling & Larkfield. However, those properties are, and will remain, part of East Malling & Larkfield parish. The community governance for those properties is not changing, and the potential movement of a boundary to encompass Area A1 will not affect their governance arrangements. If the Borough Council were to use the suggestion that parish boundaries should include land

and developments based on the parish of the nearest residential properties, almost every parish boundary would be redrawn and revised on a regular basis. I am therefore satisfied that the proposal does not fail as suggested by Teston parish council.

- (iii) Wateringbury Parish Council submitted responses to the consultation (responses 3 and 9 in **Annex 5**). Their main concern is thus: “Wateringbury Parish Council is concerned to ensure that any change or transfer reiterates that the insubstantial gap between the southern boundary of area A1 and the highway within our parish boundary (Teston Road) cannot be breached, however inadvertently by any consequence of such transfer, as the same would nullify the conditions referred to above to the great concern of Wateringbury Parish Council for the reasons promulgated at the time the Kings Hill development was approved.”

As cited above in (i), these are planning matters. The possible future development of a plot of land is not a material concern of a CGR.

Whilst the parish council may have concerns about future development in their local area, the crux of this part of the CGR is whether the possible redrawing of the boundary around Area A1 will meet the statutory criteria better than leaving them unchanged. Therefore I recommend that Members note these concerns, but consider that they of themselves cannot affect the decision about the future boundary of Kings Hill parish. The planning conditions associated with the development of Kings Hill are not affected or cancelled by a change in parish boundary.

- (iv) East Malling & Larkfield Parish Council submitted a response following a public meeting about the consultation (response 10 in **Annex 5**). Within this they expressed the following three points:

[a] “There were some present who felt no change to the long standing boundary should be made on the grounds no houses were involved and that where the boundary ran made no difference to Kings Hill Parish Council’s management of the allotments and sports pitches and facilities.”

Members are invited to note that the statutory criteria require that the council has “regard to the need to secure that community governance within the area under review — (a) reflects the identities and interests of the community in that area”, and to consider whether the possible redrawing of the boundary around Area A1 will meet the statutory criteria better than leaving them unchanged. Given the land is accessed by vehicular traffic only from Kings Hill, and is used to accommodate the Sports Park and allotments, both

managed by Kings Hill, it would appear that the redrawing of the boundary will better meet the statutory criteria.

In addition, Members are invited to note that, in response 12 East Malling & Larkfield Parish Council state “we accept its transfer [of area A1] to Kings Hill.”

[b] “There was a query raised as to whether the eastern boundary of A1 is correctly confined to the sports area and should not include any of Corio Farm, which is on the “Call for Sites” map of the Local Plan Review.”

As noted above, whether a site is included in a possible future development or not is immaterial to the CGR. However, Corio Farm is excluded from the proposed area A1. It is accepted that the boundary line on the consultation map is relatively wide, which may have led to the question being posed.

[c] “The same applies to the re-developed Heath Farm where it was queried if the strip of land adjoining forms part of the sports area or not.” The area highlighted is identified as ‘Amenity Green Space’ in the area plans and is included in area A1.

- (v) East Malling & Larkfield Parish Council submitted a parish council response (response 12 of **Annex 5**). In this they state that they “accept its [Area A1] transfer to Kings Hill.”

5) As noted above, a number of concerns and objections have been raised to the possible realignment of the boundary as proposed for Area A1. However, none of those concerns or objections have identified a matter that is material to a CGR. Therefore, the crux of this part of the CGR is whether the possible redrawing of the boundary around Area A1 will meet the statutory criteria better than leaving them unchanged.

6) On balance, it appears to me that the statutory criteria are better met by redrawing the boundaries. I therefore recommend that:

[a] Members consider the responses to the consultation; and

[b] Members agree to the redrawing of the parish boundary such that Area A1 is transferred to Kings Hill, in the final recommendations.

1.6.6 Area A2

- 1) In considering the Draft Proposals prior to the consultation, Members were advised:

Area A2 is land to the north of Area A1. It is owned by Liberty Property Trust (the developer of Kings Hill). It includes the country park, land identified through the Kings Hill Phase 3 Masterplan as being allocated as 'Natural Green Space', and other undeveloped open space and woodland. This land is served by footpaths and bridleways, which open it up for use by both Kings Hill and East Malling residents. There are no residential properties, nor commercial properties, within this area. KHPC have expressed that they wish for Area A2 to also be included within the parish boundary of Kings Hill. However, I do not consider that it meets the statutory criteria. This is because it is not used solely by Kings Hill residents and so cannot be considered to "reflect the identities and interests of the [Kings Hill] community." Ownership of the land does not in itself identify a community use, and therefore cannot be considered to be criteria enough to transfer the land to be included within Kings Hill parish.

If future in-fill development were to take place, along The Heath or Watlingbury Road, the properties would currently be within East Malling. They would be part of the East Malling community, neighboured by other East Malling properties. However, if the land were to move to Kings Hill as set out, future in-fill developments would be part of Kings Hill parish, which would not be reflective of their community identity or interests.

- 2) The consultation document stated:

The Borough Council proposes that the parish boundary between Kings Hill and East Malling & Larkfield parishes be amended such that the area marked A2 on the map below remain within East Malling & Larkfield parish.

- 3) Of the 22 responses, three did not comment upon this proposal. Of the remainder, 18 supported the proposal (either explicitly or through objecting to any change of the boundary), and one was opposed to it.

	Number of respondents	Notes
Support the proposal, such that area A2 remains within East Malling & Larkfield	18	
Object to this proposal, such that area A2 becomes part of Kings Hill parish	1	Kings Hill Parish Council
No comment	3	
Total	22	

- 4) In more detail, the objections and concerns are as follows:
- (i) Kings Hill Parish Council (response 8 of **Annex 5**) objected to the Borough Council's draft proposal. Their comments were:
- [a] "This area includes Warren Woods and other land at Heath Farm. The land at Warren Woods is specifically designed to serve the residents of Kings Hill and forms part of the Section 106 obligations of the developer as part of Phase 2 of Kings Hill."
- As noted above, planning conditions and concerns are not material to a Community Governance Review. As such, the use of Section 106 provision by a developer does not necessitate a change in parish boundary.
- [b] "It is also adjacent to Area A1 and directly accessible from the Sports Park in Area A1." It is correct that areas A1 and A2 are adjacent. However close proximity does not of itself create a necessity to move parish boundaries. The land in area A2 does not have vehicular access, but has pedestrian access from both Kings Hill and East Malling.
- 5) The points raised in the earlier paper about in-fill properties remain valid.
- 6) The key question for Members to consider in this part of the CGR is whether the possible redrawing of the boundary around Area A2 will meet the statutory criteria better than leaving them unchanged.
- 7) On balance, it appears to me that the statutory criteria are better met by leaving this boundary unchanged. I therefore recommend that:
- [a] Members consider the responses to the consultation, both the supporting arguments in **Annex 5** and the objections noted above; and
- [b] Members agree to the redrawing of the parish boundary such that Area A2 remains within East Malling & Larkfield.

1.6.7 Area B

- 1) In considering the Draft Proposals prior to the consultation, Members were advised:

Area B is currently part of Wateringbury. This area includes part of the Kings Hill Golf Club. Whilst users of the Golf Club are from a wider area than Kings Hill alone, it is accessible by road via Kings Hill parish. There are no residential properties in this area, and the only commercial properties are the facilities of the Golf Club itself.

However, if future in-fill development were to take place, along Canon Lane or the eastern edge of Danns Lane, the properties would currently be within Wateringbury. They would be part of the Wateringbury community, neighboured by other Wateringbury properties. However, if the land were to move to Kings Hill as set out, future in-fill developments would be part of Kings Hill parish, which would not be reflective of their community identity or interests.

- 2) The consultation document stated:

The Borough Council proposes that the parish boundary between Kings Hill and Wateringbury parishes marked B on the map below remain within Wateringbury.

- 3) Of the 22 responses, four did not comment upon this proposal. Of the remainder, 17 supported the proposal (either explicitly or through objecting to any change of the boundary), and one was opposed to it.

	Number of respondents	Notes
Support the proposal, such that area A2 remains within Wateringbury parish	17	
Object to this proposal, such that area A2 becomes part of Kings Hill parish	1	Kings Hill Parish Council
No comment	4	
Total	22	

- 4) In more detail, the objections and concerns are as follows:

- (ii) Kings Hill Parish Council (response 8 of **Annex 5**) objected to the Borough Council's draft proposal. Their comments were:

[a] "This area is a protected open space and therefore is extremely unlikely to be available to residential development as mentioned."

Whilst large-scale development is unlikely, in-fill development remains possible. Therefore, the arguments stated above remain true.

[b] “The Golf Club is only accessible from Kings Hill. It is not accessible from Wateringbury parish by vehicle at all. Pedestrian access is also extremely limited and is hard to access from Wateringbury parish.”

[c] “The current parish boundary cuts right through the Kings Hill Golf course and cannot be described as ‘effective and convenient’ as it currently stands.” The statutory criteria refer to local governance being ‘effective and convenient’. Kings Hill Parish Council does not have a controlling interest in the Golf Course, which also extends into a third parish not mentioned thus far in the CGR, and is not concerned with boundaries matching land ownership of private land per se.

[d] “It is adjacent to Kings Hill residential areas but a significant distance from the centre of Wateringbury village.” Whilst this is correct, there are houses immediately abutting the golf course, and these properties are part of Wateringbury parish. Close proximity does not of itself create a necessity to move parish boundaries. There are other areas within the Borough where houses are closer to a plot of land, whether in use or not, than the parish to which that land ‘belongs’, but there is no need to move the parish boundaries until they are equidistant from existing properties as noted above.

[e] “Therefore KHPC believe that Area B meets the statutory criteria as there are no residential properties in this area and it can only be accessed through Kings Hill so it would be effective and convenient to have the whole golf course within the boundary of Kings Hill rather than just a portion of it. This would ‘reflect the identities and interests of the community in that area’ as the round trip from Wateringbury is prohibitively onerous”.

There is no evidence that the only people who use Kings Hill Golf Course are residents of Kings Hill, and this is highly unlikely. The Golf Course were invited to respond to the consultation, but no response was received. Kings Hill Golf Course is currently split across three parishes, as part of the land is in Mereworth. However, there has to date been no suggestion to amend the parish boundary to include that part of the Golf Course within Kings Hill.

The statutory criteria refer to the identities and interests ‘of the community in that area’. The ‘area’ is the area subject to the review. As noted, there are no residential properties in Area B so no

identities or interests of residents themselves to consider. Instead, one must consider the identities and interests of the users of the Golf Course, and whether the course being wholly within Kings Hill will have a positive, negative or neutral effect on their identities and interests. It is worth noting, as other respondents to the consultation did, that many golf courses cross over local boundaries.

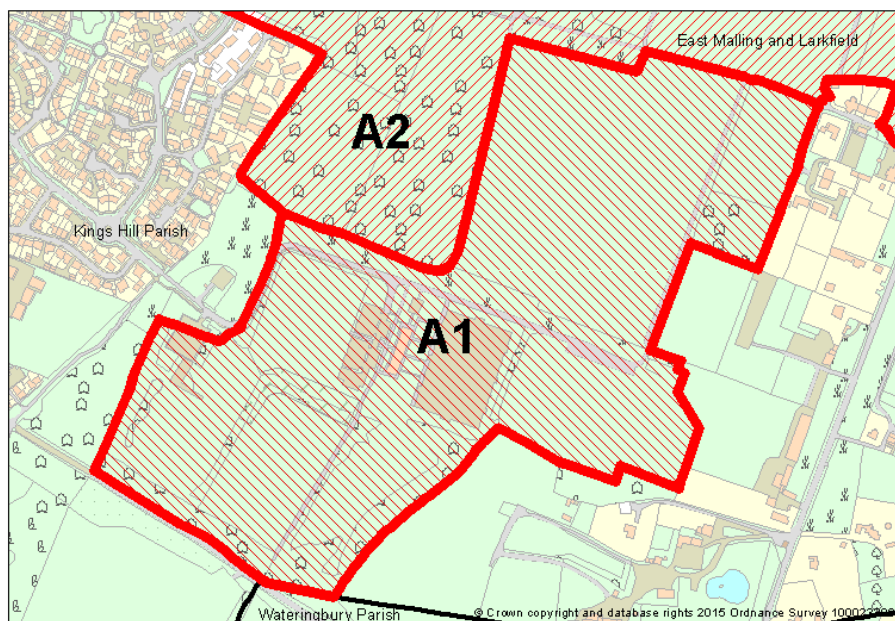
- 5) The key question for Members to consider in this part of the CGR is whether the possible redrawing of the boundary around Area B will meet the statutory criteria better than leaving them unchanged.
- 6) On balance, it appears to me that the statutory criteria are better met by leaving this boundary unchanged. I therefore recommend that:
 - [a] Members consider the responses to the consultation, both the supporting arguments in **Annex 5** and the objections noted above; and
 - [b] Members agree that the boundary in this area remain unchanged such that Area B remains in Wateringbury parish.

1.7 Final Proposal for General Purposes Committee

- 1.7.1 The responses received to the consultation have been taken into account in finalising the proposal as set out below. This Final Proposal will be published by General Purposes Committee and, subject to their approval, will be adopted and take effect from the May 2019 elections.

Proposal:

The parish boundary between Kings Hill and East Malling & Larkfield parishes be amended to include the area marked A1 on the map below within Kings Hill.



- 1.7.2 In producing this Final Proposal, Members will note that the draft Proposals for Area A2 and Area B have been endorsed, in that no change to those areas is proposed.

1.8 Legal Implications

- 1.8.1 The Council is required to keep parish electoral arrangements under review, and to undertake a CGR to consider and implement any necessary changes.

1.9 Financial and Value for Money Considerations

- 1.9.1 The financial cost of undertaking the CGR will include the costs of publishing notices and consulting with stakeholders. It is anticipated that these costs can be met from existing budgets.

1.10 Risk Assessment

- 1.10.1 Failing to undertake the review may lead to electoral arrangements that are less effective and less convenient.
- 1.10.2 Failure to comply with statutory guidance, or to make decisions contrary to the statutory criteria, could lead to a formal objection by certain interested parties. This could lead to a review of the decision-making process and outcome by the Electoral Commission.

1.11 Equality Impact Assessment

- 1.11.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

1.12 Recommendations

1.12.1 It is recommended that Members:

- 1) Consider the responses to the consultation.
- 2) Agree to the redrawing of the parish boundary such that Area A1 is transferred to Kings Hill.
- 3) Agree to the redrawing of the parish boundary such that Area A2 is **not** transferred to Kings Hill.
- 4) Agree that Area B is **not** transferred to Kings Hill.
- 5) Agree that the Final Proposal be endorsed (paragraph 1.7) and presented to the General Purposes Committee for publication and adoption, such that the boundary be amended from the May 2019 elections.

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