
**PROPOSED MERGER OF
BATHURST REGIONAL AND OBERON COUNCILS**

**Comments by the NSW Local
Government Boundaries Commission
on the Report by the Delegate
of the Acting Chief Executive Officer
of the Office of the Local Government**



April 2016



Local Government Boundaries Commission
GPO Box 5341
Sydney NSW 2001

The Hon Paul Toole MP
Minister for Local Government
Level 17 NE
52 Martin Place, SYDNEY NSW 2000

Dear Minister

Proposed merger of Bathurst Regional and Oberon councils

The Local Government Boundaries Commission provides its comments on the Delegate's Report into the above merger proposal under section 218F(6) of the *Local Government Act 1993*.

Yours sincerely

A handwritten signature in black ink that reads 'RJ Sendt'.

RJ Sendt
Chairperson
29 April 2016

1. Summary of Local Government Boundaries Commission comments

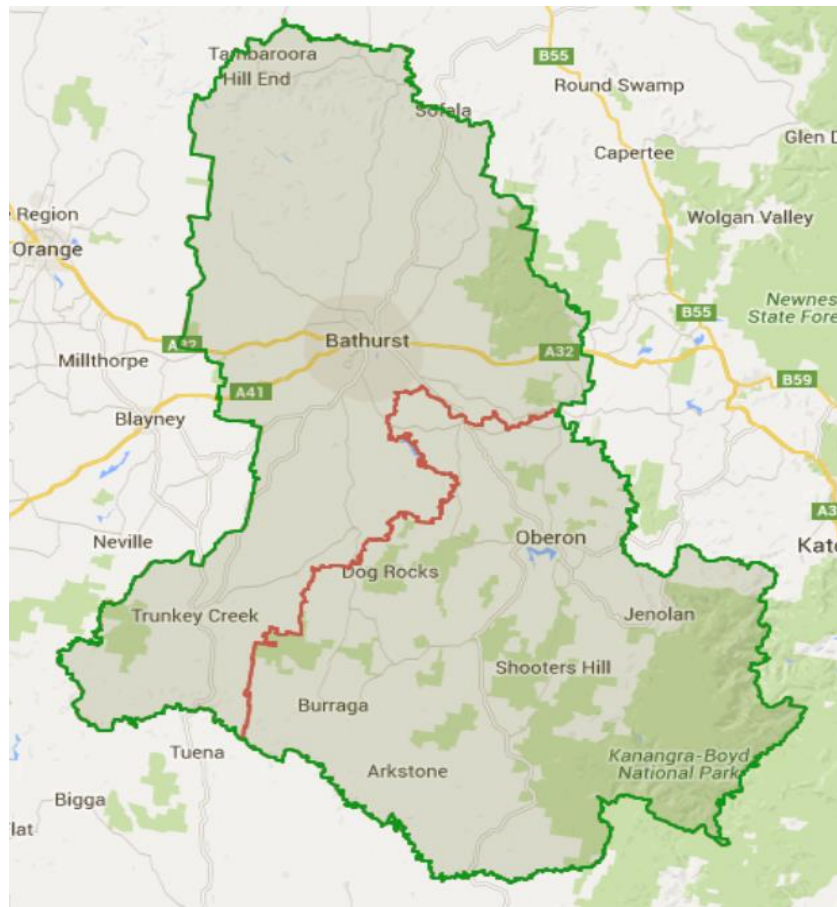
The Boundaries Commission has reviewed the Delegate's Report on the proposed merger of Bathurst Regional Council and Oberon Council to determine whether it shows the legislative process has been followed and the Delegate has taken into account all the factors required under the *Local Government Act 1993* (the Act).

The Commission has assessed that:

- the Delegate's Report shows that the Delegate has undertaken all the processes required by section 263 of the Act,
- the Delegate's Report shows that the Delegate has adequately considered all the factors required by section 263(3) of the Act, with the exception of the factor listed under subsection 263(3)(e5) (diverse communities), and
- the Delegate's recommendation in relation to the proposed merger is supported by the Delegate's assessment of the factors.

2. Summary of the merger proposal

On 6 January 2016, the Minister for Local Government referred a proposal to merge the local government areas of Bathurst Regional Council and Oberon Council to the Acting Chief Executive of the Office of Local Government for examination and report under the Act. The following map shows the proposed new council area (shaded in green).



The proposal would have the following impacts on population across the two councils.

Council	2016	2031
Bathurst Regional Council	42,900	51,550
Oberon Council	5,200	4,950
New Council	48,100	56,500

Source: NSW Department of Planning & Environment, 2014 NSW Projections (Population, Household and Dwellings).

The Acting Chief Executive delegated the function of examining and reporting on each of the proposals to a number of people, known as ‘Delegates’. Delegates were required to examine and report upon each merger proposal rigorously and fairly. The examination process included Delegates calling for submissions and holding a public inquiry on each proposed council merger. Delegates prepared a report on the proposal and provided that report to the Local Government Boundaries Commission.

3. Role of the Local Government Boundaries Commission

The Local Government Boundaries Commission is an independent statutory authority constituted under section 260 of the Act. The Boundaries Commission examines and reports on any matter referred to it by the Minister in relation to the boundaries of local government areas and the areas of operation of county councils.

The Boundaries Commission has several functions under the Act. In the current context (where the Minister has elected to refer the proposal to the Office of Local Government, rather than the Boundaries Commission, for examination), the most relevant Commission functions are set out in section 218F(6) of the Act. This section requires:

- the Chief Executive to furnish the Report on the examination of the merger proposal to the Boundaries Commission for review and comment, and
- the Boundaries Commission to review the Report and send its comments to the Minister.

The Commission’s role does not involve re-examining the advantages and disadvantages of the proposed mergers, accepting submissions or holding public inquiries.

4. Delegate’s recommendations

The Delegate’s key recommendation is:

“Having considered the Proposal, the submissions from members of the public and community groups and other material, and having regard to the factors set out in section 263(3) of the Act, the Delegate considers that the Proposal should proceed to implementation.”

Other recommendations by the Delegate were:

- *“The concerns of those residents and ratepayers who made submissions opposing the merger and the change in representational arrangements, need to be properly addressed by the implementation process to realise the advantages of a merger. Consequently it is recommended that the principles articulated in the preceding section of this report be applied in the event of a merger proceeding – in particular that a new*

name be chosen and new identity be developed reflecting the more rural and more diverse community across the merged area;

- *It is considered that adequate representation can be provided by a Council of 9 Councillors. This should be supplemented by effective use of available mechanisms for community leadership, autonomy and engagement such as precinct committees (Section 355 committees) and rotating council meetings between Bathurst and Oberon. In combination with the passionate place-based advocacy demonstrated by many submitters, this should enable the unique identities of existing communities to continue to evolve and service delivery to be optimised; and*
- *Wards could be considered with boundaries drawn to reflect rural and urban communities of interest”.*

5. The Commission’s detailed comments

5.1 Review of the process followed by the Delegate

Under the Act, the Delegate is required to undertake certain processes in examining a merger proposal. These processes include holding an inquiry, allowing members of the public to attend meetings as part of the inquiry and calling for submissions. As part of its review of the Delegate’s Report, the Commission has looked at whether these processes were followed.

In total, the Delegate considered 344 written and verbal submissions from the public, community and other organisations and councils.

The Delegate held two public inquiries on 4 February 2016 at the Oberon Showground and Panthers Bathurst.

The Commission’s view is that the Delegate has met the relevant requirements.

5.2 Review of the Delegate’s consideration of the factors specified in the Act

Under section 263(3) of the Act, the Delegate is required to have regard to a range of factors when considering a merger proposal.

Overall, the Commission’s view is that the Report shows the Delegate adequately considered all the factors, with the exception of diverse communities.

The Commission has formed this view based on its review of the discussion presented in the Delegate’s Report. The Commission specifically considered whether the extent of that discussion adequately canvassed the range of issues raised in the written submissions made to the Delegate, the views expressed at the public hearings and other information that would have been available to the Delegate.

The Commission makes the following comments relating to each factor:

5.2.1 Financial factors

Section 263(3)(a) of the Act requires the Delegate to have regard to:

“the financial advantages or disadvantages (including the economies or diseconomies of scale) of any relevant proposal to the residents and ratepayers of the areas concerned”.

The Delegate reviewed the IPART assessments of the Councils under the Fit for the Future criteria which found that both Bathurst and Oberon satisfied the financial criteria overall. The Delegate further noted that IPART found Oberon Council Not Fit overall as it did not meet the criterion of scale and capacity, and concluded that a merged council would have improved capabilities as a result of a more robust revenue base.

In her examination the Delegate considered the Local Government Infrastructure Audit for both Councils as well as NSW Treasury Corporation (TCorp) findings which assigned Bathurst Regional Council a “Moderate” Financial Sustainability Rating (FSR) and a “Negative” outlook, indicating a projected weakening in performance and sustainability. Oberon Council was assigned a “Sound” FSR and also a “Negative” outlook.

The Delegate also considered the Councils’ own financial information and performance data and concluded that both Councils are in a relatively sound financial position. However, she further noted that a merged council would have a substantial asset and revenue base, with a net operating result of \$7.85 million and net assets of \$1.4 billion.

In the Delegate’s view, the consolidation of two Councils has the potential to reduce costs and allow resources to be reallocated to other areas.

The Delegate recognised the potential costs associated with the merger, such as rebranding and signage as well as discretionary costs associated with wage parity and harmonising services. However she also noted the provision of \$5 million in the Government’s funding package to cover these costs.

While noting the potential impact for residents resulting from changes in rates and fees, the Delegate sought to balance potential positive impacts, such as reduced costs to business through regulatory consistency, increased economic activity resulting from stronger strategic capacity deployed to economic development and tourism and the reduced reliance on rates, against negative impacts such as reduced council purchasing power and employment in a town.

In assessing the potential for economies of scale, the Delegate concluded that while lower populations and large geographic areas may impede economies of scale, they do not necessarily create diseconomies of scale.

It was the Delegate’s view that Bathurst Regional Council saw generally positive financial benefits while Oberon Council had concerns about the KPMG modelling and the reliability of the projected outcomes.

In summary, the Delegate concluded a merger would bring together two financially sound councils and presents an opportunity to build strategic capacity and greater financial flexibility, with net financial advantages to residents and ratepayers in the long term.

The Commission's view is that the Delegate adequately considered the issues under this factor.

5.2.2 Communities of interest

Section 263(3)(b) of the Act requires the Delegate to have regard to:

“the community of interest and geographic cohesion in the existing areas and in any proposed new area”.

The Report noted that Bathurst Local Government Area (LGA) includes the thriving regional city of Bathurst, with its well established cultural, education and health facilities, and expansion in these industries, along with manufacturing, retail and agriculture has almost doubled its economy in recent years. The Report noted that Oberon to the south is characterised by rolling hills and forests and a number of small towns and villages, and includes the Kanangra-Boyd National Park and the major visitor attraction of Jenolan Caves. The Report described small communities with strong local traditions and connectivity issues associated with limited road networks and lack of reliable internet connection. The Delegate also recognised the challenges faced by these types of communities in delivering aged care and youth services.

The Delegate noted that many submissions from Oberon raised concerns about the lack of community of interests between Bathurst as a regional city and Oberon as a small rural town with unique villages and higher altitude environment. In contrast, submissions stated that Bathurst and Oberon have strong communities, volunteers and community facilities and that both LGAs have a mix of rural and urban areas.

In reviewing the submissions, the Delegate noted that there is evidence of rivalry between Bathurst City and the town of Oberon, however this was distinct from differences in communities of interest. She also noted clear demographic and geographic differences between the rural and urban areas, and many areas of commonality including shared economic drivers and regular movement between the two major towns for work, recreation and for accessing services. There is also significant geographic cohesion as a result of the tablelands location, climate and strong road networks across the area, and no significant physical barriers between rural areas surrounding the major towns along the boundary between the Bathurst and Oberon LGAs.

The Delegate concluded that views expressed in submissions on communities of interest and geographic cohesion were clearly polarised, largely along “rural versus urban” lines, and that both areas have settlements with unique characteristics and a sense of identity. However, the Delegate considered that this is not necessarily an impediment to shared communities of interest in a merged council and may enhance the opportunity to build social capital across the region.

The Commission's view is that the Delegate adequately considered the issues under this factor.

5.2.3 Historical and traditional values

Section 263(3)(c) of the Act requires the Delegate to have regard to:

“the existing historical and traditional values in the existing areas and the impact of change on them”.

The Report outlined the key concerns expressed in submissions on this point which, the Delegate noted, were almost all from the Oberon area and which raised concerns about a perceived loss of historic and traditional values associated with having their own council.

However, the Delegate stated that there are historical similarities between the two LGAs, and that both Councils demonstrated in their Community Strategic Plans (CSPs) the importance they and their communities place on historical and traditional values. Both currently accommodate diversity across their areas and the Wiradjuri nation encompasses Bathurst LGA and part of Oberon LGA, which is also inhabited by the Gundungurra nation.

The Delegate stated a merged council would need to consider the high value placed on community activity and Council support, as demonstrated in submissions from Oberon residents.

The Delegate concluded that a merged council would be able to pool resources currently applied to the preservation of historical and traditional values and to benefit from identifying best practice approaches currently used in each area.

The Commission’s view is that the Delegate adequately considered the issues under this factor.

5.2.4 Attitudes of residents and ratepayers

Section 263(3)(d) of the Act requires the Delegate to have regard to:

“the attitude of the residents and ratepayers of the areas concerned”.

In considering the attitudes of residents and ratepayers, the Delegate gave regard to the presentations at the public inquiry, written submissions from Councils, individuals and community groups, including information provided by Councils in relation to any polls or surveys conducted by them.

The Report stated that from an examination of community responses, 2% were in support of the proposal, 79% against and 19% undecided. The strongest response came from Oberon LGA (6% of the overall population). The Delegate noted that concerns raised included:

- a perception of potential “takeover” by Bathurst,
- the need of a stand-alone council as integral to the Oberon LGA community and quality of life,
- questioning of the assumptions,
- methodology and the merger process itself, and
- uncertainty of the projected benefits, and representational model.

The Delegate further noted those in support of the merger cited the success of the previous merger between the City of Bathurst and Evans Shire Councils, particularly in delivering benefits to rural villages, and the potential to reduce complexity/inefficiency, increase resources and improve services.

The Delegate was of the view that the attitudes expressed in submissions were polarised. She also concluded that, as a significant majority of the population of both areas chose not to comment, this may reflect indifference to the proposed merger.

The Delegate concluded that the strong opposition to a merger demonstrated in submissions primarily by residents of Oberon LGA should not be seen as a threshold impediment to a merger, but is important to consider in the context of a decision on whether or not to proceed with a merger.

The Commission's view is that the Delegate adequately considered the issues under this factor.

5.2.5 Elected representation

Section 263(3)(e) of the Act requires the Delegate to have regard to:

“the requirements of the area concerned in relation to elected representation for residents and ratepayers at the local level, the desirable and appropriate relationship between elected representatives and ratepayers and residents and such other matters as it considers relevant in relation to the past and future patterns of elected representation for that area”.

The Report noted that in a merger the ratio of population per councillor would change when compared to the existing councils. The Delegate stated that, while the change is negligible for Bathurst residents (rising from one councillor per 4,631 residents to one per 5,223, the change for Oberon which currently enjoys a ratio of one councillor per 666 residents will be dramatic. This change will pose additional challenges for Oberon LGA residents as it will result in a shift from a model of direct access and relationship with individual councillors to a model which is more corporate in nature. Submissions received on this factor, of which 70% came from Oberon residents, also expressed concerns around loss of representation on regional bodies, and a lack of voice for specific groups such as high country farmers and the timber industry which are more strongly concentrated in Oberon LGA.

The Report noted that current councillor composition does not reflect community composition and both Councils currently rely on mechanisms other than direct representation to cater to the needs of a diverse community.

The Delegate pointed to the existence of section 355 of the Act and suggested that a section 355 committee structure be used to exercise broader functions of a council for a particular township, village or locality and, if appropriately constituted, authorised and resourced, precinct committees could provide a mechanism to facilitate local representation in decision making.

The Delegate also suggested that other mechanisms, such as rotating council meetings, would also have the potential to improve access of residents to decision makers in a merged council.

The Delegate concluded that ultimately it would be up to the community to ensure that appropriate representatives are elected and, in the absence of comment to the contrary, 9 councillors could be considered appropriate in a merged council.

The Commission's view is that the Delegate adequately considered the issues under this factor.

5.2.6 Service delivery and facilities

Section 263(3)(e1) of the Act requires the Delegate to have regard to:

“the impact of any relevant proposal on the ability of the councils of the areas concerned to provide adequate, equitable and appropriate services and facilities”.

The Delegate reviewed the Councils' CSPs and found that there were common themes in establishing the frameworks for service delivery and prioritisation. She observed that while there was a relative consistency between both Councils in expenditure per capita on environment and library services, there were significant variations in other per capita expenditures including community services, recreation and culture, and public order and safety. The Delegate noted that a merged entity may provide an opportunity for sharing of best practice and improvement in service delivery quality in a merged council.

The Delegate was of the view that the additional \$10 million provided by the Government in the event of a merger would increase the new council's financial capacity and provide the opportunity to improve service delivery quality, quantity, access and equity across the merged area.

In the Delegate's view, a merger would provide an opportunity to review the range and approach to service delivery with a view to identifying best practice and any opportunities for streamlining and more efficient utilisation of physical assets and staff. She considered that a merger would likely raise expectations of service equalisation to the highest level and it would be up to a merged council to resolve how to approach this challenge. The Report also noted that service access would need to be considered given the increased size of the area such that residents of more remote locations are not disadvantaged which. This may require a level of ongoing service provision from current locations.

The Delegate concluded that overall a merger is likely to have a positive impact on the ability to provide adequate, equitable and appropriate services and facilities, provided that there are effective mechanisms for community input to prioritisation which address the needs of small communities and that access to services, particularly for less mobile or more remote residents, is addressed.

The Commission's view is that the Delegate adequately considered the issues under this factor.

5.2.7 Employment impacts on staff

Section 263(3)(e2) of the Act requires the Delegate to have regard to:

“the impact of any relevant proposal on the employment of the staff by the councils of the areas concerned”.

The Delegate noted the legislative protections under the Act for non-senior council staff affected by mergers and pointed out that the definition of rural centre would apply to Oberon which would give added employment protection to those existing council staff.

The Delegate further noted that despite fears of job losses and service impacts raised in some submissions, service delivery needs and access to services for residents may require staff to continue to be located in Oberon. The Delegate believed that there would also be potential benefits for staff and the new organisation in realising development and specialisation opportunities and implementing best practice.

The Delegate concluded that a merger would have both positive and negative impacts on staff, with negative impacts likely to be short term and associated with the change process, and positive impacts likely to accrue over time. She noted statutory protections are likely to ameliorate short term negative impacts, as would a well-designed and managed organisational and change strategy. The Delegate recommended that decisions on the new organisational structure and approach to change, which would be a matter for a new council, should be made as quickly as possible to minimise the impact of uncertainty on staff.

The Commission's view is that the Delegate adequately considered the issues under this factor.

5.2.8 Rural impacts

Section 263(3)(e3) of the Act requires the Delegate to have regard to:

“the impact of any relevant proposal on rural communities in the areas concerned”.

The Delegate noted that each of the existing Councils is currently servicing significant rural communities, with around a third of residents of the merged area living outside Bathurst City. During the submission process, concerns were expressed that Oberon Council's specialist expertise in servicing rural communities would be lost in a merged council and that rural areas, in general, would be less well served. On the other hand, some submissions commented that Bathurst Regional Council has expertise in servicing rural areas and that the combined capability of the two Councils would have a positive impact on rural communities.

The Delegate concluded that as both Councils already service rural communities, relevant skills and experience would be brought into a merged council. She further stated that the risks of decreased representation and servicing of Oberon LGA rural areas in a merged council would be balanced by opportunities for improved representation and services in rural parts of Bathurst LGA.

However, the Delegate also expressed the view that a merged council would need to consider the impact of any strategies to streamline service delivery on accessibility of services for rural communities.

The Commission's view is that the Delegate adequately considered the issues under this factor.

5.2.9 Wards

Section 263(3)(e4) of the Act requires the Delegate to have regard to:

“in the case of a proposal for the amalgamation of two or more areas, the desirability (or otherwise) of dividing the resulting area or areas into wards”.

The Delegate noted that only 5% of submissions provided comment on wards, and that both Bathurst and Oberon Councils were opposed to them – Bathurst on the basis that an undivided council would be preferable, and Oberon on the basis it opposed the merger generally.

The Delegate considered the advantages and disadvantages of wards. She considered that, while an undivided council would be more consistent with providing united leadership to a newly merged entity, the use of wards may ease the transition to a merged entity should a merger proceed. The Report suggested that ward boundaries could be drawn in such a way that there are two predominantly urban wards and one predominantly rural, with three Councillors elected from each ward.

The Delegate concluded that wards should be considered if a merger proceeds, and if implemented, the boundaries should be drawn to recognise the strong community of interest which exists for residents of rural areas, smaller towns and villages. The Delegate also stated that regardless of a decision on wards, should a merger proceed, it will be important that interim arrangements provide the community, particularly the Oberon LGA community, with confidence that communities will have a voice in setting the direction for the new organisation.

The Commission’s view is that the Delegate adequately considered the issues under this factor.

5.2.10 Opinions of diverse communities

Section 263(3)(e5) of the Act requires the Delegate to have regard to:

“in the case of a proposal for the amalgamation of two or more areas, the need to ensure that the opinions of each of the diverse communities of the resulting area or areas are effectively represented”.

The Delegate noted that nine submissions (3%) provided comment on the effective representation of diverse communities, with one referring to Council support for people with disabilities.

The Delegate concluded that as each Council already has mechanisms in place to engage with diversity within the broader community, resources committed to this engagement will continue to be available in a merged council. However the Delegate stated that there will be an opportunity to examine whether engagement with identified community groups can be carried out more effectively across current council boundaries.

The Commission’s view is that the Delegate did not adequately consider the issues under this factor.

5.2.11 Other issues

Section 263(3)(f) of the Act requires the Delegate to have regard to:

“such other factors as it considers relevant to the provision of efficient and effective local government in the existing and proposed new areas”.

The Delegate considered the following other issues with respect to this factor:

- **Strategic Capacity:** The Delegate included issues relating to strategic capacity as worthy of comment under the factor of Other Issues and provided a comprehensive analysis of the role of councils as set out under the Act, together with the perceived advantages of increased scale and capacity as defined by IPART and the merger proposal. .
- **Implementation:** The Delegate noted there were different attitudes to the nature of the merger between the two councils. The Report stated that this was evident in the tone of submissions and other council documents show that the two councils have very different cultures which present both an opportunity and a risk to a merger. The Delegate considered a risk is that the culture of the larger organisation will dominate and that positive elements of the smaller organisation will be lost. To ameliorate this risk, the Delegate suggested a number of strategies.
- **Boundary Adjustments:** The Delegate reported that two submissions suggested alternative or additional boundary changes but these were deemed to be outside the scope of the examination and reporting process on this proposal and would require examination as part of a new proposal.

The Commission’s view is that the Delegate adequately considered the issues under this factor.

The Commission notes that transitional governance arrangements and suggested boundary adjustments are matters for the Minister.