
**PROPOSED MERGER OF
BOOROWA AND YOUNG SHIRE
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**



MAY 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 Boorowa and Young Shire 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 'Bob Sendt'.

RJ Sendt
Chairperson
3 May 2016

1. Summary of Local Government Boundaries Commission comments

The Boundaries Commission has reviewed the Delegate's Report on the proposed merger of Boorowa Council and Young Shire 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)(e1) (service delivery), 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 3 March 2016, the Minister for Local Government referred a proposal to merge the local government areas of Boorowa Council and Young Shire 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
Boorowa Council	2,500	2,450
Young Shire Council	12,800	12,900
New Council	15,300	15,350

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 that:

"after taking account of the factors listed in section 263(3) of the Local Government Act 1993 (the Act), a merger between Boorowa and Young is preferable to continuing with the status quo".

Other recommendations by the Delegate were:

- *"if implemented, 12 elected representatives would provide the most desirable and appropriate relationship between residents and ratepayers and elected representatives in the new council*
- *the division of the proposed merger area into wards is not recommended as it would not address concerns about rural representation and could encourage parochialism.*

- *consistent with research presented to the Independent Local Government Review Panel, the implement transitional governance arrangements until the first council election that facilitate a 'fresh start' for the newly merged community. It is recommended that the merged council's transitional governance arrangements include around eight former councillors under the leadership of the current Boorowa Mayor, who is also the current chair of the Canberra Region Joint Organisation of Councils*
- *the new council implement comprehensive outreach and consultation strategies to engage with and listen to smaller town and rural communities, for example regularly hold council meetings in the small towns, consult annually with small towns and rural communities as part of the council's planning processes and consider establishing community development committees that include councillors' active participation*
- *ensure that councillors and the council's leaders embed a 'fresh start' into its culture to ensure a highly inclusive service and representation for the whole community".*

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 95 written and verbal submissions from the public, community and other organisations and councils.

The Delegate held two public inquiries on 5 and 6 April 2016, one at the Boorowa Ex Services Club, and the other at the Young Services Club.

The Commission's view is that the Delegate has met the relevant requirements, while noting there is no evidence in the Report that reasonable public notice was given for the public inquiries.

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 service delivery.

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 noted the submissions addressing this factor and the principal matters raised most commonly in submissions.

The Delegate considered the potential viability of the status quo and found that over the longer term continuing as two separate Councils was not viable and would lead to financial disadvantages for ratepayers and residents. The Delegate noted the outcome of previous reviews of the Councils such as IPART, TCorp and the Division of Local Government’s Infrastructure Audit. The Delegate also considered the Councils’ 2013-14 performance against the Office of Local Government’s benchmarks.

The Report noted the positive financial benefits estimated by KPMG, but also noted the financial benefits were less than half of the Boorowa, Harden and Young merger. The Delegate stated that around 40 stakeholders had argued residents and ratepayers would be directly disadvantaged or would experience an opportunity cost loss if the merger is implemented.

The Delegate concluded that the merger is unlikely to generate economies of scale as the proposal disrupts existing regional cost-efficiency arrangements for the provision of council services and only marginally increases the scale of councils’ operations. Further, the Report stated that the merger was not expected to produce additional economic development opportunities for the region as it would continue the division of the region’s tourism, viticulture and cherry industries between multiple local government areas.

The Delegate also concluded there would be positive financial advantages for the residents and ratepayers of the area from a merger between Boorowa and Young Shire Councils compared to the status quo. The Delegate also noted that the merger is not expected to increase economies of scale or to produce additional economic development opportunities for the region.

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 Delegate noted the submissions addressing this factor and the principal matters raised most commonly in submissions.

On balance the Delegate concluded that the proposed merger area shared a number of communities of interest and geographic cohesion. However, as most of these communities are shared across the

whole Hilltops region, the proposed merger may have negative impacts. Examples of negative impacts included:

- increased communications costs, especially if organisations need to deal with local government organisations with different priorities
- increased travel costs, especially if the Harden, Cootamundra and Gundagai merger proceeds increasing the distance between the likely service centres of the two new merged councils
- in relation to Hilltops produce, a number of stakeholders are concerned that while Boorowa and Young councils look to Canberra, if Harden merges with different council it will lose that focus which is expected to impose costs plus a geographic obstacle to the Hume Highway for Boorowa and Young and the Hilltops industries
- unravelling current agreements between the three councils would result in new negotiation costs but could result in the need to construct new infrastructure.

The Delegate concluded that the proposed merger area shares a number of communities of interest and geographic cohesion. Given these communities are shared across the whole of the Hilltops region (Boorowa, Harden and Young), the proposed merger risks damaging and fragmenting these communities.

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 Delegate noted the submissions addressing this factor.

The Delegate concluded that the shared traditional and historical values of the Boorowa and Young regions are unlikely to be negatively impacted by the proposal.

She stated this was because the custodians of these values are the people and families that live in the region rather than their councils. Like many other regional areas of Australia, the values of the area are enduring and deeply rooted in the community. Changes to the structure of the local government area do not impact its culture, climate, geography, Aboriginal history or civic area.

The Commission's view is that the Delegate adequately considered the issues under this factor, while noting the limited analysis provided.

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”.

The Delegate noted that the majority of submissions received oppose this merger. The Delegate states around 70 written and verbal submissions expressly oppose the Boorowa and Young merger

with only one submission expressly supporting the merger. Some submissions oppose any merger of Boorowa or any Minister initiated merger.

The Delegate noted around 50 stakeholders explicitly support the Hilltops merger because they consider the benefits of a Boorowa and Young merger are outweighed by its risks; whereas the Hilltops merger has greater benefits which outweigh the potential risks.

The Delegate reported that after 4 years of consultation and preparation for the Hilltops merger, stakeholders are concerned and frustrated about why a Boorowa and Young merger has been proposed. It was also stated that many submissions argue that this merger is a poor second choice or a merger of convenience. It is noted that some predict that, if the Boorowa and Young merger is implemented, then the community will need to ready itself to deal with a further merger proposal within the short to medium term.

The Delegate also noted that a number of submissions oppose the merger on the basis of expected business impacts and opportunity cost losses. These submissions express concern that a Boorowa and Young merger would fragment the Hilltops region and have negative impacts for the tourism, horticulture and viticulture industries. The Delegate states that these submissions also argue that a merger which excludes Harden Shire Council will not bring sufficient an increase in scale and capacity to improve council's services and infrastructure for industry to grow.

The Commission's view is that the Delegate adequately considered the issues under this factor, while noting the limited analysis provided.

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 Delegate noted the concerns raised in submissions about a loss of representation and balance in the representation of smaller towns, villages and rural communities.

The Delegate recommended that 12 councillors would provide the most desirable and appropriate relationship between residents, ratepayers and elected representatives. The Delegate's recommendation was based on:

- *“analysis of the ratio of elected representation of the 16 regional councils with populations within 25 per cent of the proposed merged council (as at 2011) which suggests an appropriate range of between 7 to 12 councillors*
- *the strength of concern expressed by stakeholders about the potential negative impacts of reduced electoral representation on the levels of council services supplied to smaller towns and rural communities*

- *acknowledgement that the maximum number of councillors per council is set by legislation at 15 councillors and the importance of avoiding unnecessary councillor salary costs where possible*
- *projections that the population of Young will grow more than surrounding regions which may increase concerns about the representation of smaller towns and rural communities*
- *recognition that a Councillor's responsibility in the Act is to represent the interests ... of the community as a whole and not a particular interest group".*

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 noted the submissions addressing this factor. Issues raised included concerns around the impact on services for smaller towns and rural areas of this merger and the Councils' concerns that the merger will have negligible positive impacts on service delivery.

The Delegate noted research from the 2004 mergers which evidenced a range of service improvements resulting from those mergers. The Delegate stated that both Councils acknowledged the need for a merger, while arguing that a merger of Boorowa, Harden and Young would have a more positive impact. The Delegate concluded that the proposed merger will modestly increase the scale of the council and therefore the merger could improve council's services.

The Commission's view is that the Delegate did not adequately consider 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 that some submissions raised concerns that this merger proposal is unlikely to generate the same positive employment benefits of the Boorowa, Harden and Young merger.

The Delegate concluded that legislated employment protection provisions will mitigate the potential negative impacts on employment of this proposal. The Delegate also concluded that this merger is likely to have fewer positive impacts on employment than the Boorowa, Harden and Young (Hilltops) merger, as there are fewer opportunities for employee career progression in the smaller merged council.

The Commission's view is that the Delegate adequately considered the issues under this factor, while noting the limited analysis provided.

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 identifies the main concerns in submissions were around the potential decline in services to rural communities due to a reduction in rural elected representation.

The Delegate noted the potential negative impacts on rural community employment are adequately mitigated by section 218CA of the Act which requires the new council to maintain current employment levels in Boorowa town and any village that currently has a council office or depot, as far as practicable. The Delegate also noted the shift in representational balance of Boorowa’s villages and rural communities and suggested strategies that could be considered by the merger council, including:

- regularly holding council meetings in the smaller towns
- the establishment of section 355 committees to represent the opinions of village and rural residents to the merged council that include the active participation of councillors
- comprehensive, annual engagement by the council with the smaller towns and rural communities as part of the Community Strategic Plan process.

The Delegate concluded the impacts on rural communities can be managed if appropriate strategies are implemented. She also noted the merger is not expected to result in additional economic development opportunities 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 the mixed views in submissions on the implementation of wards. She also noted that the Councils do not support the implementation of wards. The Delegate concluded that the implementation of a system of wards would reduce the positive impacts of the merger proposal by prolonging division between communities, as the new councillors could be seen as representing pre-merger constituencies rather than the whole of the new community.

The Delegate stated that:

“Division of the proposed merger into wards is not recommended, as it does not offer a viable strategy to address stakeholders concerns about the representation of smaller centres and rural communities in the context of a much larger urban centre”.

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 stated there were no submissions about representation of the views of ethnically and culturally diverse communities or of indigenous communities. The Delegate considered the two local government areas are characterised by relatively low levels of ethnic diversity and Aboriginal and Torres Strait islander populations.

The Delegate did however note that concerns were raised about the lack of balanced representation between urban and rural communities’ opinions.

The Delegate concluded that the new council can adequately consider the unique opinions of diverse communities, if appropriate mitigation strategies are implemented. The Delegate suggested some strategies to ensure engagement including:

- regularly holding council meetings in the smaller towns
- the establishment of section 355 committees to represent the opinions of village and rural residents to the merged council that include the active participation of councillors
- comprehensive, annual engagement by the council with the smaller towns and rural communities as part of the Community Strategic Plan process.

The Commission’s view is that the Delegate adequately considered the issues under this factor, while noting the limited analysis provided.

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 commented on the following issues:

Transitional governance arrangements

The Delegate stated if the merger is implemented, transitional governance arrangements will be critical and that transitional arrangements will be in place until the first councillors of the merged council are elected.

The Delegate suggested that the Minister appoints 8 former councillors under the leadership of the current Boorowa Mayor, who is also the current chair of the Canberra Region Joint Organisation of Councils to provide interim governance.

Name of merged council

The Delegate noted the language of submissions received made it clear that a merger of the Boorowa and Young would not be a merger of the 'Hilltops' area. The Delegate suggested the name for the new merged council to be Southern Slopes.

Investigation and negotiation of alternate merger options

The Delegate noted that a number of submissions suggested alternative merger proposals. These included:

- a merger between Boorowa, Young, Cootamundra and Harden,
- a merger with Cowra Shire, Upper Lachlan or Yass Valley, and
- a merger with another council that is equally focussed on development aligned to the Canberra region.

Some submissions proposed that the Minister supports the two councils to negotiate with different merger partners including Yass, Goulbourn or Cowra. The Delegate also noted that some submissions argued that this merger proposal should not be implemented as a 'merger of convenience' if the Hilltops merger (Boorowa, Harden and Young) does not proceed.

The Delegate further noted that Boorowa Council in its verbal submission also committed to develop a new proposal if the Hilltops merger did not proceed.

Concern about Harden's attitude to the Hilltops merger

The Delegate noted concerns raised in submissions about Harden's attitude towards a Hilltops merger.

Young's position

The Delegate noted that Young Council argued that it has the ability to become 'Fit for the Future' as a stand-alone council but considered that it is better for the whole region to merge. The Delegate stated that Young Council had stressed that a merger is in the interest of the whole region and not just specifically in the interests of Young township.

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

The Commission notes that the name of a new council and transitional arrangements are matters for the Minister.