
**PROPOSED MERGER OF
HORNSBY SHIRE (PART) AND KU-RING-GAI
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 Hornsby Shire (part) and Ku-ring-gai 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
22 April 2016

1. Summary of Local Government Boundaries Commission comments

The Boundaries Commission has reviewed the Delegate's Report on the proposed merger of Hornsby Shire Council (part) and Ku-ring-gai 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, 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 Hornsby Shire Council (part) and Ku-ring-gai 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
Hornsby Shire Council	171,400	201,750
Ku-ring-gai Council	124,700	151,100
New Council	296,100	352,850

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 are required to examine and report upon each merger proposal rigorously and fairly. The examination process includes Delegates calling for submissions and holding a public inquiry on each proposed council merger. Delegates are to prepare a Report on the proposal and provide 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:

“It is recommended that the proposal as submitted proceed to implementation.”

The Delegate made the following other recommendations and findings:

“It is recommended a public information campaign will be required to address concerns and better inform the community.

...To ensure fair and adequate representation, it is recommended that the proposed new council have 15 Councillors, including a Mayor elected by the Councillors and that the Council be divided into 5 wards of 3 Councillors each.

...Evidence suggests the initial stages of a merger will require a transition working group possibly with external independent facilitation and mediation.

...Evidence suggests that an Independent Planning Panel be established with delegated authority to facilitate independent and impartial consideration and determination of development applications and any other matters referred to it by the General Manager.

...It is recommended a new name be chosen for the Council, if the merger is implemented, that facilitates the community moving forward.

...The new Council enters into discussion with its northern local neighbour(s) with a view to reviewing the boundaries to improve representation and consultation for the Lower Hawkesbury River Communities.

...The new Council considers the merit of transferring the area west of the Berowra creek to The Hills local government area.

...Consider the merit and financial impact of adjusting the boundary to of the new Council to the transfer of North Epping to Parramatta if both merger proposals are implemented."

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 1,113 written and verbal submissions from the public, community and other organisations and councils.

The Delegate held two public inquiries on 3 February 2016 at the Pymble Golf Club, St Ives.

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.

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 and the views expressed at the public hearings.

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 detailed submissions by both Councils and the community in regard to the advantages and disadvantages of the merger proposal and the concerns that particularly relate to the KPMG analysis and modelling. The Delegate also considered community submissions addressing the financial impacts aspect, and the main themes from those submissions.

Financial impact of loss of area south of M2

The Report noted that both Hornsby and Ku-ring-gai Councils calculated that the loss of the area of Hornsby Shire Council south of the M2 Motorway, will reduce the operating result by a further \$6.4 million. The Delegate noted the assumption used by KPMG in its modelling was on a per capita basis and therefore potentially inaccurate but that such potential and its impact on the operating result had already been accounted for in the merger proposal.

Hornsby Quarry Liability

The Report noted that numerous submissions claimed the cost of remediation of the Hornsby Quarry is around \$200 million and is an unfunded liability. The Delegate noted that evidence provided to him indicated that figure had been made in a local publication without rational evidence and misrepresents the costs. The Report stated that Hornsby Shire Council submitted details of planned rectification with reasonable cost estimates

Special Rate Variations (SRVs)

The Delegate highlighted that the merger proposal indicates (page 4) both Hornsby Shire and Ku-ring-gai Councils have received SRVs, for example:

- Ku-ring-gai Council received approval of 5.0% over a one-year period in both 2013-14 and 2014-15; and
- Hornsby Shire Council received approval for a cumulative SRV of 9% over a three year period from 2011-12.

The Delegate concluded that together with the SRVs evidenced in the merger proposal and the TCorp report, it was clear both Councils relied extensively on SRVs to undertake infrastructure and asset upgrades and renewals.

Infrastructure Backlog

The report noted that the merger proposal refers to the infrastructure backlog across the Hornsby and Ku-ring-gai areas as being \$171 million as at 2013-14. The Report also noted that Ku-ring-gai Council disputed that amount and its submission advised that as at 30 June 2015, the total combined backlog for both Councils was \$34 million. The Delegate highlighted that Ku-ring-gai Council engaged Morrison Low to undertake a review of Council’s asset and financial data which resulted in its

2014-15 infrastructure backlog being recalculated to be \$26 million. Similarly, the Report noted that Hornsby Shire Council's 2014-15 infrastructure backlog is reported to be \$7 million.

The Delegate concluded that whilst Ku-ring-gai Council rightly identified that its infrastructure backlog was substantially lower, the higher backlog data was possibly used to justify its application and approval for SRVs for 2013-14 and 2014-15.

Analysis by KPMG for Hornsby Shire Council

The Report noted that as part of the examination process, the Delegate accessed a report prepared for Hornsby Shire Council by KPMG (Analysis of local government reform options in the Northern Sydney area – 22 May 2014). The Delegate considered that this analysis provided significant comfort that the projected performance improvements were credible and achievable.

The Delegate concluded that the identified savings are realistic, although potentially conservative.

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 that Hornsby Shire Council supports the Government's view that the communities across the Hornsby and Ku-ring-gai area share common characteristics and connections. The Report noted that Ku-ring-gai Council indicated such claims by Hornsby were incorrect or misleading.

The Delegate concluded that the majority of the submissions indicate that many residents identify with their localities as well as their local government area. Whilst the geography of the two Council areas contains some differences the Delegate considered that otherwise no impediment to the amalgamation proposal was presented from the perspective of communities of interest and geographic cohesion.

The Commission's view is that the Delegate adequately considered the issues under this factor, while noting the content of the Delegate's Report for this factor consists largely of direct quotes from Council submissions.

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 found that the similarities between the areas, particularly with regard to their origins, rural lifestyle and richness were obvious. The Report noted Ku-ring-gai residents are particularly proud of their history engendering strong volunteerism.

The Delegate stated his belief that comments made regarding the differing planning controls were unfounded. The Delegate noted that if the merger is implemented, the planning controls of each of the component Councils are carried forward into the new entity and change would be unlikely to occur for a considerable period. Change would only occur following extensive consultation with the residents.

On the other hand, the Report noted the fragmentation of the Hornsby Shire Council area would impact on the historical and traditional values.

Despite the issues raised in submissions, from his examination of historical and traditional values of the affected areas, the Delegate considered that there was no impediment to the amalgamation proposal presented.

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”.

The Delegate considered Council and public submissions regarding the attitudes of residents and ratepayers. The Report noted that submissions clearly indicated that the residents who engaged in the process either through council online surveys or submissions through the public inquiry, both oral and written, expressed a majority view of opposition to the merger.

The Report noted that Ku-ring-gai Council expressed a view on behalf of its residents that they are opposed to the merger proposal, and that the Mayor contacted residents and ratepayers who are subscribers to Ku-ring-gai Council's email database providing a pro-forma objection submission. The Report also notes that Hornsby Shire Council demonstrated it is supportive of local government reform and clearly sought to advocate on behalf of those residents who live south of the M2 motorway.

The Delegate also noted that the population of the area affected by this proposal is approximated at 270,060 (2014). A total of 1,113 submissions were received (67 verbal and 1,046 written), which the Delegate noted, represented a return rate of 0.41%. Despite the overwhelming majority of submissions expressing opposition to the proposal, under the circumstances, the Delegate believed the submissions to be only marginally representative of the general opinions of the residents.

Having had regard to the attitude of the residents and ratepayers of the Hornsby and Ku-ring-gai LGAs, the Delegate found that there was no impediment to the Proposal proceeding, with respect to this factor.

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 Delegate noted that the proposal, if implemented, would change the representation ratios when compared to those currently applicable at Hornsby and Ku-ring-gai with the new entity (assuming the recommendation as to the election of the maximum 15 councillors) having a ratio of 1:18,004; an increase on the current ratios in of 1:14,908 in Hornsby and 1: 12,097 in Ku-ring-gai.

The Delegate recommended that if the proposal is implemented, there should be 15 Councillors, including the Mayor.

A number of submissions recommended the Mayor be popularly elected, including one from the current Mayor of Hornsby who is popularly elected. Following consideration of submissions, it was the view of the Delegate that if the merger proposal was implemented the Mayor should be elected by the Councillors. The Delegate noted that if the Councillors were to resolve there is merit in a popularly elected mayor, this can be put to the electors to decide at a constitutional referendum.

The Delegate concluded that the adverse effect on representation ratios of the current local government areas was not insurmountable, particularly if precinct committees become a feature of the new entity, and therefore he did not consider this factor as an impediment to the implementation of the proposal.

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 that there are already shared services between Ku-ring-gai Council and Hornsby Shire Council and this was acknowledged in Ku-ring-gai Council’s submission which it says “...demonstrates the spirit of collaboration on specific issues ...”.

The Delegate noted that the harmonisation of service levels would be a major requirement for the new entity, ensuring the balance is matched to the needs of the new council area.

The Report noted that the resolution of any conflict that arises will be need to be addressed as it would currently be within the existing Councils. The Report also stated that the new council will be

required to complete a draft Operational Plan identifying not only how it proposes to equalise the rating impact but also how this Plan will meet the required services levels.

The Delegate did not consider this factor as an impediment to the implementation of the proposal.

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

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 considered both Council submissions in relation to this factor. He indicated that impacts from the proposed merger were expected and that the process will require focused attention from the leadership of the new entity to ensure such impacts are minimised in a manner that any corporate entity would need to undertake.

The Delegate considered that many of the concerns regarding the impact of the proposal, if implemented, are addressed by the Act in the form of limitations on forced redundancies, transfers and maintenance of staff positions in small rural centres.

The Delegate did not consider this factor as an impediment to the implementation of the proposal.

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 Report noted that Hornsby Shire Council, which does have rural areas, submitted that there would be no significant impact on service delivery in the event of a merger. The Report noted that Ku-ring-gai Council submitted that the existing rural areas of Hornsby Shire would be negatively affected by the merger proposal due to the more than doubling of the population in densely populated urban areas to the south.

The Delegate concluded that the merger, if it proceeds, would present few more challenges than already exist for a Council servicing rural communities and on that basis did not consider this factor as an impediment to the implementation of the proposal.

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 stated that the ward system currently operating in some NSW local government areas, including both Hornsby and Ku-ring-gai, has a number of advantages including the specific representation of a smaller geographical area and a subsequent enhancement of local knowledge, people and issues by elected representatives.

The Report noted that Hornsby Shire Council is currently divided into three wards with three councillors representing each ward plus a popularly elected Mayor, while Ku-ring-gai Council is currently divided into five wards with two councillors representing each ward and a Mayor elected from within those ten Councillors.

The Delegate recommended dividing the new council entity into five wards with three Councillors being elected to each ward. The Delegate stated that this would allow for representation of each ward to remain underpinned by specific local knowledge. The Delegate concluded that although Hornsby currently has a popularly elected Mayor, this is more appropriately decided by the new Council and its residents in due course. The Report noted the legislative impediment to recommending definitively that two of these wards should be reserved for the Ku-ring-gai local government area, “however desirable”.

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 considered Council and community submissions on this factor. He noted that both Hornsby and Ku-ring-gai have similar proportional representation from people who identify as Aboriginal and Torres Strait Islander and people from non-English speaking backgrounds (28.4% and 21% respectively). He further noted that Ku-ring-gai Council was successful in engaging many of its residents to make pro-forma submissions; however few of them gave evidence of any real impact on diverse communities within the current local government boundaries.

The Delegate discussed the current use of Precinct Committees in some councils in Sydney as a means of encouraging resident involvement in council decisions. The Delegate noted that submissions were received from a number of organisations which might be appropriately constituted as such Committees.

The Delegate did not consider this factor as an impediment to the implementation of the proposal.

The Commission's view is that the Delegate adequately considered 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 noted that Hornsby Shire Council submitted details on the impact of the excision of the area south of the M2 motorway which currently falls within the Hornsby boundary, and asked that, should the proposal succeed that the relevant Councils be provided with guidance on transition processes. The Delegate noted that other submissions also related to boundary changes with a number of specific suggestions.

The Delegate concluded that the suggested boundary adjustments was not within the scope of the current process and should be considered by the new Council if the merger proposal is implemented.

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