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**EXAMINATION OF A PROPOSAL TO ALTER THE  
BOUNDARIES OF THE SNOWY VALLEYS LOCAL  
GOVERNMENT AREA AND CREATE A NEW LOCAL  
GOVERNMENT AREA**

**Dissenting Report  
by Commissioner Gleeson  
to the Minister for Local Government**



**FEBRUARY 2021**

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Local Government Boundaries Commission  
Locked Bag 3015  
Nowra NSW 2541

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

Dear Minister

**Proposal to Alter the Boundaries of the Snowy Valleys Local Government Area  
and Create a New Local Government Area**

I have pleasure in providing my dissenting report on the above proposal as allowed under clause 12 of Schedule 2 of the *Local Government Act 1993*.

Yours sincerely

A handwritten signature in blue ink that reads 'Grant Gleeson'.

Grant Gleeson  
Commissioner  
16 February 2021

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## Glossary of terms used

Term	Meaning
“Boundaries Commission” or “Commission”	the Local Government Boundaries Commission established under section 260 of the Act
“Act”	the New South Wales <i>Local Government Act 1993</i>
“Minister”	the NSW Minister for Local Government
“area”	a local government area constituted under the Act
“demerger”	the reversal of a previous amalgamation of two or more local government areas (see also note below)
“merger”	the May 2016 amalgamation of the then Tumut and Tumbarumba local government areas
“Proposal” or “demerger Proposal”	the elector-initiated proposal under section 215 of the Act that, in effect, seeks to reverse the 2016 merger
“factor(s)”	the matter(s) that the Commission must, under section 263(3) of the Act, have regard to in examining a proposal
“economies of scale”	the concept in economics that larger organisations can produce goods or services at a lower unit cost due to their ability to spread fixed costs over a greater number of units
“diseconomies of scale”	the concept in economics that economies of scale cease to operate after a certain point as additional costs (such as co-ordination) arise
“Delegate”	the person appointed by the Chief Executive of the Office of Local Government to examine the Government’s proposal that ultimately led to the May 2016 merger.
“OLG”	the Office of Local Government
“SVC”	according to the context, either the Council of the Snowy Valleys local government area, or the area itself.
“Proponent” or “STS”	Save Tumbarumba Shire Inc, the co-ordinator of the elector-initiated Proposal
“RMS”	NSW Roads and Maritime Services
“lga”	a local government area

**Note:** The term “demerger” has been widely used to describe the outcome sought by the proponents of the current proposal. While (for ease of reference) the Boundaries Commission uses that term in this report, it is important to understand that the *Local Government Act 1993* makes no reference to the “demerger” of a lga and makes no specific provision for such a process. If the proposal were to be implemented (following a recommendation by the Minister for Local Government to the Governor), the mechanism by which this would occur is to (i) create a new lga out of the current Snowy Valleys lga, with boundaries consistent with the boundaries of the former Tumbarumba lga and (ii) reduce the boundaries of current Snowy Valleys lga accordingly (ie consistent with the boundaries of the former Tumut lga

## 1. Background to the Proposal and the Commission's Examination

I adopt the analysis of the Majority Report regarding the background to the Proposal and the Commissions examination of it with the following additional analysis and comment.

As the Majority Report notes, the current Snowy Valleys local government area was created by Proclamation published in the NSW Government Gazette on 12 May 2016 from the amalgamation of the former Tumut and Tumbarumba local government areas. The amalgamation followed a proposal by the then Minister for Local Government which was part of a suite of proposals involving amalgamations of local government areas across metropolitan, regional and rural New South Wales.

The issue of council mergers had been topical for some years. A background paper produced by LG NSW in 2015 on the issue of mergers cited a 1997 discussion paper produced by LG NSW which at that time noted: *'ongoing change was inevitable and councils needed to be proactive in implementing the right sort of changes for their areas.'*<sup>1</sup>

In bringing forward the 2016 proposal the Minister was exercising a power conferred on him under the Act. The Government repeatedly stated that it had undertaken four years of extensive consultation with communities and councils. It also stated that it had commissioned independent research and analysis. At the time, the Government considered that this background provided a compelling case for consolidating the number of councils in the state.

It was the forced nature of the change brought about by the Minister's proposal that generated the local opposition at the time, and as noted in the Majority Report, this opposition has continued to this day.

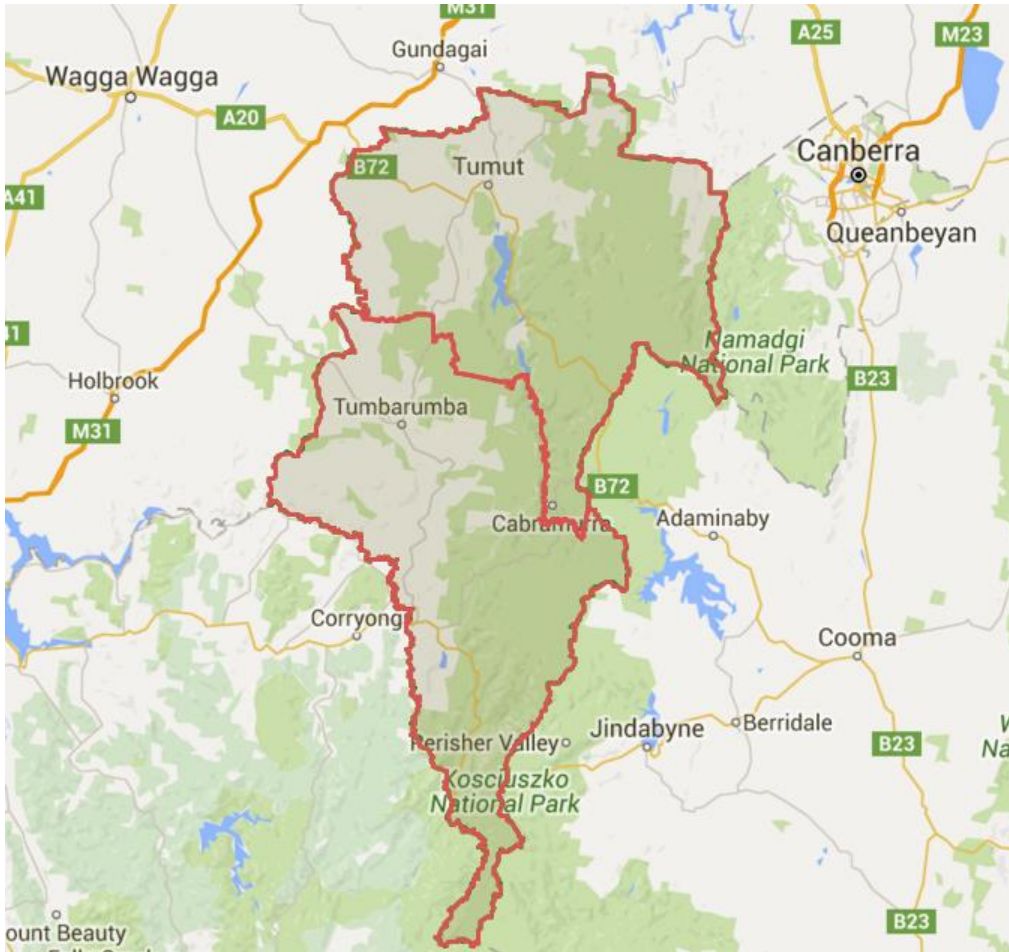
A copy of the Save Tumbarumba Shire Inc covering letter to the Proposal is included as Attachment 1. (An earlier proposal submitted to the Minister was deemed invalid as it failed to meet to meet the section 215(2) minimum number requirement.)

If implemented, the Proposal would establish a new local government area with boundaries corresponding to those of the former Tumbarumba Shire that existed prior to 12 May 2016. The existing Snowy Valleys area would continue to exist but with reduced boundaries corresponding to the former Tumut Shire boundaries prior to 12 May 2016.

The following map shows the boundaries of the former shires before their 2016 amalgamation. Together they form the current Snowy Valleys Shire.

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<sup>1</sup> Cited in. Amalgamations: To Merge or Not to Merge? February 2015, p7.



Area	Area (sq km)	Population (2016)
Former Tumbarumba Shire	4,393	3,449
Former Tumut Shire	4,566	10,990
Existing Snowy Valleys Shire	8,960	14,437

(a) Numbers do not add as ABS randomly adjusts cell values for confidentiality reasons.

Before deciding whether to refer the Proposal to the Boundaries Commission, on 9 December 2019 the Minister gave public notice of the Proposal as required by section 216 of the Act. The public notice invited submissions as to whether she should refer the proposal to the Commission. In response the Minister received approximately 536 representations, the majority of which addressed the merits of the proposal.

On 25 February 2020, the Minister referred the proposal to the Boundaries Commission. A copy of the Minister's letter is included as Attachment 2.

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## 2. Summary and Recommendations

Where I fundamentally depart from my fellow Commissioners is on the ultimate recommendation. In my view, recommending the Proposal to the Governor at this time will not be conducive to the provision of efficient and effective local government in the existing and proposed new area.

In a demerger situation the continuing SVC, operating within a reduced area, population base and organisational structure, will experience diseconomies of scale and it will struggle to achieve its current Long Term Financial Plan (LTFP) target. It is difficult to assess the full implications of this.

There have been no savings identified with recommending the Proposal, only additional expenditure. There will be immediate and on-going costs incurred by the new and diminished SVC. The new Tumbarumba council, if the Proposal is recommended for implementation, will be saddled with an uncertain cost base, new and additional establishment costs and ongoing expenses directly attributable to the demerger. Assuming relativities with the position in 2016, the cost impact is likely to be more pronounced in the new Tumbarumba council as it will have a relatively smaller scale of operation and higher separation costs. Both councils will have recurring costs due to necessary duplication of some roles in the new structures including councillors and executive leadership teams.

The purpose of this Proposal is to create a new council. If the outcome of the process is meant to be conducive to the provision of efficient and effective local government in the existing and proposed new areas, then for the Proposal to warrant recommendation the outcome should not result in either or both of the new councils being mendicant on the State Government. I concur with the views expressed in the Majority Report that at any level of government, financial viability is a key driver of the ability of an entity to provide the range and quality of services that its clients or customers can reasonably expect.

The best outcome should be that both councils will be financially sustainable. But, it seems, not even the Proponent anticipates this will be the outcome as it appears to predicate the viability of the new council on significant and on-going financial support from the Government. On present indications, this is not forecast. The additional costs and expenditure associated with the implementation of this Proposal will accordingly have to be borne by the community of the existing area.

In a demerger new Tumbarumba is forecast to show ongoing annual operating deficits before grant funding in the order of \$21.6m over 5 years averaging \$7.2m per annum. Approximately 52% of the scheduled capex to be delivered into the new area is unfunded signalling the likely on-going reliance the new council will have on cash reserves created in the establishment of the council to enable this new council to fund these projects. In a demerger scenario the net cash outflow is predicted to be in the order of \$20.6m to FY25. Given forecast operating deficits, Tumbarumba will need to consider implementing a rates and annual charges uplift absent external funding, additional grants or cost savings initiatives being identified. The ability of the new council being able to do this may be problematic.

Despite this, it is apparent that a significant minority of the electors of SVC have expressed a clear view in favour of the Proposal, but that view is not uniform across the existing SVC area. It is to be noted that approximately 1,355 electors out of a total elector population of 10,531 electors (at the time)

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supported the Proposal.<sup>2</sup> Assuming that each of the individual persons who made submissions to the Minister and to the Commission, or who addressed the Commission comprise part, if not all, of those electors, and even allowing for 'new' persons whose names are not on the petition, the views expressed do not approach a majority of the electors in the existing area. This is important in the context of what I would describe as a 'plebiscite' approach to this Proposal. It is legitimate and proper for the Commission to have regard to the views of those expressing, often strongly, the view that they want 'their' council 'back.' But taking that perspective as the lens through which to view the proposal runs the risk of distorting the assessment of that factor. Regardless of the 'volume' of the voice, the persistence of an attitude, or the strength of a conviction, that is but one factor among many that the Commission must take into account. It should not be determinative, and this is where I depart from my colleagues.

The Commission's task is to have regard to that anti merger attitude and to weigh that in the balance. It is a factor which remains a concern. SVC will be constrained into the future if it cannot achieve an alignment between councillors, management and the community, but the persistence of that attitude has not meant that the council has been unable to function. What the existing council has achieved despite the on-going 'fight' is remarkable. This is especially so when considered against other difficulties confronting the council such as statutory protections, rate freezes and external shocks such as drought, floods and bushfires.

The uncertainty associated with the campaign against the merger waged during the whole of the recent period, which was always meant to be a 'settling in' period, has meant stakeholder alignment has been challenging. I accept that a significant minority within the community has 'withdrawn' support to SVC during the five-year campaign waged against the merger.<sup>3</sup> That campaign, led by the Proponent, has deprived SVC of the opportunity to engage fully with this community. That SVC has made mistakes is acknowledged by the General Manager of SVC.<sup>4</sup> But it is clear that the Mayor and a cohort of the elected councillors of SVC want to represent the whole SVC community.<sup>5</sup> They still want to give it a go.

The fact is that the 2016 proposal reflected an option available to the Minister under the Act. The Minister's proposal was lawful. It has been implemented. Were the community of Tumbarumba to elect to work with SVC then some of the communication problems described by the community in representations,<sup>6</sup> submissions and addresses could perhaps be addressed.

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<sup>2</sup> At the time of the merger in 2016 Tumut Shire Council had 8113 electors and Tumbarumba Shire Council had approximately 2466 electors.

<sup>3</sup> As a representative for the Proponent put it to the Commission, Session 1 Tumut.

<sup>4</sup> Matthew Hyde Session 1 Tumut p15: *'We're are not a perfect organisation. We are here to listen, evaluate and implement change on a carefully considered basis. And I accept we aim to continually improve in everything that we do.'*

<sup>5</sup> Mayor James Hayes Session 1 Tumut p12:

*'When amalgamation was spoken about I was against amalgamation, and I'm on the record as being against amalgamation. However, when it happened I stood for the Snowy Valleys Council. So I stood for the amalgamated council. I didn't stand that I would do everything I could do demerge; I stood to say that I would try and make what was given to us as successful as possible, and I had eight other councillors with me.'*

<sup>6</sup> See for example, the issues over the use of the showground – submission #093.



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Seen in that context it cannot be fairly said that the merger ‘has failed,’ especially if it be accepted that the benefits of the merger were anticipated over the long term, not short term. Scarce but valuable resources of the State were made available to assist in the merger process. As the LGNSW report of 2015 notes (citing Hoffman and Talbot): ‘*Success will and has been achieved over time (5-10 years) depending on leadership, policy choices and response to external impacts.*’<sup>7</sup>

It was always expected that the benefits of the merger would be realized over a 20-year time horizon commencing after the expiration of the initial 4 year transitional period, ie. now.<sup>8</sup> It was not expected that SVC would have, by now, achieved the material savings anticipated at the time of the merger. It is in this space that the untimeliness of this Proposal features. If a significant section of the community has withheld support for all of this settling in period, then it is arguable that the settling in period has not begun. I concur with the Majority Report that a continuation of this antagonism is to no-one’s benefit. Not to the residents of Tumbarumba; not to the residents of Tumut; not to the Council itself. But I do not concur with the view that the solution is to create a new council. Bringing closure to this campaign may allow all to move on.

***Dissenting Recommendation: I recommend that the Proposal not be implemented.***

#### **Majority Report Supplemental recommendation**

With regards to the Majority Report supplemental recommendation, and while I share aspects of their concerns, I note that in relation to the implementation of the Proposal there are broad and facultative powers contained in section 213 of the Act which are available to the Governor when making a proclamation. The Governor may include such provisions as are necessary or convenient for giving effect to the proclamation. This is a power which will go quite some way to resolving uncertainties that may be identified. Whether there is a need for legislative amendments should properly abide the outcome of deliberations regarding the form of any proclamation.

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<sup>7</sup> LGNSW, *Amalgamations: To Merge or not to Merge?* (2015), p10.

<sup>8</sup> Delegate Report Knockles (2016) p14.

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### 3. The Nature of the Proposal and Role of Commission

I adopt the analysis of the Majority Report on the nature of the proposal and role of the Commission with the following additional analysis and comment

The Proposal is made to the Minister pursuant to s. 215 of the Act. The Proposal frames the application to the Minister as being to ‘reinststate the former Tumbarumba Shire LGA.’ It is properly understood as a proposal for the constitution of a new council out of an existing area, itself created in May 2016.

As the Majority Report notes, this is an important clarification as there is no mechanism in the Act to ‘de-merge’ or to ‘reinststate’ a council. If the Minister recommends the Proposal to the Governor, and the Governor proclaims it, then what will be created is a ‘new’ council area. It is in that context that the work of the Commission is to be understood.

Section 214 of the Act requires that before the Governor may proclaim the new area the proposal must be dealt with under Division 2 of Part 1 of Chapter 9 to the Act. It is the Minister’s referral of the Proposal to the Boundaries Commission pursuant to s. 218 of the Act that gives the Commission the jurisdiction and power to examine and report on the Proposal.

In the exercise of its functions the Commission is bound to have regard to specific statutory factors set out in section 263(3) of the Act. The Act does not prescribe what is required by the examination of the proposal or how the examination should be undertaken. These matters are left to the judgment of the Boundaries Commission.<sup>9</sup> It is not the case that the Commission can ‘disregard’ the report of the Delegate in 2016.<sup>10</sup> That report, and the Commission’s review of it, led to the Minister’s recommendation of that proposal to the Governor and the subsequent proclamation constituting the current area. The Delegate’s report remains relevant to the Commission’s consideration of the Proposal.

I otherwise adopt the comments of the majority in Section 3 of their report on the role of the Commission.

### 4. The Examination Process

I adopt the analysis of the Majority Report on the Examination process.

### 5. The Commission’s Approach in Considering the Proposal

I adopt the analysis of the Majority Report with regard to the approach to considering the Proposal with the following additional analysis and comment.

I concur with the Majority Report’s view that any recommendation arising from its examination of the Proposal should be based on what is the better outcome for the residents and ratepayers of the existing local government area. I also agree that it needs to be demonstrated by the Proponent that

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<sup>9</sup>Woollahra Municipal Council v Minister for Local Government [2016] NSWLEC 86, [153].

<sup>10</sup> As submitted by a legally qualified resident, submission #654.

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residents and ratepayers of the area will, as a whole, be 'better off.' To assist me to form a view on this aspect I have kept in mind the catch-all provision in s.263(3)(f) which directs the Commission to have regard to matters 'relevant to the provision of efficient and effective local government in the existing and proposed new areas.' That has assisted me to identify our various points of departure.

## 6. The Dissenting Commissioner's Observations Relating to each Factor

### 6.1. Financial Advantages or Disadvantages

Section 263(3)(a) of Act requires the Commission 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"*.

#### 6.1.1. Submissions and presentations made

The following table shows the number of written submissions and oral presentations made to the Commission that addressed this factor.

Written submissions addressing this factor			
Forwarded by Minister	Submitted directly to Commission	Total (a)	As a percentage of total submissions
453	211	664	47%

(a) Note that many individuals made submissions both to the Minister and to the Commission, often in largely similar terms.

I adopt the analysis of the Majority Report under heading 6.1.1 Submissions and presentations made and 6.2 Discussion with the following additional analysis and comment:

As the Majority Report notes, this was one of the most consistently addressed factors in the written submissions received and presentations made at the public meetings.

While the proposal seeks to 'reinstate' the former Tumbarumba Shire Council this is not financially possible. Since 2016 decisions and work have been undertaken by SVC to implement and give effect to the merger. This has resulted, among other things, in the two former councils being integrated administratively under a single management having a unified IT system, an integrated financial platform and a harmonised staffing structure. Accordingly, the creation of a new council out of the existing SVC will result in direct and indirect financial costs being incurred that would otherwise not need to be incurred.

That is the necessary financial starting point against which any identified financial benefits will have to be assessed. To assist in its consideration of this factor, the Commission engaged Deloitte to provide advice on the financial implications of the Proposal.<sup>11</sup> Deloitte has relied on information supplied by

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<sup>11</sup> Details of the scope of the advice were set out in the Commission's 16 July media release available at [www.olg.nsw.gov.au/lgbc](http://www.olg.nsw.gov.au/lgbc).

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SVC. Some residents are wary of the accuracy of the information supplied,<sup>12</sup> but I am of the view that the data supplied to Deloitte is reliable for the purposes of comparison in that the information is verifiable against published financial data.

### **6.1.2. Discussion**

A primary obligation of the council, reflected in the Principles of sound financial management referred to in Chapter 3 of the Act, is to ensure that spending *'should be responsible and sustainable, aligning general revenue and expenses.'*<sup>13</sup> It is an express role of the Governing Body of the council that it 'ensure' the financial sustainability of the council and that 'as far as possible' that the council acts in accordance with the principles in Chapter 3 of the Act.<sup>14</sup> Accordingly, whilst it is true that local government authorities have a large discretion in the expenditure of what is, in essence, *'other people's monies,'* there are constraints on how those monies ought to be spent. This has relevance in the context of choices that a merged council is called upon to make, especially during the period of statutory staff protections and a rate freeze.

The council was aware from its inception in 2016 that a 4-year rate freeze would inhibit harmonization of rates and the making of a SRV to IPART. This aspect of the merger process, coupled with statutory staff protections and the cost of maintaining Tumberumba as a rural centre, necessarily meant that there were resourcing issues to be addressed. It didn't help the new council to find that its future income would be impacted by the cessation of the former Tumut Council's 15-year SRV at the end of 2019-20. SVC estimates the loss of income associated with this will be \$0.6 million in 2020-21.

SVC and its councillors have approached the merger task in a methodical way. The delivery of the suite of strategic plan is evidence of this. Delivery on those plans is the task confronting the Council. Because of choices which had to be made, many in the community adversely affected by the decisions seem to have viewed the impact through the lens of the merger. But when the decisions are viewed in the light of those limitations, expenditure decisions taken by the administration, including the retention of separate offices and the functions they were to perform, needed to reflect the fiscal limitations confronting council. In the absence of reliable other own source income, the taking of financial decisions to increase council's cost base on an unfunded basis was a recipe for failure.

The conundrum for the Commission is whether reducing the existing council and creating a new smaller council, a process which will necessarily involve incurring more expense without any identified new savings, will generate a net benefit to the affected communities? It is at this juncture that I depart from the Majority Report.

Despite the classification of SVC as a 'Large Rural' area by OLG this does not detract from the fact that even after the merger, the area is still relatively small (in population terms) compared with some other rural LGAs and with all NSW LGAs based on regional towns. SVC has a low population density

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<sup>12</sup> See for example submission #349: *'I believe that the Deloitte's financial report should be disregarded or at least investigated further as the information seems to have been provided by Snowy Valleys Council which is opposing the demerge of its present entity. A forensic accounting audit needs to undertaken to establish the true financial position.'*

<sup>13</sup> See s8B(a).

<sup>14</sup> See s223.

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attributable to the fact of a large proportion of the area that is situated within National Parks for which SVC has no service responsibility. This suggests that diseconomies of large scale are unlikely to exist in the operations of SVC. As the Deloitte report notes, it is more likely that diseconomies of small scale would apply to the two LGAs that would result if the Proposal were recommended to be implemented. Deloitte suggests that the impact is greatest for the proposed new Tumbarumba council.

### **Financial Overview**

I adopt the analysis of the Majority Report under heading 6.1.2.1. SVC Financial Overview: 2016-2020 with the following additional analysis.

In answer to the question, sometimes put: *'what has SVC done for us?'*<sup>15</sup> it is noted that according to information obtained by Deloitte, the merger has led to an uplift in service levels and capital investment across the LGA in the order of \$58.7 million. This has been only partly funded by the merger grant funding (\$20.7 million).

In the former Tumut area, SVC has spent \$5.8 million on the delivery of new assets and programs. These include -

- an expansion of the community transport service to Adelong
- a new visitor centre in Tumut
- implementation of a new organic waste program
- construction of a new library in Batlow
- purchase of a new pump truck
- finalisation of the Batlow CBD Master Plan
- infrastructure backlog reduced from \$5.0 million to \$0.3 million in 2018-19.

In the former Tumbarumba area, SVC has spent \$10.7 million on the delivery of new assets and programs. These include –

- introduction of a waste free weekend program
- implementation of a new organic waste program
- introduction of new heritage and culture celebration events and school holiday programs for youth
- delivery on the Tumbarumba to Rosewood Rail Trail
- delivery on linking Tumbarumba to the Mountain Bike Trail
- infrastructure backlog reduced from \$0.5 million to \$0.3 million in 2018-19.

As the Majority Report notes, based on SVC's audited accounts as at June 2020, SVC had net assets of \$664.1 million<sup>16</sup> including \$639.8 million in Infrastructure, Property, Plant and Equipment (IPPE) and

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<sup>15</sup> See for example submission #278.

<sup>16</sup> Deloitte's analysis, based on the unaudited accounts net asset figure of \$604.7 million, foreshadowed a likely \$60.6 million revaluation of IPPE assets to this figure. Other unaudited 2019-20 data used by Deloitte in its

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\$41.9 million in cash and investments. Over the period since the merger, the Council has invested heavily in its road, sewerage and water networks with each of these areas seeing an increase in overall value.

Borrowings are long term (between 6-25 year terms) and most of the borrowings relate to capital works. Of the total borrowings, approximately \$5.2m relates to assets within the former Tumbarumba Shire area and approximately \$2.7m relates to the former Tumut Shire area.

What this information reveals, as the Majority Report notes, is that in comparison to the situation on merger, where 41% of Tumbarumba's IPPE assets were classified as average (category 3) or poor (category 4) with Tumut also reported approximately 10% of its IPPE assets as average or poor, since the merger, SVC has reduced the proportion of combined IPPE assets reported as average or poor to approximately 10% at June 2020. The combined maintenance backlog pre-merger had been reduced from \$5.5 million to \$0.3 million at June 2019.<sup>17</sup>

### **STS Submission**

The Commission released key findings from the Deloitte report in the week before the public hearings and ahead of the finalization of the report. The Proponent criticized the findings on a variety of grounds.

One ground was referenced to the Proposal, namely the expectation that: *'the government to provide such funding as is required to bring this proposal into effect and to fully reinstate the former Tumbarumba LGA without any cost burden on the community.'* I note that as at the time of this report there has been no announcement from the Government that it will provide funding to assist a demerger. Absent financial support from the Government to fund a demerger the reality is that if the Proposal is recommended, then the cost of the demerger will be borne by the affected communities.

A second ground of criticism drew attention to the former Tumbarumba Shire long term projections. A particular difficulty with this criticism is that the former Tumbarumba Shire projections do not take into account the fact of the merger in 2016 and the fact of the multitude of decisions taken by the new SVC Council. As the Deloitte report notes, following the merger in 2016 wage harmonisation was applied to some Tumbarumba roles to meet minimum salary bands. A new Tumbarumba council will not be able to avoid continuing to operate with the cost base established under these current arrangements, and with the attendant expense.

It is true that there is the potential for a new Tumbarumba council to operate 'more efficiently' but the likely cost base, cash and asset position identified by Deloitte as the likely starting point is difficult to ignore. The more that the starting position is shifted 'against' the continuing SVC then the greater, and disproportionate, will be the impact on the residual SVC council.

Based on the assumptions articulated in the November 2020 Submission of the Proponent,<sup>18</sup> the Proponent contends that a new Tumbarumba Council would return to a surplus in year 5 as set out in

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analysis varies little from the audited accounts.

<sup>17</sup> But, as the Majority Report notes, increasing slightly to \$1.3 million at June 2020.

<sup>18</sup> Submission to the LGBC November 2020 (11 page doc).

the table below.<sup>19</sup> The details of the assumptions (and costings) are not correlated to the calculations in the Draft LTFP. In a supplemental document,<sup>20</sup> this is explained as being due to lack of access to the records of SVC and the materials provided to the Commission for inclusion in the Deloitte’s study.

## Draft Long Term Financial Plan

<i>Financial Sustainability for the New Tumbarumba LGA Council</i>								
Consolidated Income Statement to 2029/30								
Account Description	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30
<b>Income</b>								
Rates, Levies & Annual Charges	5,232,138	5,370,410	5,512,362	5,658,066	5,807,621	5,961,130	6,118,696	6,280,427
User charges and fees	7,719,898	7,912,895	8,110,717	8,313,485	8,521,323	8,734,356	8,952,714	9,176,532
Interest & Investment Revenue	123,202	130,701	138,682	140,000	140,000	140,000	140,000	140,000
Grants, subsidies, contributions and donations - Operating	4,629,972	4,745,722	4,864,365	4,985,974	5,110,623	5,238,389	5,369,349	5,503,582
Grants, subsidies, contributions and donations - Capital	591,410	591,410	591,410	591,410	591,410	591,410	591,410	591,410
Other Income	351,767	358,361	365,120	372,007	379,023	386,172	393,456	400,877
Net gain from the disposal of assets	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000
<b>Total Income</b>	<b>18,678,388</b>	<b>19,139,499</b>	<b>19,612,656</b>	<b>20,090,942</b>	<b>20,580,001</b>	<b>21,081,457</b>	<b>21,595,625</b>	<b>22,122,829</b>
<b>Expenses</b>								
Employee Benefits	8,197,779	8,403,550	8,614,490	8,830,724	9,052,387	9,279,613	9,512,543	9,751,320
Materials & Contracts	3,047,119	3,104,786	3,163,581	3,223,489	3,284,532	3,346,730	3,410,107	3,474,683
Depreciation & Amortization	4,780,178	4,827,980	4,876,260	4,925,023	4,974,273	5,024,016	5,074,256	5,124,999
Other Expenses	2,238,135	2,294,089	2,351,441	2,410,227	2,470,483	2,532,245	2,595,551	2,660,440
Interest on loans	231,662	210,361	192,530	176,211	161,275	147,605	135,094	123,643
<b>Total Expenses</b>	<b>18,494,874</b>	<b>18,840,766</b>	<b>19,198,302</b>	<b>19,565,675</b>	<b>19,942,950</b>	<b>20,330,210</b>	<b>20,727,551</b>	<b>21,135,085</b>
<b>Operating Result - Surplus/(Deficit)</b>	<b>183,514</b>	<b>298,733</b>	<b>414,354</b>	<b>525,268</b>	<b>637,051</b>	<b>751,247</b>	<b>868,074</b>	<b>987,743</b>
<b>Operating Result - Surplus/(Deficit) before capital</b>	<b>-407,896</b>	<b>-292,677</b>	<b>-177,056</b>	<b>-66,142</b>	<b>45,641</b>	<b>159,837</b>	<b>276,664</b>	<b>396,333</b>

Finally, the Proponent further contends that the merged council ‘is not, and cannot become financially sustainable.’<sup>21</sup> The Proponent derives outcomes to support that assertion from ‘net operating results excluding capital grants.’<sup>22</sup> As noted below, regional councils are structurally dependent on grants so to exclude grants from the calculus distorts the picture. It is noted that this is not the basis the Proponent adopts for its own propounded LTFP.

In the result, there are real concerns as to whether it will be possible to realise for both the reduced SVC and the new Tumbarumba council the financial advantages and disadvantages for the residents and ratepayers of the areas concerned.

## Employment Overview

I adopt the analysis of the Majority Report under heading 6.1.2.2. SVC Employment Overview: 2016-2020 with the following additional analysis.

As at June 2020, actual FTE was reported as 222, in line with the actual FTE at merger date. The FTE in Tumbarumba has remained above 83 FTE in line with rural centre requirements.

There is now a single organisation structure operating under a single brand. The initial workforce reform task under the post merger employment protections was completed in 2017. At the merger date the combined councils employed approximately 222 FTE, the calculation being complicated by the fact that Tumbarumba did not report establishment positions or vacant roles in their financial

<sup>19</sup> Draft LTFP Nov 2020 Submission p11

<sup>20</sup> Submission by Save Tumbarumba Shire Inc November 2020 (24 page doc), App A p1.

<sup>21</sup> 24 Page Doc App B p1.

<sup>22</sup> Ibid.



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statements. Following the initial reorganisation, the actual FTE reported in June 2017 was 228 FTE. Staff continue to work in both Tumut and Tumbarumba with some staff spending time in each place.

It appears that the initial disruptions to staff, in terms of financial impacts, are now behind the Council. However, if the Proposal is recommended to the Governor a new round of protections will apply.

### **SVC Financial Outlook**

I adopt the analysis of the Majority Report under heading 6.1.2.3. SVC Financial Outlook with the following additional analysis and comment.

A constant theme in the submissions and addresses has been the absence of ‘savings’ attributable to the 2016 merger. Often the submissions overlook the efforts of the council to reinvest savings. The Audit Office’s 2019 Workforce Review found that councils did not expect significant efficiencies during the employment protection period due to the statutory protections in the Act and the impact of a number of logistical and administrative challenges associated with merger activities.<sup>23</sup>

That savings can be achieved with careful management is evident from reports at other councils such as Northern Beaches and Dubbo.<sup>24</sup>

Deloitte has not identified savings arising from the implementation of the Proposal. As such, only diseconomies have been identified. That said, it is recognised that, in theory, a new council may look to innovative strategies to identify savings not within the contemplation of Deloitte.

The Proponent clearly believes that savings are achievable. It has posted on its Facebook page: *Who would you rather have running your council? A group of capable financially savvy Tumbarumba locals, engaged with their community, or a bunch of Tumut focused councillors with a track record of failure?*<sup>25</sup> Leaving aside the pejorative in this comment, a difficulty with the assumption implicit in the comment is the fact that the new council’s ability to generate savings without increasing rates and charges will necessarily be inhibited by:

- An absence of certainty for the expectation that the Government will ‘provide such funding as is required to bring this proposal into effect and to fully reinstate the former Tumbarumba LGA without any cost burden on the community.’<sup>26</sup>
- The maintenance of operating and capital grants at or above historic levels especially given current recessionary circumstances.
- The ability to obtain additional own source income from external sources having regard to

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<sup>23</sup> *Workforce reform in three amalgamated councils*. Accessible at: <https://www.audit.nsw.gov.au/our-work/reports/workforce-reform-in-three-amalgamated-councils>

<sup>24</sup> Dubbo Regional Council has identified savings of more than \$9m as well as an increase of income of \$4m over the past 3 years - see <https://meltwaternews.com/ext/mediac/290862200.pdf>

Northern Beaches has announced that it is on track ‘to almost double the NSW Government’s \$76.3 million estimated savings from its 2016 amalgamation’ – see:

<https://meltwaternews.com/ext/mediac/281364673.pdf>

<sup>25</sup> STS Facebook post

<sup>26</sup> STS Facebook post



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locational factors.

- The likely employee cost base coupled with the staff protections associated with the demerger.
- The cost of servicing a geographically large area and managing community expectations as regards servicing levels.
- The cost of providing services such as childcare and medical services not otherwise available in the area.
- Increasing costs associated with asset renewals and infrastructure delivered post the merger.

Perhaps in recognition of this fact, the Proponent, in its LTFP calculations states: *'A 10% 'rates harmonisation' increase has been included, as proposed by SVC.'*<sup>27</sup>

### **Medium Term**

Looking to the medium term it is noted that of the \$62m invested by SVC some \$37.3m has been committed to major community projects with new community assets of approximately \$16.5m expended on projects predominately in Tumarumba. The corollary to this is that this expenditure is expected to increase ongoing cost of asset maintenance.

Whether or not SVC can deliver enhanced scale and capacity efficiencies in the longer term will depend on its delivery upon the adopted long term strategic plans which aim to achieve financial sustainability by 2030. Deloitte has analysed the medium term outlook, which it has adjusted to reflect the current state, including higher run-rate employee costs with a break-even result for FY25 which is adopted for comparative purposes. That analysis shows that SVC will generate operating deficits (ex capital grants) of \$5.9m in FY25 which equates to \$664 per rateable property. In that scenario a FY25 surplus would be possible via a 10% increase in rates and charges, 5% savings across the current cost base and additional funding of \$1.1m. It is not suggested that the council should adopt such a policy.

The LTFP adopted by SVC assumes no material change in service levels or rate increases. Key objectives are to achieve an operating surplus before capital grants and to maintain adequate funding of asset renewals. Based on the assessed financial information, Deloitte is of the view that SVC is unlikely to achieve an operating surplus (before capital grants) in the next five years without impacting service levels or increasing rates. That said, it is noted that under the LTFP the target SVC is aiming at is 2030. In the meantime, SVC assumes securing operating and capital grants at average historic levels or above.

The task ahead for the Council will be challenging as SVC faces the following constraints:

- Geographic spread and community expectations that service levels will be maintained.
- Continuing Rural Centre minimum staffing requirements in the Tumarumba region.
- Increasing cost of asset renewal associated with new infrastructure.
- Continuing community stakeholder misalignment in relation to the merger, service levels and

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<sup>27</sup> 24 Page Doc Financial Sustainability assumptions p3.

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financial sustainability objectives.

- Uncertainty surrounding the continuation and flow of private works revenue.
- Whether alternate revenue streams can be identified to offset the lapse of the Tumut Special Rate Variation.
- The likelihood of realising modest procurement and employee cost savings via natural attrition.
- Adopting a strategy to address the impact of depreciation. It appears from the Deloitte analysis that what is impacting positive cash flows is depreciation, which reflects SVC's dependence on ongoing capital grants, a situation typical of many regional/rural councils.

Against this, SVC now has a track record of being able to deliver. The task confronting the council is not insurmountable.

Firstly, most rural and regional councils in NSW rely heavily upon grant funding. LGNSW recently made a submission to a Legislative Council Inquiry recommending that: *'grant programs should continue in recognition that they are an essential funding source for local government to deliver vital community infrastructure and services.'*<sup>28</sup>

Seen in that context, it is to be noted that since the merger SVC has embarked on a program to deliver new infrastructure and asset renewal projects to the value of approximately \$62.0m. A significant source of untied income to the council (and available to any new council) is the Financial Assistance Grants (FAGs) delivered by the Commonwealth Government to individual councils annually.

Were a new council to be proclaimed the reduced SVC would remain classified as a Large Rural council but the new Tumbarumba Council would be classified as a Rural council category 9. As FAGs are determined, in part, by per capita factors, in part by reference to a council's relative position as compared to all other councils and, perhaps most significantly, by the total quantum of the funding allocated to NSW by the Commonwealth in any given year, predicting the impact on the individual level of grants to any new council is problematic.

Currently, the NSW Grants Commission relies on data from the ABS, Valuer General, Transport for NSW, State Library and financial and road and bridge data reported to the Commission and Office of Local Government by councils. This data is now based only on the amalgamated entities. The Grants Commission has supplied data which indicates that the FAGs received by SVC since 2016/7 has increased from a base of \$5.1m to its current level of \$5.9m but the maintenance of that level of assistance is not guaranteed.

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<sup>28</sup> LGNSW submission to the Inquiry into Integrity, efficacy and value for money of NSW Government grant programs August 2020, p4.

**Financial Assistance Grants - CPI Adjusted Entitlements (NOT PAYMENTS)**

		Estimated Resident Population (prelim.)				General Purpose Component			Local Road Component			Total Grant		
Year	30.6%	Pop	Change	% Change	\$	Change	% Change	\$	Change	% Change	\$	Change	% Change	
2020-21 est	2019	14,479	-53	-0.4%	4,480,068	36,206	0.8%	1,439,980	13,060	0.9%	5,920,048	49,266	0.8%	
2019-2020	2018	14,532	-50	-0.3%	4,443,862	233,718	5.6%	1,426,920	55,960	4.1%	5,870,782	289,678	5.2%	
2018-2019	2017	14,582	-431	-2.9%	4,210,144	159,899	4.0%	1,370,940	31,716	2.4%	5,581,104	191,715	3.6%	
2017-2018	2016	15,013	19	0.1%	4,050,145	183,661	4.8%	1,339,214	44,453	3.4%	5,389,389	228,144	4.4%	
2016-2017	2015	14,994	14,994	n.a.	3,866,484	3,866,484	n.a.	1,294,761	1,294,761	n.a.	5,161,245	5,161,245	n.a.	

The Grants Commission has advised that the FAGs calculations for an individual council are based on a comparison of relative differences between councils. They are not calculated simply on the data for a single council. Should the Proposal be recommended then the Grants Commission will establish a profile for the new councils based on available data and this profile will be assessed and a recommendation will be derived based on the relative position of each new council.

What can be said with confidence is that in a demerger scenario the SVC grant will diminish due to the loss of population, physical area and related expense and income factors. The new Tumbarumba council will receive a separate grant based on its data set as established at the time of any proclamation.

Secondly, the Deloitte analysis suggests that as the 2016 merger benefits were modelled for SVC over an extended period commencing after the initial four year protection period, SVC was not expected to achieve material savings in the period to date. Key drivers for declining financial performance were reductions in user charges from TFNSW revenue and in water-use charges, lower operating grants and increase employee costs.

Thirdly, the ability of SVC to achieve financial improvement benchmarks is inhibited by the ongoing statutory requirement for SVC to maintain Rural Centre minimum staffing requirements in the Tumbarumba region into the future. In that regard it is noted that the rural centre staffing requirement has not prevented staff working in both Tumut and Tumbarumba with some staff spending time in each place. With workplace lessons on the benefit of virtual options being identified in the Covid-19 Pandemic there is no reason to believe that this one factor – rural centre status - should be an impediment to success.

Finally, FY20 results have been affected by one off events. The 2019/20 bushfire events significantly affected SVC. There was one fatality, three serious injuries and nine minor injuries. Approximately 45% of the LGA was burnt affecting 1090 properties damaged or destroyed, with nearly 9000 livestock lost. Forestry, a key industry, suffered a loss of up to 50% of plantation stock. Agriculture suffered with some 20% of fruit trees lost and vignerons and blueberry harvest impacted by smoke taint. This impact was closely followed by flooding events and Covid-19 (which is continuing to impact on finances).

**Demerger Scenarios and Demerger Costs**

I adopt the analysis of the Majority Report under headings:

- 6.1.2.3. The Approach to Demerger Scenarios
- 6.1.2.4. Demerger costs
- 6.1.2.5 Demerger Scenario – Tumbarumba
- 6.1.2.6 Demerger Scenario – SVC
- 6.1.2.7 Economies and diseconomies of scale

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with the following additional analysis and comment.

The fixed assets and any associated rights and liabilities relating to these assets of SVC which are located in the area of the new council will be transferred to the new council. The remaining assets, rights and liabilities of SVC will need to be apportioned between the continuing SVC and the new Tumbarumba Council. Usually, this occurs by agreement between the two entities. Financial adjustments will need to be made to establish opening positions. Deloitte assumes that cash reserves will be allocated in proportion to 2016 merger position (SVC 61% Tumbarumba 39%). These matters can be addressed in the Proclamation. But pausing to reflect on this process demonstrates some of the difficulties associated with this Proposal.

If the Proposal is implemented there will be costs incurred. Deloitte estimates that over the next 5 year period the additional costs incurred to the community will be in the order of \$9.9m. The Proponent disputes this cost.<sup>29</sup>

Assuming relativities with the position in 2016, the cost impact is likely to be more pronounced in Tumbarumba as it will have a relatively smaller scale of operation and higher separation costs. Both councils will have recurring costs due to necessary duplication of some roles in the new structures including councillors and executive leadership teams.

There is no announced Government funding to offset these costs. If the Proposal is recommended to the Governor, then SVC would continue to exist but within reduced boundaries. Tumbarumba would need to establish new systems and operate within reassigned assets. These costs will have the effect of reversing savings achieved in the merger. Each affected community will incur the costs. Ultimately, they will need to be funded by way of increased rates, service charges or by reduced service levels.

### **Standing on the Precipice**

On these numbers, recommending the Proposal is problematic. While the financial position of the remnant SVC is impaired as a result of the demerger preventing the council from seeking to build on the economies of scale contemplated by the merger scenarios, the resulting but diminished council will likely still be financially sound.

What will the impact on rates be? SVC presently aims to achieve financial sustainability without negatively impacting the community via increased rates or other fees or by reducing services. The current scale of the council allows it to forecast, now that the constraints of the merger adjustments are behind it, an uplift in revenue growth from a focus on securing private works contracts to assist in meeting the sustainability goal of operating surpluses (excluding capital grants) by FY28.

In a demerger situation SVC, operating within a reduced area, population base and organisational structure, will experience diseconomies of scale and it will struggle to achieve its current LTFP target. Deloitte has noted that the sustainability gap (to FY25) equates to \$478 per rateable property. To

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<sup>29</sup> STS Final Submission (24 pages) Appendix A: *'We dispute the inclusion by Deloitte of unsubstantiated demerger costs in a document supposed to assess the viability of a demerged council. The Proposal before the Commission calls on the government to provide such funding as is required to fully reinstate the former Tumbarumba LGA without any cost burden on the community.'*

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address this gap SVC will need to consider implementing a rates and annual charges uplift absent external funding, additional grants or cost savings initiatives being identified.

For Tumbarumba, it will suffer from a diminished starting point compared even to SVC in its reduced capacity. While SVC will suffer a population loss reducing from the present population of nearly 14,500 to approximately 11,000, Tumbarumba will revert to a scale of operation servicing a population of less than 4,000. In this scenario, Deloitte identifies a sustainability gap (to FY25) in the order of \$1,498 per rateable property.

So in contrast to many submissions made to the Commission, the financial position of the new Tumbarumba council will, from the get-go, be more precarious. Indeed, the Proponent, based on submissions made to the Commission in addresses, appears to accept this outcome as likely in that it appears to predicate the viability of the new council on significant and on-going financial support from the Government which, on present indications, is not forecast.

As the Audit Office noted in its Report on Local Government 2019: *'Rural councils continue to face challenges in generating own source revenue.'*<sup>30</sup> Given forecast operating deficits, Tumbarumba will need to consider implementing a rates and annual charges uplift absent external funding, additional grants or cost savings initiatives being identified.

It is undoubted that elements of the Tumbarumba community perceive real advantages in once again having the ability to *'manage our own affairs.'*<sup>31</sup> But that advantage needs to be assessed against the likely financial costs associated with any demerger. Overall, it seems that the financial costs of the proposed demerger, both immediate and on-going, are likely to be significant and greatly outweigh any potential, and at the present time theoretical, financial savings.

There is every indication that the proposal will have an adverse economic impact on both councils without the prospect of financial savings to offset that disadvantage. To compensate for the cost of the demerger, it is likely that the community, in both affected areas, will have to bear increased rates and charges or the prospect of reduced service levels, or perhaps a combination of both.

Those matters being noted, it would be fair to say that SVC stands ready to realise for its community the benefits of its past decisions and recent efforts, including:

- The successful implementation of an integrated organisational structure which has optimised staffing levels and aligned positions with the current and future priorities of SVC and its community

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<sup>30</sup> Audit Office, Report on Local Government 2019 (5 March 2020), p22: *'Rural councils continue to face challenges in generating own source revenue: In 2018–19, 68 per cent of rural councils did not meet the own source operating revenue benchmark (2017–18: 62 per cent). The ability to generate own source revenue remains a challenge for rural councils, who are more reliant on external funding from grants. Rural councils have high-value infrastructure assets covering large areas, less ratepayers, lower land values and less capacity to raise revenue from alternate sources compared with metropolitan councils. For example, they have less capacity to generate revenue from sources such as parking fees, property development and rental income.'* Accessible at: <https://www.audit.nsw.gov.au/our-work/reports/report-on-local-government-2019>

<sup>31</sup> Speaker Session 2 Tumbarumba.

- Retention of both Tumut and Tumbarumba service centres and depots, as well as a service presence in smaller towns and villages and maintaining Rural Centre FTE requirements in Tumbarumba and Khancoban
- Delivery of a single IT and finance system with common operational policies and procedures
- Achieving workforce reform including harmonisation of role grades and employee salaries delivering increased salaries to Tumbarumba employees
- Planning and executing a significant program of new infrastructure and asset renewal projects with a value of \$62m across the LGA resulting in the significant reduction of infrastructure maintenance backlogs
- Harmonising differing user fee and charge structures for some service activities
- Harmonising differential annual water, sewer and waste service charges across the LGA
- Preparing, consulting and adopting a set of long term strategic, community and financial plans in accordance with the IP&R Framework (LTFP)
- Developing, in consultation with the community and the governing body, a rates harmonisation strategy ready for implementation in June 2021
- Coordinating the emergency response and recovery efforts in relation to the December 2019 bushfires.

Reflecting on those matters, I depart from my fellow Commissioners. It feels as though we are standing on a precipice, but I would prefer to allow the existing council time to deliver the benefits which are seemingly in prospect for its community.

## 6.2. Community of Interest and Geographical Cohesion

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

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

### 6.2.1. Submissions and presentations made

The following table shows the number of written submissions and oral presentations made to the Commission that addressed this factor.

Written submissions addressing this factor			
Forwarded by Minister	Submitted directly to Commission	Total (a)	As a percentage of total submissions
305	115	420	30%

(a) Note that many individuals made submissions both to the Minister and to the Commission, often in largely similar terms.

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Community of interest is a compound phrase which means ‘a closeness of interests that does not necessarily require a perfect correspondence of interest.’<sup>32</sup> As such, though recent, there have been efforts undertaken by SVC to build on and reinforce pre-existing communities of interest. A further issue to be addressed is whether people in the proposed new area will share common interests (and geographic cohesion), when compared with the existing area.

### **6.2.2. Discussion**

I adopt the analysis of the Majority Report on this factor except to the extent varied below.

It is true, by reference to the submissions and addresses, that there is a vocal minority within the community of SVC that supports the view that the community in the former Tumbarumba Shire has little ‘in common’ with residents of the former Tumut Shire.<sup>33</sup> This and the perceived ‘loss’ of the former arrangements is what is motivating the desire to ‘reinstate’ the former council. It is not an uncontested space.<sup>34</sup> In 2016 Tumut Shire Council commissioned Diana Gibbs to do a social and demographic profile for its submission to the Delegate. Her view was that Tumut and Tumbarumba were ‘two very similar LGAs.’<sup>35</sup>

As regards the existing area, it is noted that it remains in the stage of formation having regard to the recent inception of the council. Since inception the council has embarked on a process over the past four years to create new communities of interest and to bring geographic cohesion by integrating the operations of the two councils into a single cohesive entity to service the LGA. This is to be expected. This connectivity amounts to an existing community of interest.<sup>36</sup>

The council has delivered, in line with the Integrated Planning and Reporting Framework obligations in the Act, a strategic plan with community priorities which were developed following engagement with the community. These plans focus on the funding for and delivery of community priorities and service levels.

It has not been argued that there has been a lessening of the role that volunteers can perform or that s.355 committees established in the former Tumbarumba shire were disbanded, this being a concern

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<sup>32</sup> *Papaconstuntinos v Holmes a Court* (2012) 249 CLR 534 at [8].

<sup>33</sup> Speaker Session 1 Tumbarumba p31:

*‘Tumbarumba and Tumut do not share any history, social fabric or identity in common and, as such, they have no commonality to form the basis of any kind of cohesion. The much larger population base in Tumut is able to attract private operators for community services like child care, aged care and medical services. Tumbarumba, with a quarter of the population, is not able to attract these private operators.’*

<sup>34</sup> Speaker, Session 2 Tumbarumba p11:

*‘I disagree personally with some of the comments about the no need for Tumut. I align a lot to that greater region. We travelled there this winter for soccer. There’s no soccer club in town. We go to the Tumut club. I go to church in Adelong. We go to Tumut for medical things as well. So there’s a lot of - for me, I do see it as our greater neighbourhood.’*

<sup>35</sup> Delegate Report Knockles (2016) p30 (footnote 76).

<sup>36</sup> *Howe & McColough v Lees* (1910) 11 CLR 361 at 369-370 per Griffith CJ; [1910] HCA 67: *‘Any legitimate object for the exercise of human faculties pursued by several persons in association with one another may be sufficient to establish community of interest.’*



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raised by the community at the time of the merger in 2016.<sup>37</sup> What has occurred, it was suggested in the submissions and addresses, is that the s.355 committees *'have been increasingly controlled'* by SVC.<sup>38</sup> One resident submitted that the 'regulations' were 'beyond belief' and discriminatory.<sup>39</sup> The reason for this 'control' was explained by the Mayor James Hayes.<sup>40</sup> That explanation is reasonable.

What the many submissions reveal is that while it is often cited, what 'community of interest' is or means is difficult to 'pin down.'<sup>41</sup> It means many things to different people.

On one view it could be said that SVC is well on the road to surmounting the concerns raised at the time of the merger regarding communities of interest and geographic cohesion given the work of harmonizing that has occurred, the capital investment projects underway and the plans the community worked to create which the council has now adopted in the long term strategic plans.

A particular community of interest that the existing SVC community has is its focus on attracting visitors to the region. This is a matter where there is a community of interest now recognised in the branding work undertaken by the council which gives prominence to both Tumut and Tumbarumba as well as the multitude of smaller towns all of which are to one extent or the other, dependent on tourism.<sup>42</sup> Some members of the community who have a background in tourism see this as an opportunity:

*'The opportunity to bring these people and their tourism spend to Tumbarumba is now. The chance to win their hearts and see them return year after year to our beautiful town and region is now, this holiday season. If we demerge now and have to rebrand and start again from scratch we'll miss this opportunity. It may not come around again.'*<sup>43</sup>

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<sup>37</sup> Delegate Report Knockles (2016), p26

<sup>38</sup> Neil Henderson, Session 1 Tumbarumba p28:

*'Since amalgamation 355 committees have been increasingly controlled by Snowy Valleys Council, making volunteering more difficult. The recent draft volunteer policy showed no understanding of the role of volunteering, and some 355 committees would not be able to continue.'*

<sup>39</sup> Submission #068.

<sup>40</sup> Mayor James Hayes, Session 1 Tumut p13-14:

*There was also talk about risk management. And I agree that Tumut was very, very risk averse. The former Tumut council was very risk averse. And that's the way we were whereas the Tumbarumba Council was quite laissez faire. And I think if you go back to yesterday, again, we looked at the 355 committees, which was another constant theme. Tumut had lots of 355 committees, Tumbarumba probably had more.*

*355 committees - I'm not telling you anything – are committees of council, and council are basically responsible for them and they're responsible to council. So what we tried to do is we've tried to bring those in, not get rid of them, but bring them in so that the volunteers who are working on those 355 committees are covered. The risk is covered and they are covered by insurance. And there's been a lot of push back from that, but basically we're trying to cover them for risk.'*

<sup>41</sup> Jeff Tate Consulting, Report: Assessing processes and outcomes of the 2004 Local Government boundary changes in NSW (2013) (Tate Report) p12 (citing Aulich 2011):

*'Community of interest is often debated vigorously when boundaries are under consideration but can be a difficult concept to pin down, especially given the complexity and mobility of modern society (Aulich 2011 p.21).*

<sup>42</sup> See <https://visitsnowyvalleys.com.au/>

<sup>43</sup> Speaker, Session 1 Tumbarumba.



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But again, the space is not uncontested. The Vice President of the Tumbarumba Chamber of Commerce did not believe that tourism would be harmed by a demerger:

*'I do not believe that tourism development in the region will be harmed by a demerger. In fact, I believe it will be far better off. As an example, once upon a time the Tumbarumba and Tumut regions both had two-page spreads in every edition of the Snowy Mountains magazine. Now we only get one two-page spread as Visit Snowy Valleys. That's not better for either region.'*<sup>44</sup>

The phrase geographic cohesion has not been the subject of judicial consideration. It is clear that in terms of geography there are local differences. It is also clear that the area proclaimed in 2016 can be administered as a council area. As the pandemic has demonstrated, virtual connectivity is removing many barriers. The area is serviced by adequate roads. The response to the argument that there is only one road connecting the two 'places' (to use a neutral term) is that this is not unique to this area. Shoalhaven City Council, formed by a forced merger of seven areas in 1948,<sup>45</sup> shares a similar elongated shape. Nowra and Ulladulla are connected by the Princes Highway.<sup>46</sup> The distance between Nowra and Ulladulla is 66 kms. It takes nearly an hour to take the journey, or two hours return. Shoalhaven Council has resolved issues of geographic difference and isolation. But it does take time.

The matters discussed above show a certain degree of community of interest and geographic cohesion is occurring in the existing area. The benefits of that work were not expected to be realized in the timeframe the Commission is now examining under this Proposal. Indeed, it is always going to be an on-going project. If the projected own source income initiatives can be realized, if the tourism initiatives can be delivered upon, if the community can leverage the opportunities available by stakeholder alignment then obviously this will accrue benefits for all persons in the SVC community. Those advantages will not be available if the Proposal is recommended to the Governor. In that sense, recommending this Proposal would arguably be untimely.

Having regard to the fact that the former councils had operated separately for many years before the merger, there is no doubt that 'reinstating' that prior state of affairs is possible because the merger only affected the administrative arrangements. The towns and villages have continued to function. The distinct former communities recognised by the community in submissions and addresses and by the Delegate in 2016 will therefore continue to operate under any new arrangements. Reinstatement is assisted by the fact that SVC has maintained the physical footprint of the former councils – the former administrative offices and depots remain operational.

The perceived absence of a community of interest and geographic cohesion between the former areas was not seen as a barrier to the Delegate recommending the merger in 2016.<sup>47</sup> In its review of the Delegate's Report the Commission noted at the time that the Delegate had adequately considered the

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<sup>44</sup> Speaker, Session 4 Tumbarumba.

<sup>45</sup> The proposal was made by Nowra Municipality but was opposed by the six other councils – see Bayley WA, *History of the Shire of Shoalhaven*, Shoalhaven Shire Council (1975), p208.

<sup>46</sup> Many submissions point to the difficulty of getting between Tumut and Tumbarumba – see for example submission #341: *'The distance between Tumbarumba and Tumut is a 45 minute drive. For staff and residents of Tumbarumba to drive to Tumut to engage with the main office is very inconvenient and means almost 2 hours lost in travel time.'*

<sup>47</sup> Delegate Report Knockles (2016) p35.

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issue under this factor.<sup>48</sup> So, on balance, in my view this factor is neutral in the weighting to be given to the matter as it ultimately turns on whose community of interest is to be preferred.

### 6.3. Historical and Traditional Values

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

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

#### 6.3.1. Submissions and presentations made

The following table shows the number of written submissions and oral presentations made to the Commission that addressed this factor.

Written submissions addressing this factor			
Forwarded by Minister	Submitted directly to Commission	Total (a)	As a percentage of total submissions
84	12	96	7%

(a) Note that many individuals made submissions both to the Minister and to the Commission, often in largely similar terms.

I adopt the analysis of the Majority Report on this factor except to the extent varied below.

Strictly, the Act directs the Commission in this instance to consider the factor through the lens of ‘the existing areas.’ SVC is the only existing area affected by the Proposal.

The Council has identified on its website its recent history leading to the creation of the area. It states that it considers that it has laid ‘a solid foundation for building a dynamic and successful council.’<sup>49</sup> Like Tumbarumba was, SVC could become the hub of a wider community collaborating to write a new and successful history of the region.

The impact on SVC of a demerger will be significant for the reasons discussed above. Whether or not the merger project commenced in 2016 should now come to an end is a question for others. If it does come to an end that that will be the end of a chapter for SVC but, as a council area, it will continue to exist, albeit in a diminished form.

One thing is certain, regardless of the recommendation, the towns and villages within the existing area of SVC will continue to exist. While the overall population of NSW has increased in recent years, the trend in rural and regional areas is one of population decline. Just as the merger did not diminish these places, the outcome of the proposal will not cause any one of these places to cease to exist. If that should occur it will be due to a range of factors, loss of economic opportunity being high on that list.

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<sup>48</sup> LGBC Review April 2016 p4.

<sup>49</sup> SVC website: <https://www.snowyvalleys.nsw.gov.au/Council/About-Council/History-Amalgamation>

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It is to be acknowledged that the creation of SVC was, as one resident colorfully put it, the result of a forced marriage.<sup>50</sup> Reviewing the submissions and listening to the addresses in the public hearings, it is true that in terms of SVC's 'history' and 'values' it could be said that insufficient time has passed for the wider SVC community to feel the sort of loss that the community in Tumbarumba currently associates with the impact of the merger in 2016. But perhaps there are green shoots?

Taking an optimistic view, a proprietor of a local Tumbarumba business, submitted:

*We're still Tumbarumba and we still have our own identity as a town, and I think that doesn't need to ever change. I wasn't for the merge when it happened, but when it did happen I accepted that there could be some great opportunities and have been looking to do that - to find those.*

*One of the best things that has happened is the marketing and branding of our region. So the Snowy Valleys region - that does see snow on the ground in Tumbarumba and you can see it on the hills and it's actually why I love the region. I moved here because I love the snow and the mountains and the forest. Yeah, after 10 years we've seen this amazing brand that has been developed and it is now reaching and impacting people out across Australia to identify this region.<sup>51</sup>*

To survive into the future the communities in SVC potentially have more to gain from being united than they may achieve by being re-divided. That they will need to draw on this collective history and shared traditional values to adapt to new imperatives is not in doubt.

As is discussed above, strictly speaking, the recommendation of the Proposal will not lead to the reinstatement of the former Tumbarumba Shire Council, which seems to be the outcome desired by a significant minority of the community in SVC. Instead of 'reinstatement', a new council will be constituted. It will be a new chapter in the history of the Tumbarumba locality, but it will still relate to the history of the former Shire.

The past historical and traditional values in the existing localities situate within SVC are matters of importance to a significant minority within SVC. These views have been put forward to the Commission just as strongly as the views the community put in opposition to the merger in 2016.

It is clear from all of this information that a strong case is put to the Commission that the particular nature of the Tumbarumba locational geography and the dispersed population can be said to be features that have created a separate history and culture or philosophy, as it were, which differentiates Tumbarumba from Tumut. That case was well prosecuted by one speaker, whose comments reflect the views of many put to the Commission:

*'Well, the marriage did not work and is not working and will never work successfully. As a consequence, this community has suffered not only the loss of its identity and self-pride but job losses within our local council staff. A degradation of services in part perhaps because the area*

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<sup>50</sup> Speaker, Session 2 Tumbarumba 3 Nov

<sup>51</sup> Speaker, Session 2 Tumbarumba, p11.

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*is now too large to service adequately. With the advent of rate harmonisation we will in most cases see a rise in charges, not a savings as we were led to believe.*

*We will have smaller elected representation in the southern area of the electorate. Tumbarumba's history and, indeed, its community of interest lie in the south, the east and the west. The north is merely an escape route to warmer climate when the need arises.<sup>52</sup>*

Those are the competing visions for the future.

### **6.3.2. Discussion**

The fact of that 'separate' history was not a 'significant barrier' to the merger being recommended by the Delegate in 2016, albeit with caution.

The merger has not disrupted or prevented the functioning of the towns and villages in these Tumbarumba communities, they continue to write their history and to adapt to circumstances. To assist in that endeavour, it is clear that SVC has, since the merger, endeavoured to ensure funding, representation and service delivery levels are maintained.

The impact of an untimely return to the previous state of affairs will certainly diminish opportunities for the SVC communities to build on the existing historical and traditional values inherited from the former areas. On the other hand, reinstatement will allow the several localities to return to the prior state of affairs which existed before the merger.

It could be said that this factor is neutral given the relatively recent creation of SVC.

## **6.4. Attitudes of Residents and Ratepayers**

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

*"the attitude of the residents and ratepayers of the areas concerned".*

### **6.4.1. Submissions and presentations made**

The following table shows the number of written submissions and oral presentations made to the Commission that addressed this factor.

<b>Written submissions addressing this factor</b>			
<b>Forwarded by Minister</b>	<b>Submitted directly to Commission</b>	<b>Total (a)</b>	<b>As a percentage of total submissions</b>
614	642	1,256	89%

(a) Note that many individuals made submissions both to the Minister and to the Commission, often in largely similar terms.

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<sup>52</sup> Speaker, Session 3 Tumbarumba.

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I adopt the analysis of the Majority Report on this factor except to the extent varied below.

According to the signatures verified by the NSW Electoral Commission, approximately 1,355 electors (out of a total elector population of 10,531 electors at that time) supported the Proposal.<sup>53</sup> Based on that information, it is apparent that a significant minority of the electors of SVC have expressed a view in favour of the Proposal but that view is not uniform across the existing SVC area.

The overwhelming majority of the submissions made to the Commission expressed support for the proposal.<sup>54</sup> This is consistent with the opposition to the merger noted by the Delegate in 2016.<sup>55</sup>

It is apparent that many persons have taken multiple opportunities to make representations.<sup>56</sup> Firstly, to the Minister in response to her public notification (630); secondly, to make submissions to the Commission in response to its call for submissions (754); thirdly, to make an address to the Commission (74) and finally, to participate in the Survey (408). Whilst that activity has ensured that the views of the residents and ratepayers have been heard, it is to be noted that neither the volume of the expression of these views nor the aggregation of the submissions represents a 'majority view.'

Those in support of the Proposal couch their representations around the sense of 'loss' of what was there before. *'Before the boundary change and forced merger we had a lovely friendly community that our ancestors has built over generations,...'*<sup>57</sup> It was common for people to refer to the merger as being 'undemocratic'<sup>58</sup> or 'unfair'<sup>59</sup> pointing to the relief that would be delivered if the former council was reinstated. Many referenced emotional pain. As one resident said in address: *'Our community is struggling to have a voice, to have heart and we have lost our soul.'*<sup>60</sup>

Those few representations against the Proposal couch their representations differently. For example, One resident makes this observation: *SVC has done more things in Rosewood than we've ever seen before from the Tumbarumba Council.*<sup>61</sup> A long-time resident, whose family came to Tumbarumba in 1876, submitted that those opposed to the merger simply *'do not like change.'*<sup>62</sup> Another resident amplified this sentiment observing:

*'A retreat to localism, almost verging on tribalism. In a world of big government and big business we are necessarily part of a larger community and need to learn how to work within*

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<sup>53</sup> At the time of the merger in 2016 Tumut Shire Council had 8113 electors and Tumbarumba Shire Council had approximately 2466 electors.

<sup>54</sup> A point made by submission #378.

<sup>55</sup> Delegate Report Knockles (2016) p 41: *'Nearly all submissions were vehemently opposed to the merger,'*

<sup>56</sup> See for example submission #738: *'I acknowledge I have made 2 previous submission and also spoke at the hearing held in Tumut on Wednesday, November 4.'*

<sup>57</sup> Submission #008. Submission #067, put it even more succinctly: *'Much more has been lost compared to what has been gained.'*

<sup>58</sup> See for example submission #729.

<sup>59</sup> Submission #735

<sup>60</sup> Submission #738.

<sup>61</sup> Submission #041.

<sup>62</sup> Submission #535. She was happy to share past 'grievances' with the former Tumbarumba Shire. She noted that on one matter SVC acted 'within 10 days whereas former Tumbarumba took 'seventy eight years' to achieve no outcome.

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*it. We have a great deal more in common with Tumut than difference. Both communities face the likely prospect of decreasing scale of local forestry operations, the ramifications of farm amalgamations, and aging and welfare dependent populations. In the face of these commonalities competing with Tumut seems a silly strategy.*<sup>63</sup>

The Commission is therefore keenly aware that there is a significant minority core of people, particularly from Tumbarumba, who, to summarise, ‘*want our town back.*’<sup>64</sup> Tensions in parts of the SVC area are clearly high. Passions have been inflamed. However, this strength of conviction may have inhibited some people from expressing their view.

A resident from Tumbarumba, who runs a Tumbarumba accommodation business, spoke of this tension when she addressed the Commission. She said:

*‘The success of Tumbarumba is without a doubt built on the passion of the locals in the town and the surrounds, and I truly admire this position. However, for the last four years this passion has turned into anger and it has created fear within the community, so much so that I know of people that did not feel they could stand up to speak or show support for Snowy Valleys Council without the consequences of verbal or written abuse from their own community.’*<sup>65</sup>

A local Tumbarumba business owner expressed her feelings as follows:

*‘Okay, so - yeah, and particularly in a very challenging year that it's already been as a business and with a young family to go through significant change. I think there's so much potential for working together. My experience in the chamber of commerce over the last year unfortunately was really negative and I felt very intimidated to voice any other opinions that don't agree with the demerge group, and I've found I'm not the only one. When I have spoken up I've been very - I've been shouted down publicly in a chamber meeting and I've withdrawn from the meeting along with other businesses. And I'd be concerned that that is the attitude or the people that are then going to continue to lead this community.’*<sup>66</sup>

A resident who has asked that their submission be ‘private and confidential *due to possible retribution,*’ wanted to point out that ‘*doing business is far easier and more efficient in the merged area.*’ They also suggest that: ‘*Having a group of people actively intimidate people and white ant any initiatives makes it very difficult to promote and develop the interests of the LGA.*’ Another, also requesting anonymity, concluded their submission by suggesting: ‘*Instead of recommending a demerger the required expenditure would be more effectively used to develop further inclusive strategies so that both communities feel included and treated equally.*’

It is acknowledged that these are the expressions of personal opinions. They however demonstrate that whether or not the Proposal should be recommended is contested space, even in this factor on attitudes.

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<sup>63</sup> Submission #751.

<sup>64</sup> This being the most commonly phrased expression.

<sup>65</sup> Speaker Session 1 Tumbarumba p16.

<sup>66</sup> Speaker Session 2 Tumbarumba p11.

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In terms of a representative view it is noted that Mr Hamilton, speaking on behalf of the Proponent, couched the sentiment of those in favour of the Proposal as being ‘in a fight.’ He said:

*‘I said this yesterday, but I think it’s probably worthwhile reiterating while we’re talking about politics, we’ve had this fight now for five years. We fought against the New South Wales government and we will continue to fight against the NSW government.’<sup>67</sup>*

Sentiments couched in such a way express an attitude (as in settled behaviour showing opinion). As the Commission made clear at every session, our role is forward looking. While we need to consider the recent past and the present to understand the future, it is not our role to review whether the 2016 merger decision was appropriate. That is, as Mr Hamilton noted, a political decision.

In having regard to the attitude of the residents and ratepayers of SVC could it be said that it is this demonstrated settled behaviour that is preventing SVC from having a chance to meaningfully engage with this community? A current Councillor expressed this allegorically when she said:

*‘Snowy Valleys Council is like the lion in the fable who has a thorn in his paw and cannot remove it himself. In this case the thorn is orange, and when this orange thorn is removed watch this lion roar.’<sup>68</sup>*

Should having such a negative attitude be rewarded? The statutory mechanism in the Act allows a Minister to make a proposal. There is no provision in the Act for the decision to be ‘undone’ by plebiscite.

The Proponent has suggested that the demerger should happen because otherwise the ‘fight’ will continue ‘until we get our shire back.’<sup>69</sup> The submissions bear this out.<sup>70</sup> Ultimately, making that decision, a political decision,<sup>71</sup> is not the role of the Commission. It is interesting to note that in a review of the 2004 boundary changes in NSW by Jeff Tate Consulting, undertaken in 2013 for the Independent Local Government Review Panel (Tate Report), interviews conducted nearly a decade after the 2004 mergers suggested that a reappraisal of the perceived situation occurs over time and that, from the perspective of council staff, the benefits are often realized after a forced action.<sup>72</sup>

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<sup>67</sup> Neil Hamilton Session 1 Tumut p5.

<sup>68</sup> Clr speaker, Session 4 Tumut, p5. A resident who watched the address, later submitted (#731) suggesting that the solution was to ‘look for positive actions to make the pain from that thorn diminish.’

<sup>69</sup> Neil Hamilton, Session 1 Tumut p5.

<sup>70</sup> Submission #003: ‘Community outrage and anger at forced merger, and ongoing commitment to a demerger, has led to a high level of anti-government activism, but community would much rather put its energies into rebuilding its proud community.’

<sup>71</sup> Neil Hamilton Session 4 Tumut: ‘But politics is also because the demerger is a political problem. It’s not an administrative or a bureaucratic problem; it’s a problem created by a political decision and it can only be resolved by a political decision.’

<sup>72</sup> Tate Report, Section 6.7 Consistent Themes and Messages (cf p34): ‘Many of the people interviewed



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### 6.4.2. Discussion

In the context of the current Proposal the Commission's task is to have regard to that anti merger attitude and to weigh that in the balance. It is a factor which remains a concern. SVC will be constrained into the future if it cannot achieve an alignment between councillors, management and the community but the persistence of that attitude has not meant that the council has been unable to function. It has been disruptive – as the Delegated noted it could be.<sup>73</sup> What council has achieved despite the on-going 'fight' is remarkable when seen in that light.

The optimistic frame of reference held by those persons in favour of the Proposal to the future in a demerger obscures the fact that a new Tumbarumba council will be saddled with difficulties. If the economic realities forecast in the Deloitte report eventuate then a significant majority of residents and ratepayers of the new council will be impacted. What may be in the best interest of a minority of SVC residents and ratepayers needs to be contrasted to the impact of a demerger on the majority of SVC residents and ratepayers.

Having noted the persistence of animus towards SVC by a significant minority of the community but weighing that attitude against the achievements of the council it can be argued that it is too early to say that the merger 'can never work.'<sup>74</sup> With just a slight change of attitude it may surprise many what can be achieved by cooperation.

This view is supported by the Tate report which noted that:

*'To a large extent the successes of the structural reforms have been a result of the commitment of key people in the Councils rather than the models of decision making utilised at the time, and despite shortcoming in planning and implementation practices.'*<sup>75</sup>

The review also noted that while the costs of boundary changes are substantial, 'all of the councils interviewed identified significant benefits for their communities and staff.'<sup>76</sup> The results achieved by councils such as Dubbo and Northern Beaches referred to above show what is possible.

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*[Councillors, GMs and Council staff] were sceptical about the likelihood of voluntary amalgamations being achieved.'*

<sup>73</sup> Delegate Report (Knockles) 2016 p45: 'The attitudes of residents would clearly disrupt a new council if the community is unwilling to engage. Following implementation of a merged entity, this review considers it a strong possibility that well-organised community campaigns against the new council will continue in Tumbarumba Shire and likely be disruptive to council operations and service-delivery.'

<sup>74</sup> Neil Hamilton, Session 1 Tumbarumba p6:

*'The proposal to create a new Tumbarumba Shire is necessary because the structure of the Snowy Valleys Council can never work, not because of the current councillors, not because of the general manager or the staff, but because it does not satisfy the basic requirements of the Local Government Act, and it never can.'*

<sup>75</sup> Tate Report p3.

<sup>76</sup> Tate Report p33.



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In the view of this Commissioner, the persistence of an attitude against the merger held by a significant minority of the residents and ratepayers in SVC is not a reason, *per se*, for the Proposal to be recommended to the Governor.

## 6.5. Elected Representation

Section 263(3)(e) of the Act requires the Commission 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”.*

### 6.5.1. Submissions and presentations made

The following table shows the number of written submissions and oral presentations made to the Commission that addressed this factor.

Written submissions addressing this factor			
Forwarded by Minister	Submitted directly to Commission	Total (a)	As a percentage of total submissions
269	117	386	27%

- (a) Note that many individuals made submissions both to the Minister and to the Commission, often in largely similar terms.

I adopt the analysis of the Majority Report on this factor except to the extent varied below.

It was a necessary consequence of the decision to implement the merger in 2016 that ratepayers and residents of Tumbarumba would suffer a dilution of representation compared to the patterns of representation enjoyed under Tumbarumba Shire Council. This likelihood was not a compelling argument against the merger proposal in the view of the Delegate reporting in 2016.<sup>77</sup> In its review of the Delegate’s report the Commission was of the view that the Delegate had adequately considered the issues under this factor.<sup>78</sup>

### 6.5.2. Discussion

It is noted that these s.263(3)(e) matters were expressly taken into account in 2016 when the merger was implemented. While it is not the role of the Commission to review the merger decision, it is appropriate to acknowledge that in 2016 the requirements of the areas concerned (Tumut and Tumbarumba) in relation to elected representation for residents and ratepayers at the local level were considered.

The Commission is called upon to consider this aspect again because the Act expressly provides that a

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<sup>77</sup> Delegate Report Knockles (2016) p48.

<sup>78</sup> LGBC Review April 2016 p6.

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proposal may be made to the Minister by an appropriate minimum number of electors (s.215), which has occurred. However, the Commission's function is not to review that earlier decision. In that regard it is to be noted that the preponderance of submissions expressly invite the Commission to undertake that task.

The starting point for the Commission's consideration under this factor is not an assumption that the current level of representation is inadequate. While the level of representation has changed since 2016, that does not mean that the merger process conducted in 2016 was in some way flawed. That it was strenuously opposed by the community in Tumbarumba is acknowledged. That the community still keenly feels impacted by a perceived loss of representation does not mean that the current requirements for elected representation are inadequate.

A Resident who supports the Proposal, did offer some perspective:

*'And I know when it was the Tumbarumba Shire Council the smaller communities felt probably as Tumbarumba feels now - left out of sight and out of mind, but far worse situation now. Despite our local councillors best efforts, they simply do not have enough votes to carry our end of the shire.'*<sup>79</sup>

Many submissions focused on the fact of an imbalance in representation. A speaker put this case well when he observed:

*'We do not have the numbers to have an equal voice in council, which has continued to be openly Tumut-centric. We have been robbed of our basic democratic freedoms.'*<sup>80</sup>

The particular democratic freedoms he was referring to were not articulated but the strength of the feeling of loss is recognised.<sup>81</sup>

In the context of representation, there were voices against the Proposal. A current Councillor from Tumbarumba put that case well when he said:

*'And I have to give a shout-out to councillors Ham and Bruce Wright for their strong efforts within council to actively represent this community. And they've done so fairly. They've done so without rancour of any kind. This council has been a very unified council. It has never been about Tumut versus Tumbarumba. That is a furphy that has been perpetrated by people in this community who unfortunately don't have the interests of this community at heart but somehow or other have their own interests in mind. I don't know what those interests might be, but the interests of this community are being very well served by this council that I am very proud to be a part of.'*<sup>82</sup>

It is to be noted in that regard that Clr Ham supports the Proposal. In her view:

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<sup>79</sup> Speaker Session 3 Tumbarumba.

<sup>80</sup> Speaker Session 1 Tumbarumba.

<sup>81</sup> Perhaps he is referring to the sentiment put in submission #475: *'I believe this is contrary to the Australian principle of a Fair Go for everyone.'*

<sup>82</sup> Speaker Session 2 Tumbarumba.

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*'The merger has affected the town. It has brought about a division, a sadness and a fear that was never there before. The town has lost its autonomy, its very soul has been challenged. The community has been divided'*<sup>83</sup>.

On the question of equality of representation, in his address to the Commission the Mayor James Hayes, who is a resident of Adelong, observed:

*'I support the process of the boundaries commission coming here today, and I thank you again. Yesterday there was talk about equity in representation and that it was inequitable. Well, it is equitable because every person gets a vote who wants to vote - or should vote, if they're over 18. And so it is equitable.*

*What's happened is that some of the smaller communities don't have the representation that they once had. But, as I said, we represent - as councillors we represent everybody. And I think that's a change of narrative that people are having difficulty understanding.'*<sup>84</sup>

Having an equality of vote but a smaller voice in a larger council is not undemocratic. As a current Councillor from the village of Batlow noted:

*'From this day forward we look at the bright future ahead for the communities of Snowy Valleys Council. Snowy Valleys Council does not experience the constraints of being a one-town council.'*<sup>85</sup>

That is the choice offered by this Proposal. A return to a past situation or the maintenance of a state of affairs put in place relatively recently as a result of a legitimate decision of Government.

The Proposal, if recommended, will return the communities to patterns of elected representation experienced prior to the merger in 2016. This is a neutral consideration in my view as no significant issue arises, apart from preference, concerning representation.

## **6.6. Service Delivery and Facilities**

Section 263(3)(e1) of the Act requires the Commission 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".*

### **6.6.1. Submissions and presentations made**

The following table shows the number of written submissions and oral presentations made to the Commission that addressed this factor.

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<sup>83</sup> Clr Julia Ham Session 1 Tumbarumba.

<sup>84</sup> Mayor James Hayes Session 1 Tumut.

<sup>85</sup> Clr Speaker Session 4 Tumut.

Written submissions addressing this factor			
Forwarded by Minister	Submitted directly to Commission	Total (a)	As a percentage of total submissions
277	178	455	32%

(a) Note that many individuals made submissions both to the Minister and to the Commission, often in largely similar terms.

I adopt the analysis of the Majority Report on this factor except to the extent varied below.

The Act does not provide guidance as to what is adequate, equitable and appropriate recognizing that this is a matter for the Commission. The LTFP is a useful starting point for the Commission's deliberation on this factor. In July 2020 SVC adopted its Long Term Financial Plan (LTFP). It notes:

*Without taking measures to increase revenue and decrease expenditure, Council will not be able to afford the provision of the level of services and infrastructure it currently provides to the community. Such a course of action will also fail to meet the key principle of financial sustainability regarding intergenerational equity.<sup>86</sup>*

### 6.6.2. Discussion

SVC is the only area concerned by the Proposal. Over the past 4 years the council has been implementing the consolidation described above. The adopted LTFP is itself the culmination of a process of consultation between SVC and its community. It recognised that *'feedback received from the community as part of the Service Level Review project [indicated that it was unlikely] that the community will be willing to accept reduced service levels or declining infrastructure.'* In consequence, as Deloitte notes, the LTFP assumptions out to FY30 do not contemplate rate increases or overall service level reductions. SVC, in its diminished form, should the Proposal be recommended, will be constrained in its ability to deliver on the LTFP, indeed it will probably have to be revisited.

It is clear from the representations and addresses that members of the Tumbarumba community would want to tackle the task of service delivery in a different fashion. As the Delegate noted in his 2016 report, the former Tumbarumba Shire had a *'willingness to intervene in the market where the private sector is not providing a particular service or a facility demanded by residents.'* That raises as a question whether, should the Proposal be recommended, the new Tumbarumba council would be able to provide the services and facilities desired by the Tumbarumba community?

As the Productivity Commission noted in its 2017 report *'Shifting the Dial.'*

*'Over the past thirty years, the responsibilities of most Local Governments have moved from being simply providers of property related services — captured in a simple expression of their functions as focused on 'roads, rates and rubbish' — to increased involvement in the provision*

<sup>86</sup> SVC LTFP July 2020 p12.

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of social services, such as health awareness and management, recreational facilities and sporting venues and active promotion of local economic development including tourism.’

Many persons who addressed the Commission point to the services and facilities provided by the former council expressing a fear or concern that this menu of services will not continue into the future. The Delegate noted in 2016 those services included:<sup>87</sup>

- Medical, Allied Health and Centrelink Services: Council owned and maintained the Roth's Corner Medical Centre and leased the centre's rooms to the town's general practitioner, as well as a number of allied health practitioners. Council also provided an extensive range of community and Centrelink services.

This service is still being provided.<sup>88</sup>

- Frail Aged Services: Council ran a Multi Services Outlet (MSO) providing meals on wheels and community transport throughout the shire. Council also managed home modification and maintenance for safer living for older residents and the provision of Telecross.

This service is still being provided.<sup>89</sup>

- Business Services: Council operated a Centrelink Agency, provided agency services for Roads and Maritime Services including driver testing and licences, vehicle registration, and was an accredited Service NSW Instore.

This service is still being provided.<sup>90</sup>

- Children's Services: Puggles was a mobile service providing long day care to rural and isolated communities for children aged six weeks to school age. Council has recently taken on the auspice of the Khancoban Pre-School and the Khancoban Toy Library. Council also operated a variety of other day and before and after school care services.

This service is still being provided.<sup>91</sup>

- Other major initiatives: Council partnered closely with the Mannus Correctional Centre to deliver many community services such as parks and garden maintenance. Council also

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<sup>87</sup> Delegate Report Knuckles 2016 p50-51.

<sup>88</sup>SVC website:

<https://www.snowyvalleys.nsw.gov.au/News-Media/Operations-Continue-at-Roth%E2%80%99s-Corner-Medical-Centre>

<sup>89</sup> SVC website: <https://www.snowyvalleys.nsw.gov.au/Community/Community-Services/Tumbarumba-Multi-Service-Outlet>

<sup>90</sup> Service NSW website: <https://www.service.nsw.gov.au/service-centre/tumbarumba-agency>

<sup>91</sup> SVC website:

<https://www.snowyvalleys.nsw.gov.au/Community/Community-Services/Childrens-Services/Puggles-Children%E2%80%99s-Services-Van>

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constructed the Snow View Estate residential subdivision after the Hyne mill report, which stated that it was difficult to attract workers due to the limited availability of quality homes.

Work on this project is continuing.<sup>92</sup>

As can be seen from the SVC website, the merger has not meant the discontinuance of services or the provision of facilities into Tumbarumba. It is clear from the submissions that how the community has perceived it has been serviced differs to Council's understanding of what has occurred. A speaker to the Commission reflected a theme in many submissions. He said:

*'The former Tumbarumba Shire in partnership with community groups recognised this fact and undertook community services programs that brought these services to the community. All of these services have been financially self-sustaining. The SVC is focused on what it sees as core council business - being roads, rubbish and water treatment. Council is diametrically opposed to providing community service which it regards as non-core business. SVC has and will try to divest itself of these community assets for financial gain.'*<sup>93</sup>

Comments such as these reflect the different philosophies residents in Tumbarumba have towards service provision compared to the expectations of residents in Tumut. It was a matter touched upon by the Delegate in 2016.<sup>94</sup> Ultimately, the Delegate considered these differing philosophies were not a barrier to the merger concluding that a new council would have options to ensure service delivery. As is noted above regarding the continuance of services previously delivered by Tumbarumba Shire, it appears that despite concerns, delivery has occurred. Clearly, the council needs to work on its communication with the Tumbarumba community. The General Manager has recognised that this communication is an on-going project.<sup>95</sup>

Regarding a new council's ability to provide adequate, equitable and appropriate services and facilities Deloitte notes that on a comparative analysis against the assumed base case, Tumbarumba's financial capacity is more constrained than the diminished SVC's capacity in a post demerger scenario. This is implicitly recognised by the Proponent submission that the proposal requires the Government to fully fund the reinstatement of the former council.<sup>96</sup> Absent that funding, the capacity of the new council to provide adequate, equitable and appropriate services and facilities becomes problematic.

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<sup>92</sup> SVC website:

<https://www.snowyvalleys.nsw.gov.au/News-Media/Snowy-View-Estate-Stage-3-to-be-Considered-in-2020-Budget?BestBetMatch=snow%20view%20estate|d13b95b2-5146-4b00-9e3e-a80c73739a64|4f05f368-ecaa-4a93-b749-7ad6c4867c1f|en-AU>

<sup>93</sup> Speaker Session 1 Tumbarumba p31.

<sup>94</sup> Delegate Report Knockles (2016) pp51-53.

<sup>95</sup> Matthew Hyde Session 1 Tumut: *'We're are not a perfect organisation. We are here to listen, evaluate and implement change on a carefully considered basis. And I accept we aim to continually improve in everything that we do.'*

<sup>96</sup> Speaker Session 1 Tumbarumba: *'I also emphasise that the proposal calls on the government to provide such funding as is required to fully reinstate the former Tumbarumba LGA without any cost burden to the community. As they say, you broke it, you fix it.'*

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A speaker, who spoke on behalf of the Proponent and in favour of the Proposal probably sums up the conundrum well:

*'And it's about running a tight ship with good, sound management. That's the key. I don't care whether you're a big council or a small council - that's the key. And being effective and efficient in your management has got nothing to do with how many people are out there in the community or the rate base and so on. You work within the means you have.'*<sup>97</sup>

The evidence suggests that while there may be different philosophical approaches to the task, SVC is currently providing its community adequate, equitable and appropriate services and facilities consistent with its adopted LTFP.

It is arguable that the existing SVC is the agency best placed to implement measures that enable the council to continue to provide the level of services and infrastructure it currently provides to the community. It is accepted that for SVC to do this the council will need to continuously identify measures to increase revenue and decrease expenditure, especially in light of the assumption in the LTFP to deliver the forecast outcomes without rate increases or overall service level reductions.

If the Proposal is recommended to the Governor both SVC, in its diminished state, and the new council will suffer financial impairment from the get-go, making it difficult for either council to provide adequate, equitable and appropriate services and facilities to their respective communities.

This is a factor which in my opinion weighs against the recommendation of the Proposal.

### 6.7. Employment Impacts on Staff

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

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

#### 6.7.1. Submissions and presentations made

The following table shows the number of written submissions and oral presentations made to the Commission that addressed this factor.

Written submissions addressing this factor			
Forwarded by Minister	Submitted directly to Commission	Total (a)	As a percentage of total submissions
217	165	382	27%

(a) Note that many individuals made submissions both to the Minister and to the Commission, often in largely similar terms.

I adopt the analysis of the Majority Report on this factor except to the extent varied below.

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<sup>97</sup> Speaker Session 1 Tumut p12.

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It is noted that this factor requires the Commission to have regard to the impact of the Proposal on the employment of the staff by SVC, which is the council of the only area concerned or affected by the Proposal.

Should the Proposal proceed to implementation, it is assumed that the councils involved will resolve all issues related to the transfer of any other staff affected by the Proposal, consistent with the statutory protections in the Act. While that impact on staff will be managed, given the untimeliness associated with the change so near to the expiration of the 2016 protections, and having regard to the savings which will be wasted as well as the additional costs which will be incurred by the community, recommending the proposal will have a deleterious impact on the community in terms of the cost to the community and potentially, also, for some staff in terms of dislocation.

### **6.7.2. Discussion**

The employment protections were inserted into the Act by the Local Government Amendment (Employment Protection) Act 2003 and the Local Government Amendment (Council and Employee Security) Act 2004. The amendments ensure that where an organisational restructure occurs within a council due to its structural reform by way of constitution, amalgamation or boundary alteration, the existing employment conditions of staff are protected.

If the Proposal is recommended to the Governor and is implemented, then a fresh period of protection will apply to staff affected by the implementation of the Proposal. Following the expiration of the 2016 protections SVC undertook an organizational restructure which was completed in November 2019, just two years ago.

At the time of the merger in 2016 the combined councils employed approximately 222 FTE. The 2019 SVC restructure saw the approved organizational structure reduce from 239 FTE to 225 FTE. The FTE in Tumbarumba has remained above 83 FTE in line with rural centre protections which are on-going (s.218CA). Deloitte reports that the savings associated with this restructure was approximately \$2.3m which savings were reinvested in creating new positions created in the restructure.

Given the recent expiration of the 2016 protections and the 2019 restructure, an immediate impact of recommending the Proposal would be the wastage of the savings and the efforts of SVC to implement necessary organizational changes. While all affected staff will enjoy the benefit of statutory protections, it will come at a cost, which will of necessity be borne by the communities within SVC. It may be a further 3 years before either council could take steps to undertake organizational change.

Under the 2016 merger the statutory protections required SVC to maintain rural centres in Tumbarumba. This will no longer be an obligation of SVC so that is a notional saving to SVC. But it is unclear whether SVC staff will nonetheless be impacted. It is noted in that regard that the staff of SVC have not made a submission to the Commission. Having regard to the statutory protections (for example such as s.354I) it is assumed that for at least 3 years following the implementation of the Proposal some staff will be impacted by the dislocation caused by the changes. For some, this new change will follow on from the impacts associated with the 2019 reorganization.

Despite submissions to the contrary, the ability of the new Tumbarumba council to 'return' to arrangements under the former situation has been lost. The new council will have a different cost



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base and it will also be hampered by the imposition of a new period of staff protections. It is also likely that the new council will need to carefully consider how to implement change to align staffing roles with desired servicing levels which may necessitate the council incurring additional costs to address levels of specialization that may not be commercial to retain. Deloitte has assumed that there will be additional costs for retraining, for example to attain accreditation to complete large-scale private work contracts.

Taking the matters discussed above into consideration, it is my view that if the Proposal is recommended to the Governor then the staff of SVC will be adversely impacted by further untimely change associated with yet another organizational change.

I concur with the comment of the Majority Report that employee mental health is a serious matter. It would hope that resolution of this Proposal will act as a calming influence and that councils act to address these concerns. I agree with my fellow Commissioners that beyond drawing this to attention, this is not a matter that the Commission feels qualified to address further.

## 6.8. Rural Impacts

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

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

### 6.8.1. Submissions and presentations made

The following table shows the number of written submissions and oral presentations made to the Commission that addressed this factor.

Written submissions addressing this factor			
Forwarded by Minister	Submitted directly to Commission	Total (a)	As a percentage of total submissions
111	25	136	10%

(a) Note that many individuals made submissions both to the Minister and to the Commission, often in largely similar terms.

I adopt the analysis of the Majority Report on this factor except to the extent varied below.

If the Proposal is recommended it will return the rural communities to the situation that applied before 2016, albeit not in a fashion which will have ‘reinstated’ the former councils.

### 6.8.2. Discussion

Whether or not there is an impact on rural communities depends on the level of abstraction the discussion is taken to. This is reflected in a comment made by a speaker at Session 3 Tumbarumba:

*‘This [population imbalance between Tumut and Tumbarumba] will inevitably be to the detriment to the southern part of the council area. And I know when it was the Tumbarumba*

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*Shire Council the smaller communities felt probably as Tumbarumba feels now - left out of sight and out of mind, but far worse situation now. Despite our local councillors best efforts, they simply do not have enough votes to carry our end of the shire.*<sup>98</sup>

One speaker neatly encapsulated what many who addressed the Commission, at virtually every session, said:

*'The whole exercise has and continues to have a detrimental outcome for what was once a strong, viable and economically run community by people that understood, listened and represented individuals and community groups and organisations as well as supporting local businesses.*

*Since the merger over a dozen jobs have been lost from our region. This has a knock-on effect, meaning less families, lower school numbers, meaning less teachers, less people attending local businesses, therefore, less staff in those businesses.*<sup>99</sup>

That view is not shared by the General Manager of the Council Matthew Hyde. In his address to the Commission he noted, in regard to the Council's ability to provide for its rural communities:

*'We have a professional, dedicated and capable staff that take pride in their work and have adapted to an LGA-wide approach while being cognisant to the local needs of each and every one of our 10 communities and surrounding rural areas. Often this has been in the face of more destructive agendas and combative approaches that implicate and distract staff from their purpose and their pride in their work.'*<sup>100</sup>

One impact residents and ratepayers have pointed to is the impact of rate harmonization.<sup>101</sup> For the reasons discussed above, a demerger is not likely to result in rate reductions. Others point to the difficulty in accessing services,<sup>102</sup> to 'staff reductions,'<sup>103</sup> to the different 'philosophies' about volunteers and to community involvement<sup>104</sup> and this suggests that there have been impacts felt in the rural areas.

However, some residents see the merger as having positive impacts on the local rural communities. One speaker submitted:

*'SVC have created a beautiful marketing campaign that will bring some of these people and their money here. Our community has been ravaged by drought, fires, lockdowns and heavy*

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<sup>98</sup> Speaker Session 3 Tumbarumba.

<sup>99</sup> Speaker Session 4 Tumbarumba.

<sup>100</sup> Matthew Hyde Session 1 Tumbarumba p12.

<sup>101</sup> For example, submission #069.

<sup>102</sup> For example, submission #073.

<sup>103</sup> For example, submission #082, submission #085 and submission #100.

<sup>104</sup> For example, submission #083.

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*loss to our major industry. We should not divide during this challenging time. Instead, we need to take advantage of what is a great opportunity and rebuild and grow together.'*<sup>105</sup>

The Vice President of the Tumut Regional Chamber of Commerce took a positive view of the future:

*'But overall I think that with the continued focus we'll actual see an increase in the viability of our regions, particularly as both regions - both the Tumut Shire and the Tumbarumba Shire - have a decreasing population. That's going to, you know, have issues with services longer term. And if we don't have that focus on the economic viability as a whole, we'll continue to see that leakage of population out of our area and a decrease in hospitals, education, things like that, that come to our region.'*<sup>106</sup>

Another speaker, whose job takes him 'all over the council area' fully supports SVC. He says he has '*noticed a significant improvement in responsiveness and streamlining of services when it comes to the council rangers, planning and administrative arms of the council.*'<sup>107</sup>

But many others disagreed, seeing particular value in reverting to a smaller council.<sup>108</sup> The Vice President of the Tumbarumba Chamber of Commerce believes that tourism, a vital source of income for the community, will not be impacted by a demerger.<sup>109</sup> A Grazier, a resident of Tumbarumba for 50 years, expressed the sentiments of many about the impact of the merger in 2016 on the Tumbarumba community when he addressed the Commission. He said:

*'In those 50 years I've seen four major droughts and probably as many major floods. As we all know, a severe drought is usually followed by a wet year and a severe flood.*

*But in my opinion none of these events have taken the gas out of Tumbarumba like amalgamation did. I feel Tumbarumba's lost its sense of connection. If you have an issue that needs to be discussed with a councillor it is impossible to find one. And when you contact the local office you are directed to Tumut. You may get a sympathetic ear in Tumut and be told the matter will be looked into. It gets passed on, but very rarely do you get a result or follow-up.'*

If the proposal is not recommended, then SVC will be in a position to continue with the work it has undertaken over the past four years to create a united community. This work is not finished.<sup>110</sup>

If the Proposal is recommended to be implemented then this work will be wasted and with it, the

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<sup>105</sup> Speaker Session 1 Tumbarumba.

<sup>106</sup> Speaker Session 1 Tumut.

<sup>107</sup> Submission #091.

<sup>108</sup> For example, submission #103: '*Our community will me much stronger and more resilient.*'

<sup>109</sup> Speaker Session 4 Tumbarumba.

<sup>110</sup> Matthew Hyde, General Manager, Session 1 Tumbarumba p11: '*Behind the scenes we have worked hard to merge systems, processes, policies and plans and train and develop our staff. Develop and implement a customer-focused organisational culture that understands the importance of and responsibility of managing community resources*'.

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chance to deliver to this rural community the fruits of the efforts undertaken up to now. To require each community to start from scratch again will, for the reasons discussed above, adversely impact these communities, despite the hopes of the Tumbarumba community.

This, in my view, is a factor which weighs against recommending the Proposal.

**6.9. Wards**

Section 263(3)(e4) of the Act requires the Commission 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”.*

I concur with the Majority Report that this factor does not apply to the Commission’s examination as the Proposal does not relate to an amalgamation of two or more areas.

**6.10. Opinions of Diverse Communities**

Section 263(3)(e5) of the Act requires the Commission 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”.*

I concur with the Majority Report that this factor does not apply to the Commission’s examination as the Proposal does not relate to an amalgamation of two or more areas.

**6.11. Other Issues**

Section 263(3)(f) of the Act requires the Commission 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”.*

**6.11.1. Submissions and presentations made**

The following table shows the number of written submissions and oral presentations made to the Commission that addressed this factor.

Written submissions addressing this factor			
Forwarded by Minister	Submitted directly to Commission	Total (a)	As a percentage of total submissions
200	118	318	23%

(a) Note that many individuals made submissions both to the Minister and to the Commission, often in largely similar terms.

The untimeliness of the Proposal is a matter that has revealed itself throughout the consideration of this matter. It is the obverse face to the impassioned pleas to the Commission by members of the

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Tumbarumba community to support the Proposal. This impassioned sentiment is reflected in the comment of one resident who submitted: *'Please unravel this mess where one entity must become two so we can all go forward to build a better future for all.'*<sup>111</sup>

It is also acknowledged that SVC is the result of a forced merger which was, and clearly remains, bitterly opposed by sections of the community. Some put it as high as being an *'undemocratic take-over.'*<sup>112</sup>

### **6.11.2. Discussion**

It cannot be doubted that the Act gives to the Minister the power to make a proposal concerning the amalgamation of areas (s.218E). The fact that the Act affords the Minister that power is a complete answer to the criticism that the community didn't 'vote' for the merger, or that for some reason the decision was 'undemocratic.' That it was a 'forced merger' doesn't not mean that it was unlawful.

The Minister lawfully exercised that power in 2016 and following consideration of the proposal by the Delegate, and then a review by this Commission, the Minister's proposal was recommended to the Governor and SVC was proclaimed in May 2016. That proclamation has not been disturbed by a legal challenge. That it was a political decision, as suggested by the Proponent, is acknowledged. That the taking of the decision has created 'ill-will' is also acknowledged.

The Deloitte Report does not identify new, additional savings associated with the implementation of the Proposal. Rather Deloitte notes there will be immediate and on-going costs incurred by the new and diminished SVC. These consequences are not indicative of efficient and effective local government.

The uncertainty associated with the campaign against the merger has meant stakeholder alignment has been challenging. A significant minority within the community has 'withdrawn' support to SVC during the five-year campaign waged against the merger.

In 2019 the Tumbarumba community organized a 'vote of no confidence' in SVC. Yet it is clear that the Mayor and the elected councillors of SVC want to represent the whole community. That campaign by the Proponent has deprived SVC of the opportunity to engage fully with this community. That SVC has made mistakes is acknowledged by the General Manager of SVC.

Were the community of Tumbarumba to elect to work with SVC then some of the communication problems described by the community in representations, submissions and addresses could perhaps be addressed.

SVC is not 'broke'. It has a dependency on external grants to fund its forward agenda. Dependence on grant funding means that councils will face structural deficits. That is a feature of rural councils. It is why there are many avenues provided to councils to seek grant funding. The unrestricted Federal Financial Assistance Grants are a feature of the system of local government in NSW. Council's LTFP aims to address that dependency in the long term. But to deliver on that plan will require stakeholder alignment.

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<sup>111</sup> Speaker Session 3 Tumbarumba p13. Amplified in her submission #060.

<sup>112</sup> Submissions #050 and #219.

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Similarly, it cannot be fairly said that the merger ‘has failed.’ That is a matter about which it is too early to make a call, if it be accepted that the benefits of the merger were anticipated over the long term, not short term. So, forming an opinion on that outcome awaits later consideration once the expectations for the merger have been given the fullest chance to succeed – or to fail. In any event, whether or not the merger has ‘failed’ is also a political matter, as many residents acknowledged. As the LGNSW report of 2015 notes (citing Hoffman and Talbot): *‘Success will and has been achieved over time (5-10 years) depending on leadership, policy choices and response to external impacts.’*

Scarce but valuable resources of the State were made available to assist in the merger process. The staff of both former councils received statutory protections for 3 years while transitional matters were addressed. Initial elections for the new governing body were held in 2017. A new General Manager has been appointed.

Significant steps have been taken by the merged council and the Council has reached many milestones. It was always expected that the benefits of the merger would be realized over at least a 20 year time horizon commencing after the expiration of the initial 4 year transitional period, ie. now. It was not expected that SVC would have by now achieved the material savings anticipated at the time of the merger. It is in this space that the untimeliness of this Proposal features.

In the context of considering matters relevant to the provision of efficient and effective local government in the existing and proposed new areas it is relevant to note that if the Proposal is recommended to the Governor then it will bring undone the 2016 merger process, necessarily creating wastage and destroying opportunities which were identified in the merger proposal. As is discussed above, there are voices in the Tumbarumba that can see opportunity in the merger continuing. There are voices in the Tumut community that share the optimism for a better future for the merged entity.

Recommending the Proposal to the Governor at this time will not be conducive to the provision of efficient and effective local government in the existing and proposed new areas. It is therefore arguable that the community should be given the chance to succeed.

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Attachment 1

29 The Parade,  
Tumbarumba, N.S.W. 2653

4<sup>th</sup> March 2019

The Hon. Gabrielle Upton, MP,  
Minister for Local Government,  
Level 18, 52 Martin Place,  
Sydney 2000

Dear Minister Upton,

**PROPOSAL TO CREATE A NEW LOCAL GOVERNMENT AREA**

On behalf of the residents of the former Tumbarumba Local Government Area (LGA) we the undersigned handed you a proposal to alter the boundaries of the Snowy Valleys LGA and reinstate the former Tumbarumba Shire LGA and Council under Section 215 of the Local Government Act 1993, dated 5<sup>th</sup> September 2018.

Accompanying this letter is a further supplementary proposal, along with further signatures to be considered by you along with the previous proposals.

Our count is an additional 1010 signatories with this proposal (contained in the accompanying 391 pages of documents). Those signatories are all persons that have confirmed they are enrolled electors on the electoral roll eligible to vote within the Snowy Valleys local government area (LGA). This takes the total number of signatures submitted to you thus far to 2,122. While there may be some duplication, that is for your office to assess.

We restate and further submit the proposal remains that:

- 1) A new LGA be constituted comprising that area having the boundaries of the former Tumbarumba LGA that existed prior to 12<sup>th</sup> May 2016, and;
- 2) The boundaries of the Snowy Valleys LGA be altered so that the area that was the former Tumbarumba LGA prior to 12<sup>th</sup> May 2016 be excised.

We are making this proposal to you as Minister for Local Government on the same grounds as previous proposals and because:

- a) The forced amalgamation of Tumbarumba and Tumut Shires was undemocratic and deeply unwanted by the local community;
- b) Tumbarumba Shire Council provided valued, essential local representation as well as environmental protection for its residents;



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- c) Tumbarumba Shire Council was financially robust and very capable of managing its own financial affairs; and
  - d) An overwhelming majority of Tumbarumba residents wish to have reinstated their former local council rather than see it swallowed up because of a forced merger with the former Tumut Shire into the Snowy Valley LGA managed by a shire council that is proving increasingly incapable of performing the functions required of it under the Act to an acceptable standard.
  - e) The Snowy Valleys Council has failed to deliver the savings promised by the government and has failed to fulfil any of the recommendations made by the Minister's delegate whose key recommendation on the proposed merger was *"That a merger of Tumut Shire and Tumbarumba Shire not proceed unless the strong opposing attitudes of residents, ratepayers and council staff in Tumbarumba Shire are addressed through a combination of advocacy campaigns and protections of service levels within a new council"*.

Almost 3 years after the merger, Tumbarumba residents remain totally opposed to it. A plebiscite held during the council elections in September 2017 returned an almost unanimous result: more than 93% of all eligible voters want the former Tumbarumba Shire restored.

The level of concern about the poor, and unsustainable performance of the government's amalgamated Snowy Valleys Council continues to grow as attested by the mood of the community meeting held on 17<sup>th</sup> December 2018 as set out in the proceedings of that meeting and the performance scorecard reported to you in attachments to our letter to you dated 15<sup>th</sup> February 2019.

The proposal accompanying this letter contain the names, addresses and signatures of more than 1,000 eligible electors from the Snowy Valleys LGA, including from within the former Tumbarumba Shire who support this proposal to reconstitute the former Tumbarumba Shire LGA. The total number of signatures submitted to you thus far is 2,122 which is more than twice the number necessary under Section 215 of the Local Government Act.

We expect you as the responsible Minister will now support this proposal and proceed with alacrity to hold an open, public, and transparent inquiry into this proposal, including consultation with the residents of Tumbarumba. We also expect that you will refer the proposal for examination and report by the Boundaries Commission as required under the Act, and that you will recommend the Governor make a proclamation to bring this proposal into effect.

We also reiterate that you as the responsible Minister have the power under s215(1) of the Act to make a proposal as described above and to proceed to recommend to the Governor that the proposal be implemented, thereby avoiding unnecessary cost and loss of time. Such a move on your part would be welcomed.

Furthermore the community of the Snowy Valleys LGA require the government to provide such funding as is required to bring this proposal into effect and to fully reinstate the former Tumbarumba LGA without any cost burden on the community.

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Should you neither support our proposal as submitted nor use your discretionary powers, we will continue to campaign for the restoration of our Shire.

We request that you promptly acknowledge receipt of this further supplementary proposal and the accompanying 1,010 signatures contained in the attached 391 pages of documents. We also require full particulars of any and every signature that you or your delegates determine to be ineligible.

On behalf of the electors of Snowy Valleys Local Government Area and the community of the former Tumbarumba LGA;



Ms Lucy Henderson

Dr. Neil T. M. Hamilton

Mr Douglas Gee

29 The Parade, Tumbarumba NSW 2653

(Save Tumbarumba Shire Inc.)

Cc (Letter and Proposal text only);

Premier of NSW,

Leader of the NSW Opposition

Shadow Minister for Local Government

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Attachment 2



**The Hon. Shelley Hancock MP**  
Minister for Local Government

Ref: A687586

Mr Bob Sendt  
Chairperson  
Local Government Boundaries Commission  
Locked Bag 3015  
NOWRA NSW 2541

By email: [Bob.Sendt@lgbc.nsw.gov.au](mailto:Bob.Sendt@lgbc.nsw.gov.au)

Dear Mr Sendt

**Referral of Elector Proposal affecting Snowy Valleys Council**

I have received an elector proposal (the Proposal) made pursuant to section 215(1) of the *Local Government Act 1993* (the Act) from an appropriate minimum number of electors of Snowy Valleys Council (Council) to create a new local government area from the Snowy Valleys local government area.

The Snowy Valleys local government area was created by Proclamation published in the NSW Government Gazette on 12 May 2016. It resulted from the amalgamation of the former Tumbarumba and Tumut Shire local government areas. The effect of the Proposal, if implemented, would be to reinstate the former local government areas of Tumbarumba and Tumut Shire.

Public notice of the Proposal was given by me in accordance with section 216 of the Act. Representations were received in response to that notice. Having considered the representations, I have decided to continue with the Proposal.

Consequently, as required by section 218(1) of the Act, I hereby refer the Proposal to the Local Government Boundaries Commission for examination and report.

I note that in considering this matter, the Commission must have regard to the factors listed in section 263(3) of the Act. They are:

- (a) 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,
- (b) the community of interest and geographic cohesion in the existing areas and in any proposed new area,
- (c) the existing historical and traditional values in the existing areas and the impact of change on them,
- (d) the attitude of the residents and ratepayers of the areas concerned,
- (e) 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,
- (e1) 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,

GPO Box 5341 Sydney NSW 2001 ■ P: (02) 8574 5400 ■ W: [nsw.gov.au/ministerhancock](http://nsw.gov.au/ministerhancock)



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- (e2) the impact of any relevant proposal on the employment of the staff by the councils of the areas concerned,
  - (e3) the impact of any relevant proposal on rural communities in the areas concerned,
  - (e4) 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,
  - (e5) 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,
  - (f) such other factors as it considers relevant to the provision of efficient and effective local government in the existing and proposed new areas.

Further, for the purpose of exercising its functions in relation to this matter, I hereby direct the Commission, pursuant to section 263(2)(b) of the Act, to hold an inquiry.

To assist the Commission, I will arrange for the Office of Local Government to separately provide to the commission the following:


- a. a copy of the Proposal together with its accompanying letter dated 4 March 2019;
- b. a copy of the elector representations received in response to the public notice; and
- c. a copy of the representation received from Council in response to the public notice.

Yours sincerely



**The Hon. Shelley Hancock MP**  
Minister for Local Government

25 FEB 2020



New South Wales Government

*Local Government Act 1993*

**Notice of Local Government Boundaries Commission Examination and Report Into a proposal to create a New Local Government Area affecting the area of Snowy Valleys Council**

The Hon Shelley Hancock MP, Minister for Local Government, has referred a proposal made pursuant to section 215(1) of the *Local Government Act 1993* (the Act) to the Local Government Boundaries Commission (LGBC) for examination and report in accordance with section 218(1) of the Act.

The effect of the proposal is to re-establish the former Tumbarumba Shire local government area and to reduce the area of the Snowy Valleys Council so that it corresponds to the area of the former Tumut Shire Council.

The LGBC is required to examine and report on the proposal in accordance with the Act, having regard to the factors set out in section 263(3).

A copy of the proposal, together with a detailed description of the areas subject of the proposal, may be inspected at Council's offices. The proposal may also be viewed on the LGBC website at: [www.olg.nsw.gov.au/lgbc](http://www.olg.nsw.gov.au/lgbc).

**Call for written Submissions**

Submissions already made to the Minister for Local Government on this proposal have been forwarded to the LGBC. However, the LGBC is now inviting any further or supplementary submissions relating to the proposal. Submissions should preferably address one or more of the factors listed in section 263(3) of the Act.

Submissions should be forwarded to the LGBC Executive Officer Locked Bag 3015, Nowra NSW 2541 or emailed to [EO@lgbc.nsw.gov.au](mailto:EO@lgbc.nsw.gov.au) by COB 24 April 2020.

Persons making submissions should give written indication by COB 24 April 2020 on whether they wish to speak to their written submission at the LGBC's public hearings. Details of the venue and time of the public hearings will be advertised once available. Any changes that must be made to these arrangements due to the impact of COVID-19 will be published on the LGBC website.

Submissions received by the LGBC may be made publicly available at the Commission's discretion.

Further information on the making of written submissions and the conduct of the public hearings is available at the councils mentioned above and via the LGBC website: [www.olg.nsw.gov.au/lgbc](http://www.olg.nsw.gov.au/lgbc).

For more information please visit: [www.olg.nsw.gov.au](http://www.olg.nsw.gov.au)

BLZ\_SB1251

Attachment 4

[Copy of LGBC's public notice dated 24 September 2020]



New South Wales Government

## Notice of Local Government Boundaries Commission Examination and Report into a Proposal to create a New Local Government Area affecting the Area of Snowy Valleys Council

Pursuant to section 218(1) of the *Local Government Act 1993*, the Minister for Local Government has referred to the Local Government Boundaries Commission for examination and report a proposal to create a new local government area out of the Snowy Valleys local government area. The effect of the proposal, if implemented, would be to re-establish the former Tumbarumba Shire local government area and reduce the size of the Snowy Valleys Council so that it corresponds to the area of the former Tumut Shire Council.

The examination into the proposal has commenced and written submissions are invited from members of the public. The closing date for written submissions is 5pm AEDT, 13 November 2020.

Submissions can be made by email to [eo@lgbc.nsw.gov.au](mailto:eo@lgbc.nsw.gov.au) or by mail to:  
Executive Officer, Boundaries Commission  
Locked Bag 3015, Nowra NSW 2541

A public inquiry in relation to the proposal will be held under section 263 of the *Local Government Act 1993* at the following times and venues:

**Venue 1:** Tumbarumba Bowling Club, 47 Winton Street, Tumbarumba  
**3 November 2020**  
Session 1: 10am - 12pm  
Session 2: 1pm - 2:45pm  
Session 3: 3:30pm - 4:45pm  
Session 4: 5:00pm - 6:30pm

**Venue 2:** Tumut Golf Club, Fairway Drive, Tumut  
**4 November 2020**  
Session 1: 12:30pm - 2:30pm  
Session 2: 3:00pm - 4:30pm  
Session 3: 5:00pm - 6:00pm  
**5 November 2020**  
Session 4: 9:30am - 11:30am

### Registration Requirements

Due to the COVID-19 pandemic, the number of persons attending the above venues will be limited to comply with COVID safety plan requirements.

Members of the public wanting to address the public inquiry should register their intention and nominate the session they wish to attend. Speakers will be allotted three (3) minutes to address the Commission. Members of the public who want to attend but not address the public inquiry should also register their intention and nominate the session they wish to attend.

A failure to register may mean you will be unable to attend the session of your choice and/or address the inquiry. Registrations for each session will close if the maximum number of attendees is reached. Priority will be given to those addressing the public inquiry. Registrations will open from Monday 5 October 2020 and can be made at [olg.nsw.gov.au/lgbc](http://olg.nsw.gov.au/lgbc) or by contacting the Executive Officer on (02) 4428 4160.

The inquiry proceedings will be webcast live for those unable to attend the venue. The webcast will be accessible through the Boundaries Commission webpage.

For more information contact the Executive Officer or visit [olg.nsw.gov.au/lgbc](http://olg.nsw.gov.au/lgbc)

BIZ/1/1882

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Attachment 5

Section 263(3) of the *Local Government Act 1993*

- (3) When considering any matter referred to it that relates to the boundaries of areas or the areas of operations of county councils, the Boundaries Commission is required to have regard to the following factors:
- (a) 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,
  - (b) the community of interest and geographic cohesion in the existing areas and in any proposed new area,
  - (c) the existing historical and traditional values in the existing areas and the impact of change on them,
  - (d) the attitude of the residents and ratepayers of the areas concerned,
  - (e) 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,
  - (e1) 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,
  - (e2) the impact of any relevant proposal on the employment of the staff by the councils of the areas concerned,
  - (e3) the impact of any relevant proposal on rural communities in the areas concerned,
  - (e4) 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,
  - (e5) 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,
  - (f) such other factors as it considers relevant to the provision of efficient and effective local government in the existing and proposed new areas.