
**PROPOSED MERGER OF
DUNGOG SHIRE AND MAITLAND CITY COUNCILS**

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



MAY 2016



Local Government Boundaries Commission
GPO Box 5341
Sydney NSW 2001

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

Dear Minister

Proposed merger of Dungog Shire and Maitland City councils

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

Yours sincerely

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

RJ Sendt
Chairperson
3 May 2016

1. Summary of Local Government Boundaries Commission comments

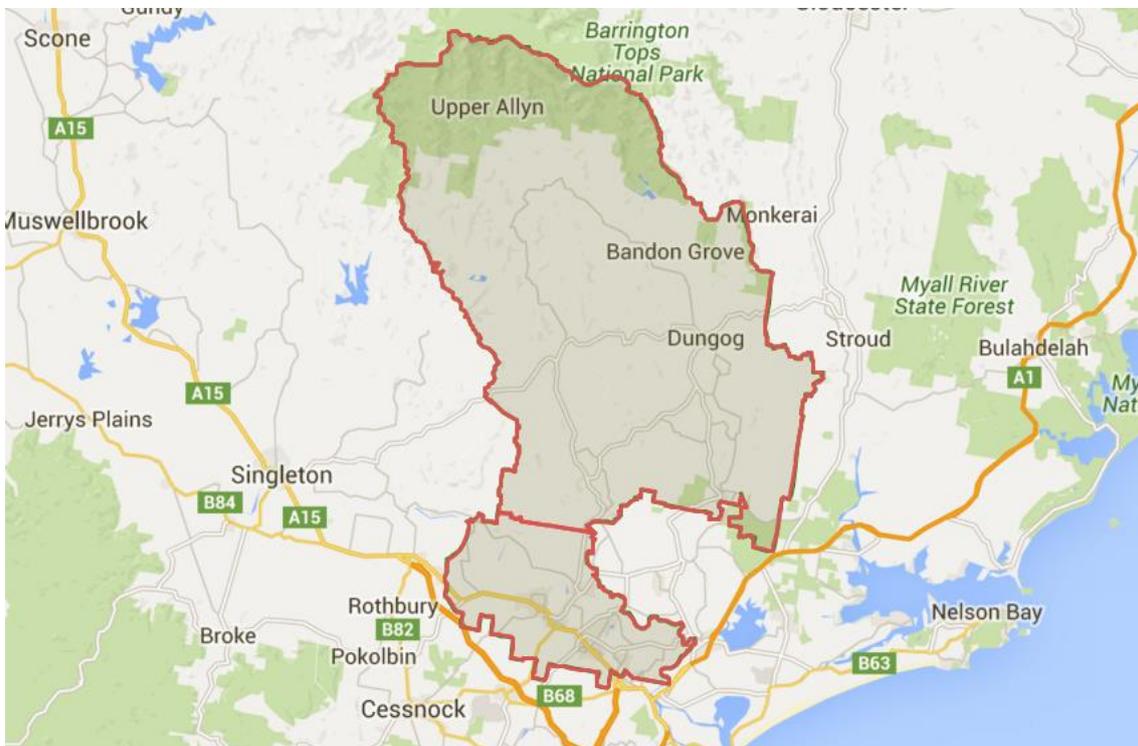
The Boundaries Commission has reviewed the Delegate's Report on the proposed merger of Dungog Shire Council and Maitland City Council to determine whether it shows the legislative process has been followed and the Delegate has taken into account all the factors required under the *Local Government Act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

The Commission has assessed that:

- the Delegate's Report shows that the Delegate has undertaken all the processes required by section 263 of the Act,
- the Delegate's Report shows that the Delegate has adequately considered all the factors required by section 263(3) of the Act, with the exception of the factors listed under subsections 263(3)(e1) (service delivery), 263(3)(e4) (wards) and 263(3)(e5) (diverse communities), and
- the Delegate's recommendation in relation to the proposed merger is supported by the Delegate's assessment of the factors, while noting the limited analysis of a number of factors in the Report.

2. Summary of the merger proposal

On 3 March 2016 the Minister for Local Government referred a proposal to merge the local government areas of Dungog and Maitland to the Acting Chief Executive of the Office of Local Government for examination and report under the Act. The following map shows the proposed new council area (shaded in green).



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

Council	2016	2031
Dungog Shire Council	8,650	8,800
Maitland City Council	77,900	100,500
New Council	86,550	109,300

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

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

3. Role of the Local Government Boundaries Commission

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

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

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

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

4. Delegate's Recommendations

The Delegate's key recommendation is that the Maitland City Council and Dungog Shire Council merger proposal proceed.

The Delegate also made the following other recommendations:

- *“that the new entity be named Maitland City Council,*
- *that a new council has a popularly elected Mayor and consists of nine councillors who would be elected from an undivided area,*
- *that an administrative centre be retained in Dungog to enable residents and surrounding rural communities to conduct their council business locally,*
- *that at least those essential outdoor staff local services at Dungog Shire Council are maintained with a local works depot presence,*

- *to address financial sustainability and service level maintenance and enhancement, it is recommended that the NSW Government’s proposed four year fixed rate path policy not be applied to this merger, should it proceed”.*

5. The Commission’s detailed comments

5.1 Review of the process followed by the Delegate

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

In total, the Delegate considered 148 written and verbal submissions from the public, community and other organisations and Councils.

The Delegate held two public inquiries on 6 April 2016 at Dungog Memorial Bowling Club and at Club Maitland City.

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

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

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

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

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

The Commission makes the following comments relating to each factor:

5.2.1 Financial factors

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

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

The Report noted the KPMG modelling for the proposal indicating a net financial saving to a new council of \$15 million over 20 years, with a further \$15 million being made available to the new council through the NSW Government funding package for merging councils. The Delegate stated that the new council would have revenue expected to exceed \$135 million per year by 2025 and an

asset base of approximately \$854 million. The comparative infrastructure backlog was also considered in the Report, with both Councils currently having a 14 per cent backlog.

The Delegate noted that Morrison Low had examined the merger business case and determined that a merger would not result in financial savings, with Morrison Low concluding that Dungog ratepayers would face significant rate increases under a merger and that that savings from back office staff were unlikely to occur. However, the Delegate noted the KPMG modelling assumed no net staffing reductions for regional councils. Maitland Council submitted that the merger would cost \$7.25 million over eight years with an operating shortfall growing to \$2.6 million each year. It was also noted by the Delegate that Morrison Low undertook modelling for Dungog Shire Council, indicating that the merger was not financial sustainable for Dungog residents, contending that the merger would fail the benchmarks of operating performance, infrastructure renewal, backlog and maintenance.

The Delegate noted several reports highlighting the significant financial issues confronting Dungog Shire Council, that Maitland City has an approved cumulative Special Rate Variation of 41.1 per cent over seven years from 2014-15, and that Dungog has indicated it could seek an SRV of 92.2 per cent over a six year period. Given these financial considerations, the Delegate stated that it would be important for a new council to have the ability to immediately implement an adequate rate increase.

It was concluded by the Delegate that the merger proposal provides a better long term solution and greater scale and capacity when compared to maintenance of the status quo, with the financial advantages outweighing the disadvantages. The Report stated that, while there may be some short term challenges, a new council will develop greater financial strength and capacity to benefit the broad communities it would represent.

The Delegate also recommended that the NSW Government's rate freeze policy should be waived for the proposed merger.

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

5.2.2 Communities of interest

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

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

Geographic features of the proposed new area were outlined in the Report, with the Delegate noting that the towns of Dungog and Maitland are 52 kilometres apart by road. The Delegate noted that the residents in Dungog Shire use Maitland as a service centre, providing “strength in common communities’ interest and geographic cohesion”. This view was also supported in the Report by reference to the rail link between Dungog and Maitland and the affiliation in sports, allied health, and other services. The Delegate further noted that each Council is affiliated with emergency service providers through the Lower and Central Hunter region.

The Delegate concluded that the relatively strong and constant community of interest and geographic cohesion of the areas supported the merger proposal. He recommended that the name of the merged council continue as Maitland City Council given that Maitland is strongly identified as a growing city.

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

The Commission notes that the name of a new council is a matter for the Minister.

5.2.3 Historical and traditional values

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

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

The shared industrial history of the two LGAs was considered by the Delegate. However, he also noted that growth in Maitland is centred on commerce, mining and mining services, industry, and urban expansion, while Dungog has a slowly declining agricultural industry and an ageing rural population.

The Report noted that the submission from Maitland City Council referred to the shared heritage and history of the areas, while acknowledging differences in city and country values are to be expected. The Delegate noted that these differences could be managed through appropriate planning and governance structures.

The Delegate concluded that there are *“ongoing connections and shared traditions and values which are positives in terms of the prospects of the success of a merged entity”.*

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

5.2.4 Attitudes of residents and ratepayers

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

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

As outlined in the Report, submissions received included the expression of attitudes that Dungog Shire Council could no longer stand alone, that Dungog Shire Council has not effectively consulted with the community, and that Dungog has failed the community in showing little inclination to focus on more basic and core service delivery.

The Delegate also noted that many submissions criticised the KPMG financial data and lack of a business case to support the proposal, with concern that Maitland ratepayers would be “propping up” Dungog Shire. It was also noted by the Delegate that many presenters at the inquiry argued a preference for a merger between Dungog and Port Stephens.

Given broad recognition that Dungog could no longer financial remain independent, the Delegate concluded “there was a degree of acceptance that DSC needed a merger partner to address its financial sustainability problems and that MCC was probably the most suitable partner”.

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

5.2.5 Elected representation

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

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

The Report noted that several submissions raised concerns about the perceived difficulty of securing representation for Dungog residents on a new council, given the comparatively small population of the current Dungog Shire. It was noted by the Delegate that Dungog currently has nine councillors elected from three wards, with the Mayor elected annually by councillors. It was also noted that Dungog Shire Council expressed a preference for the establishment of a new ward for the entire current Dungog LGA within a new council.

In contrast, the Delegate noted that Maitland City Council has a popularly elected Mayor and 12 further councillors within four wards. The Report stated that a popularly elected Mayor appeared well supported in submissions.

The Delegate stated that a 13 member council is unnecessary in an era of improved governance, policy setting and resource provision roles. He further noted that other NSW councils such as Tweed Shire and Coffs Harbour City have larger residents per councillor ratios than would a merger between Dungog and Maitland. The Delegate also noted that both Councils preferred the continued use of a ward system. However, the Delegate considered that an undivided area with proportional representation voting would better serve the new entity, with proportional voting likely to provide some representation for the Dungog area, presuming that voters supported local candidates.

It was recommended by the Delegate that a new council implement a popularly elected Mayor and consist of nine councillors including the Mayor, elected from an undivided area.

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

5.2.6 Service delivery and facilities

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

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

It was noted by the Delegate that Maitland City Council submitted there were notable differences in service levels between the two LGAs, with harmonisation to be a significant cost. Examples were given in the Report where Maitland had a higher level of service, such as communication and engagement, construction and maintenance, swimming pools, streetscape and street cleaning, museums, galleries and libraries, and events. However, the Delegate also noted that Dungog Shire Council provides services unique to local circumstances, such as advocacy for rural health service and strong delivery partnerships with local NGOs.

The Delegate stated that, given Maitland currently has an SRV, service levels should not decline in Maitland, however, the Delegate stated that it will be critical for an SRV to be secured by a new council to provide increased services to the Dungog LGA. The Delegate concluded that:

“To address financial sustainability and service level maintenance and enhancement, it is recommended that the NSW Government’s proposed four year fixed rate path policy not be applied should this merger be implemented. It would be disadvantageous to have the greater majority of a new LGA enjoying the benefits of a SRV while the former Dungog LGA would, in effect, be “marking time” for four years before being able to address its financial issues.”

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

5.2.7 Employment impacts on staff

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

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

As outlined in the Report, Maitland City Council has a full time equivalent staff complement of 354, whereas Dungog Shire Council has 65. The Delegate noted that the staff level in Dungog is below its group average of 107 and the Council contracts a substantial proportion of its roads maintenance and constructions services.

The Delegate noted that the provisions of section 218CA of the Act would apply to Dungog, protecting existing staff levels as far as reasonably practicable. While concern was expressed in submissions that the merger would have adverse impacts for staff, the Delegate stated that there was no evidence to support these claims, particularly given protections in the Act for three years. The Delegate further noted that the experience of the 2003-04 council merger process demonstrated that mergers increase job opportunities.

Dungog Council’s claim that the Council has difficulty recruiting technical and professional staff was noted by the Delegate, who suggested that merging with Maitland may provide staff with career advancement opportunities while broadening their skills.

The Delegate concluded that there would be minimal, if any, adverse impacts on employment of staff if a new council were constituted.

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

5.2.8 Rural impacts

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

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

The Report outlined that Dungog Shire includes a number of small rural communities. Given protections in the Act for employment in rural centres, the Delegate stated that these communities would be able to access administrative offices and services in either Dungog or Maitland. The Delegate also acknowledged suggestions that Maitland is a growing city that has largely lost its rural identity, with the city acting as a service centre for neighbouring LGAs, including Dungog. Despite these differences, the Delegate stated that the economic drivers and employment sources are considered complementary rather than competitive or divergent, and that any differences could be managed through appropriate planning and governance structures.

The Delegate considered that retaining an administrative centre in Dungog would be important to the provision of services to the surrounding rural communities. It is recommended in the Report that this centre be retained to enable residents and surrounding rural communities to conduct their council business locally. The Delegate also recommended that essential outdoor staff local services be maintained with a local works depot presence.

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

5.2.9 Wards

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

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

The Report stated that consideration of the matter of wards is included in the chapter relating to elected representation. In that chapter, the Delegate noted that both Councils preferred continued use of a ward system. However, the Delegate considered that an undivided area with proportional representation voting would better serve the new entity, with proportional voting likely to provide some representation for the Dungog area, presuming that voters supported local candidates.

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

5.2.10 Opinions of diverse communities

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

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

The Delegate noted that there was very little discussion or submissions regarding representation of diverse communities. The Report stated that “development of a new Community Strategic Plan for a merged council area would clearly be the cornerstone in ensuring that the needs of the various communities were effectively heard and delivered upon by the new entity”.

The Delegate concluded that communities in each LGA could be effectively represented in a merged council, with development and implementation of sound community engagement activities an important component to successful representation.

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

5.2.11 Other issues

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

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

Two issues were considered by the Delegate under this factor, relating to an alternative merger proposal and a boundary adjustment.

The Delegate noted that Port Stephens Council had resolved to lodge an alternative merger proposal, to merge Port Stephens and Dungog Shire. He understood that this proposal has been referred by the Minister for Local Government to the Acting Chief Executive of the Office of Local Government.

It was further noted by the Delegate that one submission proposed an enlarged LGA boundary to accommodate future economic and residential growth in Maitland. The Delegate stated that this was beyond his brief but may be worthy of future consideration by a merged council.

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

The Commission notes that suggested boundary adjustments are a matter for the Minister.