
**PROPOSED MERGER OF
KIAMA MUNICIPAL AND SHOALHAVEN 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**



APRIL 2016



Local Government Boundaries Commission
GPO Box 5341
Sydney NSW 2001

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

Dear Minister

Proposed merger of Kiama Municipal and Shoalhaven 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
22 April 2016

1. Summary of Local Government Boundaries Commission comments

The Boundaries Commission has reviewed the Delegate's Report on the proposed merger of Kiama Municipal Council and Shoalhaven 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, and
- the Delegate's recommendation in relation to the proposed merger is supported by the Delegate's assessment of the factors.

2. Summary of the merger proposal

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



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

Council	2016	2031
Kiama Municipal Council	22,000	25,450
Shoalhaven City Council	99,800	108,150
New council	121,800	133,600

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 existing areas of Kiama Municipal Council and Shoalhaven City Council should not be merged".

In the event that the merger does proceed, the Delegate also recommended that:

- *The area should be comprised of five wards, incorporating all of the existing Kiama LGA within one ward*
- *The Council should comprise fifteen (15) councillors*
- *The Mayor should be elected by the Councillors.*

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 2,204 written and verbal submissions from the public, community and other organisations and councils.

The Delegate held three public inquiries on Wednesday, 23 February 2016 at the Kiama Leagues Club and the Shoalhaven Ex-Servicemen's Club. A fourth public inquiry was held on Thursday, 25 February 2016 at the Milton-Ulladulla Ex-Servos Club.

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

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

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

Overall, the Commission's view is that the Report shows the Delegate adequately considered all the factors.

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

The Commission makes the following comments relating to each factor:

5.2.1 Financial factors

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

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

The Delegate investigated the financial circumstances and practices of each council and established that, as the two Councils do not currently share resources to any significant extent, the cost of merging systems and people will be substantial. He noted that although KPMG has estimated that the \$5 million on offer from the state government to support councils in establishing a new merged entity should be enough to cover most of the costs, both Kiama and Shoalhaven Councils have estimated significantly higher merger costs, with Kiama estimating the actual cost may be closer to \$9.1 million. The Delegate found that, based on industry research of experience in past

amalgamations in NSW and other jurisdictions, it was likely the cost of merger implementation of the Kiama and Shoalhaven Councils would be significantly higher than the \$5 million package offered by the State Government. He further noted that the \$10 million of State Government funding earmarked to assist a merged entity in addressing infrastructure backlogs would only cover around 25% of the combined backlog of the two councils.

The Report considers the issue of grant funding and whether a merger of the two Councils may remove the new Council from eligibility for some grant funding sources.

The Delegate also noted that although IPART had determined Kiama council as being “unfit” for the Future according to the established criteria for scale and capacity, he did not see either of the Councils as being in a difficult, long term financial position.

The Delegate concluded that in his view, that there is only limited financial advantage to the proposed merger, and only in relation to the infrastructure funding, with the likely integration costs being understated and the potential savings being only minimal.

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

5.2.2 Communities of interest

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

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

The Delegate noted that from an operational community and tourism perspective, Kiama is part of the Illawarra region and Shoalhaven is part of the Shoalhaven region and that both communities have generally been developed along these lines. In the Delegate’s view existing communities within Shoalhaven to the south of Nowra-Bomaderry traditionally have very limited or no relationship with the local government areas to the north, including Kiama. In his view this is due to distance and also geographic spheres of influence.

The Delegate noted that public transport from Kiama to Nowra is also difficult requiring a train from Kiama to Bomaderry and then a bus from Bomaderry to Nowra and that there are issues with the frequency of train services and connecting buses.

Furthermore, the Delegate noted the difference in employment types is quite distinct demonstrating the significant differences in education level, economic status and employment type of the residents living in Shoalhaven compared to those who live in the Kiama Municipality. He also noted differences in age structures and housing values between the two areas.

The Delegate suggested that combining such disparate groups can generate inequalities in terms of ability to participate, to understand the complex changes and to be able to pay for potential additional fees and charges.

The Delegate stated that in his opinion, with relatively minor exceptions, the Kiama Municipality and the Shoalhaven City exist and operate in significantly different communities of interest so that

substantial demographic differences, travel patterns and external servicing regions effectively differentiate the two localities in many respects.

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

5.2.3 Historical and traditional values

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

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

The Delegate reported that this factor had not generated a great deal of material in the submissions process from residents and ratepayers. Of those who mentioned it, concerns related to the loss of identity and rural character.

The Delegate noted that Kiama Municipality is one of the oldest local government areas in NSW having governed its area for 156 years. He also noted the Kiama Council point that it has traditionally maintained close liaison and co-operation with many local organisations, clubs and groups which has fostered very high levels of volunteerism within the Municipality community, something which Council was concerned may be lost under a new merged entity.

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

5.2.4 Attitudes of residents and ratepayers

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

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

The Delegate reported that the overwhelming majority of submissions, either written or verbal, were strongly opposed to the merger proposal although a small number of submissions (47 in total) supported the merger. However, he also noted that as the number of people who made submissions were with less than 10% of Kiama's electors and less than 1% of Shoalhaven's electors which represented an aggregate of 1.83% of the total elector base, it would be difficult to say that the attitude of the resident and ratepayer base is opposed to the proposal. It is clear, however, that of those actively engaged in the submissions/public inquiry process, the vast majority were opposed.

As noted by the Report, both Kiama Municipal Council and Shoalhaven City Council commissioned phone surveys to gauge community interest and views on the merger. The Delegate noted that in Kiama, the result was a resounding “no” response to the proposal to merge the councils with 92.7% of respondents stating they did not believe that an amalgamation would benefit the community and 87% stating they believed that Kiama Council best understands and represents their community interests. In addition 76% did not consider there is a shared community of interest with the Shoalhaven. However, a minority of 16.5% did consider that there was any community of interest with Shoalhaven.

The Delegate noted that the Kiama community response was passionate and heartfelt and focused largely around the loss of independence and identity that it feels will come with a Council merger. However the Delegate also stated that, on balance, the Shoalhaven population appears to be ambivalent about the proposal, which is confirmed in the Council's own submission.

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

5.2.5 Elected representation

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

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

The Delegate noted that currently, Kiama Municipal Council has nine councillors which provides an electoral representation ratio of one councillor per 2,368 residents. Shoalhaven City Council has 13 councillors, which equates to one councillor per 7,617 residents. Kiama is an undivided area while Shoalhaven operates three wards.

The Delegate further noted that a merger of the two Councils would result in higher representation ratios for the residents of the current Kiama Municipality and that if the Delegate's recommendation for 15 councillors in a newly merged entity was adopted then the representation ratio for residents in the existing Shoalhaven City would also increase slightly.

The area of the proposed new council would be 4,825 km², encompassing 54 distinct towns and villages. The distance from the northern to the southern boundary is 195 km. In the Delegate's view this would create challenges around travel times, transport options and diversity of community interests all of which could impact on the ability of a councillor to effectively interact with his or her constituency and to represent their best interests.

The Delegate recommended that in order to effectively administer the new council, the maximum number of councillors allowed under the Act ought to be utilised and that in the event of a merger, there should be 15 councillors on the new council.

In relation to the Mayor, the Delegate noted that two different systems currently exist in the two Council areas so that while Shoalhaven's Mayor is elected by popular vote, Kiama's Mayor is elected by the Councillors. He recommended that given the comparatively small number of electors in the existing Kiama area, it would be unlikely that a Kiama candidate could be elected to the Mayoral position in a popular vote and so in the interests of equity the Mayor should be elected by the Councillors.

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

5.2.6 Service delivery and facilities

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

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

The Delegate reported that the two Councils both provide the standard suite of local municipal services to their communities, albeit with differences in approach and standard of delivery. They also provide services common to coastal councils such as caravan and camping grounds and ocean pools or baths.

The Report noted differences in the provision of waste services – Kiama has a green waste service where Shoalhaven does not - and costs vary significantly, which may pose challenges for a new council entity in attempting to harmonise services across different population densities. Water services are also delivered by separate utilities (the council-owned Shoalhaven Water in Shoalhaven and Sydney Water in Kiama) which manifests in major differences in the methods and outcomes of service pricing, treatment of pensioners and pricing for developers across the two different schemes.

The Delegate acknowledged there were some areas of shared services, including library and tourism projects but there were limited commonalities in regards to day to day activities and use of services and facilities by residents of Kiama, who tended to look north for additional services, and those of Shoalhaven who look south to Batemans Bay.

The Delegate concluded that a higher level of service (for some services) is provided in Kiama compared to Shoalhaven, as demonstrated by the higher levels of expenditure per capita in a range of service areas. Kiama residents also pay significantly higher property rates than Shoalhaven residents.

The Delegate also stated that differing service levels and pricing mechanisms will be difficult to harmonise in the short term; specialised services responding to specific community need (such as aged care) may suffer a lack of focus or divestiture; and completely different water and sewer arrangements may lead to confusion, inefficiency and inequity for residents.

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

5.2.7 Employment impacts on staff

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

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

The Delegate noted that KPMG assumed a staff reduction of between 3.7% and 5% following the proposed merger, along with an estimated \$38 million of gross savings to be achieved over 20 years through redeployment of back office roles and administrative roles and streamlining senior management roles. However, he was not convinced that these savings could be achieved in this case principally due to the geographic size and length of the proposed new area.

The Report noted that Shoalhaven council has already undergone a major structural change to its organisation as a result of its transformation program as a response to the Fit for the Future initiatives, removing 38 management positions and implementing \$6.5 million of annual savings which limited the opportunities for further savings.

The Delegate felt that given the large geographic area of the proposed new Local Government Area (LGA), it would not be in the best interests of the community to close offices at Kiama and Ulladulla and centralise staff in Nowra, and that although there will be opportunities to reduce “back office” staff from Kiama, previous research has indicated that there will be an increase in total staff establishment over time. The geographic distance would also require the maintenance of existing operational sites such as depots, due to the need to be responsive and minimise travel times for work crews.

The Delegate concluded that the majority of savings in staff are unlikely to be achieved and the “impacts on staff” referred to in section 263(3)(e2) of the Act will be more likely to relate to transfer of location rather than actual loss of jobs and will require more travel for any staff transferring to Nowra from Kiama.

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

5.2.8 Rural impacts

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

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

The Delegate noted that the Shoalhaven area includes many rural and agricultural areas including the floodplain country along the Shoalhaven River, and that agriculture and forestry are significant industries in the region, along with dairying in the northern areas adjacent to Kiama rural areas.

The Report further noted that both councils plan to accommodate future growth primarily through outward expansion of settlements or increasing densities within existing urban areas and concluded that the proposed merger will not have a significant effect on existing rural communities. However, he acknowledged concerns regarding loss of electoral representation due to lower population densities.

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

The Commission notes that issues relating to this factor were also considered by the Delegate in his examination of the factors of ‘communities of interest’ and ‘employment impacts on staff’.

5.2.9 Wards

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

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

The Delegate reported that the issue of wards was addressed in a minor number of the submissions received and that neither of the Council submissions placed a great deal of emphasis on this matter, with Kiama assuming a ward system would be enacted and Shoalhaven preferring four wards.

The Report noted that the issue of wards can be a “double edged sword” for smaller communities merging with larger councils in that, while it will guarantee a minimum number of representatives for a particular area on the new Council, it also places a cap on the number of councillors that an area can elect.

Currently Kiama Council is an undivided LGA whereas Shoalhaven has three wards. The Delegate suggested that if an additional ward was created to accommodate Kiama it would have an elector base considerably larger than the existing Kiama elector base. The Delegate noted that this would mean a “Kiama Ward” would contain not only all of the existing Kiama voters but also almost 6,500 of existing Shoalhaven voters and therefore has the potential to dilute any Kiama representation.

The Delegate recommended that in the event of a merger, a five ward system of approximately 17,815 electors each should be introduced, thus ensuring that the former Kiama Municipality would occupy almost an entire ward in its own right. He also repeated his earlier recommendation that the new council should comprise 15 councillors which also accords more closely to a five ward model.

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

5.2.10 Opinions of diverse communities

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

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

The Delegate noted that the issue of diverse communities as it is traditionally understood did not play a large part in submissions, however Shoalhaven City Council did provide an interesting perspective on the issue in its submission. As noted in the Report, the Council pointed to the difficulties of maintaining effective community engagement in its existing 49 distinct towns and villages and suggested this would be even more complex if the various Kiama LGA localities were added to the mix. In that case it proposed the introduction of community consultative committees or precinct committees under section 355 of the Act as an appropriate mechanism for achieving this end should a merger proceed.

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

The Commission notes that issues considered under this factor were cross-referenced in the Report to the ‘communities of interest’ factor.

Other issues

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

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

The Delegate considered the following matters as other issues relevant to the proposal:

- *Development:* The Delegate noted that concerns were expressed in a number of submissions on the development differences between both councils. The main view expressed was that Kiama would become high density living and assets would be sold off. Development would occur in rural Kiama regions. The Kiama Local Environmental Plan has particular regard to affordable housing, environmental protection of agricultural land, recognition of the character and identity of coastal and rural towns and the natural environment.
- *Illawarra Pilot Joint Organisation (IPJO):* The Delegate noted the establishment of the IPJO to maximise the broader region’s potential and to serve the interests of the regional communities of its member councils which include Kiama Municipal, Shellharbour City, Shoalhaven City and Wollongong City Councils.

The Delegate stated that in his opinion, the Illawarra Joint Organisation appears, on face value to be capable of achieving many of the objectives of the merger proposal.

- *Strategic capacity:* The Delegate commented that experience has shown that larger Council organisations have better capacity to build higher level and more diverse skills than smaller Councils and are able to attract and retain a broader range of skill sets and offer more specialisation. He noted that any new Council arising from this proposal would probably have in the vicinity of 1,000 full time equivalent staff and this would provide some scope to improve the strategic capacity of the Council.

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