
**PROPOSED MERGER OF
BERRIGAN SHIRE AND JERILDERIE SHIRE (PART)
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 Berrigan Shire and Jerilderie Shire (part) 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
1 May 2016

1. Summary of Local Government Boundaries Commission comments

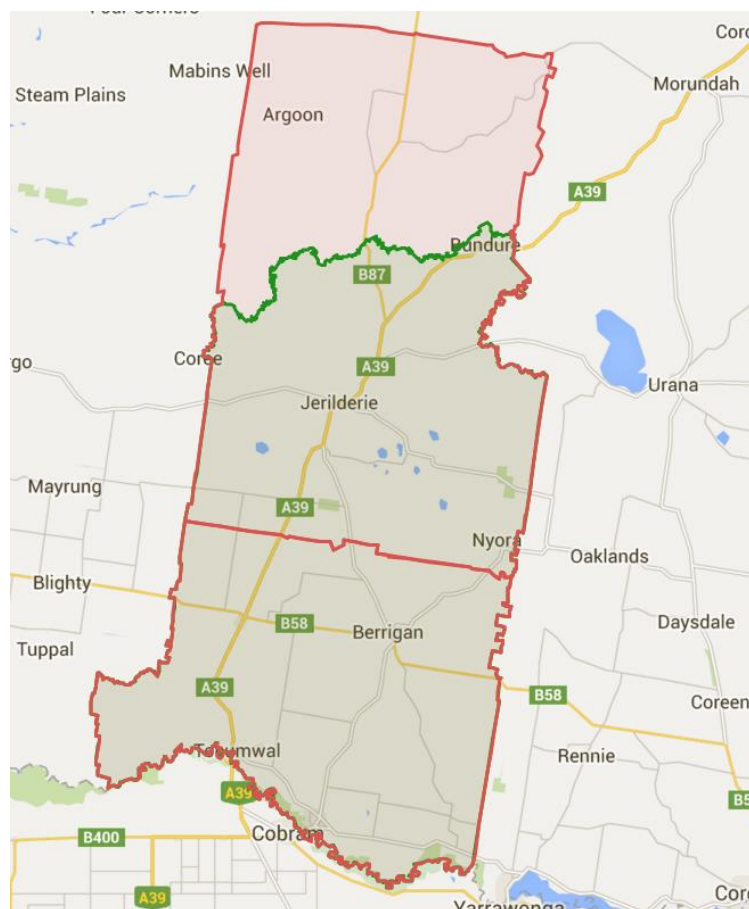
The Boundaries Commission has reviewed the Delegate's Report on the proposed merger of Berrigan Shire Council and Jerilderie Shire Council (part) to determine whether it shows the legislative process has been followed and the Delegate has taken into account all the factors required under the *Local Government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

The Commission has assessed that:

- the Delegate's Report shows that the Delegate has undertaken all the processes required by section 263 of the Act,
- the Delegate's Report shows that the Delegate has adequately considered all the factors required by section 263(3) of the Act, with the exception of the factor listed under subsection 263(3)(e5) (diverse communities), 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 Berrigan Shire Council and Jerilderie Shire Council (part) 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	2014	2031
Berrigan Shire Council	8,413	n.a.
Jerilderie Shire Council (part)	1,215	n.a.
New Council	9,628	8,000*

Source: NSW Government Merger Proposal Berrigan Shire Council and Jerilderie Shire Council (part) January 2016; NSW Department of Premier and Cabinet. *As estimated in merger proposal

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 “*strongly recommend[ed] that this proposal is **not** implemented*”.

5. The Commission’s detailed comments

5.1 Review of the process followed by the Delegate

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

In total the Delegate considered 397 written and verbal submissions from the public, community and other organisations and councils.

The Delegate held two public inquiries on 10 February 2016 at the Berrigan War Memorial and the Jerilderie Sports Club.

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

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

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

Overall, the Commission's view is that the Report shows the Delegate adequately considered all the factors, with the exception of 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 Delegate's considered that the estimated financial benefits, as modelled by KPMG, would not be realised under a merged entity and that there was a strong possibility that the proposal would result in net costs to the community. As outlined by the Delegate, this would be due to:

- the staff savings being significantly less than estimated by KPMG,
- the asset and rate component within the part of the Jerilderie Shire split meant that the proposed merged council would receive a significantly larger proportion of fixed assets (costs) than the proportion of rate income,
- the employment protections would see all staff from Jerilderie move to the proposed new council creating more staff than required to provide services.
- the reduced savings and potentially an ongoing net deficit from the split of financial statements compared to the saving forecast using the KPMG assumptions.

The Delegated stated that it was likely that the proposed merger would put the residents and ratepayers of the new entity at a financial disadvantage compared to their previous position.

The Commission's view is that the Delegate adequately considered the issues under this factor, while noting the lack of analysis in the Report of economies and diseconomies of scale.

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 Report outlined that Berrigan Shire Council and Jerilderie Shire Council are adjacent to each other. Berrigan Shire is situated along the Murray River with Jerilderie Shire to the north. Berrigan Shire has a total population of 8,066 people spread over four urban centres Berrigan, Finley, Barooga and Tocumwal, and the regional land around these towns. Jerilderie Shire has a total population of 1,496 persons living in the Jerilderie Township and the surrounding rural area.

The Delegate stated that there are different focuses for each community but at a base-level the communities that make up the Berrigan and Jerilderie Shires are essentially similar; proud of their heritage, with a strong community spirit and a reliance on their local council for services and support. The Delegate considered the Rural Fire Service (RFS) and its most appropriate location should the merger proceed. The Delegate noted that the location should be consistent with current RFS fire control for Berrigan Shire.

The Delegate considered there were no major impacts on geographic cohesion or communities of interest within the existing areas as a result of the proposed merger.

The Delegate concluded that this factor was not an impediment to the proposed merger proceeding.

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

5.2.3 Historical and traditional values

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

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

The Delegate noted only a small number of the submissions addressed the factor of historical and traditional values. The Report outlined that rural properties such as Yanco Station, Willandra, Bundure, Pooginook, Woodpark and Somerset are Jerilderie Shire’s history. The Delegate stated that these properties have played a strong part of the Jerilderie history and the community did not want its history divided and lost.

In considering the historical and traditional values of the areas affected, the Delegate determined there appeared to be no substantial evidence to indicate that the historical and traditional values would be adversely affected by the merger proposal.

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 noted that the residents and ratepayers who participated in the public consultation process overwhelmingly rejected this merger proposal. The Report stated that 12% of the Jerilderie population made representations to the public inquiry.

The Delegate concluded there was no support for the implementation of this proposal based upon the submissions received.

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 stated that, according to submissions and discussions with Council, Berrigan Shire councillors are elected on merit and not geographic origin. The Delegate stated that a continuation of this approach combined with the requirements under the Act on councillors to act in the best interests of the whole council area should mean Jerilderie would not receive inadequate representation or be disadvantaged should the merger proceed.

The Delegate recommended there be 8 councillors and that wards are not created.

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 stated that Jerilderie and Berrigan are both rural townships of less than 1,000 people and have experienced rural decline.

The Delegate stated that due to its potential weaker financial position, a merged entity would likely struggle to provide services and facilities at the same level as the existing Councils.

The Delegate noted the differences in service provision by the two Councils and stated that harmonisation would have the potential for significant impact particularly for the community of Jerilderie. In the Delegate's view, due to potential representational makeup of a new council and the current position of Berrigan Council, there was a risk that Jerilderie would lose the support currently provided by Council to maintain a permanent doctor in the town. The Delegate stated that this would have a flow on effect to the community with sick and elderly people needing to make changes and potentially move away to access medical services.

The Delegate therefore concluded that there was a risk the merger proposal would put the merged council in a worse economic position than the current Councils and have negative implications for the ongoing provision of adequate, equitable and appropriate services and facilities compared to what is currently provided.

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 section 218CA of the Act would provide employment protections for staff of Jerilderie Shire Council.

The Report outlined that Jerilderie employs 42 full-time equivalent staff and Berrigan 87. The Delegate stated that Berrigan Shire had not undertaken a detailed analysis but had indicated it would need flexibility to manage its financial sustainability through the removal of staff protections in a new council.

The Delegate considered that it was likely that over time there would be a reduction, or alternatively a high turnover, in staff in a merged council due to overstaffing and its implications. As noted in the Report, any job losses from the merged council would negatively impact on the economies of the towns of Jerilderie and Berrigan.

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 employment protections in section 218CA of the Act would need to be complied with and would make it difficult for the merged council to operate efficiently and cost effectively. He considered that the morale of under-utilised staff would not be positive and may lead to resignations, retirements and an increased level of staff turnover. The Delegate stated that this loss/turnover of jobs and the consequent reduction in local spending in both Jerilderie and Berrigan, would negatively affect these rural towns.

The Delegate further noted the potential loss of the Jerilderie’s doctor and the implications of this on other health services and population numbers if the merger were to proceed. The Delegate concluded that the proposal adds a level of risk to rural communities already actively fighting against their precarious position on the scale of rural decline.

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

5.2.9 Wards

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

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

The Report outlined the advantages and disadvantages of a ward system in a merged entity.

The Delegate considered that the introduction of wards could encourage favouritism by councillors and also limit the representation Jerilderie or any other community of the new council could achieve.

The Delegate recommended that wards not be implemented in a new council.

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)(a) 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 reported that only a small number of submissions commented on representation for diverse communities. As outlined in the Report, these submissions noted the dilution of representation for the Jerilderie community generally, however did not identify any specific issues for particular community groups within Jerilderie Shire.

The Delegate noted there were no significant issues raised in submissions in relation to the representation of diverse communities.

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”.

The Delegate noted a challenge for a merged council would be to develop an appropriate rating structure to ensure equitable rating across all rate types and regions. He considered that the four-year freeze on rates would provide adequate time for the new council to develop this with the community.

The Delegate considered boundary alignments cutting through some properties around Yanco Creek. The Delegate recommended no boundary adjustments to the proposed Yanco Creek boundary.

In response to one submission, the Delegate recommended that if the proposed merger proceeded, the new council be named Bangerang Shire Council.

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

The Commission notes that the suggested boundary adjustment and the name for a new council are matters for the Minister.