
**PROPOSED MERGER OF
NEWCASTLE CITY AND PORT STEPHENS
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 Newcastle City and Port Stephens 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

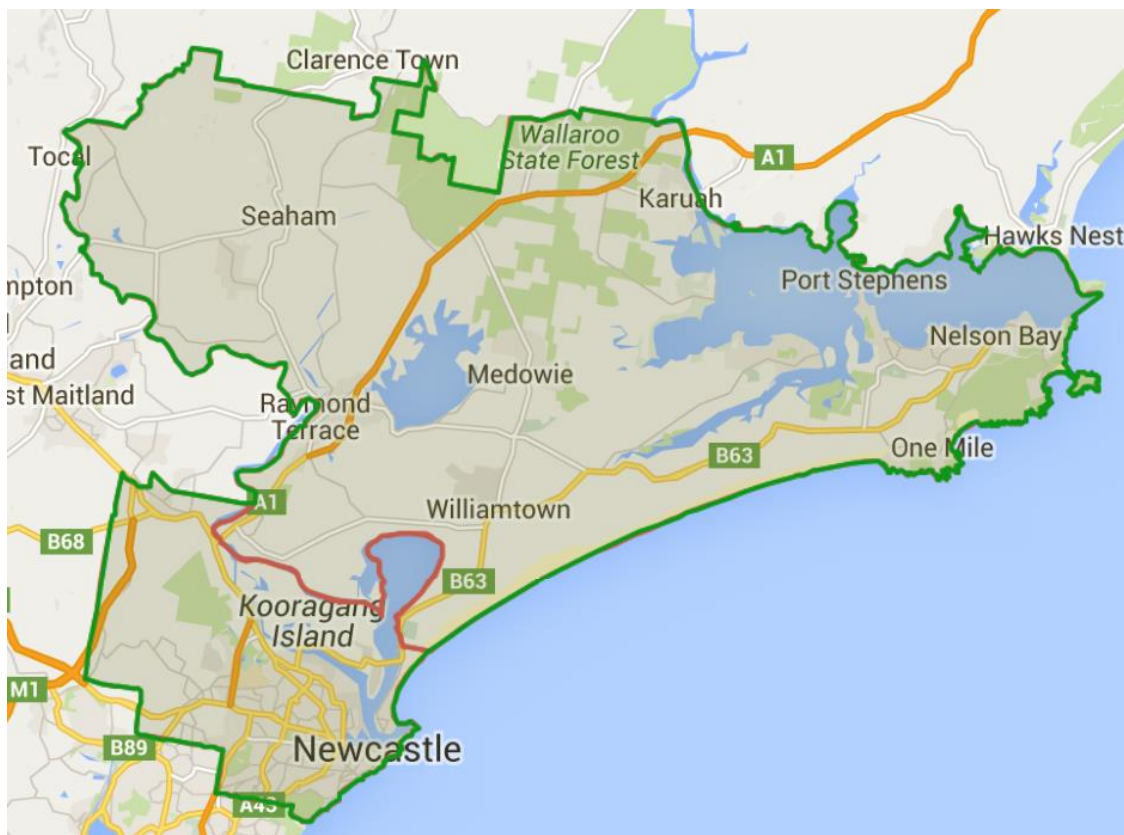
The Boundaries Commission has reviewed the Delegate's Report on the proposed merger of Newcastle City Council and Port Stephens Council to determine whether they show the legislative process has been followed and the Delegate has taken into account all the factors required under the *Local Government 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 merger proposal

On 6 January 2016, the Minister for Local Government referred a proposal to merge the local government areas of Newcastle City Council and Port Stephens 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
Newcastle City Council	164,400	190,050
Port Stephens Council	73,850	88,900
New Council	238,250	278,950

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

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

3. Role of the Local Government Boundaries Commission

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

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

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

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

4. Delegate's recommendations

The Delegate's key recommendation is:

"That the Proposal warrants proceeding to implementation."

The Delegate also recommended:

- *"That the Minister and the Boundaries Commission note this Report's findings;*
- *If the Proposal proceeds, that the new LGA be served by 15 Councillors;*
- *If the Proposal proceeds, that the new LGA is to have five wards, all with dual Indigenous-English naming, and each served by three Councillors;*

- *If the Proposal proceeds, that to the maximum extent possible, the new ward boundaries be drawn to cross the existing LGA boundary and so encompass elements of both existing LGAs, and to avoid splitting suburbs or localities;*
- *If the Proposal proceeds, that the Mayor of the new merged entity be elected by the Councillors,*
- *If the Proposal proceeds, that the Minister seek legal advice regarding the potential continuation of the Lord Mayoralty in relation to the new merged Council;*
- *That the Minister give consideration to the boundary adjustment representations made by Newcastle City and Port Stephens Councils, and by adjacent Councils;*
- *That the Minister give consideration to an appropriate length of office for the Interim Administration, following establishment of the new merged entity, taking into account the extent of adjustments to structures, policies and processes required to provide a stable foundation for the new entity."*
- *If the Proposal proceeds, that the new merged Council should determine the role for volunteer based mechanisms, provided that they are appropriately structured, resourced and accountable to the Council;*
- *That the new LGA be named the City of the Hunter Coast; and*
- *If the Proposal proceeds, that the new merged Council examine the accounts of Newcastle City and Port Stephens Councils, for potential savings and efficiencies."*

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

The Delegate held four public inquiries as follows:

- 4 February 2016 9.00am at Horizons Golf Club;
- 4 February 2016 3.00pm at Marina Views Function Centre;
- 4 February 2016 7.00pm at Marina Views Function Centre; and
- 24 February 2016 7.00pm at Port Stephens Country 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 that the Report shows that 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 Act requires the Delegate to have regard to:

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

The Delegate noted that the KPMG modelling estimated potential net financial savings from the proposed merger of approximately \$65 million over 20 years in net present value terms. He also noted several submissions that were critical of KPMG's assumptions and savings estimates.

The Report noted that in 2013, the NSW Treasury Corporation (TCorp) found that each of Newcastle City and Port Stephens Councils had a 'Moderate' Financial Sustainability Rating (FSR), meaning that each Council had *'an adequate capacity to meet its financial commitments in the short to medium term and an acceptable capacity in the long term'*. TCorp also found that each Council had a record of reporting mid-range operating deficits, but that each had recently reported a significant operating deficit.

The Report also noted the Independent Pricing and Regulatory Tribunal (IPART) 2015 finding that Newcastle City Council was 'Not Fit', as part of its 'Fit for the Future' review. While IPART found that the Council did not satisfy the 'scale and capacity' factor, it did satisfy the 'financial criteria'. Port Stephens Council was found to be 'Fit', for its finances and its 'scale and capacity'.

Rate Impact

The Delegate noted Newcastle City Council analysis indicating that the merger would have minimal impact on rates across the merged council. Port Stephens Council submitted that a current SRV approved for Newcastle would result in rates for Port Stephens residents rising, after the four year freeze, by approximately \$500 per annum.

Debt Levels

The Delegate discussed the debt levels of the two Councils. He considered that while their debt levels differed, the levels were not unreasonable.

Having had regard to the financial advantages and disadvantages (including the economies and diseconomies of scale) of the Proposal to the residents and ratepayers of the Newcastle City and Port Stephens LGAs, the Delegate found that the financial advantages outweigh disadvantages; and that mechanisms exist to help manage transitional issues, such as differential rates. As such, the Delegate concluded that there is no impediment to the Proposal proceeding, with respect to this factor.

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

5.2.2 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 Reports noted submissions highlighting that Newcastle is largely an urban centre with a high proportion of commercial, industrial and residential use land (30%) compared with Port Stephens (approximately 6.5%). Newcastle has a population over twice the size of Port Stephens, the latter having a higher proportion of people aged over 65 years.

The Delegate noted the submission from Port Stephens Council which stated that there is a level of interaction between the two areas in terms of employment flows. Whilst there are differences between the two communities in terms of development, age and business profiles, the Delegate viewed that combining the two areas could deliver additional robustness to local government by broadening and diversifying its community base. He did not expect existing lifestyles to be compromised by a merger.

The Delegate also considered a range of socio-economic measures such as age structures, use of languages other than English, the proportion of the respective populations that were indigenous, and unemployment rates.

Having had regard to the community of interest and geographic cohesion in the existing Newcastle City and Port Stephens LGAs, and in the proposed merged LGA, the Delegate found that there was no impediment to the Proposal proceeding, with respect to this factor.

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

5.2.3 Historical and traditional values

Section 263(3)(c) of 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”.

In examining the historical and traditional values in the existing area, the Delegate found that the Newcastle City and Port Stephens LGAs have similar histories and timelines. Both councils acknowledged the significant Indigenous and Colonial histories of the region. The Delegate found that the proposed merged Council provides an opportunity to recognise and celebrate those values. These include the values that are specific to the existing LGAs and the places within them, as well as the unifying historical and traditional values of the broader Hunter coastal region.

The Delegate concluded that the proposed merger would not impact on either traditional or historical values of the areas.

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 a petition signed by 10,000 or more people was lodged with the Parliament on 8 March 2016; with the title, *‘Petition—from certain citizens requesting that the proposed merger of Newcastle City Council and Port Stephens Council not proceed’*. The Delegate considered this as a component of the wider ‘Attitudes Factor’ examination.

The Report noted that Newcastle and Port Stephens Councils both carried out opinion surveys. Newcastle Council submitted that its survey (Jan/Feb 2016) indicated that *“there is no overwhelming support or opposition to the merger proposal, nor importance or perceived impact of it”*. In contrast, Port Stephens submitted that *“The Port Stephens community is strongly opposed to the merger. ... The Port Stephens community has almost universally rejected the proposal with 93% of those surveyed voting **no** to a merger with Newcastle”*.

The Delegate noted the Port Stephens Council submission that community concerns about the merger included the belief that public spending in Port Stephens would reduce under a merged council, reflecting the much higher expenditure on community development by Port Stephens (\$17 per capita) relative to Newcastle (\$3 per capita).

The Delegate further noted that of the 803 submissions received, 747 indicated opposition to the Proposal. The Delegate found that the community attitudes expressed at the public hearings were consistent with the sentiments expressed in the submissions; but that community opposition to the Proposal, while important, was insufficient to impede it from proceeding.

Having had regard to the attitude of the residents and ratepayers of the Newcastle City and Port Stephens LGAs, the Delegate found that there was no impediment to the Proposal proceeding, with respect to this factor.

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

5.2.5 Elected representation

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

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

The Delegate noted that the proposal, if implemented, would change the representation ratios when compared to those currently applicable at Newcastle and Port Stephens with the new entity (assuming the recommendation as to the election of the maximum 15 councillors) having a ratio of 1:15,300, a significant increase on the current ratios in of 1:12,300 in Newcastle and 1:7,000 in Port Stephens.

The Delegate noted that the residents' and ratepayers' access to elected officials was particularly important for areas outside metropolitan Sydney, and even more so for rural and regional areas that lie some distance from other cities. Accessibility to elected officials in the Newcastle/Port Stephens area is somewhat addressed by improvements in internet-based services and social media and on that basis the Delegate found that there is no impediment to the Proposal proceeding, with respect to this factor.

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

5.2.6 Service delivery and facilities

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

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

The Delegate noted that Port Stephens Council and residents particularly expressed their concern about decline in service levels. He noted concerns about services currently provided by one Council but not the other (eg childcare). Other concerns related to the ability of a merged council to address issues facing rural residents and perceived higher levels of volunteerism in Port Stephens.

The Delegate stated that, under the Proposal and pursuant to Government policy, the service level trajectory is fixed for four years, from the time of any merger. Beyond that time, service levels would be a matter for any new merged Council to determine in consultation with its community. Concerns

over service levels could be addressed in this context, and could include the maintenance of an administrative presence at both Newcastle and Raymond Terrace.

Having had regard to the impact of the Proposal on the ability of the councils of the LGAs concerned to provide adequate, equitable and appropriate services and facilities, the Delegate found that there was no impediment to the Proposal proceeding, with respect to this factor.

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

5.2.7 Employment impacts on staff

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

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

The Delegate noted Newcastle Council's concern about being one of the largest employers in the region and the consequent impact on the broader community of job losses. Port Stephens focused on the high levels of staff engagement and community satisfaction currently enjoyed as a result of its management practices.

The Delegate also noted a request from the United Services Union in relation to including the Union in discussions surrounding a potential transition process.

The Delegate concluded that the creation of a new entity provided the opportunity for good employment practices from both existing councils to be incorporated into the new administration. Changes in staff profiles and numbers would be considered by the new entity as future service levels are defined through its Integrated Planning and Reporting process. A new merged Council could consider the USU's suggestion for the creation of an industrial working party, to facilitate the transition of Council staff to the new entity.

Having had regard to the impact of the Proposal on the employment of the staff by the councils of the LGAs concerned, the Delegate found that there was no impediment to the Proposal proceeding, with respect to this factor.

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

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 the Newcastle Council submission indicating that it did not have significant areas that would be considered rural communities. Port Stephens Council submitted that 21.5% of its

population were considered to be in rural areas, and expressed concerns relating to a foreseeable reduction in the provision of services and amenities for Port Stephens coastal, rural and more isolated communities due to a new Council having a focus on rectifying the significant infrastructure backlog in Newcastle.

The Delegate concluded that the distance of residents and ratepayers from a new merged Council's service delivery points may be addressed in a range of ways. As such, they may be less reliant on physical proximity to the administrative centre; for example, distributed service centres, service hubs, internet-based delivery, and Council/contractor vehicular service delivery.

Having regard to the impact of the Proposal on rural communities in the LGAs concerned, the Delegate found that there was no impediment to the Proposal proceeding, with respect to this factor.

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

5.2.9 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".

Both Councils currently have wards with a popularly elected Mayor.

The Delegate expressed the opinion that representation should be maximised in the first instance in a new merged Council, with guaranteed representation from across the new LGA. In reporting that a ward system would be appropriate for the new LGA, the Delegate recommended that the new LGA should be divided into five wards, each served by three Councillors, and further that the Mayor should be elected from among and by the elected Councillors.

To help ensure suitable representation levels, in drawing ward boundaries the Delegate considered that the following principles should be used as far as possible in addition to the population criterion in the Act:

- Two wards should encompass suburban Newcastle;
- Two wards should encompass territory in both of the existing LGAs;
- The fifth ward should encompass rural or semi-rural parts of the existing Port Stephens LGA; and
- To the maximum extent possible, suburbs and localities should not be divided by ward boundaries.

Having had regard to the desirability (or otherwise) of dividing the resulting LGA into wards, the Delegate found that there was no impediment to the Proposal proceeding, with respect to this factor.

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

5.2.10 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 Report noted that in 2013-14, Indigenous people made up 2.6% of the population of the Newcastle City LGA, and 8.3% of residents communicated in a language other than English. At that time, Indigenous people made up 3.6 % of the population of the Port Stephens LGA, and 2.9 % of residents communicated in a language other than English.

Neither Council submission contained substantial consideration of the needs of diverse communities although both made comment on the Indigenous and broader communities.

The Delegate concluded that service delivery to diverse communities would likely be enhanced by a larger and better-resourced merged Council, by accessing efficiencies and economies of scale; for example, producing one set of literature in community languages, rather than multiple sets.

Recognition of Indigenous heritage could also be enhanced in a merged entity arising from a greater access to resources to carry out desired programs.

Having had regard to the need to ensure that the opinions of each of the diverse communities of the resulting LGA are effectively represented, the Delegate found that there was no impediment to the Proposal proceeding, with respect to this factor.

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

5.2.11 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”.

LGA and Ward Names, Mayoralty and Administration

The Delegate considered it appropriate that the merged new Council should have City status under the Act, and recommended that the LGA’s name should be the City of the Hunter Coast. He also suggested that the new merged Council consider dual naming of wards in English and the appropriate Indigenous language.

Concerning Newcastle City Council’s comments about the Lord Mayoralty, the Delegate recommended that the Minister seek legal advice on the matter and proceed in light of that advice.

Boundary Variations

There were a number of suggested boundary changes and the Delegate recommended these be considered in due course.

Port Stephens Council's Alternative Dungog Shire Merger

Port Stephens Council's submission commented on this issue, which was considered to be out of scope by the Delegate.

Having had regard to such other factors as the Delegate considers relevant to the provision of efficient and effective local government in the existing and proposed new LGA, the Delegate found that there was no impediment to the Proposal proceeding, with respect to this factor.

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

The Commission notes that boundary adjustments, the name of a new council and the issue of the Lord Mayoralty are matters for the Minister.