



# Government Gazette

OF THE STATE OF  
NEW SOUTH WALES

**Number 90**  
**Wednesday, 26 May 2004**

Published under authority by cmSolutions

## SPECIAL SUPPLEMENT

### LOCAL GOVERNMENT ACT 1993 – PROCLAMATION

MARIE BASHIR, Governor

I, Professor Marie Bashir, AC, Governor of the State of New South Wales, with the advice of the Executive Council, and in pursuance of Part 1, Chapter 9 and section 736 of the Local Government Act 1993, do, by this Proclamation, declare that the Proclamation published in a Special Supplement of *Government Gazette* No. 57 of 17 March 2004, commencing on page 1223 of that Special Supplement constituting the new Area of Peel Regional as re-named by Proclamation in *Government Gazette* No. 67 of 2 April 2004 as the Area of Tamworth Regional, is amended as follows:

Omit clause 2 (1) from said Proclamation and insert instead:

- (1) The date for the first election of the Councillors of the new Council is 25 September 2004.

Signed and sealed at Sydney, this 26th day of May 2004.

By Her Excellency's Command,

TONY KELLY, M.L.C.,  
Minister for Local Government

GOD SAVE THE QUEEN!

## LOCAL GOVERNMENT ACT 1993 - PROCLAMATION

MARIE BASHIR, Governor

I, Professor Marie Bashir AC, Governor of the State of New South Wales, with the advice of the Executive Council, and in pursuance of Part 1, Chapter 9 and Part 5, Chapter 12 of the Local Government Act 1993, do, by this my Proclamation declare that, on 26 May 2004:

- (a) the Areas of the City of Albury, Corowa, Culcairn, Holbrook and Hume are amalgamated so as to constitute new Areas having the names of the City of Albury, Corowa Shire and Greater Hume Shire as described in Schedules A, B and C hereto;
- (b) the land described in Schedule D hereto is taken from the former Area of Holbrook, as last described by Proclamation in Government Gazette No.121 of 7 March 1906 when the Shire of Germanton, and transferred to the Area of Tumbarumba;
- (c) the resulting boundaries of the Area of Tumbarumba (after adding thereto the land described in Schedule D) shall be as described in Schedule E hereto;
- (d) the Proclamations in force constituting or varying the constitution of the Riverina Water County Council are amended by:
  - (i) omitting the former Culcairn Shire Council and the former Holbrook Shire Council as constituent Councils of the County Council and by inserting the Greater Hume Shire Council as a constituent Council of the County Council; and
  - (ii) providing that two persons are to be elected as members by the Greater Hume Shire Council to the County Council's governing body following the first election.
- (e) the provisions set out in Schedules A, B, and C hereto apply on and from 26 May 2004 (unless another date is stated), to the new Areas effected by this Proclamation, where applicable.

Signed and sealed at Sydney, this 26th day of May 2004.

By Her Excellency's Command,

TONY KELLY, M.L.C.,  
Minister for Local Government

GOD SAVE THE QUEEN!

SCHEDULE A

Land included in the City of Albury Local Government Area

Area about 332.89 square kilometres. Commencing at the junction of the left high bank of the Murray River and the generally western boundary of the County of Goulburn: and bounded thence by part of that boundary generally northerly, part of the generally north-western boundary of Lot 6, DP 702116, generally south-westerly, a line easterly, the northern boundary of Lot 12, DP 538505, easterly, part of the generally north-western boundary of Portion 132, Parish of Mungabarina generally north-easterly, the southern, western and northern boundaries of Portion 99 westerly, northerly and easterly, again by part of the generally north-western boundary of Portion 132 generally north-easterly to a point due south of the south-western corner of Portion 220, Parish of Jindera; by a line northerly to that corner; by the north-western and north-eastern boundaries of that portion generally north-easterly and south-easterly, the north-western boundary of Portion 133, Parish of Mungabarina north-easterly, part of the generally north-western boundary of the Parish of Mungabarina, generally north-easterly, the south-western boundaries of Lots 73, 74 and 75, DP 260708, Lot 99, DP 753345 and Lot 983, DP 588631 and their prolongation, north-westerly, part of the south-eastern and the western boundaries of Lot 2, DP 858900, south-westerly and northerly, the western boundary of Lot 61, DP 837768, northerly, the western and northern boundaries of Lot 62, DP 837768 and its prolongation, northerly and easterly, part of the south-western and the north-western boundaries of Lot 122, DP 753345, north-westerly and north-easterly, the northern boundary of Lot 153, DP 753345, easterly, the southern prolongation of the generally eastern boundary of Lot 1, DP 785168 and that boundary, generally northerly, the eastern boundary of Lot 20, DP 805462 and its prolongation, northerly, part of the southern boundary and the north-western boundary of Lot 2, DP 260832, westerly and north-easterly, the north-western and northern boundaries of Lot 1, DP 260832, north-easterly and easterly, the northern boundaries of Lots 3, 4 and 5, DP 260832 and their prolongation easterly to the Wagga Road; by that road, generally northerly to Bowna Creek; by that creek downwards and the centre-line of the north-western arm of Lake Hume, generally south-easterly to the left high bank of the Murray River, aforesaid, and by that bank downwards to the point of commencement.

## 1 Definitions

In this Schedule:

*clause* means a clause in this schedule.

*Director General* means the Director General of the Department of Local Government.

*former Area* means any or all of the following:

- that part of the former Area of the City of Albury which, by this Proclamation, is constituted as the Albury City Council
- that part of the former Area of Hume which, by this Proclamation, is constituted as the Albury City Council

*former Council* means any of the former Councils of Albury City or Hume Shire.

*Minister* means the Minister for Local Government.

*new Area* means the Area of the City of Albury.

*new Council* means the Albury City Council.

*proclamation date* means 26 May 2004.

*the Act* means the Local Government Act 1993.

## 2 First election

- (1) The date of the first election of the Councillors of the new Council is Saturday 27 September 2008.
- (2) Unless otherwise required by the Act or the context, the provisions relating to ordinary elections shall be taken to apply to the first election of the Councillors.
- (3) For the purposes of:
  - (a) the entitlements of persons to be enrolled as electors for the new Area and to vote at the election, and
  - (b) the entitlements of persons to be nominated for election as Councillors for the new Area at the election, and
  - (c) the conduct of the election by the State Electoral Commissioner, and
  - (d) any other matter relating to the election,the new Area is taken to have been constituted on the date of publication of this proclamation.

## 3 Continuation in office of Mayor and Councillors of Albury City Council

- (1) Subject to section 234 of the Act, those persons who immediately before the proclamation date were the Mayor and Deputy Mayor (if applicable) of the former Albury City Council, are to continue in office on the new Council, until the next election of Mayor.
- (2) Subject to section 234 of the Act, all persons who immediately before the proclamation date were Councillors of the former Albury City Council are to continue in office, as Councillors of the new Council, until the first election.

## 4 Appointment of General Manager

The General Manager of the new Area shall be Mr Mark Henderson (former General Manager of the former Albury City Council) commencing on 26 May 2004.

## 5 Number of Councillors

- (1) The number of Councillors to be elected to the new Council at its first election is nine (9).
- (2) Subclause (1) does not limit the power of the new Council to re-determine the number of its Councillors under section 224 of the Act.

## 6 Ward Structure

- (1) The new Council shall not be divided into wards for the first election.
- (2) Nothing in subclause (1) limits the power of the new Council to hold a constitutional referendum to obtain approval to divide its Area into wards in accordance with Division 1, Part 1, Chapter 9 of the Act.

## 7 Election of Mayor

Nothing in clause 3 limits the power of the new Council to hold a constitutional referendum to determine the basis on which the Mayor attains office in accordance with Division 2, Part 2, Chapter 9 of the Act.

## 8 Appointment of the General Manager and other senior staff

The operation of this clause and clause 4 is not to be regarded as a breach of contract between a former Council or the new Council and a senior staff member (including a General Manager).

## 9 Activities of former Councils

- (1) Anything that was done or omitted to be done by a former Council and that had effect immediately before the proclamation date continues to have effect as if it had been done or omitted to be done by the new Council.
- (2) Anything that was commenced by a former Council may be completed by the new Council as if it had been commenced by the new Council.
- (3) Without limiting subclause (1) any approval, order or notice that was given or made by a former Council, and that had effect immediately before the proclamation date, continues to have effect as if it had been done or made by the new Council.

## 10 Delegations

- (1) Any delegation from a former Council that was in force immediately before the proclamation date is taken to be a delegation from the new Council and may be revoked or amended accordingly.
- (2) Subclause (1) ceases to have effect when the new Council adopts new delegations under the relevant provisions of the Act.

## 11 Codes, policies and plans

- (1) The following policies and plan of the new Council are, as far as practicable, to be a composite of the corresponding policies and plans of each of the former Councils:
  - (a) local policies for approvals and orders (Part 3 of Chapter 7).
  - (b) management plan (Part 2 of Chapter 13).
  - (c) social or community plan (clause 30 of the Local Government (General) Regulation 1999).
- (2) Where the former councils do not have a current social or community plan as referred to in subclause (1)(c), the new Council shall adopt a new plan in accordance with the Guidelines, within a reasonable period determined by the Director General.
- (3) Each of the following codes, policies and plans of the former Albury City Council apply, as far as practicable, to the new Council:
  - (a) code of conduct (section 440).
  - (b) code of meeting practice (Division 1 of Part 2 of Chapter 12).
  - (c) expenses and facilities policy (Division 5 of Part 2 of Chapter 9).
  - (d) EEO management plan (Part 4 of Chapter 11).
- (4) Subclauses (1) & (3) cease to have effect in relation to a code, policy or plan of the new Council when the new Council adopts a new code, policy or plan under the relevant provisions of the Act.

## 12 Fees

- (1) The annual fee paid to each Councillor of the new Council and the annual fee paid to the Mayor of the new Council is to be equal to the highest of the corresponding fees paid by the former Councils.
- (2) Subclause (1) ceases to have effect in relation to an annual fee when the new Council fixes the annual fee in accordance with the appropriate determination of the Local Government Remuneration Tribunal.

## 13 Organisation Structure

The initial organisation structure of the new Council is, as far as practicable, to be a composite of the organisation structures of each of the former Councils.

## 14 Transfer of Senior Staff

- (1) Any position that, immediately before the proclamation date, was a senior staff position of:
  - (a) the former Albury City Council is transferred to the Council of the new Area of the City of Albury.
  - (b) the former Hume Shire Council is transferred to a Council of the Areas of the City of Albury, Corowa Shire or Greater Hume Shire as determined by agreement between the new Councils of the Areas of the City of Albury, Corowa Shire and Greater Hume Shire.
- (2) The senior staff of each former Council are taken to be the senior staff of the new Council or Greater Hume Shire Council as determined with reference to subclause (1).
- (3) This clause ceases to have effect when a new organisation structure is determined by the new Council under Part 1, Chapter 11 of the Act.

- (4) A senior staff member of a former Council can be confirmed in a senior staff position in the new Council, that has an equivalent level of responsibility and remuneration, when the organisation structure is determined by the new Council in accordance with subclause (3), or otherwise recruitment processes commenced.

### 15 Transfer and maintenance of other staff

- (1) It is intended that the making of any determinations as to the transfer of staff (other than senior staff) by virtue of the constitution of the new Areas made in this proclamation is to be in accordance with this clause:
- (a) Each member of staff of the former Albury City Council (a transferred staff member) is transferred to the Council of the new Area of the City of Albury.
  - (b) Each member of staff of the former Hume Shire Council (a transferred staff member) is transferred to the Council of the Areas of the City of Albury, Corowa Shire or Greater Hume Shire as determined by agreement between the Councils of the Areas of the City of Albury, Corowa Shire and Greater Hume Shire.
- (2) Section 218CA (maintenance of staff numbers in rural centres) and Part 6, Chapter 11 of the Act (employment protection) applies to the employment of a transferred staff member.

### 16 Transfer of assets, rights and liabilities

- (1) It is intended that the making of any determinations as to the transfer of assets, rights and liabilities of the former Councils by virtue of the constitution of the new Area made in this proclamation is to be in accordance with this clause:
- (a) The assets, rights and liabilities of the former Albury City Council are transferred to the Council of the new Area of the City of Albury.
  - (b) The assets, rights and liabilities of the former Hume Shire Council are transferred to the Councils of the Areas of the City of Albury, Corowa Shire or Greater Hume Shire as determined by agreement between the new Councils of the Areas of the City of Albury, Corowa Shire and Greater Hume Shire.
- (2) The following provisions have effect in relation to any assets, rights or liabilities that are transferred by operation of subclause (1):
- (a) The assets of the former Councils vest in the new Council by virtue of this clause and without the need for any further conveyance, transfer, assignment or assurance.
  - (b) The rights or liabilities of the former Councils become, by virtue of this clause, the rights and liabilities of the new Council.
  - (c) All proceedings relating to the assets, rights or liabilities commenced before the transfer by or against the former Councils or a predecessor of any of the former Councils, and pending immediately before the transfer, are taken to be proceedings pending by or against the new Council.
  - (d) Any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the transfer by, to or in respect of the former Councils or a predecessor of any of the former Councils (to the extent to which that act, matter or thing has any force or effect) is taken to have been done or omitted by, to or in respect of the new Council.
  - (e) Anything that was commenced by a former Council and uncompleted at the proclamation date may be completed by the new Council as if it had been commenced by the new Council. This includes but is not limited to any application for approval or consent under the Act or any other Act.
  - (f) In so doing, the new Council must make any determinations required to be made in accordance with any relevant code, policy or plan of the relevant former Council, until such time as the new Council makes a new code, policy or plan in relation to that matter in accordance with the Act or any other Act.
  - (g) Anything that was done by a former Council, and that had effect immediately before the proclamation date, or that was commenced by a former Council and completed by the new Council as a result of this proclamation, continues to have effect and may be enforced by the new Council as if it had been done by the new Council.
  - (h) Without limiting subclause (2)(g) any approval, order or notice that was given or made by a former Council, and that had effect immediately before the proclamation date, continues to have effect and for all the purposes of the Act or any other Act shall be deemed to have been given or made by the new Council.
  - (i) Any decision of the Land and Environment Court in an appeal from a decision of a former Council, determined by the Court after the proclamation date, shall be deemed to be a decision of the new Council.
- (3) In this clause:

Assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, streams of income, choses in action and documents.

Liabilities means any liabilities, debts or obligations (whether present or future and whether vested or contingent) and includes liabilities relating to criminal acts.

Rights means any rights, powers, privileges or immunities (whether present or future and whether vested or contingent).

### **17 General provisions with respect to transfers**

- (1) A transfer affected by this Schedule takes effect on the proclamation date.
- (2) The Minister may, by notice in writing, confirm a transfer affected by this Schedule.
- (3) Such a notice is conclusive evidence of the transfer.

### **18 Effect of transfer on third party rights**

- (1) The operation of clause 16 (Transfer of assets, rights and liabilities) is not to be regarded:
  - (a) as an event of default under any contract or other instrument, or
  - (b) as a breach of contract or confidence or otherwise as a civil wrong, or
  - (c) as a breach of a contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
  - (d) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (2) No attornment to the new Council by a lessee from a former Council is required in relation to a transfer affected by clause 16.
- (3) No compensation is payable to any person or body in connection with a transfer affected by clause 16.
- (4) Subclause (3) does not affect the rights of any person or body in connection with the early termination of a contract between a former Council and that person or body.

### **19 Reports and reviews of the new Council**

- (1) A duty of the new Council under any Act, including a duty to report or review, which relates to a period before the proclamation date, is to be performed by reference to the former Areas and the former Councils as appropriate.
- (2) Until 30 June 2004 the records and statutory reporting of the new Council are to be kept as a continuation of the records and statutory reports of each of the former Councils and the new Council's financial transactions are to be apportioned between the various accounting records in such a manner as the new Council determines.
- (3) new Council's financial and statutory reports for the year ended 30 June 2004 are to be prepared in the form of separate reports for each set of records of the former Councils and County Council for the whole of that year.

### **20 Auditor**

The Auditor, KPMG will be the Auditor of the new Council unless the new Council appoints another Auditor in accordance with Division 3, Part 3, Chapter 13 of the Act.

### **21 References to former Areas and Councils**

In any Act, in any instrument made under any Act or in any document of any kind:

- (1) A reference to any of the former Areas, or to a predecessor of any of the former Areas, is taken to include a reference to the new Area and is to be read as a reference to the new Area, and
- (2) A reference to any of the former Councils, or to a predecessor of any of the former Councils, is to be taken as a reference to the new Council and is to be read as a reference to the new Council.

### **22 Rating Structures**

- (1) The new Council's maximum general income for 2004/05 is to be determined by estimating the proportionate amount of general income for 2003/04 from land in the former Areas included in the new Area.
- (2) The new Council is to determine its rating structure taking into consideration subclause (1).
- (3) The rating structure is to be reviewed within the first year of the new Council.

### **23 Matters to be determined by Minister**

- (1) In order to give effect to this proclamation, the Minister may determine from time to time any matter or thing, including, without limitation, the content of the matters set out in clause 11.
- (2) In pursuance of this clause, any matter or thing requiring determination may be referred to the Minister by the new Council, Corowa Shire or Greater Hume Shire Council.

- (3) The Minister may also determine any matter or thing that has not been referred to him by the new Council if the Minister concludes that the matter or thing cannot be determined by agreement between the new Council, Corowa Shire or Greater Hume Shire Council or if the Minister is not satisfied with any agreement reached between the aforementioned new Council, Corowa Shire and Greater Hume Shire Council, including in relation to subclauses (2) and (4) herein.
- (4) A matter to be determined by the Minister may be referred to the Director General, and/or another person or persons nominated by the Minister, for advice and recommendation, as appropriate.
- (5) The Director General and/or another person or persons nominated by the Minister, shall, if required by the Minister, convene a meeting between the new Council, Corowa Shire and Greater Hume Shire Council to assist in the determination of the matter.
- (6) The Director General and/or any person or persons nominated by the Minister under this clause, shall have regard to the Statement of Intent herein and any other principles or guidelines considered appropriate in the circumstances.

## 24 Statement of Intent

- (1) The Minister will consider an application made by the new Council for a Special Variation to increase its General Income.
- (2) There will be meaningful cooperation between the Councils of the Areas of the City of Albury, Corowa Shire and Greater Hume Shire in the sharing of information and agreement of all matters necessary to facilitate the provisions of this proclamation.
- (3) The Councillors of the new Council are to exercise community leadership for the whole local government area as set out in the Act.
- (4) The new Council is to negotiate with the Greater Hume Shire Council to resolve on a proposal to address the boundary anomalies identified in the Boundaries Commission report dated May 2004, titled "Examination of a boundary alteration and amalgamation proposal for the creation of three new local government areas Albury City, Corowa Shire and Greater Hume Shire", within one month.

### SCHEDULE B

#### Land included in the Corowa Shire Local Government Area

Area about 2402.84 square kilometres: Commencing at the junction of the western boundary of the Parish of Mulwala, County of Denison with the left high bank of the Murray River: and bounded thence by that boundary and the generally western boundaries of the Parishes of Wahgunyah, Savernake and Narrow Plains generally northerly, part of the generally northern boundary of the County of Denison and the generally northern and part of the generally eastern boundaries of the Parish of Gordon, County of Hume generally easterly and generally southerly to Walbundry Road; by that road generally easterly to the western prolongation of the southern boundary of Lot 92, DP 545426; by that prolongation and boundary and the southern boundaries of Lot 62, DP 543868, Lot 4, DP 114713, and Lots 5 and 4, DP 13761 easterly to the generally eastern boundary of the Parish of Osborne; by part of that boundary southerly and part of the generally northern boundary of the Parish of Goombargana generally westerly to the eastern side of Koringal Road at the north-western corner of Portion 173; by that side of that road and the western boundary of Portion 51, Parish of Richmond and its prolongation generally southerly to the road forming the south-western boundaries of the lastmentioned portioned and Portion 30; by that road generally south-easterly to the generally southern boundary of the parish; by part of that boundary generally easterly to the western boundary of Portion 30, Parish of Kentucky; by that boundary a line and the western boundaries of Portions 91, 8, a line, 81, 54, a line, 94, a line, 88, a line, and 89 and its prolongation southerly to the road forming the northern and western boundaries of Portion 123, Parish of Quat Quatta; by that road and its prolongation westerly and southerly to the eastern prolongation of the northern boundary of Lot 1, DP 1047619; by that prolongation, boundary and the northern boundary of Lot 89, DP 753754, easterly, a line easterly, the north-western boundaries of Lots 1 and 2, DP 838966, north-easterly, the northern boundaries of Lots 99, 100, a line and 130, DP 753754, easterly, the eastern boundaries of Lots 227, a line, 90, 212, a line and part of 213, DP 753750, northerly, the eastern prolongation of the southern boundary of Lot 257, DP 753750, that boundary and part of the eastern boundary of that lot, easterly and northerly, a line easterly, the southern boundaries of Lot 134, 58 and 59, DP 753750, easterly, a line easterly, part of the western and the generally southern boundaries of Lot 39, DP 753750, southerly and generally easterly, the southern boundary of Lot 21, DP 753750, easterly, a line, the generally northern boundary of Lot 175, DP 753750, generally easterly, the northern and eastern boundaries of Lot 176, DP 753750, easterly and southerly, the eastern and the generally south-eastern boundaries of Lot 165, DP 753750, southerly and generally south-westerly, the eastern boundary of Lot 166, DP 753750, southerly, part of the generally north-eastern and part of the generally eastern boundaries of Lot 2, DP 791385, generally south-easterly and generally southerly, the generally north-eastern and generally eastern boundaries of the Parish of Howlong, generally south-easterly and generally southerly to the left high bank of the Murray River, aforesaid and by that bank, upwards to the point of commencement.

## 1 Definitions

In this Schedule:

*clause* means a clause in this schedule.

*Director General* means the Director General of the Department of Local Government.

*former Area* means any or all of the following:

- that part of the former Area of Corowa which, by this Proclamation, is constituted as the Corowa Shire Council
- that part of the former Area of Hume which, by this Proclamation, is constituted as the Corowa Shire Council

*former Council* means any of the former Councils of Corowa Shire or Hume Shire.

*Minister* means the Minister for Local Government.

*new Area* means the Area of Corowa Shire.

*new Council* means the Corowa Shire Council.

*proclamation date* means 26 May 2004.

*the Act* means the Local Government Act 1993.

## 2 First election

- (1) The date of the first election of the Councillors of the new Council is Saturday 27 September 2008.
- (2) Unless otherwise required by the Act or the context, the provisions relating to ordinary elections shall be taken to apply to the first election of the Councillors.
- (3) For the purposes of:
  - (a) the entitlements of persons to be enrolled as electors for the new Area and to vote at the election, and
  - (b) the entitlements of persons to be nominated for election as Councillors for the new Area at the election, and
  - (c) the conduct of the election by the State Electoral Commissioner, and
  - (d) any other matter relating to the election,the new Area is taken to have been constituted on the date of publication of this proclamation.

## 3 Continuation in office of Mayor and Councillors of Corowa Shire Council

- (1) Subject to section 234 of the Act, those persons who immediately before the proclamation date were the Mayor and Deputy Mayor (if applicable) of the former Corowa Shire Council, are to continue in office on the new Council, until the next election of Mayor.
- (2) Subject to section 234 of the Act, all persons who immediately before the proclamation date were Councillors of the former Corowa Shire Council are to continue in office, as Councillors of the new Council, until the first election.

## 4 Appointment of General Manager

The General Manager of the new Area shall be Mr Bruce Corcoran (former General Manager of the former Corowa Shire Council) commencing on 26 May 2004.

## 5 Number of Councillors

- (1) The number of Councillors to be elected to the new Council at its first election is nine (9).
- (2) Subclause (1) does not limit the power of the new Council to re-determine the number of its Councillors under section 224 of the Act.

## 6 Ward Structure

- (1) The new Council shall not be divided into wards for the first election.
- (2) Nothing in subclause (1) limits the power of the new Council to hold a constitutional referendum to obtain approval to divide its Area into wards in accordance with Division 1, Part 1, Chapter 9 of the Act.

## 7 Election of Mayor

Nothing in clause 3 limits the power of the new Council to hold a constitutional referendum to determine the basis on which the Mayor attains office in accordance with Division 2, Part 2, Chapter 9 of the Act.



## 8 Appointment of the General Manager and other senior staff

The operation of this clause and clause 4 is not to be regarded as a breach of contract between a former Council or the new Council and a senior staff member (including a General Manager).

## 9 Activities of former Councils

- (1) Anything that was done or omitted to be done by a former Council and that had effect immediately before the proclamation date continues to have effect as if it had been done or omitted to be done by the new Council.
- (2) Anything that was commenced by a former Council may be completed by the new Council as if it had been commenced by the new Council.
- (3) Without limiting subclause (1) any approval, order or notice that was given or made by a former Council, and that had effect immediately before the proclamation date, continues to have effect as if it had been done or made by the new Council.

## 10 Delegations

- (1) Any delegation from a former Council that was in force immediately before the proclamation date is taken to be a delegation from the new Council and may be revoked or amended accordingly.
- (2) Subclause (1) ceases to have effect when the new Council adopts new delegations under the relevant provisions of the Act.

## 11 Codes, policies and plans

- (1) The following policies and plan of the new Council are, as far as practicable, to be a composite of the corresponding policies and plans of each of the former Councils:
  - (a) local policies for approvals and orders (Part 3 of Chapter 7).
  - (b) management plan (Part 2 of Chapter 13).
  - (c) social or community plan (clause 30 of the Local Government (General) Regulation 1999).
- (2) Where the former councils do not have a current social or community plan as referred to in subclause (1)(c), the new Council shall adopt a new plan in accordance with the Guidelines, within a reasonable period determined by the Director General.
- (3) Each of the following codes, policies and plans of the former Corowa Shire Council apply, as far as practicable, to the new Council:
  - (a) code of conduct (section 440).
  - (b) code of meeting practice (Division 1 of Part 2 of Chapter 12).
  - (c) expenses and facilities policy (Division 5 of Part 2 of Chapter 9).
  - (d) EEO management plan (Part 4 of Chapter 11).
- (4) Subclauses (1) & (3) cease to have effect in relation to a code, policy or plan of the new Council when the new Council adopts a new code, policy or plan under the relevant provisions of the Act.

## 12 Fees

- (1) The annual fee paid to each Councillor of the new Council and the annual fee paid to the Mayor of the new Council is to be equal to the highest of the corresponding fees paid by the former Councils.
- (2) Subclause (1) ceases to have effect in relation to an annual fee when the new Council fixes the annual fee in accordance with the appropriate determination of the Local Government Remuneration Tribunal.

## 13 Organisation Structure

The initial organisation structure of the new Council is, as far as practicable, to be a composite of the organisation structures of each of the former Councils.

## 14 Transfer of Senior Staff

- (1) Any position that, immediately before the proclamation date, was a senior staff position of:
  - (a) the former Corowa Shire Council is transferred to the Council of the Area of Corowa Shire.
  - (b) the former Hume Shire Council is transferred to a Council of the Areas of the City of Albury, Corowa Shire or Greater Hume Shire as determined by agreement between the new Councils of the Areas of the City of Albury, Corowa Shire and Greater Hume Shire.

- (2) The senior staff of each former Council are taken to be the senior staff of the new Councils as determined with reference to subclause (1).
- (3) This clause ceases to have effect when a new organisation structure is determined by the new Council under Part 1, Chapter 11 of the Act.
- (4) A senior staff member of a former Council can be confirmed in a senior staff position in the new Council, that has an equivalent level of responsibility and remuneration, when the organisation structure is determined by the new Council in accordance with subclause (3), or otherwise recruitment processes commenced.

### **15 Transfer and maintenance of other staff**

- (1) It is intended that the making of any determinations as to the transfer of staff (other than senior staff) by virtue of the constitution of the new Areas made in this proclamation is to be in accordance with this clause:
  - (a) Each member of staff of the former Corowa Shire Council (a transferred staff member) is transferred to the Council of the Area of Corowa Shire.
  - (b) Each member of staff of the former Hume Shire Council (a transferred staff member) is transferred to the Council of the Areas of the City of Albury, Corowa Shire or Greater Hume Shire as determined by agreement between the Councils of the Areas of the City of Albury, Corowa Shire and Greater Hume Shire.
- (2) Section 218CA (maintenance of staff numbers in rural centres) and Part 6, Chapter 11 of the Act (employment protection) applies to the employment of a transferred staff member.

### **16 Transfer of assets, rights and liabilities**

- (1) It is intended that the making of any determinations as to the transfer of assets, rights and liabilities of the former Councils by virtue of the constitution of the new Area made in this proclamation is to be in accordance with this clause:
  - (a) The assets, rights and liabilities of the former Corowa Shire Council are transferred to the Council of the Area of Corowa Shire.
  - (b) The assets, rights and liabilities of the former Hume Shire Council are transferred to the Councils of the Areas of the City of Albury, Corowa Shire or Greater Hume Shire as determined by agreement between the new Councils of the Areas of the City of Albury, Corowa Shire and Greater Hume Shire.
- (2) The following provisions have effect in relation to any assets, rights or liabilities that are transferred by operation of subclause (1):
  - (a) The assets of the former Councils vest in the new Council by virtue of this clause and without the need for any further conveyance, transfer, assignment or assurance.
  - (b) The rights or liabilities of the former Councils become, by virtue of this clause, the rights and liabilities of the new Council.
  - (c) All proceedings relating to the assets, rights or liabilities commenced before the transfer by or against the former Councils or a predecessor of any of the former Councils, and pending immediately before the transfer, are taken to be proceedings pending by or against the new Council.
  - (d) Any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the transfer by, to or in respect of the former Councils or a predecessor of any of the former Councils (to the extent to which that act, matter or thing has any force or effect) is taken to have been done or omitted by, to or in respect of the new Council.
  - (e) Anything that was commenced by a former Council and uncompleted at the proclamation date may be completed by the new Council as if it had been commenced by the new Council. This includes but is not limited to any application for approval or consent under the Act or any other Act.
  - (f) In so doing, the new Council must make any determinations required to be made in accordance with any relevant code, policy or plan of the relevant former Council, until such time as the new Council makes a new code, policy or plan in relation to that matter in accordance with the Act or any other Act.
  - (g) Anything that was done by a former Council, and that had effect immediately before the proclamation date, or that was commenced by a former Council and completed by the new Council as a result of this proclamation, continues to have effect and may be enforced by the new Council as if it had been done by the new Council.
  - (h) Without limiting subclause (2)(g) any approval, order or notice that was given or made by a former Council, and that had effect immediately before the proclamation date, continues to have effect and for all the purposes of the Act or any other Act shall be deemed to have been given or made by the new Council.
  - (i) Any decision of the Land and Environment Court in an appeal from a decision of a former Council, determined by the Court after the proclamation date, shall be deemed to be a decision of the new Council.

(3) In this clause:

Assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, streams of income, choses in action and documents.

Liabilities means any liabilities, debts or obligations (whether present or future and whether vested or contingent) and includes liabilities relating to criminal acts.

Rights means any rights, powers, privileges or immunities (whether present or future and whether vested or contingent).

## **17 General provisions with respect to transfers**

- (1) A transfer affected by this Schedule takes effect on the proclamation date.
- (2) The Minister may, by notice in writing, confirm a transfer affected by this Schedule.
- (3) Such a notice is conclusive evidence of the transfer.

## **18 Effect of transfer on third party rights**

- (1) The operation of clause 16 (Transfer of assets, rights and liabilities) is not to be regarded:
  - (a) as an event of default under any contract or other instrument, or
  - (b) as a breach of contract or confidence or otherwise as a civil wrong, or
  - (c) as a breach of a contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
  - (d) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (2) No attornment to the new Council by a lessee from a former Council is required in relation to a transfer affected by clause 16.
- (3) No compensation is payable to any person or body in connection with a transfer affected by clause 16.
- (4) Subclause (3) does not affect the rights of any person or body in connection with the early termination of a contract between a former Council and that person or body.

## **19 Reports and reviews of the new Council**

- (1) A duty of the new Council under any Act, including a duty to report or review, which relates to a period before the proclamation date, is to be performed by reference to the former Areas and the former Councils as appropriate.
- (2) Until 30 June 2004 the records and statutory reporting of the new Council are to be kept as a continuation of the records and statutory reports of each of the former Councils and the new Council's financial transactions are to be apportioned between the various accounting records in such a manner as the new Council determines.
- (3) The new Council's financial and statutory reports for the year ended 30 June 2004 are to be prepared in the form of separate reports for each set of records of the former Councils for the whole of that year.

## **20 Auditor**

The Auditor, KPMG will be the Auditor of the new Council unless the new Council appoints another Auditor in accordance with Division 3, Part 3, Chapter 13 of the Act.

## **21 References to former Areas and Councils**

In any Act, in any instrument made under any Act or in any document of any kind:

- (1) A reference to any of the former Areas, or to a predecessor of any of the former Areas, is taken to include a reference to the new Area and is to be read as a reference to the new Area, and
- (2) A reference to any of the former Councils, or to a predecessor of any of the former Councils, is to be taken as a reference to the new Council and is to be read as a reference to the new Council.

## **22 Rating Structures**

- (1) The new Council's maximum general income for 2004/05 is to be determined by estimating the proportionate amount of general income for 2003/04 from land in the former Areas included in the new Area.

- (2) The new Council is to determine its rating structure taking into consideration subclause (1).
- (3) The rating structure is to be reviewed within the first year of the new Council.

### 23 Matters to be determined by Minister

- (1) In order to give effect to this proclamation, the Minister may determine from time to time any matter or thing, including, without limitation, the content of the matters set out in clause 11.
- (2) In pursuance of this clause, any matter or thing requiring determination may be referred to the Minister by the new Council, Albury City Council or Greater Hume Shire Council.
- (3) The Minister may also determine any matter or thing that has not been referred to him by the new Council if the Minister concludes that the matter or thing cannot be determined by agreement between the new Council, Albury City Council or Greater Hume Shire Council or if the Minister is not satisfied with any agreement reached between the aforementioned new Council, Albury City Council or Greater Hume Shire Council, including in relation to subclauses (2) and (4) herein.
- (4) A matter to be determined by the Minister may be referred to the Director General, and/or another person or persons nominated by the Minister, for advice and recommendation, as appropriate.
- (5) The Director General and/or another person or persons nominated by the Minister, shall, if required by the Minister, convene a meeting between the new Council, Albury City Council or Greater Hume Shire Council to assist in the determination of the matter.
- (6) The Director General and/or any person or persons nominated by the Minister under this clause, shall have regard to the Statement of Intent herein and any other principles or guidelines considered appropriate in the circumstances.

### 24 Statement of Intent

- (1) The Minister will consider an application made by the new Council for a Special Variation to increase its General Income.
- (2) There will be meaningful cooperation between the Councils of the Areas of the City of Albury, Corowa Shire and Greater Hume Shire in the sharing of information and agreement of all matters necessary to facilitate the provisions of this proclamation.
- (3) The Councillors of the new Council are to exercise community leadership for the whole local government area as set out in the Act.

## SCHEDULE C

### Land included in the Greater Hume Shire Local Government Area

Area about 5929.13 square kilometres. Commencing at the confluence of the Murray River and Jingellic Creek: and bounded thence by that creek and Coppabella Creek, upwards to the generally southern boundary of the Parish of Coppabella, County of Goulburn; by part of that boundary, easterly to the generally northern side of the Tumbarumba-Jingellic Road; by that side of that road, generally easterly to the generally western boundary of the County of Selwyn; by part of that boundary, generally northerly, the generally south-western boundary of the Parish of Belmore, County of Wynyard, generally north-westerly, the generally southern boundaries of the Parishes of Humula and Murraguldrrie, generally westerly, the generally northern boundary of the County of Goulburn, generally westerly to a point on the range forming the north-western watershed of Sawpit Creek; by a line, 503 metres, westerly to the generally northern boundary of the Parish of Jerra Jerra, County of Goulburn; by part of that boundary, generally westerly, the generally north-eastern boundary of Portion 188, generally north-westerly to the range forming the northern watershed of Jerra Jerra Creek, by that range, generally westerly to the generally southern boundary of the Parish of Maclean, County of Mitchell; by part of that boundary and the generally southern boundary of the Parish of Yerong, generally westerly, the north-western boundary of Portion 93, Parish of Edgehill and its prolongation, south-easterly, the south-eastern boundary of Portion 63 and its prolongation, south-westerly, part of the north-eastern boundary of Portion 33, Parish of Cromer, County of Hume, northwesterly, part of the north-eastern, the southern and part of the western boundaries of Portion 142, south-easterly, westerly and northerly, the southern boundary of Portion 143 and its prolongation, westerly to the road forming the western boundary of Portion 51, by that road and the road forming the southern boundary of Portion 76, southerly and easterly to the south-eastern prolongation of the south-eastern boundary of Portion 59; by that boundary, generally south-westerly, part of the generally south-eastern boundary of the Parish of Edgehill, generally south-westerly, the generally south-eastern and generally southern boundaries of the Parish of Munyabla, generally south-westerly and generally westerly, the generally southern and part of the western boundaries of the Parish of Wallandoon, County of Urana, generally easterly and northerly, part of the generally north-eastern and the generally western boundaries of the Parish of Bulgandry, County of Hume, generally south-westerly and generally southerly, the generally western boundary of the Parish of Gibson, generally southerly, part of the generally northern boundary of the Parish of Goombergana, generally westerly to the eastern side of Koringal Road at the north-western corner of Portion 173; by that side of that road and the western boundary of Portion 51, Parish of Richmond and its prolongation generally southerly to the road forming the south-western boundaries of the lastmentioned portion and Portion 30; by that road generally south-

easterly to the generally southern boundary of the parish; by part of that boundary generally easterly to the western boundary of Portion 30, Parish of Kentucky; by that boundary a line and the western boundaries of Portions 91, 8, a line, 81, 54, a line, 94, a line, 88, a line, and 89 and its prolongation southerly to the road forming the northern and western boundaries of Portion 123, Parish of Quat Quatta; by that road westerly and southerly to Lot 1, DP 1047619, northerly to the eastern prolongation of the northern boundary of Lot 1, DP 1047619; by that prolongation, boundary and the northern boundary of Lot 89, DP 753754, easterly, a line easterly, the north-western boundaries of Lots 1 and 2, DP 838966, north-easterly, the northern boundaries of Lots 99, 100, a line and 130, DP 753754, easterly, the eastern boundaries of Lots 227, a line, 90, 212, a line and part of 213, DP 753750, northerly, the eastern prolongation of the southern boundary of Lot 257, DP 753750, that boundary and part of the eastern boundary of that lot, easterly and northerly, a line easterly, the southern boundaries of Lot 134, 58 and 59, DP 753750, easterly, a line easterly, part of the western and the generally southern boundaries of Lot 39, DP 753750, southerly and generally easterly, the southern boundary of Lot 21, DP 753750, easterly, a line, the generally northern boundary of Lot 175, DP 753750, generally easterly, the northern and eastern boundaries of Lot 176, DP 753750, easterly and southerly, the eastern and the generally south-eastern boundaries of Lot 165, DP 753750, southerly and generally south-westerly, the eastern boundary of Lot 166, DP 753750, southerly, part of the generally north-eastern and part of the generally eastern boundaries of Lot 2, DP 791385, generally south-easterly and generally southerly, the generally north-eastern and generally eastern boundaries of the Parish of Howlong, generally south-easterly and generally southerly to the left high bank of the Murray River, aforesaid; by that bank upwards to generally western boundary of the County of Goulburn; by part of that boundary generally northerly, part of the generally north-western boundary of Lot 6, DP 702116, generally south-westerly, a line easterly, the northern boundary of Lot 12, DP 538505, easterly, part of the generally north-western boundary of Portion 132, Parish of Mungabarina generally north-easterly, the southern, western and northern boundaries of Portion 99 westerly, northerly and easterly, again by part of the generally north-western boundary of Portion 132 generally north-easterly to a point due south of the south-western corner of Portion 220, Parish of Jindera; by a line northerly to that corner; by the north-western and north-eastern boundaries of that portion generally north-easterly and south-easterly, the north-western boundary of Portion 133, Parish of Mungabarina north-easterly, part of the generally north-western boundary of the Parish of Mungabarina, generally north-easterly, the south-western boundaries of Lots 73, 74 and 75, DP 260708, Lot 99, DP 753345 and Lot 983, DP 588631 and their prolongation, north-westerly, part of the south-eastern and the western boundaries of Lot 2, DP 858900, south-westerly and northerly, the western boundary of Lot 61, DP 837768, northerly, the western and northern boundaries of Lot 62, DP 837768 and its prolongation, northerly and easterly, part of the south-western and the north-western boundaries of Lot 122, DP 753345, north-westerly and north-easterly, the northern boundary of Lot 153, DP 753345, easterly, the southern prolongation of the generally eastern boundary of Lot 1, DP 785168 and that boundary, generally northerly, the eastern boundary of Lot 20, DP 805462 and its prolongation, northerly, part of the southern boundary and the north-western boundary of Lot 2, DP 260832, westerly and north-easterly, the north-western and northern boundaries of Lot 1, DP 260832, north-easterly and easterly, the northern boundaries of Lots 3, 4 and 5, DP 260832 and their prolongation easterly to the Wagga Road; by that road, generally northerly to Bowna Creek; by that creek downwards and the centre-line of the north-western arm of Lake Hume, generally south-easterly to the left high bank of the Murray River, aforesaid, and by that bank upwards to a point south of the point of commencement and by a line northerly to that point.

## 1 Definitions

In this Schedule:

*clause* means a clause in this schedule.

*Director General* means the Director General of the Department of Local Government.

*former Area* means any or all of the following:

- that part of the former Area of Culcairn which, by this Proclamation, is constituted as the Greater Hume Shire Council
- that part of the former Area of Holbrook which, by this Proclamation, is constituted as the Greater Hume Shire Council
- that part of the former Area of Hume which, by this Proclamation, is constituted as the Greater Hume Shire Council

*former Council* means any of the former Councils of Culcairn Shire, Holbrook Shire or Hume Shire.

*County Council* means the Riverina Water County Council

*Minister* means the Minister for Local Government.

*new Area* means the Area of Greater Hume Shire.

*new Council* means the Greater Hume Shire Council.

*proclamation date* means 26 May 2004.

*the Act* means the Local Government Act 1993.

## **2 First election**

- (1) The date of the first election of the Councillors of the new Council is 5 March 2005.
- (2) Unless otherwise required by the Act or the context, the provisions relating to ordinary elections shall be taken to apply to the first election of the Councillors.
- (3) For the purposes of:
  - (a) the entitlements of persons to be enrolled as electors for the new Area and to vote at the election, and
  - (b) the entitlements of persons to be nominated for election as Councillors for the new Area at the election, and
  - (c) the conduct of the election by the State Electoral Commissioner, and
  - (d) any other matter relating to the election,the new Area is taken to have been constituted on the date of publication of this proclamation.

## **3 Administration of new Council for interim period**

- (1) For the interim period between 26 May 2004 and the declaration of the first election, one Administrator is appointed and is Mr David Charles Sexton to direct and control the affairs of the new Council.
- (2) If Mr David Charles Sexton declines to be appointed as the Administrator, then the Minister may appoint an alternate person as the Administrator.
- (3) The Administrator will be paid \$34,000 per annum on a pro-rata basis for the interim period.
- (4) Any matters before the new Council with respect to the local development process or any other matter in which the Administrator has a pecuniary interest within the meaning of the Local Government Act 1993 is to be determined by a substitute Administrator appointed by the Minister for that limited purpose.
- (5) The Administrator is to complete and lodge with the Acting General Manager within 21 days, a disclosure of interests written return in accordance with Division 2, Part 2, Chapter 14 of the Act in the form prescribed by the regulations.
- (6) For the purposes of the Local Government Act 1993, the Administrator does not hold an office or a position of profit under the new Council.

## **4 Appointment of Acting General Manager**

- (1) The Acting General Manager of the new Area shall be Mr Peter Veneris (former General Manager of the former Hume Shire Council) commencing on 26 May 2004 until the first meeting of the new Council held after the first election.
- (2) The Acting General Manager of the new Council may be confirmed as the General Manager at the first meeting following the first election, or otherwise recruitment processes commenced.
- (3) If the new Council resolves to commence recruitment processes for a General Manager, the term of the Acting General Manager named in subclause (1) is extended until the General Manager commences with the new Council.

## **5 Number of Councillors**

- (1) The number of Councillors to be elected to the new Council at its first election is nine (9).
- (2) Subclause (1) does not limit the power of the new Council to re-determine, after the first election the number of its Councillors under section 224 of the Act.

## **6 Ward Structure**

- (1) The new Council shall not be divided into wards for the first election.
- (2) Nothing in subclause (1) limits the power of the new Council following the first election to hold a constitutional referendum to obtain approval to divide its Area into wards in accordance with Division 1, Part 1, Chapter 9 of the Act.

## **7 Election of Mayor following the first election**

- (1) The Mayor of the new Council is to be elected by the Councillors as referred to in sections 227(a), 282 and 290 (1) (c) of the Act at the new Council's first meeting following the first election.
- (2) Nothing in subclause (1) limits the power of the new Council following the first election to hold a constitutional referendum to determine the basis on which the Mayor attains office in accordance with Division 2, Part 2, Chapter 9 of the Act.

## 8 Appointment of the General Manager and other senior staff

The operation of this clause and clause 4 is not to be regarded as a breach of contract between a former Council or the new Council and a senior staff member (including a General Manager).

## 9 Activities of former Councils

- (1) Anything that was done or omitted to be done by a former Council and that had effect immediately before the proclamation date continues to have effect as if it had been done or omitted to be done by the new Council.
- (2) Anything that was commenced by a former Council may be completed by the new Council as if it had been commenced by the new Council.
- (3) Without limiting subclause (1) any approval, order or notice that was given or made by a former Council, and that had effect immediately before the proclamation date, continues to have effect as if it had been done or made by the new Council.

## 10 Delegations

- (1) Any delegation from a former Council that was in force immediately before the proclamation date is taken to be a delegation from the new Council and may be revoked or amended accordingly.
- (2) Subclause (1) ceases to have effect when the new Council adopts new delegations under the relevant provisions of the Act.

## 11 Codes, policies and plans

- (1) The following policies and plan of the new Council are, as far as practicable, to be a composite of the corresponding policies and plans of each of the former Councils:
  - (a) local policies for approvals and orders (Part 3 of Chapter 7).
  - (b) management plan (Part 2 of Chapter 13).
  - (c) social or community plan (clause 30 of the Local Government (General) Regulation 1999).
- (2) Where the former councils do not have a current social or community plan as referred to in subclause (1)(c), the new Council shall adopt a new plan in accordance with the Guidelines, within a reasonable period determined by the Director General.
- (3) Each of the following codes, policies and plans of the former Hume Shire Council apply, as far as practicable, to the new Council:
  - (a) code of conduct (section 440).
  - (b) code of meeting practice (Division 1 of Part 2 of Chapter 12).
  - (c) expenses and facilities policy (Division 5 of Part 2 of Chapter 9).
  - (d) EEO management plan (Part 4 of Chapter 11).
- (4) Subclauses (1) & (3) cease to have effect in relation to a code, policy or plan of the new Council when the new Council adopts a new code, policy or plan under the relevant provisions of the Act.

## 12 Fees

- (1) The annual fee paid to each Councillor of the new Council and the annual fee paid to the Mayor of the new Council is to be equal to the highest of the corresponding fees paid by the former Councils.
- (2) Subclause (1) ceases to have effect in relation to an annual fee when the new Council fixes the annual fee in accordance with the appropriate determination of the Local Government Remuneration Tribunal.

## 13 Organisation Structure

The initial organisation structure of the new Council is, as far as practicable, to be a composite of the organisation structures of each of the former Councils.

## 14 Transfer of Senior Staff

- (1) Any position that, immediately before the proclamation date, was a senior staff position of:
  - (a) the former Culcairn Shire Council is transferred to the Council of the Area of Greater Hume Shire.
  - (b) the former Holbrook Shire Council is transferred to the Council of the Area of Greater Hume Shire.

- (c) the former Hume Shire Council is transferred to a Council of the Areas of the City of Albury, Corowa Shire or Greater Hume Shire as determined by agreement between the new Councils of the Areas of the City of Albury, Corowa Shire and Greater Hume Shire.
- (2) The senior staff of each former Council are taken to be the senior staff of the new Council, Albury City Council or Corowa Shire Council as determined with reference to subclause (1).
- (3) This clause ceases to have effect when a new organisation structure is determined by the new Council under Part 1, Chapter 11 of the Act.
- (4) A senior staff member of a former Council can be confirmed in a senior staff position in the new Council, that has an equivalent level of responsibility and remuneration, when the organisation structure is determined by the new Council in accordance with subclause (3), or otherwise recruitment processes commenced.

### **15 Transfer and maintenance of other staff**

- (1) It is intended that the making of any determinations as to the transfer of staff (other than senior staff) by virtue of the constitution of the new Areas made in this proclamation is to be in accordance with this clause:
  - (a) Each member of staff of the former Culcairn Shire Council (a transferred staff member) is transferred to the Council of the Area of Greater Hume Shire.
  - (b) Each member of staff of the former Holbrook Shire Council (a transferred staff member) is transferred to the Council of the Area of Greater Hume Shire.
  - (c) Each member of staff of the former Hume Shire Council (a transferred staff member) is transferred to the Council of the Areas of the City of Albury, Corowa Shire or Greater Hume Shire as determined by agreement between the Councils of the Areas of Albury City, Corowa Shire or Greater Hume Shire.
- (2) Section 218CA (maintenance of staff numbers in rural centres) and Part 6, Chapter 11 of the Act (employment protection) applies to the employment of a transferred staff member.

### **16 Transfer of assets, rights and liabilities**

- (1) It is intended that the making of any determinations as to the transfer of assets, rights and liabilities of the former Councils by virtue of the constitution of the new Area made in this proclamation is to be in accordance with this clause:
  - (a) The assets, rights and liabilities of the former Culcairn Shire Council are transferred to the Council of the Area of Greater Hume Shire.
  - (b) The assets, rights and liabilities of the former Holbrook Shire Council are transferred to the Council of the Area of Greater Hume Shire.
  - (c) The assets, rights and liabilities of the former Hume Shire Council are transferred to the Councils of the Areas of the City of Albury, Corowa Shire or Greater Hume Shire as determined by agreement between the new Councils of the Areas of the City of Albury, Corowa Shire and Greater Hume Shire.
- (2) The following provisions have effect in relation to any assets, rights or liabilities that are transferred by operation of subclause (1):
  - (a) The assets of the former Councils vest in the new Council by virtue of this clause and without the need for any further conveyance, transfer, assignment or assurance.
  - (b) The rights or liabilities of the former Councils become, by virtue of this clause, the rights and liabilities of the new Council.
  - (c) All proceedings relating to the assets, rights or liabilities commenced before the transfer by or against the former Councils or a predecessor of any of the former Councils, and pending immediately before the transfer, are taken to be proceedings pending by or against the new Council.
  - (d) Any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the transfer by, to or in respect of the former Councils or a predecessor of any of the former Councils (to the extent to which that act, matter or thing has any force or effect) is taken to have been done or omitted by, to or in respect of the new Council.
  - (e) Anything that was commenced by a former Council and uncompleted at the proclamation date may be completed by the new Council as if it had been commenced by the new Council. This includes but is not limited to any application for approval or consent under the Act or any other Act.
  - (f) In so doing, the new Council must make any determinations required to be made in accordance with any relevant code, policy or plan of the relevant former Council, until such time as the new Council makes a new code, policy or plan in relation to that matter in accordance with the Act or any other Act.



- (g) Anything that was done by a former Council, and that had effect immediately before the proclamation date, or that was commenced by a former Council and completed by the new Council as a result of this proclamation, continues to have effect and may be enforced by the new Council as if it had been done by the new Council.
- (h) Without limiting subclause (2)(g) any approval, order or notice that was given or made by a former Council, and that had effect immediately before the proclamation date, continues to have effect and for all the purposes of the Act or any other Act shall be deemed to have been given or made by the new Council.
- (i) Any decision of the Land and Environment Court in an appeal from a decision of a former Council, determined by the Court after the proclamation date, shall be deemed to be a decision of the new Council.

(3) In this clause:

Assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, streams of income, choses in action and documents.

Liabilities means any liabilities, debts or obligations (whether present or future and whether vested or contingent) and includes liabilities relating to criminal acts.

Rights means any rights, powers, privileges or immunities (whether present or future and whether vested or contingent).

### 17 General provisions with respect to transfers

- (1) A transfer affected by this Schedule takes effect on the proclamation date.
- (2) The Minister may, by notice in writing, confirm a transfer affected by this Schedule.
- (3) Such a notice is conclusive evidence of the transfer.

### 18 Effect of transfer on third party rights

- (1) The operation of clause 16 (Transfer of assets, rights and liabilities) is not to be regarded:
  - (a) as an event of default under any contract or other instrument, or
  - (b) as a breach of contract or confidence or otherwise as a civil wrong, or
  - (c) as a breach of a contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
  - (d) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (2) No attornment to the new Council by a lessee from a former Council is required in relation to a transfer affected by clause 16.
- (3) No compensation is payable to any person or body in connection with a transfer affected by clause 16.
- (4) Subclause (3) does not affect the rights of any person or body in connection with the early termination of a contract between a former Council and that person or body.

### 19 Reports and reviews of the new Council

- (1) A duty of the new Council under any Act, including a duty to report or review, which relates to a period before the proclamation date, is to be performed by reference to the former Areas and the former Councils as appropriate.
- (2) Until 30 June 2004 the records and statutory reporting of the new Council are to be kept as a continuation of the records and statutory reports of each of the former Councils and the new Council's financial transactions are to be apportioned between the various accounting records in such a manner as the new Council determines.
- (3) The new Council's financial and statutory reports for the year ended 30 June 2004 are to be prepared in the form of separate reports for each set of records of the former Councils for the whole of that year.

### 20 Auditor

The Auditor, KPMG will be the Auditor of the new Council unless the new Council appoints another Auditor in accordance with Division 3, Part 3, Chapter 13 of the Act.

### 21 References to former Areas and Councils

In any Act, in any instrument made under any Act or in any document of any kind:

- (1) A reference to any of the former Areas, or to a predecessor of any of the former Areas, is taken to include a reference to the new Area and is to be read as a reference to the new Area, and

- (2) A reference to any of the former Councils, or to a predecessor of any of the former Councils, is to be taken as a reference to the new Council and is to be read as a reference to the new Council.

## **22 Riverina Water County Council**

For the interim period between 26 May 2004 and the election of members of the County Council by the new Council following the declaration of the first election, the Administrator of the new Council is entitled to two votes at meetings of the County Council.

## **23 Rating Structures**

- (1) The new Council's maximum general income for 2004/05 is to be determined by estimating the proportionate amount of general income for 2003/04 from land in the former Areas included in the new Area.
- (2) The new Council is to determine its rating structure taking into consideration subclause (1).
- (3) The rating structure is to be reviewed within the first year of the new Council.

## **24 Matters to be determined by Minister**

- (1) In order to give effect to this proclamation, the Minister may determine from time to time any matter or thing, including, without limitation, the content of the matters set out in clause 11.
- (2) In pursuance of this clause, any matter or thing requiring determination may be referred to the Minister by the new Council, Albury City Council or Corowa Shire Council.
- (3) The Minister may also determine any matter or thing that has not been referred to him by the new Council if the Minister concludes that the matter or thing cannot be determined by agreement between the new Council, Albury City Council or Corowa Shire Council or if the Minister is not satisfied with any agreement reached between the aforementioned new Council, Albury City Council or Corowa Shire Council, including in relation to subclauses (2) and (4) herein.
- (4) A matter to be determined by the Minister may be referred to the Director General, and/or another person or persons nominated by the Minister, for advice and recommendation, as appropriate.
- (5) The Director General and/or another person or persons nominated by the Minister, shall, if required by the Minister, convene a meeting between the new Council, Albury City Council or Corowa Shire Council to assist in the determination of the matter.
- (6) The Director General and/or any person or persons nominated by the Minister under this clause, shall have regard to the Statement of Intent herein and any other principles or guidelines considered appropriate in the circumstances.

## **25 Statement of Intent**

- (1) The Minister will consider an application made by the new Council for a Special Variation to increase its General Income.
- (2) There will be meaningful cooperation between the Councils of the Areas of Greater Hume Shire, City of Albury and Corowa Shire in the sharing of information and agreement of all matters necessary to facilitate the provisions of this proclamation.
- (3) The Councillors of the new Council are to exercise community leadership for the whole local government area as set out in the Act.
- (4) The new Council is to negotiate with the Albury City Council to resolve on a proposal to address the boundary anomalies identified in the Boundaries Commission report dated May 2004, titled "Examination of a boundary alteration and amalgamation proposal for the creation of three new local government areas Albury City, Corowa Shire and Greater Hume Shire", within one month.

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**SCHEDULE D****Land to be transferred from the former Holbrook Local Government Area to the Tumbarumba Local Government Area**

Area about 19.20 square kilometres. Commencing at the intersection of the generally western boundary of the County of Selwyn and the Jingellic Creek: and bounded thence by that creek and Coppabella Creek, upwards to the generally southern boundary of the Parish of Coppabella, County of Goulburn; by part of that boundary, easterly to the generally northern side of the Tumbarumba-Jingellic Road; by that side of that road, generally easterly to the generally western boundary of the County of Selwyn, aforesaid and by part of that boundary, generally southerly to the point of commencement.

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**SCHEDULE E****Land included in Tumbarumba Local Government Area (as altered)**

Area about 4554.61 square kilometres. Commencing at the confluence of the Murray River and Jingellic Creek: and bounded thence by that creek and Coppabella Creek, upwards to the generally southern boundary of the Parish of Coppabella, County of Goulburn; by part of that boundary, easterly to the generally northern side of the Tumbarumba-Jingellic Road; by that side of that road, generally easterly to the generally western boundary of the County of Selwyn; by part of that boundary, generally northerly, the north-eastern boundary of the Parish of Wood, County of Wynyard, generally north-westerly to the south-eastern corner of portion 52, Parish of Belmore; by part of the eastern boundary of that portion northerly, the southern and eastern boundaries of portion 51 easterly and northerly, the southern boundaries of portions 96 and 57, and a line east to the north-western corner of portion 80; by the western and southern boundaries of that portion southerly and easterly to Tarcutta Creek; by that creek upwards to the north-western corner of portion 94, Parish of Hillas; by the northern boundaries of that portion and portions 16 and 17 generally easterly to Bago Creek; by that creek upwards; by southern boundaries of portions 10 and 13 generally easterly to the road from Tumbarumba to Tumut, which forms the western boundary of the Parish of Selwyn; by western and south-western boundaries of that Parish generally southerly and south-easterly to the western boundary of the Parish of Buddong, County of Selwyn; by that boundary southerly; by the southern boundary of that Parish generally easterly to the centre of Honeysuckle Creek; by the centre of that creek downwards and the centre of the Tumut River upwards to its junction with Happy Jack's River; by the centre of that river upwards to the eastern boundary of the Parish of Table Top; by that boundary northerly to the eastern boundary of the County of Selwyn; by that boundary generally southerly to the left bank of the Upper Indi River; by that bank of that river and the left high bank of the Murray River downwards to a point of south of the point of commencement and by a line northerly to that point.

**LOCAL GOVERNMENT ACT 1993 - PROCLAMATION**

MARIE BASHIR, Governor

I, Professor MARIE BASHIR, A.C., Governor of the State of New South Wales, with the advice of the Executive Council, and in pursuance of Part 1, Chapter 9 and Part 5, Chapter 12 of the Local Government Act 1993, do, by this my Proclamation declare that:

- (a) on 26 May 2004, the Areas of the City of Bathurst, City of Lithgow, Evans, Merriwa, Mudgee, Oberon, Rylstone and Upper Hunter Shire are amalgamated so as to constitute new Areas having the names of the Bathurst Regional, City of Lithgow, Oberon, Mid-Western Regional and Upper Hunter Shire as described in Schedules A to E hereto;
- (b) on 26 November 2004, the Area of Coolah is amalgamated with the Area of Mid-Western Regional so as to constitute the new Area of Mid-Western Regional as described in Schedule D hereto;
- (c) on 26 May 2004, the Proclamations in force constituting or varying the constitution of the Mid-Western County Council are amended by omitting the former Mudgee Shire Council and Rylstone Shire Council as constituent Councils of the County Council and by inserting the new Mid-Western Regional Council as a constituent Council of the County Council;
- (d) on 26 November 2004, the Mid-Western County Council is dissolved with its operations subsumed into the new Area of Mid-Western Regional in accordance with the provisions set out in Schedule D hereto;
- (e) on 26 May 2004, the Proclamations in force constituting or varying the constitution of the Upper Macquarie County Council are amended by:
  - (i) omitting the former Bathurst City Council, Evans Shire Council, Lithgow City Council and Oberon Council as constituent Councils of the County Council and by inserting the new Bathurst Regional Council, Lithgow City Council and Oberon Council as constituent Councils of the County Council; and
  - (ii) providing that there are 10 members on the County Council's governing body to be elected by the constituent Councils following the declaration of the first election as follows:
 

Bathurst Regional Council	4 members
Blayney Shire Council	2 members
Lithgow City Council	2 members
Oberon Council	2 members
- (f) on 26 May 2004, the Proclamations in force constituting or varying the constitution of the Upper Hunter County Council are amended by:
  - (i) excluding the former Upper Hunter Shire Council as a constituent Council of the County Council and by including the new Upper Hunter Shire Council as a constituent Council of the County Council; and
  - (ii) the County Council's area of operations increases to include those parts of the former Area of Merriwa that is included in the new Council as described in Schedule E hereto; and
  - (iii) providing that two persons are to be elected as members by the Upper Hunter Shire Council to the County Council's governing body following the declaration of the first election.
- (g) the provisions set out in Schedules A, B, C, D and E hereto apply on and from 26 May 2004 (unless another date is stated), to the new Areas effected by this Proclamation, where applicable.

Signed and sealed at Sydney, this 26th day of May 2004.

By Her Excellency's Command,

TONY KELLY, M.L.C.,  
Minister for Local Government

GOD SAVE THE QUEEN!

SCHEDULE A

**Land included in the Bathurst Regional Local Government Area**

Area about 3815.01 square kilometres. Commencing at the confluence of the Macquarie River and Tambaroora Creek, Parish of Aberfoil, County of Bathurst: and bounded thence by that river downwards to the northernmost north-eastern corner of Portion 25; by the generally eastern boundary of that portion and Portion 26 and the generally north-eastern and part of the eastern boundaries of Portion 30 generally southerly, generally south-easterly and southerly to the south-western corner of Portion 29; by part of the southernmost southern boundary of that portion easterly to the north-western corner of Portion 39; Parish of St David; by the generally western boundary of the Parish of St David; by the generally western boundary of the Parish of St David generally southerly to the easternmost south-eastern corner of Portion 35, Parish of Lennox; by the generally southern boundary of that portion generally westerly to Lucky Swamp Creek; by that creek upwards to the south-western corner of Portion 57, Parish of Freemantle; by the generally south-western boundary of Portions 84 and 85 generally south-easterly to the westernmost corner of Portion 79, Parish of Byng; by the range forming the generally south-western boundary of that portion and the generally south-eastern boundary of Portions 64, 29 and 62

generally south-easterly and generally south-westerly to the northern boundary of Portion 94; by part of that boundary and a line along the eastern boundary of that portion and Portion 96 easterly and southerly to the northeastern corner of Portion 105, Parish of Colville; by the eastern and part of the southern boundaries of that portion southerly and westerly to the easternmost north-eastern corner of Portion 180; by the easternmost eastern boundary of that portion southerly to the road from Bathurst to Orange; by that road generally westerly to the easternmost north-eastern corner of portion 128; by the eastern boundary of that portion southerly; by a line south-easterly to the north-eastern corner of Portion 135; by the eastern boundary of that portion and portion 96 southerly; by a line along part of the northern boundary of Portion 91 and the northern boundary of Portions 88, 89 and 132 easterly to the north-western corner of Portion 112; by State Highway No. 7 (Mitchell Highway) generally easterly to the north-western corner of Portion 41, Parish of Vittoria; by the western boundary of that portion and the western and part of the southern boundaries of Portion 45 southerly and easterly to its intersection with a line along the westernmost western boundary of Portion 141; by that line, the southern boundary of that portion, part of the southern boundary of Portion 129 and the generally southern boundary of Portion 161 southerly and generally easterly; by a line easterly to the westernmost south-western corner of Portion 164; by the generally southern boundary of that portion generally easterly; by a line easterly to the westernmost south-western corner of portion 163; by the southern and south-western boundaries of that portion easterly and south-easterly; by part of the generally eastern boundary of the Parish of Torrens generally southerly to the northernmost north-western corner of Portion 139, Parish of Galbraith; by the northernmost northern and part of the easternmost eastern boundaries of that portion and southerly to its intersection with a line parallel to 174.1 metres rectangularly distant northerly from the northern boundary of portion 76; by that line easterly to its intersection with a line along the western boundary of the said portion 76; by that line southerly to the north-western corner of the said portion 76; by a line along the northern boundary of that portion easterly to the western boundary of Portion 125; by part of the generally northern and the generally eastern boundaries of the Parish of Galbraith generally easterly and generally southerly to the south-eastern corner of Portion 120, Parish of Galbraith; by part of the generally northern, the generally eastern and the generally south-eastern boundaries of the Parish of Three Brothers and part of the generally southern boundary of the Parish of Neville generally easterly, generally southerly and generally south-westerly to Graingers Creek; by that creek and Rocky Bridge Creek downwards and the Abercrombie River upwards to the generally western boundary of the Parish of Thompson, County of Georgiana; by part of that boundary, northerly, the eastern and generally north-eastern boundaries of Lot 90, DP 753018, northerly and generally north-westerly, the eastern boundary of Lot 91, DP 753018, northerly, part of the southern, the eastern and the generally north-eastern boundaries of Lot 63, DP 753032, easterly, northerly and generally north-westerly, the generally north-western boundary of Lot Pt 1, DP 547757, generally north-easterly, a line easterly, the generally north-western boundary of Lot A, DP 401130, generally north-easterly, the generally western, the generally northern and the eastern boundaries of Lot Pt 1, DP 547757, generally northerly, generally easterly and southerly, the generally western and southern boundaries of Lot B, DP 401130, generally southerly and easterly, the southern and part of the eastern boundaries of Lot 2, DP 1025922, easterly and northerly, the southern boundary of Lot 123, DP 753032, easterly, part of the western, the southern and the north-eastern boundaries of Lot 76, DP 753032, southerly, easterly and north-westerly, the generally eastern boundary of Lot 135, DP 753032, generally northerly, a line easterly and the generally northern boundary of Lot 106, DP 655269, generally easterly to the generally south-western side of Schumachers Road; by that side of that road, generally north-westerly to the western prolongation of the generally south-eastern boundary of Lot 2, DP 818313; by that prolongation and boundary, generally north-easterly, a line, the eastern boundary of Lot 892, DP 815567, northerly, part of the southern and the eastern boundaries of Lot 2, DP 791440, easterly and northerly, the eastern boundary of Lot 130, DP 753052, northerly, the generally eastern boundary of Lot Pt 32, DP 753052, generally northerly, a line northerly, part of the generally eastern boundary of Lot Pt 142, DP 752052, generally northerly, the northern boundary of Lot 9, DP 389174, easterly, the northern and the north-eastern boundaries of Lot 1, DP 389174 and its prolongation, easterly and south-easterly to Triangle Creek; by that creek, downwards, to the western boundary of Lot F, DP 159858; by part of that boundary and the northern boundary of that lot, northerly and easterly, the generally northern boundary of Lot 1, DP 655744 and its prolongation, generally easterly to the eastern side of Burruga Road; by that side of that road, north-easterly to the generally south-western boundary of Lot 7, DP 258535; by that boundary, generally south-easterly, part of the southern boundary of Lot 5, DP 111813, westerly to the Campbells River; by that River downwards to the southern boundary of Lot 6, DP 581791; by part of that boundary, the generally western and the generally north-western boundaries of that lot, westerly, generally northerly and generally north-easterly, the generally north-western boundary of Lot 7, DP 591246, generally north-easterly, the generally south-western boundary of Lot 12, DP 608801, generally south-easterly, the south-western and eastern boundaries of Lot 5, DP 231859, south-westerly and northerly, the generally southern boundary of Lot 3, DP 235777, generally easterly, the southern boundaries of Lot 2, DP 235777 and Lot 81, DP 757039 and their prolongation easterly to Sewells Creek; by that creek and Campbells River, downwards to the southern prolongation of the generally north-eastern boundaries of DP 859300; by that prolongation, boundaries and the generally north-eastern boundaries of DP 632418 and their prolongation, generally north-westerly, generally westerly and generally south-westerly to, again, Campbells River; by that river, downwards and Fish River, upwards to the southern prolongation of the western boundary of Portion 5, Parish of Eusdale, County of Roxburgh; by that prolongation, boundary and the northern boundary of that portion, northerly and westerly, part of the western and northern boundaries of Lot 1 DP 798788, northerly and easterly, the eastern boundary of portion 4, parish of Eusdale, County of Roxburgh, northerly to the southernmost southern boundary of Portion 108, Parish of Thornshope; by part of that boundary and the western, generally north-western and northern boundaries of that portion westerly, northerly, generally north-easterly and easterly; by the generally south-eastern and easternmost northern boundaries of Portion 124 generally north-easterly and westerly to the eastern boundary of Portion 58; by part of that boundary, the northern boundary of that portion and the northernmost northern boundary of the said Portion 124 northerly and westerly to the eastern boundary of Portion 2, Parish of Eusdale; by part of that boundary, the eastern and northern boundaries of portion 3 and part of the eastern boundary of Portion 6 northerly, westerly and again northerly to the north-eastern corner of the said Portion 6; by a line northerly to the south-

eastern corner of Portion 28, Parish of Castleton; by a line along the eastern boundary of that portion northerly to the westernmost southern boundary of Portion 83, Parish of Falnash; by part of that boundary and the westernmost western and part of the northernmost northern boundaries of that portion westerly, northerly and easterly to the south-western corner of Portion 40; by a line along the western boundary of that portion northerly to the southernmost southern boundary of Portion 82; by part of that boundary and part of the generally western boundary of that portion westerly and generally northerly to the southern side of the road forming part of the southern boundary of Portion 64, Parish of Castleton; by a line north to the said southern boundary of Portion 64; by part of that boundary and part of the northernmost northern boundary of Portion 236 westerly to the southernmost southern-eastern corner of Portion 248; by the generally eastern boundary of that portion and part of the western boundary of Portion 228 generally northerly to the south-western corner of portion 62; by the southern and eastern boundaries of that portion easterly and northerly; by the road forming the generally northern boundary of Portion 86, parish of Falnash, north-easterly to its intersection with a line along the eastern boundary of Portion 74, Parish of Castleton; by that line northerly to the southern boundary of portion 241; by part of that boundary and the western and part of the northern boundaries of that portion westerly, northerly and easterly to its intersection with the said line along the eastern boundary of portion 74; by that line northerly to the north-eastern corner of the said portion 74; by part of the generally eastern and part of the generally north-eastern boundaries of the Parish of Castleton, generally northerly and generally north-westerly to the westernmost north-western corner of Portion 57, Parish of Turon; by the westernmost northern and western boundaries of that portion, the generally western boundary of Portion 55, the westernmost western boundary of Portion 39 and part of the western boundary of Portion 16 easterly and generally northerly to the south-eastern corner of Portion 70; by the southern boundary of that portion and the southernmost southern boundary of Portion 77 westerly to Palmers Oak Creek; by that creek downwards to the south-eastern corner of Portion 159, Parish of Jesse; by the eastern and generally northern boundaries of that portion and part of the north-eastern boundary of Portion 166 northerly, generally westerly and north-westerly to a point south of the easternmost south-eastern corner of Portion 165; by a line north to that corner; by the generally northern boundary of the said Portion 165 and Portion 134 and the northernmost northern boundary of Portion 138 generally westerly; by a line westerly to the easternmost north-eastern corner of Portion 155; by the generally north-eastern boundary of that portion generally north-westerly to the northernmost corner of that portion; by the prolongation north-westerly of the northernmost north-eastern boundary of that portion north-westerly to the south-eastern boundary of Portion 62; by part of that boundary and the generally eastern boundary and the northern boundary of that portion north-easterly, generally northerly and westerly to the road from Bathurst to Upper Turon; by that road generally northerly to the Turon River; by that river downwards and Cunninghams or Crudine Creek upwards to the generally northern boundary of the Parish of Cunningham, County of Wellington; by that boundary, generally westerly to Green Valley Creek; by that creek, downwards to the generally south-eastern side of the road from Hill End to Hargraves; by that side of that road, generally south-westerly to the north-eastern prolongation of the north-western boundary of Lot 78, DP 756873; by that prolongation, boundary and part of the south-western boundary of that lot, south-westerly and south-easterly to a point 50 metres offset on the south-western side of Dixons Long Point Road; by that 50 metres offset generally north-westerly to the northern boundary of Hill End - Tambaroora Common; by that boundary and the generally western boundary of that Common westerly and generally southerly to Tambaroora Creek, aforesaid, and by that creek downwards to the point of commencement.

## 1 Definitions

In this Schedule:

*clause* means a clause in this schedule.

*Director General* means the Director General of the Department of Local Government.

*former Area* means any or all of the following:

- that part of the former Area of the City of Bathurst which, by this Proclamation, is constituted as the Bathurst Regional Council
- that part of the former Area of Evans Shire which, by this Proclamation, is constituted as the Bathurst Regional Council

*former Council* means any of the former Councils of the City of Bathurst or Evans Shire.

*Minister* means the Minister for Local Government.

*new Area* means the Area of Bathurst Regional.

*new Council* means the Bathurst Regional Council.

*proclamation date* means 26 May 2004.

*the Act* means the Local Government Act 1993.

## 2 First election

- (1) The date of the first election of the Councillors of the new Council is 24 September 2005.
- (2) Unless otherwise required by the Act or the context, the provisions relating to ordinary elections shall be taken to apply to the first election of the Councillors.

- (3) For the purposes of:
  - (a) the entitlements of persons to be enrolled as electors for the new Area and to vote at the election, and
  - (b) the entitlements of persons to be nominated for election as Councillors for the new Area at the election, and
  - (c) the conduct of the election by the State Electoral Commissioner, and
  - (d) any other matter relating to the election,the new Area is taken to have been constituted on the date of publication of this proclamation.

### **3 Administration of new Council for interim period**

- (1) For the interim period between 26 May 2004 and the declaration of the first election, one Administrator is appointed and is Ms Kath Knowles (former Mayor of former Bathurst City Council) to direct and control the affairs of the new Council.
- (2) If Ms Kath Knowles declines to be appointed as the Administrator, then the Minister may appoint an alternate person as the Administrator.
- (3) The Administrator will be paid \$82,000 per annum on a pro-rata basis for the interim period.
- (4) Any matters before the new Council with respect to the local development process or any other matter in which the Administrator has a pecuniary interest within the meaning of the Local Government Act 1993 is to be determined by a substitute Administrator appointed by the Minister for that limited purpose.
- (5) The Administrator is to complete and lodge with the Acting General Manager within 21 days, a disclosure of interests written return in accordance with Division 2, Part 2, Chapter 14 of the Act in the form prescribed by the regulations.
- (6) For the purposes of the Local Government Act 1993, the Administrator does not hold an office or a position of profit under the new Council.

### **4 Appointment of Acting General Manager**

- (1) The Acting General Manager of the new Area shall be Mr David Sherley (former Acting General Manager of the former Bathurst City Council) commencing on 26 May 2004 until the first meeting of the new Council held after the first election.
- (2) The Acting General Manager of the new Council may be confirmed as the General Manager at the first meeting following the first election, or otherwise recruitment processes commenced.
- (3) If the new Council resolves to commence recruitment processes for a General Manager, the term of the Acting General Manager named in subclause (1) is extended until the General Manager commences with the new Council.

### **5 Number of Councillors**

- (1) The number of Councillors to be elected to the new Council at its first election is nine (9).
- (2) Subclause (1) does not limit the power of the new Council to re-determine, after the first election the number of its Councillors under section 224 of the Act.

### **6 Ward Structure**

- (1) The new Council shall not be divided into wards for the first election.
- (2) Nothing in subclause (1) limits the power of the new Council following the first election to hold a constitutional referendum to obtain approval to divide its Area into wards in accordance with Division 1 of Part 1 of Chapter 9 of the Act.

### **7 Election of Mayor following the first election**

- (1) The Mayor of the new Council is to be elected by the Councillors as referred to in sections 227(a), 282 and 290 (1) (c) of the Act at the new Council's first meeting following the first election.
- (2) Nothing in subclause (1) limits the power of the new Council following the first election to hold a constitutional referendum to determine the basis on which the Mayor attains office in accordance with Division 2 of Part 2 of Chapter 9 of the Act.

### **8 Appointment of the General Manager and other senior staff**

The operation of this clause and clause 4 is not to be regarded as a breach of contract between a former Council or the new Council and a senior staff member (including a General Manager).

## 9 Activities of former Councils

- (1) Anything that was done or omitted to be done by a former Council and that had effect immediately before the proclamation date continues to have effect as if it had been done or omitted to be done by the new Council.
- (2) Anything that was commenced by a former Council may be completed by the new Council as if it had been commenced by the new Council.
- (3) Without limiting subclause (1) any approval, order or notice that was given or made by a former Council, and that had effect immediately before the proclamation date, continues to have effect as if it had been done or made by the new Council.

## 10 Delegations

- (1) Any delegation from a former Council that was in force immediately before the proclamation date is taken to be a delegation from the new Council and may be revoked or amended accordingly.
- (2) Subclause (1) ceases to have effect when the new Council adopts new delegations under the relevant provisions of the Act.

## 11 Codes, policies and plans

- (1) The following policies and plan of the new Council are, as far as practicable, to be a composite of the corresponding policies and plans of each of the former Councils:
  - (a) local policies for approvals and orders (Part 3 of Chapter 7).
  - (b) management plan (Part 2 of Chapter 13).
  - (c) social or community plan (clause 30 of the Local Government (General) Regulation 1999).
- (2) Where the former councils do not have a current social or community plan as referred to in subclause (1)(c), the new Council shall adopt a new plan in accordance with the Guidelines, within a reasonable period determined by the Director General.
- (3) Each of the following codes, policies and plans of the former Bathurst City Council apply, as far as practicable, to the new Council:
  - (a) code of conduct (section 440).
  - (b) code of meeting practice (Division 1 of Part 2 of Chapter 12).
  - (c) expenses and facilities policy (Division 5 of Part 2 of Chapter 9).
  - (d) EEO management plan (Part 4 of Chapter 11).
- (4) Subclauses (1) & (3) cease to have effect in relation to a code, policy or plan of the new Council when the new Council adopts a new code, policy or plan under the relevant provisions of the Act.

## 12 Fees

- (1) The annual fee paid to each Councillor of the new Council and the annual fee paid to the Mayor of the new Council is to be equal to the highest of the corresponding fees paid by the former Councils.
- (2) Subclause (1) ceases to have effect in relation to an annual fee when the new Council fixes the annual fee in accordance with the appropriate determination of the Local Government Remuneration Tribunal.

## 13 Organisation Structure

The initial organisation structure of the new Council is, as far as practicable, to be a composite of the organisation structures of each of the former Councils.

## 14 Transfer of Senior Staff

- (1) Any position that, immediately before the proclamation date, was a senior staff position of:
  - (a) the former Bathurst City Council is transferred to the Council of the Area of Bathurst Regional.
  - (b) the former Evans Shire Council is transferred to the Council of the Area of Bathurst Regional.
- (2) The senior staff of each former Council are taken to be the senior staff of the new Council.
- (3) This clause ceases to have effect when a new organisation structure is determined by the new Council under Part 1 of Chapter 11 of the Act.
- (4) A senior staff member of a former Council can be confirmed in a senior staff position in the new Council, that has an equivalent level of responsibility and remuneration, when the organisation structure is determined by the new Council in accordance with subclause (3), or otherwise recruitment processes commenced.



**15 Transfer and maintenance of other staff**

- (1) It is intended that the making of any determinations as to the transfer of staff (other than senior staff) by virtue of the constitution of the new Areas made in this proclamation is to be in accordance with this clause:
  - (a) Each member of staff of the former Bathurst City Council (a transferred staff member) is transferred to the Council of the Area of Bathurst Regional.
  - (b) Each member of staff of the former Evans Shire Council (a transferred staff member) is transferred to the Council of the Area of Bathurst Regional.
- (2) Section 218CA (maintenance of staff numbers in rural centres) and Part 6, Chapter 11 of the Act (employment protection) applies to the employment of a transferred staff member.

**16 Transfer of assets, rights and liabilities**

- (1) It is intended that the making of any determinations as to the transfer of assets, rights and liabilities of the former Councils by virtue of the constitution of the new Area made in this proclamation is to be in accordance with this clause:
  - (a) The assets, rights and liabilities of the former Bathurst City Council are transferred to the Council of the Area of Bathurst Regional.
  - (b) The assets, rights and liabilities of the former Evans Shire Council are transferred to the Council of the Area of Bathurst Regional or the City of Lithgow as determined by agreement between the new Councils of the Areas of Bathurst Regional and City of Lithgow.
- (2) The following provisions have effect in relation to any assets, rights or liabilities that are transferred by operation of subclause (1):
  - (a) The assets of the former Councils vest in the new Council by virtue of this clause and without the need for any further conveyance, transfer, assignment or assurance.
  - (b) The rights or liabilities of the former Councils become, by virtue of this clause, the rights and liabilities of the new Council.
  - (c) All proceedings relating to the assets, rights or liabilities commenced before the transfer by or against the former Councils or a predecessor of any of the former Councils, and pending immediately before the transfer, are taken to be proceedings pending by or against the new Council.
  - (d) Any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the transfer by, to or in respect of the former Councils or a predecessor of any of the former Councils (to the extent to which that act, matter or thing has any force or effect) is taken to have been done or omitted by, to or in respect of the new Council.
  - (e) Anything that was commenced by a former Council and uncompleted at the proclamation date may be completed by the new Council as if it had been commenced by the new Council. This includes but is not limited to any application for approval or consent under the Act or any other Act.
  - (f) In so doing, the new Council must make any determinations required to be made in accordance with any relevant code, policy or plan of the relevant former Council, until such time as the new Council makes a new code, policy or plan in relation to that matter in accordance with the Act or any other Act.
  - (g) Anything that was done by a former Council, and that had effect immediately before the proclamation date, or that was commenced by a former Council and completed by the new Council as a result of this proclamation, continues to have effect and may be enforced by the new Council as if it had been done by the new Council.
  - (h) Without limiting subclause (2)(g) any approval, order or notice that was given or made by a former Council, and that had effect immediately before the proclamation date, continues to have effect and for all the purposes of the Act or any other Act shall be deemed to have been given or made by the new Council.
  - (i) Any decision of the Land and Environment Court in an appeal from a decision of a former Council, determined by the Court after the proclamation date, shall be deemed to be a decision of the new Council.
- (3) In this clause:

Assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, streams of income, choses in action and documents.

Liabilities means any liabilities, debts or obligations (whether present or future and whether vested or contingent) and includes liabilities relating to criminal acts.

Rights means any rights, powers, privileges or immunities (whether present or future and whether vested or contingent).

**17 General provisions with respect to transfers**

- (1) A transfer affected by this Schedule takes effect on the proclamation date.
- (2) The Minister may, by notice in writing, confirm a transfer affected by this Schedule.
- (3) Such a notice is conclusive evidence of the transfer.

**18 Effect of transfer on third party rights**

- (1) The operation of clause 16 (Transfer of assets, rights and liabilities) is not to be regarded:
  - (a) as an event of default under any contract or other instrument, or
  - (b) as a breach of contract or confidence or otherwise as a civil wrong, or
  - (c) as a breach of a contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
  - (d) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (2) No attornment to the new Council by a lessee from a former Council is required in relation to a transfer affected by clause 16.
- (3) No compensation is payable to any person or body in connection with a transfer affected by clause 16.
- (4) Subclause (3) does not affect the rights of any person or body in connection with the early termination of a contract between a former Council and that person or body.

**19 Reports and reviews of the new Council**

- (1) A duty of the new Council under any Act, including a duty to report or review, which relates to a period before the proclamation date, is to be performed by reference to the former Areas and the former Councils as appropriate.
- (2) Until 30 June 2004 the records and statutory reporting of the new Council are to be kept as a continuation of the records and statutory reports of each of the former Councils and the new Council's financial transactions are to be apportioned between the various accounting records in such a manner as the new Council determines.
- (3) The new Council's financial and statutory reports for the year ended 30 June 2004 are to be prepared in the form of separate reports for each set of records of the former Councils for the whole of that year.

**20 Auditor**

The Auditor, Alan Morse & Company will be the Auditor of the new Council unless the new Council appoints another Auditor in accordance with Division 3, Part 3, Chapter 13 of the Act.

**21 References to former Areas and Councils**

In any Act, in any instrument made under any Act or in any document of any kind:

- (1) A reference to any of the former Areas, or to a predecessor of any of the former Areas, is taken to include a reference to the new Area and is to be read as a reference to the new Area, and
- (2) A reference to any of the former Councils, or to a predecessor of any of the former Councils, is to be taken as a reference to the new Council and is to be read as a reference to the new Council.

**22 Rating Structures**

- (1) The new Council's maximum general income for 2004/05 is to be determined by estimating the proportionate amount of general income for 2003/04 from land in the former Areas included in the new Area.
- (2) The new Council is to determine its rating structure taking into consideration subclause (1).
- (3) The rating structure is to be reviewed within the first year of the new Council.

**23 Upper Macquarie County Council**

For the interim period between 26 May 2004 and the election of members of the County Council by the Bathurst Regional Council following the declaration of the first election, the Administrator of the Bathurst Regional Council is entitled to four votes at meetings of the County Council.

**24 Matters to be determined by Minister**

- (1) In order to give effect to this proclamation, the Minister may determine from time to time any matter or thing, including, without limitation, the content of the matters set out in clause 11.

- (2) In pursuance of this clause, any matter or thing requiring determination may be referred to the Minister by the new Council or Lithgow City Council.
- (3) The Minister may also determine any matter or thing that has not been referred to him by the new Council if the Minister concludes that the matter or thing cannot be determined by agreement between the new Council and Lithgow City Council or if the Minister is not satisfied with any agreement reached between the aforementioned new Council and Lithgow City Council, including in relation to subclauses (2) and (4) herein.
- (4) A matter to be determined by the Minister may be referred to the Director General, and/or another person or persons nominated by the Minister, for advice and recommendation, as appropriate.
- (5) The Director General and/or another person or persons nominated by the Minister, shall, if required by the Minister, convene a meeting between the new Council and Lithgow City Council to assist in the determination of the matter.
- (6) The Director General and/or any person or persons nominated by the Minister under this clause, shall have regard to the Statement of Intent herein and any other principles or guidelines considered appropriate in the circumstances.

## 25 Statement of Intent

- (1) The Minister will consider an application made by the new Council for a Special Variation to increase its General Income.
- (2) There will be meaningful cooperation between the Councils of the Areas of the Bathurst Regional and the City of Lithgow in the sharing of information and agreement of all matters necessary to facilitate the provisions of this proclamation.
- (3) The Councillors of the new Council are to exercise community leadership for the whole local government area as set out in the Act.

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### SCHEDULE B

#### Land included in the City of Lithgow Local Government Area

Area about 4562.46 square kilometres. Commencing at the intersection of the northern boundary of Lot 1, DP 798788 and the eastern boundary of Portion 4, Parish of Eusdale, County of Roxburgh: and bounded thence by part of the latter boundary, northerly, by part of the southern boundary and the western and northern boundary of portion 108, Parish of Thornshope, westerly, northerly and easterly; by the generally eastern boundary and a northern boundary of portion 124 generally northerly and westerly to the eastern boundary of portion 58; by part of that boundary, the northern boundary of that portion and the northernmost northern boundary of the said portion 124 northerly and westerly to the eastern boundary of portion 2, Parish of Eusdale; by part of that boundary and the eastern and northern boundaries of portion 3 northerly and westerly; by a line along part of the eastern boundary of portion 6, Parish of Eusdale, and the eastern boundary of portion 28, Parish of Castleton, northerly to a southern boundary of portion 83, Parish of Falnash; by boundaries of that portion westerly, northerly and easterly to the southwestern corner of portion 40; by a line along the western boundary of that portion northerly to a southern boundary of portion 82; by part of that boundary and the generally western boundary of that portion westerly and generally northerly to the westernmost northwestern corner of that portion; by a line north to the southern boundary of portion 64, Parish of Castleton; by part of that boundary and part of the northern boundary of portion 236 westerly to the southeastern corner of portion 248; by the eastern boundary of that portion and part of the western boundary of portion 228 northerly to the southwestern corner of portion 62; by the southern and eastern boundaries of that portion easterly and northerly; by the road forming the generally northern boundary of portion 86, parish of Falnash, northeasterly to its intersection with a line along the eastern boundary of portion 74, Parish of Castleton; by that line northerly to the southern boundary of portion 241; by boundaries of that portion westerly, northerly and easterly to its intersection with the said line along the eastern boundary of portion 74; by that line northerly to the northeastern corner of the said portion 74; by part of the generally eastern boundary and the generally northeastern boundary of the Parish of Castleton generally northerly and generally northwesterly to the westernmost corner of portion 57, Parish of Turon; by the westernmost northern and western boundaries of that portion, the western boundary of portions 55 and 39 and part of the western boundary of portion 16 easterly and northerly to the southeastern corner of portion 70; by the southern boundary of that portion and the southernmost southern boundary of portion 77 westerly to Palmers Oaky Creek; by that creek downwards to the southeastern corner of portion 159, Parish of Jesse; by the eastern and generally northern boundaries of that portion, the generally northeastern boundary of portion 166, the generally northern boundary of portion 165 and 134, the northernmost boundary of portion 138, the generally northeastern boundary of portion 155 and the generally eastern boundary and the northern boundary of portion 62 northerly, generally north-westerly, again northerly and westerly to the road from Bathurst to Upper Turon; by that road generally northerly to the Turon River; by that river and Round Swamp Creek upwards to the southwestern corner of portion 34, parish of Hearne; by the southern boundary of that portion and portion 85 easterly; by the western boundary of portion 152 northerly; by part of the southern boundary, the western boundary and part of the northern boundary of portion 37 westerly, northerly and easterly to its intersection with a line along the western boundary of portion 5; by that line, part of the southern boundary of portion 42 and the western boundary of portion 156 northerly, easterly and again northerly to the southern boundary of portion 1; by part of that road forming the northern boundary of the said portion 1 westerly to the easternmost corner of portion 157; by the generally eastern

boundary of that portion, the generally northeastern boundary of portion 158 and the generally eastern boundary of portion 159, generally northerly to the Great Dividing Range; by that range generally easterly and Wollembi Range, generally south-easterly to the generally northern boundary of the Parish of Innes, County of Hunter; by that boundary and the generally northern boundary of the Parish of Wirraba, generally easterly to Wollemi Creek; by that creek and the Colo River downwards and Wollangambe Creek upwards to its intersection with a line along the northern boundary of M.L. 3, Parish of Wollangambe, County of Cook; by that line westerly to the eastern boundary of M.L. 2, by part of that boundary and the northern boundary of the said M.L. 2 northerly and westerly to the eastern boundary of M.L. 21, Parish of Clwydd; by part of that boundary and the northern boundary of the said M.L. 21 northerly and westerly to the eastern boundary of portion 162; by boundaries of that portion northerly, westerly and southerly to the southern-most corner of portion 33; by part of the southwestern boundary of that portion northwesterly to its intersection with a line along the southern boundary of portion 212, Parish of Lett; by that line and the southernmost southern boundary of portion 236 westerly; by boundaries of portion 252 northerly, westerly, southerly and easterly to the northwestern corner of portion 190, Parish of Hartley; by the western boundary of that portion southerly; by part of a northern boundary of portion 219, a line along the easternmost eastern boundary of that portion and the eastern boundary of portions 125 and 222 easterly and southerly to the southeastern corner of the said portion 222; by a line along the southernmost southern boundary of that portion and the southern boundary of portion 94 westerly to the easternmost northeastern corner of portion 99; by boundaries of that portion southerly, westerly, again southerly and again westerly to the southeastern corner of R.52031 for Public Recreation; by the eastern and northern boundaries of that reserve northerly and westerly; by part of the eastern boundary and the northern boundary of portion 188 northerly and westerly; by a line along the eastern boundary of portions 163 and 166, part of the southern boundary of the said portion 166 and part of the eastern boundary of portion 31 southerly, westerly and again southerly to the northwestern corner of portion 109; by a line along the northern boundary of that portion and portions 111 and 278 easterly to Mount York Road; by that road southeasterly to the western boundary of portion 348; by part of that boundary, part of the northern, the western and part of the southern boundaries of portion 113, the western and part of the southern boundaries of portion 74 and the eastern boundary of portion 263 southerly, westerly, again southerly, easterly, again southerly, again easterly and again southerly; by a line southeasterly to the 75 mile post on the southern side of the Great Western State Highway; by that highway generally easterly to the northwestern corner of portion 292; by a line along the westernmost western boundary and by the southernmost southern boundary of that portion and by part of the southernmost southern boundary of portion 272 southerly and easterly to the northwestern corner of R.53927 for Public Recreation; by the western and southern boundaries of that reserve and part of the westernmost western boundaries and the southernmost southern boundary of R.52037 for Public Recreation southerly, easterly, again southerly and again easterly to the western boundary of portion 356; by part of that boundary, the southern boundary of that portion and part of the southern boundary of portion 354 southerly and easterly to its intersection with a line along the western boundary of portion 339; by that line and part of the northern boundary and the generally western boundary of R.52041 for Public Recreation southerly, westerly and generally southerly to the northernmost northern boundary of R. 67625 for Public Recreation, parish of Kanimbla; by part of that boundary and a western boundary of that reserve partly forming the eastern boundary of portion 163 westerly and southerly; by the generally southern boundary of the said portion 163 generally westerly to the southwestern corner of that portion; by boundaries of R.52047 for Public Recreation westerly, southerly and easterly to the westernmost corner of portion 61; by the generally southwestern boundary of that portion and portions 51 and 53 generally southeasterly to the southwestern corner of the said portion 53; by a line south to the generally northern boundary of portion 43; by part of that boundary generally westerly to an eastern boundary of R.52065 for Public Recreation; by part of that boundary, the northernmost northern and western boundaries of that reserve and the westernmost western boundary of portion 164 northerly, westerly and southerly to the northernmost northern boundary of portion 153; by part of that boundary, the northern and part of the western boundaries of portion 157 and a line along the northern boundary of portion 156 westerly, southerly and again westerly to the eastern boundary of portion 8; by part of that boundary and the southern boundary of that portion southerly and westerly to Cox's River; by that river downwards to the southeastern corner of portion 30, Parish of Ganbenang, County of Westmoreland; by part of the generally southern boundary of the Parish of Ganbenang and the Mini Mini Range generally westerly to the generally eastern boundary of the Parish of Bindo; by part of that boundary and the generally southern boundary of that parish generally southerly and generally westerly to the Fish River; by that river downwards the southern prolongation of the western boundary of Portion 5, Parish of Eusdale, County of Roxburgh; by that prolongation, boundary and the northern boundary of that portion, northerly and westerly, part of the western and northern boundaries of Lot 1 DP 798788, northerly and easterly to the point of commencement.

## 1 Definitions

In this Schedule:

*clause* means a clause in this schedule.

*Director General* means the Director General of the Department of Local Government.

*former Area* means any or all of the following:

- that part of the former Area of the City of Lithgow which, by this Proclamation, is constituted as the Lithgow City Council
- that part of the former Area of Rylstone which, by this Proclamation, is constituted as the Lithgow City Council
- that part of the former Area of Evans which, by this Proclamation, is constituted as the Lithgow City Council

*former Council* means any of the former Councils of Lithgow City, Evans Shire or Rylstone Shire.

*Minister* means the Minister for Local Government.

*new Area* means the Area of the City of Lithgow.

*new Council* means the Lithgow City Council.

*proclamation date* means 26 May 2004.

*the Act* means the Local Government Act 1993.

## 2 First election

- (1) The date of the first election of the Councillors of the new Council is Saturday 27 September 2008.
- (2) Unless otherwise required by the Act or the context, the provisions relating to ordinary elections shall be taken to apply to the first election of the Councillors.
- (3) For the purposes of:
  - (a) the entitlements of persons to be enrolled as electors for the new Area and to vote at the election, and
  - (b) the entitlements of persons to be nominated for election as Councillors for the new Area at the election, and
  - (c) the conduct of the election by the State Electoral Commissioner, and
  - (d) any other matter relating to the election,the new Area is taken to have been constituted on the date of publication of this proclamation.

## 3 Continuation in office of Councillors of Lithgow City Council

- (1) Subject to section 234 of the Act, those persons who immediately before the proclamation date were the Mayor and Deputy Mayor (if applicable) of the former Lithgow City Council, are to continue in office on the new Council, until the next election of Mayor.
- (2) Subject to section 234 of the Act, all persons who immediately before the proclamation date were Councillors of the former Lithgow City Council are to continue in office, as Councillors of the new Council, until the first election.

## 4 Appointment of General Manager

The General Manager of the new Area shall be Mr Iain Stewart (former General Manager of the former Lithgow City Council) commencing on 26 May 2004.

## 5 Number of Councillors

- (1) The number of Councillors to be elected to the new Council at its first election is nine (9).
- (2) Subclause (1) does not limit the power of the new Council to re-determine the number of its Councillors under section 224 of the Act.

## 6 Ward Structure

- (1) The new Council shall not be divided into wards for the first election.
- (2) Nothing in subclause (1) limits the power of the new Council to hold a constitutional referendum to obtain approval to divide its Area into wards in accordance with Division 1 of Part 1 of Chapter 9 of the Act.

## 7 Election of Mayor

Nothing in clause 3 limits the power of the new Council to hold a constitutional referendum to determine the basis on which the Mayor attains office in accordance with Division 2, Part 2, Chapter 9 of the Act.

## 8 Appointment of the General Manager and other senior staff

The operation of this clause and clause 4 is not to be regarded as a breach of contract between a former Council or the new Council and a senior staff member (including a General Manager).

## 9 Activities of former Councils

- (1) Anything that was done or omitted to be done by a former Council and that had effect immediately before the proclamation date continues to have effect as if it had been done or omitted to be done by the new Council.
- (2) Anything that was commenced by a former Council may be completed by the new Council as if it had been commenced by the new Council.

- (3) Without limiting subclause (1) any approval, order or notice that was given or made by a former Council, and that had effect immediately before the proclamation date, continues to have effect as if it had been done or made by the new Council.

## 10 Delegations

- (1) Any delegation from a former Council that was in force immediately before the proclamation date is taken to be a delegation from the new Council and may be revoked or amended accordingly.
- (2) Subclause (1) ceases to have effect when the new Council adopts new delegations under the relevant provisions of the Act.

## 11 Codes, policies and plans

- (1) The following policies and plan of the new Council are, as far as practicable, to be a composite of the corresponding policies and plans of each of the former Councils:
  - (a) local policies for approvals and orders (Part 3 of Chapter 7).
  - (b) management plan (Part 2 of Chapter 13).
  - (c) social or community plan (clause 30 of the Local Government (General) Regulation 1999).
- (2) Where the former councils do not have a current social or community plan as referred to in subclause (1)(c), the new Council shall adopt a new plan in accordance with the Guidelines, within a reasonable period determined by the Director General.
- (3) Each of the following codes, policies and plans of the former Lithgow City Council apply, as far as practicable, to the new Council:
  - (a) code of conduct (section 440).
  - (b) code of meeting practice (Division 1 of Part 2 of Chapter 12).
  - (c) expenses and facilities policy (Division 5 of Part 2 of Chapter 9).
  - (d) EEO management plan (Part 4 of Chapter 11).
- (4) Subclauses (1) & (3) cease to have effect in relation to a code, policy or plan of the new Council when the new Council adopts a new code, policy or plan under the relevant provisions of the Act.

## 12 Fees

- (1) The annual fee paid to each Councillor of the new Council and the annual fee paid to the Mayor of the new Council is to be equal to the highest of the corresponding fees paid by the former Councils.
- (2) Subclause (1) ceases to have effect in relation to an annual fee when the new Council fixes the annual fee in accordance with the appropriate determination of the Local Government Remuneration Tribunal.

## 13 Organisation Structure

The initial organisation structure of the new Council is, as far as practicable, to be a composite of the organisation structures of each of the former Councils.

## 14 Transfer of Senior Staff

- (1) Any position that, immediately before the proclamation date, was a senior staff position of:
  - (a) the former Lithgow City Council is transferred to the Council of the Area of the City of Lithgow.
  - (b) the former Rylstone Shire Council is transferred to a Council of the Areas of the City of Lithgow or Mid-Western Regional as determined by agreement between the new Councils of the Areas of the City of Lithgow and Mid-Western Regional.
- (2) The senior staff of each former Council are taken to be the senior staff of the new Councils as determined with reference to subclause (1).
- (3) This clause ceases to have effect when a new organisation structure is determined by the new Council under Part 1 of Chapter 11 of the Act.
- (4) A senior staff member of a former Council can be confirmed in a senior staff position in the new Council, that has an equivalent level of responsibility and remuneration, when the organisation structure is determined by the new Council in accordance with subclause (3), or otherwise recruitment processes commenced.

**15 Transfer and Maintenance of other staff**

- (1) It is intended that the making of any determinations as to the transfer of staff (other than senior staff) by virtue of the constitution of the new Areas made in this proclamation is to be in accordance with this clause:
  - (a) Each member of staff of the former Lithgow City Council (a transferred staff member) is transferred to the Council of the Area of the City of Lithgow.
  - (b) Each member of staff of the former Rylstone Shire Council (a transferred staff member) is transferred to the Council of the Areas of the City of Lithgow or Mid-Western Regional as determined by agreement between the Councils of the Areas of the City of Lithgow and Mid-Western Regional.
- (2) Section 218CA (maintenance of staff numbers in rural centres) and Part 6, Chapter 11 of the Act (employment protection) applies to the employment of a transferred staff member.

**16 Transfer of assets, rights and liabilities**

- (1) It is intended that the making of any determinations as to the transfer of assets, rights and liabilities of the former Councils by virtue of the constitution of the new Area made in this proclamation is to be in accordance with this clause:
  - (a) The assets, rights and liabilities of the former Lithgow City Council are transferred to the Council of the Area of the City of Lithgow.
  - (b) The assets, rights and liabilities of the former Rylstone Shire Council are transferred to the Councils of the Areas the City of Lithgow or Mid-Western Regional as determined by agreement between the new Councils of the Areas of the City of Lithgow and Mid-Western Regional.
  - (c) The assets, rights and liabilities of the former Evans Shire Council are transferred to the Councils of the Areas of Bathurst Regional or the City of Lithgow as determined by agreement between the new Councils of the Areas of Bathurst Regional and City of Lithgow.
- (2) The following provisions have effect in relation to any assets, rights or liabilities that are transferred by operation of subclause (1):
  - (a) The assets of the former Councils vest in the new Council by virtue of this clause and without the need for any further conveyance, transfer, assignment or assurance.
  - (b) The rights or liabilities of the former Councils become, by virtue of this clause, the rights and liabilities of the new Council.
  - (c) All proceedings relating to the assets, rights or liabilities commenced before the transfer by or against the former Councils or a predecessor of any of the former Councils, and pending immediately before the transfer, are taken to be proceedings pending by or against the new Council.
  - (d) Any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the transfer by, to or in respect of the former Councils or a predecessor of any of the former Councils (to the extent to which that act, matter or thing has any force or effect) is taken to have been done or omitted by, to or in respect of the new Council.
  - (e) Anything that was commenced by a former Council and uncompleted at the proclamation date may be completed by the new Council as if it had been commenced by the new Council. This includes but is not limited to any application for approval or consent under the Act or any other Act.
  - (f) In so doing, the new Council must make any determinations required to be made in accordance with any relevant code, policy or plan of the relevant former Council, until such time as the new Council makes a new code, policy or plan in relation to that matter in accordance with the Act or any other Act.
  - (g) Anything that was done by a former Council, and that had effect immediately before the proclamation date, or that was commenced by a former Council and completed by the new Council as a result of this proclamation, continues to have effect and may be enforced by the new Council as if it had been done by the new Council.
  - (h) Without limiting subclause (2)(g) any approval, order or notice that was given or made by a former Council, and that had effect immediately before the proclamation date, continues to have effect and for all the purposes of the Act or any other Act shall be deemed to have been given or made by the new Council.
  - (i) Any decision of the Land and Environment Court in an appeal from a decision of a former Council, determined by the Court after the proclamation date, shall be deemed to be a decision of the new Council.
  - (j) Nothing in this proclamation limits or requires the making of a further proclamation regarding the apportionment of assets, rights and liabilities (contingent or otherwise) upon or following the dissolution of the Cudgegong (Abattoir) County Council.
- (3) In this clause:

Assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, streams of income, choses in action and documents.

Liabilities means any liabilities, debts or obligations (whether present or future and whether vested or contingent) and includes liabilities relating to criminal acts.

Rights means any rights, powers, privileges or immunities (whether present or future and whether vested or contingent).

### **17 General provisions with respect to transfers**

- (1) A transfer affected by this Schedule takes effect on the proclamation date.
- (2) The Minister may, by notice in writing, confirm a transfer affected by this Schedule.
- (3) Such a notice is conclusive evidence of the transfer.

### **18 Effect of transfer on third party rights**

- (1) The operation of clause 16 (Transfer of assets, rights and liabilities) is not to be regarded:
  - (a) as an event of default under any contract or other instrument, or
  - (b) as a breach of contract or confidence or otherwise as a civil wrong, or
  - (c) as a breach of contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
  - (d) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (2) No attornment to the new Council by a lessee from a former Council is required in relation to a transfer affected by clause 16.
- (3) No compensation is payable to any person or body in connection with a transfer affected by clause 16.
- (4) Subclause (3) does not affect the rights of any person or body in connection with the early termination of a contract between a former Council and that person or body.

### **19 Reports and reviews of the new Council**

- (1) A duty of the new Council under any Act, including a duty to report or review, which relates to a period before the proclamation date, is to be performed by reference to the former Areas and the former Councils as appropriate.
- (2) Until 30 June 2004 the records and statutory reporting of the new Council are to be kept as a continuation of the records and statutory reports of each of the former Councils and the new Council's financial transactions are to be apportioned between the various accounting records in such a manner as the new Council determines.
- (3) The new Council's financial and statutory reports for the year ended 30 June 2004 are to be prepared in the form of separate reports for each set of records of the former Councils for the whole of that year.

### **20 Auditor**

The Auditor, Alan Morse and Company will be the Auditor of the new Council unless the new Council appoints another Auditor in accordance with Division 3, Part 3, Chapter 13 of the Act.

### **21 References to former Areas and Councils**

In any Act, in any instrument made under any Act or in any document of any kind:

- (1) A reference to any of the former Areas, or to a predecessor of any of the former Areas, is taken to include a reference to the new Area and is to be read as a reference to the new Area, and
- (2) A reference to any of the former Councils, or to a predecessor of any of the former Councils, is to be taken as a reference to the new Council and is to be read as a reference to the new Council.

### **22 Rating Structures**

- (1) The new Council's maximum general income for 2004/05 is to be determined by estimating the proportionate amount of general income for 2003/04 from land in the former Areas included in the new Area.
- (2) The new Council is to determine its rating structure taking into consideration subclause (1).
- (3) The rating structure is to be reviewed within the first year of the new Council.

### **23 Matters to be determined by Minister**

- (1) In order to give effect to this proclamation, the Minister may determine from time to time any matter or thing, including, without limitation, the content of the matters set out in clause 11.
- (2) In pursuance of this clause, any matter or thing requiring determination may be referred to the Minister by the new Council or Mid-Western Regional Council.



- (3) The Minister may also determine any matter or thing that has not been referred to him by the new Council if the Minister concludes that the matter or thing cannot be determined by agreement between the new Council and Mid-Western Regional Council or if the Minister is not satisfied with any agreement reached between the aforementioned new Council and Mid-Western Regional Council, including in relation to subclauses (2) and (4) herein.
- (4) A matter to be determined by the Minister shall be referred to the Director General, and/or another person or persons nominated by the Minister, for advice and recommendation, as appropriate.
- (5) The Director General and/or another person or persons nominated by the Minister, shall, if required by the Minister, convene a meeting between the new Council and Mid-Western Regional Council to assist in the determination of the matter.
- (6) The Director General and/or any person or persons nominated by the Minister under this clause, shall have regard to the Statement of Intent herein and any other principles or guidelines considered appropriate in the circumstances.

## 24 Statement of Intent

- (1) The Minister will consider an application made by the new Council for a Special Variation to increase its General Income.
- (2) There will be meaningful cooperation between the Councils of the Areas of the City of Lithgow and Mid-Western Regional in the sharing of information and agreement of all matters necessary to facilitate the provisions of this proclamation.
- (3) The Councillors of the new Council are to exercise community leadership for the whole local government area as set out in the Act.

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### SCHEDULE C

#### Land included in the Oberon Local Government Area

Area about 3659.67 square kilometres: Commencing at the confluence of the Kowmung River and Gingra Creek, Parish of Cyclops, county of Westmoreland: and bounded thence by the south-western boundary of portion 1 and the southernmost boundary of portion 2 generally westerly; by part of the western boundary of the said portion 2 northerly about 40 chains to the range joining Mount Ti-Willa and Mount Cloudmaker; by that range generally westerly to the western boundary of the said parish of Cyclops; by that boundary of that parish generally northerly to Cox's River; by that river upwards to the south-eastern corner of portion 30, Parish of Ganbenang; by part of the generally southern boundary of the said Parish of Ganbenang on the Mini Mini Range generally westerly to the eastern boundary of the Parish of Bindo; by part of the eastern boundary and the generally southern boundary of the said Parish of Bindo southerly and generally westerly to the Fish River; by that river downwards and Campbells River, upwards to the southern prolongation of the generally north-eastern boundaries of DP 632418; by that prolongation, boundaries and the generally north-eastern boundaries of DP 859300 and their prolongation, generally north-easterly, generally easterly and generally south-easterly to, again, Campbells River; by that river and Sewells Creek, upwards to the western prolongation of the southern boundary of Lot 81, DP 757039; by that prolongation, boundary and the southern boundary of Lot 2, DP 237777, westerly, the generally southern boundary of Lot 3, DP 235777, generally westerly, the eastern and south-western boundaries, of Lot 5, DP 231859, southerly and north-westerly, the generally south-western boundary of Lot 12, DP 608801, generally north-westerly, the generally north-western boundary of Lot 7, DP 591246, generally south-westerly, the generally north-western, the generally western and the southern boundaries of Lot 6, DP 581791, generally south-westerly, generally southerly and easterly to the Campbells River; by that river, upwards to the southern boundary of Lot 5, DP 111813; by part of that boundary, easterly, the generally south-western boundary of Lot 7, DP 258535, generally north-westerly to the eastern side of the Burruga Road; by that side of that road, generally south-easterly to the eastern prolongation of the northern boundary of Lot 1, DP 655744; by that prolongation and boundary, generally westerly, the northern and part of the western boundaries of Lot F, DP 159858, westerly and southerly to Triangle Creek; by that creek, upwards to the south-eastern prolongation of the north-eastern boundary of Lot 1, DP 389174; by that prolongation and boundary, north-westerly, the northern boundary of the former lot and Lot 9, DP 389174, westerly, part of the generally eastern boundary of Lot Pt 142, DP 753052, generally southerly, a line, southerly, the generally eastern boundary of Lot Pt 32, DP 753052, generally southerly, the eastern boundary of Lot 130, DP 753052, southerly, the eastern and part of the southern boundaries of Lot 2, DP 791440, southerly and westerly, the eastern boundary of Lot 892, DP 815567, southerly, a line, the generally south-eastern boundary of Lot 2, DP 818313 and its prolongation generally south-westerly to the generally south-western side of Schumachers Road, by that side of that road, generally south-easterly to generally northern boundary of Lot 106, DP 655269, by that boundary, generally westerly, a line, westerly, the generally eastern boundary of Lot 135, DP 753032, generally southerly, the north-eastern, southern and part of the western boundaries of Lot 76, DP 753032, south-easterly, westerly and northerly, the southern boundary of Lot 123, DP 753032, westerly, part of the eastern and southern boundaries of Lot 2, DP 1025922, southerly and westerly, the southern and the generally western boundaries of Lot B, DP 401130, westerly and generally northerly, the eastern, the generally northern and the generally western boundaries of Lot Pt1, DP 547757, northerly, generally westerly and generally southerly, the generally north-western boundary of Lot A, DP 401130, generally south-westerly, a line, westerly, the generally north-western boundary of Lot Pt 1, DP 547757, generally south-westerly, the generally north-eastern, the eastern and part of the southern boundaries of Lot 63, DP 753032, generally south-easterly, southerly and westerly, the eastern boundary of Lot 91, DP 753018, southerly, the generally north-eastern and eastern boundaries of

Lot 90, DP 753018, generally south-easterly and easterly, and the generally western boundary of the Parish of Thompson, generally southerly to the Abercrombie River; by that river upwards to its source in the Great Dividing Range; by a line northerly to the westernmost corner of portion 8, parish of Abercorn, county of Westmoreland; by the road from Swatchfield to Richlands, south-easterly to the southernmost corner of portion 1, parish of Banshea; by the south-eastern boundary of that portion and portion 2, north-easterly to the range forming the northern watershed of Murruin and Bindook Creeks; by that range generally easterly to the source of Lannigan's Creek, parish of Tartarus; and by that creek and Kowmang River downwards to the point of commencement.

## 1 Definitions

In this Schedule:

*clause* means a clause in this schedule.

*Director General* means the Director General of the Department of Local Government.

*former Area* means any or all of the following:

- that part of the former Area of Oberon which, by this Proclamation, is constituted as the Oberon Council
- that part of the former Area of Evans which, by this Proclamation, is constituted as the Oberon Council

*former Council* means any of the former Councils of Oberon or Evans Shire.

*Minister* means the Minister for Local Government.

*new Area* means the Area of Oberon

*new Council* means the Oberon Council.

*proclamation date* means 26 May 2004.

*the Act* means the Local Government Act 1993.

## 2 First election

- (1) The date of the first election of the Councillors of the new Council is Saturday 27 September 2008.
- (2) Unless otherwise required by the Act or the context, the provisions relating to ordinary elections shall be taken to apply to the first election of the Councillors.
- (3) For the purposes of:
  - (a) the entitlements of persons to be enrolled as electors for the new Area and to vote at the election, and
  - (b) the entitlements of persons to be nominated for election as Councillors for the new Area at the election, and
  - (c) the conduct of the election by the State Electoral Commissioner, and
  - (d) any other matter relating to the election,the new Area is taken to have been constituted on the date of publication of this proclamation.

## 3 Continuation in office of Councillors of Oberon Council

- (1) Subject to section 234 of the Act, those persons who immediately before the proclamation date were the Mayor and Deputy Mayor (if applicable) of the former Oberon Council, are to continue in office on the new Council, until the next election of Mayor.
- (2) Subject to section 234 of the Act, all persons who immediately before the proclamation date were Councillors of the former Oberon Council are to continue in office, as Councillors of the new Council, until the first election.

## 4 Appointment of General Manager

- (1) The General Manager of the new Area shall be Mr Bruce Fitzpatrick (former General Manager of the former Oberon Shire Council) commencing on 26 May 2004.

## 5 Number of Councillors

- (1) The number of Councillors to be elected to the new Council at its first election is nine (9).
- (2) Subclause (1) does not limit the power of the new Council to re-determine the number of its Councillors under section 224 of the Act.

## 6 Ward Structure

- (1) The new Council shall not be divided into wards for the first election.

- (2) Nothing in subclause (1) limits the power of the new Council to hold a constitutional referendum to obtain approval to divide its Area into wards in accordance with Division 1 of Part 1 of Chapter 9 of the Act.

## **7 Election of Mayor**

Nothing in clause 3 limits the power of the new Council to hold a constitutional referendum to determine the basis on which the Mayor attains office in accordance with Division 2, Part 2, Chapter 9 of the Act.

## **8 Appointment of the General Manager and other senior staff**

The operation of this clause and clause 4 is not to be regarded as a breach of contract between a former Council or the new Council and a senior staff member (including a General Manager).

## **9 Activities of former Councils**

- (1) Anything that was done or omitted to be done by a former Council and that had effect immediately before the proclamation date continues to have effect as if it had been done or omitted to be done by the new Council.
- (2) Anything that was commenced by a former Council may be completed by the new Council as if it had been commenced by the new Council.
- (3) Without limiting subclause (1) any approval, order or notice that was given or made by a former Council, and that had effect immediately before the proclamation date, continues to have effect as if it had been done or made by the new Council.

## **10 Delegations**

- (1) Any delegation from a former Council that was in force immediately before the proclamation date is taken to be a delegation from the new Council and may be revoked or amended accordingly.
- (2) Subclause (1) ceases to have effect when the new Council adopts new delegations under the relevant provisions of the Act.

## **11 Codes, policies and plans**

- (1) The following policies and plan of the new Council are, as far as practicable, to be a composite of the corresponding policies and plans of each of the former Councils:
  - (a) local policies for approvals and orders (Part 3 of Chapter 7).
  - (b) management plan (Part 2 of Chapter 13).
  - (c) social or community plan (clause 30 of the Local Government (General) Regulation 1999).
- (2) Where the former councils do not have a current social or community plan as referred to in subclause (1)(c), the new Council shall adopt a new plan in accordance with the Guidelines, within a reasonable period determined by the Director General.
- (3) Each of the following codes, policies and plans of the former Oberon Shire Council apply, as far as practicable, to the new Council:
  - (a) code of conduct (section 440).
  - (b) code of meeting practice (Division 1 of Part 2 of Chapter 12).
  - (c) expenses and facilities policy (Division 5 of Part 2 of Chapter 9).
  - (d) EEO management plan (Part 4 of Chapter 11).
- (4) Subclauses (1) & (3) cease to have effect in relation to a code, policy or plan of the new Council when the new Council adopts a new code, policy or plan under the relevant provisions of the Act.

## **12 Fees**

- (1) The annual fee paid to each Councillor of the new Council and the annual fee paid to the Mayor of the new Council is to be equal to the highest of the corresponding fees paid by the former Councils.
- (2) Subclause (1) ceases to have effect in relation to an annual fee when the new Council fixes the annual fee in accordance with the appropriate determination of the Local Government Remuneration Tribunal.

## **13 Organisation Structure**

The initial organisation structure of the new Council is, as far as practicable, to be a composite of the organisation structures of each of the former Councils.

#### 14 Transfer of Senior Staff

- (1) Any position that, immediately before the proclamation date, was a senior staff position of:
  - (a) the former Oberon Council is transferred to the Council of the Area of Oberon.
  - (c) the former Evans Shire Council is transferred to a Council of the Areas of the Bathurst Regional or Oberon as determined by agreement between the new Councils of the Areas of the Bathurst Regional and Oberon.
- (2) The senior staff of each former Council are taken to be the senior staff of the new Councils as determined with reference to subclause (1).
- (3) This clause ceases to have effect when a new organisation structure is determined by the new Council under Part 1 of Chapter 11 of the Act.
- (4) A senior staff member of a former Council can be confirmed in a senior staff position in the new Council, that has an equivalent level of responsibility and remuneration, when the organisation structure is determined by the new Council in accordance with subclause (3), or otherwise recruitment processes commenced.

#### 15 Transfer and Maintenance of other staff

- (1) It is intended that the making of any determinations as to the transfer of staff (other than senior staff) by virtue of the constitution of the new Areas made in this proclamation is to be in accordance with this clause:
  - (a) Each member of staff of the former Oberon Council (a transferred staff member) is transferred to the Council of the Area of Oberon.
  - (b) Each member of staff of the former Evans Shire Council (a transferred staff member) is transferred to the Council of the Areas of Bathurst Regional or Oberon as determined by agreement between the Councils of the Areas of Bathurst Regional or Oberon Shire.
- (2) Section 218CA (maintenance of staff numbers in rural centres) and Part 6, Chapter 11 of the Act (employment protection) applies to the employment of a transferred staff member.

#### 16 Transfer of assets, rights and liabilities

- (1) It is intended that the making of any determinations as to the transfer of assets, rights and liabilities of the former Councils by virtue of the constitution of the new Area made in this proclamation is to be in accordance with this clause:
  - (a) The assets, rights and liabilities of the former Oberon Council are transferred to the Council of the Area of Oberon.
  - (b) The assets, rights and liabilities of the former Evans Shire Council are transferred to the Council of the Areas of Bathurst Regional or Oberon as determined by agreement between the Councils of the Areas of the Bathurst Regional and Oberon.
- (2) The following provisions have effect in relation to any assets, rights or liabilities that are transferred by operation of subclause (1):
  - (a) The assets of the former Councils vest in the new Council by virtue of this clause and without the need for any further conveyance, transfer, assignment or assurance.
  - (b) The rights or liabilities of the former Councils become, by virtue of this clause, the rights and liabilities of the new Council.
  - (c) All proceedings relating to the assets, rights or liabilities commenced before the transfer by or against the former Councils or a predecessor of any of the former Councils, and pending immediately before the transfer, are taken to be proceedings pending by or against the new Council.
  - (d) Any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the transfer by, to or in respect of the former Councils or a predecessor of any of the former Councils is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the new Council.
  - (e) Anything that was commenced by a former Council and uncompleted at the proclamation date may be completed by the new Council as if it had been commenced by the new Council. This includes but is not limited to any application for approval or consent under the Act or any other Act.
  - (f) In so doing, the new Council must make any determinations required to be made in accordance with any relevant code, policy or plan of the relevant former Council, until such time as the new Council makes a new code, policy or plan in relation to that matter in accordance with the Act or any other Act.
  - (g) Anything that was done by a former Council, and that had effect immediately before the proclamation date, or that was commenced by a former Council and completed by the new Council as a result of this proclamation, continues to have effect and may be enforced by the new Council as if it had been done by the new Council.

- (h) Without limiting subclause (2)(g) any approval, order or notice that was given or made by a former Council, and that had effect immediately before the proclamation date, continues to have effect and for all the purposes of the Act or any other Act shall be deemed to have been given or made by the new Council.
  - (i) Any decision of the Land and Environment Court in an appeal from a decision of a former Council, determined by the Court after the proclamation date shall be deemed to be a decision of the new Council.
- (3) In this clause:
- Assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, streams of income, choses in action and documents.
- Liabilities means any liabilities, debts or obligations (whether present or future and whether vested or contingent) and includes liabilities relating to criminal acts.
- Rights means any rights, powers, privileges or immunities (whether present or future and whether vested or contingent).

## 17 General provisions with respect to transfers

- (1) A transfer affected by this Schedule takes effect on the proclamation date.
- (2) The Minister may, by notice in writing, confirm a transfer affected by this Schedule.
- (3) Such a notice is conclusive evidence of the transfer.

## 18 Effect of transfer on third party rights

- (1) The operation of clause 16 (Transfer of assets, rights and liabilities) is not to be regarded:
  - (a) as an event of default under any contract or other instrument, or
  - (b) as a breach of contract or confidence or otherwise as a civil wrong, or
  - (c) as a breach of contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
  - (d) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (2) No attornment to the new Council by a lessee from a former Council is required in relation to a transfer affected by clause 16.
- (3) No compensation is payable to any person or body in connection with a transfer affected by clause 16.
- (4) Subclause (3) does not affect the rights of any person or body in connection with the early termination of a contract between a former Council and that person or body.

## 19 Reports and reviews of the new Council

- (1) A duty of the new Council under any Act, including a duty to report or review, which relates to a period before the proclamation date, is to be performed by reference to the former Areas and the former Councils as appropriate.
- (2) Until 30 June 2004 the records and statutory reporting of the new Council are to be kept as a continuation of the records and statutory reports of each of the former Councils and the new Council's financial transactions are to be apportioned between the various accounting records in such a manner as the new Council determines.
- (3) The new Council's financial and statutory reports for the year ended 30 June 2004 are to be prepared in the form of separate reports for each set of records of the former Councils for the whole of that year.

## 20 Auditor

The Auditor, Alan Morse and Company will be the Auditor of the new Council unless the new Council appoints another Auditor in accordance with Division 3 of Part 3 of Chapter 13 of the Act.

## 21 References to former Areas and Councils

In any Act, in any instrument made under any Act or in any document of any kind:

- (1) A reference to any of the former Areas, or to a predecessor of any of the former Areas, is taken to include a reference to the new Area and is to be read as a reference to the new Area, and
- (2) A reference to any of the former Councils, or to a predecessor of any of the former Councils, is to be taken as a reference to the new Council and is to be read as a reference to the new Council.

## 22 Rating Structures

- (1) The new Council's maximum general income for 2004/05 is to be determined by estimating the proportionate amount of general income for 2003/04 from land in the former Areas included in the new Area.
- (2) The new Council is to determine its rating structure taking into consideration subclause (1).
- (3) The rating structure is to be reviewed within the first year of the new Council.

## 23 Matters to be determined by Minister

- (1) In order to give effect to this proclamation, the Minister may determine from time to time any matter or thing, including, without limitation, the content of the matters set out in clause 11.
- (2) In pursuance of this clause, any matter or thing requiring determination may be referred to the Minister by the new Council or Bathurst Regional Council.
- (3) The Minister may also determine any matter or thing that has not been referred to him by the new Council if the Minister concludes that the matter or thing cannot be determined by agreement between the new Council or Bathurst Regional Council or if the Minister is not satisfied with any agreement reached between the aforementioned new Council or Bathurst Regional Council, including in relation to subclauses (2) and (4) herein.
- (4) A matter to be determined by the Minister may be referred to the Director General, and/or another person or persons nominated by the Minister, for advice and recommendation, as appropriate.
- (5) The Director General and/or another person or persons nominated by the Minister, shall, if required by the Minister, convene a meeting between the new Council and Bathurst Regional Council to assist in the determination of the matter.
- (6) The Director General and/or any person or persons nominated by the Minister under this clause, shall have regard to the Statement of Intent herein and any other principles or guidelines considered appropriate in the circumstances.

## 24 Statement of Intent

- (1) The Minister will consider an application made by the new Council for a Special Variation to increase its General Income.
- (2) There will be meaningful cooperation between the Councils of the Areas of Oberon and Bathurst Regional in the sharing of information and agreement of all matters necessary to facilitate the provisions of this proclamation.
- (3) The Councillors of the new Council are to exercise community leadership for the whole local government area as set out in the Act.

### SCHEDULE D

#### **Land included in the Mid-Western Regional Local Government Area from 26 May 2004 (excluding the Area of Coolah)**

Area about 9402.66 square kilometres. Commencing at the confluence of the Macquarie River and Tambaroora Creek; and bounded thence by that creek, upwards to the generally western boundary of Hill End - Tambaroora Common; by that boundary and the northern boundary of that Common, generally northerly and easterly to a point 50 metres offset on the south-eastern side of Dixons Long Point Road; by that 50 metre offset, generally south-easterly to the south-western boundary of Lot 78, DP 756873; by part of that boundary, the north-western boundary of that lot and its prolongation, north-westerly and north-easterly to the generally south-eastern side of the road from Hill End to Hargraves; by that side of that road, generally north-easterly to, again the generally eastern boundary of the Parish of Tambaroora; by part of that boundary, generally northerly to, again the south-eastern side of the road from Hill End to Hargraves; by that side of that road, generally north-easterly to Green Valley Creek; by that creek, upwards to the generally northern boundary of the Parish of Cunningham; by part of that boundary generally easterly to Crudine River; by that river downwards and Turon River aforesaid, and Round Swamp Creek upwards to the western prolongation of the southern boundary of Portion 34, Parish of Hearne, County of Roxburgh; by that prolongation and boundary, the southern and eastern boundaries of Portion 85, the eastern boundary of Portion 96 and part of the western boundary of Portion 152 easterly and northerly and the western prolongation of the northernmost boundary of the lastmentioned portion westerly for a distance of approximately 217 metres; by lines northerly 370 metres, easterly 80 metres and again northerly 446 metres to the western prolongation of the southern boundary of Portion 156; by that prolongation easterly and the western and part of the northern boundaries of that portion northerly and easterly to the generally western boundary of the Parish of Airly; by part of that boundary generally northerly to the Great Dividing Range; by that range, generally north-easterly and generally north-westerly to the source of Coricudgy Creek at Mount Coricudgy; by that creek and Widdin Brook downwards to the southern prolongation of the western boundary of Portion 31, Parish of Pomany, County of Phillip; by that prolongation, boundary and its prolongation northerly to the range forming the eastern watershed of Emu Creek; by that range generally northerly to the eastern prolongation of the southern boundary of Portion 72, Parish of Simpson; by that prolongation easterly for a distance of approximately 115 metres; by a line northerly to the eastern prolongation of the southern boundary of Portion 44, Parish

of Widdin; by that prolongation westerly and the eastern and northern boundaries of that portion northerly and westerly to its north-western corner; by a line north-westerly to Cedar Creek; by a line westerly to The Livery Stable; by part of the generally north-western boundary of the Parish of Simpson generally north-easterly to the eastern prolongation of the generally southern boundary of the Parish of Bylong; by that prolongation westerly to the range forming the eastern watershed of Reedy, Wattle and Stockyard Creeks; by that range and the range forming the north-western watershed of Birds Creek and Kerrabee Arm generally north-easterly to the western boundary of Portion 34, Parish of Kerrabee; by part of that boundary and the northern boundary of that portion and its prolongation northerly and easterly to Goulburn River; by that river, Mummurra River and Borambil Creek, upwards to the generally north-eastern side of the Golden Highway; by that side of that highway, generally south-easterly to the generally eastern boundary of the Parish of Borambil, County of Bligh; by part of that boundary, generally northerly to generally northern boundary of Lot 3, DP 232743; by that boundary, generally easterly, by a line, north-easterly, to the generally eastern side of the boundary road to the west of Portion 219, Parish of Bellaleppa; by that side of that road and its prolongation, generally northerly to the southern boundary of Portion 88, Parish of Nagora; by part of that boundary and the western boundary of that portion and Lot 1, DP 131801, westerly and northerly, part of the western boundary of Lot 1, DP 381806, northerly to the south-eastern side of the road running through that lot; by that side of that road, generally north-easterly, by a line, north-westerly to the south-eastern corner of Lot 34, DP 131506; by the generally south-eastern boundaries of that lot, Lot 33, DP 131506 and Lot 1, DP 384909, generally north-easterly, the generally eastern boundary of Lot 3, DP 184405 and its prolongation, generally northerly, part of the southern, the generally north-eastern and northern boundaries of Lot 1, DP 779029 and its prolongation, easterly, generally north-westerly and westerly to the Munmurra River, aforesaid, by that river, upwards to the eastern prolongation of the south most southern boundary of Portion 26, Parish of Moan; by that boundary, the western and the generally north-western boundaries of that portion, westerly, northerly and generally north-easterly to the generally northern boundary of the County of Bligh; by part of that boundary, generally westerly, part of the generally western boundary of Portion 12, Parish of Cunna, generally southerly and the generally southern boundary of Portion 77, Parish of Warung, generally westerly to the Talbragar River; by that river downwards to the generally northern boundary of the Parish of Nandoura; by that boundary and part of the generally south-eastern boundaries of that parish, generally easterly and generally south-westerly to the Great Dividing Range; by that range, generally south-westerly, again, the generally south-eastern boundary of the Parish of Nandoura, generally south-westerly, the northern, the generally north-western and the generally south-western boundaries of Portion 138, westerly, generally south-westerly and generally south-easterly, again, the generally south-eastern boundary of the Parish of Nandoura, generally southerly, the generally northern boundary of the Parish of Bligh, generally westerly and part of the eastern boundary of the Parish of Bungaba, northerly to the Talbragar River, aforesaid; by that river, downwards to the generally southern boundary of the Parish of Wargundy; by part of that boundary, generally westerly and generally southerly, the north-eastern, north-western and south-western boundaries of land Ms 16980e, north-westerly, south-westerly and south-easterly, again, the generally southern boundary of the Parish of Wargundy, generally westerly, part of the generally south-eastern boundary of the County of Lincoln, generally southerly, the eastern boundaries of Portions 119, 29, a line, 23 and 24, Parish of Rouse, County of Bligh, southerly, the eastern, southern and part of the western boundaries of Portion 25, southerly, westerly and northerly, part of the southern boundary of Portion 26, westerly, the northern prolongation of the eastern boundary of Portion 184, that boundary, southerly, the southern boundaries of the last mentioned portion and Portions 33 and 44, westerly, again, part of the generally south-eastern boundary of the County of Lincoln, generally south-westerly, the generally southern boundary of the Parish of Worobil, County of Bligh, generally easterly to the Cudgegong River; by that river, downwards and Meroo Creek; upwards to the northern prolongation of the eastern boundaries of Portions Pt 17 and 51, Parish of Canning, County of Wellington; by that prolongation and boundaries, southerly, the generally south-western boundaries of Portions 34, 20, 22, 32 and 31 generally, south-easterly, the generally north-eastern boundaries of Portions 10, 14 and 21, Parish of Suttor, generally south-westerly, the northern and eastern boundaries of Portion 12, easterly and southerly, the eastern boundary of Portion 11 and its prolongation, southerly to Gundowda Creek; by that creek, downwards and Black Willow Creek, upwards to the northern prolongation of the generally western boundary of Portion 39, Parish of Walters; by that boundary and part of the southern boundary of that portion, generally southerly and easterly, the western boundaries of Portions 60 and 50, southerly and part of the northern boundary of the Parish of Triamble, westerly to the Macquarie River; by that river, aforesaid, upwards to the point of commencement.

**Land included in the Mid-Western Regional Local Government Area from 26 November 2004  
(including the Area of Coolah)**

Area about 14145.01 square kilometres. Commencing at the confluence of the Macquarie River and Tambaroora Creek; and bounded thence by that creek, upwards to the generally western boundary of Hill End - Tambaroora Common; by that boundary and the northern boundary of that Common, generally northerly and easterly to a point 50 metres offset on the south-eastern side of Dixons Long Point Road; by that 50 metre offset, generally south-easterly to the south-western boundary of Lot 78, DP 756873; by part of that boundary, the north-western boundary of that lot and its prolongation, north-westerly and north-easterly to the generally south-eastern side of the road from Hill End to Hargraves; by that side of that road, generally north-easterly to, again the generally eastern boundary of the Parish of Tambaroora; by part of that boundary, generally northerly to, again the south-eastern side of the road from Hill End to Hargraves; by that side of that road, generally north-easterly to Green Valley Creek; by that creek, upwards to the generally northern boundary of the Parish of Cunningham; by part of that boundary generally easterly to Crudine River; by that river downwards and Turon River aforesaid, and Round Swamp Creek upwards to the western prolongation of the southern boundary of Portion 34, Parish of Hearne, County of Roxburgh; by that prolongation and boundary, the southern and eastern boundaries of Portion 85, the eastern boundary of Portion 96 and part of the western boundary of Portion 152 easterly and northerly and the western prolongation of the northernmost boundary of the last mentioned portion westerly for a distance of approximately

217 metres; by lines northerly 370 metres, easterly 80 metres and again northerly 446 metres to the western prolongation of the southern boundary of Portion 156; by that prolongation easterly and the western and part of the northern boundaries of that portion northerly and easterly to the generally western boundary of the Parish of Airly; by part of that boundary generally northerly to the Great Dividing Range; by that range, generally north-easterly and generally north-westerly to the source of Coricudgy Creek at Mount Coricudgy; by that creek and Widdin Brook downwards to the southern prolongation of the western boundary of Portion 31, Parish of Pomany, County of Phillip; by that prolongation, boundary and its prolongation northerly to the range forming the eastern watershed of Emu Creek; by that range generally northerly to the eastern prolongation of the southern boundary of Portion 72, Parish of Simpson; by that prolongation easterly for a distance of approximately 115 metres; by a line northerly to the eastern prolongation of the southern boundary of Portion 44, Parish of Widdin; by that prolongation westerly and the eastern and northern boundaries of that portion northerly and westerly to its north-western corner; by a line north-westerly to Cedar Creek; by a line westerly to The Livery Stable; by part of the generally north-western boundary of the Parish of Simpson generally north-easterly to the eastern prolongation of the generally southern boundary of the Parish of Bylong; by that prolongation westerly to the range forming the eastern watershed of Reedy, Wattle and Stockyard Creeks; by that range and the range forming the north-western watershed of Birds Creek and Kerrabee Arm generally north-easterly to the western boundary of Portion 34, Parish of Kerrabee; by part of that boundary and the northern boundary of that portion and its prolongation northerly and easterly to Goulburn River; by that river, Mummurra River and Borambil Creek, upwards to the generally north-eastern side of the Golden Highway; by that side of that highway, generally south-easterly to the generally eastern boundary of the Parish of Borambil, County of Bligh; by part of that boundary, generally northerly to generally northern boundary of Lot 3, DP 232743; by that boundary, generally easterly, by a line, north-easterly, to the generally eastern side of the boundary road to the west of Portion 219, Parish of Bellaleppa; by that side of that road and its prolongation, generally northerly to the southern boundary of Portion 88, Parish of Nagora; by part of that boundary and the western boundary of that portion and Lot 1, DP 131801, westerly and northerly, part of the western boundary of Lot 1, DP 381806, northerly to the south-eastern side of the road running through that lot; by that side of that road, generally north-easterly, by a line, north-westerly to the south-eastern corner of Lot 34, DP 131506; by the generally south-eastern boundaries of that lot, Lot 33, DP 131506 and Lot 1, DP 384909, generally north-easterly, the generally eastern boundary of Lot 3, DP 184405 and its prolongation, generally northerly, part of the southern, the generally north-eastern and northern boundaries of Lot 1, DP 779029 and its prolongation, easterly, generally north-westerly and westerly to the Mummurra River, aforesaid, by that river, upwards to the eastern prolongation of the south most southern boundary of Portion 26, Parish of Moan; by that boundary, the western and the generally north-western boundaries of that portion, westerly, northerly and generally north-easterly to the generally northern boundary of the County of Bligh; by part of that boundary and part of the generally south-eastern boundary of the Parish of Moredevil, County of Pottinger generally north-westerly to the generally south-western boundary of Portion 191, of Parish of Bundella; by that boundary and the generally south-western boundaries of Portions 189, 187 and 195 (part) generally north-westerly, the generally eastern boundary of Portion 186 generally southerly and part of the generally north-eastern, the generally south-eastern and the southern boundaries of Portion 143 south-easterly, generally south-westerly and westerly to Cox Creek; by that creek upwards to the north-eastern prolongation of the south-eastern boundary of Portion 58; by that prolongation and boundary south-westerly to the generally south-western boundary of the County of Pottinger; by part of that boundary generally north-westerly to the eastern prolongation of the northernmost northern side of Round Mountain Road; by that prolongation, side of road and its prolongation westerly to a point approximately 765 metres west of the western boundary of Portion 143, Parish of Neible, County of Napier; by a line south-westerly to a point approximately 170 metres north and 240 metres east of the south-eastern corner of Portion 52, Parish of Ulinda; by a line westerly to the eastern boundary of that portion; by part of that boundary and part of the eastern boundary of Portion 51 southerly to Boltons Creek; by that creek and Ulinda Creek downwards to the west most eastern boundary of Lot 20, D.P. 727215; by part of that boundary northerly, the northern and part of the western boundary of that D.P. westerly and southerly to Ulinda Creek, aforesaid; by that creek downwards to the eastern boundary of Portion 112; by part of that boundary and its prolongation southerly to the road through and forming part of the western boundary of Portion 55; by that road generally southerly, and the road forming the northern and western boundaries of Portion 110, the western boundary of Portion 109, the western and southern (part) boundaries of Portion 104 and the western boundary of Portion 117 and its prolongation westerly and generally southerly to Binnia Creek; by that creek and Castlereagh River downwards to the generally southern boundary of the Parish of Caigan, County of Gowen; by part of that boundary north-westerly and westerly to the eastern boundary of Portion 67; by that boundary northerly, the generally north-eastern boundaries of that portion, a line, and Portion 56, Parish of Yarragin generally north-westerly, the south-eastern boundary of Portion 27 south-westerly and the generally south-eastern boundaries of Lot 60 D.P. 40091, Lots 2 and 1 D.P. 538465 and Portion 77, Parish of Bandulla and its prolongation generally south-westerly to Yarragin Creek; by that creek and Castlereagh River, aforesaid, downwards to the generally western boundary of the Parish of Richardson, County of Lincoln; by that boundary and part of the generally southern boundary of that parish generally southerly and generally easterly and the eastern boundary of the Parish of Breelong South and its prolongation southerly to a point approximately 310 metres south of the southern boundary of Portion 2, Parish of Spring Creek; by a line westerly to Spring Creek; by that creek downwards to the northern prolongation of the eastern boundary of Portion 5; by that prolongation, boundary and its prolongation southerly to Talbragar River, aforesaid; by that river and Sandy Creek upwards to the generally western boundary of the Parish of Dapper; by part of that boundary generally southerly to the southernmost southern boundary of Portion 89; by that boundary easterly and the southern prolongation of the westernmost eastern boundary of that portion southerly to a point west of the westernmost south-western corner of Portion 82; by a line easterly to that corner; by part of the generally south-eastern boundary of the County of Lincoln, generally south-westerly, the generally southern boundary of the Parish of Worobil, County of Bligh, generally easterly to the Cudgegong River; by that river, downwards and Meroo Creek; upwards to the northern prolongation of the eastern boundaries of Portions Pt 17 and 51, Parish of Canning, County of Wellington; by that prolongation and boundaries, southerly, the generally south-



western boundaries of Portions 34, 20, 22, 32 and 31 generally, south-easterly, the generally north-eastern boundaries of Portions 10, 14 and 21, Parish of Suttor, generally south-westerly, the northern and eastern boundaries of Portion 12, easterly and southerly, the eastern boundary of Portion 11 and its prolongation, southerly to Gundowda Creek; by that creek, downwards and Black Willow Creek, upwards to the northern prolongation of the generally western boundary of Portion 39, Parish of Walters; by that boundary and part of the southern boundary of that portion, generally southerly and easterly, the western boundaries of Portions 60 and 50, southerly and part of the northern boundary of the Parish of Triamble, westerly to the Macquarie River; by that river, aforesaid, upwards to the point of commencement.

## 1 Definitions

In this Schedule:

*clause* means a clause in this schedule.

*Director General* means the Director General of the Department of Local Government.

*former Area* means any or all of the following:

- that part of the former Area of Coolah which, by this Proclamation, is constituted as the Mid-Western Regional Council
- that part of the former Area of Mudgee which, by this Proclamation, is constituted as the Mid-Western Regional Council
- that part of the former Area of Merriwa which, by this Proclamation, is constituted as the Mid-Western Regional Council
- that part of the former Area of Rylstone which, by this Proclamation, is constituted as the Mid-Western Regional Council

*former Council* means any of the former Councils of Coolah Shire, Mudgee Shire, Merriwa Shire and Rylstone Shire.

*former County Council* means the former Mid-Western County Council.

*Minister* means the Minister for Local Government.

*new Area* means the Area of Mid-Western Regional.

*new Council* means the Mid-Western Regional Council.

*proclamation date* means 26 May 2004.

*staged commencement date* means 26 November 2004 being the date on which the Area of Coolah is amalgamated with the new Area and the Mid-Western County Council is dissolved in accordance with paragraphs (b) and (d) of this proclamation.

*the Act* means the Local Government Act 1993.

## 1A Staged commencement

In this proclamation:

- (1) any reference to the former Area of Coolah and former Council of Coolah Shire is taken to apply on and from 26 November 2004; and
- (2) that part of any reference to a former Area or former Council which means the former Area of Coolah or the former Council of Coolah Shire as defined in clause (1), is taken to apply on and from 26 November 2004.

## 2 First election

- (1) The date of the first election of the Councillors of the new Council is 24 September 2005.
- (2) Unless otherwise required by the Act or the context, the provisions relating to ordinary elections shall be taken to apply to the first election of the Councillors.
- (3) For the purposes of:
  - (a) the entitlements of persons to be enrolled as electors for the new Area and to vote at the election, and
  - (b) the entitlements of persons to be nominated for election as Councillors for the new Area at the election, and
  - (c) the conduct of the election by the State Electoral Commissioner, and
  - (d) any other matter relating to the election,the new Area is taken to have been constituted on the date of publication of this proclamation.

### **3 Administration of new Council for interim period**

- (1) For the interim period between 26 May 2004 and the declaration of the first election, one Administrator is appointed and is Mr Colin Arnold to direct and control the affairs of the new Council.
- (2) If Mr Colin Arnold declines to be appointed as the Administrator, then the Minister may appoint an alternate person as the Administrator.
- (3) The Administrator will be paid \$50,000 per annum on a pro-rata basis for the interim period.
- (4) Any matters before the new Council with respect to the local development process or any other matter in which the Administrator has a pecuniary interest within the meaning of the Local Government Act 1993 is to be determined by a substitute Administrator appointed by the Minister for that limited purpose.
- (5) The Administrator is to complete and lodge with the Acting General Manager within 21 days, a disclosure of interests written return in accordance with Chapter 14, Part 2, Division 2 of the Act in the form prescribed by the regulations.
- (6) For the purposes of the Local Government Act 1993, the Administrator does not hold an office or a position of profit under the new Council.

### **4 Appointment of Acting General Manager**

- (1) The Acting General Manager of the new Area shall be Mr Garry Styles (former General Manager of the former Mudgee Shire Council) commencing on 26 May 2004 until the first meeting of the new Council held after the first election.
- (2) The Acting General Manager of the new Council may be confirmed as the General Manager at the first meeting following the first election, or otherwise recruitment processes commenced.
- (3) If the new Council resolves to commence recruitment processes for a General Manager, the term of the Acting General Manager named in subclause (1) is extended until the General Manager commences with the new Council.

### **5 Number of Councillors**

- (1) The number of Councillors to be elected to the new Council at its first election is nine (9).
- (2) Subclause (1) does not limit the power of the new Council to re-determine, after the first election the number of its Councillors under section 224 of the Act.

### **6 Ward Structure**

- (1) The new Council shall not be divided into wards for the first election.
- (2) Nothing in subclause (1) limits the power of the new Council following the first election to hold a constitutional referendum to obtain approval to divide its Area into wards in accordance with Division 1 of Part 1 of Chapter 9 of the Act.

### **7 Election of Mayor following the first election**

- (1) The Mayor of the new Council is to be elected by the Councillors as referred to in sections 227(a), 282 and 290 (1) (c) of the Act at the new Council's first meeting following the first election.
- (2) Nothing in subclause (1) limits the power of the new Council following the first election to hold a constitutional referendum to determine the basis on which the Mayor attains office in accordance with Division 2 of Part 2 of Chapter 9 of the Act.

### **8 Appointment of the General Manager and other senior staff**

The operation of this clause and clause 4 is not to be regarded as a breach of contract between a former Council, former County Council or the new Council and a senior staff member (including a General Manager).

### **9 Activities of former Councils and former County Council**

- (1) Anything that was done or omitted to be done by a former Council or former County Council and that had effect immediately before the proclamation date continues to have effect as if it had been done or omitted to be done by the new Council.
- (2) Anything that was commenced by a former Council or former County Council may be completed by the new Council as if it had been commenced by the new Council.

- (3) Without limiting subclause (1) any approval, order or notice that was given or made by a former Council or former County Council, and that had effect immediately before the proclamation date, continues to have effect as if it had been done or made by the new Council.

## 10 Delegations

- (1) Any delegation from a former Council or former County Council that was in force immediately before the proclamation date is taken to be a delegation from the new Council and may be revoked or amended accordingly.
- (2) Subclause (1) ceases to have effect when the new Council adopts new delegations under the relevant provisions of the Act.

## 11 Codes, policies and plans

- (1) The following policies and plan of the new Council are, as far as practicable, to be a composite of the corresponding policies and plans of each of the former Councils or former County Council:
  - (a) local policies for approvals and orders (Part 3 of Chapter 7),
  - (b) management plan (Part 2 of Chapter 13).
  - (c) social or community plan (clause 30 of the Local Government (General) Regulation 1999).
- (2) Where the former councils do not have a current social or community plan as referred to in subclause (1)(c), the new Council shall adopt a new plan in accordance with the Guidelines, within a reasonable period determined by the Director General.
- (3) Each of the following codes, policies and plans of the former Mudgee Shire Council apply, as far as practicable, to the new Council:
  - (a) code of conduct (section 440),
  - (b) code of meeting practice (Division 1 of Part 2 of Chapter 12),
  - (c) expenses and facilities policy (Division 5 of Part 2 of Chapter 9),
  - (d) EEO management plan (Part 4 of Chapter 11).
- (4) Subclauses (1) & (3) cease to have effect in relation to a code, policy or plan of the new Council when the new Council adopts a new code, policy or plan under the relevant provisions of the Act.

## 12 Fees

- (1) The annual fee paid to each Councillor of the new Council and the annual fee paid to the Mayor of the new Council is to be equal to the highest of the corresponding fees paid by the former Councils.
- (2) Subclause (1) ceases to have effect in relation to an annual fee when the new Council fixes the annual fee in accordance with the appropriate determination of the Local Government Remuneration Tribunal.

## 13 Organisation Structure

The initial organisation structure of the new Council is, as far as practicable, to be a composite of the organisation structures of each of the former Councils or former County Council.

## 14 Transfer of Senior Staff

- (1) Any position that, immediately before the proclamation date, was a senior staff position of:
  - (a) the former Coolah Shire Council is transferred to the Council of the Area of Mid-Western Regional.
  - (b) the former Mudgee Shire Council is transferred to the Council of the Area of Mid-Western Regional.
  - (c) the former Merriwa Shire Council is transferred to a Council of the Areas of Mid-Western Regional or Upper Hunter Shire as determined by agreement between the new Councils of the Areas of Mid-Western Regional and Upper Hunter Shire.
  - (d) the former Rylstone Shire Council is transferred to a Council of the Areas of Mid-Western Regional or the City of Lithgow as determined by agreement between the Councils of the Areas of Mid-Western Regional and the City of Lithgow.
  - (e) the former Mid-Western County Council is transferred to the Council of the Area of Mid-Western Regional.
- (2) The senior staff of each former Council are taken to be the senior staff of the new Councils as determined with reference to subclause (1).
- (3) This clause ceases to have effect when a new organisation structure is determined by the new Council under Part 1 of Chapter 11 of the Act.

- (4) A senior staff member of a former Council or former County Council can be confirmed in a senior staff position in the new Council, that has an equivalent level of responsibility and remuneration, when the organisation structure is determined by the new Council in accordance with subclause (3), or otherwise recruitment processes commenced.

### **15 Transfer and maintenance of other staff**

- (1) It is intended that the making of any determinations as to the transfer of staff (other than senior staff) by virtue of the constitution of the new Areas made in this proclamation is to be in accordance with this clause:
  - (a) Each member of staff of the former Coolah Shire Council (a transferred staff member) is transferred to the Council of the Area of Mid-Western Regional.
  - (b) Each member of staff of the former Mudgee Shire Council (a transferred staff member) is transferred to the Council of the Area of Mid-Western Regional.
  - (c) Each member of staff of the former Merriwa Shire Council (a transferred staff member) is transferred to the Council of the Areas of Mid-Western Regional or Upper Hunter Shire as determined by agreement between the Councils of the Areas of Mid-Western Regional and Upper Hunter Shire.
  - (d) Each member of staff of the former Rylstone Shire Council (a transferred staff member) is transferred to the Council of the Areas of Mid-Western Regional or the City of Lithgow as determined by agreement between the Councils of the Areas Mid-Western Regional and the City of Lithgow.
  - (e) Each member of staff of the former Mid-Western County Council (a transferred staff member) is transferred to the Council of the Area of Mid-Western Regional.
- (2) Section 218CA (maintenance of staff numbers in rural centres) and Part 6, Chapter 11 of the Act (employment protection) applies to the employment of a transferred staff member.

### **16 Transfer of assets, rights and liabilities**

- (1) It is intended that the making of any determinations as to the transfer of assets, rights and liabilities of the former Councils or former County Council by virtue of the constitution of the new Area made in this proclamation is to be in accordance with this clause:
  - (a) The assets, rights and liabilities of the former Coolah Shire Council are transferred to the Council of the Area of Mid-Western Regional.
  - (b) The assets, rights and liabilities of the former Mudgee Shire Council are transferred to the Council of the Area of Mid-Western Regional.
  - (c) The assets, rights and liabilities of the former Merriwa Shire Council are transferred to the Councils of the Areas of Mid-Western Regional or Upper Hunter Shire as determined by agreement between the new Councils of the Areas of Mid-Western Regional or Upper Hunter Shire.
  - (d) The assets, rights and liabilities of the former Rylstone Shire Council are transferred to the Councils of the Areas of Mid-Western Regional or the City of Lithgow as determined by agreement between the Councils of the Areas of Mid-Western Regional or the City of Lithgow.
  - (e) The assets, rights and liabilities of the former Mid-Western County Council are transferred to the Council of the Area of Mid-Western Regional.
- (2) The following provisions have effect in relation to any assets, rights or liabilities that are transferred by operation of subclause (1):
  - (a) The assets of the former Councils or former County Council vest in the new Council by virtue of this clause and without the need for any further conveyance, transfer, assignment or assurance.
  - (b) The rights or liabilities of the former Councils or former County Council become, by virtue of this clause, the rights and liabilities of the new Council.
  - (c) All proceedings relating to the assets, rights or liabilities commenced before the transfer by or against the former Councils or former County Council or a predecessor of any of the former Councils or former County Council, and pending immediately before the transfer, are taken to be proceedings pending by or against the new Council.
  - (d) Any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the transfer by, to or in respect of the former Councils or former County Council or a predecessor of any of the former Councils or former County Council (to the extent to which that act, matter or thing has any force or effect) is taken to have been done or omitted by, to or in respect of the new Council.
  - (e) Anything that was commenced by a former Council or former County Council and uncompleted at the proclamation date may be completed by the new Council as if it had been commenced by the new Council. This includes but is not limited to any application for approval or consent under the Act or any other Act.

- (f) In so doing, the new Council must make any determinations required to be made in accordance with any relevant code, policy or plan of the relevant former Council or former County Council, until such time as the new Council makes a new code, policy or plan in relation to that matter in accordance with the Act or any other Act.
  - (g) Anything that was done by a former Council or former County Council, and that had effect immediately before the proclamation date, or that was commenced by a former Council or former County Council and completed by the new Council as a result of this proclamation, continues to have effect and may be enforced by the new Council as if it had been done by the new Council.
  - (h) Without limiting subclause (2)(g) any approval, order or notice that was given or made by a former Council or former County Council, and that had effect immediately before the proclamation date, continues to have effect and for all the purposes of the Act or any other Act shall be deemed to have been given or made by the new Council.
  - (i) Any decision of the Land and Environment Court in an appeal from a decision of a former Council or former County Council, determined by the Court after the proclamation date, shall be deemed to be a decision of the new Council.
  - (j) Nothing in this proclamation limits or requires the making of a further proclamation regarding the apportionment of assets, rights and liabilities (contingent or otherwise) upon or following the dissolution of the Cudgegong (Abattoir) County Council.
- (3) In this clause:

Assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, streams of income, choses in action and documents.

Liabilities means any liabilities, debts or obligations (whether present or future and whether vested or contingent) and includes liabilities relating to criminal acts.

Rights means any rights, powers, privileges or immunities (whether present or future and whether vested or contingent).

## **17 General provisions with respect to transfers**

- (1) A transfer affected by this Schedule takes effect on the proclamation date.
- (2) The Minister may, by notice in writing, confirm a transfer affected by this Schedule.
- (3) Such a notice is conclusive evidence of the transfer.

## **18 Effect of transfer on third party rights**

- (1) The operation of clause 16 (Transfer of assets, rights and liabilities) is not to be regarded:
  - (a) as an event of default under any contract or other instrument, or
  - (b) as a breach of contract or confidence or otherwise as a civil wrong, or
  - (c) as a breach of contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
  - (d) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (2) No attornment to the new Council by a lessee from a former Council or former County Council is required in relation to a transfer affected by clause 16.
- (3) No compensation is payable to any person or body in connection with a transfer affected by clause 16.
- (4) Subclause (3) does not affect the rights of any person or body in connection with the early termination of a contract between a former Council or former County Council and that person or body.

## **19 Reports and reviews of the new Council**

- (1) A duty of the new Council under any Act, including a duty to report or review, which relates to a period before the proclamation date, is to be performed by reference to the former Areas and the former Councils or former County Council as appropriate.
- (2) Until 30 June 2004 the records and statutory reporting of the new Council are to be kept as a continuation of the records and statutory reports of each of the former Councils or former County Council and the new Council's financial transactions are to be apportioned between the various accounting records in such a manner as the new Council determines.
- (3) The new Council's financial and statutory reports for the year ended 30 June 2004 are to be prepared in the form of separate reports for each set of records of the former Councils for the whole of that year.

**20 Auditor**

The Auditor, Spencer Steer will be the Auditor of the new Council unless the new Council appoints another Auditor in accordance with Division 3, Part 3, Chapter 13 of the Act.

**21 References to former Areas, Councils and County Council**

In any Act, in any instrument made under any Act or in any document of any kind:

- (1) A reference to any of the former Areas, or to a predecessor of any of the former Areas, is taken to include a reference to the new Area and is to be read as a reference to the new Area, and
- (2) A reference to any of the former Councils or former County Council, or to a predecessor of any of the former Councils or former County Council, is to be taken as a reference to the new Council and is to be read as a reference to the new Council.

**22 Rating Structures**

- (1) The new Council's maximum general income for 2004/05 is to be determined by estimating the proportionate amount of general income for 2003/04 from land in the former Areas included in the new Area.
- (2) The new Council is to determine its rating structure taking into consideration subclause (1).
- (3) The rating structure is to be reviewed within the first year of the new Council.

**23 Mid-Western County Council**

For the interim period between 26 May 2004 and the staged commencement date, the Administrator of the new Council is entitled to three votes at meetings of the County Council.

**24 Matters to be determined by Minister**

- (1) In order to give effect to this proclamation, the Minister may determine from time to time any matter or thing, including, without limitation, the content of the matters set out in clause 11.
- (2) In pursuance of this clause, any matter or thing requiring determination may be referred to the Minister by the new Council, Lithgow City Council or Upper Hunter Shire Council.
- (3) The Minister may also determine any matter or thing that has not been referred to him by the new Council if the Minister concludes that the matter or thing cannot be determined by agreement between the new Council, Lithgow City Council or Upper Hunter Shire Council or if the Minister is not satisfied with any agreement reached between the aforementioned new Council, Lithgow City Council or Upper Hunter Shire Council, including in relation to subclauses (2) and (4) herein.
- (4) A matter to be determined by the Minister shall be referred to the Director General, and/or another person or persons nominated by the Minister, for advice and recommendation, as appropriate.
- (5) The Director General and/or another person or persons nominated by the Minister, shall, if required by the Minister, convene a meeting between the new Council, Lithgow City Council or Upper Hunter Shire Council to assist in the determination of the matter.
- (6) The Director General and/or any person or persons nominated by the Minister under this clause, shall have regard to the Statement of Intent herein and any other principles or guidelines considered appropriate in the circumstances.

**25 Statement of Intent**

- (1) The Minister will consider an application made by the new Council for a Special Variation to increase its General Income.
- (2) There will be meaningful cooperation between the Councils of the Areas of Mid-Western Regional, the City of Lithgow and Upper Hunter Shire in the sharing of information and agreement of all matters necessary to facilitate the provisions of this proclamation.
- (3) The Councillors of the new Council are to exercise community leadership for the whole local government area as set out in the Act.

## SCHEDULE E

**Land to be included in the Upper Hunter Shire Local Government Area**

Area about 7349.32 square kilometres: Commencing at the junction of Dart Brook with the Hunter River; and bounded thence by that river upwards to the north-western corner of portion 123, Parish of Russell, county of Durham; by a line along the northern boundary of that portion and the northern boundary of portion 122 easterly to a point about 15 chains east of the south-western corner of portion 128; by a line north-easterly to the southernmost corner of portion 131; by the generally south-eastern boundary of that portion and portion 132 generally north-easterly to the easternmost south-eastern corner of the latter portion; by a line easterly to the northern-most corner of portion 82; by part of the generally southern boundary of 135 generally easterly to the south-eastern corner of that portion; by the southernmost boundary and the generally south-eastern boundary of portion 120 and the generally south-eastern boundary of portion 83 easterly and generally north-easterly to the southern boundary of portion 44; by part of the southern boundary of that portion, the southern boundary of portion 42, the southern boundary and part of the eastern boundary of portion 41 and the southern boundary of portion 7, easterly, northerly and again easterly to the western boundary of portion 150, Parish of St. Aubins; by part of that boundary and the southern boundary of that portion and the southern boundary of portion 149, southerly and easterly to the south-eastern corner of the latter portion; by the generally southern boundary of portion 164, the south-western and south-eastern boundaries of portion 26 and the generally northern boundary of portion 146, generally easterly to the western boundary of portion 12; by part of that boundary, the northern boundary of that portion and a line along the northern boundary of portions 13 and 14, northerly and easterly to the western boundary of portion 266, Parish of Tudor; by part of that boundary and a line along the southern boundary of that portion southerly and easterly to the south-western boundary of portion 268; by a line along the south-western boundary of portions 268, 271 and 272 and the southern boundary of the lastmentioned portion, south-easterly and easterly to the south-eastern corner of the said portion 272; by part of the eastern boundary of that portion and a line along the southern boundary of portions 276, 280 and 283, northerly and easterly to the north-western corner of portion 287; by a line along the western, southern and eastern boundaries of portion 287, southerly, easterly and northerly to the north-western corner of portion 295; by a line along the northern and eastern boundaries of that portion easterly and southerly to the northern boundary of portion 298; by a line along that boundary easterly to the western boundary of portion 319; by part of that boundary and the western boundary of portion 320 southerly to the south-western corner of the latter portion; by the southern boundary of that portion easterly; by the westernmost, the northern and north-eastern boundaries of 302, Parish of Foy and the north-eastern boundaries of portions 301, 300 and 299, northerly and generally south-easterly to the westernmost boundary of portion 80, Parish of Rosamond; by the range dividing the waters of Fal Brook and Davis Creek through portion 80 generally north-easterly to the easternmost boundary of that portion; again by that range forming the south-eastern boundary of the said Parish of Rosamond generally north-easterly to the Mount Royal Range; by that range generally northerly to the source of the Manning River; by that river downwards to its confluence with Kangaroo Creek; by that creek upwards to the south-western corner of portion 113, Parish of Myra, county of Hawes; by a line along the western boundary of that portion and portions 107 and 10 northerly to Pigna Barney River; by that river upwards to the south-western corner of portion 28, Parish of Curricabark; by a line along the western boundary of that portion, the westernmost boundary of portions 29 and 19 and the western boundary of portion 37 of the said Parish of Curricabark, the westernmost boundary of portion 37, Parish of Mernot, and the western boundary of portion 36 northerly to McKenzies Creek; by that creek downwards to its confluence with the Barnard River at the north-western corner of portion 23; by a line north-easterly to the south-western corner of portion 8, Parish of Hall; by a line along the western boundary of that portion northerly to Tuggolo or Lawsons Creek; by that creek upwards to the northernmost corner of portion 7 of the said Parish of Hall; by a western, a northern and the westernmost boundary of that portion, southerly, westerly and again southerly to the Barnard River; by that river upwards to the north-western corner of portion 10, Parish of Barry; by a line along the western boundary of that portion southerly to Ben Halls Creek; by that creek upwards to the northern boundary of portion 13; by part of that boundary westerly to the north-western corner of the said portion 13; by part of the western boundary of the said Parish of Barry generally southerly to the southernmost corner of portion 34, Parish of Yeerawun; by part of the generally northern boundary of the County of Brisbane, generally westerly, part of the generally western boundary of Lot 222, DP 750952, generally easterly and generally southerly, the generally north-eastern, the generally south-eastern and part of the generally south-western boundaries of Lot 1, DP 732462, generally south-easterly, generally south-westerly and generally north-westerly, the generally eastern and the generally southern boundaries of Lot 2, DP 732462, generally southerly and generally westerly to the generally northern boundary of the County of Brisbane, aforesaid; by that boundary and the generally northern boundary of the County of Bligh generally westerly to the generally north-western boundary of Portion 26, Parish of Moan, County of Bligh; by that boundary, the western and the southernmost southern boundaries of that portion and its prolongation, generally south-westerly, southerly and easterly to the Munmurra River; by that river, downwards to the western prolongation of the northern boundary of Lot 1, DP 779029, by that prolongation, boundary and the generally north-eastern and part of the southern boundaries of that lot, easterly, generally south-westerly and westerly, the generally eastern boundary of Lot 3, DP 184405, generally southerly, and the generally south-eastern boundaries of Lot 1, DP 384909, Lots 33 and 34, DP 131506, generally south-westerly, by a line, south-easterly to the south-eastern side of the road running through Lot 1, DP 381806; by that side of that road, generally south-westerly to the western boundary of Lot 1, DP 381806; by part of that boundary and the western boundary of Lot 1, DP 131801, southerly, the western and part of the southern boundaries of Portion 88, Parish of Nagora, southerly and westerly to the north-eastern prolongation of the south-eastern side of the road running through Portion 113; by that prolongation and side of road, generally south-westerly to the south-western corner of Portion 219, Parish of Bellaleppa; by a line south-westerly to the north-eastern corner of Lot 3, DP 232743; by the generally northern boundary of that lot, generally westerly, part of the generally eastern boundary of the Parish of Borambil, generally southerly to the generally north-eastern side of the Golden Highway; by that side of that highway, generally north-easterly to Borambil Creek; by that creek, Munmurra

River, aforesaid, and Goulburn River downwards to the north-western corner of portion 25, Parish of Dangar, county of Brisbane; by a line along the northern boundary of portions 25 and 26 and the western boundary of portion 29, easterly and northerly to the range forming the generally eastern watershed of Smith's Rivulet of Merriwa Creek; by that range generally north-easterly to the range forming the generally south-western watershed of Worondi Rivulet; by the latter range generally south-easterly to the northernmost corner of portion 93; by the generally north-eastern boundary of that portion and part of the northern boundary of portion 88 generally south-easterly and easterly to the western boundary of portion 38, Parish of Wickham; by part of the western, the northern and part of the eastern boundary of that portion northerly, easterly and southerly to the north-western corner of portion 50; by the northern boundary of that portion, part of the western boundary and the northern boundary of portion 305, easterly, northerly and again easterly to the western boundary of portion 61; by a line along that boundary northerly to the southern boundary of portion 353; by part of that boundary and the southernmost boundary of portion 235 westerly to the south-western corner of the lastmentioned portion; by the generally western and northern boundaries of the said portion 235, generally northerly and easterly to the western boundary of portion 354; by part of that boundary and a line along the northern boundary of portion 354; northerly and easterly to the western boundary of portion 32; by part of that boundary northerly to the south-eastern corner of portion 249; by boundaries of that portion generally westerly, northerly and easterly to the western boundary of portion 126; by a line along the western boundary of that portion northerly to the southern boundary of portion 131; by part of the southern boundary and the western boundary of that portion westerly and northerly; by a line along the northern boundary of portions 131, 47 and 33 easterly to the south-western corner of portion 312; by the western boundary of that portion northerly to the southern boundary of portion 222; by boundaries of that portion westerly, northerly and easterly to the south-western corner of portion 213; by boundaries of portion 213 northerly and easterly to the western boundary of portion 185; by part of that boundary and a line along the western and northern boundaries of portion 184, northerly and easterly to a point south of the south-eastern corner of portion 138; by a line along the eastern boundary of portion 138 northerly to Gungal or Halls Creek; by that creek upwards to the south-western corner of portion 9, Parish of Myrabluan; by the southern boundary of that Parish generally easterly to Wybong Creek; by that creek downwards to the south-western corner of portion 4 Rem, Parish of Guan Gua; by a line along the southernmost boundary of that portion easterly to the south-western corner of portion 1, Parish of Halscot; by the southern boundary of that Parish and the Parish of Strathearn generally easterly to Dart Brook; and by that brook downwards to the point of commencement.

## 1 Definitions

In this Schedule:

*clause* means a clause in this schedule.

*Director General* means the Director General of the Department of Local Government.

*former Area* means any or all of the following:

- that part of the former Area of Upper Hunter Shire which, by this Proclamation, is constituted as the Upper Hunter Shire Council
- that part of the former Area of Merriwa which, by this Proclamation, is constituted as the Upper Hunter Shire Council

*former Council* means any of the former Councils of the Upper Hunter Shire or Merriwa Shire.

*Minister* means the Minister for Local Government.

*new Area* means the Area of Upper Hunter Shire.

*new Council* means the Upper Hunter Shire Council.

*proclamation date* means 26 May 2004.

*the Act* means the Local Government Act 1993.

## 2 First election

- (1) The date of the first election of the Councillors of the new Council is 25 September 2004.
- (2) Unless otherwise required by the Act or the context, the provisions relating to ordinary elections shall be taken to apply to the first election of the Councillors.
- (3) For the purposes of:
  - (a) the entitlements of persons to be enrolled as electors for the new Area and to vote at the election, and
  - (b) the entitlements of persons to be nominated for election as Councillors for the new Area at the election, and
  - (c) the conduct of the election by the State Electoral Commissioner, and
  - (d) any other matter relating to the election,
 the new Area is taken to have been constituted on the date of publication of this proclamation.



### **3 Administration of new Council for interim period**

- (1) For the interim period between 26 May 2004 and the declaration of the first election, one Administrator is appointed and is the Honourable John Jobling to direct and control the affairs of the new Council.
- (2) If the Honourable John Jobling declines to be appointed as the Administrator, then the Minister may appoint an alternate person as the Administrator.
- (3) The Administrator will be paid \$34,000 per annum on a pro-rata basis for the interim period.
- (4) Any matters before the new Council with respect to the local development process or any other matter in which the Administrator has a pecuniary interest within the meaning of the Local Government Act 1993 is to be determined by a substitute Administrator appointed by the Minister for that limited purpose.
- (5) The Administrator is to complete and lodge with the Acting General Manager within 21 days, a disclosure of interests written return in accordance with Chapter 14, Part 2, Division 2 of the Act in the form prescribed by the regulations.
- (6) For the purposes of the Local Government Act 1993, the Administrator does not hold an office or a position of profit under the new Council.

### **4 Appointment of Acting General Manager**

- (1) The Acting General Manager of the new Area shall be Mr Daryl Dutton (former Acting General Manager of the former Upper Hunter Shire Council) commencing on 26 May 2004 until the first meeting of the new Council held after the first election.
- (2) The Acting General Manager of the new Council may be confirmed as the General Manager at the first meeting following the first election, or otherwise recruitment processes commenced.
- (3) If the new Council resolves to commence recruitment processes for a General Manager, the term of the Acting General Manager named in subclause (1) is extended until the General Manager commences with the new Council.

### **5 Number of Councillors**

- (1) The number of Councillors to be elected to the new Council at its first election is nine (9).
- (2) Subclause (1) does not limit the power of the new Council to re-determine, after the first election the number of its Councillors under section 224 of the Act.

### **6 Ward Structure**

- (1) The new Council shall not be divided into wards for the first election.
- (2) Nothing in subclause (1) limits the power of the new Council following the first election to hold a constitutional referendum to obtain approval to divide its Area into wards in accordance with Division 1 of Part 1 of Chapter 9 of the Act.

### **7 Election of Mayor following the first election**

- (1) The Mayor of the new Council is to be elected by the Councillors as referred to in sections 227(a), 282 and 290 (1) (c) of the Act at the new Council's first meeting following the first election.
- (2) Nothing in subclause (1) limits the power of the new Council following the first election to hold a constitutional referendum to determine the basis on which the Mayor attains office in accordance with Division 2 of Part 2 of Chapter 9 of the Act.

### **8 Appointment of the General Manager and other senior staff**

The operation of this clause and clause 4 is not to be regarded as a breach of contract between a former Council or the new Council and a senior staff member (including a General Manager).

### **9 Activities of former Councils**

- (1) Anything that was done or omitted to be done by a former Council and that had effect immediately before the proclamation date continues to have effect as if it had been done or omitted to be done by the new Council.
- (2) Anything that was commenced by a former Council may be completed by the new Council as if it had been commenced by the new Council.
- (3) Without limiting subclause (1) any approval, order or notice that was given or made by a former Council, and that had effect immediately before the proclamation date, continues to have effect as if it had been done or made by the new Council.

## 10 Delegations

- (1) Any delegation from a former Council that was in force immediately before the proclamation date is taken to be a delegation from the new Council and may be revoked or amended accordingly.
- (2) Subclause (1) ceases to have effect when the new Council adopts new delegations under the relevant provisions of the Act.

## 11 Codes, policies and plans

- (1) The following policies and plan of the new Council are, as far as practicable, to be a composite of the corresponding policies and plans of each of the former Councils:
  - (a) local policies for approvals and orders (Part 3 of Chapter 7),
  - (b) management plan (Part 2 of Chapter 13).
  - (c) social or community plan (clause 30 of the Local Government (General) Regulation 1999).
- (2) Where the former councils do not have a current social or community plan as referred to in subclause (1)(c), the new Council shall adopt a new plan in accordance with the Guidelines, within a reasonable period determined by the Director General.
- (3) Each of the following codes, policies and plans of the former Upper Hunter Shire Council apply, as far as practicable, to the new Council:
  - (a) code of conduct (section 440),
  - (b) code of meeting practice (Division 1 of Part 2 of Chapter 12),
  - (c) expenses and facilities policy (Division 5 of Part 2 of Chapter 9),
  - (d) EEO management plan (Part 4 of Chapter 11).
- (4) Subclauses (1) & (3) cease to have effect in relation to a code, policy or plan of the new Council when the new Council adopts a new code, policy or plan under the relevant provisions of the Act.

## 12 Fees

- (1) The annual fee paid to each Councillor of the new Council and the annual fee paid to the Mayor of the new Council is to be equal to the highest of the corresponding fees paid by the former Councils.
- (2) Subclause (1) ceases to have effect in relation to an annual fee when the new Council fixes the annual fee in accordance with the appropriate determination of the Local Government Remuneration Tribunal.

## 13 Organisation Structure

The initial organisation structure of the new Council is, as far as practicable, to be a composite of the organisation structures of each of the former Councils.

## 14 Transfer of Senior Staff

- (1) Any position that, immediately before the proclamation date, was a senior staff position of:
  - (a) the former Upper Hunter Shire Council is transferred to the Council of the Area of Upper Hunter Shire.
  - (b) the former Merriwa Shire Council is transferred to a Council of the Areas of the Upper Hunter Shire or Mid-Western Regional as determined by agreement between the new Councils of the Areas of the Upper Hunter Shire or Mid-Western Regional.
- (2) The senior staff of each former Council are taken to be the senior staff of the new Council or Mid-Western Regional Council as determined with reference to subclause (1).
- (3) This clause ceases to have effect when a new organisation structure is determined by the new Council under Part 1, Chapter 11 of the Act.
- (4) A senior staff member of a former Council can be confirmed in a senior staff position in the new Council, that has an equivalent level of responsibility and remuneration, when the organisation structure is determined by the new Council in accordance with subclause (3), or otherwise recruitment processes commenced.

## 15 Transfer of other staff

- (1) It is intended that the making of any determinations as to the transfer of staff (other than senior staff) by virtue of the constitution of the new Areas made in this proclamation is to be in accordance with this clause:
  - (a) Each member of staff of the former Upper Hunter Shire Council (a transferred staff member) is transferred to the Council of the Area of Upper Hunter Shire.

- (b) Each member of staff of the former Merriwa Shire Council (a transferred staff member) is transferred to the Council of the Areas of Upper Hunter Shire or Mid-Western Regional as determined by agreement between the Councils of the Areas of Upper Hunter Shire or Mid-Western Regional.
- (2) Section 218CA (maintenance of staff numbers in rural centres) and Part 6, Chapter 11 of the Act (employment protection) applies to the employment of a transferred staff member.

## 16 Transfer of assets, rights and liabilities

- (1) It is intended that the making of any determinations as to the transfer of assets, rights and liabilities of the former Councils by virtue of the constitution of the new Area made in this proclamation is to be in accordance with this clause:
  - (a) The assets, rights and liabilities of the former Upper Hunter Shire Council are transferred to the Council of the Area of Upper Hunter Shire.
  - (b) The assets, rights and liabilities of the former Merriwa Shire Council are transferred to the Councils of the Areas of Upper Hunter Shire or Mid-Western Regional as determined by agreement between the new Councils of the Areas of Upper Hunter Shire or Mid-Western Regional.
- (2) The following provisions have effect in relation to any assets, rights or liabilities that are transferred by operation of subclause (1):
  - (a) The assets of the former Councils vest in the new Council by virtue of this clause and without the need for any further conveyance, transfer, assignment or assurance.
  - (b) The rights or liabilities of the former Councils become, by virtue of this clause, the rights and liabilities of the new Council.
  - (c) All proceedings relating to the assets, rights or liabilities commenced before the transfer by or against the former Councils or a predecessor of any of the former Councils, and pending immediately before the transfer, are taken to be proceedings pending by or against the new Council.
  - (d) Any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the transfer by, to or in respect of the former Councils or a predecessor of any of the former Councils (to the extent to which that act, matter or thing has any force or effect) is taken to have been done or omitted by, to or in respect of the new Council.
  - (e) Anything that was commenced by a former Council and uncompleted at the proclamation date may be completed by the new Council as if it had been commenced by the new Council. This includes but is not limited to any application for approval or consent under the Act or any other Act.
  - (f) In so doing, the new Council must make any determinations required to be made in accordance with any relevant code, policy or plan of the relevant former Council, until such time as the new Council makes a new code, policy or plan in relation to that matter in accordance with the Act or any other Act.
  - (g) Anything that was done by a former Council, and that had effect immediately before the proclamation date, or that was commenced by a former Council and completed by the new Council as a result of this proclamation, continues to have effect and may be enforced by the new Council as if it had been done by the new Council.
  - (h) Without limiting subclause (2)(g) any approval, order or notice that was given or made by a former Council, and that had effect immediately before the proclamation date, continues to have effect and for all the purposes of the Act or any other Act shall be deemed to have been given or made by the new Council.
  - (i) Any decision of the Land and Environment Court in an appeal from a decision of a former Council, determined by the Court after the proclamation date, shall be deemed to be a decision of the new Council.
- (3) In this clause:

Assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, streams of income, choses in action and documents.

Liabilities means any liabilities, debts or obligations (whether present or future and whether vested or contingent) and includes liabilities relating to criminal acts.

Rights means any rights, powers, privileges or immunities (whether present or future and whether vested or contingent).

## 17 General provisions with respect to transfers

- (1) A transfer affected by this Schedule takes effect on the proclamation date.
- (2) The Minister may, by notice in writing, confirm a transfer affected by this Schedule.
- (3) Such a notice is conclusive evidence of the transfer.

**18 Effect of transfer on third party rights**

- (1) The operation of clause 16 (Transfer of assets, rights and liabilities) is not to be regarded:
  - (a) as an event of default under any contract or other instrument, or
  - (b) as a breach of contract or confidence or otherwise as a civil wrong, or
  - (c) as a breach of contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
  - (d) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (2) No attornment to the new Council by a lessee from a former Council is required in relation to a transfer affected by clause 16.
- (3) No compensation is payable to any person or body in connection with a transfer affected by clause 16.
- (4) Subclause (3) does not affect the rights of any person or body in connection with the early termination of a contract between a former Council and that person or body.

**19 Reports and reviews of the new Council**

- (1) A duty of the new Council under any Act, including a duty to report or review, which relates to a period before the proclamation date, is to be performed by reference to the former Areas and the former Councils as appropriate.
- (2) Until 30 June 2004 the records and statutory reporting of the new Council are to be kept as a continuation of the records and statutory reports of each of the former Councils and the new Council's financial transactions are to be apportioned between the various accounting records in such a manner as the new Council determines.
- (3) The new Council's financial and statutory reports for the year ended 30 June 2004 are to be prepared in the form of separate reports for each set of records of the former Councils for the whole of that year.

**20 Auditor**

The Auditor, Stockfords will be the Auditor of the new Council unless the new Council appoints another Auditor in accordance with Division 3 of Part 3 of Chapter 13 of the Act.

**21 References to former Areas and Councils**

In any Act, in any instrument made under any Act or in any document of any kind:

- (1) A reference to any of the former Areas, or to a predecessor of any of the former Areas, is taken to include a reference to the new Area and is to be read as a reference to the new Area, and
- (2) A reference to any of the former Councils, or to a predecessor of any of the former Councils, is to be taken as a reference to the new Council and is to be read as a reference to the new Council.

**22 Rating Structures**

- (1) The new Council's maximum general income for 2004/05 is to be determined by estimating the proportionate amount of general income for 2003/04 from land in the former Areas included in the new Area.
- (2) The new Council is to determine its rating structure taking into consideration subclause (1).
- (3) The rating structure is to be reviewed within the first year of the new Council.

**23 Upper Hunter County Council**

For the interim period between 26 May 2004 and the election of members of the County Council by the Upper Hunter Shire Council following the declaration of the first election, the Administrator of the new Council is entitled to two votes at meetings of the County Council.

**24 Matters to be determined by Minister**

- (1) In order to give effect to this proclamation, the Minister may determine from time to time any matter or thing, including, without limitation, the content of the matters set out in clause 11.
- (2) In pursuance of this clause, any matter or thing requiring determination may be referred to the Minister by the new Council or Mid-Western Regional Council.

- (3) The Minister may also determine any matter or thing that has not been referred to him by the new Council if the Minister concludes that the matter or thing cannot be determined by agreement between the new Council and Mid-Western Regional Council or if the Minister is not satisfied with any agreement reached between the aforementioned new Council and Mid-Western Regional Council, including in relation to subclauses (2) and (4) herein.
- (4) A matter to be determined by the Minister may be referred to the Director General, and/or another person or persons nominated by the Minister, for advice and recommendation, as appropriate.
- (5) The Director General and/or another person or persons nominated by the Minister, shall, if required by the Minister, convene a meeting between the new Council and Mid-Western Regional Council to assist in the determination of the matter.
- (6) The Director General and/or any person or persons nominated by the Minister under this clause, shall have regard to the Statement of Intent herein and any other principles or guidelines considered appropriate in the circumstances.

## **25 Statement of Intent**

- (1) The Minister will consider an application made by the new Council for a Special Variation to increase its General Income.
- (2) There will be meaningful cooperation between the Councils of the Areas of Upper Hunter Shire and Mid-Western Regional in the sharing of information and agreement of all matters necessary to facilitate the provisions of this proclamation.
- (3) The Councillors of the new Council are to exercise community leadership for the whole local government area as set out in the Act.

ISSN 0155-6320

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Authorised to be printed  
R. J. MILLIGAN, Government Printer.