



New South Wales

# Local Government (Bayside) Proclamation 2016

under the

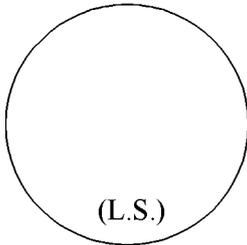
Local Government Act 1993

DAVID HURLEY, Governor

I, General The Honourable David Hurley AC DSC (Ret'd), Governor of New South Wales, with the advice of the Executive Council, and in pursuance of Part 1 of Chapter 9 of the *Local Government Act 1993*, make the following Proclamation.

Signed and sealed at Sydney, this 9th day of September 2016.

By His Excellency's Command,



(L.S.)

PAUL TOOLE, MP

Minister for Local Government

GOD SAVE THE QUEEN!

## Explanatory note

The object of this Proclamation is to amalgamate the local government areas of the City of Rockdale and the City of Botany Bay to form the new local government area of Bayside and to provide for savings and transitional matters consequential on that amalgamation. The Proclamation also makes other minor amendments to other amalgamation proclamations.

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## Local Government (Bayside) Proclamation 2016

under the

Local Government Act 1993

### Part 1 General

#### 1 Name of Proclamation

This Proclamation is the *Local Government (Bayside) Proclamation 2016*.

#### 2 Commencement

This Proclamation commences on the day and at the time at which it is published on the NSW legislation website.

#### 3 Definitions

(1) In this Proclamation:

***amalgamation day*** means the time of the day on which this Proclamation commences.

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

***Chief Executive*** means the Chief Executive of the Office of Local Government.

***former area*** means the former areas of the City of Rockdale and the City of Botany Bay amalgamated by this Proclamation.

***former council*** means the council of a former area.

***initial period*** means the period commencing on the amalgamation day and ending immediately before the first meeting of the new council held after the first council elections for the council.

***liabilities*** means any liabilities, debts or obligations (whether present or future, whether vested or contingent and whether personal or assignable).

***new area*** means the Bayside area constituted by this Proclamation.

***new council*** means the council of the Bayside area constituted by section 219 of the Act.

***register of public surveys*** means the register of that name kept under the *Surveying and Spatial Information Act 2002*.

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

***the Act*** means the *Local Government Act 1993*.

***the regulations*** means regulations made under the *Local Government Act 1993*.

**Note.** The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Proclamation.

(2) Notes included in this Proclamation do not form part of this Proclamation.

#### **4 Amalgamation and constitution of Bayside area**

- (1) The areas of the City of Rockdale and the City of Botany Bay are amalgamated to constitute a new area when this Proclamation commences with:
  - (a) the name of Bayside, and
  - (b) the boundaries shown for the area on the map kept in the register of public surveys on the amalgamation day and having the identifier number PP5011.
- (2) The councils of the areas amalgamated by this Proclamation are dissolved.
- (3) The Bayside area includes all land contained within each of the former areas incorporated in the area by this Proclamation.

#### **5 Matters or things to be determined by Minister**

- (1) For the purposes of giving effect to this Proclamation, the Minister may from time to time determine any matter or thing at the Minister's discretion or if the new council or the Administrator of the new council refers any matter or thing requiring determination to the Minister for that purpose.
- (2) The Minister may delegate any function of the Minister under this clause to the Chief Executive.
- (3) The Chief Executive may sub-delegate to any person any function delegated to the Chief Executive under this clause.

#### **6 References to former areas and councils**

A reference in any Act or instrument to:

- (a) a former council, or to a predecessor of the former council, is taken to be a reference to the new council, or
- (b) a former area, or to a predecessor of the former area, is taken to be a reference to that part of the new area that consists of the former area or the predecessor area.

#### **7 Powers under Act**

- (1) Nothing in this Proclamation limits the powers under the Act of the new council or any other person to take any action to change any matter specified by this Proclamation at any time after the initial period.

**Note.** Examples of such changes might include changes to the method of election of mayors, changes to wards and changes to councillor numbers.
- (2) Subclause (1) does not apply in respect of a matter specified in this Proclamation relating to rates for the 2016/2017 rating year.
- (3) A public inquiry under Part 8 of Chapter 13 of the Act into a matter relating to a former council or the members or staff of a former council that was commenced but not completed before the amalgamation day may be continued and completed as if the former council had not ceased to exist.

#### **8 Planning panels**

- (1) A person nominated as a member of a joint regional planning panel by a former council may continue to exercise and complete any function being exercised by that person as a member immediately before the amalgamation day.
- (2) A function exercised under subclause (1) is taken to be exercised by the member as a nominee of the new council.
- (3) A person nominated as a member of a joint regional planning panel by a former council ceases to be a nominee of an applicable council and a member of the panel

on the amalgamation day, except for the purpose of exercising a function under subclause (1).

(4) In this clause:

***joint regional planning panel*** has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

## Part 2 Operations of new council

### Division 1 Preliminary

#### 9 Definitions

In this Part:

**Administrator** means a person who is appointed by or under this Proclamation as an Administrator of the new council during the initial period.

**contributions plan** has the same meaning as in Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979*.

**deputy general manager** means the person appointed by or under this Proclamation as the deputy general manager of the new council.

**development control plan** has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

**interim general manager** means the person appointed by or under this Proclamation as the interim general manager of the new council.

### Division 2 Governance

#### 10 First election and councillors

- (1) The date of the first election of the councillors of the new council is 9 September 2017.
- (2) The number of councillors to be elected to the new council at its first election is 15.
- (3) The election is taken to be an ordinary election of councillors for the purposes of the Act or the regulations (other than for the purposes of the application of provisions relating to the administration and holding of first elections for councils and first mayors for councils).
- (4) Any contract, agreement or other arrangement entered into by a former council for the administration of an election for a former council is terminated by operation of this clause.
- (5) Clause 35 (2) applies to the termination of a contract, agreement or other arrangement by operation of this clause.

#### 11 Ward structure

The new council is to be divided into 5 wards having the boundaries shown for the new area on the map with the identifier number PP5020–W kept in the register of public surveys on the amalgamation day.

#### 12 Administrator of new council during initial period

Greg Wright is appointed as the Administrator of the new council.

#### 13 Administrators for new council

- (1) If a person appointed as an Administrator of the new council declines the appointment or ceases to hold office under clause 14, the Minister may, by order published in the Gazette, appoint another person as Administrator of the council.
- (2) The Minister may, by order published in the Gazette, appoint an additional person or persons as Administrators of the new council, if the Minister is of the opinion that it is necessary to do so for the purposes of facilitating the operations of the council.

- (3) The Administrator of the new council has, during the initial period, the functions of the council and the mayor of the council. This subclause is subject to the provisions of this Proclamation and to any order appointing another Administrator.
- (4) If an additional Administrator is appointed:
  - (a) each Administrator has the functions specified in the instrument of appointment, and
  - (b) the Minister may give directions for the purpose of resolving any issues that arise as a result of there being more than 1 Administrator.
- (5) The salary of an Administrator is to be determined by the Minister and paid from the funds of the new council.
- (6) For the purposes of the Act, an Administrator does not, in that position, hold an office or a place of profit under the new council.

#### **14 Vacation of office by Administrators**

- (1) The Minister may, by instrument in writing published in the Gazette, terminate an Administrator's appointment at any time.
- (2) An Administrator ceases to hold office:
  - (a) immediately before the end of the initial period, or
  - (b) if the Administrator's appointment is earlier terminated by the Minister, or
  - (c) if the Administrator dies.

#### **15 Appointment of interim general manager and deputy general manager**

- (1) The interim general manager of the new council is Meredith Wallace.
- (2) The deputy general manager of the new council is Lara Kirchner.

#### **16 Interim general managers and deputy general managers**

- (1) If the person appointed as interim general manager of the new council declines the appointment or the appointment is terminated or the office of interim general manager is vacated for any other reason, the Administrator may appoint another person as the interim general manager of the council.
- (2) The Administrator of the new council or the council may, at any time, terminate the appointment of an interim general manager or a deputy general manager appointed under this Proclamation. Any such termination is to be consistent with the terms of any applicable contract of employment for the interim general manager or deputy general manager.
- (3) If a person appointed as an interim general manager was, immediately before the amalgamation day, the general manager of a council, the person has the same rights and entitlements as if the person were a senior staff member who was transferred to the new council under this Proclamation.

**Note.** Under clause 406C of the *Local Government (General) Regulation 2005*, a transferred staff member is transferred under the same contract of employment (including the term of appointment) and retains accrued leave entitlements.
- (4) If a person appointed as a deputy general manager was, immediately before the amalgamation day, the general manager of a council, the person has the same rights and entitlements (apart from the person's position) as if the person were a senior staff member who was transferred to the new council under this Proclamation.
- (5) Despite subclauses (3) and (4), the Administrator may vary (but not reduce) the remuneration that would otherwise be payable to the interim general manager or deputy general manager.

- (6) The operation of this clause 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).
- (7) Nothing in this clause prevents:
  - (a) the extension of the term of appointment of an interim general manager or a deputy general manager, or
  - (b) the determination of a staff organisation structure for the new council that does not include the position of one or more deputy general managers.
- (8) Section 336 (2) and (3) of the Act apply to a person appointed as an interim general manager.

#### **17 Election of mayor following first election**

The mayor of the new council is to be elected by councillors in accordance with the Act.

#### **18 Code of meeting practice**

- (1) The code of meeting practice of the former Rockdale City Council is to be the code of meeting practice of the new council until it is amended or replaced in accordance with the Act.
- (2) Any provision of the code of meeting practice that restricts the holding of meetings to places in a former area applies so that the restriction relates to places in the new area.

### **Division 3 Council activities**

#### **19 Obligations of new council**

The new council is to use its best endeavours to facilitate the operation of this Proclamation, including sharing information, agreeing about required matters and working co-operatively with other councils.

#### **20 Activities of former councils**

- (1) Anything done or omitted to be done by a former council and having any force or effect immediately before the amalgamation day continues to have effect as if it had been done or omitted to be done by the new council.
- (2) Without limiting subclause (1):
  - (a) any approval, order or notice given or made by a former council, and that had effect immediately before the amalgamation day, continues to have effect as if it had been given or made by the new council, and
  - (b) anything commenced but not completed by a former council may be completed or discontinued by the new council.
- (3) This clause does not:
  - (a) limit any other provision of this Proclamation, or
  - (b) apply to the extent to which it is inconsistent with any other provision of this Proclamation.

#### **21 Delegations**

- (1) A delegation by a former council that was in force immediately before the amalgamation day is taken to be a delegation by the new council and may be revoked or amended accordingly.

- (2) A delegation by a former council to the general manager of that council that was in force immediately before the amalgamation day is taken to be a delegation by the new council to the interim general manager and may be revoked or amended accordingly.

## **22 Codes, plans, strategies and policies**

- (1) The codes, plans, strategies and policies of the new council are to be, as far as practicable, a composite of the corresponding codes, plans, strategies and policies of each of the former councils.
- (2) This clause ceases to have effect in relation to a code, plan, strategy or policy when the new council adopts a code, plan, strategy or policy that replaces that code, plan, strategy or policy.
- (3) This clause does not apply to the extent to which it is inconsistent with any other provision of this Proclamation.

## **23 Code of conduct**

- (1) The code of conduct for the new council is to be the model code (within the meaning of section 440 of the Act) until a code of conduct is adopted by the council in accordance with the Act.
- (2) The procedure for dealing with alleged contraventions of the code of conduct is to be the model procedure (within the meaning of section 440AA of the Act) until a procedure is adopted by the new council in accordance with the Act.

## **24 Development control plans and contributions plans**

- (1) A development control plan or contributions plan that applied to the whole or a part of a former area immediately before the amalgamation day continues to apply to that part of the new area that consists of the whole or part of the former area to which the plan applied.
- (2) This clause ceases to have effect when the development control plan or contributions plan is repealed.
- (3) To avoid doubt, nothing in this clause prevents the new council from amending a development control plan or contributions plan.

## **25 Strategic planning**

- (1) The operational plan of the new council is to be a composite of the operational plans adopted by the former councils for the year commencing 1 July 2016.
- (2) The day by which the new council must review its community strategic plan, following the first election for the council, is 1 July 2018.
- (3) The day by which the new council must establish a new delivery program, following the first election for the council, is 1 July 2018.
- (4) The delivery program is to be for the period commencing on 1 July 2018 and ending on 30 June 2021.

## **26 Payment of outstanding rates, charges and fees**

Any rates, annual charges or other fees payable to a former council in respect of any land in the area of the new council, that were not paid before the amalgamation day or for which payment is due after that day, are payable to the new council.

## **27 Rating structure**

- (1) It does not matter that different rating structures apply to different parcels of land for the year commencing 1 July 2016 because of clause 25.
- (2) The rating structure of the new council is to be reviewed within the first term of the council following the first election of the council.

## **28 Calculation of notional general income for rating purposes**

- (1) The new council's notional general income for 2016/2017 is to be determined by adding together the amount of general income for each of the former areas in the area of the council, determined as if the amalgamation effected by this Proclamation had not taken place.
- (2) Any variation of a former council's notional general income under Part 2 of Chapter 15 of the Act that would have been applicable, had the amalgamation effected by this Proclamation not taken place, to the determination of the amount of rates and charges for land within the new area during a particular period continues to apply to the determination of rates and charges in respect of that land, but only for the 2016/2017 rating year.

## **29 Reports and reviews**

- (1) The new council is, on or before 31 December 2016, to prepare audited financial reports for a former council in respect of the period commencing on 1 July 2015 and ending at the end of the day on which this Proclamation was published on the NSW legislation website.
- (2) The new council is to prepare audited financial reports for the new council for the period commencing at the beginning of the day after this Proclamation was published on the NSW legislation website and ending at the end of 30 June 2017.
- (3) The first annual report (including the audited financial reports) of the new council is to relate to the period referred to in subclause (2) and, for that purpose, the Act and the regulations apply as if a reference to a year were a reference to the period referred to in that subclause.
- (4) Financial reports and audits of financial reports may be prepared in accordance with this clause despite any requirements of the Act relating to them.
- (5) Any report or review that is required to be carried out by the new council, and that relates to a period before the amalgamation day, may be carried out by reference to the former areas, as the case requires.

## **30 Auditor of council**

- (1) The persons who provided auditing services to the former councils immediately before the amalgamation day are taken to be appointed by the new council to be auditors of the new council, with the proportion and nature of auditing services provided to be as determined by the new council, having regard to the services provided in respect of the former councils.
- (2) This Proclamation is subject to any savings and transitional provisions made by or under Schedule 8 to the Act as a consequence of the substitution of Division 3 of Part 3 of Chapter 13 of the Act by the *Local Government Amendment (Governance and Planning) Act 2016*.

## **Division 4 Staff**

### **31 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.

### **32 Transfer of senior staff**

- (1) Any position that, immediately before the amalgamation day, was a senior staff position of a former council is taken to be a senior staff position of the new council.
- (2) A person who held any such senior staff position immediately before the amalgamation day is taken to be the holder of that position in the organisation structure of the new council.
- (3) This clause does not apply to a person appointed as an interim general manager or a deputy general manager by or under this Proclamation.
- (4) This clause is subject to any determination of an organisation structure by the new council.

### **33 Transfer of other staff**

Each member of staff (other than senior staff) of a former council immediately before the amalgamation day is transferred to the new council.

**Note.** Part 6 of Chapter 11 of the Act contains provisions relating to transferred non-senior staff.

## **Division 5 Transfer of assets, rights and liabilities**

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

The assets, rights and liabilities of the former councils are transferred to the new council.

### **35 Provisions relating to transfers of assets, rights and liabilities**

- (1) When any assets, rights or liabilities are transferred pursuant to this Proclamation from a former council to the new council, the following provisions have effect:
  - (a) the assets of the former 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 council become, by virtue of this clause, the rights or liabilities of the new council,
  - (c) 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 council or a predecessor of the former council 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,
  - (d) the new council has all the entitlements and obligations of the former council in relation to those assets, rights and liabilities that the former council would have had but for the transfer, whether or not those entitlements and obligations were actual or potential at the time of the transfer.

**Note.** Clause 6 translates references in any instrument to former councils or areas and their predecessors.
- (2) The operation of this clause is not to be regarded:
  - (a) as a breach of contract or confidence or otherwise as a civil wrong, or

- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
  - (c) 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, or
  - (d) as an event of default under any contract or other instrument.
- (3) The Minister may, by notice in writing, confirm a transfer of particular assets, rights or liabilities. The notice is conclusive evidence of that transfer.
- (4) No attornment to the transferee by a lessee from the former council is required.

**36 Continuation or institution of proceedings by or against new councils**

- (1) Proceedings that were instituted by or against a former council before its dissolution, or that could have been instituted by or against a former council but for its dissolution, may be continued or instituted by or against the new council.
- (2) For that purpose:
- (a) proceedings instituted by or against the former council are taken to be proceedings instituted by or against the new council, and
  - (b) anything done by or in relation to the former council is taken to have been done by or in relation to the new council.
- (3) In this clause:  
*proceedings* means criminal proceedings, civil proceedings, civil penalty proceedings or other legal proceedings (including the issue of penalty notices for alleged offences and proceedings arising out of the issue of any such penalty notice).

## **Schedule 1 Amendment of other proclamations**

### **1.1 Local Government (Council Amalgamations) Proclamation 2016**

#### **[1] Clause 7 Powers under Act**

Omit “formal” from clause 7 (3). Insert instead “former”.

#### **[2] Clause 8 County councils**

Insert after clause 8 (1):

- (1A) The following provisions apply for the purposes of the continuance of the operation of a county council under this clause:
- (a) a new council is taken to be a constituent council of a county council instead of a former council if the former council was a constituent council of the county council immediately before the amalgamation day,
  - (b) the number of members to be elected by the new council to the county council’s governing body is to be the same as the total number of members of the former councils on the governing body,
  - (c) until the first election of members of the county council’s governing body following the amalgamation day, the Administrator of the new council may exercise the functions (including the voting rights) that would be able to be exercised by persons elected to the governing body by the new council,
  - (d) until the first election of members of the county council’s governing body following the amalgamation day, the Administrator is to be the chairperson of the county council if the chairperson immediately before the amalgamation day was a councillor of a former council,
  - (e) elections for the chairperson of the county council and for members of the county council are to be held within 2 months after the first ordinary election of councillors for the new council.

#### **[3] Clause 12 Administrators for new councils**

Omit clause 12 (5). Insert instead:

- (5) The salary of an Administrator is to be determined by the Minister and paid from the funds of the new council.

#### **[4] Clause 19 Codes, plans, strategies and policies**

Omit “polices” from clause 19 (1). Insert instead “policies”.

#### **[5] Clause 20 Code of conduct and meeting code**

Insert at the end of the clause:

- (2) The procedure for dealing with alleged contraventions of the code of conduct is to be the model procedure (within the meaning of section 440AA of the Act) until a procedure is adopted by the new council in accordance with the Act.
- (3) Any provision of a code of meeting practice applied to a new council by this Proclamation that restricts the holding of meetings to places in a former area applies so that the restriction relates to places in the new area.

**[6] Clause 27 Reports and reviews**

Omit “to the amalgamation day” from clause 27 (1).

Insert instead “to the end of the day on which this Proclamation was published on the NSW legislation website”.

**[7] Clause 27 (2)**

Omit “on the amalgamation day”.

Insert instead “at the beginning of the day after the day on which this Proclamation was published on the NSW legislation website”.

**[8] Clause 27 (2A)**

Insert after clause 27 (2):

- (2A) Financial reports and audits of financial reports may be prepared for the periods specified in this clause despite any requirements of the Act relating to them.

**[9] Clause 33 Provisions relating to transfers of assets, rights and liabilities**

Omit clause 33 (1) (c).

**[10] Clause 34**

Insert after clause 33:

**34 Continuation or institution of proceedings by or against new councils**

- (1) Proceedings that were instituted by or against a former council before its dissolution, or that could have been instituted by or against a former council but for its dissolution, may be continued or instituted by or against the new council.
- (2) For that purpose:
- (a) proceedings instituted by or against the former council are taken to be proceedings instituted by or against the new council, and
- (b) anything done by or in relation to the former council is taken to have been done by or in relation to the new council.
- (3) In this clause:  
*proceedings* means criminal proceedings, civil proceedings, civil penalty proceedings or other legal proceedings (including the issue of penalty notices for alleged offences and proceedings arising out of the issue of any such penalty notice).

**1.2 Local Government (City of Parramatta and Cumberland) Proclamation 2016**

**[1] Clause 8 County councils**

Omit the clause.

**[2] Clause 12 Administrators for new councils**

Omit clause 12 (5). Insert instead:

- (5) The salary of an Administrator is to be determined by the Minister and paid from the funds of the new council.

**[3] Clause 20 Codes, plans, strategies and policies**

Omit “polices” from clause 20 (1). Insert instead “policies”.

**[4] Clause 21 Code of conduct and meeting code**

Insert at the end of the clause:

- (2) The procedure for dealing with alleged contraventions of the code of conduct is to be the model procedure (within the meaning of section 440AA of the Act) until a procedure is adopted by the new council in accordance with the Act.
- (3) Any provision of a code of meeting practice applied to a new council by this Proclamation that restricts the holding of meetings to places in a former area applies so that the restriction relates to places in the new area.

**[5] Clause 23 Contributions plans**

Omit “Schedule” from clause 23 (1). Insert instead “Proclamation”.

**[6] Clause 29 Reports and reviews**

Omit “to the amalgamation day” from clause 29 (1).

Insert instead “to the end of the day on which this Proclamation was published on the NSW legislation website”.

**[7] Clause 29 (3)**

Omit “on the amalgamation day”.

Insert instead “at the beginning of the day after the day on which this Proclamation was published on the NSW legislation website”.

**[8] Clause 29 (3A)**

Insert after clause 29 (3):

- (3A) Financial reports and audits of financial reports may be prepared for the periods specified in this clause despite any requirements of the Act relating to them.

**[9] Clause 37 Provisions relating to transfers of assets, rights and liabilities**

Omit clause 37 (1) (c).

**[10] Clause 38**

Insert after clause 37:

**38 Continuation or institution of proceedings by or against new councils**

- (1) Proceedings that were instituted by or against a former council before its dissolution, or that could have been instituted by or against a former council but for its dissolution, may be continued or instituted by or against the new council.
- (2) For that purpose:
  - (a) proceedings instituted by or against the former council are taken to be proceedings instituted by or against the new council, and
  - (b) anything done by or in relation to the former council is taken to have been done by or in relation to the new council.

- (3) If there are 2 or more new councils in relation to a former council (because the area of the former council is transferred to the areas of different councils):
  - (a) in the case of proceedings that relate to matters arising out of or connected with particular assets of the former council—the new council for the purposes of this clause is the new council to which those assets are transferred under this Proclamation, or
  - (b) in the case of proceedings that relate to other matters—the new council for the purposes of this clause is the new council to which responsibility for the matter is transferred under this Proclamation.
- (4) In this clause:  
***proceedings*** means criminal proceedings, civil proceedings, civil penalty proceedings or other legal proceedings (including the issue of penalty notices for alleged offences and proceedings arising out of the issue of any such penalty notice).