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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 of Chapter 9 of the Local Government Act 1993, do, by this my Proclamation declare that, on 6 February 2004:

- (a) the Area of the City of Sydney and the Area of the City of South Sydney are to be amalgamated so as to constitute a new Area to be known as the City of Sydney; and
- (b) the boundaries of the new Area of the City of Sydney are the same as the combined boundaries of the former Area of the City of Sydney (as described by Proclamation in Government Gazette No 47 of 19 February 2003) and of the former Area of the City of South Sydney (as described by Proclamation in Government Gazette No 47 of 19 February 2003), disregarding those boundaries that are common to both former Areas and;
- (c) the provisions set out in the Schedule to this Proclamation are to apply on and from 6 February 2004 (unless another date is stated), to the amalgamation effected by this Proclamation.

Signed and sealed at Sydney, this 6th day of February 2004.

By Her Excellency's Command,

TONY KELLY, MLC,
Minister for Local Government

GOD SAVE THE QUEEN!

Schedule

1. Definitions

In this Schedule:

amalgamation date means: 6 February 2004

clause means a clause in this schedule.

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

former Area means the former Area of City of Sydney or former Area of the City of South Sydney.

former Council means the Council of a former Area.

new Area means the new Area of the City of Sydney.

new Council means the Council of the City of Sydney.

Minister means the Minister for Local Government.

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 27 March 2004.
- (2) The election is taken to be an ordinary election of the Councillors for the purposes of the Act and any Regulation under the Act.
- (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 Electoral Commissioner of New South Wales, 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.

- (4) a reference in any Act, in any instrument made under any Act or in any document to 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
- (5) a reference in any Act, in any instrument made under any Act or in any document to any of the former Councils is taken to include a reference to the new Council and is to be read as a reference to the new Council.

3. Administration of the new Council for interim period.

- (1) For the interim period between 6 February 2004 and the declaration of the election held on 27 March 2004, three Administrators are appointed and are Ms Lucy Turnbull (former Lord Mayor, of the former Council of the City of Sydney), Mr Tony Pooley (former Mayor, of the former Council of the City of South Sydney) and the Director General of the Department of Local Government to direct and control the affairs of the new Council.
- (2) If Ms Lucy Turnbull or Mr Tony Pooley decline to be appointed as Administrators, then the Minister may appoint alternate persons as Administrators.
- (3) The Administrators may otherwise be known as Commissioners.
- (4) Nothing shall preclude the Administrators from determining development applications, other than those applications for 'major development' within the meaning of the City of Sydney Act 1988.
- (5) The Administrators (other than the Director General of the Department of Local Government) are to be paid an amount equivalent to the annual fee paid to the former Lord Mayor of the former Council of the City of Sydney on a pro-rata basis.
- (6) For the purposes of the Local Government Act 1993, the Administrators do not hold an office or a position of profit under the new Council.

4. Quorum during interim period

The quorum for a meeting of the new Council during the interim period of 6 February 2004 to 27 March 2004 is two, one of whom must be the Director General of the Department of Local Government.

5. Appointment of Acting General Manager and Acting Deputy General Manager

- (1) The Acting General Manager of the new Area shall be Mr Robert Domm (former General Manager of the former Council of City of Sydney) for a period of six months commencing from 6 February 2004.
- (2) For the interim period 6 February 2004 to 27 March 2004, Mr Michael Whittaker (former General Manager of the former Council of the City of South Sydney) shall be the Council's new Acting Deputy General Manager.

6. Election procedures

- (1) The election provisions of the City of Sydney Act 1988 and Local Government Act 1993 will continue to apply to persons and entities entitled to be enrolled on the roll of electors for the former Area of the City of Sydney had the ordinary election for the former Area been held on 27 March 2004.
- (2) The relevant provisions of the Local Government Act 1993 will continue to apply to persons and entities entitled to be enrolled on the roll of electors for the former Area of the City of South Sydney had the ordinary election for the former Area been held on 27 March 2004.
- (3) The returning officer conducting the election is to call for nominations of candidates for election to the new Area as early as practicable after the date of Proclamation.
- (4) A nomination proposal received by a returning officer for election to the council of a former Area shall be taken as a nomination proposal for the council of the New Area.
- (5) The Electoral Commissioner of New South Wales will decide on any dispute or uncertainty on any issue relating to the election for the new Area.

7. Claim for inclusion in roll of electors

A claim for the inclusion on the roll of electors for a former Area shall be taken as a claim for inclusion on the roll of electors for the new Area if the claim for inclusion would otherwise have been valid before the amalgamation date.

8. Number of Councillors

- (1) The number of Councillors to be elected to the new Council at its first election is 10, including the Lord Mayor elected by the electors.
- (2) Subclause (1) does not limit the power of the new Council to redetermine, after the first election the number of its Councillors under section 224 of the Act.

9. Election of Lord Mayor following the first election

The Lord Mayor of the new Council is to be elected by the electors in accordance with section 23 of the City of Sydney Act 1988.

10. Appointment of the General Manager and other senior staff

- (1) The operation of this clause and clause 5 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).
- (2) Nothing in this Proclamation shall require the new Council to appoint a Deputy General Manager after the expiration of the interim period.

11. 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 amalgamation 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 amalgamation date, continues to have effect as if it had been done or made by the new Council.

12. Delegations

Any delegation from a former Council that was in force immediately before the amalgamation date is taken to be a delegation from the new council and may be revoked or amended accordingly.

13. Codes, policies and plans

- (1) Any codes, policies and plans of the former Council of the City of Sydney apply, as far as is practicable, to the new Council.
- (2) Subclause (1) ceases 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.

14. Fees

- (1) The annual fee paid to each Councillor of the new Council and the annual fee paid to the Lord Mayor of the new Council is to be equal to the higher 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.

15. Organisation Structure

- (1) The 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.
- (2) In particular, any position that, immediately before the amalgamation date, was a senior staff position in relation to a former Council is taken to be a senior staff position in relation to 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.

16. Transfer of staff

- (1) Each member of staff of a former Council (a transferred staff member) is transferred to the new Council.
- (2) Part 6 of Chapter 11 of the Act (employment protection) applies to the employment of a transferred staff member.
- (3) The senior staff of each former Council are taken to be the senior staff of the new Council.

17. Additional employment protection

- (1) For the period between 6 February 2004 and 27 March 2004 staff employed under an award wage or other industrial instrument approved by the Industrial Relations Commission may not be unreasonably based outside the general locality in which they were based immediately before the transfer without their approval.
- (2) For the period between 6 February 2004 and 27 March 2004, no staff employed under an award wage or other industrial instrument approved by the Industrial Relations Commission are to be made redundant without their approval.

18. Transfer of assets, right and liabilities

- (1) The assets, rights and liabilities of the former Councils are transferred to the new Council.
- (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 amalgamation 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 amalgamation 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 amalgamation 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 amalgamation date shall be deemed to apply to 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).

19. General provisions with respect to transfers

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

20. Effect of transfer on third party rights

- (1) The operation of clause 18 (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 effected by clause 18.
- (3) No compensation is payable to any person or body in connection with a transfer effected by clause 18.
- (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.

21. Reports and reviews of the new Council

A duty of the new Council under any Act, including a duty to report or review, which relates to a period before the amalgamation date, is to be performed by reference to the former Areas and the former Councils as appropriate.

22. Auditor

The Audit Office of New South Wales will be the Auditor of the new Council unless the Council appoints another Auditor in accordance with Division 3 of Part 3 of Chapter 13 of the Act.

23. 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.

24. Rating Structures

- (1) The rating structures are to be reviewed within the first term of the new Council.

25. Ward Structure

- (1) The new Council shall not be divided into wards for the first election.
- (2) There shall be wards for subsequent ordinary elections, the structure of which will be determined by the new Council.