

Local Government (City of Parramatta and Cumberland) Proclamation 2016

[2016-241]



New South Wales

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The provisions displayed in this version of the legislation have all commenced.

Authorisation

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Local Government (City of Parramatta and Cumberland) Proclamation 2016



New South Wales

Part 1 General

1 Name of Proclamation

This Proclamation is the *Local Government (City of Parramatta and Cumberland) Proclamation 2016*.

2 Commencement

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

3 Definitions

(1) In this Proclamation:

altered area means an area the boundaries of which are altered by this Proclamation (other than an area amalgamated by this Proclamation).

altered council means the council of an altered area.

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.

fixed asset of a council means:

- (a) land, whether built on or not, or
- (b) a building of any description or any part of it and appurtenances to it, or

(c) plant, equipment or any other thing that is located only at one place.

former area means an area amalgamated by this Proclamation and includes any part of an altered area incorporated in a new area by this Proclamation.

former council means the council of a former area and includes, in relation to any part of an altered area incorporated in a new area by this Proclamation, the council of that altered 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 an area constituted by this Proclamation.

new council means the council of a new 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](#).

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

4 Amalgamations and boundary alterations

(1) The areas specified in the Table to this subclause are amalgamated, and the boundaries of the other areas specified in this Table are altered, to constitute new areas when this Proclamation commences with:

(a) the names specified in the Table, and

(b) the boundaries shown for each new area on the maps kept in the register of public surveys on the amalgamation day and having the identifier numbers specified beside the new areas in the Table.

Table

Column 1	Column 2	Column 3	Column 4
Areas amalgamated	Areas altered	New areas	Map identifier numbers

City of Auburn, City of Holroyd, City of Parramatta	The Hills Shire, Hornsby	City of Parramatta	PP5002
		Cumberland	PP5003

- (2) The boundaries for the The Hills Shire area, and the Hornsby area, as altered by this Proclamation, are the boundaries shown on the maps kept in the register of public surveys on the amalgamation day and having the identifier numbers specified in the Table to this subclause:

Table

Column 1	Column 2
Areas altered	Map identifier numbers
The Hills Shire	PP5004
Hornsby	PP5005

- (3) The councils of the areas amalgamated by this Proclamation are dissolved.
- (4) Nothing in this Proclamation operates to abolish The Hills Shire Council or the Hornsby Shire Council.
- (5) Schedules 1 and 2 contain provisions relating to the areas, and councils of those areas, established or altered by this clause.

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 a council or an Administrator refers any matter or thing requiring determination to the Minister for that purpose.
- (2) The Minister may determine any matter or thing that is required to be or may be the subject of an agreement between councils under this Proclamation if the councils fail to agree or the Minister is not satisfied with any agreement between the councils.
- (3) Without limiting subclause (2), the Minister may determine a matter relating to the transfer of staff or the transfer of assets, rights and liabilities if the matter has not been agreed within the following periods:
- (a) for a matter relating to the transfer of a member of staff—within 6 months after the amalgamation day,
 - (b) for any other matter—within the initial period.
- (4) The Minister may delegate any function of the Minister under this clause to the Chief Executive.

- (5) 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

- (1) A reference in any Act or instrument to:
 - (a) a former council (other than an altered council), or to a predecessor of the former council, is taken to be a reference to the new council that has responsibility for those matters relating to the former council or predecessor council to which the Act or instrument relates, or
 - (b) a former area (other than an altered area), or a predecessor of the former area, is taken to be a reference to the parts of each new area that consist of the relevant part of the former area or the predecessor of the former area.
- (2) A reference in any Act or instrument to:
 - (a) an altered council, or to a predecessor of the altered council, is taken to be a reference to the new council that has responsibility for those matters relating to the altered council or predecessor council to which the Act or instrument relates (but only insofar as it relates to the relevant part of the new council's area), or
 - (b) the area of an altered council, or a predecessor of the altered area, is taken to be a reference to the part of the new area that consists of the part of the altered area so incorporated.

7 Powers under Act

- (1) Nothing in this Proclamation limits the powers under the Act of a 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 may be continued and completed as if the former council had not ceased to exist.

8 County councils

- (1) To avoid doubt, the constitution and operation of a county council, as existing immediately before the amalgamation day, is not affected by any changes to councils or council areas effected by this Proclamation.

- (2) This clause does not prevent a change being made to the constitution or operation of a county council or the dissolution of a county council in accordance with the Act at any time during or after the initial period.

9 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 applicable new council.
- (3) A person nominated as a member of a joint regional planning panel by a former council (other than an altered 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 councils

Division 1 Preliminary

10 Definitions

In this Part:

Administrator means a person who is appointed under this Proclamation as an Administrator of a 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 a person appointed by or under this Proclamation as a deputy general manager of a new council.

development control plan has the same meaning as in the [Environmental Planning and Assessment Act 1979](#).

former area, in relation to a new council, means a part of a former area or an altered area incorporated into the area of the council by this Proclamation.

former council, in relation to a new council, means a council of a former area partly incorporated into the area of the council by this Proclamation.

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

Division 2 Governance

11 First election

- (1) The date of the first election of the councillors of a new council is 9 September 2017.
- (2) 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).
- (3) Any contract, agreement or other arrangement entered into by a former council (other than an altered council) for the administration of an election for a former council is terminated by operation of this clause.
- (4) Clause 37 (2) applies to the termination of a contract, agreement or other arrangement by operation of this clause.

12 Administrators for new councils during initial period

- (1) If a person appointed as an Administrator of a new council declines the appointment or ceases to hold office under clause 13, 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 a 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 a 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 one administrator.
- (5) The remuneration paid to an Administrator is to be as determined by the Minister.
- (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.

13 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.

14 Interim general managers and deputy general managers

- (1) If a person appointed as an interim general manager of a 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 of the new council may appoint another person as the interim general manager of the council.
- (2) The Administrator of a new 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 term of the 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 a 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.

15 Election of mayor following first election

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

16 Wards and councillors of altered areas

(1) All wards in The Hills Shire area are abolished.

(2) All wards in the Hornsby area are abolished.

(3) Nothing in this Proclamation operates to vacate, or otherwise affect, the holding of office by a councillor or mayor of an altered council.

Division 3 Council activities

17 Obligations of new councils

(1) A new council or an altered 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.

(2) A new council or an altered council must make available to another council any records or other information in the possession of the new council or altered council and that relates to transferred members of staff, assets, rights or liabilities or any function of, or any part of the area of, the other council.

(3) Any such records or information that relates solely to transferred members of staff, assets, rights or liabilities or any function of, or any part of the area of, the other council is to be transferred by the new council or altered council as soon as practicable after the amalgamation day.

18 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) Subclauses (1) and (2) do not apply to the extent to which any act, omission, approval, order, notice or anything commenced relates to:
- (a) any part of the area of a former council or altered council that is not incorporated within the area of the new council by this Proclamation, or
 - (b) any asset, right or liability or member of staff not transferred to the new council under this Proclamation.
- (4) 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.

19 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.
- (3) Nothing in this clause affects a delegation by an altered council that was in force immediately before the amalgamation day.

20 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 (other than any altered council).
- (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.

21 Code of conduct

The code of conduct for a 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.

22 Development control plans and contributions plans

- (1) A development control plan or contributions plan that applied to a former area immediately before the amalgamation day continues to apply to that part of the area of the new council that consists of the former area.
- (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 or an altered council from amending a development control plan or contributions plan.
- (4) A new council or altered council is to consult with the other council before amending the development control plan or contributions plan.

23 Contributions plans

- (1) If a contributions plan continued in force by this Schedule also continues to apply to land in another new area or altered area, the contributions plan is taken to be a plan approved by the councils of each of the areas.
- (2) A condition imposed under section 94 or 94A of the *Environmental Planning and Assessment Act 1979*, and in force immediately before the amalgamation day, that requires a monetary contribution to be paid wholly or partly for the benefit of an area that consists of land within the new area and land within another new area or altered area is taken to be a condition referred to in section 94C (1) of that Act and, if there is no joint contributions plan, is to be apportioned in accordance with an agreement between the relevant councils.

24 Strategic planning

- (1) The day by which a new council must have an operational plan is 1 August 2016.
- (2) The day by which a new council must review its community strategic plan, following the first election for the council, is 1 July 2018.
- (3) The day by which a 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.

25 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 a 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.

26 Authorisation of expenditure pending operational plan

A new council may hold a meeting for the purposes of approving expenditure and voting money for the period from 1 July 2016 until the adoption by the council of the first operational plan for the council.

27 Rating structure and categorisation of land for rating purposes

- (1) This clause applies to the levying of rates for the 2016/2017 rating year.
- (2) The structure for rates applied by a council to rates levied for a parcel of land in a former area for the 2015/2016 rating year is to be applied by the new council to that parcel.
- (3) The category or sub-category applied to a parcel of land in a former area for rating purposes for the 2015/2016 rating year is to be applied by the new council to that parcel.
- (4) It does not matter that different rating structures apply to different parcels because of subclause (2).
- (5) This clause does not prevent a person from applying for a review of a category under section 525 of the Act or from making an appeal under section 526 of the Act.
- (6) The rating structure is to be reviewed within the first term of the new 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 that would be attributable to the part of each former area included in the new area, if the general income for the former area had been determined as if the amalgamation or alteration of boundaries 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 an amalgamation or alteration of boundaries effected by this Proclamation not taken place, to the determination of the amount of rates and charges for land within the area of a new council 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) A new council is to prepare audited financial reports for the former councils (other than any altered councils), in respect of the period from 1 July 2015 to the amalgamation day, on or before 31 December 2016.
- (2) The new councils are to determine by agreement which council is to prepare the audited financial reports in relation to each of the former councils (other than any altered councils).
- (3) The first annual report (including the audited financial reports) of a new council is to relate to the period commencing on the amalgamation day and ending on 30 June 2017.
- (4) For the purposes of the preparation of the first annual report (including the audited financial reports) of a new council, the Act and the regulations apply as if a reference to a year were a reference to the period referred to in subclause (3).
- (5) Any report or review that is required to be carried out by a 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 auditor of a new council is to be determined by the council and is to be a person who provided auditing services to one or more of the former councils immediately before the amalgamation day.
- (2) Any contract, agreement or other arrangement made by a former council (other than an altered council) with any other person to provide auditing services is terminated by operation of this clause.
- (3) Clause 37 (2) applies to the termination of a contract, agreement or other arrangement by operation of this clause.

Division 4 Staff of councils

31 Organisation structure

The initial organisation structure of a new council is, as far as practicable, to be a composite of the organisation structures of each of the former councils that is not an altered council.

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 position of one of the new councils, as determined by agreement between the new councils, in accordance with that

agreement.

- (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 for which it is taken to be a senior staff position.
- (3) A person who holds a position by operation of subclauses (1) and (2) (or as determined by the Minister under clause 5) is taken to have held the position on and from the amalgamation day.
- (4) This clause does not apply to the senior staff of an altered council or a person appointed as an interim general manager or deputy general manager under this Proclamation.
- (5) This clause is subject to any determination of an organisation structure by the new council.

33 Transfer of other staff

- (1) Each member of staff (other than senior staff) of a former council (other than an altered council) immediately before the amalgamation day is transferred to one of the new councils, as determined by agreement between the new councils, in accordance with that agreement.

Note—

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

- (2) A transfer under subclause (1) (or as determined by the Minister under clause 5 of this Proclamation) is taken to have effect on and from the amalgamation day.

34 Staff arrangements pending agreement or determination

- (1) This clause applies until an agreement is reached under clause 32 or 33 or a determination is made under clause 5 in relation to the transfer of members of staff.
- (2) The City of Parramatta Council is, pending that agreement or determination, to exercise the functions of the employer of all of the members of staff of the former City of Parramatta Council.
- (3) The Cumberland Council is, pending that agreement or determination, to exercise the functions of the employer of all of the members of staff of the former Auburn City Council and Holroyd City Council.

35 Transfer of staff of altered councils

- (1) An altered council and a new council may agree to the transfer of staff from the altered council to the new council as a consequence of a boundary alteration effected by this Proclamation.

- (2) The staff are transferred to the new council in accordance with that agreement.
- (3) A transfer under subclause (2) (or as determined by the Minister under clause 5 of this Proclamation) is taken to have effect on and from the amalgamation day.

Division 5 Transfer of assets, rights and liabilities

36 Transfer of assets, rights and liabilities

- (1) The fixed assets and any associated rights and liabilities of a former council that are located in the area of a new council are transferred to the new council.
- (2) The other assets, rights and liabilities of the former councils (other than any altered councils), that are determined by agreement between the new councils, are transferred to the new councils, in accordance with that agreement.
- (3) Any specified assets, rights and liabilities of a former council that is an altered council that are agreed between the altered council and a new council to be transferred to the new council are transferred in accordance with that agreement.
- (4) A transfer under subclause (2) or (3) (or as determined by the Minister under clause 5) is taken to have effect on and from the amalgamation day.

37 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 a 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) all proceedings relating to the assets, rights or liabilities commenced before the transfer by or against the former council or a predecessor of the former 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 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,
 - (e) 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 or altered 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.

Schedule 1 Provisions for City of Parramatta Council

1 Definition

In this Schedule:

new council means the City of Parramatta Council.

2 Description of area

The City of Parramatta area is the area of that name with the boundaries as shown on the maps referred to in the Table to clause 4 (1) of this Proclamation kept in the register of public surveys on the amalgamation day.

3 Constitution of area as city

The City of Parramatta area is constituted as a city.

4 Administrator of new council during initial period

Amanda Chadwick is appointed as the Administrator of the new council.

5 Interim general manager

The interim general manager of the new council is Greg Dyer.

6 Number of councillors

The number of councillors to be elected to the new council at its first election is 15.

7 Ward structure

The new council is to be divided into 5 wards having the boundaries shown for the City of Parramatta area on the map with the identifier number PP5006-W kept in the register of public surveys on the amalgamation day.

8 Code of meeting practice

The code of meeting practice of the former Parramatta 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.

Schedule 2 Provisions for Cumberland Council

1 Definition

In this Schedule:

new council means the Cumberland Council.

2 Description of area

The Cumberland area is the area of that name with the boundaries as shown on the maps referred to in the Table to clause 4 (1) of this Proclamation kept in the register of public surveys on the amalgamation day.

3 Administrator of new council during initial period

Viv May is appointed as the Administrator of the new council.

4 Interim general manager

The interim general manager of the new council is Merv Ismay.

5 Deputy general manager

The deputy general manager of the new council is Mark Brisby.

6 Number of councillors

The number of councillors to be elected to the new council at its first election is 15.

7 Ward structure

The new council is to be divided into 5 wards having the boundaries shown for the Cumberland area on the map with the identifier number PP5007-W kept in the register of public surveys on the amalgamation day.

8 Code of meeting practice

The code of meeting practice of the former Holroyd 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.