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LOCAL GOVERNMENT ACT 1993

PROCLAMATION

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 sections 397 (1) and (2) of the *Local Government Act 1993*, do hereby declare that on and from the beginning of 1 July 2016:

- (a) the Proclamations in force constituting or varying the constitution of Rous County Council are amended in the manner described in Schedule A below, and in line with the provisions in Schedule B below; and
- (b) Richmond River County Council is dissolved with its functions and operations transferred to Rous County Council in line with the provisions in Schedule B below; and
- (c) Far North Coast County Council is dissolved with its functions and operations:
 - (i) in the local government areas of Ballina Shire, Byron Shire, Lismore City and Richmond Valley transferred to Rous County Council in line with the provisions in Schedule B below; and
 - (ii) in the local government areas of Kyogle and Tweed Shire subsumed by Kyogle Council and Tweed Shire Council respectively in line with the provisions in Schedule B below.

Signed and sealed at Sydney, this 22nd day of June 2016.

By His Excellency's Command,

PAUL TOOLE, MP
Minister for Local Government

GOD SAVE THE QUEEN!

Schedule A

Amendments to the constitution of Rous County Council

The constitution is amended so that the functions of the County Council now include:

- (a) all the functions that were formerly undertaken by Richmond River County Council, established by proclamation in *Government Gazette* No 139 of 4 December 1959 (as amended by subsequent proclamations); and
- (b) all the functions that were formerly undertaken by Far North Coast County Council, established by proclamation in *Government Gazette* No 195 of 5 November 1920 (as amended by subsequent proclamations), within the local government areas of Ballina Shire, Byron Shire, Lismore City and Richmond Valley.

Schedule B

Facilitating Provisions

1. Definitions

In this Schedule:

'*clause*' means a clause in this Schedule.

'*former County Council*' means any of the former Far North Coast County Council or Richmond River County Council.

'*the Minister*' means the Minister for Local Government.

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

'*the transfer date*' means 1 July 2016.

2. Transfer of staff

- (1) Each member of staff of a former County Council is transferred to Rous County Council.
- (2) Section 354F of the Act (no forced redundancy of non-senior staff members for 3 years after transfer) applies to the transfer of non-senior staff from a former County Council to Rous County Council as a result of this proclamation.

3. Delegations

- (1) Any delegation from a former County Council that was in force immediately before the transfer date is taken to be a delegation from Rous County Council and may be revoked or amended accordingly.
- (2) Subclause (1) ceases to have effect when Rous County Council adopts new delegations under the relevant provisions of the legislation pursuant to which the delegations referred to in subclause (1) were made.

4. Plans, programs and strategies

- (1) The following plans, program and strategy of Rous County Council under Part 2 of Chapter 13 of the Act and Division 8 of Part 9 of the *Local Government (General) Regulation 2005* are, as far as practicable, to be a composite of those plans, program and strategy and the corresponding plans, programs and strategies of the former County Councils:
 - (a) business activity strategic plan (clause 218 of the *Local Government (General) Regulation 2005*),
 - (b) resourcing strategy (section 403 of the Act),

- (c) delivery program (section 404 of the Act),
- (d) operational plan (section 405 of the Act).

(2) Subclause (1) ceases to have effect in relation to a plan, program or strategy of Rous County Council when Rous County Council adopts a new plan, program or strategy under the relevant provisions of the Act or the *Local Government (General) Regulation 2005*.

5. Activities of former County Councils

- (1) Subject to subclause (2), anything that was done or omitted to be done by a former County Council that had effect immediately before the transfer date continues to have effect as if it had been done or omitted to be done by Rous County Council.
- (2) Anything that was done or omitted to be done by Far North Coast County Council in relation to the local government areas, or any part thereof, of Kyogle or Tweed Shire that had effect immediately before the transfer date continues to have effect as if it had been done or omitted to be done by Kyogle Council or Tweed Shire Council as the case requires.
- (3) Subject to subclause (4), anything that was commenced by a former County Council may be completed by Rous County Council as if had been commenced by Rous County Council.
- (4) Anything that was commenced by Far North Coast County Council in relation to the local government areas, or any part thereof, of Kyogle or Tweed Shire may be completed by Kyogle Council or Tweed Shire Council as if it had been commenced by Kyogle Council or Tweed Shire Council as the case requires.
- (5) Without limiting subclauses (1) or (2), any approval, order, notice or certificate that was given or made by a former County Council, and that had effect immediately before the transfer date, continues to have effect as if it had been done or made by Rous County Council, Kyogle Council or Tweed Shire Council as the case requires.

6. 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 County Councils by virtue of their dissolution, and the amendments of the constitution of Rous County Council made in this proclamation are to be in accordance with this clause:
 - (a) The assets, rights and liabilities of the former Far North Coast County Council are transferred to Rous County Council or Kyogle Council or Tweed Shire Council as determined by agreement between Rous County Council, Kyogle Council and Tweed Shire Council.
 - (b) The assets, rights and liabilities of the former Richmond River County Council are transferred to Rous County 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 County Councils vest in Rous County Council or Kyogle Council or Tweed Shire Council as the case may be by virtue of this clause and without the need for any further conveyance, transfer, assignment or assurance.
 - (b) The rights and liabilities of the former County Councils become, by virtue of this clause, the rights and liabilities of Rous County Council or Kyogle Council or Tweed Shire Council as the case may be.
 - (c) All proceedings relating to the assets, rights or liabilities commenced before the transfer by or against the former County Councils or a predecessor of the former County Councils and pending immediately before the transfer, are taken to be proceedings pending by or against Rous County Council or Kyogle Council or Tweed Shire Council as the case may be.
 - (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 County Councils or a predecessor of the former County 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 Rous County Council or Kyogle Council or Tweed Shire Council as the case may be.
 - (e) Anything that was commenced by the former County Councils and uncompleted at the date of transfer may be completed by Rous County Council or Kyogle Council or Tweed Shire Council, as the case may be, as if it had been commenced by Rous County Council or Kyogle Council or Tweed Shire Council respectively. This includes, but is not limited to any application for approval or consent under the Act or any other Act.
 - (f) In doing so, Rous County Council or Kyogle Council or Tweed Shire Council as the case may be must make any determinations required to be made in accordance with any relevant code, policy or plan of the former County Councils as the case requires, until such time as Rous County Council or Kyogle Council or Tweed Shire Council makes a new code, policy or plan in relation to that matter in accordance with the Act or such other Act as the case requires.
 - (g) Anything that was done by a former County Council, and that had effect immediately before the transfer, or that was commenced by a former County Council and completed by Rous County Council or Kyogle Council or Tweed Shire Council as a result of this proclamation, continues to have effect and may be enforced by Rous County Council or Kyogle Council or Tweed Shire Council as the case may be as if it had been done by Rous County Council or Kyogle Council or Tweed Shire Council.

- (h) Without limiting subclause (2) (g) any approval, order or notice that was given or made by a former County Council, and that had effect immediately before the transfer, continues to have effect and may be enforced by Rous County Council or Kyogle Council or Tweed Shire Council as the case may be as if it had been done by Rous County Council or Kyogle Council or Tweed Shire Council.
- (i) Any decision of the Land and Environment Court in an appeal from a decision of a former County Council, determined after the transfer, shall be deemed to be a decision of Rous County Council or Kyogle Council or Tweed Shire Council as the case requires.
- (j) Rous County Council, Kyogle Council and Tweed Shire Council have all the entitlements and obligations of the former County Councils in relation to those assets, rights and liabilities that the former County Councils would have had but for the transfer, whether or not those entitlements and obligations were actual or potential at the time of transfer.

(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).

7. General provisions

- (1) A transfer effected by this Schedule takes effect on the transfer 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.

8. Effect of transfer on third party rights

- (1) The operation of clause 6 (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 Rous County Council or Kyogle Council or Tweed Shire Council by a lessee from a former County Council is required in relation to a transfer affected by clause 6.
- (3) No compensation is payable to any person or body in connection with a transfer affected by clause 6.
- (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 County Council and that person or body.

9. References to former County Councils

- (1) In any Act, in any instrument made under any Act or in any document of any kind a reference to Richmond River County Council or a predecessor of that Council is, unless the context requires otherwise, to be taken as a reference to Rous County Council.
- (2) In any Act, in any instrument made under any Act or in any document of any kind a reference to Far North Coast County Council or a predecessor of that Council is, unless the context requires otherwise, to be taken as a reference to whichever of Rous County Council, Kyogle Council or Tweed Shire Council, has responsibility for those matters relating to Far North Coast County Council or a predecessor of that Council to which the Act, instrument or document relates.

10. Matters to be determined by the 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 4.
- (2) In pursuance of this clause, if Rous County Council, Kyogle Council and Tweed Shire Council are unable to agree between themselves about any matter relating to the assets, rights and liabilities relating to Far North Coast County Council that are to be transferred from Far North Coast County Council to any of them as a result of this proclamation, then any one or more of them may apply to the Minister to determine the assets, rights and liabilities of Far North Coast County Council that are to be transferred from Far North Coast County Council to any of them.
- (3) The Minister may also determine any matter or thing that has not been referred to him by Rous County Council, Kyogle Council or Tweed Shire Council if the Minister concludes that the matter or thing cannot be determined

by agreement between Rous County Council, Kyogle Council or Tweed Shire Council or if the Minister is not satisfied with any agreement reached between the aforementioned Councils or any of them.

- (4) In making a determination under this clause, the Minister may refer the matter to the Chief Executive of the Office of Local Government for advice and recommendation as appropriate.

