



20 May 2016

NOTICE OF EXTRAORDINARY COUNCIL MEETING

Your attendance is respectfully requested on **Monday 23rd May, 2016** for an **EXTRAORDINARY MEETING** commencing at **4.00pm**, at the Cabonne Council Chambers, Bank Street, Molong to consider the undermentioned business.

Yours faithfully

Andrew L Hopkins

GENERAL MANAGER

ORDER OF BUSINESS

- 1) Open Ordinary Meeting
- 2) Consideration of General Manager's Report
 - a) Funding for Amalgamation Court Case
 - b) Land & Environment Court – Consideration of possible Appeal



COUNCIL'S MISSION

“To be a progressive and innovative Council which maintains relevance through local governance to its community and diverse rural area by facilitating the provision of services to satisfy identified current and future needs.”

COUNCIL'S VISION

Cabonne Council is committed to providing sustainable local government to our rural communities through consultation and sound financial management which will ensure equitable resource allocation.

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ITEM 1 - APPLICATIONS FOR LEAVE OF ABSENCE

REPORT IN BRIEF

Reason For Report	To allow tendering of apologies for Councillors not present.
Policy Implications	Nil
Budget Implications	Nil
IPR Linkage	4.5.1.g - Code of Meeting Practice adopted and implemented.
Annexures	Nil
File Number	\\OFFICIAL RECORDS LIBRARY\\GOVERNANCE\\COUNCIL MEETINGS\\COUNCIL - COUNCILLORS LEAVE OF ABSENCE - 758565

RECOMMENDATION

THAT any apologies tendered be accepted and the necessary leave of absence be granted.

GENERAL MANAGER'S REPORT

A call for apologies is to be made.

Please note that guidelines have been issued under Section 23A of the Local Government Act titled "Council decision making during merger proposal periods". Council must consider the guidelines in relation to each decision they make during the proposal period, this matter is of an ongoing nature and it is considered it complies with the guidelines.

ITEM 2 - DECLARATIONS OF INTEREST

REPORT IN BRIEF

Reason For Report	To allow an opportunity for Councillors to declare an interest in any items to be determined at this meeting.
Policy Implications	Nil
Budget Implications	Nil
IPR Linkage	4.5.1.g - Code of Meeting Practice adopted and implemented.
Annexures	Nil
File Number	\\OFFICIAL RECORDS LIBRARY\\GOVERNANCE\\COUNCIL MEETINGS\\COUNCIL - COUNCILLORS AND STAFF DECLARATION OF INTEREST - 2016 - 758566

RECOMMENDATION

THAT the Declarations of Interest be noted.

GENERAL MANAGER'S REPORT

A call for Declarations of Interest.

Please note that guidelines have been issued under Section 23A of the Local Government Act titled "Council decision making during merger proposal periods". Council must consider the guidelines in relation to each decision they make during the proposal period, this matter is of an ongoing nature and it is considered it complies with the guidelines.

ITEM 3 - DECLARATIONS FOR POLITICAL DONATIONS

REPORT IN BRIEF

Reason For Report	To allow an opportunity for Councillors to declare any Political Donations received.
Policy Implications	Nil
Budget Implications	Nil
IPR Linkage	4.5.1.g - Code of Meeting Practice adopted and implemented.
Annexures	Nil
File Number	\\OFFICIAL RECORDS LIBRARY\GOVERNANCE\COUNCIL MEETINGS\COUNCIL - COUNCILLORS DECLARATION OF POLITICAL DONATIONS - 758568

RECOMMENDATION

THAT any Political Donations be noted.

GENERAL MANAGER'S REPORT

A call for declarations of any Political Donations.

Please note that guidelines have been issued under Section 23A of the Local Government Act titled "Council decision making during merger proposal periods". Council must consider the guidelines in relation to each decision they make during the proposal period, this matter is of an ongoing nature and it is considered it complies with the guidelines.

ITEM 4 - FUNDING FOR AMALGAMATION COURT CASE

REPORT IN BRIEF

Reason For Report	Advising of an increase in costs from previously reported.
Policy Implications	Nil
Budget Implications	Increase in expenditure
IPR Linkage	4.5.1.a. Provide quality administrative support and governance to councillors and residents
Annexures	Nil
File Number	\\OFFICIAL RECORDS LIBRARY\GOVERNANCE\AMALGAMATIONS\BLAYNEY SHIRE, CABONNE AND ORANGE CITY COUNCILS PROPOSED MERGER 2016 - 758586

RECOMMENDATION

THAT Council:

1. Vote an additional \$30,000 for legal expenses; and
2. Resolve that the expenditure is required and warranted to enable the legitimate exercise of the right of appeal.

GENERAL MANAGER'S REPORT

On 12 April 2015, Cabonne Council resolved to join a court case against the lawfulness of the provisions used by the State Government in its merger proposal of Cabonne, Blayney and Orange. The case was initiated by Woollahra Council and the strategy was for Walcha, Cabonne and other rural/regional councils to join the Woollahra case.

At that time and upon the advice of Walcha Shire Council (which invited Cabonne to participate in the case), the total cost of legal fees for the rural/regional councils was to be \$20,000, to be shared between the rural/regional councils party to the court action. Subsequently, Council resolved to join the case and allocated \$20,000 maximum for expenditure on legal services.

By email dated 29 April and read out at the Extraordinary Council meeting of 10 May, the General Manager advised the Mayor that he had been verbally advised by the General Manager of Walcha that because 'our' case was not able to be joined with Woollahra Council, the costs would now be 'up to \$80,000' for the separate case lodged by Walcha and the costs would be shared between the participating rural/regional councils (which were then three, with the inclusion of Oberon).

Most recently, in a teleconference between the Mayor, Director of Finance & Corporate Services, General Manager and the solicitor instructing the barrister, it has been revealed the costs of the case, heavily discounted, are likely to be in the order of \$120,000 plus disbursements of \$15,000 - \$20,000 plus Cabonne's in-house legal support provided by Marsdens – up to \$10,000. The solicitor also advised there are four councils party to the case: Walcha, Cabonne, Oberon and Gundagai.

Therefore, the individual cost to Cabonne would likely be in the order of \$45,000. Much (possibly two-thirds) of this cost would have already been incurred due to the immediacy of the matters required to progress the case to a hearing and the preparatory work required by the solicitors and barristers.

Should council wish to proceed with this matter it should allocate, via resolution, additional funding of \$25,000 plus contingency of \$5,000 (i.e. \$30,000).

Please note that guidelines have been issued under Section 23A of the Local Government Act titled "Council decision making during merger proposal periods". Council must consider the guidelines in relation to each decision they make during the proposal period. It is considered it complies with the guidelines. The Section 23A Guidelines state: *"In particular, councils and council officials should not make decisions during a merger proposal period... to prevent or disrupt the consideration of merger proposals by the Chief Executive of the Office of Local Government or his delegate, the Boundaries Commission or the Minister for Local Government other than through the legitimate exercise of legal rights of review or appeal."*

ITEM 5 - LAND & ENVIRONMENT COURT - CONSIDERATION OF POSSIBLE APPEAL

REPORT IN BRIEF

Reason For Report	Seeking Council's consideration of possible appeal.
Policy Implications	Nil
Budget Implications	Potential expenditure
IPR Linkage	4.5.1.a. Provide quality administrative support and governance to councillors and residents
Annexures	1. Amended Statement of Claim
File Number	\\OFFICIAL RECORDS LIBRARY\GOVERNANCE\AMALGAMATIONS\BLAYNEY SHIRE, CABONNE AND ORANGE CITY COUNCILS PROPOSED MERGER 2016 - 758594

RECOMMENDATION

THAT Council:

1. Determine whether to appeal any judgement which is adverse to council in the case of Walcha Council & ORS v Minister case no 16/40360 being heard in the Land and Environment Court of New South Wales.
2. Should the Council determine to proceed, authorise the Mayor and/or General Manager to take all actions necessary to lodge an appeal consistent with 1) above.
3. Should the Council determine to proceed, vote a maximum \$150,000 for legal expenses to fund the appeal referred to in 1) above.
4. Should the Council determine to proceed, resolve that the expenditure is required and warranted to enable the legitimate exercise of the right of appeal.

GENERAL MANAGER'S REPORT

Council is an 'Applicant' together with Walcha (which is 1st Applicant, meaning they initiated the case), Oberon and Gundagai Councils in a legal challenge against the State Government and to be heard by the Land and Environment Court of NSW on the 24th and 25th of May. The case, in essence, is claiming that the State has improperly used provisions of the Local Government Act to undertake aspects of its Merger Proposal. The claims by the Applicants are set out in the attached Amended State of Claim (ASOC).

The judgement about this case could be made at any time post the hearing and is anticipated in early to mid-June. Should the judgement be unfavourable to Council, Council has a lawful ability to appeal the judgement.

Advice received from council's lawyers is that the appeals list in the NSW Court of Appeal is currently in the order of 8-10 months. Therefore, it would be in the order of 8-10 months before an appeal would be heard.

Should Council wish to appeal an unfavourable judgement it will need to instruct its legal representatives to set in place specific actions, including lodging an intention to appeal and initiating an injunction.

Given an appeal is based around arguing specific points of law, it is often the case that specialist legal consultants need to be engaged. Our solicitors have estimated the cost of an appeal would be similar to the cost of the initial case, possibly more. The costs of the current case are anticipated to be \$30,000 per council (\$120,000 total) plus disbursements of \$15,000 - \$20,000 plus 'in-house' legal support – up to \$10,000 for Cabonne. On this basis it is estimated the cost of an appeal would be a minimum of \$140,000 plus in-house legal support possibly an additional \$10,000. At this stage it is unknown whether any of the other councils party to the case would participate in an appeal.

Please note that guidelines have been issued under Section 23A of the Local Government Act titled "Council decision making during merger proposal periods". Council must consider the guidelines in relation to each decision they make during the proposal period. The Section 23A Guidelines: *"In particular, councils and council officials should not make decisions during a merger proposal period... to prevent or disrupt the consideration of merger proposals by the Chief Executive of the Office of Local Government or his delegate, the Boundaries Commission or the Minister for Local Government other than through the legitimate exercise of legal rights of review or appeal."*



Form 3A (Version 7)
UCPR 6.2

AMENDED STATEMENT OF CLAIM OF CABONNE COUNCIL [V1]

COURT DETAILS

Court Land and Environment Court of NSW
Class 4
Case number 16/40360

TITLE OF PROCEEDINGS

First Applicant **Walcha Council**
Number of Applicants if more than two 3

First Respondent **Minister for Local Government**
Number of Respondents if more than two 4

FILING DETAILS

Filed for **Cabonne Council, Applicant**
Legal representative Patterson, Byfield & Byren Solicitors
Contact name and telephone Sophie Thomson Telephone: 02 6777 2066

TYPE OF CLAIM

Local government law – other (Ch 9 Local Government Act 1993)

eCOURT ACCESS

For eCourt purposes, please give access to the following accounts:

RELIEF CLAIMED

The Applicant Cabonne Council claims the following relief:

- 1 A declaration that the First Respondent (**Minister**) would contravene or fail to comply with s 218F of the *Local Government Act 1993* (NSW) (**LGA**) if he:

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- a. purported to recommend under s 218F(7) of the LGA implementation of the proposal for the amalgamation of the local government areas of:
 - (i) Cabonne Council with Blayney Shire Council and Orange City Council made by him on about 6 January 2016 (**Cabonne Proposal**); and/or
 - b. did not, prior to making that recommendation, afford the Applicant (**Cabonne Council**) a reasonable opportunity to deal with or respond to the documents that are referred to in the Cabonne Proposal and described therein as analyses and modelling undertaken by KPMG (**Full KPMG Report**).
- 2 An injunction restraining the Minister from purporting to recommend implementation of the Cabonne Proposal under s 218F(7) of the LGA until such time as the Council has had a reasonable opportunity to deal with or respond to the Full KPMG Report.
- 3 A declaration that the Second Respondent by his Delegate the Third Respondent, Mr Richard Pearson (**Delegate**):
- a. did not examine the Proposal or hold an inquiry in relation to the Proposal or one or more of them in accordance with ss 218F and 263 of the LGA, and thereby failed to comply with those provisions;
 - b. did not give "reasonable public notice" of the holding of an "inquiry" as required by s 263(2B) of the LGA, and thereby failed to comply with that provision; and
 - c. did not convene or conduct an inquiry as required by Chapter 9.1.2B and 9.2 LGA;
 - d. would contravene or fail to comply with ss 218F and 263 of the LGA if they purported to furnish a report on the Proposals to the Boundaries Commission or the Minister.
- 4 An injunction restraining the Second and or Third Respondents by their Delegates, servants or agents or otherwise from purporting to furnish a report on the Proposal to the Boundaries Commission or the Minister until such time as the Proposal has been examined and an inquiry in relation to the Proposal has been held in accordance with ss 218F and 263 of the LGA.

- 5 A declaration that the Minister would contravene or fail to comply with s 218F(7) of the LGA if he purported to recommend implementation of the Proposal having regard to a report furnished in the circumstances described in Prayer 3.
- 6 An injunction restraining the Minister from recommending implementation of the Proposal until such time as the Proposal has been examined, an inquiry in relation to the Proposal has been held, and a report furnished in accordance with ss 218F and 263 of the LGA.
- 7 Declaration that the Proposal is void and of no effect.
- 8 Order in the nature of a writ of prohibition against the Respondents their servants or agents or otherwise or any one of them from taking any further steps to amalgamate the Applicant with any other Council under LGA Chapter 9..
- 9 Costs.
- 10 Such further or other orders as the Court deems fit.

PLEADINGS AND PARTICULARS

1. The Applicant (the **Council**) is a body politic of the State of New South Wales constituted under the Local Government Act 1993 (NSW) (**LGA**) with perpetual succession and the legal capacity and powers of an individual, both in and outside the State.
2. The First Respondent (**Minister**) is a Minister of the Crown in right of New South Wales appointed by the Governor under s35E of the *Constitution Act 1902* (NSW), and able to be sued.
3. The Second Respondent (**Chief Executive**) is the Departmental Chief Executive of the Office of Local Government of NSW and is able to be sued.
4. The Third Respondent (**Delegate**) is an officer of the Department administered by the Second Respondent.
5. The Fourth Respondent is the State of New South Wales which employs the Second to Third Respondents and is responsible for the conduct of the Respondents and each of them and of the NSW Government.

Proposal

6. On or prior to 17 December 2015 the Fourth Respondent, the Government of NSW, made a decision to amalgamate Councils in NSW with other Councils in accordance with a report of KPMG called the Full KPMG Report 2015 [which included the Longer Form KPMG Report, the Business Case analysis and the Options Report and modelling underpinning and explaining the Report], and in accordance with that decision the Applicant Council was to be amalgamated with other Councils and be wound up and disappear as a political entity under section 220(1).
7. On or about 6 January 2016, the Minister purportedly made a proposal for the exercise of a function under s 218A of the LGA, being for the amalgamation of the local government areas of Cabonne with Orange and Blayney Councils (the **Proposal**).

Particulars

The Proposal is contained in documents entitled "Merger Proposal" published by the New South Wales Government on or about 6 January 2016.

8. Also on or about 6 January 2016, pursuant to s 218F(1) of the LGA, the Minister referred the Proposal to the Chief Executive for examination and report.
9. On or about 6 January 2016 the Chief Executive delegated his functions in relation to the Proposal to the Third Respondent [the Delegate] pursuant to s 745 of the LGA.
10. Amongst other things, the Proposal stated:
 - a. that the Proposal was:

"...supported by independent analysis and modelling by KPMG"
 - b. that:

"Analysis by KPMG shows the new Council has the potential to generate net savings to council operations."; and
 - c. that:

"The analysis also shows the proposed merger is expected to generate savings every year from 2020 onwards. Savings will primarily be from the removal of back office and administrative functions; streamlining of senior

management roles; efficiencies from increased purchasing power of materials and contracts; and reduced expenditure on councillor fees".

11. The reference to "KPMG" is to an Australian partnership trading under that name and providing various professional services.
12. The asserted "Benefits" and "Opportunities" identified in the Proposal, included matters that were said in the Proposal to be shown or supported by the analysis and modelling undertaken by KPMG.

Particulars

Pages 3 and 8-11 of each Proposal.

13. The analysis and modelling undertaken by KPMG referred to in the Proposal is contained in a number of documents provided to the New South Wales Government (which will be referred to, collectively, as the "Full KPMG Report").
14. The Full KPMG Report was received by or disclosed to the Minister in or about 2015.

Particulars

Further particulars will be provided after discovery.

15. The Minister purportedly made the Proposal:
 - a. in reliance on the Full KPMG Report and the decision alleged in paragraph 6; and
 - b. in circumstances where he considered that the Proposal was supported by the Full KPMG Report.
16. The Full KPMG Report has not been published.
17. The Full KPMG Report has not been disclosed to the Delegate or to the citizens or the electors in the local government area and the participants in the meeting or "inquiry" conducted by the Delegate under Chapter 9.1.2B and 9.2 LGA.
18. The Full KPMG Report has not been disclosed to the Council.
19. On the dates specified, the New South Wales Government published the following documents relating to the analysis conducted by KPMG:

- a. A document prepared by KPMG entitled Local Government Reform Merger Impacts and Analysis (**Impacts Document**), published by the New South Wales Government on or about 18 December 2015;
- b. a "Technical Paper" prepared by KPMG entitled "Outline of Financial Modelling Assumptions for Local Government Merger Proposals" (**Technical Paper**), published by the New South Wales Government on or about 20 January 2016;
- c. A "List of council data sources used by KPMG" released on 5 February 2016 and accessible on the Department of Premier and Cabinet's Disclosure Log;
- d. A spreadsheet purporting to summarise outputs from KPMG's modelling for the Proposal and other proposed amalgamations, released on 5 February 2016 and accessible on the Department of Premier and Cabinet's Disclosure Log (together the **KPMG Related Documents**).

20. The Impacts Document:

- a. states that:

"A comprehensive analysis was undertaken to evaluate the impacts of the proposed local government reforms. These include quantified and non-quantified impacts, including:

- a financial appraisal of how a merger impacts a councils Long-Term Financial Plans (LTFPs) based on the potential savings and costs generated by the merger
- an assessment of state-wide merger impacts, including net financial and the overall benefit cost ratio (BCR) of the proposed local government reforms..."

- b. contained information about the asserted costs and benefits of the Proposal, which information was said to be sourced from "KPMG" and "KPMG Analysis".

Particulars

Pages 4, 5 and 6 of the Impacts Document.

21. The Technical Paper states that:

"KPMG was engaged by the NSW Department of Premier and Cabinet to prepare independent modelling of the potential financial impacts of selected council mergers. The financial modelling undertaken relied on publically available council data and a financial model developed by KPMG..."

Particulars

Page 2 of the Technical Document.

22. The KPMG Related Documents (taken together or separately) are not the Full KPMG Report.
23. The analysis and modelling from the Full KPMG Report referred to in the Proposal is not reproduced (or is not reproduced in full) in the KPMG Related Documents or in the Proposals.
24. On or about 19 April 2016, the Director of the New South Wales Department of Premier and Cabinet:
 - a. in this Honourable Court upon production of the Full KPMG Report [2015] in answer to a subpoena to the Department of Premier and Cabinet claimed privilege on the ground of public interest immunity over the documents comprising or forming part of the Full KPMG Report;
 - b. on 12 February 2016 the Director wrote to Mr Scott Bennison a Cllr of Lane Cove Council refusing access to the same documents.

The "Public Inquiry"

25. Section 263(2A) of the LGA imposed upon the Delegates an obligation to hold an inquiry for the purpose of exercising his or her functions in relation to the Proposal.
26. Section 263(2B) of the LGA imposed upon the Delegates an obligation to give reasonable public notice of the holding of the inquiry referred to in section 263(2A) of the LGA.
27. Section 263(5) further required that the Delegates allow members of the public to attend the inquiry referred to in section 263(2A) of the LGA.

28. In purportedly seeking to fulfil the obligation imposed by section 263(2A) of the LGA, the delegates purportedly inquired into the proposed amalgamation and met with members of the public on a half day in Molong (the **Meeting**)

Purported notice of the Meetings

29. In purported fulfilment of the obligation imposed by s 263(2B) of the LGA the First Delegate caused to be published a notice of the Meeting as follows:

- a. By advertisements published in January 2016 in regional and local newspapers.

30. Save for the notices referred to in paragraph 29 and publication on <https://www.councilboundaryreview.nsw.gov.au/proposals> the Delegate did not otherwise cause to be published any notice of the Meeting.

31. The Delegate did not send notice of the Meeting to members of the public by post, nor provide a questionnaire or conduct a poll of ratepayers or electors in the local government area.

The Meetings

32. On 5 February 2016, the Cabonne Council Meeting was held at the notified place and time.

33. The Third Respondent [Delegate Pearson] for whose conduct the Second and Fourth Respondents are responsible attended the Meetings.

34. A significant number of members of the public and the Mayor of the Applicant Council spoke at the Meetings.

35. All members of the public who spoke at the Meetings spoke against the Proposal.

36. The Delegate did not:

- a. answer questions put by members of the public attending the Meetings;
- b. ask any questions regarding the merits or demerits of the Proposal;
- c. ask any questions regarding the matters that were put to them by those speaking at the Meeting;

- d. otherwise play an active part in dealing with the matters sought to be canvassed by those speaking at the Meeting;
 - e. did not provide any reason or reasons for the Proposal;
 - f. Did not make available the Full KPMG Report [2015] on which the NSW Government decision to amalgamate was founded, nor relevant modelling nor the Business Case.
37. No representative of KPMG spoke at the Meetings.
38. The Full KPMG Report was not disclosed to any participant in the Meetings and was not able to be considered or discussed at the Meetings.
39. The documents referred to in paragraph 19 were not disclosed to any participant in the Meeting prior to the time that each meeting was held and, as a consequence, were not able to be considered or discussed at the Meetings.
40. The Third Respondent [Delegate Peason] received written personal statements and other material in addition to that received at the Meeting, including apparently during meetings to which the public were not invited nor permitted to attend.
41. The Full KPMG Report was not disclosed to any participant in the private meetings referred to in paragraph 40 and has not been considered or discussed at those meetings.
42. The Delegate has not held and does not propose to hold any inquiry into the Proposal (under s 263(2A) of the LGA) apart from the purported "inquiry" comprised by the Meeting.

Particulars

- a) Since the period over which the views of citizens and electors were sought commencing in January 2016 in the case of the Council the Delegate has not sought the views of citizens and electors of each local government area by an inquiry authorised by Chapter 9.1.2B and 9.2;
- b) Since the period over which the views of citizens and electors were sought commencing in January 2016 in the case of the Applicant Council the

Delegate has not sought the views of citizens and electors as specified in section 263 of the LGA;

- c) The Applicant repeats the particulars in paragraph 36;
 - d) Because the basis of the Proposal was not explained or made available in documentary or other form to the citizens and electors in the local government area, many persons were discouraged from expressing, and did not express, their views because there was nothing to respond to, and no case supported by evidence or the Full KPMG Report [2015] upon which the NSW Government asserted it was proceeding.
43. The Delegate has prepared or is in the process of preparing his report to the Minister, a copy of which is required to be furnished to the Boundaries Commission under s 218F(6) of the LGA and which will be sought to be produced at the hearing.
44. Further or alternatively, the decision made by the Minister on or about 6 January 2016 proposing amalgamation of the Applicant with Orange and Blayney Councils was *ultra vires* and void in that the Minister decided to amalgamate the Council with other Councils regardless of any report or inquiry under Chapter 9.1 and 9.2 LGA whereby he misconstrued the legislation and his authority with respect to forced amalgamations.

Particulars

- a) The decision in respect of each Council to initiate and refer a Proposal was ultra vires and void;
- b) There was no proposal to review but rather a decision to amalgamate to be endorsed by the process of review in Chapter 9.1.2B;
- c) The decision other than to amalgamate was illusory having regard to the media statements by the Minister and Premier alleged above, the earlier decision of the NSW Government alleged in paragraph 6, the limited and restricted disclosure of the Full KPMG Report, the perfunctory meetings or "inquiries" held in February (3 hours only for each Council), and correspondence from the Minister for Local Government for councillors and Department of Premier & Cabinet for General Managers and staff inviting them to apply for new positions expressly or impliedly on condition they supported the proposed mergers.

45. Further or alternatively, the decision made by the Minister the First Respondent on or about 6 January 2016 proposing amalgamation of the Applicant with Orange and Blayney Councils was manifestly unreasonable in that no reasonable Minister in the position of the First Respondent on the material before him would have made the referral decision:

Particulars

- a. The KPMG published material did not justify any such decision;
- b. The Full KPMG Report, when produced, will be tendered to the Court;
- c. The Report as published contained unwarranted and indefensible assumptions with no empirical basis;
- d. The KPMG published material was too flawed to employ in the decision-making process on local government mergers.

46. In the premises the 6 January 2016 decision was void and of no effect.

Ground 1 - Apprehended Breach of the LGA

47. Once the Minister receives any report prepared by the Delegate, he will make a decision as to whether to recommend or to decline to recommend implementation of the Proposal pursuant to ss 218F(7) and (8) of the LGA.

48. A recommendation that the Proposal be implemented would be adverse to the interests of each Council and is opposed by the Council.

49. In making the decision whether to recommend or to decline to recommend implementation of the Proposal the Minister will take into account the Full KPMG Report, which contains information that is not credible, relevant and significant to those decisions.

50. On or about 28 February 2016 the Applicant lodged detailed submissions including financial projections opposing the Proposal without the benefit of the Full KPMG Report.

51. The Minister has threatened to proceed without further consideration of the Council's position.

52. If the Minister proceeds to exercise the power conferred by s 218F(7) of the LGA without affording the Council the opportunity to deal with the Full KPMG Report, then the Council will have been denied procedural fairness and that purported exercise of that power will involve the Minister contravening or failing to comply with the LGA.
53. In the premises, there exists a threat or an apprehension that the Minister will contravene or fail to comply with the LGA which is liable to be restrained at the suit of the Council under s 673 of the LGA.

Ground 2 - Failure to conduct the required examination and public inquiry

54. Further or in the alternative, by reason of the matters alleged above the Delegates and each of them have been (and will be) unable to:
- a. Examine that part of the Proposal that were informed by or based upon the Full KPMG Report;
 - b. Conduct an inquiry into that part of the Proposal that were informed by or based upon the Full KPMG Report;
 - c. Examine or inquire into:
 - i. The analysis and modelling undertaken by KPMG that is referred to in each of the Proposal;
 - ii. The asserted "Benefits" and "Opportunities" said in each of the Proposal to be supported by that analysis and modelling; and
 - iii. The financial advantages asserted in the Proposal to accrue to the residents and ratepayers of the areas concerned, insofar as those asserted advantages are based upon the analysis contained in the Full KPMG Report;
 - d. Examine or inquire into material that will be before the Minister at the time of his consideration of the exercise of the powers conferred by ss 218F(7) and (8) in respect of the Proposal and which is credible, relevant and significant to the decisions to be made by the Minister regarding the possible exercise of those powers.

55. In the premises:

- a. the Delegate has not been able to conduct the examination or the inquiry that is mandated by ss 218F and 263 of the LGA; and
 - b. any report or reports prepared by the Delegate to the Minister will not be a valid report for the purposes of ss 218F and 263 of the LGA.
56. Further or alternatively, by reason of the matters alleged above the Delegate has not conducted an "inquiry" as required by ss 263(2A) and (5) of the LGA and has instead conducted meetings within 3 hours on one occasion and possibly a series of private meetings and without obtaining the views of citizens and electors in the local government area.
57. Further or alternatively, it is a condition of the valid exercise of the powers conferred by ss 218F(7) and (8) that:
- a. the Respondents including the Boundaries Commission, the Chief Executive or her or his Delegate have conducted an examination and the inquiry as mandated by ss218F and 263 of the LGA; and/or
 - b. the Respondents including the Boundaries Commission, the Chief Executive or her or his Delegate have provided to the Minister a report which is prepared in compliance with the procedures prescribed by ss218F and 263 of the LGA.
58. By reason of the matters alleged above:
- a. the Delegate has contravened or failed to comply with the LGA and each such failure or contravention is liable to be remedied or restrained at the suit of the Council and each of them under s 673 of the LGA;
 - b. there exists a threat or an apprehension that the Minister will contravene or fail to comply with the LGA which is liable to be restrained at the suit of the Council under s 673 of the LGA.

Ground 3 - Failure to give adequate notice

59. During the period between the time notice was given as referred to above in relation to the Meetings, an interested resident or rate payer of the each of the Applicant Council's local government areas, wishing to participate in a meaningful fashion in the Meeting, would have had needed to undertake some or all of the following steps:

- a. read one or more of the notices referred to above;
- b. understood that the Proposal involved the forced amalgamation of the Councils with other Councils;
- c. understood the consequences of the Proposal.
- d. considered the financial benefits of amalgamation asserted in the Proposal (to the extent that was possible in the absence of the Full KPMG Report);
- e. analysed the Proposal and such of the documents that were published prior to the Meetings referred to above, to determine if the amalgamation was in the Council's best interests;
- f. considered other documents bearing upon the Proposal;
- g. if necessary, to have discussed the forced amalgamation with other electors and if necessary the Council;
- h. if he/she wished to speak at the meeting to register to speak; and
- i. to have his/her comments organised so as to speak for 3 minutes allowed at the Meeting.

60. At the time notice was given as referred to above, many residents and rate payers of each of the Council were not available or were not able to speak due to time constraints.

61. In the premises:

- a. the notices referred to did not constitute "reasonable public notice" as required by s 263(2B);
- b. the Delegate failed to otherwise give "reasonable public notice" as required by s 263(2B);
- c. the Delegate thereby contravened or failed to comply with s 263(2B) of the LGA; and
- d. each such failure or contravention is liable to be remedied or restrained at the suit of the Council and each of them under s 673 of the LGA.

62. The Council says that in the premises there exists:

- a. a threat or an apprehension that the Minister will contravene the LGA; or
- b. a threat or an apprehension that the Minister will fail to comply with the Act

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which is liable to be restrained at the suit of the Council under s 673 of the LGA.

63. The Council further contends that in the premises an inquiry in respect of each proposed merger has not been conducted in accordance with s218F (3) and (4) LGA.
64. The Applicant will further contend that there is no power to proceed with any proposal involving it having regard to s218F (7) LGA .
65. In the premises the Applicant seeks the declaration that the Proposal is void and of no effect.
66. Further, in the premises the Applicant seeks the order in the nature of a writ of prohibition against the Respondents their servants or agents or otherwise or any one of them from taking any further steps to amalgamate the Applicant with any other Council under LGA Chapter 9.

SIGNATURE OF LEGAL REPRESENTATIVE

This statement of claim does not require a certificate under clause 4 of Schedule 2 to the Legal Profession Uniform Law Application Act 2014.

I have advised the Applicants that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature

Capacity

Date of signature

SOLICITOR
28 APRIL 2016

NOTICE TO RESPONDENTS

If you do not file a defence within 28 days of being served with this statement of claim:

- You will be in default in these proceedings.
- The court may enter judgment against you without any further notice to you.

The judgment may be for the relief claimed in the statement of claim and for the Applicants' costs of bringing these proceedings. The court may provide third parties with details of any default judgment entered against you.

HOW TO RESPOND

Please read this statement of claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the claim you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the claim from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

You can respond in one of the following ways:

- 1 If you intend to dispute the claim or part of the claim,** by filing a defence and/or making a cross-claim.
- 2 If money is claimed, and you believe you owe the money claimed,** by:
 - Paying the Applicants all of the money and interest claimed. If you file a notice of payment under UCPR 6.17 further proceedings against you will be stayed unless the court otherwise orders.
 - Filing an acknowledgement of the claim.
 - Applying to the court for further time to pay the claim.
- 3 If money is claimed, and you believe you owe part of the money claimed,** by:
 - Paying the Applicants that part of the money that is claimed.
 - Filing a defence in relation to the part that you do not believe is owed.

Court forms are available on the UCPR website at www.ucprforms.justice.nsw.gov.au or at any NSW court registry.

REGISTRY ADDRESS

Street address	225 Macquarie Street Windeyer Chambers SYDNEY NSW 2000
Postal address	The Land and Environment Court of NSW GPO Box 3565 SYDNEY NSW 2001
Telephone	+61 2 9113 8200

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AFFIDAVIT VERIFYING

Name Sophie Thomson
 Address Fitzderby Chambers, 1E Fitzroy Street, Walcha NSW 2354
 Occupation Solicitor
 Date 28 APRIL 2016

I say on oath:

- 1 I am the solicitor for the Applicants.
- 2 I believe that the allegations of fact in the statement of claim are true.

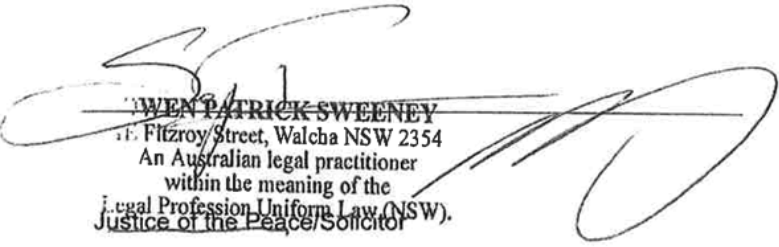
SWORN at

Signature of deponent

Name of witness

Address of witness

Capacity of witness


OWEN PATRICK SWEENEY
 1E Fitzroy Street, Walcha NSW 2354
 An Australian legal practitioner
 within the meaning of the
 Legal Profession Uniform Law (NSW).
 Justice of the Peace/Solicitor

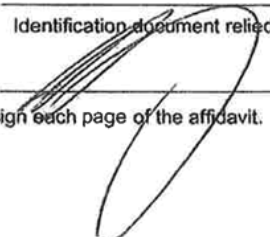
And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

- 1 I saw the face of the deponent.
~~#I did not see the face of the deponent because the deponent was wearing a face covering, but I am satisfied that the deponent had a special justification for not removing the covering.*~~
- 2 #I have known the deponent for at least 12 months. [OR, delete whichever option is inapplicable]
~~#I have confirmed the deponent's identity using the following identification document:~~

 Identification document relied on (may be original or certified copy) [†]

Signature of witness

Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B


OWEN PATRICK SWEENEY
 1E Fitzroy Street, Walcha NSW 2354
 An Australian legal practitioner
 within the meaning of the
 Legal Profession Uniform Law (NSW).

[* The only "special justification" for not removing a face covering is a legitimate medical reason (at April 2012).]

[[†]"Identification documents" include current driver licence, proof of age card, Medicare card, credit card, Centrelink pension card, Veterans Affairs entitlement card, student identity card, citizenship certificate, birth certificate, passport or see Oaths Regulation 2011.]

PARTY DETAILS**PARTIES TO THE PROCEEDINGS****Applicant**

Walcha Council, First Applicant

Oberon Council, Second Applicant

Cabonne Council, Third Applicant

Respondents

Minister for Local Government, First Respondent

Chief Executive, Office Of Local Government, Second Respondent

Mr Richard Pearson, Delegate, Third Respondent

State of New South Wales, Fourth Respondent

FURTHER DETAILS ABOUT APPLICANTS**Applicant**

Name

Walcha Council

Address

2w Hamilton Street Walcha 2354

Oberon Council

137-139 Oberon Street Oberon 2787

Cabonne Council

101 Bank Street Molong 2866

Legal representative for Applicants

Name

Sophie Thomson

Practising certificate number

29456

Firm

Patterson Byfield and Bryen

Contact solicitor

Sophie Thomson

Address

Fitzderby Chambers, 1e Fitzroy Street Walcha NSW 2354

Telephone

(02) 6777 2066

Email

pbbwalcha@northnet.com.au

Electronic service address

Not applicable

DETAILS ABOUT RESPONDENTS**First Respondent**

Name Minister for Local Government
Address Level 17, 52 Martin Place, Sydney NSW 2000

Second Respondent

Name Chief Executive of the Office of Local Government
Address Level 17, 52 Martin Place, Sydney NSW 2000

Third Respondent

Name Mr Richard Pearson, Delegate
Address

Fourth Respondent

Name State of New South Wales
Address Level 17, 52 Martin Place, Sydney NSW 2000