



AGENDA

EXTRAORDINARY MEETING

19 January 2016

LEICHHARDT MUNICIPAL COUNCIL

EXTRAORDINARY MEETING OF COUNCIL

NOTICE IS HEREBY GIVEN THAT AN **EXTRAORDINARY MEETING** OF THE LEICHHARDT MUNICIPAL COUNCIL WILL BE HELD IN THE COUNCIL CHAMBERS, LEICHHARDT TOWN HALL, 107 NORTON STREET, LEICHHARDT, ON 19 JANUARY 2016 at 6:30 PM.

Peter Head
GENERAL MANAGER

15 January 2016

BUSINESS :

**** ACKNOWLEDGEMENT OF COUNTRY**

I acknowledge the Gadigal and Wangal people of the Eora nation on whose country we are meeting today, and their elders past and present.

**** APOLOGIES AND APPLICATIONS FOR LEAVE OF ABSENCE AND/OR CONDOLENCES**

**** DECLARATION OF PECUNIARY INTERESTS AND NON-PECUNIARY INTERESTS**

***** BUSINESS**

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| ITEM 1 | NSW GOVERNMENT'S MERGER PROPOSAL – ASHFIELD, LEICHHARDT AND MARRICKVILLE COUNCILS..... | 3 |
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**ITEM 1 NSW GOVERNMENT MERGER PROPOSAL – ASHFIELD,
LEICHHARDT AND MARRICKVILLE COUNCILS**

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| Division | General Manager |
| Author | Peter Head General Manager; Mark Bonanno Manager Legal Services |
| Meeting date | 19 January 2016 Extraordinary Meeting |
| Strategic Plan Key Service Area | Community well-being Accessibility Place where we live and work A sustainable environment Business in the community Sustainable services and assets |

SUMMARY AND ORGANISATIONAL IMPLICATIONS

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| Purpose of Report | To enable Council to consider: <ul style="list-style-type: none"> • The NSW Government Merger Proposal process • Proposed framework for submission to the Public Inquiry • Proposed dates to consider and endorse the final submission (due by 28 February 2016) • Proposed public information campaign • Legal implications • Contingency planning |
| Background | The NSW Premier and the Minister for Local Government on Friday 18 th December 2015 announced the proposed amalgamations for Sydney and Regional NSW councils ; reducing the number of councils in the Sydney region from 43 to 25. . The Minister for Local Government in turn made a formal proposal to merge councils (in our case to merge Ashfield, Marrickville and Leichhardt Council) on the 6 th January 2016; in doing so he has referred the proposal to the Chief Executive of the Office of Local Government to hold a Public Inquiry and report through his Delegate to the Minister. The Boundaries Commission will make comment to the Minister on the Delegate's report. Final outcomes are expected mid-year |
| Current Status | The Public Inquiry will be held on Tuesday 2 February with a closing date for submissions on Sunday 28 February 2016. |
| Relationship to existing policy | Council's policy remains to standalone |
| Financial and Resources | Approximately \$10,000 required for a public |

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| <p>Implications</p> | <p>information campaign and \$10,000 as a provisional amount to assist with developing a transition plan should the amalgamations proceed; contingency funds amounting to \$78,000 are currently available if council decides to undertake a Poll, this would cost an additional \$215,000 approximately for the NSW Electoral Commission to undertake</p> |
| <p>Recommendations</p> | <p>That Council:</p> <ol style="list-style-type: none"> 1. Requests the General Manager to prepare a draft submission on the proposed merger proposal for the consideration of Council at its Policy meeting of the 9th February 2016 based on the proposed framework details as contained within this report. This framework responds to the factors in s263(3) of the Local Government Act ; essentially sets out the case for Leichhardt standing alone ; and provides options for council to make recommendations for interim and new council governance arrangements in the event that amalgamations proceed. 2. Publicly exhibit a Draft Submission once adopted at the 9th February Policy meeting and report back to the 23rd February Ordinary meeting with a final Draft Submission in order to meet the Inquiry deadline of Sunday 28th February 2016 3. Endorses the proposed public information campaign as detailed in this report, including a double sided A4 DL brochure for distribution to all residents and businesses on the merger proposal and the inquiry process encouraging their full participation in that process ; and allocates \$10,000 from available funds to meet these campaign costs 4. Determine whether it wishes to add to the public information campaign by conducting a Poll of electors 5. Notes the various legal implications as detailed within this report and keeps all matters under review 6. Notes the need for the General Manager to commence essential contingency planning and |

| | |
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| | allocates a nominal \$10,000 to assist in preparation of a transition plan to be developed jointly by the 3 councils should a new council be formed |
| Notifications | As proposed for the public information campaign |
| Attachments | Annexure 1 – Council Decision Making During Merger Proposal Periods (Section 23A guidelines) Annexure 2 - NSW Government Merger Proposal report Annexure 3 – The legislative Framework around Wards Annexure 4 – Request for a Poll Annexure 5 – Legal Implications |

Purpose of Report

To enable Council to consider:

- The NSW Government Merger Proposal process
- Proposed framework for submission to the Public Inquiry
- Proposed dates to consider and endorse the final submission (due by 28 February 2016)
- Proposed public information campaign
- Legal implications
- Contingency planning

Recommendations

That Council:

1. Requests the General Manager to prepare a draft submission on the proposed merger proposal for the consideration of Council at its Policy meeting of the 9th February 2016 based on the proposed framework details as contained within this report. This framework responds to the factors in s263(3) of the Local Government Act ; essentially sets out the case for Leichhardt standing alone ; and provides options for council to make recommendations for interim and new council governance arrangements in the event that amalgamations proceed.
2. Publicly exhibit a Draft Submission once adopted at the 9th February Policy meeting and report back to the 23rd February Ordinary meeting with a final Draft Submission in order to meet the Inquiry deadline of Sunday 28th February 2016
3. Endorses the proposed public information campaign as detailed in this report, including a double sided A4 DL brochure for distribution to all residents and businesses on the merger proposal and the examination process encouraging their full participation in that process ; and allocates \$10,000 from available funds to meet these campaign costs
4. Determine whether it wishes to add to the public information campaign by conducting a Poll of electors
5. Notes the various legal implications as detailed within this report and keeps all matters under review
6. Notes the need for the General Manager to commence essential contingency planning should a new council be formed; and allocates a nominal \$10,000 to assist in preparation of a transition plan to be developed jointly by the 3 councils.

Background

In responding to the Independent Pricing and Regulatory Tribunal (IPART) Fit for the Future findings (which found Leichhardt Council unfit despite satisfying all the financial sustainability criteria) as well as the NSW Government request to

reconsider merger preferences, Council at its Policy meeting of the 10th November resolved as follows:

That Council

- 1. Reaffirms its unambiguous position that Leichhardt Council can and should stand alone - the recently updated evidence based business case clearly shows this remains the best option for our community.*
- 2. Provides feedback to the State Government on IPART's assessment of our Fit for the Future Standalone submission in line with the details contained within this report*
- 3. Responds immediately to the State Government's invitation for merger preferences by advising that*
 - a. Leichhardt Council's 3 way merger preference with Ashfield and Marrickville Councils is offered strictly on the basis that the Government proceeds with compulsory mergers.*
 - b. The 3 way merger preference does not constitute an amalgamation proposal under the Local Government Act*
 - c. Leichhardt Council reiterates its strong stand alone position, categorically rejects the State Government's 6 council Inner West merger, or any merger involving Auburn Council, and will withdraw from this 3 way merger preference if the State Government does not proceed with forced amalgamations.*
- 4. Immediately make all expert internal and external legal advice Councillors have received on this matter publicly available.*
- 5. That Leichhardt Council support the "Rally for Local Democracy" on 18 November organised by Unions NSW and Save Our Council's Coalition.*

The NSW Premier, Hon Mike Baird MP and the Minister for Local Government, Hon Paul Toole on Friday 18th December 2015 subsequently announced the proposed amalgamations for Sydney and Regional NSW councils ; reducing the number of councils in the Sydney region from 43 to 25.

The Process

The Proposal Phase

The Minister for Local Government took the next step and made a formal proposal to merge councils (in our case to merge Ashfield, Marrickville and Leichhardt Council) on the 6th January 2016; in doing so he has referred the proposal to the Chief Executive of the Office of Local Government for examining and reporting on the proposal.

This is the effective date therefore for commencement of the Proposal Phase - from which time we need to observe the s23A guidelines imposed on councils during the merger proposal period, especially about expending significant unbudgeted funds or imposing significant future financial commitments on a new council (**annexure 1**).

During this period, staff (other than Senior Staff) have protections against forced redundancies (s354C of the Act) independent of the 3 year protection provisions under s354F which apply to staff transferred to a new council (note that Leichhardt Council's adopted policy extends this protection to 5 years).

Accompanying this announcement was a merger proposal report prepared by the State Government for amalgamation of Ashfield, Leichhardt and Marrickville
(annexure 2)

The Chief Executive of the Office of Local Government (OLG) in turn delegated the responsibility of examining and reporting on the proposal to 18 delegates; in our case Ms. Cheryl Thomas who has since written to council confirming her appointment to conduct a public inquiry into the proposal and seeking a meeting with council representatives (now set for 6pm on Wednesday 20th January level 2 Administration Centre)

Delegates were appointed on the basis of their skills and experience, and assigned to various local areas based on ensuring there were no conflicts of interest. There is no right to question or challenge the appointment of a delegate as far as the Government is concerned.

The public inquiry will commence on Tuesday 2 February at the Wests Ashfield Leagues Club. There will be 2 sessions (from 1 to 5pm and 7 to 10pm). Speakers must pre-register, and will have 6 minutes to present (organisations will be given 10 to 15 minutes). The inquiry will be extended to the following day if necessary. The closing date for written submissions is Sunday 28 February

The Inquiries were advertised in the Sydney Morning Herald on Tuesday 12th January (there does not appear to be any further public notices to occur other than in the local paper and generic radio ads, both yet to occur) and councils can assist in raising public awareness (at their cost).

Delegates will need to finalise their report to the Minister within the next 1 to 2 months i.e. end March or April (likely by 31st March).

The Boundaries Commission, currently being constituted, will provide comments for the Minister on the Delegate's reports. They will not however hold any further inquiries

The Minister (around end April/end May) will then review the Delegate's report and Boundary Commission comments; and mid-year (end May/end June) will make his decision to either seek a proclamation from the Governor to proceed with the amalgamation or choose not to proceed.

The Transition Phase

This commences on the date of Proclamation and concludes when a council is elected. A proclamation (June/July) will likely mean that current councils no longer exist, therein creating the new council around mid-2016. How the new council would operate is still to be decided by the Government but there are 2 options

- a. under an administrator
- b. appointment of some or all of the former councillors as councillors of the new council (pending elections in September 2016 but more likely March 2017)

Councillors and Senior Staff won't know what option the Government intends to take until the Proclamation is actually made.

Establishment and Protection Phase

This commences with the election of the new council and ends 3 to 5 years after staff are transferred to the new council.

Funding of \$10mill. for Sydney Metro councils plus \$15mill. Stronger Communities funding for 3 or more councils is available; in our case, if amalgamations proceed, amounting to \$25 million

For new councils, former council rate structures will be preserved for 4 years (ie Leichhardt Council's rate structure will remain for the next 4 years and thereafter harmonised with the other 2 councils if the merger proceeds) ; nor will any new Special Rate Variations be allowed during this 4 year period

Ongoing Operations Phase

This commences at the expiration of all staff protection provisions.

Proposed framework for submission to the Public Inquiry

The Delegate is required to review the proposed merger against a number of factors specified under the Local Government Act (S263) that must be considered:

1. financial advantages or disadvantages
2. community of interest and geographic cohesion
3. existing historical and traditional values and the impact of change on them,
4. attitude of the residents and ratepayers,
5. elected representation for residents and ratepayers,
6. ability of the councils of the areas concerned to provide adequate, equitable and appropriate services and facilities,
7. the impacts on the employment of the staff by the councils,
8. the desirability (or otherwise) of dividing the resulting area or areas into wards,
9. the need to ensure that the opinions of each of the diverse communities of the resulting area or areas are effectively represented,
10. other factors relevant to the provision of efficient and effective local government in the existing and proposed new areas

Council's submission will therefore be structured around each of these 10 factors, noting in particular that if council doesn't express a view or recommendations on governance structures and the like (including wards for example) there will be no other opportunity to make further representations should the Minister proceed with the amalgamations.

The proposed submission framework is as follows:

| S263 Factors | Approach |
|--|--|
| 1.financial advantages or disadvantages | Standalone remains the best option based on the arguments as submitted to the Government in November 2015 – our current well established, solid financial position ; the updated evidence based financial modelling and Leichhardt Council's adopted Long Term Financial Plan demonstrating that standalone is superior in achieving the 7 financial benchmark indicators much earlier than the amalgamated council ; along with improved operating results ; huge amalgamation costs |
| 2. community of interest and geographic cohesion 3. existing historical and traditional values 5. elected representation for residents and ratepayers 9. the need to ensure that the opinions of each of the diverse communities of the resulting area or areas are effectively represented | All in accordance with our submission responding to the IPART review in June and the Upper House Inquiry in August 2015 including the unique heritage, loss of identity and place, loss of representation including analysis of resident/councillor ratios for all the Sydney metro proposed amalgamations to demonstrate inequities, loss of local accountability, loss of priorities to local issues, Issues surrounding wards or otherwise will also influence responses to factors 5 and 9. |
| 4. attitude of the residents and ratepayers, | As submitted to the IPART review; random phone survey; on line and reply paid survey demonstrating that the community (55% - 72%) preferred a standalone position . Will also include further outcomes from the public inquiry and councils public information campaign Council to determine if it is holding a Poll |
| 6. ability of the councils of the areas concerned to provide adequate, equitable and appropriate services and | As submitted to the IPART review & Upper House Inquiry; the risk of not achieving savings eg staff redundancies, |

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| facilities, | reduced purchasing leading to reduction in services or increases in costs; harmonising different service levels which must mean either increased costs or reduced services |
| 7. the impacts on the employment of the staff by the councils | As submitted to IPART. Huge amalgamation costs; risk of forced staff redundancies; organisation disruption and upheaval with low staff morale. Opportunity for council to make recommendations for interim staffing arrangements pending elections for the new council if amalgamations proceed |
| 8. the desirability (or otherwise) of dividing the resulting area or areas into wards, | Details of ward legislative requirements are attached to this report (annexure 3) allowing councillors to review options for the new council if amalgamations proceed including councillor numbers and whether there is a recommendation or otherwise for wards |
| 10. other factors relevant to the provision of efficient and effective local government in the existing and proposed new areas | Opportunity for council to make recommendations for interim governance and staffing arrangements pending elections for the new council if amalgamations proceed. Option for all councillors and senior staff to remain in place during the Transition phase eg Canada Bay/Queensland amalgamations model Additional option to make recommendations for the new council if amalgamations proceed eg, election of Mayor, new council name. |

Proposed dates to consider and endorse the final submission (due by 28 February 2016)

1. Draft submission presented to the 9th February Policy meeting for exhibition
2. Publicly exhibit Draft Submission from 10 to 22 February
3. Final Draft Submission for endorsement to the 23rd February Ordinary Council meeting

Proposed public information campaign

The s23A guidelines state that councils should avoid spending council resources to oppose or support a merger proposal for personal or political reasons – any information campaigns should be approved at an open council meeting, be transparent and objective

To ensure that the community is fully informed and aware of the merger proposal and public inquiry, in particular addressing the s263 (3d) factor about the attitude of residents and ratepayers, the following actions are recommended :

1. Media releases – as required but including
 - a. immediate (joint Mayors release) to inform the community about the merger proposal and the public inquiry
 - b. around 10th February on the Draft submission exhibition;
 - c. after the 23rd February once council has adopted its final submission
2. Website and e news communications with a dedicated e newsletter specifically about the merger proposals
 - a. Immediate and ongoing
3. Social media
 - a. Immediate and ongoing
4. Double sided A4 DL brochure to all residents and businesses hand delivered prior to the 2nd February public inquiry
 - a. Content includes facts about the merger proposal including timelines, councils adopted position, the public inquiry and how to have your say
5. Local paper advertisements
 - a. About the forthcoming public inquiry
 - b. About the Draft Submission once on exhibition

This public information campaign is estimated to cost approximately \$10,000, made up of the following:

- Design and print 26,700 DL brochures \$3500
- Distribute hand delivery\$4000
- 3 x ¼ page adverts \$2100
- Contingencies \$400

In addition, a request for an extraordinary meeting has now been received by the Mayor and myself to consider the conducting of a poll of electors on the amalgamation (**annexure 4**).

Council will therefore need to decide if it wishes to proceed with such a proposal. The logistics around conducting a Poll, which the NSW Electoral Commission has advised will cost approximately \$215,000, are contained in the Legal Implications advice (**annexure 5**).

Legal implications

Council's Manager Legal Services has undertaken a detailed review of all the legal implications associated with the merger proposal and process (**annexure 5**)

In summary:

- The Government's public views assessment process is possibly inadequate and should be reviewed when we have firmer details of how the section 263(3d) process proceeds.
- Council is able to undertake a poll of its electors but to have some potential bearing on the merger proposal, all 3 councils should participate
- Council should write to the Minister for Local Government seeking the immediate release of the KPMG report that underpins his proposal to amalgamate Ashfield, Leichhardt and Marrickville Councils in order to enable Council to provide an informed response to the Delegate.
 - On Friday 15 January Premier & Cabinet advised that they would release the KPMG model assumption details either on this date or Monday 18 January
- There is no legal impediment for the Government if it wished to keep the former councils in place until the election of the new council
- Other legal issues will be kept under review

Contingency Planning

A decision by the Minister on whether to form a new council could take place as early as mid this year.

If a Proclamation to that effect is signed, the existing councils will likely cease to exist and the Proclamation will set out interim administrative arrangements (e.g. appoint an acting General Manager and either an Administrator or some or all existing Councillors as an interim 'council'). It remains unclear whether senior staff contracts (GMs in particular) will terminate with the existing councils or will be transferred to the new council.

General Managers are responsible for the efficient and effective operation of council. In order to discharge that obligation on behalf of the Leichhardt community, transition planning needs to be well advanced on how to seamlessly transition existing operations to a new council should that occur. There is a considerable amount of work required to enable that to happen – most particularly the preparation and execution of a detailed transition plan. This work will inevitably require considerable collaboration between the General Managers, leadership teams and staff of each of the councils.

Detailed planning in areas such as the following will be needed:

- Communication – Internal & External;
- Customer Experience;
- Strategic Planning;

- Legal;
- Policy;
- Services;
- Technology;
- People & Culture;
- Finance;
- Governance & Risk Management;
- Accommodation.

It would be preferable for this work to be undertaken by existing staff across the councils to ensure ownership of and commitment to the plans. Strong facilitation and training (where required) could usefully be provided by external consultants. A provisional allocation of \$10,000 is suggested to enable these processes to commence.

In summary, this contingency planning involves preparation of a detailed transition plan by existing staff in the event that amalgamations proceed. It does not involve any actual transitioning, only planning how it is best done. Much of this work requires discovery, audit, documentation and review of vast amount of data (policies, contracts, services to name only a few).

Should the amalgamations not proceed this will not be wasted work as each council will have identified through this process a number of key improvement process/efficiency issues (not entirely dissimilar to our “Living within our Means” internal efficiency program)

Attachments

Annexure 1 – Council Decision Making During Merger Proposal Periods (Section 23A guidelines)

Annexure 2 – NSW Government Merger Proposal report

Annexure 3 – The legislative Framework around Wards

Annexure 4 – Request for a Poll

Annexure 5 – Legal Implications

ANNEXURE 1



Office of Local Government

**COUNCIL DECISION MAKING DURING
MERGER PROPOSAL PERIODS**

Strengthening local government



DECEMBER 2015

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(Special arrangements may be made if these hours are unsuitable)
All offices are wheelchair accessible.

ALTERNATIVE MEDIA PUBLICATIONS

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PURPOSE

These Guidelines provide guidance to councils that are the subject of merger proposals on the appropriate exercise of their functions during the period in which a merger proposal is under consideration by the Chief Executive of the Office of Local Government, the Boundaries Commission and the Minister for Local Government under the Act.

It is important during any merger proposal period that councils continue to operate appropriately, effectively and efficiently to meet the needs of their communities. The Office of Local Government recognises that councils, councillors and council staff all share the desire to continue to serve their communities effectively during the merger proposal period and will have many questions about how to do this in a manner that is appropriate and permissible. These Guidelines seek to assist councils to do this and to provide clear guidance on what is and is not appropriate and permissible during the merger proposal period.

These Guidelines are issued under section 23A of the Act meaning that all councils must consider them when exercising their functions.

THE SCOPE OF THESE GUIDELINES

These Guidelines apply to decisions made by councils the subject of a merger proposal during a merger proposal period.

For the purposes of these Guidelines:

“the Act” – means the *Local Government Act 1993* (NSW).

“a decision” - includes the exercise by the council of any function (including the expenditure of monies and the use of resources) and includes functions exercised under delegation by council officials.

“council officials” – includes a councillor (including the Mayor), a member of council staff or a delegate of a council.

“merger proposal” – means a proposal for the amalgamation of two or more local government areas or the alteration of the boundaries of one or more local government areas initiated by the Minister for Local Government, a council affected by the proposal or an appropriate minimum number of electors under section 218E of the Act.

“merger proposal period” – means the period of time during which a council is affected by a merger proposal, commencing on the day a proposal is made with respect to the council’s area under section 218E of the Act and concluding on:

- the day after the Minister decides to decline to recommend to the Governor that a proposal referred to the Boundaries Commission or the Chief Executive be implemented under section 218F(8), or
- the date specified in the proclamation implementing the proposal if the Minister

recommends to the Governor that the proposal be implemented.

“**new council**” – means a new council created as a result of a merger proposal.

COUNCIL DECISION MAKING DURING MERGER PROPOSAL PERIODS – GENERAL PRINCIPLES

During a merger proposal period, councils and council officials should be mindful of the need to act in the best interests of their community and for the purposes of meeting the needs of that community. Councils should not make decisions that needlessly impose avoidable costs on a new council.

In particular, councils and council officials should not make decisions during a merger proposal period for the following purposes:

- 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
- to exercise their functions or use council resources to oppose or support a merger proposal for personal or political purposes (see below for more information on merger-related information campaigns)
- to seek to damage or impede the operational effectiveness of a new council including by (but not limited to):
 - making significant and/or ongoing financial commitments that will be binding on a new council
 - making other significant undertakings or commitments that will be binding on a new council
 - making decisions that are designed to limit the flexibility or discretion of a new council
 - deliberately and needlessly expending council resources to minimise the resources available to a new council on its commencement.

INTEGRATED PLANNING AND REPORTING

During a merger proposal period, councils should continue to implement and operate in accordance with their adopted Community Strategic Plan, Delivery Program, Operational Plan and Resourcing Strategy.

Annual reporting requirements continue in accordance with the Act, and a report on the progress on implementation of the Community Strategic Plan should be presented at the final meeting of each of the outgoing councils.

Preparation of Operational Plans

Should councils prepare Operational Plans during a merger proposal period, these should be prepared as a sub-plan of the council's adopted Delivery Program and should not depart from the council's adopted Delivery Program.

The Operational Plan should directly address the actions outlined in the council's adopted Delivery Program and identify projects, programs or activities that the council will undertake within the financial year towards addressing these actions.

The Operational Plan should include a detailed budget for the activities to be undertaken in that year.

FINANCIAL MANAGEMENT

Expenditure during merger proposal periods

During a merger proposal period, councils should only expend monies in accordance with the detailed budget adopted for the purposes of implementing their Operational Plans for the relevant year.

There should be clear and compelling grounds for any expenditure outside of a council's adopted budget. Expenditure outside of the adopted budget should be approved by the council at a meeting that is open to the public.

The council's resolution approving the expenditure should disclose the reasons why the expenditure is required and warranted.

Should such expenditure be outside of a council's adopted budget and be of an amount equal to or greater than \$250,000 or 1% of the council's revenue from rates in the preceding financial year (whichever is the larger), then such a variation shall be advertised and public comments invited.

Councils the subject of merger proposals should not make decisions that will impose a significant and/or ongoing financial commitment on a new council.

Entry into contracts and undertakings

Councils the subject of merger proposals should not enter into a contract or undertaking involving the expenditure or receipt by the council of an amount equal to or greater than \$250,000 or 1% of the council's revenue from rates in the preceding financial year (whichever is the larger), unless:

- the contract or undertaking is being entered into as a result of a decision made or procurement process commenced prior to the start of the merger proposal period; or
- entry into the contract or undertaking is reasonably necessary for the purposes of:
 - meeting the council's ongoing service delivery commitments to its community; or

- to implement an action previously approved under a council's Delivery Program or the Operational Plan for the relevant year

WORKFORCE MANAGEMENT

Appointment and termination of employment of general managers and senior staff

A council affected by a merger proposal should not during a merger proposal period appoint or reappoint a person as the council's general manager, other than:

- appointing a person to act as general manager under section 336(1) of the Act, or
- temporarily appointing a person as general manager under section 351(1) of the Act.

Councils affected by merger proposals should also avoid making appointments of senior staff other than temporary or "acting" appointments unless there are compelling operational reasons for doing so. Outside of these circumstances, where possible, councils should make temporary appointments to fill vacancies to senior staff positions during the merger proposal period.

There is no restriction on councils' ability to terminate the employment of general managers and other senior staff during a merger proposal period. However, in doing so, councils must comply with the standard contracts of employment for general managers and senior staff and the 'Guidelines for the Appointment & Oversight of General Manager' (July 2011).

Organisation restructures

Councils affected by merger proposals should not undertake organisation restructures unless there are compelling operational grounds for doing so.

No forced redundancies of non-senior staff

Councils affected by a merger proposal should not during a merger proposal period terminate the employment of non-senior staff on grounds of redundancy without their agreement (see section 354C).

Determination of employment terms and conditions for council staff

Determinations of the terms and conditions of employment of council staff members (including in an industrial agreement, in an employment contract or in an employment policy of the council) made during a merger proposal period will not be binding on a new council unless the determination has been approved by the Minister for Local Government (see section 354E).

The Minister's approval is not required for the following determinations:

- determinations authorised by an industrial instrument, or employment policy of the former council, made or approved before the merger proposal period
- determinations in, or authorised by, an award, enterprise agreement or other

industrial instrument made or approved by the Industrial Relations Commission or Fair Work Australia

- determinations that comprise the renewal of an employment contract (other than for the general manager) entered into before the proposal period.

As a general rule, the Minister will approve determinations unless he is satisfied that the determination arises from or is in anticipation of a merger proposal and would result in an unjustifiable increase or decrease in the obligations of the new council in relation to transferred staff members (see section 354E(3)).

REGULATORY FUNCTIONS

Councils and council officials should exercise their regulatory functions strictly in accordance with statutory requirements and the requirements of the *Model Code of Conduct for Local Councils in NSW* and solely on the basis of relevant considerations.

Councils should not exercise their regulatory functions (including in relation to development applications or strategic land use planning) for the purposes of campaigning for or against a merger proposal.

Councils should not make decisions that would not otherwise withstand legal challenge on the basis that the new council and not the outgoing one would need to defend any such challenge.

MERGER-RELATED INFORMATION CAMPAIGNS

Any public information campaigns conducted by councils with respect to merger proposals:

- should be conducted for the purposes of informing the local community about the merger proposal and should be proportionate to this purpose
- should not involve disproportionate or excessive expenditure or use of council resources
- should be conducted in an objective, accurate and honest manner and should not be deliberately misleading
- should not be used to endorse, support or promote councillors, individually or collectively, political parties, community groups or candidates or prospective candidates at any election, Local, State or Federal.

Merger-related information campaigns should be approved by councils at an open council meeting. Councils should also publicly approve a budget for the campaign at an open council meeting before incurring any expenditure on the campaign.

Any variations to the budget should also be publicly approved by the council at an open meeting.

Councils should account fully and publicly for the costs of merger-related information campaigns, including staff and contractor costs. This information should be accessible to the community on councils' websites.

ENFORCEMENT OF THESE GUIDELINES

These Guidelines are issued under section 23A of Act. Councils are required to consider the Guidelines in exercising their functions. The Office of Local Government will be monitoring compliance with these Guidelines.

Failure to comply with the Guidelines may result in the Minister for Local Government issuing a performance improvement order under section 438A of the Act against a council to compel them to comply with the Guidelines or to correct any non-compliance.

The Chief Executive of the Office of Local Government may also surcharge a council official under section 435 the amount of any deficiency or loss incurred by the council as a consequence of the negligence or misconduct of the council official.

ANNEXURE 2



The Hon Paul Toole MP
Minister for Local Government

Clr Darcy Byrne
Mayor
Leichhardt Municipal Council
PO Box 45
LEICHHARDT NSW 2040
leichhardt@lmc.nsw.gov.au
dbyrne@lmc.nsw.gov.au

06 January 2016

Dear Clr Byrne

Today I referred a council merger proposal relating to your Council to the Chief Executive of the Office of Local Government (OLG) for examination and report under the *Local Government Act 1993*.

The merger proposal identifies significant benefits for the local community. It has been informed by four years of consultation with NSW councils, independent assessment, council merger preferences, and feedback from communities and stakeholders.

The Chief Executive has delegated the function of examining and reporting on the proposal to a Delegate.

The proposal relating to your Council and details regarding the process being undertaken, including the name of the Delegate, can be located at: www.councilboundaryreview.nsw.gov.au

The process for reviewing a council merger proposal will now commence, and will allow councils and the community to have their say through public inquiries (public meetings) and written submissions. I encourage you to take advantage of this opportunity to put forward your views.

Delegates will prepare reports that consider the factors in the legislation, including financial considerations, communities of interest, elected representation, employment of staff, service and facilities, and the attitude of residents and ratepayers. These reports will go to me, as well as the independent Local Government Boundaries Commission, which will comment on each report. The timeframe for the process is a matter for the Delegate and the Boundaries Commission. I will carefully consider the reports before making a final decision. This is not expected to be before the middle of 2016.

The Government remains committed to allowing councillors that are supportive of making the new council a success the opportunity to shape the future of the new council.

No decision has been made in relation to the manner in which existing councillors may continue to be involved in a new council for an amalgamated area. Options available under the *Local Government Act 1993* include the appointment of a single person or group of people (which may include councillors for presently existing council areas) to act as administrators, or the continuation in office of councillors from the former council areas, as councillors of a new area ahead of the next election. In addition, councils can establish Local Representation Committees, to help shape the new council.

On behalf of the Government, I thank you for your input into this process.

Yours sincerely



Paul Toole MP
Minister

Merger Proposal:

Ashfield Council

Leichhardt Municipal Council

Marrickville Council

JANUARY 2016

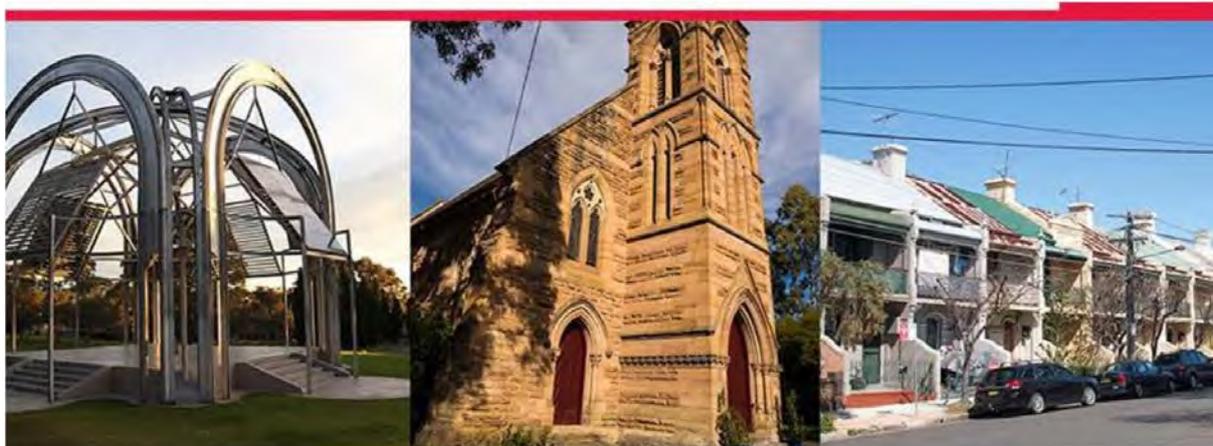
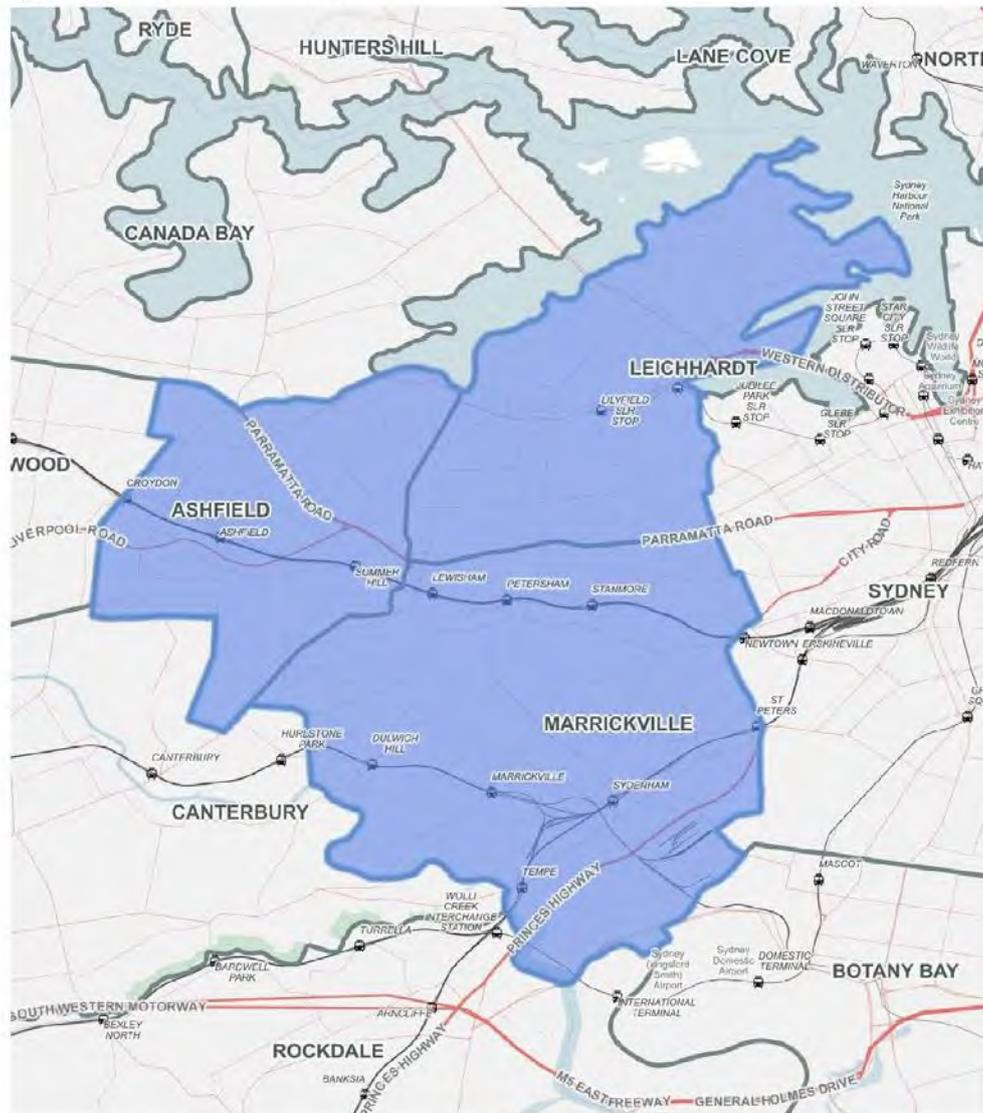


Figure 1: Proposed new local government area



Proposed merger: Ashfield, Leichhardt and Marrickville

Data sources: Land and Property Information
Datum and Projection: GDA94



- Proposal Area
- Current LGA Boundaries
- Suburbs
- Waterbodies
- Open space
- Roads
- Rivers
- Rail

MINISTER'S FOREWORD

Four years of extensive consultation, research and analysis have demonstrated that change is needed in local government to strengthen local communities.

Independent experts have concluded that NSW cannot sustain 152 councils – twice as many as Queensland and Victoria.

After considering the clear need for change, the Independent Local Government Review Panel (ILGRP) research and recommendations, the assessment of councils by the Independent Pricing and Regulatory Tribunal (IPART), council merger preferences, community views and the unique needs and characteristics of each area, I am putting forward the proposal to merge the local government areas of Ashfield, Leichhardt and Marrickville.

The proposed merger will create a council better able to meet the needs of the community into the future and will provide significant benefits for the community.

This document details the benefits the merger will provide to communities, including:

- a total financial benefit of \$113 million over a 20 year period that can be reinvested in better services and more infrastructure;
- a projected 61 per cent improvement in annual operating results;
- potentially reducing the reliance on rate increases through Special Rate Variations (SRVs) to fund local infrastructure;
- reducing the reliance on rate increases through Special Rate Variations to fund local infrastructure;
- greater capacity to effectively manage and reduce the infrastructure backlog across the three councils;
- improved strategic planning and economic development to better respond to the changing needs of the community;
- effective representation by a council with the required scale and capacity to meet the future needs of the community; and
- providing a more effective voice for the area's interests and better able to deliver on priorities in partnership with the NSW and Australian governments.

With the merger savings, the NSW Government funding of \$25 million – and a stronger voice – the new council will be better able to provide the services and infrastructure that matter to the community, projects like:

- improving local roads;
- investing and maintaining parks and open spaces to meet the recreation needs of residents; and
- completing the missing links in the area's bike network with the aim of creating direct and safe pedestrian and cycling environment with improved signage.

The savings, combined with the NSW Government's policy to freeze existing rate paths for four years, will ensure that ratepayers get a better deal.

A suitably qualified delegate of the Chief Executive of the Office of Local Government will consider this proposal against criteria set out in the *Local Government Act (1993)*, and undertake public consultation to seek community views.

I look forward to receiving the report on the proposal and the comments from the independent Boundaries Commission.



Minister Paul Toole

January 2016

EXECUTIVE SUMMARY

The communities of Ashfield, Leichhardt and Marrickville share many common characteristics and connections, including strong cultural diversity, and will benefit by \$113 million from a merged council with a stronger capability to deliver on community priorities and meet the future needs of its residents.



Introduction

This is a proposal by the Minister for Local Government under section 218E(1) of the *Local Government Act (1993)* for the merger of the Ashfield, Leichhardt Municipal and Marrickville local government areas.¹ This merger proposal sets out the impacts, benefits and opportunities of creating a new council.

The creation of this new council will bring together communities with similar expectations in terms of demands for services, infrastructure and facilities.

The proposal has been informed by four years of extensive council and community consultation and is supported by independent analysis and modelling by KPMG.

In 2015, the Independent Pricing and Regulatory Tribunal (IPART) assessed that each of these three councils is 'not fit' to remain as a standalone entity.

IPART determined that Ashfield, Leichhardt Municipal and Marrickville councils each satisfy key financial performance benchmarks. However, IPART assessed that operating individually, each council has limited scale and capacity to effectively deliver on behalf of residents and meet future community needs.

The new council for the new local government area will not only oversee an economy that shares many similar residential, workforce and industry characteristics, but will have enhanced scale and capacity to help it deliver on local infrastructure priorities such as planning for affordable housing

¹ The end result if the proposal is implemented is that a new local government area will be created. For simplicity throughout this document, we have referred to a new council rather than a new local government area.

and seniors housing, and building a sustainable urban region.

Impacts, Benefits and Opportunities

A range of benefits and opportunities have been identified from the proposed merger, including a stronger balance sheet to meet local community needs and priorities.

Analysis by KPMG shows the new council has the potential to generate net savings to council operations. The merger is expected to lead to around \$88 million in net financial savings over 20 years.

Council performance will also be improved with a projected 61 per cent increase in annual operating results achieved within 10 years.² This means that there will be a payback period of three years after which the merger benefits will exceed the expected merger costs.

The analysis also shows the proposed merger is expected to generate, on average, around \$7 million in savings every year from 2020 onwards. Savings will primarily be from the removal of duplicate 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.³

The NSW Government has announced a funding package to support merging councils which would

² Operating results refer to the net financial position after subtracting total expenditure from total revenue in a given financial year.

³ NSW Government (2015), Local Government Reform: Merger Impacts and Analysis, December.

result in \$25 million being made available should the proposed merger proceed.

These savings may enable the new council to reduce its reliance on rate increases to fund new and improved community infrastructure.

Two of the three councils have recently received approval for Special Rate Variations (SRVs) from IPART. For example:

- Marrickville Council has an approved SRV of 3.0 per cent for a one-year period in 2015–16 ; and
- Ashfield Council has an approved cumulative SRV of 26.6 per cent over a four-year period from 2015–16.

The proposed merger is also expected to result in simplified council regulations for residents and businesses in the Ashfield, Leichhardt Municipal and Marrickville council areas given each council is currently responsible for separate and potentially inconsistent regulatory environments. Regulatory benefits include consistency in approaches to development approvals, health and safety, building maintenance, traffic management and waste management.

The proposed merger will provide significant opportunities to strengthen the role and strategic capacity of the new council to partner with the NSW and Australian governments on major infrastructure projects, addressing urban socio-economic challenges, delivery of services and focus on regional priorities.

This could assist in:

- reducing the existing \$65 million infrastructure backlog across the Ashfield, Leichhardt and Marrickville area;
- delivering urban priorities such as transport links across the area;
- stimulating small business start-ups and contributing to lower unemployment; and
- supporting economic growth and urban development while enhancing the standard of living and lifestyle that local residents value.

While a merged council will increase the current ratio of residents to elected councillors, the new ratio is likely to be comparable with levels in other communities across Sydney.

Next Steps

This merger proposal will be referred for examination and report under the *Local Government Act (1993)*.

Local communities have an important role to play in helping ensure the new council meets their current and future needs for services and infrastructure and will have an opportunity to provide input on how the new council should be structured.

Local communities will have an opportunity to attend the public inquiry that will be held for this merger proposal and an opportunity to provide written submissions. For details please visit www.councilboundaryreview.nsw.gov.au

Figure 2 Map showing boundaries for the proposed new council within Greater Sydney with Blacktown City Council highlighted for comparison



INTRODUCTION

This merger proposal has been informed by an extensive four-year consultation and review process.

The NSW Government has been working with local councils and communities since 2011 to strengthen council performance and ensure local government is well placed to meet future community needs.

A first key step in that process was the Independent Local Government Review Panel's (ILGRP) comprehensive review of local government and subsequent recommendations for wide-ranging structural reform and improvements to the system. In response, the NSW Government initiated the *Fit for the Future* reforms that required each local council to self-assess against key performance indicators and submit proposals demonstrating how they would meet future community needs.

The NSW Government appointed IPART in 2015 to assess each council's submission. IPART has now completed its assessment of 139 proposals (received from 144 councils) and concluded 60 per cent of councils are 'not fit' for the future. Many of these councils did not meet the elements of the 'scale and capacity' criterion (refer Box 1 below).

Ashfield, Leichhardt and Marrickville councils each submitted *Fit for the Future* proposals to remain as standalone councils. In assessing each council's submission, IPART determined that all three councils are 'not fit' to stand alone and that a merger is needed to achieve the required scale and capacity to meet the needs of residents now and in the future. This proposal aligns with the merger preferences submitted by all three councils following the IPART assessment process.

Box 1 Overview of scale and capacity

Key elements of 'scale and capacity'

Scale and capacity is a minimum requirement as it is the best indicator of a council's ability to govern effectively and provide a strong voice for its community. At a practical level, this includes being able to:

- undertake regional planning and strategic delivery of projects;
- address challenges and opportunities, particularly infrastructure backlogs and improving financial sustainability;
- be an effective partner for the NSW and Australian governments on delivering infrastructure projects and other cross-government initiatives; and
- function as a modern organisation with:
 - staffing capacity and expertise at a level that is currently not practical or economically possible for small councils;
 - innovative and creative approaches to service delivery; and
 - the resources to deliver better training and attract professionals into leadership and specialist roles.

A NEW COUNCIL FOR THE ASHFIELD, LEICHHARDT AND MARRICKVILLE AREA

The proposed new council will be responsible for infrastructure and service delivery to around 185,000 residents across Ashfield, Leichhardt and Marrickville area of Sydney.

The creation of a new council provides the opportunity to bring together the communities from across the local government areas of Ashfield, Leichhardt and Marrickville. These communities have key similarities in their occupations, lifestyles and socio-economic profiles as residents of the Inner West region of Sydney.

The new council will be responsible for infrastructure and service delivery to more than 223,000 residents by 2031. This reflects the expected population growth across the area of 1.0 per cent per annum.⁴

The proposed merger aligns with the approach of the NSW Government's Sydney Metropolitan Plan (known as *A Plan for Growing Sydney*). The Plan also identifies the importance of adopting a coordinated approach to managing the expected population growth across the Ashfield, Leichhardt and Marrickville area and the need to plan for, and respond to, the changing service and infrastructure needs of these communities. The NSW Government has identified a number of regional priorities that are directly relevant to the proposed new council. For example:

- delivering the Bays Precinct urban renewal program;
- delivering WestConnex, linking Sydney's west and south-west with the CBD, Sydney Airport and Port Botany;
- planning for major urban renewal in communities along the Parramatta Road corridor;
- planning for urban renewal along the length of the Inner West Light Rail extension; and
- protecting the natural environment, the visual amenity of the harbour foreshore, and the health of waterways such as Sydney Harbour and the Cooks River.

A new council with appropriate scale and capacity will be better able to partner with the NSW Government on the implementation of these urban priorities.

The establishment of a new council will also provide an opportunity to generate savings and efficiencies and reduce the current duplication of back-office functions, senior executive positions and potentially the many layers of current regulations. Any savings generated by a merger of these three councils could be redirected to improving local community infrastructure, lowering residential rates and/or enhancing service delivery. An overview of the current performance of the three existing councils and the projected performance of the new proposed entity is provided in Figure 3.

In addition, while IPART found each of the three councils satisfy financial performance criteria, it also found that each council's ability to effectively advocate for community priorities is affected by a lack of scale and capacity. A merged council will improve this, with an enhanced scale and capacity to better plan and coordinate investment in critical infrastructure and services. This should also put the new council in a better position to advocate to the NSW and Australian governments for the regional investments that will be needed for the future.

⁴ NSW Department of Planning & Environment (2014), NSW Projections (Population, Household and Dwellings).

Figure 3: Council profiles

| | Ashfield Council | Leichhardt Municipal Council | Marrickville Council | New Council |
|-----------------------------|---|---|---|---|
| |  |  |  |  |
| Population (2014) | 44,498 | 58,136 | 83,356 | 185,990 |
| Area | 8 sq km | 11 sq km | 17 sq km | 35 sq km |
| IPART Rating | NOT FIT | NOT FIT | NOT FIT | This merger proposal is broadly consistent with the findings of the ILGRP (2013) and IPART's Fit for the Future assessments (2015). The new council will likely have enhanced scale and capacity to better meet the future service and infrastructure needs of the community. |
| Operating Revenue (2013-14) | \$35.5m | \$83.4m | \$101.6m | \$263.6m (projected 2019-20) |
| Operating Result (2013-14) | \$0.6m | \$13.0m | \$3.7m | +\$11.1m projected improvement to 2019-20 operating results |
| Asset Base | \$206.9m | \$486.1m | \$572.1m | \$1.3bn |
| Infrastructure Backlog | 12 per cent | 7 per cent | 1 per cent | 5 per cent |

Sources: Australian Bureau of Statistics, Department of Planning and Environment, Office of Local Government, Council Long Term Financial Plans, Fit for the Future submissions to IPART and IPART Assessment of Council Fit for the Future Proposals.

Note: Totals may not sum due to rounding. Estimates of the new council's operating performance and financial position is based on an aggregation of each existing council's projected position as stated in respective Long Term Financial Plans (2013-14). In addition, it is assumed efficiency savings are generated from a merger, and this is reflected in the projected 2019-20 operating result for the new council. Further details are available in NSW Government (2015), Local Government Reform: Merger Impacts and Analysis, December.

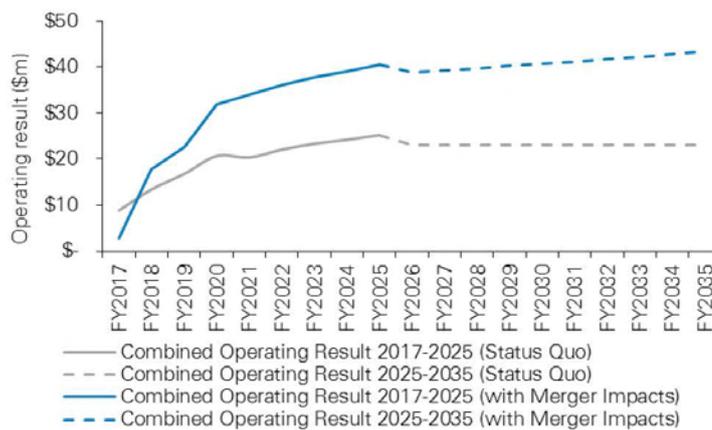
BENEFITS, OPPORTUNITIES AND IMPACTS

The proposed merger has the potential to provide a \$113 million benefit to communities over 20 years which could be support invested in critical local infrastructure and services and/or be utilised to address rate pressures.

Financial Benefits of the Proposed Merger

Analysis by KPMG in 2015 shows the proposed merger has the potential to generate a net financial savings of \$88 million to the new council over 20 years. Council performance will also be improved with a projected 61 per cent increase in annual operating results achieved within 10 years. The proposed merger is also expected to generate, on average, around \$7 million in savings every year from 2020 onwards.⁵ Consequently, the merged council will have a balance sheet that is stronger and in a better position to meet local community needs and priorities. Figure 4 illustrates how the proposed merger will lead to growing improvements in the operating performance of the new council compared to the current projected operating performance of each of the three councils.

Figure 4 Projected operating results of the Ashfield, Leichhardt Municipal and Marrickville councils, with and without a merger



Note: Operating results refers to the net financial position and is calculated as operating revenue less operating costs. It excludes revenue associated with capital grants and expenditure on capital items.

Source: Council Long Term Financial Projections (2013–14).

Gross savings over 20 years are modelled to be due to:

- removal of duplicate back office and administrative functions and streamlining senior management roles (\$84 million);
- efficiencies generated through increased purchasing power of materials and contracts (\$11 million); and
- a reduction in the overall number of elected officials that will in turn reduce expenditure on councillor fees (estimated at \$4 million).⁶

In addition, the NSW Government has announced a funding package to support merging councils which would result in \$25 million being made available should the proposed merger proceed. The implementation costs associated with the proposed merger (for example, information and communication technology, office relocation, workforce training, signage, and legal costs) are expected to be surpassed by the accumulated

⁵ NSW Government (2015), Local Government Reform: Merger Impacts and Analysis, December.

⁶ NSW Government (2015), Local Government Reform: Merger Impacts and Analysis, December.

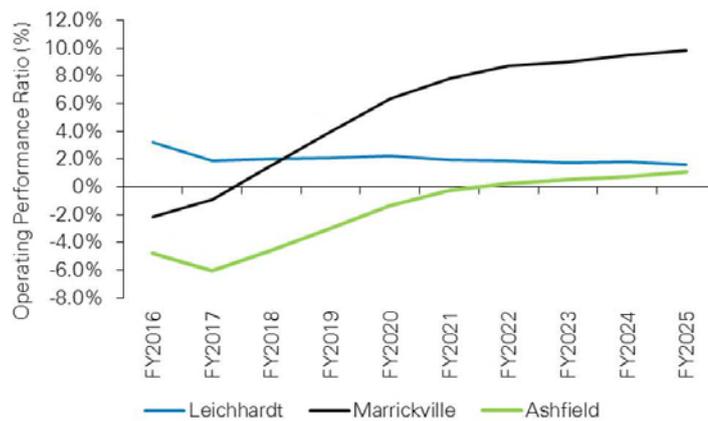
net savings generated by the merger within a three year payback period. The Local Government Act contains protections for three years for all council employees below senior staff level.

Merger benefits could be reinvested to:

- improve infrastructure – annual savings could be redeployed towards infrastructure renewal or capital works, including projects such as improving local roads and cycleways. Redeployment of savings could lead to cumulative additional infrastructure expenditure of almost \$88 million over 20 years;
- enhance service delivery – removal of duplicate back office and administration functions could provide the basis for employing an additional 66 staff for frontline services. This could include services such as library services and waste management services; and/or
- reduce rate pressures – annual savings could be used to reduce the existing dependency on SRVs to fund community infrastructure and/or avoid future rate increases.

The expected operating performance ratio of each council over the next 10 years is illustrated in Figure 5.⁷

Figure 5: Projected operating performance ratio by council (2016–2025)



Note: Operating performance ratio measures a council's ability to contain operating expenditure within operating income.

Source: Council Long Term Financial Plans (2013–14).

Both Marrickville and Ashfield show improving ratios, which is partly driven by increases in rate income as a result of the councils' approved SRVs. This merger proposal will provide the new council with the opportunity to strengthen its balance sheet and provide a more consistent level of financial performance. Overall, the proposed merger is expected to enhance the financial sustainability of the new council through:

- net financial savings of \$88 million to the new council over 20 years;
- a forecast 61 per cent increase in the operating result of the merged entity within 10 years;
- achieving efficiencies across council operations through, for example, the removal of duplicated back office roles and functions and streamlining senior management;
- establishing a larger entity with a broad operating revenue that is expected to exceed \$303 million per year by 2025;
- an asset base of approximately \$1.3 billion to be managed by the merged council; and
- greater capacity to effectively manage and reduce the infrastructure backlog across the area by maintaining and upgrading community assets and improving services.

⁷ Calculation of a council's operating performance ratio excludes any grants received from the council's reported operating revenue. This enables comparison of council operating performance based on own-source revenue.

Opportunities for Improved Services and Infrastructure

The efficiencies and savings generated by the merger will allow the new council to invest in improved service levels and/or a greater range of services and address the current infrastructure backlog across the three councils. Examples of local infrastructure priorities that could be funded by merger-generated savings include projects like:

- improving local roads;
- investing and maintaining parks and open spaces to meet the recreation needs of residents; and
- completing the missing links in the area's bike network with the aim of creating direct and safe pedestrian and cycling environment with improved signage.

The councils are currently focusing their operational budget spend on improvements to recreational facilities and transportation. A merged council could continue this prioritisation and would have greater capacity to better coordinate projects and related community initiatives.

Regulatory Benefits

There are currently 152 separate regulatory and compliance regimes applied across local council boundaries in NSW. These many layers of regulations are making it hard for people to do business, build homes and access services they need. NSW businesses rated local councils as second to only the Australian Tax Office as the most frequently used regulatory body, and highest for complexity in dealings.⁸

It can be expected that the proposed merger will result in simplified council regulations for many Ashfield, Leichhardt and Marrickville residents and businesses. Ashfield, Leichhardt Municipal and Marrickville councils are each responsible for separate and potentially inconsistent regulatory environments. A merged council provides an opportunity to streamline and harmonise regulations.

Adopting best practice regulatory activities will generate efficiencies for a merged council and benefit local residents and businesses. For example:

- a small business owner with outlets across the Ashfield, Leichhardt and Marrickville area will have just a single local council regulatory framework to understand and comply with;
- the compliance burden for a retail outlet owner with multiple outlets across neighbouring suburbs (currently in different local council areas) will be reduced and simplified; and
- residents can have greater confidence that development applications will be subject to a more uniform process than the existing variations in regulations that can add to the cost and complexity of home renovations and building approvals.

Impact on Rates

Two of the three councils have recently received approval for SRVs from IPART to fund community infrastructure:

- Marrickville Council has an approved SRV of 3.0 per cent for a one-year period in 2015–16 ; and
- Ashfield Council has an approved cumulative SRV of 26.6 per cent over a four-year period from 2015–16.

The savings generated by a merger may enable the new council to reduce reliance on rate increases to fund community infrastructure.

In addition, the proposed merger will bring together a range of residential and business premises across the area, providing the new council with a large rate base on which to set ratings policies and improve the sustainability of council revenue. Table 1 outlines the mix of business and residential rating assessments that underpin current rate revenue across the area.

⁸ NSW Business Chamber (2012), Red Tape Survey.

Table 1: Comparison of rateable businesses and residential properties (total and percentage share)

| Council | Business rating assessments | | Residential rating assessments | |
|------------------------------|-----------------------------|-----|--------------------------------|-----|
| Ashfield Council | 834 | 5% | 15,141 | 95% |
| Leichhardt Municipal Council | 1,833 | 8% | 22,347 | 92% |
| Marrickville Council | 3,238 | 10% | 30,217 | 90% |
| Merged council | 5,905 | 8% | 67,705 | 92% |

Source: NSW Office of Local Government, Council Annual Data Returns (2013–14).

Local Representation

The ratio of residents to elected councillors in each of the three councils is markedly different. This reflects the wide variation in resident populations. While the proposed merger will increase the ratio of residents to elected councillors, the ratio, based on councillor numbers in the existing councils, is likely to be similar to those currently experienced in other Sydney councils, including the more populous Blacktown City Council (Table 2). For the purpose of analysis of merger benefits, this proposal has assumed that the new Council will have the same number of councillors as each of the current councils do. The Government welcomes feedback through the consultation process on the appropriate number of councillors for the new council.

Some councils in NSW have wards where each ward electorate elects an equal number of councillors to make up the whole council. Community views on the desirability of wards for a new council will be sought through the consultation process.

Table 2: Changes to local representation in Ashfield, Leichhardt and Marrickville

| Council | Number of councillors | Number of residents (2014) | Residents per councillor |
|------------------------------|-----------------------|----------------------------|--------------------------|
| Ashfield City Council | 12 | 44,498 | 3,708 |
| Leichhardt Municipal Council | 12 | 58,136 | 4,845 |
| Marrickville Council | 12 | 83,356 | 6,946 |
| Merged council | 12* | 185,990 | 15,499 |
| Blacktown City Council | 15 | 325,139 | 21,676 |

* Ashfield, Leichhardt and Marrickville communities will have an opportunity to shape how a new merged council will be structured, including the appropriate number of elected councillors. Fifteen elected councillors is the maximum number currently permitted under the NSW Local Government Act (1993).

Source: Australian Bureau of Statistics, Estimated Resident Population 2013; and NSW Office of Local Government, Council Annual Data Returns (2013–14).

The new council will be in a position to use its larger scale and capacity to more effectively advocate for the needs of the Ashfield, Leichhardt and Marrickville communities. As the new council will represent a more significant share of Sydney's population, and have a substantial economic base, it will be able to negotiate more effectively on behalf of its residents. It will also be able to develop improved strategic capacity to partner with the NSW and Australian governments, including on major infrastructure initiatives, community services and urban planning and development.

The many ways communities currently engage with these councils will continue, including through public forums, committees, surveys and strategic planning. Councillors will continue to represent local community interests and will have the opportunity to take a more regional approach to economic development and strategic planning.

THE LOCAL COMMUNITY

The Inner West communities of Ashfield, Leichhardt and Marrickville share common characteristics and connections. The proposed new council will have enhanced scale and capacity and be better placed to shape and deliver the economic development, community services, and infrastructure that underpin the lifestyle of these communities.

Geography and Environment

Located within Sydney's Inner West region, Ashfield, Leichhardt and Marrickville local government areas are all situated within ten kilometres of the centre of Sydney's CBD. These inner-city areas contain important heritage and cultural sites and also feature significant urban development to accommodate high-density populations. Gentrification of some of the areas within the Ashfield, Leichhardt and Marrickville councils, particularly those closer to the city, has seen a shift in the demographic profiles of those areas and highlights the need for effective land use planning.

The proposed council would be able to plan for communities and coordinate growth and the delivery of infrastructure along both sides of the eastern section Parramatta Road (rather than three separate councils). The new council would also be able to plan for and deliver urban renewal and local infrastructure along areas of the Inner West Light Rail Line that were previously planned for three local government areas.

Local Economy

The local government areas of Ashfield, Leichhardt and Marrickville contribute nearly \$10 billion to the NSW economy, equivalent to two per cent of the Gross State Product.⁹ Characteristics of the local economy include:

- an average household income close to or above the metropolitan average of \$89,210: Ashfield (\$88,349), Marrickville (\$96,043), Leichhardt (\$118,669);
- lower rates of unemployment compared to the metropolitan average of 5.4 per cent in Ashfield (4.7 per cent) and Leichhardt (3.5 per cent), but higher in Marrickville (7.4 per cent);
- employment growth which varies in comparison with the metropolitan average of 1.6 per cent: Leichhardt (0.9 per cent), Ashfield (1.5 per cent) and Marrickville (2.0 per cent), and
- educational attainment rates (the proportion of residents holding a post-school qualification) above the metropolitan average of 59 per cent: Marrickville (66 per cent), Ashfield (68 per cent) and Leichhardt (74 per cent).

Table 3 provides a snapshot of the local business profile of each council. More than 18,000 local businesses across the area contribute more than 92,000 jobs to the local economy. The area has strong employment in the Health Care and Social Assistance sector -- the largest sector within the Ashfield local government area. The largest employment sector in the proposed council will be Professional, Scientific and Technical Services, which provides a strong economic foundation for the new council.

The NSW Government's Household Travel Survey highlighted similar travel patterns across the three existing council areas. Approximately 30 per cent of residents across the area travel for social and recreation purposes and 18 per cent for commuting to work.¹⁰ Specifically, around 35 per cent of Leichhardt and Marrickville residents commute to the Sydney CBD for work compared to about 20 per cent of Ashfield residents.

While residents typically commute to a workplace outside their council area, the area is relatively self-contained and well-connected in relation to:

⁹ Regional Development Australia, Sydney Metropolitan Region economic Baseline Assessment – Update, August 2015; and Australian Bureau of Statistics (2014), Australian National Accounts: State Accounts 2013–14, Canberra.

¹⁰ Transport for NSW, Bureau of Transport Statistics, Household Travel Survey Data 2012–13, released November 2014.

- health services, especially through the Royal Prince Alfred Hospital, Sydney Private Hospital and the Macquarie University outpatient clinic and research centre in Summer Hill;
- extensive retail services, through the Marrickville Metro Shopping Centre, Norton Plaza and Ashfield Mall; and
- transport infrastructure connecting the three councils to the Sydney CBD.

Table 3: Local business and employment profile

| Council | Number of businesses | Local jobs | Largest sector |
|------------------------------|----------------------|---------------|--|
| Ashfield Council | 3,736 | 20,618 | Health Care & Social Assistance |
| Leichhardt Municipal Council | 7,112 | 30,003 | Professional, Scientific & Technical Services |
| Marrickville Council | 7,674 | 41,876 | Professional, Scientific & Technical Services |
| Merged council | 18,522 | 92,497 | Professional, Scientific & Technical Services |

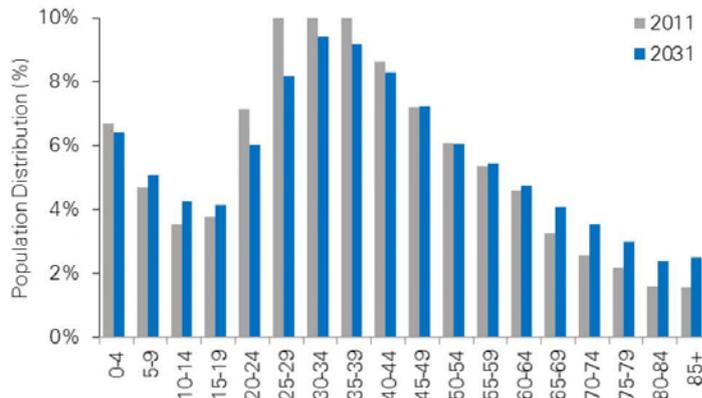
Source: Australian Bureau of Statistics, Business Counts and Employment by Industry (2014).

The business profile across the area and the corresponding workforce will require relatively similar services and infrastructure, particularly in relation to maintaining and upgrading transport links to the Sydney CBD. A merged council will be better placed to deliver these services and infrastructure in a coordinated manner.

Population and Housing

The new council will be responsible for infrastructure and service delivery to more than 223,000 residents by 2031. The Ashfield, Leichhardt and Marrickville area is culturally diverse with a relatively low ratio of children to adults of parenting age, and a low proportion of elderly people, reflecting the areas' proximity to Sydney's CBD (Figure 6). This population distribution is expected to shift over time with an increase in the proportion of the population aged over 65 years.

Figure 6 Change in population distribution, by age cohort (2011 v 2031)



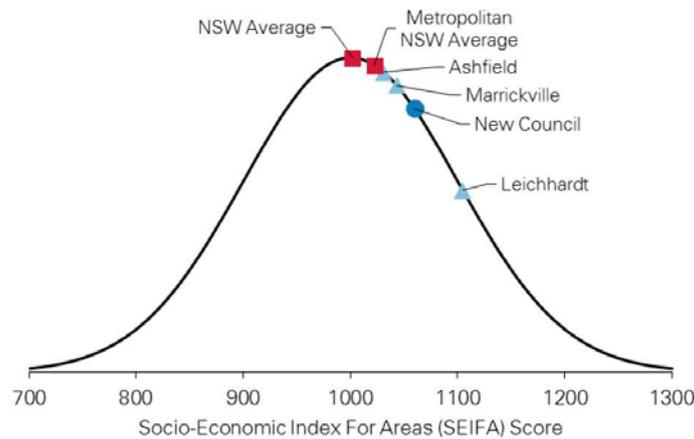
Source: NSW Department of Planning & Environment, 2014 NSW Projections (Population, Household and Dwellings).

A strong council with the appropriate scale and capacity is needed to respond and adapt to the changing service needs of the community. With the high proportion of professionals and managers living in the area, transport links are increasingly important for commuting residents. An ageing population is likely to increase

demand for community health services, creation and maintenance of accessible parks and leisure areas and community outreach services.

In comparison with the rest of Sydney, the Ashfield, Leichhardt and Marrickville communities are relatively advantaged from a socio-economic standpoint. The Socio-Economic Index for Areas (SEIFA), illustrated in Figure 7, measures a range of factors to rate an individual council's relative socio-economic advantage. The Ashfield and Marrickville councils have similar socio-economic profiles with SEIFA scores that are above the NSW and metropolitan averages, while Leichhardt has a socio-economic profile above the NSW and metropolitan averages. This reflects the characteristics across the Ashfield, Leichhardt and Marrickville communities in relation to, for example, household income, education, employment and occupation.

Figure 7: Comparison of councils' socio-economic profile



Source: Australian Bureau of Statistics, SEIFA 2011 by local government area.

Table 4 outlines the current mix of housing types across the area. A merged council provides an opportunity to apply a more regional and strategic focus to planning for the additional 15,800 households and associated amenities that are predicted to be required by 2031. This approach can also help to ensure any pressures and challenges associated with population growth and housing development are not unreasonably concentrated in particular neighbourhoods.

Table 4: Dwelling types in the Ashfield, Leichhardt and Marrickville area (total number and per cent)

| Dwelling type | Ashfield Council | | Leichhardt Municipal Council | | Marrickville Council | |
|--------------------------------|------------------|-----|------------------------------|-----|----------------------|-----|
| Separate house | 6,390 | 37% | 8,403 | 34% | 11,179 | 32% |
| Medium density | 5,481 | 32% | 10,841 | 44% | 15,283 | 44% |
| High density | 5,207 | 30% | 5,070 | 21% | 7,441 | 22% |
| Other | 149 | 1% | 357 | 1% | 588 | 2% |
| Total private dwellings | 17,227 | | 24,671 | | 34,491 | |

Source: Australian Bureau of Statistics, Census (2011), Dwelling Structure by local government area.

Shared Community Values and Interests

These communities are bound by their sense of place as part of Sydney's Inner West. Box 2 below provides examples of the sense of place in the form of the community organisations, services and facilities that have a presence across the area, which indicate strong connections between the communities in the existing council areas.

Box 2: Examples of common community services and facilities

Shared regional services and facilities

Examples of community services which operate across the area include:

- the Inner West Courier, a print and online newspaper, is circulated throughout the area;
- the Leichhardt Marrickville Community Transport Group provides transport services for frail aged and younger people with disabilities, and their carers across all the two council areas;
- Ashfield and Leichhardt are part of the Inner West Home and Community Care area, which means that many community care services for the frail aged and respite services for carers are delivered across the council boundaries;
- the Inner West Youth Alliance is a network of youth service providers from across the area; and
- the Child and Family Interagency is a network of agencies that provide services for families and children under the age of eight in the Marrickville and Leichhardt local government areas.

The Ashfield, Leichhardt Municipal and Marrickville councils have already been collaborating in a number of ways:

- all participate in the Southern Sydney Regional Organisation of Councils (SSROC). The role of SSROC is to undertake projects that cross council boundaries, achieving results in procurement of goods and services as well as initiatives that will contribute to the sustainability of the member councils and their communities.¹¹ SSROC undertakes advocacy, training and practical projects;
- SSROC's Street Lighting Improvement Program seeks to address a number of issues such as compliance with the Public Lighting Code, improved pricing and pricing oversight, technology advancements, and securing grants and other funding;
- through SSROC the councils have undertaken shared telecommunications procurement to achieve cost savings, access broadband and to develop a best practice contract for the supply of telecommunications services;
- through SSROC the councils have been implementing shared library services, including standardising practices across the provision of library services, pooling of procurement and utilisation of external service providers;
- the three councils have benefited from SSROC's investigation of waste management practices and the drafting a set of target outcomes for the waste strategy across the region leading to the creation of the 2014-21 regional Waste Avoidance and Resource Recovery Strategy;
- Our Solar Future is a website run by the local councils to provide advisory services for residents regarding the purchase and installation of solar energy systems; and
- Marrickville and Leichhardt Municipal councils have resolved to collaborate to reinvigorate the live music scene, with a particular focus on Parramatta Road, this is part of a larger shared focus on making Parramatta Road more attractive to visitors and business owners.

The connections between the councils and communities are evident in the existing partnerships and collaborations. A new council will be better placed to deliver these services and projects into the future, without relying on voluntary collaboration with neighbouring areas.

¹¹ Southern Sydney Regional Organisation of Councils, <http://ssroc.nsw.gov.au/about-us/>, Accessed November 2015.

CONCLUSION

This proposal to create a merged council has the potential to provide a range of benefits to local communities, including:

- a \$113 million net financial benefit over a 20 year period that may be used to deliver better community services, enhance infrastructure and/or lower rates;
- a projected 61 per cent improvement in annual operating results that will strengthen the council's balance sheet and free up revenue for critical infrastructure;
- NSW Government funding of \$25 million to meet merger costs and provide a head start on investing in services and infrastructure that the savings from mergers will ultimately support;
- greater efficiencies through the removal of back office and administrative functions, increased purchasing power of materials and contracts, and reduced expenditure on councillor fees all of which are expected, on average, to generate savings of around \$7 million every year from 2020 onward;
- greater capacity to effectively manage and reduce the \$65 million infrastructure backlog across the three councils by maintaining and upgrading community assets;
- reducing the reliance on rate increases through SRVs to fund local community infrastructure projects and services;
- better integrating strategic planning and economic development to more efficiently respond to the changing needs of the community;
- building on the shared communities of interest and strong local identity across the area;
- providing effective representation through a council with the required scale and capacity to meet the future needs of the community; and
- being a more effective advocate for the area's interests and better able to deliver on priorities in partnership with the NSW and Australian governments.

NEXT STEPS

Every community will have an opportunity to help shape a new council for their area.

Community Engagement

This merger proposal will be referred to the Chief Executive of the Office of Local Government for examination and report under the *Local Government Act (1993)*. The Chief Executive proposes to delegate this function to a suitably qualified person. The delegate will consider this proposal as required under the Act, including against statutory criteria and hold a public inquiry. The delegate will also undertake public consultation to seek community views. The delegate is also required by the Act to provide the delegate's report to an independent Boundaries Commission for review and comment. The Minister for Local Government under the legislation may decide whether or not to recommend to the Governor that the merger proposal be implemented. For the factors a delegate must consider when examining a merger proposal (under Section 263 of the *Local Government Act (1993)*), please refer to the Appendix to this document.

Through the merger assessment process, there will be opportunities for communities and stakeholders to consider merger proposals and have their say. Each merger proposal will be the subject of a public inquiry where the community can hear about and discuss the proposal. Through the consultation process, the delegate will ensure that the opinions of each of the diverse communities of the resulting area or areas will be effectively represented.

Further information about the process is available on the Local Government Reform website at www.councilboundaryreview.nsw.gov.au, including:

- details about the proposed mergers;
- information about the delegate for your area;
- dates for public meetings; and
- a portal to provide a written submission.

Appendix

The following table outlines the factors that a delegate must consider under section 263 of the *Local Government Act (1993)* when examining a proposal. The section references outline where the criteria have been addressed in this merger proposal.

| <i>Legislative criteria</i> | <i>Section reference</i> |
|---|---|
| (a) the financial advantages or disadvantages (including the economies or diseconomies of scale) of any relevant proposal to the residents and ratepayers of the areas concerned | Benefits, Opportunities and Impacts |
| (b) the community of interest and geographic cohesion in the existing areas and in any proposed new area | The Local Community |
| (c) the existing historical and traditional values in the existing areas and the impact of change on them | The Local Community |
| (d) the attitude of the residents and ratepayers of the areas concerned | There is a public consultation process which includes a public inquiry allowing for the views of residents and ratepayers to be considered. |
| (e) the requirements of the area concerned in relation to elected representation for residents and ratepayers at the local level, the desirable and appropriate relationship between elected representatives and ratepayers and residents and such other matters as it considers relevant in relation to the past and future patterns of elected representation for that area | Local Representation |
| (e1) the impact of any relevant proposal on the ability of the councils of the areas concerned to provide adequate, equitable and appropriate services and facilities | Benefits, Opportunities and Impacts |
| (e2) the impact of any relevant proposal on the employment of the staff by the councils of the areas concerned | Financial Benefits of the Proposed Merger |
| (e3) the impact of any relevant proposal on rural communities in the areas concerned | The Local Community |
| (e4) in the case of a proposal for the amalgamation of two or more areas, the desirability (or otherwise) of dividing the resulting area or areas into wards | Local Representation |
| (e5) in the case of a proposal for the amalgamation of two or more areas, the need to ensure that the opinions of each of the diverse communities of the resulting area or areas are effectively represented | Next Steps |
| (f) such other factors as it considers relevant to the provision of efficient and effective local government in the existing and proposed new areas | Benefits, Opportunities and Impacts |

For more information visit:
www.councilboundaryreview.nsw.gov.au

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ANNEXURE 3**THE LEGISLATIVE FRAMEWORK FOR WARDS****SUMMARY**

The Council in its submission to the Delegate on the merger proposal for Ashfield, Leichhardt and Marrickville has the option to clearly outline its preference for the new Council to be divided into wards or to abolish all wards if it so chooses. Failure to indicate a preference may leave the final decision of wards to the State Government or the new council without the benefit of the current council's recommendations.

The question of the advantages and the disadvantages of Wards and whether to have them or not is a matter for council to discuss and determine.

When making any submission, Council needs to consider the above issues:

- If Council favours Wards, the Wards for the new, amalgamated area will need to have populations the same, with only a 10% variation each.
- Any revised Council Ward system will need to consider how many Councillors the new Council will have (the Act allows between 5 and 15 under section 224) and how many Councillors each Ward will return (in accordance with the 10% rule cited above). The draft amendments to the Local Government Act favour a system of Councils with odd numbers of Councillors ostensibly to prevent deadlock situations. Given that each Council currently has 12 Councillors and the new entity will be much larger than the current three, it is assumed that all the Councils may seek a membership of 15 Councillors
- The new Council can vary the proposed Wards at a later time via the mechanisms set out above.
- Wards, if favoured, need to ensure that the level of representation of the various diverse communities in the new Council will not result in one community or another being advantaged or disadvantaged.

LEGISLATIVE DETAIL

Chapter 9, Part 1, Division 1 of the *Local Government Act 1993* ("the Act") provides the legislative framework for Wards. The following legislative details are provided for information.

a. Constitution of an area, division of the area into wards or abolition of wards

The Act under section 218A provides that the Governor may *amalgamate two or more areas into one or more new areas*. This is the power the State is using to force the current amalgamation. Divisions 1 and 2 of the Act (sections 204 to 218) apply to the new area in the same way as they apply to an area constituted by a proclamation under section 204. However, section 212(2) (about public inquiries) does not apply. Once constituted, a Council (under s. 210 which applies to our situation) may divide its area into wards, abolish all wards, alter ward boundaries and name or rename a ward. Under section 213, the proclamation establishing the new Council may turn its mind to a number of items, including whether the area has Wards, and if so, what the Ward boundaries will be.

On the mechanics of establishing wards, the Act stipulates that the division of a council's area into wards, or a change to the boundaries of a ward, must not result in a variation of more than 10 per cent between the number of electors in each ward in the area.

The following items b, c, and d apply to Councils which decide to create Wards or to vary Wards.

b. Consultation, public notice and exhibition of proposals regarding ward boundaries

Before dividing a council's area into wards or altering a council's ward boundaries, the council must (s. 210):

- (a) consult the Electoral Commissioner and the Australian Statistician to ensure that, as far as practicable, the proposed boundaries of its wards correspond to the boundaries of appropriate districts (within the meaning of the *Parliamentary Electorates and Elections Act 1912*) and census districts, and to ensure that the proposed boundaries comply with the 10 per cent variation noted previously, and
- (b) prepare and publicly exhibit a plan detailing the proposed division or alteration (the **ward boundary plan**).

Under section 210A, the council must give public notice of the following:

- (a) the place at which the ward boundary plan may be inspected,
- (b) the period for which the plan will be exhibited (being a period of not less than 28 days),
- (c) the period during which submissions regarding the ward boundary plan may be made to the council (being a period of not less than 42 days after the date on which the ward boundary plan is placed on public exhibition).

Further, the council must, in accordance with its notice, publicly exhibit the ward boundary plan together with any other matter that it considers appropriate or necessary to better enable the plan and its implications to be understood.

Any person may make a submission to the council regarding the ward boundary plan within the 42 day period and the council must consider submissions made in accordance with this section.

The *Local Government (General) Regulation 2005* (Part 11, Division 2, section 277) provides further details on the notice of changes to wards. This section of the Regulation states that if a council divides its area into wards, abolishes all its wards, alters its ward boundaries or names or renames a ward in its area, the general manager of the council must give notice of that fact and stipulates the notice to be given as follows:

- (a) by advertisement in a newspaper circulating generally in the council's area, and
 - (b) in writing displayed at the office of the council, and
 - (c) in writing delivered or sent to the Electoral Commission.
- (3) If, as a result of the changes referred to in this clause, there are any wards that are new or that have altered boundaries, the notice must include a written

description of, and a map showing, the boundaries of the new wards or boundaries as so altered.

c. Approval to abolish all wards in council's area

Under section 210B of the Act, a council may resolve to make an application to the Minister to approve the abolition of all wards of the council's area. The council must give not less than 42 days' public notice of its proposed resolution.

After passing the resolution, the council must forward to the Minister a copy of the resolution, a summary of any submissions received by it and its comments concerning those submissions. The Minister may approve the application or may decline to approve it.

If the Minister approves the application, all the wards in the council's area are abolished with effect on and from the day appointed for the next ordinary election of councillors after the application is approved.

d. Ward boundaries

The Act (section 211) requires the council of an area divided into wards that they must keep the ward boundaries under review. If the following conditions (a and b below) are met the council must, as soon as practicable, alter the ward boundaries in a manner that will result in each ward containing a number of electors that does not differ by more than 10 per cent from the number of electors in each other ward in the area:

- (a) during a council's term of office, the council becomes aware that the number of electors in one ward in its area differs by more than 10 per cent from the number of electors in any other ward in its area, and
- (b) that difference remains at the end of the first year of the following term of office of the council, the council must, as soon as practicable, alter the ward boundaries in a manner that will result in each ward containing a number of electors that does not differ by more than 10 per cent from the number of electors in each other ward in the area.

If the new Council decided that Wards would be advantageous, the procedures set out above at b, c, and d would be invoked to create new Wards.

ANNEXURE 4

Extraordinary Meeting:

Cr Porteous, Cr Channells, Cr Kogoy and Cr McKenzie:

Call for an Extraordinary Meeting of Council in order to consider the following motion:

That Leichhardt Council

- 1) *Conducts a poll of all electors in Leichhardt Municipal Council area on the Government proposed forced council amalgamation. The poll to be conducted as soon as possible on a Saturday and the question put to the electors to be:*

“Do you want Leichhardt Council to be amalgamated with Marrickville Council and Ashfield Council? Yes/No “

- 2) *That Leichhardt Council seeks the costs of this poll to be met by the State Government, if these funds are not forthcoming that the cost of the poll be met by Leichhardt Council.*
- 3) *That Leichhardt Council encourages both Marrickville and Ashfield councils to conduct similar polls of their electorate.*

Background:

Leichhardt Council is facing a forced council amalgamation proposal from the State Government which wants to see Leichhardt Council forcibly amalgamated with Marrickville and Ashfield Councils. The State Government is clearly intending to do the bare minimum to comply with the Act in terms of community consultation and the only opportunity our residents will have to have their say is at one public inquiry to be held on 2 February for the three councils and written submissions. The OLG delegate is required to consider the attitude of residents to the proposed amalgamation and a poll is nominated as a way of achieving this however the Government does not want polls to be conducted. In fact the State Government recently tried to block Botany Bay Council from running a poll on amalgamations by refusing to provide the council with the electorate roll. Botany took this to the Supreme Court before the Government conceded, settling out of court and providing them with the electorate roll. The Botany Poll will be conducted on February 27.

The future of Leichhardt Council should be in the hands of the people and not one delegate nominated by the OLG. The Government does not want the community to have a collective say on the future of their council but we believe that Councillors do want this and while the result of the poll does not bind the delegate or the Minister in their final recommendations it will need to be considered. The poll very importantly gives the community a voice and a say on what they want for the future of their local council and local community.

ANNEXURE 5

LEGAL IMPLICATIONS

Proposal

The Minister has now confirmed that the merger proposal has been made under s218E of the *Local Government Act 1993 (Act)*. This means that the s23A Direction has now commenced.

A proposal under s218E can be made by the Minister; or by the Councils subject to the proposal; or by electors in certain circumstances. The proposal is the Minister's and this has implications, most notably under s218F (3) (see later).

Assessment of the proposal is by the Boundaries Commission (**BC**) or the Departmental Chief Executive (**DCE**) (s218 (F)(1)). In this case the Minister has chosen to delegate the assessment to a delegate of the DCE (Delegate). Where the matter proceeds by way of the DCE, the DCE has all the same powers and responsibilities of the BC under ss263, 264 and 265: section 218F (2).

This is presumably because the Delegates will have 35 proposals to assess and a number of people have been called in to undertake the task.

Can a Delegate undertake this task that is reserved for the BC or DCE?

Yes. We have seen the Instrument of Delegation under s745 (1) of the Act and it is legal.

Appointment of Delegate

Council has been allocated Cheryl Thomas, who has also been charged with the assessment of the Murray and Wakool Shire proposals.

Can the appointment be challenged?

Legally, any appointment may be challenged if any bias can be found. I have reviewed all the available material on Ms. Thomas and I do not see any basis for challenge.

Ms. Thomas has written to us and advised that all submissions need to be lodged by 28 February 2016 (Letter dated 7 January 2016 previously circulated). We understand that Delegate's reports must be completed by 31 March 2016.

Can Council challenge the short period of time for making a submission?

Yes, especially in light of the fact the period opened in the holidays. However, that still gives a full month for Councils and members of the public to prepare submissions. I would not be comfortable starting such an application without advice, but my view is that there is enough time to prepare a submission, particularly in light of the fact that the Government has foreshadowed this process for some time.

Ms. Thomas has administrative support (Bryce O'Neill Acting Assistant Regional Coordinator Premier & Cabinet) and will not be operating from an office. Ms. Thomas will also be undertaking the Murray/Wakool proposal.

Can Council challenge the process on the basis of the short amount of time, and limited resources of the Delegate?

Possibly. If there were a large number of submissions it is difficult to see how the Delegate could review and consider them all, especially given that the Delegate must consider two merger proposals.

Allowing an unduly short amount of time to review submissions would impact on procedural fairness and will depend on how many submissions there are, and how long the Delegate has to answer them. This should be monitored as the Inquiry proceeds.

Public Input – is the Government process sufficient?

If the Council had made the proposal, section 218F (3) would have required either a poll or some other mechanism to discover the attitude of electors. The section reads:

(3) *For the purpose of examining a joint proposal of 2 or more councils for the amalgamation of two or more areas under section 218A, the Boundaries Commission or Departmental Chief Executive, as the case requires, must seek the views of electors of each of those areas:*

(a) *by means of:*

- (i) *advertised public meetings, and*
- (ii) *invitations for public submissions, and*
- (iii) *postal surveys or opinion polls, in which reply-paid questionnaires are distributed to all electors, or*

(b) *by means of formal polls.*

The Government are reading section 218F (3) so as to require the seeking of public input when the Councils themselves put forward the proposal (ie joint proposal). The Government argues that if the Minister makes the proposal, these provisions don't apply.

I think that the subsection can be read to mean that it is the consideration of a proposal involving two or more Council areas, whether or not the Minister or the Council's proposed it, however I admit that it requires a strained interpretation.

If s218F (3) applies it also provides for a minimum 40 days: s218F (4) to ascertain the electors views.

There are two other opportunities for public input: s263 (2A) requires an "inquiry" where there is a s218F proposal, as here. Further, section 263 (2B) requires "reasonable public notice" of such an inquiry.

Section 263 (5) requires the BC to hold its inquiry in public, however this provision is one which then transfers to the DCE and therefore the Delegate. Section 264 then allows representation before the inquiry.

Section 265 allows the BC (and therefore the Delegate) to seek the opinion of the electors to satisfy section 263(3)(d). However the BC/DCE may seek the opinion by poll. It is not mandatory.

In accordance with Ms Thomas's most recent letter of the 14 January 2016 (circulated separately by the General Manager) providing more information on the public meeting, individuals have 6 minutes and organisations 15 minutes to present and the Inquiry will be recorded.

Can Council conduct a poll?

In my view, it can, but subject to conditions. Section 263 (3)(d) requires the BC (and therefore the Delegate) to consider *the attitude of the residents and ratepayers of the areas concerned*. By holding the poll Council is providing cogent evidence of this to the Delegate. However, the evidence that the Delegate requires concerns the attitude of the ratepayers "in the areas concerned". To do this, and to compare apples with apples, **all the Councils** which are part of the proposal should undertake a poll. If the poll is not generally undertaken, with all the Councils participating, and with the same question asked, I do not think it would assist the Delegate. If Council wants to undertake a poll I believe the Delegate should be consulted.

The Delegate has power to call a poll: section 265. And may decide to ascertain public views by other means.

I do not believe that the cost of a poll (approximately \$215,000 I am advised) runs counter to the section 23A Direction. It is providing evidence the delegate requires to make a decision. There is a procedure for undertaking expenditure outside the budget without breaching the s23A Direction.

The poll could not be conducted in a manner that was biased. That would be counter to the Direction which states that Councils may not *exercise their functions or use council resources to oppose or support a merger proposal for personal or political purposes*.

We could take a poll that may have bearing on the case I believe if:

- The other two Councils agreed; and
- The wording of the question was objective and neutral, subject to independent legal advice

I note that if Council wants to go down this path it should do so carefully. When Queensland faced amalgamation in 2007, the then Beattie Government threatened sackings and surcharging if Councils went ahead with polls. The Shire of Ilfracombe had actually printed the ballots when it decided to shelve the poll after threats of surcharging. The same provisions exist in NSW.

In summary, the proposed Government public views assessment process is possibly inadequate and should be reviewed when we have firmer details of how the section 263(3d) process proceeds.

Other matters for consideration

The criteria for considering the proposal are found in s263 (3). There are 11- 10 of which are applicable to this merger proposal.

1. I am advised that the KPMG modelling which underpins the Government's merger proposal will not be made available.. Failure to allow Councils to review that data would open the criteria to challenge. I also understand that much of the savings come from staff redundancies. If so, this number should be revealed for the three Councils. It is relevant for consideration of s263 (3) (e2).
2. Likewise, if the KPMG assumptions about staff redundancies can be made clear, Council can then review factor (e1): *the impact of any relevant proposal on the ability of the councils of the areas concerned to provide adequate, equitable and appropriate services and facilities*. It may be that there will be fewer staff, but if that is the case, will may also be a reduction in services. Electors should be allowed to know what the loss of services will be.
3. I also mention section 263 (7): *The Supreme Court may not make an order in the nature of prohibition in respect of, or an order for removing to the Court or quashing, any decision or proceeding made or conducted by the Boundaries Commission in connection with the exercise of its functions*. This subsection was introduced in 1999 before the High Court case of *Kirk v Industrial Court (NSW)* [2010] HCA 1. That case had no difficulty in allowing the Court to intervene and require the decision maker due process. As this section deals also with the report of the Delegate, I see no reason why Council should not be able to require the Delegates report and to take legal action if the report is inadequate.
4. The delegate will prepare her report and she must send it to the BC: section 218F (6) (a). The BC must then review before forwarding to the Minister: s218F (6) (b). We are told we will not see the Delegates report to the BC ; or the BC report to the Minister, until it is sent to the Minister. We are presuming we will have time to review and challenge these reports and will therefore keep this issue under review.

I would want to seek advice before challenging the BC report. It may be that the report is not the correct time to challenge. The challenge may be to the Minister's decision if the report is inadequate, or fails to take into account relevant factors. The BC will only be reviewing the reports. The Government is of the view that the processes set out for the BC in s263 will already have been carried out by the Delegate. I am not sure that this is the case. Section 218F (2) only says that sections 263, 264, and 265 apply to the DCE (and therefore the Delegate) in the same way that they apply to the BC. The BC is not eliminated from the picture, the Delegate merely has to do the same things that the BC is required. I am of the view therefore that the BC should hold an inquiry when reviewing the report of the BC; and the same ability to review and challenge the BC exists for the Delegate.

I must reiterate my previous advice however on administrative law appeals: we may be able to show that the decision maker took into account an irrelevant factor; gave too much weight to one, or not enough to another factor; or made a decision that no reasonable decision maker would come to (Wednesbury unreasonableness). If a matter is struck down on that basis the Court does not substitute its own decision for the erroneous one. It send the matter back to the decision maker to determine according to law. This means that the decision maker usually comes to the same decision allowing for the factor the subject of the appeal.

5. Assuming that the Minister decides to go ahead with a proposal (and the proposal is essentially the same as the one he made to the BC/Delegate) he can do so.. As sections 218D, E, and F have been complied with, he can now recommend to the Governor a new Council per s218A. This allows for the dissolution of the Council on a date to be given in the Proclamation. The Act is very liberal on what can be done. There may be administrators, there may not be. It is up to the Minister what will be in the Proclamation. In theory this Proclamation could occur as early as June and the time spent in preparing for the new Council before the election could be with the assistance of the old Council, or under the fiat of an administrator.

The Act is very clear that the more prohibitive requirements for a public inquiry under s212(2) are not necessary (see s218A(4)).

I draw council's attention to Canada Bay as a precedent for Ashfield, Leichhardt and Marrickville

I have spoken with some of the officers who were at Concord and Drummoyne before Canada Bay came into existence. Some of their experience could be relevant here.

- Because Canada Bay was a proposal by the Councils themselves, s218F (3) and (4) came into play, requiring that the views of electors be sought. This was done some months before the proclamation by mail.
- The Proclamation under s218A was signed by the Governor on 27 September, and placed in the Gazette on 29 September 2000. Drummoyne and Concord were to cease to exist on Friday 1 December 2000 (the *amalgamation date*) and the new Canada Bay came into existence as soon as the old Council was abolished.
- The next day was election day, Saturday 2 December 2000.
- Concord and Drummoyne existed as separate Councils right up to the amalgamation date, with Councillors staying in their positions, and all staff remaining.
- The Proclamation established the new Council to be composed of 9 Councillors whose election would take place the day following amalgamation date.
- The Proclamation also indicated that there would be a Constitutional referendum held at the same time as the general election (2 December) to

- determine if the Council would have popularly elected Mayor. If supported, the popular election would not take place until the election 4 years hence.
- The organisation structure “is as far as practicable, to be a composite of the organisation structures of each of the former Councils”: Clause 12 (1).
 - Essentially, the organisation went into the amalgamation as a composite of the two former areas.
 - The mechanism for change was clause 12(3) of the Proclamation: “This clause ceases to have effect when a new organisation structure is determined by the new Council under Part I of Chapter 11 of the Act”.
 - Significantly, section 333 in that Part states:
The organisation structure may be re-determined by the council from time to time. It must be re-determined within 12 months after any ordinary election of the council.
 - The “heavy lifting” was all done in the first twelve months of the new Council.

Our similarities with the Canada Bay experience.

- An amalgamation under Division 2A and 2B like the one we are facing.
- Similar locality and issues impacting (residential area in the inner west with similar geography, populations infrastructure, growth and housing issues)

Differences with the Canada Bay experience

- Canada Bay was a voluntary process. Ours is not.
- The constituent Councils had already merged their infrastructure areas by having outdoor staff work under a unified corporate structure before amalgamation.
- Consequently, discussions between Councils and staff were more advanced over merging structures and functions.
- Canada Bay took place by itself. Our amalgamation is taking place amid 34 other proposals.

The Canada Bay Proclamation contained an interesting provision: after setting out the date of abolition of the old, and commission of the new Council, the Proclamation read:

“...declare the provisions set out in the Schedule to this Proclamation are to apply on 1 December 2000 (unless another date is stated) to the amalgamation effected by this Proclamation.”

So even if the Proclamation sets a date far in the future, it can also reserve the right to state a different date.

In summary, I can see no legal impediments for the Government if it wished to keep the former councils in place until the election of the new council.

6. A note on elected Mayors

My reading of the Act is that whether Mayors are popularly elected is a matter for a poll at a later time. While Wards can be determined from the start of the new Council, the only provisions for popularly elected Mayors concern having a referendum. Thus, as you will see with Canada Bay above, the referendum took place at the same time as the election on 2 December 2000. The people determined they did want to elect the Mayor, and the first popularly elected Mayor received his mandate at the following election in 2004. The Councillors determined the position from 2000 to 2004.

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