

SUPPLEMENTARY BUSINESS PAPER 2

COUNCIL MEETING

Tuesday, 15 March, 2016

Distributed on 15 March 2016

Meeting commences at 6:30pm

**Council Chambers
Level 3, 2-14 Fisher Street
Petersham**

MEETING AGENDA – PRECIS SUPPLEMENTARY ITEMS

The following report appears as a late item with Mayoral approval as information required for the preparation of the report was not available at the time of distribution of the Business Paper.

1 Mayoral Minutes

C0316 Item 25 MAYORAL MINUTE: STAFF CONDITIONS

3

Item No: C0316 Item 25
Subject: MAYORAL MINUTE: STAFF CONDITIONS
File Ref: 16/4717/30586.16

From Councillor Sam Iskandar, Mayor of Marrickville

Item 25

MOTION:

THAT, in accordance with section 354E of the *Local Government Act 1993*, Council seek the approval of the Minister to alter the conditions of employment of all existing staff (other than senior staff) and any non-senior staff employed prior to the date of amalgamation so that the 3 year protection from forced redundancy in 354F of the Act is extended to 5 years.

Background

Under section 354F of the *Local Government Act 1993*, a merged council may not forcibly make redundant a staff member transferred to it from a former council for at least 3 years from the date the transfer occurs (ie. from the date of amalgamation) where the redundancy arises from such transfer.

On 6 October 2015, Leichhardt Council adopted a policy whereby it extended the 3 year protection afforded by section 354F for a further 2 years (ie. to 5 years) (see **ATTACHMENT 1**). It is understood that Leichhardt Council has written to each of its staff confirming this arrangement.

The USU has written to me (see **ATTACHMENT 2**) requesting that Council enter into an MOU whereby Council commits to grant to its staff the same level of protection with respect to forced redundancies as that afforded to Leichhardt Council staff.

Section 354E of the Act provides as follows:

- (1) *This section applies to a determination of the terms and conditions of employment of staff members of a council that is made during the proposal period, and extends to any such determination made in an industrial agreement with or on behalf of the staff members, in an employment contract with a staff member or in an employment policy of the council.*
- (2) *After the transfer day:*
 - (a) *the transferee council is not bound by any such determination, and*
 - (b) *any such determination is to be disregarded for the purposes of section 354D (1), unless the determination has been approved by the Minister under this section or the approval of the Minister is not required under this section.*
- (3) *If an application is made to the Minister for approval of a determination to which this section applies, the Minister may refuse to approve the determination only if the Minister is satisfied that the determination arises from or is in anticipation of the proposal and would result in an unjustifiable increase or decrease in the obligations of the transferee council in relation to transferred staff members.*
- (4) *A determination to which this section applies is not required to be approved by the Minister if:*
 - (a) *it complies with the requirements of regulations made for the purposes of this section, or*
 - (b) *the Minister determines in writing that approval is not required.*

As can be seen, any change in employment conditions during a proposal period (ie. during the period where a formal amalgamation proposal is under consideration) is not binding on the new merged council unless it has been approved by the Minister or if the approval of the Minister is not required. In this case, Ministerial approval is required unless the Minister says otherwise as clause 406 of the *Local Government (General) Regulation 2005* does not provide an exemption from such approval.

I believe, on grounds of fairness and equity, that Marrickville Council staff should be afforded the same level of protection from forced redundancy that Leichhardt Council staff enjoy. Otherwise, in the event of amalgamation, Marrickville staff face greater uncertainty around their tenure within the new council and are at a significant disadvantage to their Leichhardt counterparts.

In order to achieve this outcome, however, the approval of the Minister is required by virtue of section 354E and I recommend that Council seek such approval.

ATTACHMENTS

1. Leichhardt Council Policy
2. Letter from United Services Union



Externally Initiated Redundancy Policy

| | |
|---|---------------------------------|
| Date Adopted: | 6 October 2015 |
| Council or Corporate Procedure: | Council Policy |
| Responsible Division: | General Manager |
| Supporting documents, associated policies & forms of this procedure: | |
| References & Legislation: | Local Government Act 1993 (NSW) |

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1 Background

With the introduction of the NSW State Government's *Fit for the Future* proposals local government throughout New South Wales is facing the threat of forced amalgamations.

Council and the Union covering the majority of employees within our Council, the United Services Union (USU), wish to restore some degree of certainty to all employees, whether USU members or not, by having in place, before and if any future proposed amalgamations or boundary changes take place, an agreed policy on staff conditions of employment and redundancy.

2 Purpose

To the extent allowed by law, Council wishes to embody a mechanism for protecting the employment security of all Leichhardt Council staff (other than a senior staff member who is employed under a Senior Officer or General Manager Contract as provided by the Office of Local Government) who may lose their position by reason of amalgamation or similar external action.

3 Definitions

| Word/Term | Definition (with examples if required) |
|---------------------------------|---|
| Act / LG Act | Local Government Act 1993 (NSW) |
| Award | Local Government (State) Award 2014 |
| Employee | Any person employed by Leichhardt Municipal Council whether a member of a Union or not, other than a senior staff member who is employed under a Senior Officer or General Manager Contract as provided by the Office of Local Government |
| Externally Initiated Redundancy | Any redundancy of a member of Council's staff due to: <ol style="list-style-type: none"> 1. Forced amalgamation of Council with any other Local Government body; 2. Forced removal of an area of Leichhardt Council to another Local Government body. |
| Proposal period | The period between the first transfer day of the former Council and ending on the following day to the newly constituted council (or as the Minister proposes). |

4 Current Employment Protections & Preservation of Entitlements under Local Government Act 1993 (NSW)

4.1 Under Section 354D of the Act, it currently states;

354D Preservation of entitlements of staff members

(1) If a staff transfer occurs, the employment of:
(a) a transferred staff member, and

(b) in the case of a boundary alteration:

- (i) a remaining staff member of the transferor council, and
- (ii) an existing staff member of the transferee council,

other than a senior staff member, continues on the same terms and conditions that applied to the staff member immediately before the transfer day, subject to section 354E.

This indicates that existing entitlements, for example grant days that Council staff currently have, will continue as per normal during any transition/proposal period from an amalgamation or boundary alteration.

4.2 Furthermore under Section 354F of the Act, it currently states;

354F No forced redundancy of non-senior staff members for 3 years after transfer

If a staff transfer occurs, the employment of:

- (a) a transferred staff member, and
- (b) in the case of a boundary alteration:
 - (i) a remaining staff member of the transferor council, and
 - (ii) an existing staff member of the transferee council,

other than a senior staff member, must not be terminated, without the staff member's agreement, within 3 years after the transfer day on the ground of redundancy arising from the staff transfer.

5 Proposed Employment Protections and Extension of Preservation Entitlements under this policy

- 5.1 In the event of an Externally Initiated Redundancy the above employment protection of three (3) years under Section 354F of the Act is extended by two (2) years to a total of five (5) years by this Policy.
- 5.2 This Policy does not alter any other employment conditions contained within the Act or the Award.

6 Version Control Table

| Version Control | Date Effective | Approved By | Amendment |
|-----------------|----------------|-------------|-----------|
| 1 | 06/10/2015 | Council | |
| 2 | | | |



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In response please quote: MARR 21/16
Contact: Steve Donley

9 March 2016

Clr Sam Iskandar
Mayor of Marrickville
Marrickville Council
PO Box 14
Petersham NSW 2049

Also by fax: 02 9335 2029

FOR THE ATTENTION OF THE MAYOR

Dear Clr Iskandar,

Memorandum of Understanding for 5 Year Protections

We refer to recent discussion around the signing of an MOU to extend employment protections for employees to five years.

As you are aware the *Local Government Act 1993* currently provides 3 years of protection for staff against forced redundancies in the case of amalgamation. The USU is calling on councils to sign a Memorandum of Understanding and amend the contract of employment for staff to extend those protections to 5 years.

As a council which is undergoing potential amalgamation, it is essential that Marrickville take steps to protect the job security of its employees.

We are not aware of any reason that a Local Council would not be lawfully able to sign an MOU with the Union. It is also quite reasonable for a council to seek to alter contracts of employment by agreement with employees.

A memorandum of understanding is not a registered industrial instrument, but rather a record of a practice adopted by the concerned parties.

Accordingly we press Marrickville to work with the USU to ensure that structural change in Local Government does not occur in a way which hurts workers.

Should you wish to discuss this correspondence please contact Steve Donley on 9265 8211.

Yours faithfully,

Protected by PPIPA

Graeme Kelly
GENERAL SECRETARY
Per: Steve Donley, Manager Metropolitan
MN:cd
CC: Irene Nair Organiser, William Green, Kim Hoare

New South Wales Local Government, Clerical, Administrative, Energy, Airlines & Utilities Union

Regional Offices: Newcastle, Wollongong. **Satellite Offices:** Armidale, Bathurst, Canberra, Dubbo, Grafton, Hay, Port Macquarie, Wagga Wagga