SAVE OUR COUNCILS COALITION (SOCC) 20 JUNE 2016

REPORT ON COUNCIL COURT CHALLENGES – NSW GOVERNMENT'S FORCED MERGER PROPOSALS

1. COURT CASES CHALLENGING PROCESS

a) The council court cases in the NSW Land & Environment Court allege that the Government's forced merger proposals have followed a flawed process and should be declared invalid. Challenges can only be made on process and not on the merits or demerits of proposals.

b) The following 7 city councils have completed or are close to completion of their cases – Woollahra, Ku-ring-gai, Mosman, Strathfield, Hunters Hill, North Sydney and Lane Cove – as are the 3 rural and coastal councils of Oberon, Cabonne and Shellharbour. Gundagai has been dissolved but its challenge is proceeding through the actions of its former Mayor and Deputy Mayor. There are 19 additional councils proposed for mergers that are affected by the court decisions. The Minister has announced in relation to these 29 existing councils his "in-principle support" to merge them, subject to the decisions of the courts – which are not likely before August.

c) To summarise, the Government on 18 December announced forced merger proposals that could lead to the dissolution of 72 local councils. On 12 May 2016 the NSW Government forcibly amalgamated 42 of these councils, leaving 29 councils and Gundagai awaiting the result of 11 court actions. It should be noted that in Sydney the merger proposals are to create Mega councils of over 150,000 people each, which on any view are not local councils.

2. MERGER PROPOSALS MISLEADING

a) The Government's Merger Proposals released on 18 December 2015 with accompanying documents 6 January 2016, and statements at the time by the Premier and Minister for Local Government, all say that KPMG provided an "independent analysis" of the Merger Proposals. This allegedly showed significant financial benefits and formed the basis for the Government pushing ahead with forced mergers.

b) Evidence was led by the councils from documents produced reluctantly by the Government to the court, that KPMG was in fact engaged by July 2015 to work with the Government in developing these proposals. They were doing so in pursuit of the Government's objectives for merging councils. Documents dated July 2015 marked Draft Cabinet-In-Confidence reveal KPMG Analysis of various options for mergers. It was submitted to the court that KPMG did not carry out an independent analysis of the merger proposals as alleged. It was intimately involved from the start in their production and for the Government to say otherwise to councils and the community from 18 December onwards was to mislead them in a way that has infected and invalidated the whole process.

3. PUBLIC INQUIRY PROCESS FLAWED

a) THE NOTICES DEFICIENT

The Government notices stated that there would be a public inquiry into the proposals to "amalgamate or alter the boundaries" of councils – two fundamentally different processes. One

involves the dissolution of an elected council, the other involves its retention. The proposals in fact were for amalgamation and failed to advise the public that this would involve the removal of the fundamental right to democratic participatory local democracy. The notice also failed to accurately disclose the place and time for a meeting that was supposed to be open to the public to attend.

b) NO REAL PUBLIC INQUIRY

A Public Inquiry was conducted by a delegate required to examine and report on the Proposal. The Delegate stated at the public meeting that he was "independent." The Government's proposal document and advertisements claimed that the public inquiry would allow people to "hear about and discuss" the merger proposal. However, the Delegate chose to simply listen to oral submissions, and refused to take or answer questions on any substantive matters. The councils submitted to the court that this did not constitute at law a public inquiry. In addition delegates failed to reveal that they had been secretly briefed by KPMG and had received undisclosed documents.

4. ADDITIONAL ERRORS

Various councils also challenged other matters. These included for rural councils a failure to properly consider "rural centres", and for other councils errors in relation to "financial advantages and disadvantages", "community of interest", the holding of a "poll", and what constitutes "a single area of contiguous land" as required by the Act for a merger.

5. CONCLUSION

a) The councils' cases are compelling. As to the misleading actions of the Government, a finding that this has tainted the whole process could mean that all the forced amalgamations of councils to date have not proceeded according to law. This could have serious ramifications.

b) Other errors would require the Government to start the process again, which it would be ill-advised to do. In Strathfield's case the Government has already conceded that the delegate got it wrong when dealing with "community of interest".

c) The Government should listen to the community and to the experts and to all other political parties, and not proceed with its deeply flawed forced amalgamations agenda. It has no mandate to destroy local democracy in this State.

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Phil is a member of the SOCC Committee, a former councillor and a retired barrister who followed the court cases in court as a member of the public.