

# Council victories in final embarrassing merger defeat for government

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Days after the government abandoned its signature council merger policy, the NSW Court of Appeal delivered a stinging indictment on its handling of the process, declaring invalid three of the five remaining mergers and leaving the government with a legal bill mounting in the millions of dollars.



*NSW Premier Gladys Berejiklian defends the policy of council amalgamations, but concedes the implementation was wrong.*

The Court of Appeal judgment, handed down on Monday, brings to an end more than a year of legal action that resulted in the Sydney councils – Hunters Hill, Lane Cove, Strathfield, Mosman and North Sydney – challenging the mergers through the courts.

The protracted legal action ultimately forced the government to retreat on the core policy last week, [as Premier Gladys Berejiklian justified the backflip as necessary to ensure certainty ahead of next month's council elections](#).

Hunters Hill, Lane Cove and Strathfield council received further vindication from the Court of Appeal, which threw out the government's planned mergers for those councils, overturning earlier decisions in the Land and Environment Court.

"This is a victory for grassroots democracy," said Hunters Hill mayor Richard Quinn.



*NSW Premier Gladys Berejiklian CREDIT: BROOK MITCHELL*

"From day one in this whole debate we have argued that forced mergers should not proceed, and that communities should have a direct say in how they are governed."

The Court of Appeal ordered the state government pay the three councils' legal bills, leaving taxpayers footing a bill likely to run into the several millions of dollars, once the government's costs are factored in.

The final bills are yet to be crunched, but preliminary figures provided to Fairfax Media show Hunters Hill spent around \$400,000 on legal fees, Strathfield spend around \$500,000, and Lane Cove's council bill is expected to surpass \$245,000.

The government has also settled a \$300,000 bill with Ku-ring-gai council, [following the council's victory in the Court of Appeal in March](#).

And the final bill could still increase substantially, depending on whether Woollahra Council's High Court appeal, due to be heard later this year, proceeds.

A council spokesperson said its legal team were still discussing the options, including whether to seek a costs order to recover the \$1.1 million in legal fees spent by the council to date.

However, the state government is likely to recoup some of its expenses from Mosman and North Sydney councils, whose appeals were dismissed by the court on Monday.

In light of the legal defeat, North Sydney mayor Jilly Gibson said the Premier's backdown just days earlier was "serendipitous" for the community.

"I'm sure champagne corks were popping in homes right across North Sydney."

Mosman Mayor Peter Abelson said the council had "won in the court of public opinion", and the government's backflip was being "warmly" welcomed across Mosman.

In an extensive joint judgment covering each of the five appeals, Court of Appeal judges Robert Macfarlan, John Basten and Ronald Sackville grounded their decisions in the facts particular to each merger proposal.

Hunters Hill and Lane Cove council, which were challenging the proposed merger with Ryde Council, won on the technicality that the new council did not constitute a "single area of contiguous land" as required by law, because the two council areas were separated by the Lane Cove river.

Strathfield, Mosman and North Sydney's appeals featured a common argument: that the government had denied the councils procedural fairness by refusing to disclose key consultants' reports, prepared by KPMG, which the government relied upon as justification for the financial benefits of the mergers.

However, the court treated this ground differently in each case, distinguishing between the extent to which the government-appointed delegates relied on the KPMG analysis in their assessment of the merger proposals.

Judges Macfarlan and Sackville dismissed Mosman and North Sydney's cases on this basis, finding the delegate had not accepted "uncritically" the government's claims that a three-way merger with Willoughby council would be financially beneficial. Judge Basten dissented on this point.

Conversely, Strathfield council's appeal was upheld because the delegate did not exercise his independent judgment in assessing the benefits of the proposed merger with Burwood and Canada Bay councils.

Judge Sackville concluded the delegate had done "no more than summarise the financial advantages asserted by the minister."

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