

# ‘Delegate failed to inquire into merger proposal’: Woollahra’s amalgamation challenge is heard in NSW Court of Appeal

The Daily Telegraph 25 August 2016

Wentworth Courier

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*Christopher Birch SC representing Woollahra Council at the appeal hearing on Monday.*

THE State’s top legal minds are expected to take at least a month to make a judgment on Woollahra’s landmark amalgamation challenge which was heard in the NSW Court of Appeal on Monday.

Council barrister Christopher Birch SC challenged several findings by Chief Judge Brian Preston who on July 20 [threw out the council’s challenge](#) against the State Government’s proposed merger with Randwick and Waverley.

Dr Birch’s central argument was that Robert Lang, the delegate who carried out the public inquiry, failed to meet the minimum standard for an inquiry.

The court heard Dr Lang failed to inquire into the proposal and that he should have investigated whether KPMG’s calculation that the merger would deliver \$124m in savings — the key justification for the merger — was accurate.



*Woollahra Councillors Anthony Marano, Toni Zeltzer (mayor) and Luise Elsing*

Dr Birch said the inquiry was further invalidated when Dr Lang held a confidential briefing with KPMG, which locked out members of the community from the inquiry, which was meant to be public.

“It can’t be for the delegate to choose to only examine some particular aspect of the proposal in public session and for him to determine other aspects of the proposal in private session,” Dr Birch said.

#### **WOOLLAHRA DEFENDS COSTS**

Dr Birch also argued Dr Lang was required by the local government act to inquire into the financial advantages and disadvantages of the merger on each individual council area.

He said there should have been an examination into whether the savings were achieved by punishing one local government area or how ratepayers money would be spent under the umbrella of an eastern suburbs super council.

“Will it be spent on the local government area with the biggest infrastructure backlog?” he asked.

Mr Preston had found it was enough to consider the areas collectively.



*Noel Hutley SC represented the State Government. Pictures: Kate Bastians*

Dr Birch also disputed a finding by Judge Preston that the proposal document and KPMG documents “stood in no privileged position compared to other submissions, information and material received by the delegate ...”

“(Dr Lang) spends significantly more time looking at the issues that are in the proposal document than on submissions made by mayors and complaints by residents,” Dr Birch said.

Noel Hutley SC, who represented the Government, said Dr Lang fulfilled the requirements for a public inquiry.

“With respect to the meeting with KPMG, anything of real significance was in the public arena at the time of the inquiry,” said Mr Hutley, who is the NSW Bar Association president.

Mr Hutley said KPMG had committed to undertaking a “vigorous” and “independent” analysis using the “appropriate professional skills”.

Judgements have been reserved for several similar cases in the Land and Environment Court as judges await the outcome of Woollahra’s appeal, widely considered a test case.

The appeal was heard by Court of Appeal president Margaret Beazley, judge Julie Ward and NSW Chief Justice Tom Bathurst — the State’s top judge — who are expected to take between one and two months to hand down a decision.

Even then the fate of the council may not be sealed as the losing side would have the opportunity to take the matter to the High Court.

The Wentworth Courier has been told the appeal is expected to cost at least \$100,000 — for barrister's fees — after the law firm which has represented the council in its amalgamation battle offered to handle the appeal for free.

It is understood the lawyers would waive the fees because they believe the grounds for appeal are strong.

The council has spent \$692,000 to date but were [recently ordered by Chief Judge Brian Preston](#) in the Land and Environment Court to also pay the government's costs, expected to tip the bill over the \$1 million mark.

<http://www.dailytelegraph.com.au/newslocal/wentworth-courier/delegate-failed-to-inquire-into-merger-proposal-woollahras-amalgamation-challenge-is-heard-in-nsw-court-of-appeal/news-story/9e9e0e8ec1f3a296f558dfe0a3de3b68>