

# Woollahra Council set for High Court showdown with Berejiklian over merger

Government News May 2, 2017  
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**Woollahra Council is bracing itself for a High Court showdown with NSW Premier Gladys Berejiklian as it continues to struggle against the government's plans to merge it with Randwick and Waverley Councils.**

The Eastern Sydney suburbs council will head to the High Court on May 12 in an attempt to secure leave to appeal a decision that went against it in the NSW Supreme Court of Appeal last December when three judges unanimously threw out its appeal against the forced merger.

Woollahra Council has already faced the NSW government in the Land and Environment Court but its case was dismissed out of hand by Chief Judge Brian Preston in July 2016, who also awarded costs against the council.

Save Our Councils Coalition spokesman Phil Jenkyn, an ex-barrister, said the council's success in being granted an appeal rested on demonstrating that it was arguing an important point of law that had implications for other cases – an argument

that he said was reasonable – and whether there had been an error of law in the December court judgement.



*David Shoebridge MLC*



*Phil Jenkyn OAM*



*Mayor Toni Zeltzer*

The council has argued before that the full KPMG report, which the government relied upon to make its case for the savings from council mergers, should have been given to councils and delegates before public hearings. Delegate reports containing recommendations on whether councils should merge or stand alone were given to the Boundaries Commission after the hearings.

If Woollahra Council is blocked from appealing *Government News* understands that there are plans to form an Eastern suburbs residents' group that could take up cudgels, emboldened by Ku-ring-gai Council's win in March.

It has been an expensive battle for those councils who have stood up to the government. Woollahra has spent more than \$1 million battling the merger, including community consultation costs.

Liberal mayor of Woollahra, Toni Zeltzer, has justified the council's court cases saying that the majority of residents are opposed to the amalgamation and rates would soar between 20 and 50 per cent for Woollahra residents if it were amalgamated.

Greens MP David Shoebridge, also an ex-barrister, said it was possible for a third party to run a fresh case based on the Ku-ring-gai decision, which he said showed the illegitimacy of the government's forced merger agenda based on secret documents.

"[Woollahra Council] know they got a job done on them, they have got their residents' support. I would be surprised if they didn't throw their support around a viable legal challenge," Mr Shoebridge said.

The KPMG report took centre stage during a NSW Court of Appeal case in March when Ku-ring-gai Council argued that the government's suppression of part of the report had denied it procedural fairness.

The council won its case and the court decided that the delegate's report to the Boundaries Commission, which recommended a merger with Hornsby Shire, be

thrown out. The NSW government has yet to state whether it will abandon the merger or commission a new delegate's report.

The Ku-ring-gai decision, which the government chose not to appeal, has given renewed hope to councils still fighting mergers in the courts, including Hunters Hill, Lane Cove, Mosman, North Sydney and Strathfield. These councils had their cases heard at the beginning of April and are waiting to hear their judgements, which could take months.

Mr Shoebridge said the government's failure to appeal the Ku-ring-gai decision was telling.

"The Ku-ring-gai judgement doesn't just give the councils hope, it gives them an extremely strong legal basis to impugn every one of those cases of forced amalgamation. It's a compelling decision which supports all those councils that have maintained the fight," Mr Shoebridge said.

"The basic political truth is that if you don't fight you lose. I think residents should be very critical of their former council leadership if they didn't take up the legal fight."

But Mr Shoebridge conceded that the courts would be unlikely to unpick the council mergers last May, when more than 40 local councils were forced to merge into 19, because of the complexity, upheaval and expense.

Mr Jenkyn said the Ku-ring-gai judgement demonstrated that forced mergers had not been a fair dinkum process.

"How can you say there are all these billions of dollars being saved when all these expert reports say that what happened on the ground in Victoria, Queensland, NSW and Canada [after mergers] say rates grew and there were big inefficiencies?"

He said Woollahra's High Court challenge could lead to the full KPMG report being subpoenaed, which he said could "bring down the government" if the contents showed the government colluded with KPMG.

Meanwhile NSW Local Government Minister Gabrielle Upton said the government was committed to the merger of Hornsby and Ku-ring-gai Councils 'given the clear benefits it will have for the local communities'.

"There are a series of matters before the courts, including the High Court matter in Woollahra, which is why the government is not considering one case in isolation," Ms Upton said.

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