

Current Legal Cases – Status and Costs – November/December 2021

Advice on Costs and Status of Council's Court Proceedings

Executive Summary

1. Advice on Council's Court proceedings for the period 1 November 2021 to 15 December 2021 is contained within this report.
2. Total legal costs to date for the 2021/22 financial year are \$417,056.00.
3. Total legal costs recovered to date for the 2021/22 financial year are \$248,035.00.
4. Total costs incurred by Council in legal proceedings are \$283,930.00.
5. Total nett costs are \$169,021.00.

Background

6. The current Court Proceedings for the reporting period are broken down as follows:

Land and Environment Court

- 16 x Class 1 (Merit/DA)
- 2 x Class 4 Proceedings
- 6 x Class 5 Proceedings

Local Court

- 22 x Council Prosecutions

Costs Recoveries

- 13 x costs recoveries

New Matters

7. There were 3 new matters in this reporting period: 7 x Class 1 Appeals: *Thanos, Zhou (3), Zhang & Zhou, Salhab and Loucas Architects Pty Limited*.

Finalised matters

8. Twenty one (21) matters were finalised in this reporting period: 18 x Local Court matters: *Your Style Building Services Pty Limited*, 2 x Land & Environment Court matters: *SAF* (x2) and *Little Endeavours*.

Current Table

9. The Court proceedings current for the reporting period are set out below. The external costs include both external legal and expert consultants' (Court witnesses') fees.

No	Property Address / Applicant / Proceedings Number	Description of Matter	Status / Critical Dates
Land and Environment Court Proceedings – Class 1 Appeals			
1	33 Waterview Street, Carlton Applicant: 3R Investments Pty Limited Proceedings No: 2020/101221	Class 1 Appeal against the order made under Division 9.3 and Schedule 5, Part 1 (Order 1) of the Environmental Planning and Assessment Act by the Respondent dated 26 March 2020.	Matter listed for contested hearing on 26 and 27 November 2020. Appeal upheld. Section 56A Appeal heard on 27 October 2021. Court dismissed the Appeal.
2	33 Waterview Street, Carlton Applicant: SAF Group Pty Limited Proceedings No: 2020/101209	Class 1 Appeal against actual refusal of DA2019/0417 for the change of use of an industrial building to a depot, warehouse and associated offices.	Matter listed for contested hearing on 26 and 27 November 2020. Appeal upheld. Section 56A Appeal heard on 27 October 2021. Court dismissed the Appeal.
3	17 Endeavour Street, Sans Souci Applicant: Little Endeavours Early Learning Centre	Class 1 Appeal against deemed refusal of DA2020/0554 for alterations and additions to an existing childcare centre involving minor demolition and the	Matter listed for S34 Conference on 30 August 2021. Matter not resolved. Listed for contested hearing on 6 and 7 December 2021. A S34 Agreement was entered into following amended plans.

	Proceedings No: 2021/153352	construction of a new external stair, first floor outdoor play area and internal renovations.	
4	80 Boronia Parade, Lugarno Applicant: Landgrowth One Pty Limited ATF Landgrowth 001 Unit Trust Proceedings: 2021/199083	Class 1 Appeal against deemed refusal of DA2021/0181 for demolition existing structures and a Torrens title subdivision of the existing lot into 31 residential lots, construction of new roads, drainage and tree removal.	Matter was listed for S34 Conference on 22 October 2021. Section 34 Conference adjourned to 1 February 2022 following Applicant's Notice of Motion for matter to be heard with Class 1 Appeal against the Interim Heritage Order.
5	23 Louisa Street, Oatley Applicant: Robert Daoud Proceedings: 2021/251058	Class 1 Appeal against actual refusal of Building Certificate Application No. 149D2021/0037.	Matter listed for S34 Conference on 1 December 2021. Matter adjourned to 4 February 2022.
6	80 Boronia Parade, Lugarno Applicant: Milford & Matthei Proceedings: 2021/257771	Class 1 Appeal against the making on an Interim Heritage Order No. 1 in respect of the property at 80 Boronia Parade, Lugarno by Georges River Council published in the NSW Government Gazette No. 389 dated 13 August 2021.	Matter listed for S34 Conference on 1 February 2022.
7	117 Stuart Street, Blakehurst Applicant: Gemaveld Pty Ltd Proceedings: 2021/293258	Class 1 Appeal against the refusal of DA2020/0247 for the demolition of existing building and erection of a new multi dwelling house, swimming pool, front fence, landscaping and site works.	Matter listed for S34 Conference on 18 February 2022.

8	<p>870 & 870A Forest Road, Peakhurst</p> <p>Applicant: McDonagh Developments Pty Ltd</p> <p>Proceedings: 2021/295804</p>	<p>Class 1 Appeal against deemed refusal of DA2021/0302 for a seniors living development comprising 6 x 3 bedroom and 2 x 2 bedroom “in-fill self care housing” dwellings including strata subdivision.</p>	<p>Matter listed for S34 Conference on 21 February 2022.</p>
9	<p>31 Caloola Crescent, Beverly Hills</p> <p>Applicant: Ethan Dabbagh</p> <p>Proceedings: 2021/303459</p>	<p>Class 1 Appeal against deemed refusal of DA2021/0253 for the demolition of all existing structures, removal of tree on street, proposed attached dual occupancy with 2 x cabana and 2 x pool and proposed Torrens Title Subdivision.</p>	<p>Matter listed for S34AA Conciliation Conference on 1 and 2 February 2022.</p>
10	<p>31 Regent Street, Kogarah</p> <p>Applicant: Peter Thanos</p> <p>Proceedings: 2021/302444</p>	<p>Class 1 Appeal against the deemed refusal of DA2021/0253 for the demolition of all existing structures, removal of tree on street, proposed attached dual occupancy with 2 x cabana and 2 x pool, proposed Torrens Title Subdivision at 31 Caloola Crescent, Beverly Hills.</p>	<p>Matter listed for S34 Conference on 10 December 2021. Section 34 Agreement entered into following amended plans. Judgment listed for 15 December 2021.</p>
11	<p>25 William Road, Riverwood</p> <p>Applicant: Xiao Di Zhou</p> <p>Proceedings: 2021/306327</p>	<p>Class 1 Appeal against actual refusal of development application DA2021/0039 for premises known as 25 William Road, Riverwood.</p>	<p>Matter listed for S34 Conference on 7 February 2022.</p>

12	<p>25A William Road, Riverwood</p> <p>Applicant: Huawei Zhang & Xiao Di Zhou</p> <p>Proceedings: 2021/306381</p>	<p>Class 1 Appeal against actual refusal of development application DA2021/0040 for premises known as 25A William Road, Riverwood.</p>	<p>Matter listed for S34 Conference on 7 February 2022.</p>
13	<p>25 William Road, Riverwood</p> <p>Applicant: Xiao Di Zhou</p> <p>Proceedings: 2021/306358</p>	<p>Class 1 Appeal against deemed refusal of the Building Information Certificate Application dated 2 August 2021 for premises known as 25 William Road, Riverwood.</p>	<p>Matter listed for S34 Conference on 7 February 2022.</p>
14	<p>25A William Road, Riverwood</p> <p>Applicant: Xiao Di Zhou</p> <p>Proceedings: 2021/306268</p>	<p>Class 1 Appeal against deemed refusal of the Building Information Certificate Application dated 2 August 2021 for premises known as 25A William Road, Riverwood.</p>	<p>Matter listed for S34 Conference on 7 February 2022.</p>
15	<p>62 Morshead Drive, Connells Point</p> <p>Applicant: Buddy Salhab</p> <p>Proceedings: 2021/319419</p>	<p>Class 1 Appeal against the actual refusal of DA2020/0192 for the demolition of the existing dwelling and structures and construction of a two storey attached dual occupancy with swimming pools.</p>	<p>Matter listed for S34AA conciliation hearing on 1 and 4 April 2022.</p>
16	<p>176 – 178 Princes Highway, Beverley Park</p> <p>Applicant: Loucas Architects Pty Limited</p>	<p>Class 1 Appeal against deemed refusal of DA2020/0462 for the demolition of existing dwellings and construction of a six (6) storey residential building development containing twenty eight</p>	<p>Matter listed for directions hearing on 20 December 2021.</p>

	Proceedings: 2021/337124	(28) units above two (2) levels of basement car parking and associated landscaping and communal open space.	
Class 4 Proceedings			
1	15 Merton Street, Kogarah Bay Parties: George & Ilinka Apostolovski Proceedings: 2021/295989	Class 4 Application in relation to accumulation of material and items at premises.	Matter listed for directions hearing on 18 February 2022.
2	244 Connells Point Road, Connells Point Parties: Habib Hamade, Zeinab Hammoud, Carole Li and Winson Li Proceedings: 2020/72897	Class 4 Application in relation to unauthorised excavation works resulting in the undermining of a retaining wall and swimming pool at neighbour's property.	Notice of Motion listed for hearing on 9 February 2022 relating to non-compliance with Court orders.
Class 5 Proceedings			
1	9 Nellella Street, Blakehurst Parties: SAF Developments Pty Limited Proceedings: 2021/244132	Class 5 Summons for carrying out development on land which was prohibited.	Matter listed for mention on 4 February 2022.
2	9 Nellella Street, Blakehurst Parties: SAF Developments Pty Limited Proceedings: 2021/244133	Class 5 Summons for carrying out development not in accordance with consent.	Matter listed for mention on 4 February 2022.

3	9 Nellella Street, Blakehurst Parties: SAF Developments Pty Limited Proceedings: 2021/244134	Class 5 Summons for polluting land.	Matter listed for mention on 4 February 2022.
4	9 Nellella Street, Blakehurst Parties: SAF Developments Pty Limited Proceedings: 2021/244135	Class 5 Summons for unlawful transport of waste.	Matter listed for mention on 4 February 2022.
5	9 Nellella Street, Blakehurst Parties: Mohammad Safwan Abdul- Rahman Proceedings: 2021/244136	Class 5 Summons for polluting land.	Matter listed for mention on 4 February 2022.
6	9 Nellella Street, Blakehurst Parties: Mohammad Safwan Abdul- Rahman Proceedings: 2021/244137	Class 5 Summons for unlawful transport of waste.	Matter listed for mention on 4 February 2022.

Local Court Proceedings

1-6	2 – 6 Allen Street & 42 – 46 Connells Point Road, Connells Point Parties: Your Style Building Services Pty Limited	Appeals against Penalty Notices (6) issued for development not in accordance with development consent.	Matters listed in Downing Centre Local Court on 24 and 25 November 2021. Defendant pled guilty to 4 matters and 2 matters were withdrawn. Defendant convicted. Penalty issued for \$18,000.
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7-9	2 – 6 Allen Street & 42 – 46 Connells Point Road, Connells Point Parties: Your Style Building Services Pty Limited	Appeals against Penalty Notices (3) issued for development not in accordance with development consent.	Matters listed in Downing Centre Local Court on 24 and 25 November 2021. Defendant pled guilty to 1 matter and 2 matters were withdrawn. Defendant convicted. Penalty issued for \$3,000.
10- 16	2 – 6 Allen Street & 42 – 46 Connells Point Road, Connells Point Parties: Your Style Building Services Pty Limited	Appeals against Penalty Notices (7) issued for development not in accordance with development consent.	Matters listed in Downing Centre Local Court for hearing on 24 and 25 November 2021. Defendant pled guilty to 6 matters and 1 matter was withdrawn. Defendant convicted. Penalty issued for \$15,000.
17- 18	2 – 6 Allen Street & 42 – 46 Connells Point Road, Connells Point Parties: Your Style Building Services Pty Limited	Appeals against Penalty Notices (2) issued for development not in accordance with development consent.	Matters listed in Downing Centre Local Court for hearing on 24 and 25 November 2021. Defendant pled guilty to 1 matter and 1 matter was withdrawn. Defendant convicted. Penalty issued for \$1,000.
19	66 Townson Street, Blakehurst Parties: David Minaway	Appeal against Penalty Notice issued for failure to comply with development consent.	Matter listed for hearing on 6 April 2022.
20	12 Universal Street, Mortdale Parties: Charisma Developments Pty Limited	Appeal against Penalty Notice issued for development not in accordance with development consent.	Matter listed for hearing on 18 February 2022.
21	72A Ogilvy Street, Peakhurst Parties: Faoud Haifa	Court Attendance Notice in relation to offence under <i>Companion Animals Act 1988</i> .	Matter listed for further mention on 1 February 2022.

22	10 Belgrave Street, Kogarah Parties: Ly and Bcy Wong	Appeal against Penalty Notice issued for for late submission of annual fire safety statement.	Matter listed for further mention on 25 January 2022.
Costs			
1	36 – 38 Waterview Street, Carlton Parties: Tyre Nation Pty Ltd and Fardous & Saab Pty Limited Proceedings No: 2020/170606	Statement of Charge for Contempt of Court filed following failure to comply with Court orders regarding fire safety.	Matter listed for hearing on 22 and 23 July 2021. Consent orders entered into on 22 July 2021 with orders made for payment of \$220,000 by instalments.
2	977 Forest Road, Lugarno Parties: The Congregational Christian Church in Samoa, Parish of Sydney Inc Proceedings No: 2020/304249	Class 4 interlocutory proceedings seeking the Respondents be restrained from using the land for the purposes of a place of public worship unless in accordance with the conditions of Development Consent 2006/DA0372.	Matter listed for hearing on 24 and 25 June 2021. Consent orders entered into to carry out acoustic measures at the site. Council awarded costs as agreed or as assessed. Respondent has failed to agree on an amount. Property to be sold.
3	Lot 9, 29 Laycock Road, Penshurst Applicant: Penshurst Laycock Pty Ltd aff Trustee of Penshurst Laycock Unit Proceedings No. 20/208037	Class 1 Appeal against deemed refusal of DA2020/0160 for construction of a two storey boarding house development containing 7 boarding rooms, excavation and construction of a basement containing two car parking spaces.	Matter listed for contested hearing on 29 to 31 March 2021. Appeal refused. Costs awarded as agreed or assessed on 30 June 2021. Applicant has failed to agree on an amount. Matter proceeding to costs assessor to prepare bill of costs.

4	<p>Lot 10, 29 Laycock Road, Penshurst</p> <p>Applicant: Penshurst Laycock Pty Ltd aff Trustee of Penshurst Laycock Unit</p> <p>Proceedings No. 20/208038</p>	<p>Class 1 Appeal against deemed refusal of DA2020/0160 for construction of a two storey boarding house development containing 7 boarding rooms, excavation and construction of a basement containing two car parking spaces.</p>	<p>Matter listed for contested hearing on 29 to 31 March 2021. Appeal refused.</p> <p>Costs awarded as agreed or assessed on 30 June 2021. Applicant has failed to agree on an amount.</p> <p>Matter proceeding to costs assessor to prepare bill of costs.</p>
5	<p>Lot 11, 29 Laycock Road, Penshurst</p> <p>Applicant: Penshurst Laycock Pty Ltd aff Trustee of Penshurst Laycock Unit</p> <p>Proceedings No. 20/208036</p>	<p>Class 1 Appeal against deemed refusal of DA2020/0160 for construction of a two storey boarding house development containing 7 boarding rooms, excavation and construction of a basement containing two car parking spaces.</p>	<p>Matter listed for contested hearing on 29 to 31 March 2021. Appeal refused.</p> <p>Costs awarded as agreed or assessed on 30 June 2021. Applicant has failed to agree on an amount.</p> <p>Matter proceeding to costs assessor to prepare bill of costs.</p>
6	<p>54 Lawrence Street, Peakhurst</p> <p>Applicant: William Karavelas</p> <p>Proceedings No: 20/222456</p>	<p>Class 1 Appeal against refusal of DA2018/0578 for demolition of existing dwelling and ancillary structures and construction of a residential flat building containing 6 apartments over basement parking.</p>	<p>Matter listed for contested hearing on 17 and 18 May 2021. Section 34 Agreement entered into following amended plans. S8.15 costs to be paid in the amount of \$8,000. Arrangements entered into for payment of costs.</p>
7	<p>2 – 4 Vaughan Street, Blakehurst</p> <p>Applicant: Gianni Georges</p>	<p>Class 1 Appeal against refusal of DA2018/0517 for demolition of existing dwellings and improvements and the erection of a strata residential flat building development comprising</p>	<p>Matter listed for contested hearing 9 to 11 December 2020. Judgment handed down on 18 January 2021. Appeal dismissed.</p> <p>Costs awarded as agreed or assessed on 18 January 2021.</p>

	<p>Proceedings No: 2019/282526</p>	<p>24 units being 4 x 1 bed, 18 x 2 bed and 2 x 3 bed apartments above basement parking for 38 cars.</p>	<p>Applicant has failed to agree on an amount.</p> <p>Matter proceeding to costs assessor to prepare bill of costs.</p>
8	<p>5 Maclaurin Street, Penshurst</p> <p>Parties: Emanuel Mifsud</p> <p>Proceedings No: 2019/323436</p>	<p>Proceedings commenced requiring Respondent to remove articles and items from the Premises (hoarding).</p>	<p>Listed for a contested hearing on 28 and 29 July 2020. Judgment issued on 30 October 2020. Orders made for Respondent to remove articles and items within 28 days, failing which Council can carry out the works. Contractors arranged to carry out the works on 1 December 2020.</p> <p>Council awarded costs as agreed or as assessed.</p> <p>Respondent has failed to agree an amount.</p> <p>Bill of costs prepared. Mediation with Defendant failed to resolve the matter. Awaiting costs assessment.</p>
9	<p>297 Rocky Point Road, Sans Souci</p> <p>Parties: Alan Frederick Goddard</p> <p>Proceedings No: 2018/366019</p>	<p>Proceedings commenced for accumulation of items resulting in premises being in an unsafe or unhealthy condition under the <i>Local Government Act, 1993</i>.</p>	<p>On 24 September 2019 the Court held that the premises were unsafe or unhealthy and made Orders for de-accumulation of items in accordance with a schedule provided by Council. Costs awarded in favour of Council.</p> <p>Council awarded costs as agreed or as assessed.</p> <p>Matter proceeding to costs assessment.</p>
10	<p>977 Forest Road, Lugarno</p> <p>Parties: The Congregational Christian Church in Samoa, Parish of</p>	<p>Proceedings commenced against Respondents for a declaration that the First and Second Respondents have each breached the <i>Protection of the Environment</i></p>	<p>Costs awarded following hearing on 12 and 13 December 2018 and on 31 May 2019. Costs assessment finalised and Certificates of Judgment registered.</p> <p>Bankruptcy proceedings now commenced against Taeipo Malifa.</p>

	<p>Sydney Incorporated and Taeipo Malifa</p> <p>Proceedings No. 2018/23816 2019/43432</p>	<p>(Operations) Act 1997 by failing to comply with prevention notices given to each of them under section 96 of that Act by Council.</p>	<p>A Creditor's Petition is being prepared to be filed with the Court.</p> <p>A Writ of Execution has been recorded on the Certificate of Title for the property owned by the Church. Property is now to be sold. Negotiations taking place in relation to payment of the debt.</p>
11	<p>244 Connells Point Road, Connells Point</p> <p>Parties: Habib Hamade, Zeinab Hammoud, Carole Li and Winson Li</p> <p>Proceedings: 2020/72897</p>	<p>Class 4 Application in relation to unauthorised excavation works resulting in the undermining of a retaining wall and swimming pool at neighbour's property.</p>	<p>Consent Orders issued on 19 October 2020 including orders that the First and Second Respondents pay Council's costs as agreed or as assessed.</p> <p>Costs assessment application filed with Supreme Court. Awaiting judgment.</p>
12	<p>34 Milsop & 47 Jersey Avenue, Mortdale</p> <p>Parties: Robert Stojanovski & Steven Stojanovski</p> <p>Proceedings No: 2018/99739</p>	<p>Proceedings commenced for unauthorised erection of structures and slabs, including habitation of structure at the premises.</p>	<p>Respondent found to be in Contempt of Court Orders on 30 September 2019.</p> <p>Costs assessment process undertaken.</p> <p>Bankruptcy proceedings commenced. Hearing of Creditor's Petition to take place on or about 11 November 2021. Awaiting issue of bankruptcy orders.</p>
13	<p>5 Mona Street, Allawah</p> <p>Applicant: Aplus Architecture</p> <p>Proceedings No: 2020/39217</p>	<p>Class 1 Appeal for deemed refusal of DA2019/0608 for demolition of existing structures and construction of a boarding house with basement parking.</p>	<p>Matter listed for S34 Conference on 6 October 2020. Section 34 Conference terminated. Matter listed for contested hearing on 13 and 14 April 2021. Appeal upheld.</p> <p>Costs of \$20,000 being paid by instalments.</p>

10. Costs to date are as follows:

Type	Amount
Class 1 Appeals – Consultants for Court Proceedings	\$101,222
Class 1 Appeals – Planning DA External Lawyers	\$76,918
Class 2 Appeals	\$0
Class 3 Appeals	\$0
Class 4 Appeals	\$84,588
Class 5 Appeals	\$20,992
Local Court Prosecutions/Enforcements	\$210
Supreme Court Proceedings	\$0
Industrial Relations Commission (IRC)	\$0
NSW Civil and Administrative Tribunal (NCAT)	\$0
Total	\$283,930.00