

Current Legal Cases – Status and Costs – September 2021

Advice on Costs and Status of Council's Court Proceedings

Executive Summary

1. Advice on Council's Court proceedings for the period 1 September 2021 to 30 September 2021 is contained within this report.
2. Total legal costs to date for the 2021/22 financial year are \$209,230.00.
3. Total legal costs recovered to date for the 2021/22 financial year are \$236,091.00.
4. Total costs incurred by Council in legal proceedings are \$147,905.00.

Background

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

Land and Environment Court

- 8 x Class 1 (Merit/DA)

Local Court

- 23 x Council Prosecutions

Costs Recoveries

- 13 x costs recoveries

New Matters

6. There were 5 new matters in this reporting period: 2 x Class 1 Appeals: *Milford & Matthei* and *Daoud* and 3 x Local Court prosecutions: *Haifa*, *Wong* and *Ghassani*.

Finalised matters

7. One matter was finalised in this reporting period: 1 x Class 1 appeal: *Ibrahim*.

Current Table

8. 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 filed. Listed for hearing on 27 October 2021.
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 filed. Listed for hearing on 27 October 2021.
3	10 Lawrence Street, Peakhurst Applicant: Mariam Ibrahim Proceedings No: 2020/336594	Class 1 Appeal against the Respondent's deemed refusal of modification application MOD2020/0178 seeking to modify DA2014/1197 for minor internal and external alterations and an increase in the number of children permitted at the	Matter listed for S34 Conference on 25 May 2021. Conciliation terminated. Listed for contested hearing on 27 and 28 September 2021 however following further amended plans a S34 Agreement was entered into prior to the hearing.

		childcare centre from 48 to 58.	
4	17 Endeavour Street, Sans Souci Applicant: Little Endeavours Early Learning Centre Proceedings No: 2021/153352	Class 1 Appeal against deemed refusal of DA2020/0554 for alterations and additions to an existing childcare centre involving minor demolition and the construction of a new external stair, first floor outdoor play area and internal renovations.	Matter listed for S34 Conference on 30 August 2021. Matter not resolved. Listed for contested hearing on 6 and 7 December 2021.
5	591 – 611 Princes Highway, Blakehurst Applicant: QMS Media Limited Proceedings No: 2021/177924	Class 1 Appeal against refusal of DA2020/0065 for the installation of a digital advertising sign.	Matter listed for S34 Conference on 19 October 2021.
6	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 listed for S34 Conference on 22 October 2021.
7	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.

8	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 directions on 8 October 2021.
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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.
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.
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.
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.

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</i> 1988.	Matter listed for mention on 9 November 2021.
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 mention on 14 December 2021.
23	36 Whitfield Parade, Hurstville Grove Parties: Rob Ghassani	Appeal against Penalty Notice issued for development not in accordance with development consent.	Matter listed for hearing on 14 December 2021.
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	Class 4 interlocutory proceedings seeking the Respondents be restrained from using	Matter listed for hearing on 24 and 25 June 2021. Consent orders entered into to carry out acoustic measures at the site.

	<p>Congregational Christian Church in Samoa, Parish of Sydney Inc</p> <p>Proceedings No: 2020/304249</p>	<p>the land for the purposes of a place of public worship unless in accordance with the conditions of Development Consent 2006/DA0372.</p>	<p>Council awarded costs as agreed or as assessed.</p> <p>Respondent has failed to agree an amount.</p> <p>Matter now with costs assessor to prepare bill of costs.</p>
3	<p>Lot 9, 29 Laycock Road, Penshurst</p> <p>Applicant: Penshurst Laycock Pty Ltd aff Trustee of Penshurst Laycock Unit</p> <p>Proceedings No. 20/208037</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. Negotiations continuing with Applicant.</p>
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. Negotiations continuing with Applicant.</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. Negotiations continuing with Applicant.</p>
6	<p>54 Lawrence Street, Peakhurst</p>	<p>Class 1 Appeal against refusal of DA2018/0578</p>	<p>Matter listed for contested hearing on 17 and 18 May 2021. Section</p>

	<p>Applicant: William Karavelas</p> <p>Proceedings No: 20/222456</p>	<p>for demolition of existing dwelling and ancillary structures and construction of a residential flat building containing 6 apartments over basement parking.</p>	<p>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>Proceedings No: 2019/282526</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 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>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>Applicant has failed to agree 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 to take place prior to proceedings to recover outstanding costs.</p>
9	<p>297 Rocky Point Road, Sans Souci</p> <p>Parties: Alan Frederick</p>	<p>Proceedings commenced for accumulation of items resulting in premises being in an unsafe or unhealthy condition under the <i>Local</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>

	Goddard Proceedings No: 2018/366019	<i>Government Act, 1993.</i>	Council awarded costs as agreed or as assessed. Costs assessment now being undertaken.
10	977 Forest Road, Lugarno Parties: The Congregational Christian Church in Samoa, Parish of Sydney Incorporated and Taeipo Malifa Proceedings No. 2018/23816 2019/43432	Proceedings commenced against Respondents for a declaration that the First and Second Respondents have each breached the <i>Protection of the Environment (Operations) Act 1997</i> by failing to comply with prevention notices given to each of them under section 96 of that Act by Council.	Costs awarded following hearing on 12 and 13 December 2018 and on 31 May 2019. Costs assessment finalised and Certificates of Judgment registered. Bankruptcy proceedings now commenced against Taeipo Malifa. A Writ of Execution has been recorded on the Certificate of Title for the property owned by the Church.
11	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.	Consent Orders issued on 19 October 2020 including orders that the First and Second Respondents pay Council's costs as agreed or as assessed. Costs assessment application filed with Supreme Court.
12	34 Milsop & 47 Jersey Avenue, Mortdale Parties: Robert Stojanovski & Steven Stojanovski Proceedings No: 2018/99739	Proceedings commenced for unauthorised erection of structures and slabs, including habitation of structure at the premises.	Respondent found to be in Contempt of Court Orders on 30 September 2019. Costs assessment process undertaken. Bankruptcy proceedings have now commenced.
13	5 Mona Street, Allawah	Class 1 Appeal for deemed refusal of	Matter listed for S34 Conference on 6 October 2020. Section 34

	<p>Applicant: Aplus Architecture</p> <p>Proceedings No: 2020/39217</p>	<p>DA2019/0608 for demolition of existing structures and construction of a boarding house with development basement parking.</p>	<p>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>
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9. Costs to date are as follows:

Type	Amount
Class 1 Appeals – Consultants for Court Proceedings	\$45,712
Class 1 Appeals – Planning DA External Lawyers	\$41,499
Class 2 Appeals	\$0
Class 3 Appeals	\$0
Class 4 Appeals	\$52,425
Class 5 Appeals	\$8,239
Local Court Prosecutions/Enforcements	\$30
Supreme Court Proceedings	\$0
Industrial Relations Commission (IRC)	\$0
NSW Civil and Administrative Tribunal (NCAT)	\$0
Total	\$147,905