

Current Legal Cases – Status and Costs – April and May 2022

Advice on Costs and Status of Council's Court Proceedings

Executive Summary

1. Advice on Council's Court proceedings for the period 30 March 2022 to 31 May 2022 is contained within this report.
2. Total legal costs to date for the 2021/22 financial year are \$1,294,917.00.
3. Total legal costs recovered to date for the 2021/22 financial year are \$540,415.00.
4. Total costs incurred by Council in legal proceedings are \$932,799.00.
5. Total nett costs are \$754,502.00.

Background

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

Land and Environment Court

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

District Court

- 1 x matter

Local Court

- 1 x Council Prosecutions

Costs Recoveries

- 12 x costs recoveries

New Matters

7. There were 4 new matters in this reporting period: 4 x Class 1 Appeals: *Design Studio 407 Pty Ltd, Pyramid Consulting Pty Ltd, Chen* and *32 The Avenue Hurstville Pty Ltd ATF 32 The Avenue Hurstville Trust*.

Finalised matters

8. Nine matters were finalised in this reporting period: 8 x Class 1 Appeal matters: *Landgrowth One Pty Limited ATF Landgrowth 001 Unit Trust, Gemaveld Pty Ltd, Zhang & Zhou (x 4), Salhab, Chen* and 1 x Class 4 matter: *Apostolovski*.

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 |
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| Land and Environment Court Proceedings – Class 1 Appeals | | | |
| 1 | 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 hearing on 31 October to 4 November 2022 however Applicant has now discontinued proceedings. |
| 2 | 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. S34 Agreement entered into following amended plans. |
| 3 | 870 & 870A Forest Road, Peakhurst Applicant: McDonagh Developments Pty Ltd | Class 1 Appeal against deemed refusal of DA2021/0302 for a seniors living development comprising 6 x 3 bedroom and 2 x 2 | Matter listed for S34 Conference on 21 February 2022. Section 34 Conference terminated. Matter set down for hearing 15 – 17 June 2022. |

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| | Proceedings: 2021/295804 | bedroom “in-fill self care housing” dwellings including strata subdivision. | |
| 4 | 25 William Road, Riverwood Applicant: Xiao Di Zhou Proceedings: 2021/306327 | Class 1 Appeal against actual refusal of development application DA2021/0039 for premises known as 25 William Road, Riverwood. | Matter listed for S34 Conference on 7 February 2022. S34 Agreement entered into following amended plans. |
| 5 | 25A William Road, Riverwood Applicant: Huawen Zhang & Xiao Di Zhou Proceedings: 2021/306381 | Class 1 Appeal against actual refusal of development application DA2021/0040 for premises known as 25A William Road, Riverwood. | Matter listed for S34 Conference on 7 February 2022. S34 Agreement entered into following amended plans. |
| 6 | 25 William Road, Riverwood Applicant: Xiao Di Zhou Proceedings: 2021/306358 | Class 1 Appeal against deemed refusal of the Building Information Certificate Application dated 2 August 2021 for premises known as 25 William Road, Riverwood. | Matter listed for S34 Conference on 7 February 2022. S34 Agreement entered into following amended plans. |
| 7 | 25A William Road, Riverwood Applicant: Xiao Di Zhou Proceedings: 2021/306268 | Class 1 Appeal against deemed refusal of the Building Information Certificate Application dated 2 August 2021 for premises known as 25A William Road, Riverwood. | Matter listed for S34 Conference on 7 February 2022. S34 Agreement entered into following amended plans. |
| 8 | 62 Morshead Drive, Connells Point Applicant: Buddy Salhab | Class 1 Appeal against the actual refusal of DA2020/0192 for the demolition of the existing dwelling and structures and construction of a two | Matter listed for S34AA conciliation hearing on 1 and 4 April 2022. S34 Agreement entered into following amended plans. |

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| | Proceedings: 2021/319419 | storey attached dual occupancy with swimming pools. | |
| 9 | 176 – 178 Princes Highway, Beverley Park Applicant: Loucas Architects Pty Limited Proceedings: 2021/337124 | 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 (28) units above two (2) levels of basement car parking and associated landscaping and communal open space. | Matter listed for S34 Conference on 6 April 2022. S34 Agreement entered into. Awaiting judgment. |
| 10 | 88 – 92 Botany Street, Carlton Applicant: Hurstville Community Centre Incorporated Proceedings: 2021/360407 | Class 1 Appeal against refusal of DA2019/0644 for demolition works, alterations to existing building and change of use from nursing home to place of public workshop, community facilities and associated works. | Matter listed for hearing on 17 – 19 August 2022. |
| 11 | 47 Boronia Street, Kyle Bay Applicant: Harry Myliotis Proceedings: 2022/16300 | Class 1 Appeal against deemed refusal of modification application MOD 2021/0142 for various modifications at basement level including increase in basement footprint along with relocation of external vents, inclusion of plant room, and inclusion of storage area. The modifications also include conversion of car space adjacent to lift into store and plant room; and lowering of pool coping level on 47 | Matter listed for S34AA Conference on 3 and 4 May 2022. Matter adjourned to 6 June 2022. |

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| | | Boronia, removal of pool at 34 Cross Street, and relocation of alfresco and additional fill to north-western corner and demolition of fencing and new timber, fencing boundary. | |
| 12 | 6 – 10 Torrens Street, Blakehurst Applicant: Lioncrest Capital Holdings Pty Limited Proceedings: 2022/25659 | Class 1 Appeal against deemed refusal of DA2021/0478 which seeks consent for the demolition of existing dwellings and ancillary structures and construction of a five-storey residential flat building over basement parking. | Matter listed for hearing 27 and 28 June 2022. |
| 13 | 36 Chamberlain Street, Narwee Parties: Commitment Pty Limited Proceedings No: 2022/44228 | Class 1 Appeal against deemed refusal of DA2021/0415 for demolition works and construction of a child care centre. | Matter listed for S34 Conference on 15 June 2022. |
| 14 | 3 Coolangatta Road, Beverly Hills Applicant: Chun Yue Cao Proceedings 2022/337124 | Class 1 Appeal against refusal of DA2021/0021 for demolition, construction of a detached two storey dual occupancy development including landscaping and site works. | Matter listed for S34AA Conciliation on 21 and 22 June 2022. |
| 15 | 26 Bowden Street, Connells Point Applicant: Yasser Elgammal Proceedings 2022/45831 | Class 1 Appeal against Stop Work Order dated 11 February 2022. | Matter listed for further directions hearing on 1 July 2022. |

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| 16 | 32 Montgomery Street, Kogarah Applicant: Lateral Estate Pty Limited Proceedings 2022/62002 | Class 1 Appeal against deemed refusal of modification application MOD2022/0014 to modify development consent DA2021/0110 for internal and external alterations to level 2 and alterations in relation to car parking. | Matter listed for S34 Conference on 8 June 2022. |
| 17 | 32 Montgomery Street, Kogarah Applicant: Lateral Estate Pty Limited Proceedings 2022/62033 | Class 1 Appeal against deemed refusal of modification application MOD2022/0013 to modify development consent DA2018/0139 for internal and external alterations. | Matter listed for S34 Conference on 8 June 2022. |
| 18 | 12-14 Bembridge Street, Carlton Applicant: Michel Murr Proceedings 2022/65497 | Class 1 Appeal against deemed refusal of DA2021/0400 for demolition of existing structures and construction of five storey residential flat building comprising of 16 apartments with rooftop communal space and 2 levels of basement parking. | Matter listed for S34 Conference on 27 May 2022. Matter adjourned to 3 June 2022. |
| 19 | 55 Park Road, Carlton Applicant: Mamdouh Salem Proceedings No: 2022/71021 | Class 1 Appeal against deemed refusal of DA2021/0295 for demolition of existing structures on the site, tree removal and the construction of a 6 storey mixed use development comprising a ground floor commercial tenancy, a 44 room boarding house including a communal | Matter listed for S34 Conference on 2 June 2022. |

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| | | room, managers room and associated amenities above two levels of basement car parking and associated landscaping and site works. | |
| 20 | 26 Martin Place, Mortdale Applicant: JAMG Holdings Pty Ltd as Trustee for the JAMG Property Trust Proceedings No: 2022/83335 | Class 1 Appeal against demolition of existing structures, removal of trees, erection of a 4 storey residential flat building containing 5 units, parking on grade. | Matter listed for S34 Conference on 26 July 2022. |
| 21 | 49 Johnstone Street, Peakhurst Applicant: Moussa Choker Proceedings No. 2022/88489 | Class 1 Appeal against demolition of existing buildings on the subject site and construction of a new dual occupancy development (each dwelling with a swimming pool and cabana). Removal / replacement of two trees. | Matter listed for hearing on 29 June 2022. |
| 22 | 64 Moons Avenue, Lugarno Applicant: Design Studio 407 Pty Limited Proceedings No: 2022/92245 | Class 1 Appeal against refusal of modification of consent of DA2018/0230 for alterations and additions to a dwelling house – removal of timber decks and Condition 10. | Matter listed for S34AA Conciliation Conference on 30 June 2022. |
| 23 | 40 Oxford Street, Mortdale Applicant: Pyramid Consulting Pty Limited | Class 1 Appeal against deemed refusal of DA2022/0041 for demolition of existing structures and construction of a part 3, part 4 storey, 27 room | Matter listed for S34 Conference on 29 July 2022. |

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| | Proceedings No: 2022/96931 | boarding house over two basement levels of carparking. | |
| 24 | 30 – 32 The Avenue, Hurstville Applicant: 32 The Avenue Hurstville Pty Ltd ATF 32 The Avenue Hurstville Trust Proceedings No: 2022/122081 | Class 1 Appeal against deemed refusal of DA2021/0399 for demolition of existing structures, amalgamation of two existing lots and construction of a 4 storey mixed use residential flat building containing ground floor retail space, basement carparking and associated landscaping. | Matter listed for S34 Conference on 20 June 2022. |
| 25 | 5 Dinjerra Crescent, Oatley Applicant: Jiging Chen Proceedings No: 2022/114271 | Class 1 Appeal against a Development Control Order. | Applicant discontinued proceedings on 20 May 2022. |
| 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 8 April 2022. Consent orders entered into in relation to a staged clean up of the Premises. |
| 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 relating to non-compliance with Court orders and contempt motion listed for 7 June 2022. |

| Class 5 Proceedings | | | |
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| 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 hearing 6 March to 17 March 2023. |
| 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 hearing 6 March to 17 March 2023. |
| 3 | 9 Nellella Street, Blakehurst Parties: SAF Developments Pty Limited Proceedings: 2021/244134 | Class 5 Summons for polluting land. | Matter listed for hearing 6 March to 17 March 2023. |
| 4 | 9 Nellella Street, Blakehurst Parties: SAF Developments Pty Limited Proceedings: 2021/244135 | Class 5 Summons for unlawful transport of waste. | Matter listed for hearing 6 March to 17 March 2023. |
| 5 | 9 Nellella Street, Blakehurst Parties: Mohammad Safwan Abdul- Rahman Proceedings: 2021/244136 | Class 5 Summons for polluting land. | Matter listed for hearing 6 March to 17 March 2023. |

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| 6 | 9 Nellella Street, Blakehurst Parties: Mohammad Safwan Abdul-Rahman Proceedings: 2021/244137 | Class 5 Summons for unlawful transport of waste. | Matter listed for hearing 6 March to 17 March 2023. |
| Local Court Proceedings | | | |
| 1 | 72A Ogilvy Street, Peakhurst Parties: Faoud Haifa | Court Attendance Notice in relation to offence under <i>Companion Animals Act</i> 1988. | Matter listed for hearing on 1 November 2022. |
| District Court | | | |
| 1 | Parties: Stanley Xie | Appeal against Local Court decision of parking fine. | Matter listed for hearing on 11 April 2022. Matter adjourned to 2 September 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 | 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 | 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. |

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| | Proceedings No: 2020/304249 | Development Consent 2006/DA0372. | |
| 3 | Lot 9, 29 Laycock Road, Peshurst Applicant: Peshurst Laycock Pty Ltd aff Trustee of Peshurst 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. Negotiations taking place with Applicant's solicitors. |
| 4 | Lot 10, 29 Laycock Road, Peshurst Applicant: Peshurst Laycock Pty Ltd aff Trustee of Peshurst Laycock Unit Proceedings No. 20/208038 | 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. Negotiations taking place with Applicant's solicitors. |
| 5 | Lot 11, 29 Laycock Road, Peshurst Applicant: Peshurst Laycock Pty Ltd aff Trustee of Peshurst Laycock Unit Proceedings No. 20/208036 | 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. Negotiations taking place with Applicant's solicitors. |
| 6 | 54 Lawrence Street, Peakhurst | Class 1 Appeal against refusal of DA2018/0578 for demolition of existing dwelling and ancillary | Matter listed for contested hearing on 17 and 18 May 2021. Section 34 Agreement entered into following amended plans. S8.15 costs to be |

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| | <p>Applicant: William Karavelas</p> <p>Proceedings No: 20/222456</p> | <p>structures and construction of a residential flat building containing 6 apartments over basement parking.</p> | <p>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 on an amount.</p> <p>Matter with costs assessor. Bill of costs being finalised.</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 on 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:</p> | <p>Proceedings commenced for accumulation of items resulting in premises being in an unsafe or unhealthy condition</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</p> |

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| | <p>Alan Frederick Goddard</p> <p>Proceedings No: 2018/366019</p> | <p>under the <i>Local Government Act</i>, 1993.</p> | <p>provided by Council. Costs awarded in favour of Council.</p> <p>Council awarded costs as agreed or as assessed.</p> <p>Bill of costs prepared. Awaiting costs assessment.</p> |
| 10 | <p>977 Forest Road, Lugarno</p> <p>Parties: The Congregational Christian Church in Samoa, Parish of Sydney Incorporated and Taeipo Malifa</p> <p>Proceedings No. 2018/23816 2019/43432</p> | <p>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.</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. 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.</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 review 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 further information from the Official Trustee in Bankruptcy.</p> |

10. Costs to date are as follows:

| Type | Amount |
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| Class 1 Appeals – Consultants for Court Proceedings | \$327,984 |
| Class 1 Appeals – Planning DA External Lawyers | \$357,811 |
| Class 2 Appeals | \$0 |
| Class 3 Appeals | \$0 |
| Class 4 Appeals | \$175,765 |
| Class 5 Appeals | \$32,886 |
| Local Court Prosecutions/Enforcements | \$22,990 |
| Supreme Court Proceedings | \$0 |
| Industrial Relations Commission (IRC) | \$0 |
| NSW Civil and Administrative Tribunal (NCAT) | \$15,363 |
| Total | \$932,799 |