

Current Legal Cases – Status and Costs – December 2022 & January 2023

Advice on Costs and Status of Council's Court Proceedings

Executive Summary

- 1. Advice on Council's Court proceedings for the period 1 December 2022 to 31 January 2023 is contained within this report.
- 2. Total legal costs to date for the 2022/23 financial year are \$1,175,340.00.
- 3. Total legal costs recovered to date for the 2022/23 financial year are \$82,450.00.
- 4. Total costs incurred by Council in legal proceedings are \$847,060.00.
- 5. Total nett costs are \$1,092,890.00.

Background

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

Land and Environment Court

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

Supreme Court – Court of Appeal

1 x Summons

Local Court

• 7 x Council Prosecutions

Costs Recoveries

12 x costs recoveries

New Matters

7. There were 12 new matters in this reporting period: 4 x Class 1 Appeals: *NXT Developments Pty Limited, Vortex Construction Pty Limited* and *Beaini Corp Pty Limited;* 1 x Class 4 Summons: *Elgammal* and 7 x Local Court Proceedings: *N* & *N Khan Investments Pty Limited.*

Finalised matters

- 8. Four Land and Environment Court (LEC) Class 1 matters were finalised in this reporting period: *Anevski, Arcidiacono (Slieman), Winphil Pty Limited,* and *Budmars Pty Limited.*
- 9. One LEC Class 4 matter was finalised in this reporting period: *Mifsud*.

Current Table

10. 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
Lan	d and Environment Co	urt Proceedings – Class	1 Appeals
1	6 – 10 Torrens Street, Blakehurst	Class 1 Appeal against deemed refusal of DA2021/0478 which	
	Applicant: Lioncrest Capital Holdings Pty Limited	seeks consent for the demolition of existing dwellings and ancillary structures and	
	Proceedings: 2022/25659	construction of a five- storey residential flat building over basement parking.	
2	26 Martin Place, Mortdale	Class 1 Appeal against demolition of existing structures, removal of	26 July 2022. S34 Conference
	Applicant:JAMGHoldingsPtyLtdLtdasTrustee for the JAMGPropertyTrust	trees, erection of a 4 storey residential flat building containing 5 units, parking on grade.	hearing 29 November to 1 December 2022. Judgment
	Proceedings No: 2022/83335		
3	48 Oxford Street, Mortdale	Class 1 Appeal against deemed refusal of DA2022/0041 for demolition of existing structures and	29 July 2022 however vacated. S34 Conference now listed on 10 February 2023.

	Applicants Dimensio	appointed at a set of	
	Applicant: Consulting LimitedPyramid PtyProceedings 2022/96931No:	construction of a part 3, part 4 storey, 27 room boarding house over two basement levels of carparking.	
4	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.	20 June 2022. Matter unresolved and listed for hearing on 31 October and 1 November 2022. Awaiting judgment.
5	49 Jersey Avenue, Mortdale Applicant: Sharobem Holdings Pty Limited Proceedings No. 2022/164067	Class 1 Appeal against refusal of DA2020/0354 for demolition works and the construction of a child care centre.	Matter listed for S34 Conference on 25 August 2022. Matter listed for hearing on 16 and 17 February 2023.
6	5A The Strand, Penshurst Applicant: Winphil Pty Limited Proceedings No. 2022/174905	Class 1 Appeal against deemed refusal of DA2021/0244 for demolition and construction of a mixed use development comprising basement car parking, ground floor commercial and residential apartments above (12 x studios used as affordable housing, 8 x 2 bedroom units and 5 x 3 bedroom units.	16 September 2022. Matter listed for hearing on 1 and 2 February 2023. Matter discontinued on 25 January 2023 with order for costs in
7	15 Dalcassia Street, Hurstville	Class 1 Appeal against refusal of DA2020/0261 for demolition of existing structures and	Matter listed for S34 Conference on 10 October 2022 however terminated. Matter listed for

	Applicant: Wang Zhang Lin & Bao Zhen Qiu Proceedings No. 2022/189574	construction of a 12 room boarding house (one being a caretakers room), landscaping and site works.	hearing on 13 and 14 February 2023.
8	14 Gardinia Street, Narwee Applicant: Bobby Anevski and Kathy Anevski Proceedings No. 2022/214927	Class 1 Appeal against refusal of building information certificate number 149D2016/0025 on 27 January 2022 for alterations and additions to the existing dwelling comprising of rear addition to dining room and new laundry, new decking with stairs, alterations to front patio, front façade reconstruction with additional columns, demolish existing garage with extended garage slab for car space and replacement carport.	Matter listed for S34 Conference on 21 November 2022. S34 Conference was terminated. Applicant discontinued these proceedings.
9	46 Annette Street, Oatley Applicant: Anna and John Arcidiacono Proceedings No. 2022/229777	Class 1 Appeal against deemed refusal of DA2022/0008 for demolition of existing structures and construction of a dual occupancy with Torrens Title subdivision.	Conference on 13 and 14
10	2 – 6 Lacey Street, Kogarah Bay Applicant: Truland Development Pty Limited Proceedings No. 2022/241040	Class 1 Appeal against deemed refusal of Modification Application Portal Reference PAN- 209172 being an application to modify the development consent Council reference DA2021/0211.	9 February 2023.
11	41 – 47 Princes Highway, Kogarah Bay	Class 1 Appeal against deemed refusal of MOD2022/0052	

	Applicant: Skyton Developments No 2 Pty Ltd Proceedings No: 2022/252723	(seeking modification to conditions of DA183.20.2016) for minor modifications to address structural engineering requirements, reduction of units from 52 to 45 residential apartments to comply with ADG, increase in the total height from 10 storeys to 12 storeys and an increase in parking in basement area.	
12	15 Greenbank Street, Hurstville Applicant : Carol Li Ma and De Yong Chen Proceedings No: 2022/254306	Class 1 Appeal against actual refusal of DA2021/0401 for demolition works, subdivision of land into three lots, construction of 3 x 2 storey detached dwellings with a basement and a swimming pool on each proposed lot and associated works.	
13	21 Hogben Street, Kogarah Applicant: Michel Murr trading as Michel Proceedings No: 2022/273362	Class 1 Appeal against actual refusal of DA2020/0190 for demolition works, site preparation and construction of a twelve (12) storey mixed use development in elevation comprising ground floor retail/commercial floor space, 51 residential apartments above five (5) levels of basement containing 76 car spaces, roof top communal open space,	31 January 2023. Adjourned to 21

		landscaping, site works and stratum subdivision.	
14	426 – 428 Princes Highway, Blakehurst Applicant: Julie McInnes Proceedings No: 2022/282069	Class 1 Appeal against actual refusal of DA2021/0388 for demolition works of existing structures and the construction of a residential flat building.	27 January 2023. Matter listed for
15	42 Treacy Street, Hurstville Applicant: Vi Phong Chau Proceedings No: 2022/284572	Class 1 Appeal against deemed refusal of DA2021/0448 for demolition of existing single storey brick building, construction of seven storey boarding house with two commercial units on ground floor over three levels of basement car parking.	Matter listed for S34 Conference on 10 February 2023. Adjourned to 17 February 2023.
16	44 Park Avenue, Oatley Applicant: Bryan & Holly Hallinan Proceedings No: 2022/305763	Class 1 Appeal against refusal of DA REV2022/0011 for construction of a new two storey dwelling house, landscaping and site works.	
17	36 – 38 Waterview Street, Carlton Applicant: Fardous & Saab Pty Limited Proceedings No: 2022/295282	Class 1 Appeal against order made under Division 9.3 and Schedule 5, Part 2 (Order 1) of the Environmental Planning and Assessment Act 1979 dated 5 September 2022.	
18	68 Morshead Drive, Connells Point	Class 1 Appeal against deemed refusal of Modification Application	

	Applicant: Budmars Pty Limited Proceedings No: 2022/333320	202210167 lodged pursuant to s4.56 of the Environmental Planning and Assessment Act to modify Development Consent DA2020/0192 granted by the Land and Environment Court in proceedings 2021/0031949.	2023. Matter discontinued by Applicant.
19	40 Algernon Street, Oatley Applicant: Ross Green Proceedings No: 2022/335956	Class 1 Appeal against refusal of DA2021/0273 for subdivision of two Torrens title lots and driveway and landscaping works.	Matter listed for S34AA Conference on 29 and 30 March 2023.
20	36 – 40 Anderson Road, Mortdale Applicant: John Hatch Proceedings No: 2022/335956	Class 1 Appeal against refusal of Modification Application 2021/0193 for the increase in capacity from 68 children to 90, construction of new car park and play area, and other landscaping and building alterations.	Matter listed for S34 Conference on 30 May 2023.
21	95 – 99 Railway Parade, Mortdale Applicant: NXT Developments Pty Limited Proceedings No: 2022/369251	Class 1 Appeal against deemed refusal of DA2022/0113 for a seven storey shop top housing development.	Matter listed for S34 Conference on 24 May 2023.
22	348 – 352 Railway Parade & 2 – 2A Garfield Street, Carlton Applicant: Vortex Construction Pty Limited	Class 1 Appeal against deemed refusal of DA2022/0431 for demolition of existing structures and construction of a multi- storey shop top housing development comprising	Matter listed for S34 Conference on 8 May 2023.

		of one commercial	
	Proceedings No. 2022/383670	tenancy and 39 residential apartments and three level basement parking.	
23	37 Inverness Avenue, Penshurst	Class 1 Appeal against deemed refusal of Modification Application	Matter listed for first directions hearing on 15 February 2023.
	Applicant: Beaini Corp Pty Limited	MOD2022/0168 relating to DA2021/0227 which relate to the demolition	
	Proceedings No: 2023/7575	works and construction of a detached dual occupancy.	
Clas	s 4 Proceedings		
1	244 Connells Point Road, Connells Point	Class 4 Application in relation to unauthorised excavation works	Notice of Motion relating to non- compliance with Court orders listed for further hearing on 28 July 2022.
	Parties: Habib Hamade, Zeinab Hammoud, Carole Li and Winson Li	resulting in the C undermining of a c	Consent orders entered into to complete additional remedial works within 21 days.
	Proceedings:	swimming pool at	Contempt proceedings listed for 17
	2020/72897		and 18 April 2023.
2	247 Princes Highway, Carlton	Class 4 Application in relation to the	Matter listed for hearing on 23 and 24 March 2023.
	Parties: Perry Properties Pty Ltd	compulsory acquisition of 247 Princes Highway, Carlton.	
	Proceedings No: 2022/237344		
3	26 Bowden Crescent, Connells Point	Class 4 Application in relation to unauthorised	Matter listed for directions hearing on 17 March 2023.
	Parties: Yasser Elgammal & Abdul Hammoud	works.	
	Proceedings No: 2023/35778		
4	5 Maclaurin Street, Penshurst	Proceedings commenced requiring Respondent to remove articles and items from the Premises (hoarding).	Final orders made on 2 December 2022. Orders made the First Respondent carry out works within 60 days and costs of \$4,093.00 to be paid.

	Parties : Emanuel Mifsud & Crystina Mifsud		
	Proceedings No: 2019/323436		
Cla	ss 5 Proceedings	1	
1	9 Nellella Street, Blakehurst	Class 5 Summons for carrying out	5
	Parties: SAF Developments Pty Limited	development on land which was prohibited.	
	Proceedings: 2021/244132		
2	9 Nellella Street, Blakehurst	Class 5 Summons for carrying out	5
	Parties: SAF Developments Pty Limited	development not in accordance with consent.	
	Proceedings: 2021/244133		
3	9 Nellella Street, Blakehurst	Class 5 Summons for polluting land.	Matter listed for hearing 6 and 7 March 2023.
	Parties: SAF Developments Pty Limited		
	Proceedings: 2021/244134		
4	9 Nellella Street, Blakehurst	Class 5 Summons for unlawful transport of	5
	Parties: SAF Developments Pty Limited	waste.	
	Proceedings: 2021/244135		

5	9 Nellella Street, Blakehurst Parties: Mohammad Safwan Abdul- Rahman Proceedings: 2021/244136	Class 5 Summons for polluting land.	Matter listed for hearing 6 and 7 March 2023.
6	9 Nellella Street, Blakehurst Parties: Mohammad Safwan Abdul- Rahman Proceedings: 2021/244137	Class 5 Summons for unlawful transport of waste.	5
1-7	532 King Georges Road, Beverly Hills Parties: N & N Khan Investments Pty Limited	Court Attendance Notices in relation to offences under Food Act 2003 (NSW) of Phillies, 532 King Georges Road, Beverly Hills.	Matters listed for directions hearing on 14 March 2023.
Sup 1	reme Court – Court of 117 Stuart Street, Blakehurst Parties: Peter John El Khouri, Goumana Therese El Khouri and Effi Theodorakopoulos v Gemaveld Pty Limited Proceedings 2022/197368	AppealSupremeCourtSummons(JudicialReview) of decision ofCommissioner Horton oftheLandEnvironment Court on 7April2022tograntdevelopment consent toDA202/0247fordemolitionworks,construction of a multileveldwelling house,swimmingpool,frontfence,landscapingsite works.	č ,

Cos	ts		
1	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. Negotiations are continuing.
2	Lot 9, 29 Laycock Road, Penshurst Applicant: Penshurst Laycock Pty Ltd atf 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. Negotiations taking place with Applicant's solicitors.
3	Lot 10, 29 Laycock Road, Penshurst Applicant: Penshurst Laycock Pty Ltd atf Trustee of Penshurst 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.
4	Lot 11, 29 Laycock Road, Penshurst Applicant : Penshurst Laycock Pty Ltd atf	Class 1 Appeal against deemed refusal of DA2020/0160 for construction of a two storey boarding house development containing 7 boarding rooms,	Matter listed for contested hearing on 29 to 31 March 2021. Appeal refused. Costs awarded as agreed or assessed on 30 June 2021.

	Trustee of Penshurst Laycock Unit Proceedings No . 20/208036	excavation and construction of a basement containing two car parking spaces.	Applicant has failed to agree on an amount. Negotiations taking place with Applicant's solicitors.
5	2 – 4 Vaughan Street, Blakehurst Applicant: Gianni Georges Proceedings No: 2019/282526	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.	Matter listed for contested hearing 9 to 11 December 2020. Judgment handed down on 18 January 2021. Appeal dismissed. Costs awarded as agreed or assessed on 18 January 2021. Applicant has failed to agree on an amount. Costs assessment filed with Supreme Court. Further information provided to Costs Assessor.
6	5 Maclaurin Street, Penshurst Parties: Emanuel Mifsud Proceedings No: 2019/323436	Proceedings commenced requiring Respondent to remove articles and items from the Premises (hoarding).	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. Council awarded costs as agreed or as assessed. Respondent has failed to agree on an amount. Bill of costs prepared. Mediation with Defendant failed to resolve the matter. Costs assessment determination received. Costs respondent lodged an application for review of the costs determination. Further Certificate of Determination received. Proceedings with recovery of costs from Defendant.

7	297 Rocky Point Road, Sans Souci Parties: Alan Frederick Goddard Proceedings No: 2018/366019	Proceedings commenced for accumulation of items resulting in premises being in an unsafe or unhealthy condition under the <i>Local</i> <i>Government</i> Act, 1993.	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. Council awarded costs as agreed or as assessed. Bill of costs prepared. Costs assessment determination received. Negotiations with Defendant taking place.
8	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</i> of the Environment (Operations) Act 1997 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 Creditor's Petition is being prepared to be filed with the Court. A Writ of Execution has been recorded on the Certificate of Title for the property owned by the Church. Negotiations are continuing.
9	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 review application filed with Supreme Court. Awaiting judgment.
10	34 Milsop & 47 Jersey Avenue, Mortdale	Proceedings commenced for unauthorised erection of structures and slabs, including habitation of	Respondent found to be in Contempt of Court Orders on 30 September 2019. Costs assessment process undertaken.

	Parties: Robert Stojanovski & Steven Stojanovski Proceedings No: 2018/99739	structure at the premises.	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.
11	4 The Esplanade, South Hurstville Applicant: Ekon Pty Limited Proceedings No: 2019/296629	Class 1 Appeal against refusal of DA2017/0659 for demolition of existing structures and construction of 68 place childcare centre at 4 The Esplanade, South Hurstville.	Matter listed for contested hearing on 24 and 25 May 2021. Appeal refused. Negotiations in relation to costs taking place with Applicant's solicitors.
12	 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.	hearing on 17 August 2022 following amendment of application. Appeal upheld subject to conditions.

11. Costs to date are as follows:

Туре	Amount
Class 1 Appeals – Consultants for Court Proceedings	\$379,083
Class 1 Appeals – Planning DA External Lawyers	\$332,331
Class 2 Appeals	\$0
Class 3 Appeals	\$0
Class 4 Appeals	\$102,481
Class 5 Appeals	\$13,412
Local Court Prosecutions/Enforcements	\$10,051
Supreme Court Proceedings	\$9,702
Industrial Relations Commission (IRC)	\$0
NSW Civil and Administrative Tribunal (NCAT)	\$0
Total	\$847,060