

Current Legal Cases – Status and Costs – February 2023

Advice on Costs and Status of Council's Court Proceedings

Executive Summary

1. Advice on Council's Court proceedings for the period 1 February 2023 to 28 February 2023 is contained within this report.
2. Total legal costs to date for the 2022/23 financial year are \$1,257,222.00.
3. Total legal costs recovered to date for the 2022/23 financial year are \$305,014.00.
4. Total costs incurred by Council in legal proceedings are \$916,692.00.
5. Total nett costs are \$952,209.00.

Background

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

Land and Environment Court

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

Supreme Court – Court of Appeal

- 1 x Summons

Local Court

- 8 x Council Prosecutions

Costs Recoveries

- 13 x costs recoveries

New Matters

7. There were 2 new matters in this reporting period: 1 x Class 1 Appeals: *Ayoubi*; 1 x Local Court Proceedings: *Macchina Espresso Pty Limited*.

Finalised matters

8. One Land and Environment Court (**LEC**) Class 1 matters were finalised in this reporting period: *Sharobem Holdings Pty Limited*.

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	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 20 and 21 September 2022. Matter adjourned to 21 March 2023.
2	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. S34 Conference terminated. Matter listed for hearing 29 November to 1 December 2022. Judgment reserved.
3	48 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 boarding house over two	Matter was listed for S34 Conference on 10 February 2023 however vacated. Matter is now listed for hearing on 19 to 21 April 2023.

	Proceedings No: 2022/96931	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.	Matter listed for S34 Conference on 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. A S34 Agreement was entered into following amended plans.
6	15 Dalcassia Street, Hurstville Applicant: Wang Zhang Lin & Bao Zhen Qiu Proceedings No. 2022/189574	Class 1 Appeal against refusal of DA2020/0261 for demolition of existing structures and construction of a 12 room boarding house (one being a caretakers room), landscaping and site works.	Matter listed for S34 Conference on 10 October 2022 however terminated. Matter listed for hearing on 13 and 14 February 2023. A S34 Agreement was entered into following amended plans.
7	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.	Matter listed for S34 Conference on 9 February 2023. Awaiting judgment.

8	<p>41 – 47 Princes Highway, Kogarah Bay</p> <p>Applicant: Skyton Developments No 2 Pty Ltd</p> <p>Proceedings No: 2022/252723</p>	<p>Class 1 Appeal against deemed refusal of MOD2022/0052 (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.</p>	<p>Matter listed for S34 Conference on 22 February 2023 however terminated. Matter is listed for hearing on 19 and 20 July 2023.</p>
9	<p>15 Greenbank Street, Hurstville</p> <p>Applicant: Carol Li Ma and De Yong Chen</p> <p>Proceedings No: 2022/254306</p>	<p>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.</p>	<p>Matter listed for S34 Conference on 16 December 2022. Adjourned to 16 February 2023. A S34 Agreement was entered into following amended plans.</p>
10	<p>21 Hogben Street, Kogarah</p> <p>Applicant: Michel Murr trading as Michel</p> <p>Proceedings No: 2022/273362</p>	<p>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</p>	<p>Matter listed for S34 Conference on 31 January 2023. Adjourned to 13 March 2023.</p>

		spaces, roof top communal open space, landscaping, site works and stratum subdivision.	
11	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.	Matter listed for S34 Conference on 27 January 2023. Matter listed for further hearing on 20 & 21 June 2023 however was discontinued by the Applicant.
12	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 was listed for S34 Conference on 10 February 2023 however terminated. Matter is now listed for hearing on 24 and 25 July 2023.
13	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.	Matter listed for S34AA Conciliation hearing on 20 and 21 March 2023.
14	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.	Matter listed for S34 Conference on 19 December 2022 however terminated. Matter listed for hearing on 3 July 2023.

15	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 however vacated. Matter listed for further directions on 30 May 2023.
16	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.
17	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.
18	348 – 352 Railway Parade & 2 – 2A Garfield Street, Carlton Applicant: Vortex Construction Pty Limited Proceedings No. 2022/383670	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 of one commercial tenancy and 39 residential apartments and three level basement parking.	Matter listed for S34 Conference on 8 May 2023.
19	37 Inverness Avenue, Penshurst	Class 1 Appeal against deemed refusal of Modification Application	Matter listed for S34AA Conference on 5 and 6 June 2023.

	<p>Applicant: Beaini Corp Pty Limited</p> <p>Proceedings No: 2023/7575</p>	<p>MOD2022/0168 relating to DA2021/0227 which relate to the demolition works and construction of a detached dual occupancy.</p>	
20	<p>10 Spalding Crescent, Hurstville Grove</p> <p>Applicant: Wageeh Ayoubi</p> <p>Proceedings No: 2023/26519</p>	<p>Class 1 Appeal against refusal of DA2022/0826 for demolition works and construction of a dual occupancy development.</p>	<p>Matter listed for S26 Mediation on 31 May 2023.</p>
Class 4 Proceedings			
1	<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>Notice of Motion relating to non-compliance with Court orders listed for further hearing on 28 July 2022. Consent orders entered into to complete additional remedial works within 21 days.</p> <p>Contempt proceedings listed for 17 and 18 April 2023.</p>
2	<p>247 Princes Highway, Carlton</p> <p>Parties: Perry Properties Pty Ltd</p> <p>Proceedings No: 2022/237344</p>	<p>Class 4 Application in relation to the compulsory acquisition of 247 Princes Highway, Carlton.</p>	<p>Matter listed for hearing on 23 and 24 March 2023.</p>
3	<p>26 Bowden Crescent, Connells Point</p> <p>Parties: Yasser Elgammal & Abdul Hammoud</p> <p>Proceedings No: 2023/35778</p>	<p>Class 4 Application in relation to unauthorised works.</p>	<p>Matter listed for directions hearing on 17 March 2023.</p>

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 hearing 6 and 7 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 and 7 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 and 7 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 and 7 March 2023.
5	9 Nellella Street, Blakehurst Parties: Mohammad Safwan Abdul- Rahman	Class 5 Summons for polluting land.	Matter listed for hearing 6 and 7 March 2023.

	Proceedings: 2021/244136		
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 and 7 March 2023.
Local Court Proceedings			
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.
8	75 Boundary Road, Mortdale Parties: Macchina Espresso Pty Limited	Court Attendance Notice in relation to development without development consent.	Matter listed for hearing on 30 March 2023.
Supreme Court – Court of Appeal			
1	117 Stuart Street, Blakehurst Parties: Peter John El Khouri, Goumana Therese El Khouri and Effi Theodorakopoulos v Gemaveld Pty Limited Proceedings 2022/197368	Supreme Court Summons (Judicial Review) of decision of Commissioner Horton of the Land and Environment Court on 7 April 2022 to grant development consent to DA202/0247 for demolition works, construction of a multi level dwelling house, swimming pool, front fence, landscaping and site works.	Matter listed for hearing on 6 April 2023.

Costs			
1	<p>977 Forest Road, Lugarno</p> <p>Parties: The Congregational Christian Church in Samoa, Parish of Sydney Inc</p> <p>Proceedings No: 2020/304249</p>	<p>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.</p>	<p>Matter listed for hearing on 24 and 25 June 2021. Consent orders entered into to carry out acoustic measures at the site.</p> <p>Council awarded costs as agreed or as assessed.</p> <p>Negotiations are continuing.</p>
2	<p>Lot 9, 29 Laycock Road, Penhurst</p> <p>Applicant: Penhurst Laycock Pty Ltd aff Trustee of Penhurst 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.</p> <p>Applicant has failed to agree on an amount.</p> <p>Negotiations taking place with Applicant's solicitors.</p>
3	<p>Lot 10, 29 Laycock Road, Penhurst</p> <p>Applicant: Penhurst Laycock Pty Ltd aff Trustee of Penhurst 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.</p> <p>Applicant has failed to agree on an amount.</p> <p>Negotiations taking place with Applicant's solicitors.</p>
4	<p>Lot 11, 29 Laycock Road, Penhurst</p> <p>Applicant: Penhurst Laycock Pty Ltd aff</p>	<p>Class 1 Appeal against deemed refusal of DA2020/0160 for construction of a two storey boarding house development containing 7 boarding rooms,</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.</p>

	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. Certificate of Determination received. Proceeding with recovery of costs from Defendant.
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	<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>Certificate of Determination received. Proceedings with recovery of costs from Defendant.</p>
8	<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. Negotiations are continuing.</p>
9	<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.</p> <p>Certificate of Determination received. Proceedings with recovery of costs from Defendant.</p>

10	<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>
11	<p>4 The Esplanade, South Hurstville</p> <p>Applicant: Ekon Pty Limited</p> <p>Proceedings No: 2019/296629</p>	<p>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.</p>	<p>Matter listed for contested hearing on 24 and 25 May 2021. Appeal refused.</p> <p>Negotiations in relation to costs taking place with Applicant's solicitors.</p>
12	<p>88 – 92 Botany Street, Carlton</p> <p>Applicant: Hurstville Community Centre Incorporated</p> <p>Proceedings: 2021/360407</p>	<p>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.</p>	<p>Matter listed for consent order hearing on 17 August 2022 following amendment of application. Appeal upheld subject to conditions.</p> <p>Negotiations in relation to costs have failed to resolve the costs issue. Matter being prepared to be sent for costs assessment.</p>
13	<p>5 Maclaurin Street, Penshurst</p> <p>Parties: Emanuel Mifsud & Crystina Mifsud</p> <p>Proceedings No: 2019/323436</p>	<p>Proceedings commenced requiring Respondent to remove articles and items from the Premises (hoarding).</p>	<p>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. Awaiting payment of costs.</p>

10. Costs to date are as follows:

Type	Amount
Class 1 Appeals – Consultants for Court Proceedings	\$405,499
Class 1 Appeals – Planning DA External Lawyers	\$342,001
Class 2 Appeals	\$0
Class 3 Appeals	\$0
Class 4 Appeals	\$133,443
Class 5 Appeals	\$15,347
Local Court Prosecutions/Enforcements	\$10,700
Supreme Court Proceedings	\$9,702
Industrial Relations Commission (IRC)	\$0
NSW Civil and Administrative Tribunal (NCAT)	\$0
Total	\$916,692