

Current Legal Cases – Status and Costs – March 2022

Advice on Costs and Status of Council's Court Proceedings

Executive Summary

1. Advice on Council's Court proceedings for the period 1 March 2022 to 29 March 2022 is contained within this report.
2. Total legal costs to date for the 2021/22 financial year are \$876,716.00.
3. Total legal costs recovered to date for the 2021/22 financial year are \$282,134.00.
4. Total costs incurred by Council in legal proceedings are \$522,944.00.
5. Total nett costs are \$594,581.00.

Background

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

Land and Environment Court

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

District Court

- 1 x matter

Local Court

- 3 x Council Prosecutions

Costs Recoveries

- 12 x costs recoveries

New Matters

7. There were 8 new matters in this reporting period: 8 x Class 1 Appeal: Cao, *Elgammal*, *Lateral Estate Pty Limited* (x2), *Murr*, *Salem*, JAMG Holdings and Choker.

Finalised matters

8. Two matters were finalised in this reporting period: 2 x Local Court matters: *Charisma Developments Pty Limited* and *Wong*.

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	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 hearing 31 October to 4 November 2022.
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. Matter adjourned to 28 March 2022. Awaiting judgment.
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 bedroom "in-fill self care	Matter listed for S34 Conference on 21 February 2022. Section 34 Conference terminated. Matter set down for hearing 14 – 17 June 2022.

	Proceedings: 2021/295804	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. Awaiting judgment.
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. Awaiting judgment.
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. Awaiting judgment.
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. Awaiting judgment.
8	62 Morshead Drive, Connells Point Applicant: Buddy Salhab Proceedings: 2021/319419	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	Matter listed for S34AA conciliation hearing on 1 and 4 April 2022.

		occupancy with swimming pools.	
9	<p>176 – 178 Princes Highway, Beverley Park</p> <p>Applicant: Loucas Architects Pty Limited</p> <p>Proceedings: 2021/337124</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 (28) units above two (2) levels of basement car parking and associated landscaping and communal open space.</p>	<p>Matter listed for S34 Conference on 6 April 2022.</p>
10	<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 S34 Conference on 10 March 2022. Matter adjourned to 5 April 2022.</p>
11	<p>47 Boronia Street, Kyle Bay</p> <p>Applicant: Harry Myliotis</p> <p>Proceedings: 2022/16300</p>	<p>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 Boronia, removal of pool</p>	<p>Matter listed for S34AA Conference on 3 and 4 May 2022.</p>

		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 S34 Conference on 8 April 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 27 April 2022.

16	<p>32 Montgomery Street, Kogarah</p> <p>Applicant: Lateral Estate Pty Limited</p> <p>Proceedings 2022/62002</p>	<p>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.</p>	<p>Matter listed for S34 Conference on 8 June 2022.</p>
17	<p>32 Montgomery Street, Kogarah</p> <p>Applicant: Lateral Estate Pty Limited</p> <p>Proceedings 2022/62033</p>	<p>Class 1 Appeal against deemed refusal of modification application MOD2022/0013 to modify development consent DA2018/0139 for internal and external alterations.</p>	<p>Matter listed for S34 Conference on 8 June 2022..</p>
18	<p>12-14 Bembridge Street, Carlton</p> <p>Applicant: Michel Murr</p> <p>Proceedings 2022/65497</p>	<p>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.</p>	<p>Matter listed for directions hearing on 5 April 2022.</p>
19	<p>55 Park Road, Carlton</p> <p>Applicant: Mamdouh Salem</p> <p>Proceedings No: 2022/71021</p>	<p>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</p>	<p>Matter listed for directions hearing on 8 April 2022.</p>

		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 directions hearing on 22 April 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 directions hearing on 28 April 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.
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 8 April 2022 relating to non-compliance with Court orders. Contempt motion listed for 29 April 2022.

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 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.

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.
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Local Court Proceedings

1	12 Universal Street, Mortdale Parties: Charisma Developments Pty Limited	Appeal against Penalty Notice issued for development not in accordance with development consent.	Defendant was found guilty of the offence and fined \$2,000 and ordered to pay Council's costs of \$7,500.
2	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.
3	10 Belgrave Street, Kogarah Parties: Ly and Bcy Wong	Appeal against Penalty Notice issued for late submission of annual fire safety statement.	Matter listed for further mention on 22 February 2022. Matter discontinued.

District Court

1	Parties: Stanley Xie	Appeal against Local Court decision of parking fine.	Matter listed for hearing on 11 April 2022.
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Costs

1	36 – 38 Waterview Street, Carlton	Statement of Charge for Contempt of Court filed following failure to	Matter listed for hearing on 22 and 23 July 2021.
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	<p>Parties: Tyre Nation Pty Ltd and Fardous & Saab Pty Limited</p> <p>Proceedings No: 2020/170606</p>	comply with Court orders regarding fire safety.	Consent orders entered into on 22 July 2021 with orders made for payment of \$220,000 by instalments.
2	<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>	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>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>Respondent has failed to agree on an amount. Property to be sold.</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>	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>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>Matter proceeding to costs assessor to prepare bill of costs.</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>	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>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>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.</p> <p>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>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 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</p>

			<p>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: 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 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. Negotiations taking place in relation to payment of the debt.</p>
11	<p>244 Connells Point Road, Connells Point</p>	<p>Class 4 Application in relation to unauthorised excavation works</p>	<p>Consent Orders issued on 19 October 2020 including orders that the First and Second Respondents</p>

	<p>Parties: Habib Hamade, Zeinab Hammoud, Carole Li and Winson Li</p> <p>Proceedings: 2020/72897</p>	<p>resulting in the undermining of a retaining wall and swimming pool at neighbour's property.</p>	<p>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
Class 1 Appeals – Consultants for Court Proceedings	\$451,630

Class 2 Appeals	\$0
Class 3 Appeals	\$0
Class 4 Appeals	\$133,003
Class 5 Appeals	\$32,886
Local Court Prosecutions/Enforcements	\$22,932
Supreme Court Proceedings	\$0
Industrial Relations Commission (IRC)	\$0
NSW Civil and Administrative Tribunal (NCAT)	\$15,363
Total	\$522,944