

Current Legal Cases – Status and Costs – May 2021

Advice on Costs and Status of Council's Court Proceedings

Executive Summary

1. Advice on Council's Court proceedings for the period 1 May 2021 to 31 May 2021 is contained within this report.
2. Total legal costs to date for the 2020/21 financial year are \$2,016,612.00.
3. Total legal costs recovered to date for the 2020/21 financial year are \$422,414.00.
4. Total costs incurred by Council in legal proceedings are \$1,594,198.00.
5. **Total nett costs are \$1,578,891.00.**

Background

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

Land and Environment Court

- 16 x Class 1 (Merit/DA)
- 3 x Class 4
- 1 x Contempt Proceedings

Local Court

- 34 x Council Prosecutions

New Matters

7. There were two new Land and Environment Court Class 1 Appeals (*Genlik*) and (*Kozarovski*).

Finalised matters

8. Twenty five matters were finalised in this reporting period (*Karavelas*), (*Aplus Architecture*), (*Kai-Tian Group Kogarah Pty Ltd*), (*Du*) x 11 and (*Taste of Shanghai*) x 11.

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	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. Matter adjourned to 18 June 2021.
2	5 Mona Street, Allawah Applicant: Aplus Architecture Proceedings No: 2020/39217	Class 1 Appeal for deemed refusal of DA2019/0608 for demolition of existing structures and construction of a boarding house development with basement parking.	Matter listed for S34 Conference on 6 October 2020. Section 34 Conference terminated. Matter listed for contested hearing on 13 and 14 April 2021. Appeal upheld.
3	519 King Georges Road, Beverly Hills Applicant: Outdoor Systems Pty Limited Proceedings No: 2020/65407	Class 1 Appeal for refusal of MOD 2019/0196 for replacement of existing north and north western facing advertising panels with single digital LED screen.	Matter listed for contested hearing 22 and 23 April 2021. Awaiting judgment.
4	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.

5	<p>33 Waterview Street, Carlton</p> <p>Applicant: SAF Group Pty Limited</p> <p>Proceedings No: 2020/101209</p>	<p>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.</p>	<p>Matter listed for contested hearing on 26 and 27 November 2020. Appeal upheld. Section 56A Appeal filed.</p>
6	<p>Lot 9, 29 Laycock Road, Penshurst</p> <p>Applicant: Penshurst Laycock Pty Ltd atf 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. Awaiting judgment.</p>
7	<p>Lot 10, 29 Laycock Road, Penshurst</p> <p>Applicant: Penshurst Laycock Pty Ltd atf 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. Awaiting judgment.</p>
8	<p>Lot 11, 29 Laycock Road, Penshurst</p> <p>Applicant: Penshurst Laycock Pty Ltd atf 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. Awaiting judgment.</p>

9	<p>36 Chamberlain Street, Narwee</p> <p>Applicant: Commitment Pty Limited</p> <p>Proceedings No: 20/222588</p>	<p>Class 1 Appeal against refusal of DA2020/0050 for demolition and construction of a child care centre.</p>	<p>Matter listed for contested hearing on 26 and 27 April 2021. Awaiting judgment.</p>
10	<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.</p>
11	<p>31 Garfield Street, Carlton</p> <p>Applicant: Compag Group Pty Limited</p> <p>Proceedings No: 20/240194</p>	<p>Class 1 Appeal against deemed refusal of DA2020/0133 for demolition of existing 1 storey brick building and erection of a four storey boarding house development with partial basement parking.</p>	<p>Matter listed for contested hearing on 31 May and 1 June 2021.</p>
12	<p>18 – 24A Victoria Street, Kogarah</p> <p>Applicant: Kai-Tian Group Kogarah Pty Limited</p> <p>Proceedings No: 20/285043</p>	<p>Class 1 Appeal against actual refusal of DA2017/0597 for demolition of existing structures and construction of a residential flat building over basement parking with associated landscaping and drainage works.</p>	<p>Matter listed for S34 Conference on 27 April 2021. Section 34 Agreement entered into following amended plans.</p>

13	<p>10 Lawrence Street, Peakhurst</p> <p>Applicant: Marian Ibrahim</p> <p>Proceedings No: 2020/336594</p>	<p>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 childcare centre from 48 to 58.</p>	<p>Matter listed for S34 Conference on 25 May 2021. Conciliation terminated. Listed for directions hearing on 15 June 2021.</p>
14	<p>10 Kyle Parade, Kyle Bay</p> <p>Applicant: Christopher Robert Zaarour</p> <p>Proceedings No: 2021/44244</p>	<p>Class 1 Appeal against deemed refusal of DA2020/0435 for demolition of the existing dwelling and ancillary structures and the construction of a dual occupancy over basement car parking.</p>	<p>Matter listed for S34 Conference on 11 May 2021. Conciliation terminated. Listed for directions hearing on 9 June 2021.</p>
15	<p>2A Plimsoll Street, Sans Souci</p> <p>Applicant: Milton & Lisa Genlik</p> <p>Proceedings No: 2021/119099</p>	<p>Appeal against Council's demolition order dated 1 April 2021.</p>	<p>Matter listed for directions hearing on 24 June 2021.</p>
16	<p>15 Resthaven Road, South Hurstville</p> <p>Applicant: Marko Kozarovski</p> <p>Proceedings No: 2021/139806</p>	<p>Class 1 Appeal against refusal of DA2021/0051 for the demolition of existing structures, removal of trees and construction of single level child care centre with basement car park.</p>	<p>Matter listed for directions hearing on 16 June 2021.</p>

Land and Environment Court Proceedings – Class 4 Appeals			
1	36 – 38 Waterview Street, Carlton Parties: Tyre Nation Pty Ltd and Fardous & Saab Pty Limited Proceedings No: 2020/170606	Class 4 interlocutory proceedings seeking removal of motor vehicle tyres.	Matter listed for hearing on 17 and 18 September 2020. Judgment handed down requiring regime of fire works to be carried out on 24 December 2020. Council successful in the proceedings, including costs. Notice of Intention to Appeal filed by Respondents. Notice of Motion in relation to costs is listed on 22 July 2021.
2	33 Waterview Street, Carlton Parties: SAF Group Pty Limited & 3R Investments Pty Limited Proceedings No: 2020/230645	Class 4 interlocutory proceedings seeking the Respondents be restrained from using the premises as a business premises; for crushing, grinding or separating works; a resource recovery facility or for a civil construction and traffic management facility.	Matter listed for directions on 11 June 2021.
3	977 Forest Road, Lugarno Parties: The Congregational Christian Church in Samoa, Parish of Sydney Inc and Taeipo Malifa 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.
4	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.

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 19 and 20 July 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 19 and 20 July 2021.
10- 20	177 Forest Road, Hurstville Parties: Jun Du	Court Attendance Notices issued against Defendant for committing an offence against section 21 of the Food Act 2003 (NSW) for breach of section 21 of the Food Act by failing to comply with the Food Standards Code.	Proceedings formally withdrawn on 4 May 2021 as a result of plea bargain arrangements (see below).
21- 31	177 Forest Road, Hurstville Parties: Taste of Shanghai Hurstville Pty Limited	Court Attendance Notices issued against Defendant for committing an offence against section 21 of the Food Act 2003 (NSW) for breach of section 21 of the Food Act by failing to comply with the Food Standards Code.	Proceedings formally withdrawn on 4 May 2021 following plea bargaining and Penalty Notices issued in relation to 10 offences, for a total in fines of \$8,800.00. Defendant to pay Council's legal costs in the agreed sum of \$8,000.00 (paid on 20 May 2021).
32	Parties: Melissa Carretero	Court Attendance Notices issued against Defendant in relation to injuries sustained to a person and animal by the Defendant's dog.	Defendant has entered a plea of guilty. Matter set down for sentencing on 29 June 2021.

33-34	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 adjourned to 1 June 2021.
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10. Costs to date are as follows:

Type	Amount
Class 1 Appeals – Consultants for Court Proceedings	\$350,864
Class 1 Appeals – Planning DA External Lawyers	\$641,302
Class 2 Appeals	\$0
Class 3 Appeals	\$0
Class 4 Appeals	\$527,501
Class 5 Appeals	\$24,929
Local Court Prosecutions/Enforcements	\$8,231
Supreme Court Proceedings	\$3,154
Industrial Relations Commission (IRC)	\$0
NSW Civil and Administrative Tribunal (NCAT)	\$22,910
Total	\$1,578,891