

Current Legal Cases – Status and Costs – November 2020

Advice on Costs and Status of Council's Court Proceedings

Executive Summary

1. Advice on Council's Court proceedings for the period 1 November 2020 to 30 November 2020 is contained within this report.
2. Total legal costs to date for the 2020/21 financial year are \$740,842.00.
3. Total legal costs recovered to date for the 2020/21 financial year are \$58,686.00.
4. Total costs incurred by Council in legal proceedings are \$583,814.00.
5. **Total nett costs are \$682,155.00.**

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)
- 5 x Class 4

Local Court

- 1 x Police matter
- 5 x Council Prosecutions

New Matters

7. There was one new Class 1 matter received during this period (*47 Boronia Street Pty Ltd*) and 5 new Local Court matters (*Your Style Building Services Pty Limited*).

Finalised matters

8. Four matters were finalised in this reporting period (*Thomas*), (*Futuristic Design Pty Limited*), (*Mifsud*) and (*Hamade*).

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	301 Kingsgrove Road, Kingsgrove Applicant: Futuristic Design Pty Limited Proceedings No: 2018/390589	Class 1 Appeal against refusal of DA2017/0487 for the demolition of all structures and construction of a two (2) storey child care centre for forty seven (47) children and basement car parking.	Matter resolved by way of S34 Agreement on 23 November 2020 following amended plans.
2	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.
3	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 was listed for S34 Conference on 18 May 2020 however was vacated due to COVID-19. Matter now listed for contested hearing on 10 and 11 February 2021.

4	<p>87a Jubilee Ave, Beverley Park</p> <p>Applicant: Beverley Park Golf Club Limited</p> <p>Proceedings No: 2020/14918</p>	<p>Class 1 Appeal against refusal of DA2017/0471 for construction of perimeter security fence and gates.</p>	<p>Matter listed for S34 Conference on 16 November 2020. Proceedings not resolved on that day. Further directions hearing on 4 December 2020.</p>
5	<p>11 Arnold Street, Peakhurst</p> <p>Applicant: Hassib Faraj</p> <p>Proceedings No: 2020/43296</p>	<p>Class 1 Appeal for refusal of DA2018/0309 for demolition and construction of a two storey boarding house containing eleven (11) rooms with basement car parking at 11 Arnold Street, Peakhurst.</p>	<p>Matter listed for S34 Conference on 13 October 2020. S34 Agreement pending following amended plans.</p>
6	<p>5 Mona Street, Allawah</p> <p>Applicant: Aplus Architecture</p> <p>Proceedings No: 2020/39217</p>	<p>Class 1 Appeal for deemed refusal of DA2019/0608 for demolition of existing structures and construction of a boarding house development with basement parking.</p>	<p>Matter listed for S34 Conference on 6 October 2020. S34 Conference terminated. Matter listed for hearing on 13 and 14 April 2021.</p>
7	<p>519 King Georges Road, Beverly Hills</p> <p>Applicant: Outdoor Systems Pty Limited</p> <p>Proceedings No: 2020/65407</p>	<p>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.</p>	<p>Matter listed for hearing 22 and 23 April 2021.</p>

8	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. Awaiting judgment.
9	33 Waterview Street, Carlton Applicant: SAF Group Pty Limited Proceedings No: 2020/101209	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.	Matter listed for contested hearing on 26 and 27 November 2020. Awaiting judgment.
10	3 Newman Street, Mortdale Applicant: State Projects Pty Limited Proceedings No: 2020/119104	Class 1 Appeal against refusal of DA2018/0190 for demolition of existing structures and construction of a double storey boarding house with 19 rooms and basement parking for 11 car spaces.	Matter listed for S34 Conference on 27 July 2020. S34 Conference terminated. Matter set down for hearing on 2 and 3 February 2021.
11	2 – 4 Gladstone Street & 10 Victor Street, Kogarah Applicant: Edrik Properties Pty Ltd T/as Vortex Property Group NSW Proceedings No: 20/138206	Class 1 Appeal to modify DA2017/0519 granted by the Land and Environment Court to provide for three additional residential units, removal of car lift to basement parking and replacement with a ramp and one additional level of basement car parking.	Matter was listed for S34 Conference on 21 July 2020. S34 Conference terminated. Matter set down for hearing on 18 and 19 March 2021.

12	44 – 52 Regent Street, Kogarah Applicant: Landmark Group Australia Pty Limited Proceedings No: 20/143770	Class 1 Appeal against deemed refusal of DA2020/0132 for demolition of existing dwellings, construction of a new 11 storey residential flat building containing 81 apartments over 3 basement carpark levels and lot consolidation.	Matter was listed for S34 Conference on 27 August 2020. S34 Conference terminated and matter set down for hearing on 9 to 11 March 2021.
13	6 – 16 Victoria Street, Kogarah Applicant: Landmark Group Australia Pty Limited Proceedings No: 20/143771	Class 1 Appeal against deemed refusal of DA2020/0128 for demolition of existing dwellings, retention and adaptive re-use of two heritage listed terraces and construction of a new 12 storey residential flat building containing 83 apartments over 3 basement levels and lot consolidation.	Matter was listed for S34 Conference on 27 August 2020. S34 Conference terminated and matter set down for hearing on 9 to 11 March 2021.
14	3 & 3A Cambridge Street, Kogarah Applicant: Jiang Wen Proceedings No. 20/168120	Class 1 Appeal against refusal of DA2020/0147 for demolition of existing buildings, amalgamation of lots and construction of a boarding house comprising of 40 rooms including the manager's room and basement level car parking.	Matter listed for S34 Conference on 3 November 2020. S34 Agreement pending following amended plans.
15	Lot 9, 29 Laycock Road, Penshurst Applicant: Penshurst Laycock Pty Ltd aff 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	Matter listed for hearing on 29 – 31 March 2021.

		two car parking spaces.	
16	<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>	<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 hearing on 29 – 31 March 2021.</p>
17	<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 hearing on 29 – 31 March 2021.</p>
18	<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 S34 Conference on 26 October 2020. Adjourned to 20 December 2020.</p>
19	<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 S34 Conference on 30 November 2020. Matter listed for second directions hearing on 8 December 2020.</p>

20	25 William Road, Riverwood Applicant: Huawen Zhang & Xiao Zhou Proceedings No: 20/240347	Class 1 Appeal against deemed refusal of DA2020/0206 for change of use of outbuilding to secondary dwelling.	Matter listed for S34 Conference on 3 December 2020.
21	25A William Road, Riverwood Applicant: Huawen Zhang & Xiao Zhou Proceedings No: 20/240320	Class 1 Appeal against deemed refusal of DA2020/0213 for change of use of outbuilding to granny flat.	Matter listed for S34 Conference on 3 December 2020.
22	31 Garfield Street, Carlton Applicant: Compage Group Pty Limited Proceedings No: 20/240194	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.	Matter listed for S34 Conference on 14 December 2020.
23	16 – 18 Elizabeth Street, Allawah Applicant: Cornerstone Design Pty Limited Proceedings No: 20/249925	Class 1 Appeal against deemed refusal of DA2020/0223 for demolition works and construction of a residential flat building with basement car parking.	Matter listed for S34 Conference on 2 November 2020. S34 Agreement pending following amended plans.

24	18 – 24A Victoria Street, Kogarah Applicant: Kai-Tian Group Kogarah Pty Limited Proceedings No: 20/285043	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.	Matter listed for S34 Conference on 27 April 2021.
25	47 Boronia Street, Kyle Bay Applicant: 47 Boronia Street Pty Ltd Proceedings No: 2020/319489	Class 1 Appeal against actual refusal of modification application MOD2020/0131 for modification of consent no. DA2017/0579 for demolition of existing structures and construction of two storey detached dual occupancy with swimming pools in each dwelling.	Matter listed for first directions on 1 December 2020.

Land and Environment Court Proceedings – Class 4 Appeals

1	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. Adjourned to 13 October 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.
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.	Listed for hearing on 19 and 20 October 2020. Consent orders issued requiring First and Second Respondents to complete remedial works to rectify land and structures.

3	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. Awaiting judgment following final written submissions in November 2020.
4	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 stood over to 18 December 2020 to away outcome of related Class 1 proceedings.
5	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 mediation on 10 December 2020 and further directions on 18 December 2020.

Local Court Proceedings

1-5	2 – 6 Allen Street & 42 – 46 Connells Point Road, Connells Point Parties: Your Style Building Services Pty Limited	Appeals against Penalty Notices (5) issued for development not in accordance with development consent.	Matters listed on 2 and 4 February 2021.
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Local Court Proceedings – Police		
1	Former staff member (KF) Police as Prosecutor	Police charge of Larceny. The defendant has pleaded not guilty. Matter was listed for hearing on 16 April 2020 but due to COVID 19 has been postponed. Awaiting update from NSW Police on rescheduled Court dates. Matter has been set down for 25 to 26 March 2021.

10. Costs to date are as follows:

Type	Amount
Class 1 Appeals – Consultants for Court Proceedings	\$96,266
Class 1 Appeals – Planning DA External Lawyers	\$152,905
Class 2 Appeals	\$0
Class 3 Appeals	\$0
Class 4 Appeals	\$283,650
Class 5 Appeals	\$24,929
Local Court Prosecutions/Enforcements	\$0
Supreme Court Proceedings	\$3,154
Industrial Relations Commission (IRC)	\$0
NSW Civil and Administrative Tribunal (NCAT)	\$22,910
Total	\$583,814