

## Current Legal Cases – Status and Costs – October 2020

### Advice on Costs and Status of Council's Court Proceedings

#### Executive Summary

1. Advice on Council's Court proceedings for the period 1 October 2020 to 31 October 2020 is contained within this report.
2. Total legal costs to date for the 2020/21 financial year are \$496,958.
3. Total legal costs recovered to date for the 2020/21 financial year are \$58,486.
4. Total costs incurred by Council in legal proceedings are \$394,373.
5. **Total nett costs are \$438,472.**

#### Background

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

##### Land and Environment Court

- 27 x Class 1 (Merit/DA)
- 4 x Class 4

##### Local Court

- 1 x Police matter
- 1 x Council Prosecution

#### New Matters

7. There was no new matters received during this period.

#### Finalised matters

8. One matter was finalised in this reporting period (*W H Project Management Pty Ltd*).

## 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
<b>Land and Environment Court Proceedings – Class 1 Appeals</b>			
1	301 Kingsgrove Road, Kingsgrove  <b>Applicant:</b> Futuristic Design Pty Limited  <b>Proceedings No:</b> 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 not resolved at S34 Conference on 19 August 2019. Matter was listed for hearing on 30 and 31 March 2020. However due to COVID-19 has been postponed to 23 and 24 November 2020.
2	29 Penshurst Street, Penshurst  <b>Applicant:</b> Christopher Thomas  <b>Proceedings No:</b> 2019/191841	Class 1 Appeal against deemed refusal of DA2019/0160 for the partial demolition of the Penshurst Hotel and construction of a car park.	Matter listed for hearing on 11 and 14 September 2020. S34 Agreement being entered into.
3	2 – 4 Vaughan Street, Blakehurst  <b>Applicant:</b> Gianni Georges  <b>Proceedings No:</b> 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.

4	<p>4 The Esplanade, South Hurstville</p> <p><b>Applicant:</b> Ekon Pty Limited</p> <p><b>Proceedings No:</b> 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 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.</p>
5	<p>186 – 190 Princes Highway and 2 – 6 Lacey Street, Kogarah Bay</p> <p><b>Applicant:</b> Truland Development Pty Limited</p> <p><b>Proceedings No:</b> 2019/308785</p>	<p>Class 1 Appeal against refusal of DA2018/0513 for retention of heritage item, demolition of all other existing structures and construction of a residential flat building over two levels of basement parking.</p>	<p>Matter listed for contested hearing on 28 to 30 September 2020. Awaiting judgment.</p>
6	<p>87a Jubilee Ave, Beverley Park</p> <p><b>Applicant:</b> Beverley Park Golf Club Limited</p> <p><b>Proceedings No:</b> 2020/14918</p>	<p>Class 1 Appeal against refusal of DA2017/0471 for construction of perimeter security fence and gates.</p>	<p>Matter was listed for S34 Conference on 7 April 2020 however due to COVID 19 has been postponed to 16 November 2020.</p>
7	<p>11 Arnold Street, Peakhurst</p> <p><b>Applicant:</b> Hassib Faraj</p> <p><b>Proceedings No:</b> 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. Adjourned to 2 November 2020.</p>

8	<p>5 Mona Street, Allawah</p> <p><b>Applicant:</b> Aplus Architecture</p> <p><b>Proceedings No:</b> 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. Awaiting hearing date to be allocated by the Court.</p>
9	<p>1 Butler Road, Hurstville</p> <p><b>Applicant:</b> W H Project Management Pty Limited</p> <p><b>Proceedings No:</b> 2020/60885</p>	<p>Class 1 Appeal for refusal of DA2017/0402 for demolition of existing structures and construction of new mixed use buildings with ground floor retail, 11 levels and apartments and 3 levels of basement car parking with strata subdivision.</p>	<p>Matter listed for S34 Conference on 6 November 2020. S34 Agreement entered into prior to S34 Conference.</p>
10	<p>519 King Georges Road, Beverly Hills</p> <p><b>Applicant:</b> Outdoor Systems Pty Limited</p> <p><b>Proceedings No:</b> 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 S34 Conference on 13 November 2020.</p>
11	<p>33 Waterview Street, Carlton</p> <p><b>Applicant:</b> 3R Investments Pty Limited</p> <p><b>Proceedings No:</b> 2020/101221</p>	<p>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.</p>	<p>Matter listed for contested hearing on 26 and 27 November 2020.</p>

12	33 Waterview Street, Carlton  <b>Applicant:</b> SAF Group Pty Limited  <b>Proceedings No:</b> 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.
13	3 Newman Street, Mortdale  <b>Applicant:</b> State Projects Pty Limited  <b>Proceedings No:</b> 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.
14	2 – 4 Gladstone Street & 10 Victor Street, Kogarah  <b>Applicant:</b> Edrik Properties Pty Ltd T/as Vortex Property Group NSW  <b>Proceedings No:</b> 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.
15	44 – 52 Regent Street, Kogarah  <b>Applicant:</b> Landmark Group Australia Pty Limited  <b>Proceedings No:</b> 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.

16	6 – 16 Victoria Street, Kogarah  <b>Applicant:</b> Landmark Group Australia Pty Limited  <b>Proceedings No:</b> 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.
17	3 & 3A Cambridge Street, Kogarah  <b>Applicant:</b> Jiang Wen  <b>Proceedings No.</b> 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.
18	Lot 9, 29 Laycock Road, Penshurst  <b>Applicant:</b> Penshurst Laycock Pty Ltd aff Trustee of Penshurst Laycock Unit  <b>Proceedings No.</b> 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 hearing on 29 – 31 March 2021.
19	Lot 10, 29 Laycock Road, Penshurst  <b>Applicant:</b> Penshurst Laycock Pty Ltd aff Trustee of Penshurst Laycock Unit	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.

	<b>Proceedings No.</b> 20/208038	two car parking spaces.	
20	Lot 11, 29 Laycock Road, Penshurst  <b>Applicant:</b> Penshurst Laycock Pty Ltd aff Trustee of Penshurst Laycock Unit  <b>Proceedings No.</b> 20/208036	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 hearing on 29 – 31 March 2021.
21	36 Chamberlain Street, Narwee  <b>Applicant:</b> Commitment Pty Limited  <b>Proceedings No:</b> 20/222588	Class 1 Appeal against refusal of DA2020/0050 for demolition and construction of a child care centre.	Matter listed for S34 Conference on 26 October 2020. Adjourned to 3 November 2020.
22	54 Lawrence Street, Peakhurst  <b>Applicant:</b> William Karavelas  <b>Proceedings No:</b> 20/222456	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.	Matter listed for S34 Conference on 30 November 2020.
23	25 William Road, Riverwood  <b>Applicant:</b> Huawei Zhang & Xiao Zhou  <b>Proceedings No:</b> 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.

24	<p>25A William Road, Riverwood</p> <p><b>Applicant:</b> Huawen Zhang &amp; Xiao Zhou</p> <p><b>Proceedings No:</b> 20/240320</p>	<p>Class 1 Appeal against deemed refusal of DA2020/0213 for change of use of outbuilding to granny flat.</p>	<p>Matter listed for S34 Conference on 3 December 2020.</p>
25	<p>31 Garfield Street, Carlton</p> <p><b>Applicant:</b> Compage Group Pty Limited</p> <p><b>Proceedings No:</b> 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 S34 Conference on 14 December 2020.</p>
26	<p>16 – 18 Elizabeth Street, Allawah</p> <p><b>Applicant:</b> Cornerstone Design Pty Limited</p> <p><b>Proceedings No:</b> 20/249925</p>	<p>Class 1 Appeal against deemed refusal of DA2020/0223 for demolition works and construction of a residential flat building with basement car parking.</p>	<p>Matter listed for S34 Conference on 2 November 2020.</p>
27	<p>18 – 24A Victoria Street, Kogarah</p> <p><b>Applicant:</b> Kai-Tian Group Kogarah Pty Limited</p> <p><b>Proceedings No:</b> 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 directions hearing on 3 November 2020.</p>



Land and Environment Court Proceedings – Class 4 Appeals			
1	5 Maclaurin Street, Penshurst  <b>Parties:</b> Emanuel Mifsud  <b>Proceedings No:</b> 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.
2	244 Connells Point Road, Connells Point  <b>Parties:</b> Habib Hamade, Zeinab Hammoud, Carole Li and Winson Li  <b>Proceedings:</b> 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  <b>Parties:</b> Tyre Nation Pty Ltd and Fardous & Saab Pty Limited  <b>Proceedings No:</b> 2020/170606	Class 4 interlocutory proceedings seeking removal of motor vehicle tyres.	Matter listed for hearing on 17 and 18 September 2020. Awaiting judgment.
4	33 Waterview Street, Carlton  <b>Parties:</b> SAF Group Pty Limited & 3R Investments Pty Limited  <b>Proceedings No:</b> 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.

<b>Local Court Proceedings</b>			
1	34 Whitfield Parade, Hurstville Grove  <b>Parties:</b> Ivica Siminovic	Appeal against Penalty Notice issued for Failing to Comply with Development Control Order.	Matter listed for mention 22 October 2020. Matter discontinued.
<b>Local Court Proceedings – Police</b>			
1	Former staff member (KF)  <b>Police as Prosecutor</b>	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:

<b>Type</b>	<b>Amount</b>
Class 1 Appeals – Consultants for Court Proceedings	\$83,226
Class 1 Appeals – Planning DA External Lawyers	\$119,318
Class 2 Appeals	\$0
Class 3 Appeals	\$0
Class 4 Appeals	\$140,836
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
<b>Total</b>	<b>\$394,373</b>