

Current Legal Cases – Status and Costs – April 2020

Advice on Costs and Status of Council's Court Proceedings

Executive Summary

1. Advice on Council's Court proceedings for the period 1 April 2020 to 30 April 2020 is contained within this report.
2. Total legal costs to date for the 2019/20 financial year are \$1,428,829.
3. Total legal costs recovered to date for the 2019/20 financial year are \$329,044.
4. Total costs incurred by Council in legal proceedings are \$986,153.
5. **Total nett costs are \$1,099,785.**

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
- 1 x Class 6

Local Court

- 2 x Council Prosecution
- 1 x Police matter

NSW Civil and Administrative Tribunal (NCAT)

- 1 x matter

New Matters

7. There were three new Class 1 matters received during this period (*3R Investments Pty Limited*) (*SAF Group Pty Limited*), (*State Projects Pty Limited*) and one new Local Court matter (*Siminovic*).

Finalised matters

8. Three matters were finalised – (*Adouni and Raad Pty Limited*), (*Hijazi*) and (*Cost-Chretien*).

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	143 – 145 Rocky Point Road, Beverley Park Applicant: Adouni and Raad Pty Limited Proceedings No: 2018/369087	Class 1 Appeal against deemed refusal of DA2018/0429 for the demolition of existing building and the construction of a residential flat building, basement car parking, landscaping and associated works.	Matter not resolved at S34 Conference on 31 July 2019. Matter listed for hearing on 10 and 11 March 2020. Appeal upheld following amended plans.
2	3 Gray Street, Kogarah Applicant: Best Build NSW Pty Limited Proceedings No: 2018/393349	Class 1 Appeal against deemed refusal of DA2018/0201 for the demolition of existing building and the construction of a 6 storey boarding house comprising 44 rooms including site manager room over basement car parking.	Matter not resolved at S34 Conference on 28 August 2019. Matter listed for hearing on 28 and 29 May 2020.
3	301 Kingsgrove Road, Kingsgrove Applicant: Futuristic Design Pty Limited	Class 1 Appeal against refusal of DA2017/0487 for the demolition of all structures and construction of a two (2) storey child care centre	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

	<p>Proceedings No: 2018/390589</p>	<p>for forty seven (47) children and basement car parking.</p>	<p>2020.</p>
4	<p>253 – 255 Princes Highway, Carlton</p> <p>Applicant: Touma Carlton Pty Limited</p> <p>Proceedings No: 2019/150524</p>	<p>Class 1 Appeal against deemed refusal of DA2019/0116 for demolition of existing structures and construction of a six storey mixed use development.</p>	<p>Matter not resolved at S34 Conference on 30 January 2020. Matter listed for hearing on 1 and 2 September 2019.</p>
5	<p>2 – 10 Palmerston Street, Kogarah</p> <p>Applicant: A V Jennings SPV No 19 Pty Limited</p> <p>Proceedings No: 2019/152130</p> <p>Proceedings No:</p>	<p>Class 1 Appeal against modification of Court granted consent on 20 September 2018 approving DA9/2017/112/1 subject to conditions, for the construction of a residential flat building comprising 51 units and 6 serviced apartments over 3 levels of basement parking for 63 cars. Modification is seeking construction of a mixed use building containing a ground floor retail shop and 11 residential floors comprising a total of 55 units and deletion of s7.13 contributions in the amount of \$855,000.</p>	<p>Matter listed for S34 Conference on 1 November 2019. Matter listed for hearing on 7 and 8 July 2020.</p>
6	<p>29 Penshurst Street, Penshurst</p> <p>Applicant: Christopher Thomas</p> <p>Proceedings No: 2019/191841</p>	<p>Class 1 Appeal against deemed refusal of DA2019/0160 for the partial demolition of the Penshurst Hotel and construction of a car park.</p>	<p>Matter not resolved at S34 Conference on 31 January 2020. Matter listed for hearing on 11 and 14 September 2020.</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 S34 Conference on 12 May 2020.</p>
8	<p>16 – 22A Gladstone Street and 2 Victoria Avenue, Kogarah</p> <p>Applicant: Kogarah Investments No 1 Pty Limited</p> <p>Proceedings No: 2019/283937</p>	<p>Class 1 Appeal against deemed refusal of DA2019/0319 for the retention of the local heritage listed dwelling on 2 Victoria Street, demolition of other existing structures and the construction of an 11 storey residential flat building with 3 levels of basement car parking.</p>	<p>Matter listed for S34 Conference on 8 May 2020.</p>
9	<p>137 Woniora Road, South Hurstville</p> <p>Applicant: Xiao Ping Zheng</p> <p>Proceedings No: 2019/290322</p>	<p>Class 1 Appeal against refusal of DA0616/2017 for demolition of existing structures and construction of a boarding house to accommodate 29 boarders and parking.</p>	<p>Matter listed for S34 Conference on 11 December 2019. Matter listed for hearing on 20 August 2020.</p>
10	<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 was listed for S34 Conference on 18 May 2020 however has been vacated due to COVID-19. Matter now listed for contested hearing on 10 and 11 February 2021.</p>

11	<p>186 – 190 Princes Highway and 2 – 6 Lacey Street, Kogarah Bay</p> <p>Applicant: Truland Development Pty Limited</p> <p>Proceedings No: 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 S34 Conference on 26 May 2020.</p>
12	<p>69 Boundary Road, Mortdale</p> <p>Applicant: K J Planning</p> <p>Proceedings No: 2019/371035</p>	<p>Class 1 Appeal against modification to development consent number MOD2018/0118 in relation to conditions 53, 54, 73, 74 and 75.</p>	<p>Matter listed for S34 Conference on 31 July 2020.</p>
13	<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 was listed for S34 Conference on 7 April 2020 however due to COVID 19 has been postponed to 16 November 2020.</p>
14	<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.</p>

15	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.
16	23 Bay Road, Oatley Applicant: Mustapha Moussa Proceedings No: 2020/35211	Class 1 Appeal in relation to modification of consent number DA2017/0198 be rescinded and modification approved to allow removal of Tree 36, relocation of Council stormwater pit, installation of a new driveway including the removal of a rock outcrop and level changes.	Matter listed for S34 Conference on 29 October 2020.
17	1 Butler Road, Hurstville Applicant: W H Project Management Pty Limited Proceedings No: 2020/60885	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.	Matter listed for S34 Conference on 6 November 2020.
18	519 King Georges Road, Beverly Hills Applicant: Outdoor Systems Pty Limited Proceedings No: 2020/65407	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 13 November 2020.

19	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 November 2020.
20	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 November 2020.
21	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 8 stacked car spaces.	Matter listed for first directions hearing on 19 May 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. Respondent has not filed evidence to date.

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.	Timetable set for filing of evidence. Listed for hearing on 19 and 20 October 2020.
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Land and Environment Court Proceedings – Class 6 Appeals

1	18 Riversdale Avenue, Connells Point Parties: Ahmad Hijazi Proceedings No: 2019/323436	Appeal against Local Court judgment of \$120,000 in fines.	Matter heard on 4 March 2020. Judgment given on 23 April 2020. Fines were reduced to \$80,000 in total.
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Local Court Proceedings

1	7/5-9 Hudson Street, Hurstville Parties: David Cost-Chretien	Appeal against Penalty Notice issued for not complying with order.	Appeal has been withdrawn.
2	34 Whitfield Parade, Hurstville Grove Parties: Ivica Siminovic	Appeal against Penalty Notice issued for Failing to Comply with Development Control Order.	Matter listed for mention 22 October 2020.

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. Matter is listed for mention on 4 May 2020.
NCAT Proceedings			
1	Rita Kastanias	Applicant is objecting to release of documents sought under the <i>Government Information (Public Access) Act 2009 (GIPA)</i> .	Matter is listed for hearing via AVL on 3 June 2020.

10. Costs to date are as follows:

Type	Amount
Class 1 Appeals – Consultants for Court Proceedings	\$353,448
Class 1 Appeals – Planning DA External Lawyers	\$451,857
Class 2 Appeals	\$1,838
Class 3 Appeals	\$0
Class 4 Appeals	\$129,698
Class 5 Appeals	\$11,364
Local Court Prosecutions/Enforcements	\$6,393
Supreme Court Proceedings	\$23,666
Industrial Relations Commission (IRC)	\$0
NSW Civil and Administrative Tribunal (NCAT)	\$7,889
Total	\$986,153