

Current Legal Cases – Status and Costs – September 2022

Advice on Costs and Status of Council's Court Proceedings

Executive Summary

1. Advice on Council's Court proceedings for the period 1 September 2022 to 30 September 2022 is contained within this report.
2. Total legal costs to date for the 2022/23 financial year are \$476,128.00.
3. Total legal costs recovered to date for the 2022/23 financial year are \$17,104.00.
4. Total costs incurred by Council in legal proceedings are \$296,583.00.
5. Total nett costs are \$459,025.00.

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

Supreme Court – Court of Appeal

- 1 x Summons

District Court

- 1 x matter

Local Court

- 1 x Council Prosecutions

Costs Recoveries

- 13 x costs recoveries

New Matters

7. There were 4 new matters in this reporting period: 4 x Class 1 Appeals: *Ma*, *Murr*, *McInnes* and *Chau*.

Finalised matters

8. Six matters were finalised in this reporting period: *Hurstville Community Centre Incorporated, Myliotis, Commitment Pty Limited, Murr, Smoljo, Xie and Tyre Nation Pty Limited.*

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	88 – 92 Botany Street, Carlton Applicant: Hurstville Community Centre Incorporated Proceedings: 2021/360407	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.	Matter listed for consent order hearing on 17 August 2022 following amendment of application. Appeal upheld subject to conditions.
2	47 Boronia Street, Kyle Bay Applicant: Harry Myliotis Proceedings: 2022/16300	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	Matter listed for S34AA Conference on 3 and 4 May 2022. Mediation terminated. Further S34AA Conciliation Conference listed on 1 September 2022. Section 34 Agreement entered into, following amended plans.

		<p>coping level on 47 Boronia, removal of pool at 34 Cross Street, and relocation of alfresco and additional fill to north-western corner and demolition of fencing and new timber, fencing boundary.</p>	
3	<p>6 – 10 Torrens Street, Blakehurst</p> <p>Applicant: Lioncrest Capital Holdings Pty Limited</p> <p>Proceedings: 2022/25659</p>	<p>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.</p>	<p>Matter listed for hearing 20 and 21 September 2022. Matter adjourned to 21 March 2023.</p>
4	<p>36 Chamberlain Street, Narwee</p> <p>Applicant: Commitment Pty Limited</p> <p>Proceedings No: 2022/44228</p>	<p>Class 1 Appeal against deemed refusal of DA2021/0415 for demolition works and construction of a child care centre.</p>	<p>Matter adjourned to 30 September 2022. Matter discontinued by Applicant.</p>
5	<p>26 Bowden Street, Connells Point</p> <p>Applicant: Yasser Elgammal</p> <p>Proceedings 2022/45831</p>	<p>Class 1 Appeal against Stop Work Order dated 11 February 2022.</p>	<p>Matter listed for S34 Conference on 20 September 2022. Adjourned to 20 October 2022.</p>
6	<p>12-14 Bembridge Street, Carlton</p> <p>Applicant: Michel Murr</p>	<p>Class 1 Appeal against deemed refusal of DA2021/0400 for demolition of existing structures and construction of five</p>	<p>Matter listed for S34 Conference on 27 May 2022. Matter was not resolved. Matter listed for hearing on 11 and 12 October 2022 however matter has now been discontinued by Applicant.</p>

	Proceedings 2022/65497	storey residential flat building comprising of 16 apartments with rooftop communal space and 2 levels of basement parking.	
7	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 S34 Conference on 26 July 2022. S34 Conference terminated. Matter listed for hearing 29 November to 1 December 2022.
8	40 Oxford Street, Mortdale Applicant: Pyramid Consulting Pty Limited Proceedings No: 2022/96931	Class 1 Appeal against deemed refusal of DA2022/0041 for demolition of existing structures and construction of a part 3, part 4 storey, 27 room boarding house over two basement levels of carparking.	Matter listed for S34 Conference on 29 July 2022 however vacated. S34 Conference now listed on 18 November 2022.
9	30 – 32 The Avenue, Hurstville Applicant: 32 The Avenue Hurstville Pty Ltd ATF 32 The Avenue Hurstville Trust Proceedings No: 2022/122081	Class 1 Appeal against deemed refusal of DA2021/0399 for demolition of existing structures, amalgamation of two existing lots and construction of a 4 storey mixed use residential flat building containing ground floor retail space, basement carparking and associated landscaping.	Matter listed for S34 Conference on 20 June 2022. Matter unresolved and listed for hearing on 31 October and 1 November 2022.
10	49 Jersey Avenue, Mortdale	Class 1 Appeal against refusal of DA2020/0354 for demolition works and	Matter listed for S34 Conference on 25 August 2022. Matter listed for

	<p>Applicant: Sharobem Holdings Pty Limited</p> <p>Proceedings No. 2022/164067</p>	the construction of a child care centre.	hearing on 16 and 17 February 2023.
11	<p>49 Johnstone Street, Peakhurst</p> <p>Applicant: Winphil Pty Limited</p> <p>Proceedings No. 2022/174905</p>	Class 1 Appeal against deemed refusal of DA2021/0244 for demolition and construction of a mixed use development comprising basement car parking, ground floor commercial and residential apartments above (12 x studios used as affordable housing, 8 x 2 bedroom units and 5 x 3 bedroom units.	Matter listed for S34 Conference on 16 September 2022. Matter listed for hearing on 1 and 2 February 2023.
12	<p>46A Llewellyn Street, Oatley</p> <p>Applicant: Lovro Smoljo</p> <p>Proceedings No. 2022/182295</p>	Class 1 Appeal against refusal of DA2021/0437 for demolition of existing double storey building and construction of a new two storey dwelling.	Matter listed for S34AA Conciliation Conference on 22 and 23 September 2022. Section 34 Agreement entered into, following amended plans.
13	<p>15 Dalcassia Street, Hurstville</p> <p>Applicant: Wang Zhang Lin & Bao Zhen Qiu</p> <p>Proceedings No. 2022/189574</p>	Class 1 Appeal against refusal of DA2020/0261 for demolition of existing structures and construction of a 12 room boarding house (one being a caretakers room), landscaping and site works.	Matter listed for S34 Conference on 10 October 2022 however terminated. Matter listed for hearing on 13 and 14 February 2023.
14	<p>14 Gardinia Street, Narwee</p> <p>Applicant: Bobby Anevski and Kathy Anevski</p>	Class 1 Appeal against refusal of building information certificate number 149D2016/0025 on 27 January 2022 for alterations and additions to the existing dwelling	Matter listed for S34 Conference on 21 November 2022.

	<p>Proceedings No. 2022/214927</p>	<p>comprising of rear addition to dining room and new laundry, new decking with stairs, alterations to front patio, front façade reconstruction with additional columns, demolish existing garage with extended garage slab for car space and replacement carport.</p>	
15	<p>46 Annette Street, Oatley</p> <p>Applicant: Anna and John Arcidiacono</p> <p>Proceedings No. 2022/229777</p>	<p>Class 1 Appeal against deemed refusal of DA2022/0008 for demolition of existing structures and construction of a dual occupancy with Torrens Title subdivision.</p>	<p>Matter listed for S34AA Conciliation Conference on 13 and 14 December 2022.</p>
16	<p>2 – 6 Lacey Street, Kogarah Bay</p> <p>Applicant: Truland Development Pty Limited</p> <p>Proceedings No. 2022/241040</p>	<p>Class 1 Appeal against deemed refusal of Modification Application Portal Reference PAN-209172 being an application to modify the development consent Council reference DA2021/0211.</p>	<p>Matter listed for S34 Conference on 9 February 2023.</p>
17	<p>41 – 47 Princes Highway, Kogarah Bay</p> <p>Applicant: Skyton Developments No 2 Pty Ltd</p> <p>Proceedings No: 2022/252723</p>	<p>Class 1 Appeal against deemed refusal of MOD2022/0052 (seeking modification to conditions of DA183.20.2016) for minor modifications to address structural engineering requirements, reduction of units from 52 to 45 residential apartments to comply with ADG, increase in the total</p>	<p>Matter listed for S34 Conference on 16 January 2023.</p>

		height from 10 storeys to 12 storeys and an increase in parking in basement area.	
18	15 Greenbank Street, Hurstville Applicant: Carol Li Ma and De Yong Chen Proceedings No: 2022/254306	Class 1 Appeal against actual refusal of DA2021/0401 for demolition works, subdivision of land into three lots, construction of 3 x 2 storey detached dwellings with a basement and a swimming pool on each proposed lot and associated works.	Matter listed for S34 Conference on 16 December 2022.
19	21 Hogben Street, Kogarah Applicant: Michel Murr trading as Michel Proceedings No: 2022/273362	Class 1 Appeal against actual refusal of DA2020/0190 for demolition works, site preparation and construction of a twelve (12) storey mixed use development in elevation comprising ground floor retail/commercial floor space, 51 residential apartments above five (5) levels of basement containing 76 car spaces, roof top communal open space, landscaping, site works and stratum subdivision.	Matter listed for first directions hearing on 13 October 2022.
20	426 – 428 Princes Highway, Blakehurst Applicant: Julie McInnes Proceedings No: 2022/282069	Class 1 Appeal against actual refusal of DA2021/0388 for demolition works of existing structures and the construction of a residential flat building.	Matter listed for first directions hearing on 20 October 2022.

21	42 Treacy Street, Hurstville Applicant: Vi Phong Chau Proceedings No: 2022/284572	Class 1 Appeal against deemed refusal of DA2021/0448 for demolition of existing single storey brick building, construction of seven storey boarding house with two commercial units on ground floor over three levels of basement car parking.	Matter listed for first directions hearing on 25 October 2022.
Class 4 Proceedings			
1	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 relating to non-compliance with Court orders listed for further hearing on 28 July 2022. Consent orders entered into to complete additional remedial works within 21 days. Contempt proceedings listed for 17 and 18 April 2023.
2	247 Princes Highway, Carlton Parties: Perry Properties Pty Ltd Proceedings No: 2022/237344	Class 4 Application in relation to the compulsory acquisition of 247 Princes Highway, Carlton.	Matter listed for directions hearing on 28 October 2022 to set down for hearing.
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	Class 5 Summons for carrying out development not in	Matter listed for hearing 6 March to 17 March 2023.

	<p>Parties: SAF Developments Pty Limited</p> <p>Proceedings: 2021/244133</p>	accordance with consent.	
3	<p>9 Nellella Street, Blakehurst</p> <p>Parties: SAF Developments Pty Limited</p> <p>Proceedings: 2021/244134</p>	Class 5 Summons for polluting land.	Matter listed for hearing 6 March to 17 March 2023.
4	<p>9 Nellella Street, Blakehurst</p> <p>Parties: SAF Developments Pty Limited</p> <p>Proceedings: 2021/244135</p>	Class 5 Summons for unlawful transport of waste.	Matter listed for hearing 6 March to 17 March 2023.
5	<p>9 Nellella Street, Blakehurst</p> <p>Parties: Mohammad Safwan Abdul-Rahman</p> <p>Proceedings: 2021/244136</p>	Class 5 Summons for polluting land.	Matter listed for hearing 6 March to 17 March 2023.
6	<p>9 Nellella Street, Blakehurst</p> <p>Parties: Mohammad Safwan Abdul-Rahman</p> <p>Proceedings: 2021/244137</p>	Class 5 Summons for unlawful transport of waste.	Matter listed for hearing 6 March to 17 March 2023.

Local Court Proceedings			
1	72A Ogilvy Street, Peakhurst Parties: Faoud Haifa	Court Attendance Notice in relation to offence under <i>Companion Animals Act 1988</i> .	Matter listed for hearing on 1 November 2022.
District Court			
1	Parties: Stanley Xie	Appeal against Local Court decision of parking fine.	Matter listed for hearing on 11 April 2022 and 2 September 2022. Court found Applicant guilty and fined \$400.
Supreme Court – Court of Appeal			
1	117 Stuart Street, Blakehurst Parties: Peter John El Khouri, Goumana Therese El Khouri and Effi Theodorakopoulos v Gemaveld Pty Limited Proceedings 2022/197368	Supreme Court Summons (Judicial Review) of decision of Commissioner Horton of the Land and Environment Court on 7 April 2022 to grant development consent to DA202/0247 for demolition works, construction of a multi level dwelling house, swimming pool, front fence, landscaping and site works.	Matter adjourned to 14 October 2022 for directions.
Costs			
1	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. Consent orders entered into on 22 July 2021 with orders made for payment of \$220,000 by instalments. Final payment made. Matter complete.
2	977 Forest Road, Lugarno Parties: The Congregational	Class 4 interlocutory proceedings seeking the Respondents be restrained from using the	Matter listed for hearing on 24 and 25 June 2021. Consent orders entered into to carry out acoustic measures at the site.

	<p>Christian Church in Samoa, Parish of Sydney Inc</p> <p>Proceedings No: 2020/304249</p>	<p>land for the purposes of a place of public worship unless in accordance with the conditions of Development Consent 2006/DA0372.</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>	<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>Negotiations taking place with Applicant's solicitors.</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>	<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>Negotiations taking place with Applicant's solicitors.</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>Negotiations taking place with Applicant's solicitors.</p>

6	<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>Costs assessment filed with Supreme Court.</p>
7	<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 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. Costs assessment determination received. Proceeding with recovery of costs from Defendant.</p> <p>Costs respondent has lodged an application for review of the costs determination.</p>
8	<p>297 Rocky Point Road, Sans Souci</p> <p>Parties: Alan Frederick Goddard</p>	<p>Proceedings commenced for accumulation of items resulting in premises being in an unsafe or unhealthy condition</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>Proceedings No: 2018/366019</p>	<p>under the <i>Local Government Act</i>, 1993.</p>	<p>Council awarded costs as agreed or as assessed.</p> <p>Bill of costs prepared. Costs assessment determination received. Proceeding with recovery of costs from Defendant.</p>
9	<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.</p>
10	<p>244 Connells Point Road, Connells Point</p> <p>Parties: Habib Hamade, Zeinab Hammoud, Carole Li and Winson Li</p> <p>Proceedings: 2020/72897</p>	<p>Class 4 Application in relation to unauthorised excavation works resulting in the undermining of a retaining wall and swimming pool at neighbour's property.</p>	<p>Consent Orders issued on 19 October 2020 including orders that the First and Second Respondents pay Council's costs as agreed or as assessed.</p> <p>Costs assessment review application filed with Supreme Court. Awaiting judgment.</p>
11	<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>

12	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. Appeal refused. Negotiations in relation to costs taking place with Applicant's solicitors.
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10. Costs to date are as follows:

Type	Amount
Class 1 Appeals – Consultants for Court Proceedings	\$137,264
Class 1 Appeals – Planning DA External Lawyers	\$122,487
Class 2 Appeals	\$0
Class 3 Appeals	\$0
Class 4 Appeals	\$23,558
Class 5 Appeals	\$10,380
Local Court Prosecutions/Enforcements	\$2,126
Supreme Court Proceedings	\$768
Industrial Relations Commission (IRC)	\$0
NSW Civil and Administrative Tribunal (NCAT)	\$0
Total	\$296,583