

Current Legal Cases – Status and Costs – May 2020

Advice on Costs and Status of Council's Court Proceedings

Executive Summary

1. Advice on Council's Court proceedings for the period 1 May 2020 to 31 May 2020 is contained within this report.
2. Total legal costs to date for the 2019/20 financial year are \$1,560,925.
3. Total legal costs recovered to date for the 2019/20 financial year are \$455,862.
4. Total costs incurred by Council in legal proceedings are **\$1,079,114**.
5. **Total nett costs are \$1,105,063.**

Background

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

Land and Environment Court

- 24 x Class 1 (Merit/DA)
- 2 x Class 4

Local Court

- 1 x Council Prosecution
- 1 x Police matter

NSW Civil and Administrative Tribunal (NCAT)

- 1 x matter

New Matters

7. There were four new Class 1 matters received during this period (*The Gallery Kogarah Pty Limited*) (*Edrik Properties Pty Ltd t/as Vortex Property Group NSW*), (*Landmark Group Australia Pty Limited*) and (*Landmark Group Australia Pty Limited*).

Finalised matters

8. Two matters were finalised – (*Kogarah Investments Pty Limited*) and (*Zheng*).

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	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, 29 May and 3 June 2020.
2	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 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.
3	253 – 255 Princes Highway, Carlton Applicant: Touma Carlton Pty Limited	Class 1 Appeal against deemed refusal of DA2019/0116 for demolition of existing structures and construction of a six storey mixed use	Matter not resolved at S34 Conference on 30 January 2020. Matter listed for hearing on 1 and 2 September 2020.

	Proceedings No: 2019/150524	development.	
4	2 – 10 Palmerston Street, Kogarah Applicant: A V Jennings SPV No 19 Pty Limited Proceedings No: 2019/152130 Proceedings No:	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.	Matter listed for S34 Conference on 1 November 2019. Matter listed for further S34 Conference on 19 June 2020.
5	29 Penshurst Street, Penshurst Applicant: Christopher Thomas Proceedings No: 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 not resolved at S34 Conference on 31 January 2020. Matter listed for hearing on 11 and 14 September 2020.
6	2 – 4 Vaughan Street, Blakehurst Applicant: Gianni Georges Proceedings No:	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,	Matter listed for hearing 9 – 11 December 2020.

	2019/282526	18 x 2 bed and 2 x 3 bed apartments above basement parking for 38 cars.	
7	16 – 22A Gladstone Street and 2 Victoria Avenue, Kogarah Applicant: Kogarah Investments No 1 Pty Limited Proceedings No: 2019/283937	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.	Matter listed for S34 Conference on 8 May 2020. S34 Agreement entered into.
8	137 Woniora Road, South Hurstville Applicant: Xiao Ping Zheng Proceedings No: 2019/290322	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.	Matter listed for S34 Conference on 11 December 2019. Matter listed for hearing on 20 August 2020 however S34 Agreement has now been entered into.
9	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 has been vacated due to COVID-19. Matter now listed for contested hearing on 10 and 11 February 2021.
10	186 – 190 Princes Highway and 2 – 6 Lacey Street, Kogarah Bay Applicant: Truland Development Pty Limited Proceedings No: 2019/308785	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.	Matter listed for S34 Conference on 26 May 2020. S34 Conference was terminated and matter listed for directions on 2 June 2020.

11	69 Boundary Road, Mortdale Applicant: K J Planning Proceedings No: 2019/371035	Class 1 Appeal against modification to development consent number MOD2018/0118 in relation to conditions 53, 54, 73, 74 and 75.	Matter listed for S34 Conference on 31 July 2020.
12	87a Jubilee Ave, Beverley Park Applicant: Beverley Park Golf Club Limited Proceedings No: 2020/14918	Class 1 Appeal against refusal of DA2017/0471 for construction of perimeter security fence and gates.	Matter was listed for S34 Conference on 7 April 2020 however due to COVID 19 has been postponed to 16 November 2020.
13	11 Arnold Street, Peakhurst Applicant: Hassib Faraj Proceedings No: 2020/43296	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.	Matter listed for S34 Conference on 13 October 2020.
14	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.

15	<p>23 Bay Road, Oatley</p> <p>Applicant: Mustapha Moussa</p> <p>Proceedings No: 2020/35211</p>	<p>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.</p>	<p>Matter listed for S34 Conference on 29 October 2020.</p>
16	<p>1 Butler Road, Hurstville</p> <p>Applicant: W H Project Management Pty Limited</p> <p>Proceedings No: 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.</p>
17	<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 S34 Conference on 13 November 2020.</p>
18	<p>33 Waterview Street, Carlton</p> <p>Applicant: 3R Investments Pty Limited</p> <p>Proceedings No: 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 November 2020.</p>

19	<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 November 2020.</p>
20	<p>3 Newman Street, Mortdale</p> <p>Applicant: State Projects Pty Limited</p> <p>Proceedings No: 2020/119104</p>	<p>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.</p>	<p>Matter listed for S34 Conference on 27 July 2020.</p>
21	<p>56 – 58 Regent Street, Kogarah</p> <p>Applicant: The Gallery Kogarah Pty Limited</p> <p>Proceedings No: 20/132825</p>	<p>Class 1 Appeal against refusal of DA2019/0190 for demolition of existing structures and construction of an 11 storey residential flat building with 3 levels of basement parking.</p>	<p>Matter listed for first directions on 2 June 2020.</p>
22	<p>2 – 4 Gladstone Street & 10 Victor Street, Kogarah</p> <p>Applicant: Edrik Properties Pty Ltd T/as Vortex Property Group NSW</p> <p>Proceedings No: 20/138206</p>	<p>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.</p>	<p>Matter listed for first directions on 5 June 2020.</p>

23	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 listed for first directions on 12 June 2020.
24	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 listed for first directions on 12 June 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	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.

	Li and Winson Li		
	Proceedings: 2020/72897		
Local Court Proceedings			
1	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. Awaiting update from NSW Police on rescheduled Court dates.
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	\$393,271
Class 1 Appeals – Planning DA External Lawyers	\$495,233
Class 2 Appeals	\$1,838
Class 3 Appeals	\$0
Class 4 Appeals	\$138,323
Class 5 Appeals	\$11,364

Local Court Prosecutions/Enforcements	\$6,393
Supreme Court Proceedings	\$24,803
Industrial Relations Commission (IRC)	\$0
NSW Civil and Administrative Tribunal (NCAT)	\$7,889
Total	\$1,079,114