

## Current Legal Cases – Status and Costs – February 2021

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

#### Executive Summary

1. Advice on Council's Court proceedings for the period 1 February 2021 to 28 February 2021 is contained within this report.
2. Total legal costs to date for the 2020/21 financial year are \$1,513,567.00.
3. Total legal costs recovered to date for the 2020/21 financial year are \$178,723.00.
4. Total costs incurred by Council in legal proceedings are \$1,170,712.00.
5. **Total nett costs are \$1,334,845.00.**

#### Background

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

##### Land and Environment Court

- 19 x Class 1 (Merit/DA)
- 3 x Class 4
- 1 x Contempt Proceedings

##### Local Court

- 1 x Police matter
- 31 x Council Prosecutions

#### New Matters

7. There was one new Class 1 matter received during this period (*Zaarour*) and 25 new Local Court matters (*Your Style Building Services Pty Limited*) x 3, (*Du*) x 11 and (*Taste of Shanghai Hurstville Pty Ltd*) x 11. There was one Contempt proceedings commenced (*Tyre Nation Pty Ltd*).

#### Finalised matters

8. Three matters were finalised in this reporting period (*State Projects Pty Ltd*) and (*Landmark Group Australia Pty Ltd*) x 2.

#### 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	4 The Esplanade, South Hurstville  <b>Applicant:</b> Ekon Pty Limited  <b>Proceedings No:</b> 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.
2	5 Mona Street, Allawah  <b>Applicant:</b> Aplus Architecture  <b>Proceedings No:</b> 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. Section 34 Conference terminated. Matter listed for contested hearing on 13 and 14 April 2021.
3	519 King Georges Road, Beverly Hills  <b>Applicant:</b> Outdoor Systems Pty Limited  <b>Proceedings No:</b> 2020/65407	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.	Matter listed for contested hearing 22 and 23 April 2021.
4	33 Waterview Street, Carlton  <b>Applicant:</b> 3R Investments Pty Limited	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	Matter listed for contested hearing on 26 and 27 November 2020. Awaiting judgment.

	<b>Proceedings No:</b> 2020/101221	the Respondent dated 26 March 2020.	
5	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. Awaiting judgment.
6	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. Section 34 Agreement entered into following amended plans.
7	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. Section 34 Conference terminated. Matter set down for contested hearing on 18 and 19 March 2021.
8	44 – 52 Regent Street, Kogarah  <b>Applicant:</b> Landmark Group Australia Pty Limited	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	Matter was listed for S34 Conference on 27 August 2020. Section 34 Conference terminated and matter set down for hearing on 9 to 11 March 2021. However, S34 Agreement has now been entered into following amended plans.

	<b>Proceedings No:</b> 20/143770	apartments over 3 basement carpark levels and lot consolidation.	
9	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. However, S34 Agreement has now been entered into following amended plans.
10	Lot 9, 29 Laycock Road, Penshurst  <b>Applicant:</b> Penshurst Laycock Pty Ltd atf 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 contested hearing on 29 – 31 March 2021.
11	Lot 10, 29 Laycock Road, Penshurst  <b>Applicant:</b> Penshurst Laycock Pty Ltd atf Trustee of Penshurst Laycock Unit  <b>Proceedings No.</b> 20/208038	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 contested hearing on 29 – 31 March 2021.
12	Lot 11, 29 Laycock Road, Penshurst  <b>Applicant:</b> Penshurst Laycock Pty Ltd atf	Class 1 Appeal against deemed refusal of DA2020/0160 for construction of a two storey boarding house development containing	Matter listed for contested hearing on 29 – 31 March 2021.

	Trustee of Penshurst Laycock Unit  <b>Proceedings No.</b> 20/208036	7 boarding rooms, excavation and construction of a basement containing two car parking spaces.	
13	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 contested hearing on 26 and 27 April 2021.
14	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 contested hearing on 17 and 18 May 2021.
15	31 Garfield Street, Carlton  <b>Applicant:</b> Compage Group Pty Limited  <b>Proceedings No:</b> 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 contested hearing on 31 May 2021 and 1 June 2021.
16	18 – 24A Victoria Street, Kogarah  <b>Applicant:</b> Kai-Tian Group Kogarah Pty Limited	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	Matter listed for S34 Conference on 27 April 2021.

	<b>Proceedings No:</b> 20/285043	landscaping and drainage works.	
17	47 Boronia Street, Kyle Bay  <b>Applicant:</b> 47 Boronia Street Pty Ltd  <b>Proceedings No:</b> 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 hearing on 10 and 11 February 2021. S34 Agreement pending following amended plans.
18	10 Lawrence Street, Peakhurst  <b>Applicant:</b> Marian Ibrahim  <b>Proceedings No:</b> 2020/336594	Class 1 Appeal against the Respondent's deemed refusal of modification application MOD2020/0178 seeking to modify DA2014/1197 for minor internal and external alterations and an increase in the number of children permitted at the childcare centre from 48 to 58.	Matter listed for S34 Conference on 25 May 2021.
19	10 Kyle Parade, Kyle Bay  <b>Applicant:</b> Christopher Robert Zaarour  <b>Proceedings No:</b> 2021/44244	Class 1 Appeal against deemed refusal of DA2020/0435 for demolition of the existing dwelling and ancillary structures and the construction of a dual occupancy over basement car parking.	Matter listed for first directions hearing on 9 March 2021.

Land and Environment Court Proceedings – Class 4 Appeals			
1	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. Judgment handed down requiring regime of fire works to be carried out on 24 December 2020. Council successful in the proceedings, including costs. Notice of Intention to Appeal filed by Respondents. Notice of Motion in relation to costs is listed on 10 June 2021.
2	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 5 March 2021 to await outcome of related Class 1 proceedings.
3	977 Forest Road, Lugarno  <b>Parties:</b> The Congregational Christian Church in Samoa, Parish of Sydney Inc and Taeipo Malifa  <b>Proceedings No:</b> 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 hearing on 24 and 25 June 2021.
4	36 – 38 Waterview Street, Carlton  <b>Parties:</b> Tyre Nation Pty Ltd and Fardous & Saab Pty Limited  <b>Proceedings No:</b> 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.

Local Court Proceedings			
1-6	2 – 6 Allen Street & 42 – 46 Connells Point Road, Connells Point  <b>Parties:</b> Your Style Building Services Pty Limited	Appeals against Penalty Notices (6) issued for development not in accordance with development consent.	Matters listed in Downing Centre Local Court on 19 and 20 July 2021.
7-9	2 – 6 Allen Street & 42 – 46 Connells Point Road, Connells Point  <b>Parties:</b> Your Style Building Services Pty Limited	Appeals against Penalty Notices (3) issued for development not in accordance with development consent.	Matters listed in Downing Centre Local Court on 19 and 20 July 2021.
10- 20	177 Forest Road, Hurstville  <b>Parties:</b> Jun Du	Court Attendance Notices issued against Defendant for committing an offence against section 21 of the Food Act 2003 (NSW) for breach of section 21 of the Food Act by failing to comply with the Food Standards Code.	Matters listed on 9 March 2021.
21- 31	177 Forest Road, Hurstville  <b>Parties:</b> Taste of Shanghai Hurstville Pty Limited	Court Attendance Notices issued against Defendant for committing an offence against section 21 of the Food Act 2003 (NSW) for breach of section 21 of the Food Act by failing to comply with the Food Standards Code.	Matters listed on 9 March 2021.



<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	\$251,804
Class 1 Appeals – Planning DA External Lawyers	\$423,290
Class 2 Appeals	\$0
Class 3 Appeals	\$0
Class 4 Appeals	\$444,625
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>\$1,170,712</b>