

Current Legal Cases – Status and Costs – May 2023

Advice on Costs and Status of Council's Court Proceedings

Executive Summary

1. Council's Court proceedings for the period 1 May 2023 to 31 May 2023 is contained within this report.
2. Total legal costs to date for the 2022/23 financial year are \$2,150,331.00.
3. Total legal costs recovered to date for the 2022/23 financial year are \$1,041,108.00
4. Total costs incurred by Council in legal proceedings are \$1,624,888.00.
5. Net legal costs are \$1,109,223.00.

Background

6. Current court proceedings for the reporting period are broken down as follows:

Land and Environment Court

- 23 x Class 1 (Merit/DA Appeals)
- 3 x Class 4 (Civil Enforcement Proceedings)
- 6 x Class 5 (Prosecution Proceeding)

Supreme Court – Court of Appeal

- 1 x Summons

Local Court

- 11 x Prosecutions

Costs Recoveries

- 17 x cost recoveries

New Matters

There were 4 new matters in this reporting period: 3 x Class 1 Appeals: BT Developments Pty Ltd, Outdoors Systems Pty Ltd and Adam Rennie.

Finalised matters

7. There were 7 matters that were finalised in this reporting period: 1 x Class 1 Appeal: JAMG Pty Ltd; 1 x Class 4 Perry Properties Pty Ltd; 6 x Class 5: All 6 cases relating to SAF Developments; 1 x Supreme Court: El Khouri v Gemaveld; 3 x Local Court: Macchina Espresso Pty Ltd, The Baked Bakers Kitchen Pty Ltd and Panalasang Pinoy.

Current Table

8. Court proceedings for the current 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	6 – 10 Torrens Street, Blakehurst Applicant: Lioncrest Capital Holdings Pty Limited Proceedings: 2022/25659	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.	Matter listed for hearing 20 and 21 September 2022. Matter adjourned to 30 May 2023. S34 Conference listed on 9 June 2023
2	26 Martin Place, Mortdale Applicant: JAMG Holdings Pty Ltd as Trustee for the JAMG Property Trust Proceedings No: 2022/83335	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. Appeal upheld following amended plans. Applicant ordered to pay Council's costs currently being assessed.
3	41 – 47 Princes Highway, Kogarah Bay Applicant: Skyton Developments No 2 Pty Ltd Proceedings No: 2022/252723	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 height from 10 storeys to 12 storeys and an increase in parking in basement area.	Matter listed for S34 Conference on 22 February 2023 however terminated. Matter is listed for hearing on 19 and 20 July 2023.
4	21 Hogben Street, Kogarah Applicant: Michel Murr trading as Michel Proceedings No: 2022/273362	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 S34 Conference on 31 January 2023. Adjourned to 14 June 2023
5	42 Treacy Street, Hurstville Applicant: Vi Phong Chau Proceedings No: 2022/284572	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 was listed for S34 Conference on 10 February 2023 however terminated. Matter is now listed for hearing on 24 and 25 July 2023.

6	36 – 38 Waterview Street, Carlton Applicant: Fardous & Saab Pty Limited Proceedings No: 2022/295282	Appeal against order under Division 9.3 and Schedule 5, Part 2 (Order 1) of the Environmental Planning and Assessment Act 1979 dated 5 September 2022.	Matter listed for S34 Conference on 19 December 2022 however terminated. Matter listed for hearing on 3 July 2023.
7	40 Algernon Street, Oatley Applicant: Ross Green Proceedings No: 2022/335956	Appeal against refusal of DA2021/0273 for subdivision of two Torrens title lots and driveway and landscaping works.	Matter listed for S34AA Conference on 29 and 30 March 2023 however vacated. Matter listed for further directions on 30 May 2023.
8	36 – 40 Anderson Road, Mortdale Applicant: John Hatch Proceedings No: 2022/335956	Appeal against refusal of Modification Application 2021/0193 for the increase in capacity from 68 children to 90, construction of new car park and play area, and other landscaping and building alterations.	Matter listed for S34 Conference on 30 May 2023, Online Court hearing scheduled for 23 June 2023
9	95 – 99 Railway Parade, Mortdale Applicant: NXT Developments Pty Limited Proceedings No: 2022/369251	Appeal against deemed refusal of DA2022/0113 for a seven storey shop top housing development.	Matter listed for S34 Conference on 21 June 2023.
10	348 – 352 Railway Parade & 2 – 2A Garfield Street, Carlton Applicant: Vortex Construction Pty Limited Proceedings No. 2022/383670	Appeal against deemed refusal of DA2022/0431 for demolition of existing structures and construction of a multi-storey shop top housing development comprising of one commercial tenancy and 39 residential apartments and three level basement parking.	Matter listed for S34 Conference on 8 May 2023. Matter adjourned to 5 June 2023.
11	37 Inverness Avenue, Penshurst Applicant: Beaini Corp Pty Limited Proceedings No: 2023/7575	Appeal against deemed refusal of Modification Application MOD2022/0168 relating to DA2021/0227 which relate to the demolition works and construction of a detached dual occupancy.	Matter listed for S34AA Conference on 5 and 6 June 2023.
12	10 Spalding Crescent, Hurstville Grove Applicant: Wageeh Ayoubi Proceedings No: 2023/26519	Appeal against refusal of DA2022/0826 for demolition works and construction of a dual occupancy development.	Matter listed for S26 Mediation on 31 May 2023. S34AA scheduled for 7 and 8 November 2023
13	26 Bowden Crescent, Connells Point Applicant: Yasser Elgammal Proceedings No. 2023/67101	Appeal against an order issued under Division 9.3 and Schedule 5, Part 5 (Order 2) of the Environmental Planning and Assessment Act by Council dated 1 February 2023 in respect of the above property.	Matter listed for S34 Conference on 7 August 2023.

14	1 Butler Road, Hurstville Applicant: W H Project Management Pty Ltd Proceedings No. 2023/68786	Application direct to Land and Environment Court to modify development consent DA2017/0402 granted by the LEC in W H Project Management Pty Ltd v Georges River Council [2020] NSWLEC 1508 on 23 October 2020 for demolition of existing structures on the site; construction of new mixed use buildings and ground floor commercial/retail. 11 levels of apartments and 3 levels of basement car parking and strata subdivision. The modification application seeks to modify condition B.1 of the consent to modify the southern fire stair egress and consequential amendments to the approved plans.	Matter listed for S34 Conference on 18 July 2023.
15	2A Woodlands Avenue, Lugarno Applicant: Russell Winston Green Proceedings No. 2023/78761	Appeal against refusal of Development Application DA2020/0460 for boundary adjustment and re-subdivision of two lots, including construction of driveway and partial demolition of dwelling and garage.	Matter listed for S34AA Conference on 16 and 17 August 2023.
16	202 – 206 Princes Highway, Kogarah Bay Applicant: Bentayga Pty Limited Proceedings No: 2023/80478	Appeal against deemed refusal of DA2022/0379 for demolition of the existing commercial buildings and construction of a 6 storey residential flat building containing 39 units over basement parking.	Matter listed for S34 Conference on 10 July 2023.
17	12 Ogilvy Street, Peakhurst Applicant: Shady Eskander Proceedings No: 2023/91345	Appeal against deemed refusal of DA2022/0387 seeking consent for the demolition and construction of a detached two storey dual occupancy development with two levels of basement, in-ground swimming pool, landscaping and fencing.	Matter listed for S34AA Conference on 23 and 26 June 2023.
18	14 Targo Road, Beverley Park Applicant: Patrick Yazbeck Proceedings No: 2023/96759	Appeal against refusal of application for a Building Information Certificate in relation to a retaining wall at the rear with back fill and additional hardstand area.	Matter listed for S34 Conference on 19 July 2023.
19	50 Lily Street, Hurstville Applicant: Carmelina Lombardi Proceedings No: 2023/86674	Appeal against actual refusal of DA2021/0361 for demolition of alterations and additions to existing dwelling house and change of use to a boarding house.	Matter listed for S34 Conference on 28 June 2023.

20	18 Victoria Street, Kogarah Applicant: Kai Tian Group Kogarah Pty Limited Proceedings No: 2023/103213	Appeal against deemed refusal of DA2023/0015 for alterations and additions to the upper level of an approved residential flat building (DA2017/0597) and the construction of two additional residential units.	Matter listed for S34 Conference on 5 September 2023.
21	13-19 Hogben Street, Kogarah Applicant: Adam Rennie Proceedings 2023/144342	Appeal against the refusal for two storey addition to an existing mixed -use building comprising of 5 residential units.	Matter is listed for the first direction hearing on 2 June 2023.
22	169 Penshurst Street, Beverly Hills BT Development Group Pty Ltd Proceedings 2023/144818	Appeal against actual refusal of DA2022/0098 for demolition and construction of new industrial building with 17 Units	Matter listed for first hearing on 2 June 2023.
23	152 Stoney Creek Road, Beverly Hills Outdoor Systems Pty Ltd Proceedings 2023/00152711	Appeal against deemed refusal of MOD2023/0026 for modification of an existing static advertising sign to a digital sign and removal of the existing sign.	Matter listed for first direction hearing on 9 June 2023

Class 4 Proceedings

1	244 Connells Point Road, Connells Point Parties: Habib Hamade, Zeinab Hammoud, Carole Li and Winson Li Proceedings: 2020/72897	Proceedings 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. Judgment reserved. Motion to be filed before 30 June 2023
2	247 Princes Highway, Carlton Parties: Perry Properties Pty Ltd Proceedings No: 2022/237344	Proceedings in relation to the compulsory acquisition of 247 Princes Highway, Carlton.	Matter listed for hearing on 23 and 24 March 2023. Judgement received on 11 May 2023, dismissing the summons with costs to be paid to Council.
3	26 Bowden Crescent, Connells Point, Parties: Yasser Elgammal & Abdul Hammoud Proceedings No: 2023/35778	Proceedings in relation to unauthorised works and validity of construction certificate.	Matter adjourned to 9 June 2023.

Class 5 Proceedings			
1	9 Nellella Street, Blakehurst Parties: SAF Developments Pty Limited Proceedings: 2021/244132	Prosecution for carrying out development on land which was prohibited.	Matter listed for hearing 6 and 7 March 2023. Matter withdrawn.
2	9 Nellella Street, Blakehurst Parties: SAF Developments Pty Limited Proceedings: 2021/244133	Prosecution for carrying out development not in accordance with consent.	Matter listed for hearing 6 and 7 March 2023. Guilty plea entered, pending final court order.
3	9 Nellella Street, Blakehurst Parties: SAF Developments Pty Limited Proceedings: 2021/244134	Prosecution for polluting land.	Matter listed for hearing 6 and 7 March 2023. Matter withdrawn.
4	9 Nellella Street, Blakehurst Parties: SAF Developments Pty Limited Proceedings: 2021/244135	Prosecution for unlawful transport of waste.	Matter listed for hearing 6 and 7 March 2023. Guilty plea entered, pending final court order.
5	9 Nellella Street, Blakehurst Parties: Mohammad Safwan Abdul- Rahman Proceedings: 2021/244136	Prosecution for polluting land.	Matter listed for hearing 6 and 7 March 2023. Matter withdrawn.
6	9 Nellella Street, Blakehurst Parties: Mohammad Safwan Abdul- Rahman Proceedings: 2021/244137	Prosecution for unlawful transport of waste.	Matter listed for hearing 6 and 7 March 2023. Matter withdrawn.

Local Court Proceedings			
1-7	532 King Georges Road, Beverly Hills Parties: N & N Khan Investments Pty Limited	Court Attendance Notices in relation to offences under Food Act 2003 (NSW) of Phillies, 532 King Georges Road, Beverly Hills.	Matters listed for hearing on 10 November 2023.
8	75 Boundary Road, Mortdale Parties: Macchina Espresso Pty Limited	Court Attendance Notice in relation to development without development consent.	Matter listed for hearing on 30 March 2023. Defendant entered guilty plea and was convicted, fined \$1,000 and ordered to pay professional costs of \$600.
9	26 Regent Street, Kogarah Parties: Panlasang Pinoy Pty Ltd	Court Attendance Notice in relation to offences under Food Act 2003 (NSW).	Matter listed for mention on 16 May 2023. Guilty plea entered and Defendant was convicted and fined \$9,400 and ordered to pay professional cost of \$1,800
10	59 Boundary Road, Mortdale Parties: The Baked Bakers Kitchen Pty Limited	Court Attendance Notice in relation to development without consent.	Matter listed for mention on 23 May 2023. Guilty plea entered and Defendant was convicted and fined \$1,500 and ordered to pay professional
11	17 Raymond Street, Oatley Parties: Tarek Hassan	Court Attendance Notice in relation to tree removal.	Matter listed for hearing on 22 May 2023.

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 listed for hearing on 6 April 2023. Court of Appeal handed down judgment dismissing application. Negotiations taking place in relation to costs.

Costs			
1	Lot 9, 29 Laycock Road, Penshurst Applicant: Penshurst Laycock Pty Ltd atf Trustee of Penshurst Laycock Unit Proceedings No. 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 to 31 March 2021. Appeal refused. Costs awarded as agreed or assessed on 30 June 2021. Applicant has failed to agree on an amount. Matter being prepared for costs assessment.

2	<p>Lot 10, 29 Laycock Road, Penshurst</p> <p>Applicant: Penshurst Laycock Pty Ltd atf 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. Matter being prepared for costs assessment.</p>
3	<p>Lot 11, 29 Laycock Road, Penshurst</p> <p>Applicant: Penshurst Laycock Pty Ltd atf Trustee of Penshurst Laycock Unit</p> <p>Proceedings No. 20/20803</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. Matter being prepared for costs assessment.</p>
4	<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. Certificate of Determination received. Proceeding with recovery of costs from Defendant.</p>
5	<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. 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.</p> <p>Costs respondent lodged an application for review of the costs determination. Further</p>

			Certificate of Determination received. Proceedings with recovery of costs from Defendant.
6	297 Rocky Point Road, Sans Souci Parties: Alan Frederick Goddard Proceedings No: 2018/366019	Proceedings commenced for accumulation of items resulting in premises being in an unsafe or unhealthy condition under the <i>Local Government Act, 1993</i> .	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. Council awarded costs as agreed or as assessed. Certificate of Determination received. Proceeding with recovery of costs from Defendant.
7	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.	Consent Orders issued on 19 October 2020 including orders that the First and Second Respondents pay Council's costs as agreed or as assessed. Costs assessment review application filed with Supreme Court. Certificate of Determination received. Proceedings with recovery of costs from Defendant.
8	34 Milsop & 47 Jersey Avenue, Mortdale Parties: Robert Stojanovski & Steven Stojanovski Proceedings No: 2018/99739	Proceedings commenced for unauthorised erection of structures and slabs, including habitation of structure at the premises.	Respondent found to be in Contempt of Court Orders on 30 September 2019. Costs assessment process undertaken. 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.
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 listed for contested hearing on 24 and 25 May 2021. Appeal refused. Negotiations in relation to costs taking place with Applicant's solicitors.
10	88 – 92 Botany Street, Carlton Applicant: Hurstville	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	Matter listed for consent order hearing on 17 August 2022 following amendment of application. Appeal upheld subject to conditions.

	Community Centre Incorporated Proceedings: 2021/360407	workshop, community facilities and associated works.	Negotiations in relation to costs have failed to resolve the costs issue. Matter has been sent for costs assessment.
11	5 Maclaurin Street, Penshurst Parties: Emanuel Mifsud & Crystina Mifsud Proceedings No: 2019/323436	Proceedings commenced requiring Respondent to remove articles and items from the Premises (hoarding).	Final orders made on 2 December 2022. Orders made the First Respondent carry out works within 60 days and costs of \$4,093.00 to be paid. Awaiting payment of costs.
12	48 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 was listed for S34 Conference on 10 February 2023 however vacated. Matter is now listed for hearing on 19 to 21 April 2023. Matter discontinued by Applicant. Negotiations taking place in relation to costs.
13	49 Jersey Avenue, Mortdale Applicant: Sharobem Holdings Pty Ltd Proceedings No. 2022/164067	Class 1 Appeal against refusal of DA2020/0354 for demolition works and the construction of a child care centre.	Matter listed for S34 Conference on 25 August 2022. Matter listed for hearing on 16 and 17 February 2023. A S34 Agreement was entered into following amended plans. Negotiations taking place in relation to costs.
14	15 Dalcassia Street, Hurstville Applicant: Wang Zhang Lin & Bao Zhen Qiu Proceedings No. 2022/189574	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. A S34 Agreement was entered into following amended plans. Payment of costs in the amount of \$12,000 has been received.
15	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. Adjourned to 16 February 2023. A S34 Agreement was entered into following amended plans. Negotiations taking place in relation to costs.
16	48 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 was listed for S34 Conference on 10 February 2023 however vacated. Matter is now listed for hearing on 19 to 21 April 2023. Negotiations taking place in relation to costs.
17	30 – 32 The Avenue, Hurstville Applicant: 32 The Avenue Hurstville Pty Ltd ATF 32 The Avenue Hurstville Trust	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	Matter listed for S34 Conference on 20 June 2022. Matter unresolved and listed for hearing on 31 October and 1 November 2022. Awaiting judgment.

Proceedings No: 2022/122081	space, basement carparking and associated landscaping.	
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9. Costs to date are as follows:

Type	Amount
Class 1 Appeals – Consultants for Court Proceedings	\$625,319
Class 1 Appeals – Planning External Lawyers	\$535,043
Class 2 Appeals	\$0
Class 3 Appeals	\$0
Class 4 Appeals	\$407,002
Class 5 Appeals	\$36,287
Local Court Prosecutions	\$11,535
Supreme Court Proceedings	\$9,702
Industrial Relations Commission (IRC)	\$0
NSW Civil and Administrative Tribunal (NCAT)	\$0
Total	\$1,624,888