

### **3.8. Current Appeals and Results - March 2021**

**AUTHOR:** Craig Winn, Solicitor

**ENDORSED BY:** Ken Gouldthorp, General Manager

**ATTACHMENTS:**

1. Current Appeal Matters List LEC March 2021 [**3.8.1** - 4 pages]
2. Local Court Matters List March 2021 [**3.8.2** - 1 page]
3. NCAT Matters List March 2021 [**3.8.3** - 1 page]

**PURPOSE:**

Report on current appeal and prosecution matters.

**EXECUTIVE SUMMARY:**

Attached is a list of current appeal and prosecution matters as at 1 March 2021 for Council's information.

**FINANCIAL IMPLICATIONS:**

As at 1 March 2021, Council has incurred \$808,228 on legal fees for the 2020/2021 financial year and recovered legal costs in the amount of \$118,687. The legal budget for 2021 financial year is \$ 1,500,000.00.

**RECOMMENDATION:**

1. **THAT** the Current Appeal and Results – March 2021 report be received.

## **LINK TO COMMUNITY STRATEGIC PLAN**

The relationship with the Community Strategic Plan is as follows:

5. Our Civic Leadership

5.2 Council is well governed and customer focused

## **BACKGROUND**

The Current Appeals and Prosecutions list was last reported to the Legal and Planning Committee meeting of 12 October 2020.

## **CONSULTATION REQUIREMENTS**

Community engagement is not required.

## **DETAIL**

The defence of Land and Environment Court appeals and the prosecution of regulatory matters represents a major ongoing expense for Council. The attached list provides a summary of each current appeal(s) and prosecution(s) (including fees incurred) as at 1 March 2021.

A separate Confidential Report that provides detailed information on the legal matters has been distributed to Councillors.

**CURRENT MATTERS LIST – LAND & ENVIRONMENT COURT**  
As at 1 March 2021

<b>Property DA No. Appeal No. Date of Appeal (DOA)</b>	<b>Applicant/ Other party</b>	<b>Nature of Appeal</b>	<b>Council Officer responsible</b>	<b>Status</b>	<b>Fees Estimate (\$) Fees Billed (\$) Disb. (\$) Officer Recommendation Council decision</b>	<b>Result</b>
<b>3 Parker St, McMahons Point</b> DA 103/19 LEC 260634/19 DOA 27/08/19 H&W	Brazete Investments Pty Ltd	Class 1 appeal against the deemed refusal for the adaptive reuse and alterations and additions to create a three level residential flat building.	George Youhanna	Listed for hearing on 19 and 20 October 2020. Appeal upheld. Matter closed.	Fee Estimate: \$55,000 Fees: \$54,232.59 Recommendation: N/A Decision: N/A	Appeal upheld Matter closed
<b>21 Christie Street, Wollstonecraft</b> DA 238/19 LEC 298474/19 DOA 30/09/19 LEC 329322/19 DOA (Refiled) 28/10/19 H&W	BCMA Investments Pty Ltd	Class 1 appeal against the deemed refusal for the demolition of building and construction of a new generation boarding house.	Geoff Mossemenear	Matter listed for hearing on 21 and 22 December 2020. Appeal upheld on 27 January 2021. Matter closed.	Fee Estimate: \$25,000 Fees: \$25,990.79 Recommendation: N/A Decision: N/A	Appeal upheld Matter closed
<b>66 Shellcove Road, Neutral Bay</b> DA 37/19 LEC 305102/19 DOA 30/09/19 SH	Anne McCusker	Class 1 appeal against the refusal for the subdivision of property into two lots.	Michael Stephens	Matter listed for hearing on 20 and 21 April 2021.	Fee Estimate: \$55,000 Fees: \$44,637.52 Recommendation: Refusal Decision: Refusal	Pending
<b>1/9 Tobruk Ave, Cremorne</b> Order No 1 & 11 LEC 316133/19 DOA 11/10/19 H&W	Richard Bryson	Class 1 appeal against a development control issued regarding unauthorised works to create a dual occupancy within a sole occupancy.	Long Huynh	Appeal resolved by way of section 34 agreement on 26 November 2020, upholding appeal. Matter closed.	Fee Estimate: \$20,000 Fees: \$11,138.80 Recommendation: N/A Decision: N/A	Appeal upheld, costs of \$2,200 awarded to Council Matter closed
<b>27 Edward Street, North Sydney</b> DA 225/19 LEC 354290/19 DOA 12/11/19 H&W	Linda Jays	Class 1 appeal against the deemed refusal for alterations and additions to dwelling including new first floor.	Luke Donovan	Listed for hearing on 8 November 2020. Appeal dismissed.	Fee Estimate: \$15,000 Fees: \$18,904.08 Recommendation: N/A Decision: N/A	Appeal dismissed. Matter closed.

Property DA No. Appeal No. Date of Appeal (DOA)	Applicant/ Other party	Nature of Appeal	Council Officer responsible	Status	Fees Estimate (\$) Fees Billed (\$) Disb. (\$) Officer Recommendation Council decision	Result
<b>116 Blues Point Road, McMahons Point</b> Existing Rights LEC 373973/19 DOA 28/11/19 HWL	Blues Point Hotel Property Pty Ltd and Blues Point Hotel Property No 2 Pty Ltd	Class 4 Summons seeking a declaration that the premise benefits from existing use rights for the purpose of a pub for in its entirety including the first floor external terrace.	Long Huyhn	Matter listed for hearing on 8,9 and 10 February 2021. Judgment reserved.	Fee Estimate: \$85,000 Fees: \$72,577.31 Recommendation: N/A Decision: N/A	Judgment reserved
<b>111 Milson Road, Cremorne Point</b> DA 289/19 LEC 73040/20 DOA 09/03/20 H&W	Rosetta Stevens	Class 1 appeal against the refusal for the construction of a new double carport within the front set back.	Robyn Pearson	The matter is listed for a s34 Conciliation Conference on 26 and 27 November 2020. Appeal dismissed. Matter closed.	Fee Estimate: \$10,000 Fees: \$12,857.82 Recommendation: Refusal Decision: Refusal	Appeal dismissed Matter closed
<b>6 John Street, Cremorne Point</b> Order No 11 LEC 122833/20 DOA 24/04/20 HWL	Noakes Group Pty Limited	Class 1 appeal against a development control issued for the operation of Noakes Boatyard not in accordance with the Development Consent 1164/1990.	Long Huyhn	Proceedings resolved by way of section 34 Agreement and Deed of Settlement. Matter closed.	Fee Estimate: \$100,000 Fees: \$95,972.29 Recommendation: N/A Decision: N/A	Matter closed
<b>37-39 Murdoch Street, Cremorne</b> DA 69/20 LEC 157515/20 DOA 23/06/20 MLG	Active Kids Group Pty Limited	Class 1 appeal against the deemed refusal of a first floor addition to existing child care centre – new staff room facilities.	Kim Rothe	Matter listed for directions on 7 October 2020. Listed for hearing on 20 and 21 April 2021.	Fee Estimate: \$15,000 Fees: \$16,892.25 Recommendation: N/A Decision: N/A	Pending
<b>7 Carr Street, Waverton</b> DA 237/19/2 LEC 197275/20 DOA 07/07/20 MLG	David McCrae	Class 1 appeal against the deemed refusal to modify consent No 237/19 with regards to roof form and new skylight.	Hugh Shouldice	Matter to be listed for a section 34 Conciliation Conference on 20 and 21 January 2021. Appeal upheld. Matter closed.	Fee Estimate: \$15,000 Fees: \$11,960.30 Recommendation: N/A Decision: N/A	Appeal upheld Matter closed

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<b>177-199 Pacific Hwy, North Sydney</b> DA 16//20 LEC 210569/20 DOA 21/07/20 HWL	TPG Telecom Limited (formerly Vodafone Hutchison Australia Pty Limited)	Class 1 appeal against the refusal for illumination of the existing Vodafone sign on the western elevation of the building.	Geoff Mossemear	Matter listed for hearing on 8 and 9 March 2021.	Fee Estimate: \$40,000 Fees: \$17,852.45 Recommendation: Refusal Decision: Refusal	Pending
<b>85 Kurraba Road, Kurraba Point</b> General Order LEC 206622/20 DOA 21/07/20 MLG	Proprietors of SP 16183	Class 1 appeal against a development control issued to demolish and remove multi-levelled viewing platform erected in the rear of the yard.	Brad Calleia	Appeal upheld on 15 December 2020 subject to terms of Order as modified.	Fee Estimate: \$22,550 Fees: \$5,382.30 Recommendation: N/A Decision: N/A	Appeal upheld
<b>85 Kurraba Road, Kurraba Point</b> C 13/20 LEC 259686/20 DOA 08/09/20 MLG	Proprietors of SP 16183	Class 1 appeal against the refusal of Building Information Certificate No. C13/20 for a multi-levelled viewing platform.	Dane Johnson	Discontinued with notice filed on 17 November 2020.	Fee Estimate: \$22,550 Fees: \$11,910.00 Recommendation: N/A Decision: N/A	Discontinued
<b>58 Cowdroy Avenue. Cammeray</b> DA 56/20 LEC 277618/20 DOA 15/10/20 MLG	Renata Etherington	Class 1 appeal against the refusal for the demolition of the existing dwelling and construction of a new dwelling and associated landscaping	Robyn Pearson	Motion to amend to be filed. Motion listed for hearing on 16 March 2021.	Fee Estimate: \$25,000 Fees: \$2,178.00 Recommendation: Refusal Decision: Refusal	Pending
<b>61 Ernest Street, Crows Nest</b> DA 399/17/5 LEC 324022/20 DOA 13/11/20 MLG	TLB Trading Pty Ltd	Class 1 appeal against the refusal to modify consent No 399/17 for the proposed removal of existing camphor laurel tree to rear of property and replacement with two trees.	Geoff Mossemear	Listed for hearing on 13 and 14 July 2021.	Fee Estimate: \$30,000 Fees: \$9,188.30 Recommendation: Refusal Decision: Refusal	Pending

Property DA No. Appeal No. Date of Appeal (DOA)	Applicant/ Other party	Nature of Appeal	Council Officer responsible	Status	Fees Estimate (\$) Fees Billed (\$) Disb. (\$) Officer Recommendation Council decision	Result
<b>15 Richmond Avenue. Cremorne DA 326/16/4 LEC 328098/20 DOA 23/11//20 MF</b>	Steve Laliotis	Class 1 appeal against the deemed refusal to modify consent to the approved dual occupancy including modified levels, increased building height, condition modifications, tree removal and storm water modifications.	Robin Tse	Listed for a section 34 Conciliation Conference on 11 and 12 May 2021.	Fee Estimate: \$15,000 Fees: \$13,640 Recommendation: Refusal Decision: N/A	Pending
<b>62-64 Hayberry Street, Crows Nest DA 226/19/2 LEC 332718/20 DOA 03/12/20 H&amp;W</b>	Dr Eric Lim	Class 1 appeal against the refusal to modify consent No 226/19 for the deletion of a condition in order to construct a double garage.	Hugh Shouldice	Listed for a section 34 Conciliation Conference on 17 March 2021.	Fee Estimate: \$15,000 Fees: \$0 Recommendation: Refusal Decision: Refusal	Pending
<b>5 Bay View St, Lavender Bay DA 55/19/2 LEC 356210/20 DOA 23/12/20 HWL</b>	Yolenda Camuglia	Class 1 appeal against the refusal to modify the court approved consent No 55/19 seeking the reduction of the roof ridge and the removal of the step in the roof.	Kim Rothe	To be listed for hearing.	Fee Estimate: \$20,000 Fees: \$5,062.20 Recommendation: Rejected by DRP Decision: Rejected by DRP	Pending
<b>18 Illiliwa St., Cremorne DA 460/16 (LEC 70971/17) LEC 356211/20 DOA 23/12/20 HWL</b>	Connoisseur Property Holdings Pty Ltd	Class 1 application to the Court to modify the Court approved DA 460/16 by the deletion of condition B2.	George Youhanna	Listed for hearing on 12 and 13 July 2021.	Fee Estimate: \$20,000 Fees: \$6,954.20 Recommendation: N/A Decision: N/A	Pending

## LOCAL COURT MATTERS LIST

As at 1 March 2021

Property DA No. Appeal No. Date of Appeal (DOA)	Applicant/ Other party	Nature of Appeal	Council Officer responsible	Status	Fees Estimate (\$) Fees Billed (\$) Disb. (\$) Officer Recommendation Council decision	Result
<b>21 Shellcove Road, Kurraba Point</b> DOA: 31/03/20 SG	Aranac (Contracting) Pty Ltd	Local Court prosecution in respect to development without consent.	Brad Calleia	Court Attendance Notice issued.	Fee Estimate: \$0 Fees: \$0	Pending
<b>12 Tobruk Avenue, Cremorne</b> DOA: 20/10/20 In House with Council Solicitor	Draincorp Pty Ltd	Local Court prosecution in respect to development not in accordance with consent	Mark Ottewill or Catherine Chambers	Listed for mention on 20 October 2020. Dismissed. No conviction recorded.	Fee Estimate: \$0 Fees: \$0	Dismissed
<b>Dog Matter</b> DOA: 19/10/20 In House with Council Solicitor	Matthew Williams	Local Court prosecution in respect to dog matter (attacks/bites,harasses/ charges)	Patrick Lendvai	Guilty. Dog has since been trained. Behavioural. Conditional release. \$ 300 costs. 6 month bond.	Fee Estimate: \$0 Fees: \$0	Guilty plea
<b>8 Levick, Cremorne</b> DOA: 17/11/20 In House with Council Solicitor	Michael Barnett	Local Court prosecution in respect to development not in accordance with consent	Jose Ferrer	Dismissed. No conviction recorded.	Fee Estimate: \$0 Fees: \$0	Dismissed
<b>12 Tobruk Ave, Cremorne</b> DOA: TBA In House with Council Solicitor	Hunter Building Group Pty Ltd	Local Court prosecution in respect to development not in accordance with consent	Mark Ottewill	Matter listed for mention on 20 October 2020. Discontinued.	Fee Estimate: \$0 Fees: \$0	Discontinued
<b>Glen St, Milsons Point</b> DOA: 24/9/20 In House with Council Solicitor	Vassil Leon Vasseleou	Local Court prosecution in respect to parking infringement (mobility sticker)	Dayne Foley	Court Attendance Notice withdrawn 09/02/21.	Fee Estimate: \$0 Fees: \$0	CAN Withdrawn

**NCAT MATTERS LIST**  
As at 1 March 2021

<b>Property DA No. Appeal No. Date of Appeal (DOA)</b>	<b>Applicant/ Other party</b>	<b>Nature of Appeal</b>	<b>Council Officer responsible</b>	<b>Status</b>	<b>Fees Estimate (\$) Fees Billed (\$) Disb. (\$) Officer Recommendation Council decision</b>	<b>Result</b>
<b>NCAT Privacy Complaint</b> NCAT: 136495/20 DOA: 14/05/20 MDK	EIG	Request for review of Privacy Complaint	Craig Winn	Council served with NCAT Application with matter listed for hearing on 30 October 2020. Judgment reserved,	Fee Estimate: \$65,000 Fees: \$57,769.25	Pending