

3.1. Current Appeals and Results - June 2020

AUTHOR: Craig Winn, Solicitor

ENDORSED BY: Ken Gouldthorp, General Manager

ATTACHMENTS:

1. Current Appeals Matters List - LEC [**3.1.1** - 5 pages]
2. Local Court Matters List [**3.1.2** - 1 page]
3. NCAT Matters List [**3.1.3** - 1 page]

PURPOSE:

Report on current appeal and prosecution matters.

EXECUTIVE SUMMARY:

Attached is a list of current appeal and prosecution matters as at 4 June 2020 for Council's information.

FINANCIAL IMPLICATIONS:

As at 4 June 2020, Council has incurred \$1,184,735 on legal fees for the 2019/2020 financial year and recovered legal costs in the amount of \$157,045. The legal budget for 2020 financial year is \$ 1,500,000.00.

RECOMMENDATION:

1. **THAT** the Current Appeals and Results – June 2020 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 9 March 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 4 June 2020.

CURRENT MATTERS LIST – LAND & ENVIRONMENT COURT
As at 4 June 2020

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
275 Alfred Street, North Sydney DA59/07(LEC10791/07) LEC 227590/18 DOA 25/07/18 HWL	Benmill Pty Ltd	Class 4 Summons seeking judicial review of previous Class 1 Appeal approval	David Hoy	Judgment handed down on 4 May 2020. Appeal upheld. Council is currently reviewing the judgment and may consider its appeal rights.	Fee Estimate: \$90,000 Fees: \$90,837.21 Recommendation: N/A Decision: N/A	Appeal upheld
12 Raymond Road, Neutral Bay DA 266/17 LEC 358115/18 DOA 22/11/18 SH	William and Olivia Northcott	Class 4 Summons seeking judicial review of certain conditions imposed in determining DA 266/17.	Hugh Shouldice	Appeal dismissed with costs awarded to Council. Council is currently negotiating a costs resolution.	Fee Estimate: \$105,000 Fees: \$104,207.74 Recommendation: Approved Decision: Approved	Appeal dismissed Costs awarded to Council
7 Penshurst Avenue, Kurraba Point DA 155/18 LEC 363684/18 DOA 30/11/18 HWL	Michael McCarthy	Class 1 Appeal against the refusal of alterations and additions to existing dwelling, including new second floor and roof.	Luke Donovan	Agreement reached. Appeal upheld.	Fee Estimate: \$40,000 Fees: \$32,351.55 Recommendation: Refusal Decision: Refusal	Appeal upheld
55-61 Chandos Street, St Leonards DA 32/19 LEC 100913/19 DOA 05/04/19 MDK	Tasktea Pty Ltd	Class 1 Appeal against the deemed refusal of alterations and additions with including new shop top housing.	Lara Huckstepp	Council served with Class 1 Appeal with matter listed for hearing on 20-24 July 2020.	Fee Estimate: \$40,000 Fees: \$33,340.87 Recommendation: N/A Decision: N/A	Pending Listed for hearing 20-24 July 2020
67-69 Chandos Street, St Leonards DA 30/19 LEC 125653/19 DOA 24/04/19 MDK	TWT Development Pty Ltd	Class 1 Appeal against the deemed refusal of the demolition existing structures and the construction of an 11 storey mixed use building containing 22 apartments with parking.	George Youhanna	Council served with Class 1 Appeal with matter listed for hearing on 20-24 July 2020.	Fee Estimate: \$40,000 Fees: \$33,468.37 Recommendation: N/A Decision: N/A	Pending Listed for hearing 20-24 July 2020

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
22-26 Spruson St, Neutral Bay DA 65/19 LEC 229229/19 DOA 31/07/19 HWL	Made Property Group Pty Limited	Class 1 appeal against the deemed refusal of the demolition of existing buildings and construction of a residential flat building.	Luke Donovan	Judgment reserved.	Fee Estimate: \$71,000 Fees: \$70,397.01 Recommendation: N/A Decision: N/A	Judgment reserved
3 Parker St, McMahons Point 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	Council served with Class 1 Appeal with matter listed for a s34 hearing on 25 February 2020. Section 34 hearing terminated. Listed for hearing on 19 and 20 October 2020.	Fee Estimate: \$15,000 Fees: \$9,089.06 Recommendation: N/A Decision: N/A	Pending Listing for hearing on 19 and 20 October 2020
5 Bay View St, Lavender Bay DA 55/19 LEC 268493/19 DOA 3/09/19 HWL	Yolenda Camuglia	Class 1 appeal against the deemed refusal for the demolition of existing structures, retainment of the swimming pool and the construction of a new residential flat building.	Kim Rothe	Council served with Class 1 Appeal with matter listed for a s34 hearing on 16 June 2020.	Fee Estimate: \$45,000 Fees: \$38,248.04 Recommendation: N/A Decision: N/A	Pending Listed for s34 Conciliation Conference on 16 June 2020
17 Milson Road, Cremorne Point DA 329/17/2 LEC 274015/19 DOA 6/09/19 MF	Peter Ping Xie	Class 1 appeal against the refusal to modify consent to alter front dormer and update façade treatments.	Robin Tse	Council served with Class 1 Appeal with matter listed for a s34 hearing on 27 and 28 April 2020. Agreement reached. Appeal upheld. Matter closed.	Fee Estimate: \$45,000 Fees: \$30,050.20 Recommendation: Refusal Decision: Refusal	Appeal Upheld Matter closed
101 Miller Street, North Sydney DA 169/19 LEC 290454/19 DOA 18/09/19 HWL	Nick James Wills	Class 1 appeal against the refusal for the extension of the area of delineation approved by approval LEC 10474 of 2002.	George Youhanna	Council served with Class 1 Appeal with matter listed for hearing on 3 March 2020. Appeal upheld. Matter closed.	Fee Estimate: \$125,000 Fees: \$125,852.93 Recommendation: Refusal Decision: Refusal	Appeal upheld 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
21 Christie Street, Wollstonecraft 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	Council served with Class 1 Appeal with matter listed for a section 34 Conciliation Conference on 10 June 2020.	Fee Estimate: \$25,000 Fees: \$0 Recommendation: N/A Decision: N/A	Pending
66 Shellcove Road, Neutral Bay 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	Council served with Class 1 Appeal with matter listed for a section 34 Conciliation Conference on 27 May 2020. No agreement reached. Matter listed for further directions and a hearing date.	Fee Estimate: \$30,000 Fees: \$25,365.45 Recommendation: Refusal Decision: Refusal	Pending
40 Brightmore Street, Cremorne DA 224/19 LEC 315224/19 DOA 10/10/19 HWL	Connoisseur Investments Pty Ltd	Class 1 appeal against the deemed refusal for the demolition of existing residential flat building and construction of new residential flat building.	George Youhanna	Council served with Class 1 Appeal with matter listed for a section 34 Conciliation Conference on 7 May 2020. No agreement reached. Matter listed for hearing on 28 September to 2 October 2020.	Fee Estimate:\$90,000 Fees: \$71,230.41 Recommendation: N/A Decision: N/A	Pending
1/9 Tobruk Ave, Cremorne 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	Council served with Class 1 Appeal with matter listed for a section 34 Conciliation Conference on 23 July 2020.	Fee Estimate: \$20,000 Fees: \$2,391.40 Recommendation: N/A Decision: N/A	Pending
13 Shellcove Road, Kurraba Point DA 249/19 LEC 329464/19 DOA 23/10/19 MF	MaryAnn Beregi	Class 1 appeal against the deemed refusal for the alterations and additions to dwelling house including excavation works, double garage, swimming pool and spa, cabana and boat workshop.	Geoff Mossemenear	Council served with Class 1 Appeal with matter listed for hearing on 22 and 23 July 2020. On 5 June 2020 the Applicant made an offer to discontinue the proceedings, subject to each party paying their own costs. Council is currently considering its position in relation to costs.	Fee Estimate: \$100,000 Fees: \$78,198.69 Recommendation: N/A Decision: N/A	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
24 Cranbrook Avenue, Cremorne DA 175/19 LEC 340894/19 DOA 05/11/19 MDK	Modog Pty Limited	Class 1 appeal against the refusal for the demolition of the existing heritage listed dwelling and construction of a new development and associated landscaping	Luke Donovan	Council served with Class 1 Appeal with matter listed for a section 34 Conciliation Conference on 25 June 2020.	Fee Estimate: \$40,000 Fees: \$11,822.26 Recommendation: Refusal Decision: Refusal	Pending
27 Edward Street, North Sydney 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	Council served with Class 1 Appeal with matter listed for a section 34 Conciliation Conference on 24 July 2020.	Fee Estimate: \$15,000 Fees: \$0 Recommendation: N/A Decision: N/A	Pending
116 Blues Point Road, McMahons Point 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	Council served with Class 4 Summons with the matter listed for directions on 7 February 2020. Evidence to be filed and served. Listed for further directions on 19 June 2020.	Fee Estimate: \$85,000 Fees: \$61,709.88 Recommendation: N/A Decision: N/A	Pending
17 Milson Road, Cremorne Point Order No 2 LEC 403332/19 DOA 10/01/20 MF	Peter Ping Xie	Class 1 appeal against a development control issued to stop work for works being carried that are not in accordance with development application.	Brad Calleia	Council served with Class 1 Appeal with matter listed for a section 34 Conciliation Conference on 27 and 28 April 2020. Appeal upheld. Matter closed.	Fee Estimate: \$35,000 Fees: \$33,700 Recommendation: N/A Decision: N/A	Appeal upheld
111 Milson Road, Cremorne Point 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	Council served with Class 1 Appeal with matter listed for mention on 27 March 2020. The matter is listed for a s34 Conciliation Conference on 26 and 27 November 2020.	Fee Estimate: \$10,000 Fees: \$0 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
55 Lavender Street, Milsons Point DA 92/05/6 LEC 71383/20 DOA 11/03/20 SH	LDC Opco Holding Company Pty Limited	Class 1 appeal against the deemed refusal to modify the consent to extending the time during which the consent may operate by 15 years.	Luke Donovan	Council served with Class 1 Appeal with matter listed for case management hearing on 29 June 2020.	Fee Estimate: \$ 35,000 Fees: \$18,488.03 Recommendation: N/A Decision: N/A	Pending
6 John Street, Cremorne Point 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 Huynh	Council served with Class 1 Appeal with the matter to be listed for directions.	Fee Estimate: \$15,000 Fees: \$9,280.15 Recommendation: N/A Decision: N/A	Pending

LOCAL COURT MATTERS LIST
As at 4 June 2020

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
83 Mount Street, North Sydney DOA: 13/06/19 SG	Little Veinna Pty Ltd	Local Court prosecution in respect of a food premises.	Gareth Munro	Proceedings listed for hearing on 23 January 2020. Question of law raised by the defendant. Proceedings adjourned, subject to written submissions being filed. Judgment reserved.	Fee Estimate: \$10,000 Fees: \$0	Pending
21 Shellcove Road, Kurraba Point DOA: 31/03/20 SG	Aranac (Contracting) Pty Ltd	Local Court prosecution in respect to development without consent.	Brad Calleia	Court Attendance Notice issued. Awaiting listing date.	Fee Estimate: \$0 Fees: \$0	Pending
Tobruk Avenue, Cremorne DOA: TBA 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	Annulment application served on 09 March 2020. Overdue fine matter. Listed for mention on 20 October 2020.	Fee Estimate: \$0 Fees: \$0	Pending
Dog Matter DOA: TBA In House with Council Solicitor	Matthew Williams	Local Court prosecution in respect to dog matter (attacks/bites,harasses/ charges)	Patrick Lendvai	Court Attendance Notice received and listed for mention on 19 October 2020. Court elect penalty notice matter.	Fee Estimate: \$0 Fees: \$0	Pending
8 Levick, Cremorne DOA: TBA In House with Council Solicitor	Michael Barnett	Local Court prosecution in respect to development not in accordance with consent	Jose Ferrer	Court Attendance Notice issued. Court elect penalty notice matter	Fee Estimate: \$0 Fees: \$0	Pending
12 Tobruk Ave, Cremorne 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	Court Attendance Notice issued. Court elect penalty notice matter	Fee Estimate: \$0 Fees: \$0	Pending

NCAT MATTERS LIST
As at 4 June 2020

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
NCAT Shop 3, 190-192 Military Rd, Neutral Bay COM: 18/41110 DAO: 25/09/18 H&H	D'Annunzio	NCAT Application seeking damages for breach of lease. Lease dispute	Risha Joseph	Council served with NCAT Application with matter listed for hearing on 26 March 2019. Appeal dismissed with costs awarded in favour of Council.	Fee Estimate: \$40,000 Fees: \$34,139.39	Appeal dismissed
NCAT Shop 3, 190-192 Military Rd, Neutral Bay AP: 20/1855 DAO: 14/01/20 H&H	D'Annunzio	Appeal against NCAT decision of 16/12/19 re application seeking damages for breaches of lease.	Risha Joseph	Council served with Notice of appeal to the Tribunals decision with matter listed for hearing on 23 January 2020. Appeal dismissed with costs awarded in favour of Council.	Fee Estimate: \$30,000 Fees: \$24,426.60	Appeal dismissed
NCAT Privacy Complaint 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 23 June 2020.	Fee Estimate: \$10,000 Fees: \$0	Pending
NCAT GIPA Complaint NCAT: 142324/20 DOA: 19/05/20 MDK	Maryann Beregi	Request for review Formal GIPA decision by Council	Craig Winn/Denise Highton	Council served with NCAT Application with matter listed for hearing on 23 June 2020.	Fee Estimate: \$10,000 Fees: \$0	Pending