



Report to General Manager

Attachments:

1. Current Appeal Matters List - LEC
 2. Local Court Matters List
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SUBJECT: Current Appeals and Results - March 2020

AUTHOR: Craig Winn, Solicitor

EXECUTIVE SUMMARY:

Attached is a list of current appeal and prosecution matters as at 28 February 2020 for Council's information.

As at 28 February 2020, Council has incurred \$859,711.72 on legal fees for the 2019/2020 financial year and recovered legal costs in the amount of \$156,987.61. The legal budget for 2020 financial year is \$ 1,500,000.00.

RECOMMENDATION:

1. **THAT** the Current Appeals and Results - March 2020 report be received.
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LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

Direction: 5. Our Civic Leadership

Outcome: 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 21 October 2019.

SUSTAINABILITY STATEMENT

The sustainability implications were considered and reported during the assessment of each particular application.

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 28 February 2020.

CRAIG WINN
SOLICITOR

CURRENT MATTERS LIST – LAND & ENVIRONMENT COURT
As at 28 February 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	Listed for hearing on 12 and 13 August 2019. Judgement reserved.	Fee Estimate: \$90,000 Fees: \$86,987.11 Recommendation: N/A Decision: N/A	Judgement Reserved
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	Council served with Class 4 Summons with the proceedings listed for hearing on 27, 28 and 29 August 2019. Judgement reserved.	Fee Estimate: \$105,000 Fees: \$103,678.95 Recommendation: Approved Decision: Approved	Judgement reserved
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	Council served with Class 1 Appeal. In principle agreement reached, subject to further negotiations on draft conditions of consent.	Fee Estimate: \$40,000 Fees: \$32,351.55 Recommendation: Refusal Decision: Refusal	Pending
6 The Boulevard, Cammeray DA 334/18 LEC 39238/19 DOA 12/02/19 H&W	Platino Properties Pty Ltd	Class 1 Appeal against the deemed refusal of the construction of car parking and lobbies for an approved dual occupancy development.	Lara Huckstepp	Council served with Class 1 Appeal with the proceedings listed for hearing on 6 November 2019. Appeal dismissed.	Fee Estimate: \$50,000 Fees: \$46,121.57 Recommendation: N/A Decision: N/A	Appeal dismissed Matter closed
63 Carter Street, Cammeray DA 443/18 LEC 94274/19 DOA 02/04/19 MDK	63 Carter St Cammeray Pty Ltd	Class 1 Appeal against the deemed refusal of the demolition of flat buildings and the construction of a residential flat building with 20 apartments.	George Youhanna	Council served with Class 1 Appeal with matter listed for a Conciliation Conference on 28 August 2019 and hearing on 5 and 6 November 2019. Agreement reached. Appeal upheld.	Fee Estimate: \$50,000 Fees: \$50,670 Recommendation: N/A Decision: N/A	Appeal upheld Costs awarded to Council, as agreed or assessed 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
141 Carabella Street, Kirribilli DA 40/18 LEC 102445/19 DOA 05/04/19 H&W	Nicholas Kougellis	Class 1 Appeal against the refusal of alterations and additions including new upper level.	Lisa Kamali	Council served with Class 1 Appeal with matter listed for a section 34 conference on 5 December 2019. Agreement reached. Appeal upheld.	Fee Estimate: \$20,000 Fees: \$21,743.02 Recommendation: Approval Decision: Refusal	Appeal upheld Costs of \$6,000 awarded to Council Matter closed
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: \$19,532.68 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: \$22,235.83 Recommendation: N/A Decision: N/A	Pending Listed for hearing 20-24 July 2020
1 Henry Lawson Ave, McMahons Point DA 395/18 LEC 155417/19 DOA 21/05/19 HWL	David Fox	Class 1 appeal against the deemed refusal for the demolition of the existing building and restoration of the existing heritage listed slipway and the construction of a new mixed use building.	David Hoy	Council served with Class 1 Appeal with matter listed for hearing on 29,30 and 31 October 2019. Appeal dismissed. Matter closed.	Fee Estimate: \$150,000 Fees: \$168,139.14 Recommendation: N/A Decision: N/A	Appeal dismissed Matter closed
5 Montpelier St, Neutral Bay DA 366/18 LEC 176736/19 DOA 17/06/19 MF	Jame Woodhill	Class 1 appeal against the deemed refusal for the demolition of the existing building and the construction of a new attached dual occupancy.	Robin Tse	Council served with Class 1 Appeal with matter listed for a s34 hearing on 15 and 16 January 2020. Matter resolved by way of s34 section agreement on 15 January 2020 with amended conditions being agreed. Matter closed.	Fee Estimate: \$25,500 Fees: \$27,043.81 Recommendation: N/A Decision: N/A	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
22 Cairo St, Cammeray DA 428/18 LEC 198061/19 DOA 27/06/19 MF	Michael Doyle and Sally Mitchell	Class 1 appeal against the refusal for the addition of a dividing wall between front doors of 20 and 22 Cairo St.	Alexander Richard	Council served with Class 1 Appeal with matter listed for consent orders hearing on 30 October 2019. Appeal upheld. Matter closed.	Fee Estimate:\$20,000 Fees: \$18,141.06 Recommendation: Refusal Decision: Refusal	Appeal upheld Matter closed
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	Council served with Class 1 Appeal with matter listed for hearing on 19 and 20 March 2020.	Fee Estimate: \$30,000 Fees: \$19,729.77 Recommendation: N/A Decision: N/A	Pending
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 a directions hearing on 3 March 2020.	Fee Estimate: \$15,000 Fees: \$9,089.06 Recommendation: N/A Decision: N/A	Pending
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 9 April 2020.	Fee Estimate: \$15,000 Fees: \$11,177.65 Recommendation: N/A Decision: N/A	Pending
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.	Fee Estimate: \$ 45.000 Fees: \$13,139.50 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
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.	Fee Estimate: \$65,000 Fees: \$53,251.17 Recommendation: Refusal Decision: Refusal	Pending
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.	Fee Estimate: \$30,000 Fees: \$12,033.45 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.	Fee Estimate: \$60,000 Fees: \$40,967.99 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 1 May 2020.	Fee Estimate: \$20,000 Fees: \$0 Recommendation: N/A Decision: N/A	Pending

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13 Shellcove Road, Kurraba Point DA 249/19 LEC 329464/19 DOA 23/10/19 MF	Michael Morgan (Nettletontribe)	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.	Fee Estimate: \$45,000 Fees: \$38,545.89 Recommendation: N/A Decision: N/A	Pending
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: \$6,021.62 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 24 April 2020.	Fee Estimate: \$60,000 Fees: \$2,890.80 Recommendation: N/A Decision: N/A	Pending

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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.	Fee Estimate: \$15,000 Fees: \$16,616.60 Recommendation: N/A Decision: N/A	Pending

LOCAL COURT MATTERS LIST
As at 15 October 2019

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
563-565 Pacific Highway, St Leonards DOA: 06/02/19 MDK	Pyramid Consulting Pty Ltd	Local Court prosecution in respect to development without consent.	Brett Maina	Court Attendance Notice issued. Matter listed for hearing on 30 July 2019. Judgement reserved. Convicted and fined \$6,000. Council awarded costs of \$10,000.	Fee Estimate: \$20,000 Fees: \$28,595.31	Convicted and fined Matter closed
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. Relisted for hearing on 10 May 2020.	Fee Estimate: \$10,000 Fees: \$0	Pending
Shop 3,83 Mount Street, North Sydney DOA: 18/06/19 In house with Council Solicitor	Thu Ba Pty Ltd	Local Court prosecution in respect of a food premises.	Gareth Munro	Proceedings listed for hearing on 8 August 2019. Convicted and fined \$3,000. Council awarded costs of \$2,000.	Fee Estimate: \$0 Fees: \$0	Convicted and fined Matter closed
47A King Street, Wollstonecraft DOA: 07/05/19 SG	SRG Constructions Pty Ltd	Local Court prosecution in respect to pollutions of waters.	Gary Evans	Court Attendance Notice issued. Matter listed for hearing on 5 September 2019. Convicted and fined \$10,000. Council awarded costs of \$18,000.	Fee Estimate: \$12,500 Fees: \$10,366.68	Convicted and fined Matter closed
2 McHatton Street, Waverton DOA: 11/11/19 In House with Council Solicitor	Neil Schiller	Local Court prosecution in respect to development without consent.	Maria Ilardo	Court Attendance Notice issued. Matter listed for hearing on 11 December 2019. Guilty plea with offence proven, disposed of the proceedings with no penalty, Council awarded professional costs of \$ 800. Matter closed.	Fee Estimate: \$0 Fees: \$0	Convicted with no penalty Council awarded professional costs of \$800. Matter closed