

11.2. Current Appeals and Results - September 2022

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ATTACHMENTS:

1. Current Matters list LEC Sept 2022 [**11.2.1** - 4 pages]
2. Current Matters list Local Court Sept 2022 [**11.2.2** - 1 page]
3. Current Matters list NCAT Sept 2022 [**11.2.3** - 1 page]

PURPOSE:

To report on current appeal and prosecution matters.

EXECUTIVE SUMMARY:

Attached is a list of current appeal and prosecution matters as at 2 September 2022 for Council's information.

A separate Confidential report is provided. The Confidential report includes additional detail on the legal nature of the appeal, status and legal issues relating to matter still afoot.

In order to discuss the ongoing legal matter with Council's Solicitor, it is recommended that the meeting be closed to the public in accordance with Section 10A(2) of the Local Government Act and the Local Government (General) Regulation 2005 for the reason listed below:

(g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege.

Further, consideration of the matter in open Council would, on balance be contrary to the public interest as it would affect Council's ability to manage legal matters effectively and in the best interests of the North Sydney community.

FINANCIAL IMPLICATIONS:

As at 2 September 2022, Council has incurred \$ 219,987 on legal fees for the 2022/23 financial year and recovered legal costs in the amount of \$ 3,333. The legal budget for 2023 financial year is \$ 1,500,000.

RECOMMENDATION:

1. THAT the meeting be closed to the public in accordance with Section 10A(2)(g) of the Local Government Act and the Local Government (General) Regulation 2005.

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 14 June 2022.

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 2 September 2022.

**CURRENT MATTERS LIST – LAND & ENVIRONMENT COURT
As at 2 September 2022**

| Legal Proceedings | Costs (\$) | Status | Result |
|---|-------------------|---------------|--|
| 6 John St, McMahons Point Stannards Marine Pty Ltd LEC 63136/21 | \$ 1,131,284.16 | Closed | Part Appeal dismissed. |
| 105-153 Miller Street, North Sydney IOF Custodian Pty Limited atf the 105 Miller Street North Sydney Trust LEC 245302/21 | \$ 372,377.08 | Pending | N/A |
| 66 Shellcove Road, Neutral Bay Anne McCusker LEC 9347/22 | \$ 23,755.35 | Closed | Discontinued |
| 6 Billong Street, Kurraba Point George Nusalim LEC 33501/22 | \$ 30,518.61 | Closed | Appeal upheld |
| 6 John St, McMahons Point Stannards Marine Pty Ltd LEC 36839/22 | \$ 149,772.15 | Closed | Appeal upheld, subject to amended agreed conditions. |
| 80 Cairo St, Cammeray Brigit Salter LEC 78045/22 | \$ 64,622.64 | Closed | Appeal Upheld |
| 115-119 Holt Ave, Cremorne Holt Avenue Cremorne Pty Ltd LEC 81791/22 | \$ 23,566.05 | Closed | Appeal dismissed |

| Legal Proceedings | Costs (\$) | Status | Result |
|--|--------------|---------|---------------|
| 131 – 133 Holt Ave, Cremorne LEC 81671/22 | \$ 57,972.35 | Closed | Appeal upheld |
| 11A Hazelbank Rd, Wollstonecraft Kate Gamble LEC 89668 /22 | \$ 20,754.78 | Closed | Appeal upheld |
| 117 Union Street, McMahons Point Mark Stefan Kachor LEC 111254/22 | \$ 7,059.97 | Closed | Discontinued |
| 21 Christie St, Wollstonecraft BCMA Investments Pty Ltd as Trustee for BCMA Trust LEC 115396/22 | \$ 3,014.24 | Closed | Appeal upheld |
| 60 Kareela Rd, Cremorne Andrew Sutton, David Elliot, Hugh Elliot and Jams Elliot LEC 132806/22 | \$ 41,897.90 | Pending | N/A |
| 131 – 133 Holt Ave, Cremorne Helm No.18 Pty Ltd LEC 131164/22 | \$ 5,996.84 | Pending | N/A |
| 6 Warung St, McMahons Point William Neilson LEC 141240/22 | \$ 4,852.89 | Pending | N/A |

| Legal Proceedings | Costs (\$) | Status | Result |
|---|--------------|---------|--------|
| 1 Warung St, McMahon's Point Highbury Warung Pty Ltd LEC 157325/22 | \$ 4,633.20 | Pending | N/A |
| 271 Pacific Highway, North Sydney Jazar Investments Pty Ltd LEC 160129/22 | \$ 0 | Pending | N/A |
| 96-98 Ben Boyd Rd, Neutral Bay AIDOP No 3 Pty Ltd ATF Aidop No 3 Unit Trust LEC 165233/22 | \$ 32,439.57 | Pending | N/A |
| 8 Baden Rd, Kurraba Point Gail Pemberton LEC 166567/22 | \$ 0 | Pending | N/A |
| 107 High St, North Sydney 107 High Nth Sydney Pty Ltd LEC 173292/22 | \$ 6,305.20 | Pending | N/A |
| 1 Eden St, North Sydney ID Fitouts Pty Ltd LEC 173180/22 | \$ 5,319.60 | Pending | N/A |
| 15 Allister St, Cremorne The Owners - SP 19383, Michael Kerrigan, Nicole Roche and Cremorne JV Pty Ltd LEC 188395/22 | \$ 2,828.10 | Pending | N/A |

| Legal Proceedings | Costs (\$) | Status | Result |
|--|-------------|---------|--------|
| 107 Mount St, North Sydney Dynasty ABC Investment Holdings Pty Ltd LEC 199712/22 | \$ 5,440.59 | Pending | N/A |
| 287 Military Road, Cremorne Captive Vision Pty Ltd LEC 213788/22 | \$ 8,618.50 | Pending | N/A |
| 21 Christie St, Wollstonecraft BCMA Investments Pty Ltd LEC 214975/22 | \$ 0 | Pending | N/A |
| 115-119 Holt Ave, Cremorne Holt Avenue Cremorne Pty Ltd LEC 219204/22 | \$ 0 | Pending | N/A |
| 4 -14 Merlin St and 1 McIntosh Ln, Neutral Bay Aplus Architectural Pty Ltd LEC 225334/22 | \$ 0 | Pending | N/A |
| 7-11 Premier St, Neutral Bay AP Development No 2 Pty Limited LEC 220363/22 | \$ 0 | Pending | N/A |
| 182 Kurraba Rd, Kurraba Point David Rahme LEC 237231/22 | \$ 0 | Pending | N/A |
| 173-179 Walker St, North Sydney CBUS Property Pty Ltd LEC 252804/22 | \$ 0 | Pending | N/A |

LOCAL COURT MATTERS LIST
As at 2 September 2022

| Legal Proceedings | Costs (\$) | Status | Result |
|--|------------|----------|--------|
| Dangerous Dog Matter Broughton St, Kirribilli Faye Westwood | \$ 0 | Pending. | N/A |

**NCAT MATTERS LIST
As at 2 September 2022**

| Legal Proceedings | Costs (\$) | Status | Result |
|--|-------------|---------|-------------------|
| Appeal against NCAT: 80016/21 EIG AP: 319529/21 | \$84,841.01 | Pending | Judgment reserved |