

10.8. Current Appeals and Results - May 2023

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ATTACHMENTS	<ol style="list-style-type: none">1. Current Matters list LEC April 23 [10.8.1 - 8 pages]2. Current Matters list Local Court April 23 [10.8.2 - 1 page]3. Current Matters list NCAT April 23 [10.8.3 - 1 page]4. CONFIDENTIAL - Current Matters list confidential LEC April 23 [10.8.4 - 12 pages]5. CONFIDENTIAL - Current Matters list confidential Local Court April 23 [10.8.5 - 2 pages]6. CONFIDENTIAL - Current Matters list confidential NCAT April 23 [10.8.6 - 1 page]
CSP LINK	<ol style="list-style-type: none">5. Our Civic Leadership5.2 Strong civic leadership and customer focussed services

PURPOSE:

The purpose of this report is to provide Council with information on current appeal and prosecution matters.

EXECUTIVE SUMMARY:

- Attached is a list of current appeal and prosecution matters as at 30 April 2023 for Council's information.
- Six attachments are provided, including a public listing and a separate confidential report. The confidential report includes additional detail (as highlighted) on the legal nature of the appeal, status update and legal issues relating to matters still afoot.
- The most significant matter listed is IOF Custodian Pty Limited atf the 105 Miller Street North Sydney Trust v Special Minister of State [2022] NSWLEC 86 which delivered a decision in favour of Council. This was considered by Council at its meeting of 8 May 2023, where Council resolved to the Minister for Heritage, The Hon Penny Sharpe, MLC urging her to urgently act to take all steps necessary to direct the listing of the MLC Building on the State Heritage Register pursuant to s 34(2) of the Heritage Act 1979.
- Should Council wish to discuss this report it is noted that the attached confidential document includes advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege and because consideration of the matter in open Council would be, on balance, contrary to the public interest as it would affect Council's ability to manage legal matters effectively and in the best interests of the community. As such should this report be discussed it should be considered in closed session.

RECOMMENDATION:

1. THAT the report be noted.

1. THAT should Council resolve to debate or discuss this matter 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.

It is further noted that release of this information would be, on balance, contrary to the public interest as it would affect Council's ability to manage legal matters effectively and in the best interests of the community.

Background

The Current Appeals and Prosecutions list was last reported to the Council at its meeting of 26 September 2022 and include as at 30 April 2023.

Report

The defense 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 30 April 2023.

Further to the attachments, it is noted that the most significant matter listed is IOF Custodian Pty Limited atf the 105 Miller Street North Sydney Trust v Special Minister of State [2022] NSWLEC 86 delivered a decision in favour of Council. This was considered by Council at its meeting of 8 May 2023, where Council resolved to the Minister for Heritage, The Hon Penny Sharpe, MLC urging her to urgently act to take all steps necessary to direct the listing of the MLC Building on the State Heritage Register pursuant to s 34(2) of the Heritage Act 1979.

In addition to the listed report status, there is the North Sydney Council v Transport for NSW Proceedings related to Anzac Park, St Leonards Park and Cammeray Park which was reported to Council on 26 April 2023. At that meeting Council resolved to endorse the continuation and funding of this matter as per the advice and as briefed to Council.

At its meeting held 27 March 2023, Council resolved in part

THAT Council clarify its preference in relation to the Land & Environment Court appeals so that if agreement is reached in an s34 conciliation conference, Council finalise the matter by consent orders to ensure that the community can see the agreed conditions and have an opportunity to make submissions to the Court on the agreement.

The implementation of this Council resolution will be monitored by staff to allow reporting as to any impacts of this resolution regarding outcomes and costs. A further report is being prepared in accordance with the Council resolution and following the briefing conducted with Councillors on 11 April 2023.

Summary of matters

Land and Environment Court Matters:

Judgement reserved	Matter closed	Discontinued	Open matters
3	14	3	19

There are six Local Court matters reported for the period. Two remain pending with the remainder either withdrawn, closed or resulting in a successful conviction.

There is one NCAT matter reported for the period which is now closed.

Consultation requirements

Community engagement is not required.

Financial/Resource Implications

As at 30 April 2023, Council has incurred \$2,788,397.02 on legal fees for the 2022/23 financial year and recovered legal costs in the amount of \$179,671.62.

The legal budget for 2023 financial year is \$3,000,000 and will be overspent. The budget for Solicitors' costs has been increased by a further \$195,000 in the March Budget Review. The budget for the year is now \$3,195,000.

The MLC matter alone has resulted in a cost to Council as at 30 April 2023 of \$1,427,369.35. A report was provided to Council on 13 March 2023 noting an estimated total cost for this matter of \$1,296,705.60.

It is further noted that in three matters the applicant was ordered to pay Council's costs and these cost settlement amounts are being negotiated.

CURRENT MATTERS LIST – LAND & ENVIRONMENT COURT
As at 30 April 2023

Property DA No. Appeal No. Date of Appeal (DOA)	Applicant/ Other party	Costs (\$)	Result/Status
105-153 Miller Street, North Sydney DA 147/20 LEC 245302/21 DOA 01/09/21 HWL	IOF Custodian Pty Limited atf the 105 Miller Street North Sydney Trust	\$1,427,369.35	Judgment reserved Pending
60 Kareela Rd, Cremorne DA 459/21 LEC 132806/22 DOA 11/05/22 MF	Andrew Sutton, David Elliot, Hugh Elliot and Jams Elliot	\$67,039.99	Appeal upheld Closed
131 – 133 Holt Ave, Cremorne DA 239/21 LEC 131164/22 DOA 12/05/22 MLG	Helm No.18 Pty Ltd	\$13,968.46	Appeal upheld Closed
6 Warung St, McMahons Point DA 361/21 LEC 141240/22 DOA 18/05/22 H&W	William Neilson	\$10,508.95	Appeal upheld Closed
1 Warung St, McMahons Point DA 379/21 LEC 157325/22 DOA 01/06/22 MLG	Highbury Warung Pty Ltd	\$31,349.98	Judgment reserved Pending

Property DA No. Appeal No. Date of Appeal (DOA)	Applicant/ Other party	Costs (\$)	Result/Status
271 Pacific Highway, North Sydney Order 3 LEC 160129/22 DOA 06/06/22 MLG	Jazar Investments Pty Ltd	\$16,760.11	Appeal upheld Closed
96-98 Ben Boyd Rd, Neutral Bay DA 86/22 LEC 165233/22 DOA 09/06/22 MF	AIDOP No 3 Pty Ltd ATF Aidop No 3 Unit Trust	\$140,320.77	Appeal upheld Closed
8 Baden Rd, Kurraba Point DA 206/21 LEC 166567/22 DOA 14/06/22 H&W	Gail Pemberton	\$33,090.66	Appeal upheld Closed
107 High St, North Sydney DA 281/21 LEC 173292/22 DOA 16/06/22 MLG	107 High Nth Sydney Pty Ltd	\$55,419.76	Judgment reserved Pending
1 Eden St, North Sydney DA 274/21 LEC 173180/22 DOA 17/06/22 MLG	ID Fitouts Pty Ltd	\$32,568.72	Appeal upheld Closed
15 Allister St, Cremorne IHO 2/22 LEC 188395/22 DOA 01/07/22 MLG	The Owners - SP 19383, Michael Kerrigan, Nicole Roche and Cremorne JV Pty Ltd	\$7,208.50	Discontinued Closed

Property DA No. Appeal No. Date of Appeal (DOA)	Applicant/ Other party	Costs (\$)	Result/Status
107 Mount St, North Sydney DA 58/22 LEC 199712/22 DOA 14/07/22 HWL	Dynasty ABC Investment Holdings Pty Ltd	\$107,884.38	Appeal upheld Closed
287 Military Road, Cremorne DA 193/18 (LEC 393238/18) LEC 213788/22 DOA 22/07/22 MF	Captive Vision Pty Ltd	\$32,185.44	Appeal upheld Closed
21 Christie St, Wollstonecraft DA 185/22 LEC 214975/22 DOA 28/07/22 H&W	BCMA Investments Pty Ltd	\$7,644.56	Discontinued Closed
115-119 Holt Ave, Cremorne DA 243/21 LEC 219204/22 DOA 30/07/22 MLG	Holt Avenue Cremorne Pty Ltd	\$13,911.90	Pending
4 -14 Merlin St and 1 McIntosh Ln, Neutral Bay DA 155/22 LEC 225334/22 DOA 04/08/22 SH	Aplus Architectural Pty Ltd	\$53,611.80	Pending

Property DA No. Appeal No. Date of Appeal (DOA)	Applicant/ Other party	Costs (\$)	Result/Status
7-11 Premier St, Neutral Bay DA 144/22 LEC 220363/22 DOA 05/08/22 MLG	AP Development No 2 Pty Limited	\$23,302.07	Appeal upheld Closed
182 Kurraba Rd, Kurraba Point DA 333/19/4 LEC 237231/22 DOA 18/08/22 MLG	David Rahme	\$26,593.18	Pending
173-179 Walker St, North Sydney DA 197/22 LEC 252804/22 DOA 26/08/22 SH	CBUS Property Pty Ltd	\$104,046.69	Pending
89 Colin St, Camberay DA 63/22 LEC 282437//22 DOA 21/9/22 MF	Odette Gourley	\$54,097.22	Appeal upheld Closed
1 Hayes St, Neutral Bay DA 182/22 LEC 302126//22 DOA 11/10/22 HWL	7 Pty Ltd	\$39,079.26	Pending

Property DA No. Appeal No. Date of Appeal (DOA)	Applicant/ Other party	Costs (\$)	Result/Status
88 Alexander St, Crows Nest DA 96/22 LEC 334267/22 DOA 11/11/22 MDK	Crows Nest Project Pty Ltd ATF Crows Nest Development Sub Trust	\$31,436.24	Pending
31 Wycombe Rd, Kurraba Point DA 121/22 LEC 346270/22 DOA 18/11/22 MF	Thomas Bateman & Fiona Bateman	\$29,258.35	Appeal upheld Closed
52-56,70-72 and 80 Parraween St, Cremorne IHO 3/22 LEC 351880/22 DOA 24/11/22 MLG	Skermanic Pty Ltd	\$10,511.48	Pending
82-88 Parraween, Cremorne IHO 4/22 LEC 351906/22 DOA 24/11/22 MLG	Skermanic Pty Ltd	\$5,730.60	Pending
5 (aka 1-11) Rodborough Avenue, Crows Nest DA 232/20/3 LEC 350239/22 DOA 28/12/22 MF	Rodborough Development Pty Ltd	\$33,940.45	Appeal upheld Closed

Property DA No. Appeal No. Date of Appeal (DOA)	Applicant/ Other party	Costs (\$)	Result/Status
271 Pacific Highway, North Sydney DA 315/22 LEC 361426/22 DOA 1/12/22 MLG	Jazar Investments Pty Ltd	\$10,378.97	Appeal upheld Closed
66 Rangers Road, Cremorne DCO No 3 LEC 375458/22 DOA 13/12/22 H&W	Howard Eakins	\$2,872.77	Pending
112-114 Wycombe Rd, Neutral Bay DA 230/22 LEC 378217/22 DOA 19/12/22 MLG	WINIM Developments Pty Limited	\$4,183.30	Pending
12 Toongarah Road, Waverton DA 167/22 LEC 385987/22 DOA 23/12/22 SH	Scott Hay and Ernest Wong	\$6,748.50	Discontinued Closed
8 Levick Street, Cremorne DA 198/22 LEC 382408/22 DOA 23/12/22 MF	Katherine and Jonathan Morris	\$40,291.90	Pending

Property DA No. Appeal No. Date of Appeal (DOA)	Applicant/ Other party	Costs (\$)	Result/Status
275 Alfred Street, North Sydney DA 369/22 LEC 13132/23 DOA 13/01/23 HWL	Legge & Legge Architects Pty Limited	\$8,343.10	Pending
165 Military Rd - Neutral Bay DA 404/22 LEC 39866/23 DOA 06/02/23 MDK	Eastview (Australia) Pty Limited	\$9,765.58	Pending.
66 Ernest Street, Crows Nest DA 407/22 LEC 42493/23 DOA 10/02/23 MLG	66 Ernest St Developments Pty Limited ATF 66 Ernest Development Unit Trust	\$14,230.24	Pending
53-55 Yeo Street, Cremorne DA 334/22 LEC 50417/23 DOA 15/02/23 MF	PP Neutral Bay Pty Ltd	\$12,265.55	Pending
124 Benelong Rd, Cremorne DA 323/21 LEC 73980/23 DOA 07/03/23 SH	Regal Benelong Pty Ltd	\$10,589.70	Pending

Property DA No. Appeal No. Date of Appeal (DOA)	Applicant/ Other party	Costs (\$)	Result/Status
53-55 Yeo Street, Cremorne IHO 1/23 LEC 96434/23 DOA 23/03/22 MF	Timothy Cox & Yeo 55 Pty Ltd	\$0	Pending
12-14 Waters Rd - Neutral Bay DA 42/23 LEC 108799/23 DOA 06/04/23 MLG	CE Waters Pty Ltd ATF CE Waters Development Trust	\$0	Pending
14 Armstrong Street, Camberay DA 297/22 LEC 112096/23 DOA 11/04/23 H&W	Edward Warrant	\$0	Pending

**CURRENT MATTERS LIST – LOCAL COURT MATTERS LIST
As at 30 April 2023**

Property DA No. Appeal No. Date of Appeal (DOA)	Applicant/ Other party	Fees Billed (\$) Officer Recommendati on Council decision	Result
Dog Matter Broughton St, Kirribilli DOA: 21 June 22 MLG	Faye Westwood	\$5,273.40	Pending
63 Carter St, Cammeray DOA: 27 September 22 MLG	Dynamic Projects (AUS) Pty Ltd	\$1,052.70	Did Not proceed Closed
32 Lord St, North Sydney DOA: 31 October 22 MF	Chenwenyi Liang	\$10,389.72	Withdrawn Closed
Dog and Traffic Matter McMahons Point DOA: 25 November 22 MLG	Matthew Norbury Williams	\$1,089.00	(1) Withdrawn (2) Successful conviction Closed
173 Military Rd, Neutral Bay DOA: 27 September 22 MLG	Boost Tel Pty Ltd	\$1,851.30	Withdrawn Closed
20 Hipwood St, North Sydney DOA: 4 April 2023 MLG	Adrian and Peggy Lim	\$0	Pending

NCAT MATTERS LIST
As at 30 April 2023

Property DA No. Appeal No. Date of Appeal (DOA)	Applicant/ Other party	Fees Billed (\$) Officer Recommendati on Council decision	Result
NCAT Appeal against NCAT: 80016/21 AP: 319529/21 DOA: 10/11/21 MDK	EIG	\$87,212.50	Appeal upheld Closed