

**15.8 Current legal matters - status update as at 30 September 2024**

CSP Objective: Outcome 5.2: Governance is transparent and builds trust

CSP Strategy: 5.2.1 Build strong relationships and ensure our partners and community share the responsibilities and benefits of putting plans into practice.

Delivery Program: 5.2.1.2 Support good governance through systems and processes for legislative compliance.

Item 15.8

**Summary**

This report is being provided to update Council on current legal matters and investigations, together with advice on the status and costings for each matter as at the end of September 2024.

Attachment 1 provides a comprehensive list of matters currently being litigated in various jurisdictions.

**Financial implication**

Legal matters have a significant cost implication for Council. In appeals to the Land and Environment Court (LEC), it is common practice to engage solicitors and barristers to represent Council and guide staff through the process. Often, a variety of specialists are also required to act as both expert witnesses and to prepare and review reports.

**Risk implication**

The LEC has jurisdiction to hear and finalise a development application or modification when Council has made a determination or, is taken to have refused an application and the applicant is dissatisfied with the decision.

As demonstrated in the attached document, 14 of the 19 current litigation proceedings (excluding general legal matters and investigations) are LEC matters (74%). The LEC encourages conciliation between parties in an attempt to identify the issues in dispute, develop options, consider alternatives and endeavour to reach agreement. Dealing with matters in this way avoids the added costs of a matter proceeding to hearing which is usually for multiple days.

Risks can be also be mitigated through timely decision making and appropriate staff delegations for making determinations.

Appropriate compliance with the Code of Conduct would also mitigate risks associated with conduct matters.

**Policy**

All engagement of legal services occurs in accordance with Council's Procurement Policy

**Consultation (internal)**

Nil

**Communication/Community engagement**

Not applicable

Report of the Chief Executive Officer

15.8 Current legal matters - status update as at 30 September 2024 (cont)

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### Attachments

1 Legal Status Update Summary as at 30 September 2024 [↓](#)

### Enclosures

Nil

### RECOMMENDATION

That Council receive this legal status update summary report and note that the following approximate amounts have been expended as at 30 September 2024 on the legal matters itemised in the attachment since the commencement of each individual proceeding:

- NSW Land & Environment Court = \$682,670.26
- NSW Civil & Administrative Tribunal matters = \$13,960.98
- Supreme Court matters = \$64,760.48
- Federal Court matters = \$3,772,125.03 (excludes settlement amount)
- Local Court matters - \$23,809.90
- Blue Haven = \$350,330.70
- General legal/Probity advice = \$101,157.88
- Councillor Code of Conduct related matters = \$4,576.00

TOTAL = \$5,013,391.23 (excludes settlement amount)

### Background

Part of the role of the Implementation Team is the oversight of Council's legal portfolio, ensuring that Council staff utilise the services of Council's panel of external legal services providers in an efficient and cost-effective manner.

There is a process in place requiring all requests for legal services, be it advice or representation, to be coordinated by the Business Integrity Coordinator. Some of the benefits of centralising this process include –

- Fee estimates are sought from at two legal panel members
- Requests are spread evenly across all members of the legal panel
- Requests are not sought for the same or similar advice
- Requests will require approval at least at Manager level

A quarterly update of legal matters is provided at the second ordinary meeting of the quarter (i.e. August, November, February and May) to ensure that Council is provided with the most current information.

DATE INSTRUCTED	MATTER DESCRIPTION and details of Jurisdiction	STATUS	COUNCIL OFFICER	FEE ESTIMATE (ex GST)	BILLED COSTS TO END OF SEPTEMBER	UNBILLED COSTS TO DATE
<b>LAND &amp; ENVIRONMENT COURT</b>						
15/04/2024	DA House v KMC Class 1 - L&E Court Refusal of DA 10.2022.175.1 31 & 37 Cooida Place, Kiama	DA for a multi dwelling (12) development and subdivision. Refusal based on car parking, solar access, design, access and other matters that could not be resolved through the DA process and were not compliant with Council's DCP. Listed for conciliation conference 3/10/2024.	E.Paterson	\$ 39,000.00	\$ 8,532.00	
1/05/2023	Fountaindale v KMC Class 1 - L&E Court Refusal of DA 10.2021.26.1 15 Golden Valley Road, Jamberoo	Council's invoice for \$17,500 costs thrown away provided to Applicant on 31 July 2024. Council to confirm receipt of payment.	J.Rippon	\$ 95,000.00	\$ 78,988.50	
15/05/2024	Michael Joseph v KMC & Spencers Class 4 Refusal of DA10.2023.98.1 110 North Kiama Drive, Kiama	Appeal discontinued. Council sought a costs order and judgment was reserved on 8 March 2024. Judgement yet to be handed down.	J.Rippon	\$ 93,000.00	\$ 72,660.66	\$ 638.20
22/05/2024	J & R Spencer v KMC Class 1 Refusal of DA10.2023.98.1 110 North Kiama Drive, Kiama Downs	Proceedings resolved by s34 agreement following provision of additional information which resolved the contentions in the matter. Judgment handed down on 30 August 2024. Appeal upheld. Development consent granted subject to conditions. <b>FINALISED.</b>	J.Rippon	\$ 55,030.00	\$ 55,027.21	\$ 167.40
15/09/2022	Vortex Developments et al v KMC Class 1 - L&E Court Refusal of DA 10.2021.156.1 96 Rose Valley Road, Rose Valley (Abattoir)	Hearing concluded. Awaiting judgement and advice re costs orders.	E.Paterson	\$ 175,121.70	\$ 167,457.70	\$ 1,331.39

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7/12/2022	Enzo Developments (McElhone) v KMC Class 4 - L&E Court Deemed refusal of DA 10.2021.344.1 92 Jerrara Road, Jerrara	Orders made 05/07/2024. Awaiting outcome of the Class 1 Appeal below.	J.Rippon	\$ 40,000.00	\$ 21,558.60	\$ 1,026.60
12/04/2024	Enzo Developments (McElhone) v KMC Class 1 - L&E Court Deemed refusal of DA 10.2023.109.1 92 Jerrara Road, Jerrara	These proceedings are listed for hearing on 20-22 November 2024.	J.Rippon	\$ 32,000.00	\$ 16,977.74	\$ 5,862.90
12/01/2024	Forte Kiama Heights Development v KMC Class 1 - L&E Court Refusal of DA 10.2022. 113.1 4 Elanora Road, Kiama	Agreement reached. Judgement handed down 10/07/2024 - Appeal upheld. Development Consent modified. <b>FINALISED.</b>	C.Lappin	\$ 29,000.00	\$ 12,915.76	
27/10/2021	Grant v KMC Class 4 - L&E Court Grantie's Village 219 Donovan Road, Broughton Village	Final hearing 21/02/2024 - sought to establish the removal of certain rides from the park that do not have development consent. It was also established through an independent expert that a number of the rides are unsafe and should be decommissioned. Awaiting judgement.	J.Rippon	\$ 128,786.19	\$ 120,024.89	\$ 1,162.50
17/01/2024	Cole & Hennessy v KMC Class 1 - L&E Court Refusal of DA 10.2022. 152.1 50 Riverfeigh Avenue, Gerroa	Agreement reached between the parties. Court orders handed down 23/07/2024 - Appeal Upheld. DA approved subject to conditions on consent. <b>FINALISED</b>	C.Lappin	\$ 32,000.00	\$ 34,086.03	
13/03/2024	Harwood v KMC Class 1 - L&E Court Deemed refusal of DA 10.2023.134.1 110-114 Terralong Street, Kiama	This matter relates to a deemed refusal of a multi dwelling/shop top housing development. S 34 Agreement signed - matter close to settlement.	C.Lappin	\$ 58,000.00	\$ 50,560.57	

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4/03/2024	EPLANING v KMC Class 1 - L&E Court Deemed refusal of DA 10.2023.176.1 261 Jamberoo Mountain Road, Jamberoo	Matter not resolved at conciliation. Listed for hearing on 11 & 12 November 2024. The matter has been listed for a s34 conciliation conference on 28/01/2025. The Planning Panel has been notified of the development application and Council is awaiting further information from the panel regarding the conduct of the appeal. Awaiting instructions from Council to brief external town planning, bushfire, ecology and hydrology experts.	C.Lappin	\$ 30,800.00	\$ 10,998.90	\$ 13,584.50
15/08/2024	Kiama Spring Creek P/L v KMC Class 1 - L&E Court Refusal of DA10.2023.59.1 Dido Street, Kiama		C.Lappin	\$ 220,000.00	\$ 27,983.70	\$ 831.60
29/08/2024	Abata P/L v KMC Class 1 - L&E Court Issue of Development Control Order 295 Cloonty Road, Carrington Falls (Installation of Dog runs & kennels without consent)	Section 34 conference scheduled for 06/02/2025.	D.Hewitt	\$ 45,000.00	\$ 4,898.00	\$ 1,308.50
<b>NCAT</b>						
17/05/2024	NCAT - GIPA Debra MOORE v KMC	Mediation Agreement finalised and application withdrawn. <b>FINALISED</b>	A.Critcher	\$ 17,000.00	\$ 13,960.98	
<b>SUPREME COURT</b>						
12/10/2023	KMC v Josef Fischer Supreme Court proceedings Extension of Caveat Swamp Road Cycleway, 11 Thornett Way, Kiama Downs	Easement registered. Once registered, caveat withdrawn and proceedings discontinued as per deed. <b>FINALISED.</b>	B.Ramaekers	\$ 68,925.64	\$ 61,352.08	

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24/07/2024	Costs Orders Renkema-Lang v KMC & Ors	COSTS ORDERS in the matter of Karen Renkema-Lang v KMC & Ors Judicial Review - Supreme Court Revocation of Censure of Councillor Negotiations between the Plaintiff and Council currently underway.	J. Stroud	\$ 10,000.00	\$ 3,408.40	
<b>FEDERAL COURT</b>						
6/10/2022	Federal Court Proceedings Nicholas Daoud (NDCO) v KMC (Unreasonable delays to DA)	On 14 August 2024 the Deed of Release was executed by Council and the proceedings were dismissed with no Order as to costs as per the executed Consent Orders. Council was recently provided advice regarding mandatory financial statement disclosure of the settlement amount. The parties agreed to a statement to be included by Council in its financial statements regarding the matter. <b>FINALISED.</b>	J. Stroud	\$ 2,500,000.00	\$3,729,035.83 (exclusive of settlement amount)	
21/04/2022	John Giles v KMC Federal Court of Australia	Application alleging unlawful discrimination by Council. Matter not resolved following mediation on 09/11/2022. Parties have exchanged correspondence over a considerable period of time to try and reach settlement and some in principle agreement has been reached. On 07/02/2024, the Applicant forwarded a request for particular works to be carried out by Council as part of settlement, having regard to a stormwater assessment and requesting amendments to a proposed indemnity. The amendments sought by the Applicant were not supported by Council. Agreement on settlement terms has been executed. On 16/07/2024 a Notice of Discontinuance was filed. <b>FINALISED.</b>	M. Malone	\$ 43,725.00	\$ 43,089.20	\$ 135.00

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<b>GENERAL</b>						
6/07/2022	Probity Advice - Terralong, Akuna & Shoathaven Streets	This matter is subject to an ICAC Section 11 referral. The Commission has not completed its investigation. This matter will escalate at the conclusion of the Federal Court Proceedings in the matter of KMC v Daoud.	J.Stroud	\$ 90,000.00	\$ 73,824.87	-
23/08/2023	Blue Haven (Bonaira) Ongoing probity advice	Following the completion of the sale, the matter is now <b>FINALISED</b> .	J.Gaudiosi	\$ 95,350.00	\$ 76,241.00	\$ 115.80
	Blue Haven EOI/Due Diligence	Provision of ad hoc advice during the due diligence process. No current instructions.	J.Gaudiosi		\$ 7,713.00	
	Blue Haven Corporate Transaction Documents	Advice on the pre-completion and completion process in connection with the sale of the business	J.Gaudiosi		\$ 162,035.80	\$ 150.00
	Blue Haven Bonaira Proposed Sale of Property	Contract exchanged and completion is scheduled for 3 February 2025	J.Gaudiosi		\$ 24,062.50	
	Blue Haven Advice on Defects	Advice on potential action against the builder	J.Gaudiosi		\$ 65,642.20	
	Blue Haven Employment Advice	Advice on the employment aspects of the pre-completion and completion process in connection with the sale of the business	J.Gaudiosi		\$ 8,275.50	
	Blue Haven Review of vendor financing arrangement	Advice on the financing aspects of the pre-completion and completion process in connection with the sale of the business	J.Gaudiosi		\$ 6,360.70	
3/05/2024	KMC v Morgan Lewis Local Court Failure to comply with terms of DA Fillmore's, Manning Street, Kiama	Defendant pleads not guilty. Matter listed for further mention 20/11/2024.	J.Milevski	\$ 20,000.00	\$ 23,809.90	\$ 1,207.00
9/05/2023	Advice on the removal of caveats - Spring Creek	Finalised advice provided to Council 22/08/2024	J.Stroud	\$ 23,600.00	\$ 27,333.01	\$ 146.10
19/09/2024	Preparation of Probity Plan - Growth and Housing Strategy	Work yet to commence.	M.Ballinger	\$ 7,500.00		\$ 384.00

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<b>INVESTIGATIONS</b>						
30/04/2024 (Councillor)	Code of Conduct Complaint	Matter referred to Pinnacle Integrity for Investigation. Recommendation - Two grounds did not require any further action. One ground to be addressed by alternative and appropriate means. <b>FINALISED.</b>	R.Winston	\$ 9,724.00	\$ 4,576.00	
5/07/2024 (Councillor)	Code of Conduct Complaint x 2	OLG approached seeking approval to enter a Special Complaints Management Arrangement under Clause 5.48 of the Procedures for the Administration of the Model Code of Conduct (the Procedures). OLG advice received that they do not propose to enter into the proposed arrangement and placed the responsibility back with Council to manage the complaint. Matter referred to The O'Connell Group for preliminary assessment.	S.Salviejo	\$ 5,900.00		
16/07/2024 (Staff)	Code of Conduct Complaint	OLG approached seeking approval to enter a Special Complaints Management Arrangement under Clause 5.48 of the Procedures for the Administration of the Model Code of Conduct (the Procedures). OLG advice received that they do not propose to enter into the proposed arrangement and placed the responsibility back with Council to manage the complaint. Matter referred to Pinnacle Integrity for preliminary assessment.	S.Salviejo	\$ 5,800.00		