

5.4 Planning Enforcement Matters Report - 3 May 2021

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Recommendation(s)

That Council note the list of enforcement matters currently before VCAT, the Magistrates' Court and the County Court.

Executive Summary

The following list of enforcement matters currently before VCAT & the Magistrates' Court is submitted for Councillors information.

Relevance to Council Plan

3.5 Our Environment - Balanced needs of development, the community and the environment

3.5.2 Plan for the development of the urban growth area with a mix of residential, commercial, employment, recreational and community activities to meet the needs of our growing community in a sustainable way.

Background

Where breaches of the Planning Scheme are detected, the breaches may give rise to criminal liability, which may result in infringements being issued, or charges being filed in the Magistrates Court of Victoria.

If Council cannot obtain appropriate remediation by consent, Council undertakes enforcement action at the Victorian Civil and Administrative Tribunal (VCAT).

VCAT enforcement actions will usually be delayed until Magistrates' Court proceedings are completed.

These matters can take several forms and the following are the usual steps in the enforcement process.

Current Enforcement Cases

The following list indicates such enforcement activities that are currently before VCAT or the Magistrates' Court.

Property Address	Nature of Contravention	Status
765 Gembrook Rd, Pakenham Upper (OH:LK:16299)	Native vegetation removal, and earthworks creating driveway and hardstand, in breach of Rural Conservation Zone – Schedule 2, Environmental Significance Overlay Schedule 1, and Clause 52.17	On the 18th December 2019 , Magistrates' Court found the owner guilty of 11 offences, relating to unpermitted vegetation removal and earthworks over a 2 year period. The owner was convicted and fined \$5,000 with Council costs being referred for further hearing. The accused has appealed the conviction (which has been substantially delayed due to listing delays in the the County Court. The appeal commenced on 11th and 12th February 2021 , and will resume on 19th April 2021 .
2 Johanna Court, Pakenham (JALF-TD-20542)	Native vegetation removed, contrary to Vegetation Protection Overlay (42.02) and Clause 52.17	On 25th March 2021 the Dandenong Magistrates Court found the accused company (being the owner of the land) guilty of breaching the scheme, by removing native understory vegetation. The company was convicted and fined \$20,000 and ordered to pay Council costs
Earnley Way, Officer (JALF-TD-20506)	Native vegetation removed, contrary to provisions of 52.17 (Officer Native Vegetation Precinct Plan)	Matter listed for further mention at Dandenong Magistrates' Court on 20th May 2021 .
95 Old Sawmill Rd, Nar Nar Goon North (JALF-KS-20539)	(Building prosecution for building work without a permit – related to planning permit refused by Council during 2020)	Matter is listed for further mention at Dandenong Magistrates' Court on 20th May 2021 . Council also seeks injunctive orders to compel the removal of illegal building works from the property.

Conclusion

The list of current enforcement activities is presented for information.

Glossary of terms

Practice Day Hearing

This is the first stage of the VCAT process and is held shortly after the application is lodged. It is used to assess the future path of the case, and determine if the case can be settled, or will need to proceed to a full hearing.

Mention Hearing

A mention hearing is a brief hearing, where the Court or VCAT lists the matter for brief hearing. If the case can be dealt with swiftly, it will be dealt with at a Mention hearing. For more lengthy matters (such as contested hearings) the case will be further adjourned. In the Magistrates' Court, the Court may hear a "guilty plea" during a mention hearing.

Administrative Mention

Administrative Mention is a hearing held without the parties in attendance and requires written correspondence from both parties to update the Member on the process of the matter.

Adjournment

A court or Tribunal will adjourn a case when the matter is deferred until another date. This can occur for a number of reasons and is at the discretion of the Magistrate or VCAT member.

Land Management Plan

These plans are used to describe actions that will remediate the land, and commonly describe rehabilitation following unlawful vegetation removal. This plan will then become mandatory, by being incorporated into an Enforcement Order or a Section 173 agreement. The contents of the Plan will be decided by Council's Environment Team, or Vegetation Management officer.

Contested Hearing / Full hearing

A contested (or "full" hearing) means the matter is disputed by the accused/respondent, and Council and the respondent will fully present and test each other's evidence and/or submissions. A contested (of "full") hearing is effectively a "trial".

Consent Orders

Consent Orders are an agreement between Council and the Respondents to, in most cases, create an Enforcement Order with conditions that are agreed to by both Parties. This is done where a Respondent has accepted there has been a breach of the Act and wants to comply with Council's proposed Enforcement Order. This saves on time and money by avoiding a hearing or lengthy VCAT processes.