

5.5 Current Planning Enforcement Matters

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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.

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 (prosecutions reference)	Description of alleged breaches	Status/outcome
765 Gembrook Rd, Pakenham Upper (OH:LK:20505)	Native vegetation alleged removal between April 2016 and July 2018 (contrary to Native vegetation and Environmental Significance Overlay) Earthworks in a road zone without a permit Earthworks in excess of 1 metre, contrary to Environmental Significance Overlay)	This prosecution commenced in 2017. In Dec 2019, following a contested hearing, the Magistrates Court at Dandenong found the owner guilty of all charges. He was convicted and fined \$5,000, and ordered to pay Council costs (to be assessed at a later date). The owner appealed the conviction and sentence, and after a 6-day hearing, the County Court at Melbourne found the owner guilty of the majority of allegations, with one allegation found not proven. Upon being warned that the Court was considering imposing a higher penalty, the owner withdrew his appeal against sentence, and the Magistrates' Court penalty was re-imposed. The County Court ordered the owner to pay Council costs, which will be subject to a further hearing.
2 Johanna Court, Pakenham (JALF:TD:20542)	Between January – April 2020, Native vegetation removal (native grasses) contrary to the Native Vegetation particular provisions and Vegetation Protection Overlay	On 26 March 2021, the Magistrates Court of Victoria found the accused company guilty of all offences (in the absence of any company representatives). The company was convicted and fined \$20,000 and ordered to pay Council costs. The accused company has applied for a re-hearing of the matter. The matter will be next heard on 7 th Oct 2021.

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.