

2 PLANNING ENFORCEMENT MATTERS (INCLUDING MAGISTRATES' COURT PROSECUTIONS)

FILE REFERENCE INT1828180

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RECOMMENDATION

That the list of enforcement matters currently before VCAT and the Magistrates' Court (and the County Court) be noted.

EXECUTIVE SUMMARY

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

Where breaches of the Planning Scheme are detected that cannot be satisfactorily resolved Council undertakes enforcement action at the Victorian Civil and Administrative Tribunal (VCAT).

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

Where breaches are sufficiently serious, criminal proceedings in the Magistrates' Court will be commenced, and if so, the successful criminal proceedings will usually be followed by VCAT proceedings (criminal proceedings taking precedence over "civil" proceedings)

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
2705 Princes Hwy, Tynong North (OH:LK:17356)	Removal of native vegetation in Council road reserve, in breach of Environmental Significance Overlay (42.01) and Native Vegetation Particular Provisions (52.17). Breach of planning permit condition relating to protection of remnant vegetation	On 18 January 2018 , the company that owns this property appeared in the Magistrates Court at Dandenong. Council and the owner have agreed to the making of an Enforcement Order which requires the owner to manage the road reserve for 10 yrs. Work has commenced on the relevant applications, which will result in orders by consent. These are yet to be filed.
715 Gembrook Rd, Pakenham Upper	Construction of retaining wall without building permit.	FOR INFORMATION ONLY – no on going <i>planning enforcement</i> matters relating to property

(ref: OH:AB:14130)		<p>MAGISTRATES COURT CASE relating to unpermitted building work (retaining wall) –</p> <p>On 21 December 2017, the Magistrates Court delivered judgement in this matter, finding the charges proven. The owner was fined \$1500, without conviction, and ordered the owner to pay in excess of \$15,000 costs.</p> <p>The COUNTY COURT has listed a contested hearing of the matter in May 29-31 2018.</p> <p>In April 2018, the owner has filed an application in the High Court of Australia in respect of this hearing. We expect that this HCA application may delay the COUNTY COURT contest.</p>
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	<p>Magistrates' Court proceeding, alleging that the owner has conducted earthworks that require a permit, and cleared native vegetation, both without a permit.</p> <p>The mater is set down for a 2-day contested hearing from May 2nd 2018, which is likely to be adjourned, due to a recently-filed High Court of Australia application.</p>
60 Hillbrick Rd, Garfield OH:JALF:17371	Earthworks affecting drainage and flow of water, without a permit/in breach of issued permit, contrary to Environmental Significance Overlay – Schedule 1	VCAT enforcement order application has been filed. On 2 nd March 2018, this application was withdrawn by consent, the owner having remediated the land satisfactorily and met Council costs.
1 Thomson Road, Beaconsfield Upper OH:LK:17364	Earthworks in excess of 1 metre and affecting the rate of flow, contrary to Rural Conservation Zone and Environmental Significance Overlay	<p>Magistrates' Court prosecution arising from large excavations and spreading of soil, in apparent response to water drainage issues.</p> <p>On 12 April 2018, the accused pleaded guilty and was fined \$1,500 and ordered to pay costs.</p> <p>The accused is currently applying for a permit which will permit the works, which is currently being considered by Statutory Planning (T170796)</p>
555 Back Creek Rd, Gembrook	Native vegetation removal, and earthworks creating a	Magistrates' Court prosecution arising from the creation of a large dam (by earthworks and vegetation removal), contrary to strict

EH:LK:16272	dam, in breach of Section 173 agreement and the scheme. Rural Conservation Zone – Sch 1, Environmental Significance Overlay – Sch 1, Bushfire Management Overlay, and Clause 52.17	environmental controls and Section 173 agreement protecting vegetation on the land. On 15th September 2016 the Court issued a Warrant for arrest to compel the attendance of the accused. The matter is adjourned indefinitely, pending Victoria Police execution of the warrant.
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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.