

4 PLANNING ENFORCEMENT MATTERS (INCLUDING MAGISTRATES' COURT PROSECUTIONS)

FILE REFERENCE INT1944573

RESPONSIBLE GENERAL MANAGER Peter Benazic

AUTHOR Owen Hardidge

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.

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
1 Walker Street, Koo Wee Rup (OH:SM:18409)	Land that was developed without a permit, in contravention of planning scheme - Heritage Overlay (43.01)	Magistrates' Court proceeding, the accused did not attend the contested hearing date (21/2/19). The accused has now been bailed to attend the Dandenong Magistrates Court on 19 July 2019 .
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	Magistrates' Court proceeding, alleging that the owner has conducted earthworks that require a permit, and cleared native vegetation, both without a permit. The case was listed for contested hearing 8 May 2019 . The accused requested, and was granted, an adjournment of the case and it will proceed as a contested hearing on 30 July 2019
Officer South Rd, Officer OH:JALF:18419	Land used for materials recycling, being a prohibited use, contrary to the Urban Growth Zone.	VCAT enforcement order application, was listed for contested hearing on 11 June 2019 . The owner of the land attended the hearing, and undertook to the Tribunal to remove waste materials from the land within two months, and that this had already commenced. The matter is listed for further hearing on the 11th August 2019 . Compliance Services will monitor the progress of the clean up, and return the matter to the Tribunal if the clean up does not proceed satisfactorily.
13-15 Carney St, Koo Wee Rup OH:JALF:19446	Use of the land as a store, without a planning permit, contrary to the Commercial 1 Zone.	VCAT enforcement order application filed, and has been allocated a Practice Day Hearing on 5th July 2019 .

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.