

5 PLANNING ENFORCEMENT MATTERS (INCLUDING MAGISTRATES' COURT PROSECUTIONS)

FILE REFERENCE INT2033893

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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 enforcements 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
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 and sentence, which will be heard in the County Court commencing 1 July 2020 .
1 Walker Street, Koo Wee Rup (OH-SM-19478)	Land that was developed without a permit, in contravention of planning scheme - Heritage Overlay (43.01)	Following a successful prosecution, VCAT enforcement order application commenced and listed hearing on 26th June 2020 .
709 Gembrook Rd, Pakenham Upper (OH-DA-20511)	Native vegetation removal in contravention of Clause 42.02, Environmental Significance Overlay, of the Cardinia Planning Scheme	Council has filed application for enforcement order with VCAT. This included a concurrent application for interim enforcement order in relation to the alleged breaches. All hearings in the Planning and Environment List are suspended, due to COVID-19, and will be re-scheduled at the discretion of the Tribunal.

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.