

## **6 PLANNING ENFORCEMENT MATTERS (INCLUDING MAGISTRATES' COURT PROSECUTIONS)**

FILE REFERENCE INT1867224

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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)

### **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, listed for further mention on 4 <sup>th</sup> October 2018, alleging that the owner has constructed an extension of the dwelling, developed the land and lopped a tree, without a permit.
Unit 1/4A Whitstable Street, Lang Lang  (OH:AB:18412) (OH:JALF:18401)	Land that was developed without a permit in contravention of planning scheme – Heritage Overlay (43.01) AND without a building permit	Magistrates' Court proceeding, listed for first hearing on 6 <sup>th</sup> September 2018. The owner pleaded guilty to undertaking work without relevant planning and building permits.  The Court adjourned the case to 8 <sup>th</sup> November 2018, on the basis that the owner can take steps in the meantime to obtain relevant permissions. His progress in this regard will likely be a significant factor in sentencing.
65 Moody Street, Koo Wee Rup  (OH:JALF:18395)	Failed to comply with planning permit, namely failing to comply with engineering requirements prior to subdivision.	Magistrates' Court proceeding, alleging that the owner commenced work without approval from responsible authority (CEMP, Transport Management Plan and haulage strategy).  The matter for further mention on 20 <sup>th</sup> September 2018.
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 Magistrates Court has adjourned this case indefinitely, pending the outcome of a related High Court application. (See below)
715 Gembrook Rd, Pakenham Upper  (OH:AB:14130)	Construction of retaining wall without building permit.	FOR INFORMATION ONLY – ongoing <i>planning enforcement</i> matters relating to property  MAGISTRATES COURT CASE relating to unpermitted building work (retaining wall) –  On 21 December 2017, the Magistrates Court delivered judgement in this matter,

		<p>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 owner has appealed the Magistrates Court decision to the County Court.</p> <p>In April 2018, the owner filed an application in the High Court of Australia in respect of this hearing. On 12 September 2018, the High Court dismissed this application as being without proper basis.</p> <p>The COUNTY COURT appeal is next listed for mention on 24 October 2018.</p>
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### **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.