

ELECTED MEMBERS' BRIEFING SESSION COVER SHEET

Date of Workshop:	15 November 2021
Subject:	Legal Review - 28 Commercial Road Decision
Department:	City Services
Presenter(s):	Aden Miegel, Norman Waterhouse Lawyers Gary Brinkworth, Manager Development and Regulatory Services
Session:	Open to the public.
Attachments:	Nil

PURPOSE

To provide the Council with a summary of the outcome and learnings from the prosecution of the tree damaging activity to a significant tree.

DISCUSSION

Council has pursued action against four parties in the Environment, Resources and Development Court (ERD Court) and the Supreme Court over tree damaging activity undertaken on two regulated trees without authorisation. One party entered a guilty plea prior to the hearing and took no further active part in the matter. The ERD Court found the remaining defendants not guilty of the offences, and in subsequent action undertaken by Council in the Supreme Court, the Judge determined to dismiss the appeal.

As a result of the decisions, Council and the legal representatives have undertaken a review of the process and outcome to determine what learnings can be taken into consideration for future prosecutions, particularly in relation to those relating to significant trees.

Additionally, the introduction of the *Planning, Development and Infrastructure Act 2016* (PDI Act) has provided alternative options for future enforcement and these alternatives will be discussed.

Key Considerations

- Learnings from the prosecution and Court decisions
- Options under the PDI Act for enforcement action

SPEAKERS

Gary Brinkworth, Manager Development and Regulatory
Aden Miegel, Norman Waterhouse Lawyers

THE BRIEFING IS OPEN TO THE PUBLIC