

## **5 PLANNING ENFORCEMENT MATTERS**

FILE REFERENCE INT1712237

RESPONSIBLE GENERAL MANAGER Andrew Paxton

AUTHOR Owen Hardidge

### **RECOMMENDATION**

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

### **Attachments**

*Nil.*

### **EXECUTIVE SUMMARY**

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

### **BACKGROUND**

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).

#### **1). Multi-purpose 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.

#### **2). Admin 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.

#### **3). Adjournment**

An adjournment will be asked for where there has been some discussion between Council and the Respondent, and more time is to be allowed for the Respondent (or Council as the Applicant) for a variety of reasons.

#### **4). Offset plan**

An Offset Plan goes by a few different names, including a Property Management Plan or a Property Remediation Plan. These plans are used when a Respondent has removed vegetation or otherwise damaged vegetation on the Land and Council is seeking a remedy for this removal, normally requiring replanting to occur on the Land. This plan is what Council will seek in the shape of an Enforcement Order, and the contents of the Plan will be decided by Council's Environment Team.

**5). Full hearing**

A full hearing is a hearing which is to be contested by the Respondent.

**6). 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.

The following list indicates such enforcement activities that are currently before VCAT or the Magistrates' Court.

Property Address	Nature of Contravention	Status
<b>715 Gembrook Rd, Pakenham Upper</b>  (ref: OH:AB:14130, OH:SMAY:15227 OH:OH:16295)	Alleged land use (burning off) and building breaches, that relates to extensive and complex planning history of the site.	<p>Magistrates' Court proceedings adjourned to <b>30 &amp; 31 March 2017 for contested hearing</b>, as accused has filed application in VCAT for declaration as to existing use rights.</p> <p>This VCAT application will be listed for a 2-day hearing in <b>14-15 June 2017</b>.</p> <p>Magistrates' Court proceeding may be delayed pending determination of this issue.</p> <p>Council commenced Building and Local Law prosecution of the owner, arising from construction and commercial-scale burn offs on the site.</p> <p>The owner asserts that burning off activities are protected by the planning scheme. The owner now asserts a broader range of activities attract Existing Use Rights, and this contested proceeding will seek to clarify land use rights.</p> <p>The property has a 17 yr history of litigated planning disputes between 1997 and 2015.</p>
<b>555 Back Creek Rd, Gembrook</b>  <b>EH:LK:16272)</b>	Native vegetation removal, and earthworks creating a dam, in breach of Section 173 agreement and the scheme.	Magistrates' Court prosecution arising from the creation of a large dam (by earthworks and vegetation removal), contrary to strict environmental

	Rural Conservation Zone – Sch 1, Environmental Significance Overlay – Sch 1, Bushfire Management Overlay, and Clause 52.17	controls and Section 173 agreement protecting vegetation on the land.  On <b>15<sup>th</sup> September 2016</b> the Court issued a Warrant for arrest to compel the attendance of the accused. The accused has recently re-located, and we are investigating options to locate him.
<b>230 Telegraph Road Beaconsfield Upper</b>  <b>EH:JALF:16300</b>	Earthworks and excavation creating a structure consisting of a total of six 40ft shipping containers, in breach of 35.06-5 Rural Conservation Zone – Sch 2, clause 42.01-2 Environmental Significance Overlay – Sch 1, Bushfire Management Overlay, and clause 44.06-1	VCAT Enforcement arising from the creation of a structure, earthworks and excavation, contrary to strict environmental controls.  The owner has submitted a planning application to regularise the development. If this application is refused, the applicant may seek review of the decision which will be determined with the enforcement order application. If the application is successful, the enforcement order application will not be necessary.  VCAT application for enforcement order filed and Practice Day of the matter 7 <sup>th</sup> April 2017.
<b>670 Nine Mile Road, Cora Lynn</b>  <b>EH:JALF:16328</b>	Construction of a solid fence in LSIO, contrary to Clause 44.04 (Land Subject to Inundation overlay).	Infringement issued against the owner, was referred to Court for decision following correspondence with the owner.  The matter is listed for further mention on <b>23<sup>rd</sup> February 2017</b> . The applicant has also filed an application for permit to regularise the fence, which has been referred to Melbourne Water.

## CONCLUSION

The list of current enforcement activities is presented for information.