

9 PLANNING ENFORCEMENT MATTERS (INCLUDING MAGISTRATES' COURT PROSECUTIONS)

FILE REFERENCE INT1611474

RESPONSIBLE GENERAL MANAGER Phil Walton

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.

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
41 Burton Rd, Beaconsfield Upper	Vegetation removal and use of land as contractor's depot without a permit	<p>VCAT enforcement proceedings filed. Practice day hearing 20 Nov 2015. Possible contested hearing deferred to June 2016, to enable planning applications to be considered.</p> <p>Respondents have filed applications for planning permission regarding non-conforming uses. Currently with Planning department.</p>
205 O'Briens Rd, Bayles	Ongoing materials recycling issue on Green Wedge Land. Continuing failure to comply with VCAT enforcement order.	Magistrates' Court prosecution for failure to comply with VCAT order commenced. Listed for next mention 10 March 2016.
715 Gembrook Rd, Pakenham Upper	Alleged land use (burning off) and building breaches, that relates to extensive and complex planning history of the site.	<p>Magistrates' Court proceeding adjourned to 15 June 2016, to allow accused to file application in VCAT for declaration as to existing use rights.</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, and the prosecution will have to litigate this issue in some form.</p>

Property Address	Nature of Contravention	Status
		The property has a 17 year history of litigated planning disputes between 1997 and 2015.
168 Brown Rd, Pakenham	Native vegetation removal, contrary to Environmental Significance Overlay, Green Wedge Zone and cl 52.17.	Magistrates' Court prosecution for alleged vegetation removal contrary to the scheme. Matter to be adjourned into March 2016 (date TBA) to allow accused to prepare remediation plan.
67 Payne Rd, Beaconsfield	Earthworks (fill) in excess of permit / without a permit, contrary to Green Wedge Zone and Environmental Significance Overlay.	Magistrates' Court prosecution listed for first mention 25/2/2016.

CONCLUSION

The list of current enforcement activities is presented for information.