

10 PLANNING ENFORCEMENT MATTERS

FILE REFERENCE INT1764426

RESPONSIBLE GENERAL MANAGER Andrew Paxton

AUTHOR Shannon Maynard

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.

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
715 Gembrook Rd, Pakenham Upper (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.	VCAT APPLICATION P1197/2016 VCAT recently made orders and reasons in this long-running matter. VCAT made a declaration in the following terms: 1. 1. "The subject land has existing use rights under the Cardinia Planning Scheme for a tree lopping/vegetation management business conducted from the land (the Business), including the:

		<p>a) Storage of vehicles and other plant, equipment and machinery;</p> <p>b) Undertaking servicing and repairs of plant, equipment and machinery in accordance with any planning permit;</p> <p>c) Bringing onto the land timber and other vegetation that has been felled by or on behalf of the operator of the business;</p> <p>d) Storing, sorting, cutting and mulching timber and other vegetation on the land that has been felled by or on behalf of the operator of the business;</p> <p>e) Burning off timber or vegetation on the land that has been felled by or on behalf of the operator of the business;</p> <p>all associated with the Business.”</p> <p>This decision only declares the owner’s rights under the <i>Planning and Environment Act</i>, and does not determine whether Cardinia Shire Council <i>Local Law 17</i> (which prohibits commercial burning off without a permit) continues to apply, which remains contentious.</p> <p>MAGISTRATES COURT CASE relating to unpermitted building work (retaining wall) –</p> <p>The matter is set down for a 3- day contested hearing from 29th November 2017.</p> <p>The property has a 20 yr history of litigated planning disputes between 1997 and 2015.</p>
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	<p>Magistrates’ Court proceeding, alleging that the owner has conducted earthworks that require a permit, and cleared native vegetation, both without a permit.</p> <p>On 10 August 2017, the accused appeared in Court with a number of supporters. The accused withdrew from the hearing, after his supporters were ejected for disruptive behaviour. It is unclear how he intends to respond to this case going forward.</p> <p>It is listed for further hearing on the 30 October 2017.</p>
230 Telegraph Rd, Beaconsfield Upper	Native vegetation removal, in breach of Clause 52.17 (Native Vegetation) and Clause	Magistrates’ Court proceeding is listed for further mention on 12 th October 2017.

OH:LK:17351	42.04-2 (Environmental Significance Overlay – Schedule 1)	
555 Back Creek Rd, Gembrook EH:LK:16272	Native vegetation removal, and earthworks creating a dam, in breach of Section 173 agreement and the scheme. Rural Conservation Zone – Sch 1, Environmental Significance Overlay – Sch 1, Bushfire Management Overlay, and Clause 52.17	Magistrates’ Court prosecution arising from the creation of a large dam (by earthworks and vegetation removal), contrary to strict environmental controls and Section 173 agreement protecting vegetation on the land. On 15 th September 2016 the Court issued a Warrant for arrest to compel the attendance of the accused. The matter is adjourned indefinitely, pending Victoria Police execution of the warrant.

Conclusion

The list of current enforcement activities is presented for information.