

4 PLANNING ENFORCEMENT MATTERS

FILE REFERENCE INT1835041

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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, 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.

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 |
|--------------------------------|---|--|
| 2705 Princes Hwy, Tynong North | Removal of native vegetation in Council road reserve, in breach of Environmental Significance Overlay (42.01) and Native Vegetation Particular Provisions (52.17). Breach of planning permit condition relating to protection of remnant vegetation | <p>On 18 January 2018, the company that owns this property appeared in the Magistrates Court at Dandenong.</p> <p>Council and the owner have agreed to the making of an Enforcement Order which requires the owner to manage the road reserve for 10 yrs. Work has commenced on the relevant applications, which will result in orders by consent.</p> <p>This application is listed for Practice Day</p> |

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|---------------------------------|---|---|
| | | Hearing on 15 June 2018 . |
| 715 Gembrook Rd, Pakenham Upper | Construction of retaining wall without building permit. | <p>FOR INFORMATION ONLY – no on going <i>planning enforcement</i> matters relating to property</p> <p>MAGISTRATES COURT CASE relating to unpermitted building work (retaining wall) –</p> <p>On 21 December 2017, the Magistrates Court delivered judgement in this matter, 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 COUNTY COURT has listed a contested hearing of the matter in May 29-31 2018.</p> <p>In April 2018, the owner has filed an application in the High Court of Australia in respect of this hearing. We expect that this HCA application may delay the County Court contest.</p> |
| 765 Gembrook Rd, Pakenham Upper | 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>The mater was set down for a 2-day contested hearing from May 2nd 2018, but was adjourned to 13-14 November 2018, due to a recently-filed High Court of Australia application.</p> |
| 555 Back Creek Rd, Gembrook | 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 | <p>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.</p> <p>On 15th 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.</p> |

CONCLUSION

The list of current enforcement activities is presented for information.