

7 PLANNING ENFORCEMENT MATTERS

FILE REFERENCE INT1634427

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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 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 (ref: OH:LK:14151)	Vegetation removal and use of land as contractor's depot without a permit	VCAT enforcement proceedings filed. Contested hearing listed June 2016 . Respondents have filed applications for planning permission regarding non-conforming uses, though there is confusion as to how they affect the enforcement action. Currently with Planning department.
205 Obriens Rd, Bayles (ref: OH:AK:15260)	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. Plea of guilty entered. Further adjourned at request of accused, as mortgagee is imminently re-taking possession, which may prompt (partial) remediation of the land. Listed for next mention 2 June 2016 .
715 Gembrook Rd, Pakenham Upper (ref: OH:AB:14130, OH:SMAY:15227)	Alleged land use (burning off) and building breaches, that relates to extensive and complex planning history of the site.	Magistrates' Court proceeding adjourned to 15th June 2016 , to allow accused to file application in VCAT for declaration as to existing use rights. Magistrates' Court proceeding may be delayed pending determination of this issue. Council commenced Building and Local Law prosecution of the owner, arising from construction and commercial-scale burn offs on the site. 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.

		The property has a 17 yr history of litigated planning disputes between 1997 and 2015.
168 Brown Rd, Pakenham (ref: OH:LK:15225)	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. On 19 May 2016 , the accused appeared in the Dandenong Magistrates' Court, and by consent agreed to participate in the Criminal Justice Diversion Program. The accused accepted responsibility for the alleged vegetation removal, and consent to a Diversion plan with the following conditions: <ul style="list-style-type: none"> - To prepare a 10 year Land Management Plan for the remediation of the land (already prepared and accepted by Council) - To consent to the plan being made enforceable by VCAT enforcement order (to be obtained by consent) - To pay the costs of such application - To pay Council costs in the Magistrates Court proceeding (\$117)
67 Payne Rd, Beaconsfield (ref: EH:LK:15259)	Earthworks (fill) in excess of permit / without a permit, contrary to Green Wedge Zone and Environmental Significance Overlay.	Magistrates' Court prosecution. The accused appeared in the Dandenong Magistrates' Court on 21 April 2016 , and pleaded guilty to 1 charge of breaching the scheme, namely undertaking earthworks without a permit, and failing to provide plans for endorsement. The director of the accused company (the land owner) appeared. The company was placed on an Adjourned Undertaking (aka Good behaviour bond), ordered to donate \$1,500 to the Court fund, and ordered to pay Council costs.

CONCLUSION

The list of current enforcement activities is presented for information.