

4 PLANNING ENFORCEMENT MATTERS (INCLUDING MAGISTRATES' COURT PROSECUTIONS)

FILE REFERENCE INT1750988

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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 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
<p>715 Gembrook Rd, Pakenham Upper</p> <p>(ref: OH:AB:14130, OH:SMAY:15227 OH:OH:16295)</p>	<p>Alleged land use (burning off) and building breaches, that relates to extensive and complex planning history of the site.</p>	<p>VCAT APPLICATION - On 15 June 2016, VCAT started hearing the owner's application for a declaration as to Existing Use Rights that are said to attach to the land regarding Burning Off and handling of waste timber on the land.</p> <p>The owner asserts that burning off and mulching activities are protected by the planning scheme. The accused has filed additional historical statements and documents in support of his application. On 21 July 2016, the Tribunal reserved its decision, and a written judgement is expected within 4-6 weeks. This will give greater clarity, but is unlikely to completely resolve the contentious burning off issues.</p> <p>MAGISTRATES COURT CASE - On the 13 July 2017, the Magistrates' Court delivered a ruling, comprehensively dismissing 25 constitutional arguments raise by the owner, and finding there was jurisdiction to hear the case. The matter is set down for a 3- day contested hearing from 29 November 2017. The owner has indicated that he intends to appeal the magistrates jurisdictional ruling.</p> <p>The property has a 20 yr history of litigated planning disputes between 1997 and 2015.</p>
<p>765 Gembrook Rd, Pakenham Upper</p> <p>(OH:LK:16299)</p>	<p>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>	<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 matter has been listed for Contest Mention on 10 August 2017.</p>

<p>555 Back Creek Rd, Gembrook</p> <p>EH:LK:16272</p>	<p>Native vegetation removal, and earthworks creating a dam, in breach of Section 173 agreement and the scheme.</p> <p>Rural Conservation Zone – Sch 1, Environmental Significance Overlay – Sch 1, Bushfire Management Overlay, and Clause 52.17</p>	<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 15 September 2016 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.</p>
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CONCLUSION

The list of current enforcement activities is presented for information.