

## **5 PLANNING ENFORCEMENT MATTERS (INCLUDING MAGISTRATES' COURT PROSECUTIONS)**

FILE REFERENCE INT1779938

RESPONSIBLE GENERAL MANAGER Andrew Paxton

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.

### **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).

### **Current enforcement cases**

The following list indicates such enforcement activities that are currently before VCAT or the Magistrates' Court.

<b>Property Address</b>	<b>Nature of Contravention</b>	<b>Status</b>
2705 Princes Hwy, Tynong North  (OH:LK:17356)	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	Magistrates Court prosecution listed for mention on <b>16<sup>th</sup> November 2017</b> , and adjourned by consent to <b>18<sup>th</sup> January 2018</b> .  Case alleges the wrongful removal of extensive tract of native vegetation along Council road reserve, and breaches of the planning permit for the associated development, by failing to protect native vegetation on site.
715 Gembrook Rd, Pakenham Upper  (ref: OH:AB:14130)	Construction of retaining wall without building permit.	FOR INFORMATION ONLY – no ongoing <i>planning enforcement</i> matters relating to property

Property Address	Nature of Contravention	Status
		<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 <b>29<sup>th</sup> November 2017</b>.</p> <p>The property has a 20 yr history of litigated planning disputes between 1997 and 2015.</p>
<p>765 Gembrook Rd, Pakenham Upper  (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 mater is set down for a 2-day contested hearing from <b>May 2<sup>nd</sup> 2018</b>.</p>
<p>230 Telegraph Rd, Beaconsfield Upper  OH:LK:17351</p>	<p>Native vegetation removal, in breach of Clause 52.17 (Native Vegetation) and Clause 42.04-2 (Environmental Significance Overlay – Schedule 1)</p>	<p>Magistrates’ Court proceeding is listed for further mention on <b>7<sup>th</sup> December 2017</b>.</p>
<p>555 Back Creek Rd, Gembrook  EH:LK:16272</p>	<p>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>	<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 <b>15<sup>th</sup> September 2016</b> 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>