

Who can enforce a condition in a planning permit?

Conditions of a planning permit or VCAT determination are not always met in the final construction. Often residents are left to identify and report breaches. In the first instance these should be reported to council for enforcement. If however enforcement is not forthcoming there are other options.

The next step to enforce conditions in a planning permit is to obtain an enforcement order from VCAT.

Section 119 of the Planning and Environment Act 1987 provides

“An enforcement order made by the Tribunal— ... (b) may direct any person against whom it is made to ...(B) to ... ensure compliance with ..[a].. permit condition ...

Section 114 of the Act provides

... any person may apply to the Tribunal for an enforcement order ... if a use or development of land contravenes or has contravened, or, unless prevented by the enforcement order, will contravene ... a condition of a permit ...

It is not necessary to have been an objector to a permit or demonstrate a special interest in the relevant property to have the right to apply for an enforcement order.

Having said this, however, the powers of the local council to inspect the properties and interview people mean it would be far easier, in general, for the council to obtain an enforcement order.

Obtaining the enforcement order is the first step in what is a pretty drawn out process for enforcement of a planning permit condition. A paper (see link below) prepared some time ago by the Environment Defenders Office sets out a summary of the process.

Environmental Defenders Office (Victoria) Ltd Enforcement Kit.

A working guide to seeking enforcement in planning matters and nuisance under the Health Act.

https://envirojustice.org.au/downloads/files/kits/edo_enforcementkit0612.pdf