

# Agriculture Victoria Planning and Advisory Service

VCAT Decisions that impact Rural zoned land

Looking back to 2022

This update includes VCAT cases from 2022. It provides council officers a summary of decisions that impact rural zoned land. The Agriculture Victoria Planning and Advisory Service does not provide comment as to the merits of each case or the reasons provided by the members.

## Dwelling – Use of land

Citation	Zones, Overlays	Outcome	Summary
<p><u>Strachan v Latrobe CC</u> [2022] VCAT 35 <i>Juliette Halliday, Member</i></p>	<p>FZ BMO</p>	<p>Council decision set aside, no permit granted</p>	<p>32 A proposal to develop and use the land for a dwelling was the subject of an application to the Tribunal for review of a grant of a permit in 2012. It was put to the Tribunal in that matter that the permit applicant intended to run a beef herd with 10 weaner cattle being fattened on the site at any one time. The Tribunal set aside the Council's decision and a permit was not granted. The Tribunal found that the proposal was an attempt to have a rural living arrangement masked as an agricultural use within a Farming Zone.</p> <p>58 ..... I have not been persuaded that if the hobby farm operation is started, it will sustainably persist in the long term. The FMP makes no provision for what is to occur if the hobby farm operation ceases, after the dwelling is constructed. In my view, once the dwelling is constructed, there is real risk that if the proposed hobby farming activity commences, it will not be sustained.</p>
<p><u>Bucci v Cardinia SC</u> [2022] VCAT 113 <i>Joel Templar, Member</i></p>	<p>RCZ ESO1 BMO</p>	<p>Council decision upheld, permit granted</p>	<p>Use and development of the land for a dwelling and vegetation removal.</p> <p>38 In my view, there is very limited weighing of so-called 'competing policies' required. The provision of diverse and affordable housing as one of the factors weighing in favour of the proposal is quite a stretch in my view. The diverse and affordable housing policies of the planning scheme also have to be viewed through the lens of accompanying policy, such as those relating to establishment of housing in existing or identified settlements. Further, the provision of rural living housing is something which the planning scheme seeks to provide in a coordinated and planned manner, rather than through provision of dwellings on individual vacant lots, in non-urban areas.</p> <p>40 I am not persuaded that the removal of such a large extent of vegetation is an acceptable outcome in the RCZ. The RCZ seeks to retain and enhance the natural qualities of the land and the review site is in an area of identified</p>

			significant landscape and environmental qualities, owing to the fact that the ESO1 wholly affects the site.
<u>Sullivan v Moorabool SC [2022] VCAT 225</u> <i>Jeanette G Rickards, Senior Member</i>	RCZ DDO2 BMO	Proceeding summarily dismissed	1 This is an application brought under section 89 of the Planning and Environment Act 1987 (PE Act) seeking the cancellation of Permit XXX issued on 25 June 2021 for the development and use of a dwelling and a shed on Lot XXX 10 It is however based on section 89 (3) of the PE Act that I am refusing to consider the request and dismissing the application. 11 I do this as I am not satisfied that the request has been made 'as soon as practicable after the person making it had notice of the facts relied upon in support of the request'.
<u>Sullivan v Moorabool SC [2022] VCAT 557</u> <i>Jeanette G Rickards, Senior Member</i>	RCZ DDO2 BMO	Council decision varied, permit granted	32 From the submissions received it would appear Mr Sullivan would like to see the area kept in a pristine condition with no development of dwellings, but the zoning, lot sizes and recent planning approvals do not lead to this conclusion. 33 I am unable to conclude that the proposed dwelling, located approximately 204m from the applicants' property, will result in any economic impact on the applicants' business conducted on their property.
<u>Xurban Pty Ltd v Macedon Ranges SC [2022] VCAT 299</u> <i>Frank Dawson, Member</i>	RCZ SLO1 ESO5 BMO RO10 VPO9	Council decision set aside, permit granted	20 On review of all of the submissions and evidence, I consider there are two key issues for determination in this proceeding: <ul style="list-style-type: none"> <li>Is the extent and type of native vegetation to be removed to enable the construction of the proposed dwelling acceptable?</li> <li>Does the bushfire attack protection afforded by BAL 40 construction and the associated defendable space ameliorate the bushfire risk to an acceptable degree?</li> </ul> 24 In relation to the location of the proposed dwelling, I note the whole Macedon township is in the RCZ. .... Most, if not all, of the lots in this part of the RCZ have been developed with dwellings. I find it also relevant to note that the subject land is included in the Restructure Overlay (RO10). .... Lot 2 LP205227 in Amara Road (the subject land) is listed to be suitable for a dwelling.
<u>Ruven Nominees Pty Ltd v Greater Dandenong CC [2022] VCAT 304</u> <i>Dalia Cook, Member</i>	GWZ VPO1	Council decision upheld, no permit granted	1 The applicant seeks permission to use and develop the subject land for a dwelling. It also proposes to use the land for Animal husbandry (horse breeding and keeping), which does not require a planning permit. 4 The land does not enjoy permanent rights of access to a road..... 15 I do not support the grant of a planning permit for the use and development of the subject land as a dwelling until such time as a more secure, ongoing legal entitlement to access the subject land may be facilitated.
<u>Kilpatrick v Wyndham CC [2022] VCAT 474</u> <i>Philip Martin, Senior Member</i>	GWZ PAO5	Application is disallowed	5 It still seems useful to set out below the following opening paragraphs from the applicant's main written submission: 3. Mr Kilpatrick applied to the responsible authority (Council) for a planning permit for the use and development on each parcel of a dwelling, with the

			<p>dwelling located within the reserved land (PAO5). The purpose of the permit applications was to obtain a refusal, so as to enliven rights for compensation under Part 5 of the Planning and Environment Act 1987 (PE Act).</p> <p>4. Rather than objecting to the permit applications, the acquiring authority as a determining referral authority required that the dwellings be located outside the reserved land. Council subsequently granted the permits subject to conditions requiring the proposed dwellings to be located outside the reserved land.</p> <p>5. Mr Kilpatrick seeks orders from the Tribunal disallowing the applications for review on the ground that the land is or may be required for a public purpose, pursuant to Section 99(a)(iii)(B) of the PE Act.</p>
<p><u>Coolstream Super Pty Ltd v Macedon Ranges SC [2022] VCAT 490</u> <i>Margaret Baird, Senior Member</i></p>	<p>FZ ESO4 BMO</p>	<p>Council decision upheld, no permit granted</p>	<p>14 The Council's refusal to grant a permit is also based on its position that the dwelling is the primary use (rather than secondary to agriculture) and is too large. Although convenient, the Council says this is a location where a dwelling is discouraged. A dwelling has not been shown to be needed and/or justified. The outcome is defacto hobby farming. Moreover, the dwelling could proceed without the agricultural use going ahead.</p> <p>49 I am not persuaded that there is a 'notable absence of serious farming operations', as the applicant contends. It depends where one looks. There are 'hobby' operations but I find the applicant's argument that there is now little 'serious' farming in this area underscores an issue that is at the forefront of the scheme's consideration. That is, ad hoc and incremental conversion of agricultural lots into residential lots with little agriculture, that cause gradual emergence of unplanned rural lifestyle precincts to the detriment of agricultural production. I find the proposal would exacerbate such an outcome, contrary to the scheme, including the prospect of inflated land values.</p> <p>66 I agree truffles are high-value, and (on Mr Fitzpatrick's evidence) can start to yield produce in four years once the inoculated seedlings are properly planted and then managed. A dwelling would be convenient, could assist with security and offer some efficiencies. However, a dwelling is not the only way to monitor and secure the property in the establishment phase, either for the oak trees, nor for the conservation area or seasonal livestock.</p>
<p><u>Kaminsky v Mornington Peninsula SC [2022] VCAT 492</u> <i>Geoffrey Rundell, Member</i></p>	<p>GWZ3 ESO12 SLO6 ESO28 SLO1 VPO2</p>	<p>Council decision varied, permit granted</p>	<p>To develop dwelling additions and associated works. The further dwelling would be single storey and have two bedrooms, a kitchen, living area and bathrooms....The two dwellings would be connected by a covered walkway....</p> <p>The dwelling additions would replace an existing farm outbuilding.</p> <p>13 I agree with the permit applicants. The size of the primary dwelling and the dwelling additions comfortably complies with the preferred limit of 2,000 square metres or ten percent of the site area (whichever is the lesser). There is no negative impact on use of the land, remnant vegetation or amenity, nor specific policy objectives to</p>

			<p>which this permit condition arises. The requirement imposed by the responsible authority is subjective and arbitrary.</p> <p>27 I give weight to the proposition that I should give limited weight to a blunt requirement in a document that is adopted by Council rather than having been brought into the Scheme in some way. The responsible authority has had ample time to commence the required planning processes to make this document a seriously entertained planning proposal. I do not accept that it can apply requirements from an adopted document as mandatory minimum siting standards. It should apply the requirements when it can demonstrate there are public or planning benefits for doing so and a part of a comprehensive assessment of the design and siting response to the particular circumstances of the land. In my view the responsible authority has failed to demonstrate the need for condition 1(b).</p>
<p><u>Boglis v Whittlesea CC [2022] VCAT 493</u> Michelle Blackburn, Presiding Member Joel Templar, Member</p>	<p>RCZ UGZ IPO5 ESO6 DCPO16 PAO2</p>	<p>Council decision upheld, no permit granted</p>	<p>49 .... in our view the PSP and the BCS are generally consistent with and reinforce our finding that the proposed development of a dwelling on each of the sites is not in accordance with the Concept Plan, including by:</p> <p>The clear intent of the PSP to provide a separation between dwellings and conservation areas ...</p> <p>Limiting the use and development of a conservation area for non-conservation purposes ...</p> <p>Clear designation of other parts of the PSP area that are to be developed with dwellings ...</p>
<p><u>Chase v Mornington Peninsula SC [2022] VCAT 503</u> Frank Dawson, Member</p>	<p>GWZ ESO3 ESO17 ESO28 EMO1 EMO2 SLO1 VPO2</p>	<p>Council decision upheld, permit granted</p>	<p>Construction of a dwelling, buildings and works.</p> <p>Three areas of agricultural activity are proposed:</p> <ul style="list-style-type: none"> <li>• Propagation, regeneration and harvest of tea tree.</li> <li>• Cattle breeding and beef production.</li> <li>• Honey production.</li> </ul> <p>The proposed permit conditions include a land management plan for the fencing of bushland and the 'preserving and enhancing' of the biodiversity of flora and fauna on the land.</p> <p>13 The size of the land also facilitates agricultural use. Taking into consideration the size of the land and the agricultural use proposed, I accept that it is not unreasonable for a dwelling to be established on the land if the enterprises identified in the farm management plan are to be realised.</p>
<p><u>Wiltshire v Campaspe SC [2022] VCAT 549</u> Frank Dawson, Member</p>	<p>FZ FO SCO2</p>	<p>Council decision upheld, no permit granted</p>	<p>16 In this application for example, I am troubled by the prospect that should the use of the land for horse breeding discontinue, it is not unreasonable to expect that a site of 5.14 hectares containing a dwelling may change to rural residential use. Such an outcome runs counter to the policy objective for the protection of agricultural land, particularly as the subject land is in a well-established agricultural district where policy is directed toward land consolidation rather than fragmentation.</p>
<p><u>Stonehenge Constructions Aust Pty</u></p>	<p>RCZ ESO3</p>	<p>Council decision</p>	<p>Use and development of the land for a dwelling in association with horse husbandry and dog breeding.</p>

<p><u>Ltd v Greater Bendigo CC [2022] VCAT 584</u> <i>Joel Templar, Member</i> <i>Christopher Harty, Member</i></p>		<p>upheld, no permit granted</p>	<p>7 Following the merits hearing .... the Tribunal discovered a covenant that neither party brought to the attention of the Tribunal, ..... it was apparent that the restriction registered under the covenant may be breached by the proposal. ....</p> <p>11 Our findings are that the proposal breaches the restriction in the covenant registered on title and we are therefore unable to grant a permit. Otherwise, we would have found the proposal to be generally acceptable in response to each of the permit triggers, although there are some aspects that require further detail.</p>
<p><u>Thomson v Hepburn SC [2022] VCAT 586</u> <i>Frank Dawson, Member</i></p>	<p>FZ ESO1 HO120</p>	<p>Council decision set aside, permit granted</p>	<p>The applicant proposes to construct a dwelling on land formerly associated with the Newlyn railway station, goods yard and railway line.</p> <p>11 .... I accept that the application includes a comprehensive proposal for agricultural land use. .... Taking into consideration the previous use of the land for railway infrastructure, I expect that implementation of the farm plan will improve the agricultural productivity of the land. ...</p>
<p><u>Petkovski v Greater Bendigo CC [2022] VCAT 599</u> <i>Christopher Harty, Member</i></p>	<p>RCZ ESO1 ESO3 VPO2</p>	<p>Council decision upheld, no permit granted</p>	<p>32 I agree with Council. I find the proposal has several inconsistencies with the provisions of the planning scheme, which individually would not result in a refusal to grant a permit, but cumulatively, amount to a proposal which presents as an unacceptable outcome in the context of the RCZ and the policy framework as it relates to environmental protection, agricultural fragmentation, rural character, water quality and bushfire risk.</p> <p>37 .... The proposal clearly portrays itself as a rural lifestyle development outcome with a large dwelling that includes significant earthworks for the dwelling and its access driveway. ....</p>
<p><u>Kania v Golden Plains SC [2022] VCAT 656</u> <i>Sarah McDonald, Member</i></p>	<p>RAZ ESO3</p>	<p>Council decision upheld, no permit granted</p>	<p>98 Based on my findings outlined above, in principle I am satisfied that the visual impacts of the propose dwelling will be acceptable. However, there is a lack of information regarding the bushfire risk and whether any required bushfire protection measures can be implemented while also providing landscaping and any planting associated with a land management plan. ...</p>
<p><u>Pickering v Greater Bendigo CC [2022] VCAT 676</u> <i>Frank Dawson, Member</i></p>	<p>FZ</p>	<p>Council decision upheld, permit granted</p>	<p>5 Council's permit conditions includes a requirement to consolidate the subject land (CA 31A) with a separate, but contiguous small title of 2,356 square metres (CA 31B) that is also owned by Mr Whittle.</p> <p>26 The issue of farming viability in conjunction with the need for a dwelling in the FZ is vexing. What makes a farm viable? Is viability confined to generating an income solely from the agricultural pursuit, or is a farm considered viable if it is supported by both off-farm and on-farm income? Viability can also be affected by variations in weather such as periods of drought. If the preservation of productive farming land is the key objective, sustainable use of the land (for example, a sustainable stocking rate) may offer a more useful guide to the effective use of agricultural land.</p> <p>27 Considering the existing use of the subject land for cropping and sheep raising, I find agreement with Council's view (cited earlier in my reasons) that although</p>



			<p>the subject land is 7.27 hectares, this is consistent with the pattern of land ownership of surrounding land. The existing use of the land for cropping and sheep raising demonstrates that the land is used for agriculture. In this case, I find the construction of a dwelling will not take agricultural land out of production and is likely to assist the owner to manage the property.</p>
<p><u>Kennedy v Baw Baw SC [2022] VCAT 787</u> <i>Shiran Wickramasinghe, Member</i></p>	<p>FZ LSIO DCPO1</p>	<p>Council decision upheld, no permit granted</p>	<p>32 ..... I find this application is not supported by the policies in the Planning Scheme and the purpose of the LSIO and the relevant decision guidelines which require the avoidance of developments in areas where access is subject to flooding.</p> <p>54 I am not satisfied that any particular management requirements have been identified to substantiate a continual presence on the site in the form of a dwelling. I agree with Council the 15 hours of work per week associated to the agricultural use of tending 10 sheep, 60 chickens and a market garden do not require a 24 hour a day, 7 day a week presence on the site.</p> <p>56 It therefore follows that I am not persuaded by submissions that the size of the site and use of other land in this area must result in the site being developed with a dwelling. The site can still be put to some productive use whether on its own or by incorporation into a larger property holding. The size of the site should not raise expectations that it is suitable only for a rural lifestyle dwelling.</p>
<p><u>Pobjoy v Nillumbik SC [2022] VCAT 823</u> <i>Frank Dawson, Member</i></p>	<p>RCZ ESO1 BMO</p>	<p>Council decision set aside, permit granted</p>	<p>21 .... I find the opportunity for habitat restoration identified by Kern in his evidence falls in favour of approval for a dwelling on this land. The proposal before me has minimal impact in terms of vegetation removal, a modest building footprint and through the proposed land management plan, provides a realistic opportunity for vegetation restoration and weed management. I find the proposed development is also consistent with the prevailing character of surrounding development; that is, single dwellings on lots less than 8 hectares.</p>
<p><u>Scott v South Gippsland SC (Corrected) [2022] VCAT 849</u> <i>T Bilston-McGillen, Member</i></p>	<p>FZ ESO5 BMO</p>	<p>Council decision varied, permit granted</p>	<p>7 The planning permit application seeks approval for an extension to the existing dwelling by enclosing parts of the existing building and garage to create four additional bedrooms, each with bathroom facilities, plus an additional living area space....</p> <p>8 The tram has been re-located to the southern side of the property.....</p> <p>32 ..... Having regard to the decision guidelines of the FZ, I am persuaded that the proposed extension to the dwelling would not adversely affect the use of land for agriculture.</p> <p>47 I am satisfied that the principle to give priority to the protection of human life has been achieved. The site remains in proximity to a timber plantation but unlike the earlier Scott proposal, this case is about an extension to an existing dwelling. It is not for new group accommodation....</p> <p>56 It is a reasonable proposition that the tram is not used for sleeping but the respondents put that it should be</p>

			able to be used for a reading room or having a glass of wine.
<p><u>Bruni v Macedon Ranges SC (Corrected) [2022] VCAT 886</u> <i>Laurie Hewet, Senior Member</i></p>	<p>FZ ESO4 HO150</p>	<p>Council decision set aside, permit granted</p>	<p>Application to amend a permit to allow the change of use of an agricultural building to a dwelling, with associated works. The site consists of three parcels with a total area of approximately 22 hectares.</p> <p>30 The farm management plan establishes that the review site is part of a larger family farming business, being a self-replacing cattle breeding and rearing operation located across 232 hectares of grazing land on five separate properties. The herd size is currently 295 head.</p> <p>37 The farm management plan and Mr Pitt's evidence demonstrates that the review site is the most suitable of the five properties that are part of the overall farming business, to conduct the calving operation. This is because the property has a centrally located set of stockyards, equipped with a crush and veterinary inspection gate. Consequently, if a cow (or heifer) gets into difficulty, the yards are only a short distance away from most parts of the property. The stockyards have all weather access and are located on a stony rise with good natural drainage. There are also a number of small holding paddocks close to the yards where sick or lame animals can be isolated for care and treatment.</p>
<p><u>O'Neill v Mornington Peninsula SC [2022] VCAT 1007</u> <i>Jeanette G Rickards, Senior Member</i></p>	<p>GWZ BMO EMO1 ESO10 SLO1 VPO2</p>	<p>Council decision varied, permit granted</p>	<p>Development of a replacement dwelling, conversion of an existing dwelling to a tennis court pavilion, tennis court, swimming pool and associated buildings and works.</p>
<p><u>Nguyen v Yarra Ranges SC [2022] VCAT 1028</u> <i>Geoffrey Code, Senior Member</i></p>	<p>GWZ BMO</p>	<p>Council decision upheld, no certificate of compliance granted</p>	<p>The grant of a certificate of compliance was refused on the following grounds:</p> <p>The use of land of more than one dwelling is prohibited under clause 35.04 (Green Wedge Zone) of the Yarra Ranges Planning Scheme</p> <p>Insufficient evidence has been submitted to demonstrate that there is an existing use right for a second dwelling pursuant to clause 63 of the Yarra Ranges Planning Scheme</p>
<p><u>Samways v Mornington Peninsula SC (Corrected) [2022] VCAT 1040</u> <i>Alison Glynn, Member</i></p>	<p>GWZ BMO EMO1 ESO13 ESO17 ESO28 SLO1 VPO1</p>	<p>Council decision varied, permit granted</p>	<p>1 In 2020 the council issued a planning permit for a dwelling at the review site. The endorsed plans for this permit show the dwelling located just west of a treed area in which a shed will be used for calf rearing as part of Farm Management Plan (FMP) that forms part of the planning permit.</p> <p>The proposal is to amend a planning permit by changing the location of a dwelling approved for the land.</p>
<p><u>The Estate of Andrew Taylor v Ballarat CC (Corrected) [2022] VCAT 1097</u></p>	<p>RLZ BMO</p>	<p>Council decision set aside, no</p>	<p>1 The respondents have sought a planning permit from Ballarat City Council to construct a dwelling and to carry out works on the review site (site). The site is not connected to reticulated sewer. The appearance of the dwelling itself is not contentious. Rather, the earthworks</p>

<p>Mary-Anne Taranto, Presiding Member</p> <p>Nicholas Hadjigeorgiou, Member</p>		<p>permit granted</p>	<p>together with the site's susceptibility to overland flows and consequential implications for on-site wastewater management and flood related impacts are the most contentious aspects of this proposal.</p> <p>14 In summary, we have found that on the basis of the information before us, the type of wastewater system proposed is not a suitable one for this site. We therefore conclude that the site would not be capable of treating and containing effluent within its boundaries under this proposal.</p> <p>15 We have also been unable to conclude that this proposal would not cause unacceptable flooding and stormwater related impacts.</p>
<p><u>Goumas v Bass Coast SC [2022] VCAT 1134</u></p> <p>Christopher Harty, Member</p>	<p>FZ ESO1 SLO2</p>	<p>Council decision upheld, no permit granted</p>	<p>22 I find the proposal does not achieve a net community benefit regarding the response of the proposal to the physical and policy settings of the site. I find the site is already farmed and that a dwelling is not necessarily going to significantly improve the level of production other than reducing the inconvenience of the applicant to continue to farm. Agricultural activity on the site is and can continue without the need for a dwelling and the use of the land for a dwelling further reduces the area of land available for agricultural purposes.</p> <p>60 Clause 02.03-4 relating to Natural resource management refers to the majority of rural land in Bass Coast being considered productive agricultural land. Relevantly, the policy recognises that there is a demand for rural living opportunities, however the unplanned incursion of residential land uses into rural areas results in agricultural land being taken out of production. While a rural dwelling may be needed to properly conduct farming activity, new dwellings must be limited to those that genuinely relate to agricultural production.</p>
<p><u>Chapman v Mildura Rural CC [2022] VCAT 1244</u></p> <p>Judith Perlstein, Member</p>	<p>FZ DCPO ESO SCO</p>	<p>Council decision set aside, permit granted</p>	<p>42 In that context, I find that the issue of the permits in 2002 and 2004 had already removed this land from agricultural production and that the subsequent changes to the Scheme have left the land owner in limbo, unable to use the land either for productive agriculture or for the residential purpose for which it was created. I do not consider, therefore, that the approval of a dwelling on the review site will be removing productive agricultural land from the FZ.</p>
<p><u>Bricknell v Greater Geelong CC [2022] VCAT 1260</u></p> <p>Rachel Naylor, Senior Member</p>	<p>RLZ</p>	<p>Council decision upheld, no permit granted</p>	<p>2 The Council advises its decision is based primarily on the fact that the proposed dwelling is a 'sensitive land use' and the site is within 200 metres of an operational solid inert waste landfill.</p> <p>37 There is nothing in the planning scheme that specifically discourages this proposal because of its close proximity to a landfill. Nor are there any specific criteria (such as a separation or buffer distance) or considerations for a sensitive land use on residentially zoned land that is close to a landfill. The only specific planning control is the RLZ with its relevant decision guideline about considering whether the proposal is compatible with nearby land uses.</p> <p>86 Having regard to the above comments and the limitations of the LGRA, I am unable to conclude that the</p>



			potential landfill gas mitigation risk has been addressed acceptably for now and the future, including after closure of the landfill. As such, I am not persuaded that the proposed land use is compatible with the nearby landfill land use.
<u>Schenk v Moorabool SC [2022] VCAT 1274</u> <i>Christopher Harty, Member</i>	RLZ ESO1 DDO2 BMO	Council decision upheld, no permit granted	63 I find the proposed use of secondary treatment of wastewater is insufficient to overcome this high risk posed by development at Lal Lal. This is because the use of such a system addresses only the risk during normal operations. The purpose of the buffer or setback distance is to address the risk if that system fails. A failure of the treatment plant or the self-contained recirculation beds of the Rhizopod system within the setback distance represents an unacceptable risk.
<u>O'Brien v Wangaratta RC [2022] VCAT 1355</u> <i>Megan Carew, Member</i>	FZ	Council decision upheld, no permit granted	19 The proposed use would comprise a rural living lot that is at odds with outcomes sought for farming areas. While there are similar sized properties surrounding the review site that are used for rural lifestyle purposes, there are also some larger parcels such as the land to the immediate west of the review site. The location of dwellings in Greta West are somewhat scattered and I am not persuaded that there is a clear settlement character. The evidence of Ms Bohn was that while this individual lot had limited agricultural capacity, it retains value for agriculture when combined with other land as at present. 20 An additional dwelling on a small lot in this location will contribute to a concentration of dwellings on small lots that has negative implications for agriculture use of land due to potential amenity expectations and increased land values affecting ability to expand onto existing small lots.
<u>Adebayo v Central Goldfields SC [2022] VCAT 1416</u> <i>Tracey Bilston-McGillen, Member</i>	RLZ SMO BMO EMO VPO1	Tracey Bilston-McGillen Member	30 Even if I am wrong on this point and the road does flood, I further disagree with the interpretation of Council that the RMP in identifying Queripels Road as RA2 identifies this as the 'target condition' and not the 'standard' of the road. If Council in theory was correct that the existing road is sub-standard, how is it acceptable that there is an existing dwelling at 60 Queripels Road that is located on a road that emergency vehicles cannot access? Condition 10 does not relate to upgrading the road outside the site's frontage but the road from Logan Road to the site's access point being on the corner of the site on Baxter Road. This is the section of the road that other vehicles use.
<u>MacLeod v Colac Otway SC [2022] VCAT 1422</u> <i>Frank Dawson, Member</i>	FZ SLO1 BMO EMO1	Council decision upheld, permit granted	10 The circumstance of the subject land is not the consideration of new rural residential development, but an assessment of whether it is appropriate to utilise an existing lot in a long established group of mostly original small crown titles. The title for the subject land tells me the lot was created a century ago as part of the dispersed settlement of Yeodene. The intent for a small rural settlement is evident from a 'legacy' group of developed lots that remain in the FZ, including a public hall reserve. 15 Taking into consideration the strategies for the protection of agricultural land, I cannot conclude that the development of a dwelling on the subject land will compromise the continuation of the agricultural production

			<p>on surrounding land. In my assessment, the development of a dwelling on the land cannot be regarded as 'ad hoc' given the location within an established group of small rural lots</p> <p>19 As indicated earlier, I have also concluded that the development of the subject site does not remove land from agricultural production, as the site has been in its current configuration for many years and presumably was created for the purpose of accommodating a local school.</p>
<p><u>Alabakis v Moorabool SC [2022] VCAT 1456</u> <i>Juliette Halliday, Member</i></p>	<p>FZ DDO2 ESO1</p>	<p>Council decision upheld, no permit granted</p>	<p>32 Whilst I acknowledge that the proposal would involve the consolidation of two smaller lots, the size of the consolidated lots at 13 hectares is not large in a rural context. Having regard to the size of the land, and its location close to the Gordon township, I am not persuaded that the proposed use of the land for a dwelling is consistent with the policy at clause 14.01-1S (Protection of agricultural land) which seeks to limit new housing growth in rural areas by directing housing growth into existing settlements and discouraging development of isolated small lots in the rural zones from use for dwellings.</p> <p>36 I have not been persuaded that growing fruit, nut and olive trees, vegetables and herbs and keeping 100 chickens on the land for egg production and the production of 20 lambs each year is of a scale that requires a dwelling on the land. Even if keeping of 100 chickens and producing 20 lambs does need daily attention, I am not persuaded that the scale of the agricultural activities requires a dwelling on the land, particularly given the close proximity of the land to the Gordon township.</p>

## Subdivisions

Citation	Zones, Overlays	Outcome	Summary
<p><u>Coleman Estate v Mornington Peninsula SC VCAT [2022] 10</u> <i>Ian Potts, Senior Member</i></p>	<p>GWZ ESO4 ESO17 ESO28 BMO</p>	<p>Council decision upheld, no permit granted</p>	<p>Review of refusal to grant a planning permit. Two lot subdivision by re-alignment of boundaries. Whether new lots of less than 40 ha acceptable planning outcome having regard to purposes of GWZ and policy to protect agricultural production.</p> <p>30 The principal reason given for pursuing the subdivision is about equitable distribution of the family estate. Such a reason is not a planning consideration under the scheme.</p> <p>36 At its highest, Mr Phillip's evidence is that the current level of management and activity can be sustained under the proposed two lot configuration – though this is dependent on cooperation between the two lot owners to share the one set of cattle yards. This may suit the present family arrangement, but this is not an arrangement that the planning framework or scheme can control. It is foreseeable that a future outcome of the subdivision could be that the two proposed lots would be owned and managed independent of each other by two unrelated entities.</p>

<p><u>BRB Law on behalf of the Estate of the late Ian Leslie Montgomery v Bass Coast SC [2022] VCAT 47</u> <i>Sarah McDonald, Member</i></p>	<p>FZ</p>	<p>Council decision upheld, no permit granted</p>	<p>34 While the provisions of the Farming Zone provide for the excision of the dwelling, this does not persuade me that that site is necessarily 'suitable' for such development. The site's suitability for subdivision must be determined having regard to all of the relevant policies and provisions of the scheme.</p> <p>36 Having regard to the zone purpose 'To provide for the use of land for agriculture', the proposed subdivision does not directly serve this purpose. The land is currently used for agricultural purposes, and the subdivision is not necessary to provide for its continued use for this purpose.</p> <p>40 The existing dwelling's close proximity to its boundary with proposed lot 2 has the potential to result in land use conflicts between any agricultural use of lot 2 and the dwelling use of lot 1. Although the current use of the land for grazing animals may be innocuous, there are a range of agricultural and other uses that could occur on the land without the need for a planning permit that could give rise to land use conflicts with the dwelling use.</p> <p>41 The proposed subdivision is related to giving effect to the terms of the legal will and management of the deceased estate of the owner. I have been informed that the current resident of the existing dwelling is to remain living in the dwelling, and that their son is to have first right of refusal on a lease to run the farm on proposed lot 2. Even if this arrangement does eventuate, there is no certainty it will be maintained in the longer term. Irrespective, the personal circumstances of the individuals involved in the current and future ownership and occupancy of this land are not relevant considerations under the planning scheme.</p> <p>51 The proposal is inconsistent with the strategic directions for housing at clause 02.03-6 that seeks to 'support the provision of rural living and low density residential development in areas already zoned for this purpose'. I consider that proposed lot 1 is akin to a rural living property. In fact, the proposed lot 1 appears to be smaller than the properties in the Rural Living Zone to the west, and is less than the 2ha minimum lot size required in that zone. The site is not zoned for rural living or low density residential development, and is distinguished from the adjacent Rural Living Zone in the Inverloch Strategic Framework Plan at clause 11.01-1L-08.</p>
<p><u>Fensham v Yarra Ranges SC [2022] VCAT 487</u> <i>Michael Nelthorpe, Member</i></p>	<p>GWZ SLO2 EMO LSIO BMO RO</p>	<p>Council decision set aside, permit granted</p>	<p>Two lot re-subdivision of old and inappropriate subdivision; role of tenement provisions; landscape impact; bushfire and geotechnical issues.</p> <p>To re-subdivide an existing landholding of 50 lots into two lots, to construct a dwelling and shed on the vacant new lot, to undertake earthworks in association with the new dwelling, shed and driveway, and to remove most easements from the site.</p>
<p><u>Roussac-Hoyne v South Gippsland SC [2022] VCAT 577</u> <i>Ian Potts, Senior Member</i></p>	<p>FZ ESO3 SLO3 LSIO BMO</p>	<p>Council decision upheld, no permit granted</p>	<p>60 I accept that the FMP details how successful the agricultural enterprise is and how it can continue. This fact however does not do is support or justify the subdivision that is being proposed. .... In fact, in considering the layout being proposed, the subdivision affectively carves off the proposed dwelling lot such that it could be sold and be used</p>

			independent of the agricultural activities conducted on the property.
<u>Hart v Greater Shepparton CC [2022] VCAT 764</u> <i>Joel Templar, Member</i>	FZ BMO SCO LSIO FO	Council decision set aside, no permit granted	<p>16 The respondent said the purpose of the subdivision is to sell lot 2 to fund a pivot irrigation system on proposed lot 1. It was also submitted that the purpose of creating lot 2 in two parts was in order to meet the minimum 40 hectare lot size minimum in the FZ schedule.</p> <p>28 Mr Steigenberger said that meeting the minimum lot size in the FZ schedule does not automatically guarantee that a permit should be granted. I agree. If this were the case, then the planning scheme could allow such a subdivision without triggering a planning permit if it met the minimum lot size requirement. However, this is not the case.</p> <p>34 However, the subdivision would further fragment agricultural land, raising the prospect of land use conflicts, particularly where lot 2 would be in two separate parts. Whilst this may not be an issue in some cases, it is a further erosion of the practical useability of this land and there are no tangible or demonstrated agricultural benefits flowing from such a subdivision.</p> <p>45 It is also noted that the existence of a section 173 agreement to which a permit application runs contrary is not an automatic 'cross' against a proposal. A section 173 agreement is not a restriction in the same way a restrictive covenant is considered under the Planning and Environment Act 1987 and is therefore not subject to the provisions under that legislation, such as sections 60(2) or 60(5).</p>
<u>Jindivick Pty Ltd v Baw Baw SC [2022] VCAT 943</u> <i>J A Bennett, Senior Member</i>	RLZ DCPO1	Council decision set aside, permit amendment granted	<p>Request to remove condition 9 requiring payment of a 5% public open space contribution.</p> <p>7 Despite the lack of physical evidence, I also agree with Mr Haydon that the Local Government Act 1958, which was the operative legislation at that time, makes it clear at section 569B (10) that:</p> <p style="padding-left: 40px;">The sealing of a plan of subdivision shall be conclusive evidence for all purposes that there has been compliance with this Act with respect to such sealing and that all preliminary steps and proceedings required to be taken in connexion therewith have been duly and properly taken.</p> <p>8 On the basis that the Buln Buln SC sealed the plan of subdivision, I consider that conclusive evidence that a cash contribution was made as set out in the Shire Secretary's letter dated 3 November 1976.</p>

## Agricultural Use

Citation	Zones, Overlays	Outcome	Summary
<u>Jorgensen v Moorabool SC [2022] VCAT 355</u> <i>Susan Whitney, Member</i>	FZ ESO1 DDO2	Council decision set aside,	Use and development of the land for the purpose of <b>dog breeding</b> (10 breeding dogs).

	BMO	permit granted	<p>55 Whilst it might be regarded that Dog breeding is not a conventional form of agriculture, it remains nested within the land use term “Agriculture” for the purposes of the Scheme. As such, the proposed use of the Land in the FZ for a form of agriculture is consistent with the purposes of the FZ that include to provide for the use of land for agriculture.</p> <p>65 In this regard, I found the expert evidence of Mr Henderson to be persuasive. I say this having regard to his methodology, assumptions, analysis and recommendations. Having considered his evidence and the cross examination, I am satisfied that there is a low likelihood of adverse noise impacts being experienced by surrounding residential properties as a consequence of the proposed operation, provided that the proposed and recommended physical and operational noise attenuation measures are implemented. Whilst these physical and operational measures are detailed I do not regard them as cumbersome, unrealistic or unachievable.</p>
<p><u>Sutton v Moira SC</u> [2022] VCAT 440 <i>Tracey Bilston-McGillen,</i> <i>Presiding Member</i> <i>Claire Bennett, Member</i></p>	FZ LSIO RFO SCO	Council decision varied, permit granted	<p>Use and Development – Intensive Dairy Farm</p> <p>1 The Moira Shire Council (Council) issued a Notice of Decision to Grant a Planning permit (NOD) for the use and development of an Intensive Dairy Farm at XXX. ....It was put by Mr Sutton and Ms Metaxas that they support the proposed development and grant of a permit but raised a number of concerns including odour, flies, groundwater and the matter of landownership. They further requested additional conditions to be included on any permit issued...</p> <p>2 The permit applicant submitted that a permit should be granted subject to conditions, noting that the conditions as drafted by the Council could be improved. The applicant put to us that (the family) have been farming the land in some form or another, for around 100 years. .... The proposal as described by the applicant, is to establish a free-stall dairy system on the land over three stages (10 years) involving the construction of three barns (open sheds) and ancillary infrastructure including a milking shed and maternity barn....</p>
<p><u>Robinson v Yarra Ranges SC</u> [2022] VCAT 775 <i>Ian Potts, Senior Member</i></p>	GWZ SLO7 LSIO BMO	Council decision set aside, permit amended	<p>An existing dog breeding enterprise operates from the subject land. An application was made to increase the number of breeding female dogs that could be held on the land. The application also sought to retrospectively permit various buildings and works associated with the dog breeding activity that had been developed but for which no plans had been endorsed under the permit.</p>
<p><u>Kutukoff v Cardinia SC</u> [2022] VCAT 854 <i>T Bilston-McGillen,</i> <i>Member</i></p>	RCZ LSIO	Council decision upheld, no permit granted	<p>Use and development of the land for Domestic Animal Husbandry (breeding dogs).</p> <p>3 Council refused the application on six grounds. These were grouped into issues namely zoning and policy provisions, off-site amenity impacts and compatibility with surrounding land uses and orderly and proper planning for the area.</p> <p>8 This case is not decided on whether or not there are current noise complaints. The planning scheme is not set up for uses or development to commence and then apply for a planning permit at a later date. Despite the fact that</p>



			<p>Council Officers did not request further information including an acoustic report and management plan, I am not satisfied that the proposed use would not have an impact on adjoining properties, particularly in light of lack of any assessment. I consider the amenity considerations require a fulsome consideration and require such information and detail.</p> <p>12 It was confirmed that Council environmental officers had not assessed the proposed development but Council planning officers imposed draft conditions requiring a Land/Animal Management Plan to detail amongst other reasons how effluent disposal will be managed.</p>
<p><u>Grimes v Macedon Ranges SC [2022] VCAT 1163</u> <i>Sarah McDonald, Member</i></p>	<p>RCZ BMO ESO5 VPO9</p>	<p>Council decision varied, permit granted</p>	<p>Amend the existing planning permit that allows the use of the land as a <b>winery</b> and construction and use of a wine tasting area.</p> <p>The proposed amendments to the permit includes alterations to an existing building, alterations to the 'red line' liquor licence area, alterations to the car parking area, and an extension of the hours of operation.</p>
<p><u>52 Boundary Road Pty Ltd v Yarra Ranges SC [2022] VCAT 1325</u> <i>Dalia Cook, Member</i></p>	<p>GWZ</p>	<p>Council decision set aside, permit granted</p>	<p>Buildings and works for outbuildings (<b>horticultural structures</b>) and Rural store; and Use of land for <b>Rural store</b></p> <p>11 The use of land for Agriculture does not require planning permission in the Green Wedge Zone. Therefore, the use of the proposed greenhouses is not in contest.</p> <p>12 The only relevant consideration is the appropriateness of the development, which raises questions about siting, design and the like.</p> <p>102 The planning scheme seeks a balance between the scenic values of this land and its use for agriculture. I consider that the proposed structures have been suitably designed and sited to strike an acceptable balance.</p> <p>103 However, I do not support the retention of the existing fencing on the side and rear boundaries and have refused to grant such permission.</p>
<p><u>Melbourne Hunt Club Inc v Wellington SC [2022] VCAT 1470</u> <i>Dalia Cook, Member</i></p>	<p>FZ</p>	<p>Declaration made</p>	<p>The proposed use of the subject land by Melbourne Hunt Club Inc for keeping up to 30 foxhounds is characterised as Animal husbandry for the purpose of Clause 35.07 of the Wellington Planning Scheme.</p>
<p><u>Cheviot Wine Group Pty Ltd v Mornington Peninsula SC [2022] VCAT 1474</u> <i>Karina Shpigel, Member</i></p>	<p>GWZ ESO28 ESO17 ESO10 VPO SLO1 SLO3 SLO6 EMO1 BMO</p>	<p>Declaration refused</p>	<p>2 The applicant has made an application for a declaration under section 149A of the Planning and Environment Act 1987 that:</p> <p>An existing use right is established in relation to the use of that part of the land at 53 Shoreham Road Red Hill South marked on the sub-lease between Ideal Catering Services Pty Ltd and Cheviot Wine Group Pty Ltd dated 7 October 2013 as Area C (but not including Area C1) for the purpose of "cellar door sales".</p>

## Other Use

Citation	Zones, Overlays	Outcome	Summary
<u>Melbourne Karen Buddhist Association v Moorabool SC (Corrected) [2022] VCAT 76</u> <i>Tracey Bilston-McGillen, Member</i>	FZ DDO2 BMO	Council decision varied, permit granted	Place of assembly
<u>Nguyen v Greater Bendigo CC [2022] VCAT 101</u> <i>K Birtwistle, Member</i>	RLZ ESO1	Council decision upheld, no permit granted	Place of assembly
<u>PRB Nominees Pty Ltd v Indigo SC [2022] VCAT 161</u> <i>Frank Dawson, Member</i>	FZ ESO3 HO108 HO816	Council decision set aside, permit granted	To use the land for the purpose of a function centre.
<u>KJR Investments Pty Ltd v Bass Coast SC [2022] VCAT 191</u> <i>Laurie Hewet, Senior Member</i> <i>Christopher Harty, Member</i>	FZ ESO1 SLO2	Council decision upheld, no permit granted	The use and development of land for a camping and caravan park, removal of vegetation, the creation of an access to Phillip Island Road, construction of a caretaker's residence and erection and display of a floodlit business identification sign.
<u>Bauer v Nillumbik SC [2022] VCAT 227</u> <i>Jeanette G Rickards, Senior Member</i>	RCZ3 ESO1 BMO	Council decision varied, permit granted	Amendment to existing Permit 391/2003/01P for use of land for an art and craft centre, buildings and works for associated paving and outbuilding, and a reduction in the required number of car spaces.
<u>Fox v Mildura Rural CC [2022] VCAT 284</u> <i>Ian Potts, Senior Member</i>	FZ SCO	Council decision set aside, no permit granted	Proposal for service station at Red Cliffs
<u>Warren v Campaspe SC (Corrected) [2022] VCAT 464</u> <i>Alison Slattery, Member</i>	FZ SCO2 LSIO	Council decision set aside, no permit granted	The site is proposed to be used as a target shooting range including trap, skeet, and simulated field shooting.
<u>Myers v Southern Grampians SC (Red Dot) [2022] VCAT 695</u> <i>Joel Templar, Member</i>	RLZ ESO3 DDO6	Council decision varied, permit granted	Use and development of the land for <b>Group Accommodation</b> . The decision is of interest because it addresses the following two important related matters – 1. The extent of the Tribunal's jurisdiction in an application for review under s.82(1) of the Planning and Environment Act 1987 (the Act) having regard to s.82(3) of the Act.

			2. The extent to which a matter exempted from notice and review under s.82(3) of the Act is relevant to the Tribunal's consideration of a review application commenced under s.82(1) of the Act.
<u>Truc Lam Tu An Zen Monastery Vietnamese Zen Buddhism Pty Ltd v Macedon Ranges SC</u> [2022] VCAT 746 <i>Sarah McDonald, Member</i>	FZ ESO4	Council decision upheld, no permit granted	Use and development of a Restricted Place of Assembly (meditation retreat centre) and display of business identification signage.
<u>Nolle v Ballarat CC</u> [2022] VCAT 874 <i>Ian Potts, Senior Member</i>	RLZ ESO1 FO LSIO	Council decision set aside, permit granted	Whether nano-brewery and cider production <b>rural industry</b> . Characterisation of land use. Proposal includes function centre for tastings. Potential for amenity impacts to adjoining properties considered. Whether agricultural uses are acceptable. Whether site is suitable for agricultural uses.
<u>M J De Frutos Nominees Pty Ltd v Hume CC (Red Dot)</u> [2022] VCAT 890 <i>Geoffrey Code, Senior Member</i>	GWZ ESO1 MAEO2 PAO3	Application struck out	In this case, the dispute concerned the approval of a geotechnical report under a condition of a permit relating to the rehabilitation of a former quarry.  This decision is a Red Dot Decision because:  (a) it is a reminder that the Tribunal will not grant a poorly drafted consent order and that parties need to carefully prepare a consent order request, and  (b) it illustrates how a poorly drafted consent order request can lead to the widening of a dispute or the emergence of a new dispute.
<u>Parklea Developments Pty Ltd v Strathbogie SC (Red Dot)</u> [2022] VCAT 938 <i>Jeanette G Rickards, Presiding Senior Member</i> <i>Megan Carew, Member</i> <i>Claire Bennett, Member</i>	FZ PPRZ FO	Council decision upheld, no permit granted	Proposed Camping and caravan park on backwater of the Goulburn River, Nagambie  The decision outlines the relevant environmental policy considerations at paragraphs 57-67, including the requirement to consider both the onsite impacts and the site surround impacts, with consideration of those environmental impacts at paragraphs 80-138. The decision specifically considers the core riparian zone at paragraphs 91-108.
<u>Calibre Sport Inc v Mitchell SC</u> [2022] VCAT 948 <i>Ian Potts, Senior Member</i> <i>Tracy Watson, Member</i>	FZ VPO1 DPO6 EMO	Council decision set aside, permit amendment granted	Calibre Sports Inc conducts sports hand gun (pistol) shooting at an existing open air shooting range on land associated with the State Motor Sports Complex at Broadford. This is conducted under an existing planning permit. That permit contains conditions which limit the number of shooters on the land to 120 at any one time and limits the number of days for shooting. Calibre Sports seeks to amend these conditions to allow for 180 shooters and 7 days a week operation.
<u>Margetts v Mornington Peninsula SC</u> [2022] VCAT 977 <i>Michael Deidun, Member</i>	GWZ ESO15 ESO23 BMO	Council decision varied, permit granted	Use and development of a <b>leisure and recreation facility</b> (hot springs) and ancillary restaurant (café), which requires the removal of native vegetation and the sale and consumption of liquor.
<u>Contra Constructions Pty Ltd v Greater Geelong CC</u> [2022] VCAT 986	FZ	Council decision upheld, no	The proposal is to establish a <b>resort</b> comprising: a 110 bed hotel, a function centre to accommodate 100 people, restaurant to accommodate 100 people, vineyard cellar door, 'wellness centre' and art gallery space. The resort

<i>Alison Glynn, Member</i>		permit granted	includes associated car parking, located under the buildings and a driveway access that connects to the east side of the building, out to Tower Road.
<u>Curie v Mornington Peninsula SC [2022] VCAT 1052</u> <i>S P Djohan, Member</i>	GWZ ESO1	Council decision varied, permit granted	Use of land for the purpose of an <b>equine veterinary centre</b> (for up to ten onsite client visits per week) and display of signs and associated works.
<u>M J De Frutos Nominees Pty Ltd v Hume CC [2022] VCAT 1063</u> <i>Jeanette G Rickards, Senior Member</i> <i>Greg Sharpley, Member</i>	GWZ ESO1 PAO3	Council decision set aside, permit amendment not granted	<b>Landfill</b> Amendment to Permit P1488.02 seeking to increase the capping contours and maximum capping height to 184 m above sea level and a variable decrease in the perimeter or 'toe' contour of the cap at the boundary with the adjoining site to enable independent completion of the landfill capping obligations in a timely manner without reliance on the abutting property at 40 Batey Court.
<u>Hallows v Corangamite SC (Corrected) [2022] VCAT 1111</u> <i>Alison Slattery, Presiding Member</i>	RCZ ESO1	Council decision upheld, no permit granted	Use and development of the site for a <b>group accommodation</b> facility and associated buildings and works. Removal of native vegetation.
<u>Mark's Country Place Ltd v Macedon Ranges SC [2022] VCAT 1131</u> <i>Laurie Hewet, Senior Member</i>	FZ ESO4	Council decision set aside, permit granted	Use and Development of the land for <b>Outdoor Recreation Facility</b> (Community Recreational Space) and Display of Business Identification Signage
<u>Pared Victoria Ltd trading as Lysterfield Lake College v Casey CC [2022] VCAT 1136</u> <i>Michael Nelthorpe, Member</i>	GWAZ4 SLO1 BMO	Council decision upheld, no permit granted	A faith-based <b>school</b> of 239 students and 22 staff developed over two stages.
<u>Green Wedge Guardians Alliance Inc v Hume CC [2022] VCAT 1168</u> <i>Laurie Hewet, Senior Member</i> <i>Katherine Paterson, Member</i>	GWZ MAEO2	Council decision set aside, no permit granted	Use and development of the site for a <b>market and plant nursery</b> .
<u>Guillot v Macedon Ranges SC [2022] VCAT 1205</u> <i>Alison Glynn, Member</i>	RLZ	Council decision varied, permit granted	Development and then use of a <b>Store</b> (caravan and boat storage facility)
<u>Port Phillip Holdings Pty Ltd v Mornington Peninsula SC [2022] VCAT 1219</u> <i>Christopher Harty, Member</i>	GWZ3 ESO6 ESO17 ESO19 ESO28 VPO2	Council decision set aside, permit extended	2 This matter involves an application ..... seeking a review by the Tribunal of a decision by Mornington Peninsula Shire Council (Council) to refuse to grant an extension of time to complete the development allowed under Planning Permit No. XX.

	SLO3		<p>4 The permit was originally issued on 3 January 2007 by direction from the Tribunal ..... The permit now allows (as amended on 16 October 2007) for:</p> <p>The development and use of the land for a holiday resort incorporating a winery, a function centre, a restaurant, an 80 room residential hotel, a 472 site caravan and camping park and a golf driving range (including, the removal of vegetation, access to a road zone, the sale and consumption of liquor and the car parking requirement for the restaurant and function centre).</p>
<p><u>Dandenong South Land Holdings Pty Ltd v Greater Dandenong CC [2022] VCAT 1237</u></p> <p>Claire Bennett, Presiding Member</p> <p>Peter Gaschk, Member</p>	FZ UFZ LSIO Within UGB	Council decision set aside, permit granted	Use and development of the land for two (2) warehouses, removal of native vegetation and a reduction in car parking.
<p><u>O'Hare v Mitchell SC [2022] VCAT 1272</u></p> <p>Bill Sibonis, Senior Member</p> <p>Phil West, Member</p>	FZ	Council decision upheld, no permit granted	<p>Development and use of a 'Restricted Recreation Facility (Drift Training Facility)'.</p> <p>3 Consistent with the recommendation of its planning officer, the Council determined to refuse a permit on grounds which refer to matters of policy, inconsistency with the FZ, amenity impacts (noise, air, dust and odour emissions) visual impacts, no net community benefit, and non-compliance with the decision guidelines at clause 65.01.</p>
<p><u>Kapitany v Casey CC [2022] VCAT 1354</u></p> <p>Peter Gaschk, Member</p>	GWAZ	Council decision set aside, permit granted	Use and development of the land as an Exhibition Centre
<p><u>Prosperity Park Pty Ltd v Mount Alexander SC [2022] VCAT 1398</u></p> <p>Tracy Watson, Member</p>	FZ ESO1	Council decision set aside, permit granted	It is proposed to use and develop the subject site with a <b>Service Station</b> , with two access points, and associated vegetation removal.
<p><u>De Vires v Greater Geelong CC [2022] VCAT 1430</u></p> <p>Shiran Wickramasinghe, Member</p>	FZ	Council decision upheld, no permit granted	Use of the land for the purpose of a contractor's depot.

## Buildings and Works

Citation	Zones, Overlays	Outcome	Summary
<p><u>Alfred v Nillumbik SC [2022] VCAT 107</u></p> <p>Michael Deidun, Member</p>	RCZ3 BMO ESO1	Council decision varied, permit granted	<p>Outbuilding in a Rural Conservation Zone</p> <p>9 I find that the proposed outbuilding is an appropriate response to the guidance from the Nillumbik Planning Scheme, and the physical attributes of the site and surrounding area.</p>



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<p><u>Ashlyn Springs Pty Ltd v Yarra Ranges SC [2022] VCAT 190</u> <i>Margaret Baird, Senior Member</i></p>	<p>RLZ ESO1 LSIO</p>	<p>Council decision set aside, permit granted</p>	<p>Buildings and works to construct a fence. The 1.8 metre high black chain mesh boundary fence is proposed to delineate between private property, other properties and public land. The fencing is designed to limit harm to wildlife and includes large gaps to allow for wildlife movement. The fencing will supplement some other fencing associated with the site and on common boundaries with adjacent properties.</p>
<p><u>Lamaro v Yarra Ranges SC [2022] VCAT 229</u> <i>Frank Dawson, Member</i></p>	<p>GWAZ EMO1 BMO</p>	<p>Council decision upheld, permit granted</p>	<p>Buildings and works to construct a roof over a horse menage.</p>
<p><u>Oliver v Moyne SC [2022] VCAT 397</u> <i>Christopher Harty, Presiding Member</i> <i>Phil West, Member</i></p>	<p>FZ SLO6</p>	<p>Council decision set aside, permit granted</p>	<p>To construct a single 5.1 kilowatt domestic wind turbine.</p>
<p><u>Nethercott v Mornington Peninsula SC [2022] VCAT 403</u> <i>Frank Dawson, Member</i></p>	<p>GWZ ESO11 ESO17 ESO28 VPO2</p>	<p>Council decision varied, permit granted</p>	<p>Shed and tank construction The proposed shed is associated with the existing approval on the land, being for the development of a single dwelling in association with animal husbandry, crop raising, ancillary gate sales and associated works. The shed has been stated (within application documents) as for dry/hay storage and directly associated with the agricultural uses on the land.</p>
<p><u>Curry v Nillumbik SC [2022] VCAT 420</u> <i>Frank Dawson, Member</i></p>	<p>RCZ3 ESO1 BMO</p>	<p>Council decision set aside, permit granted</p>	<p>Extension of an existing outbuilding.</p>
<p><u>Vu v Yarra Ranges SC [2022] VCAT 501</u> <i>Sarah McDonald, Member</i></p>	<p>GWAZ SLO1 BMO</p>	<p>Council decision set aside, application remitted</p>	<p>XXX (the applicant) sought a planning permit to undertake 'buildings and works to construct garden bed structures and associated earthworks' (the proposal) on the property at XXX (the review site). 6 The buildings and works have already been undertaken and the permit application seeks retrospective approval for them.</p>
<p><u>Earth Solutions Group Pty Ltd v Greater Dandenong CC [2022] VCAT 640</u></p>	<p>GWZ ESO3 VPO1</p>	<p>Council decision set aside, permit granted</p>	<p>Filling by placement of clean fill (soil) across three areas of the subject land is proposed. The method of filling requires stripping of topsoil, controlled placement and compaction of fill and replacement of topsoil.</p>
<p><u>Conte v Macedon Ranges SC [2022] VCAT 655</u> <i>Geoffrey Code, Senior Member</i></p>	<p>RCZ BMO</p>	<p>Council decision varied, permit granted</p>	<p>Construction of a shed</p>
<p><u>Nine in Six Builders Pty Ltd v Cardinia SC [2022] VCAT 924</u> <i>Tracy Watson, Member</i></p>	<p>GWAZ ESO1 BMO</p>	<p>Council decision set aside,</p>	<p>It is proposed to make alterations and additions to an existing dwelling and outbuilding.</p>

		permit granted	
<u>Hope v Yarra Ranges SC [2022] VCAT 957</u> <i>Tracy Watson, Member</i>	GWAZ BMO	Council decision upheld, no permit granted	The proposal is for buildings and works for the construction of an outbuilding.
<u>Japara Property Holdings Pty Ltd v Mornington Peninsula SC [2022] VCAT 1036</u> <i>Susan Whitney, Presiding Member</i> <i>Nicholas Wimbush, Member</i>	GWZ ESO1	Council decision set aside, permit granted	Buildings and works to construct accommodation and amenities associated with the existing use of the subject land as a nursing home along with removal of native vegetation.
<u>Calder v Rural City of Wangaratta Council [2022] VCAT 1381</u> <i>Peter Gaschk, Member</i>	FZ LSIO	Council decision upheld, permit granted	Construction of an agricultural building on the land in the Farming Zone and Land Subject to Inundation Overlay.

## Enforcement orders

Citation	Zones, Overlays	Outcome	Summary
<u>Mornington Peninsula SC v Smith [2022] VCAT 241</u> <i>Karina Shpigel, Member</i>	GWZ ESO15 ESO23 ESO28 VPO2 SLO3 BMO	Enforcement order made	2 The Mornington Peninsula Shire Council (Council) alleges the respondents' use and development of the land contravenes the Mornington Peninsula Planning Scheme (planning scheme) and they are seeking an enforcement order under section 114 of the Planning and Environment Act 1987 (PE Act). The Council is seeking enforcement orders specifically concerning the following uses and works: <ul style="list-style-type: none"> <li>• Use of the subject land for the purpose of 'Boat and caravan storage';</li> <li>• Use of the subject land for the purpose of a 'Store';</li> <li>• Use and development of the subject land for the purpose of a contractor's depot;</li> <li>• Carrying out earthworks on the subject land;</li> <li>• Constructing buildings and works on the subject land; and</li> <li>• Destruction and removal of native vegetation.</li> </ul>
<u>Baw Baw SC v Walsh [2022] VCAT 833</u> <i>Juliette Halliday, Member</i>	FZ DCPO1 ESO2 EMO	Enforcement order allowed in part	Use of land for <b>Accommodation</b> 30 A permit cannot be granted in the Farming Zone to use the land for the type of accommodation for which the land has been used in this case, being short-term rental accommodation by visitors, away from their usual place of residence, because this type of accommodation is prohibited in the Farming Zone, for the reasons I have explained above. It follows that I find that the use of the land for short-term rental accommodation by visitors, away from their usual place of residence contravenes clause 35.07-1 of the Scheme. To the extent that the respondent

			has used the land as a 'dwelling' when she stayed at the cottage from time to time, this would also contravene clause 35.07 of the Scheme, given that no planning permit exists for the use and development of the land for a 'dwelling'.
<u>Yarra Ranges SC v Borg [2022] VCAT 1211</u> <i>Juliette Halliday, Member</i>	GWZ SLO6 BMO ESO1	Enforcement order allowed	2 Council says that the respondent has extended a shed and built outbuildings and a fence without a permit, has placed a shipping container on the site and that she has used the site to store items including vehicles, vehicle parts, scrap building materials and other waste.
<u>Whittlesea CC v Woods [2022] VCAT 1287</u> <i>Judith Perlstein, Member</i>	GWAZ	Enforcement order allowed	3 On 6 September 2013, Planning Permit No. 714258 (permit) was issued for development and use of the land for a dwelling and water tank in accordance with endorsed plans. Condition 1 of the permit provided as follows:  Within three (3) months of a certificate of occupancy having been issued for the proposed dwelling, the existing dwelling must be removed entirely from the site.  5 The original dwelling was not removed within three months of 13 December 2014 and remains on the land.