

Agriculture Victoria Planning and Advisory Service

April 2024 edition: VCAT cases from January to March 2024

This update includes VCAT cases from January to March 2024. It provides council officers a summary of recent 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>Shetland Heights West Pty Ltd v Bass Coast SC [2024] VCAT 1</u></p> <p><i>Mary-Anne Taranto, Member</i></p>	<p>FZ SLO1</p>	<p>Council decision upheld, no permit granted</p>	<p>Dwelling in association with Angus beef cattle grazing on 36.65 hectares.</p> <p>108 I asked both experts on agricultural related matters whether it is necessary to locate the dwelling in the position proposed in order to effectively oversee the intended farming activities. Both agreed that it is not. While identifying benefits and disbenefits with the proposed location, they also concur that there are potential site security related benefits in locating the dwelling closer to the street.</p> <p>145 Overall, I find that the visual impacts of the dwelling and proposed earthworks would not produce an acceptable outcome when tested against the various provisions and decision guidelines of the SLO1, FZ and planning scheme policies.</p> <p>173 On balance, I find that while there are some the benefits to be gained by allowing a dwelling use on the review site, these are limited and would be considerably outweighed by the dwelling's broad ranging and longer lasting disbenefits – in terms of its visual impacts on the landscape and on agricultural values.</p>
<p><u>Mizzi v Macedon Ranges SC [2024] VCAT 19</u></p> <p><i>Jane Tait, Member</i></p>	<p>FZ</p>	<p>Council decision varied, permit conditions amended</p>	<p>Construction of a second dwelling and development of an outbuilding. The subject site is 3.27 hectares..... contains paddocks and is used for horse husbandry.</p> <p>Conditions deleted or amended in relation to requirement for a Section 173 agreement, related to:</p> <ul style="list-style-type: none"> • No further subdivision • Restriction on who can use the dwelling • Acknowledge and accept the possibility of nuisance from adjoining or nearby agricultural operations may occur <p>Condition deleted relating to:</p> <ul style="list-style-type: none"> • Consolidation of lots

<p><u>Wood v Mornington Peninsula SC [2024] VCAT 87</u> Joel Templar, Member</p>	<p>GWZ VPO1 ESO10 ESO17 ESO28 BMO SLO1 SLO6 EMO1</p>	<p>Council decision set aside, no permit granted</p>	<p>The review site is located on the southern side of Tucks Road..... an overall area of 4.323 hectares.... The site is currently variously occupied by vineyards, an olive grove plantation, the creek and associated vegetation....</p> <p>34 The GWZ is not a residential zone and does not expressly encourage residential development. Whilst it neither discourages nor encourages residential development, it focusses on other outcomes being sought. However, other policy in the planning scheme discourages the development of small lots in rural areas from being developed for residential purposes, and seeks to protect agricultural land for productive agricultural purposes.</p> <p>46 In this case, whilst there may be some merit to the argument about the minimal loss of productive agricultural land, I think this has been overstated as part of the respondents' case and takes too narrow a view about the impact the establishment of a dwelling can have from an agricultural perspective.</p> <p>47 The establishment of a dwelling on land that is identified as productive agricultural land effectively removes the site from being a transferable commodity at agricultural values, rather, assigns residential land values which inherently raises the value of the land beyond that which is ascertainable for agricultural production.</p>
<p><u>Kelly v Casey CC [2024] VCAT 218</u> Michael Deidun, Member</p>	<p>GWAZ BMO HO35 SLO1</p>	<p>Council decision upheld, no permit granted</p>	<p>The development of a Dependent persons unit, swimming pool and associated pool building, basketball court, carport and front fence, and the removal of vegetation.</p> <p>46 As I cannot support the impact on the significance or character of the heritage place, the extent of proposed built form, or the extent of vegetation that is sought to be removed, I will not proceed to assess the remaining elements of the proposal.</p> <p>49 At the hearing, and as confirmed in writing in a subsequent email, the Council consents to an order being made to reimburse the fees sought by the applicant. As such, I will order the reimbursement of fees by consent.</p>

Subdivisions

Citation	Zones, Overlays	Outcome	Summary
<p><u>Hoyle v Mildura Rural CC [2024] VCAT 44</u> Shiran Wickramasinghe, Member</p>	<p>FZ</p>	<p>Council decision upheld, no permit granted</p>	<p>Dwelling excision</p> <p>36 I have not been persuaded by the applicant that <i>allowing them to offload a productive piece of land</i> will necessarily lead to innovative and sustainable approaches to agricultural and associated rural land use practices. It was not demonstrated how this will (or may) occur. Further there was no submission with respect to how the sale of lot 1 will facilitate ongoing productivity and investment in high value agriculture. Therefore I am not persuaded the applicants submission that the proposal meets the Objective of clause 14.01-2S.</p>

			<p>39 Whilst there is a cluster of fragmented land to the north-west, the nearest site that has frontage to Wentworth Road (Calder Highway) is located approximately 272 metres from lot 1. I do not find the existence of these sites to provide sufficient justification to warrant support of the proposal in the context of my preceding findings against the proposal.</p>
<p><u>MV Napoleone & Co Properties Pty Ltd v Yarra Ranges SC [2024] VCAT 217</u> <i>Christopher Harty, Member</i></p>	<p>GWZ ESO1 SLO5 LSIO</p>	<p>Council decision upheld, no permit granted</p>	<p>Re-subdivision of two existing lots</p> <p>13 Of note for the proposal is the exception provided under Clause 51.03, and that both existing lots are already below the minimum lot size and the total land area of the site is around 8.4 hectares. Currently, the existing lots forming the site cannot be further subdivided to create an additional lot.</p> <p>69 In my view, this creates a risk where future occupants of the dwelling may expect greater amenity with a dwelling on an allotment used solely for residential purposes. Occupants of the dwelling may not like the activities that may occur on the surrounding farmland with noise from machinery, use of irrigation and sprays and tending to plants and harvesting all potentially leading to a perceived diminution of amenity expectations. This has the potential to disrupt and adversely impact on agriculture in this area.</p> <p>71 I am not persuaded that a permit should be granted that creates a small lot solely for an existing dwelling with the potential to create a land use conflict with agricultural activity. I accept that existing conflicts brought about by past planning decisions must be managed but the purpose of current planning policy is to avoid creating additional conflicts. The method of avoiding additional conflicts is clear in current planning policy. Existing agricultural uses are to be protected by avoiding the creation of distinctly rural-residential lifestyle properties nearby.</p>

Agricultural Use

Citation	Zones, Overlays	Outcome	Summary
None this quarter			

Rural Industry

Citation	Zones, Overlays	Outcome	Summary
<p><u>O'Neill v Hepburn SC [2024] VCAT 197</u> <i>Rachel Naylor, Senior Member</i></p>	<p>FZ ESO1 BMO SLO1 EMO</p>	<p>Council decision upheld, permit granted</p>	<p>To use and develop part of the site for the purpose of an abattoir.</p> <p>19 In the context of both this part of the site (Beacon Paddock) and the overall farm holding of 28.5 hectares, I am not persuaded the proposed building and works are of a size or scale that adversely impacts on the protection of high quality productive agricultural land for agricultural</p>

			<p>uses. Rather, the proposal is an example of facilitating rural land for a range of agricultural uses and compatible rural industrial uses.</p> <p>35 EPA's referral letter notes the threshold distance is not met when measured from the property boundary, but it states it is met from the activity area of the proposed abattoir. EPA refers to its Publication 1518 that identifies particular uses with a throughput of less than 200 tonnes per year and then EPA states this proposal is 'small scale' and 'no separation distances are required'. It also points out that Publication 1518 recommends there is no visible discharge of dust or emissions of odours offensive to the senses of human beings beyond the boundaries of the premises.</p>
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Other Use

Citation	Zones, Overlays	Outcome	Summary
<u>Collins v Greater Geelong CC [2024] VCAT 7</u> <i>Michael Deidun, Member</i>	FZ	Council decision upheld, no permit granted	Use and development of the land for a Restaurant, Function centre and Outdoor recreation facility (Children's farm)
<u>Williamson v Baw Baw SC [2024] VCAT 46</u> <i>Christopher Harty, Presiding Member</i> <i>Nick Wimbush, Member</i>	FZ BMO DCPO1	Council decision set aside, permit granted	Use and development of an airfield and construction of an office, toilet, and hangar.
<u>Khadem v Hume CC (Corrected) [2024] VCAT 61</u> <i>Ian Potts, Senior Member</i>	GWZ	Council decision set aside, permit granted	Use and development of an 8 hectare lot for a place of worship.
<u>Telstra Corporation Limited v Knox CC [2024] VCAT 74</u> <i>J A Bennett, Senior Member</i> <i>Katherine Paterson, Member</i>	GWZ ESO2 SLO1 BMO1 TRZ2	Council decision upheld, no permit granted	Construction of a telecommunications facility.
<u>Greco v Mansfield SC [2024] VCAT 91</u> <i>Tracy Watson, Member</i>	RLZ ESO2 BMO	Council decision set aside, no permit granted	It is proposed to reduce the width of an existing carriageway easement.
<u>Indara Infrastructure Pty Ltd v Yarra Ranges SC [2024] VCAT 109</u> <i>Alison Glynn, Member</i>	GWZ SLO5 BMO HO306 EMO	Council decision set aside, permit granted	Construction of a 43 metre high monopole with associated ground works and service equipment for a telecommunications facility.

	ESO		
<u>City of Casey v White</u> <u>[2024] VCAT 248</u> <i>S P Djohan, Senior Member</i>	GWZ2 BMO LSIO ESO4	Enforcement order allowed	Application for enforcement orders; unlawful earthworks and destruction of vegetation

A closer look...at the resources available for planners and applicants on the Agriculture Victoria website

<https://agriculture.vic.gov.au/farm-management/planning-and-farm-development>

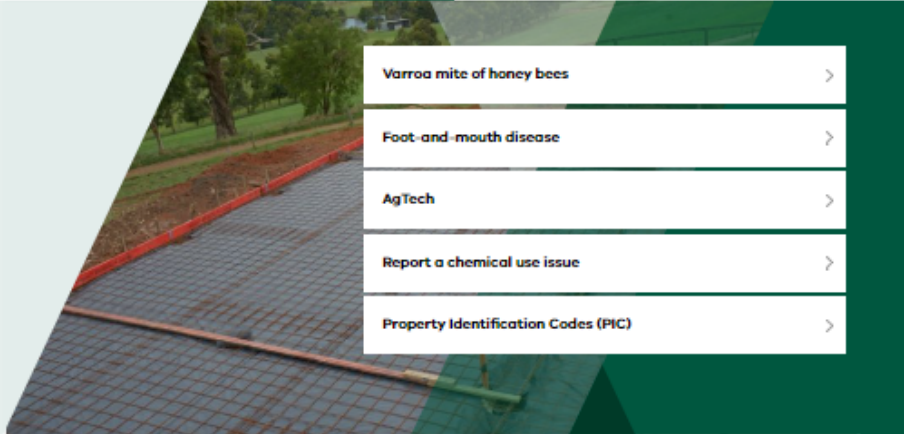
The Planning and Farm Development section of the Agriculture Victoria website contains a number of resources for planners and applicants. Of note, the page contains;

- Service offer and contact details for the Agriculture Victoria Planning and Advisory Service
- Navigating Farm developments – a tool to help farmers and advisors to identify planning and other requirements related to farm development projects.
- A collection of eGuides for planners and applicants on planning for Agricultural developments, including:
 - Farm Management Plans to support a planning application for the primary use of the land for Agriculture
 - Animal production land use terms in the Victoria Planning Provisions for council planners
 - Animal production land use terms in the Victoria Planning Provisions for farmers and farm advisors
 - How to use Navigating Farm Developments
 - Planning Pathways for Poultry Farms
 - Planning Pathways for Pig Farms
- The full catalogue of VCAT updates impacting Rural zoned land.



Planning and farm development

Service, information and tools to help farmers and planners understand agricultural land use planning in Victoria.



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- > **Planning and farm development**
 - > [Ag Vic Planning and Advisory Service](#)
 - > [Information for applicants](#)
 - > [Information for planners](#)
 - > [NFD Glossary](#)
 - > [Navigating farm developments - online planning tool](#)
 - > [VCAT updates](#)
 - > [eGuides - Planning and farm development](#)
 - > [Engage Victoria public consultation](#)
 - > [Prepare](#)
 - > [Property Identification Codes \(PIC\)](#)
 - > [Soil](#)
 - > [Water](#)

Agriculture Victoria Planning and Advisory Service

This service assists planners and farmers navigate Victoria's planning system for agricultural land use planning applications.



Information for applicants

Information and resources to help applicants on planning requirements for agricultural land use.



Information for planners

Information and resources to assist planners and other authorities on planning requirements for agricultural land use.



NFD Glossary

This glossary may assist in understanding technical terms used in NFD.



Navigating farm developments – online planning tool

This online tool helps farmers and their advisors identify planning and other requirements related to farm development projects.



VCAT updates

Quarterly summary of VCAT cases impacting Rural zoned land.



eGuides – Planning and farm development

Short guides for farmers and planning officers on planning and agriculture land use topics.



Engage Victoria public consultation

Consultation on proposed new planning regulations is now open.



We acknowledge the traditional Aboriginal Owners of Country throughout Victoria, their ongoing connection to this land and we pay our respects to their culture and their Elders past, present and future.