

Agriculture Victoria Planning and Advisory Service

VCAT Decisions that impact Rural zoned land

July 2025 edition: VCAT cases from April to June 2025

This update includes VCAT cases from April to June 2025. It provides council officers with 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
<u>Ritchie v Bass Coast SC [2025] VCAT 292</u> <i>Susan Whitney, Member</i>	RLZ1 DPO1	Council decision set aside, permit granted	26 The parties differ in how they say the RLI Development Plan applies to the Land 35 ... the applicant submits that the Council's role in the approval of creation of the Land (through approving the plan of subdivision) prevents the Council from now asserting that the proposal is inconsistent with the RLI Development Plan and the DPO1.... 128c What is the effect of the registration of PS524032Q? The effect of section 13 of the Subdivision Act is that the certification of both PS524032Q and PS502616L by the Council may be relied upon by the applicant as conclusive evidence that the provisions of the Subdivision Act have been met in relation to PS524032Q and PS502616L.
<u>Vella v Mount Alexander SC [2025] VCAT 348</u> <i>Christopher Harty, Member</i>	FZ ESO1	Council decision set aside, permit granted	37 I find the proposal is for a second dwelling. The proposal does not introduce residential use on the site. It already occurs. I accept that the proposal results in intensification of residential use in a rural setting. However, this is adjacent to a settlement boundary and in an area that Council accepts has little value for agriculture.
<u>Matotek v Mildura RCC [2025] VCAT 338</u> <i>Sarah Porritt, Member</i>	FZ DCPO SCO1	Application struck out	9 For the reasons set out below, I have concluded that the application is prohibited and have struck the matter out on the basis that the Tribunal has no jurisdiction to grant a permit.
<u>WestWind Energy Development Pty Ltd v Buloke SC [2025] VCAT 289</u> <i>T Bilston-McGillen, Member</i>	FZ VPO	Council decision set aside, no permit granted	6 In making a decision on this matter, I make the observation that this is an application for a dwelling in a particular location on a site that is 129 hectares in size. The review site is relatively large and whilst it is wholly within one kilometre of the proposed Wilkur Energy Park (discussed later), it may be that a house located in alternate location on the site, together with mitigation works to avoid potential issues of noise and shadow flicker, may result in an acceptable outcome. ...
<u>Reandrew Investments Pty Ltd v Greater</u>	FZ	Council decision set	2 ... the Tribunal directs that a certificate of compliance must be issued. ... as follows:

<u>Geelong CC [2025] VCAT 386</u> <i>S P Djohan, Senior Member</i>	LSIO	aside, certificate of compliance to be issued	(a) ... (b) The certificate refers to: The use of land for three dwellings. The land has existing use rights for three dwellings. Proof of continuous use of the land for three dwellings has been established pursuant to clause 63.11 of the Greater Geelong Planning Scheme. Therefore, the use of the land for three dwellings complies with the requirements of the Greater Geelong Planning Scheme as at 2 May 2025.
<u>Strachan v LaTrobe CC [2025] VCAT 389</u> <i>Shiran Wickramasinghe, Member</i>	FZ BMO	Council decision varied, permit granted	48 The submission of the applicant that the farming enterprise and the benefits that derive from them could be realised without a dwelling being constructed are acknowledged. However, I am not persuaded that it means a dwelling should not be permitted where there is sufficient nexus between the proposed dwelling use and the farming enterprise. I am satisfied the provision of a dwelling on the site will facilitate the establishment of the proposed farming enterprise. This outcome is consistent with the FZ2 zoning of the land that seeks to provide for the use of land for agriculture.
<u>Pethybridge v Moorabool SC [2025] VCAT 431</u> <i>Katherine Paterson, Member</i>	RCZ BMO DDO2	Council decision varied, permit granted	3 I find that the development of a dwelling and consequential removal of vegetation on this site is acceptable having regard to the planning policy framework, the purposes and decision guidelines of the RCZ and decision guidelines of Clause 52.17. I have therefore determined that a planning permit should be granted.
<u>Bliss v Mornington Peninsula SC [2025] VCAT 513</u> <i>Jane Tait, Member</i>	GWZ ESO17 ESO10 ESO28 EMO1 SLO6 VPO2	Council decision affirmed, permit granted	41 I am satisfied the FMP demonstrates that there is a nexus between the agricultural use of the land for horse agistment and use and development of the dwelling. This document includes adequate information about the proposed use, such details of projected stock numbers, proposed infrastructure, soil type and pasture management, dams and drainage, grazing management, capital investment and property suitability.
<u>Jennings v Cardinia SC [2025] VCAT 567</u> <i>K Birtwistle, Member</i>	RCZ ESO1 BMO	Council decision affirmed, no permit granted	11 Having considered all the submissions and evidence, the extensive range of State and Local Planning Policies that apply and inspected the review site and its immediate locality I am of the opinion that the key issues in this proceeding are: <ul style="list-style-type: none"> • Is the proposal consistent with planning policy and the purpose and decision guidelines of the Rural Conservation Zone? • Is the extent of vegetation removal and modification acceptable? • Is the bushfire risk appropriately managed? 16 On balance, I have determined that the proposal will not result in an acceptable outcome in the context of the planning scheme provisions. I find that the development of a dwelling and consequential removal of vegetation on this site is not acceptable having regard to the planning policy framework, the purposes and decision guidelines of the RCZ and ESO.
<u>DeMaria v Mildura Rural CC [2025] VCAT 564</u>	FZ	Council decision	2 The review site is located within the Mildura Older Irrigation Area ('MOIA') and within the Specific Controls

<i>Peter Gaschk, Member</i>	DCPO2 SCO1	affirmed, no permit granted	<p>Overlay, Schedule 1 ('SCO1'). The proposal must therefore also satisfy the permit requirements for dwellings as set out within the MOIA, Incorporated Document, October 2023 of the Scheme.</p> <p>39 I do not support the proposed siting of the sole dwelling towards the rear of the site. I agree with council that placing the proposed dwelling to the rear has the potential to compromise the agricultural potential of the subject land. It also has potential to adversely impact the viability of surrounding existing agricultural activities occurring on adjoining land.</p> <p>46 For example, in the context of the FZ purposes that amongst other matters, supports the ongoing agricultural activity on the review site (see highlighted zone purposes above), the applicants have not provided any technical evidence that confirmed the status of the existing irrigation infrastructure, or whether that infrastructure required upgrade or replacement. Nor was any economic evidence provided with the application that dealt with the overall costings of any infrastructure upgrade that would lead me to a conclusion the replacement of this infrastructure would be cost prohibitive. Additionally, I was not provided with any cost-benefit analysis that would substantiate the costs and timeframes for this upgrade/replacement work in the short to medium term (if indeed this was required within these timeframes). Such evidence would have been very helpful to the Tribunal. I find this omission is fatal to this proposal.</p>
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A Closer look....one that was missed

A decision that was missed when it was published, but a well written decision that highlights the protection of agricultural land and importance of strong local policy.

Citation	Zones, Overlays	Outcome	Summary
<u>Brusamarello v Bass Coast SC [2024] VCAT 916</u> <i>Donna D'Alessandro, Member</i>	FZ	Council decision affirmed, no permit granted	<p>The review site contains two separate lots. The land is currently used for cattle grazing, and has a combined area of approximately 26.7 hectares..... the two lots are divided by an unmade government road ...which has a lease for grazing purposes.</p> <p>3 The applicant has recently been granted a planning permit ... to establish a Low Density Mobile Outdoor Poultry Farm ('poultry farm') on the land. During the hearing, the applicant confirmed that a number of relevant conditions on that permit have not been satisfied (i.e. endorsed plans or reports) nor has the land been prepared to commence the use authorised under that permit.</p> <p>4 The applicant asserts that the proposed poultry farm use requires a 24-hour human presence on the land for a range of reasons ...</p> <p>44 While I have no doubt that activities associated with the poultry farm require careful oversight (as would most farming operations), I am not persuaded by the evidence before me that it requires the farm managers to live on the land, albeit it may be more convenient. Noting that the</p>

			<p>nearest township of Wonthaggi is a short drive from the review site, it is entirely possible that the farm manager could reside elsewhere and attend the site twice a day to open and close the mobile shed/s and undertake other management responsibilities such as egg collection.</p> <p>45 The Scheme (particularly Clauses 02.03-4 – Natural Resource Management, 02.03-6 – Housing, 11-01-1S – Settlement, 11-01-1L-01 – Settlement and 11.03-3S - Peri-urban areas), all set a primary objective to reinforce settlement boundaries by discouraging housing development and urban growth beyond established townships. The policy recognises the importance of this strategy to avoid urban sprawl, specifically the expansion of isolated rural living allotments, in order to protect agricultural land.</p> <p>47 At a local level, Council acknowledges the threat of new dwellings in rural areas, with Clause 14.01-1L - Dwelling and subdivisions in rural areas discouraging dwellings in rural zones, unless a dwelling is <u>necessary</u> for the operation of an <u>existing</u> agricultural use, directly supports the <u>ongoing</u> protection and viability of agricultural landholdings and facilitates a clear improvement in farming efficiency and sustainable land management practices.</p>
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Subdivisions

Citation	Zones, Overlays	Outcome	Summary
<p><u>Jaques v Macedon Ranges SC [2025] VCAT 390</u></p> <p><i>Christopher Harty, Member</i></p>	<p>RCZ ESO4 VPO9 SLO1 BMO</p>	<p>Council decision upheld, no permit granted</p>	<p>Two lot subdivision comprising Lot 1 with an area of 40.43 hectares and Lot 2 with an area of 44.35 hectares. Lot 1 ... used and developed for a single storey dwelling ... Lot 2 will contain an existing dwelling and associated outbuildings.</p> <p>5 The applicants say the subdivision is in accordance with the 40 hectares minimum lot size under the RCZ1 ...</p> <p>69 The applicants and the evidence of Dr Hatton say that without the proposal, there is currently no incentive to protect and enhance the environmental values of the site. Without the proposal, they say the condition of the environmental values on the site will gradually continue to degrade due to grazing pressure associated with continued agricultural activity and from kangaroos present on the land.</p> <p>90 I agree with the Tribunal in Rozen 2009 that the greater chance of success and long-term environmental improvements will result if the land is retained in a single holding and managed as a single unit and that the financial return to a landowner is not a relevant planning consideration that I should be influenced by.</p> <p>102 Degradation of the environmental values of the site are recognised in Dr Hatton's evidence as slow. I consider that environmental improvement works undertaken on a slow but consistent trajectory would be of benefit. They would not be impossible and can be appropriately</p>

			supported by other means such as through various environmental grants and the like without the need for development to provide the catalyst. I consider this can occur now.
<u>McInnes v Horsham Rural CC [2025] VCAT 406</u> <i>Peter Gaschk, Member</i>	FZ BMO ESO1 ESO4 ESO5 SLO1	Council decision varied, permit granted	<p>Condition 6 on the endorsed permit proposing a section 173 agreement restricting further subdivision of the new lots is sought to be deleted by the applicant.</p> <p>31 While the decision of SM Daicic in JSW Brian Pty Ltd dealt with physical settings and policy differences to the matter before me, I agree with her finding regarding the use of section 173 agreements, that 'exceptional circumstances' should be demonstrated to warrant the imposition of a section 173 agreement that seeks to restrict further subdivision of the subject land. I have applied and given weight to that finding in my review of condition 6 on PA2400794.</p> <p>32 I find the use of the section 173 agreement in this instance, 'fetters' the opportunity to assess any further subdivision and effectively removes the discretion to grant a planning permit for a subdivision form that is contemplated (albeit by discretion) by the planning scheme. I do not consider this achieves an orderly and proper planning outcome.</p>

Agricultural Use – none this quarter

Other Use

Citation	Zones, Overlays	Outcome	Summary
<u>Assyrian Christian Schools Victoria Ltd v Minister for Planning [2025] VCAT 299</u> <i>Margaret Baird, Presiding and Senior Member</i> <i>Peter Cole, Member</i>	GWZ	Council decision upheld, no permit granted	Use and development of the land for a primary and secondary school, in four stages, to a total of 350 students.
<u>NPLT Pty Ltd v Mildura Rural CC [2025] VCAT 371</u> <i>Joel Templar, Member</i> <i>Nick Wimbush, Member</i>	FZ HO175 DCPO2 SCO1	Council decision upheld, permit not amended	<p>1 This proceeding concerns the review by the applicant of the council's decision to refuse to grant an amendment to an existing planning permit. The original permit was issued for subdivision of the land. This application to amend the permit seeks permission to use and develop a camping and caravan park on one of the newly subdivided lots.</p>
<u>Gray v Hepburn SC [2025] VCAT 433</u> <i>Cassandra Rea, Member</i>	RLZ ESO1 VPO1	Council decision varied, permit granted	The application seeks to use part of the site as a contractor's depot associated with an earthmoving and transport business, and construct a shed at the rear of the site.

<u>Dance v Colac Otway SC (No. 5) [2025] VCAT 437</u> <i>Rachel Naylor, Senior Member</i> <i>Claire Bennett, Member</i>	RCZ SLO4 EMO1 BMO	Council decision upheld, permit not amended	Tourist accommodation - omnibus planning application 3 There were two conditions in the original Notice of Decision to Grant a Permit that were disputed by the Respondent permit applicant in the first three hearing days. Council has decided not to impose these conditions in its new decision. The Applicant requests that these two conditions be included in the permit.
<u>Carringbush Pty Ltd v Yarra Ranges SC [2025] VCAT 458</u> <i>J Perlstein, Member</i>	GWAZ SLO1 DDO14 BMO	Council decision set aside, permit granted	Use of a food truck/coffee cart on the land and construction of a gate in an existing fence.
<u>Lorenzo Business Park Pty Ltd v Horsham Rural CC [2025] VCAT 482</u> <i>Bill Sibonis, Senior Member</i> <i>Kate Partenio, Member</i>	FZ	Council decision upheld, permit not amended	Amendment to a permit for the use and development of a service station to delete conditions requiring the provision of an acceleration lane on the Western Highway.
<u>Werribee Karen Baptist Community Inc v Greater Geelong CC [2025] VCAT 524</u> <i>Michael Deidun, Member</i>	FZ	Council decision set aside, permit granted	Use and development of a Place of worship
<u>Allen v Golden Plains SC [2025] VCAT 519</u> <i>Katherine Paterson, Member</i>	FZ	Council decision set aside, permit granted	Use and development of the land for a Contractor's Depot. Six trucks with associated trailers currently operate from the site with four full-time drivers and two part-time drivers. The vehicles used in the contactor's depot range in size and type, but include A-double vehicles (road trains).
<u>Ramsay v Queenscliffe BC [2025] VCAT 555</u> <i>S P Djohan, Senior Member</i>	RCZ ESO1 ESO2 SLO	Council decision set aside, permit granted	1 The applicant seeks to use land situated at 6 McDonald Road, Queenscliffe, Victoria ('subject land') for the purpose of a helicopter landing site.
<u>Nillumbik SC v Chetcuti [2025] VCAT 538</u> <i>J Perlstein Member</i>	RCZ ESO1 BMO	Interim enforcement order allowed	Preliminary hearing: Application for interim enforcement order; Alleged earthworks carried out without planning permission;
<u>Jakovljevic v Mansfield SC [2025] VCAT 249</u> <i>Jane Tait, Member</i>	RLZ	Council decision upheld, no permit granted	Use and development of the land for rural industry (farm machinery repairs), display of a business identification sign and a reduction of the car parking requirements.
<u>Anker v Yarra Ranges SC [2025] VCAT 256</u> <i>Alison Slattery, Member</i> <i>Phil West, Member</i>	GWZ SLO6	Council decision set aside, permit granted	1 ... applied to ... Council for a permit to develop the land ...the site for use of the land for sale and consumption of liquor and buildings and works to construct a marquee and an outbuilding associated with an existing function centre.