

Agriculture Victoria Planning and Advisory Service

VCAT Decisions that impact Rural zoned land

April 2025 edition: VCAT cases from January to March 2025

This update includes VCAT cases from January to March 2025. 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
<u>Blashki v Mornington Peninsula SC [2025] VCAT 217</u> <i>Alison Glynn, Senior Member</i>	GWZ ESO3 ESO17 ESO19 ESO28 VPO2	Council decision varied, permit granted	<p>4 The applicants do not specifically oppose the use of a dwelling on the land... Specifically, this is the adverse impact from the loss of views.....</p> <p>17 Any consideration to move the dwelling away from that shown in the application plans, needs to derive from a planning reason.</p> <p>25 I find it relevant that such buildings works, for example an agricultural shed associated with a use in section 1 of the GWZ3, or planting of windbreaks, could impact on the views from the applicants' property to Port Phillip Bay and other rural vistas regardless of the proposal before me. I also note that other nearby properties include netting of crops that may not require a planning permit. I find the legitimate expectations of maintaining views from the applicants' property across other land, including the respondents land is limited by these circumstances.</p> <p>44 Consequently, as a broad amenity impact on the applicants' dwelling, I find the loss of a small, albeit valued, component of the existing panoramic vista from their dwelling is acceptable as a general test under clause 65.01 of the scheme, having regard to the permit triggers under GWZ3 and ESO3.</p>

Subdivisions

Citation	Zones, Overlays	Outcome	Summary
<u>Pippicella v Mildura Rural CC [2025] VCAT 211</u> <i>Frank Dawson, Member</i>	FZ DCPO2 SCO1	Council decision upheld, no permit granted	<p>1 ... a review of the decision ...to refuse a permit for the resubdivision to increase the size of the garden area at the rear of the existing dwelling ..., utilising agricultural land from the adjoining ... lot ...</p> <p>31 The proposed resubdivision reduces the area of horticultural land and I cannot agree that this loss is inconsequential purely because of its relatively small area. The purpose of the application is to increase the size of residential garden, but in my assessment, there is no demonstration of benefit in relation to horticultural land use.</p>

Agricultural Use

Citation	Zones, Overlays	Outcome	Summary
<u>Aberle v East Gippsland SC [2025] VCAT 36</u> <i>Rachel Naylor, Senior Member</i>	RLZ BMO	Council decision set aside, no permit granted	<p>1 This proceeding concerns an application lodged by an objector to a permit application, She seeks a review of the decision by (Council) to issue a Notice of Decision to Grant a Permit (NOD) (the/this site) allowing 'use of the land for Horse Husbandry (Agistment for seven horses).</p> <p>2 (the Respondent permit applicant) has ... advised of her intention not to proceed with this permit application. She wishes to withdraw the permit application. Council acknowledges this and accepts that the appropriate outcome for this proceeding is for the Tribunal to set aside Council's decision and order that no permit be issued.</p>
<u>Nancarrow v Baw Baw SC [2025] VCAT 120</u> <i>Christopher Harty, Member</i>	RAZ BMO DCPO	Council decision varied, permit granted	<p>The use and development for domestic animal boarding for a maximum of 30 dogs.</p> <p>4 ... (The objectors) consider the proposed use and development ... will result in detrimental impacts on their rural amenity by way of noise from dogs barking.</p> <p>5 They are also concerned about wastes entering nearby waterways, impacts on the serenity and biodiversity values ... and ... concerns over traffic safety associated with Mill Road which is a narrow gravel road.</p> <p>33 I find that, generally, the proposal enjoys policy support for the use and development within the RAZ and in a rural area.</p> <p>35 I also consider the proposal would not harm the ability to farm surrounding land and hence, not have detrimental effects on agricultural activity.</p> <p>54 The acoustic assessment identified that if all dogs are housed within their respective kennels between the hours of 10.00pm and 7.00am, the proposal would be compliant with the noise criteria established under the Noise Protocol....</p> <p>60 The combination of the buffering provided by the existing shed, the cutting into the hill of the kennels and lowering of their built form from view of the Crossover Regional Park and by effectively shielding the visual presence of the dogs from the Crossover Regional Park, I consider the effects on wildlife to not be significant.</p> <p>89 Overall, I consider the risk from wastes, erosion and the steep slopes of the site are minor and capable of appropriate management.</p> <p>101 I considered the narrow nature of Mill Road will aid in traffic safety as it will force vehicle movements along Mill Road to travel at slow speeds. together with the relatively low expected numbers of trips and sporadic nature of use, should not have the effect of impairing traffic safety.</p>

Other

Citation	Zones, Overlays	Outcome	Summary
<u>Lapilli La Mt Buninyong Pty Ltd v Ballarat CC [2025] VCAT 47</u> <i>Geoffrey Code, Senior Member</i> <i>Peter Gaschk, Member</i>	RLZ VPO1 ESO5 BMO	Council decision set aside, permit granted	Group accommodation - comprising eight single-storey, one bedroom dwellings
<u>Redland Fruit Pty Ltd v Swan Hill RCC [2025] VCAT 127</u> <i>Geoffrey Code, Senior Member</i>	FZ SCO1	Council decision affirmed, certificate of compliance refused	Rural Workers accommodation This case is related to a previous case <u>Redland Fruit Pty Ltd v Swan Hill Rural CC [2023] VCAT 601</u> where VCAT deemed the workers accommodation as ancillary to the horticultural use, which we featured in the first edition of the VCAT update (July 2023). As a result, we have also looked at this decision as “a closer look” below
<u>Mckenzie v Yarra Ranges SC [2025] VCAT 170</u> <i>Sarah McDonald, Member</i>	GWAZ SLO6	Council decision upheld, no permit granted	Construction of a fence.
<u>Yarra Ranges SC v Hawkey [2025] VCAT 203</u> <i>Susan Whitney, Member</i>	GWAZ	Enforcement order allowed	5 ... The Council seeks this enforcement order on the basis that it alleges the Land has been used for the purposes of a ‘Store’, being the storage of tyres, contrary to the Scheme.

A Closer look.... Rural workers accommodation – ancillary use?

In the first edition of the VCAT update, we featured [Redland Fruit Pty Ltd v Swan Hill Rural CC \[2023\] VCAT 601](#) as a case where the workers accommodation was deemed to be ancillary to the primary use of the land for horticulture.

This recent case relates to the same applicant and land parcel with a different outcome. Due to the changed circumstances, the workers accommodation use was deemed not to be ancillary.

[Redland Fruit Pty Ltd v Swan Hill RCC \[2025\] VCAT 127](#)

5 Redland Fruit Pty Ltd (Redland) is a large orchardist operating in various States. It has an orchard at 269 Long Lake Road, Lake Boga, about 1.5 km west of Swan Hill (the subject land or the orchard).

6 The orchard has an area of 99.67 ha and consists of two lots. It is unnecessary to refer to their title particulars. It suffices to refer to them as the ‘northern lot’, which has an area of 50.43 ha and the ‘southern lot’, which has an area of 49.24 ha ...

11 The proposed use and development for ‘rural worker accommodation’ does not comply with the requirements in clauses 35.07-1 and 35.07-4 of the planning scheme, for reasons that I will get to. The effect of the non-compliance is that permission is required under the planning scheme for the use and development in the proposal.

13 In 2023 Redland applied to the Tribunal for a declaration under section 149B of the Planning and Environment Act 1987 (Vic) (the PE Act) that:

The proposed workers accommodation upon land situated at Lot 2 PS 421611W Long Lake Road Lake Boga to be contained in a complex of 6 detached buildings to be used only by workers on the subject land

for the duration of the harvest at no cost to the workers, is ancillary to the main use of the subject land for horticultural activities.

19 After giving careful and detailed reasons, the Tribunal granted a declaration that, in respect of the proposed worker accommodation:

The use of [the southern lot] is ancillary to use of [that lot] for horticulture if it occurs in the following manner:

- the workers must be accommodated generally in accordance with the complex of detached buildings as shown on the drawings prepared by Julnic Pty Ltd, drg no. 2022-074, sheets 1 of 5, 2 of 5, 3 of 5, 4 of 5 and 5 of 5 all dated July 2022, which is yet to be constructed;
- a maximum of 32 workers may be accommodated on the land;
- the workers may only be accommodated during the harvest season that is, from July through to December;
- the workers accommodation may only be used by workers actively working on the land for the harvesting of the fruit from the land; and
- the accommodation must be provided at no cost to the workers and their rooms must not be serviced.

THIS APPLICATION

25 It will be observed that the accommodation shown on this site plan includes 14 four-bedroom units, with two beds in each bedroom (accommodating up to 112 persons), two two-bedroom units, with two beds in each bedroom (accommodating up to eight persons), three dining units, three kitchens and three amenity blocks, a driveway (labelled 'road access'), 23 car spaces and an area for bus parking.

27 Redland states its proposal includes the following 'limitations':

The accommodation must only be provided to workers who are actively working on the Land in connection with the harvesting of the fruit.

The accommodation must only be provided during the harvest season.

The accommodation must be provided at no cost to the workers.

A maximum of 120 workers would be accommodated on the Land.

The rooms would not be serviced.

31 Properly construing Redland's application, Redland is seeking a certificate of compliance that the proposed use and development (ie the proposal) complies with the requirements of the planning scheme.

39 Based on the findings in Redland Fruit and based on the submissions (as well as the evidence of recent aerial photography) in this proceeding, I am content to find that the subject land is used to grow grapes, citrus (some different varieties) and apricots. The purpose of that may be characterised as horticulture, which is also a defined use in the planning scheme.

48 The overarching principle accepted by the Supreme Court is that it is a matter of fact and degree in the particular circumstances of each case as to whether a use (or activity) is ancillary to another dominant use ie the purpose of another use.

56 For example, and contrary to the Council's submissions, there is a functional connection between the horticulture and accommodation uses, even though the subject land is in two lots and the accommodation is proposed to be located only on one of them. The orchard plan shows existing areas planted for the grapes, citrus and apricots straddling both lots.

57 However, having regard to other factors identified in Lando, I give weight to three matters of fact and degree in finding the accommodation use is not ancillary.

58 The first factor is scale or intensity of the use or activity.

63 In oral submissions, Redlands submitted that if different varieties of fruit needed to be harvested at the same time, there was potential for 180 workers at one time. In any event, a reasonable inference is that Redland now proposes to be able to usually accommodate a much larger proportion of workers than was the case in the earlier proceeding.

65 The second factor is the duration and frequency of accommodation.

66 In Redland Fruit, the accommodation use was held to be ancillary when conducted during a harvest season from 'July through to December'. The proposal is for accommodation during the whole year, partly because Redland submits the harvest period for different fruit could be at all times of the year having regard to a range of circumstances, including varying seasonal conditions and fruit condition. This is an indicator of a scale or intensity that is significantly greater than that in the declaration.

67 The third factor is the type of workers proposed to be accommodated.

71 However, this factor is also an indicator of a scale or intensity that is greater than that in the declaration which provided that the accommodation must 'only be used by workers actively working on the land for the harvesting of the fruit from the land'. While the matter is not free from doubt, I infer the declaration did not extend to workers involved in processing the fruit ie in packing or cool room activities.

86 As a matter of completeness, I characterise the accommodation use as a separate use for the purpose of 'rural worker accommodation'. This a use that is defined in the planning scheme as 'land used to accommodate a person engaged in agricultural production, away from their normal place of residence'.

87 Construction of buildings and works associated with rural worker accommodation requires permission under the planning scheme if use for rural worker accommodation requires permission.

88 Use for rural worker accommodation requires permission if one of the nine conditions in section 1 of the Farming Zone are not met.

89 One of those conditions is 'no more than 10 persons may be accommodated away from their normal place of residence'. This condition is not met because, under the proposal, 120 (or 128) persons may be accommodated in the relevant way.