

Agriculture Victoria Planning and Advisory Service

VCAT Decisions that impact Rural zoned land

October 2024 edition: VCAT cases from July to September 2024

This update includes VCAT cases from July to September 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
<u>Symmons v Macedon Ranges SC [2024] VCAT 614</u> <i>J A Bennett, Senior Member</i>	FZ	Council decision upheld, no permit granted	<p>... a battle axe shaped lot of 5.7 hectares results from a 2-lot subdivision approved in 2002.</p> <p>17 I consider that just because other smaller lots have been used and developed for dwellings does not justify further approvals which would undermine those policies seeking to avoid construction of dwellings on small rural lots.</p> <p>23 It appears to be the case here where Ms Symmons purchased the land in 2005 without a permit to use the land for a dwelling. Although a s173 agreement associated with the subdivision gave the impression that Lot 2 would be suitable for a dwelling, no permit was granted for such a use at that time.</p> <p>35 However, I do not accept that the dwelling is required to provide day to day management of what is a benign agricultural use of the land. It is different to those nearby activities involving horses or other animals where a more intensive management regime is required. It might be convenient for Ms Symmons to live on the property, but it is not essential for the ongoing production of hay.</p> <p>36 My concern is that if a dwelling is constructed, the property will primarily become a rural lifestyle property. ...</p>
<u>Marson v Cardinia SC [2024] VCAT 639</u> <i>Mary-Anne Taranto, Presiding Member</i> <i>Cassandra Rea, Member</i>	SUZ1 LSIO	Council decision upheld, no permit granted	<p>1 24.38 ha parcel of farming land The land is in the Cardinia Green Wedge and the Koo Wee Rup Swamp area. identified as being high quality agricultural land of State significance. This is reflected by the SUZ1 for horticultural preservation that applies to the land and surrounding land. The land is also subject to flooding.</p> <p>76 the long term, sustainable and orderly planning of the area is to be given greater weight than the short term needs of land owners.</p>

			<p>79 To the extent that use of the land for a dwelling on the subject land will allow a greater presence on the subject land and better oversight of existing farming activities on the subject land and the applicants' other two separate land holdings to the north:</p> <ul style="list-style-type: none"> • we are not persuaded that a dwelling is reasonably required for the operation of the rural activity being conducted on the subject land – a decision guideline of SUZ1. These existing activities involve cattle grazing and the production of hay and silage. While we accept that these are genuine agricultural activities, we find that they do not warrant a continuous on-site presence for their successful conduct; • we find that any enhancement of on-site security is not contingent on permitting a dwelling on the subject land. There are many other ways of enhancing site security through for example, remote monitoring by electronic means or changes to the type, location and design of fencing; and • in relation to the applicants' other two land holdings to the north, these parcels are both capable of being separately disposed of at any time. <p>90 While we accept that the applicants have a genuine desire to live on the land they have farmed for many years, a dwelling use would result in a permanent change of land use and inevitably inflate the market value of the subject land.</p>
<p><u>Baw Baw SC v Hanes</u> [2024] VCAT 671 <i>J Perlstein, Member</i></p>	<p>FZ DCPO1 ESO2 EMO BMO</p>	<p>Enforcement order allowed</p>	<p>2. All parts of the building described as 'bedroom' and 'bathroom' located east of the living area ('eastern extension') in the floorplan image shown in the plan attached to this Order and marked "Attachment A" must be removed and the land in the area of the eastern extension must be reinstated to its prior condition within 90 days of the making of this Order.</p>
<p><u>Watson v Murrindindi SC</u> [2024] VCAT 675 <i>Nick Wimbush, Member</i></p>	<p>RCZ SLO2 BMO FO</p>	<p>Council decision upheld, no permit granted</p>	<p>31 My reasons are discussed in detail below but overall, I consider that the risk of onsite wastewater disposal given the reduced setback, steep slope and relatively impermeable soils is such that the proposal is not an acceptable planning outcome, and a permit should not be granted.</p>
<p><u>Maraone v Bass Coast SC</u> [2024] VCAT 803 <i>Megan Carew, Member</i></p>	<p>FZ</p>	<p>Council decision set aside, permit granted</p>	<p>43 Given the existing pattern of dwellings and subdivision in this area, the location of the highway and the tourism/golf course use to the north, I find that the dwelling will not have any significant impact on the agricultural activities of adjacent or nearby land uses. The exception to this is the property to the west which is 20ha and presently used for grazing. The policy at 14.01-1L requires consideration of mitigation measures such as buffers. In this respect the implementation of the shelter belt as set out in the LMP is important to mitigate impact.</p> <p>45 My findings are specific to this site and its context. It would be difficult to justify a dwelling for this limited agricultural purpose on a larger lot, or where the established large orchard, market garden and other land uses were not present.</p>

			The specific subdivision and land use pattern in this immediate location has been a key consideration.
<u>Pyramid Rock Pty Ltd v Bass Coast SC [2024] (Corrected) VCAT 847</u> <i>Sarah McDonald, Member</i>	FZ SLO2	Council decision set aside, plans endorsed	Review the responsible authority's decision, that the siting plan submitted for approval under condition 2 of planning permit 992878 is unsatisfactory, and its refusal to endorse the plan pursuant to of the permit.

Subdivisions

Citation	Zones, Overlays	Outcome	Summary
<u>Marke v Mitchell SC [2024] VCAT 762</u> <i>Margaret Baird, Senior Member</i>	FZ BMO VPO1 VPO2	Council decision upheld, no permit granted	<p>Re-subdivision of the subject land into four lots.</p> <p>The subject land comprises four lots, with a total area of 279.59 ha. A section 173 agreement under the PE Act applies to two existing lots.</p> <p>74 ... the creation of a lot with immediate dwelling potential is inconsistent to the scheme's directions, particularly when absent sufficient demonstration as to how an acceptable outcome is achieved in the context of the purpose of clause 35.07. Incremental subdivision approvals of this type build the pressure on important agricultural land to which the scheme refers. The impact of incremental decisions over time can be significant and can undermine the outcomes being pursued.</p>
<u>Stanton v Swan Hill RCC [2024] VCAT 811</u> <i>Christopher Harty, Member</i>	FZ SCO1	Council decision set aside, permit granted	<p>Re-subdivision of three existing lots and creation of two lots; agriculture and small lot containing existing dwelling.</p> <p>49 In my view, this physical context presents a limited level of exposure of the existing dwelling to surrounding agricultural activity. It represents a limited extent of potential for land use conflict between agricultural production and rural lifestyle pursuits.</p> <p>50 I find the proposal presents a net community benefit and achieves an acceptable outcome. It will provide for an unencumbered larger balance lot available for agricultural production and have limited potential for inhibiting or adversely impacting on surrounding agricultural production activity to continue or be pursued. This is what the RLUS recognises and encourages.</p> <p>51 The presence of the existing dwelling already inflates the value of the land. By removing it from the balance lot, such pressure should ease, and assist in providing the opportunity, as an unencumbered allotment, for agricultural use.</p>
<u>Grewal v Murrindindi SC [2024] VCAT 885</u> <i>Christopher Harty, Member</i>	FZ ESO1 BMO	Council decision upheld, no permit granted	<p>Two (2) lot subdivision (house lot excision).</p> <p>2 The proposal involves creating Lot 1 with an area of 42.32 hectares and Lot 2 with an area of 1.95 hectares and depth of 70.5 metres which will contain the existing dwelling, storage shed and portable office building. Proposed Lot 1 would include the balance of the site which is currently used for horticultural production and grazing....</p> <p>59 In integrated decision making, the planning scheme asks under Clause 71.02-3 that I balance conflicting policy in favour of net community benefit and sustainable</p>

			<p>development for the benefit of present and future generations. In this regard, I find that the proposed subdivision creates a new small lot with an existing dwelling that results in a change in the nature of the land use, from a dwelling associated with farming to one that can be disassociated with farming. There is no control preventing the new lot from being separately disposed of. This makes the proposal one where a permanent change in land use occurs and one which is not planned. I find this results in an unacceptable outcome given the directions of the planning scheme.</p> <p>61 I accept that the area has a somewhat rural living/rural-residential character and that the proposed house excision would result in a new lot that would not significantly change this character. However, the presence of the rural living/rural residential area to the east on the other side of the Whittlesea-Yea Road is planned with a settlement boundary to contain that form of development. The FZ area to the south of the site is land that has a legacy of smaller lots that is inconsistent with the strategic directions of the planning scheme.</p>
--	--	--	--

Agricultural Use

Citation	Zones, Overlays	Outcome	Summary
<p><u>Larne v Mornington Peninsula SC [2024] VCAT 802</u></p> <p><i>Ian Potts, Senior Member</i> <i>Megan Carew, Member</i></p>	<p>GWZ2 ESO4</p>	<p>Council decision varied, permit granted</p>	<p>1 ... The NOD would allow an additional broiler shed with an outdoor range area to be constructed on the subject land together with three silos and a machinery storage shed. The subject land is currently used for a broiler farm (the raising of chickens for meat). There are three existing broiler sheds developed on the subject land for this purpose along with other infrastructure and a manager's dwelling.</p> <p>3 ... The applicants say that odours from the existing operation of the broiler farm impact the amenity and enjoyment of their property and that an additional broiler farm shed would make this impact worse....</p> <p>9 It is also important to understand that the permit application does not seek planning permission for the use. The broiler farm has existing use rights arising from its operation before the present and past planning schemes came into operation. This was not in dispute between the parties ...</p> <p>45 The changes do not amount to a change in the use as characterised for the purposes of existing use rights. As set out by the Tribunal in Wellington, a use may change over time without changing the purpose. The number of birds may increase or decrease so long as the same purpose is served. So too may the form of sheds, their areas or indeed the use of other areas of the land for free range areas.</p> <p>Points 50-72 include extensive discussion on the applicability of the Victorian Code for Broiler Farms 2009 (plus 2018 amendments) re current capacity of the farm</p>

			<p>and the question of whether the application is an expansion or upgrade.</p> <p>74 In view of our determination to grant a permit it is therefore necessary to ensure that the permit does not allow an expansion. Accordingly, we have included a limit on the number of birds that can be placed on the land in what the permit allows equating to the number that has been applied for of 92,414 birds.</p> <p>93 As the respondent's farm capacity is not increasing, there is no requirement for an odour assessment under the Code (as noted earlier). Nor are separation distances to be determined and applied in accordance with the Code. These expressed limitations in the Code are understood to deal with existing broiler farms that were established before these requirements were put in place.....</p>
--	--	--	---

Other Use

Citation	Zones, Overlays	Outcome	Summary
<u>Central Highlands Water Corporation v Ballarat CC [2024] VCAT 661</u> <i>Ian Potts, Senior Member</i>	FZ ESO5 SLO2 BMO	Council decision varied, permit granted	The construction of a mine tailings storage facility ('TSF') is proposed.
<u>K Rouse Transport Pty Ltd v Wangaratta Rural CC [2024] VCAT 670</u> <i>Teresa Bisucci, Deputy President</i>	FZ DDO6	Declaration made but different to those sought	Existing use rights; Certificate of compliance for Transport Depot;
<u>Earl v Mount Alexander SC [2024] VCAT 713</u> <i>Alison Slattery, Member</i>	FZ ESO1	Council decision upheld, no permit granted	It is proposed to regularise the permission for the dwelling, which includes endorsed plans that do not reflect the development on the ground. Retrospective approval is sought for the use of the site as a truck depot and the construction of works in accordance with that use.
<u>Austin v Benalla Rural CC [2024] VCAT 701</u> <i>Rachel Naylor, Senior Member</i>	FZ	Council decision varied, permit granted	The use of land for a restaurant with up to 20 patrons and 3 staff.