

Agriculture Victoria Planning and Advisory Service

VCAT Decisions that impact Rural zoned land

January 2025 edition: VCAT cases from October to December 2024

This update includes VCAT cases from October to December 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.

We would like to highlight *Tyrrell v Baw Baw SC* [2024] VCAT 1176 (in Dwelling section below) which demonstrates the importance of strong local policy to protect Agricultural land.

Small scale abattoir eGuide available now

The Agriculture Victoria Planning and Advisory Service has recently launched a new eGuide to assist proponents and others to understand the various regulatory pathways required for the establishment of an on-farm small scale fixed or mobile abattoir. In conjunction with this, a new development type is available on Navigating Farm Developments to provide site specific analysis. Find them at:

- [eGuides – Planning and farm development](#)
- [Navigating farm developments – online planning tool](#)

Dwelling – Use of land

Citation	Zones, Overlays	Outcome	Summary
<u>Jordan v Baw Baw SC (No. 2) [2024] VCAT 1112</u> <i>Michael Nelthorpe, Member</i>	FZ LSIO DCPO	Council decision varied, permit granted	To use the land for a dwelling and to construct a two storey, five bedroom dwelling. (5.8 ha site) 7 I find that: a. Allowing the respondent to live on the site will support and enhance the horse breeding and Equine Assisted Learning ('EAL') and Equine Assisted Therapy ('EAT') business that they propose to undertake. b. The site is unlikely to be used for broad acre farming given its size and the number of small lots occupied by dwellings near the site. c. Agricultural activity on adjoining or nearby land is unlikely to affect the horse breeding and proposed EAL/EAT business.
<u>Tyrrell v Baw Baw SC [2024] VCAT 1176</u> <i>Nick Wimbush, Member</i>	FZ ESO4 DCPO	Council decision upheld, no permit granted	The site is 14.94 hectares..... The site is cleared and grazed for beef cattle. 2 The site is proposed to be used for growing advanced ornamental trees in pots.... 16 The applicant took me to <u>Jordan v Baw Baw SC</u> to illustrate the point that the FZ no longer contains a decision

			<p>guideline requiring a dwelling be required to support the agricultural land use. I note however, that local policy in the planning scheme does contain such guidance. At cl 14.01-1L</p> <p>22 The proposed dwelling in my view is inconsistent with policies around preventing further dwelling intensification in rural areas, and particularly the zone decision guidelines around the proliferation of dwellings in rural areas. The proposal is on the edge of the Buln Buln township and potentially presents as an extension of the township. I don't accept the applicant's view that the 'horse has bolted' and there is already a proliferation of dwellings in the FZ in this area. If there are, this is a reason to prevent more in accordance with the policy settings, not allow additional dwellings.</p> <p>28 It is self-evident that the existing and proposed beef grazing use does not require a dwelling as this occurs on the land at present.</p> <p>29 I have reviewed the specific items in Mr Gallienne's ALMP that are said to require a dwelling be located on site. In my view none of these items requires an onsite dwelling. They are normal operations that might be expected with a horticultural operation such as an orchard and none of them in my view demonstrate an intrinsic link that means a manager or worker must be present on site in a dwelling.</p> <p>30 I accept that it may be more convenient for a manager or owner to live on site, but can not see on the material before me why the tree growing use requires a residence.</p>
<p><u>Thrum v Greater Shepparton CC [2024] VCAT 1191</u></p> <p><i>J Perlstein, Member</i></p>	<p>FZ LSIO FO</p>	<p>Council decision varied, permit granted</p>	<p>4 most of the subject land is covered by the LSIO. There is a central part of the subject land not covered by the LSIO, which is where the dwelling is located in the application plans.</p> <p>5 There is a second, small area in the southwest corner that is also not covered by the LSIO. Condition 1(a) is seeking that the dwelling be moved to that corner of the subject land. (to which the applicant objects)</p> <p>16 Having considered the submissions and evidence of the parties,, I find that condition 1(a) is unnecessary and unreasonable and should be deleted from the permit.</p>
<p><u>Nicholls v Strathbogie SC [2024] VCAT 1217</u></p> <p><i>Nick Wimbush, Member</i></p>	<p>FZ EMO</p>	<p>Council decision set aside, permit granted</p>	<p>The subject site is 10.76 hectares situated approximately 3 kilometres north-west of the Strathbogie township....</p> <p>5 The land has been grazed with beef cattle in the past which have been removed. Part of the rationale for the dwelling is to support a more intensive agricultural use including a mix of quince and apricot orchards and free range chickens for egg production....</p> <p>29 As the applicant noted, there is no longer a direct requirement in the FZ for the dwelling to be necessary, as opposed to convenient for the successful operation of the agricultural use. In this case however, even if such a link did exist in the planning scheme, I am satisfied that the egg producing component of the proposed agricultural use will require a greater level of supervision and management, including rapid response times at night, to protect the</p>

			<p>poultry from predators. I do not think such a link could be established for the orchard use, but in any event given my other findings on policy this is not necessary.</p> <p>31 Its appearance and design to me is that of a dwelling secondary to a proposed agricultural use, not a large dwelling with agriculture used to justify its presence....</p> <p>32 An important element of policy is whether the dwelling will constrain or conflict with nearby agricultural uses. This is largely a landscape of grazing (beef production) which as a use is relatively benign in terms of amenity impact. I cannot discount the possibility of future proposals for intensive animal production with offsite amenity impacts in the vicinity. I consider however, that within the broader policy balance the specific environmental improvements and the proposed agriculture use on site do not persuade me that in this case the future potential for conflict is fatal to the application.</p>
<p><u>Houben v South Gippsland SC [2024] VCAT 1219</u></p> <p><i>Joel Templar, Member</i></p>	<p>FZ EMO</p>	<p>Council decision upheld, no permit granted</p>	<p>The review site is approximately 22 hectares in area, is irregular in shape and is comprised of two parcels/titles.... It sits at the head of the Tarwin River catchment which provides the town of Meeniyana with its drinking water.</p> <p>10 I have found that the proposal will not be an acceptable outcome, broadly because of the limited scale of the horse breeding operation proposed, and that other agricultural and environmental outcomes proposed are inconsequential to the long-term establishment of a dwelling on the land....</p> <p>33 In my view, this case is not one that stands or falls on evidence. It also does not rest on the economics of the agricultural operation, and whether it will be profitable or economically sustainable, or whether the operator is genuine and has the necessary skills and expertise to execute that which is sought. It simply relates to whether the use of the land for a dwelling is necessarily supported by the intensity of the use proposed and, to a lesser extent, the level of infrastructure that is required for the agricultural operation and the extent of that which the applicant is willing to install prior to occupation of the dwelling.</p> <p>41 I am not persuaded that the dwelling use will be secondary to the agricultural use. Whilst I can see some obvious nexus between the proposed horse breeding operation and the need for a dwelling, the extent to which there is immediate need for presence on the land is not of sufficient scale to warrant a dwelling. The scale of the horse breeding operation, the uncertainty of whether it will continue in the longer term as set out in the FMP, and the comparison of that with the greater certainty of the dwelling remaining in the long term is not favourable to the grant of a permit in this case.</p>

Subdivisions

Citation	Zones, Overlays	Outcome	Summary
<u>Jordan v Greater Bendigo CC [2024] VCAT 1064</u> <i>Ian Potts, Senior, Member</i> <i>Katherine Paterson, Member</i>	RLZ ESO1 EMO	Council decision varied, permit granted	<p>Subdivision of the subject land into 22 lots and the construction of a dwelling on each proposed lot. The subject site consists of 9 lots of varying sizes, with a combined area of 226.49 hectares.</p> <p>6 Having heard from the parties, considered their submissions, the expert evidence and inspected the site and its surrounds, we have concluded that the proposal would result in an acceptable planning outcome. We have therefore directed the grant of the planning permissions being sought, though we have varied some of the conditions set out in the NOD in response to the amendment of the plans, matters raised in the course of the hearing and that follow from our findings.</p>
<u>Otway Silva Pty Ltd v Corangamite SC [2024] VCAT 1088</u> <i>Nick Wimbush, Member</i>	FZ	Council decision upheld, no permit granted	<p>Subdivision of an 89.45 hectare lot to create a lot containing an existing dwelling and a balance lot. The lot containing the dwelling (Lot 1) would be 2.73 hectares and the balance lot (Lot 2) would be 86.72 hectares.</p> <p>2 The applicant is in the business of plantation forestry (Timber production...</p> <p>14 It was common ground between the parties that if the subdivision were approved, a new dwelling could be constructed on Lot 2 at some point in future subject to servicing requirements as Lot 2 would be over 40 hectares.</p> <p>20 There is no dispute that if the subdivision is approved, it likely generates the opportunity for an as of right dwelling on the larger balance lot (Lot 2), which is over 40 hectares. While a dwelling is not proposed in this application, I consider the creation of an opportunity for a further dwelling by the subdivision application is not consistent with the policy in cl 14.01-1L that discourages such an eventuality.</p> <p>23 The applicant submitted that as the dwelling exists and no new dwelling is proposed, the policy around avoiding land use conflicts with surrounding agriculture uses should be given limited weight. I understand the submission but have some reservations. Firstly, creating a lot with the dwelling and curtilage creates a separate marketable property. Such a property in this attractive landscape has the potential to attract a range of buyers, including people looking for a rural lifestyle on a small lot. Some people seeking the idyllic pastoral life find the reality of out of hours noise, dust, unpleasant odours, exposure to the realities of animal husbandry and production and other significant amenity impacts confronting. This in my experience is not a remote potential, but a real potential.</p> <p>33 The fate of the dwelling is in the hands of the applicant. Whether it chooses to demolish or leave the dwelling vacant for reasons of economics or business convenience is just that; a choice. I do not consider the potential loss of the dwelling is implicitly or explicitly given much weight in policy in deciding whether to approve the</p>

			subdivision in this highly productive farming area. In my view, if it is not an irrelevant consideration, it is one to which I should give low weight.
<u>Awesomeness Aussie Agricultural Life Group Pty Ltd v Cardinia SC</u> [2024] VCAT 1137 Donna D'Alessandro, Member	GWZ LSIO1	Council decision upheld, no permit granted	<p>It is proposed to realign Lot 1 and Lot 2 by consolidating Lot 1 with an area of 120.4 hectares and Lot 2 to 1,007 square metres. Each lot will be occupied by the existing dwelling and associated sheds.</p> <p>40 The Tribunal has consistently held that the long-term, sustainable and orderly planning of an area is to be given greater weight than the short-term needs of landowners and I agree with these principles.</p> <p>44there are four dwellings (including the review site) in Stanlake Road I do not share the same view as the applicant that given there are other dwellings next to the existing dwelling, this is justification to allow a further smaller lot. I am also not clear on the specific circumstances of these dwellings and my role is to assess the proposal before me against the provisions of the planning scheme.</p> <p>47 The creation of a small lot will disconnect the land from any agricultural activity. The proposal will result in a permanent land use change that is contrary to the purpose of the zone.</p>
<u>Stott v Mitchell SC</u> [2024] VCAT 1201 Cassandra Rea, Member	FZ EMO BMO ESO2 VPO	Council decision upheld, no permit granted	<p>1 It is proposed to realign the boundaries between the two larger lots, and consolidate a former road reserve lot with proposed Lot 2. If proposed Lot 1 is increased above 40 hectares in area, a dwelling can be accommodated without a planning permit.</p> <p>21 Whilst it may be the case that the site has very low agricultural potential, with agricultural productivity nominated by Mr Beever at a hobby scale, I am not persuaded that the approval of the re-subdivision will maintain existing levels of agriculture, even at a low level, let alone address planning policy that seeks to '<i>protect productive agricultural land from unplanned loss due to permanent changes in land use</i>'.</p> <p>26 Even if Mr Beever's evidence is held to be true about the presence of dwellings on rural sites potentially increases farming productivity, the Farming Zone allows an application to be sought and would allow council to undertake a comprehensive assessment that the dwelling use in combination with the rural productivity operation has a demonstrated benefit.</p> <p>38 This is noting that increasing the number of dwellings possible across the land from one to two, will in effect fragment the existing farming unit from one to two. Given the lack of agricultural productivity, as explained by Mr Beever, adding the potential for a second dwelling that 'is not required in conjunction with the agricultural use of the land' would be contrary to planning policy at clause 14.01-1L of the scheme.</p>

Agricultural Use

Citation	Zones, Overlays	Outcome	Summary
<u>Doyle & Ors v Gannawarra SC [2024] VCAT 3</u> <i>Ian Potts, Senior Member</i>	FZ ESO4 LSIO BMO SCO2	Council decision varied, permit granted	<p>Use and development of land for a rotational outdoor pig farm for up to 5,000 pigs</p> <p>6 I have determined that the degree of risk for the adverse impacts apprehended by the review applicants is not supported. While there are potential risks, the proposed management of the pig farm responds appropriately to manage and minimise them. Planning permit conditions can ensure compliance with the proposed management plan. Accordingly, when balancing the various relevant objectives and purposes of the FZ and other applicable provisions of the planning scheme, I have concluded that an acceptable planning outcome would be achieved by this proposal and a planning permit can be issued.</p> <p>More detail in “A Closer Look” below</p>

Other Use

Citation	Zones, Overlays	Outcome	Summary
<u>Amplitel Pty Ltd v Greater Shepparton City Council [2024] VCAT 1001</u> <i>Margaret Baird, Senior Member</i>	FZ HO202 LSIO SCO	Council decision set aside, permit granted	<p>Development of a 36.3 metre high telecommunications tower on the western side of the subject land.</p> <p>Impact on the heritage place; Impact on extant fabric; Visual confusion, competition and dominance.</p>
<u>Meau Pty Ltd v Yarra Ranges SC [2024] VCAT 1043</u> <i>Alison Slattery, Member</i>	GWZ4 SLO6 ESO1	Council decision set aside, permit granted	<p>Retrospective approval of the construction of playground equipment.</p> <p>Buildings and works in association with an existing winery and restaurant within a Green Wedge Zone</p>
<u>Ace Equipment Services Pty Ltd v Yarra Ranges SC [2024] VCAT 1103</u> <i>Tracy Watson, Member</i>	GWZ4 ESO1 LSIO SLO2 BMO	Council decision set aside, certificate of compliance to be issued	<p>The existing uses of the subject site are cattle grazing; a dwelling; repairing and maintaining farming and construction plant and equipment; and storing materials for civil construction and farming.</p> <p>Application under section 97P of the Planning and Environment Act 1987 – to review the refusal to grant the Certificate of Compliance.</p>
<u>Dafner-Beach v Yarra Ranges SC [2024] VCAT 1068</u> <i>Rachel Naylor, Senior Member</i>	GWZ5 SLO6 BMO	Council decision set aside, permit granted	<p>Business retreat including caravan accommodation for a 14 day period twice per year.</p>
<u>Singh v Cardinia SC [2024] VCAT 1150</u> <i>Geoffrey Code, Senior Member</i>	GWZ1 ESO1	Council decision set aside, permit granted	<p>Use for a place of worship</p>

<u>PDV Group Pty Ltd v Nillumbik SC [2024] VCAT 1183</u> <i>Susan Whitney, Member</i>	RCZ3 BMO	Council decision set aside, permit granted	Development of an outbuilding to house collectable motor vehicles.
<u>Cole v Yarra Ranges SC [2024] VCAT 1214</u> <i>Cassandra Rea, Member</i>	RCZ ESO1 SLO6 BMO EMO	Council decision upheld, extension of time refused	Extension of time associated with permit YR-2016/529 issued 20 July 2017 that allows use and development of a dwelling, associated earthworks and native vegetation removal.

A Closer look....Doyle & Ors v Gannawarra SC [2024] VCAT 3 – Pig Farm

This one is from an order published at the start of 2024 that somehow got missed through multiple previous searches. It is a long and detailed decision worthy of a closer look.

Background:

1 Western Plains Pork Pty Ltd ('Western Plains') sought planning permission from Gannawarra Shire Council ('council') for a rotational outdoor piggery with a capacity of up to 5,000 pigs.

9 The total area of the subject land is 438 hectares....

2 On 15 June 2022, the council resolved to grant a permit subject to conditions that were set out in its Notice of Decision of 1 July 2022 ('NOD').

3 Neighbouring and other local property owners objected to the permit application. On issue of the NOD, they applied to the Tribunal for a review of the decision to grant a permit.

Outcome:

Permit granted

5 In application P965/2022 the decision of the responsible authority is varied.

6 In planning permit application P21147 a permit is granted and directed to be issued for the land at 127 & 191 Orrs Road and 1399 Cohuna-Koondrook Road Gannawarra in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:

- Use and development of land for a rotational outdoor pig farm for up to 5,000 pigs and
- alteration of access to a road in a Transport Zone 2 (Cohuna-Koondrook Road).

Issues considered:

Sufficiency of detail, characterisation of use, land use terms and definitions, VC150 (points 14-58)

14 ...sufficiency of detail about the proposal set out in the application and the efficacy of the Environmental Management Plan....

46 Submissions for the review applicants acknowledge that the correct land use characterisation of the proposal is a 'Pig farm'. The planning scheme defines a 'Pig farm' as follows: Land used to keep or breed pigs.

49 Notwithstanding the review applicants assert that the nature of pig farming as opposed to its land use characterisation is an intensive animal industry. Reference is made to the fact that pig farms are grouped with intensive animal industries in state policy at clause 14.01-2S and referred to as an intensive animal industry in the section 4.2 of the National Environmental Guidelines for Piggeries ('NEGP'). In advancing such a characterisation

submissions for the review applicants refer to the local planning strategy at clause 02.03-4 of the planning scheme which directs 'intensive animal industries' to 'isolated locations' because:

...intensive animal industries have the potential for greater impacts than other forms of industry, such as extensive animal industries.

50 It is also submitted that the permit application:

...does not sufficiently address the environmental and amenity impacts associated with the proposed scale and intensity of the pig farm.

53 Amongst other changes, Planning Scheme Amendment VC150 ('VC150') introduced the new land use term 'Pig farm', deleted the land use term 'Intensive animal husbandry' - under which a piggery proposal such as this would have fallen within - and inserted clause 53.16 into the planning scheme.....

55 It is trite law, but given the submissions for the applicants, necessary to state that logically it follows that a use that falls within the character of the land use term found in the table of clause 73.01 should not be given some other land use characterisation, especially one that is not within the scheme. The land use terms given to a use or activity operate, amongst other reasons, to ensure appropriate permissions required under the scheme and relevant provisions are correctly applied.

57 I do not accept the review applicants' case that under this planning regime the proponent has somehow failed to address the scale and intensity of the proposal or otherwise avoided proper scrutiny under the scheme. To apply some other land use term or concept that has been intentionally removed from the Victorian Planning Schemes ('VPS') would not be an appropriate approach. Indeed, it could subvert the intent of VC150.

The grounds of the review applicants

Groundwater quality impacts

120 It follows from the above consideration of the evidence, that the level of risk posed by this proposal on Gunbower Creek and Gunbower Forest as apprehended by the review applicants is not supported. I find the evidence is that the risk is in fact not established or if possible, has a very low potential for adverse impact. This is because, when considered through the lens of a risk pathway approach:

- The source of nutrient build up in the subject land's soils said to be a risk to groundwater quality can be appropriately managed to mitigate or minimise that impact.
- The evidence does not support a high likelihood of a pathway for groundwater migration from the subject land to the adjoining Gunbower Creek or Gunbower Forest groundwater dependant ecosystems. The absence of such a pathway minimises the likelihood of impact on these potential receptor environments.
- The low likelihood of nutrient leaching to groundwater and pathway for migration equate to a low if any risk to the receptors of concern.

Amenity impacts

122 The review applicants apprehend odour from the mortalities composting pad and odour and raised dust associated with the pig growing paddocks.

124 In accordance with the NEGROP, pig paddocks are excluded from areas within 250 metres of any dwelling.

134 Further, and perhaps most relevantly, the guidance provided under Planning Practice Note 86 states that the NEGROP (and NEGP) provide national best practices for the design and management of pig farms. While a guideline and not mandatory, this guidance can be understood to be directing planning permit applicants in Victoria to these guidelines as a basis for developing proposals that align with accepted best practice.

135 The calls by the review applicants for more sophisticated assessment of odour (or dust) are in my view not supported considering national best practice guidance provided in the NEGROP about the low risk of odour or other air quality impacts.

138 In contrast, while the scale of the operation is up to 5,000 pigs, this scale is based on rotational areas of approximately 51 hectares on land with a total available property area of some 320 hectares for such activity (and on total property area that is larger). As such, the overall area for the operations across the subject land compared to the actual area used for the piggery operations leads to lower risk of unacceptable odour or dust beyond the property boundaries.

Flooding and drainage

159 Given this physical context of the subject land, developments and works associated with the proposal are not likely to affect the passage or storage of floodwaters, nor cause any significant rise in flood levels or flow velocity that would affect surrounding properties, land or environments.

160 In respect to localised stormwater or rainfall inundation, a substantive system to collect and manage surface drainage is in place over the subject land. Granted this is designed to collect and manage irrigation flows. However, it will also collect and control overland flows from rainfall runoff and from sheet / flood inundation (if it were to occur) as referred to in Professor Coombes evidence.

165 Finally, in respect to runoff or drainage around the mortalities composting pad, I first note that the area of this pad would be located on one of the more elevated portions of the farm, in and around the former dairy area. An isolated dam is located here, into which the runoff or leachate drainage from the mortality pads can be readily directed. I am satisfied that this is an acceptable outcome given the elevated location and isolated nature of this dam.

Biodiversity, native vegetation and landscape matters

166 Apprehensions are raised by the review applicants about adverse impacts on native vegetation, habitat, and ecological and biodiversity values on and off the subject land. All these apprehensions are intertwined to a degree by a common theme about the lack of a detailed assessment of native vegetation, biodiversity values and habitat conditions.

167 The level of attack on this proposal was extensive and covered many matters. To address these matters, it is necessary to break down my assessment into several themes.

Issues raised about impacts on biodiversity values

199 It is for these reasons that I accept that the proper and acceptable focus should be on the management of the native vegetation in the undisturbed areas present on the land and any potential impacts on adjoining land or environments.

213 It follows from the above that I am satisfied that with appropriate amendments to the EMP, the proposed assessment and fencing process will be capable of addressing the presence of native vegetation in an adaptive but structured process. If this process results in less area than presently anticipated, so be it. This will be a matter for Western Plains to adjust rotation areas, growing paddocks and / or pig numbers accordingly. That said, for reasons that I set out earlier which address nutrient balance matters, it is apparent that the large area of the subject land that is available is sufficient to provide the necessary flexibility for setting out and maintaining the grower area paddocks without infringing into the patches of native vegetation or under the scattered native trees on the subject land.

Impacts to other onsite and adjoining biodiversity values

214 The submissions for the review applicants set out a series of apprehensions about this proposal's impacts on local biodiversity values. In summary, these impacts are said to arise from:

- The disturbance or disruption of local populations of birds from foraging on, or otherwise utilising the land designated for piggery paddocks and the later cropping for nutrient stripping.
- The disturbance of local movement of fauna from roadside vegetation (habitat) to internal patches of native vegetation habitat due to the presence of the piggery paddocks and cropping phases.
- The use of feral proof fencing along the boundaries facing the Gunbower Forest that will prevent two turtle species from using the subject land for nesting.
- Landscaping along the property boundaries at densities of vegetation that will not support species in adjoining roadside vegetation habitat and interfere with foraging and nesting behaviour of local fauna.

Landscaping of boundary buffers

232 In this context, it would seem to me that full screening of the pig farming activity is an unnecessary step. In any event, there is no call from the planning scheme controls for such a level of screening. The NEGROP guidance is a guideline only and not a scheme requirement.

233 Given this physical and scheme context, a Landscape and Revegetation Plan that focuses on practical and positive biodiversity outcomes outlined above while achieving or enhancing the filtered views into the subject land is an acceptable and positive planning outcome.

Onsite biodiversity values for identified freshwater turtle species

243 I therefore do not accept that a 500 metre buffer from Gunbower Forest is necessary to provide for habitat protection of the freshwater turtles. The evidence and materials relied on by Mr Organ indicate that a 100 metre buffer would be sufficient. When the nesting hotspot map of the Petrov paper above is compared to the subject land, and allowance is made for 30 metres setback of the piggery paddocks from the No 3 Channel, it can be seen that all the land north and east of the channel is available for nesting habitat. This would be supplemented by land available for nesting south and west of the channel within the 30 metre buffer required by GMW.

Onsite biodiversity values for identified birds and other reptile species

257 Such evidence might carry some weight if it was planned that all of the subject land were to be actively used for pig paddocks all of the time. However this is not what is proposed. The proposal as now properly understood would involve only a portion (i.e. 52 hectares) of the subject land at any one time, and even then, only half of this as active pig paddocks. Accordingly only a fraction of potential range of this species within the subject land might be 'disturbed' by the actual pig growing activities.

258 It must also be kept in mind that the pig paddocks would be buffered away from canopy areas where limb, twig and leaf fall would occur. Therefore these foraging values would be retained. The woodland patches would be similarly retained with buffers.

259 I do not accept that the proposed cropping of the land for the nutrient removal would be a threatening process to this species given its recorded habitation and use of cropped land.

The decision in Parklea and submissions about a precautionary approach

272 In this application the presence of the sensitive Gunbower Forest and wetlands environment near the subject land and biodiversity values arising from roadside vegetation is acknowledged. However, there is no proposal to undertake the use or development of the piggery in these ecologically sensitive environments. To the extent that indirect impacts on the biodiversity and other environmental values of these features are apprehended, I am satisfied that the relevant pathways for potential impact have been appropriately assessed and I have been able to make my findings accordingly.

Other issues

Biosecurity

284 express concern about the transmission of Japanese Encephalitis virus and other mosquito borne diseases between pig facilities and impacts on human health.

290 The letter from Dr Richards confirms that the main transmission pathway of viruses of concern to humans and livestock is via migratory birds and mosquitoes. His advice also highlights that the impact to the piggery is as much a concern from these pathways as it is to humans. Neither however are identified by Dr Richards as the main vectors for transmission and steps can be taken to mitigate the risks to both these populations.

291 Having set out the above however, it is questionable whether the biosecurity matters raised by the review applicants is in fact a matter relevant to the grant of a planning permit in this proceeding. Neither the FZ, clause 53.16 or clause 65.01 call on a planning decision maker to consider these forms of health or biosecurity matters.

Aboriginal heritage

298 Fourth, while parts of the subject land fall within an area of Aboriginal cultural heritage sensitivity under the Aboriginal Heritage Regulations 2018 (Vic) ('AH Regs'),⁷⁸ the proposal for a piggery is not a high impact activity as presently defined in these regulations.⁷⁹ Thus a mandatory Cultural Heritage Management Plan ('CHMP') is not required under the AH Regs and the Aboriginal Heritage Act 2006 (Vic) ('AH Act'). Submissions for the review applicants did not point to any other reason why a permission under the AH Act would be required.