

ATTACHMENT TO AGENDA ITEM

Ordinary Meeting

20 May 2014

**Agenda Item 10.4 Use of land for the storage and distribution of
swimming pools**

Attachment 1 DELEGATES REORT 535

Delegates Report

Application Details:

Responsible Officer:	Andrew Dainton
Application Number:	2013-303
Applicant Name:	H J Hughes
Date Received:	20-Nov-2013
Statutory Days:	119
Land/Address:	5765 Midland Highway TATURA VIC 3616
Zoning & Overlays:	Farming Zone 1 Abuts Road Zone Category 1 Abuts Floodway Overlay Area of Aboriginal Heritage Sensitivity
Why is a permit required (include Permit Triggers):	Use of land for the storage and distribution of swimming pools under 35.07-1
Are there any Restrictive Covenants on the title?	No

Proposal

The application seeks retrospective approval to use land to store and distribute swimming pools. The use of land has been occurring since 2007 without a planning permit.

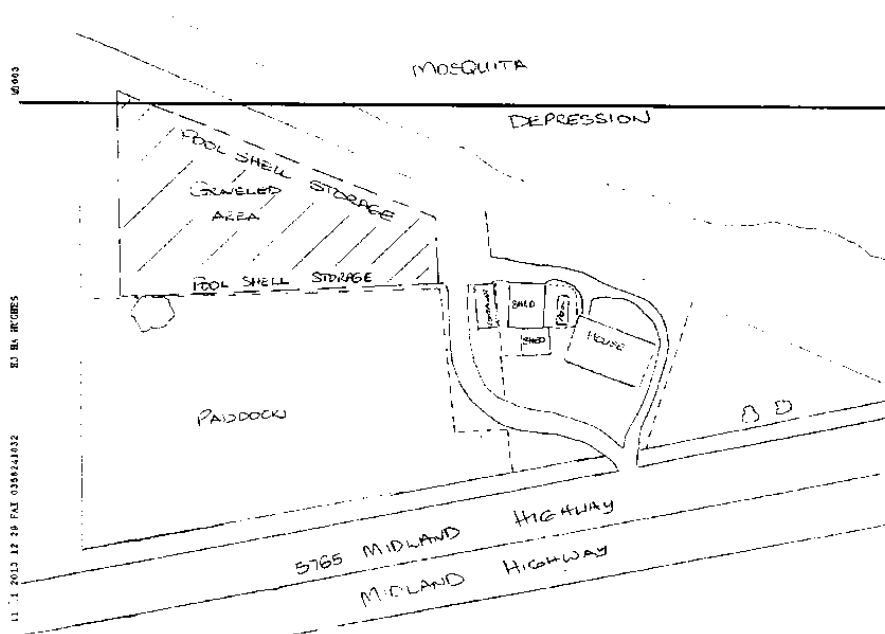
Council became aware of the use during an assessment of a proposed subdivision of the land in 2012, which led to enforcement file EF-431 being opened. As a result of the enforcement file an application for planning permit has been made.

The applicant has explained the use as:

- Swimming pools are delivered to the land from their place of manufacture in Newcastle
- No works are undertaken on the pools at the land
- The pools are stored on the land normally for short periods and then delivered to the end user
- The delivery of the pools is organised by the permit applicant
- Trucks movements to the land are limited to day time hours
- The use of land employees six persons

- The use would not be viable if forced to relocate to an industrial zoned land. If the use is not permitted to operate at the land it is likely that the business will cease to operate

A site plan of the proposed use is below:



The land is entirely within an area of cultural heritage sensitivity. The applicant has engaged Jo Bell Heritage Services (Jo Bell) to provide advice if the use triggers the need for a Cultural Heritage Management Plan (CHMP). Jo Bell in a letter dated 12 March 2014 concludes the use will result in no significant ground disturbance, therefore no CHMP is triggered by the use.

The application has been assessed and found to achieve unacceptable planning outcomes for the following reasons:

- The application is contrary to 21.06 of the Local Planning Policy Framework which specifically discourages non-agricultural land uses on rural land unless the use is dependent on a rural location. The proposed use for the storage and distribution of swimming pools is a use well suited to an industrial zone in either Tatura, Mooroopna or Shepparton
- The proposed use of land for a non-agricultural use in the Farming Zone undermines the Industrial Land Review and economic feasibility of possible future industrial growth areas developing in Tatura which were identified in North Tatura and Cussen Street due to their location and proximity to existing infrastructure

- The application is contrary to 14.01-1 of the State Planning Policy Framework by permanently removing agricultural land of state importance from agricultural production
- The application fails to achieve acceptable planning outcomes when assessed against the relevant planning provisions including the Farming Zone, agricultural policies and the Industrial Land Review by:
 - Removing land within an irrigation district from agricultural production
 - Not supporting or enhancing agricultural production as the use is in no way related to an agricultural use
 - Introducing a non-agricultural use on the Midland Highway may place pressure on existing agricultural uses to cease and therefore allow for an alternative low cost industrial land use precinct

Summary of Key Issues

- This application seeks retrospective planning permission to use the land for storage and distribution of swimming pools. The use has operated from the land since 2007 and was discovered by the Planning Department following an application being made to subdivide the land
- The land is within an area of aboriginal cultural heritage sensitivity. Jo Bell Heritage Services reviewed the application and determined that the use does not trigger the need for a CHMP
- The application was advertised and no objections were lodged
- The relevant authorities being Vic Roads and Goulburn Murray Water did not oppose the grant of a permit
- When assessed against the relevant parts of the planning scheme the application is found to achieve an unacceptable planning outcome as the use permanently removes agricultural land from agricultural activities

Subject Site & Locality

An inspection of the site and the surrounding area has been undertaken.

Date: 19 March 2014

Time: 8.34am

The site has a total area of 38.16ha and currently contains:

- two existing dwellings and sheds and crushed rock surface to store swimming pools which is located in the south west corner of the land
- a sign on the shed includes the name of the business being Compass Pool's Australia Victorian Distribution Depot
- agricultural land being used for grazing
- unsealed vehicle access to the land from the Midland Highway
- front part of the land is used as a feed area for cattle

- the Mosquito Depression abuts the land to the east

The main site/locality characteristics are:

- the land is surrounded by agricultural activities including cropping and grazing

The Photos below show the existing site:



View of land and pools



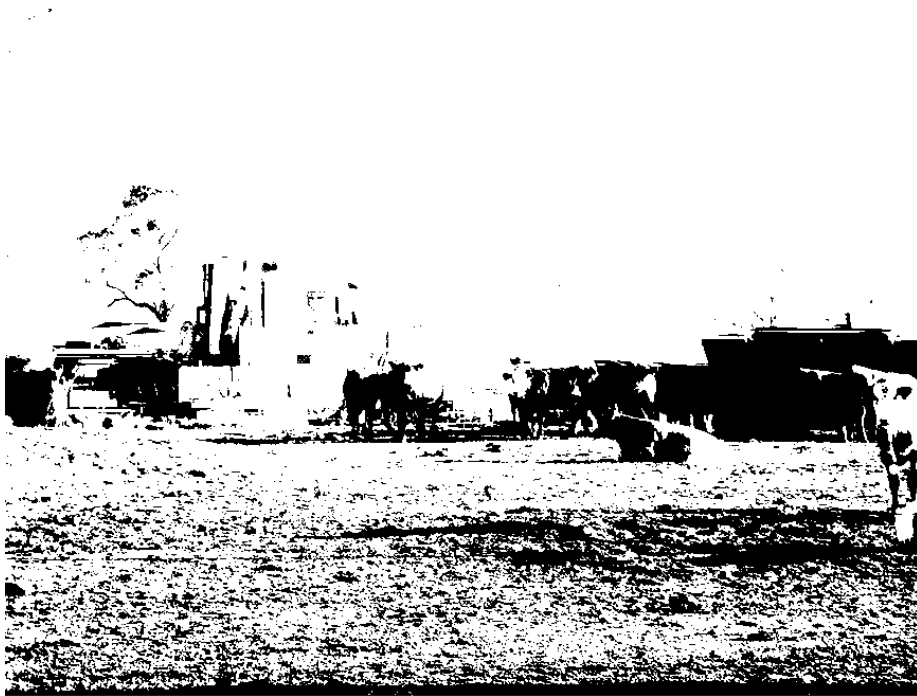
Existing shed and dwelling on the land



Existing paddock which holds cattle for intensive feeding



Photos of existing pools being stored



Permit/Site History

The history of the site includes:

- Planning permit 2012-397 allowed a re-subdivision of the land and was granted on 8 February 2013
- Statement of compliance was issued for the subdivision on 2 September 2013
- The permit applicant's were first made aware of the breach of the planning scheme on 3 January 2013 by letter
- Following the lodgement of the planning application, the planning officer called the land owner on 28 November 2013. During this conversation the land owner was informed that the use should be relocated to a commercial or industrial zone. A file note from this conversation is on file
- A meeting was held on 4 December 2013 between the permit applicant's and planning officer. The officer informed the land was within an area of cultural heritage sensitivity which may trigger the need for a CHMP. The land owner informed this had been reviewed previously and signed off by Yorta Yorta, a copy of this will be provided. The planning officer informed the purpose of the FZ and local policy discouraged industrial uses in the FZ. The planning officer informed it is likely that the application will be referred to DHP to recommend that the application be refused. It was agreed that the application would be placed on public notice and sent to authorities to progress the application.
- On 5 March 2014, the planning officer reminded the applicant by letter of the need to respond to the *Aboriginal Heritage Act*
- On 12 March 2014 the applicant provided written advice in relation to the *Aboriginal Heritage Act* which concluded the application did not trigger the need for a CHMP.

Further Information

Was further information requested for this application? No

Public Notification

The application has been advertised pursuant to Section 52 of the *Planning and Environment Act 1987*, by:

- Sending notices to the owners and occupiers of adjoining land.
- Placing a sign on site.

The applicant returned a signed declaration stating the sign was displayed on the land between 10 December to 25 December 2013.

Objections

The Council has received no objections to date.

Title Details

The title does not contain a Restrictive Covenant.

The title contains a Section 173 Agreement. The agreement relates to subdivision in the FZ, therefore the S173 has no impact on this use application.

Consultation

Consultation was not undertaken.

Referrals

External Referrals/Notices Required by the Planning Scheme:

Referrals/Notice	Advice/Response/Conditions
Section 55 Referrals	Clause 66 of the scheme did not require referral of the application.
Section 52 Notices	<p>The application was notified to Vic Roads, GMW and CMA.</p> <p>Vic Roads consented to the grant of a permit subject to the inclusion of the following condition being included in the permit.</p> <p><i>Prior to the commencement of the use the existing access must be upgraded to the satisfaction of the Roads Corporation (VicRoads) and at no cost to the Roads Corporation in accordance with standard drawing SD2065 Truck Access to Rural Properties Type B.</i></p> <p>GMW consented to the proposal without requiring any conditions.</p> <p>The CMA did not respond to the notice therefore their consent is deemed.</p>

Internal Council Notices	Advice/Response/Conditions
EHO and Development Engineers	The EHO's and development engineers were internally referred of the application. The internal Council departments consented to the proposed use without requiring any conditions.

Assessment

The zoning of the land

The land is within the FZ1.

Purposes of the zone include:

- To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- To provide for the use of land for agriculture.
- To encourage the retention of productive agricultural land.
- To ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.
- To encourage the retention of employment and population to support rural communities.
- To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.

Under 35.07-1 a planning permit is required to use the land for a store.

Under 35.07-6 are decision guidelines for the FZ.

Relevant overlay provisions

The land is not within any overlays.

The State Planning Policy Framework (SPPF)**11.05-3 Rural productivity****Objective**

To manage land use change and development in rural areas to promote agriculture and rural production.

Strategies

Prevent inappropriately dispersed urban activities in rural areas.

Limit new housing development in rural areas, including:

- Directing housing growth into existing settlements.
- Discouraging development of isolated small lots in the rural zones from use for single dwellings, rural living or other incompatible uses.
- Encouraging consolidation of existing isolated small lots in rural zones.

Restructure old and inappropriate subdivisions.

Policy guidelines

Planning must consider as relevant:

• Ready for Tomorrow – a Blueprint for Regional and Rural Victoria (State Government of Victoria, 2010).

14.01 Agriculture**14.01-1 Protection of agricultural land****Objective**

To protect productive farmland which is of strategic significance in the local or regional context.

Strategies

Ensure that the State's agricultural base is protected from the unplanned loss of productive agricultural land due to permanent changes of land use.

Consult with the Department of Primary Industries and utilise available information to identify areas of productive agricultural land.

Take into consideration regional, state and local, issues and characteristics in the assessment of agricultural quality and productivity.

Permanent removal of productive agricultural land from the State's agricultural base must not be undertaken without consideration of its economic importance for the agricultural production and processing sectors.

In considering a proposal to subdivide or develop agricultural land, the following factors must be considered:

- The desirability and impacts of removing the land from primary production, given its agricultural productivity.

- The impacts of the proposed subdivision or development on the continuation of primary production on adjacent land, with particular regard to land values and to the viability of infrastructure for such production.
- The compatibility between the proposed or likely development and the existing uses of the surrounding land.
- Assessment of the land capability.

In assessing rural development proposals, planning and responsible authorities must balance the potential off-site effects of rural land use proposals (such as degradation of soil or water quality and land salinisation) which might affect productive agricultural land against the benefits of the proposals.

Planning for rural land use should consider:

- land capability; and
- the potential impacts of land use and development on the spread of plant and animal pests from areas of known infestation into agricultural areas.

14.01-2 Sustainable agricultural land use

Objective

To encourage sustainable agricultural land use.

Strategies

Ensure agricultural and productive rural land use activities are managed to maintain the long-term sustainable use and management of existing natural resources.

Encourage sustainable agricultural and associated rural land use and support and assist the development of innovative approaches to sustainable practices.

Support effective agricultural production and processing infrastructure, rural industry and farm-related retailing and assist genuine farming enterprises to adjust flexibly to market changes.

Facilitate the establishment and expansion of cattle feedlots, piggeries, poultry farms and other intensive animal industries in a manner consistent with orderly and proper planning and protection of the environment.

The Local Planning Policy Framework (LPPF)- including the Municipal Strategic Statement (MSS), local planning policies and Structure Plans

21.06-1 Agriculture

Irrigated primary production and the processing of that product underpin the municipality and the Region's economy. The level of production is nationally important and the region is responsible for significant parts of the nation's milk production, deciduous canned fruit production, stone fruit crop and tomato processing production.

The region's workforce is heavily dependent on the agricultural sector with many people directly involved in agricultural production on farms, and an estimated similar number involved directly and indirectly in the processing and transport of that product.

Objectives – Agriculture

To ensure that agriculture is and remains the major economic driver in the region.
 To facilitate growth of existing farm businesses.
 To facilitate growth of new agricultural investment.
 To provide for small scale, specialized agriculture.

Strategies - Agriculture

- Identify 'growth', 'consolidation' and 'niche' areas in the Farming Zone.
- Encourage growth and expansion of existing farm businesses and new investment in 'growth' and 'consolidation' areas.
- Encourage opportunities for smaller scale, specialized agriculture in 'niche' areas.
- Discourage land uses and development in the Farming Zone, Schedule 1 that would compromise the future agricultural use of the land, including farm related tourism.
- Encourage value adding and new enterprises for agricultural production.
- Encourage the preparation of Whole Farm Plans for on farm earthworks.
- Discourage non-agricultural uses on rural land other than rural based industry.
- Discourage non-agricultural development in rural areas except where development is dependent on a rural location, and cannot be accommodated within existing industrial or business zoned land.
- Discourage non-agricultural development along major roads in rural areas especially at the fringe of existing urban areas when it may contribute to ribbon development.
- Buildings for non-agricultural purposes in rural areas should be set back a minimum of 100 metres from any road, be constructed in muted coloured 'colorbond' materials or similar and screened from any road by dense tree and shrub planting.
- Signs for industrial and commercial development in rural areas will be strictly limited in size and number.

VCAT decisions

In *Fadgyas Planning Associates Pty Ltd v Greater Geelong* VCAT 953 24 May 2004, Member Baird considered an application to a use of land in the Rural Zone which consisted of storing of fabricated products with some assembly of materials and distribution of the products.

In deciding to refuse to grant a permit the following comments were made:

While I have no criticism of the business operation per se, it has no critical link or nexus with agricultural or rural-based activities locally or further afield. The review site would be used as a store, assembly and distribution centre whose products can loosely be described as being linked with road management or the management of other spaces, being removable bollards, car park products, barrier mesh, lighting and fixed barriers. It cannot be said to be economic development that is related to rural activities.

I have not been persuaded that the proposal is acceptable when assessed against the Zone purpose and relevant policies. I am not satisfied that the outcome of this Application is policy neutral, rather, as I have said, the outcome would be an industrial use in a rural zone with the potential to undermine the policy directions of the Scheme.

In *Hastings & Brereton v Pyrenees Shire Council and Anor P2274/2003* Member Cimino considered an engineering workshop in the Rural Zone.

In this case VCAT also considered availability of industrial zoned land to accommodate the use.

A further factor to consider is the lack of serviced industrial land available for a business of this type in Avoca. On this point, it is acknowledged in the "Beaufort and Avoca Industrial Land Strategy" report 2002 that by comparison with Beaufort, there have been fewer industrial development initiatives in Avoca over recent years and there is no industrial estate with the potential to provide serviced lots for start up industries. One of Avoca's weaknesses identified in the strategy is that there is a lack of factory buildings available. Some industrial land is available, however, it is not suitable for a venture of this type as it requires redevelopment and the associated costs are beyond those that could reasonably be embraced by a small business venture like that carried out by the applicants.

In such circumstances, it seems to me that there should be some scope to allow land within the Rural Zone to be used for an industrial purpose that provides services to the local community.

In this current application in Tatura the applicant has raised the lack of available industrial land in Tatura as a factor in locating the use without obtaining a planning permit in a Farming Zone.

The Council's Industrial Land Review (ILR) assessed both the demand and supply of industrial land in Tatura. Utilising planning and development data, and existing supply capabilities, the ILR suggests that there is a shortage of available industrial zoned lands within the township. The ILR calculates that there is approximately 4 hectares of appropriately zoned land for industrial purposes in Tatura equal to approximately two years' worth of supply. The majority of this land is owned by the three large industrial businesses within Tatura:

1. Tatura Abattoirs Pty Ltd;
2. Tatura Milk Industries Ltd; and
3. Unilever Australia Holding Pty Ltd.

This land is effectively reserved for the companies' own expansion needs and is not available for small-scale industrial subdivision for local small-scale businesses.

The Industrial Land Review undertaken by Council identifies two investigation areas in Tatura for future industrial re-zoning being:

1. the North Tatura Industrial Investigation Area; and
2. the Cussen Street Industrial Investigation Area.

It is therefore acknowledged that a shortage of industrial land in Tatura exists.

However, it is considered that if there is to be industrial uses locating in the Farming Zone the most appropriate location for this to occur is within the two investigation areas as there is future strategic direction for industrial land use within these areas.

The siting of industrial uses within these investigation areas would ensure ad hoc industrial intrusions do not occur within land that is set aside for farming.

The subject site is currently within an agricultural area with no strategic direction for the land to be used for anything other than agriculture; therefore the use should not be allowed.

Like the application in Greater Geelong, this application seeks to use Farming Zone for an industrial use which leads to unacceptable outcomes when considered against the Farming Zone and associated policies. Reasons for this conclusion are set out below.

Officer's Assessment

The proposal seeks retrospective planning permission to use the land for a non-agricultural use being the storage and distribution of swimming pools. The use is not related to agriculture and is an opportunistic use of agricultural land for a use that would most appropriately be located in an industrial zone as are other storage and distribution type uses.

It is acknowledged that the use is open to grant a permit under the FZ. Despite this clause 31.02 states the following when making decisions about section 2 uses.

Because a use is in Section 2 does not imply that a permit should or will be granted. The responsible authority must decide whether the proposal will produce acceptable outcomes in terms of the State Planning Policy Framework, the Local Planning Policy Framework, the purpose and decision guidelines of the zone and any of the other decision guidelines in Clause 65.

With regard to access the location being on a major east west road, provides some benefits in terms of location and access to transport routes. The direct access to the Midland Highway raises potential road safety issues and therefore Vic Roads has required the existing access to be upgraded. However, based on the Vic Roads consent (subject to condition) the application it is deemed to not lead to any undesirable road safety conditions.

Although the use is visible when travelling on the Midland Highway the use itself is relatively gentle in terms of impact on amenity and visual appearance. This is demonstrated through no negative response to the application from neighbours.

However despite some positive aspects to the application, other policy considerations must be given more weight.

The use of land is not related to agriculture and produces unacceptable planning outcomes for the following reasons:

- It is well documented, through the Rural Regional Land Use Strategy and the Planning Scheme, that the municipality is an important food producing region for the state and nation. Therefore it is of critical importance that agricultural land be protected from inappropriate land uses such as that applied for to ensure land is maintained for agriculture and that land prices are not inflated beyond their agricultural value by inappropriate uses

- Council's local planning policy at 21.06 specifically discourages non-agricultural uses on rural land unless the use is dependent on a rural location. This proposed use, for the storage and distribution of swimming pools, is a common use found in industrial areas across the municipality and is more appropriate in an industrial zone.
- The proposed use of land for a non-agricultural use in the Farming Zone undermines the Industrial Land Review and economic feasibility of possible future industrial growth areas developing in Tatura which were identified in North Tatura and Cussen Street due to their location and proximity to existing infrastructure
- Although the loss of agricultural land is minimal the precedent which is likely to be created is undesirable and may lead to a proliferation of like uses in the area and impact on the productive capacity of the surrounding agricultural area by removing land from agricultural production and creating potentially conflicting land uses
- The formalisation of a land use unrelated to agriculture would give permission to remove the land from agricultural production
- The use of land is contrary to the purposes of the Farming Zone which seeks to provide, retain and protect productive agricultural land for agricultural pursuits.
- The proposal achieves negative outcomes in terms of the decision guidelines of the FZ by:
 - Removing land within an irrigation district from agricultural production
 - Not supporting or enhancing agricultural production as the use is in no way related to an agricultural use. The use is an activity that would normally be located within an industrial zone.
 - Introducing a non-agricultural use on the Midland Highway may place pressure on existing agricultural uses to cease and therefore allow for an alternative low cost industrial land use precinct

In summary, by reference to policy:

- The application represents a loss of potentially productive agricultural land which is of strategic significance in the local, regional and state context.
- The application is not a sustainable solution for agriculture and arises from the personal needs of the applicant.
- The application detracts from the long term productive capacity of agricultural land.
- The application is contrary to local planning policy which recognises the importance of agriculture to the economic base of the municipality, and of importance to Victoria.
- The application is contrary to the purposes and decision guidelines of the Farming Zone.

Based on this assessment it is recommended that no permit grant and that the application be refused on the following grounds:

- The application is contrary to 21.06 of the Local Planning Policy Framework which specifically discourages non-agricultural land uses on rural land unless the use is dependent on a rural location. The proposed use for the storage and distribution of swimming pools is a use well suited to an industrial zone in either Tatura, Mooroopna or Shepparton
- The proposed use of land for a non-agricultural use in the Farming Zone undermines the Industrial Land Review and economic feasibility of possible future industrial growth areas developing in Tatura which were identified in North Tatura and Cussen Street due to their location and proximity to existing infrastructure
- The application is contrary to 14.01-1 of the State Planning Policy Framework by permanently removing agricultural land of state importance from agricultural production
- The application fails to achieve acceptable planning outcomes when assessed against the relevant planning provisions including the Farming Zone, agricultural policies and the Industrial Land Review by:
 - Removing land within an irrigation district from agricultural production
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Should, Council decide to refuse to grant a permit, enforcement action will then need to be undertaken to require the business relocate and use cease at the land. It is recommended that the land owner be provided with six months to relocate the business unless additional time is granted by a planning officer.

Relevant Particular Provisions

52.06 – Car Parking

52.06-2 requires that before a new use commences a satisfactory provision of parking is provided on the land.

Under the table to 52.06-5 requires that a store provide parking to a rate of 10% of the site area.

Whilst the submitted site plan does not show areas for car parking, the site is large enough to accommodate car parking should it be decided to grant a permit.

The decision guidelines of Clause 65

Before deciding on an application or approval of a plan, the responsible authority must consider, as appropriate:

- The matters set out in Section 60 of the Act have been considered.

The proposed development does not accord with the relevant provisions within the Greater Shepparton Planning Scheme as discussed previously in this report.

The proposed use and development conflicts with the objectives of planning in Victoria.

- The proposed development will not have any substantial effect on the amenity of the area.
- The application does not propose the removal or destruction of native vegetation.

Relevant incorporated or reference documents

There are no relevant incorporated or reference documents.

Other relevant adopted State policies or strategies policies

There is no relevant adopted state or strategic policies.

Relevant Planning Scheme amendments

There are no relevant Planning scheme amendments to this application.

Are there any significant social & economic effects?

The application raises no significant social or economic effects.

Discuss any other relevant Acts that relate to the application?

The Aboriginal Heritage Act, 2006 has been considered within this report and found that the application does not trigger the need for a CHMP.

There are no other relevant Acts that relate to this application.

Conclusion

The proposed application to use land in the Farming Zone 1 for storage and distribution of swimming pools is a retrospective application as the use has commenced without a permit.

The application fails to achieve acceptable planning outcomes when considered against agricultural policies, therefore no permit should grant.