

3 Planning scheme performance

3.1 ZONES AND OVERLAYS

The policies summarised in Chapter 2 provide the overarching decision making framework for use and development of rural land. Consideration of these policies is invoked when a landholder seeks approval for a planning permit to change land use or undertake buildings and works. Whether a planning permit is required will depend on the zone and any overlays that apply to the landholders' land.

ZONES

A planning scheme identifies zones to designate land for particular uses, such as farming, residential or industrial. Each zone has its own purpose, identifies if a planning permit is required for use and/or development of land and the matters that must be considered before deciding to grant a planning permit. Figure 16 shows the rural zones in Hepburn.

The **Farming Zone (FZ)** is the main zone for rural land in the Hepburn Planning Scheme and aims to encourage retention of productive agricultural land and discourage uses that may have adverse impacts on agriculture. The FZ covers nearly 100,000ha or 67% of the total Shire area (Table 5). There are two schedules to the FZ. FZ1 requires a minimum subdivision area of 40ha and a minimum area of 40 ha above which no planning permit is required for a dwelling. FZ2 requires a minimum subdivision area of 20ha and a minimum area of 20 ha above which no planning permit is required for a dwelling.

The **Rural Conservation Zone (RCZ)** is primarily concerned with protecting and conserving rural land for its environmental features or attributes. The conservation values of the land must be identified in the schedule to the zone and could be historic, archaeological, landscape, ecological, cultural or scientific values. The RCZ covers around 2,800ha or 2% of the total Shire area. There are two schedules to the RCZ.

RCZ1 has been applied to conserve areas dominated by Plains Grassy Woodland of the Victoria Volcanic Plains and riparian zones. RCZ2 has been applied to conserve areas that contribute to ecological connectivity across private land and between public land forest blocks.

The **Rural Living Zone (RLZ)** provides for residential use in a rural setting and is designed to provide lots that are large enough to accommodate a dwelling and a farming use. The farming use is likely to be carried on for reasons other than the need to provide a significant source of household income. The RLZ covers 640ha or 4% of the total Shire area. There are two schedules to the RLZ. RLZ1 requires a minimum subdivision area of

4ha and a minimum area of 4 ha above which no planning permit is required for a dwelling. RLZ2 requires a minimum subdivision area of 8ha and a minimum area of 8ha above which no planning permit is required for a dwelling.

The **Rural Activity Zone (RAZ)** has not been applied to land in Hepburn Shire. In 2022, the Shire commissioned an assessment of rural land that may be suitable for application of the RAZ. The findings of the study are detailed in Chapter 8, Rural Tourism.

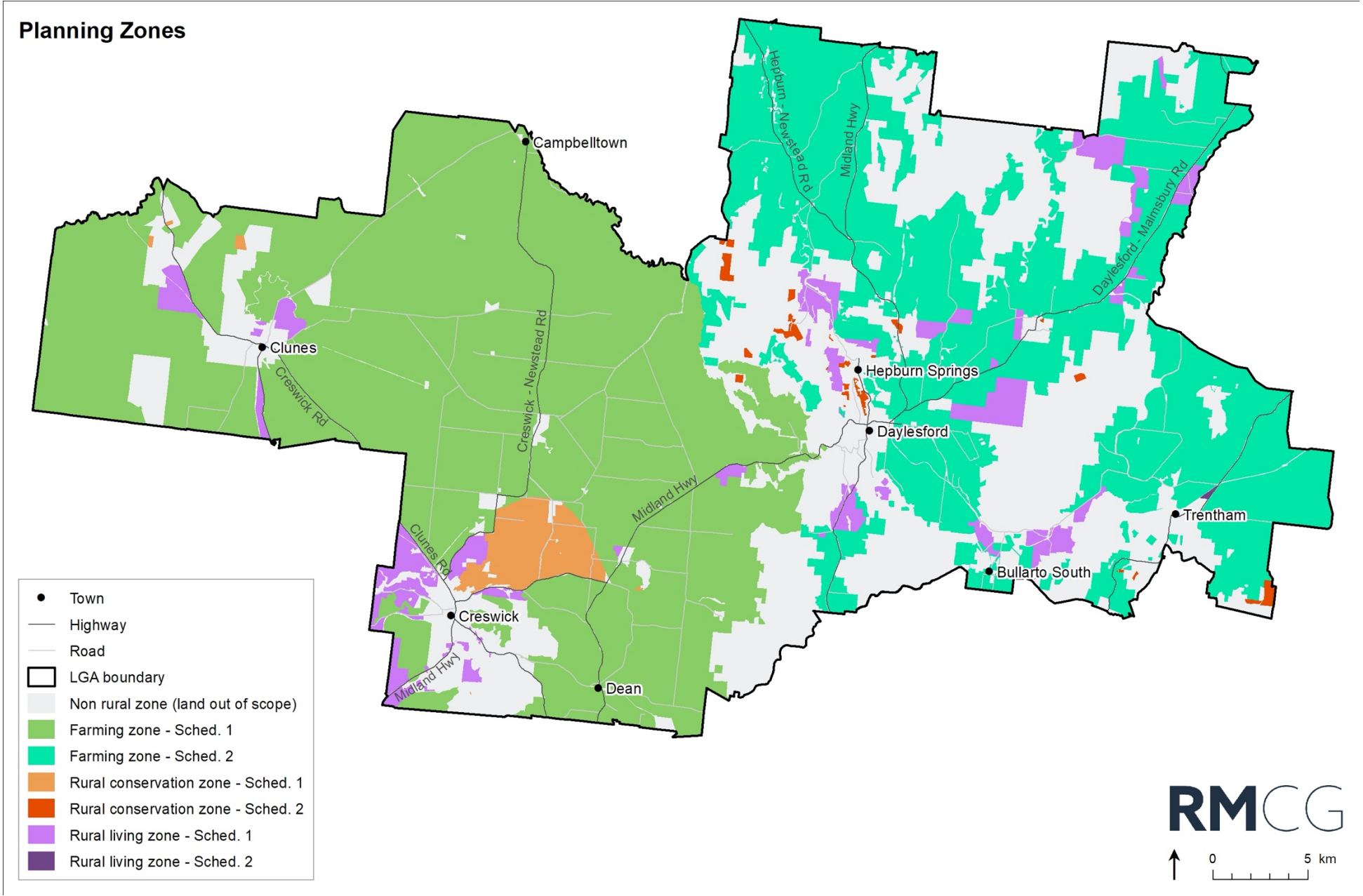
Table 5: Hepburn Planning Scheme rural zones

Zone	Shire wide area of zones (ha)	Proportion of total shire area	Schedules	Minimum lot size above which a planning permit for a dwelling is not required (ha)	Minimum lot size subdivision (ha)
FZ	99,437	67%	FZ1	40	40
			FZ2	20	20
RCZ	2,822	2%	RCZ1	-	40
			RCZ2	-	20
RLZ	5,640	4%	RLZ 1	4	4
			RLZ2	8	8

The current FZ and RCZ schedules reflect the recommendations of the 1999 Hepburn Land Use Strategy which included:

- In the Rural Zone, to respond to the variation in rural land and agricultural situations, a minimum subdivision size of 40ha in the predominantly grazing areas in the west of the Shire and another more flexible minimum size down to 20ha, in areas according to land capability assessment and criteria that have a greater potential for diversity of horticultural activities. Local policy was recommended to discourage small lot subdivisions and excisions and uses that are incompatible with rural areas.
- Apply the Environmental Rural Zone to areas of local domestic water supply and to areas within defined mineral spring aquifers. Two subdivision sizes were proposed; one reflecting rural farming areas, the other relating to areas characterised by sub-commercial farming or rural lifestyle development and that the minimum subdivision size would generally reflect the existing lot sizes in the respective areas.

Figure 16: Rural zones, Hepburn Shire



It would appear from the current scheme that the Rural Zone recommendations were implemented and then directly translated into the new rural zones in 2006.

- FZ1 applies to land in the west of the Shire with a minimum lot size of 40ha.
- FZ2 applies to land in the west of the Shire with a minimum lot size of 20ha.

The recommendation relating to the Environmental Rural Zone and protection of water supply catchments and the mineral springs was not implemented. However, a number of overlays (ESO 1 and ESO 2) have subsequently been introduced to protect potable water supply catchments. The current RCZ schedules relate to protection of biodiversity values.

- RCZ2 has been applied to some land around Hepburn Springs.
- RCZ1 has been applied to land north east of Creswick.

This review provides an opportunity to test whether the FZ and schedules align with land where agriculture is intended as the primary land use and whether there is land with significant environmental values that may warrant application of the RCZ.

In 2016, the Centre for Regional and Rural Futures¹⁹ undertook a review of the agricultural versatility of land in Hepburn under future climate scenarios. The review found that extensive areas of the Shire will experience no change in agricultural versatility, areas to the south and east will experience a 10% increase in versatility, while areas to the north and west will experience a 10% decline in versatility. The report concluded:

..... that Hepburn has a biophysical environment (climate, soil and topography) that is highly suited to sustaining a productive agricultural sector (now and in the future). This is borne out by the extent and diversity of agricultural production already occurring across the Shire. The level of suitability may decline somewhat into the future as the climate changes, but overall the level of decline is small. Of more note is the shift in some versatile land into the south east of Hepburn.

If appropriate focus is placed on building adaptive capacity within the agriculture sector (through the dissemination of information related to what commodities the farmers can viably diversify into and through developing a better understanding of water resources in the Shire, both conventional and alternative) it appears Hepburn can apply an equal focus to capitalising on the opportunities presented by climate change.

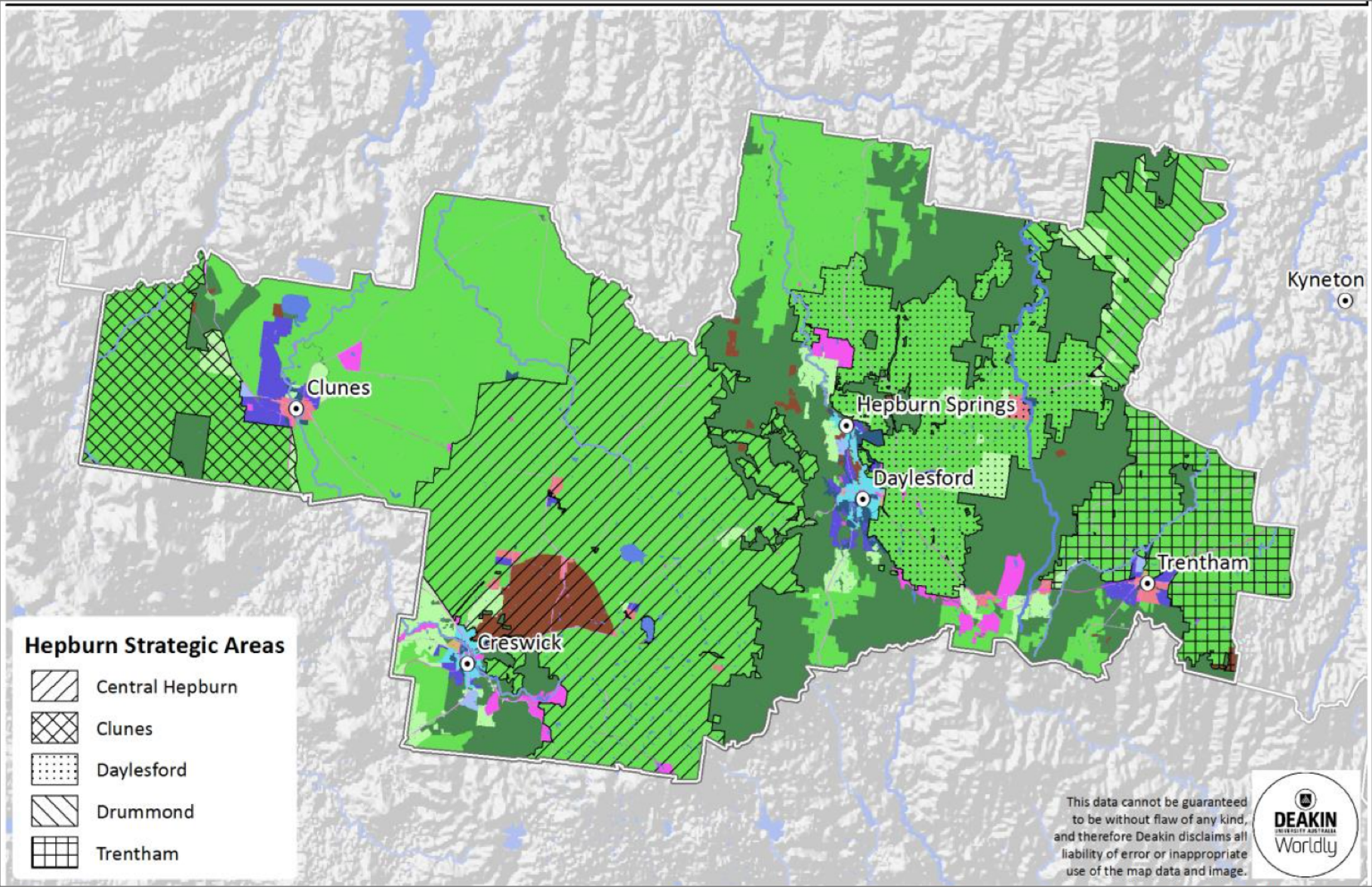
On the basis of the forecast changes to agricultural versatility and the predominant agricultural land use at the time, the study recommended a number of changes to the Hepburn Planning Scheme for a number of strategic planning areas (Figure 17).

- Central Hepburn:
 - retain the FZ and increase the minimum subdivision minimum size and the minimum area for which a planning permit for a dwelling is not required to 80 hectares.
 - apply the RLZ or RAZ to the south west corner of the area.
- Clunes
 - retain the FZ and increase the minimum subdivision minimum size and the minimum area for which a planning permit for a dwelling is not required to 80 hectares.
- Daylesford
 - Apply the RAZ and include a minimum subdivision size of at least 20 hectares to maintain the range of agricultural enterprises and the rural landscape values.
- Drummond
 - the high quality productive agricultural land in this zone could be prejudiced by the current 20 hectares minimum subdivision size. Therefore, this rural zone should be maintained and both minimum subdivision size and minimum lot sizes for which a permit is not required to use the land for the purpose of a dwelling should be 40 hectares.
- Trentham
 - the high quality productive agricultural land in this zone could be prejudiced by the current 20 hectares minimum subdivision size. Therefore, this rural zone should be maintained and both minimum subdivision size and minimum lot sizes for which a permit is not required to use the land for the purpose of a dwelling should be 40 hectares.
- All other agricultural areas
 - Retain the FZ and the current 40ha minimum lot sizes.

This study provides an opportunity to test and validate the application of the rural zones and review the minimum lot size schedules in accordance with the Rural Zones Practice Note No 42 taking into consideration the findings of this review.

¹⁹ Centre for Regional and Rural Futures (2016) Climate Cognisant Hepburn: Rural Land Use Review

Figure 17: Strategic planning areas19



OVERLAYS

Overlays address particular issues such as heritage, bushfire or flooding. An overlay will set out requirements for development of the land, if a planning permit is required and the matters that must be considered before deciding to grant a permit. The requirements of an overlay apply in addition to the requirements of the zone. Table 6 provides a summary of the most relevant overlays to this review, including the overlay purpose and the impact on land use and development. Overlays are discussed in further detail in the relevant theme chapter.

Table 6: Overlays that apply to rural areas of Hepburn Shir

Overlay	Purpose	Impact on land use and development
Environmental Significance Overlay		
Schedule 1 – Special Water Supply Catchment Protection	Protect the quality and security of water supply	Limits the siting and form of development to minimise impacts on ground and surface water quality
Schedule 2 – Mineral springs and groundwater protection	Protect the mineral springs and town water supply groundwater aquifers from the impacts of effluent and drainage	Limits the siting and form of development to minimise impacts on ground water quality
Vegetation Protection Overlay		
Schedule 1 – Significant exotic and native vegetation	Protect vegetation of significance for its natural beauty, interest and importance and contribution to the character of an area	Removal of vegetation is subject to a planning permit
Significant Landscape Overlay		
Schedule 1 – Volcanic peaks landscape area and ridges and escarpments area	Protect the visual significance of vegetation, ridges, escarpments and geological features	Limits the location and form of development of land, including native vegetation clearance, that may impact landscape qualities.
Land Subject to Inundation Overlay		
Schedule 1 – Flooding from waterways in Clunes and Creswick (depths up to and including 350mm)	Identifies land in a flood storage or fringe area affected by a 1 in 100 year flood.	Limits the location and form of development to minimise impacts from flooding on property and the natural environment
Schedule 2 – Flooding from waterways in Clunes and Creswick (depths greater than 350mm)	Identifies land in a flood storage or fringe area affected by a 1 in 100 year flood.	Limits the location and form of development to minimise impacts from flooding on property and the natural environment
Schedule 1 – Flooding from waterways Coomoora, Drummond, Evansford, Kooroocheang, Mount Beckworth, Mount Cameron, Smeaton and Yandoit	Identifies land in a flood storage or fringe area affected by a 1 in 100 year flood.	Limits the location and form of development to minimise impacts from flooding on property and the natural environment
Bushfire Management Overlay		
Schedule 1 – Creswick, Daylesford, Hepburn , Trentham BAL-12.5 Areas	Specifies bushfire protection measures and referral requirement for construction or extension of dwelling in the designated area.	Requires bushfire protection measures to be incorporated into siting and design of new dwellings.
Schedule 2 – Hepburn, Hepburn Springs BAL-29 Areas	Specifies bushfire protection measures and referral requirement for construction or extension of dwelling in the designated area.	Requires bushfire protection measures to be incorporated into siting and design of new dwellings.

3.2 PLANNING SCHEME REVIEW

A review of the Hepburn Planning Scheme²⁰ in 2020 made a number of recommendations to improve the performance of the planning scheme. Specific recommendations relevant to rural land, and whether they are in or outside the scope of this study are summarised in Table 7.

Table 7: Planning scheme review summary of recommendations

Clause	Recommendation	Project response
Municipal Planning Strategy	Set out the importance of rural/agricultural land and enterprises.	Strategy will provide relevant text
	Set out the importance of tourism to the municipality and the links to the key underpinnings of the tourism offer identified (such as heritage, landscape, township character, environment) and the need to balance the benefits and manage the disbenefits.	Strategy will provide relevant text for rural tourism
Local Policy	Strengthen local policy in relation to land uses in the farming zones and when dwellings are not appropriate.	Strategy will include principles and decision criteria to inform a local policy
	Develop a local policy in relation to tourism uses within the farming zones and the need for tourism facilities to be preferably located within townships with criteria identified for out of township development providing clarity on where rural enterprises will be allowed to locate	Strategy will include principles and decision criteria to inform a local policy
Further work	Undertake an industrial, commercial and residential land demand study for the Shire.	Demand/supply of RLZ land
	Undertake structure plans for Trentham, Creswick, Clunes, Daylesford, Hepburn Springs, and Glenlyon.	Final strategy will inform of designation township boundaries
35.03 RLZ, 35.06 RCZ 35.07 FZ	Require translation to new schedule template.	Final strategy will inform zone schedules
Overlays 42.01 Environmental Significance Overlay 1 and 2	These require significant redrafting to comply with Ministerial Directions and review to ensure they comply with an appropriate source document. This should be undertaken in conjunction with the water authorities and DELWP. Coliban Water have also identified a catchment specific ESO schedule for the Upper Coliban Catchment which could be explored.	Make recommendations for further strategic work based on review of background resources and consultation with water authorities.
42.02 Vegetation Protection Overlay 1 and 2	Additional schedules may be required to implement any future biodiversity studies. Although Council can rely on Clause 52.17 – Native vegetation for a ‘first pass’ form of development control on sites greater than 4000 sqm, there is a need to be more thorough in the level of protection provided. Identification of significant stands of vegetation is required both outside and within townships for protection.	Make recommendations for further strategic work based on review of background resources and consultation
42.03 Significant Landscape Overlay 1	Schedules may be required to implement any future biodiversity studies or landscape assessments. Council can consider implementing the South West Landscape Assessment Study through the amendment to expand the existing SLO1 and the introduction of SLO2 The SLO should be reviewed as part of further strategic work on landscape assessment.	Make recommendations for further strategic work based on review of background resources and consultation
44.01 Erosion Management Overlay 1	The schedule requires significant redrafting to meet the Ministerial Direction. Management objectives and risks need to be identified. Any additional areas identified by the CMA or DELWP could be included in any amendment depending on the level of strategic work that has already been undertaken.	Make recommendations for further strategic work based on review of background resources and consultation
44.04 Land Subject to Inundation Overlay 1	The current schedule has not been populated and therefore will require significant redrafting to meet the Ministerial Direction.	Out of scope

²⁰ Plan2Place (2020) Hepburn Planning Scheme Audit and Review Report

3.3 MINISTERIAL AMENDMENTS

A new suite of rural zones was introduced in 2004 by Ministerial Amendment VC24 to the Victoria Planning Provisions and by direct translation to the Hepburn Planning Scheme in 2006. This resulted in application of the Farming Zone to land previously zoned Rural. Direct translation means that the new zones were applied without strategic justification or analysis to ensure that the zone objectives and minimum lot size schedules were matched to existing uses, land attributes and promotion of the desired land use outcomes.

This study provides an opportunity to test and validate the application of the rural zones, consider the current rural land use and development circumstances and review the minimum lot size schedules in accordance with the Rural Zones Practice Note No 42.

In September 2013, Amendment VC103 introduced a number of changes to the Farming Zone and Rural Conservation Zone. Changes to the Farming Zone included:

- A new purpose statement promoting the retention of employment and population to support existing rural communities.
- Reducing the restrictions for alterations and extensions to dwellings and farm buildings Removing the requirement for a mandatory Section 173 agreement which restricts future subdivision after an initial subdivision is approved.
- Making less uses prohibited and more uses discretionary including some accommodation, retail and commercial uses.
- Removing the prohibition on group accommodation, landscape gardening supplies, market, trade supplies, warehouse and primary and secondary schools
- Increasing the threshold for persons that can be accommodated in a bed and breakfast from six to 10 without a permit.
- Removing the 'in conjunction' requirement which restricts uses such as group accommodation, residential hotel and restaurant.
- Removing other conditions which restrict uses such as group accommodation, place of assembly, store and transfer station.
- Removing permit requirements for uses such as primary produce sales, rural industry and rural store.
- Deleting the requirement and long-standing test to consider 'whether the dwelling is reasonably required for the agricultural activity conducted on the land'.

- Modifying the purpose of the Farming Zone to reduce the emphasis on dwellings adversely affecting the use of land for agriculture ('particularly dwellings' was changed to 'including dwellings').
- Adding a purpose to 'encourage the retention of employment and population to support rural communities'.
- Removing the restriction on further subdivision following the creation of a lot for an existing dwelling.

Removing the prohibition on some uses and making more uses discretionary provides scope for accommodating farm-related infrastructure such as processing facilities and logistics that may or may not be appropriate depending on the location. In deleting the requirement for an applicant to prove '*whether the dwelling is reasonably required for the agricultural activity conducted on the land*' the key remaining decision guideline regarding the nexus between dwellings and agriculture is '*the potential for the proposal to lead to a concentration or proliferation of dwellings in the area and the impact of this on the use of the land for agriculture*'. In the absence of policy, there is potential for uses and development, particularly dwellings not associated with primary production to occur in important agricultural areas of the Shire.

3.4 DEVELOPMENT IN THE FARMING ZONE

An analysis of planning permits in the FZ (Table 8) for the last 11 years found that most approved planning permits were for dwellings. Since 2011, 532 planning permits for new dwellings were approved in the Farming Zone with around 30% approved for properties in FZ1 and the remainder in FZ2 (Figure 18). Note that this does not include dwellings that may have been constructed without the requirement for a planning permit.

Farm numbers in Hepburn have reduced by around 40% since 2001²¹. This trend in farm numbers is contrary to the number of permits approved for dwellings in the FZ and suggests that many of these dwellings were for rural lifestyle purposes.

Since 2013, 55 planning permits for subdivision were approved in the FZ, with just under 70% approved for properties in FZ2 (Figure 19). The minimum lot size schedules should be reviewed in the light of the analysis agricultural industries and land ownerships to test if subdivision is supporting agricultural outcomes.

Permits were also issued for accommodation, including group accommodation, farm stays and bread and breakfasts, function centres including wedding venues, spa and health resorts and rural industry including composting, biochar manufacture, materials

²¹ Australian Bureau of Statistics Agricultural Census Survey. Data provided by Kynetec

recycling, landscape gardening, storage of food products, plant nursery. Most permits were approved on land in the eastern half of the Shire (Figure 20).

Council Officers in discussion on the current performance of the planning scheme noted that guidance, additional to that in the scheme would improve decision making particularly with regard to determining whether a new dwelling was genuinely required for an agricultural use and guidance on the type and scale of tourism developments in the FZ. The Hepburn Planning Scheme Review² also noted development pressure for new dwellings, lifestyle farming and tourism in the rural areas of the Shire, and that these are threatening the character of the municipality. The Review stated:

Pressure for further subdivision is a challenge for Council. The review has heard from a number of traditional farmers who wish to retire and subdivide their land and new farmers who are seeking smaller land holdings for their artisan activities. There are, at times, difficult personal circumstances that Council considers but these are rarely planning issues. Council needs to maintain a broader public interest test that preserves the land for the future generations and protects the land viability in the context of increasing natural hazard impacts and requirements for food production.

In addition to exerting a limiting influence on land prices, larger minimum lot sizes and land use controls can: maintain rural landscapes; protect environmental and natural resource assets such as remnant vegetation; protect environmental water flows by controlling the proliferation of small dams on fragmented land holdings; better manage bushfire risk; and, limit infrastructure and servicing costs to small lots that are better located.

Table 8: Planning permits FZ (2007 - 2021)²²

USE	TOTAL	APPROVED	REFUSED
Dwellings	405	322	16
Accommodation	31	25	1
Function centre	16	14	1
Festival	3	1	1
Gallery	3	2	1
Restaurant	5	4	0
Rural industry*	10	6	1
Rural store	4	3	0
Winery	5	5	0

* composting, biochar manufacture, materials recycling, landscape gardening, storage of food products, plant nursery

Figure 18: Dwellings permits approved in the Farming Zone²²

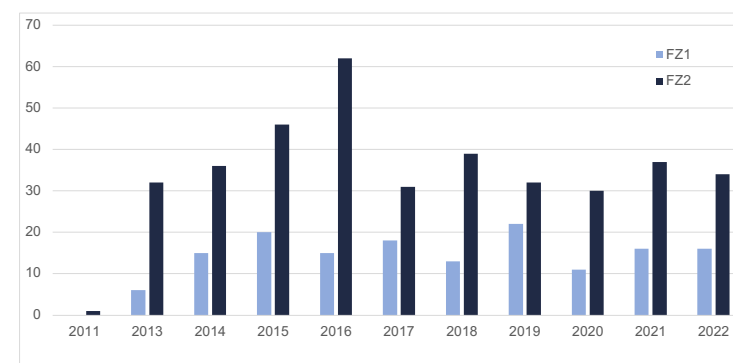
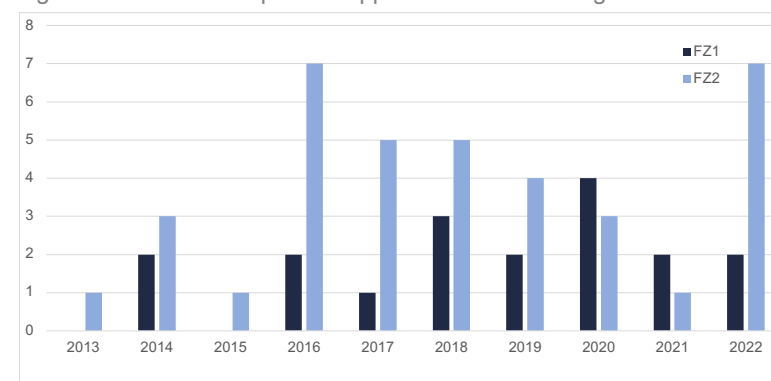


Figure 19: Subdivision permits approved in the Farming Zone²²



²² Data provided by Hepburn Shire

Figure 20: Planning permit approvals for dwellings and replacement dwellings²²

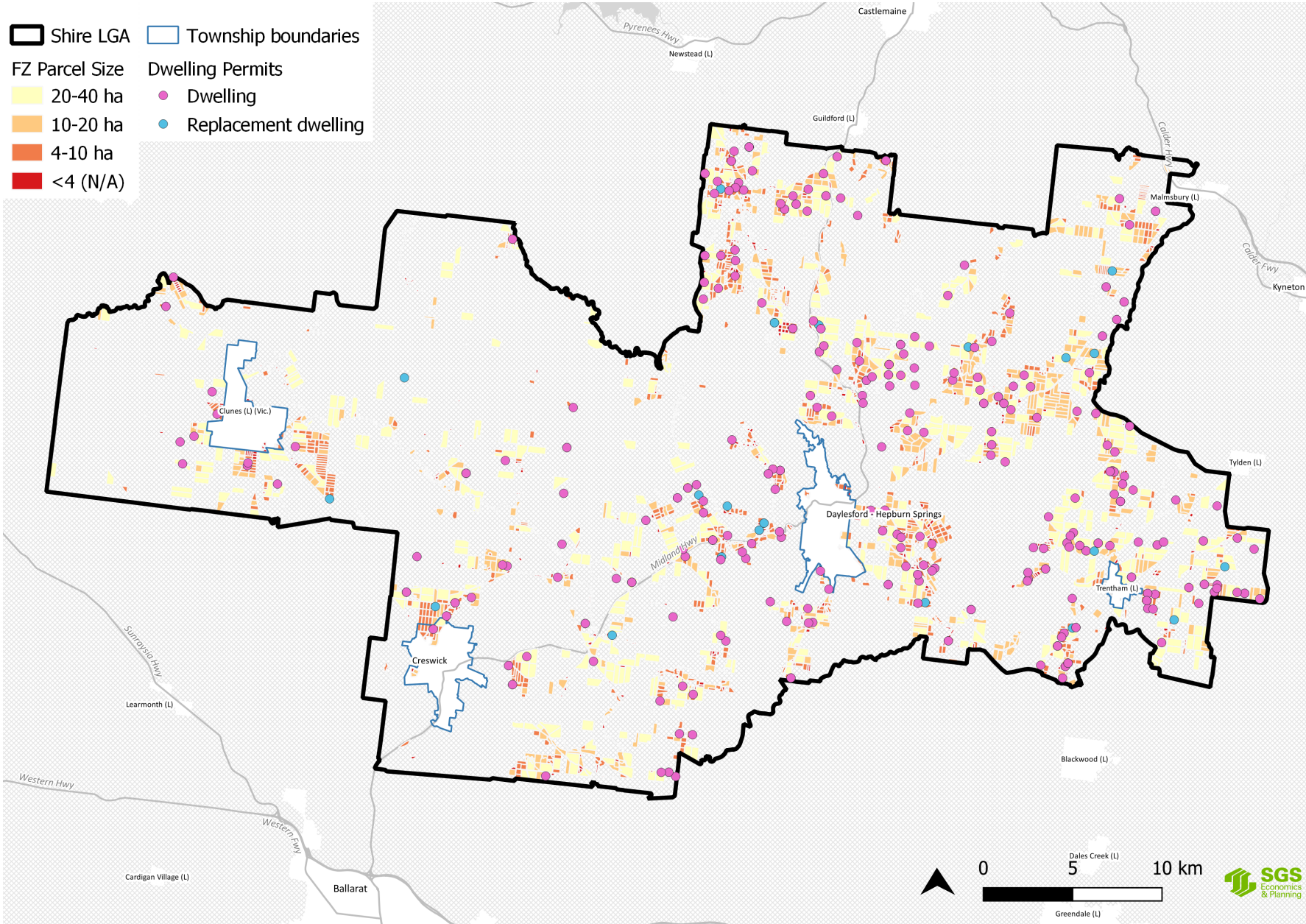
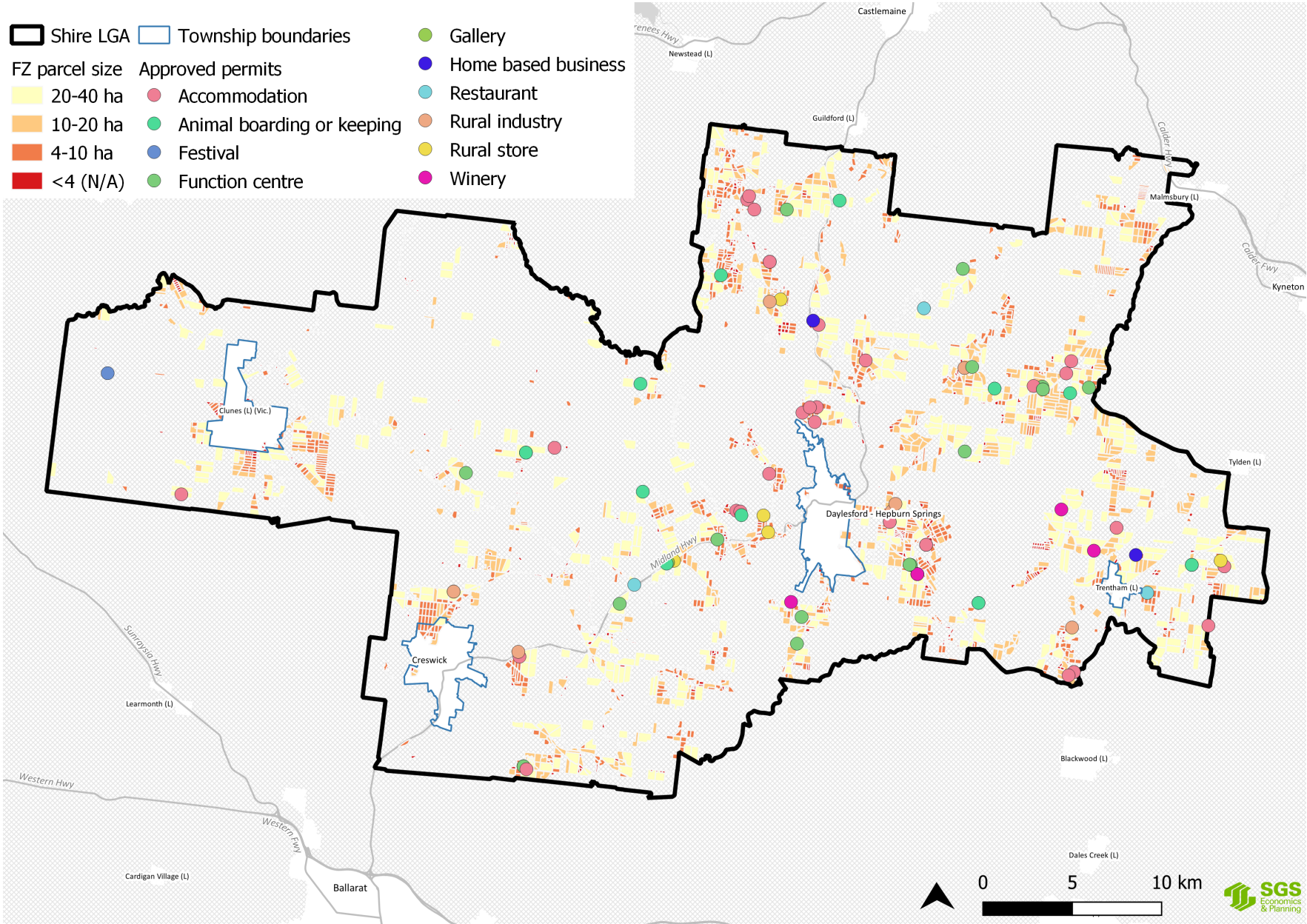


Figure 21: Planning permit approvals for tourism and rural industry²²



3.5 VCAT

The 2020 Planning Scheme Review² included analysis of planning appeals between 2008 and 2017 which showed that Council has a very low rate of appeals on planning application decisions, with around 1% of applications appealed per annum or around 5 appeals per year. Some of the key issues relevant to this study raised in VCAT determinations included:

- Variable support for Council's rural land policy and provisions, with a range of decisions supporting new dwellings and others not supporting new dwellings.
- Support for careful management of sewerage and potable water in the declared water catchment area which affects the entire Shire.

In response to the assessment of VCAT appeals, the Review recommended that:

- Clearer and improved policy about rural enterprises and dwellings on rural land was required.
- Controls and policies for protection of declared potable water catchment and the management of effluent and stormwater be retained.

Additional review of VCAT for this Background Report found that:

- Farm Management Plans prepared by landholders to support planning permit applications generally are inadequate. There is a lack of evidence regarding the proposed farm business and the plans do not address FZ decision guidelines, particularly why a dwelling is required to undertake the agricultural enterprise.
- There are contradictory views about whether a site can be classified as high quality or productive agricultural land. Council's data was considered by a VCAT member to be too broad based on regional scale mapping vs site scale assessment.
- There was dispute about whether agriculture can occur in the absence of a dwelling on the land e.g. livestock grazing was considered by some VCAT members as being sufficient justification for a dwelling.
- There appears to be a conflict between the minimum lot size for a dwelling of 20ha in the FZ and the Guideline for Planning Permit Applications in Open, Potable Water Supply Catchment Areas²³, which recommends a dwelling density of 1 per 40ha unless there has been detailed work to demonstrate that a less dwelling density can be supported. This is discussed further in Chapter 11.

²³ DSE (2012) Planning permit applications in open, potable water supply catchment areas

3.6 LOT SIZES

There are around 22,000 lots across all zones in Hepburn, with a total area of around 142,000ha. Just under half of all lots are in rural zones encompassing a total area of 106,000ha. An analysis of the lot supply in the FZ, RCZ and RLZ (Table 9) found that:

- There is a total of just over 8,200 lots in the rural zones, the majority in the FZ.
- There are around 3,700 lots in the FZ under 4ha, split evenly between the FZ1 and FZ2.
- In the FZ1 there are:
 - 413 lots larger than the minimum lot size below which a dwelling permit is required for a dwelling.
 - 62 lots that are larger than 80, and therefore could be subdivided to the minimum lot size of 40ha.
- In the FZ2 there are:
 - 564 lots larger than the minimum lot size below which a dwelling permit is required for a dwelling.
 - 139 lots that are larger than 40, and therefore could be subdivided to the minimum lot size of 20ha.
- The majority of lots in the RCZ are under 20ha.
- The majority of lots in the RLZ are under 4ha.

Table 9: Lot sizes²⁴

Lot size	FZ1	FZ2	RCZ1	RCZ2	RLZ1	RLZ2
<4ha	1,854	1,861	115	44	1,383	
4 - 20	1,379	1,536	71	34	412	3
20 – 40ha	620	425	33	2	11	
40-100ha	378	130	9	1	2	
100-500ha	32	10				
>500ha	3					
Total lots	4,266	3,962	228	81	1,808	3
Total area (ha)	60,415	37,460	2,363	430	5,326	18

The analysis shows that land in the FZ in particular has been extensively subdivided and that there is a plentiful supply of small lots such that further subdivision for an agricultural purpose should be rarely required. There is also potential for a significant

²⁴ Data sourced from <https://mapshare.vic.gov.au/vicplan/> and analysed by RMCG

number of dwellings to be constructed in the FZ without the need for a planning permit to determine whether the dwelling is genuinely required to support an agricultural enterprise.

3.7 KEY FINDINGS

The current suite of rural zones has not been strategically reviewed since 1999. In the intervening years, there has been substantial changes to the rural zones and, as will be discussed in subsequent chapters, significant change in rural land use and rural activities. This review provides an opportunity to test whether:

- the current zones and schedules align with the values and future prospects of the land.
- the zone and schedules are achieving the desired outcomes and objectives, particularly in relation to agriculture and protection and enhancement of biodiversity values.
- rural land values are adequately reflected in the current suite of overlays.

Issues

Large number of planning permits approved for dwellings in the FZ.

Large number of permits for tourism accommodation in the FZ.

Poor standard and inadequate content of information in support of planning permits in the FZ.

Potential for a significant number of dwellings to be constructed in the FZ without the need for a planning permit to determine whether the dwelling is genuinely required to support an agricultural enterprise.

Current FZ schedules are based on out of date information.

Conflict between the FZ2 20ha minimum lot size and the recommendation of 1 dwelling per 40ha in water supply catchments.

Potential strategy responses

Review FZ schedules, including minimum lot size to reflect agricultural qualities of land and agricultural industries.

Local policy guidance for assessment of planning permits for dwellings in the FZ.

Local policy guidance on the types of uses appropriate for agricultural areas.

Prepare a map of productive agricultural land based on more recent data.