

Amendment VC119

Bushfire replacement buildings

Planning Advisory Note | 62

APRIL 2015

This advisory note provides information about planning scheme provision Clause 52.39 – Bushfire – Replacement Buildings, and changes made to it by Amendment VC119 to the *Victoria Planning Provisions* and all planning schemes.

Clause 52.39 exempts the rebuilding of dwellings and other types of buildings that were damaged or destroyed in the 2009 Victorian bushfires from any requirement of the scheme, including any requirement to obtain a planning permit to use or develop land.

The provision makes it easier for people to rebuild their homes and farms and saves councils time and money in processing planning permit applications for replacement dwellings and other buildings.

The purpose of the provision is to support the rebuilding of dwellings, dependent person's units and buildings used for agriculture damaged or destroyed by the 2009 Victorian bushfires.

Amendment VC119 extends the date for submitting a rebuilding site plan to council for approval to 30 September 2017.

What types of buildings does Clause 52.39 apply to?

Planning scheme provision Clause 52.39 applies to the following types of buildings:

- Dwellings
- Dependent person's units
- Buildings used for agriculture.

A dwelling is a building used as a self contained residence. It includes out-buildings such as garages and sheds.

A dependent person's unit is a movable building on the same lot as an existing dwelling and used to provide accommodation for a person dependent on a resident of the existing dwelling.

A building used for agriculture includes any building used in association with farming including storage sheds and buildings used for intensive animal industries.

What does Clause 52.39 do?

If one of these types of buildings was damaged or destroyed by a bushfire that occurred between 1 January 2009 and 31 March 2009, the provision allows them to be replaced and used without having to comply with the normal requirements of the planning scheme, including any requirement to obtain a planning permit. However, specific conditions must be met before construction of replacement buildings can commence. These conditions are explained below.

The provision also allows the removal, destruction or lopping of vegetation to enable the construction, use and maintenance of a building rebuilt in accordance with the provision.

The provision does not apply to land in a Heritage Overlay. If a property is in a Heritage Overlay, please contact your council for further advice.

Do other existing planning scheme exemptions continue to apply?

Yes. The exemptions provided by this provision do not remove other existing planning scheme exemptions. For example, if a planning permit is not required to use or develop land for a dwelling, then the requirements of the provision do not apply and the landowner can commence rebuilding once other relevant approvals, such as a building permit, have been obtained.

What do I need to do before I commence rebuilding?

The provision has been designed to allow for a simple site plan approval by your local council to enable you to then seek building approval and commence rebuilding. The provision includes several important conditions that must be satisfied before you can commence rebuilding. Each of these requirements is explained in detail below:

- **You must submit a site plan first**

Before constructing a replacement building allowed under the clause, a site plan must be prepared and submitted to the local council for approval by **30 September 2017**. After this date, the normal planning scheme provisions will apply.

Once the site plan has been approved by the council, you have two years to commence rebuilding. Rebuilding must be completed within two years after you commence building. However the council may allow an extension of time if you make a request before these dates are reached or within three months after.

The preparation and approval of a site plan enables the local council to assess the location of the replacement building(s) on the property and provide advice on whether adjustments to its location on the property will achieve a better outcome.

Rebuilding must be undertaken in accordance with the approved site plan.

The site plan is a simple plan which must show the following information:

- the boundaries of the property
- the location of any damaged or destroyed building
- the proposed location of the replacement building

- existing and proposed access
- any vegetation to be removed, destroyed or lopped to enable the rebuilding to take place.

If your property is located in a rural zone, the site plan must also show:

- the location and dimensions of the vehicle access
- the location and storage of water for potable and fire fighting purposes if not connected to a reticulated potable supply
- the location of the waste water treatment system if waste water is being treated on site.

- **Conditions to be met**

For land in the Farming Zone, Rural Conservation Zone, Rural Activity Zone, Green Wedge Zone, Green Wedge A Zone or the Rural Living Zone, replacement dwellings and dependent person's units must make provision for water, sewerage, vehicle access and power supply.

These are standard matters that are considered for new residential development in rural areas and should ensure that a minimum level of services and road access is provided.

Owners in rural areas should discuss the service and access requirements with the local council. The council will provide guidance on what is appropriate access to a site and the appropriate provision of waste water treatment facilities and other services.

Access to the dwelling or dependent person's unit must be provided via an all weather road with dimensions adequate to accommodate emergency vehicles.

The dwelling or dependent person's unit must be connected to a reticulated sewerage system or if not available, the waste water must be managed to the satisfaction of the responsible authority.

The dwelling or dependent person's unit must be connected to a reticulated potable water supply or have an alternative potable water supply with adequate storage for domestic use as well as for fire fighting purposes.

The dwelling or dependent person's unit must be connected to a reticulated electricity supply or have an alternative energy source.

- **You require additional authorisation if...**

Some land is subject to flooding, erosion or other special requirements and so additional authorisation is required. Authorisation is a written approval from the relevant authority and may contain some additional requirements which must be obtained before you start building. It is a good idea to understand these requirements early. Your local council can help you identify who you need to talk to.

... your property is in a Flood Overlay, Land Subject to Inundation Overlay or Special Building Overlay

If your property is identified in the planning scheme as being susceptible to flooding, you will require the written authorisation of the relevant flood plain management authority before you can commence construction of your building or any associated works.

For properties outside metropolitan Melbourne, the flood plain management authority is the catchment management authority. Inside metropolitan Melbourne the flood plain management authority is Melbourne Water.

It is recommended that you contact the flood plain management authority before submitting your site plan to the council for approval.

... your property is in an Erosion Management Overlay

If your property is located in the Shire of Yarra Ranges and is also in an Erosion Management Overlay (EMO) you will require additional written authorisation from the Yarra Ranges Shire Council prior to commencing construction of your building, any associated works or removing any vegetation.

In the Yarra Ranges the EMO identifies areas that are susceptible to landslip. The Dandenong Ranges, parts of Silvan, the Don River Valley and Warburton, together with other areas in the Shire, have all been identified as being susceptible to landslip.

A number of geotechnical studies have been undertaken, in various forms, in the former Shires of Lilydale, Upper Yarra, Healesville and Sherbrooke, and in the broader region administered by the former Upper Yarra Valley and Dandenong Ranges Authority.

The Shire of Yarra Ranges has developed a uniform classification of landslip risk, together with development control criteria to meet the needs of those who wish to develop land which is potentially affected by landslip.

The control of environmental factors, such as vegetation cover, drainage, rock and soil disturbance, and effluent and stormwater disposal, are important in managing the risk of landslip for residents and those who wish to develop land affected by this overlay.

Interaction between planning and building approvals

Landowners will still require a building permit to ensure structural safety and implementation of the new bushfire requirements.

However it is possible to co-ordinate the approval of a site plan and issuing of a building permit in one process through councils.

Councils have brought together planning, building and health services and considerations to support rebuilding, often enabling a single interaction at the counter with a landowner to ease the process.

Can I rebuild in the same location?

In most cases you will be able to rebuild in the same location. However, before submitting the site plan for approval, landowners are encouraged to consider if alternative locations on their property will achieve a better outcome in relation to bushfire risk.

Before approving your site plan the council will work with you to identify if there are other sites on your property which may assist in reducing the risk from bushfire. For properties with particular characteristics that contribute to greater risk from bushfire, the council may ask the Country Fire Authority for advice. You are also encouraged to seek CFA advice directly.

The CFA provides information and advice about how to site dwellings to reduce bushfire risk and other bushfire risk management actions. This information is available on the CFA website:

www.cfa.vic.gov.au

Alternatively, you can contact the CFA on 9262 8444.

If you propose a different location, a range of factors will be considered by the council when deciding to approve your site plan. It is important that you tell your council why you have chosen the alternative location.

I had two dwellings before the fires; can I rebuild both of them?

Yes. If, for example, you previously had two dwellings on your property but the planning scheme now only allows one, the provision allows you to rebuild both dwellings. Under the provision the land must not be used for more than the number of dwellings that were damaged or destroyed by the bushfires.

Can I remove vegetation when I rebuild?

Yes. The provision enables vegetation to be removed to enable the construction, use and maintenance of a replacement building. Vegetation beyond 10 metres of the building cannot be removed for maintenance of the building. However, other planning permit exemptions in the planning scheme for vegetation removal continue to be available for landowners. This includes the planning permit exemptions for removing vegetation for protection from bushfire.

If you are rebuilding in the same location on your property the amount of vegetation that needs to be removed should be limited. If you are proposing to site the building in another location on the property, one of the matters that the council will consider is the amount and type of vegetation that would need to be removed.

More information is available online

If you require any information about preparing a site plan or complying with any conditions contained in Clause 52.39, contact the planning department of your council.

Zones and overlays

To find out what zone land is in or if an overlay covers a property:

- use the online mapping tool Planning Maps Online at: www.land.vic.gov.au
- view the relevant planning scheme maps at: www.delwp.vic.gov.au/planning/planning-schemes
- contact your local council.

Planning Maps Online accessed from the department's planning web page is an interactive map service that allows a search of property boundaries, planning controls, historical planning information and aerial imagery for the Melbourne metropolitan area. The service can generate a planning property report which can be a useful tool in the preparation of a site plan.

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