

Amendment VC142

Planning Advisory Note 67

JANUARY 2018

This advisory note provides information about Amendment VC142 which makes changes to the *Victoria Planning Provisions* (VPP) and planning schemes arising from the Smart Planning program

Why is this amendment required?

Amendment VC142 is the first phase of Smart Planning's reforms to planning schemes. The amendment includes a wide range of reforms across the VPP that generally remove permit triggers, expand permit exemptions for land uses and buildings and works, remove superfluous and outdated provisions, update references, improve and update definitions, clarify common points of confusion and improve the usability of planning schemes.

These changes have been identified through feedback to the Smart Planning program and by relevant Victorian Civil and Administrative Tribunal decisions, Planning Panels Victoria recommendations, government inquiries, industry reviews (such as the Small Business Regulation Review being undertaken by the Department of Economic Development, Jobs, Transport and Resources), professional input and other sources. In particular, VC142 was informed by consultation in 2017 with peak industry bodies, local government, state government authorities and agencies, planning practitioners and the community, which included the online VPP Reform Survey.

What are the main features of this amendment?

Amendment VC142 makes a number of changes to the VPP and all planning schemes in Victoria. The amendment will improve the overall clarity and consistency of the VPP and in turn provide greater certainty for applicants and responsible authorities. It will remove low impact and low risk matters from the planning system, reduce delays, and allow for resources to be directed to more significant applications. The main features of the amendment are:

- **Home based business:** reforming and expanding the home occupation provisions.
- **Heritage Overlay:** reducing the number of permit triggers for minor matters.
- **Permit exemptions:** increasing the number of permit exemptions throughout the VPP.



- **Correcting anomalies in the flood provisions:** making changes to permit requirements for dependent person's units and rainwater tanks in flooding overlays.
- **Land use provisions:** making more uses exempt from a permit through changes to land use provisions in specific zones.
- **Land use terms and definitions:** modernising and removing unnecessary land use terms and definitions.
- **Integrated public transport planning:** relocating the public transport referral requirements from Clause 52.36 to Clause 66 (Referral and Notice Provisions), and making a consequential change to the State Planning Policy Framework.
- **Neighbourhood and site description approval:** making minor changes to Clauses 34, 54, 55, 56 and 58 to remove a procedural step.
- **Land adjacent to a Road Zone Category 1 road, or a Public Acquisition Overlay for a Category 1 road:** modifying Clause 52.29 to expand permit exemptions.
- **Car parking:** modifying Clause 52.06 to expand permit exemptions.
- **Loading and unloading of vehicles:** removing the permit trigger at Clause 52.07.
- **Biodiversity strategy:** updating Clause 12 of the State Planning Policy Framework to reflect Amendment VC138.
- **Reference documents:** removing and replacing obsolete reference documents.

Home based business

The land use term 'home occupation' has been changed to 'home based business', which is more commonly used by community and government for this type of activity. The title of Clause 52.11 has also been changed to reflect the new term.

Some of the conditions in Clause 52.11 have also been changed to provide more opportunity for home based businesses to establish and expand, and to provide additional amenity protection for neighbours. These changes

reflect the social, economic and workforce trends towards more home based businesses and the growth of the service and creative industries supported by technological improvements such as online selling and fast broadband. The changes are:

- Increasing the number of people who do not live in the dwelling, and are permitted to work in the home based business at any one time, to two people (without a permit), and to three people (with a permit).
- Increasing the floor area that may be used to store goods or materials to 100 square metres (without a permit), and to 200 square metres (with a permit).
- Changing the measurement of floor area from gross floor area to net floor area and clarifying that the net floor area of the dwelling includes out-buildings and works normal to a dwelling.
- Clarifying that vehicles may not be adjusted or modified for gain, in addition to not being able to be serviced or repaired for gain, to better protect the amenity of neighbourhoods.
- Clarifying that a home based business may sell goods online, but restricting any ability for those goods to be collected from the dwelling by the purchaser to protect the amenity of neighbourhoods and the role of activity centres.
- Specifying that goods offered for sale online do not need to be manufactured or serviced in the dwelling, for example second hand clothing sold online, or vintage wares, to provide greater flexibility for small, low-impact businesses.

Heritage Overlay

The Heritage Overlay has been reviewed to identify buildings and works that should not require a permit. Applications for buildings and works that do not materially impact on the heritage values of a building, place or precinct can be an administrative burden on councils and impose unnecessary costs and delays on home owners and businesses.



The following buildings and works no longer require a permit under the Heritage Overlay:

- Fences, swimming pools and spas (and associated equipment), decks, non-domestic disabled access ramps, and electric vehicle charging stations, that are not visible from a street (other than a lane) or public park. These buildings and works are not typically attached to a building, or can be removed without materially impacting the heritage value of the building or place.
- Services normal to a building other than a dwelling (including chimneys, flues, skylights, heating and cooling systems, hot water systems, security systems and cameras, downpipes and window shading devices, or similar) that are not visible from a street (other than a lane) or public park. This exemption is consistent with the existing exemption for domestic services normal to a dwelling.
- Bicycle pathways and trails. These works are typically constructed by or on behalf of the public land manager and pose minimal risk to a heritage place, building or precinct.
- Roadworks which do not change the appearance of a heritage place and which are generally undertaken to the same details, specifications and materials. This change reduces unnecessary regulation for routine roadworks, (such as resurfacing), especially in areas where a heritage precinct has been designated which incidentally covers roads and streets. The wording of the permit requirement ensures protection for roads with heritage elements (such as bluestone kerb and cobblestone laneways).

To further reduce delays and costs to applicants, the following classes of applications under the Heritage Overlay have been added to the VicSmart permit process:

- An application to construct or install an electric vehicle charging station.
- An application to construct and install services normal to a building other than a dwelling including chimneys, flues, skylights, heating and cooling systems, hot water systems, security systems and cameras, downpipes, window shading devices, or similar.

Other permit exemptions

In addition to permit exemptions under the Heritage Overlay, Clause 62 (Uses, Buildings, Works, Subdivisions and Demolition Not Requiring a Permit), and some zone and overlay provisions, have been amended to introduce new permit exemptions or modify existing ones. These changes improve the efficiency of the planning system by removing unnecessary permit requirements and reducing costs and delays for home owners and businesses.

Changes to Clause 62.01 (Uses not requiring a permit) include the following:

- Deleting the requirement to obtain a council's authorisation under a local law before land in a road can be used without a planning permit to trade from a stall, stand, motor vehicle, trailer, barrow or other similar device. This use is now exempt regardless of whether authorisation is required under a local law. If desired, councils may manage these activities through local laws.
- Including a permit exemption for the use of land for a 'Minor utility installation'. The exemption complements the existing exemption for buildings and works associated with a minor utility installation in Clause 62.02-1. Consequential changes have also been made to land use tables throughout the VPP to delete references to 'Minor utility installation'.

Changes to Clause 62.02-1 (Buildings and works not requiring a permit) include the following:

- Including a permit exemption for works associated with geotechnical testing or service proving. Geotechnical testing and service proving (digging to locate and test in-ground services) are important for infrastructure and construction projects, and involve minor or reversible works that have no lasting impact. They are important to infrastructure projects and the construction industry and are often needed in a timely fashion.
- Including a permit exemption for buildings and works associated with use of the land in a road to trade from a stall, stand, motor vehicle, trailer, barrow or other similar device. Buildings and works associated with this use are typically minor in nature and are



regulated by the *Road Management Act 2004* (and may also require authorisation under a local law). The exemption complements the existing exemption for this use in Clause 62.01.

Changes to Clause 62.02-2 (Buildings and works not requiring a permit unless specifically required by the planning scheme) include the following:

- Increasing the size of a rainwater tank that is exempt from a permit from 4,500 litres to 10,000 litres. Consequential changes have also been made to the buildings and works permit requirements in the industrial zones, Port Zone, Floodway Overlay and Land Subject to Inundation Overlay.
- Including a permit exemption for services normal to a building other than a dwelling (including chimneys, flues, skylights, heating and cooling systems, hot water systems, security systems and cameras, downpipes, window shading devices, or similar). The exemption does not apply to land in the Heritage Overlay, if the services are visible from a street (other than a lane) or public park. The exemption will remove unnecessary regulation, delays and costs for businesses.
- Including a permit exemption for an electric vehicle charging station. The exemption does not apply to land in the Heritage Overlay, if the charging station is visible from a street (other than a lane) or public park. The exemption facilitates the uptake of electric vehicles, reducing the environmental impact of road transport.

Changes to zone and overlay provisions include the following:

- Amending the Urban Floodway Zone, Floodway Overlay, Land Subject to Inundation Overlay and Special Building Overlay to exempt roadworks from the requirement to obtain a permit if the water flow path is not redirected or obstructed. This will enable road managers and public authorities to carry out roadworks that do not exacerbate flooding and inundation hazards without unnecessary delays and costs.

- Including a permit exemption in the residential zones for structural changes to a dwelling that do not increase the size of the dwelling, or the number of dwellings. The definition of 'construct' in section 3 of the *Planning and Environment Act 1987* includes 'reconstruct or make structural changes' and so the permit requirements in the residential zones for constructing one dwelling on a lot also previously applied to inconsequential external structural changes (such as installing a new door or window). This exemption removes a permit trigger for structural changes that are already regulated by the *Building Act 1993*.
- Including a permit exemption in the Public Conservation and Resource Zone for buildings and works undertaken by or on behalf of a public land manager under the *Road Management Act 2004*. This exempts the public land manager, such as VicRoads, from requiring a permit for minor and routine road works on land subject to Clause 36.03. This creates efficiency within the planning system by removing unnecessary permit applications.
- Making 'Art gallery' and 'Museum' Section 1 (permit not required) uses in the Mixed Use Zone and Commercial 2 Zone. This change supports new creative businesses and promotes the arts by allowing these low-impact uses to establish without a permit in appropriate locations.
- Making 'Art and craft centre' a Section 1 (permit not required) use in the commercial zones. This change supports a growing industry and allows this low-impact use that is consistent with the purposes of the commercial zones.
- Making 'Warehouse' (other than Mail centre, Fuel depot or Shipping container storage) a Section 1 (permit not required) use in the Industrial 3 Zone (subject to meeting the same conditions that apply to this use in the Industrial 1 Zone).

The Low Density Residential Zone, Residential Growth Zone, General Residential Zone and Neighbourhood Residential Zone have also been amended to make 'Market' a Section 2 (permit required) use. This change reflects the deletion of the land use term 'Community



market' which has been absorbed within the definition of 'Market' and enables this use to be carried out in more zones, subject to obtaining a permit.

Correcting anomalies in the flood provisions

Dependent person's units

A permit is now required for buildings and works associated with a dependent person's unit in the Floodway Overlay, Land Subject to Inundation Overlay and Special Building Overlay. This amendment corrects an anomaly by which a dependent person's unit could previously be constructed on land at risk from flooding or inundation without a planning permit.

The permit requirement is consistent with the requirements for buildings and works associated with other accommodation uses under these overlays and ensures the risk to life and property are properly assessed before the development proceeds.

Transitional provisions have not been included in the amendment because of the potential risk to life and property from flooding and inundation. This means that a planning permit will now be required even if:

- a building permit has been issued for the building; or
- construction of a dependent person's unit has already commenced.

Rainwater tanks

The Special Building Overlay has been amended to specify that a permit is required for a rainwater tank with a capacity of not more than 10,000 litres, to override the permit exemption specified in Clause 62.02-2. Rainwater tanks can be large structures and can restrict free passage of floodwaters and increase flood flow velocity if not appropriately designed and sited.

This change is consistent with the current requirements of the Floodway Overlay and Land Subject to Inundation Overlay and will provide a mechanism for ensuring that the construction of rainwater tanks is compatible with the purpose of this overlay.

Land use terms and definitions

The amendment deletes redundant land use terms and updates other terms and definitions to reflect shifts in the operation of uses over time, to clarify the activities that are included in the defined use, or to adopt contemporary words that are more commonly used in the community.

Changes to definitions includes the following:

- Amending the 'Research and development centre' definition to clarify that it includes testing new technologies.
- Amending the 'Warehouse' definition to clarify it can include the storage and distribution of goods for online retail, but excludes in-person collection and retail sales at the premises.

Changes to land use terms include the following:

- Replacing the term 'Adult sex bookshop' with 'Adult sex product shop'.
- Replacing the term 'Home occupation' with 'Home based business'.
- Replacing the term 'Pleasure boat facility' with 'Recreational boat facility'.
- Replacing the term 'Pleasure park' with 'Amusement park'.

The land use terms 'Business college', 'Cabaret', 'Community market' and 'Trash and treasure market' are redundant and have been deleted.

The amendment makes consequential changes to land use terms in Clause 74 (Land Use Terms), Clause 75 (Nesting Diagrams) and relevant zones and overlays throughout the VPP.

Integrated public transport planning

The amendment deletes Clause 52.36 (Integrated Public Transport Planning) and moves the referral requirement into Clause 66 (Referral and Notice Provisions). This change improves the useability of planning schemes by locating all referral requirements in a single location.



A minor change has also been made to the land use and transport planning strategies in Clause 18.01-1 (Land use and transport planning) to maintain the intent of the purposes of Clause 52.36 so that the deletion of this clause is ‘policy neutral’.

Neighbourhood and site description approval

The amendment deletes the requirement in the Commercial 1 Zone, and Clauses 54, 55, 56 and 58 that the responsible authority must inform the applicant in writing that the neighbourhood and site description is satisfactory prior to notice being given, or the application being determined. Deleting this requirement will reduce the administrative burden on councils and streamline the permit process for residential development.

An applicant must still submit a satisfactory neighbourhood and site description and the responsible authority must still be satisfied that the neighbourhood and site description is satisfactory before it requires notice of an application to be given, or before it decides an application.

Land adjacent to a Road Zone Category 1 road, or a Public Acquisition Overlay for a Category 1 road

The amendment includes new permit exemptions in Clause 52.29 to streamline the permit process for some applications and reduce the administrative burden on councils and VicRoads. A permit is no longer required for:

- Boundary realignments.
- Subdivisions of existing buildings already connected to services and requiring no new access.
- Two lot subdivisions requiring no new access.
- Proposals which, in the opinion of the responsible authority, satisfy requirements or conditions previously agreed in writing between the responsible authority and the Roads Corporation.

Car parking exemption

The amendment changes Clause 52.06-6 (Number of car parking spaces required for other uses) to clarify that the use of land for a temporary portable land sales office located on the land for sale can commence without providing car parking.

This clarification complements the existing exemptions at Clause 62 for this use and development.

Loading and unloading of vehicles

The amendment deletes Clause 52.07 from the VPP and makes consequential changes to Clause 92.05 (Buildings and works in an overlay), 93.04 (Building and works in a zone [except a rural zone]) and 93.11 (Loading and unloading facilities). Deleting Clause 52.07 will simplify the VPP and remove an unnecessary permit requirement.

New decision guidelines have been added to Clause 65 and Clause 93.04-2 to ensure that the design and location of loading and unloading facilities are appropriately considered when a permit is required for associated development.

Update to biodiversity policy

The amendment changes Clause 12.01-1 (Protection of biodiversity) of the State Planning Policy Framework to relocate a biodiversity strategy reference and remove the words ‘high value’ from that reference. This change ensures that the strategy is consistent with recent amendments introduced by Amendment VC138.

References to documents

The amendment deletes references to the following outdated documents in the State Planning Policy Framework:

- *Port Phillip and Westernport Regional Catchment Strategy (Port Phillip Regional Catchment and Land Protection Board, 1997)* at Clause 12.02-5 (Coastal Tourism).
- *Technical Guidelines for Waterway Management (Department of Sustainability and Environment, 2007)* at Clause 14.02-1 (Catchment Planning and Management).



- *Victoria's Litter Reduction Strategy* (Environmental Protection Authority, 1995) at Clause 19.03-2 (Water supply, sewerage and drainage).

These documents contain obsolete content and are of little relevance to contemporary planning decision making.

The amendment also updates references to other documents:

- *Victoria Floodplain Management Strategy* (Department of Natural Resources and Environment, 1998) is replaced with *Victorian Floodplain Management Strategy* (Department of Environment, Land, Water and Planning, 2016) at Clause 13.02-1 (Floodplains).
- *Occupational Health and Safety (Major Hazard Facilities) Regulations 2000* is replaced with *Occupational Health and Safety Regulations 2017* in Clause 17.02 (Industry), the Mixed Use Zone, Township Zone, industrial zones, commercial zones, Activity Centre Zone and Port Zone.
- *Dangerous Goods (HDCG) Regulations 2005* is replaced with *Dangerous Goods (HCDG) Regulations 2016* in Clause 66.02-7 (Industry or warehouse).

How will this amendment affect existing permit applications?

Where an application has been made for a permit that is no longer required because of Amendment VC142, the application cannot be determined by a council. Applicants should speak to the council about whether the council will provide a full or partial refund of the application fee.

Transitional provisions are not included for the purposes of this amendment. The amendment will apply to applications which have not been determined by the responsible authority.

More information

More information is available at www.planning.vic.gov.au/smart-planning.

To view Amendment VC142 go to Planning Scheme Amendments Online.

For more information go to:

- [Victoria Planning Provisions](#).
- [Small Business Regulation Review: Retail Sector 'Detailed descriptions of the Draft Action Statement reforms'](#).

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