

# Planning permit exemptions for emergency recovery

## Fact Sheet

December 2022

This document provides information about the planning permit exemptions for emergency recovery in Clause 52.07

### What is clause 52.07?

Clause 52.07 is a provision of the planning scheme which supports immediate recovery following any emergency. It includes the establishment of temporary accommodation, the continued operation of business and services, repair of fences, provision of required materials and infrastructure and other emergency recovery activities.

In this clause:

- **emergency** means:
  - a bushfire; or
  - an earthquake, flood, wind-storm or other natural event;
- **recovery** means the assisting of persons and communities affected by emergencies to achieve a proper and effective level of functioning.

### What does clause 52.07 do?

This clause provides an exemption that turns off other parts of the planning scheme to enable emergency recovery activities to be undertaken without a planning permit provided requirements are met.

### What does clause 52.07 not apply to?

The exemption in clause 52.07 only applies to planning scheme requirements. It does not override restrictive covenants, agreements made under section 173 of the *Planning and Environment Act 1987* or other laws and regulations that may apply to the use and development of land.

The exemptions in clause 52.07 also do not apply to:

- the permanent replacement of buildings
- the requirements of the Environmental Audit Overlay
- the use and development of land to which clause 52.14 (2009 Bushfire Replacement Exemptions) apply.



## Information about temporary accommodation

The following requirements do not apply to the use or development of land associated with recovery carried out by or on behalf of a municipal council or public authority. This enables municipal councils and public authorities, as part of their recovery actions, to provide or make land available for, temporary accommodation in appropriate and safe locations, for people impacted by an emergency or involved in recovery.

Under clause 52.07 land must only be used for private temporary accommodation for those residents whose principal place of residence was damaged or destroyed by a **bushfire** as unlike other natural hazards, the hazard (fuel) is eliminated for a period of time.

The below requirements only need to be met if you want to benefit from the exemption. You can still do the things that clause 52.07 applies to in accordance with the normal requirements of the planning scheme if you choose to. Other exemptions in the planning scheme continue to apply.

### 1. Requirements that apply to the use, location and size of your temporary accommodation

- Your temporary accommodation must be located on the same property as your place of residence.
- You can only use your property for temporary accommodation for up to three years. After this you need to use your property in accordance with the normal requirements of the planning scheme.
- The combined gross floor area of all buildings you construct must not be more 60 square metres. However, your council may agree in writing to you constructing a larger building.
- Any building you construct must be completed within 18 months of when your home was damaged or destroyed by the bushfire.
- Access to your temporary accommodation must be provided via an all-weather road with dimensions adequate to accommodate emergency vehicles.
- Your temporary accommodation must be connected to a reticulated sewerage system or if that is not available, your wastewater must be:
  - treated and retained on-site in accordance with the *Environment Protection Act 2017*, the *Environment Protection Regulations 2021* and *Environment Reference Standard 2021*; or
  - treated and disposed of to the satisfaction of your council.
- Your temporary accommodation must have a potable water supply and an electricity supply.

### 2. Removal of vegetation around your temporary accommodation

- You cannot remove vegetation under clause 52.07 in order to construct your temporary accommodation. If you cannot avoid removing vegetation to construct

your temporary accommodation you should speak to your council about whether you require a planning permit.

- However, you can remove the following vegetation around a building you construct for your temporary accommodation under clause 52.07:
  - Any vegetation within 10 metres of the building.
  - If the building **is not** in a Bushfire Management Overlay, any vegetation that is not a tree within 30 metres of the building.
  - If the building **is** in a Bushfire Management Overlay, any vegetation that is not a tree within 50 metres of the building.

### 3. You must give information to your council first

- Before you construct a building or use your land for temporary accommodation you must give your council some information about what you are proposing to do and where you propose to do it. Check with your council about what information you need to provide.

### 4. Council approval still required for some development

- If your property is in a Bushfire Management Overlay, Erosion Management Overlay or Heritage Overlay, your council may need to approve your development before you start (including the construction of any building, the construction or carrying out of any works, and the removal of vegetation).
- This requirement only applies if the proposed development or vegetation removal would normally require a planning permit, or is normally prohibited, under the planning scheme. Check with your council about whether its approval is required and what information you may need to provide before the council decides.



## **5. Floodplain management authority approval required for development**

- If your property is in a Floodway Overlay, Land Subject to Inundation Overlay or Special Building Overlay, the relevant floodplain management authority may need to approve the siting of your development before you start.
- This requirement applies only if the proposed development would normally require a planning permit, or is normally prohibited, under the planning scheme. The approval is not a planning permit.
- Check with the relevant floodplain management authority about whether approval is required and what information you may need to provide to the authority. The floodplain management authority will usually be the catchment management authority for your area.



## Frequently asked questions about temporary accommodation

### **Can I use the clause 52.07 exemption to establish temporary accommodation if my holiday house or investment property was damaged or destroyed by a bushfire?**

No. The clause can only be used to provide temporary accommodation for someone who has lost their principal place of residence on the same land.

### **Why do the temporary accommodation exemptions only apply following a bushfire?**

The temporary accommodation exemptions only apply to bushfire, as unlike other natural hazards, the hazard (fuel) is eliminated for a period of time.

### **Can I install a water tank or septic or effluent disposal system for my temporary accommodation?**

Yes, if the installation is associated with the use of land for temporary accommodation and the requirements of clause 52.07 are met. However:

- your council will need to approve your septic or effluent disposal system
- you may need a planning permit to remove, destroy or lop vegetation to enable the installation.

For more information about septic or other effluent disposal systems contact your council or visit the [EPA website](#).

### **Can I construct vehicle access to my temporary accommodation?**

Yes, you can construct a vehicle access to your temporary accommodation, provided the vehicle access on your land and the requirements of clause 52.07 are met. You will need the permission of your council to do any works outside of your property boundary.

You may need a planning permit to remove, destroy or lop vegetation for the vehicle access.

### **Can I use a caravan, tent or shed as temporary accommodation under clause 52.07?**

Clause 52.07 does not prescribe the type of accommodation you may use if the requirements are met.

However, you may require council approval to live in a caravan, tent or shed and you may require a building permit to convert a shed to a house. Some councils also have local laws which may be applicable. You should contact your council to confirm this.

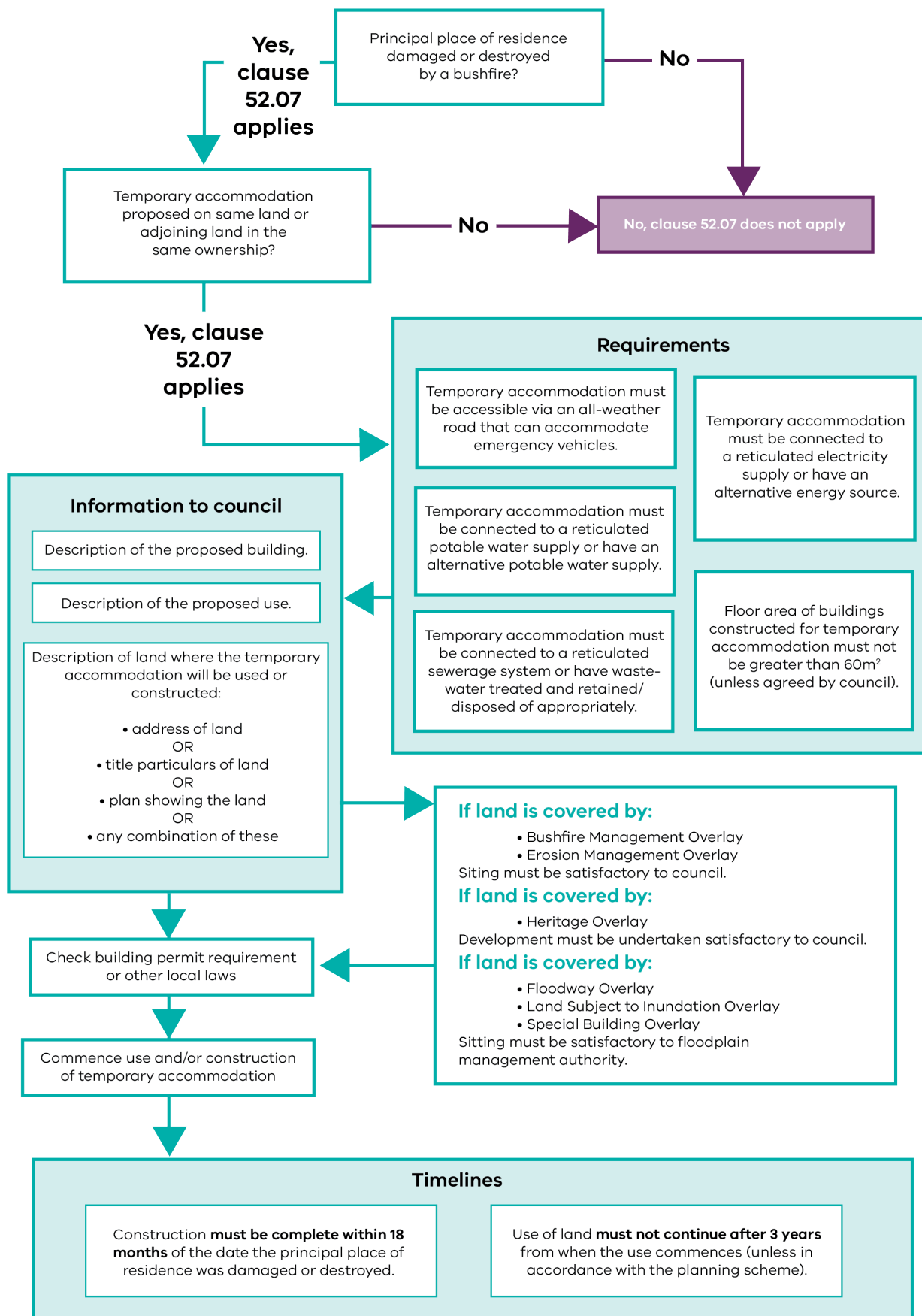
### **If I don't normally need a planning permit to use and develop my land for a house, do I need to comply with the requirements of clause 52.07?**

No. The requirements of clause 52.07 only apply if you want to establish temporary accommodation using the permit exemption.

While clause 52.07 exempts some bushfire recovery activities from planning scheme requirements, other laws and regulations may still apply. For example, a building permit may still be required for any building work.



## Clause 52.07 Emergency recovery – Temporary accommodation following a bushfire flow chart





## Information for businesses

If your business premises was damaged or destroyed by an emergency, clause 52.07 enables you to:

- continue to use the property for your business
- use another property for your business with the written agreement of your council
- establish temporary buildings without a planning permit for your business.

The following requirements do not apply to the use or development of land associated with recovery carried out by or on behalf of a municipal council or public authority.

### The requirements are summarised below:

#### 1. Requirements that apply to continuing your business

- The building that was damaged or destroyed must have been lawfully used for your business. This means you must have been operating in accordance with the planning scheme or a planning permit at the time the building was damaged or destroyed.
- You can only use the property (including any buildings on it) for up to three years without a planning permit. After this time, you will need to use your property in accordance with the normal requirements of the planning scheme (this may include obtaining a planning permit).
- If you want to continue your business temporarily on a different property, you will need your council's written agreement to this.
- Remember that these requirements only apply if the planning scheme normally requires you to obtain a planning permit for whatever it is you want to do.

#### 2. Requirements for location and size of buildings

- The combined gross floor area of all buildings you construct under the exemption for your business must not be more than 100 square metres. However, your council may agree to you constructing a larger building.
- Any building you construct for your business must be completed within 18 months of when your business premises was damaged or destroyed by the bushfire.

#### 3. Removal of vegetation around your business premises

- You cannot remove vegetation under clause 52.07 in order to construct a building. If you cannot avoid removing vegetation to construct your building, you should speak to your council about whether you require a planning permit.

#### 4. You must give information to your council first

- Before you construct a building or use the property for your business you must give your council information about what you propose to do and where you propose to do it. Check with your council about what information you need to provide.

#### 5. Council approval still required for some development

- If the property is in a Bushfire Management Overlay, Erosion Management Overlay or Heritage Overlay, your council may need to approve your development before you start (including the construction of any building, and the construction or carrying out of any works).
- This requirement only applies if the proposed development would normally require a planning permit, or is normally prohibited, under the planning scheme. The approval is not a planning permit.
- Check with your council about whether its approval is required and what information you may need to provide before the council decides on building in these overlays.

#### 6. Floodplain management authority approval required for development

- If the property is in a Floodway Overlay, Land Subject to Inundation Overlay or Special Building Overlay, the relevant floodplain management authority (generally the Catchment Management Authority for your area) may need to approve the siting of your building before you start. Check with the Council to determine whether you are in one of these overlays.
- This requirement applies only if the proposed development would normally require a planning permit, or is normally prohibited, under the planning scheme. The approval is not a planning permit.



## Frequently asked questions about business re-establishment

### **Can I re-construct my farm shed under clause 52.07?**

Yes, provided you comply with the requirements summarised above.

### **Can I construct a sign for my business under clause 52.07?**

No. There are existing exemptions for some types and size of signs in the planning scheme, so you may not need a planning permit. Check with your council about what sign requirements apply, and if you need a planning permit for your sign.

### **How do I measure gross floor area?**

The total floor area of your building, measured from the outside of external walls or the centre of party/dividing walls, and including all roofed areas.

### **If I don't normally need a permit to use and develop my land for my business, do I need to comply with the requirements of clause 52.07?**

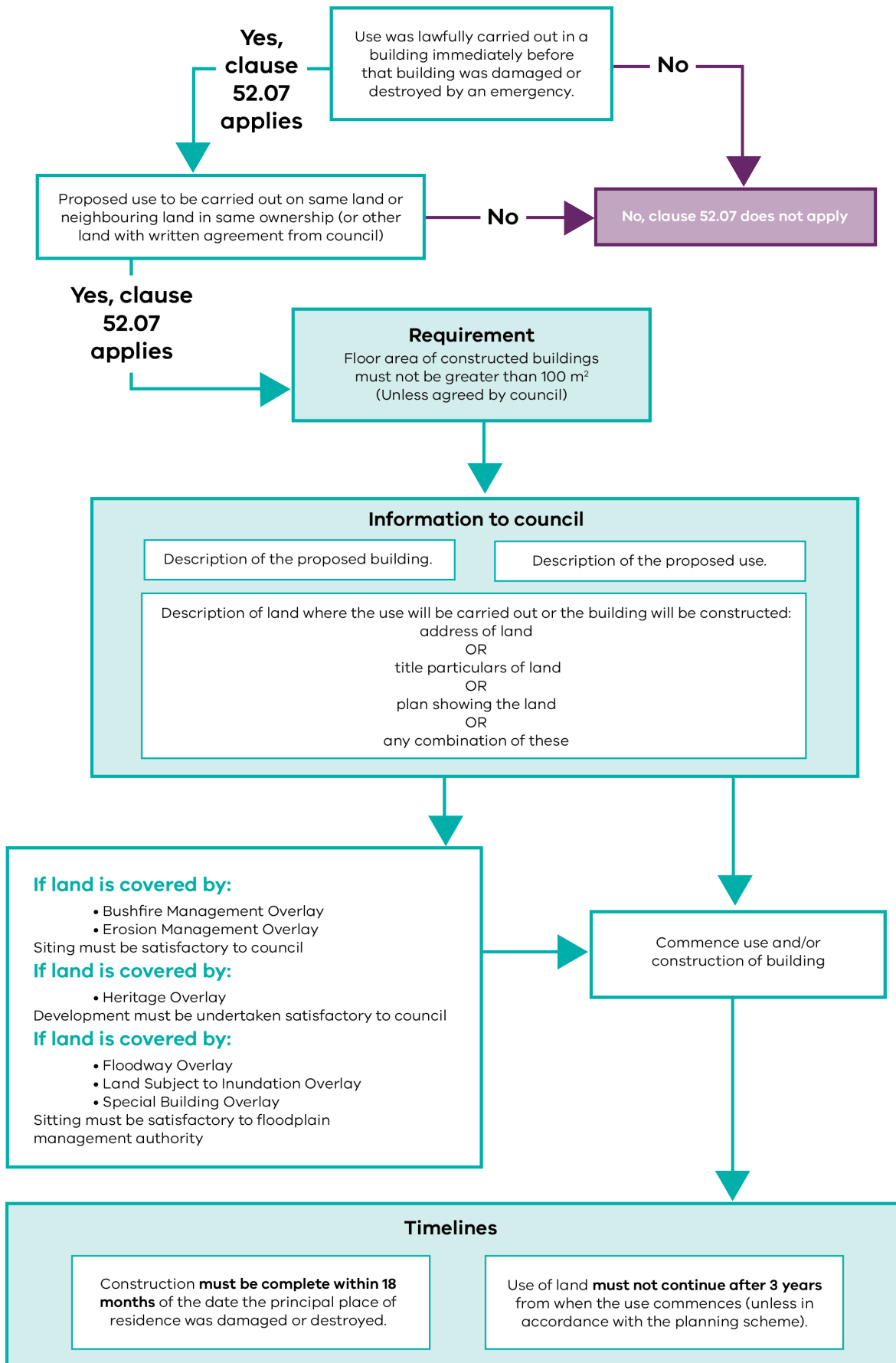
No. The requirements of clause 52.07 only apply if you want to re-establish a use on a temporary basis.

### **My house was destroyed by the 2009 Black Saturday bushfires. Can I use clause 52.07?**

No. Clause 52.07 does not apply to the 2009 bushfires. Other specific recovery planning controls were available following the 2009 bushfires. Please speak to your council.



## Clause 52.07 Emergency Recovery – Business flowchart







## Information about vegetation removal for temporary accommodation and businesses

Under clause 52.07 you can clear the minimum amount of vegetation necessary to:

- remove a building, equipment or other material that has been damaged or destroyed by an emergency; or
- repair or reconstruct a fence that has been damaged or destroyed by an emergency within a combined width of 4 metres of a fence (for example, 2 metres one side and 2 metres the other).

This exemption only applies for 3 years after the emergency.

If you want to clear vegetation that is not covered by the clause 52.07 exemption you may need to obtain a planning permit first. Check with your council about what permit requirements apply to you.

## Information about extractive industry

Under clause 52.07 extractive industry operating hours or days are not limited by the hours or days that may be specified in a planning permit, including any condition, or any provision of a planning scheme if the:

- materials are directly associated with recovery; and
- quarrying and processing of materials and the dispatch, delivery, loading or unloading of materials occurs within 12 months of an emergency.

This enables the raw materials, such as stone, to be used for urgent repairs and infrastructure, which may be required in large quantities in short time frames.

## General information

### Other planning permit exemptions

Some other things you may want to do following an emergency may not need a planning permit or may be exempt from a permit under another part of the planning scheme. Ask your council if you can use these other exemptions to help you after an emergency.

### Other approvals

Even if you don't need a planning permit, you may need other approvals, for example, a building permit for any building work, and environmental health or local law approvals from your council. Check with your council about what other approvals you may need for your emergency recovery activities.

## More information

Emergency Recovery Victoria (ERV) at: [vic.gov.au/emergency-recovery-victoria](http://vic.gov.au/emergency-recovery-victoria)

Find out what overlays apply to your property by creating a Planning Property Report at: [planning.vic.gov.au](http://planning.vic.gov.au) or [mapshare.vic.gov.au/vicplan](http://mapshare.vic.gov.au/vicplan)

You can check who your council is at: [knowyourcouncil.vic.gov.au](http://knowyourcouncil.vic.gov.au)

Your council will be able to tell you who your relevant floodplain management authority is or see: [water.vic.gov.au/waterways-and-catchments/our-catchments/catchment-management-framework](http://water.vic.gov.au/waterways-and-catchments/our-catchments/catchment-management-framework)

VicEmergency at: [emergency.vic.gov.au/relief-and-recovery/661](http://emergency.vic.gov.au/relief-and-recovery/661)

Department of Environment, Land, Water and Planning (DELWP) at: [delwp.vic.gov.au](http://delwp.vic.gov.au)

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