

Amendments VC82 and VC91

Changes to wind energy facility provisions

This Advisory Note provides information about changes to the *Victoria Planning Provisions* (VPP) and all planning schemes made by Amendments VC82 and VC91.

What does Amendment VC91 do?

Changes introduced by Amendment VC91 clarify that the application requirement, to obtain written consent from dwelling owners located within two kilometres of a turbine, does not apply to a proposed turbine in a residential, an industrial, a business or a special purpose zone.

Amendment VC82

Changes introduced by Amendment VC82 prohibit a wind energy facility in the following circumstances and locations:

1. A wind energy facility that includes a turbine located within two kilometres of an existing dwelling is prohibited except where the planning permit application includes evidence of written consent from the owner of the dwelling to the location of the turbine.
2. Areas with high conservation and landscape values:
 - National, state and coastal parks described in a schedule to the *National Parks Act 1975*.

- Ramsar wetlands as defined under section 17 of the *Environment Protection and Biodiversity Conservation Act 1999*.
3. Locations that feature a high degree of amenity, environmental value, or are a significant tourist destination:
 - Yarra Valley and Dandenong Ranges and Mornington Peninsula, being all land in the Yarra Ranges and Mornington Peninsula Planning Schemes.
 - Bellarine Peninsula, being all land in the Queenscliffe Planning Scheme, and that area in the Greater Geelong Planning Scheme east of the Surf Coast Highway and south of the Princes Highway.
 - Macedon Ranges and McHarg Ranges, being all land in the Macedon Ranges Planning Scheme; all land west of the Hume Freeway and the Goulburn Valley Highway in the Mitchell Planning Scheme; and all land within the area bounded by the Mclvor Highway and the Calder Highway and Calder Freeway in the Greater Bendigo and Mount Alexander Planning Schemes.
 - Bass Coast, being all land within five kilometres of the coast in the Bass Coast Planning Scheme and South Gippsland Planning Scheme, west of Wilson's Promontory.



- Great Ocean Road region, being land within five kilometres of the high water mark of the coast in the Colac Otway, Corangamite, Greater Geelong, Moyne, Surf Coast and Warrnambool Planning Schemes between the Surf Coast Highway in the east and Warrnambool in the west.
4. Locations identified for future urban growth:
- Land in an Urban Growth Zone that applies to metropolitan growth areas and some regional growth areas like Armstrong Creek in Geelong and Ballarat.
 - Designated regional population growth corridors, being land within five kilometres of major regional cities and regional centres specified in the Regional Victoria Settlement Framework Plan in the State Planning Policy Framework (Ararat, Bairnsdale, Ballarat, Benalla, Bendigo, Colac, Echuca, Geelong, Hamilton, Horsham, Mildura, Moe, Morwell, Portland, Sale, Shepparton, Swan Hill, Traralgon, Wangaratta, Warrnambool and Wodonga). The five kilometre exclusion area will be replaced with defined locations as growth planning for each centre is completed.

Clause 52.32 was amended by:

- Specifying that a permit is required to use and develop land for a wind energy facility.
- Introducing a table to Clause 52.32-2 that specifies locations where the use and development of land for a wind energy facility is prohibited. The table provides for a local schedule to Clause 52.32 to provide for planning schemes to specify locations where wind energy facilities are prohibited.
- Introducing a requirement for evidence of written consent from the owner of an existing dwelling where a turbine is proposed to be located within two kilometres of the dwelling.
- Consolidating application requirements in Clause 52.32-4 that were previously included both in Clause 52.32 and the *Planning and policy guidelines for development of wind energy facilities in Victoria* (March 2011).
- Adding a new Clause 52.32-6 that specifies that a permit may be granted to use and develop land for the purpose of wind measurement by an anemometer for a period of more than three years.

Clause 37.07 Urban Growth Zone – Wind energy facility is included in section 3 in the use table, and is prohibited in the zone.

Exceptions to the wind energy facility prohibitions

Amendment VC82 included a number of exceptions to these prohibitions. The prohibitions and exceptions introduced by Amendment VC82 are summarised in the following table:

Location/circumstance in which a wind energy facility is normally prohibited	Exceptions where the prohibition does not apply
National parks	Where the wind energy facility is principally used to supply electricity to a facility used in conjunction with conservation, recreation, administration or accommodation use of the land
Mornington Peninsula, Yarra Ranges, McHarg Ranges, Bellarine Peninsula	Where the wind energy facility is on land in an urban zone* and is integrated as part of the development of the land
Land within five kilometres of an urban zone* in a regional settlement identified in the schedule to Clause 52.32 in the planning scheme	Where the wind energy facility is on land in an urban zone* and is integrated as part of the development of the land
Land within five kilometres of the high water mark of the Bass Coast/Great Ocean Road coast	Where the wind energy facility is on land in an urban zone* and is integrated as part of the development of the land
Turbines located within two kilometres of an existing dwelling	Where the owner of the dwelling consents to the turbine. Where the turbine is on land in an urban zone* (turbines in an urban zone are not subject to the consent requirement, even if they are located within 2km of a dwelling)**

*An urban zone means a residential zone, an industrial zone, a business zone or a special purpose zone.

**Amendment VC91 clarified the controls to ensure that the original policy intent was achieved, namely that the application requirement for written consent of all dwelling owners within 2km of a turbine does not apply to applications for turbines in an urban zone.



Turbines generating electricity for on-site use

Turbines that are principally used to supply electricity for domestic or rural use of the land are excluded from the definition of a wind energy facility in the VPP. They therefore do not require a permit under Clause 52.32 (although a permit may be required for buildings and works under the zoning or overlay controls that apply to the land).

The wind energy facility provisions under Clause 52.32 also allow for turbines that are used primarily to generate electricity for other on-site uses, including:

- a permit can be obtained under Clause 52.32 for a wind energy facility in a national park, provided the wind energy facility generates electricity primarily to supply park facilities
- a permit can be obtained under Clause 52.32 for a wind energy facility in “no go” locations listed in a schedule to Clause 52.32-2, provided they are located in a residential zone, an industrial zone, a business zone or special purpose zone and are integrated as part of the development of the land.
- a permit obtained under Clause 52.32 for a wind energy facility in a residential zone, an industrial zone, a business zone or special purpose zone does not require the consent of dwelling owners within two kms of a turbine.

Can turbines generating electricity for on-site use be connected to the grid?

A turbine generating electricity in the circumstances outlined above may be connected to the grid. The critical question in the first two circumstances is whether the wind energy facility or turbine(s) generates an amount of electricity that is generally proportional to the electricity requirements of the main use of the land. If it does, it is likely that a permit application can be considered by the responsible authority under one of the exceptions introduced by Amendment VC82.

Policy and planning guidelines for development of wind energy facilities (July 2012)

The guidelines have been updated to include the changes introduced by Amendments VC82 and VC91. The guidelines are now a reference document in the *Victoria Planning Provisions* and planning schemes and address:

- what evidence is required to be provided to a responsible authority of the consent of an owner of a dwelling for a turbine proposed to be located in a non-urban zone within two kilometres of a dwelling
- model permit conditions that should be considered by responsible authorities when issuing a planning permit for a wind energy facility.

What must be provided as evidence of written consent?

The responsible authority must establish if an application for a wind energy facility is discretionary under the planning scheme. Where an application includes a turbine or turbines on land in a non-urban zone within two kilometres of an existing dwelling, the responsible authority must be provided with evidence of written consent of the owner(s) of the dwelling or dwellings (unless an exception applies – see above). The application requirement in Clause 52.32-3 requires a planning permit application to include:

1. A plan showing all dwellings within two kilometres of a proposed turbine that forms part of the wind energy facility.
2. Evidence of the written consent of the owner of any existing dwelling located within two kilometres of a proposed turbine that forms part of the wind energy facility.

The above requirement does not apply to land in a residential zone, an industrial zone, a business zone or special purpose zone.

Evidence of written consent should include:

- a statement of consent that contains
 - the name and address of the owner(s) of the dwelling
 - the address of, and title particulars for, the land on which the dwelling is located

- a statement that the owner consents to an application being made that includes a turbine(s) located as shown on the attached plan
- a plan showing:
 - the dwelling
 - the proposed location of the turbine(s) within two kilometres of the dwelling
 - the distance between the dwelling and the proposed turbine(s).

The location of the turbine(s) can be a specific site or a more general area in which the turbine(s) will be sited.

The plan should be able to be read and reconciled with the plans of the wind energy facility that form part of the application (including the plan showing all dwellings within two kilometres of a proposed turbine that forms part of the wind energy facility).

The statement of consent and the attached plan should both be signed and dated by the owner of the dwelling.

The *Policy and planning guidelines for development of wind energy facilities in Victoria* includes a Statement of Consent form that can be used by an applicant.

Can consent be withdrawn after an application has been lodged?

Consent relates to the point in time when the application for planning permit is lodged. Evidence of written consent is required to change a proposal from being prohibited to being discretionary under the planning scheme. The application can be considered and determined once the responsible authority has been satisfied that there is written consent to locate a turbine within two kilometres of a dwelling. If an owner subsequently withdraws consent, this is not a matter for the responsible authority to consider.

Does written consent prevent the owner of a dwelling making an objection?

Written consent allows the application to be considered. All other provisions of the Act still apply to the application. This includes the responsible authority determining what notice must be provided of the application (section 52 of

the Act), the right to make an objection or the right of review of any person considered to be affected by the grant of a permit.

What about wind energy facilities in urban locations?

Specific provision has been made to ensure that a wind energy facility in an urban location, like the six star ANZ Docklands headquarters, can continue to be considered and are not subject to the requirement relating to turbines within two kilometres of a dwelling. For more detail, refer to the discussion of turbines generating electricity for on-site use above.

Are there any transitional arrangements?

No new transitional arrangements applied to the changes introduced by Amendment VC82. The transitional arrangements in Clause 52.32 introduced by Amendment VC78 in March 2011 applied until 15 March 2012.

Other questions and answers

- Q. Does Clause 52.32 apply to turbines that are principally used to supply electricity for domestic or rural use of the land?**
- A. No. Turbines that are principally used to supply electricity for domestic or rural land use are excluded from the definition of a wind energy facility in the *Victoria Planning Provisions*. They therefore do not require a planning permit under Clause 52.32 (although a planning permit may be required for buildings or works under the zone or overlay controls that apply to the land).
- Q. Does Clause 52.32 differentiate between small, medium and large scale turbines?**
- A. No. The provisions apply to wind energy facilities as defined in the VPP and to turbines that form part of a wind energy facility.

Land used to generate electricity by wind force. It includes any turbine, building or other structure or thing used in or in connection with the generation of electricity by wind force. It can include an anemometer.

It does not include turbines principally used to supply electricity for domestic or rural use of the land.

However, the provisions allow for turbines used to generate electricity for on-site use, and turbines in urban areas, to be considered.

Q. In what circumstances does the evidence of consent of the owner of a dwelling apply?

A. Evidence of written consent of an owner of a dwelling is required for any turbine that forms part of a wind energy facility within two kilometres of that dwelling. This does not apply where:

1. The turbine is principally used to supply electricity for domestic or rural use of the land. (These turbines are not a wind energy facility under the definition in the VPP.)
2. The turbine is in a residential zone, industrial zone, business zone or special purpose zone. (Under Clause 52.32, the 2km rule does not apply in these zones).

Q. When can a wind energy facility be considered in the “no go” locations included in Amendment VC82?

A. A wind energy facility can be considered in a “no go” location where:

1. The turbine(s) is principally used to supply electricity for domestic or rural use of the land. (These turbines are not a wind energy facility under the definition in the VPP.) or
2. The wind energy facility is on land in a residential zone, an industrial zone, a business zone or a special purpose zone and integrated as part of the development of the land or
3. The wind energy facility generates the electricity needs of a facility used for the conservation, recreation, administration or accommodation use of the land in a national park.

Q. If a wind energy facility or wind turbine used for on-site generation is connected to the electricity grid, will it still be exempt from the prohibitions?

A. In principle, yes. The test in these circumstances is not whether the wind energy facility or turbine is connected to the electricity grid. Rather, the question is whether the wind energy facility or turbine generates an amount of electricity that is generally proportional to the electricity requirement of the (main) use of the land. If it is, the wind energy facility or turbine is likely to be:

- “principally used to supply electricity for domestic or rural use of the land” (in which case it falls outside the definition of a wind energy facility); or
- “integrated as part of the development of the land”, and therefore exempt from the prohibitions in Amendment VC82.

A wind energy facility used for on-site generation may also be ancillary to another use of the land. However it is important to note that a wind energy facility which is ancillary nevertheless requires a permit under Clause 52.32, because Clause 52.32 requires a permit for both use *and development* of a wind energy facility.

Further information and useful links

More information about the Victorian planning system is available online at: www.dpcd.vic.gov.au/planning

To view Amendments VC82 and VC91, go to: www.dpcd.vic.gov.au/planning/amendmentsonline

View the Policy and planning guidelines for development of wind energy facilities in Victoria, July 2012 at www.dpcd.vic.gov.au/planning/windenergy

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