

Amendment VC83 – Bushfire protection

Vegetation exemptions

This advisory note provides information about the new planning scheme provision, clause 52.48 Bushfire protection: exemptions, which provides vegetation removal exemptions around buildings used for accommodation and along fencelines.

Introduction

Amendment VC83 introduced clause 52.48 into the *Victoria Planning Provisions* and all planning schemes on 18 November 2011.

This provision has been developed in response to recommendations of the 2009 Victorian Bushfires Royal Commission.

Clause 52.48 allows the removal, destruction or lopping of vegetation to reduce fuel load around existing buildings used for accommodation and adjacent to fences on property boundaries without requiring a planning permit. These permit exemptions for vegetation removal only apply to buildings and fences existing or approved before 10 September 2009.

Clause 52.48 replaces the interim controls contained in clause 52.43 – Interim measures for bushfire protection.

What does clause 52.48 do?

Under clause 52.48:

- any requirement of a planning permit, including any condition, which has the effect of prohibiting the removal, destruction or lopping of vegetation; or
- any requirement of the planning scheme to obtain a planning permit; or
- any provision in the planning scheme which prohibits the removal, destruction or lopping of vegetation; or
- any provision in the planning scheme that requires the removal, destruction or lopping of vegetation to be carried out in a particular manner

does not apply to the following measures for bushfire protection:

- the removal, destruction or lopping of any vegetation within 10 metres of an existing building used for accommodation that was:
 - constructed before 10 September 2009; or
 - approved by a planning permit issued under this planning scheme before 10 September 2009; or
 - approved by a building permit issued under the *Building Act 1993* before 10 September 2009.



- the removal, destruction or lopping of any vegetation, except for trees, within 30 metres of an existing building used for accommodation:
 - constructed before 10 September 2009; or
 - approved by a planning permit issued under a planning scheme before 10 September 2009; or
 - approved by a building permit issued under the *Building Act 1993* before 10 September 2009.
- the removal, destruction or lopping of any vegetation, except trees, within 50 metres of an existing building used for accommodation where land is within the Bushfire Management Overlay where the existing building was:
 - constructed before 10 September 2009 or lawfully erected before 18 November 2011 without the need for a planning permit; or
 - approved by a permit issued under a planning scheme before 10 September 2009 and erected before 18 November 2011; or
 - approved by a building permit issued under the *Building Act 1993* before 10 September 2009 and erected before 18 November 2011.
- the removal, destruction or lopping of any vegetation for a maximum width of four metres either side of an existing fence on a boundary between properties in different ownership that was constructed before 10 September 2009.

Do the exemptions apply everywhere?

No. The exemptions do not apply to all areas.

The removal, destruction or lopping of any vegetation within **10 metres** of an existing building used for accommodation and the removal, destruction or lopping of any vegetation, except for trees, within **30 metres** of an existing building used for accommodation applies to the whole State except:

- areas covered by the Banyule, Bayside, Boroondara, Brimbank, Darebin, Glen Eira, Greater Dandenong, Hobsons Bay, Kingston, Knox, Maribyrnong, Maroondah, Melbourne, Monash, Moonee Valley, Moreland, Port of Melbourne, Port Phillip, Stonnington, Whitehorse and Yarra planning schemes.

However, these planning schemes may specifically state that the exemptions do apply and this will be set out in the schedule to clause 52.48. Check with your council whether the planning scheme provides for this.

The removal, destruction or lopping of any vegetation within **10 metres** of an existing building used for accommodation and the removal, destruction or lopping of any vegetation, except for trees, within **50 metres** of an existing building used for accommodation applies to any land that is covered by the Bushfire Management Overlay.

The removal, destruction or lopping of any vegetation for a maximum width of **four metres** either side of an existing fence on a boundary between properties in different ownership that was constructed before 10 September 2009 applies to the whole state except:

- areas covered by the Banyule, Bayside, Boroondara, Brimbank, Darebin, Glen Eira, Greater Dandenong, Hobsons Bay, Kingston, Knox, Maribyrnong, Maroondah, Melbourne, Monash, Moonee Valley, Moreland, Port of Melbourne, Port Phillip, Stonnington, Whitehorse and Yarra planning schemes unless the land is included in the Bushfire Management Overlay.

Why have the 10/30 and 10/50 rules?

These rules give certainty to land owners and residents in areas where there is a hazard so that they can maintain the vegetation on their property in a fire-ready condition.

Are the exemptions permanent?

Yes. Clause 52.48 replaces clause 52.43 – Interim measures for bushfire protection with permanent planning provisions.

Do the exemptions apply when an overlay requires a permit for removing vegetation?

Yes. The exemptions apply to any requirement of the planning scheme, including any requirement to obtain a planning permit to remove, destroy or lop vegetation.



Erosion Management Overlay – landslip risk

Some councils have identified areas that are prone to landslip by applying the Erosion Management Overlay.

Landslip risk can be increased by the removal of vegetation, particularly deep-rooted, long lasting trees and plants that have a large root system.

An existing planning permit issued for buildings in areas which are identified as being prone to landslip may include conditions requiring the establishment or protection of vegetation to assist with minimising the risk of landslip. In some cases, the design and construction of the building will have been based on a geotechnical or engineering assessment that factored in the establishment or retention of vegetation.

While vegetation is able to be removed without a permit in areas prone to landslip, landowners and residents are advised to retain vegetation to minimise landslip risk or to seek expert advice before removing vegetation.

Do the exemptions apply to vegetation required to be maintained or protected by an existing planning permit condition?

Yes. Where the exemptions in clause 52.48 apply they override any planning permit, including any condition, which has the effect of prohibiting the removal, destruction or lopping of vegetation.

An existing planning permit issued for a dwelling may include a condition requiring landscaping to be undertaken and maintained. Under clause 52.48 vegetation in the landscaped area can be removed for bushfire protection provided the specified limits are not exceeded. Vegetation beyond the exemptions continues to be bound by requirements and conditions of the planning permit.

Do the exemptions apply to both native and non-native vegetation?

Yes. The exemptions apply to both native and non-native vegetation.

Do the exemptions apply to vegetation protected by a legal agreement or covenant?

No. The exemptions do not apply to legal agreements or covenants that have the effect of prohibiting the removal, destruction or lopping of native vegetation.

Legal agreements and covenants can be used to secure offsets for vegetation that has been permitted to be removed. Agreements are typically established under section 173 of the *Planning and Environment Act 1987* or section 69 of the *Conservation, Forests and Lands Act 1987*. A covenant can also be applied to vegetation under section 3A of the *Victorian Conservation Trust Act 1972*.

Do other existing planning permit exemptions for vegetation removal continue to apply?

Yes. There are a number of other exemptions for fire prevention, including the ability to clear vegetation that poses an immediate risk to people or property, to allow access in case of an emergency, or for fire fighting purposes. The planning scheme also contains exemptions for a range of activities that involve vegetation removal, such as farming activities, mining and weed control. These other exemptions continue to apply.

What is meant by ‘a building used for accommodation’?

Clause 74 of all planning schemes defines ‘accommodation’ as ‘land used to accommodate persons.’ A building used for accommodation includes dwellings (houses) and other types of accommodation such as a dependent person’s unit, group accommodation and a bed and breakfast.

Do the exemptions apply to proposed buildings and fences?

No. As set out above, the exemptions only apply to existing buildings and fences that meet the requirements of clause 52.48.



Can vegetation be removed for bushfire protection around other types of buildings?

Depending on the location of a proposed building or fence, other planning permit exemptions may be available to manage vegetation. However, it is important that bushfire risk and vegetation management is considered early in the planning stages of any proposal for a new building or fence.

If a planning permit is required to construct a building in an area that is at risk from bushfire, applicants and responsible authorities should consider the impact of future vegetation removal for bushfire protection on landslip and erosion risk, as well as recognised environmental, heritage and amenity values.

Depending on the type of vegetation and the planning scheme provisions applying to the land an applicant may be required to demonstrate how future vegetation removal for bushfire protection can be avoided, and if it cannot be avoided, how the removal of native vegetation will be minimised through appropriate planning and design.

Depending on the location of the proposed building and the type of vegetation to be removed, the planning scheme may require any loss of vegetation to be offset.

These exemptions only apply to an existing building used for accommodation and an existing fence. Depending on the location of the property, other planning permit exemptions in a planning scheme may enable vegetation to be removed around other types of buildings for bushfire protection.

How much vegetation can be removed along a property boundary fence?

A maximum combined width of four metres of vegetation can be removed along an existing property boundary fence. The maximum width of four metres can be divided in any manner that the two landowners agree to. For example, two metres either side of the fence, or one metre on one side and three metres on the other side. Before removing vegetation adjacent to a boundary fence, each landowner and resident should seek agreement from their neighbours on how much can be removed.

Can vegetation be removed if more than four metres is already cleared on one side of the fence?

No. If there is already at least four metres of cleared land on one side of the fence, vegetation cannot be removed on the other side of the fence without a planning permit.

Can a landowner or resident remove vegetation from their neighbour's property or from public land?

Only with permission from the landowner.

Before any vegetation is removed from a neighbour's property, or public land, including roadsides, parks and reserves, written permission must first be obtained from the landowner or land manager.

I am in the Shire of Yarra Ranges. What am I able to do?

Not all exemptions apply in the Shire of Yarra Ranges because existing clause 52.43 of the Yarra Ranges Planning Scheme continues to apply.

Under clause 52.43 any planning permit or scheme requirement that has the effect of prohibiting or controlling the removal, destruction or lopping of any vegetation does not apply: within 10 metres of a building used for accommodation; except for trees, within 30 metres of a building used for accommodation and within four metres of a boundary fence provided the building or fence was constructed or approved by a planning or building permit before 10 September 2009.

Check with your council for any updates that apply specifically to Yarra Ranges.

More information

Preparing a property for bushfire

Information about assessing bushfire risk and preparing a property for bushfire is available by contacting the Victorian Bushfire Information Line on 1800 240 667 or on the CFA website:

www.cfa.vic.gov.au

Information about preparing for bushfire in areas prone to landslip is available at: www.dpcd.vic.gov.au/planning/bushfire



Vegetation controls in planning schemes

Information about vegetation removal for bushfire protection is available at: www.dpcd.vic.gov.au/planning/bushfire

Information about bushfire protection and native vegetation clearing is available on the Department of Sustainability and Environment website: www.dse.vic.gov.au/land-management/native-vegetation-local-government

View the planning scheme provisions at: planningschemes.dpcd.vic.gov.au (or <http://planningschemes.dpcd.vic.gov.au/index.html>)

Information about the operation of the native vegetation planning provisions is available at: www.dpcd.vic.gov.au/planning/practicenotes

Amendment VC83 changes

More information about the bushfire provisions introduced by Amendment VC83 is provided in:

[Advisory note 33 – Bushfire protection: Community fire refuge and private bushfire shelter exemptions](#)

[Advisory note 40 – Bushfire protection: Bushfire planning provisions](#)

[Practice note 64 – Local planning for bushfire protection](#)

[Practice note 65 – Bushfire Management Overlay and bushfire protection: planning requirements](#)

[Roadside vegetation management – new fire exemption for roadsides, Department of Sustainability and Environment](#)

More bushfire related information is available at www.dpcd.vic.gov.au/planning/bushfire

Published by the Victorian Government Department of Planning and Community Development, Melbourne, November 2011.
© The State of Victoria Department of Planning and Community Development 2011.

This publication is copyright. No part may be reproduced by any process except in accordance with the provisions of the *Copyright Act 1968*.

Authorised by the Victorian Government, 1 Spring Street, Melbourne.

This publication may be of assistance to you but the State of Victoria and its employees do not guarantee that the publication is without flaw of any kind or is wholly appropriate for your particular purposes and therefore disclaims all liability for any error, loss or other consequence which may arise from you relying on any information in this publication.

www.dpcd.vic.gov.au/planning