Planning exemptions for bushfire reconstruction

Factsheet
May 2020

This document provides information about planning exemptions for bushfire reconstruction in Clause 52.10 of planning schemes.

What is Clause 52.10?
Clause 52.10 is a provision to help landowners reconstruct homes and buildings damaged or destroyed by a bushfire and help re-establish businesses and services. It exempts some planning requirements for dwellings and streamlines the planning permit application process.

Information about dwellings
You will probably need a planning permit to rebuild your dwelling or re-establish your business. If you do, some exemptions have been put in place to speed up the process.

The requirements below only need to be met if you want to benefit from the exemption. You can still do the things that Clause 52.10 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. If you don’t normally need a permit for a use or development, this doesn’t affect you. Check with your council if you are unsure.

Exemption for use of land for a dwelling
In some zones, you need a planning permit to use land for a dwelling. The planning scheme considers land use separately from development. Check with your council to see which zones have a use requirement.

In these zones, you can use your land for a dwelling and be exempt from planning scheme requirements, but you may still be subject to other requirements to build your dwelling.

You can benefit from the use exemption if the following requirements are met:

- Your dwelling must have been damaged or destroyed by a bushfire after 1 January 2019.
- You must move into your new dwelling within five years of when your dwelling was damaged or destroyed.
- Access to your dwelling must be provided via an all-weather road with dimensions adequate to accommodate emergency vehicles.
- Your dwelling 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 State Environment Protection Policy (Waters of Victoria) under the Environment Protection Act 1970, or
  - treated and disposed of to the satisfaction of your council.
- Your dwelling must have potable water and electricity supplies.

Exemption from notice and appeal for a dwelling
All dwellings will be exempt from public notice and appeals to the Victorian Civil and Administrative Tribunal (VCAT) by others if all the following requirements are met (even if you don’t meet the Exemption for use of land for a dwelling):

- Your dwelling must have been damaged or destroyed by a bushfire after 1 January 2019.
- Your application must be lodged within 5 years of the date the building was damaged or destroyed.
- You must have had a dwelling on your land and were using it as a dwelling, immediately before your dwelling was damaged or destroyed by a bushfire.
- You must not construct more dwellings on your land than the number of dwellings that was damaged or destroyed.
Information about other uses and buildings

If you need a planning permit under the normal requirements of the scheme, your application will be exempt from public notice and appeals to VCAT if all the following requirements are met:

- Your building was damaged or destroyed by a bushfire after 1 January 2019.
- Your application is lodged within 5 years of the date the building was damaged or destroyed.
- Your application is to use or develop land for, or in association with, a use that was lawfully carried out on your land immediately before your building was damaged or destroyed by a bushfire.

There is no restriction on the location, number or type of buildings you can apply for other than the normal requirements of the planning scheme.

All other requirements under the planning scheme continue to apply. Note that requirements for building permits still apply.

What documentation will I need to provide with my application?

The normal planning permit application documentation applies. That includes application form, title, plans and other documentation or reports relevant to the location of your property. It is important to approach your council before preparing any plans or documents, as they will be able to help you.

Will the government help with some technical assessments for my application?

The Victorian Government – through Bushfire Recovery Victoria – is working on technical land assessments to support people with their planning and building permit applications. For more information about the assessments and how they might support you, contact a Bushfire Recovery Victoria Community Recovery Hub via brv.vic.gov.au.

What will the council consider?

The council will consider the planning scheme as it normally applies to your application (other than the exempt process steps). This may include the consideration of their own local policies or design objectives for your area.

What if I have already lodged an application with the council?

The exemptions in Clause S210 will apply to your application if the requirements are met. Check with your council if you are unsure.

Who decides if I get a planning permit?

The council’s Chief Executive Officer will decide on your application. If your application is refused or you are unhappy with the conditions placed on the planning permit, you can appeal to VCAT for a review of your application.