FAQs – One dwelling or small second dwelling on a lot

(September 2025)

Department of Transport and Planning

Deemed to comply operation

What happens if a council decides a standard is met?

If a standard is met, the corresponding objective is met. The council is not required to consider the corresponding decision guidelines.

What happens if a council decides a standard is not met?

If council decides a standard has not been met, the relevant decision guideline of the standard outlines what council must consider when deciding whether the corresponding objective is met. For example, the decision guidelines in the suite of neighbourhood character objectives include the requirement to assess an alternative design solution against "Any relevant neighbourhood character objective, policy or statement set out in this scheme". This enables the council to apply local neighbourhood character policies when considering if an alternative design solution satisfies the objective.

What role will referral authorities play in deemed to comply assessments?

Any referral requirements of a planning scheme continue to apply. Clause 54 does not exempt the council from considering any decision and comments it has received from a referral authority as set out in section 60 (1)(d) of the *Planning and Environment Act 1987* (the Act).

Does the garden area requirement in the General Residential Zone or Neighbourhood Residential Zone apply to a clause 54 assessment?

Yes. The applicable zone requirements continue to apply in addition to the requirements of clause 54.

Do the building height requirements of an applicable zone apply to a clause 54 assessment?

Yes. An applicable mandatory building height requirement will apply to an application assessed under clause 54.

Does the applicant need to state if the standard has been met or not?

Yes. Clause 54 states that an application must be accompanied by "a written statement outlining which standards are met and which are not met". If a standard is not met, the written statement must include an explanation of how the development meets the corresponding objective having regard to the corresponding decision guidelines.

What parts of the Act are exempt for deemed to comply assessments?

An application to which clause 54 applies is exempt from specific requirements in the Act to ensure that clause 54 operates as a deemed to comply provision.

An application to which clause 54 applies is exempt from the requirements of section 60(1)(b), (e), (f), (1A) and (1B) of the Act in order to limit the matters that a council may consider when assessing an application. This includes the following matters:

- The objectives of planning in Victoria (section 60(1)(b)).
- Any significant effects the use or development may have on the environment or the environment may have on the use and development (section 60(1)(e)).
- Any significant social and economic effects (section 60(1)(f)).
- The approved regional strategy plan under Part 3A, approved strategy plan under Part 3C and Part 3D, any relevant environment reference standard and Order under the *Environment Protection Act 2017*, strategic plan, policy statement, code or guideline, or section 173 agreement affecting the land (section 60 (1A))
- The number of objectors in considering whether the use or development may have a significant social effect (section 60 (1B)).

An application to which clause 54 applies is also exempt from the requirements of section 84B(2)(b) to (jb) of the Act in order to ensure the Victorian Civil and Administrative Tribunal (VCAT) takes into account similar matters to the council in determining an application for review. This includes the following matters:

- The objectives of planning in Victoria (section 84B(2)(b)).
- The approved regional strategy plan under Part 3A, approved strategy plan under Part 3C and Part 3D (section 84B(2)(c), (d) and (da)).
- Any relevant environment reference standard or Order under the *Environment Protection Act 2017* (section 84B(2)(e) and (ea)).
- The extent to which persons residing or owning land in the vicinity of the land to which is the subject of the application were able to and in fact did participate in the procedures required to be followed under the Act before the responsible authority could make a decision in respect of the application for a permit (section 84B(2)(f)).
- Any amendment to a planning scheme which has been adopted but not approved by the Minister or the planning authority (section 84B(2)(g)).
- Any section 173 agreement affecting the land (section 84B(2)(h)).
- Any amendment to the approved regional strategy plan under Part 3A, approved strategy plan under Part 3C and approved strategy plan under Part 3D Section 84B(2)(i), (j) and (ja)).
- The number of objectors in considering whether the use or development may have a significant social effect (Section 84B(2)(jb)).

How will a responsible authority consider land contamination and other environmental matters?

The requirements of the Environmental Audit Overlay, Buffer Area Overlay and other environmental overlays do not change. These overlays will continue to operate and are applied by council's strategic work as planning scheme amendments.

What obligations does the land manager have to manage contaminated land?

The changes to clause 54 do not change the obligations on land managers under the *Environment Protection Act 2017* (the EP Act).

The duty to manage contaminated land (section 39 of the EP Act) requires land managers to minimise risks of harm to human health and the environment from contaminated land so far as reasonably practicable. This includes:

- identifying, investigating and assessing any contamination the land manager should be aware of, or suspects is present
- putting in place measures to minimise risks of harm from the contamination
- sharing information about contamination with anyone who may be affected or may become a land manager.

In some cases, the land manager may need to notify EPA of the contamination (section 40 of the EP Act).

If the land manager engages in an activity that disturbs contaminated land, the general environmental duty (section 25 of the EP Act) requires the land manager to minimise risks of harm to human health and the environment from the contaminated land so far as is reasonably practicable.

What happens if other planning provisions apply to an application?

There are no changes to the operation of other provisions of the planning scheme, including overlays and particular provisions. Residential developments are still required to meet the requirements of any relevant overlay or particular provision that apply to the site or proposal, including planning permit requirements for land use, development and heritage.

The notice and review provisions of the Act will continue to apply as required by other provisions of the planning scheme.

Does this mean clause 65 applies in full where an overlay applies?

Yes. When an overlay applies, its purposes and decision guidelines must still be considered in addition to the relevant decision guidelines in clause 65. However, the council is exempt and must not consider the decision guidelines in clause 65 in determining an application under a residential zone to which clause 54 applies.

Types of application

What type of application process applies?

Applications are assessed according to the regular planning permit process unless they are eligible for the streamlined 10 business day VicSmart assessment process. The deemed-to-comply operation applies to all applications under clause 54.

When is an application VicSmart?

An application to develop, extend or alter a single dwelling or small second dwelling is a VicSmart application in the Residential Growth Zone, General Residential Zone, Neighbourhood Residential Zone, Housing Choice and Transport Zone, Mixed Use Zone and Township Zone if the standards under the following clauses are met:

- 54.02-1 Street setback

- 54.02-2 Building height
- 54.02-3 Side and rear setbacks
- 54.02-4 Walls on boundaries
- 54.02-5 Site coverage
- 54.02-6 Tree canopy
- 54.02-7 Front fences (single dwellings only)
- 54.02-8 Building setback for small second dwellings (small second dwellings only)
- 54.03-5 Safety and accessibility for small second dwellings (small second dwellings only)
- 54.04-1 Daylight to existing windows
- 54.04-2 Existing north-facing windows
- 54.04-3 Overshadowing secluded open space
- 54.04-4 Overlooking
- 54.05-2 Overshadowing domestic solar energy systems

The standards are set out in clause 54 of the relevant planning scheme. Find the relevant planning scheme at Browse Planning Schemes.

Why has the assessment for clause 54 VicSmart applications changed?

These applications will now be assessed according to the requirements of clause 54 rather than separate information requirements and decision guidelines at clause 59 to ensure that the streamlined deemed to comply process applies.

Amendment VC282 removed clause 59.14 (Construction and extension of one dwelling on a lot or a small second dwelling on a lot in a residential zone) from planning schemes as it is no longer required.

What if an overlay applies to the land?

A proposal may have more than one requirement for a permit (for example, a permit requirement under the zone and separate permit requirements of any overlay that applies).

A permit requirement in an overlay may or may not affect whether a proposal is eligible for the VicSmart assessment process.

For example, if an application is eligible for the VicSmart assessment process because it meets the relevant clause 54 standards as set out in the zone, and the proposal is also a class of VicSmart application in that overlay, the application is a VicSmart application. However, if the proposal is not a class of VicSmart application in that overlay, the application is a regular application.

Notice of application

Are neighbours notified of applications?

Notice is not given for VicSmart applications.

There has been no change to the notice provisions for regular applications. Neighbours will continue to be notified about a regular application if a council considers that the application may cause material detriment to them.

If the development meets the standard, but an objection raises concerns regarding the standard, must the council consider the objection?

The Act requires the council to consider all objections. If an objection is received specifically about a standard that council considers is met, then no change in relation to a deemed to comply standard can be required as part of council's decision.

Review rights at VCAT

Can an objector seek review of a decision to VCAT?

No, an objector cannot seek review of a decision to VCAT for a VicSmart application (third-party review rights do not apply to VicSmart applications).

For a standard application, when all the applicable standards are met, there will be no third-party review right. The applicable standards relate to neighbourhood character and amenity protection:

- 54.02-1 Street setback
- 54.02-2 Building height
- 54.02-3 Side and rear setbacks
- 54.02-4 Walls on boundaries
- 54.02-5 Site coverage
- 54.02-6 Tree canopy
- 54.02-7 Front fences (single dwellings only)
- 54.02-8 Building setback for small second dwellings (small second dwellings only)
- 54.03-5 Safety and accessibility for small second dwellings (small second dwellings only)
- 54.04-1 Daylight to existing windows
- 54.04-2 Existing north-facing windows
- 54.04-3 Overshadowing secluded open space
- 54.04-4 Overlooking
- 54.05-2 Overshadowing domestic solar energy systems

If there is an objection and the application does not meet one or more of the above standards, and the council decides to grant a planning permit, it must issue a notice of the decision to grant a permit to the applicant and any objector. An objector will then have the opportunity to appeal the decision to VCAT.

Can an applicant seek review of a decision to VCAT?

Yes. The applicant may seek review of council's decision.

Transitional arrangements

What provisions apply to an application lodged before 8 September 2025?

An application lodged before 8 September 2025 continues to be assessed under the former clause 54 provisions. Any applicable VicSmart assessment, notice requirements and objector rights that applied before 8 September 2025 continue to apply to the application.

If council is making a decision on a condition of a permit that was issued before 8 September 2025 as condition 1 plans, does council have to consider the new clause 54?

No. If the permit was issued before 8 September 2025, the conditions of the permit relate to the approval of the application at the time.

If council is considering an amendment to an existing permit, which provisions apply?

The transitional provision will apply to an application for an amendment of a permit under section 72 of the Act if the original permit was lodged before the commencement date of VC282, 8 September 2025. Therefore, the former clause 54 provisions in operation before 8 September 2025 apply.