

Interim measures for bushfire protection Amendment VC61

This advisory note provides information about the introduction of a new planning scheme provision, *Clause 52.43 – Interim measures for bushfire protection*.

After the experiences of the recent devastating bushfires, the State Government is streamlining vegetation controls in areas that are prone to bushfire so that landowners and residents can implement their bushfire plan before the next fire season. The purpose of the new provision is to enable the removal, destruction or lopping of vegetation to reduce fuel load around buildings used for accommodation and on roadsides to assist with minimising risk to life and property from bushfire.

What has been introduced?

Under the new provision Clause 52.43:

- 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 a building used for accommodation
- the removal, destruction or lopping of any vegetation, except for trees, within 30 metres of a building used for accommodation
- the removal, destruction or lopping of any vegetation for a combined maximum width of 4 metres either side of a fence on a boundary between properties in different ownership
- fuel reduction burning on the roadside of an existing public road
- the removal of fallen wood for personal use from the roadside of an existing public road.

Do the exemptions apply everywhere in Victoria?

No. The new Clause 52.43 does not apply to the area 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.

In these areas the regulation of vegetation removal will remain unchanged.

In other areas of Victoria, the exemptions are available for bushfire protection only.

What was the basis for deciding the areas to be included?

The municipalities where the interim provision applies were determined on the basis of fire risk. For those land owners and residents at risk from bushfire, the interim provision will enable them to implement their bushfire plan before the next bushfire season.

Are these exemptions permanent?

No. The exemptions are an interim measure to enable landowners to implement their bushfire plan before the next fire season.

The new Clause 52.43 will expire on 31 August 2010. The regulation of vegetation removal for bushfire protection will be reassessed once the final report of the Victorian Bushfire Royal Commission is available.

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 through the application of the Erosion Management Overlay.

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

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

Yes. The exemptions apply to any planning permit, including any condition, which has the effect of prohibiting the removal, destruction or lopping of vegetation.

Planning permits issued for the development of dwellings may include a condition requiring landscaping to be undertaken and maintained. Under Clause 52.43 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.

Planning permits in areas prone to landslip

Planning permits 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.

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 dependent person's units, group accommodation, and bed and breakfasts.

What will the exemptions mean for new accommodation?

The new provision only applies to existing buildings used for accommodation and the rebuilding of houses destroyed in the 2009 bushfire.

It is expected that every effort will be made to avoid native vegetation removal and to provide a 10 metre separation between new buildings and existing vegetation. If the construction of the building requires a planning permit, planning officers should consider the impact of future vegetation removal for bushfire protection on landslip and erosion risk, and environmental, heritage, amenity and recognised values.

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

These exemptions only apply to buildings used for accommodation. Depending on the location of the property, other planning permit exemptions in planning schemes 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 a 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, landowners and residents should talk to their neighbours and agree to 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 can not be removed on the other side of the fence without a planning permit.

Can landowners and residents remove vegetation from their neighbour's property or from public land?

Not without 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.

Do the exemptions allow the public to start collecting fallen wood from any roadside reserve?

No. Under Section 63 of the *Road Management Act 2004* the written consent of the coordinating road authority is required before any vegetation is removed from a roadside. Some councils also regulate the removal of vegetation from roadsides through a local law. Clause 52.53 only provides an exemption from planning scheme and planning permit requirements, not from these other consent requirements.

However, the public will be given permission to collect fallen wood for personal use two weeks prior to planned fuel reduction burning on nominated roadsides. Roadside fuel reduction burns will be advertised with a sign on the site and in local papers. Where this advertises that a "no written consent" period for fallen firewood collection for personal use has been provided, the public will be able to collect fallen wood for personal use from that section of roadside prior to the burn without obtaining further consent. The "no written consent" period for fallen firewood collection for personal use will last for two weeks in advance of fuel reduction burning.

Collection of fallen wood from roadsides outside the advertised period or on roads that have not been designated for fuel reduction burns continues to be subject to the normal approvals. Collection of fallen wood from a roadside without approval is an offence and is subject to penalties.

Preparing a property for bushfire

How can someone identify if they should be concerned about bushfire?

There are a number of factors that influence bushfire risk, including:

- the type and extent of vegetation on the property and surrounding land
- proximity to vegetated land such as forests, grasslands and scrub
- topography - the rate of spread of a fire increases significantly up a slope

It is important that landowners inform themselves about bushfire risk and where necessary, obtain property risk level advice from the CFA.

Each year the CFA, MFB, the Department of Sustainability and Environment, and the Department of Human Services jointly conduct *Living with Fire*, a community safety education initiative targeted to residents in high fire risk areas across Victoria.

Interactive community meetings in local halls and street corner meetings are planned across the State with the aim of raising people's awareness of their bushfire risk, and to work with residents to turn awareness into action. For more information contact the Victorian Bushfire Information Line or visit the CFA website.

What vegetation should form part of a property bushfire plan?

Fires need fuel to burn in the form of plants, shrubs, trees, garden waste and woodpiles. The path a fire takes depends on where the fuel is. This means landowners and residents need to prepare their properties before the fire season to lessen the fuel load.

Fine fuels (thinner than a finger) contribute most to the heat and speed of a fire. Fine fuels include dry grass, leaves, twigs and loose bark but do not include larger logs and branches and trees. The slope of land and weather conditions can also influence fire behaviour.

More information about how to manage vegetation as part of preparing a property for bushfire is available from the CFA website and regional offices, or the Victorian Bushfire Information Line.

What other matters should be considered before removing vegetation as part of making a property fire-ready?

When preparing a property for bushfire, landowners and residents should be aware that:

- totally removing leaf litter causes soil to dry out and may harm the soil structure causing plants to shed leaves or die, leading to increased fuel loads
- bare soil can also lead to erosion
- grading or ploughing fuel breaks can encourage weeds which may increase fuel loads
- it is unnecessary to slash all vegetation as trees and shrubs scattered through the slashed area won't significantly increase fine fuels. They can be quite good for protecting the landscape and the local ecology. They provide shade to help keep plants moist, suppress weeds and provide habitat for small animals.

Vegetation, in particular native vegetation, has many important roles. In addition to biodiversity and habitat, vegetation is an important component of the amenity and character of Victoria's towns, suburbs and rural landscape. It can provide soil stability to help prevent erosion and landslip, as well as shade and shelter.

Before vegetation is removed landowners and residents should think about:

- The value of vegetation – do trees provide screening from neighbours, shade during summer etc?
- The benefit of cleaning up fine fuels. Research shows that it is the fine fuels that enhance fire intensity.
- The need for other works such as replanting with alternative vegetation or retaining works?
- The gradient of the land and its susceptibility to erosion or landslip. What will be the outcome if the vegetation is removed?

Landslip risk

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.

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

Land owners and residents are advised to:

- exercise caution when removing vegetation on slopes, particularly slopes above 25 degrees
- engage the services of a suitably qualified geotechnical engineer to assess the landslip risk before removing any vegetation, and in particular trees.

Working safely with trees

Fatalities and serious injuries associated with removing trees occur every year. Landowners and residents are advised to seek professional assistance when removing vegetation, particularly trees.

Vegetation management is only one part of preparing a property for bushfire

During a bushfire, bark, twigs and leaves on fire (known as embers) can be blown ahead of the fire front and start new fires. Embers are most likely to get into a house through gaps in or around roofs, windows, doors and decks.

In addition to vegetation management, the CFA provides information and advice on the other important actions that should form part of preparing a property and house for bushfire. This advice can be found on the CFA website or in hard copy from CFA regional offices or from the Victorian Bushfire Information Line.

Where is information available?

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

More information about the interim measures for bushfire protection is available on the Department of Sustainability and Environment website: www.dse.vic.gov.au