VICTORIA PLANNING PROVISIONS

AMENDMENT VC109

EXPLANATORY REPORT

Who is the Planning Authority?

This amendment has been prepared by the Minister for Planning.

The Minister for Planning is the planning authority for this amendment.

What the amendment does

The amendment changes the *Victorian Planning Provisions* (VPP) and all Victorian planning schemes by amending:

- Clause 44.06 'Bushfire Management Overlay' (BMO) to move the application requirements to Clause 52.47 and a new mandatory condition for bushfire bunkers.
- Clause 52.17 'Native Vegetation' to enable the clearing of native vegetation to be undertaken by private landholders on Crown land with the written permission of the Secretary of the Department of Environment and Primary Industries for the purposes of maintaining wild dog exclusion fences.
- Clause 52.47 'Planning for bushfire' to provide approved and alternative bushfire safety measures for new single dwellings, replace or extend an existing dwelling and other buildings.
- Clause 52.48 'Bushfire Protection: Exemptions' to provide exemptions for the provision of defendable space for a dwelling approved under the BMO.
- Amending Clause 66 'Referral and Notice Provisions' to change the referral authority status for relevant fire authorities for some development from determining to recommending referral authority.

Strategic assessment of the amendment

Why is the amendment required?

In November 2011 the bushfire planning provisions including the BMO were introduced into the VPP and planning schemes by Amendment VC83 replacing the previous Wildfire Management Overlay, in line with the recommendations of the Victorian Bushfire Royal Commission 2009.

Since the implementation of the BMO, a number of concerns have arisen about its practical implementation for new, replacement and upgraded single dwellings including:

- the inability of some landowners to achieve defendable space because of site constraints which can cause a planning permit to be refused
- the rigidity of the system that does not allow for practical site specific solutions
- inconsistencies in the application of the bushfire controls across the State
- the inability of the system to consider alternative fire safety solutions
- competing interests relating to vegetation removal for defendable space purposes.

Amendment VC109 proposes to amend the VPP and all planning schemes to:

- allow landowners to build a new single dwelling on infill lots within an existing subdivision zoned: Neighbourhood Residential Zone, General Residential Zone, Residential Growth Zone, Urban Growth Zone, Low Density Residential Zone, Township Zone and Rural Living Zone; and replace or extend an existing dwelling in an extreme bushfire risk area. In these circumstances, applications will be required to meet an improved bushfire construction standard, but will not be assessed against the broader landscape hazard. An application will require:
  - a bushfire hazard site assessment
  - a bushfire management statement
- align the BMO to include the Flame Zone using the Australian Standard AS3959 *Construction of Buildings in Bushfire prone areas*. Calculation of the Bushfire Attack Level (BAL) for planning purposes will now be based on a Fire Danger Index (FDI) of 100, and not FDI 120
- enable the BAL rating in each case to be used to determine the building construction requirements in bushfire prone areas
- remove the need for multiple approvals for vegetation clearance to facilitate the provision of defendable space as the BMO permit will be the only permit process for vegetation removal
- allow adjoining land to be included as defendable space where there is reasonable assurance that the land will remain managed in that cleared condition
- allow a landowner who chooses not to clear vegetation to meet the minimum defendable space requirements, to build to BAL Flame Zone.
- allow a landowner who provides the required defendable space and a private bushfire shelter as an alternative safety measure, to build the dwelling to the next lower corresponding BAL rating
- require that where a private bushfire shelter is required under the BMO, it will be a mandatory permit condition that a s173 Agreement under the *Planning and Environment Act 1987* is registered on the title of the land between the landowner and council
- change the referral authority status for relevant fire authorities for single dwellings and subdivision from determining to recommending and remove their veto power over some permit applications in BMO areas.

New residential subdivisions, a single dwelling on land not within an existing subdivision zoned residential/township, two or more dwellings on a lot and vulnerable use buildings in the BMO will still need to be designed to meet the current bushfire standards, with the BAL and defendable space requirements based on FDI 100 for planning purposes. All applications for a permit for these land uses must be accompanied by:

- a bushfire hazard landscape assessment
- a bushfire hazard site assessment
- a bushfire management statement.

The Victorian Government has committed to working with the community and public land managers to implement a range of measures to reduce wild dog impacts on livestock, including wild dog exclusion fences separating public and private land. An integral part of the program is fence maintenance, specifically controlling vegetation along the fence perimeter.

Amendment VC109 will enable private landowners to clear native vegetation along a fence line on Crown land with the written permission of the Secretary of the Department of Environment and Primary Industries, under certain circumstances.

How does the amendment implement the objectives of planning in Victoria?

The amendment implements the objectives in section 4 of the *Planning and Environment Act 1987* (the Act). In particular, it supports the objectives to:

(a) provide for the fair, orderly, economic and sustainable use, and development of land.

(b) balance the present and future interests of all Victorians.

How does the amendment address any environmental effects and any relevant social and economic effects?

There may be some environmental, biodiversity and heritage impacts as a result of clearing vegetation for defendable space on private land adjacent to proposed and existing dwellings. However, the amendment will allow (but not mandate) vegetation removal for defendable space purposes by providing an alternative solution to build to the highest construction standard.

Clearing vegetation for defendable space has the effect of increasing community resilience to bushfire by encouraging greater safety for new single dwellings and replacing or extending existing dwellings.

There may be additional costs for some landowners wishing to clear vegetation and constructing a bushfire shelter. However, this will be offset by reduced regulatory compliance costs, and the associated costs are likely to be lower than reductions in land value under the current provisions.

The amendment will provide more flexibility for private landowners to maintain native vegetation along wild dog exclusion fences, thereby improving the integrity of the ongoing wild dog impact reduction program.

Does the amendment address relevant bushfire risk?

The amendment addresses relevant bushfire risk by facilitating the removal of vegetation to provide defendable space for dwellings, by removing the need for multiple approvals for vegetation clearance. This will reduce the risk to individual owners and the overall community by reducing the likelihood of vegetation on lots adding to the overall fuel load.

The amendment will also encourage the upgrade of existing dwellings by allowing automatic planning approval to rebuild to contemporary construction standards. This will encourage greater safety for new single dwellings and replacement or extended existing dwellings.

Does the amendment comply with the requirements of any Minister's Direction applicable to the amendment?

The amendment complies with all Ministerial Directions issued under section 12 of the Act.

The amendment complies with the *Ministerial Direction on the Form and Content of Planning Schemes* issued under section 7(5) of the Act.

How does the amendment support or implement the State Planning Policy Framework (SPPF)?

The amendment supports and implements Clause 13.05 (Bushfire) of the SPPF by increasing the resilience of new single dwellings and replacement or extended existing dwellings to bushfire. Reducing risk to life and property remains of paramount importance as homeowners will still need to demonstrate reasonable efforts to incorporate bushfire protection measures into their new developments.

The amendment supports and implements Clause 14.01-2 (Sustainable Agricultural Use) to ensure agricultural and productive rural land use activities are managed to maintain the long-

term sustainable use and management of existing natural resources by increasing flexibility to remove vegetation around wild dog exclusion fences.

Does the amendment make proper use of the Victoria Planning Provisions?

The amendment makes proper use of the *Victoria Planning Provisions* and is consistent with the Ministerial Direction on the Form and Content of Planning Schemes.

How does the amendment address the views of any relevant agency?

The amendment follows a Department of Transport, Planning and Local Infrastructure review of the planning and building framework for bushfire that involved a Bushfire Review Working Group independently chaired and comprising relevant State fire service agencies, the Victorian Building Authority, Metropolitan Planning Authority and the Municipal Association of Victoria.

The amendment is not considered to impact on the Government's policy position to reduce the risk to life and property in high risk bushfire areas, and will provide fairness to landowners by enabling new development proposals to be considered under a range of circumstances.

The Department of Environment and Primary Industries supports the changes to Clause 52.17 in relation to the removal of native vegetation on Crown land with the written permission of the Secretary of the Department of Environment and Primary Industries.

Does the amendment have a significant impact on the transport system, as defined by section 3 of the *Transport Integration Act 2010*?

The amendment will not have an impact on the transport system as it is an amendment to introduce new planning permit considerations for dwellings in bushfire prone areas and native vegetation removal exemptions along wild dog exclusion fences into the *Victoria Planning Provisions* and planning schemes.

Resource and administrative costs

What impact will the new planning provisions have on the resource and administrative costs of the responsible authority?

A new $700,000 assistance fund will be developed by DTPLI to assist councils in streamlining certain applications, and to address the backlog of planning permit applications and grants for councils to develop localised schedules to the BMO.

It is likely that the amendment may result in more planning permit applications under the BMO, however streamlining the assessment requirements and identifying alternative bushfire safety measures in the BMO will reduce the regulatory burden for councils.

The amendment will have no impact on the resource and administrative costs of councils in relation to native vegetation removal exemptions along wild dog exclusion fences.

Where you may inspect this Amendment

A copy of the amendment can be inspected, free of charge, during office hours, at all municipal council offices in Victoria and at the following offices of the Department of State Development, Business and Innovation (**DSDBI**):

Barwon South West Region
Geelong office
69- 71 Moorabool Street
GEELONG VIC 3220

Barwon South West Region
Warrnambool office
9 Gilles Street
WARRNAMBOOL VIC 3280

Gippsland Region
71 Hotham Street
TRARALGON VIC 3844

Grampians Region
111 Armstrong Street North
BALLARAT VIC 3350

Hume Region
Level 1, 62 Ovens Street
WANGARATTA VIC 3676

Loddon Mallee Region
Level 1, 56-60 King Street
BENDIGO VIC 3550

The amendment is also available for public inspection at www.dpcd.vic.gov.au/planning/publicinspection.