Fact Sheet

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Strathbogie SHIRE COUNCIL

Planning exemptions for reconstruction after an emergency

This document provides information about planning exemptions for reconstruction after an emergency in clause 52.10 of planning schemes.

Clause 52.10 was introduced into planning schemes in May 2020 to support communities impacted by the 2019-20 bushfires that significantly impacted communities in eastern Victoria.
In October 2021, clause 52.10 was amended to apply to other emergencies.

What is clause 52.10?

Clause 52.10 is a planning scheme provision to help landowners reconstruct homes and other buildings damaged or destroyed due to an emergency (including a bushfire) and help re-establish businesses and services.

It exempts some planning requirements for dwellings and streamlines the planning permit application process.

What types of emergencies does clause 52.10 apply to?

Clause 52.10 defines an *emergency* to be a:

bushfire; or

an earthquake, flood, wind-storm or other natural event.

Clause 52.10 applies to all emergencies that occurred after 1 January 2019.

What are the key features of clause 52.10?

Clause 52.10 has been introduced to speed up the planning permit application process and provide more certainty in the rebuilding process.

Clause 52.10 includes two types of exemptions:

1) Dwelling use exemption

Subject to meeting some requirements, this exemption turns off planning scheme requirements related to the use of land for a dwelling so that affected owners and councils can focus on rebuilding safely.

If you need to use this exemption, you will still likely need a planning permit to construct your replacement dwelling.

2) Notice and review exemption

Under this exemption:

the council is not required to give notice to your neighbours of your planning permit application

other people cannot apply to the Victorian Civil and Administrative Tribunal (VCAT) for a review of the council's decision on your application.

This exemption applies to applications for dwellings as well as for businesses and other uses and developments impacted by an emergency after 1 January 2019, including a bushfire.

Even if you cannot satisfy the requirements of the dwelling use exemption, your application to use and develop your land for a dwelling can benefit from this exemption if the requirements are met.

More information about the requirements you need to meet to benefit from these exemptions is provided below.

Another key feature is that the Chief Executive Officer of council (or delegate) will decide your application. This will also reduce delays in the application process.

Information about dwellings

Depending on the planning scheme provisions that apply to your land, and the extent of damage to your dwelling, you may have needed a planning permit to continue to use your land for a dwelling. However, this does not apply if you can meet the requirements of the dwelling use exemption.

The planning scheme considers the use of land separately from the development of land (for example, the construction of a dwelling).

Regardless of whether you need to use the dwelling use exemption, you may still need a planning permit to repair your dwelling or to construct your replacement dwelling. However, your application can still benefit from the notice and review exemption.

What requirements do I need to meet for the dwelling use exemption?
To benefit from the dwelling use exemption, a few requirements need to be met. In summary, these are:

Your dwelling must have been damaged or destroyed due to an emergency after 1 January 2019.

Your new dwelling must be occupied within seven years of when your dwelling was damaged or destroyed.

You cannot use your land for more dwellings than the land was lawfully used before 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 reticulated sewerage, if available. If reticulated sewerage is not available, all wastewater must be treated and retained within your lot in accordance with the requirements of the Environment Protection Regulations under the *Environment Protection Act 2017.*

Your dwelling must be connected to a reticulated potable water supply or have an alternative potable water supply with adequate storage for domestic use as well as for firefighting purposes.

Your dwelling must be connected to a reticulated electricity supply or have an alternative energy source.

If you are unsure about how these requirements apply to you, call Council and ask to speak to one of our Planning Officers.

What requirements do I need to meet for the notice and review exemption?
To benefit from the notice and review exemption, few requirements need to be met. In summary, these are:

A dwelling on your land must have been damaged or destroyed because of an emergency after 1 January 2019.

If your application is to use your land for a dwelling (for example, if you cannot meet the requirements of the dwelling use exemption) the dwelling must have been lawfully used before it was damaged or destroyed.

If your application is for the development of land, the application must be for either the repair of the damaged or destroyed dwelling; or

the construction of a replacement dwelling.

Your application must only be for the number of dwellings that were damaged or destroyed.

Your application must be lodged with the council within seven years of the date the dwelling was damaged or destroyed.

If you are unsure about how the requirements of clause 52.10 apply to you, call Council and ask to speak to one of our Planning Officers.

Information for other types of uses and developments

If a planning permit is required to continue a use, or to repair or reconstruct a building or works damaged or destroyed due to an emergency (including a bushfire), the application will benefit from the notice and review exemption if the following requirements are met:

A building or works on the land must have been damaged or destroyed due to an emergency after 1 January 2019.

If your application is for the use of land, the use must have been lawfully carried out on the land before a building was damaged or destroyed and cannot continue without the building or works being reconstructed.

If your application is for a development, the development must be for either:

the repair of the damaged or destroyed building or works; or

the construction of a building, or the construction or carrying out of works, to replace the damaged or destroyed building or works.

Your application must be lodged with the council within seven years of the date the building was damaged or destroyed.

If you are unsure about how these requirements apply to you, call Council and ask to speak to one of our Planning Officers

Does clause 52.10 apply if I wouldn't normally need a planning permit?

No. If you wouldn't normally need a planning permit, you don't need to use clause 52.10.

Do I still need to get a planning permit?

Apart from the dwelling use exemption, the normal planning permit requirements of the planning scheme continue to apply.

Even if you can benefit from the dwelling use exemption, you will still likely need a planning permit to rebuild your dwelling.

Requirements for building permits and other consents also still apply.

If you are unsure whether you need a planning permit, check council website or call Council and ask to speak to one of our Planning Officers
What if I don't want to use the exemptions?

The requirements of the exemptions only need to be met if you want to benefit from the exemptions. You can still follow the normal requirements of the planning scheme if you choose to.

What information will I need to provide with my application?

Standard information for a planning permit application includes an application form, a copy of title, plans and the application fee. Depending on the planning scheme provisions that apply to your land, other information and reports may also be required. It is important to speak to a Council Planning Officer before preparing and lodging your application.

How will the council assess my application?

The council will assess your application against the requirements and decision guidelines of the planning scheme.

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

The exemptions in clause 52.10 will apply to your application if the requirements are met. Check with council if you are unsure.

Who decides if I get a planning permit?

The council's Chief Executive Officer (or delegate) will decide your application.

If your application is refused or you are unhappy with the conditions included on the planning permit, you can apply to the Victorian Civil and Administrative Tribunal (VCAT) for a review of the decision or the permit conditions.

Where can I get more information?

- Vic Emergency at emergency.vic.gov.au
- Department of Energy, Environment and Climate Action at deeca.vic.gov.au
- Emergency Recovery Victoria (ERV) at vic.gov.au
- Goulburn Broken Catchment Management Authority at gbcma.vic.gov.au
- You can check what overlays apply to your property by creating a Planning Property Report at planning.vic.gov.au or by viewing VicPlan at mapshare.vic.gov.au