



**MORNINGTON  
PENINSULA**  
*Shire*

# **ATTACHMENTS**

**PLANNING SERVICES COMMITTEE MEETING**

**MONDAY, 16 MARCH 2020**

**7.00PM**

**MUNICIPAL OFFICES  
BESGROVE STREET, ROSEBUD**

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**PREVIOUS COUNCIL AND PLANNING SERVICES COMMITTEE MEETING RESOLUTIONS**

**Council Meeting, 14 May 2019, Item 3.2: Living Melbourne – Our Metropolitan Urban Forest**

4. That a further paper be brought to Council reviewing any right to remove vegetation throughout the Shire under the 10/30 and 10/50 right, including redevelopment of land to require canopy tree planting, incorporating acknowledgement of the Localised Planning Statement and establish an advocacy position for Council to adopt.

**Planning Services Committee Meeting, 18 March 2019, Item 2.1: Bushfire Management Overlay and Bushfire Prone Areas Mapping Review**

That the Committee:

1. Does not pursue any amendments to the mapping of the Bushfire Management Overlay Schedule 1 and 2 in the Mornington Peninsula Planning Scheme;
2. Adopts and forwards the attached submission (Attachment 6) to DELWP requesting that the mapping of Bushfire Prone Areas (BPA) in Portsea, Sorrento and Blairgowrie be verified and that Department of Environment, Land, Water and Planning (DELWP) engage a suitably qualified expert to further investigate and justify this variation as part of the next round of formal mapping reviews.
3. Engages a suitably qualified expert to investigate the nature of bushfire risk in all areas of the Mornington Peninsula Shire outside the Bushfire Management Overlay that are not affected by BPA mapping as part of the Neighbourhood Character Study, with a view to determining whether removal of the 10/30 exemption in these areas is appropriate.

52.12

31/07/2018  
VC148

**BUSHFIRE PROTECTION: EXEMPTIONS**

52.12-1

31/07/2018  
VC148

**Exemption to create defensible space around buildings used for accommodation**

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 this planning scheme to obtain a planning permit, or any provision of this planning scheme that prohibits the removal, destruction or lopping of vegetation or requires the removal, destruction or lopping of vegetation to be carried out in a particular manner, does not apply to:

- The removal, destruction or lopping of any vegetation within 10 metres of an existing building used for accommodation that was:
  - constructed before 10 September 2009; or
  - approved by a permit issued under this scheme before 10 September 2009; or
  - approved by a building permit issued under the *Building Act 1993* before 10 September 2009; or
  - constructed to replace a dwelling or dependent persons unit that was damaged or destroyed by a bushfire that occurred between 1 January 2009 and 31 March 2009.

This does not apply to land 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 unless the land is included in a Bushfire Management Overlay or is specified in a schedule to this clause.

- The removal, destruction or lopping of any vegetation, except trees, within 30 metres of an existing building used for accommodation that was:
  - constructed before 10 September 2009; or
  - approved by a permit issued under this scheme before 10 September 2009; or
  - approved by a building permit issued under the *Building Act 1993* before 10 September 2009; or
  - constructed to replace a dwelling or dependent persons unit that was damaged or destroyed by a bushfire that occurred between 1 January 2009 and 31 March 2009.

This does not apply to land 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 unless the land is specified in a schedule to this clause.

- The removal, destruction or lopping of any vegetation, except trees, within 50 metres of an existing building used for accommodation where land is within the Bushfire Management Overlay and where the existing building was:
  - constructed before 10 September 2009 or lawfully erected before 18 November 2011 without the need for a planning permit; or
  - approved by a permit issued under this scheme before 10 September 2009 and erected before 18 November 2011; or
  - approved by a building permit issued under the *Building Act 1993* before 10 September 2009 and erected before 18 November 2011; or

- constructed to replace a dwelling or dependent persons unit that was damaged or destroyed by a bushfire that occurred between 1 January 2009 and 31 March 2009.

**52.12-2 Exemption for vegetation removal along a fenceline**

31/07/2018  
VC 148

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 this planning scheme to obtain a planning permit, or any provision of this planning scheme that prohibits the removal, destruction or lopping of vegetation or requires the removal, destruction or lopping of vegetation to be carried out in a particular manner, does not apply to:

- The removal, destruction or lopping of any vegetation for a combined maximum width of 4 metres either side of an existing fence on a boundary between properties in different ownership that was constructed before 10 September 2009.

This does not apply to land 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 unless the land is included in a Bushfire Management Overlay.

**52.12-3 Exemption for buildings and works associated with a community fire refuge**

31/07/2018  
VC 148

Any requirement in this scheme relating to the construction of a building or the construction or carrying out of works does not apply to modifying an existing building to create a community fire refuge in accordance with Ministerial Direction No. 4, Construction Requirements for a Community Fire Refuge (1 August 2012).

**52.12-4 Exemption for buildings and works associated with a private bushfire shelter**

31/07/2018  
VC 148

Any requirement in this scheme relating to the construction of a building or the construction or carrying out of works does not apply to buildings and works associated with a private bushfire shelter (a Class 10c building within the meaning of the Building Regulations 2006), provided the total area of all buildings and works does not exceed 30 square metres.

This clause does not apply to land in the Urban Floodway Zone, Erosion Management Overlay, Floodway Overlay, Land Subject to Inundation Overlay, Special Building Overlay or Heritage Overlay.

**52.12-5 Exemption to create defensible space for a dwelling approved under Clause 44.06 of this planning scheme**

31/07/2018  
VC 148

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 this planning scheme to obtain a planning permit, or any provision of this planning scheme that prohibits the removal, destruction or lopping of vegetation or requires the removal, destruction or lopping of vegetation to be carried out in a particular manner, does not apply to the removal, destruction or lopping of vegetation to construct a dwelling and create its defensible space if all of the following requirements are met:

- Land is in the Bushfire Management Overlay.
- Land is in the General Residential Zone, Residential Growth Zone, Neighbourhood Residential Zone, Urban Growth Zone, Low Density Residential Zone, Township Zone, Rural Living Zone, Farming Zone or Rural Activity Zone.
- The removal, destruction or lopping of vegetation:

- Does not exceed the distance specified in Table 1 to Clause 53.02-3 of this planning scheme, based on the bushfire attack level determined by a relevant building surveyor in deciding an application for a building permit under the *Building Act 1993* for a dwelling or alteration or extension to the dwelling; or
- Is required to be undertaken by a condition in a planning permit issued after 31 July 2014 under Clause 44.06 of this scheme for a dwelling or an alteration or extension to the dwelling.

EXTENT OF LAND ON THE MORNINGTON PENINSULA COVERED BY THE BUSHFIRE MANAGEMENT OVERLAY (BMO)  
– shown in red



**EXTENT OF LAND ON THE MORNINGTON PENINSULA COVERED BY BUSHFIRE PRONE AREA (BPA) MAPPING**  
 – shown in pink





### BUSHFIRE PLANNING REVIEW FRAMEWORK – Advocacy Position and Action Plan

#### Clause 52.12: Bushfire Protection: Exemptions

Position 1: Advocate to the Minister for Planning to remove the '10/30 rule' (Clause 52.12-1) and fenceline vegetation exemptions (52.12-2) from identified low- to no-risk areas on the Mornington Peninsula.

Position 2: Advocate to introduce a provision to Clause 52.12 that enables a responsible authority to consider vegetation recently removed under the exemptions where the land is subsequently proposed to be developed.

ACTION	TIMING	SUB-ACTION	RESOURCING
The Council should make a good faith offer to the Minister for Planning to work with DELWP on identifying options for the 10/30 rule and fenceline exemption.	Immediate (within 1-3 months)	Prepare correspondence.	Council Officer
The Council should advocate for a provision to be added to the planning scheme to enable a responsible authority to consider vegetation recently removed under the 10/30 rule and fenceline exemption where the land is subsequently proposed to be redeveloped.	Immediate (within 1-3 months)	A brief evidence base be prepared demonstrating why the Council is seeking the change, based on selected examples of actual misuse.  Proposal and evidence to be included in correspondence to the Minister for Planning (see above)	Consultant Planner
The Council should develop evidence on how the 10/30 rule and fenceline exemption are being used in Mornington Peninsula Shire and if the 10/30 rule and fenceline exemption are contributing factors to enhanced bushfire resilience and the loss of vegetation.	Short term (3-6 months)	Develop and test a proposed methodology. This will include a basis to attribute vegetation loss to different causes.	Consultant Expert Planner
	Short term (3-6 months)	Field work in conjunction with council environment, fire protection and enforcement functions.	Consultant Expert Planner (bushfire focus)
	Short term (3-6 months)	Historical / long term analysis of vegetation change (30 years)	Consultant Expert Planner
	Short term (3-6 months)	Development analysis, including planning permit & building permit analysis (with access to Council records) and preparing typologies of development	Consultant Expert Planner Consultant Expert Urban Designer / Landscape Architect
	Short term (3-6 months)	Aerial photography (it is likely aerial photography would be a key part of the methodology).	Expert third-party provider

ACTION	TIMING	SUB-ACTION	RESOURCING
	Short term (3-6 months)	Vegetation coverage GIS analysis (it is likely GIS analysis of vegetation coverage would be a key part of the methodology).	Expert third-party provider
	Short term (3-6 months)	A framework for understanding the contributing factors to urban change, with a focus on outputs orientated to community education and engagement	Expert Consultant Planner Expert Consultant Planner (bushfire focus)  Expert Consultant Urban Designer / Landscape Architect
	Short term (3-6 months)	Analysis and report writing	Expert Consultant Planner
	Short term (3-6 months)	Project management	Expert Consultant Planner

**Clause 44.06: Bushfire Management Overlay – Schedules 1 & 2**

Position 3: Advocate to the Minister for Planning to amend Schedules 1 & 2 to the BMO to introduce tailored defensible space requirements that align to localised bushfire risk on the Mornington Peninsula.

Position 4: Continue to develop and implement an active compliance regime for vegetation modification for defensible space within BMO areas aligned with bushfire risk to ensure that the amended, more locally appropriate defensible space requirements are of the BMO1 and BMO2 are being delivered.

ACTION	TIMING	SUB-ACTION	RESOURCING
Investigate the level of compliance with implementing defensible space requirements specified in planning permits.	Short term (3-9 months) <i>Avoid bushfire season</i>	Develop and roll out a methodology for determining compliance with BMO defensible space permit conditions.	Officer (planning, environment and enforcement)
		Capacity support to staff team to progress investigations in a timely manner.	Expert Consultant Planner
		Engage with and encourage CFA involvement as part of the staff team	CFA

## Planning Services Committee Attachments

16 March 2020

## 2.1 (Cont.)

Attachment 5

ACTION	TIMING	SUB-ACTION	RESOURCING
Prepare a genuine, life-safety focused offer to the CFA to enter a process of joint-consideration of: <ul style="list-style-type: none"> <li>How defensible space in the Southern Peninsula can be more consistently delivered, including though codified and bespoke defensible space requirements.</li> <li>Whether a landscape design guide for modified fuel areas that focuses vegetation modification on areas within a site where it is most needed would be more appropriate in response to the risk arising in modified fuel environments.</li> </ul>	Short term (3-9 months) <i>Avoid bushfire season</i>	Develop an enforcement regime / proposal, including costings and deliverability, that would deliver a high level of compliance with defensible space permit conditions.  Consider good practice in other local government areas, including how planning and fire prevention functions relate to each other.	Officer (planning, enforcement and fire protection)
	Short term (3-9 months) <i>Avoid bushfire season</i>	Develop a landscape proposal that would deliver bushfire protection in modified environments.  Consider the impacts on urban design and development form / site coverage.	Expert Consultant Landscape Architect  Expert Consultant Bushfire Behaviour Analyst (field work)  Urban designer
In partnership with the CFA, consider the development of an active compliance regime for defensible space permit conditions.	Short term (3-9 months) <i>Avoid bushfire season</i>	Project management, framework development and engagement with CFA	Expert Consultant Planner (bushfire)
	Short term (3-9 months) <i>Avoid bushfire season</i>	Partnership, relationship and joint work with the CFA	Officer

Position 5 : *Continue to advocate to DELWP to complete its review of mapping in Sorrento, Portsea, Blairgowrie and Rye as requested in Council's submission to the BPA14 and BMO-R5 Mapping Review.*

It is not recommended that Council undertake further research on this matter as the expense of undertaking works to verify mapping should be borne by State Government given BPA mapping is a State responsibility that is implemented according to State-set criteria.