

Tuesday, June 3, 2025 at 3:50:06 PM Australian Eastern Standard Time

Subject: Mornington Peninsula Shire Council - Comments for draft Bushfire Planning Provisions
Date: Friday, 10 February 2023 at 7:29:43 pm Australian Eastern Daylight Time
From: Christian Lynch <Christian.Lynch@mornpen.vic.gov.au>
To: Planning Systems (DELWP) <Planning.Systems@delwp.vic.gov.au>
Attachments: image007.png, image008.png, image009.png, image010.png, image011.png, image012.png, image013.png, image014.png, image001.gif, image002.gif, image003.gif, image004.gif, image005.gif, image006.jpg, Mornington Peninsula Shire Council - Draft Bushfire Planning Provisions Comments for Planning Systems Reform.docx

Hi there,

As per your previous email from 21 December 2022, please find attached MPSC's comments concerning the draft Bushfire Planning Provisions.

Please contact me should you have any questions or require further clarification of our comments.

Kind regards
 Christian



CHRISTIAN LYNCH | Senior Strategic Planner

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Mornington Peninsula Shire acknowledges and pays respect to the Bunurong people, the Traditional Custodians of these lands and waters.
[We are committed to carbon neutrality.](#)

From: Planning Systems (DELWP) <Planning.Systems@delwp.vic.gov.au>

Sent: Wednesday, 21 December 2022 3:56 PM

To: Corporate E-Mail Enquiries <customerservice@mornpen.vic.gov.au>

Cc: Christian Lynch <Christian.Lynch@mornpen.vic.gov.au>

Subject: OFFICIAL-Sensitive: Draft bushfire planning provisions

Review of the bushfire planning provisions

Thank you for your interest in the latest review of the bushfire planning provisions. Planning Systems Reform has attached an advanced draft of the provisions and would value your feedback on drafting and structure.

The draft provisions have addressed elements from the discussion paper *Bushfire Planning Made Clearer: Options for Victoria's Planning System*. Given the breadth of subjects covered in the discussion paper, not all matters could be addressed in this phase of the work. The proposed changes build on submissions and feedback from the workshops held in early 2022.

The key changes clarify terms and the strategies in clause 13.02-1S (Bushfire planning) and implement statutory mechanisms via zones and clause 53.02 (Bushfire Planning) to support the assessment of permit applications in the bushfire prone area. Other changes include applying VicSmart for some outbuildings and enhancements to the assessment of development associated with 'vulnerable' uses.

We are particularly seeking feedback on any structural, operational and drafting issues including but not limited to:

- clarity and application of the strategies in clause 13.02-1S
- structure of clause 53.02
- dwellings in existing settlements (pathway 1 applications)
- BMO exemptions
- applying clause 53.02 to applications in the bushfire prone area, note that there is no fire authority referral.

We have attached the following documents and clauses for your review:

- A summary overview of the key changes in a table format
- 13.02-1S Bushfire planning
- 44.06 Bushfire Management Overlay
- 53.02 Bushfire Planning
- Schedule to 53.02 Bushfire Planning
- 35.07 Farming Zone (as an example of changes to several zones – refer to summary table for each zone)
- 59.05 VicSmart: Buildings and works in an overlay
- 73.01 General terms

Track change versions are available on request.

Should you have any comments on the planning scheme updates it would be great to receive these by **Friday 10 February 2023**. Feedback can be sent to via planning.systems@delwp.vic.gov.au.

The Planning Systems Reform team wishes you a happy and safe festive period.
regarding this work please contact **Senior Policy Officer**

If you have any questions please contact
delwp.vic.gov.au

Regards,

Personal Data

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We acknowledge Victorian Traditional Owners and their Elders past and present as the original custodians of Victoria's land and waters and commit to genuinely partnering with them and Victoria's Aboriginal community to progress their aspirations.



OFFICIAL-Sensitive

Draft Bushfire Planning Provision Comments

Bushfire Planning Made Clearer: Options for Victoria's Planning System



Clause 13.02-1S Bushfire Planning

- No comments, changes to this provision are generally supported

Clause 44.06 Bushfire Management Overlay

Specific comments:

- The underlined wording in buildings and works exemption “Construct a building with a floor area of less than 100sqm not used for accommodation and ancillary to a dwelling” is somewhat confusing because a building that is ancillary to a dwelling is used for accommodation when referring to the land use definition. It is unclear from this wording whether “not used for accommodation” means a non-habitable building (ie. no habitable rooms), or a building that doesn’t accommodate people (ie. no beds on the ground).

It is worth noting that Clause 53.02 uses the phrasing “An application to construct a non-habitable outbuilding that is ancillary a dwelling...” and this might be clearer terminology that could be applied to Clause 44.06.

General comments:

- The rewording and clarification of the buildings and works exemptions for dwellings and DPU’s is supported.
- The introduction of a VicSmart provision for non-habitable outbuildings is supported.

Clause 53.02 Bushfire Planning

Specific comments:

- Page 2, proposed alternative wording for first exemption:
“An application ~~under~~ **within a schedule to** Clause 44.06 that meets all of the applicable requirements specified in clause 5.0 (Requirements to be met) of a schedule to Clause 44.06.”
- The Decision Guidelines at Clause 53.02-5.5 refer to “the bushfire emergency management plan”, however there doesn’t appear to be an application requirement that corresponds with this. Including a requirement to prepare a bushfire management plan could be beneficial for high risk uses (accommodation, leisure and recreation, education centre, hospital and place of assembly) because this is a common condition requested by the CFA/FRV in our Planning Department’s experience.

General comments:

- Removing the Use and development control from Clause 13.02 and operationalising it into Clause 53.02 removes some of the flexibility of the control. The proposed Clause 53.02 wording only seems to apply to specific uses, when previously the Responsible Authority was able to consider any use where people can congregate in large numbers (recent examples being wineries, art and craft centres). Does this mean that these types of uses would no longer fall into the Clause 53.02 controls?
- Clause 53.02 is becoming quite an extensive control following the addition of the Use and development controls. As drafted, it will operate as multiple clauses merged into one with the operation and application clauses each now referring to the four “elements” of the Clause (development in a BMO, subdivision in the BPA, the Use and development control in the BPA, and

Draft Bushfire Planning Provision Comments

Bushfire Planning Made Clearer: Options for Victoria's Planning System

the landscaping controls in the BPA). It appears to be somewhat difficult to identify which information requirements, objectives and measures are applicable to a development as you need to trawl through much of the Clause to find them.

- If it can be contemplated at this stage in the process, is there any scope to potentially reformat the control to create more self-contained clauses for each development type? This could be a format where the applicable information requirements, objectives, approved measures and decision guidelines for a particular development type could be contained within its own clause, instead of the integrated manner as is currently set out. An example layout could be:
 - Clause 53.02-1 – Application (List applications the clause applies to, exemptions and a table specifying which clause applies to which)
 - Clause 53.02-2 – Operation (Similar to the current layout of Clause 53.02, describing what an approved measure is, etc.)
 - Clause 53.02-3 – Outbuilding requirements
 - Clause 53.02-4 – Dwellings in BMO in existing settlements (application requirements, objectives, measures, decision guidelines)
 - Clause 53.02-5 – Bushfire protection in BMO (application requirements, objectives, measures, decision guidelines)
 - Clause 53.02-6 – Subdivision for BMO and BPA (application requirements, objectives, measures, decision guidelines)
 - Clause 53.02-7 – Use and development in the BPA but not in a BMO (application requirements, objectives, measures, decision guidelines)
 - Clause 53.02-8 – Landscaping in the BPA but not in a BMO (application requirements, objectives, measures, decision guidelines)
 - Clause 53.02-9 – General decision guidelines
 - Clause 53.02-10 – Tables

The control would be less concise, however a layout like this could be clearer and more user friendly, particularly when you have a specific use or development application and all you'd need to do is refer straight to the relevant clause to find all the applicable requirements.

- The intention of including landscaping controls in Bushfire Prone Areas is generally understood, however our Planning Department receives a large number of planning applications in Bushfire Prone Areas and there are some concerns regarding the additional time and resources that would be required to appropriately enforce these controls.

Clause 66 – Referral and Notice Provisions

- With the operationalising of the Use and development control for high-risk uses (accommodation, leisure and recreation, education centre, hospital and place of assembly) in the BPA but not in the BMO, should a referral or notice requirement to the relevant fire authority be introduced into Clause 66.02, 66.03 or 66.05, particularly if these uses are going to require all of the application requirements set out in Clause 53.02?
- For Clause 66.03, do the referral exemptions for outbuildings need to change to state that they do not apply to applications for non-habitable out buildings that meet the requirements of Clause 53.02-2 (Non-habitable outbuilding requirements)?