

**52.39**

18/11/2011  
VC86

**2009 BUSHFIRE - REPLACEMENT BUILDINGS****Purpose**

To support the rebuilding of dwellings, dependent persons' units and buildings used for agriculture damaged or destroyed by the 2009 Victorian bushfires.

**52.39-1**

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**Scope**

This clause applies to:

- The construction of a building or the construction and carrying out of works, associated with rebuilding:
  - a dwelling or dependent person's unit; or
  - a building used for agriculture,

that was damaged or destroyed by a bushfire that occurred between 1 January 2009 and 31 March 2009.

- The use of land for:
  - a dwelling or dependent person's unit that is rebuilt in accordance with this clause; or
  - agriculture to the extent that the use relates to a building that was destroyed by a bushfire that occurred between 1 January 2009 and 31 March 2009 and that use cannot continue unless that building is rebuilt.
- The removal, destruction or lopping of vegetation to enable the construction, use and maintenance of a building rebuilt in accordance with this Clause.

This clause does not apply to land in a Heritage Overlay.

For the avoidance of doubt, any planning permit exemption provided by the scheme continues to apply to the use and development specified in this Clause.

If any use or development is within the scope of both this Clause 52.39 and Clause 52.38, then this Clause 52.39 prevails over Clause 52.38 in the event of any inconsistency.

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**Exemption from planning scheme requirements**

Any requirement of the scheme to obtain a permit or any provision in the scheme which prohibits the use or development of land or requires the use or development of land to be carried out in a particular manner does not apply to the use and development specified in Clause 52.39-1 provided the following requirements are met:

**Site plan**

- Before the commencement of construction of a building or the construction or carrying out of works, a site plan must be provided to and approved by the responsible authority. The site plan must show:
  - The boundaries of the property.
  - The location of any damaged or destroyed dwelling, dependent person's unit or building used for agriculture.
  - The proposed location of the replacement dwelling, dependent person's unit or building used for agriculture.
  - The existing and proposed access to the lot.

- Vegetation to be removed destroyed or lopped to enable rebuilding including construction of vehicle access, water storage and waste water treatment.
- For replacement dwellings and dependent persons' units on land in a Farming Zone, Rural Conservation Zone, Rural Activity Zone, Green Wedge Zone, Green Wedge A Zone or the Rural Living Zone:
  - The location and dimensions of vehicle access.
  - The location and storage of water for potable and fire fighting purposes if the dwelling or dependent person's unit cannot be connected to a reticulated potable water supply.
  - The location of the waste water treatment system if waste water is to be retained and treated on site.
- The site plan must be submitted to the responsible authority by 30 April 2013.

### **Commencement of development**

- The development must commence within two years after the approval of a site plan by the responsible authority and must be completed within two years after the development commences. The responsible authority may allow an extension of time on the request of the owner or the occupier of the land to which the approved site plan applies, provided that request is made before the expiry of the applicable period or within three months of the expiry of the applicable period.

### **Compliance with site plan**

- The development must comply with the approved site plan.

### **Use and development conditions**

- The land must not be used for more than the number of dwellings or dependent persons' units that were damaged or destroyed.
- The removal, destruction or lopping of vegetation to enable the maintenance of a building must not exceed 10 metres beyond the building.
- For land in the Farming Zone, Rural Conservation Zone, Rural Activity Zone, Green Wedge Zone, Green Wedge A Zone or the Rural Living Zone:
  - Access to the dwelling or dependent person's unit must be provided via an all weather road with dimensions adequate to accommodate emergency vehicles.
  - The dwelling or dependent person's unit must be connected to a reticulated sewerage system or if not available, the waste water must be managed to the satisfaction of the responsible authority.
  - The dwelling or dependent person's unit 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 fire fighting purposes.
  - The dwelling or dependent person's unit must be connected to a reticulated electricity supply or have an alternative energy source.
- A building must be constructed of materials that are non-reflective and of muted tones in the following locations:
  - Land in an Environmental Significance Overlay, Design and Development Overlay or Significant Landscape Overlay.

- Land in a Green Wedge Zone, Green Wedge A Zone or Rural Conservation Zone in the municipal districts of the Shire of Yarra Ranges and the Shire of Nillumbik.
- For land in a Restructure Overlay, a building must be consistent with any Restructure Plan.
- For land adjacent to a Road Zone, Category 1, or Land in a Public Acquisition Overlay if the purpose of acquisition is for a Category 1 road, access must not be created or altered.

**52.39-3 Land in an Erosion Management Overlay**

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For land in an Erosion Management Overlay in the municipal district of the Shire of Yarra Ranges, in addition to the requirements specified in Clause 52.39-2, the written authorisation of the responsible authority must be obtained prior to:

- Constructing a building or constructing and carrying out works; or
- Removing, destroying or lopping vegetation.

**52.39-4 Land in a Floodway Overlay, Land Subject to Inundation Overlay or Special Building Overlay**

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For land in a Floodway Overlay, Land Subject to Inundation Overlay or Special Building Overlay, in addition to the requirements specified in Clause 52.39-2, the written authorisation of the relevant flood plain management authority must be obtained prior to the commencement of construction of a building or the construction or carrying out of works.

**52.39-5 Decision guidelines**

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Before deciding on approval of the site plan, in addition to the decision guidelines in Clause 65 and any other requirements of the Act, the responsible authority must consider, as appropriate:

- The extent to which the siting of the building and associated development can reasonably achieve compliance with other relevant requirements of this scheme.
- The extent to which the replacement dwelling or dependent person's unit can be located on the land to assist the minimisation of risk to life and property from bushfire.