

# 2009 Victorian Bushfires Royal Commission

## General Submission by Local Government in Victoria

May 2009

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## Introduction

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This Submission is lodged by the Municipal Association of Victoria (“**MAV**”) and 77 Victorian Municipal Councils (“**Councils**”) in response to the invitation by the Royal Commission for general submissions. A list of the 77 Councils is set out in Section 1.

Many of the Councils have communities in their municipalities which were impacted by the 2009 Bushfires.

Given the Terms of Reference of the Royal Commission, it is anticipated that the Commission will enquire into many aspects of the 2009 Bushfires, including preparation and planning for bushfires in Victoria, current laws, policies, practices, and strategies for the prevention and management of bushfire threats and risks in Victoria, and the response to the 2009 Bushfires.

The regime for bushfire management in Victoria (“**Victoria’s Bushfire Management Regime**”) is contained in various pieces of legislation and regulations. The regime is complex. There are many stakeholders involved. The main stakeholders are the Country Fire Authority (“**CFA**”), whose primary responsibility is the prevention and suppression of bushfires in the country area of Victoria, and the Department of Sustainability and Environment (“**DSE**”), which is responsible for bushfire prevention and suppression on public land. Other stakeholders include Councils, Department of Planning and Community Development (“**DPCD**”), Metropolitan Fire and Emergency Services Board (“**MFB**”), VicRoads, Parks Victoria, VicTrack, Victoria Police, electricity companies, gas utilities, water authorities, the Office of the Emergency Services Commissioner (“**OESC**”), the Department of Primary Industries (“**DPI**”), and individual landowners and occupiers.

This Submission discusses the role of Councils in Victoria’s Bushfire Management Regime.

In considering the role played by Councils in bushfire management, a number of matters need to be taken into account. These matters include the following:

- 1 Councils are not homogenous. Councils differ in size, population, the environment in the municipality, community preferences, the rate base, and resources.
- 2 Pursuant to section 74 of the *Constitution Act 1975*, Councils are to ensure the peace, order and good government of each municipal district. They have powers, duties and functions pursuant to the *Local Government Act 1989*, which embrace many matters beyond those concerned with bushfire management. Councils are democratically accountable to their local electorate, and often are required to balance competing considerations in relation to decisions and actions taken by them.
- 3 Councils are limited by the resources available to them.

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The Commission will also need to assess, in connection not only with the role played by Councils, but in connection with Victoria's Bushfire Management Regime generally:

- the unprecedented conditions which characterised the bushfires which commenced on and followed Saturday, 7 February 2009 including record temperatures which exacerbated the preceding heatwave conditions and exploited the parched environment caused by the prolonged drought;
- the severity and intensity of the bushfires themselves, involving the rapid movement of fire fronts fanned by extremely strong and changing winds, spotting over great distances, advancing fireballs, ember attacks on a massive scale, and the limited impact of defensive measures such as fire breaks and cleared land upon the passage of the bushfires;
- the indiscriminate nature of the damage caused by the 2009 Bushfires, with dwellings surrounded by extensive cleared land or meeting exacting building standards burnt to the ground, whilst old timber houses surrounded by forest remained unscathed;
- the rapidly expanding urban fringe in Victoria, with increasing numbers of people choosing to live in bushfire prone areas or bush settings;
- the impacts of climate change on future bushfires in Victoria;
- the balance which needs to be struck between steps or measures which may have benefits from the perspective of bushfire management, and conservation values, the maintenance of biodiversity and ecosystems, and the amenity of homes, townships and communities; and
- given the loss of life which was experienced in relation to the 2009 Bushfires, whether any emphasis is to be placed on steps which may save lives, as opposed to steps which might be designed to safeguard property and dwellings.

The Commission will need to consider the extent to which Victoria's Bushfire Management Regime is appropriate moving forward, and whether changes should be recommended.

The MAV and the Councils are pleased to provide this Submission and look forward to participating in the inquiry conducted by the Royal Commission.

May 2009

## Section 1: Local Government in Victoria

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### Section 1.1: MAV and Councils

This Submission is made on behalf of Local Government in Victoria.

The 2009 Bushfires had and continue to have a significant impact on numerous Councils and their communities.

Local Government has a range of roles in relation to Victoria's Bushfire Management Regime. As such, the MAV has supported Councils' efforts to be represented before the 2009 Bushfire Royal Commission.

Formed in 1879, the MAV is the peak representative body for Local Government in Victoria. In the 128 years since its formation, the MAV has represented, promoted and advanced the interests of Councils. Through MAV Insurance (Civic Mutual Plus scheme), the MAV also provides public liability and professional indemnity insurance for Councils.

The Councils on behalf of whom this Submission is lodged are listed at Figure 1. Only two Councils in Victoria are not a party to this submission. They are the Cities of Greater Dandenong and Stonnington. Neither was affected by the 2009 Bushfires.

The Councils who are parties to this Submission		
Alpine Shire Council	Greater Geelong City Council	Mount Alexander Shire Council
Ararat Rural City Council	Greater Shepparton City Council	Moyne Shire Council
Ballarat City Council	Hepburn Shire Council	Murrindindi Shire Council
Banyule City Council	Hindmarsh Shire Council	Nillumbik Shire Council
Bass Coast Shire Council	Hobsons Bay City Council	Northern Grampians Shire Council
Baw Baw Shire Council	Horsham Rural City Council	Port Phillip City Council
Bayside City Council	Hume City Council	Pyrenees Shire Council
Benalla Rural City Council	Indigo Shire Council	Queenscliffe Borough Council
Boroondara City Council	Kingston City Council	South Gippsland Shire Council
Brimbank City Council	Knox City Council	Southern Grampians Shire Council
Buloke Shire Council	Latrobe City Council	Strathbogie Shire Council
Campaspe Shire Council	Loddon Shire Council	Surf Coast Shire Council
Cardinia Shire Council	Macedon Ranges Shire Council	Swan Hill Rural City Council
Casey City Council	Manningham City Council	Towong Shire Council
Central Goldfields Shire Council	Mansfield Shire Council	Wangaratta Rural City Council
Colac Otway Shire Council	Maribyrnong City Council	Warrnambool City Council
Corangamite Shire Council	Maroondah City Council	Wellington Shire Council
Darebin City Council	Melbourne City Council	West Wimmera Shire Council
East Gippsland Shire Council	Melton Shire Council	Whitehorse City Council
Frankston City Council	Mildura Rural City Council	Whittlesea City Council
Gannawarra Shire Council	Mitchell Shire Council	Wodonga City Council
Glen Eira City Council	Moira Shire Council	Wyndham City Council
Glenelg Shire Council	Monash City Council	Yarra City Council
Golden Plains Shire Council	Moonee Valley City Council	Yarra Ranges Shire Council
Greater Bendigo City Council	Moorabool Shire Council	Yarriambiack Shire Council
	Moreland City Council	
	Mornington Peninsula Shire Council	

Figure 1

Of the 77 Councils listed above, 27 Councils were impacted by the 2009 Bushfires. The impacts of the 2009 Bushfires included loss of life and destruction or damage to houses and other property. A list of the 27 Councils whose municipalities were impacted is set out in Figure 2.

Impacted Councils		
Alpine Shire Council	Knox City Council	Moyne Shire Council
Baw Baw Shire Council	Latrobe City Council	Murrindindi Shire Council
Cardinia Shire Council	Macedon Ranges Shire Council	Nillumbik Shire Council
Casey City Council	Mansfield Shire Council	South Gippsland Shire Council
Corangamite Shire Council	Mitchell Shire Council	Southern Grampians Shire Council
East Gippsland Shire Council	Moorabool Shire Council	Wangaratta Rural City Council
Greater Bendigo City Council	Mornington Peninsula Shire Council	Wellington Shire Council
Hepburn Shire Council	Mount Alexander Shire Council	Whittlesea City Council
Horsham Rural City Council		Yarra Ranges Shire Council
Indigo Shire Council		

Figure 2

The map in Figure 3 on the next page shows the location of Councils and their municipalities.

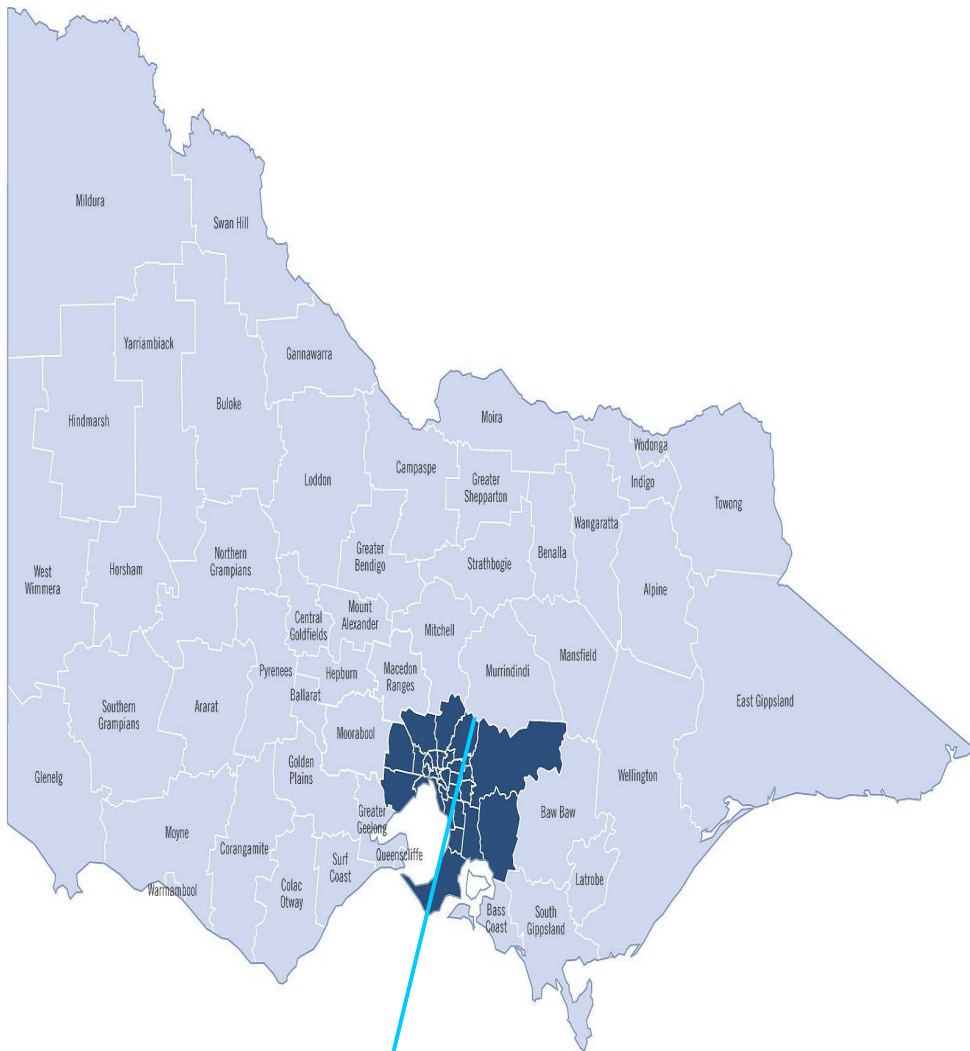


Figure 3: Location of Councils in Victoria

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## Section 1.2: The Nature of Councils

### Overview

Councils have a number of characteristics which need to be considered in assessing the role they play in Victoria's Bushfire Management Regime:

- Councils are democratically accountable to their local electorate;
- there is no one-size fits all approach to local community governance;
- the powers of Councils are geographically limited;
- there are two types of Council decision-making: political and administrative;
- Councils have limited resources;
- Councils are dependent on the technical expertise of other agencies;
- Councils must often weigh competing considerations; and
- Councils are subordinate bodies required to implement government policy.

The legal basis for Local Government and each of these characteristics is discussed below.

### Legal Basis

Local Government is recognised in Part IIA of the *Constitution Act* as a distinct and essential third tier of government consisting of democratically elected Councils.<sup>1</sup> Under Section 74 of the *Constitution Act* these democratically elected Councils are to ensure "the peace, order and good government of each municipal district".<sup>2</sup> The powers, duties and functions of Councils are set out in the *Local Government Act*.<sup>3</sup> The primary objective of Councils is to achieve the best outcomes for the local community having regard to the long term and cumulative effects of decisions. In doing so, Councils must have regard to the following objectives:

- promotion of the social, economic and environmental viability and sustainability of the municipal district;
- efficient use of resources to best meet the needs of the local community;
- improvement of the overall quality of life of people in the local community;
- equitable imposition of rates and charges; and
- transparency and accountability in Council decision-making.

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## Councils are democratically accountable to their local electorate

Councils are representative bodies democratically elected to manage local issues and to establish and plan for their local community's needs.<sup>4</sup> In this respect, Councils must be responsive and democratically accountable to the needs and expectations of the people within their electorate.

## There is no one-size-fits all approach to local community governance

The representative nature of Local Government means that each Council is distinct. While there is a degree of commonality in the provision of services in accordance with the *Local Government Act* across the 79 Councils in Victoria, each municipality varies in size, population, natural environment, community preferences, rate base and resources. Consequently, Councils are not all the same. There also can be significant differences between areas within the one municipality.

As a result, there is a high degree of diversity in responding to varying local needs and expectations. This diversity is due to factors such as the differing composition and priorities of communities across Victoria. For example, in some municipalities many people reside in or have weekend homes because of the aesthetic appeal of the natural environment and the community, whereas the reasons people live in other municipalities may be quite different.

## The powers of Councils are geographically limited

The constitutional basis of Local Government means that in the exercise of their powers they are geographically restrained. They may engage with and co-operate with neighbouring municipalities in the exercise of their powers,<sup>5</sup> but ultimately those powers are to be exercised only for and on behalf of the people residing within the geographical boundaries of the municipality.

## Councils have limited resources

Council decision-making and activity is restrained by its limited financial resources.<sup>6</sup> Councils' financial resources are finite and must be allocated among competing claims and priorities as well as the expense of Local Government itself. The activities of Councils are diverse and extensive. They include infrastructure services, traffic and street management, maintenance of local roads and bridges, land management, waste management, family and community services, aged services, recreation and culture and animal management.

In applying their resources, Councils must do so in accordance with "Best Value Principles" under the *Local Government Act*.<sup>7</sup> These principles provide that Councils must take into account, amongst other factors, community expectations and values, the balance of affordability and services to the community, and the potential environmental advantages for the municipality.

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As discussed above, each Council is distinct, providing certain “core” services in common with other Councils, and other services that respond to particular local circumstances. Councils fund their services principally from rates levied on the basis of property values.<sup>8</sup> While there are variations among different Councils, rates on property constitute approximately 53% of Council income. The remainder of Council income is derived from general and specific government grants, fees, charges and fines and investment income.

### Councils rely on the technical expertise of other agencies

Because Councils generally have limited fire management technical expertise, they rely in significant part on the technical expertise of other stakeholders in bushfire management, in particular CFA and DSE.

### Councils must often weigh competing considerations

Decisions or activities in relation to bushfire management also often tend to be interrelated with other issues including road safety, conservation values, environmental biodiversity, ecosystems, aesthetic considerations, pressures for commercial development, and the varying attitudes of residents to bushfire risk.

### Councils are subordinate bodies required to implement Government policy

Although Councils have a degree of discretion and powers to implement policy at a local level in certain areas (e.g., adoption of local laws and the Municipal Strategic Statement), in most instances Councils are subordinate political bodies required to implement legislation and policy set a higher level within the Victorian hierarchy of constitutional government. For example, under the Town Planning Regime, Councils are required to adhere to and implement the State planning policy framework, and the Victorian Planning Provisions (“VPPs”). They must operate within that constraint.

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## Section 2: Victoria's Bushfire Management Regime

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### Section 2.1: The Structure of Victoria's Bushfire Management Regime

There is no single Act, Regulation, policy or other instrument which comprehensively sets out Victoria's Bushfire Management Regime, or how the various stakeholders should communicate in an integrated manner and share information, resources and expertise.

An issue for the Commission to consider is whether there should be such a document.

In practice, Victoria's Bushfire Management Regime is comprised of two elements which operate separately. They are:

- **Bushfire Planning and Prevention**, which is conducted by a range of stakeholders pursuant to a number of legislative and regulatory instruments including the *Country Fire Authority Act 1958*, the *Forests Act 1958*, the *Metropolitan Fire Brigades Act 1958*, the VPPs, and building legislation; and
- **Bushfire Response and Recovery**, which comprises fire suppression activities by MFB, CFA and DSE under their governing legislation as well as emergency response and recovery activities conducted as part of the State's broader disaster and emergency management planning under the *Emergency Management Act 1986* and the Emergency Management Manual Victoria ("**Manual**").

## Section 2.2: Stakeholders in Victoria's Bushfire Management Regime

The table below identifies the 19 stakeholders in addition to Councils and land owners/occupiers who have a role in Victoria's Bushfire Management Regime.

Stakeholder	Description
<b>000</b>	<i>Victoria's emergency 000 call service is maintained by the Emergency Services Telecommunications Authority ("ESTA"). ESTA has legislative responsibility for handling 000 calls, dispatching emergency organisations and providing emergency communications.</i>
<b>Catchment Management Authorities (CMA)</b>	<i>CMA's were established under the Catchment and Land Protection Act 1994 and are responsible for the condition of the land and water in their regional catchment area. Victoria is divided into 10 catchment regions and there is a CMA for each region.</i>
<b>Co-ordinator in Chief of Emergency Management</b>	<i>Under the Emergency Management Act, the Minister for Police and Emergency Management is the Co-ordinator in Chief of Emergency Management with the Chief Commissioner of Police as deputy. The role of the Co-ordinator in Chief is to:</i> <ul style="list-style-type: none"> <li><i>ensure that adequate emergency management measures are taken by government agencies; and</i></li> <li><i>co-ordinate the activities of government agencies carrying out their statutory functions, powers, duties and responsibilities in taking such measures.</i></li> </ul>
<b>CFA</b>	<i>CFA is a volunteer based fire emergency management organisation which has more than 59,000 volunteers, over 400 career fire fighters and more than 700 career support and administrative staff.</i>
<b>Department of Human Services (DHS)</b>	<i>DHS is Victoria's largest State Government department. Responsibilities of the department include health, mental health, senior Victorians, community services and housing. DHS is responsible for planning, funding and delivering health, community and housing services and plays a major role in disaster and emergency recovery.</i>
<b>DPCD</b>	<i>The DPCD advises Ministers and the Premier on planning and local government, community development and strategic policy.</i>
<b>DPI</b>	<i>DPI is responsible for agriculture, fisheries, earth resources, energy and forestry in Victoria. It plays a major role in the management of disease and death to livestock arising from disasters and emergencies.</i>
<b>DSE</b>	<i>DSE sustainably manages water resources and catchments, climate change, bushfires, parks and other public land, forests, biodiversity and ecosystem conservation. DSE has approximately 2700 staff, working in 90 different locations across the state and receives annual funding of around \$1 billion.</i>
<b>Electricity</b>	<i>Electricity companies generate, transmit, distribute, supply and sell electricity to</i>

Stakeholder	Description
<b>Companies</b>	<p><i>Victorian customers under licence.</i></p> <p><i>These companies are regulated by the Electricity Safety Act and their compliance with that Act is monitored by Energy Safe Victoria.</i></p>
<b>Gas Utilities</b>	<p><i>Gas utilities transmit, distribute, supply and sell gas to Victorian customers under licence.</i></p>
<b>MFB</b>	<p><i>The MFB (also known as the Metropolitan Fire and Emergency Services Board) has primary responsibility for the suppression of fires within the metropolitan area of Melbourne.</i></p>
<b>OESC</b>	<p><i>OESC provides leadership in emergency management for Victoria. The OESC supports the role of the Commissioner by:</i></p> <ul style="list-style-type: none"> <li><i>• facilitating cooperation across the emergency services;</i></li> <li><i>• providing independent advice and leadership to government on any matter in relation to emergency management; and</i></li> <li><i>• working with emergency services, government departments and the community to continuously improve the safety of all Victorians.</i></li> </ul>
<b>Parks Victoria</b>	<p><i>Parks Victoria is responsible for parks in Victoria and for the recreational management of Port Phillip Bay, Western Port and the Yarra and Maribyrnong rivers. Parks Victoria's area of responsibility includes approximately 3.96 million hectares (17 per cent of Victoria).</i></p>
<b>State Emergency Service (SES)</b>	<p><i>SES is a volunteer based organisation that responds to emergencies and works to ensure the safety of communities around Victoria. SES responds to floods, storms and earthquakes and operates the largest network of road rescue in Australia. SES also assists other agencies such as Victoria Police as well as Councils in planning and auditing their emergency management plans.</i></p>
<b>VicTrack</b>	<p><i>VicTrack is a government rail agency that operates to support the delivery of public transport services.</i></p>
<b>VicRoads</b>	<p><i>VicRoads' main purpose is to manage the Victorian arterial road network as part of the overall transport system. It is responsible for the management of Victoria's 22,320km arterial road network.</i></p>
<b>Victoria Police</b>	<p><i>The Victoria Police Force employs more than 13,600 people, including police, public servants and protective security officers. The core responsibilities of the Victoria Police are traffic and transit management, crime prevention, forensic services and emergency response.</i></p>
<b>Timber Plantation Owners</b>	<p><i>There are a number of large plantation owners across the State, most of whom have fire fighting capability.</i></p>

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Stakeholder	Description
<b>Water Corporations</b>	<i>There are 19 Victorian water corporations providing bulk and retail water and waste water services to all of Victoria's urban and rural irrigation customers.</i>

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## Section 3: Bushfire Planning and Prevention

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### Section 3.1: Key Stakeholder Roles in Planning and Prevention

Bushfire planning and prevention in Victoria is governed by a range of legislation, inter-agency agreements and agreements between some or all Councils (or the MAV on behalf of Councils) and various State agencies.<sup>9</sup>

Within this complex statutory framework, the lead fire management agencies for country Victoria are CFA in respect of private land and DSE in respect of public land.<sup>10</sup>

#### The Role of the Country Fire Authority

Under the *Country Fire Authority Act* the CFA is responsible for the prevention of fires in the country area of Victoria.<sup>11</sup> The country area of Victoria encompasses all private land in Victoria outside the metropolitan fire district but does not include any forest, national park or protected land. CFA's geographic area of responsibility spans more than 150,182 square kilometres of land and 2.5 million people.

The CFA is given powers to do all things necessary for the prevention and suppression of fires in the country area of Victoria.<sup>12</sup> This is complemented by a number of specific powers with respect to brigades<sup>13</sup> and the appointment of a Chief Officer of the CFA (“**Chief Officer**”) who can, amongst other things, inspect both private and public land to report to the CFA any contravention of laws relating to the storage of inflammable substances.<sup>14</sup> All fire-fighters and brigades are under the general order and control of the Chief Officer.<sup>15</sup>

Other CFA fire prevention powers and duties include:

- the absolute discretion to declare a day or partial day a total fire ban in respect of the whole or any part of Victoria;<sup>16</sup>
- at the request of the owner or occupier of the land or Councils, to carry out any fire prevention work (including burning) considered necessary for the prevention of the occurrence or spread of fire;<sup>17</sup>
- to conduct regular inspections to assess compliance with the *Country Fire Authority Act*;<sup>18</sup>
- to report to the Governor in Council where the functions conferred on Councils and public authorities under section 43 of the *Country Fire Authority Act* are not being properly discharged;<sup>19</sup>

- 
- optional appointment of regional fire prevention committees and a municipal fire prevention committee comprised mainly of CFA personnel with a number of roles to play in relation to fire prevention planning;<sup>20</sup>
  - applications for permits in Wildfire Management Overlays (“**WMOs**”) may be referred to the CFA as the relevant fire authority;<sup>21</sup>
  - prior to the 2009 Bushfires the Chief Officer had a duty to consult with Councils to determine areas to be designated as Bushfire Prone Areas (“**BPAs**”);<sup>22</sup> and
  - responsibility for the designation of an area as a “hazardous bushfire risk” area which results in more onerous standards of bushfire mitigation on electricity suppliers in those areas.<sup>23</sup>

As a practical matter, CFA discharges its extensive responsibilities for bushfire planning and prevention under the *Country Fire Authority Act* and other regulatory instruments through a range of activities. These include resource deployment, recruitment and development, community safety and education, publishing of various fire prevention and planning guidelines, advising industry and Councils on matters requiring technical expertise with respect to fire prevention and planning, being the referral authority for planning approvals, and WMO mapping.

## The Role of the Department of Sustainability and Environment

DSE has statutory responsibility for fire management in State forests, national parks and other Crown land (“**DSE Land**”). This land covers approximately one third of the State.

The primary responsibility of DSE for fire prevention arises under section 62(2) of the *Forests Act* which directs the Secretary of DSE to carry out proper and sufficient work for the prevention and suppression of fire on DSE Land.<sup>24</sup> Section 17(2)(b) of the *National Parks Act 1975* also requires DSE to ensure that appropriate measures are taken to protect each national park from injury by fire.

DSE officers have extensive legislative powers to:

- direct a person to extinguish a fire on private land within 3 km of the boundary of DSE Land;<sup>25</sup>
- direct neighbours to carry out (prevention or control) works within 50m of the boundary which are similar to DSE’s on the adjoining public land;<sup>26</sup>
- carry out any of the required clearing and preventative burning that another person was required to carry out;<sup>27</sup>
- use fire to maintain or manage vegetation on DSE Land;<sup>28</sup>
- enter into agreements and arrangements with any person or body in Victoria or elsewhere relating to prevention and suppression of fire;<sup>29</sup>

- 
- declare an area of State forest to be a public safety zone for the purpose of fire operations;<sup>30</sup> and
  - do anything he or she considers for the prevention or control of fire in relation to any remote and natural area.<sup>31</sup>

DSE discharges its responsibilities by running education programs, declaring prohibited periods for the lighting of fires and issuing permits for certain works on total fire ban days,<sup>32</sup> and applying and promoting the Code of Practice for Fire Management on Public Land.<sup>33</sup> The Code includes principles for prescribed burning on DSE Land. The extent to which DSE conducts prescribed burns on DSE Land and when such burns are conducted, is at the discretion of DSE. DSE allocates resources which it considers appropriate to prescribed burns. Due to the risks involved with conducting controlled burns there are only limited periods of time and conditions which allow prescribed burns to occur.

As a referral authority under municipal planning schemes, DSE must consider applications to remove native vegetation under clause 52.17 and other relevant Overlays of the VPPs where applications for the removal of vegetation for fire protection and other purposes are made.

## The Role of Councils

The role of Councils in the country area of Victoria in relation to municipal fire prevention planning arises largely out of the *Country Fire Authority Act*.

Pursuant to section 96A, each Council must appoint a fire prevention officer (“**MFPO**”) for that Council.

Pursuant to section 52 of the *Country Fire Authority Act*, the CFA may appoint a Regional Fire Prevention Committee (“**RFPC**”). The RFPC must consist of:

- an executive officer from the CFA;
- two representatives from each of the CFA brigade groups operating in the region;
- up to two representatives appointed by the CFA from each industry brigade operating in the region;
- up to four representatives from DSE;
- not more than two Council representatives appointed by the CFA (after election in the prescribed manner) from Councils whose municipal districts are wholly or partly within the region; and
- a representative from a public statutory corporation if requested by the RFPC.

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The RFPC's key functions are to submit plans and recommendations to the appropriate authorities (DSE, CFA and VicRoads) for the clearing of major firebreaks and for fire prevention works within the region and to generally coordinate fire prevention planning within the region.

Pursuant to section 54 of the *Country Fire Authority Act*, the CFA may appoint a Municipal Fire Prevention Committee ("**MFPC**") in respect of any municipal district of a Council. In practice, there are MFPCs in each municipality. Each MFPC consists of:

- the MFPO of the relevant Council, who is the chairman and executive officer of the MFPC;
- one representative of each urban or rural CFA brigade operating in the municipality;
- one CFA appointed representative of each brigade operating in the municipality;
- one representative of each group of CFA brigades operating in the municipality;
- one representative of Council;
- one representative from DSE if there is DSE land adjacent to the municipality;
- if requested by the MFPC, a representative from a public statutory corporation such as VicRoads, VicTrack and water corporations; and
- if requested by the MFPC, a representative from a local interest group such as electricity companies, timber plantation owners and local community groups.<sup>34</sup>

As there are typically many CFA brigades in a municipality (sometimes 45 or more) the size of the MFPC may be very large. Where this occurs, the MFPC is often broken into smaller groups and meets as one large group only once a year. Due to the dominant representation of the CFA on MFPCs, MFPCs tend to be heavily influenced by the CFA.

The MFPCs' key functions are to:

- plan the burning or clearing of fire breaks within the municipality;
- advise the appropriate authorities as to the existence of and steps to be taken for the removal of fire hazards;
- advise and make recommendations to the Council for preparation of a Municipal Fire Prevention Plan ("**MFPP**");
- recommend to the CFA any action to reduce the risk of fire;
- advise the MFPO as to the removal of fire hazards;
- refer matters to the RFPC (if one exists); and

- 
- carry out other such functions that may be imposed on the MFPC by the CFA.

Participation in and contribution to the MFPC by some stakeholders can be problematic. Attendance at MFPC meetings can also vary as between CFA brigades operating within a municipality.

The content of the MFPP is based on CFA guidelines<sup>35</sup> and is subject to CFA audit every three years. The structure and composition of MFPPs varies as between Councils. The CFA guidelines do not provide a standard template for the content of the MFPP. Although the MFPP is a 'municipal' fire prevention plan, the word 'municipal' refers to the area the plan covers, and not that it is Council's own plan for its land.

The role of Councils is to ensure that there is a MFPP for their respective municipalities, which incorporates the plans and other contributions of all relevant stakeholders including CFA, DSE and VicRoads. Pursuant to section 55A of the *Country Fire Authority Act*, Councils must prepare the MFPP in accordance with the advice and recommendations of the MFPC. An MFPP must contain provisions:

- (a) identifying areas, buildings and land use in the municipal district which are at particular risk in case of fire;
- (b) specifying how each identified risk is to be treated;
- (c) specifying who is to be responsible for treating those risks; and
- (d) relating to any other matter prescribed for inclusion in the plan.

Pursuant to section 41D of the CFA Act, the MFPO has the power to issue fire prevention notices ("FPNs") to owners and occupiers of land within the municipality requiring vegetation clearance works to minimise the risk of the spread of the fire on or from the property. Where there is non-compliance with a FPN, the Council can undertake the fire prevention works at the landowner's expense and/or issue an infringement notice. The CFA is also empowered to issue FPNs.<sup>36</sup>

Pursuant to section 43 of the *Country Fire Authority Act*, Councils and all public authorities are required to take all practicable steps to prevent the occurrence of fires on, and minimise the danger of the spread of fires from and on, land and roads under their control or management.

Section 43 operates in conjunction with sections 42 and 44 to 46 of the *Country Fire Authority Act*, which (amongst other things) provide for:

- (a) fire prevention work to be carried out by the CFA at the request of Councils, public authorities and owners and occupiers of land;

- 
- (b) regular inspections to be carried out by the CFA to ascertain whether the provisions of the *Country Fire Authority Act* are being properly and efficiently carried out; and
  - (c) the CFA to report to the Governor in Council in relation to any failure by an MFPO, a Council or a public authority to properly and efficiently carry out any powers or duties conferred upon them under Division 3 of Part III of the *Country Fire Authority Act*, and certain steps which may be taken by the Governor in Council in respect of any such failures.

In relation to Councils, section 43 of the *Country Fire Authority Act* operates in conjunction with the other legislative provisions referred to elsewhere in this Submission.

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## Section 3.2: The Roles of Other Agencies

A number of other stakeholders play a role at the bushfire planning and prevention stage. These stakeholders include the OESC, VicRoads, VicTrack, Parks Victoria and electricity companies.

### The Office of the Emergency Services Commissioner

The *Emergency Management Act* gives the OESC a broad role in emergency prevention and planning, including fire services. The OESC can set and monitor performance standards for the lead fire agencies and facilitate co-operation between these agencies.

### VicRoads

VicRoads is responsible for maintaining all roads (such as major arterial roads) for which it is the responsible authority under the *Road Management Act 2004*. VicRoads is also a public authority for the purpose of section 43 of the *Country Fire Authority Act*.

### VicTrack

Pursuant to section 11(1) of the *Rail Corporations Act 1996*, VicTrack has the responsibility to establish, manage and maintain railways and rail infrastructure. This statutory responsibility encompasses keeping railway tracks safe and clear, which extends to fire prevention work. VicTrack is also a public authority for the purposes of section 43 of the *Country Fire Authority Act*.

### Parks Victoria

Parks Victoria is a statutory authority within the DSE portfolio and the largest land manager in Victoria. DSE has a statutory obligation to seek agreement with Parks Victoria before undertaking fire prevention works within national parks.

### Electricity Industry

Under part 8 of the *Electricity Safety Act 1998*, Energy Safe Victoria must ensure that electrical companies minimise the risk of fire to the community. All electricity suppliers must prepare a bushfire mitigation plan for the area their supply covers.<sup>37</sup>

Responsibility for electrical clearance is determined by section 84 of the *Electricity Safety Act* which also triggers the obligation to prepare a management plan under *Electricity Safety (Electric Line Clearance) Regulations 2005* addressing strategies for minimising the risk of electric lines starting fires and the identification of vegetation for pruning to remove fire hazards.

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## Section 3.3: Controls under the Town Planning Regime

### Overview

The Town Planning Regime in Victoria gives rise to a number of controls relevant to bushfire planning and prevention. Some controls play a part in bushfire planning and prevention while others are designed to protect vegetation and restrict removal. These controls may conflict with each other. The controls are set out in the VPPs and applied in instruments known as Planning Schemes made under the *Planning and Environment Act 1987*.

Each Council in metropolitan or rural Victoria has its own Planning Scheme, which consists of some State-wide provisions drawn from the VPPs and some local provisions drawn from local policies. The DPCD describes the VPPs as:

*“a comprehensive set of standard planning provisions and provides a standard format for all Victorian planning schemes. It provides the framework, standard provisions and State planning policy. The planning authority (usually the Council) must provide the local planning policy content, including a Municipal Strategic Statement, and select the appropriate zones and overlays from the VPP, for inclusion in their planning scheme. The VPP also has references to a number of documents which are incorporated documents common to all planning schemes.”*

There are two key levels of decision-making in the town planning regime: the State level and the local level. At the State level, the Minister for Planning, the DPCD and Advisory Committees are the key decision-makers although the Governor in Council, other Ministers, other departments and State-level public authorities may also play a role.

At the local level, Councils, the Minister for Planning and local public authorities are the key decision-makers.

Under the *Planning and Environment Act*, the Minister may amend the VPPs and therefore amend the State-standard provisions. In this way, he or she has the power to determine metropolitan or regional planning policy and implement those policies in Planning Schemes.<sup>38</sup>

### State Planning Policy Framework

Every Planning Scheme in Victoria contains the State Planning Policy Framework (“**SPPF**”). The SPPF is identical in each local planning scheme and is intended to ensure that the objectives of planning in Victoria (as set out in section 4 of the *Planning and Environment Act*) are met. The SPPF covers areas of strategic importance including:

- settlement;
- environment;
- housing;

- 
- economic development;
  - Infrastructure; and
  - particular uses and developments.

The SPPF provides high-level strategic guidance which informs Councils making decisions on whether to grant planning approvals. It provides the overall State policy and the vision of the State for future development and land use.

### Local Planning Policy Framework

Each Planning Scheme in Victoria also contains a Local Planning Policy Framework (“LPPF”). The LPPF identifies long term direction for land use and development in the municipality and provides the rationale for the zone and overlay requirements and particular provisions in the scheme. The LPPF usually includes a Council’s vision for the growth of the municipality, and highlights the hallmarks of the area including the main population centres, areas of regional interest or growth including tourism and industry, in addition to natural assets such as waterways and forests.

Councils are required to consider the LPPF when making decisions regarding planning approvals. As such, the LPPF guides decision-making generally but does not contain mandatory requirements. The LPPF also contains the Municipal Strategic Statement (“MSS”) described below.

### Municipal Strategic Statement

The MSS must be prepared by a Council under section 12A of the *Planning and Environment Act*. The MSS must contain:

- the strategic planning, land use and development objectives of the planning authority;
- the strategies for achieving the objectives;
- a general explanation of the relationship between those objectives and strategies and the controls on the use and development of the land in the Planning Scheme; and
- other matters required by the Minister.

It must also be consistent with Council’s current Council Plan (which up until 2008 was often referred to as Council’s Corporate Plan). The MSS forms part of the Planning Scheme and is a forward-looking document used by a Council to provide strategic policy on land use planning and development. It must be reviewed by Council every four years.

An example is the MSS of Nillumbik Shire. This MSS outlines the objectives and strategies which need to be implemented to achieve the desired land use and natural resource management

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vision, is the rationale for statutory planning controls and policies contained in the Nillumbik Shire Planning Scheme, provides a framework for the assessment of planning permit applications and amendment requests, identifies additional strategic work to be undertaken by the Council, and identifies additional community education and support programs.

The Nillumbik Shire MSS:

- outlines the vision for sustainable land use and natural resource management in the municipality;
- refers to the constitution of 1994 to Nillumbik Shire as a “Green Wedge” municipality of Melbourne;
- recognises the high conservation and environmental values of the municipality and its regional importance for metropolitan Melbourne as an attractive area of natural beauty and the importance of those issues in making planning decisions;
- refers to the Council Plan which provides that the Council protect and preserve the natural environment and heritage of the Shire, and encourage people in communities to be co-operative and self-sustaining, creative, active and secure. It also sets out the Council’s guiding principles as promoting the significance of the “Green Wedge” and ensuring that environmental awareness, conservation, restoration and safety are primary considerations in all works undertaken by Council; and
- notes that due to extensive vegetation cover, the orientation of steep sloping land and prevailing winds, much of the State’s non-urban and urban area are prone to high fire risk. It acknowledges CFA and DSE mapping and the precautions to be taken in the design of subdivisions and buildings and the ongoing management of land and fire risk within the municipality.

Each Council must make planning decisions against the background of its own MSS.

## Zones (State-wide)

The zoning of land identifies whether or not a particular use of land:

- does not require a permit and is allowed “as of right” (category 1);
- requires a permit and therefore may or may not be allowed (category 2); or
- is prohibited (category 3).

There are a number of zones for particular land use types including: residential, business, industrial, public land, rural conservation, public conservation, green wedge, road and special use zones.

Each of the Zones contain standard provisions which regulate use and development of a particular land parcel. Zones contain mandatory controls and requirements. Each of the three categories above may also contain conditions which are required to be met by the proposed land use. In addition, Zones will identify whether or not permits are required for any proposed buildings and works in addition to use.

Rural Activity, Rural Conservation, and Green Wedge zones are of particular significance to environmental issues, and may be summarised as follows:

Zone	Key Elements
Rural Activity Zone	<p>Intended to provide for uses which are compatible with agriculture and the environmental and landscape characteristics of the area, to enhance natural resources and biodiversity of the area, and to encourage comprehensive and sustainable land management practices.</p> <p>Decision guidelines for Councils require factors such as the impact on soil and water quality, impact on flora fauna and landscape features and protection and enhancement of biodiversity of the area to be considered, as well as minimising impact on character and appearance of areas of natural beauty through site selection.</p>
Rural Conservation Zone	<p>Intended to protect and enhance natural environment and natural processes for their historic, archaeological and scientific interest, landscape, faunal habitat and cultural values.</p> <p>Decision guidelines require consideration of whether or not this objective is achieved. In addition, development is required to assess likely environmental impacts.</p>
Green Wedge Zone	<p>Intended to recognise, protect and conserve green wedge land for its agricultural, environmental, historic, landscape, recreational and tourism opportunities, and mineral and stone resources. Also intended to promote sustainable land management practices, including farming and agricultural uses as well as protecting cultural heritage and the character of open rural and scenic non-urban landscapes.</p> <p>A schedule to the Green Wedge Zone may contain a minimum permitted size for subdivisions (at least 40 hectares).</p>

Zone	Key Elements
Green Wedge Zone A	<p>The Green Wedge Zone A has similar objectives to the Green Wedge Zone.</p> <p>However, Green Wedge Zone A further limits the size of a proposed subdivision to 8 hectare or less. Buildings are permitted to be set-back a closer distance to a road under the Green Wedge Zone A than under the Green Wedge Zone</p>

The Zones under a Planning Scheme may also contain one or several site-specific schedules. Such schedules may deal in some detail with a particular development proposal for an area.

### Overlays (State-wide)

Overlays contain State-wide controls which are applied to areas of land. Overlays contain use-specific controls that apply to land and are applied to manage special risks, or to achieve special land use or design outcomes.

Although the terms of an Overlay are uniform State-wide, an Overlay may contain one or more schedules which only apply to the specified areas. If an Overlay is shown on the Planning Scheme map, the provisions of the Overlay apply in addition to the provisions of the Zone and any other provision of this scheme.

An Overlay may contain permit triggers that apply to a use and development proposal. An Overlay may provide that certain developments are permitted as of right, or without a permit. However such provisions would not override zoning controls.

Overlays are used to implement the SPPF and the LPPF, including the MSS and local planning policies. For example, if the SPPF contains a future vision for residential growth in a precinct, a Development Plan Overlay may apply to that land, including a schedule which sets out the Council's vision for that future residential growth.

Overlays relevant to Victoria's Bushfire Management Regime include:

Overlay	Key Elements
Vegetation Protection Overlay (“VPO”)	<p>Intended to protect areas of significant vegetation.</p> <p>A permit is required to remove, destroy or lop any vegetation specified in a schedule to the VPO.</p>
Environmental Significance Overlay (“ESO”)	<p>Intended to protect environmental values.</p> <p>Land over which an ESO is applied will be subject to several restrictions relating to construction and works.</p> <p>The removal, destruction or lopping of native vegetation on land subject to an ESO is prohibited without obtaining a planning permit.</p>
Significant Landscape Overlay (“SLO”)	<p>Intended to protect certain natural features of landscapes.</p> <p>The SLO contains several restrictions relating to construction and works.</p> <p>The removal, destruction or lopping of native vegetation on land subject to a SLO is prohibited without obtaining a planning permit.</p>
Erosion Management Overlay (“EMO”)	<p>Intended to prevent the erosion of landscapes, and covers the clearance of native vegetation due to the potential for this to significantly increase erosion.</p> <p>The EMO contains several restrictions relating to construction and works, and also prevents the removal, destruction or lopping of native vegetation without a planning permit.</p>
Salinity Management Overlay (“SMO”)	<p>Intended to prevent any increase in the salinity of land.</p> <p>The SMO does not of itself specifically prohibit the clearance of vegetation. However, planning permits authorising other land uses, buildings or works in areas at risk of salinity may contain minimum vegetation requirements to ensure that an area's water table remains below a certain level.</p>

Overlay	Key Elements
Wildfire Management Overlay (“WMO”)	Intended to identify areas where the intensity of wildfire is significant and likely to pose a threat to life and property and to ensure that development in these areas does not significantly increase that threat.
Heritage Overlay (“HO”)	<p>Intended to protect places and items of particular heritage significance.</p> <p>While the HO does not specifically prohibit the clearance of native vegetation, heritage places and items which are protected under the HO may include native vegetation. Such vegetation may be specified in the schedule to a HO as being protected. This may prevent such vegetation from being removed, destroyed or lopped.</p>

## Wildfire Management Overlay

The WMO is of particular relevance in the context of bushfire prevention and planning.

WMOs identify areas where the intensity of wildfire is likely to be significant and poses a threat to life and property. As with other Overlays, each WMO contains one or more maps which shows where the WMOs are located within the municipality.

A WMO was included in the first version of the VPPs in 1997. Prior to 1997, Councils relied on “High Risk Fire Maps” to delineate areas prone to bushfires. These maps were prepared on an ad hoc basis by many Councils.

Under the Town Planning Regime, Council must decide whether to include a WMO in its Planning Scheme. Councils are largely reliant on the CFA in this regard as the necessary mapping of WMOs is done by the CFA. Many Councils have brought WMOs into alignment with BPAs in their municipality. Initial incorporation of WMOs and subsequent changes to WMOs require approval of the Minister and a planning scheme amendment. Amendments to the Planning Scheme are usually required to be advertised and may also be referred to a panel.

A planning permit is required under a WMO to construct a building or to carry out works associated with uses such as accommodation, child and education centres, hospitals, industrial uses, places of assembly, retail premises and timber production. Uses which essentially involve congregations of people are often referred to as sensitive uses.

Objectives that must be met before a permit in relation to land affected by a WMO is granted include:

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- availability of adequate water supplies;
  - provision of a fuel managed buffer;
  - safe access for emergency vehicles;
  - design and siting of works; and
  - management of ground fuel and shrubs to reduce potential fire intensity.

The requirement to comply with WMO objectives only arises in relation to land on which a prescribed use as described above is proposed. In the absence of one of the prescribed uses, there is no requirement for land subject to a WMO to comply with the objectives of the WMO.

In deciding whether to issue a permit, Councils must not only consider the objectives described above, but also refer to the following documents:

- Building in a WMO 2007 (CFA);
- Building in Bushfire Prone Areas;
- Planning Conditions and Guidelines for Subdivisions (CFA 1991); and
- the MFPP.

Unless the Council determines that the application meets the requirements previously agreed with the CFA or the MFB, the application for a permit must be referred to the relevant fire authority which may impose conditions on the permit.

## Particular Provisions

The particular provisions contain requirements for particular use and development proposals. They are uniform across the State. The particular provisions include:

- Native Vegetation (clause 52.17), the purpose of which is to protect and conserve native vegetation to reduce the impact of land and water degradation and provide habitat for plants and animals;
- Bushfire Recovery 2009 (clause 52.38), the purpose of which is to support recovery operations following the 2009 Bushfires; and
- Timber Production (clause 52.18), which requires compliance with the Code of Practice for Timber Production 2007.

On 14 May 2009, a new clause was introduced into the VPPs. This new particular provision 2009 Bushfire - Replacement Buildings (clause 52.39) is located immediately after the first 2009 Bushfire clause found in clause 52.38.

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Clause 52.39 is triggered in three ways:

- first, by a proposal to rebuild damaged or destroyed dwellings, dependent person's units or buildings used for agriculture which were damaged or destroyed by a bushfire between 1 January 2009 and 31 March 2009;
- secondly, by use of buildings covered by this clause; and
- thirdly, by vegetation clearance to enable the development use and maintenance of buildings covered by this clause.

Although exemptions elsewhere in the Planning Scheme continue to apply, if there is any inconsistency between clause 52.39 and clause 52.38, then clause 52.39 prevails. This is relevant because clause 52.39 imposes new requirements for site plans to be prepared. If a site plan is prepared, then a permit exemption will apply to buildings and works which would otherwise require a permit, or which would otherwise be prohibited, provided certain conditions are met.

A site plan under clause 52.39 must show property boundaries, the location of the damaged or destroyed building and the location of the replacement dwelling in addition to site access. It must also show vegetation proposed to be cleared. For replacement dwellings and dependent persons units which are located in a Farming Zone, Rural Conservation Zone, Rural Activity Zone, Green Wedge Zone, Green Wedge A Zone or Rural Living Zone, the location and dimensions of vehicle access, water storage and waste water treatment must also be shown.

Clause 52.39 applies to dwellings and buildings destroyed between 1 January 2009 and 31 March 2009 by bushfire. The site plan must be prepared and approved by Council before buildings and works are undertaken. The site plan must be submitted prior to 30 April 2012. The development must be commenced within two years of approval of the site plan and completed within two years of the commencement of development.

Conditions which apply include:

- the land must not be used for more dwellings than were damaged or destroyed;
- vegetation clearance must not extend wider than 10 metres beyond the building; and
- additional conditions apply to developments in the Farming Zone, Rural Conservation Zone, Rural Activity Zone, Green Wedge Zone, Green Wedge A Zone or Rural Living Zone, and to buildings in certain overlays (e.g., use of muted tones, additional approvals required for land located in an Erosion Management Overlay, Floodway Overlay, Land Subject to Inundation Overlay or Special Building Overlay).

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## General Provisions (State-wide)

The General Provisions nominate the responsible authority for the administration and enforcement of a particular Planning Scheme.

For example, the Shire of Baw Baw is the responsible authority for administering and enforcing the Baw Baw Planning Scheme for most matters. However, the Minister for Planning is the responsible authority for considering and determining applications in accordance with Divisions 1, 1A, 2, and 3 of Part 4 of the *Planning and Environment Act*, and for approving matters in relation to the use and development of land for the purpose of a wind energy facility with a capacity greater than 30 megawatts.

The General Provisions deal with referral and notice provisions and set out who the referral authorities are for particular kinds of applications. For example, the CFA is the referral authority for applications to subdivide land outside the metropolitan fire district which creates a road, where the requirements of clause 56.09-3 are not met.

Clause 65 of the General Provisions sets out decision guidelines which the responsible authority is required to consider in deciding on an application or on an approval of a plan. The responsible authority is required to consider various matters including:

- the matters set out in section 60 of the *Planning and Environment Act*, which includes the relevant Planning Scheme and the objectives of planning in Victoria as set out in section 4 of the *Planning and Environment Act*;
- the SPPF and LPPF including the MSS and local policies;
- the purpose of and any matter required to be considered in the Zone, Overlay or other provision;
- the orderly planning of the area;
- the effect on the amenity of the area;
- the extent and character of native vegetation and the likelihood of its destruction;
- whether native vegetation is to be or can be protected, planted or allowed to regenerate; and
- the degree of fire hazard associated with the location of the land and the use, development or management of the land so as to minimise any such hazard.

## Definitions (State-wide)

This part of the VPPs sets out State-wide definitions. The definitions of the VPPs are broken down into the following categories:

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- General Terms;
  - Outdoor Advertising Terms; and
  - Land Use terms.

### Incorporated Documents (State-wide and local)

There are a range of incorporated documents which are incorporated at the State level. The documents listed in the table and in the schedule to clause 81.01 of the VPPs are incorporated documents and include:

- the Code of Practice for Timber Production 2007;
- the Code of Practice for Fire Management on Public Land (Department of Sustainability and Environment, Revision No. 1 2006); and
- Building in Bushfire-Prone Areas - CSIRO and Standards Australia (SAA HB36-1993), May 1993.

Documents incorporated at a local level vary between Councils.

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## Section 3.4: Controls under the Native Vegetation Conservation and Management Regime

DSE is primarily responsible for the development of vegetation conservation and management policies. DSE also performs a central role in the consideration of planning permit applications to clear native vegetation. Vegetation retention policies are essentially the product of a State-level framework known as *Native Vegetation in Victoria: A Framework for Action (2002)* (“**Framework**”), which incorporates numerous policies and guidelines.

Councils have two roles in relation to vegetation conservation and management. They are:

- **Responsible Authority.** Councils are the agency primarily responsible for the administration and enforcement of the Town Planning Regime. Councils consider applications to clear native vegetation in the context of broader planning permit applications. Such permits often include conditions relating to the retention and clearance of vegetation, and the provision of offsets for cleared vegetation.
- **Land Manager.** Councils manage various roads and other public lands within their municipalities. In many cases, the responsibility of Councils extends to an obligation to manage vegetation on such lands. However, in fulfilling this function, Councils are subject to restrictions, policies and requirements at State level.

### General Principles

Councils are required to adhere to general principles and policies in relation to native vegetation prescribed by the Victorian Government. Many of the principles relevant to native vegetation management and conservation are set out in the Framework. The Framework was originally published by the Department of Natural Resources and Environment, the predecessor to DSE, in 2002.

The Framework states that:

*“The Victorian Government recognises the permanent care of our natural environment as one of the most important duties of any government. Our quality of life depends on properly managing our environment and protecting our precious natural, urban and historical heritage. Victoria’s rich biodiversity of species, habitats and ecosystems is a legacy to be held in trust for future generations.”<sup>39</sup>*

One of the underlying objectives of the Victorian Government, as described in the Framework, is to engage in:

*“[Actively] promoting the responsible management and expansion of our natural ecosystems including the protection of remnant vegetation along streamsides, roadways, wetlands and the conservation of native vegetation on private land, backed by an improved system of native vegetation retention controls.”<sup>40</sup>*

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The main goal of the Framework is expressed as being a “*reversal, across the entire landscape, of the long-term decline in the extent and quality of native vegetation, leading to a net gain*”.<sup>41</sup> In essence, “net gain” means ensuring that overall gains in native vegetation are greater than overall losses.

To achieve the “net gain” objective, the Framework sets out four guiding principles. They are:

- retention and management of remnant native vegetation is the primary way to conserve natural biodiversity across the Victorian landscape;
- the conservation of native vegetation and habitat depends on the maintenance of catchment processes;
- the costs of vegetation management should be equitably shared according to benefits accrued by landholders, the community and region; and
- a landscape approach to planning native vegetation management is required, with goals and priorities based upon bioregions within Catchment Management Authority regions. Priorities for each of these regions should be specific for each bioregion.

In respect of these guiding principles, persons involved in activities which may impact upon native vegetation must undertake a three-step approach, in the following order of priority:

- 1 **(Avoid)** first, to avoid adverse impacts, particularly through vegetation clearance;
- 2 **(Minimise)** secondly, if impacts such as the clearance of native vegetation cannot be avoided, minimise any impacts through careful planning, design and management; and
- 3 **(Offset)** thirdly, if the clearing of native vegetation cannot be avoided or satisfactorily minimised, any such clearing must be offset by the planting or preservation of other areas of equal or higher conservation significance. Any such offsets must be located in the same bioregion as the region in which the native vegetation is being cleared, consistent with the fourth guiding principle identified above.

This approach is of relevance to Councils, given the roles of Councils as responsible authority and as land manager.

## Protection of Native Vegetation

Native vegetation conservation and management is regulated by:

- legislation, both State and Commonwealth;
- planning controls; and

- 
- voluntary protection by property owners.

## Forests Act

DSE is responsible for the control and management of State forests and other Crown lands which are not the responsibility of any other authority.<sup>42</sup> DSE's management of forests is to be undertaken in accordance with a Forest Management Plan.<sup>43</sup> Such plans are regional, and Victoria is divided into 14 Forest Management Areas. Each plan is developed in consultation with a number of experts, including biologists. DSE's responsibilities for fire prevention planning and suppression under the *Forests Act* are discussed elsewhere in this Submission.

## Flora and Fauna Guarantee Act 1988

The purpose of the *Flora and Fauna Guarantee Act* is to promote the conservation of Victoria's native flora and fauna. The main objectives of the *Flora and Fauna Guarantee Act* are to:<sup>44</sup>

- ensure that Victoria's flora and fauna can survive, flourish and retain their potential for evolutionary development in the wild;
- conserve Victoria's communities of flora and fauna;
- ensure that the genetic diversity of flora and fauna is maintained; and
- manage potentially threatening processes.

Under the *Flora and Fauna Guarantee Act*, all public authorities, including Councils, must have regard to these objectives when discharging their various statutory responsibilities.<sup>45</sup>

The *Flora and Fauna Guarantee Act* provides that certain rare flora may be listed as 'protected flora'.<sup>46</sup> Once listed, a permit is required to undertake any activity or works which might kill, injure or disturb the protected flora.<sup>47</sup> This restriction applies predominantly to public lands. Private landowners are granted an exemption for works they undertake on their own land.

Works on public roadsides which may affect protected flora, such as species of vegetation protected under the *Flora and Fauna Guarantee Act*, may also require a permit from DSE.

## Planning and Environment Act

Native vegetation clearance is regulated under the *Planning and Environment Act*, through the requirement to obtain a permit to clear native vegetation.

Councils are responsible for the granting or refusal of planning permits, or the referral of planning permit applications to relevant referral authorities such as DSE. This function is performed on the basis of the regime contained in the *Planning and Environment Act*, discussed earlier in this Submission.

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The circumstances in which a planning permit is required under the *Planning and Environment Act* for the clearance of vegetation, and the criteria that must be taken into account in considering any such application, are discussed further below.

### Catchment and Land Protection Act

The *Catchment and Land Protection Act* imposes duties on landowners to, amongst other things, avoid causing or contributing to land degradation which causes or may cause damage to another landowner, conserve soil and protect water resources.<sup>48</sup> Depending on individual circumstances, this concept of “land degradation” may include degradation which results from the removal of vegetation.

Orders, in the form of land management notices which regulate or prohibit certain activities in relation to the land concerned, may be made by the Secretary of DSE.<sup>49</sup>

The obligations in the *Catchment and Land Protection Act* apply principally to landowners. It also includes the public authority that is responsible for the management of Crown land,<sup>50</sup> such as Councils in the case of land under their control and management.<sup>51</sup>

### Environment Protection and Biodiversity Conservation Act 1999 (Cth)

The *Environment Protection and Biodiversity Conservation Act* regulates activities likely to have a significant impact on matters of national environmental significance, including:

- threatened flora and fauna species;
- listed migratory species; and
- wetlands of international importance (known as Ramsar wetlands).

If a proposed activity may have a significant impact on a matter of national environmental significance, the party proposing to undertake the activity must refer that activity to the Commonwealth Department of Environment, Water, Heritage and the Arts (“**DEWHA**”) to determine whether approval is required.

The *Environment Protection and Biodiversity Conservation Act* applies to a wide range of activities including:

- clearing native vegetation;
- changing the natural flow of water; and
- controlling weeds and other pests.

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In the context of vegetation management, approval may be required where the clearance of vegetation could impact upon listed threatened species of native flora or fauna.

## Native Vegetation Planning Controls

As discussed earlier in this Submission, planning permits are generally issued by Councils.

The key native vegetation planning controls are contained in clause 52.17 of the VPPs which applies where the land in question is not subject to a Native Vegetation Precinct Plan (“**NVPP**”).<sup>52</sup> There are a number of exemptions from the requirement to obtain such a planning permit to clear native vegetation which are discussed below.

Applications for permits to clear native vegetation must contain specific information, including:<sup>53</sup>

- a photograph or site plan showing the boundaries of the site, existing native vegetation and the native vegetation proposed to be cleared;
- a description of the native vegetation proposed to be cleared, including the type and how much, as well as the number and size of any trees to be cleared;
- topographic information;
- an explanation of how the avoid/minimise/offset approach will be addressed; and
- a copy of any property vegetation plan (discussed below) that applies to the site.

An application to clear native vegetation must be referred by Council to DSE where it is proposed to:<sup>54</sup>

- remove or destroy more than 15 native trees if each tree has a trunk diameter of less than 40 centimetres at a height of 1.3 metres above ground level;
- remove or destroy more than 5 native trees if each tree has a trunk diameter of 40 centimetres or more at a height of 1.3 metres above ground level;
- remove or destroy native vegetation which is in an Ecological Vegetation Class that has a Bioregional Conservation Status of Endangered, Vulnerable or Rare if the area to be cleared is more than 0.5 hectare;
- remove or destroy native vegetation which is in an Ecological Vegetation Class that has a Bioregional Conservation Status of Depleted or Least Concern if the area to be cleared is more than 1 hectare;

- 
- remove, destroy or lop native vegetation if a property vegetation plan applies to the site;  
or
  - remove, destroy or lop native vegetation on Crown land which is occupied or managed by the responsible authority.

DSE must, within 28 days of the date that the application is referred to it, respond to the Council stating whether it objects or does not object to a permit being granted, or whether it does not object to the granting of a permit provided certain conditions apply to the clearing of vegetation.<sup>55</sup>

If DSE does not respond within 28 days, it is taken to have no objection to the planning permit application.

Councils must accept the recommendations of DSE in deciding whether to either refuse the permit,<sup>56</sup> or to grant the permit subject to conditions that DSE considers should be imposed.<sup>57</sup>

Where a Council wishes to clear native vegetation on Crown land it manages, it must obtain a planning permit, unless one of the exemptions applies. Depending on the amount of vegetation Council wishes to clear, it may be subject to the requirement to refer the application to DSE, as referral authority. DSE may impose such conditions as it believes appropriate in considering the application, and may recommend that the permit not be granted and the vegetation remain intact.

The criteria the Council must take into account are contained in clause 52.17-5 of the VPPs. The criteria are extensive and are in addition to the normal planning permit assessment criteria listed in clause 65 of the VPPs.

Matters which must be taken into account by a Council considering an application for a permit to clear native vegetation include, amongst other things:

*General Issues*

- the Framework;
- the preservation of and impact on the natural environment or landscape values;
- the avoid/minimise/offset approach towards native vegetation clearance;
- any relevant approved Regional Vegetation Plan;
- the conservation and enhancement of the area; and
- whether the proposed development is in accordance with any property vegetation plan that applies to the site.

*Land Protection*

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- the role of native vegetation in protecting water quality and riparian ecosystems;
  - the role of native vegetation in preventing land degradation, including erosion, salinity and acidity; and
  - preventing adverse effects on groundwater recharge.

#### *Conservation Significance*

- the conservation status of the vegetation, and its quality and condition;
- the strategic location of the vegetation in the context of the local landscape; and
- whether the native vegetation is a threatened community, or provides habitat for flora and fauna protected under the *Flora and Fauna Guarantee Act*.

#### *When Offsets may be required*

- the conservation significance of the native vegetation;
- the offset criteria in the Framework and any offset requirements in a Regional Vegetation Plan; and
- the long-term security of the offset.

#### *Permits relating to timber production*

- in the case of timber production, the benefit of including a condition requiring operations to be carried out in accordance with any relevant code of practice under Part 5 of the *Conservation, Forests and Lands Act 1987*.

#### *Aboriginal Cultural Heritage*

- the conservation of native vegetation protected under the *Aboriginal Heritage Act 2006*.

Fire hazard minimisation is not included as one of the decision criteria for consideration under clause 52.17. This means that a Council is not required to consider whether a specific clearance would have fire prevention benefits.

## Exemptions

A number of exemptions from the requirement to obtain a planning permit to clear native vegetation are contained in a table in clause 52.17-6 of the VPPs. The exemptions most relevant to Victoria's Bushfire Management Regime are:

Exemption	Conditions and Limitations
Fire protection and prevention	<p>Native vegetation may be removed, destroyed or lopped in the following circumstances for fire prevention:</p> <ul style="list-style-type: none"> <li>• fire fighting measures, periodic fuel reduction burning, the making of a fuel break or a fire fighting access track up to 6m wide;</li> <li>• to make a fuel break by a public authority in accordance with a strategic fuel break plan approved by the DSE;</li> <li>• the native vegetation is a tree overhanging the roof of a building used for accommodation. Only that part of the tree overhanging the building may be removed without a permit;</li> <li>• the native vegetation is within 30 metres of a building used for accommodation. A permit is not required in this case where: <ul style="list-style-type: none"> <li>➤ the vegetation is not a tree;</li> <li>➤ at least 50% of the native shrubs are retained; and</li> <li>➤ any native grasses are kept at a height of at least 10cm;</li> </ul> </li> <li>• the native vegetation is within the distance of a building used for accommodation purposes specified in the table at clause 52.17-7;</li> <li>• the vegetation is to be cleared in accordance with a FPN issued under section 41 of the <i>Country Fire Authority Act</i>, section 65 of the <i>Forests Act</i> or section 8 of the <i>Local Government Act</i>; or</li> <li>• the native vegetation is to be cleared in accordance with a Code of Practice governing electric line clearance prepared under the <i>Electricity Safety Act</i>.</li> </ul>
Emergency works	<p>Native vegetation may be cleared without a permit where it presents an immediate risk of personal injury or damage to property. Vegetation may only be cleared to the extent to which it is necessary to address the risk.</p> <p>Native vegetation may also be removed, destroyed or lopped by a public authority or Council to create emergency access or to enable emergency works.</p>
Lopping and pruning for maintenance only	<p>Not more than 1/3 of the foliage is to be removed from any individual plant.</p> <p>This exemption does not apply to pruning or lopping the trunk of a tree or shrub, or to native vegetation within a road or railway reserve.</p>
Mowing of grasses for maintenance only	<p>Native vegetation is a grass and is to be mown or slashed for maintenance only.</p>

Exemption	Conditions and Limitations
	Grass must be located within a garden or planted area, or maintained at a height of at least 10cm above ground level.
Clearing of regrowth	Native vegetation to be cleared is regrowth which has naturally established or regenerated on land lawfully cleared of native vegetation.  The re-growth must be less than 10 years old, or bracken, or less than 10 years old at the time that a Property Vegetation Plan is signed by the DSE and is shown on that Plan as being certified regrowth, or is located within the boundary of a timber production plantation.  This exemption does not apply where native vegetation has been cleared, destroyed or damaged by a natural disaster such as fire or flood.
Clearing of dead vegetation	The native vegetation to be cleared is dead.  This exemption does not apply to standing dead trees with a trunk diameter of at least 40cm at a height of 130cm above ground level.
Notices under the <i>Catchment and Land Protection Act</i>	Native vegetation is to be cleared pursuant to a land use condition notice or a land management notice issued under the <i>Catchment and Land Protection Act</i> .
Utility installations	The native vegetation is to be removed, destroyed or lopped to maintain minor utility installations, or to install or maintain utility installations if the clearance is done in accordance with a code of practice approved by the DSE and incorporated into the planning scheme.
Public roads	The native vegetation is to be removed, destroyed or lopped to maintain the safe and efficient function of an existing public road (as defined in the <i>Road Management Act 2004</i> ), in accordance with the written agreement of the DSE.

Some of these exemptions are either new, or were substantially modified following the approval and adoption of Amendment VC49 on 15 September 2008. This Amendment followed a review of vegetation clearance controls by an advisory committee established by the Minister for Planning.

Of these exemptions, the exemption for fire protection and prevention is the most important to bushfire planning and mitigation. This exemption affects Councils in both of their roles as land manager and responsible authority.

Negotiations with DSE have recently taken place in relation to the terms of a pro forma agreement which may be entered into by DSE and each Council for the purposes of the public roads exemption.

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## Overlays

As discussed earlier in this Submission, a number of Overlays impact upon the ability to clear both native vegetation and exotic vegetation. These Overlays may contain provisions which override the application of 52.17.

Generally, the Overlays contain a much narrower set of exemptions and fewer decision criteria than those under clause 52.17. As with clause 52.17, a permit is required where a NVPP or an exemption do not apply.

## Voluntary protection by the property owner

In addition to the range of mandatory statutory protection measures outlined above, an increasing range of voluntary protection measures aimed at conserving native vegetation are becoming available in Victoria. These measures include schemes facilitated by the Victorian Government such as Bush Broker and Carbon Tender.

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## Section 3.5: Controls under the Building Regime

To avoid property damage and loss as a result of wildfire, a number of building controls exist in Victoria.

### Designation of Bushfire Prone Areas

Before the 2009 Bushfires, regulation 804 of the *Building Regulations 2006* imposed an obligation on Councils to, in consultation with the Chief Officer, make a determination as to whether an area within their municipal district was a BPA.

If a building to be constructed in a designated BPA required a planning permit and had undergone a site assessment for the purposes of assessing bushfire risk as part of the planning permit application, the building surveyor could accept this bushfire risk assessment for the purpose of determining the construction requirements applicable to the building. Where no such assessment had been conducted, the building surveyor would make an assessment of the applicable bushfire risk.

### Construction Requirements before the 2009 Bushfires

Before the 2009 Bushfires, the construction standards applicable to buildings to be constructed in BPAs were set out in AS 3959 - 1999 (referenced in the *Building Code*, which forms part of the *Building Regulations*).

AS 3959 - 1999 set out four levels of risk assessment for buildings to be constructed in BPAs. These risk levels were based on a number of environmental factors including slope and vegetation of the land around the proposed dwelling.

The role and responsibilities of building surveyors in inspecting, enforcing compliance with building requirements, such as those contained in AS 3959 - 1999, are discussed below.

### The Roles and Responsibilities of Building Surveyors

In most cases, property owners who wish to construct buildings (including dwellings) must obtain a building permit in addition to any planning permits required under the Town Planning Regime. A building permit must be obtained from a building surveyor. The *Building Act* creates the roles of private and municipal building surveyors. A municipal building surveyor is employed by a Council, whereas a private building surveyor operates as a private entity.

Prior to 1 July 1994, a building permit could only be obtained from the Council in whose municipality the building work was being carried out. The Council was responsible for carrying out all the building inspections and ensuring that the building work complied with the relevant legislation at the time.

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Since the introduction of the *Building Act* on 1 July 1994, property owners have had a choice between using Council services (through the municipal building surveyor) or using the services of a private building surveyor to obtain a building permit and to arrange inspections of building works.

One of the roles of the building surveyor is to inspect whether the building work complies with the *Building Act*, the *Building Regulations* and the *Building Code* and the construction standards set out in standards such as AS 3959 - 1999. Building surveyors may engage a building inspector to conduct inspections on their behalf, however, the building surveyor remains responsible for ensuring that an inspection is properly conducted and that the building or building work complies with Building Regulations and the building permit.

When a building project is complete, and following a mandatory notification stage, the building surveyor must issue an occupancy permit or certificate of final inspection (whichever is applicable) when the building is deemed "suitable for occupation". Although building surveyors are responsible for ensuring consistency with planning permits, it is the responsibility of Council to administer and enforce its Planning Scheme under the *Planning and Environment Act*.

## Construction Requirements after the 2009 Bushfires

After the 2009 Bushfires, the *Building Amendment (Bushfire Construction) Interim Regulations 2009* were introduced which amend the *Building Regulations*. The *Building Amendment (Bushfire Construction) Interim Regulations* make two significant changes to the *Building Regulations* and to the *Building Code* which impact on class 1 (e.g., a single dwelling or boarding house), class 2 (e.g., a building containing two or more sole-occupancy units each being a separate dwelling), class 3 (e.g., a residential building other than a class 1 or class 2 building) and associated class 10a buildings (e.g., a garage).

First is the insertion of regulation 114 - Bushfire Construction Requirements which adopts the new AS 3959 - 2009 replacing AS 3959 - 1999. AS 3959 - 2009 sets out the minimum design and construction requirements for six defined bushfire attack levels (up from the four levels under AS 3959 - 1999). The site assessment process contained in AS 3959 - 2009 is based on scientific data and can be arrived at using either a simplified method within the body of the standard or by using fire engineering principles contained in Appendix B of the standard.

The new site classification process also includes a fire danger index as well as factoring in more realistic slope aspects. According to the Victorian Building Commission, a site assessment can be made by the architect, building designer, building surveyor, builder or owner-builder to ascertain the bushfire attack level, which determines the construction methods and design elements that must be used. These construction methods must be included on the design documents lodged for a building permit and the relevant building surveyor must check that these requirements have been met.

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The second significant amendment is the revocation of regulation 804, which, as noted above, requires Councils to designate certain areas as BPAs. Compliance with the amended regulations, in the interim, has fallen to the State by virtue of the revocation of regulation 804.

The *Building Amendment (Bushfire Construction) Interim Regulations* also amend the *Building Code* to include a requirement that certain classes of building comply with the new AS 3959 - 2009, where the reference to BPA or designated BPA in AS 3959 - 2009 is to be read as a reference to the whole of Victoria, with the consequence being that the entire State has effectively been declared bushfire prone.

As a result of these amendments, all new class 2 and class 3 buildings to be constructed in Victoria prior to 10 March 2010 must comply with AS 3959 - 2009. The *Building Amendment (Bushfire Construction) Interim Regulations* will expire on 10 March 2010 after which the responsibility for designating areas as BPAs may, subject to any further amendments, revert back to Councils for determination.

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## Section 3.6: The Road Management Regime

The Road Management Regime is relevant to Victoria's Bushfire Management Regime because it allocates responsibility for public roads in Victoria amongst VicRoads, DSE and Councils, and establishes the general principles that are to be applied to road management. The relevant stakeholders and their responsibilities are described in the table below.

Stakeholder	Responsibility
VicRoads	The lead agency with respect to road management in Victoria. VicRoads is the primary road authority for most roads in Victoria. It is responsible for the overall management and coordination of freeways and arterial roads.
Councils	Responsible for municipal roads and parts of arterial roads in urban areas (service roads, median strips, pathways and parking bays).
DSE	Responsible for roads in forests and national parks.
Minister for Roads and Ports	Responsible for promulgating Codes of Practice giving practical guidance to road authorities in carrying out road management functions and allocating operational responsibility for different parts of a road reserve.

### Overview

Statutory responsibility for roads throughout Victoria is governed by the *Road Management Act*.<sup>58</sup> Under the *Road Management Act*, Councils have responsibilities and powers in relation to certain roads in their municipalities but they are not, however, responsible for all roads.

The *Road Management Act*:

- establishes a framework for the management of safe and efficient public roads that best meets the needs and priorities of State and local communities;
- establishes a system of classification for roads and principles governing the division of responsibilities between State and local road authorities;
- establishes the general principles which apply to road management;
- establishes decision-making processes relating to standards of construction, inspection and repair of roads having regard to the varying needs and expectations of local communities, other national, State and local policies and funding constraints; and
- provides for the role, functions and powers of a road authority.<sup>59</sup>

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The *Road Management Act* also provides for the promulgation by the Minister for Roads and Ports of Codes of Practice. Codes of practice give practical guidance to road authorities in carrying out road management functions, clarifying or determining how the operational responsibility for different parts or elements of the a road reserve is to be allocated between road authorities and determining how to allocate resources, develop policies, set priorities and make road management plans.<sup>60</sup>

The Minister for Roads and Ports has not introduced a code of practice relating to roadside clearance activities for fire prevention purposes.

Road authorities are required to establish a register of public roads listing each road for which they are responsible.

### *Classification of Roads*

The *Road Management Act* distinguishes between roads generally and “public roads”. The term “road” refers to highways in the common-law sense; that is, land over which the public has a legal right to pass. A “public road”, on the other hand, is a road that is reasonably required for general public use. It is only in the case of public roads that the *Road Management Act* imposes a legal duty to inspect, maintain and repair these roads to an adequate standard.

Section 37 of the *Road Management Act* establishes a tripartite classification of State roads in determining responsibility between States agencies and Councils. The three categories are freeways, arterial roads and non-arterial State roads.

For roads designated as freeways by VicRoads under section 44 of the *Road Management Act*, VicRoads is the responsible road authority.<sup>61</sup>

The principal criterion in determining whether a road is to be designated by VicRoads as an arterial road is whether the road provides a principal route for the movement of people or goods between regions, major population centres or across cities. Roads may also be declared to be arterial roads if they have State-wide economic or tourism significance, are major public transport routes or provide connections between other arterial roads.<sup>62</sup> Where the road is an arterial road, section 37(b) allocates road management responsibility as follows:

- VicRoads is the responsible road authority for any part of the roadway used by through traffic and for the roadside in a non-urban area; and
- the Council of the municipality where that part of the road is located is the responsible road authority for any part of the roadway not used by through traffic, any service road, the median strip between the roadway and the service road, the roadside in an urban area, and any pathway (other than a pathway on a freeway service road);

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Where the road is a non-arterial road responsibility depends on the location of the road. For example, responsibility for roads located in forests and national parks, vests with the relevant State agency, in many cases DSE. Non-arterial roads may include bush tracks.

## Allocation of Road Management Functions

### Arterial Roads

There are two main road management functions in relation to arterial roads. First, there is coordination of development and use of the road, such as the development and implementation of management plans, the placement of non-infrastructure like pipes and poles, the timing of works and powers of a regulatory or enforcement nature.

VicRoads is responsible for the overall management and coordination of the development of freeways and arterial roads.<sup>63</sup> DSE is responsible for managing roads that are a State responsibility but which do not form part of the arterial road network, such as roads in national parks.<sup>64</sup> Councils are responsible for the overall management and coordination of development of municipal roads, including roads on Crown land that serve the local community.

The second type of road management function for arterial roads relates to operational issues such as construction, inspection, maintenance and repair of roadways and pathways. In relation to arterial roads, there is a split of operational responsibility in urban areas, which reflects the reality that main roads in urban areas also serve important functions for local community and should therefore be locally managed.<sup>65</sup>

For this reason, the *Road Management Act* provides that Councils have operational responsibility for the parts of urban arterial roads that are used for purely local purposes such as service roads and footpaths and roadside areas such as nature strips. VicRoads, however, remains responsible for the overall coordination of the arterial road network, while in non-urban areas VicRoads is responsible for the exercise of operational functions in respect of the entire road reserve of arterial roads.

### Municipal Roads

Municipal roads are the responsibility of the relevant Council. A municipal road is a road other than a freeway and an arterial or non-arterial State road, which a Council has agreed to have the care and management of pursuant to section 205 of the *Local Government Act*.

Under section 15 of the *Road Management Act* a road authority may enter into an agreement with another road authority to transfer a road management function that would otherwise apply to it under sections 36 and 37 of the *Road Management Act*. In practice, Councils have many such agreements with other adjoining municipalities to maintain roads to the municipal boundary.

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## Road Reserves

The physical limits of operational responsibility between VicRoads and Councils for the different parts within the road reserve of public roads is set out in a Code of Practice promulgated by the Minister for Transport on 17 December 2004. It relevantly provides that Councils perform the functions of responsible road authority with respect to the parts of the arterial road including service road traffic lanes and shoulders, pathways outside the 'kerb to kerb' limits of the through carriage ways, central median strips including vegetation, and indented parking bays.

## Demarcation between Road Authorities

Many Councils have demarcation agreements with VicRoads and DSE under section 15 of the *Road Management Act*. Typically, VicRoads is the responsible road authority for the entire road reserve on all public highways, freeways and declared main roads in rural areas. In urban areas VicRoads generally retains responsibility for these roads, back of kerb to back of kerb and the rest of the road becomes the responsibility of the Council. Any variations to this baseline position are set out in the demarcation agreement which defines the boundary between urban and rural roads and also details other areas of demarcation, such as median strips and roundabouts, where required.

## Management of the Road System

The *Road Management Act* provides that responsible road authorities must have regard to road safety as the principal object of road management.<sup>66</sup> This overriding objective is supplemented by the following subsidiary principles:

- the minimisation of road safety hazards;
- the avoidance or minimisation of damage or disruption to infrastructure on roads;
- the avoidance or minimisation of damage or disruption to plans for the development of road infrastructure and non-road infrastructure;
- the avoidance or minimisation of disruption to traffic;
- the avoidance or minimisation of disruption to the effective and efficient delivery of utility services; and
- the efficient use of resources of road authorities and infrastructure managers and the minimisation of cost to the community of infrastructure and services.<sup>67</sup>

The *Road Management Act* does not mention fire prevention as an objective of road management.

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The *Road Management Act* recognises that roads vary in character and it is not possible to set road standards that will be suitable for all places and all times.<sup>68</sup> For this reason, as well as to ensure road authorities are democratically accountable to their local communities, the *Road Management Act* provides that it is for each road authority to decide how it will carry out its road management functions. Accordingly, the *Road Management Act* authorises road authorities to develop, in consultation with relevant communities and stakeholders, road management plans that set out in detail the standards of construction, inspection, repair and maintenance of public roads.

## Road Management Plans

The making of road management plans is voluntary.<sup>69</sup> A road management plan is different to a roadside management plan, which many Councils also prepare for fire prevention purposes in accordance with CFA guidelines.

The purpose of a road management plan is to establish a management system for the road management functions of a road authority based on policy and operational objectives and available resources. The road management plan also sets the relevant standard in relation to the discharge of duties in the performance of those management functions.<sup>70</sup> Section 52 of the *Road Management Act* provides for the contents of a road management plan.

A road management plan must include any matters that a relevant Code of Practice specifies should be included in a road management plan.

The Minister for Transport has promulgated a Code of Practice for Road Management Plans.<sup>71</sup> In determining appropriate standards, including prioritisations for the maintenance and repair of road infrastructure on public roads, a road authority should consider:

- the type of road infrastructure, and the volume and nature of public road usage;
- community expectations;
- any relevant risk factors;
- the resources available, and the competing demands for these resources;
- the use of temporary measures and warning systems to warn road users of hazards until the utility of the public road can be restored;
- potential impacts on utility infrastructure and utility providers; and
- environmental and cultural factors.

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The *Road Management Regulations* provide that where a Council adopted a road management plan before 29 November 2008 it must commence a review of that plan by 1 January 2009 and complete that review by 30 June 2009.

The *Road Management Act* provides a defence to civil liability claims brought against Councils where Councils have complied with policies in relation to road management activities in accordance with their road management plan.<sup>72</sup>

## General Functions and Powers of Road Authorities

The general functions conferred on a road authority by the *Road Management Act* include management of traffic on roads in a manner that enhances the safe and efficient operation of roads. This function is to be undertaken with regard to the principle that the primary purpose of a road is to be used by members of the public and that other uses are to be managed in a manner which minimises any adverse effect on the safe and efficient operation of the road and the environment.<sup>73</sup>

In exercising its powers and functions a road authority must also have regard to the following considerations:<sup>74</sup>

- the need to exercise the functions and powers within its overall policy and budgetary context;
- policies and priorities in relation to transport, the environment and other matters determined by the Government of Victoria;
- any relevant Code of Practice;
- any other law affecting the management of roads;
- any roadside management plan developed to protect flora and fauna; and
- any matters arising from consultation with the community, utilities and other stakeholders.

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## Section 4: Emergency Response and Recovery

In the context of a bushfire, emergency response involves bushfire suppression as well as response other than suppression. Although there is considerable overlap between response (other than suppression) and recovery, the recovery phase can continue for a considerable period after a bushfire.

The principal instruments, roles, responsibilities and activities undertaken by the relevant stakeholders in relation to:

- Fire Suppression; and
- Response (other than fire suppression) and Recovery,

are discussed below.

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## Section 4.1: Fire Suppression Regime

### Key Stakeholders

As identified in the Manual, the control agencies in relation to fire suppression are DSE, MFB and CFA. The location of the fire determines which agency carries primary responsibility for a fire in a particular locality. Councils do not have a role to play in relation to fire suppression. The roles of the key control agencies are described in further detail below.

### Department of Sustainability and Environment

DSE has primary responsibility for carrying out works for the prevention and suppression of fire on DSE land.<sup>75</sup> Procedures also exist for the DSE and CFA to agree that an area will be the primary responsibility of one or the other,<sup>76</sup> and an agreement is likely to be entered if an agency has the majority of resources in an area.

As the agency with primary responsibility for the suppression of fires within its area, DSE's role is both practical and organisational. DSE must manage the deployment of its fire-fighting teams to the fire area. This deployment is done in accordance with an Incident Action Plan, prepared to take into account considerations such as fire-fighter safety, current and predicted fire behaviour and assets and values at risk from the wildfire.<sup>77</sup> Additional practical fire fighting activities conducted by the DSE include the establishment of control lines and other fire-control measures.

In addition to its practical role, DSE plays an important role in the co-ordination and management of fires within its area. DSE acts as central liaison with the CFA, Parks Victoria, DPI, Councils, any interstate fire and land management agencies present as well as any other organisations with a role in suppressing a bushfire.<sup>78</sup>

DSE must co-operate with the CFA to manage the organisation and deployment of any air resources obtained by the government for fire prevention, suppression and fire support purposes. DSE is also the primary support agency to the CFA for fires occurring on DSE land.<sup>79</sup> This means that DSE must coordinate with and take direction from CFA teams actively fighting fires in areas under CFA control.

### Country Fire Authority

CFA has the primary responsibility for the suppression of fires in the country area of Victoria.<sup>80</sup> The country area of Victoria does not include DSE land.

As discussed above, the DSE Secretary and Chief Officer may jointly determine that either the CFA or DSE will be solely responsible for the suppression of fires in particular areas outside the metropolitan fire district.<sup>81</sup> The CFA may also be required to step in and take

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control of fire suppression in a particular area not within its primary area of responsibility where the local DSE or MFB officer is not available.<sup>82</sup>

In addition, the Chief Officer has a range of specific powers for extinguishing or restricting the spread of fire. These include powers to:

- control brigades and volunteers that are at a fire scene;
- enter land or buildings, open doors and take fire-fighting equipment into houses or buildings that are burning or in the neighbourhood of any fire;
- shut off water elsewhere to gain greater supply, and take water from private properties to extinguish fires;
- cause roads to be closed or traffic to be directed on roads in the vicinity of a fire;
- have people removed if they are interfering with the fire brigade's operations;
- pull down or stabilise any wall or building damaged by fire that may be dangerous; and
- take other measures necessary for the protection of life and property.<sup>83</sup>

## Metropolitan Fire Brigade

The MFB has primary responsibility for the suppression of fire within the metropolitan area of Melbourne.<sup>84</sup> However MFB's district does not include some of the outer suburbs such as Frankston and Lilydale. While MFB has no official responsibilities in outer-Melbourne and regional Victoria, it may be requested by another fire fighting agency or the Minister for Police and Emergency Services to attend fires outside of the metropolitan area.<sup>85</sup>

## Other Agencies

Parks Victoria and DPI are relevant support agencies in relation to fire suppression and a detailed description of their respective roles and responsibilities can also be found in the Manual.

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## Section 4.2: Response (other than fire suppression) and Recovery

Response (other than fire suppression) and recovery after a bushfire involves a large number of control and support agencies. CFA, DSE or MFB are the control agencies.<sup>86</sup> Councils are one of the support agencies. The obligations of the various stakeholders in relation to emergency response (other than fire suppression) and recovery are set out in the following regulatory instruments:

- the *Emergency Management Act*;
- the Manual; and
- the State Emergency Response Plan (“**SERP**”).

A detailed description of the roles and responsibilities of the many agencies involved in response (other than fire suppression) and recovery is contained in the Manual.

### Emergency Management Act

The *Emergency Management Act* is the principal piece of legislation that establishes Victoria's emergency management structure, and assigns roles and responsibilities to various emergency response and recovery agencies. The *Emergency Management Act* also establishes the State Emergency Recovery Arrangements. These arrangements require the Coordinator-in-Chief of Emergency Management (whose role is described below) to nominate a recovery coordination agency. DHS is nominated as that agency.

At the State level the recovery management process is not concerned with directing the actual recovery management. Rather, it is concerned with:

- the highest level of inter-agency co-ordination;
- inter-governmental liaison; and
- facilitation, support and resourcing of operations at affected levels.

### Emergency Management Manual Victoria

The Manual contains policy and planning documents for emergency management in Victoria, and provides information on what roles different organisations play in the emergency management arrangements. The OESC maintains the Manual.

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## State Emergency Response Plan

The SERP is set out in Part 3 of the Manual and identifies the organisational arrangements for managing the response to emergencies within, or with the potential to affect, Victoria. SERP applies to all agencies having roles or responsibilities in response to those emergencies.

## Roles of the Key and Support Agencies

The main statutory obligations of key emergency management stakeholders are as follows:

### *Victoria Emergency Management Council*

The role of the Victoria Emergency Management Council (“**VEMC**”) is to advise the Co-ordinator in Chief on all matters, including the coordination of activities of government and non-government agencies, relating to the prevention of, response to and recovery from emergencies.<sup>87</sup>

Membership of the VEMC includes the Co-ordinator in Chief, as chairman, and representatives of government and non-government agencies.

Agencies invited to participate in meetings may vary according to the subject matter under consideration. Organisations involved include:

- Ambulance Victoria;
- Bureau of Meteorology;
- CFA;
- Department of Defence;
- DHS;
- Department of Justice;
- Department of Premier and Cabinet;
- DPI;
- DSE;
- Department of Treasury and Finance;
- DPCD;
- ESTA;

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- MFB;
  - MAV;
  - Parks Victoria;
  - State Recovery Co-ordinator;
  - Victoria Police;
  - SES; and
  - Chairpersons of State-level emergency management committees.

Other groups, sub committees and bodies are also set up under the umbrella of the VEMC such as the Municipal Emergency Management Enhancement Group (“MEMEG”).

### *Minister for Police and Emergency Services*

The Minister for Police and Emergency Services is the designated responsible government minister for the state emergency management arrangements and the Co-ordinator in Chief of Emergency Management in Victoria.

The role of the Co-ordinator in Chief is two-fold:<sup>88</sup>

- to ensure that government agencies take adequate emergency management measures; and
- to co-ordinate the activities of government agencies when they undertake emergency management measures.

The Co-ordinator in Chief must also prepare the SERP as well as the State emergency recovery plan.

### *Department of Human Services*

DHS is the government agency with overarching responsibility for emergency recovery.

As the lead agency in the recovery process, DHS must coordinate recovery planning and management at both the State and Regional levels. This involves managing all State and Commonwealth Departments, Councils, non-government organisations and agencies.

Along with its coordination and managerial responsibilities, the DHS arranges personal support in the form of psychological first aid and assists Councils in recovery planning and managing recovery activities.

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Additionally, DHS plays a central role in administering a variety of Victorian Government Personal Hardship Grants. These grants are available to people who live in areas which have been affected by emergencies, and who in many cases have been required to evacuate their residences. Grants include the emergency assistance grant, the temporary living expenses grant and the re-establishment grant.

### *Office of the Emergency Services Commissioner*

The OESC has the following functions:

- to establish and monitor standards for the prevention and management of emergencies to be adopted by all emergency services agencies;
- to monitor and investigate the performance of the ESTA in relation to the provision of services by the Authority to emergency services and other related services organisations;
- to make recommendations to the Minister about matters arising from the monitoring or investigation of the ESTA;
- to advise, make recommendations and report to the Minister on any issue in relation to emergency management;
- to encourage and facilitate co-operation between all agencies to achieve the most effective utilisation of all services;
- to act as Executive Officer of the Council; and
- any other function conferred under the *Emergency Management Act* or any other Act.

### *CFA*

The CFA's response activities (other than fire suppression) are described in the Manual and SERP. These include:

- the rescue of people endangered by burning, collapsed or damaged buildings;
- protection of property and the environment from fire damage; and
- the provision of advice to threatened and affected communities on actions that they should take during an emergency event.

As with DSE, CFA has a duty to manage and support other agencies responding to a fire for which other agencies are responsible.

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## Victoria Police

The Chief Commissioner of Police is the delegated Deputy Co-ordinator of Emergency Management and may perform any power of function of the Co-ordinator in Chief. Under SERP, the Chief Commissioner of Police is responsible for the State co-ordination role in respect of government and non-government agencies involved in emergency management.

## Victoria State Emergency Service

SES is a volunteer based emergency service that services Victoria. SES plays a number of roles from planning for and responding to emergency events. It also provides a support role to other emergency service agencies including the Victoria Police. SES plays a major planning role providing support and guidance to Councils, as well as providing an auditing role on municipal emergency management plans (“**MEMPs**”) in consultation with DHS and Victoria Police. SES is the primary agency responsible for the provision of relief in an emergency.

## Councils

The *Emergency Management Act* provides that Councils must:

- appoint a Municipal Emergency Management Planning Committee (“**MEMPC**”) (which includes Council members, CFA, local community groups etc).<sup>89</sup> The MEMPC does not have a controlling role in an emergency event. This role rests with the key combat agency;
- prepare and maintain a MEMP<sup>90</sup> in which Councils must identify municipal and other resources available for emergency prevention, response and recovery and specify how these resources are to be used. The MEMP is audited by SES and DHS every three years;
- appoint a Municipal Emergency Resource Officer (“**MERO**”) who is responsible for coordinating municipal resources to be used in emergency response and recovery.<sup>91</sup> The MERO will usually be the key liaison between Councils and the emergency services within the municipal district; and
- establish a Municipal Emergency Co-ordination Centre (“**MECC**”) during an emergency event. The MECC is a location for organising municipal resources that may be required to service the emergency event. The MECC may also operate and provide resources to relief centres. The MECC is the principal communication link to the Incident Control Centre (“**ICC**”). Councils must ensure that MECCs have appropriate communication equipment, mapping of the localised area and trained personnel to assist the emergency response agencies that are combating the emergency event.

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Councils may also establish Community Recovery Committees pursuant to the State Emergency Recovery Arrangements. These committees usually comprise representatives from government agencies and affected people, and facilitate the recovery process by identifying community needs, implementing plans to resource the community needs, and liaising with the key agencies which undertake the tasks of fulfilling these needs and providing required resources.

### Victorian Bushfire Reconstruction and Recovery Authority

On 10 February 2009, the Commonwealth and Victorian Governments established the Victorian Bushfire Reconstruction and Recovery Authority (“**VBRR**”) to oversee and coordinate the recovery and rebuilding program after the 2009 Bushfires.

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## Section 5: Specific Matters

Certain additional or particular matters relevant to Councils in relation to Victoria's Bushfire Management Regime arise or require further comment. These matters are:

- Integrated Fire Management Planning;
- WMOs;
- BPAs;
- FPNs;
- Local Laws;
- Native vegetation clearance on private land;
- Roadsides;
- Emergency Management, Response and Recovery; and
- Provision of information.

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## Section 5.1: Integrated Fire Management Planning

A number of reviews in recent years, particularly the Victorian Government's Inquiry into the 2002-2003 Victorian Bushfires and the 2003 Auditor-General's Performance Audit of Fire Prevention and Preparedness, identified a number of issues.

These issues included the fact that many agencies plan separately for fires, and that these plans are generally not adequately coordinated during fire events.

To address these issues the Premier approved Integrated Fire Management Planning ("IFMP") and development and consultation of IFMP began in December 2004.

When fully implemented, IFMP aims to achieve a consistent and effective means for fire management planning within Victoria through cooperation, including information sharing and the building of collective knowledge.

IFMP changes the manner in which the elements of Victoria's Bushfire Management Regime currently operate.

### IFMP Structure

The IFMP proposes a state, regional and municipal hierarchy of planning for fire prevention. IFMP will operate under existing fire and emergency management legislation and the arrangements for the operation will be included in the Manual.

At the State level, the State Fire Management Planning Committee ("SFMPC") is comprised of the following key organisations:

- CFA;
- DHS;
- DPCD;
- DPI;
- DSE;
- Department of Transport;
- Energy Safe Victoria;
- MFB;
- MAV;
- OESC;

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- Parks Victoria;
  - Regional Development Victoria;
  - Tourism Victoria;
  - VicRoads;
  - Victoria Police;
  - SES; and
  - other members nominated by the Coordinator in Chief.

The purpose of the SFMPC is to ensure a consistent sustainable and integrated approach to fire management planning across Victoria that is blind to land tenure. The SFMPC provides policies and direction to facilitate an integrated approach to fire management planning across the State. The Chair of the Committee will report to the Victoria Emergency Management Council on issues relating to fire management planning. This will include performance, non-participation, legislative reform and other matters of significance relating to fire that may impact on effective emergency management.

Below the State level, there are eight Regional Strategic Fire Management Planning Committees (“**RFMPCs**”) to be established by June 2009. The RFMPCs will provide a link between municipal and State fire management planning by drawing together State and regionally based stakeholders to integrate fire prevention planning. The RFMPCs will be comprised of:

- CFA;
- DSE;
- MFB;
- Councils (including 5 alpine resorts);
- DHS;
- DPI;
- Parks Victoria;
- Rail Authorities;
- Utilities;
- VicRoads;
- Victoria Police;
- SES; and
- other members as required.

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Each RFMPC will produce a Regional Strategic Fire Management Plan and report to the SFMPC. The Regional Strategic Fire Management Plan will be risk-based and consider the needs of the region as a whole. This plan will guide the development of each municipal plan within the region.

At the next level, there is the Municipal Fire Management Planning Committee (“**MFMPC**”). The MFMPC will replace the existing MFPC. Existing requirements for Councils to appoint a MFPO and MERO will not change under IFMP. The MFMPC will be comprised of:

- MFB, DSE and CFA (as appropriate);
- the relevant Council or alpine resort; and
- other members as required.

The MFMPC will produce a Municipal Fire Management Plan (“**MFMP**”) to be endorsed by Council. Ministerial Guidelines for municipal fire prevention planning will be included in Part 6 of the Manual.

The MFMPC will also:

- identify and incorporate local needs to the fire management planning process;
- monitor, review and report to Council and the community through the MEMPC and the RFMPC; and
- replace and fulfil the responsibilities of the current MFPC.

IFMP will also result in three key changes from the current regime. These changes are as follows:

- the creation of the State Fire Management Planning Support Team (“**SFMPST**”). The SFMPST will be staffed by multi agency personnel and is tasked with providing support to the state, regional and municipal committees;
- the MFMPC will develop its own procedures for the election or appointment of a chair. This responsibility will no longer fall automatically to the MFPO; and
- it will be made clear that the fire management planning process will be managed and supported by the CFA, MFB and DSE which are the agencies with the technical expertise and primary responsibility for the prevention and suppression of fires.

In addition to these changes it is proposed to amend the *Emergency Management Act* so as to integrate IFMP as part of the *Emergency Management Act*. This will result in the MFMP becoming a sub-plan of the MEMP. The audit of the MEMP and the MFMP will then occur under the auspices of the *Emergency Management Act*, which should result in a more standardised audit process.

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## Benefits

It is contemplated that the IFMP will deliver the following benefits to fire management planning:

- enable a consistent and systematic state wide approach to fire management planning between municipalities and agencies;
- bring agencies with fire management responsibilities together, regardless of whether the land is private or public;
- put control of fire management planning in the hands of specialist fire agencies;
- provide support for the MFMP through the new SFMPST; and
- allow the chair of the MFMP to be appropriately elected or appointed.

## MAV and Councils

The MAV and Councils are generally supportive of IFMP. However, the lack of detailed information about how IFMP will work means that the true effectiveness of the framework is not yet properly understood. For example, it is not known whether IFMP will:

- make it mandatory for certain key stakeholders (e.g., VicTrack and VicRoads) to play an active role on the MFMP;
- provide the appropriate specialist fire agencies with express means for enforcing the implementation of fire prevention measures under the MFMP;
- result in additional funding resourcing and training of their relevant staff to Councils to adequately undertake their role as a participant in the MFMP;
- adequately integrate private landowners into the overall fire management process; and
- successfully eradicate a 'tenure-based' approach where fire prevention, management and suppression is undertaken according to land management responsibilities.

A pilot programme has been developed at municipal level. Eight Councils are participating in this programme. The pilots are progressing at different rates. The timeframe for overall delivery of IFMP means that it will not be operating state wide until at least another two or three fire seasons have passed. An issue is whether the process for delivery of IFMP is progressing at a sufficient rate.

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## Section 5.2: Wildfire Management Overlays

As noted earlier, WMOs are a type of Overlay which may be incorporated in the Planning Scheme for a municipality.

Many municipalities in Victoria have WMOs incorporated in their Planning Schemes. Most municipalities affected by the 2009 Bushfires had at least some land covered by a WMO.

A WMO:

- (a) is designed to identify areas where the intensity of wildfire may be significant and likely to pose a threat to life and property; and
- (b) requires a permit to be obtained to construct a building or carry out works for specified uses or to subdivide land.

No planning permit requirement is triggered by a WMO if the proposed building is consistent with a fire risk management plan prepared to the requirements of the “relevant fire authority”.

In the country areas of Victoria, the CFA is the “relevant fire authority” for the purposes of WMOs.

Any application to construct a building or construct or carry out works must be accompanied by a statement which demonstrates that all fire protection requirements set out in the WMO for water supply, access, buildings and works, and vegetation have been considered and incorporated.

In considering any application to construct a building or carry out works or to subdivide land in an area covered by a WMO, the following must be considered:

- (a) the SPPF and the LPPF, including the MSS and local planning policies;
- (b) the views of the “relevant fire authority”;
- (c) whether the design and sitting of any proposed building works or access road appropriately meets the objectives and outcomes of the WMO;
- (d) the MFPP; and
- (e) the principles and guidelines included in:
  - Design and Sitting Guidelines, Bushfire Protection for Rural Houses, CFA and Ministry for Planning and Environment, 1990;
  - Planning Conditions and Guidelines for Subdivisions, CFA, 1991; and

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- Building in Bushfire-Prone Areas - CSIRO & Standards Australia (SAA HB36-1993), May 1993.

Several issues arise in relation to WMOs in the context of Victoria's Bushfire Management Regime:

- WMOs are prospective in operation only;
- WMOs may not necessarily adequately reflect current fuel loads;
- Councils depend largely on the CFA in relation to the declaration and operation of WMOs;
- whether WMOs are best implemented through the planning regime or if so, whether the Minister for Planning should take control of their introduction into Planning Schemes;
- the land covered by WMOs and the extent to which buildings constructed after the introduction of the relevant WMO survived the 2009 Bushfires;
- planning permits, building permits and certificates of occupancy; and
- the exemptions introduced after the 2009 Bushfires are not necessarily consistent with the objectives of a WMO.

### WMOs are prospective

WMOs apply only to prospective applications to construct a building, carry out works, or subdivide land made after the incorporation of the WMO in the local Planning Scheme.

Accordingly, there is no requirement that an existing building, works or subdivision need to comply with the requirements set out in a WMO.

This is a substantial limitation on the effectiveness of WMOs. The vast majority of buildings impacted by the 2009 Bushfires which were on land subject to WMOs were constructed prior to the introduction of the relevant WMO.

For example, in relation to Nillumbik Shire, as at 7 February 2009 there were 746 properties covered by a WMO within the areas of St Andrews, Arthur's Creek, Strathewen, Christmas Hills and Kinglake. Of these 746 properties, 116 properties had dwellings which were destroyed, and 9 properties had dwellings which were damaged. Of the 116 destroyed dwellings, only about 4 dwellings were the subject of a WMO planning permit.

### The role of the CFA

As noted earlier in this Submission, the mapping of the areas to be subject to WMOs is typically done by the CFA. Many Councils have amended the location of the areas within their municipality

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which are covered by a WMO to bring the mapping of WMOs into alignment with BPAs determined by the CFA.

Historically, the CFA mapped BPAs for the purposes of the building regulations by using Geographic Information System. BPAs and WMOs are broadly based upon a consideration of canopy density and “ground truthing”. Ground truthing is essentially using the knowledge of local and regional CFA staff and sometimes surveyors and planners to determine the wildfire risk of a particular area. In practice, Councils rely predominantly (or exclusively) on CFA mapping to determine WMO areas, although in some cases Councils have had to resort to external fire consultants to obtain this data where the local CFA is unable to resource the exercise.

The CFA is also heavily involved in the application process under WMOs.

A proposal to construct certain types of buildings on land which falls within a WMO triggers both a requirement for a planning permit and a building permit. Under the buildings and works requirements of the WMO, the application for a planning permit is required to include a statement that various fire protection criteria are satisfied, which are essentially the criteria set out in the Applicant’s Kit.<sup>92</sup>

Where a development proposal falls within an area designated as “*Category 1 Lower Risk Areas*” or “*Category 2 Higher Risk Areas*” the application is not required to be referred to the CFA if there is an agreement between the Council and CFA under clause 44.06-3 of the WMO. It is only in the highest risk categories that the application must be specifically referred to the CFA. On referral, the CFA may specify permit conditions that the Council must include in any WMO planning permit. The CFA rarely rejects planning permit applications in areas covered by a WMO.

### WMOs may not necessarily adequately reflect current fuel loads

There is a necessary process which must be undertaken in relation to the initial incorporation of a WMO into a Planning Scheme of a particular municipality and for any subsequent amendment to it. This process involves:

- mapping of the areas to be covered by a WMO;
- public notification of the proposed WMO by the Council;
- community consultation;
- possible referral by the Minister to a planning panel;
- endorsement by the Council of any recommendations made by the planning panel; and
- approval by the Minister.

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This process can take anywhere from 6 to 18 months and sometimes longer to complete. As a result, WMOs may not accurately reflect current fuel loads by the time they are actually incorporated, or amended in a Planning Scheme.

## WMOs as planning instruments

There is an issue regarding the nature of the WMO as a bushfire protection measure or a planning instrument.

On the one hand, as a creature of a Planning Scheme, a WMO only regulates changes in land use or new buildings and works on land. Once a permit is issued for an area affected by a WMO, the relevance of a WMO falls away. For this reason, the WMO is at best only a tool for managing new development approvals in areas identified under a Planning Scheme as wildfire-prone and covered by a WMO.

On the other hand, there are many things that the WMO does not control. If a change to the mapping of WMOs within a municipality means that new areas of land are covered by the Overlay, this does not mean that existing buildings are required to meet a higher standard of bushfire protection. Therefore, despite the heavy involvement of the CFA in relation to WMOs (both in terms of mapping the location of the overlay and the issuing of permits pursuant to it) a WMO is not capable of managing bushfire risk other than by imposing development conditions on new buildings or land use proposals prior to their development.

As discussed earlier in this Submission, WMOs only operate in relation to certain prescribed uses on land. Where a WMO does operate, the nature of the WMO objectives does not necessarily guarantee protection or preservation of life or property in a bushfire.

WMOs are further limited in their ability to manage bushfire risk in areas of public land. WMOs mostly do not apply to DSE Land. This further limits the practical ability of a WMO to regulate wildfire risk in high vegetation growth areas such as State forest and also surrounding land which may include residential areas.

In contrast to other Overlays such as VPOs and in contrast to clause 52.17 of the general provisions, WMOs seek to provide increased protection against bushfires rather than being an instrument designed to protect vegetation. Indeed, WMOs may compete with other Planning Scheme provisions.

The VPP Practice Note recognises this and states:

*“The objectives of the WMO may compete with other objectives in the planning scheme (such as objectives for vegetation retention). Before deciding on an application, the responsible authority must decide which objectives should be given more weight.”*

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Although there are exemption provisions in other Overlays (such as VPOs) enabling the removal, destruction or lopping of vegetation for bushfire protection purposes, the exemptions are not always particularly clear or easy to apply.<sup>93</sup>

A WMO calls for a building protection zone, landscaped to reduce fuel load (ground fuel and shrubs), to be established. The CFA Applicant's Kit further provides for clearance of a distance of 30 metres around a property. It provides requirements for grass height of not more than 100mm, and leaf litter reduction, but also suggests that elevated fuel (trees) should not occupy more than 50% of the area, and with sparse, or very little dead material.

VPOs allow for vegetation removal for making a fuel break up to 6 metres wide. VPOs also allow for removal of ground fuel within 30 metres of a building and pursuant to an FPN.

Clause 52.17 is stricter. It is a general provision of the VPPs which applies uniformly State-wide. Clause 52.17, the WMO and VPO provide that no permit is required for fire protection works where the native vegetation is within 30 metres of a building used for accommodation provided that:

- the native vegetation is not a tree;
- at least 50 percent of native shrubs are retained; and
- native grasses are kept to at least a height of 100 millimetres.

These provisions are not necessarily harmonious. Tension arises because the purpose of the WMO is to be a management tool to protect life and property, whereas the VPO and clause 52.17 are primarily tools for protecting native vegetation.

There may also be a level of community misunderstanding about the significance of WMO and the area covered by this type of Overlay. The fact that an area is not covered by a WMO does not necessarily mean that it is not subject to bushfire risk.

For these reasons, if WMOs continue to play a role in Victoria's Bushfire Management Regime, an issue is whether the relevant fire authorities should have greater responsibility for WMOs. In the case of the rural areas of Victoria, the relevant fire authority is the CFA.

## Planning Scheme Amendment Process

If the WMO is to remain as an overlay implemented through Planning Schemes an issue arises regarding whether the Planning Scheme amendment process required to introduce the WMO should be a process managed by and funded by the State rather than Councils.

The process for Councils to introduce a WMO through a Planning Scheme Amendment process is time consuming and costly as often the objections received mean that the amendment is referred to a Panel hearing and may be unpopular with residents who are also the voting electorate.

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Ideally, the location of WMOs should be reviewed regularly as fuel loads change within a municipality. This means that WMOs may not accord with changes in fuel loads within a municipality. Such changes may be due to fluctuations in vegetation growth, drought and rainfall among other factors.

If however, the Planning Scheme Amendment process were handled by the Minister for Planning these processes could be expedited and the CFA could provide input directly to the Minister as to the revised location of the WMOs for each municipality.

### The land covered by WMOs and the extent to which buildings constructed after the introduction of the relevant WMO survived the 2009 Bushfires

Bushfires may occur in areas not mapped as WMOs. In fact, many of the 2009 Bushfires occurred in areas of State forest which are not covered by WMOs. DSE's general position is that WMOs are not appropriate for DSE Land given that DSE do not undertake development activities in those areas.

Moreover, as the 2009 Bushfires demonstrated, buildings were destroyed notwithstanding that they were the subject of a planning permit application which contains WMO conditions.

These circumstances may raise issues as to the breadth of WMOs, and the adequacy of their requirements.

### Planning permits, building permits and occupancy permits

There is a lack of synchronisation between compliance with a planning permit containing WMO conditions and an occupancy permit under the relevant building regulation. A holder of a planning permit which contains WMO conditions generally has two years with which to comply with the conditions of that permit. However, there is no legislative requirement that the conditions of the WMO are met before the issue of an occupancy permit or a certificate of final inspection pursuant to building legislation.

Accordingly, an occupier can live in a house through one or two fire seasons without having complied with the WMO conditions. As such, although an occupier may benefit from living in a home that is designed and constructed to resist bushfire due to the building requirements in the building permit, this protection may be diminished if the requirements of the WMO, which provide 'whole-of-site' protection, are not met under the planning permit for up to two years.

A further issue is whether reforms should be made which consolidate compliance with building and planning approvals with occupancy permits to ensure that conditions which relate to bushfire risk management are met prior to occupancy.

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## The exemptions introduced after the 2009 Bushfires are not necessarily consistent with the objectives of a WMO

In early March 2009, the State Government introduced an exemption to WMOs to enable rebuilding of dwellings damaged or destroyed by the 2009 Bushfires. As a result, the permit requirement under a WMO does not apply to:

*“A building or works associated with a dwelling that is sited in the same location on the land as a dwelling that was damaged or destroyed by bushfires that occurred after 1 January 2009. The construction of the building or the construction or carrying out of the works must commence prior to 31 March 2011.”*

Whilst the object of this exemption is understandable, to enable the rebuilding of homes, homes rebuilt in areas susceptible to bushfire may not have the benefit of all of the WMO conditions.

The exemption also only applies to the rebuilding of dwellings affected by the 2009 Victorian Bushfires and not to other new dwellings in the same impacted areas. This may lead to anomalies, with some dwellings being built in accordance with WMO standards, whilst neighbouring dwellings are not.

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## Section 5.3: Bushfire Prone Areas

As discussed earlier in this Submission, prior to the 2009 Bushfires and pursuant to section 804 of the *Building Regulations*, Councils, in consultation with the CFA, designated certain bushfire vulnerable areas within their municipalities as BPAs.

As with WMOs, mapping of BPAs historically has been undertaken by the CFA for use by Councils. New residential buildings constructed in BPAs were required to comply with specific design and construction requirements set out in the *Building Code* and in AS 3959 - 1999.

Since 10 March 2009, the introduction of the *Building Amendment (Bushfire Construction) Interim Regulations* and revised building standards under the new AS 3959 - 2009 has meant the whole of Victoria has effectively been designated a BPA. Councils will not be required to designate areas within their municipalities as BPAs until 10 March 2010, after which this responsibility may revert to Councils.

Under the new regulations and the revised building standards, updated bushfire attack levels and construction standards aim to improve the ability of buildings to provide shelter and to withstand a fire front.

In the context of Victoria's Bushfire Management Regime, several issues arise with respect to BPAs:

- BPAs are prospective in operation only;
- Councils depend largely on the CFA in relation to locating areas to be covered by a BPA;
- there is no system for the monitoring of on-going compliance with building permit requirements for dwellings built in BPAs;
- there is a lack of synchronisation between occupancy permits and compliance with WMO conditions in a planning permit;
- there is no method of notifying prospective land purchasers that they are purchasing land in a BPA and will therefore be subject to certain building/ design requirements; and
- the impact of the *Interim Building Regulations* and the new AS 3959 - 2009 on rebuilding damaged buildings and new buildings in bushfire affected areas.

### BPAs are prospective

The relevant wildfire construction requirements set out in the *Building Code* and the design and construction requirements set out under AS 3959 - 1999 only applied to buildings to be constructed after BPAs were first introduced in 1994 and up to the amendments of 10 March 2009.

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Accordingly, as with areas covered by a WMO, there was no requirement that an existing building comply with the relevant bushfire construction and design requirements triggered by the existence of a BPA.

This is a substantial limitation on the effectiveness of the BPA as those homes built prior to the introduction of the BPA would not necessarily be built to resist a fire front. Given that the intensity of a bushfire increases when buildings or structures burn, the utility of some homes being 'bushfire resistant' as a result of being built after the introduction of the BPA, would be diminished.

## The role of the CFA

Regulation 804 of the *Building Regulations* state that:

*"...a council, after consultation with the chief officer [of the CFA], may determine that areas within its municipal district are designated bushfire prone areas".*

In practice the actual designation and mapping of BPAs is generally done by the CFA. There is an issue as to whether Councils should continue to have a role in relation to the designation of BPAs.

## Ongoing Compliance

Property owners are required to comply with the conditions of their building permit, which in a BPA may include certain conditions relating to management of fuel load around the building. Continued compliance with such requirements is required even after an occupancy permit or certificate of final inspection has been issued.

However, it is often the case that ongoing compliance with building permit conditions is not undertaken by property owners which could, in turn, diminish the bushfire protection afforded to a building. Enforcement of continued compliance with building permit conditions for buildings in BPAs would be extremely resource intensive and time consuming for Councils.

## No notification of prospective property purchasers

Prior to 10 March 2009, unless prospective land purchasers and property developers made enquiries of Council, there was no system to notify such purchasers or developers that land was covered by a BPA or that they would need to comply with certain building construction and design requirements to mitigate bushfire risk.

A system of notification, may assist prospective purchasers and property developers in evaluating the risk and responsibilities associated with living in a bushfire vulnerable area.

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## Impact of the Interim Building Amendment Regulations and AS 3959 - 2009

The Victorian Building Commission's *Guide to Building in Victoria after the Bushfires* notes that the site assessment required under AS 3959 - 2009, to determine which of the six defined bushfire attack levels apply (which in turn trigger increasingly more stringent fire protection construction requirements) may be undertaken by, amongst others, an owner-builder in consultation with a building surveyor.

The revised bushfire attack levels may have two unintended consequences:

- first, some owner-builders who wish to build in an area susceptible to bushfire attack may choose a lower bushfire attack level so as to minimise the higher costs of meeting more stringent construction standards; and
- secondly, a further issue is whether landowners may clear excessive amounts of native vegetation to lower a site's bushfire attack level rating.

An issue is whether the new standards strike an appropriate balance between bushfire protection on the one hand, and protection and preservation of the amenity of communities on the other. This is a particular concern in certain townships heavily impacted by the 2009 Bushfires, such as Marysville, whose economic prosperity, sustainability and regrowth depends upon their local character and setting.

The interim building standards may also give rise to affordability issues for certain individuals.

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## Section 5.4: Fire Prevention Notices

As discussed earlier in this Submission, the MFPO has the power under the *Country Fire Authority Act* to issue Fire Prevention Notices.<sup>94</sup> The CFA also has the power to serve Fire Prevention Notices.<sup>95</sup>

FPNs may be served in respect of:

- anything on land in the country area of Victoria; and
- on the adjacent half width of any private street that abuts that land.

which by its nature, composition, condition or location constitutes or may constitute a danger to life or property from the threat of fire.

A FPN may be served on any owner or occupier of land in the municipal district other than a public authority.

In practice, MFPOs usually commence inspections for the purposes of the issue of FPNs in about October of each year. Inspections tend to be done by drive-by visual inspection, and in some cases, by aerial photography. Often many thousands of kilometres of inspections are conducted.

FPNs are often directed to visible overgrown vegetation, including grasses, which can be a fine fuel threat.

Many Councils issue hundreds or thousands of FPNs in a given year.

In all cases, after the initial inspection, the MFPO typically follows up in about November to determine whether compliance has been achieved. If not, then compliance may be achieved by the Council undertaking or Council engaging a contractor to undertake the fire prevention works. Councils typically seek to recover the costs of the works from the property owner.

Issues in relation to FPNs include that:

- an FPN cannot be served on DSE or other State authorities;
- an FPN cannot relate to a threat of fire caused by a building or anything inside a building;
- the *Country Fire Authority Act* does not expressly impose an obligation on the owner or occupier to maintain compliance with an FPN over the course of a fire season which may lead to a second to the issuing of further FPNs which may impact on resources;
- subsequent rains may cause more rapid growth in vegetation, which may involve the issuing of further FPNs, and consequential impact on Council resources; and

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- in municipalities with absent landowners, FPNs may place a financial burden on Councils notwithstanding the recovery rights available to Councils.

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## Section 5.5: Local Laws

Councils have a broad power to make local laws under section 111 of the *Local Government Act*.

A local law must not be inconsistent with any Act, Regulation or a Planning Scheme. A local law may set out penalties for non-compliance. It may also provide for service of an infringement notice specifying a fixed penalty for an offence against it as an alternative to prosecution for an offence (sections 115 and 117 of the *Local Government Act*).

Local laws (previously known as by-laws) are used by Councils primarily to manage local neighbourhood issues. Local laws are particular to the municipalities in respect of which they are made.

The local laws made by some Councils, which are relevant for present purposes may:

- restrict persons in relation to lighting a fire or using an incinerator in the open air on any land;
- require approval or a permit to be obtained from Council for removal of vegetation (including dead vegetation and fallen timber) from public areas such as parks and reserves, unless certain exemptions from this requirement apply;
- require an owner or occupier of premises to ensure that all necessary steps are taken to prevent fire on those premises, and to minimise the possibility of spread of fire from those premises; and
- require owners or occupiers not to allow premises to become unsightly, and require management of rubbish, excessive vegetation growth and waste.

In addition, some Councils have a local law which is used to supplement FPNs, requiring premises to be kept free of material which may cause a fire to spread or constitute a fire hazard. This is to deal with the perceived vegetation maintenance deficiency with FPNs under the *Country Fire Authority Act*, discussed earlier in this Submission.

Local laws generally restrict behaviour in order to balance competing issues in the community.

For example, local laws which restrict open air burning often will specify the circumstances in which such burning can occur, and the reasons why it can occur (such as for fire prevention purposes or pursuant to a permit). This may take the form of restricting open air burning to periods on certain days at certain times of the year. An example of such a local law from the Shire of Baw Baw provides as follows:

*“A person must not light or allow to be lit or allow to remain alight any fire in the open air or in an incinerator unless the open air burning is -*

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- (a) *allowed under a permit previously issued by Council;*
  - (b) *is lit on land contained in a Rural Zone;*
  - (c) *is carried out for fire prevention purposes and*
    - (i) *is carried out between the hours of 9am and 6pm; and*
    - (ii) *only on Friday or Saturday; and*
    - (iii) *during the period from 1 September to 30 November each year; and*
  - (iv) *the land is within the Wildfire Management Overlay specified under the Baw Baw Planning Scheme or greater than 4000m<sup>2</sup>;*
  - (d) *a barbecue while being used for the purpose of preparing food;*
  - (e) *associated with a tool of trade while being used for the purpose for which it was designed; or*
  - (f) *a fire lit by an officer of the Country Fire Authority in the course of their duty."*

Such restrictions are primarily to reduce the impact on neighbours (including from smoke) and to reduce the risk of fire breaking out as a result of an open air burn.

Local laws which restrict the removal of vegetation from public places (including roadsides) without a permit or authorisation from Council are primarily:

- due to concerns that the community does not appreciate restrictions which may otherwise apply to native vegetation removal;
- to maintain the appearance and amenity of the municipality; and
- due to concerns of the impact of unregulated activity on the environment.

Local laws of this kind operate in addition to other legislation which regulates vegetation clearance such as the *Flora and Fauna Guarantee Act* and the *Environment Protection and Biodiversity Conservation Act* which may trigger their own approval requirements.

The use of local laws in this area are not necessarily effective due to difficulties with enforcement, and the resources needed to enforce them.

The specific exclusion of local laws from the *Infringements Act 2006* means each unpaid fine issued by Councils for breach of a local law must be prosecuted in the Magistrates' Court rather than the Infringements Court. This increases the cost and difficulty of enforcing local laws.

Penalties under local laws are also not covered by the *Monetary Units Act 2004*, which means that the real value of these penalties declines in over time, which may impact the deterrent affect of such penalties. .

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## Section 5.6: Vegetation Clearance on Private Land

As noted earlier, planning permits are required to clear native vegetation in Victoria, unless an exemption from the need to obtain a permit applies.

Native vegetation is defined in the VPPs as plants that are indigenous to Victoria including trees, shrubs, herbs and grasses but does not include fallen branches, twigs and leaf litter.

Councils hold primary responsibility for considering planning permit applications, including applications to clear native vegetation.

While Councils have primary responsibility for considering planning permit applications to clear native vegetation, in a large number of cases Councils are required by the VPPs to refer such applications to DSE, as referral authority. DSE will then consider the application and either approve it, approve it subject to conditions, or not grant approval. As DSE is a referral authority in relation to such matters, Councils are bound by any conditions DSE may wish to impose, or any decision made by DSE insofar as the native vegetation clearance aspect of the planning permit application is concerned.

As a result of the policy priorities of the Framework, if a permit is granted to clear native vegetation, any such permit will generally contain conditions which require either:

- the amount of vegetation to be cleared to be minimised as far as is practicable; or
- in some cases, offsets to be provided.

The consequence of requiring offsets as part of the “net gain” policy objectives set out in the Framework can be an overall increase in vegetation within a municipality, although overall the extent of native vegetation in Victoria is in decline.

### Issues with clearing native vegetation on private land

Issues which arise in relation to clearing native vegetation on private land include the following:

- the complexity of the exemptions from the requirement to obtain a permit to clear native vegetation and the circumstances in which the exemptions arise;
- pursuing permits for native vegetation clearance (and the botanical assessments, negotiations and offsets which may flow from that application) can be complicated, time consuming and expensive for individuals, which may dissuade them from engaging in native vegetation removal for fuel load reduction or other purposes. It may also encourage unlawful and unregulated native vegetation removal;

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- Councils are required to implement native vegetation retention policies which derive from State-level policies, such as the Framework, regardless of any local preference to reduce native vegetation and fuel loads for fire prevention purposes;
  - the focus of the Framework is vegetation retention. The objective of the Framework is to achieve a net gain in native vegetation across Victoria. Fire prevention, management and the importance of saving human lives from bushfire is not a priority of the Framework;
  - there is a lack of guidance about how the tension between vegetation clearance and fire prevention is to be reconciled in particular cases;
  - there is inconsistency between the policy objectives contained in vegetation conservation and retention planning controls, policies and requirements, and the policy objectives found in other planning controls;
  - the extent to which Councils may have the technical expertise and resources in relation to the intricacies of native vegetation;
  - whether Councils should be primarily responsible for enforcing native vegetation permit conditions given that DSE is the referral authority in relation to applications for permits to clear native vegetation and sets permit conditions in relation to that removal;
  - balancing community expectations in relation to native vegetation conservation and applications to clear native vegetation for fire prevention purposes;
  - the further layer of complexity introduced by the process for separate approval to clear vegetation under the *Environment Protection and Biodiversity Conservation Act* and the *Flora and Fauna Guarantee Act*;
  - where private land adjoins DSE Land, whether the responsibility for native vegetation clearance for fire prevention purposes should rest with DSE or the private landowner; and
  - the willingness and ability of individuals including those with special needs (e.g., the aged and people with disabilities) to undertake physical works to reduce fuel loads (other than native vegetation) on their properties.

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## Section 5.7: Roadsides

The issue of roadsides, and in particular vegetation clearance activities by Councils, in the context of bushfire management is complex and raises a number of considerations and issues.

### General Matters

#### *Responsibility*

Councils are not responsible for all roads in their municipalities.

As explained earlier, the Road Management Regime allocates the responsibilities for the various and differing roads in Victoria pursuant to a complicated statutory framework. The Road Management Regime also establishes the general principles that are to apply to road management.

The responsibilities in relation to roads in municipalities are primarily divided amongst VicRoads, DSE and Councils. VicRoads is responsible for freeways and arterial roads, DSE is responsible for roads in forests and national parks, and Councils are responsible for municipal roads and arterial roads which are not for through traffic or in non-urban areas. In all municipalities, there will be roads for which each of these entities has responsibilities.

#### *Roads are of different kinds*

Roads in municipalities vary significantly in their nature, ranging from freeways, arterial roads, minor roads, to unsealed heavily tree-lined bush tracks. Some roads may be strategic, primary or secondary firebreaks for the purposes of the MFPP, which is developed taking into account recommendations and advice of the MFPC and relevant bushfire agencies, including in particular the CFA and the DSE.

In general terms, a strategic fuel break is established where sites are identified because of their ability to be used as a fuel break and a major traffic corridor, primary fuel breaks are usually along declared highways and main arterial roads, and secondary fuel breaks are additional breaks often designated by the MFPC and local CFA brigades to provide protection at a local level.

The nature of roadsides also differs substantially. Roads may have cleared verges of limited width with few trees abutting cleared properties. Other roads may be unsealed tracks on hillsides with heavy forestation lining both sides of the road.

Roadside clearance activities by Councils typically vary by reference to the nature of those roads in respect of which Councils have responsibility.

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## Considerations apart from bushfire management

Roadside clearance engages a range of laws and regulations with differing objectives. Fire prevention is not the only factor. Road safety and environmental considerations arise, as do community expectations.

Roadsides often have high conservation values. Roadsides may contain the last remaining native vegetation in an area. Roadsides can form habitat corridors. Dead logs and branches on roadsides also can provide vital habitat and food for various species. Roadside vegetation may also be important in combating soil erosion and land slippage.

Various requirements and restrictions arise in relation to the destruction or removal of vegetation on roadsides under clause 52.17 of the VPPs and under the *Flora and Fauna Guarantee Act* and the *Environmental Protection and Biodiversity Conservation Act*. These requirements and restrictions are discussed earlier in this Submission.

For example, under the *Flora and Fauna Guarantee Act*, all public authorities must be administered having regard to the objectives of the Act, which include:

- that Victoria's flora and fauna can survive, flourish and retain their potential for evolutionary development in the wild;
- to conserve Victoria's communities of flora and fauna; and
- to manage potentially threatening processes.

Any roadside clearance activity may require a permit under the *Flora and Fauna Guarantee Act* from DSE.

Similarly, as discussed earlier in this Submission, the VPPs require Councils to take into account and give effect to State-level planning policy. The VPPs provide that the State Government expects Councils to endeavour to integrate the range of policies relevant to local issues into the Municipal Planning Schemes.

The Framework provides a three-tiered objective, which is commonly summed up as 'avoid, minimise, offset'. In other words, the Framework seeks, where possible, to avoid the removal of native vegetation altogether. If avoidance cannot be achieved, then removal should be to the minimum extent possible. Finally, where native vegetation is removed, the removal should be offset in other areas. In this way, the Framework has moved from avoiding a net loss of vegetation to an objective of making a net gain.

Under the *Planning and Environment Act* and the VPPs, certain matters relating to native vegetation must be referred to the DSE. Where the extent or nature of the vegetation to be removed falls within certain classes, DSE approval is required. In addition, regardless of the exemptions provided in the

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VPPs discussed below, as the majority of roadsides are Crown land, Councils need permission from DSE to remove vegetation (except for the purpose of forming or maintaining a road). In practice, when permission is sought, the DSE is likely to use the planning permit process to evaluate the proposed works.

The following principal exemptions from the requirement for a permit are found in the tables to clause 52.17:

- lopping less than one third of foliage (but not the trunk);
- grass is mown to not less than 100mm;
- dead vegetation (except if the standing tree had a trunk diameter greater than 40cm above 1.3m);
- fire protection to allow clearance for fire fighting measures, periodic fuel reduction burning or the making of a fuel break up to 6m wide; and
- public roads: there may be clearance to maintain the safe and efficient function of an existing public road managed by an authority in accordance with a written agreement entered into by a Council with DSE.

The *Road Management Act* requires Councils to have regard to road safety as the primary objective in managing roads. The *Road Management Act* also requires Councils to have regard to environmental considerations and community expectations in the preparation of road management plans. Further, some roadside management plans recognise that vegetated roadsides are an important component of the forested character of the municipality.

### *Fire Hazard*

Different types of roadside vegetation, both living and dead, involve different levels of fire hazard.

In general, fine fuels such as twigs and grass involve a greater fire hazard than heavier fuels like branches and logs which tend to burn more slowly. Treed roadsides with native grassy understorey generally have relatively low surface fine fuel loads. Grassy roadsides generally have high surface fuel loads, which can be exacerbated by weeds.

### *Municipal Fire Prevention Plans*

The MFPPs of each municipality typically incorporate the planned annual roadside vegetation clearance activities to be undertaken by Councils in their municipalities. The MFPPs are compiled taking into account available resources, advice and recommendations of the MFPC and advice from agencies such as the CFA. Often Councils have regard to the CFA's *Roadside Fire Management Guidelines* in determining annual roadside clearance activities and treatments in their municipality.

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## Resources

Roadside vegetation clearance activities are costly. Councils have limited resources. There may be thousands of kilometres of roads under the management of Councils in their municipalities. This necessitates prioritising of works and is a substantial restriction on the clearance activities undertaken by Councils.

## Roadside treatments

There are a number of possible roadside treatments. Whether any particular treatment may be appropriate in a given circumstance depends upon factors such as:

- the purpose of the vegetation removal;
- the nature of the vegetation to be removed; and
- the conditions at the site (including road type, the traffic volume and speed, the width, nature and characteristics of the roadside, and type of roadside vegetation).

Treatments include slashing, physical removal of fine fuel, grading or ploughing, firewood collection, roadside grazing, herbicides, burning, and pruning and lopping. Each of these treatments have limitations, and may or may not be appropriate in any given circumstance.

### *Slashing*

Slashing is the primary clearance method used by Councils for roadside clearance. MFPPs typically set out the annual program for slashing, specifying the roadsides to be slashed, and the width of slashing which is to be achieved. The slashing function is generally contracted out by Councils.

Slashing has the advantage of reducing the volume of elevated fuel, and can be carried out in a timely manner prior to the fire season.

The terrain of roadsides can impede or prevent slashing. Weed seed can also be spread. The presence of trees may necessitate physical mowing.

Where slashing is impractical, physical removal of fine fuel from the ground may be conducted. This is necessarily labour-intensive.

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### *Ploughing*

Grading or ploughing may be carried out to create a bare earth break. It is generally impractical to provide a bare earth break which prevents the spread of fire in windy conditions. Bare earth breaks are costly, and also can lead to erosion and invasion by weeds.

### *Herbicides*

Many Councils have on-going programs of spraying weeds on roadsides. Weed infestations are extensive in Victoria. Herbicide treatments are expensive, relatively slow, and public liability issues can arise due to spray drift and the encouragement of herbicide-resistant species of weeds. Spraying also does not typically reduce fuel loads as dead or dying weeds require physical removal.

### *Burns*

Controlled burns are a method for reducing elevated fine fuels on roadsides. Controlled burns require accreditation, skill and care to conduct and require appropriate conditions which significantly limit the times when such controlled burns can occur. Councils typically do not have the expertise or the resources to conduct controlled burns, and the CFA has not conducted controlled burns on roadsides in many municipalities for a number of years. Possible reasons for the reluctance of the CFA to conduct controlled burns on roadsides include:

- heightened awareness of public liability;
- lack of resources and trained personnel;
- prolonged drought making safe burning difficult;
- community concerns associated with the road closures and smoke that accompany controlled burning;
- opposition from adjoining landowners; and
- the need for permits to remove native vegetation and the lack of data and knowledge about the species protected by the *Flora and Fauna Guarantee Act* and the *Environment Protection and Biodiversity Conservation Act*.

Issues in connection with controlled burns include smoke hazard to passing traffic and abutting land owners, the risks of burning beyond the intended area and causing property damage, the risk of a controlled burn becoming a wildfire, erosion of bare earth following burning, and the encouragement of fire tolerant weeds.

### *Pruning*

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Pruning and lopping is typically used by Councils on treed roadsides where roads are a fire break or to avoid trees being a hazard to road users. Pruning and lopping is a largely manual activity and is expensive.

#### *Firewood collection*

Collection of firewood from roadsides may reduce roadside fuel loads. However, the material collected is typically not fine fuel, and generally leaves and twigs are left behind. Further, the manner in which firewood is collected may involve fire hazards, for example, if chainsaws are used or if parking on verges is encouraged. As noted earlier in this Submission, some municipalities have local laws which regulate and require permission from Council before roadside firewood collection is permitted. Such local laws are also intended to protect against any adverse impact on the environment.

#### *Grazing*

Councils may also allow grazing on roadsides which serves as a method for reducing fuel loads in grassed areas. This is generally subject to a permit requirement under a local law. Grazing however does not necessarily lead to any particular fuel load reduction and the quality of roadside pastures vary considerably which impacts the extent to which grazing can occur. Roadsides often have weeds, which also limits the attractiveness of grazing.

## Specific Issues

### *Integrated Fire Management Planning*

There is no regulatory instrument that ensures co-operation amongst VicRoads, DSE and Councils in relation to fire management planning for roadsides. VicRoads is not a mandatory member of the MFPC. As a result, there may not be a coordinated approach to roadside fire prevention planning in a municipality.

The transition to IFMP as discussed earlier in this Submission may address this issue.

### *Roads Managed by Agencies*

VicRoads and DSE are responsible for roadside vegetation clearance activities alongside roads for which they are responsible. Councils have no power or authority to direct VicRoads or DSE as to the manner in which these agencies conduct roadside clearance activities on roads managed by them. Many of the roads managed by VicRoads and DSE are designated firebreaks.

Similar issues arise with rail authorities in that Councils cannot require VicTrack to carry out works on a rail reserve.

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## *Noxious and Environmental Weeds*

The legal responsibility for the control of noxious weeds on roadsides is unclear. This is because the *Catchment Land Authority Act* appears to impose concurrent responsibility on the roadside manager (such as a Council or VicRoads) and the owner of land adjoining the roadside to prevent the spread of regionally controlled weeds.

Noxious weed clearance is particularly resource intensive, so the lack of clarity around responsibility creates difficulties for Councils in prioritising and allocating their limited resources.

There is also no assigned statutory responsibility for the control of environmental weeds (for example, hakea and acacia) on roadsides.

## *Community Conflict*

There is often a conflict in approach between groups or individuals within the same municipality in relation to vegetation clearance on roadsides. Some members of the community oppose any clearance of native vegetation on roadsides on environmental or aesthetic grounds. Roadside clearance activities may be preceded by community consultation involving local residents, the CFA and others.

## *Managing Native Vegetation on Roadsides*

As discussed above, a range of laws require Councils to have regard to considerations apart from bushfire management. There is an inherent tension between preservation of native vegetation and fire prevention on roadsides. However, there is little legislative prescription or policy guidance for Councils in relation to resolving this tension.

The requirement to provide off-sets in relation to removal of native vegetation can give rise to significant difficulty in connection with roadside clearance activities because (amongst other things) there may be limited or non-existent availability of appropriate land or vegetation to enable a net gain to be achieved. This can be particularly acute in relation to native vegetation that is endemic to particular areas for which offsets may be difficult to obtain.

Council officers have been threatened with prosecution by DEWHA for a possible breach of the *Environment Protection and Biodiversity Conservation Act* in relation to roadside clearance activities.

Because of the difficulty in reconciling native vegetation with roadside clearance and the need for permits from the DSE under clause 52.17 of the VPPs, a pro forma agreement in relation to the public roads exemption was negotiated with DSE in April 2009.

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The pro forma agreement is intended to simplify the DSE permit process with respect to the public roads exemption in clause 52.17-6 of the VPPs for the safe and efficient function of a public road in accordance with the *Road Management Act*. The pro forma agreement specifies that maintenance activities include fire prevention maintenance. Its stated objective is:

*“To provide a common understanding of how the exemption will be implemented by DSE and LGAs, to ensure that roads are managed for their safe and efficient function, that administrative processes are streamlined, and that the objectives of the government’s policy for native vegetation are delivered. This Agreement outlines the exemption and the principles that have been developed to describe the shared areas of interest between the portfolios.”*

It is up to each Council to determine whether it enters into an agreement with DSE on the proposed terms. If a Council does not enter into an agreement with DSE, it must apply for a permit to clear vegetation on each separate occasion. The pro forma agreement states that the public roads exemption is subject to and separate from any permit required under the *Flora and Fauna Guarantee Act* and the *Environment Protection and Biodiversity Conservation Act*.

### **Exit Roads**

Exit roads raise complex issues that need to be considered in conjunction with the following considerations:

- determining which agency has responsibility for the identification of exit roads (as opposed to identification of strategic firebreaks or access roads for emergency vehicles);
- complete roadside clearing along lengthy and heavily tree-lined road corridors or bush tracks to avoid trees falling and blocking access and egress in the event of bushfire, or the widening of such roads, would be an enormous task and is not practicable for Councils, even when environmental issues and considerations as to whether or not those residents who choose to live adjacent to bush tracks favour such action, are put to one side;
- the timeliness and effectiveness of the communication of warnings of a bushfire by lead fire and emergency agencies;
- the impact of the “stay and defend or go early” policy which is predicated on keeping people off the roads during fires; and
- the level of personal bushfire planning and education required of those who choose to live in a secluded natural environment surrounded by native vegetation or on bush tracks or other roads which may only have one exit.

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## *Restoration*

The 2009 Bushfires caused significant damage to many roads in Victoria, including roads under the management of certain Councils. Such damage included the destruction of timber bridges and other infrastructure. This requires repair work to be carried out by Councils. Similarly, in a number of areas, significant erosion and land slippage along embankments is being experienced and needs to be addressed.

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## Section 5.8: Emergency Management, Response and Recovery

Councils are one of many stakeholders who play a role in emergency management, response and recovery.

As a support agency, the role of Councils is largely facilitative.

The pressures placed on all stakeholders by the 2009 Bushfires, and in particular by the fires on and following 7 February 2009, were extreme. Events of the kind experienced during and in the aftermath of the 2009 Bushfires necessarily resulted in a substantial drain on the limited resources of Councils, with the financial impact extending well beyond matters in respect of which the Victorian Government provides reimbursement.

Generally, under enormous pressure and resource constraints, Councils in the affected regions responded quickly and pro-actively in accordance with their municipal emergency planning protocols. The work done by a number of Councils was extensive and on-going for a lengthy period. This occurred despite complications and a level of confusion in many instances arising from the involvement and interaction of numerous State and Commonwealth agencies.

Certain issues arose in relation to emergency management response and recovery and deserve comment.

### Response

#### *Municipal Emergency Management Planning Committee*

Although the *Emergency Management Act* charges Councils to convene the MEMPC, it does not require participation in the process by the key agencies. As a result, attendance and involvement by various key agencies varied. Often this was overcome by existing personal relationships at the local level. However, an issue is whether attendance by agencies at the MEMPC should be made mandatory.

#### *Municipal Emergency Management Plans*

The *Emergency Management Act* does not prescribe the content of a MEMP. Although guidelines are issued and the plans are audited at regular stages by SES, there is no template for Councils to use. Councils often use local knowledge and customise a plan that is specific to the particular needs of a municipality. However the creation of a standard template for MEMPs would encourage consistency of approach and also facilitate the implementation of new approaches to emergency management across the 79 municipalities.

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## *Resources*

Only a few Councils are sufficiently resourced to have a full time MERO. Funding of a full time and properly trained MERO position for all Councils should be considered.

## *Lack of clarity of Councils' role in emergency management*

External agencies often misunderstand the role of Councils in emergency management.

Under the emergency management regime Councils are required to identify and supply Council resources for use in emergencies. However, external agencies often did not appreciate that this role is limited by available resources. Councils were therefore often requested to locate resources and undertake tasks beyond their own resources. This added to the strain on Councils, and has also resulted in some assets which were obtained from third parties not being returned.

Some agencies in some instances did not follow their own formal channels for requesting resources and used the MECC and Councils instead. This resulted in confusion and duplication of orders.

## *Communications between ICC and the MECC*

Communications between the MECC and the ICC is recognised as essential to the successful operation of the MECC.

For example, information on the location and spread of the fire from control agencies at the ICC such as CFA, DSE and Victoria Police is critical for Councils responding to requests for graders, bulldozers and other equipment. This equipment is required to enable CFA and DSE to create firebreaks ahead of the fire front.

It is also critical that a MECC has current information from the ICC to ensure that the relief centres are located in safe areas.

Difficulties were experienced by a number of MECCs with communications from their ICCs on and following the fires on 7 February 2009.

In some cases, the lack of information flowing from the ICC to the MECC was such that Councils sent personnel in cars and taxis to the ICC to gather information on the status of fires.

These difficulties with communications were for reasons including:

- the absence of an adequately trained and experienced CFA Liaison Officer as typically required under most Councils' MEMPs;

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- the absence of an adequately experienced Emergency Services Liaison Officer (“ESLO”) at the MECC (where experienced ESLOs were stationed at the MECC, the operation of the MECC was enhanced);
  - the physical distance, which was often considerable, between the MECCs and the ICCs; and
  - the varying quality of information relayed from the ICC which also diminished as the relevant officers at the ICC changed.

### *Communications Generally*

Communications was an issue experienced in many municipalities. This was due to factors including:

- the coverage of mobile telephone networks not extending to all areas;
- difficulties which arose in connection with fixed line services and the use of 000; and
- the reliability and timeliness of information from ABC Radio and the CFA and DSE websites in relation to the progression of the fires (which also impacted some MECCs).

Additional funding to Councils could be made available to further assist with communications between MECCs and ICCs. This funding could assist with the provision State-wide of:

- wireless broadband internet connections and laptops to ensure the MECC is portable at short notice and can access a variety of web based information;
- priority phone lines; and
- a supply of appropriate communication devices.

### *Recovery*

#### *Information sharing*

In the immediate aftermath of the bushfires there was a critical need to collate information and attend to the needs of displaced residents. During this period not all agencies or services shared relevant information with Councils. This led to the duplication of effort in information gathering, and delays in understanding community impacts and needs. As a result, frustration was experienced by residents and Council staff.

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There was no central database accessible to all relevant agencies that recorded the details of those impacted by the 2009 Bushfires. This resulted in bushfire victims having to provide their details on numerous occasions.

### *Lack of coordination with Councils*

There was a general lack of co-ordination between State and Commonwealth agencies and Councils which resulted in confusion and lack of continuity in service delivery in some cases to those impacted by the 2009 Bushfires.

In addition, for the first time Commonwealth and State Governments decided to implement a case management system in response to the 2009 Bushfires. This was implemented with little consultation with Councils. While generally beneficial, this case management system did not take into account the varying resources of Councils and recovery works already commenced by some Councils.

An issue therefore is whether greater focus should be placed on communication and co-ordination between State and Commonwealth agencies and Councils.

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## Section 5.9: Provision of information

Councils typically provide a large amount of information about bushfire preparedness to those who live and work within their municipalities.

This information can take the following forms:

- information, guidelines, FAQs and brochures on Council websites;
- links from Council websites to the websites and documents of the principal fire agencies in Victoria;
- brochures and other materials made available at Council offices;
- mail outs of brochures and information DVDs to residents prior to the commencement of the fire season; and
- assistance with information sessions typically conducted by the CFA.

Councils provide this information on a voluntary basis. In some cases, certain Councils have applied for and obtained State Government grants to undertake specific community education programs or to develop Council-specific bushfire strategies. However this funding is not available to all Councils as of right or automatically upon application.

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## Section 6: The Government's "Go Early or Stay and Defend" Policy, Fire Refuges, Public Bunkers and Evacuation

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### Section 6.1: Go early or stay and defend

The bushfire survival strategy of "*go early or stay and defend*" has been the longstanding preferred strategy of the Victorian Government and the CFA.

The Commission has indicated that the communication of warnings in the context of the "*go early or stay and defend*" strategy will be examined at an early stage of its inquiry.

The MAV and the Councils have no submission to make at this stage on this aspect of the "*go early or stay and defend*" strategy.

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## Section 6.2: Fire refuges

An issue related to the “*go early or stay and defend*” strategy is the provision of designated fire refuges. Whether fire refuges have a place in the overall scheme of emergency response to bushfires has been identified as a matter for consideration by the Commission. Fire refuges, and their role in Victoria’s Bushfire Management Regime, has been subject to consideration, recommendations and scrutiny in a number of previous published reports. These include (in more recent times):

- (a) the 1994 Report of the Bushfire Committee on Bushfire Disaster Preparedness and Response in Victoria following the Ash Wednesday Fires 16 February 1983;
- (b) the 1997 Dandenong Ranges Fires Inquiry by the Coroner;
- (c) the 2001 Fire Refuge Review by the multi-Agency Fire Refuge Review Working Party;
- (d) the 2003 Fire Prevention and Preparedness Report of the Auditor-General of Victoria; and, most recently
- (e) the 2005 Report entitled “Fire Refuges in Victoria - Policy and Practice” by the Victorian Emergency Services Commissioner (“**OESC Report**”).

A fire refuge is defined in the OESC Report as “a place designated for public use where people may seek short term shelter from the fire front during a bushfire”. A fire refuge is separate and distinct from a fire relief centre.

There is no legislative requirement upon Councils in Victoria to provide designated fire refuges in municipal areas.

The provision of designated fire refuges also is not part of standard bushfire policy in any other State of Australia.

In the 2003 *Fire Prevention and Preparedness Report*, the Auditor-General recommended that:

*“the Office of the Emergency Services Commissioner, in conjunction with the Country Fire Authority, the Department of Sustainability and Environment and Local Government urgently progress work on a consistent state wide position on fire refuges that incorporates a risk assessment process, standards for fire refuges and aligns with the policy position on evacuation.”*

The OESC Report was in response to this recommendation of the Auditor-General.

The OESC Report was released in October 2005, and followed an extensive public consultation period involving the issue of a Consultation Draft of the Report in May 2004. Numerous bodies and agencies contributed to the OESC Report, including the OESC, the CFA, the DSE, the MFB, Victoria Police, SES, MAV and certain Councils.

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The OESC Report:

- (a) did not advocate the use of designated fire refuges, and stated that there was no expectation that any particular part of Victoria will or will not have fire refuges;
- (b) confirmed the Victorian Government's policy that the primary strategy for people exposed to bushfire is to *stay and defend or leave early*, and that neither the OESC Report nor any policy of the Victorian Government required Councils to identify, designate and/or retain fire refuges;
- (c) expressed concerns that travelling to a fire refuge during a bushfire might result in people going towards a fire front thereby increasing the danger confronting them;
- (d) identified the primary considerations in relation to the establishment of fire refuges and the decommissioning of them in any particular area as being:
  - (i) that they are capable of undermining the Government's primary strategy for people exposed to bushfire, namely to stay and defend or to leave early;
  - (ii) construction standards and methods of operation; and
  - (iii) the legal risks and obligations incurred by refuge providers, including the lack of any legislative immunity from action;<sup>96</sup>
- (e) stated that the provision of a fire refuge is a municipal decision involving all relevant community stakeholders and agencies, to be based on the rare and exceptional circumstances where other bushfire safety strategies are less effective;
- (f) stated that the decision-making process as to whether or not to have fire refuges should be based on a consideration of all the relevant issues, including the Government's primary bushfire strategy, as well as financial, operational, and legal risk considerations; and
- (g) set out performance criteria to be applied to any designated fire refuges.

The performance criteria to be applied to and met by any designated fire refuges as set out in the OESC Report include:

- (a) *siting and fuel management*, including that if a refuge is an area of open space where shelter is recommended, it must be clear of combustible material between that place and vegetation by reference to the height of vegetation and the distance between the place and the vegetation;
- (b) *design and construction*, including that if a refuge is a building, it must meet all relevant Building Regulations, including the Australian Standard AS 3959-1999 *Building in Bushfire Prone Areas*;

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- (c) *the availability of water and fire fighting equipment*, including that the refuge must have equipment and water provided to enable the public and/or fire service to extinguish ember ignitions on and around the refuge (for example, an identified static water supply of at least 10,000 litres solely for fire fighting purposes);
  - (d) *capacity, availability and access*, including that the fire refuge must be able to provide shelter for the expected number of attendees at all times that there is the potential for a significant bushfire in the area, with local residents, seasonal tourists, and workers not resident in the area being taken into account and car parking being provided, and with designated levels of access to the building or area from any roadway;
  - (e) *facilities*, including that the conditions of the fire refuge should not be detrimental to the health of people who remain at the refuge for several hours;
  - (f) *assessment of compliance with criteria by an expert team* including a Municipal Building Surveyor, a MFPO, the relevant CFA Manager - Community Safety, and others;
  - (g) *maintenance of fixed performance*, including annual inspections opening in that if a fire refuge's safety performance requires it to be opened, it must be opened if there is a fire in the area, and the relevant management committee/body must determine the method for ensuring the fire refuge is opened;
  - (h) *the provision of information/advice/instructions for users*, including basic guidelines for appropriate actions to be taken by people sheltering at the fire refuge;
  - (i) *attendance by a fire crew*, if possible; and
  - (j) *a governance and management structure* for the fire refuge, including a fire refuge management committee.

The OESC Report also identified further issues in relation to fire refuges that might be located on Crown land, on State Government property including schools, and on private property.

By reason of the issues of the kind identified in the OESC Report, and in light of the mandated requirements for fire refuges in the OESC Report and in draft guidelines released previously, there has been a general move away from the provision by Councils of designated fire refuges in municipal areas. Whilst in some municipalities there are designated fire refuges which typically are referred to and specified in MFPPs and/or MEMPs, in most municipalities there are no designated fire refuges operated by Councils. In many municipalities fire refuges which existed in the past have been decommissioned.

The general move away from the provision by Councils of designated fire refuges primarily has been due to factors including:

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- (a) the inconsistency of fire refuges with the *stay and defend or leave early* strategy, with designated fire refuges having the propensity to encourage people to leave their homes late, potentially increasing risk to their personal safety;
  - (b) the increased risk to personal safety unless fire refuges are located close to communities that move to them in the event of a fire;
  - (c) the exposure of Councils to legal liability by designating venues as fire refuges, and the failure of the State Government to provide any immunity from action;
  - (d) the failure or inability of existing fire refuges to meet the standards for fire refuges mandated in the OESC Report; and
  - (e) the cost that would be involved in making buildings compliant with the mandated standards, or of replacing buildings with new compliant facilities, and the absence of any State Government funding for such work.

Any consideration of whether fire refuges should have a place in the overall scheme of emergency response to bushfires in Victoria will need to take into account each of the matters referred to in the discussion above.

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## Section 6.3: Public Bunkers

One possible form of fire refuge is a public bunker. Bunkers have attracted some coverage in the media since 7 February 2009. The issues identified above apply to bunkers just as they do to other forms of fire refuges (such as open space areas and buildings). In addition, any consideration of whether public fire refuge bunkers should be constructed in any area of Victoria would need to take into account issues including:

- (a) the building standards that are to be applied;
- (b) the location, and in particular in which communities a bunker should be constructed and where such bunkers should be located;
- (c) the financial impact and burden of constructing bunkers;
- (d) issues of maintenance and security, particularly given that particular bunkers are likely to be rarely used, if at all;
- (e) the accommodation capability of any bunker; and
- (f) the decision-making process that is to be applied when the bunker is full (and the procedure that is to be followed if more people seek refuge in the bunker than can be safely accommodated).

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## Section 6.4: Evacuation

Another issue related to the “*go early or stay and defend*” policy which has been identified by the Commission is the alternative strategy of mandatory evacuation.

Any consideration by the Commission of evacuation as a form of bushfire strategy would raise a number of issues, including:

- (a) the need for an effective State-wide emergency warning system, which copes with bushfires moving at significant speeds, and which reaches all those who are to be evacuated;
- (b) the need for logistical processes to be developed for the State, which would cater for evacuations of potentially many thousands of people from many municipalities using nominated safe evacuation routes and identifying appropriate safe gathering points;
- (c) whether Victoria has an existing road network and the infrastructure capable of supporting large scale evacuations;
- (d) the threshold risk level at which evacuation is to be implemented would need to be clearly defined, and clearly communicated to and understood by the community; and
- (e) the evacuation authority with responsibility for co-ordinating an evacuation would need to be specified.

Councils would not be in a position to act as an evacuation authority or otherwise co-ordinate an evacuation because, amongst other things:

- (a) fires do not respect municipal boundaries, and evacuation may involve people from more than one municipality;
- (b) Councils are not linked to official communication and warning channels;
- (c) the evacuating authority would be likely to face resistance from people wishing to stay and defend their homes, and Councils would not be considered to have the same coercive power as, for example, Victoria Police or other emergency services agencies;
- (d) Councils are not sufficiently trained and do not have the required specialist knowledge to nominate safe evacuation routes and gathering points; and
- (e) Councils do not have the number of personnel or vehicle fleets to assist with evacuations at short notice.

## Glossary of Terms and Abbreviations

Abbreviation	Term
Aboriginal Heritage Act	<i>Aboriginal Heritage Act 2006</i>
Catchment and Land Protection Act	<i>Catchment and Land Protection Act 1994</i>
Catchment and Land Protection Act	<i>Catchment and Land Protection Act 1994</i>
Conservation, Forests and Lands Act	<i>Conservation, Forests and Lands Act 1987</i>
Constitution Act	<i>Constitution Act 1975</i>
Country Fire Authority Act	<i>Country Fire Authority Act 1958</i>
Electricity Safety Act	<i>Electricity Safety Act 1998</i>
Emergency Management Act	<i>Emergency Management Act 1986</i>
Environment Protection and Biodiversity Conservation Act	<i>Environment Protection and Biodiversity Conservation Act 1999 (Cth)</i>
Flora and Fauna Guarantee Act	<i>Flora and Fauna Guarantee Act 1988</i>
Forests Act	<i>Forests Act 1958</i>
Forests and Lands Act	<i>Forests and Lands Act 1987</i>
Infringements Act	<i>Infringements Act 2006</i>
Local Government Act	<i>Local Government Act 1989</i>
Metropolitan Fire Brigades Act	<i>Metropolitan Fire Brigades Act 1958</i>
Monetary Units Act	<i>Monetary Units Act 2004</i>
National Parks Act	<i>National Parks Act 1975</i>
Planning and Environment Act	<i>Planning and Environment Act 1987</i>
Road Management Act	<i>Road Management Act 2004</i>
Safety on Public Land Act	<i>Safety on Public Land Act 2004</i>
Victorian Plantations Corporation Act	<i>Victorian Plantations Corporation Act 1993</i>
Building Regulations	<i>Building Regulations 2006</i>
Electricity Safety (Electric Line Clearance) Regulations	<i>Electricity Safety (Electric Line Clearance) Regulations 2005</i>
Building Amendment (Bushfire Construction) Interim Regulations	<i>Building Amendment (Bushfire Construction) Interim Regulations 2009</i>
AS - 3959 - 1999	Australian Standard 3959 - 1999 Construction of Buildings in Bushfire - Prone Areas

Abbreviation	Term
AS - 3959 - 2009	Australian Standard 3959 - 2009 Construction of Buildings in Bushfire - Prone Areas
BPA	Bushfire Prone Areas
CFA	Country Fire Authority
CMA	Catchment Management Authority
DEWHA	Department of Environment, Water, Heritage and the Arts
DHS	Department of Human Services
DPCD	Department of Planning and Community Development
DSE	Department of Sustainability and Environment
ESO	Environmental Significance Overlay
FPN	Fire Prevention Notice
Framework	Native Vegetation in Victoria: A Framework for Action (2002)
HVP	Hancock Victorian Plantations
ICC	Incident Control Centre
IFMP	Integrated Fire Management Plan
LPPF	Local Planning Policy Framework
LSIO	Land Subject to Inundation Overlay
MAV	Municipal Association of Victoria
MECC	Municipal Emergency Coordination Centre
MFB	Metropolitan Fire Brigade
MFPC	Municipal Fire Prevention Committee
MFPO	Municipal Fire Prevention Officer
MFPP	Municipal Fire Prevention Plan
MRM	Municipal Recovery Manager
MSS	Municipal Strategic Statement
OESC	Office of Emergency Services Commissioner
Parks Vic	Parks Victoria
SERP	State Emergency Response Plan
SLO	Significant Landscape Overlay
SPPF	State Planning Policy Framework
VPC	Victorian Plantations Corporation
VPO	Vegetation Protection Overlay
VPP	Victorian Planning Provisions
WMO	Wildfire Management Overlay

## Footnotes and References

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- <sup>1</sup> Section 74A(1) of the *Constitution Act*. See also Section 3B of the *Local Government Act*.
- <sup>2</sup> See also section 3A of the *Local Government Act*.
- <sup>3</sup> Section 3C of the *Local Government Act*.
- <sup>4</sup> See [www.localgovernment.vic.gov.au](http://www.localgovernment.vic.gov.au).
- <sup>5</sup> Section 18 of the *Emergency Management Act* is illustrative in this respect.
- <sup>6</sup> See, for example, section 83(a) of the *Wrongs Act 1958* which recognises that “the functions required to be exercised by [local governments] are limited by the financial and other resources that are reasonably available to the authority for the purpose of exercising those functions”.
- <sup>7</sup> Sections 208B and 208C of the *Local Government Act*.
- <sup>8</sup> See sections 156 to 158 of the *Local Government Act*.
- <sup>9</sup> See Report of the Auditor-General (Victoria), *Fire Prevention and Preparedness* (2003), p 4. See also *Report of the Inquiry into the 2002-2003 Victorian Bushfires* at [3.66].
- <sup>10</sup> See Report of the Auditor-General (Victoria), *Fire Prevention and Preparedness* (2003), p 24.
- <sup>11</sup> Section 14 of the *Country Fire Authority Act*. See also section 7 of the *Country Fire Authority Act* which provides that the Country Fire Authority is an Authority constituted for the “more effective control of the prevention and suppression of fires in the country area of Victoria”.
- <sup>12</sup> Section 20AA of the *Country Fire Authority Act*.
- <sup>13</sup> Section 23 of the *Country Fire Authority Act*.
- <sup>14</sup> Section 29(d) of the *Country Fire Authority Act*.
- <sup>15</sup> Section 27 of the *Country Fire Authority Act*.
- <sup>16</sup> Section 40 of the *Country Fire Authority Act*.
- <sup>17</sup> Section 42 of the *Country Fire Authority Act*.
- <sup>18</sup> Section 44 of the *Country Fire Authority Act*.
- <sup>19</sup> Section 46 of the *Country Fire Authority Act*.
- <sup>20</sup> Sections 52-55 of the *Country Fire Authority Act*.
- <sup>21</sup> Section 55 of the *Planning and Environment Act*.
- <sup>22</sup> Rule 804 of the *Building Regulations*.
- <sup>23</sup> Sections 80 and 87 of the *Electrical Safety Act*.
- <sup>24</sup> This is subject to the proviso that “...in any national park or protected public land proper and sufficient work for prevention of fire shall be undertaken only by agreement with the person or body having the management and control thereof and in case of failure to reach any such agreement as determined by the Governor in Council whose determination shall be final and conclusive”.
- <sup>25</sup> Section 63 of the *Forests Act*.
- <sup>26</sup> Section 65(1) of the *Forests Act*.
- <sup>27</sup> Section 68(b) of the *Forests Act*.
- <sup>28</sup> Section 62A of the *Forests Act*.
- <sup>29</sup> Section 62C of the *Forests Act*.
- <sup>30</sup> Section 4 of the *Safety on Public Land Act 2004*.
- <sup>31</sup> Section 21D of *National Parks Act 1975*.
- <sup>32</sup> A prohibited period is declared by the DSE under section 64 of the *Forests Act*. No fires, other than campfires, may be lit on DSE Land (or land within 1.5km of DSE Land) without a permit or authority from DSE. Total fire ban days are declared by the CFA pursuant to section 40 of the *Country Fire Authority Act* in consultation with DSE. DSE

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may issue permits under section 40(5)(c) of the *Country Fire Authority Act* for some works to be carried out on DSE Land on total fire ban days.

33 Department of Sustainability and Environment, *Code of Practice for Fire Management on Public Land, Revision No 1* (2006).

34 Section 54(2)(3) of the *Country Fire Authority Act*.

35 CFA, *Municipal Fire Prevention Planning Guidelines* (2003).

36 Section 41F of the *Country Fire Authority Act*.

37 Section 83A of *Electricity Safety Act*.

38 For example, the Minister for Planning is the responsible authority and planning authority for the unincorporated territories of French Island and Sandstone Island. These islands do not fall within any municipal boundary.

39 *Native Vegetation Management - A Framework for Action* (2002), Department of Natural Resources and Environment, page 9.

40 *Native Vegetation Management - A Framework for Action* (2002), Department of Natural Resources and Environment, page 9.

41 *Native Vegetation Management - A Framework for Action* (2002), Department of Natural Resources and Environment, page 5.

42 Section 18 of the *Forests Act*.

43 Section 22 of the *Forests Act*.

44 Section 4 of the *Flora and Fauna Guarantee Act*.

45 Section 4(2) of the *Flora and Fauna Guarantee Act*.

46 Section 46 of the *Flora and Fauna Guarantee Act*.

47 Section 47 of the *Flora and Fauna Guarantee Act*.

48 Section 20 of the *Catchment and Land Protection Act*.

49 Section 37 of the *Catchment and Land Protection Act*.

50 Section 3 of the *Catchment and Land Protection Act*.

51 Section 3, definition of "land owner" in the *Catchment and Land Protection Act*, which incorporates the definition of land owner in s.3 *Conservation, Forests and Lands Act*

52 Clause 52.17-1 VPPs.

53 Clause 52.17-5 VPPs.

54 Clause 66.02-3 VPPs.

55 Section 56 of the *Planning and Environment Act*.

56 Section 61(2) of the *Planning and Environment Act*.

57 Section 62(1)(a) of the *Planning and Environment Act*.

58 The sharing of responsibilities with respect to roads, and the costs associated with fire prevention works on roads in particular, is recognised in section 43(3) of the *Country Fire Authority Act*.

59 Sections 1 - 4 of the *Road Management Act*.

60 Section 24 of the *Road Management Act*.

61 Section 37(1)(a) of the *Road Management Act*.

62 Section 14(3) of the *Road Management Act*.

63 Section 36(a) of the *Road Management Act*.

64 Section 36(b) of the *Road Management Act*.

65 See Second Reading Speech, page 293.

66 Section 20(1) of the *Road Management Act*.

67 Section 20(2) of the *Road Management Act*.

68 Second Reading Speech, page 292.

69 Section 49 of the *Road Management Act*.

70 Under section 50 of the *Road Management Act*, where a Council proposes to adopt a road management plan, it must follow a specified procedure of publication and a 28 day submission period.

71 Code of Practice for Road Management Plans (16 September 2004).

72 Section 105 of the *Road Management Act*.

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73 Section 34 of the *Road Management Act*.  
74 Section 38 of the *Road Management Act*.  
75 Section 62(2) of the *Forests Act*.  
76 Section 33(1)(a) of the *Country Fire Authority Act*.  
77 DSE Code of Practice for Fire Management on Public Land.  
78 Part 7 Emergency Management Manual Victoria.  
79 Part 7 Emergency Management Manual Victoria.  
80 Section 33 (2)(a) of the *Country Fire Authority Act*.  
81 Section 33(1)(a) of the *Country Fire Authority Act*.  
82 Section 33(2)(b) and (c) of the *Country Fire Authority Act*.  
83 Section 30(1) of the *Country Fire Authority Act*.  
84 Section 4 of the *Metropolitan Fire Brigades Act*.  
85 Section 55E of the *Metropolitan Fire Brigades Act*.  
86 Section 16 *Emergency Management Act*.  
87 Section 8 of the *Emergency Management Act*.  
88 Section 6 of the *Emergency Management Act*.  
89 Section 21(3) of the *Emergency Management Act*.  
90 Section 20 of the *Emergency Management Act*.  
91 Section 21(1) of the *Emergency Management Act*.  
92 CFA Building In a Wildfire Management Overlay Applicants Kit 2007.  
93 These provisions include the Environmental Significance Overlay (clause 42.01);  
Vegetation Protection Overlay (clause 42.02); Significant Landscape Overlay (clause  
42.03); Heritage Overlay (clause 43.01); Native Vegetation (clause 52.17 and clause  
62); Public Acquisition Overlay (clause 45.01)  
94 Sections 41-41D of the *Country Fire Authority Act*.  
95 Section 41F of the *Country Fire Authority Act*.  
96 Proposals have been put to the State Government that an appropriate immunity or  
indemnity in favour of Councils in relation to the provision of fire refuges should be  
incorporated in the *Emergency Management Act*. This was recommended by the Fire  
Refuge Review Working Party in 2001. However no such legislative immunity has been  
enacted.