



**CITY OF
BALLARAT**

Ballarat Planning Scheme Applying Amendment VC 53 to Council projects

**Planning and Development
(Statutory Planning & Building)**

**BALLARAT CITY COUNCIL
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1 DOCUMENT CONTROL INFORMATION

DOCUMENT CONTROL

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	Version	Date	Author
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Review Draft			
Review Final			
Approved			

2 POLICY STATEMENT

Legislative Context:

On 23 February 2009 the State Government approved amendment VC 53 to all Victorian Planning Schemes; and this policy outlines the implications for Council arising from the amendment.

The amendment of VC 53 has two parts:

- A *Bushfire Recovery Clause* (Clause 52.38) that applies to use or development of land carried out for the purposes of bushfire recovery. Subject to certain requirements being met, a planning permit is not required; and
- A *planning permit exemption for municipal development* (Clause 62.02) for buildings and works with an estimated cost of \$1 million or less carried out for or on behalf of a municipal Council.

The first part has minimal application in Ballarat as the only fire recorded in the municipality was a grass shrub fire of ~4 ha near Dereel. The exemptions under this Clause relate to works, vegetation removal and signage relating to bushfire recovery carried out and completed prior to 31 March 2010.

The second part has implications for Council projects.

3 OWNER

The owner of this policy is the Chief Executive Officer.
All enquiries regarding this policy should be initially directed to the Manager Statutory Planning and Building.

4 APPLICABILITY

Amendment VC 53 applies to:

- Buildings and works with an estimated cost of \$1 million or less carried out for or on behalf of a municipal Council (*planning permit exemption for municipal development* (Clause 62.0)) and;
- Use or development of land carried out for the purposes of bushfire recovery (*Bushfire Recovery Clause* (Clause 52.38)) that applies to. Subject to certain requirements being met, a planning permit is not required.

This policy relates only to the Buildings and works exemptions for Council projects with an estimated cost of \$1 million or less carried out for or on behalf of a municipal Council.

5 DEFINITIONS

Definitions are as per the Planning and Environment Act and the City of Ballarat Planning Scheme.

6 PROCEDURE AND GUIDANCE NOTES

Requirements:

The exemption only applies to projects that would have required a planning permit for buildings and works in the Ballarat Planning Scheme. The amendment does not exempt Council from the requirement to obtain a planning permit (if required by the Planning Scheme) for:

- Land Use
- Subdivision of Land
- Particular Provisions such as car parking, signage and native vegetation removal.

The exemption has implications where a planning permit is not required by the Planning Scheme for the use of the land but a zone and / or overlay triggers a requirement for a planning permit for building and works. This exemption will now exempt buildings and works carried out by or on behalf of a municipality from requiring planning approval where the cost is \$1 million or less.

Here are some examples that explain the nature of the new exemption:

Public Use Zone 6 – Local Government

The Zone applies to Council owned properties and buildings. Council does not require a planning permit to use the land for municipal purposes, and therefore buildings and works do not require a planning permit.

The exemption is not relevant in these situations as no planning permit is currently required.

Affect of an Overlay

If an “Overlay” however exists over the Public Use Zone 6, a planning permit may be required to carry out buildings and works.

This situation applies to the Heritage, Design & Development, Environmental Significance, Significant Landscape, Erosion Management, Salinity Management, Floodway, Land Subject to Inundation, Wildfire Management, Airport Environs and Public Acquisition Overlays.

The exemption created under this amendment would apply if the project estimate was \$1 million or less to the need for such a permit bypass.

Other Zones

Council also undertakes projects involving buildings and works where the zoning of the land is not within the Public Use Zone 6. A number of potential scenarios apply:

- In certain Zones, the same situation applies as in the PUZ 6. Where the use of the land does not require a planning permit under the zone, buildings and works do not require a planning permit.

This situation applies to the Residential, Low Density Residential, Mixed Use, Township, Rural Living, Rural Conservation, Farming and Road Zones.

The exemption would not be relevant in these situations as no planning permit is currently needed.

- Where the use of the land does require a planning permit under those zones, a planning permit is also required for buildings and works. If the use has previously been approved, or has existing use rights, a planning permit for use would not be required. If not, a planning permit would need to be obtained for use of the land.

In both of these situations, the exemption from obtaining a planning permit for buildings and works created under this amendment would apply if the project estimate was \$1 million or less.

- In other Zones, the situation is different. Irrespective of whether the use of the land requires a permit under the Zone, a planning permit is required for buildings and works.

This applies to the Business and Industrial Zones.

The exemption would apply if the project estimate was \$1 million or less.

- There are also zones that exempt specific buildings and works and works from requiring a planning permit.

This applies to the Public Park & Recreation and Public Conservation & Resource Zones.

The exemption is not relevant in these situations as no planning permit is currently required.

Implications for Council

Council will audit all current projects in terms of the provisions of Amendment VC 53 and establish if a planning permit is still required.

Different situations may apply to current and proposed Council projects in relation to planning permits:

- There may be some projects where a planning permit application has been lodged but not decided. If the project is not covered by the new exemption due to either the nature of the proposal or the development estimate, these projects should continue through the planning process;

- There may be some current planning permit applications for buildings and works that have become exempt as a result of Amendment VC53. These applications should be withdrawn from the planning process immediately. A planning permit cannot be issued if a planning permit is not required. Subject to the nature and sensitivity of the project, and the stage of the planning process reached, consultation with relevant parties or the community may be necessary / desirable (refer below).
- Projects in the pipeline that will still require a planning permit despite the new exemptions should continue as normal through the planning permit application process.
- Projects in the pipeline that will no longer require a planning permit due to the new exemptions. Council should consider whether the nature and sensitivity of the project suggests consultation with relevant parties or the community may be necessary / desirable (refer below).

As part of the audit, a review of current Council processes relating to the need for a planning permit for Council projects has been undertaken and this policy outlines alternate procedures to be used for consultation on these projects.

Council is the Responsible Authority for planning permit applications. Whilst the intent of exemptions in Amendment VC53 is to allow fast tracking of key building projects, it is important that in moving forward with significant projects that Council not erode the purpose and integrity of planning controls (despite being exempt from requiring a planning permit).

For example, in sensitive areas such as those affected by the Heritage Overlay, Council projects involving buildings and works that do not require planning approval are expected to still achieve the relevant objectives of the overlay, such as ensuring the proposal will protect and enhance heritage places and ensuring developments do not adversely affect the significance of heritage places.

A communication plan / information process is to be used in these instances. The scope of the consultation is outlined in this policy based on the likely extent of works . This is to ensure that new buildings and works positively affect not only individual sites and buildings but also precincts with multiple land owners.

The consultation process will also minimise the potential for community perception of there being different sets of rules, one for Council projects and another for everyone else. In other overlay areas the need to no longer get a permit results in the formal process for referral being unnecessary. This policy ensures that referral still occurs as this will allow other factors such as risk and design matters to be accurately established.

Staging of Projects in excess of \$1 million

The \$1 million cap on exempted projects raises the issue of how to treat staged projects where individual stages are estimated at \$1 million or less but the total cost is greater than \$1 million.

Where a project has clearly identified discrete stages; the value of the works should be determined based on the confirmed available funding at the time of assessment. For example a project may identify a package of upgrading works valued at \$2 Million to a heritage site in a conservation management plan. However current budget processes only

identifies \$750,000 as available to commence this list. The value of the project would therefore be considered as \$750,000.

Assessment of Council Projects

In order to protect integrity of the Ballarat Planning Scheme, ensure that Council is engaging its residents and to minimise the risk of future liability claims in relation to planning matters, this policy will be used to assess if a Council project requires planning approval or if the buildings and works are exempt from requiring planning approval. The following steps will be applied:

1. Details of each project will be submitted to the Statutory Planning Department for comment in order for the relevant process to be identified. Council projects will generally fall into one of three scenarios. Some projects will still require planning approval whilst some projects involving minor works will be exempted by the Planning Scheme and others will be exempted by the introduction of Amendment VC 53. Diagram 1 contains a Flow Diagram identifying how each scenario fits into the planning process.

Table1 contains a summary of the process to be followed for each of the identified scenarios.

Appendix A provides a template for Council Staff to use to refer the development to the Statutory Planning Department for advice. This template may be refined through ongoing use.

2. Where a project is identified as not requiring a planning permit due to Amendment VC53, a consultation plan associated with proposed works will be developed in accordance with Table 2.

Diagram 1 – Flow Chart

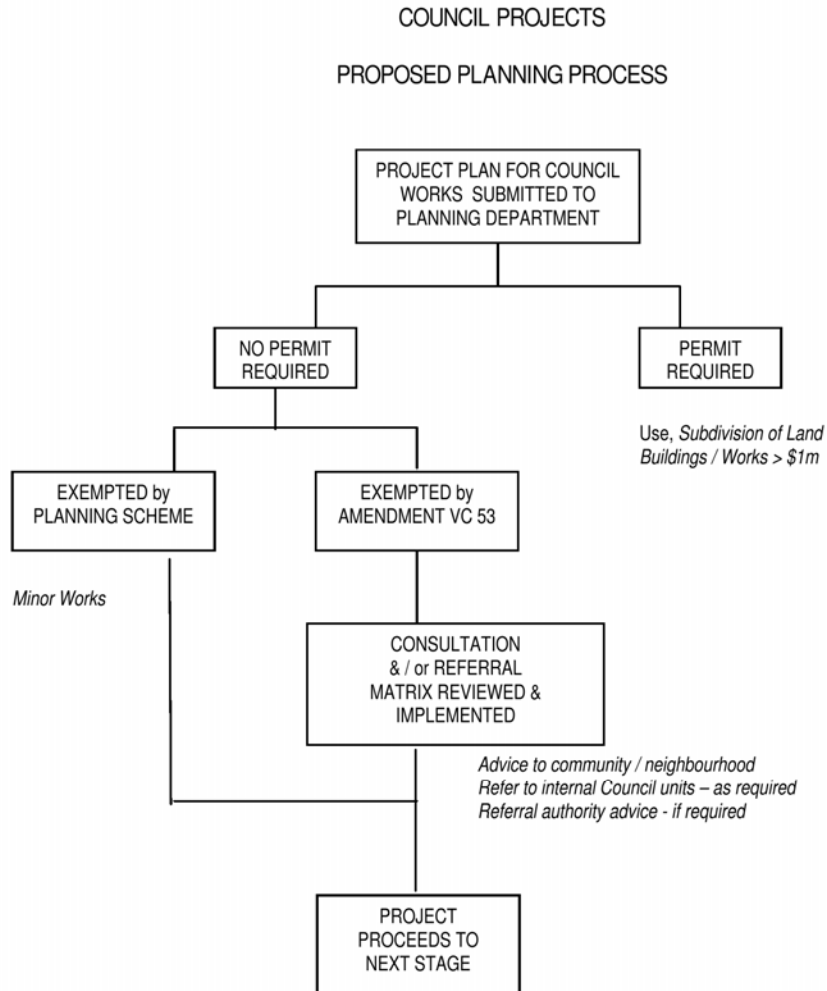


Table 1 – Process Description

Scenario	Scenario Description	Process
1	Planning approval still required	Applications will be subject to the usual planning permit process. Referral and Notice requirements are specified in the Ballarat Planning Scheme.
2	No planning approval was required prior to Amendment VC 53.	<p>This would apply to any proposal that are currently exempt from requiring planning approval by the Planning Scheme, generally limited to minor works (e.g. Playground equipment occupying up to 10 m² of parkland in the Public Park and Recreation Zone where there are no overlays).</p> <p>No consultation currently takes place and due to the limited extent and minor nature of works currently exempted by the Scheme, there is no identified need to introduce consultation at this time.</p>
3	No planning approval required due to exemptions introduced in Amendment VC 53.	<p>This scenario applies to any proposal where the sole reason planning approval is not required is the exemption created in Clause 62.02-1 of the Ballarat Planning Scheme introduced by Amendment VC 53.</p> <p>To ensure that the integrity of planning controls is protected Council projects will be assessed by the Statutory Planning Department. Views will be sought from Council planners (of which there may be a designated officer(s) to streamline the process) and other internal officers / departments as appropriate.</p> <p>Council will also discuss proposals with the respective external referral agencies under any relevant Overlay. This will protect Council to ensure that any works carried out in areas affected by overlays don't create liability or other issues.</p> <p>Council will undertake informal notification process for such works were comments can be received and considered from the general public, though obviously as no permit is required Council would be the sole arbitrator as to whether and in what form works take place, and there would be no third party appeal rights.</p>

Table 2 – Consultation & Referral Process

Note: where more than one category applies measures suggested are concurrent

Category	Reponses	Actions from Comments
1. Planning scheme identifies that works would previously have required referral to external agencies under Section 52 or 55	Refer to relevant agency/ies seeking comment	Reponses incorporated into design by Project Manager, or negotiated by Project Manager/ Relevant Director, with referral agency/ies.
2. Works estimated to be under \$250,00 in value	Letter to surrounding land holders advising of project and seeking feedback on concerns within 10 business days	Project Manager liaises with those making comments to establish if concerns can be resolved. If not, Director determines course forward for project.
3. Works between \$250,000-\$500,000	<p>a. Letter to surrounding land holders advising of project and seeking feedback on concerns within 10 business days</p> <p>b. Advertising of project in local papers seeking comments from the broader community within a minimum of 10 business days</p>	<p>Project Manager liaises with those making comments to establish if concerns can be resolved.</p> <p>If not resolved, CEO determines course forward for project.</p>
4. Works between \$500,001-\$999,999	<p>a. Letter to surrounding land holders advising of project and seeking feedback on concerns within 10 business days</p> <p>b. Advertising of project in local papers seeking comments from the broader community within a minimum of 10 business days</p> <p>c. Community information sessions held to provide</p>	<p>Project Manager liaises with those making comments to establish if concerns can be resolved.</p> <p>If not resolved, Council determines course forward for project through it's meeting processes</p>

	information on project during the timeline of Action b above	
5. Works on Council sites or reserves where there are lessees or regular user groups	Letter to the lessees or user groups advising of project & seeking feedback on concerns within 15 business days	Response depends on value of works – refer to Categories 2-4 above

Notes

- a. Standard templates for letters, newspaper notices and community information sessions together with acknowledgement & response forms to submitters are to be developed for Council use.
- b. Where planning for the project has already involved consultation consistent with that identified in Categories 2-5 in the last 12 months only advice to say works are proceeding to relevant parties is required.

7 COMPLIANCE RESPONSIBILITIES

The Manager Statutory Planning and Building is responsible for all aspects of compliance within this policy.


8 CHARTER OF HUMAN RIGHTS COMPLIANCE

It is considered that this policy does not impact on any human rights identified in the Charter of Human Rights Act 2007

9 REFERENCES AND RELATED POLICIES

	Include - Name, Reference and location of reference
Acts	PLANNING AND ENVIRONMENT ACT, 1987
Regulations	
Codes of Practice	
Guidance notes	
Australian Standards	
Related Policies	PRELIMINARY CONFERENCE POLICY

Appendix A

 <p>CITY OF BALLARAT</p>	<u>PROJECT SUMMARY PLAN & PLANNING REFERRAL</u>	
	<input type="checkbox"/> Capital	<input type="checkbox"/> Other _____
Project Title:		Date Prepared: / /
Total Project Budget		
Project Manager:		Project Support Officers:
Estimated Start Date: / /		Estimated End Date: / /
Project Description (What & Where): Nature of Project: Location of Works: (Please attach plans of location & development proposed)		
Project Purpose/Objectives (Why): 		
Project Outcomes/Deliverables/Benefits (What will happen): 		
Key Stakeholders & Consultation Process to date (Who & How): 		
Project Constraints/Limitations/Risks (Issues): 		
General Comments: 		



PLANNING ASSESSMENT - INTERNAL OFFICE USE ONLY

A. Zoning _____
B. Overlays _____

1. Permit is required: Use
 For Subdivision
 Based on Value of Building & Works > \$ 1 Million
2. No Permit required as: Exempted by Zone/Overlay
 Exempted by VC53/Clause 62
3. Relevant consultation & referral:

Community

- Surrounding landholders (attached list)
 Community groups using site -establish with Property & Recreation
 General community through newspaper advertising
 Community information session

Referral

Section 52 **Section 55** **Other**

VicRoads	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dept Sustainability & Environment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Central Highlands Water [.....]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Catchment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Education Department	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Environmental Protection Authority	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
VicTrack	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Telstra	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tenix	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Powercor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Country Fire Authority	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Heritage Victoria	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Aboriginal Affairs Victoria	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dept of Human Services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Victoria Police	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Southern Rural Water	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Department of Infrastructure	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Goulburn Murray-Water	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other -	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other -	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Prepared By _____	Date _____
Checked By _____	Date _____