



VNPA response to the Final Report of the 2009 Victorian Bushfires Royal Commission

Issue: Planning & Native Vegetation

Summary of Environment Groups' response

Environment groups support the Commission's recommendations 48-55, which incorporate a strategic approach to fire planning tools, importantly integrating biodiversity considerations early in the planning process. However, the recommendations most relevant to conservation concerns are numbers 37-46, which deal with planning and native vegetation controls.

There are four areas of interest:

- Strengthened planning controls and the 10/30 rule
- Community planning information and mapping
- Native vegetation offsets
- Resettlement or the public land consolidation strategy

The VNPA supports the Commission's proposal to abolish the 10/30 rule, and its proposal for strengthened planning controls which take into account both biodiversity and fire risk. A collective vegetation offset scheme was also recommended, and this could be useful for small block owners or existing dwellings in high fire risk areas if it has additional transparency provisions and clearer criteria. There is also merit in developing a public land consolidation strategy, on a voluntary basis.

The Commission's Summary Report said:

"Fire is an integral part of the Australian environment, and the states in the south-east are most prone to bushfires. The risks associated with bushfires are also potentially increasing as a result of population growth in the rural-urban interface and the probable effects of climate change. The result is that, although it might be possible to reduce the number of severe fires and to be better prepared for fire, bushfire will never be eliminated from the Australian landscape."(page13)

The approach the Commission proposes acknowledges the complexity of the planning system and seeks to strengthen consideration of bushfire throughout the planning process by giving greater recognition to bushfire risk without imposing unacceptable biodiversity costs. (page 14)

This is the most effective way of maintaining the capacity to assess each development on its merits, while ensuring that such assessment attaches sufficient weight to the risk and impacts of bushfire.



The Commission therefore proposes that the Victoria Planning Provisions relating to bushfire and the CFA guidelines for assessing permit applications in areas of high bushfire risk be amended in order to give priority to protecting human life and to ensure that development does not occur in areas in which either the bushfire risk or the environmental cost of making people safe is too high.

In addition, the Commission makes detailed proposals about the planning regime in order to improve information and understanding of bushfire through better mapping of both bushfire risk and Victoria's biodiversity. It also recommends that bushfire risk be accounted for in the application of controls on clearing native vegetation and that the construction of houses be restricted on high-risk blocks that are too small to enable a defensible space to be created and maintained."

Relevant Royal Commission Planning Recommendations:

RECOMMENDATION 37

The State identify a central point of responsibility for and expertise in mapping bushfire risk to:

- review urgently the mapping criteria at present used by the Country Fire Authority to map the Wildfire Management Overlay, to ensure that the mapping used to determine building and planning controls is based on the best available science and takes account of all relevant aspects of bushfire risk
- map and designate Bushfire-prone Areas for the purposes of planning and building controls,
- in consultation with municipal councils and fire agencies
- finalise the alignment of site-assessment methods for planning and building purposes, taking into account bushfire risk to human safety as well as to property.

RECOMMENDATION 38

The State implement a regional settlement policy that:

- takes account of the management of bushfire risk, including that associated with small, undeveloped rural lots
- includes a process for responding to bushfire risk at the planning stage for new urban developments in regional cities, the process being similar to that used for new developments in Melbourne's Urban Growth Zone.

RECOMMENDATION 39

The State amend the Victoria Planning Provisions relating to bushfire to ensure that the provisions give priority to the protection of human life, adopt a clear objective of substantially restricting development in the areas of highest bushfire risk—giving due consideration to biodiversity conservation—and provide clear guidance for decision makers. The amendments should take account of the conclusions reached by the Commission and do the following:

- outline the State's objectives for managing bushfire risk through land-use planning in an amended state planning policy for bushfire, as set out in clause 15.07 of the Victoria Planning Provisions
- allow municipal councils to include a minimum lot size for use of land for a dwelling, both with and without a permit, in a schedule to each of the Rural Living Zone, Green Wedge Zone, Green Wedge A Zone, Rural Conservation Zone, Farming Zone and Rural Activity Zone
- amend clause 44.06 of the Victoria Planning Provisions to provide a comprehensive Bushfire-prone Overlay provision.



RECOMMENDATION 40

The Country Fire Authority amend its guidelines for assessing permit applications for dwellings, non-dwellings and subdivisions in the Bushfire-prone Overlay in order to accommodate the amendments to the Wildfire Management Overlay that are implemented as a result of recommendation 39 and make the guidelines available to municipal councils and the public. The revised guidelines should do the following:

- substantially restrict new developments and subdivisions in those areas of highest risk in the Bushfire-prone Overlay
- set out the CFA's guidelines for assessing permit applications for dwellings, non-dwellings and subdivisions—including the minimum defendable space requirements for different risk levels
- clarify that the CFA will approve new developments and subdivisions only if the recommended bushfire protection measures—including the minimum defendable space—can be created and maintained on a continuing basis
- emphasise the need for enduring permit conditions—in particular, conditions for the creation and maintenance of minimum defendable space to be maintained for the life of the development.

RECOMMENDATION 41

The State:

- amend the Victoria Planning Provisions to require that, when assessing a permit to remove native vegetation around an existing dwelling, the responsible authority and the Department of Sustainability and Environment, as referral authority, take into account fire hazard and give weight to fire protection purposes
- develop guidelines for determining the maximum level of native vegetation removal for bushfire risk mitigation, beyond which level the application would be rejected.

RECOMMENDATION 42

The Department of Sustainability and Environment develop and administer a collective offset solution for individual landholders who are permitted to remove native vegetation for the purpose of fire protection.

RECOMMENDATION 43

The Department of Sustainability and Environment conduct biodiversity mapping identifying flora, fauna and any threatened species throughout Victoria and make the results publicly available. The format used should be compatible with that used for Bushfire-prone Area mapping.

RECOMMENDATION 44

The Country Fire Authority produce for community guidance material on fire-resistant landscape and garden design, including a list of fire-resistant species.

RECOMMENDATION 45

The State press municipal councils—in particular, Murrindindi Shire Council—to urgently adopt a bushfire policy in their Local Planning Policy Framework and incorporate bushfire risk management in their planning policies and strategies for rebuilding communities such as Marysville, Kinglake and others affected by the January–February 2009 fires



RECOMMENDATION 46

The State develop and implement a retreat and resettlement strategy for existing developments in areas of unacceptably high bushfire risk, including a scheme for non-compulsory acquisition by the State of land in these areas.

VNPA Response to issues:

Strengthened planning controls

Importantly, the Commission pointed out that:

“The expert panel accepted that considerable weight should be given to biodiversity conservation—not only for native vegetation but for all flora and fauna and particularly threatened species—in planning. They thought the balance between biodiversity conservation and protection against bushfire was best struck at the strategic level, using high-quality information, so that development could be concentrated in areas of lower biodiversity value. Panel members also stressed that this high-level policy should be reflected in decision making at the permit application stage, to enable an assessment of the biodiversity costs of an application by, for example, considering the amount of vegetation clearing required to create the defensible space necessary for new developments and subdivisions” (page 244)

The combined recommendations 37, 38, 39, 40, 41 & 45 are essentially a major overhaul of existing fire planning tools, and importantly incorporate a strategic approach to planning which integrates biodiversity early in the planning process.

The commission is suggesting capacity to establish a defensible space of up to 100 or 150 square metres, which could lead to extensive clearing.

The VNPA believes that these larger defensible spaces could be considered in planning permit conditions where there would not be adverse effects on significant native vegetation, large old trees or native vegetation in moderate to excellent condition. If this level of clearing is the only way to protect a new development, we believe the proposal should be rejected or re-assessed to avoid the loss.

The strategic focus of the recommendations is supported, but the ‘avoid and minimise’ emphasis of the native vegetation framework should still apply for new developments and high conservation significant areas, with a collectivised, streamlined and possibly subsidised central offset scheme (see below).

The VNPA would recommend that the principle of ‘avoid and minimise’ should be supported by more precise but flexible exemptions from the need to obtain a permit to destroy or remove native vegetation for wildfire protection. We are concerned that some of the current exemptions can be used inappropriately for clearing unrelated to wildfire protection, or in the absence of other measures that would provide more effective protection.

In particular, we believe the exemption for the creation of 6 metre wide fuel breaks and fire access tracks anywhere (the former are even exempted under overlays, including Environmental Significance Overlays) and at unrestricted spacing, is open to abuse. We believe that the exemption should restrict these fuel breaks (and access tracks) to locations adjacent to valuable



wildfire-susceptible assets such as buildings, crops, plantations and structures other than fences, and must not be planted, sown or allowed to become part of a crop or plantation area. (Note: there is a special exemption to construct and maintain fences).

The VNPA believes that any additional wildfire protection measures involving modification or removal of native vegetation beyond those available in the current c52.17-6, such as the extended fuel reduction zones described in c52.17-7 or additional or wider fuel breaks, should only be available as part of a holistic wildfire protection plan, approved by the Municipal Fire Protection Officer. This would mean that threats other than native vegetation could be required to be addressed, rather than relying entirely on native vegetation removal. A person with such a plan would have an exemption from the need to obtain a planning permit to undertake the essential native vegetation management needed to protect a dwelling or asset. DSE and CFA could be asked to set out the method, limitations and standard template for such a plan.

The VNPA also strongly supports recommendations for strengthened and tighter planning controls on proposed new developments in fire-prone areas.

“As noted, particular safety risks arise when residential development is permitted on small blocks in areas of high bushfire risk. The Commission supports the expert panel’s view that additional measures are needed to deal with the problem of residential development on small rural lots and that this could be achieved by more effective use of some types of zones.” (page 228)

The VNPA strongly supports Recommendation 40, that the CFA amend its guidelines for assessing applications in a WMO. Too often, the CFA as referral authority fails to object to planning permits for subdivisions, dwellings and other developments in high fire-risk areas where the risk would still be significant even if risk mitigation conditions proposed by the CFA were carried out faithfully (eg VCAT 2005-2156 *Cock v Nillumbik* & VCAT 720 2008 *Orchard v Nillumbik*). Inevitably, compliance with on-going planning permit conditions is generally poor. Reliance on landowners reducing fuel loads in large protection zones to protect their dwelling or other assets, particularly in steep or difficult-to-traverse country or where they must rely on actions on neighbouring land, is unlikely to provide reliable protection. The CFA should be more proactive in rejecting applications to place people in harm’s way where development is proposed in fundamentally dangerous locations, rather than relying on permit conditions that are unlikely to be effective or even implemented, let alone maintained over the long term.

The VNPA also supports the Commission’s proposal to remove the interim 10/30 rule and strengthen wildfire overlays, tighten controls on further subdivisions and development of high bushfire risk areas, but also link them to vegetation information and additional strategic planning controls.

The 10/30 Rule

Clause 52.43, commonly known as the 10/30 Rule, was introduced as an interim measure for vegetation controls for fire protection around buildings. It allowed vegetation to be cleared for up to 30 metres around homes, 4 metres either side of fences and boundaries, existing fuel



reduction on roadsides, and removal of fallen wood from roadsides for personal use. Environment groups were concerned that the 10/30 rule would lead to unwarranted widespread clearing of native vegetation to the detriment of the community.

This Commission's recommendations address these concerns, but there will be detailed implementation issues which will need to be worked through.

The commission said.

*“ There is, however, concern that, in an effort to achieve simplicity, **clause 52.43 might permit the destruction of vegetation to the overall detriment of the community and the environment** because it overrides any environmental and landscape overlay that has been applied in a planning scheme “ (page 243)*

*“Implementation of recommendation 39 would also allow the extent of clearing permitted for fire protection to be linked to an **applicable risk level**, based on more accurate bushfire hazard mapping and application of the Bushfire-prone Overlay, rather than **the arbitrary measures in the 10/30 rule**. This might not be as simple as the 10/30 rule, but it would be a **more evidence-based and robust approach**, and the CFA could provide detailed guidelines to help people understand the rationale and approach to assessing permit applications for dwellings, non-dwellings and subdivisions.” (page 245)*

“Although the Commission considers the 10/30 rule has been a useful interim measure, the rule should not continue to be used once clause 44.06 and the CFA's assessment guidelines are revised and comprehensive bushfire-prone area mapping is completed. The State agreed with this proposition in its submissions.” (page 245)

Community Planning Information and mapping

The VNPA also supports recommendations for additional fire risk, biodiversity and habitat mapping to inform strategic planning and decision making. (Recommendations 43 & 37)

The VNPA supports the idea of Recommendation 44, but suggests that the proposed list of recommended fire-resistant plants be assessed for environmental weed potential or impact before being released. Importantly, preference for inclusion on the list should be given to the many native plants that are relatively fire-resistant. Plants with potential to invade natural bushland or other native vegetation should be excluded from the list. There may be limited potential for identifying suitable non-native fire-resistant plants that are not invasive. In February 2009 conditions, most plants have the capacity to act as fuel for a severe fire. The gardens around houses in Kinglake and Marysville were often composed of exotic shrubs and herbs, which burnt and contributed to the susceptibility of the house much as native shrubs and herbs would have done.

We see more potential in the benefits of sensible landscaping for fire protection than in identifying fire-resistant plants. We note that the CFA withdrew its publication about fire-resistant plants a few years ago for two reasons: one, because the plants proved unhelpful in the face of an intense fire in dry conditions; and two, because many were known environmental weeds.

The government should also consider community engagement programs to assist the community in high fire risk area. The NSW Hotspots community engagement program, which assists communities understand fire safety and local ecological issues in relation to private bushland, is a useful model.

http://nccnsw.org.au/index.php?Itemid=642&id=317&option=com_content&task=blogcategory

The Nature Conservation Council of NSW Bushfire Program also provides support for community engagement in public land management. It could also be a useful model for Victoria

http://nccnsw.org.au/index.php?option=com_content&task=blogsection&id=25&Itemid=682

Native Vegetation Offsets

According to the Commission:

“Allowing people in the Bushfire-prone Overlay to clear defensible space around their homes without a permit should reduce the requirement for native vegetation around homes to be offset. Offsets might still be required for clearing in those areas of particular environmental or landscape importance where councils already require a permit to remove vegetation around existing properties. For new developments, the Native Vegetation Management Framework’s net gain requirements will apply, so offsets will be required where a permit is granted to remove vegetation”

“Such a scheme would differ from the BushBroker scheme, which brokers individual offsets, in that it would pool funds contributed by individual landholders seeking to offset small removals in order to create a larger scale offset with greater biodiversity value.”

Recommendation 42, that *“The Department of Sustainability and Environment develop and administer a collective offset solution for individual landholders who are permitted to remove native vegetation for the purpose of fire protection”* is problematic.

Without a permit, authorities cannot track clearing, so mechanisms need to be put in place to record and aggregate multiple clearing. This could be done regionally or on a local government area basis.

Off-site offsets are particularly needed for small block owners. The Victorian Civil and Administrative Tribunal has repeatedly stated that all native vegetation on small blocks created in residential subdivisions should be considered lost in the longer term and should not be used to locate offsets. The Tribunal has applied this approach to all subdivisions creating lots smaller than 4000 m². The 30 metre fuel reduction zone allowed around a dwelling in c52.17 and all of the overlays would mean an area of compromised vegetation for wildfire protection of around 6500 m². If this zone is extended to over 100 m as permitted by plan under c52.17-7, the area of modified vegetation is in excess of 3 hectares. Since the “10/30 rule” has demonstrated that offsets are not secure in a fire protection zone, owners wanting to build on such blocks must seek offsite offsets.

Many municipalities recognise the need for easy-to-access offsets for landowners with small blocks or other circumstances where it would be inappropriate or impossible to locate offsets on their property. Many investigate over-the-counter offset services for their most frequent offset requests as an option for landowners who cannot find a suitable offset elsewhere. For a fee covering the proportional cost of the offset works, the municipality would aggregate many small offsets into achieving a significant outcome in a municipal conservation reserve, open-space area or private land vegetation asset.



Some are trying to tie in their proposed system with the State's offset register but are having difficulties with the bureaucracy, and the apparent inflexibility of DSE's BushBroker system. Rather than forcing municipalities to develop their own systems, it would be beneficial if DSE would allow use of the State offset register without being bound by the complex requirements of BushBroker.

Offsetting should focus on existing dwellings in high risk areas where vegetation modification zones, recommended by an experienced expert, exceed the exemptions allowed under the planning scheme. As a second priority, offsets should be directed to new dwellings or extensions on in-fill lots in existing well-settled areas. We support the thrust of the Commission's recommendations that permits for dwellings in isolated high-risk locations should not be supported and offsets should therefore not be required.

The State government is currently proposing a collectivised offset scheme for the grasslands within the new urban growth boundary, but current schemes lack transparency.

Any centralised offset scheme should:

1. ensure like-for-like offsets and overall 'net gain' of native vegetation
2. a preference for 'permanent offsets' as opposed to shorter term offsets provided by 'BushBroker schemes
3. be strategic in focus and aim to consolidate conservation assets rather than be dispersed across the landscape
4. cover other clearing such as fuel breaks on public land
5. be administered as an independent trust, which reports annually to parliament on native vegetation accounting, including losses and gains, and expenditure.¹
6. allow for a range of accredited agencies and organisations to deliver offsets, including Parks Victoria, Trust for Nature and non-government organisations such as Bush Heritage or similar.

Offsets can take time to deliver, so it is critical that there is a robust institutional framework that is transparent and allows work to continue through political cycles.

Consideration should be given to how an offset scheme may support the suggested resettlement and public land consolidation strategy.

¹ For example, a number of trusts currently operate under this model including the Recreational Fishing Licence Trust Account.

Resettlement or Public Land Consolidation Strategy

The Commission says that:

“The new Bushfire-prone Overlay the Commission proposals would allow for vegetation clearing for fire protection purposes around existing dwellings, but there could be circumstances when this would not be enough. In these cases communities might need to rely on other mechanisms for dealing with bushfire risk. Many of the alternatives—for example, fuel management on public land, the construction of refuges and shelters, and options such as evacuation planning—are discussed elsewhere in this report. They will be most effective when they are taken as part of an integrated fire management plan.” (page 249)

“In view of the extent of existing development in rural areas, the commitment to rebuild following 7 February, and the slow progress in establishing shelters and refuges, it might be necessary to help people move out of areas where the bushfire risk is greatest. One option for existing developments in areas of unacceptably high risk is a retreat-and-resettlement strategy that encourages people living in those areas to move somewhere safer.” (page 252)

“In developing the retreat and resettlement strategy the State should consider a number of factors:

- *focusing on land that is near to or adjoining public land*
- *giving priority to acquiring land that is in an area of unacceptably high bushfire risk and on which dwellings were damaged or destroyed by the 2009 bushfires*
- *determining criteria for ‘unacceptably high risk’, with particular reference to the availability of other risk-mitigation measures such as shelters and refuges*
- *using non-compulsory land acquisition as a last resort only, when other options—such as creating defensible space around a dwelling and installing a bunker—are not feasible*
- *allowing an application for acquisition to be initiated by a landowner or recommended by the State*
- *the duration of the strategy and the available funds.”*

The Commission recommended that: *“The State develop and implement a retreat and resettlement strategy for existing developments in areas of unacceptably high bushfire risk, including a scheme for non-compulsory acquisition by the State of land in these areas”*

This recommendation is supported by the VNPA, as it could not only reduce risk but also have longer-term ecological benefits through reducing fragmentation and edge effects, and improving the ease of conservation management for fire and conservation through improved buffers. There would also be significant value in targeting inliers, or private land within or adjacent to existing parks or state forest.

An additional criterion of ‘conservation significance’ or ‘ecological resilience’ should be added to assist with prioritisation, and significant funds made available. Funding could also be potentially linked to the proposed vegetation offset scheme (see offset discussion above). The scheme should be voluntary and implemented over time.

It could also be reframed as a public land consolidation strategy, focusing on improving the integrity and manageability of public land rather than just resettlement.