

## 6.3 Policy Reports

### 6.3.1 Proposed Local Law 20 - Open Air Fires Local Law

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#### Recommendation(s)

It is recommended that:

1. Council resolves to propose to make “Local Law 20 – Open Air Fires Local Law (version 2.0)” (including Schedule 1 maps), in accordance with Part 3 – Division 3 of the *Local Government Act 2020*, and
2. Council resolves to give notice of the proposed “Local Law 20 – Open Air Fires Local Law (version 2.0)” (including Schedule 1 maps) in accordance with Section 73 of the *Local Government Act 2020*, and to conduct community engagement in accordance with the Community Engagement Policy, and
3. Council further considers, at a future Council meeting on a date to be fixed, whether to make “Local Law 20 – Open Air Fires Local Law (version 2.0)” (including Schedule 1 maps) to have effect within the municipal district.

#### Attachments

1. PROPOSED Local Law 20 Open Air Burning Local Law version 2 00 [6.3.1.1 - 27 pages]
2. Schedule 1 Open Air Fire Zone Maps - Shire overview [6.3.1.2 - 1 page]
3. Schedule 1 Zone Map - Emerald Overview [6.3.1.3 - 1 page]
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11. Schedule 1 Zone Map - Maryknoll [6.3.1.11 - 1 page]
12. Schedule 1 Zone Map - Nar Nar Goon [6.3.1.12 - 1 page]
13. Schedule 1 Zone Map - Pakenham Upper [6.3.1.13 - 1 page]
14. Schedule 1 Zone Map - Tynong [6.3.1.14 - 1 page]
15. Schedule 1 Zone Map - Urban Growth Boundary 2021 [6.3.1.15 - 1 page]
16. Schedule 1 Zone Map - Beaconsfield Overview [6.3.1.16 - 1 page]
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18. Community Impact Statement - Proposed Local Law 20 Open Air Fire Local Law review of Local [6.3.1.18 - 8 pages]

#### Executive Summary

In this report:

“Existing Local Law” refers to Local Law 17 – Part 5A, which includes the existing local law offences relating to open air burning

“**Proposed Local Law 20**” refers to a proposed local law, namely Local Law 20 – Open Air Fires Local Law (version 2.0) which is attached to this report.

Cardinia Shire Council’s *existing local law* relating to open air burning has been reviewed following its adoption in 2016. Council undertook public consultation on the *existing Local Law* for a period of six weeks in 2019, ending Friday 22 November 2019. That consultation sought broad public and external agency feedback. A literature review and data analysis were also undertaken to identify inconsistencies in terminology and to better understand the management of open air fires in Cardinia Shire’s surrounding municipalities.

Feedback identified opportunities to enhance the structure and language of the *existing local law*, to improve Council’s internal processes, while strengthening the local law to provide adequate provision for fuel reduction, fire prevention and discouraging unnecessary open air fires.

Local Law 20 – Open Air Fires Local Law (ver 2.0) (*the proposed Local Law 20*) has been drafted to better balance fuel reduction at locations where it is most beneficial, against the increasing impact of smoke on public health and amenity in urbanised areas, while also discouraging inappropriate commercial and high-risk open air fires.

If Council resolves to propose to make Local Law 20, Council will formally commence a period of consultation in accordance with the Community Engagement Policy and will give notice of the *proposed Local Law 20* in media and other public notices. The public consultation period will be open from Friday 20 August 2021, which will conclude on Friday 17 September 2021.

This will provide the community and stakeholders with an opportunity to review the *proposed Local Law 20* and the Local Law Community Impact Statement and provide feedback to the Council for consideration.

## Background

Cardinia Shire has a significant history of bushfire dating back to the early 1900s. Some fires of note are the 1939 Black Friday fires, 1983 Ash Wednesday fires, 2009 Black Saturday fires and 2019 Bunyip Complex fires. Many residents use burning off to reduce green waste on their properties and prefer to retain the option to burn off. However, other residents oppose burning off because of the amenity and health impacts of smoke in the landscape. Local Law 20 – Open Air Fires Local Law seeks to strike a balance between the two positions, by placing most restrictions on burning off where property sizes are smallest and population densities are highest (“Urban and township zone”) and providing for lesser restrictions in “Bushland and peri-urban zone” and “Rural zone”. Anomalies, and the needs of individual property owners are mitigated by the availability of a free permit approval process.

A considerable proportion of burn-offs in Cardinia Shire are not for efficient fuel reduction. Community consultation indicated that many landholders use burning-off for garden/property maintenance, as cheaper waste disposal or for inefficient fuel reduction. Many residents use burning-off as their default option, without turning their mind to potentially more efficient and environmentally sustainable options, such as green waste disposal, mulching and composting. Evidence shows that burning-off small piles on individual properties has little to no impact on days of severe, extreme, or catastrophic fire danger (GJ McCarthy, KG Tolhurst, 2001). These practices are inconsistent with the intent of current open air burning regulations in Cardinia Shire.

The review of the *existing local law* has generated significant interest from the community. A thorough consultation about burn-off practices with residents and business owners, as well as external agencies and neighbouring council stakeholders, has informed the *proposed Local Law 20*.

## Proposed Local Law 20 – Open Air Fires Local Law

The *proposed Local Law 20* is a complete re-write of the *existing local law* relating to Open Air burning and is proposed to be a standalone Local Law. Upon coming into effect, *proposed Local Law 20* will repeal the existing clauses in Local Law 17, Part 5A.

*Proposed Local Law 20*, if made, would come into effect from 1 Feb 2022, and be implemented following the end of the 2021/22 Fire Danger Period.

*Proposed Local Law 20* builds on many of the existing Local Law requirements and provides the best possible platform for residents in high-risk areas to manage their bushfire risk from a landscape perspective, while reducing the impact of burning-off for waste disposal on townships and urban communities.

*Proposed Local Law 20* creates 3 zones, and all land in the municipality is defined (by incorporated mapping) to fall into a zone. These zones are referred to as:

- Urban and Township zone
- Bushland and peri-urban zone, and
- Rural zone.

The practical outcome of these proposed zones is similar to the existing three categories in the *existing local law*, but better differentiate between the higher-density township centres, and they are less complicated to describe and determine.

Under the *proposed Local Law 20*, properties located within the Bushland and Peri-Urban Zone and Rural Zone can have open air fires without a permit if the parameters included within draft Local Law 20 are adhered to.

Properties within the Bushland and Peri-Urban Zone can undertake open air burning on Sunday, Tuesday, Thursday, and Friday. These properties can have up to two fires burning at once to a size of no more than three metres in any dimension. Properties in the Rural Zone can burn off on Sundays, Mondays, Tuesdays, Thursdays, and Fridays. These properties can have up to three fires burning at once to a maximum size of no more than five metres in any dimension.

The following provisions have also been included in the *proposed Local Law 20*.

- Restrictions on open air burning where the EPA Air Quality Index is 'poor', 'very poor' or 'hazardous'
- A permit required in all instances for the burning of windrows
- Specific offence prohibiting the burning-off of industrial, commercial waste and domestic waste
- Include increased penalties for non-compliance with Local Law provisions - the maximum penalties for all offences will be \$3,635, with most offences having an infringement penalty of \$363, and aggravated offences (such as burning industrial waste) having an infringement penalty of \$727.
- No burning-off for the months of July and August.
- No burning-off on public holidays
- Cardinia Shire Chief Executive Officer given the power to suspend or relax clauses (such as permitted burn off days) in the lead up to the Fire Danger Period (to give residents greater access to fuel reduction over that period)
- Burning-off prohibited on days where a severe weather warning has been issued by the Bureau of Meteorology
- No new ignitions after 7pm, or after sunset (whichever is the earlier)

The **proposed Local Law 20** does not apply to fires lit for heating, cooking and comfort (like the **existing Local Law**), and does not apply to indigenous cultural practices involving open air fires, such as smoking ceremonies.

Burning off outside these parameters (including in the Urban and Township Zone) can be arranged on a case-by-case basis through the permit application process, which can be applied for through an online process or in person. No fee is proposed to apply for a permit.

Burning-off will continue to be prohibited under the *Country Fire Authority Act 1958* during the declared Fire Danger Period.

The **proposed Local Law 20** – Open Air Fires Local Law (version 2.0) is included as an attachment and should be read in its entirety.

## Community impact

The **proposed Local Law 20** changes will have varying effects on members of the community.

The result of the proposed new zones will increase the number of properties that are unable to burn-off without a permit, in the areas listed below. As can be observed from the attached mapping, most of this change is because of the inclusion of properties in the Urban and Township Zone in the highest-density properties around major townships.

Locality	Proposed Local Law 20 - number of properties that require a permit to burn off	Current Local Law – number of properties that require a permit to burn off	Difference
Bunyip	1355	747	+608
Nar Nar Goon and Nar Nar Goon North	363	216	+147
Garfield	761	607	+154
Lang Lang	1323	749	+574
Koo Wee Rup	1734	1608	+126
Bayles	38	N/A	+38
Tynong	197	N/A	+197
Pakenham, Officer, Beaconsfield	39044	33430	+5614
Upper Beaconsfield	34	N/A	+34
Emerald	213	N/A	+213
Cockatoo	32	N/A	+32
Gembrook	76	N/A	+76

Total: +7813

Additional information regarding community impact is included in the Local Law 20 - Community Impact Statement. (See attachments)

## Rationale

**Proposed Local Law 20** is intended to:

- improve health and amenity outcomes for the community overall,
- address the impacts of climate change and
- better reflect the urban structure and spread of Cardinia Shire as it stands.

For this reason, **proposed Local Law 20** will see the local law move away from using bushfire-prone area designations as the basis for zone definitions. These designations are complex to

describe, and do not appropriately reflect the conditions and environments identified as high risk (e.g. areas that are built up and new housing developments).

The new zoning in *proposed Local Law 20* is based on:

- Urban growth boundaries
- Property size
- Planning zones (Commercial, Low Density Residential, Urban Growth and Green Wedge)
- Existing bushfire prone area

The new zones should be reviewed and updated periodically (ideally, at least every five years) by Council following community and stakeholder engagement.

*Proposed Local Law 20* includes a clause to allow the Chief Executive Officer to suspend or relax clauses in the lead up to the Fire Danger Period. In 2019 and in 2020, Council resolved to relax the operation of the Local Law in the immediate run-up to the Fire Danger Period, and the delegation of this power to the CEO will simplify this process, while allowing the precise parameters to be customised to the climate and environmental conditions of each year.

The power to relax burning off to promote fuel reduction is offset by the proposed total ban on burning off during winter months. Burning off in the winter months typically produces increased smoke due to wet vegetation, exacerbates health impacts caused by the increased use of wood-burning heating, and provides no meaningful reduction in fire risk.

*Proposed Local Law 20* will increase penalties for many open air fire offences. This is primarily the result of changes to the *Local Government Act 2020*, which in turn has amended the *Sentencing Act 1991*. The upshot of these changes has modified the financial value of a “penalty unit” for local laws passed after 1 July 2021. Under *Proposed Local Law 20*, in respect of all infringements, the maximum penalty (that is, the penalty that a Court could impose) will increase to \$3,635 (up from \$2,000 in the *existing local law*), and most offences will attract an infringement penalty of \$363 (up from \$200). A new offence is proposed (burning industrial or commercial waste) that will attract a \$727 infringement.

The proposed penalties are appropriate, to act as a deterrent against wrongdoing. Often, burning off is chosen as a cheaper alternative to attending the tip, or as a more convenient option than using more appropriate disposal options. The proposed higher penalty in respect of burning industrial and commercial waste is also considered appropriate, as a deterrent to those who commit offences in a commercial context.

Finally, *proposed Local Law 20* will restrict burning off on days of severe weather or poor air quality and/or in proximity to neighbouring properties and structures. These restrictions are designed to address public amenity and health feedback received during the initial community consultation period. Concern was particularly expressed that many people still burn off on days of high wind.

## Policy Implications

The *proposed Local Law 20* aligns with the following Council policies and plans.

- Cardinia Municipal Emergency Management Plan 2018
- Cardinia Municipal Fire Management Plan 2018
- Sustainable Environment Policy 2018-2028
- Biodiversity Strategy 2019-2029
- Waste and Resource Recovery Strategy 2017-2026
- Community Engagement Policy 2021
- Compliance and Enforcement Policy 2019

## Relevance to Council Plan

### 1.1 We empower our communities to be healthy, connected and resilient

1.1.4 Facilitate a partnership approach to create safer communities.

### 3.1 We value our natural assets and support our biodiversity to thrive

3.1.1 Partner with community, business and industry to take action on, and adapt to, climate change.

3.1.3 Work with community to improve and manage our natural assets, biodiversity and cultural heritage.

### 5.1 We practise responsible leadership

5.1.1 Build trust through meaningful community engagement and transparent decision-making.

## Climate Emergency Consideration

Open air burning contributes to climate change through the release of CO<sub>2</sub> into the atmosphere. The *proposed Local Law 20* seeks to reduce the occurrence of open air burning in areas where there is no bushfire fuel reduction need and to encourage alternative methods of waste disposal such as mulching or green waste drop off.

Unlike bushfire and prescribed landscape burning, small open air fires do not reabsorb the CO<sub>2</sub> through the regeneration of new vegetation.

## Consultation/Communication

In 2019, the community was invited to provide open feedback on the *existing local law* in relation to open air burning. Council sought feedback on all aspects of the *existing local law* from the community, government agencies and internal and external stakeholders.

Council undertook pop-up sessions across the Shire, held meetings with emergency service organisations and a general community drop-in session was held at the Civic Centre.

Council's Creating Cardinia webpage had a 'Register to receive updates' page for this consultation from the start of October 2019 to build a mailing list of people interested in contributing to the discussion and being informed about the process. Community members were able to make written submissions from this page when the consultation period opened.

The top five themes from the community feedback were:

- days allowed to burn-off.
- smoke.
- size of fires.
- property size allowed to burn-off; and
- enforcement.

If Council resolves to **propose Local Law 20**, staff will deliver a community consultation program to the community and stakeholders (including those that engaged during the earlier phases of consultation). The results of this consultation will be provided to Council to further consider, prior to resolving to make Local Law 20.

The consultation period will begin on 20 August and conclude on 17 September 2021. A communications and engagement plan has been developed to promote the consultation period.

All submissions will be considered in line with the requirements set out in the *Local Government Act 2020*.

### External Consultation

External agencies that were invited to provide feedback are listed below.

- Municipal Fire Management Planning Committee
- Department of Health and Human Services
- Environment Protection Authority (EPA)
- Victoria Police
- Forest Fire Management
- Parks Victoria
- Country Fire Authority (Community Safety)
- Country Fire Authority (Operations)
- Baw Baw Shire Council
- Casey Council
- Yarra Ranges Shire Council

### Financial and Resource Implications

Costs associated with the review of Local Law 17 – Part 5A and the drafting and implementation of **proposed Local Law 20** will be met within the existing 2021/22 budget.

### Conclusion

Cardinia Shire has a high-risk fire profile and a significant history of fire, and an obligation to mitigate the public health and amenity impacts.

The **proposed Local Law 20** balances the need for bushfire fuel reduction while providing mechanisms to deal with the increasing levels of burning of commercials or household waste in urbanised areas. The proposed Local Law 20 will still allow burning off for parts of the municipality with higher fire danger risk. All properties within the municipal district can apply for a permit, should they need to have an open air fire outside of the provisions included in the **proposed Local Law 20**.

Community consultation through the 28 days statutory consultation process will provide for community and stakeholder engagement, prior to the **proposed Local Law 20** being made.

Once the results of the community consultation are known, the **proposed Local Law 20** will return to Council meeting, for Council to further consider whether the **proposed Local Law 20** should be brought into effect.

If, after the consultation phase, Council proposes any further changes that affect the rights or obligations of residents, Council will be required to undertake further drafting and consultation, in accordance with the *Local Government Act 2020*.





## Open Air Fires Local Law

Local Law No 20 was **made** by resolution of the Cardinia Shire Council on the #####.

This version is effective from #####

**Proposed Local Law 20 – Open Air Fires Local Law** (version 2.0 ,16<sup>th</sup> August 2021)

**VERSION HISTORY**

Version number		Effective dates
1.0.1	First working draft (not for distribution)	
2.0	Proposed Local Law 20	Proposed by motion of Cardinia Shire Council on 16 August 2021

**Proposed Local Law 20 – Open Air Fires Local Law** (version 2.0 ,16<sup>th</sup> August 2021)

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**Proposed Local Law 20 – Open Air Fires Local Law** (version 2.0 ,16<sup>th</sup> August 2021)**Part 1      Introductory Clauses****1. Title**

This Local Law is the Cardinia Shire Local Law 20 – Open Air Fires Local Law.

**2. Objectives**

The main objectives of this Local Law are to:

- a) provide for the peace order and good government of the Cardinia Shire Council; and
- b) promote a physical and social environment free from hazards to health, in which the residents of the *municipal district* can enjoy a quality of life that meets the general expectations of the community; and
- c) protect the amenity of the municipal district; and
- d) prevent and suppress nuisances connected with *open air fires* and smoke in the environment, which may adversely affect the enjoyment of life or the health, safety and welfare of persons; and
- e) prohibit, regulate and control *open air fires* (and related behaviours) which may be dangerous or unsafe or detrimental to the quality of life and the environment; and
- f) provide for the consistent application and enforcement of this Local Law.

**3. The power to make this Local Law**

This Local Law is made under section 71(1) of *the 2020 Act*.

**4. Commencement**

This Local Law comes into operation on **1 February 2022**.

**5. Revocation**

Unless revoked earlier, this Local Law ceases to operate on **31<sup>st</sup> January 2032**.

**6. Application**

This Local Law applies and operates throughout the whole of the *municipal district*.

**Proposed Local Law 20 – Open Air Fires Local Law** (version 2.0 ,16<sup>th</sup> August 2021)**7. Exemption – emergency services and government agencies**

This Local Law does not apply to any member, officer or employee of:

- a) an *emergency service*, or
- b) the Commonwealth Government or State Government, or
- c) any military or civil-defence organisation, or
- d) the Council, or
- e) a contractor directly engaged by the Council to undertake works or to provide a service;

in the course of performing any of the duties they are lawfully entitled or required to perform while engaging in those duties

**8. General exemptions**

This Local Law does not apply to an *open air fire* that is lit—

- a) for the purpose of meal preparation or personal comfort if all of the following apply—
  - i. the air movement in the vicinity of the fire is no stronger than ten kilometres per hour; and
  - ii. the fire is lit in a properly constructed fireplace or in a trench at least 30 centimetres deep; and
  - iii. the ground and air space within a distance of three metres from the outer perimeters and uppermost point of the fire are clear of any flammable material; and
  - iv. the fire does not occupy an area in excess of one square metre and the size of the fire and the dimensions of solid fuel used to fuel the fire are the minimum necessary for the purpose; or
- b) for the purpose of extracting honey, relocating bees, railway maintenance, heating bitumen, welding, gas-cutting, soldering, grinding or charring if all of the following apply—
  - i. a shield or guard of fire resistant material is placed or erected in such a way as to prevent the emission of sparks, hot metal or slag from the fire; and
  - ii. the area for a radius of at least 1.5 metres from the activity outlined in this clause is clear of all flammable material or wetted down sufficiently to prevent the spread of fire; and
  - iii. there is available for immediate use in the event of an uncontrolled fire a reticulated water supply or an effective water spray pump of the knapsack pattern with a tank capacity of at least nine litres of water available for use; and
  - iv. where applicable cut-offs and electrode stubs from the activity outlined in this clause are placed directly in a fire proof receptacle.

**Proposed Local Law 20 – Open Air Fires Local Law** (version 2.0 ,16<sup>th</sup> August 2021)**9. Exemption – Indigenous cultural practices**

This Local Law does not apply to an *open air fire* that is lit by an *Aboriginal person* if the fire is lit for the purpose of conducting or engaging in an *Aboriginal tradition*.

***Explanatory note:***

Complying with the exemptions set out in Clause 7, 8 and 9 in relation to the lighting of a fire for a particular purpose does not of itself relieve a person from liability for any damage sustained by another person as a result of the lighting of the fire.

**10. Chief Executive Officer may suspend clauses in this Local Law**

The *Chief Executive Officer* may make a declaration which suspends the operation of any clause in this Local Law for a period of time specified in the declaration.

A declaration made by the *Chief Executive Officer* under clause 10(1) must be made in writing and notice of the declaration having been made must be published on the Council's Internet site.

**11. Definitions**

1) In this Local Law:

**'1989 Act'** means the *Local Government Act 1989* (Vic)

**'2020 Act'** means the *Local Government Act 2020* (Vic)

**'Aboriginal person'** has the same meaning as in section 4(1) of the *Aboriginal Heritage Act 2006* (Vic).

**'Aboriginal tradition'** has the same meaning as in section 4(1) of the *Aboriginal Heritage Act 2006* (Vic).

**'authorised officer'** means any person appointed by the Council to be an Authorised Officer under section 224 of *the 1989 Act* and includes members of Victoria Police who are appointed under that section.

**'authorised staff member'** means and *authorised officer* or any other staff member authorised in accordance with Clause 39(3).

**'Chief Executive Officer'** has the same meaning as in section 3(1) of the 2020 Act.

**Proposed Local Law 20 – Open Air Fires Local Law** (version 2.0 ,16<sup>th</sup> August 2021)

**'Council'** means Cardinia Shire Council.

**'domestic waste'** means any matter that is discarded, rejected, abandoned, unwanted or surplus, irrespective of any potential use or value, but does not include:

- (a) any vegetation of any kind; or
- (b) **industrial waste**.

**'emergency service'** means

- a) Victoria Police,
- b) Fire Rescue Victoria ,
- c) the Country Fire Authority,
- d) Ambulance Victoria,
- e) the State Emergency Service,
- f) the Department of Environment, Land, Water and Planning,
- g) any organisation whose primary function is the provision of first aid response,  
and
- h) any successor to any named organisation above.

**'fire danger period'** has the same meaning as in section 3(1) of the *Country Fire Authority Act 1958* (Vic).

**'Incinerator'** means a structure, device, or piece of equipment which is designed, adapted, used or capable of being used for the burning of any material or substance and which is not:

- a) enclosed in any building; or
- b) a barbeque; or
- c) licensed in accordance with the *Environment Protection Act 2017*.

**'Industrial waste'** has the same meaning as in section 3(1) of the *Environment Protection Act 2017* (Vic).

**'Infringement notice'** has the same meaning as in section 3(1) the *Infringements Act 2006* (Vic).

**'lot'** has the same meaning as in section 3(1) of the *Subdivision Act 1988* (Vic).

**'municipal district'** has the same meaning as in section 3(1) of the *2020 Act*.

**Proposed Local Law 20 – Open Air Fires Local Law** (version 2.0 ,16<sup>th</sup> August 2021)

*'nuisance'* has the same meaning it has at common law.

*'official warning'* has the same meaning as in section 3(1) of the *Infringements Act 2006* (Vic).

*'open air fire'* means a fire lit by a person in the open air.

*'Penalty Unit'* has the same meaning as set out in section 110 of the *Sentencing Act 1991* (Vic).

*'permit'* means a permit in writing issued in accordance with Part 7 of this Local Law,

*'property'* means any *lot*.

*'public place'* has the same meaning as in section 3 of the *Summary Offences Act 1966*.

*'supervised'* means under constant observation.

*'windrow'* means an accumulation of felled, fallen or cleared trees or other vegetation, the volume of which is 50 cubic metres or more.

- 2) In this Local Law:
- a) words defined in the singular include the plural; and
  - b) words defined in the plural include the singular.

**Proposed Local Law 20 – Open Air Fires Local Law** (version 2.0 ,16<sup>th</sup> August 2021)**Part 2 Open Air Fire Zones****12. Establishment and Application of Open Air Fire Zones**

- 1) The following zones are created under this Local Law:
  - a. **Urban and Township Zone;**
  - b. **Bushland and Peri-Urban Zone;** and
  - c. **Rural Zone.**
  
- 2) The Urban and Township Zone applies to all *properties* in the *municipal district* that are shown on the Open Air Fire Zone Maps in ***Schedule 1*** of this Local Law coloured red and identified as Urban and Township Zone
  
- 3) The Bushland and Peri-Urban Zone applies to all *properties* in the *municipal district* that are shown on the Open Air Fire Zone Maps in ***Schedule 1*** of this Local Law coloured yellow and identified as Bushland and Peri-Urban Zone.
  
- 4) The Rural Zone applies to all *properties* in the *municipal district* that are not Urban and Township Zone in accordance with Clause 12 (2), and are not Bushland and Peri-Urban Zone in accordance with Clause 12(3). Rural Zone properties are shown on the Open Air Fire Zone Maps in ***Schedule 1*** of this Local Law coloured white or any colour other than red or yellow.
  
- 5) **Part 3** of this Local Law applies to all of the *municipal district* irrespective of which zone applies to a *property* under this clause.
  
- 6) **Part 4** of this Local Law applies to all *properties* in the *municipal district* that are subject to the **Urban and Township Zone.**
  
- 7) **Part 5** of this Local Law applies to all *properties* in the *municipal district* that are subject to the **Bushland and Peri-Urban Zone.**
  
- 8) **Part 6** of this Local Law applies to all *properties* in the *municipal district* that are subject to the **Rural Zone.**

***Explanatory note:***

The three Open Air Fire Zones are different to (and should not be confused with) the zones and overlays of the Cardinia Planning Scheme.

**Proposed Local Law 20 – Open Air Fires Local Law** (version 2.0 ,16<sup>th</sup> August 2021)

Residents can find out which zone their property is in by looking at the detail maps in Schedule 1, or by going to [cardinia.vic.gov.au/burningoff](http://cardinia.vic.gov.au/burningoff)

**13. Permit may be issued**

Upon application by a person, an *authorised staff member* may issue a permit in accordance with Part 7 of this Local Law which allows the permit holder, subject to any conditions outlined in the permit, to have on any *property* specified in the permit an *open air fire* that does not comply with any of the requirements of:

- a) Part 3 – requirements that apply to all land
- b) Part 4 – requirements that apply to the Urban and Township Zone
- c) Part 5 – requirements that apply to the Bushland and Peri-Urban Zone
- d) Part 6 – requirements that apply to the Rural Zone.

Proposed Local Law 20 – Open Air Fires Local Law (version 2.0 ,16<sup>th</sup> August 2021)

### Part 3 Requirements of Open Air Fires that apply to all of the Municipal District

#### 14. Part 3 applies to all of the Municipal District

This Part applies to all of the *municipal district*, irrespective of which zone (if any) applies to the *property* under clause 12 where the *open air fire* occurs.

#### 15. No open air fires without the consent of the land owner or public land manager

- 1) A person must not light an *open air fire* without the consent of the owner of the land on which the *open air fire* occurs.
- 2) If an *open air fire* is lit in a *public place*, the person lighting the fire must have the written consent of the agency or authority that manages the *public place*.

*Maximum Penalty: 20 penalty units*  
*Infringement penalty: 2 penalty units*

#### 16. No open air fires during July and August

A person must not light an *open air fire* from 1 July to 31 August.

*Maximum Penalty: 20 penalty units*  
*Infringement penalty: 2 penalty units*

#### ***Explanatory note – Open air fires during fire danger period***

The *Country Fire Authority Act 1958* allows restrictions to be imposed on open air fires on Total Fire Ban days, and during the declared *fire danger period*.

For more information, go to the Country Fire Authority Internet site [www.cfa.vic.gov.au](http://www.cfa.vic.gov.au)

#### 17. No open air fires on public holidays

A person must not light an *open air fire* on a day that is a declared public holiday.

*Maximum Penalty: 20 penalty units*  
*Infringement penalty: 2 penalty units*

#### ***Explanatory note – declared public holidays***

**Proposed Local Law 20 – Open Air Fires Local Law** (version 2.0 ,16<sup>th</sup> August 2021)

A list of declared public holidays in Victoria can be found on the Business Victoria Internet site:  
[www.business.vic.gov.au](http://www.business.vic.gov.au)

**18. Times when open air fires must not be ignited**

A person must not light an *open air fire* after, whichever is earlier of:

- a) 7:00 pm, or
- b) Sunset.

*Maximum Penalty: 20 penalty units*

*Infringement penalty: 2 penalty units*

**19. Person must supervise and be able to extinguish an open air fire**

- 1) A person must not light an *open air fire* or allow an *open air fire* to remain alight, unless:
  - a. the *open air fire* is *supervised* by at least one person who is able to control the fire, and prevent it spreading or escaping, and
  - b. there is an adequate water supply at hand at all times to control the fire and prevent it spreading or escaping or becoming uncontrolled.
- 2) The owner of a *property* must not allow an *open air fire* to be lit or allow an *open air fire* to remain alight on the *property*, unless:
  - a. the *open air fire* is *supervised* by at least one person who is able to control the fire, and prevent it spreading or escaping; and
  - b. there is an adequate water supply at hand at all times to control the fire and prevent it spreading or escaping or becoming uncontrolled.
- 3) The occupier of a *property* must not allow an *open air fire* to be lit or allow an *open air fire* to remain alight on the *property*, unless:
  - a. the *open air fire* is *supervised* by at least one person who is able to control the fire, and prevent it spreading or escaping; and
  - b. there is an adequate water supply at hand at all times to control the fire and prevent it spreading or escaping or becoming uncontrolled.

*Maximum Penalty: 20 penalty units*

*Infringement penalty: 2 penalty units*

**Proposed Local Law 20 – Open Air Fires Local Law** (version 2.0 ,16<sup>th</sup> August 2021)***Explanatory note – meaning of ‘supervised’***

To supervise an open air fire means to keep the open air fire “under constant observation” – see Clause 11 – Definitions

**20. Person must comply with direction**

A member of the *emergency services*, or an *authorised officer* may give a direction to any person in respect of an *open air fire*, including (but not limited to) a direction to extinguish a fire.

**21. Offence to not comply with direction**

A person who is given a direction under Clause 20 must comply with the direction.

*Maximum Penalty: 20 penalty units*

*Infringement penalty: 2 penalty units*

**22. Requirement to notify Emergency Services Telecommunications Authority**

- 1) A person must not light an *open air fire* without the Emergency Services Telecommunications Authority being notified prior to the *open air fire* commencing.
- 2) The owner of a *property* must not allow an *open air fire* to be lit on the *property* without the Emergency Services Telecommunications Authority being notified prior to the *open air fire* commencing.
- 3) The occupier of a *property* must not allow an *open air fire* to be lit on the *property* without the Emergency Services Telecommunications Authority being notified prior to the *open air fire* commencing.

*Maximum Penalty: 20 penalty units*

*Infringement penalty: 2 penalty units*

***Explanatory note:***

Notifying the Emergency Services Telecommunications Authority helps to ensure that emergency services are not sent to the location of an open air fire unless it is totally necessary.

You can find out more information, including the different ways you can notify ESTA, at [esta.vic.gov.au](http://esta.vic.gov.au)

**Proposed Local Law 20 – Open Air Fires Local Law** (version 2.0 ,16<sup>th</sup> August 2021)**23. Severe weather**

- 1) A person must not light an *open air fire* at any time when the Bureau of Meteorology has issued a Severe Weather Warning that applies to the property upon which the *open air fire* is to be lit.
- 2) The owner of a *property* must not allow an *open air fire* to be lit on the *property* at any time when the Bureau of Meteorology has issued a Severe Weather Warning that applies to the *property*.
- 3) The occupier of a *property* must not allow an *open air fire* to be lit on the *property* at any time when the Bureau of Meteorology has issued a Severe Weather Warning that applies to the *property*.

*Maximum Penalty: 20 penalty units  
Infringement penalty: 2 penalty units*

***Explanatory note:***

You can find out whether the Bureau of Meteorology has issued weather warnings in your area by going to [www.bom.gov.au](http://www.bom.gov.au) or using the Bureau of Meteorology smart phone app.

**24. Air quality**

- 1) A person must not light an *open air fire* at any time when the Environment Protection Authority Air Quality Index that applies to the *property* on which the fire is to be lit on the relevant day is 'poor', 'very poor' or 'hazardous'.
- 2) The owner of a *property* must not allow an *open air fire* to be lit on the property at any time when the Environment Protection Authority Air Quality Index that applies to the *property* on the relevant day is 'poor', 'very poor' or 'hazardous'.
- 3) The occupier of a *property* must not allow an *open air fire* to be lit on the property at any time when the Environment Protection Authority Air Quality Index that applies to the *property* on the relevant day is 'poor', 'very poor' or 'hazardous'.

*Maximum Penalty: 20 penalty units  
Infringement penalty: 2 penalty units*

***Explanatory note:***

You can find the Environment Protection Authority Air Quality Index at [epa.vic.gov.au](http://epa.vic.gov.au).

**Proposed Local Law 20 – Open Air Fires Local Law** (version 2.0 ,16<sup>th</sup> August 2021)**25. Open air fires must not cause a hazard or nuisance**

- 1) A person must not cause an *open air fire* to be a hazard or nuisance.
- 2) The owner of a *property* must not allow an *open air fire* on that *property* to be a hazard or nuisance.
- 3) The occupier of a *property* must not allow an *open air fire* on that *property* to be a hazard or nuisance.

*Maximum Penalty: 20 penalty units*

*Infringement penalty: 2 penalty units*

**26. Use of incinerators is prohibited**

- 1) A person must not light an *open air fire* in an *incinerator*.
- 2) The owner of a *property* must now allow an *open air fire* to be lit in an *incinerator* on the *property*.
- 3) The occupier of a *property* must not allow an *open air fire* to be lit in an *incinerator* on the *property*.

*Maximum Penalty: 20 penalty units*

*Infringement penalty: 2 penalty units*

**27. Use of accelerants is prohibited**

A person must not:

- (a) use accelerants or ignitable liquids to start or light an *open air fire*, or
- (b) add accelerants or ignitable liquids to an *open air fire*.

*Maximum Penalty: 20 penalty units*

*Infringement penalty: 2 penalty units*

**28. No industrial waste may be burned**

- 1) A person must not burn *industrial waste* in an *open air fire*.
- 2) The owner of a *property* must not allow *industrial waste* to be burned in an *open air fire* on that *property*.
- 3) The occupier of a *property* must not allow *industrial waste* to be burned in an *open air fire* on that *property*.

*Maximum Penalty: 20 penalty units*

**Proposed Local Law 20 – Open Air Fires Local Law** (version 2.0 ,16<sup>th</sup> August 2021)

*Infringement penalty: 4 penalty units*

***Explanatory note: meaning of 'industrial waste'***

In this Local Law, industrial waste has the same meaning as it has in the Environmental Protection Act 2017, and means:

- a) Waste arising from commercial, industrial or trade activities or from laboratories; or
- b) Waste prescribed to be industrial waste for the purposes of the *Environmental Protection Act* 2017, and subordinate instruments.

**29. No domestic waste may be burned**

- 1) A person must not burn *domestic waste* in an *open air fire*.
- 2) The owner of a *property* must not allow *domestic waste* to be burned in an *open air fire* on that *property*.
- 3) The occupier of a *property* must not allow *domestic waste* to be burned in an *open air fire* on that *property*.

*Maximum Penalty: 20 penalty units*

*Infringement penalty: 2 penalty units*

**30. Windrows**

- 1) A person must not engage in the burning of a *windrow*.
- 2) The owner of a *property* must not allow the burning of a *windrow* on that *property*.
- 3) The occupier of a *property* must not allow the burning of a *windrow* on that *property*.

*Maximum Penalty: 20 penalty units*

*Infringement penalty: 2 penalty units*

**Proposed Local Law 20 – Open Air Fires Local Law** (version 2.0 ,16<sup>th</sup> August 2021)

## **Part 4 Urban and Township Zone**

### **31. Application of Part 4 - Urban and Township Zone**

This Part applies to all *properties* in the *municipal district* that are subject to the Urban and Township Zone under clause 12.

### **32. Open Air Fires prohibited, unless with a permit**

- 1) A person must not light or allow to remain lit an *open air fire* on any *property* in the Urban and Township Zone without a permit issued under this Local Law.
- 2) The owner of any *property* in the Urban and Township Zone must not allow an *open air fire* to be lit or allow an *open air fire* to remain lit on that *property* unless a permit has been issued under this Local Law.
- 3) The occupier of any *property* in the Urban and Township Zone must not allow an *open air fire* to be lit or allow an *open air fire* to remain lit on that *property* unless a permit has been issued under this Local Law.

*Maximum Penalty: 20 penalty units*

*Infringement penalty: 2 penalty units*

Proposed Local Law 20 – Open Air Fires Local Law (version 2.0 ,16<sup>th</sup> August 2021)

## Part 5 Bushland and Peri-Urban Zone

### 33. Application of Part 5 - Bushland and Peri-Urban Zone

This Part applies to all *properties* in the *municipal district* that are subject to the *Bushland and Peri-Urban Zone* under clause 12.

### 34. Days and sizes of open air fires

- 1) An *open air fire* that occurs on any *property* in the Bushland and Peri-Urban Zone, must comply with the following requirements:
  - a. days on which the fire may be lit: Sunday, Tuesday, Thursday and Friday;
  - b. days on which the fire **must not** be lit: Saturday, Monday, Wednesday;
  - c. maximum dimensions of each fuel pile: no more than 3 metres in any dimension;
  - d. minimum clearance between fire and structures, fences, vegetation or other combustible material: 25 metres
  
- 2) If an *open air fire* is lit on a *property* in any manner which contravenes any of the requirements of sub-clause 1, the following persons are guilty of an offence:
  - a. the person who lit the *open air fire* on the *property*,
  - b. the owner of the *property* on which the *open air fire* is lit; and
  - c. the occupier of the *property* on which the *open air fire* is lit.

*Maximum Penalty: 20 penalty units*

*Infringement penalty: 2 penalty units*

### 35. Maximum number of piles

- 1) The maximum number of *open air fires* that may be alight at any one time on any *property* zoned Bushland and Peri-Urban Zone must not exceed two.
  
- 2) If *open air fires* are lit on a *property* in contravention of sub-clause 1, the following persons are guilty of an offence:
  - a. the person who lit the *open air fires* on the *property*,
  - b. the owner of the *property* on which the *open air fires* are lit; and
  - c. the occupier of the *property* on which the *open air fires* are lit.

*Maximum Penalty: 20 penalty units*

*Infringement penalty: 2 penalty units*

**Proposed Local Law 20 – Open Air Fires Local Law** (version 2.0 ,16<sup>th</sup> August 2021)**Part 6 Rural Zone****36. Application of Part 6 - Rural Zone**

This Part applies to all *properties* in the *municipal district* that are subject to the Rural Zone under clause 12.

**37. Days and sizes of open air fires**

- 1) An open air fire that occurs on any property in the Rural Zone, must comply with the following requirements:
  - a. days in which the fire may be lit: Sunday, Monday, Tuesday, Thursday and Friday;
  - b. days in which fire **must not** be lit: Saturday and Wednesday;
  - c. maximum dimensions of each fuel pile: no more than five metres in any dimension;
  - d. minimum clearance between fire and structures, fences, vegetation or other combustible material: 25 metres
  
- 2) If an *open air fire* is lit on a *property* in any manner which contravenes any of the requirements of sub-clause 1, the following persons are guilty of an offence:
  - a. the person who lit the *open air fire* on the *property*,
  - b. the owner of the *property* on which the *open air fire* is lit; and
  - c. the occupier of the *property* on which the *open air fire* is lit.

*Maximum Penalty: 20 penalty units*

*Infringement penalty: 2 penalty units*

**38. Maximum number of piles**

- 1) The maximum number of *open air fires* that may be alight at any one time on any *property* zoned Rural Zone must not exceed three.
  
- 2) If *open air fires* are lit on a *property* in contravention of sub-clause 1, the following persons are guilty of an offence:
  - a. the person who lit the *open air fires* on the *property*,
  - b. the owner of the *property* on which the *open air fires* are lit; and
  - c. the occupier of the *property* on which the *open air fires* are lit.

*Maximum Penalty: 20 penalty units*

*Infringement penalty: 2 penalty units*

**Proposed Local Law 20 – Open Air Fires Local Law** (version 2.0 ,16<sup>th</sup> August 2021)**Part 7 Permits****39. *Authorised staff member* may issue permits**

- 1) An ***authorised staff member*** may issue a permit, renew a permit or extend a permit under this Local Law, with or without any conditions.
- 2) The Council may from time to time prescribe:
  - a) the manner and form in which applications for a permit under this Local Law should be made;
  - b) any policy that may apply to permits being issued, or the refusal to issue a permit;
  - c) the manner in which any permit under this Local Law should be issued;
  - d) the fee payable to apply for a permit or to renew or extend a permit; and
  - e) any other matter related to issuing permits under this Local Law.
- 3) The Chief Executive Officer may authorise any member of Council staff to issue permits under clause 39(1).
- 4) The Council must keep a record of permits issued under this Local Law.
- 5) An ***authorised staff member*** may request further information from the person applying for the permit prior to issuing, or refusing to issue, or extending a permit.
- 6) An ***authorised staff member*** may require that notice of an application for a permit is publicised or otherwise brought to the attention of any affected person, at the expense of the applicant.
- 7) A permit expires on whichever of the following dates occurs first:
  - a) the date specified in the permit; or
  - b) if a ***fire danger period*** has been declared, upon the commencement of the ***fire danger period***.
- 8) The Council may waive, reduce or alter any fee or charge with or without conditions, in respect of a class of permit, a class of applicant or any other circumstances.
- 9) A permit may be issued subject to conditions, including (but not limited to):
  - a) the payment of a fee; or
  - b) a time limit or specifying the duration, commencement or completion date permitted under the Permit; or
  - c) the occurrence of an event; or
  - d) the rectification, remedying or restoration of a situation or circumstance; or
  - e) the consent of the owner of land, or any other person affected by the issuing of the permit; or
  - f) the currency of public liability insurance in respect of any activity or conduct related to the issue of a permit; or
  - g) the requirement to comply with any policy, code of practice or guidelines, and

**Proposed Local Law 20 – Open Air Fires Local Law** (version 2.0 ,16<sup>th</sup> August 2021)

- h) the obtaining of other permits or authorisations which may be required by Council whether under this Local Law or otherwise.

**40. Deciding whether to issue a permit or what conditions a permit should have**

In considering an application for a permit an *authorised staff member* may consider:

- a) any policy or guideline adopted by the Council relating to the subject matter of the application for the permit; and
- b) any submission that may be received in respect of the application; and
- c) any comments that may be made in respect of the application by any public authority, Government department, community organisation or any other body or person; and
- d) the risk posed to public safety, property or Council assets by the proposed activity; and
- e) any anticipated impact on other persons of the proposed activity; and
- f) whether the concerns or issues raised regarding the proposed activities can be adequately controlled by permit conditions, and
- g) the objectives of this Local Law, and
- h) any other relevant matter.

**41. Correction of errors in permits**

On their own initiative or upon a request, an *authorised staff member* may amend a permit if the permit contains:

- a) a clerical error or an accidental, slip or omission; or
- b) an evident material miscalculation of figures;
- c) an evident material mistake in the description of any person, thing or property referred to in the permit.

**42. Council can set a fee for permits, or classes of permits**

Council may fix a fee for issuing permits (or classes of permits) under this Local Law.

**43. Offence provision – Person who lights an open air fire contrary to conditions of a permit**

If an *open air fire* occurs on any property, and the *open air fire* is not in accordance with any conditions of a permit issued under this Local Law, the following persons are guilty of an offence:

**Proposed Local Law 20 – Open Air Fires Local Law** (version 2.0 ,16<sup>th</sup> August 2021)

- a) the person that lit the *open air fire*, and
- b) the person that engaged another person to light the *open air fire*, and
- c) the owner of the *property* on which the *open air fire* occurs, and
- d) the occupier of the *property* on which the *open air fire* occurs.

*Maximum penalty: 20 Penalty Units*

*Infringement penalty: 2 Penalty Units*

Proposed Local Law 20 – Open Air Fires Local Law (version 2.0 ,16<sup>th</sup> August 2021)

## Part 8 Enforcement provisions of this Local Law

### 44. Service of documents

Any document that is required to be served under this Local Law, may be served by:

- a) by giving it to or serving it personally on the person to whom it is directed; or
- b) by sending it by post to the person at the person's usual or last known residential or business address; or
- c) by leaving it at the usual or last known residential or business address of the person, with a person on the premises who is apparently at least 16 years old and apparently residing or employed there; or
- d) where the person is a body corporate, in a manner prescribed by any other Act or law for service on a body corporate of the same nature as the body corporate to be served.

### 45. Discretionary powers

On becoming aware of a contravention of this Local Law an *authorised officer* may, on considering all of the circumstances known at the time, do any of the following:

- a) issue an *official warning*, or
- b) issue an *infringement notice*, or
- c) commence court proceedings to prosecute the offence, or
- d) take any other action permitted by law.

### 46. Power to Act in urgent circumstances

- 1) An *authorised officer* may in urgent circumstances arising as a result of a failure to comply with this Local Law, take action to remove, remedy or rectify a situation provided that the *authorised officer* considers the circumstances or situation to be sufficiently urgent and that further delay would place a person, animal, property, asset or thing at an unacceptable risk of harm, injury or damage.
- 2) The *authorised officer* acting in urgent circumstances may do what is reasonably necessary to cause the immediate abatement of (or to minimise) the risk or danger involved.

**Proposed Local Law 20 – Open Air Fires Local Law** (version 2.0 ,16<sup>th</sup> August 2021)**47. Infringement notices**

- 1) Any offence against this Local Law is an infringeable offence as defined by the *Infringements Act 2006*, and an **authorised officer** may issue an **infringement notice** for any offence under this Local Law.
- 2) The penalty fixed for an **infringement notice** issued under this Local Law is the amount specified after the words “Infringement Penalty” in the clause that creates the offence.
- 3) The provisions of the *Infringements Act 2006* apply to an **infringement notice** issued for an offence against this Local Law.

**Proposed Local Law 20 – Open Air Fires Local Law** (version 2.0 ,16<sup>th</sup> August 2021)

## **Part 9 Amendments to Local Law 17 and saving clause**

### **48. Previous Local Laws relating to Open Air Burning revoked**

When this Local Law comes into effect, the following amendments are made to Cardinia Shire Council Local Law 17 (Environment, Amenity and Asset Protection):

- a) Part 5A of Local Law 17 is revoked, and
- b) Clause 54.1 of Local Law 17 is amended by inserting “not” before the words “including a building on the land”, and
- c) Clause 9.2.3 is revoked.

### **49. Savings provision – inconsistency**

If there is any inconsistency between this Local Law and the 1989 Act, the 2020 Act or any other Act, the part of this Local Law to which the inconsistency applies will be of no effect, and all other clauses of this Local Law continue to operate.

**Proposed Local Law 20 – Open Air Fires Local Law** (version 2.0 ,16<sup>th</sup> August 2021)

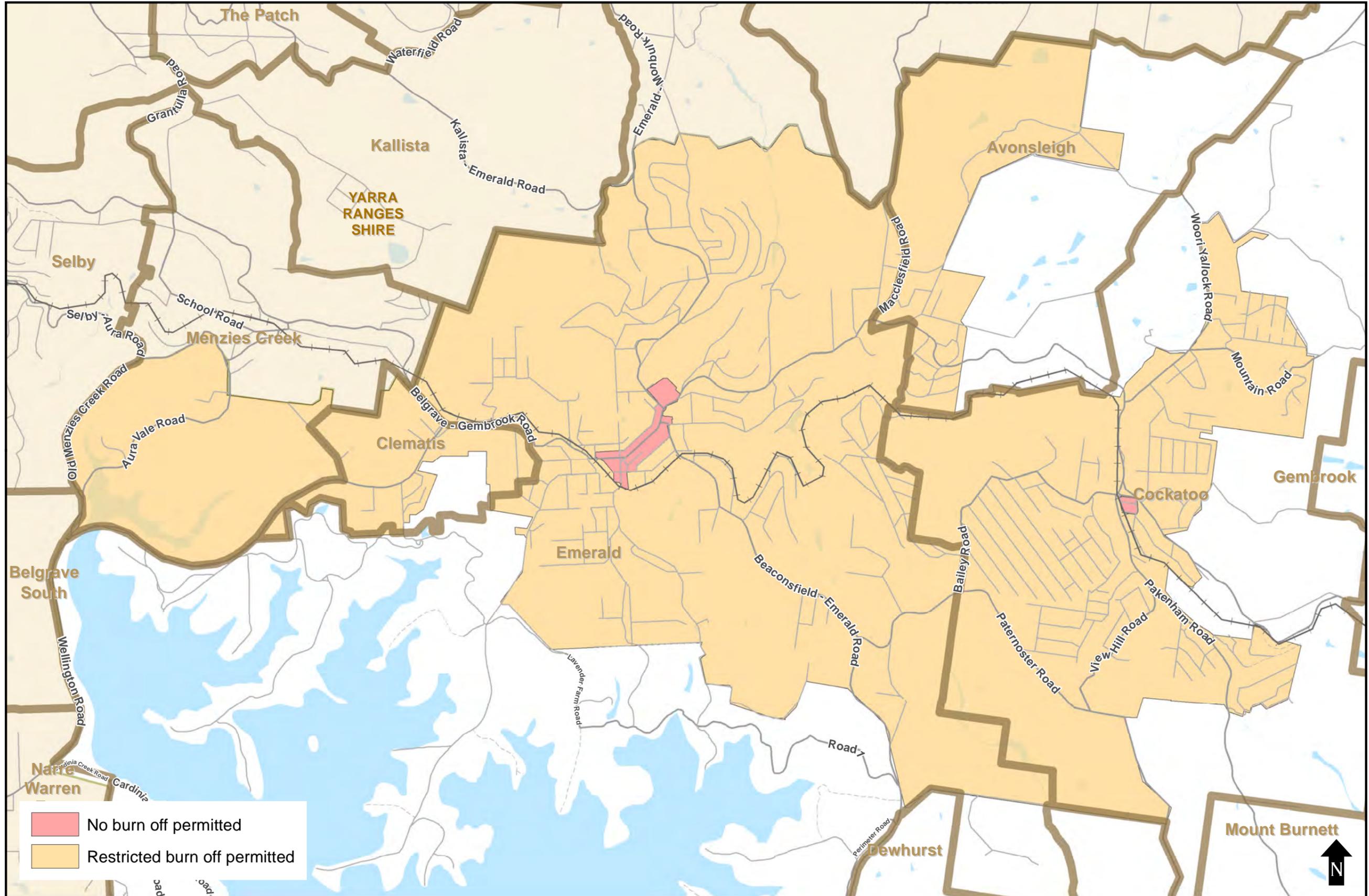
## **Schedule 1 Open Air Fire Zone Maps**

In accordance with Clause 12, in this Local Law,

- 1) The Urban and Township Zone applies to all *properties* in the *municipal district* that are shown on the Open Air Fire Zone Maps in this Schedule coloured red and identified as Urban and Township Zone
  
- 2) The Bushland and Peri-Urban Zone applies to all *properties* in the *municipal district* that are shown on the Open Air Fire Zone Maps in this Schedule coloured yellow and identified as Bushland and Peri-Urban Zone.
  
- 3) The Rural Zone applies to all *properties* in the *municipal district* that are not Urban and Township Zone in accordance with Clause 12 (2), and are not Bushland and Peri-Urban Zone in accordance with Clause 12(3). Rural Zone properties are shown on the Open Air

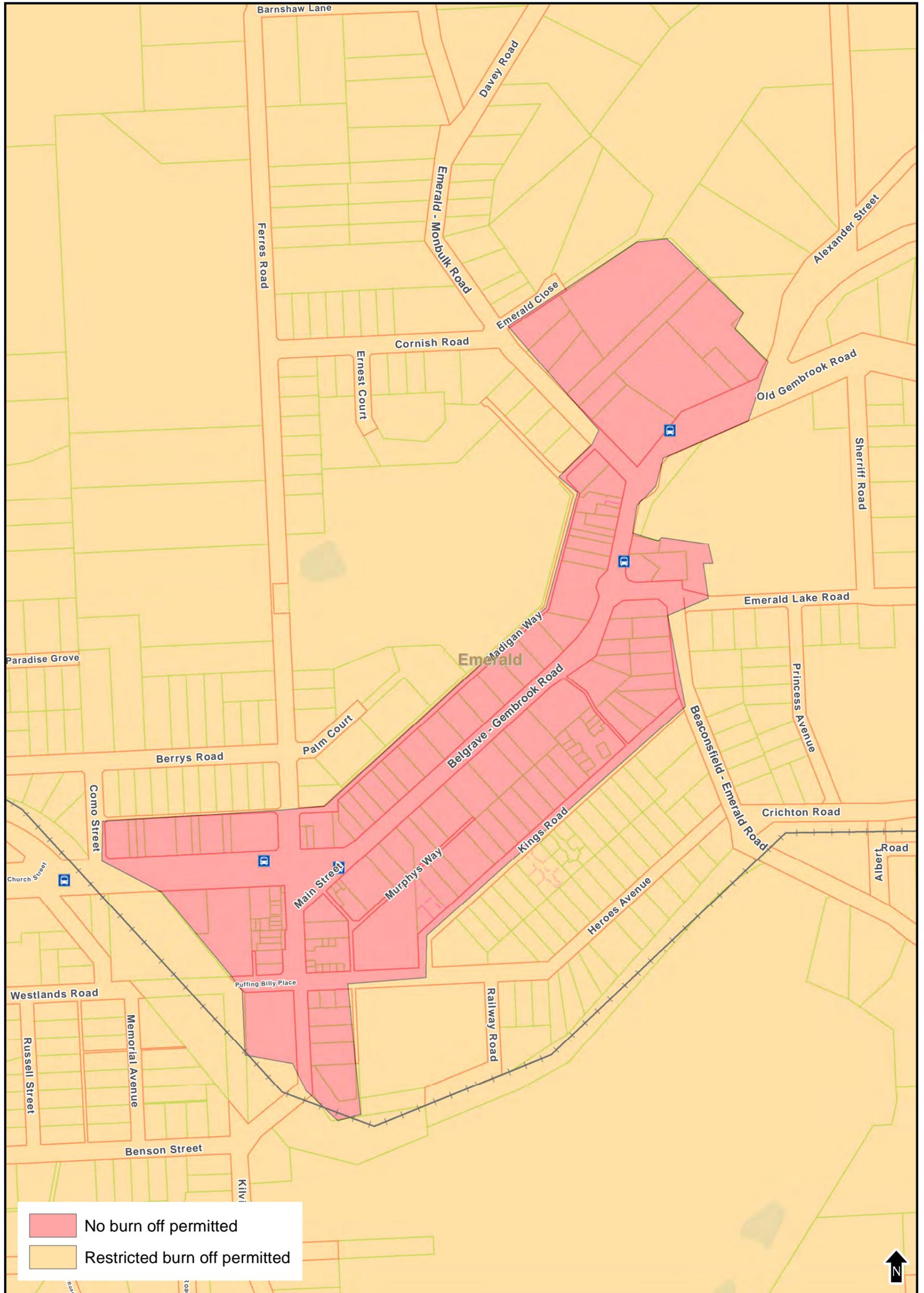


# OAB Review Emerald Overview



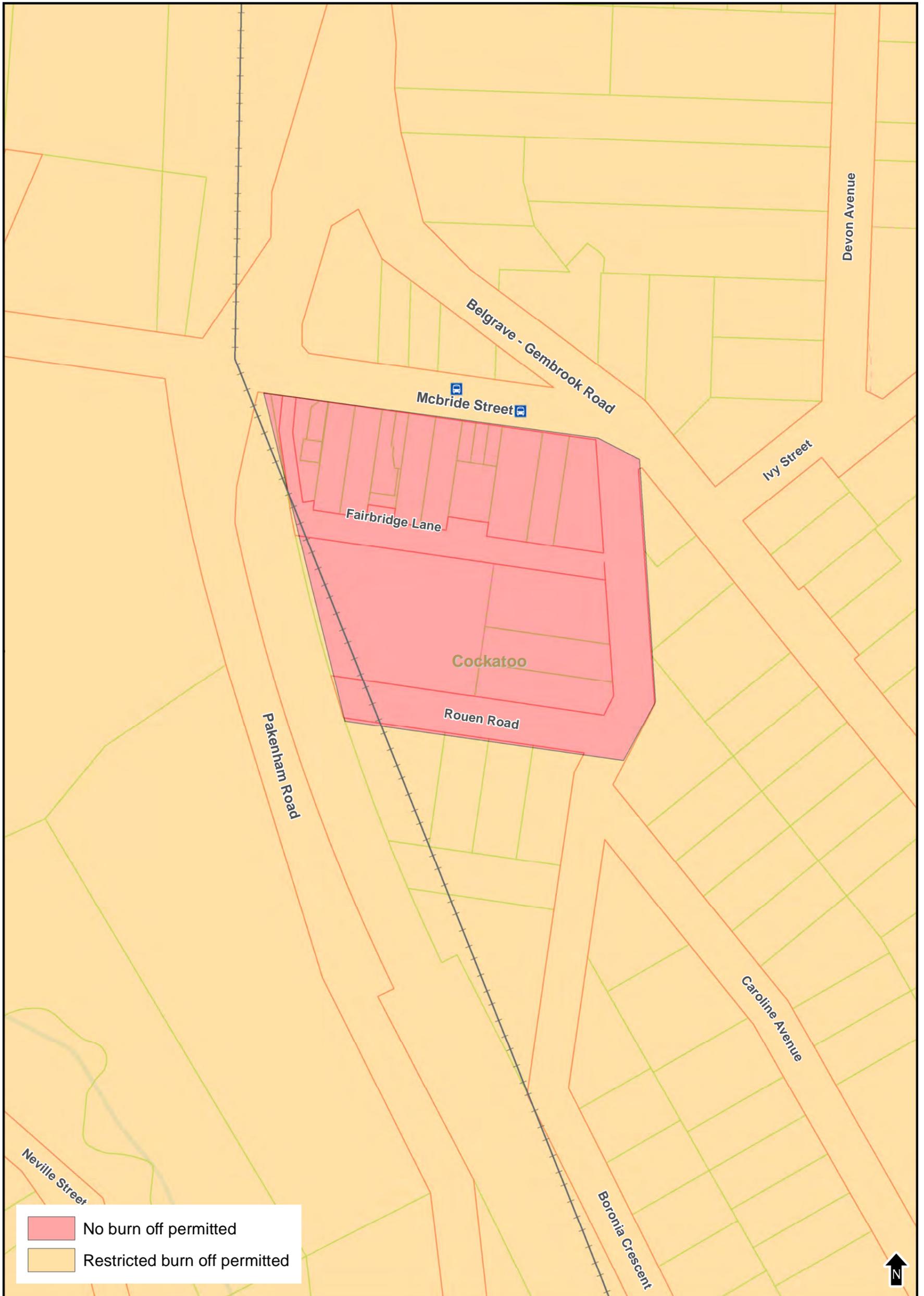


# OAB Review Emerald No Burn Area



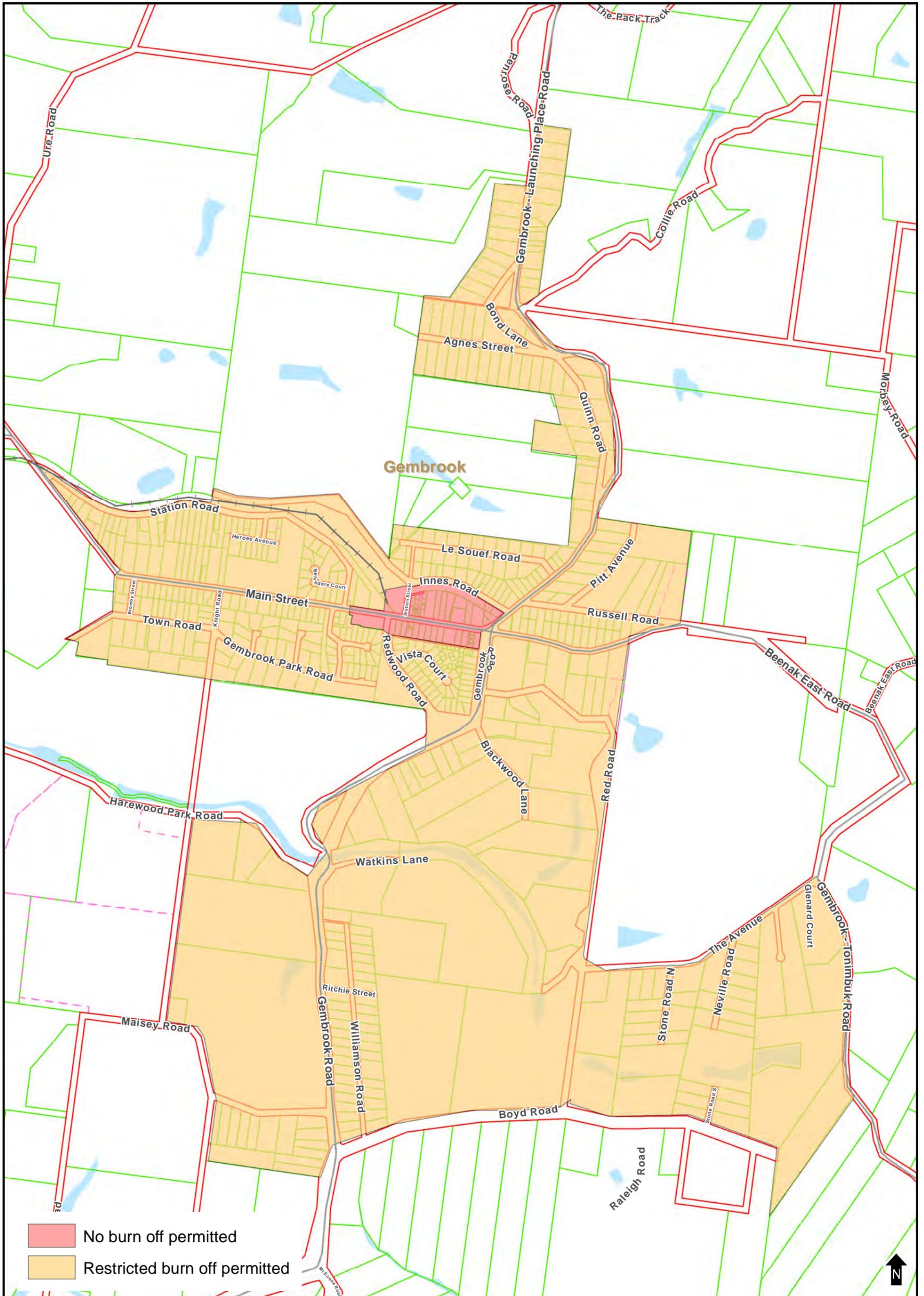
Printed: 24-Jun-21 Data Source: State & Local Government. © CARDINIA SHIRE COUNCIL

# OAB Review Cockatoo No Burn Area



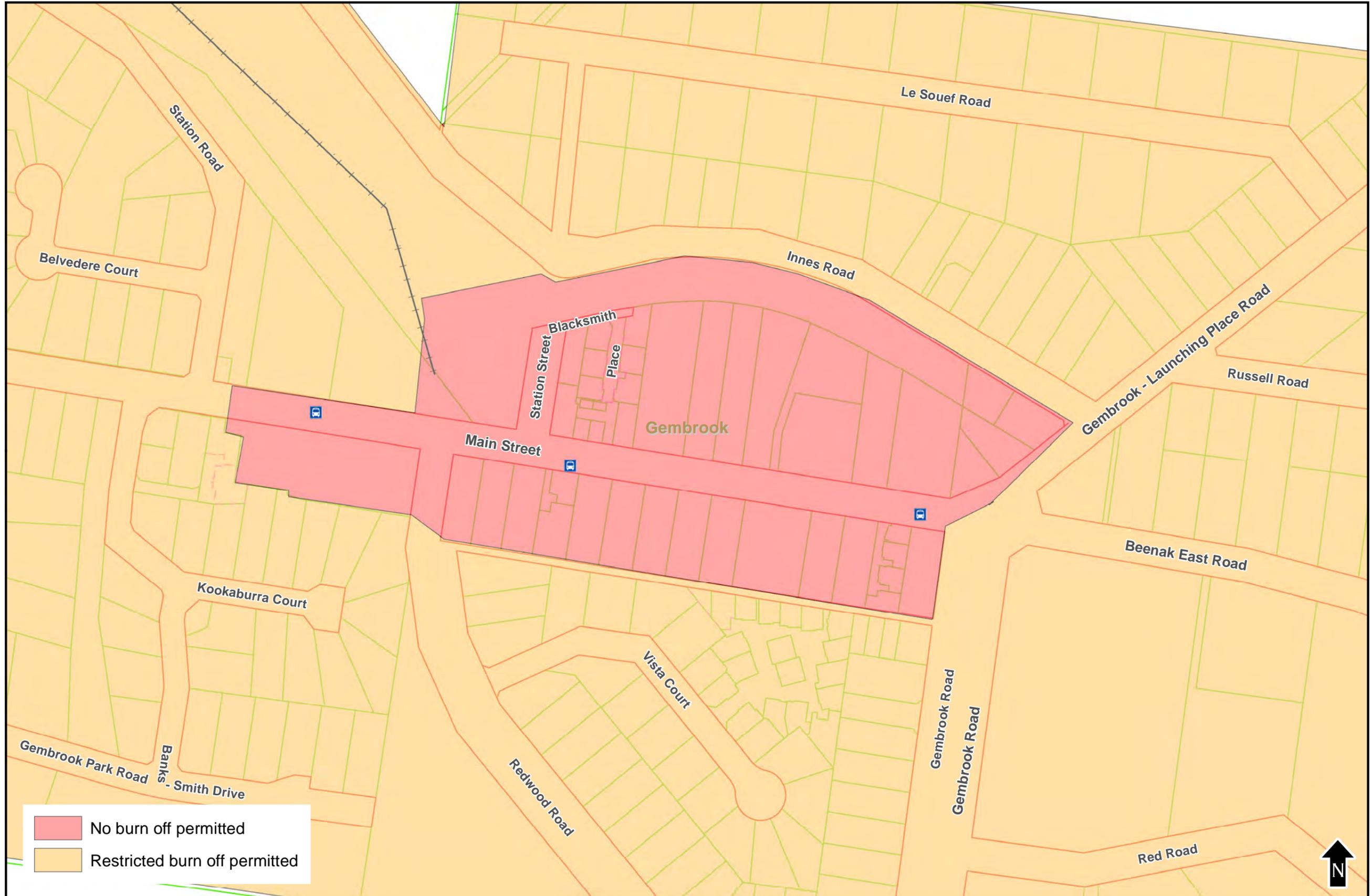
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# OAB Review Gembrook Overview



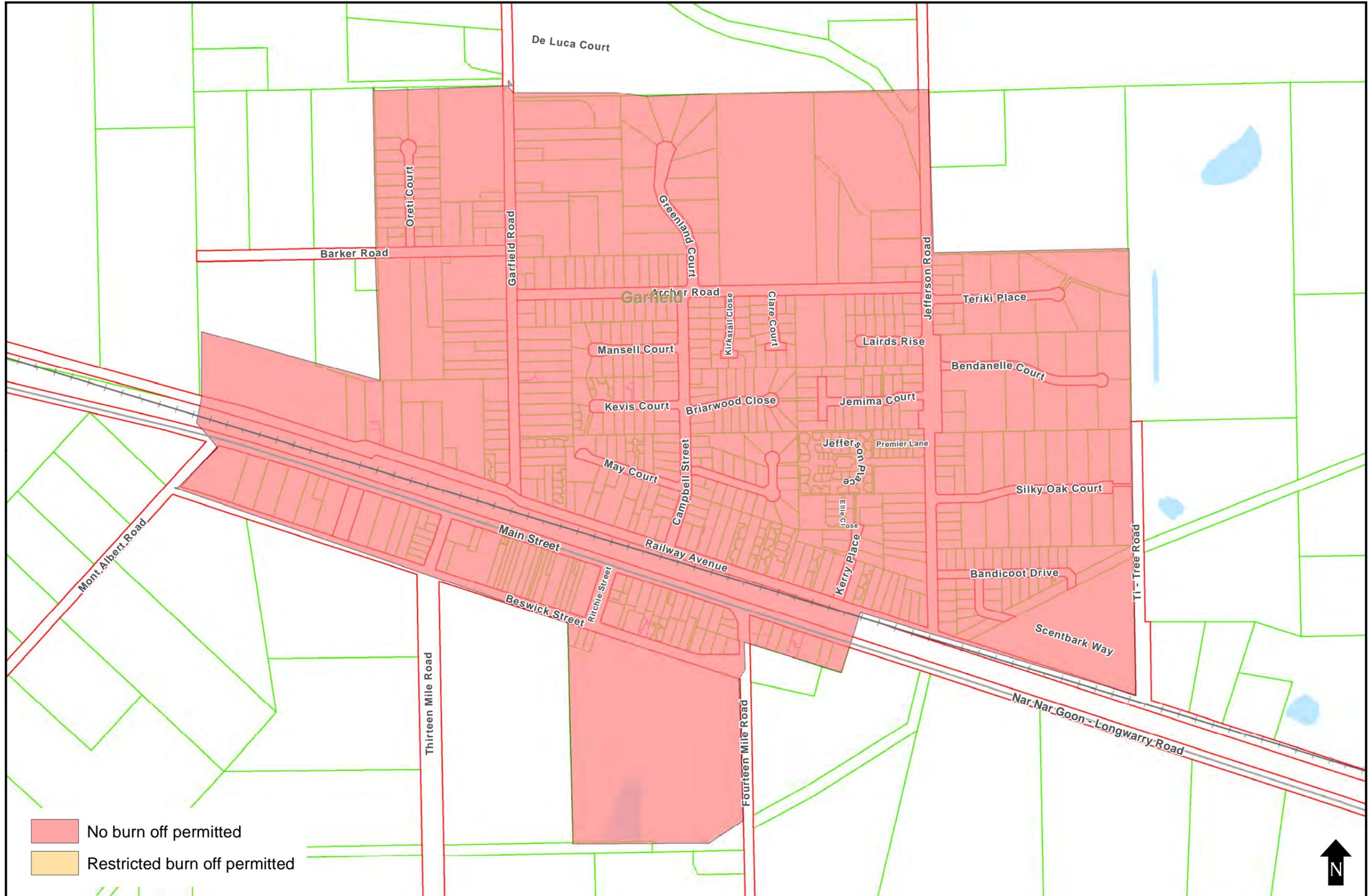
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# OAB Review Gembrook No Burn Area

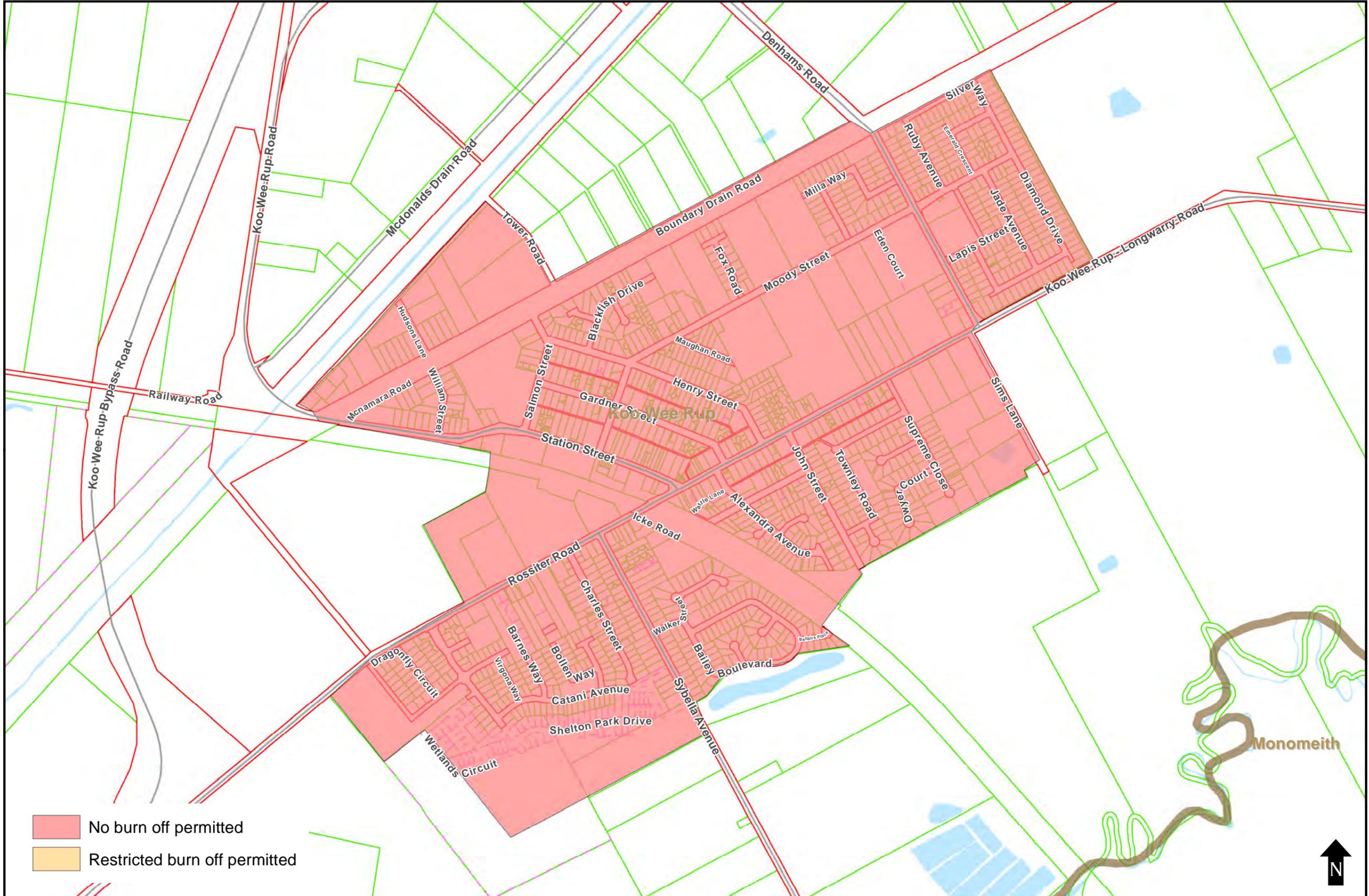




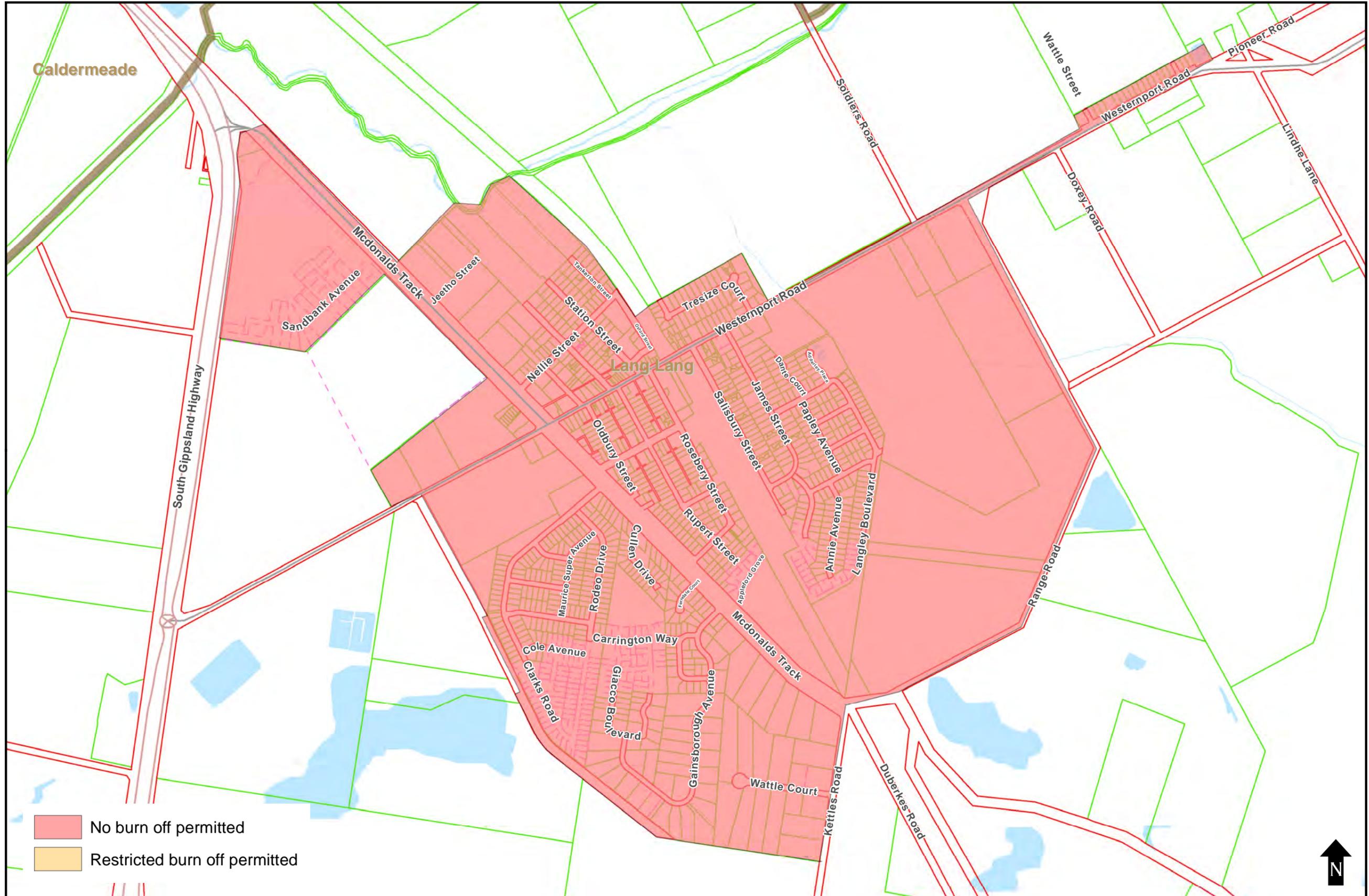
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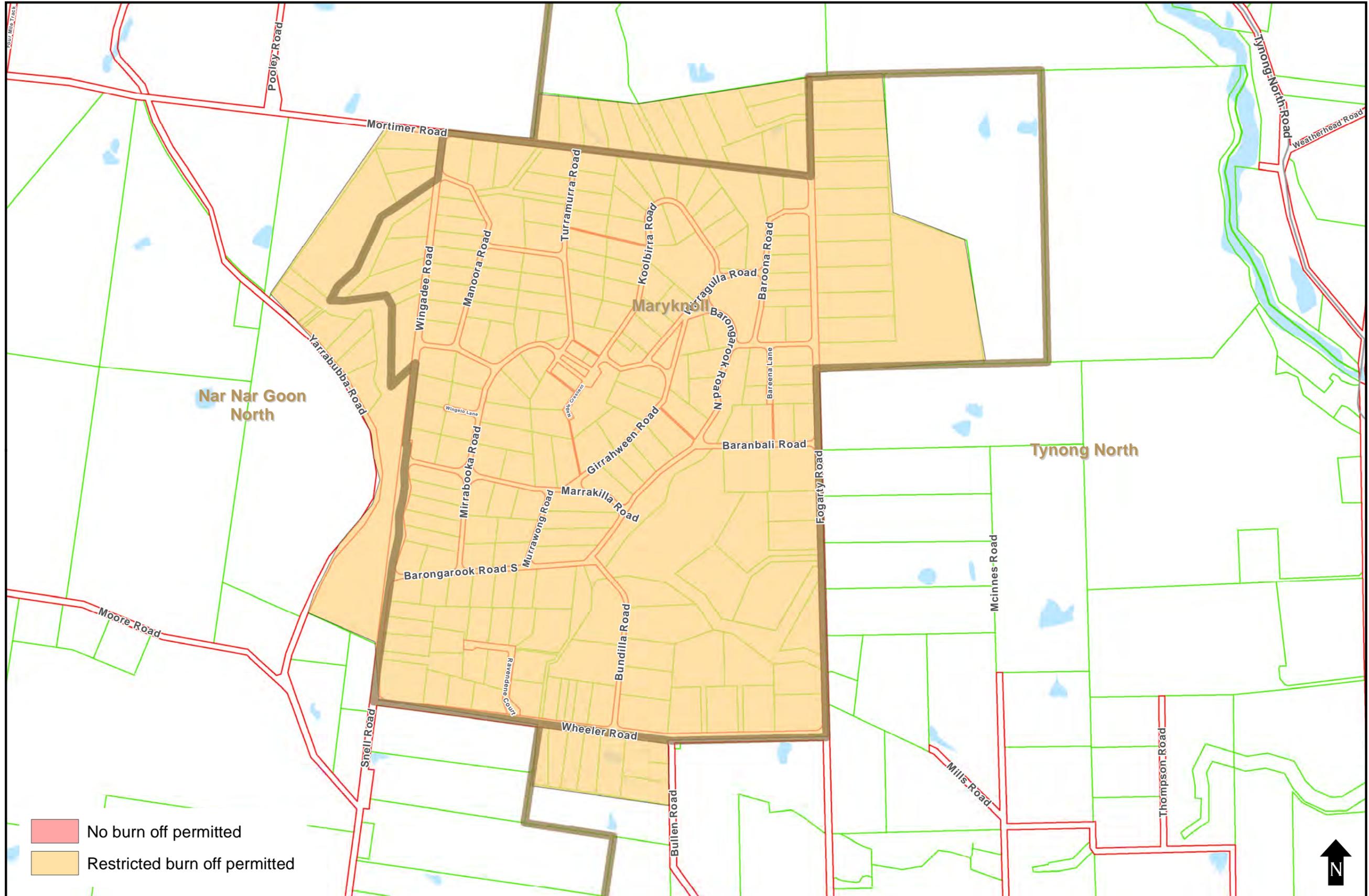
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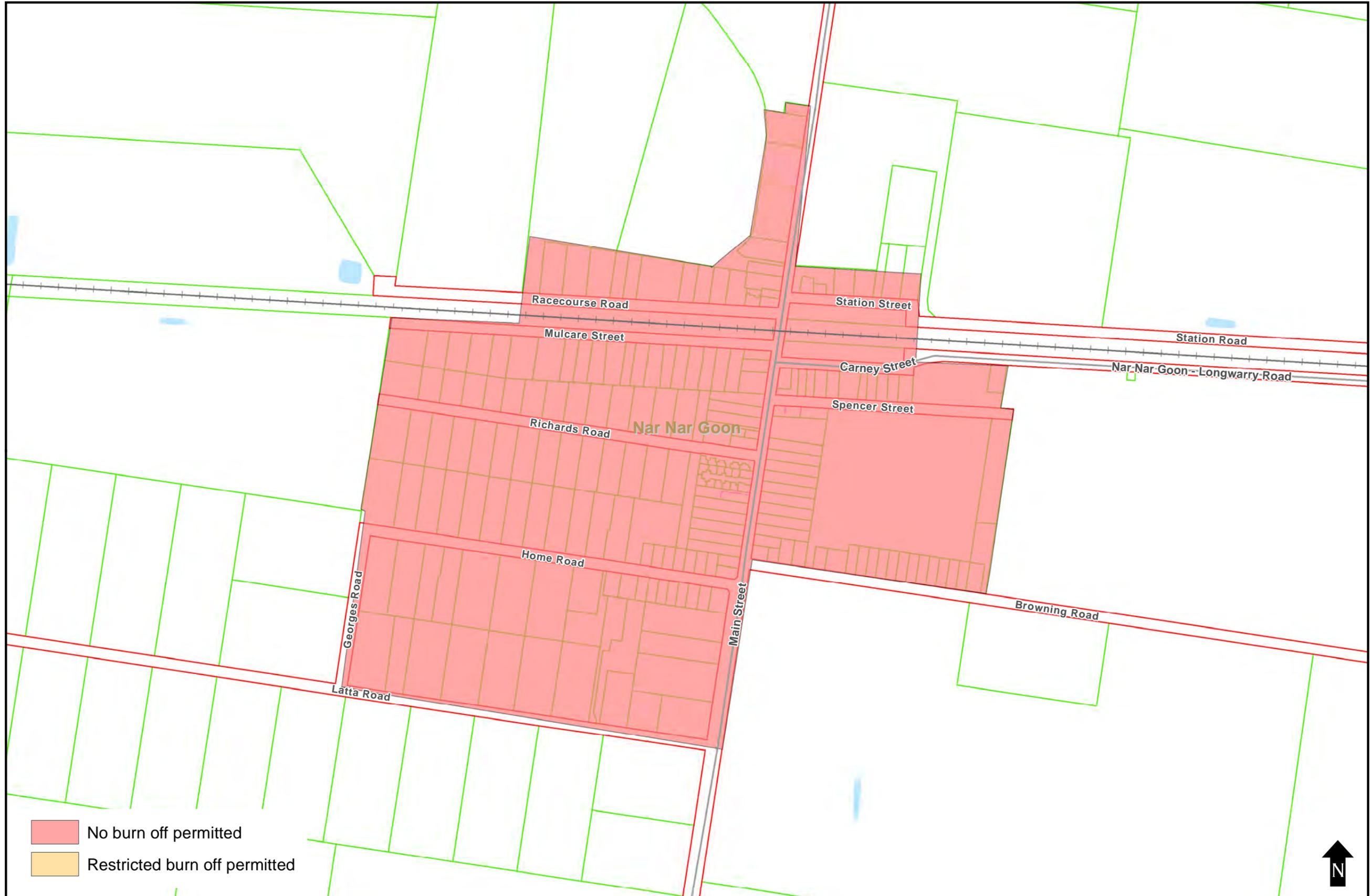
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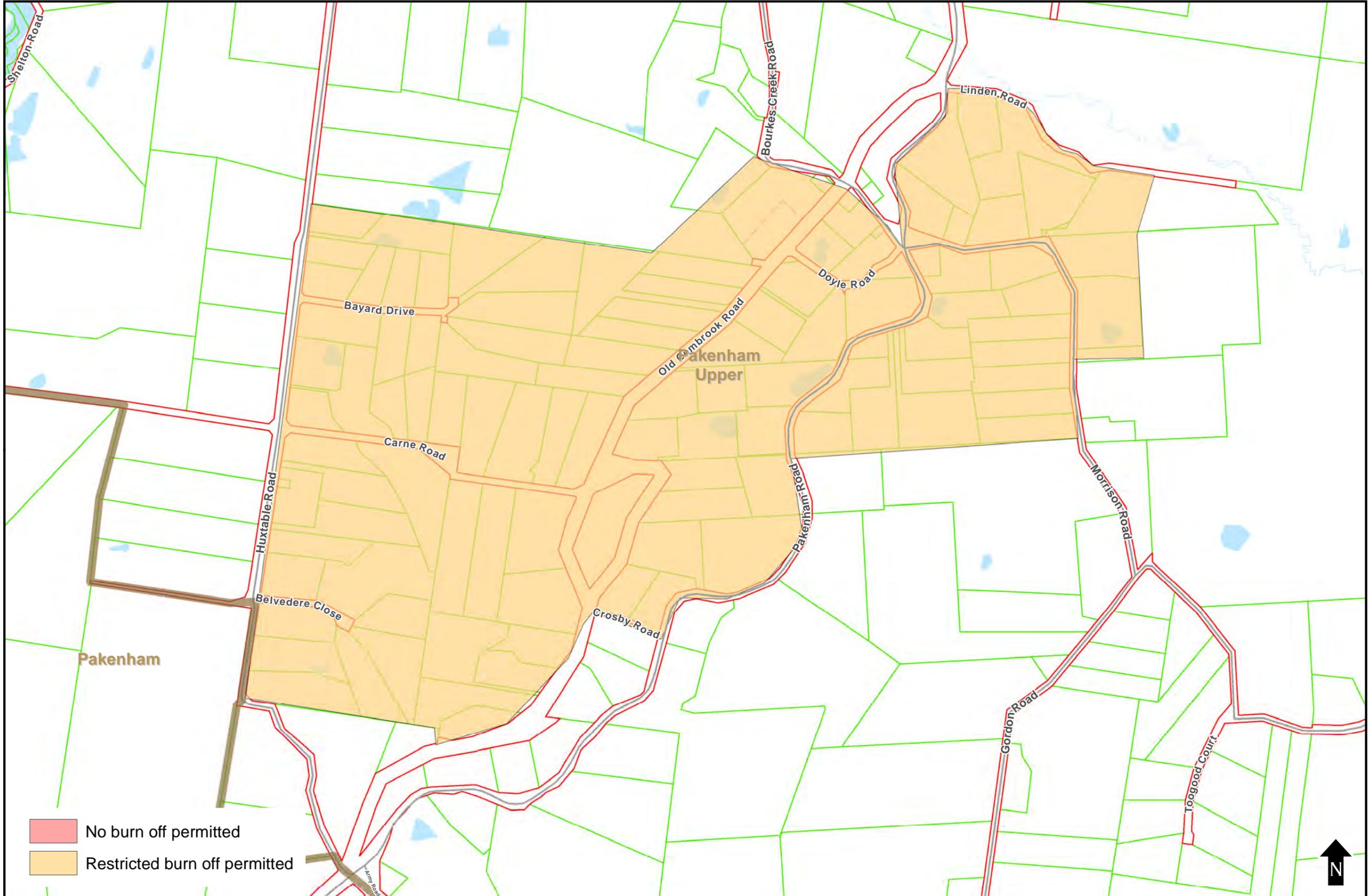
# OAB Review Maryknoll



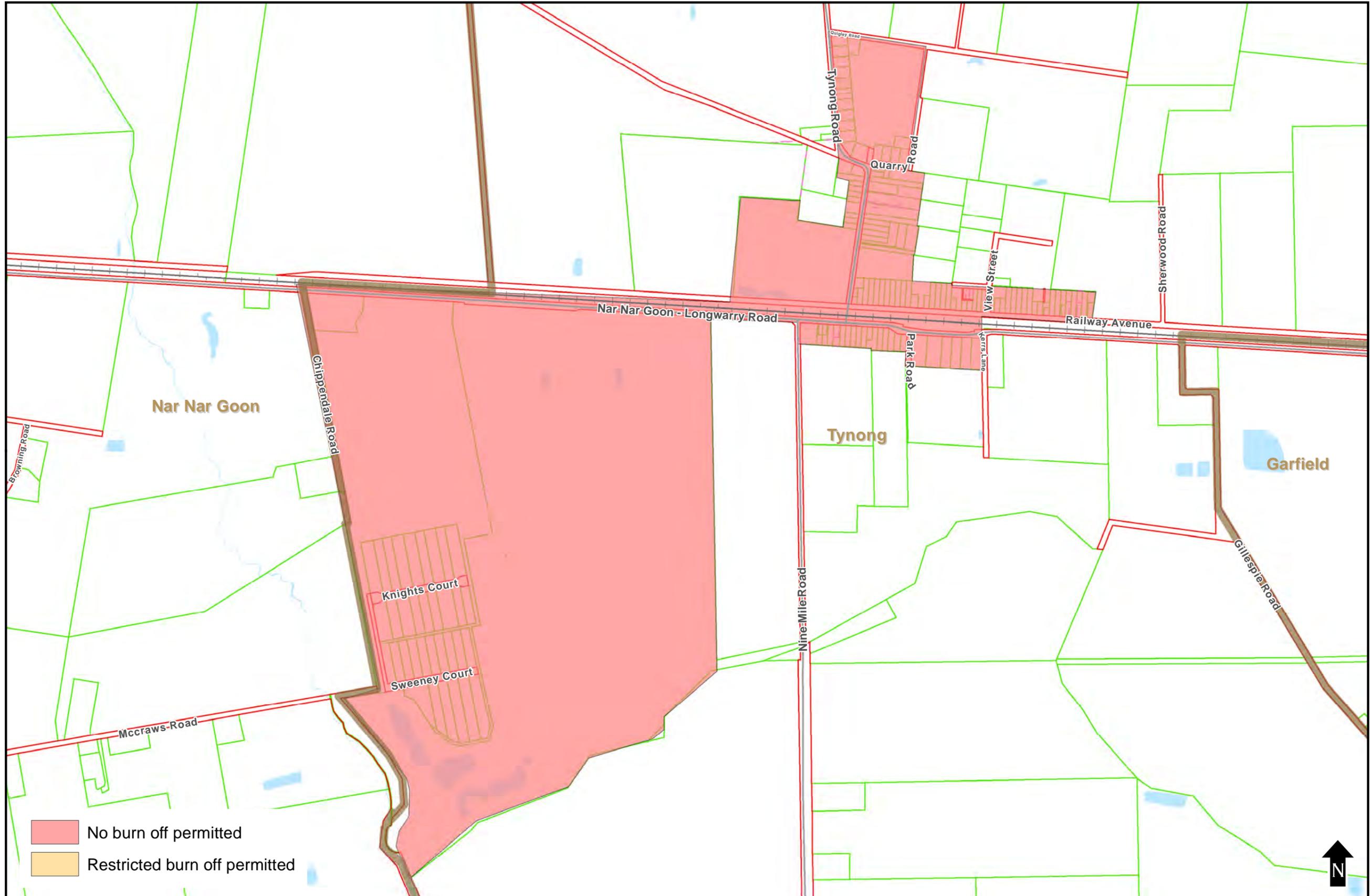
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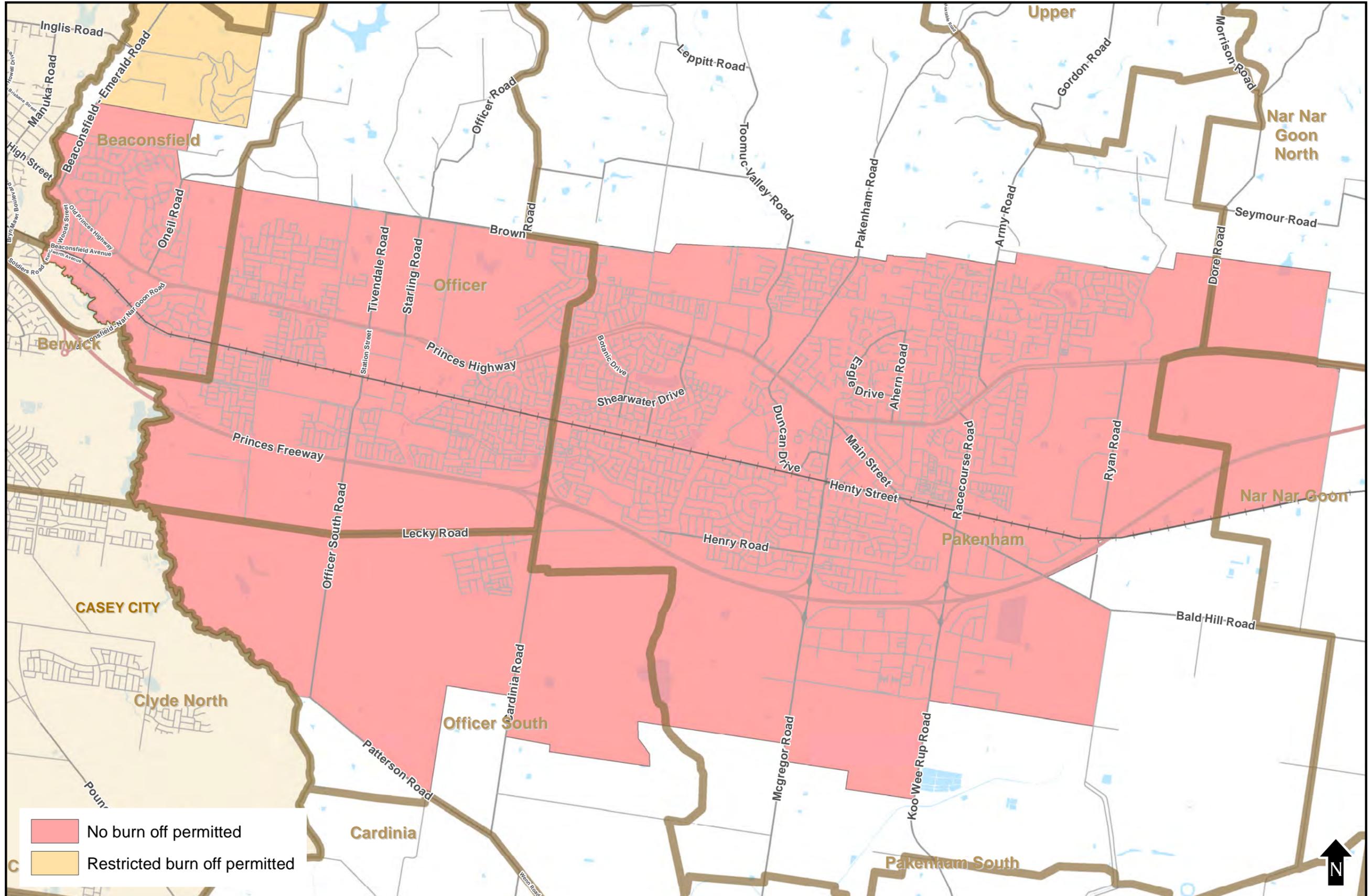
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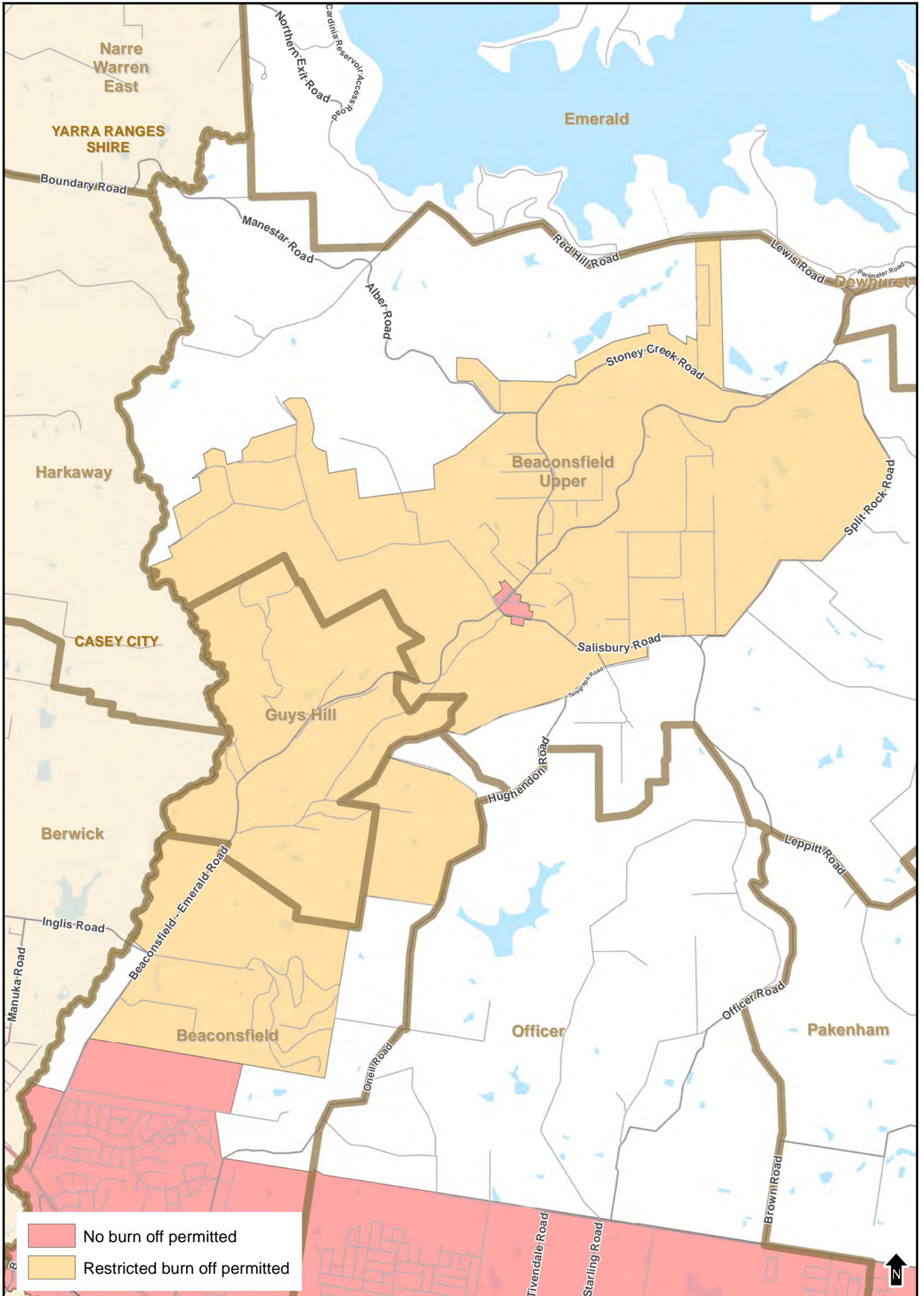


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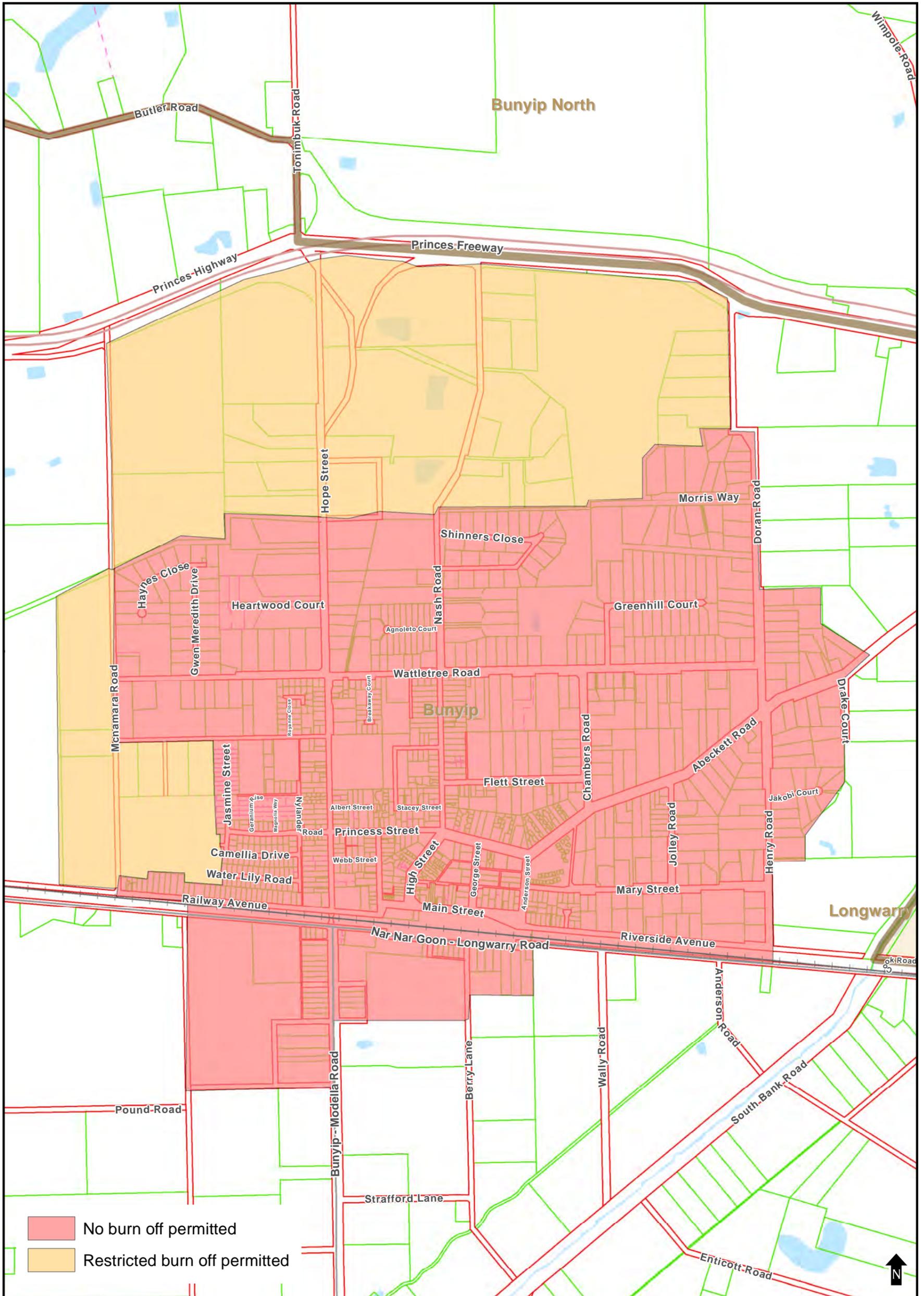


# OAB Review Beaconsfield Overview



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# OAB Review Bunyip



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Cardinia Shire Council



# Local Law Community impact statement

Proposed Local Law 20 – Open Air Fires Local Law

16 August 2021

Version 1.0

## Part A

### Background

Cardinia Shire Council commenced a review of Local Law 17 – Part 5A in 2019 after it was recognised that the existing laws in relation to open air burning were insufficient and did not meet community and Council expectations.

An extensive review of Council's existing Open Air Burning Local Law was undertaken, focusing on simplifying and strengthening the local law that provides the community with the means to prepare their property to reduce risk of fire, through burning off for genuine fuel reduction, while discouraging the inappropriate or undesirable burning of waste.

The local law review included extensive community consultation and consultation with the Municipal Fire Management Planning Committee, agency partners and internal Council business units.

The review included a benchmarking against Baw Baw and Yarra Ranges shires, given their similarity to Cardinia Shire's geographical blend of urban, semi-rural and rural townships, while also incorporating large areas of national and state parks.

Due to the COVID19 pandemic the local law review was put on hold throughout 2020.

The *Proposed Local Law 20 – Open Air Fires Local Law (version 2.0)* was prepared in line with the requirements of the Local Government Act 2020. Council has confirmed that the Proposed *Local Law 20 – Open Air Fires* complies with the 'local law requirements set out in Section 72 of the Local Government Act 2020, including the development of this community impact statement.

The purpose of the community impact statement is to ensure:

- regulation is only implemented when there is a justified need
- only the most efficient forms of regulation are adopted
- there is an adequate level of public consultation in the development of regulatory measures.

Council has used *The Guideline for Local Laws Manual* (published by Local Government Victoria) to inform the development of the community impact statement, as the explanatory document for the community, and integrated its components into Council's processes of better practice local law making.

Pursuant to Section 73 of the Act, Council is required to give public notice of the proposed local law and invite submissions for a period of at least 28 days.

The consultation period will run from 20 August to 17 September.

Anyone who makes a written submission can request to be heard in support of their submission at the Ordinary Council Meeting which considers the making of the proposed local law.

### Objectives

The objectives of the local law are to:

- provide for the peace, order and good government of Cardinia Shire
- promote a physical and social environment free from hazards to health, in which the residents of the municipal district can enjoy a quality of life that meets the general expectations of the community
- protect the amenity of the municipal district

- prevent and suppress nuisances connected with open air fires and smoke in the environment, which may adversely affect the enjoyment of life or the health, safety and welfare of persons
- prohibit, regulate and control open air fires (and related behaviours) which may be dangerous or unsafe or detrimental to the quality of life and the environment
- provide for the consistent application and enforcement of this local law.

## Part B

### Measures of success of proposed local law

The primary objectives of local laws are to protect the amenity of the municipality and the health and safety of the community. These objectives are not simply about compliance but are also about creating an environment that is equitable and fair where residents, business and visitors alike can participate in the community with mutual respect and enjoyment.

While enforcement of local laws is important, measures of success must have regard to impact of local law related actions, whether that is information or enforcement, against the stated objectives.

To measure the success of the local law, Council will:

1. record levels of compliance/non-compliance, including the level of reporting of resident complaints and proactive detection of non-compliance
2. review enforcement actions taken, including official warnings, infringements and prosecutions
3. monitor how the local law contributes to supporting community safety
4. undertake inspections to ensure compliance with the local law and permit conditions
5. record and monitor the volume and nature of applications for permits under the Local Law, and the reasons that individual residents need exemption from the general local law provisions.

### Existing legislation that might be used instead

Council has considered whether there are alternatives to the local law that might better suit the needs of the community. Council does not believe that there is an alternative that is better suited to address the issues, and as such is satisfied that the creation of the proposed local law is the correct and preferable approach.

### Overlap of existing legislation

Council is satisfied that the proposed local law that the proposed Local Law does not 'duplicate, overlap or conflict with other statutory rules or legislation'. To the extent that any duplication or overlap is found to exist, the proposed local law will be ineffective.

The existing Acts listed below also include provisions that are related to the subject matter of the proposed local law.

- *Fire Rescue Victoria Act 1958*, and *Country Fire Authority Act 1958* – both of these Acts include provision for fire danger periods and measures to address fire hazard when it is detected on private land
- *Cardinia Shire Local Law 17* – includes a number of restrictions relating to fire hazard and dangerous land.
- *Public Health and Wellbeing Act* – this Act includes significant powers to prohibit (or to order the improvement) when a person allows a nuisance to emanate from their land and to cause a public health risk. Persistent and severe smoke nuisance may fall into this category.
- *Environment Protection Act 2017* – this Act covers a wide range of issues for the purpose of protecting the environment. This includes specific regulations relating to the handling and disposal of industrial and commercial waste.
- *Summary Offences Act 1966* – this Act includes criminal offences relating to the lighting of fires that cause damage to other structures.
- *Road Management Act 2004* – Council and Vicroads are the road management authorities for most of the roads adjacent to residential properties. To the extent that nature strips are used as the location for open air fires, Council and Vicroads permission may be required.
- *Infringements Act 2006* – this Act sets out the processes when infringements are issued and enforced.

The provisions of the proposed local law are consistent with state legislation without duplicating, overlapping, or creating any inconsistency.

The objectives of the *Country Fire Authority Act 1958* and the *Fire Rescue Victoria Act 1958* are supported by the controls proposed in the proposed local law in relation to incinerators and burning-off.

### **Overlap of planning scheme**

The provisions of this local law do not overlap, duplicate or create inconsistency with the *Cardinia Planning Scheme*.

### **Risk assessment**

Many clauses in the proposed local law reflect the current policy or are unchanged from *Local Law 17 – Part 5A*. Where open air fires are more restricted under the proposed local law, the practices that are restricted do not meaningfully contribute to effective fuel reduction, or can be addressed by other means. The capacity to issue permits at a property level also allows Council and property owners to respond to the specific attributes of the land in question, and such conditions are in effect ‘treatments’ to minimise risk from use of or activity.

### **Legislative approach adopted**

Council has carefully consider the approach to this proposed local law. In the case of open air fires there is a wide range of views within the community, and the proposed local law attempts to balance these needs. As such, Council has adopted a moderately prescriptive approach, to promote clarity and consistency across the zones in the municipality.

An example of this approach is in the prescribed times when burning off is, and is not permitted. On the one hand, residents desire the freedom to conduct fires at their convenience. However, this needs to be balanced with the health and amenity impacts, and the cumulative effects of wood-fire smoke in the environment. It is therefore considered necessary to identify specific days of the week where burning off may occur, in order to maximise the community benefit of days with decreased smoke.

Council recognises that all laws seek to make general regulations that can be applied efficiently and consistently across a large number of people. In order to achieve this, it has been necessary to create specific rules. This has resulted in the minimum possible number of provisions which create offences. In this context, Council recognises that:

- a. the municipality comprises an area of 1,283 square kilometres
- b. the municipality has over 47 suburbs, townships and villages
- c. the municipal population is approximately 112,159
- d. the area is one of the most diverse in Victoria
- e. around 65% of the population live in the ‘urban areas’ which in area comprise 6% of the municipality

The level of prescription is offset by the capacity for people to apply for, and for Council to issue, individualised permits which allow for relaxation of the prescriptions at an individual property level.

### **Restriction of competition**

The proposed local law does not restrict competition and is not inconsistent with any National Competition Policy provisions.

## Penalties

Council has compared the general level of penalties provided for in the local law with those of three comparable councils (Baw Baw, Casey and Yarra Ranges). The infringement penalty amounts are similar to (or within the range of) infringement penalties imposed by the equivalent laws of neighbouring municipal districts.

Infringement notice penalties are used to simplify the process of enforcing less serious breaches of local laws. Infringement notices avoid the complex process of court prosecution.

Maximum penalties may be imposed by a court when:

1. Council or an authorised officer chooses to prosecute an offence, rather than issue an infringement notice
2. a person receiving an infringement notice chooses to have the matter heard in court.

Under the proposed local law, infringement penalty amounts will be higher than previously applied under the former local law. This is as a result of two factors:

1. Section 110 (2) of the *Sentencing Act* 1991 was repealed, effective from 1 July 2021, and as such the method of calculating penalty units in respect of local law offences has changed, and
2. Cardinia Shire Local Law 17 penalty units are generally lower than neighbouring Councils.

Taking into account the effect of the repeal of Section 110 (2), Council is satisfied that the infringement penalties under the proposed local law are consistent (and in some cases significantly lower than) equivalent penalties in neighbouring Councils, and are appropriate to ensure that penalties act as an efficient and clear deterrent to wrongdoing.

Under the proposed local law, the maximum penalty for each offence will still be 20 penalty units (now equal to \$3635). The majority of infringement penalties will be 2 penalty units (\$363) and the aggravated offence of burning industrial and commercial waste will attract an infringement penalty of 4 penalty units (\$727).

## Permits

As far as possible, Council has removed the requirement for permits for those who most need to undertake open air burning for genuine fuel-reduction purposes.

Permit applications are still an option for all residents should they not be able to undertake open air burning within the scope of the proposed local law and will be assessed on a case-by-case basis.

## Fees

The proposed local law allows Council to set fees annually and this will be done as part of the budget process. Determining the fees and charges is not within the scope of the local law review, and no fee is currently associated with applying for or receiving an open air fire permits.

## Comparison with neighbouring or like councils

Benchmarking of new clauses and amendments was undertaken against other local laws from a range of councils, including Yarra Ranges, Casey, Baw Baw and Knox.

The benchmarking undertaken with Casey and Yarra Ranges was based on a like-for-like basis as Cardinia Shire shares a similar geographical blend of urban, peri-urban and rural townships, as well as significant areas of state and national parks.

The benchmarking undertaken with Casey and Baw Baw was undertaken given our shared municipal boundaries.

The purpose of conducting this benchmarking was to assess the similarities and differences between councils to ensure a best practice approach was adopted in developing the local law and a broad consistency across the wider south-east metropolitan and South Gippsland districts.

The proposed local law more closely resembles the open air fire laws in Yarra Ranges Council, in that it differentiates between 3 zones, with different levels of restriction, and which reflect the geographic diversity of the municipal district.

The proposed local law can be contrasted with the current law prevailing in the City of Casey, which has adopted a model which prohibits all open air fires, unless a permit has been issued. Council is satisfied that a similar approach should not be adopted in Cardinia Shire at this time, and believes that the proposed local law is the appropriate balance between consistency and diversity.

### **Charter of human rights**

The *Charter of Human Rights and Responsibilities Act 2006* (Charter) contains 20 basic rights that promote and protect the values of freedom, respect, equality and dignity. Public authorities must not knowingly be in breach of these rights and must always consider them when creating laws, developing policies and delivering services.

Cardinia Shire Council, as a public authority under the Charter, must ensure that a proposed local law is not incompatible with a human right or, in making a decision, fail to give proper consideration to a relevant human right.

If a provision under the local law interferes with or restricts a right, consideration must be given to determine whether the provision is reasonable and justified under the Charter.

The proposed local law has been reviewed for compatibility with the Charter and is considered to be compatible. To the extent that the proposed local law limits the freedoms of residents, it is justified by a legitimate public interest in controlling certain behaviours. To the extent that residents may become subject to prosecution, the requirements of the law are unambiguous, and clearly communicated to those who are effected.

### **Consultation meetings**

In 2019, Council invited the community to provide open feedback on the existing local law in relation to open air burning. Council sought feedback on all aspects of the local law from the community, government agencies and internal and external stakeholders.

Council undertook pop-up sessions across the shire, held meetings with emergency service organisations, and held a general community drop-in session at Council.

Council's *Creating Cardinia* web page had a 'Register to receive updates' page for this consultation from the start of October 2019, to build a mailing list of people interested in contributing to the discussion and being informed about the process. Community members were able to make written submissions from this page when the consultation period opened.

Analysis of this feedback identified key areas for improvement based on the large volume of comments on these provisions from various community members and stakeholders. Council has highlighted these key areas and listed a response to each of these items.

The top 5 themes from the community feedback were:

- days allowed to burn-off
- smoke
- size of fires
- property size allowed to burn-off
- enforcement.

The proposed local law has been developed and reviewed in consultation with Councillors, members of Council staff and legal practitioners.

In accordance with the Cardinia Shire Community Engagement policy, a further period of consultation will be conducted, prior to the making of the proposed local law (as required by Section 73 of the *Local Government Act 2020*).

## Submissions

Council has given public notice of its intention to make the proposed local law and provide members of the public with an opportunity to make a written submissions to Council in relation to the proposed local law. Council will consider submissions received before making a final decision on the proposed local law.

A person who makes a written submission is entitled to request (in the submission) to be heard by Council in support of their submission. When Council makes a final decision on the proposed local law, it must notify in writing each submitter of the decision and the reasons for the decision.

This community impact statement has been prepared to inform the community about the proposed local law and to assist any member of the public who may wish to make a submission to Council.

The proposed local law will be available to view during the consultation period.

To view the proposed Local Law 20 – Open Air Fires Local Law, visit [www.cardinia.vic.gov.au/haveyoursay](http://www.cardinia.vic.gov.au/haveyoursay)

All submissions must be made in writing to Cardinia Shire Council, PO Box 7, Pakenham, 3810 or emailed to [mail@cardinia.vic.gov.au](mailto:mail@cardinia.vic.gov.au) and must include the following details:

- name and address of the submitter
- reasons for the submission
- advice as to whether they wish to be heard at a meeting of Council or a committee appointed for the purpose in support of their submission.

All submissions must be submitted to Council prior to **17 September 2021**.