

6.3 Policy Reports

6.3.1 Open Air Fires - Local Law 20

Responsible GM: Debbie Tyson
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Recommendation(s)

That Council:

1. Notes the outcomes of community consultation described in this report that followed the Council resolution on 16th August 2021 to propose Local Law 20 – Open Air Fires Local Law,
2. Notes the Community Impact Statement prepared in respect of Local Law 20, and
3. Notes the certification of an Australian Lawyer who has been admitted to the legal profession for at least 5 years, that Local Law 20 – Open Air Fires Local Law is consistent with the requirements of the *Local Government Act 2020*,
4. Resolves to make Local Law 20 – Open Air Fires Local Law (version 4.10 attached to this report, including zone mapping), pursuant to Part 3, Division 3 of the *Local Government Act 2020*, and
5. Resolves that the Chief Executive Officer is instructed to cause all necessary actions to implement the local law so made, and
6. Resolves to adopt the Open Air Fires Local Law Policy (version 2.0), pursuant to Clause 38 (2) of Local Law 20 – Open Air Fires Local Law to guide Council officers in the issuing of permits under the local law so made.

Attachments

1. Local Law 20 - Open Air Fires Local Law - version 4-10 (including maps) [6.3.1.1 - 55 pages]
2. Certificate pursuant to section 74(1) Local Government Act 2020 [6.3.1.2 - 1 page]
3. Local Law 20 - Open Air Fires - Permit Policy [6.3.1.3 - 10 pages]
4. LLCIS - Local Law 20 - Open Air Fire Local Law 2022 v 1.1 [6.3.1.4 - 8 pages]
5. Engagement and Communications Summary [6.3.1.5 - 2 pages]

Executive Summary

Cardinia Shire Council's Local Law 20 – Open Air Fires has been developed following a review of Local Law 17 – Part 5A, which commenced in 2019. Over the past two years a comprehensive community engagement process has been undertaken to understand the concerns of the community and internal and external stakeholders and identify new measures to support those with a genuine bushfire fuel reduction need, while discouraging unnecessary and unlawful burning of waste and promoting healthy and clean air and public amenity.

Considerable community feedback was received during these consultation periods that directly helped shape Local Law 20 – Open Air Fires, including the proposed days of the week, “no burn” periods, size of piles, minimum clearance dimensions, air quality and safety provisions.

Local Law 20 is designed to provide Council and the community with the ability to ensure that the Local Law remains tailored to the needs of the community in the long term by creating and mapping three new zones – ‘Urban and Township’, ‘Bushland and Peri-Urban’ and ‘Rural’

zones. These zones reflect the diversity of the municipal district and will allow Council to flexibly apply conditions and restrictions that address the changing land management needs over time.

Local Law 20 also provides greater powers to the CEO of Cardinia Shire to suspend certain provisions to support recovery from emergencies and preparation for times of increased fire danger or following major storms.

The Open Air Fires Local Law Policy also provides clarity to Authorised Council Officers and the community in respect of the issue of permits to burn issued under the Local Law.

A copy of Local Law 20 – Open Air Fires (version 4.10) can be found in the attachments.

Background

Cardinia Shire has a significant history of bushfire, with records 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. With the impacts of climate change being increasingly felt in weather extremes and frequency, the risk of adverse fire outcomes is significant.

In September 2019 Cardinia Shire Council resolved to declare a climate emergency, which calls for immediate and urgent action to reverse global warming and address climate change. A significant proportion of burn-offs in Cardinia Shire are not for efficient fuel reduction.

Local Law 17 – Part 5A currently provides for restrictions on open air fires, that vary depending on the size of the land, and whether the land is classified as “Bushfire Prone” by the Victorian Building Authority.

In 2019, Council began a review of Local Law 17 – Part 5A following internal, external and community feedback that it wasn’t meeting the needs of some parts of the community and stakeholders.

This Local Law review project has generated significant interest from the community on what is a passionate and somewhat divisive topic, including record submissions through the Statutory Consultation process.

Community consultation indicates many landholders use burning-off for garden/property maintenance, as cost-efficient waste disposal and for inefficient fuel reduction. Many residents use burning-off as their default option, without giving thought to potentially more efficient and environmentally sustainable options. However, there is a need in higher risk areas of the Shire for residents to have the option to burn-off to prepare their property for fire in the interest of personal and community safety.

Data provided by fire agencies in 2020 shows that there have been 509 instances over the past 10 years of issues relating to open-air burning, including 251 instances of inappropriate burning off or burning-off for reasons other than fuel reduction.

Local Law 20 strikes a balance between urbanisation, clean air and public amenity and the need for burning-off to be part of the solution for bushfire preparedness in those areas that face significant fire risk, alongside other methods of green waste disposal and utilisation of Councils waste collection and drop/off services.

New features of Local Law 20 include:

- New mapping that creates three new zones – Urban and Township, Bushland and Peri-Urban and Rural Zone
- A new no-burn period in July each year
- Increased penalties with a focus on those who burn industrial waste
- The power for the CEO to suspend certain clauses within the Local Law to allow residents greater flexibility to clean up their property following a major storm or before the commencement of the Fire Danger Period
- New restriction around burning-off on days of Poor, Very Poor or Extremely Poor air quality (as defined by EPA)
- Exemption to allow cultural traditions by Aboriginal peoples to be practiced without a permit
- Increased opportunity for residents in the Bushland and Peri-Urban and Rural zones to undertake fuel reduction through burning-off
- Overall simplification of the Local Law to aid residents in understanding their responsibilities

The new mapping will see an increase in the number of properties unable to burn-off without a permit, mostly around the growth areas of Pakenham, Officer and Beaconsfield. Additionally, the new zones also start to address the impacts of smoke in some of the peri-urban townships by applying the Urban and Township Zoning.

All residents and properties will have the ability to apply for a permit (online or over the phone) should they not meet the parameters in Local Law 20. Applications for permits will not attract a fee and will be determined in line with the Open Air Fires Local Law Policy.

Local Law 20 – Open Air Fires will come into effect on 1 July 2022.

Policy Implications

Local Law 20 – Open Air Fires 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
- Local Law 20 – Open Air Fires Permit Policy 2021

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 fires contribute to climate change through the release of CO₂ into the atmosphere. Unlike bushfires and prescribed landscape burning, small open-air fires do not re-absorb CO₂ through the regeneration of new vegetation.

Local Law 20 seeks to reduce the occurrence of open-air fires in areas where there is no genuine bushfire fuel reduction need and to encourage alternative methods of green waste disposal through existing and future Council services.

Reducing the impact of climate change is in line with the Cardinia Shire Sustainable Environment Policy 2018-2028.

Consultation/Communication

As part of development process of Local Law 20 consultation was undertaken with community, agencies and other internal and external stakeholders between 2019 and 2021. Consultation and engagement included a mixture of online (social media, SMS, email, advertisements, and survey) and face-to-face (community meetings and pop-up stalls) activities across the Shire.

Two formal consultation periods occurred, in September 2019 and September 2021. Council received more than 900 direct responses from these consultations that helped shape and define Local Law 20.

During the initial consultation in September 2019 (Phase 1), we asked the community and stakeholders to tell us what worked and what didn't with the existing Local Law 17 – Part 5A.

The top five themes from the community feedback from Phase 1 were:

- Days Allowed to burn-off (30%)
- Smoke (24%)
- Size of fires (21%)
- Property size allowed to burn-off (16%)
- Enforcement (9%)

A summary of the engagement methods

Method	Location	Reach
Face to Face Pop-Up Session	- Bayles - Bunyip - Gembrook - Koo Wee Rup - Nar Nar Goon - Lang Lang	- 15 - 30 - 45 - 25 - 40 - 5
Online Survey	Online	480 attempted the survey.
Facebook Post - 8 November - 18 November	Online	- Reach 6349, Engagement 961 - Reach 2376, Engagement 127
Creating Cardinia	Online	555 page visits 15 site posts 31 Quick Survey Respondents
SMS Text Messaging	Online	Message sent to 387 recipients.

Newspaper Advertising	Cardinia Shire	Unknown
Council Website	Online	422 page views to media article
Stakeholder Email	Online	33

From the 10,000 data points received, a draft local law was developed and put out to the community in September 2021. Formally, this was a “proposed Local Law”, in accordance with Section 73 of the *Local Government Act 2020*.

The statutory consultation period in September 2021 (Phase 2), where community could view the draft Local Law 20 and provide feedback, resulted in 403 submissions being received by the due date and 426 submissions overall, with more than 95% of these unique. This feedback was wide-ranging, but in particular the following themes were commented on most strongly:

- ‘25m Minimum Clearance Rule’ being too restrictive and prohibiting many residents from burning off
- Prohibition of Open-Air Fires in July and August being overly restrictive
- Prohibition on burns on certain days of the week being too restrictive

Version 4.10 of the Local Law incorporates amendments, directly as a result of this community feedback. Amending these provisions directly addressed more than 54% of the feedback received.

Community members and stakeholders who had registered interest in or had previous dealings with Council on issues relating to burning-off (permits, complaints) received an email or text message inviting them to participate in the consultation.

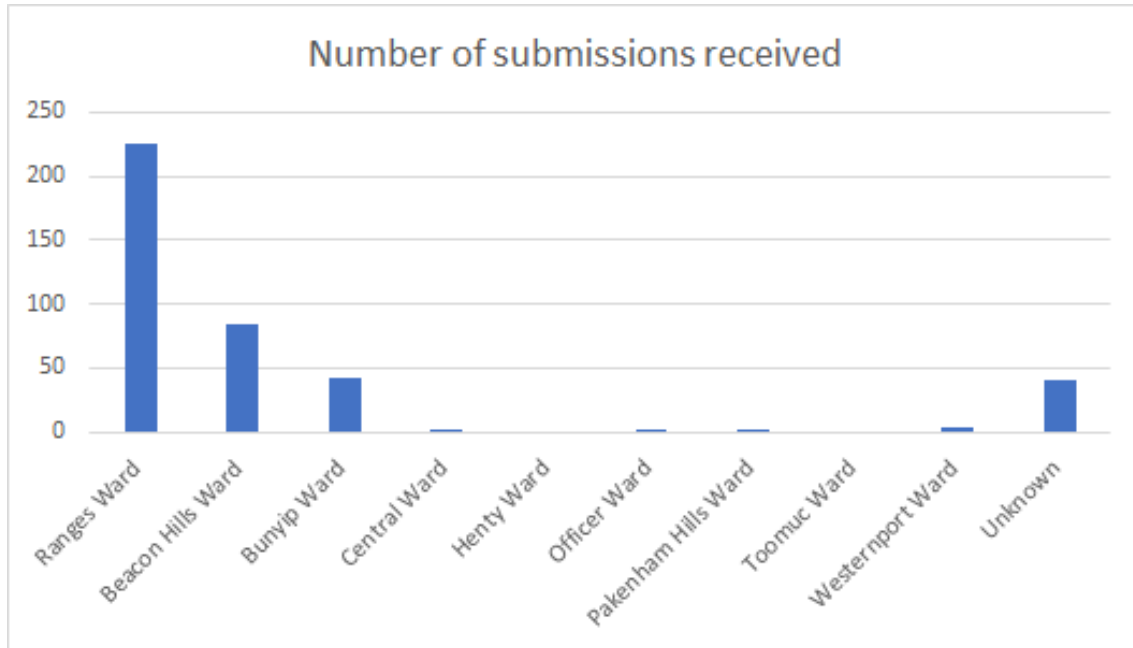
The table below outlines the methods of communication that were used and the reach of each method (where available).

Email	176
SMS Message	1011
Facebook	10,887
Creating Cardinia	5907
Newspapers Pakenham Gazette Ranges Trader	Unknown
Connect Magazine	46,000
Community Newsletters Village Bell – Upper Beaconsfield Beaconsfield Banner Nar Nar Goon News Monthly Cockatoo	Unknown

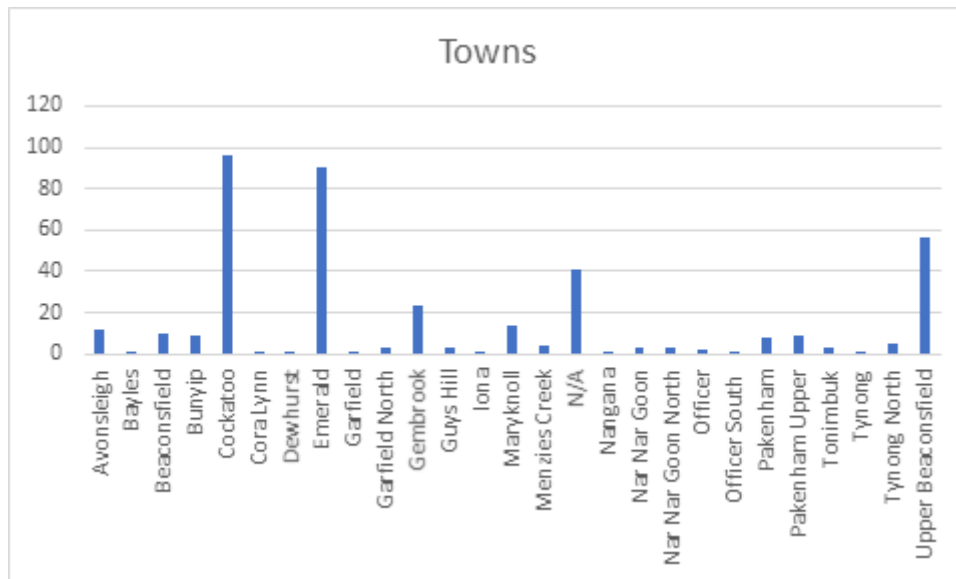
A public notice was also published in the Gazette and Ranges Trader as well as on the Council website.

Upon reading all of the submissions, Council staff have identified 21 'themes'. Many submissions addressed multiple themes, and a total of 737 opinions were expressed across the 21 themes. There were 69 instances where it was not possible to identify a specific theme, or where the feedback expressed a general dislike of restricting burning off, or the submissions were offensive or threatening in nature.

The submissions primarily came from the Ranges, Beacon Hills and Bunyip Wards. 41 submissions contained insufficient information to identify the ward of the submitter.

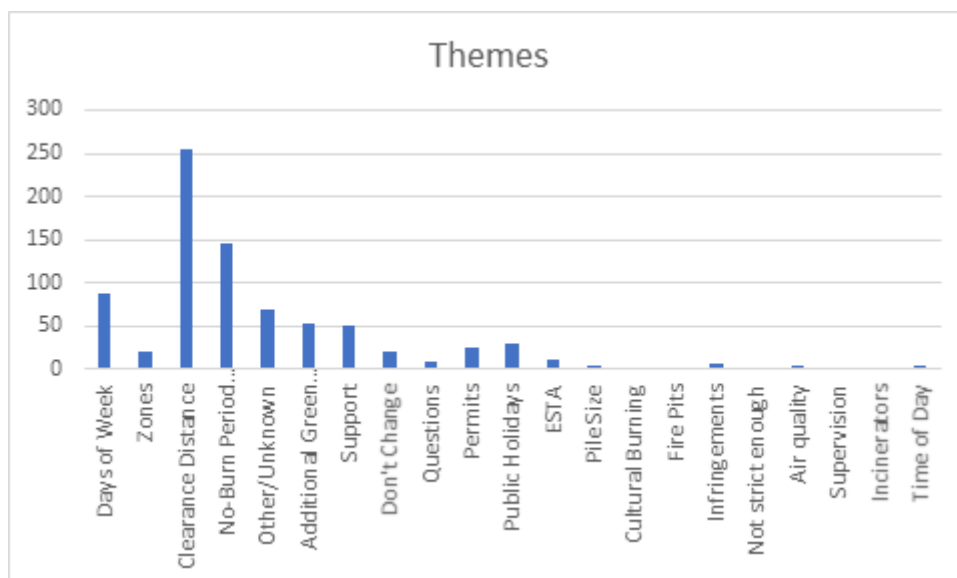


Ranges Ward	226
Beacon Hills Ward	85
Bunyip Ward	43
Central Ward	1
Henty Ward	0
Officer Ward	1
Pakenham Hills Ward	2
Toomuc Ward	0
Westernport Ward	3
Unknown	41



Avonsleigh	12
Bayles	1
Beaconsfield	10
Bunyip	9
Cockatoo	96
Cora Lynn	1
Dewhurst	1
Emerald	90
Garfield	1
Garfield North	3
Gembrook	23
Guys Hill	3
Iona	1
Maryknoll	14
Menzies Creek	4
N/A	41
Nangana	1
Nar Nar Goon	3
Nar Nar Goon North	3
Officer	2
Officer South	1
Pakenham	8
Pakenham Upper	9
Tonimbuk	3
Tynong	1
Tynong North	5
Upper Beaconsfield	56

Further breakdown of the data shows that 399 of the 737 (54%) issues raised relate to the minimum clearance and prohibition of burning during July and August. Of the 403 submissions, 135 (33.5%) relate only to these two themes.



Summary of all themes raised:

Days of Week	88
Zone	21
Clearance Distance	254
No-Burn Period	145
Other/Unknown	69
Additional Green Waste Measures	52
Support Proposed Local Law 20	50
Don't Change	20
Questions	9
Permits	25
Public Holidays	31
ESTA	11
Pile Size	4

Cultural Burning	1
Fire Pits	3
Infringements	7
Not Strict Enough	2
Air Quality	4
Supervision	2
Incinerators	3
Time of Day	5

Following the close of the consultation period, residents who had expressed interest in presenting to Council were invited to do so at an Ordinary Council Meeting, held on 6 December 2021. Residents were allocated four minutes to address Councillors, with the meeting including some residents who had provided a pre-recorded address.

Directly as a result of the Phase 2 consultation, amendments have been incorporated into Local Law 20 – Open Air Fires Local Law. Specifically, the changes (from the “proposed” Local Law) include:

- a reduction on the minimum clearance distance from 25 to 12 metres,
- removing the prohibition of open air fires on public holidays,
- reducing the “no burn off months” to July only,
- amended the mapping for greater clarity and
- other miscellaneous amendments to remove inconsistencies or duplication.

To support the implementation of Local Law 20 – Open Air Fires a comprehensive community engagement and education plan has been developed, including online learning, mailouts, social media, face-to-face awareness sessions and direct communication to those who registered their details. These community engagement activities will begin in during 2022 (pending the commencement of the Local Law).

Discussion of specific themes in response to Proposed Local Law 20

(References to clause numbers are references to the Proposed Local Law – version 2.0)

Theme: “25 metres clearance” rule (Clauses 34 and 37)

The proposed Local Law included clauses which required properties in the Bushland & Peri urban, and Rural Zones to comply with the following requirements:

“d. minimum clearance between fire and structures, fences, vegetation or other combustible material: 25 metres”

Many submissions rightly observed that this clause (as drafted) would have had the effect of preventing many land owners from burning off (who were otherwise in zones that would have allowed for burning off). The intention of this clause was to ensure that appropriate safe

distances are maintained when burning off occurs, to limit the impact of fires “running away”, and the language is similar to that which exists in the current local law.

However, the drafting of the clause has resulted in an unintended outcome, and as such the clause has been amended. Specifically, the following changes have been made:

- A) the maximum pile sizes is reduced (in respect of rural properties)
- B) the distance from the fire to structures (excluding fences) be amended to 12 metres, and
- C) the distance from the fire to combustible materials (including fences) and other vegetation be 5 metres (unless the vegetation is grass cut to below 100mm), and
- D) adding an explanatory note to highlight that the person who makes the fire remains liable for any damage caused by the fire, irrespective of whether the minimum distances in the Local Law are complied with.

These amendments are an appropriate modification of the proposed Local Law. In drafting the Local Law, there is a constant tension between making the laws easy to understand and addressing all of the possible permutations that can arise on the properties effected. The above amendments represent a sensible compromise that promotes the safety and amenity objectives of the Local Law, without being overly prescriptive in certain aspects.

These changes help to respond to the top feedback item received, while taking into consideration the safety of the community through radiant heat, smoke, fuel reduction and amenity.

Theme: Zoning of specific properties

During consultation, some property owners expressed concern that their properties were zoned as Urban and Township zone, when their property needs were akin to bushland or rural properties. The properties affected in this way were primarily “interface” areas around Beaconsfield, Bunyip, Officer and Pakenham.

In considering these submissions, it is not proposed to re-zone these properties at this stage. Rather, it is proposed to issue permits pursuant to the Local Law that are customised to the specific needs of the land owners.

We recommend that these properties not be re-zoned, as in most cases Council anticipates development on increased intensity in the localities. Rather, we propose that these properties can be individually responded to by fast, free and flexible permits, which can be issued so as to directly reflect the individual needs of the land. The permit process will allow Council staff to monitor the nature and purposes of open air fires in these properties. If the need to burn off remains for an extended period of time, this will inform reviews of the zone mapping from time to time.

The attached Open Air Fires Policy specifically endorsed the issuing of permits in these circumstances, usually within 3 business days (depending on complexity). A demonstrated long-term need may be used when zone mapping is reviewed in the future.

Theme: Prohibiting burning off in July and August (Clause 16)

Of those who made submissions, many did not agree with the proposal to prohibit burning off in July and August. Some expressed support for one month, but not both. Some proposed changing the months, but there was no consistent proposal as to which month should be preferred. Others supported the concept of “smoke-free months”.

Local Law 20 – Open Air Fires Local Law changes the prohibition, so that only *July* is included as a “no-burn off month”. This is a compromise between those who supported sustained “smoke-free” months”, and those who felt that prohibiting whole months would unduly limit their capacity to conduct fuel reduction activities.

It is also noted that Clause 16 represents the “base position”, and that permits may also be issued that would permit individual burn offs during these months. Also, the proposed Local Law provides the CEO with a mechanism to relax certain laws, where justified. For example, following the recent storm events, many submitters noted the very high volume of green waste to be disposed off at hills properties during July. In such a scenario in the future, the CEO would have a power to exempt affected property owners from the operation of the law (or part of it).

Theme: prohibiting burn offs on public holidays (clause 17)

Of those who made submissions, most did not agree with the proposed ban on Open Air Fires on Public Holidays. Combined with the prohibition on certain days, and during winter months, the prevailing comment was that to ban burning off on public holidays would unduly restrict residents to burn off on suitable days.

This proposed restriction has been removed from Local Law 20.

Theme: requirement to contact Emergency Services Telecommunications Authority (Clause 22)

Some submitters believed it was unnecessary to require a burn off to be registered with ESTA, prior to it occurring, and characterised this required as overly bureaucratic. We note that this clause already applies under the existing Local Law 17, Part 5A. The requirement to notify ESTA is the preferred advice of the CFA, and this requirement remains in the Local Law attached to this report. The feedback suggested that this requirement is not that well understood.

Theme: Days of the week that burning off is allowed

The proposed Local Law specifies that the burning off is prohibited on the following days:

Bushland & Peri urban zone: Saturday, Monday, Wednesday

Rural zone: Saturday & Wednesday

The purpose of limiting days for burning off is to promote a decrease in frequency in which it occurs, and specifying the days on which burning off is prohibited is simple to understand and communicate.

The days that residents can burn off is always controversial, in that there is no combination of days that ideally suits everybody. Many of the submissions objected to the specified days, or objected to any days being prohibited, predominantly as it would not give the residents the flexibility to choose to burn off at times that are best suited to burning off, or which are convenient to them.

Unfortunately, there is no consistent preference among the submissions for days.

We recommend that the Local Law continue to include specified days that burning off is prohibited. This means that residents have greater certainty about when smoke will be in the landscape, and is enforceable by direct observation of Council officers. Council officers have considered alternative methods of describing days in the law, including not specifying days, but specifying a *frequency of burn offs*, however Council officers do not support this method,

as it would rely entirely on residents providing statements against neighbours to support enforcement.

Council officers also considered whether it was feasible to prohibit burning off on alternating weeks, though Council officers do not recommend this method, as it would be confusing in practice, complex to draft and difficult to remember for residents.

The proposed days allow for a mix of weekend and weekdays for both burning off. Again, the restriction inherent in specifying days can be mitigated, in appropriate circumstances, by issuing permits to specific property owners.

Miscellaneous amendments

The following minor modifications have also been incorporated into Local Law 20

- the time that an open air fires may commence was not specified in the proposed Local Law. This has been amended to include the earliest time (unless a permit is issued)
- Severe weather warnings (clause 23). Minor amendment to clarify that the provision only applies when the warning period commences, not just when that warning is issued, as warnings are issued in advance.
- Air quality requirement (Clause 24) – clarification made to add in the explanatory note that Cardinia Shire is in the Central air quality district.
- Windrows (Clause 30) – proposed to amend to include the words ‘without a permit’, to aid understanding
- Windrow definition amended to reduce pile size
- Other minor spelling and grammar amendments

Additional green waste support

A strong theme in the feedback was that residents want additional green waste services, and that this service is closely associated with burning off. This was the fourth highest number of responses, with many feeling that the current measures do not provide adequate opportunity for them to dispose of green waste, which in turn pushes them towards other methods of disposal such as burning.

Some residents expressed the view that current green waste drop off services (at waste transfer stations) were of limited utility, in that a resident required access to a trailer or ute to take advantage of them.

It is possible that an increase in green waste options for residents will generate a reduction in burning off.

If additional green waste options are to be considered, we recommend that options are considered in conjunction with the next annual Council budget.

Theme: Permits

There has also been some concerns and questions raised by residents about the permit process and whether Council will charge a fee. While it is legally possible, Council does not currently, and is not proposing to, charge a fee for the application for such a permit.

Theme: Community education

Many of the submissions advocated for additional information from Council around:

- a) how to undertake a burn-off safely and
- b) additional promotion of alternate methods of waste disposal and

c) other ways you can prepare you property for fire.

As part of the project, the Emergency Management Team will develop a good practice guide for circulation to all properties in the Bushland and Peri-Urban and Rural Zones. Furthermore, Council was successful in receiving a grant through the Safer Together initiative to develop an online training program that focuses on private land fuel management, which will be available to the community in the new year. A beta version is available for viewing at <http://bushfireprepare.online>

The Emergency Management Team will develop and deliver community education programs, most likely delivered with the support of the CFA.

Theme: more restrictions on burning off

One notable submission drew attention to the recent Victorian Parliamentary Inquiry into the Health Impacts of Air Pollution in Victoria, which report was tabled in Parliament on 18 November 2021. While the report does not specifically make recommendations in respect of burning off, there is some discussion on the role of Councils, especially in respect of particulate matter generated by burning off and wood-fired heating. The submission also noted other municipalities around Australia, where measures (of various types) have been implemented to reduce or address this issue.

The state Government is expected to provide a response to the issues raised in this Inquiry report by May 2022. It is unlikely that this response will directly address the regulation of burning off, but may reflect other related policy outcomes.

The *Public Health and Wellbeing Act* currently provides some mechanisms for enforcement where particulate matter results in health impacts.

It can be observed that the vast majority of submissions in respect of the proposed Local Law were in favour of more burning off (or at least, less restriction). It is not possible to state what support there would be in the community for more restrictive laws in Cardinia.

Community impact

The new mapping will increase the number of properties unable to burn-off in the areas listed below.

Locality	OAB properties	BPA properties	Difference
Bunyip	1318	747	+571
Nar Nar Goon	247	216	+31
Garfield	808	607	+201
Lang Lang	1242	749	+493
Koo Wee Rup	1684	1608	+76
Bayles	41	N/A	+41
Garfield	808	618	+190
Tynong	200	N/A	+200
Pakenham, Officer, Beaconsfield	36,525	24,036/6948/2446	+3095
Upper Beaconsfield	355	N/A	+50
Emerald	1923	N/A	+120
Cockatoo	1694	N/A	+21
Gembrook	612	N/A	+40

Total: +5129

***Estimates only as some areas have been subdivided and the existing BPA has been updated.**

Additional information regarding community impact may be found in the Local Law Community Impact Statement – Local Law 20, which can be found in the attachments.

Financial and Resource Implications

Costs associated with the development and implementation of Local Law 20 – Open Air Fires, including legal advice, public notices, communications, and promotion, will be met within existing 2021/22 budgets.

Conclusion

Open Air Fires (Burning-off) is a controversial issue in the community and Local Law 20 intends to strike a balance between the varied views, while meeting Council's obligations in relation to community safety, amenity and its commitment to address the impacts of climate change.

The community consultation periods in 2019 and 2021 provided an opportunity for residents to provide feedback, with a record number of submissions received during the 2021 statutory consultation period. The feedback received during the consultation periods directly helped shape Local Law 20.

Local Law 20 is designed to provide Council and the community with the ability to ensure that the Local Law remains tailored to the needs of the community, by taking ownership of the mapping and ensuring provisions balance the need for bushfire fuel reduction, healthy and clean, air as well as public amenity.

Council will roll-out a comprehensive communications and engagement plan to promote the Local Law 20 – Open Air Fires in the early stages of this year.



Open Air Fires Local Law

Local Law No 20 was **made** by resolution of the Cardinia Shire Council on the (date to be updated if approved)

This version is effective from (date to be updated if approved)

Local Law 20 – Open Air Fires Local Law

(version 4.1)

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
3.0	Proposed Local Law 20	Incorporating amendments following public consultation
4.0	Local Law 20 – Open Air Fires	Public Version
4.1	Local Law 20 – Open Air Fires	Proposed version (correction of mapping)

Local Law 20 – Open Air Fires Local Law

(version 4.1)

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Local Law 20 – Open Air Fires Local Law

(version 4.1)

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Local Law 20 – Open Air Fires Local Law

(version 4.1)

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) encourage the use of open air fires only for fire prevention purposes; and
- g) 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 July 2022.

5. Revocation

Unless revoked earlier, this Local Law ceases to operate on 30th June 2032.

6. Application

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

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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 a ***supervised open air fire*** that is lit—

- a) for the purpose of meal preparation or personal comfort if all 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.

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9. Exemption – Indigenous cultural practices

This Local Law does not apply to an *open air fire* (excluding landscape burning) 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

- 1) 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.
- 2) 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 an *authorised officer* or any other staff member authorised in accordance with Clause 38(3).

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

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‘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*.

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‘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 more than 3 metres in any dimension (length, width or height).

2) In this Local Law:

- a) words defined in the singular include the plural; and
- b) words defined in the plural include the singular.

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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 *properties* in 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.

Residents can find out which zone their property is in by looking at the detailed maps in **Schedule 1**, or by going to cardinia.vic.gov.au/burningoff

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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.

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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 properties in 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

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

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

17. Times when open air fires must not be ignited

- 1) A person must not light an *open air fire*, or allow an open air fire to remain alight:
 - a. Earlier in the day than 7am, or
 - b. Later in the day than whichever is earlier of sunset or 7pm.

Maximum Penalty: 20 penalty units

Infringement penalty: 2 penalty units

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18. 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****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

19. 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.

20. Offence to not comply with direction

A person who is given a direction under Clause 19 must comply with the direction.

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

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21. 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

22. Severe weather

- 1) A person must not light an *open air fire* at any time when a Severe Weather Warning (issued by the Bureau of Meteorology) 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 a Severe Weather Warning (issued by the Bureau of Meteorology) 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 a Severe Weather Warning (issued by the Bureau of Meteorology) 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 or using the Bureau of Meteorology smart phone app.

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23. 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. Cardinia Shire Council is within the Central Air Quality district.

24. Open air fires must not cause a danger or nuisance

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

*Maximum Penalty: 20 penalty units**Infringement penalty: 2 penalty units***25. 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 not 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*

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26. 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

27. 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

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.

28. 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

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29. Windrows

- 1) A person must not engage in the burning of a **windrow**, without a permit.
- 2) The owner of a **property** must not allow the burning of a **windrow** on that **property**, without a permit.
- 3) The occupier of a **property** must not allow the burning of a **windrow** on that **property**, without a permit.

Maximum Penalty: 20 penalty units

Infringement penalty: 2 penalty units

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Part 4 Urban and Township Zone**30. 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.

31. 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

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Part 5 Bushland and Peri-Urban Zone**32. 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.

33. 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 length, width or height;
 - d. minimum clearance between the fire and structures (excluding fences): 12 metres
 - e. minimum clearance between the fire and fences or *combustible material or vegetation*: 5 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.
- 3) For the purposes of sub-clause 1 e. *combustible material or vegetation* does not include grass that is less than 100mm in height.

Maximum Penalty: 20 penalty units

Infringement penalty: 2 penalty units

Explanatory note:

Complying with the requirements set out in Clause 33 in relation to the lighting of an *open air fire* 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.

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34. 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*

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Part 6 Rural Zone**35. 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.

36. 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 three metres in length, width or height;
 - d. minimum clearance between the fire and structures (excluding fences): 12 metres;
 - e. minimum clearance between the fire and fences or *combustible material or vegetation*: 5 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.
- 3) For the purposes of sub-clause 1) e. *combustible material or vegetation* does not include grass that is less than 100mm in height.

Maximum Penalty: 20 penalty units

Infringement penalty: 2 penalty units

Explanatory note:

Complying with the requirements set out in Clause 36 in relation to the lighting of an *open air fire* 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.

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37. 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 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*

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Part 7 Permits

Explanatory note:

During the declared Fire Danger Period, Council does not issue permits to burn off, and you cannot burn off without a permit to burn issued by the Country Fire Authority. For more information, go to: cfa.vic.gov.au/warnings-restrictions/fire-permits/fire-danger-period-permits.

38. *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 38(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

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

39. 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.

40. 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; or
- c) an evident material mistake in the description of any person, thing or property referred to in the permit.

41. 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.

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42. 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:

- 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

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Part 8 Enforcement provisions of this Local Law**43. Service of documents**

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

- 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.

44. Discretionary powers

On becoming aware of a contravention of this Local Law an *authorised officer* may, on considering all 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.

45. Power to Act in urgent circumstances

- 3) 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.
- 4) 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.

Local Law 20 – Open Air Fires Local Law

(version 4.1)

46. 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.

Local Law 20 – Open Air Fires Local Law

(version 4.1)

Part 9 Amendments to Local Law 17 and saving clause**47. 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.

48. 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.

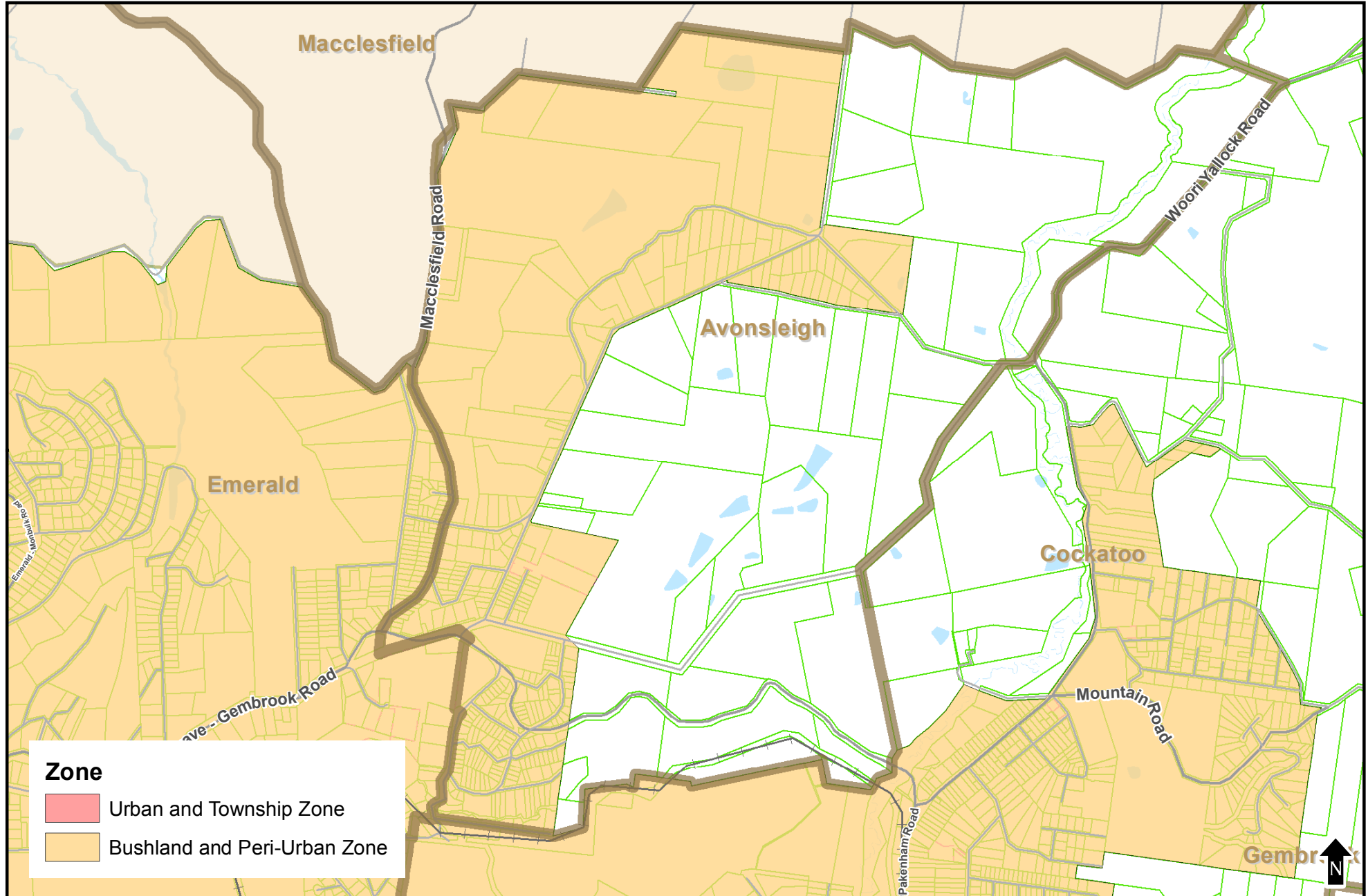
Local Law 20 – Open Air Fires Local Law

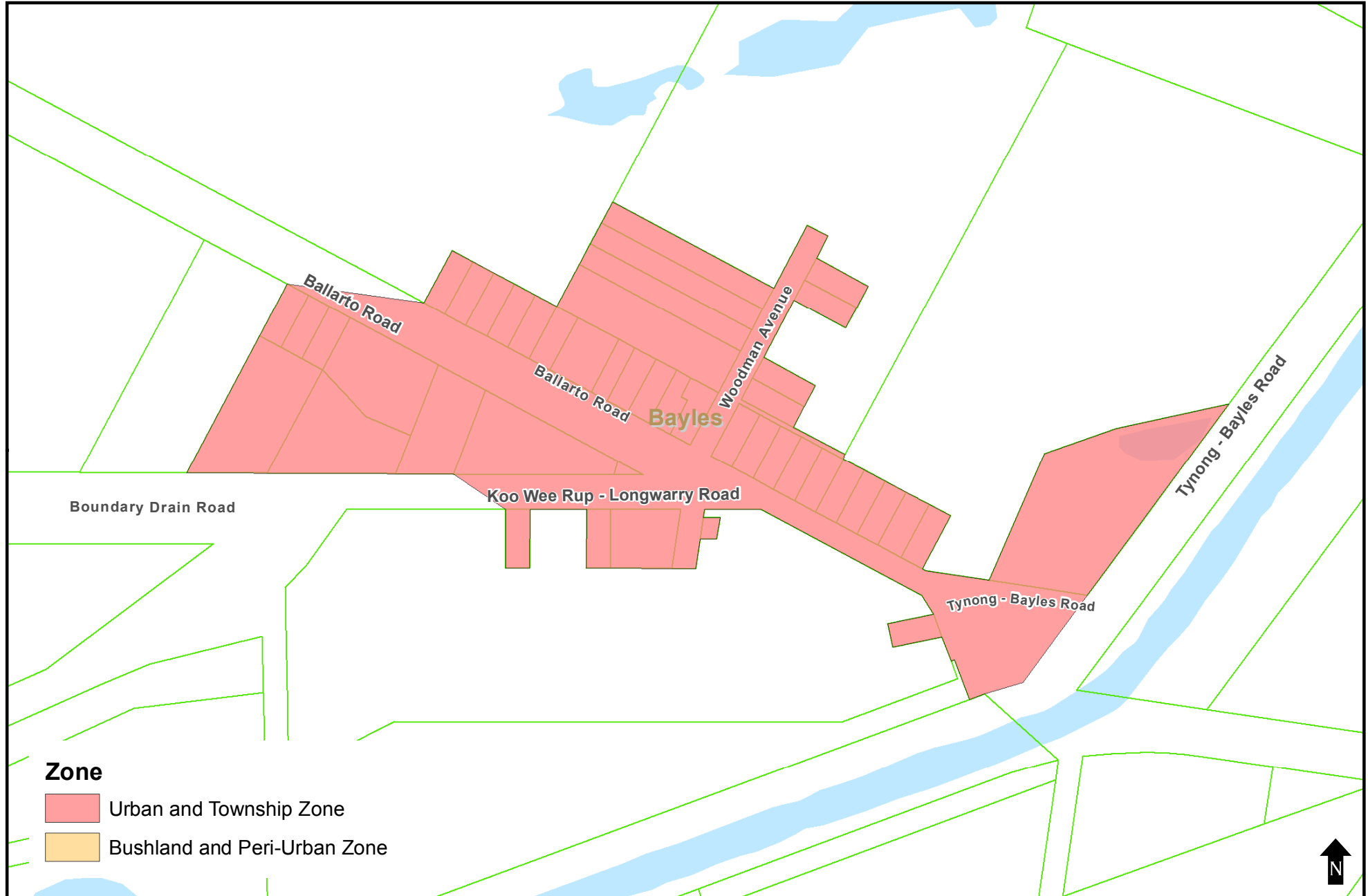
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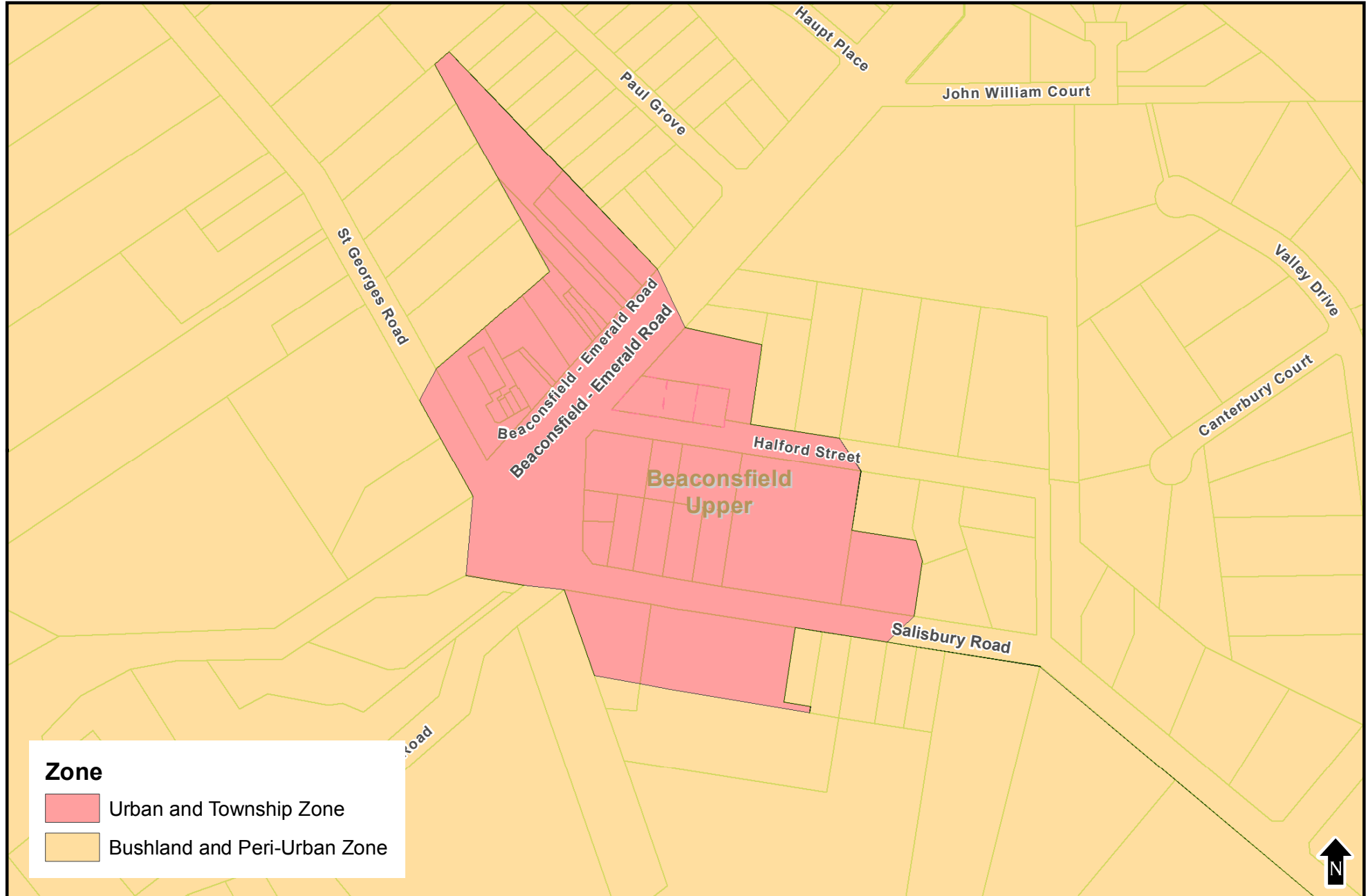
Schedule 1 Open Air Fire Zone Maps

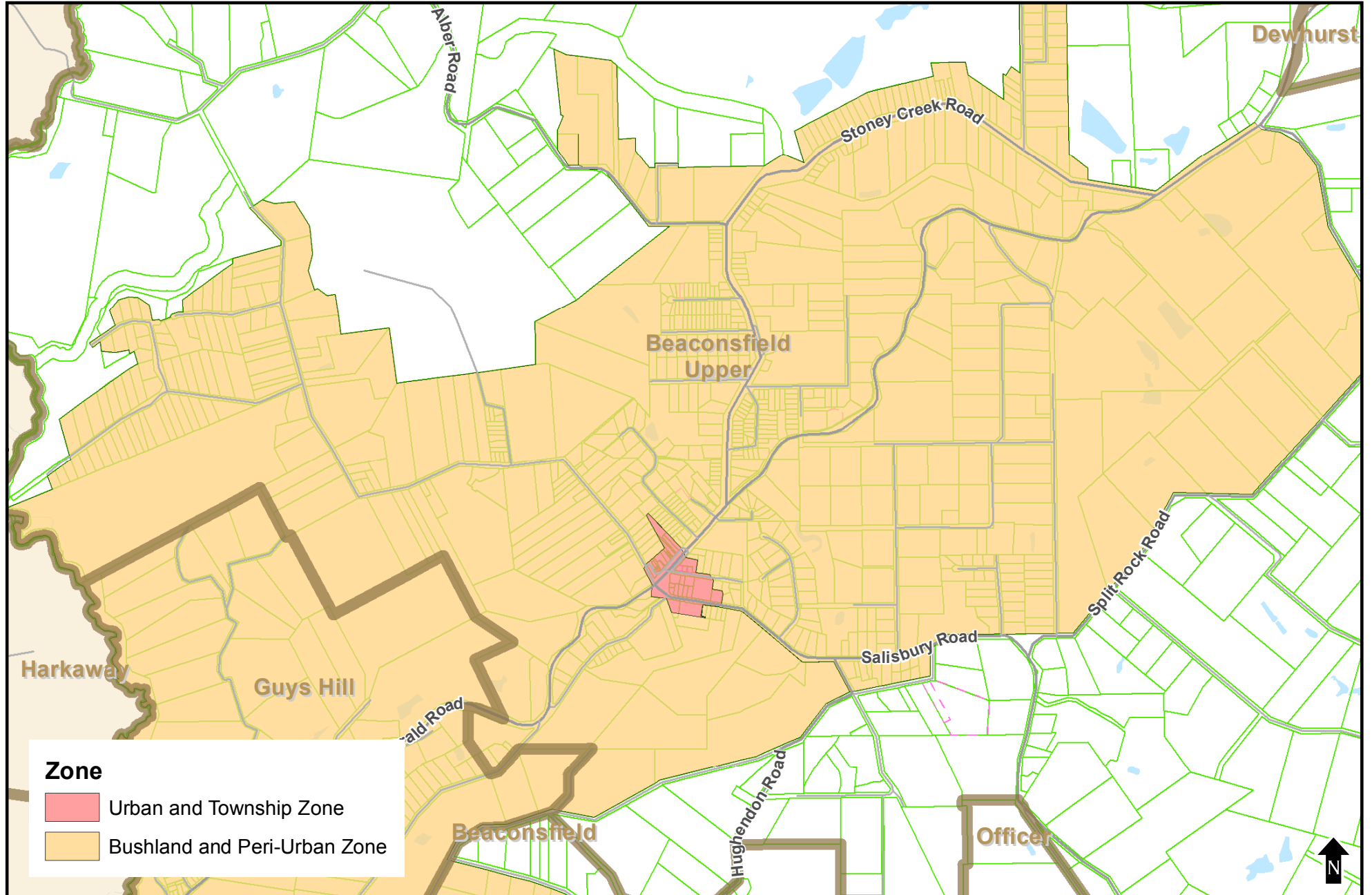
In accordance with Clause 12, in this Local Law,

- 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 Fire Zone Maps coloured white or any colour other than red or yellow.

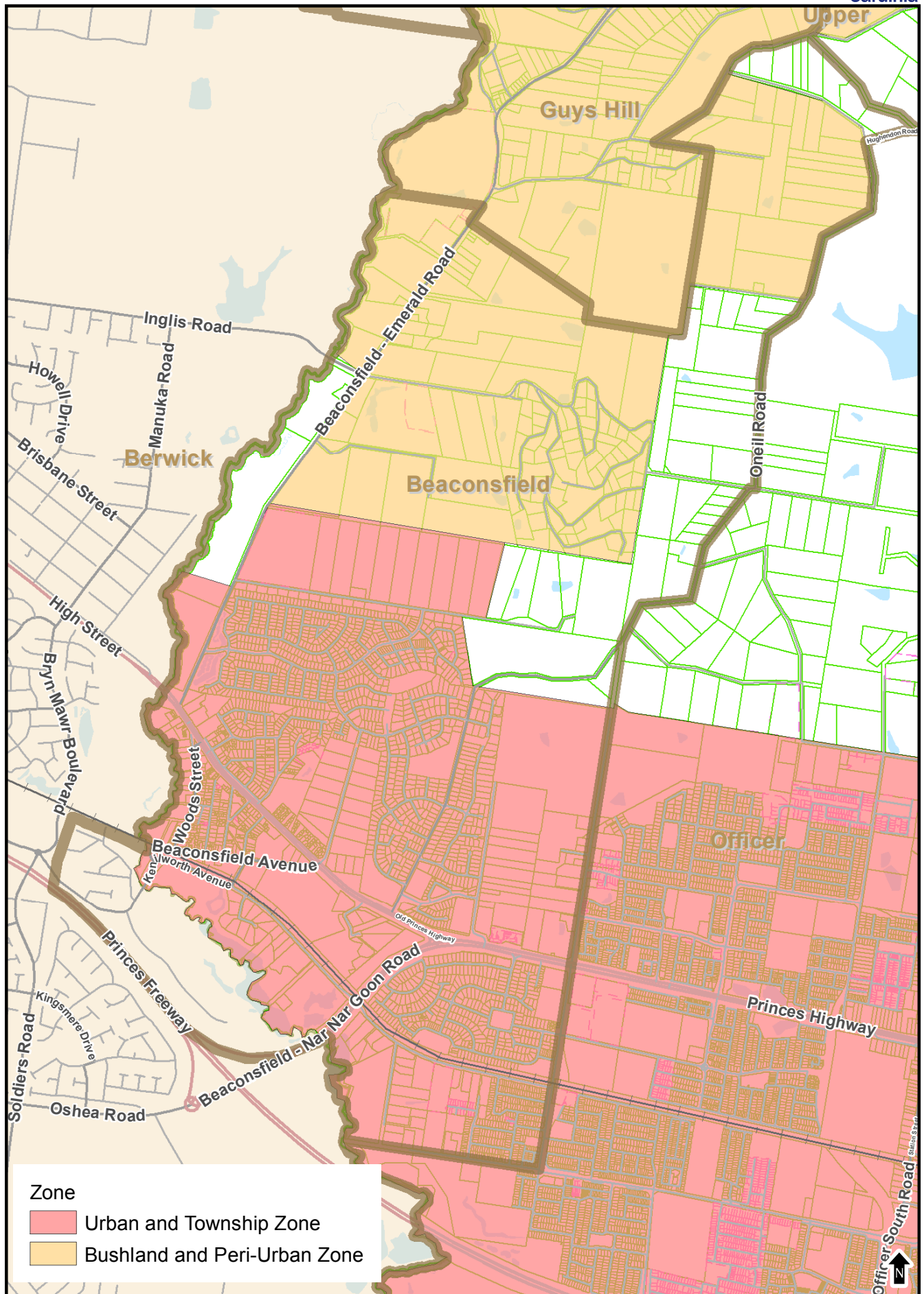


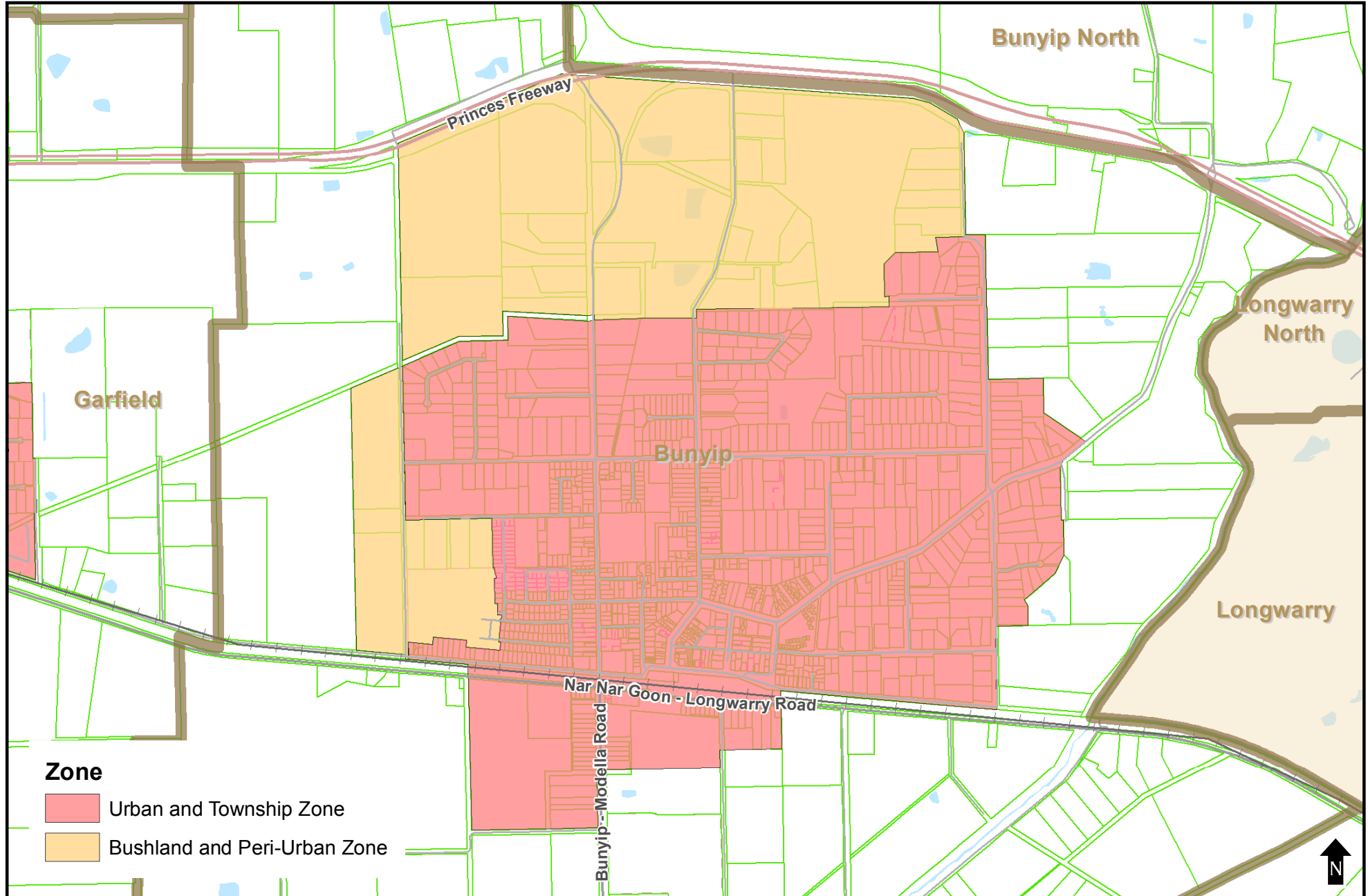


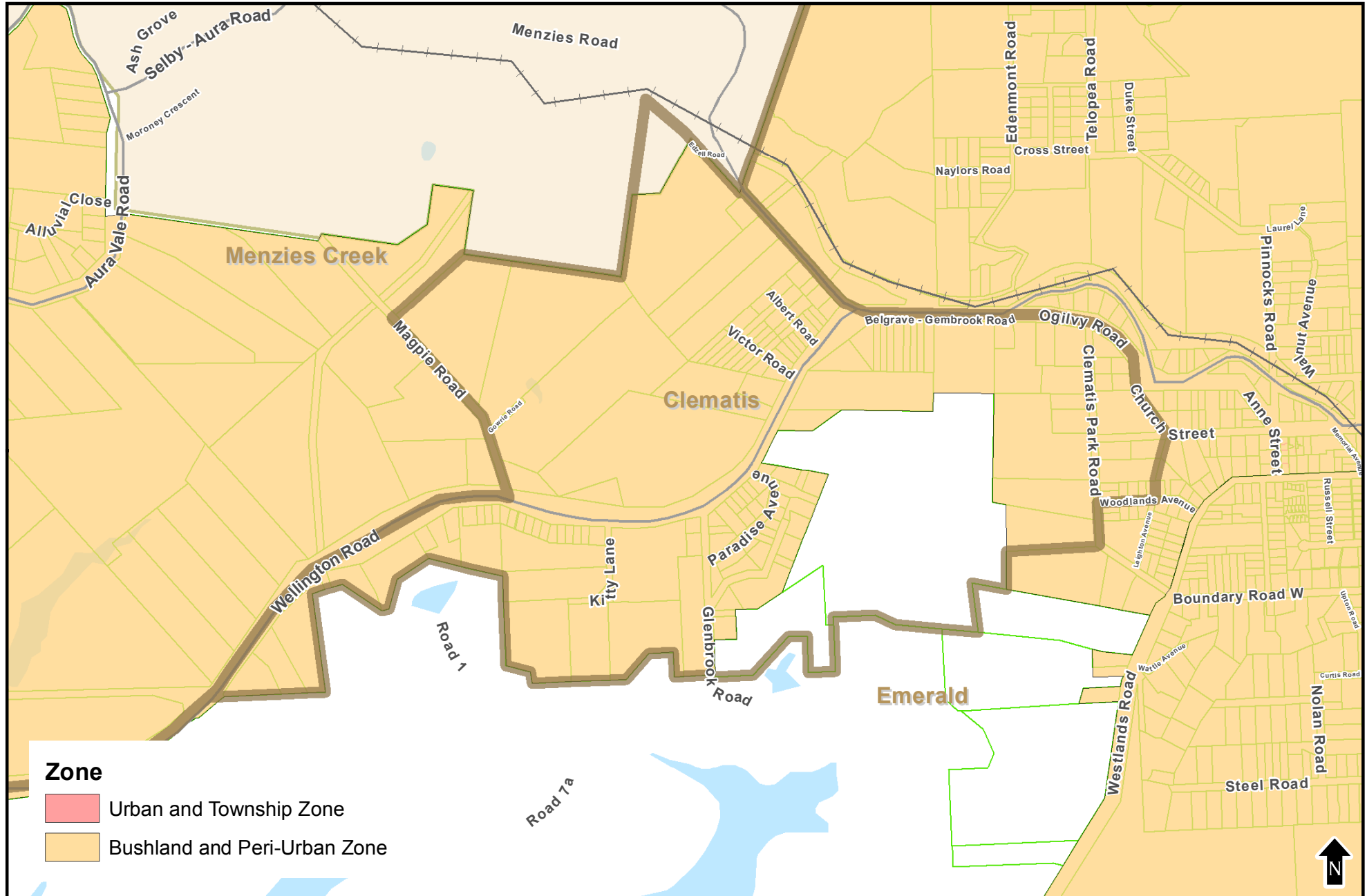


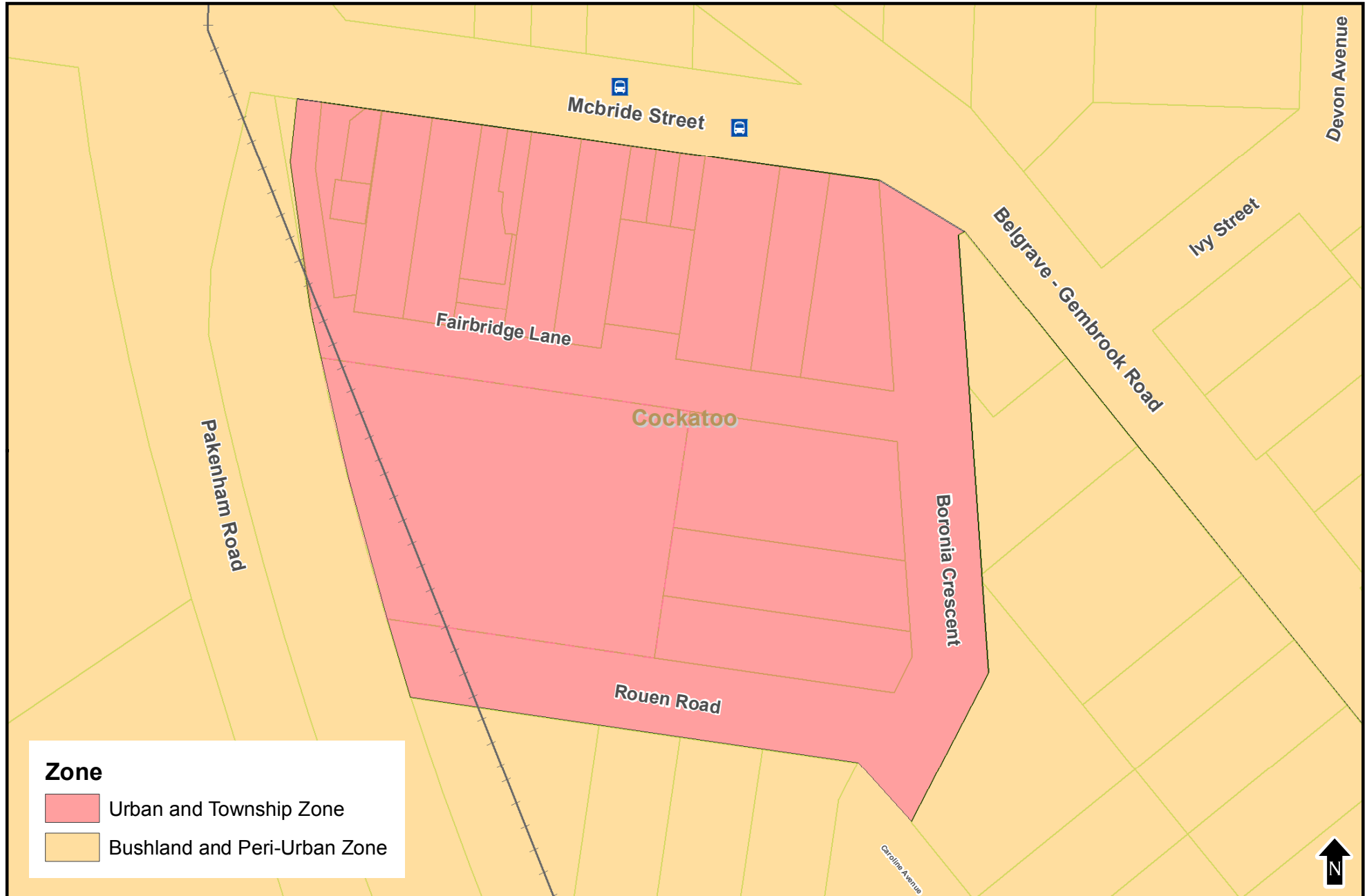


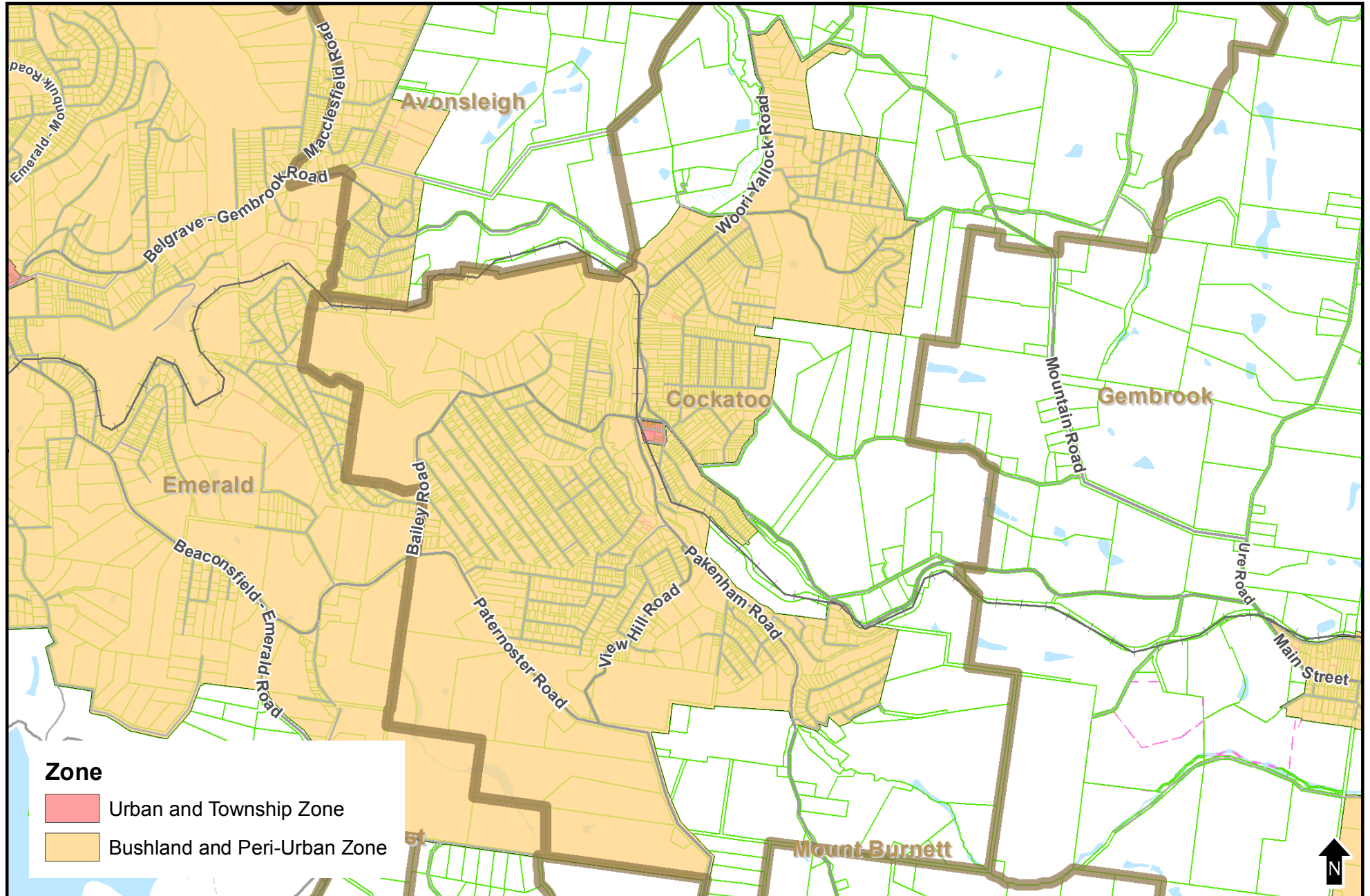
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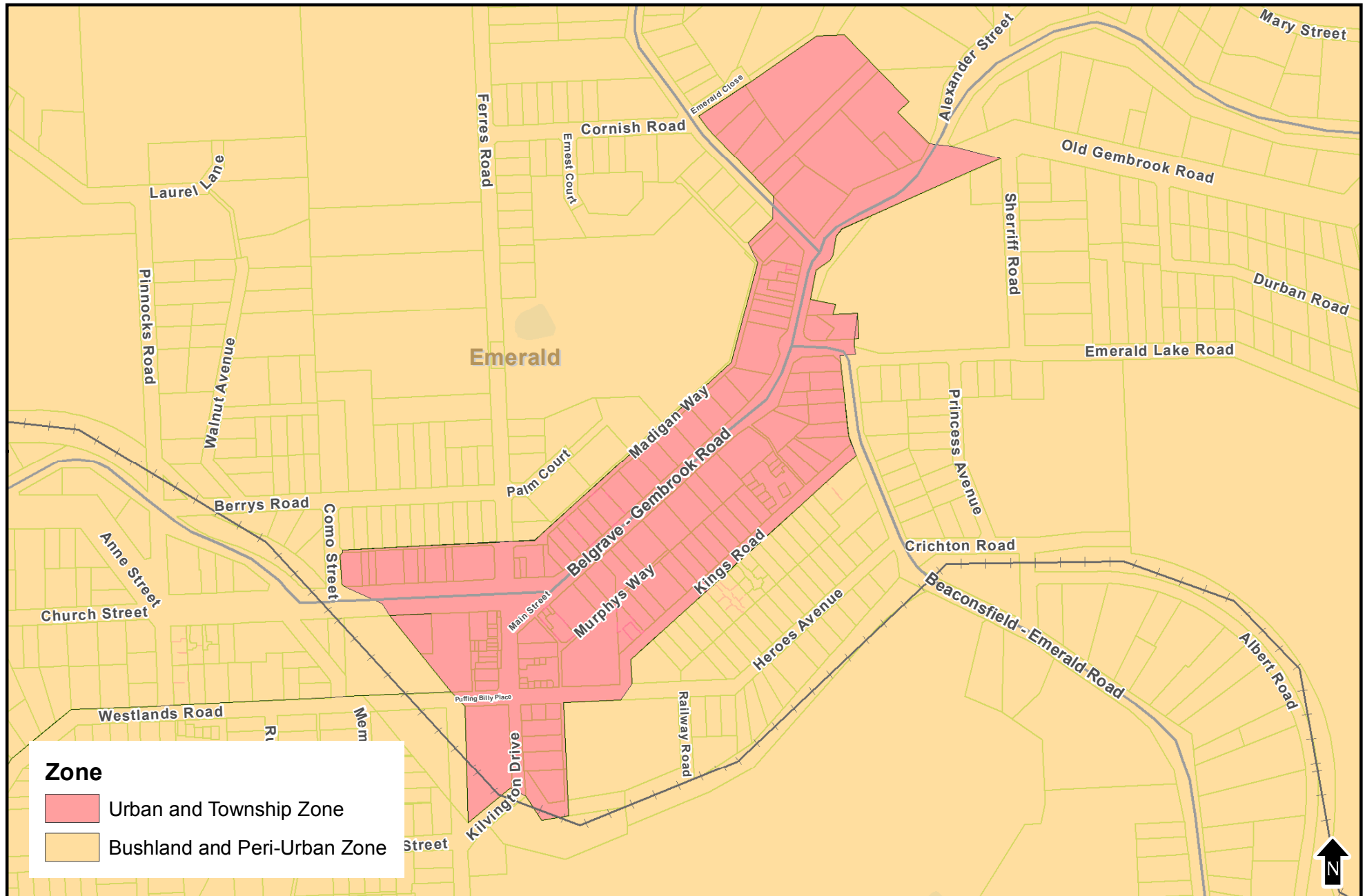




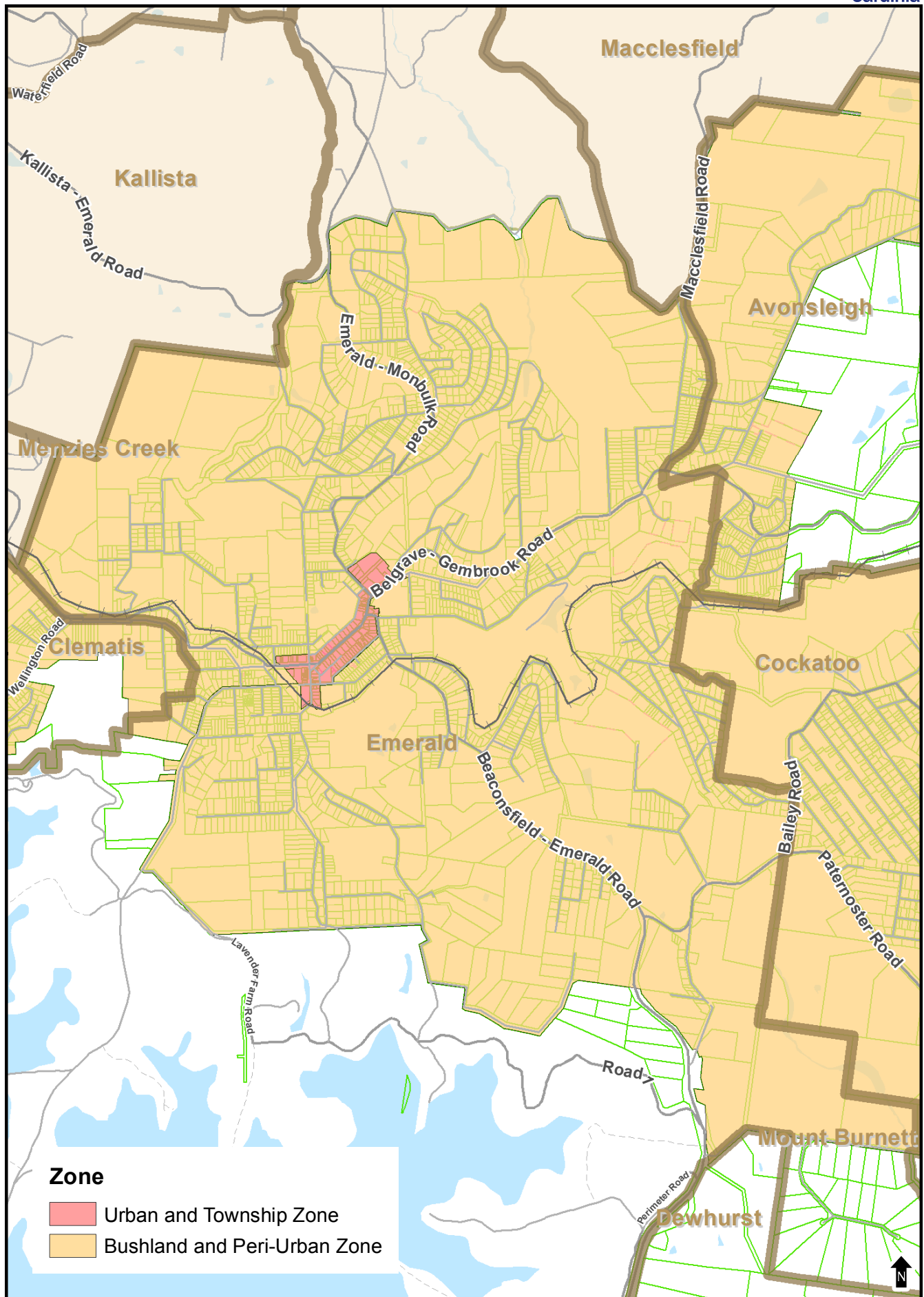




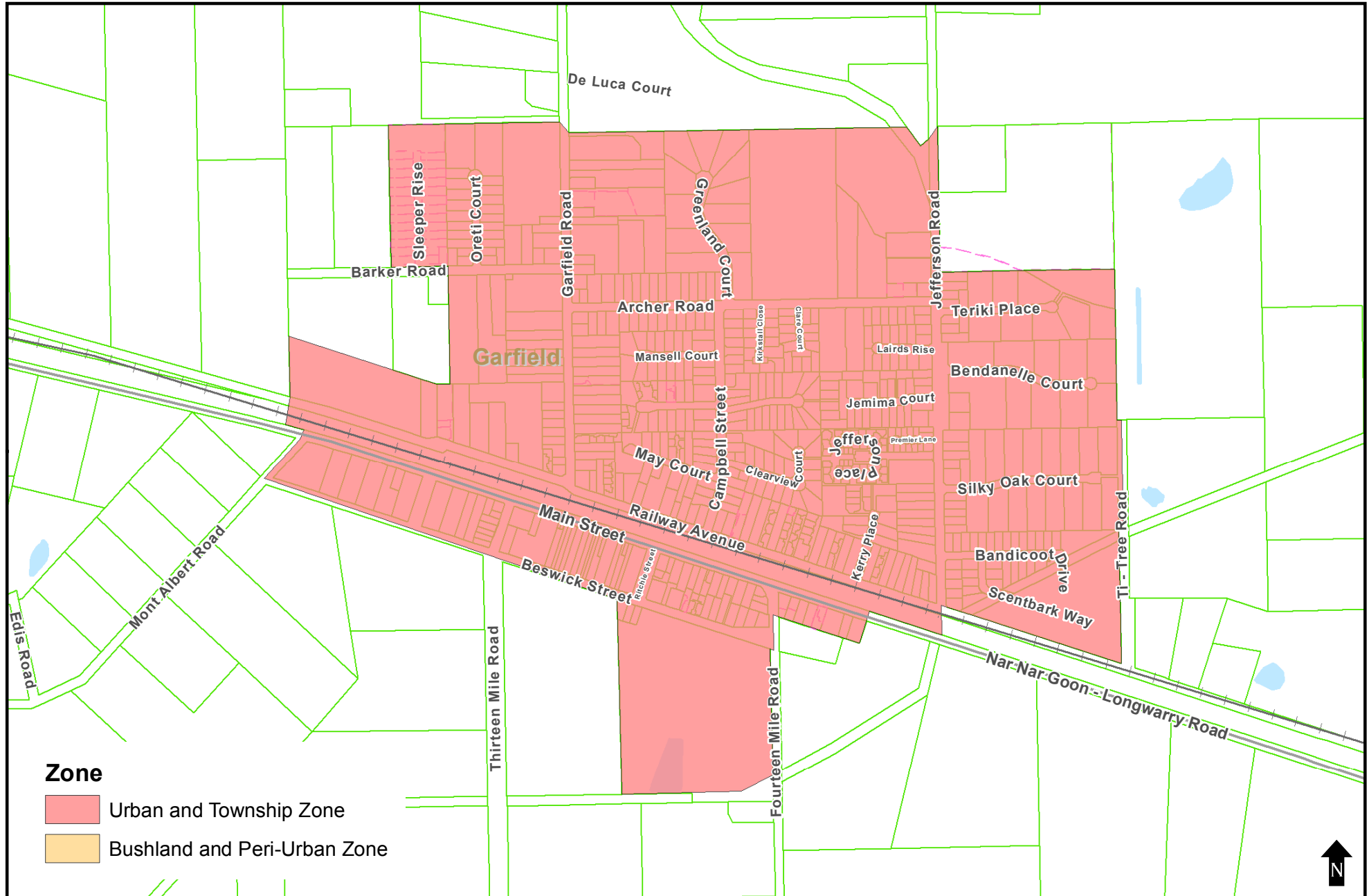


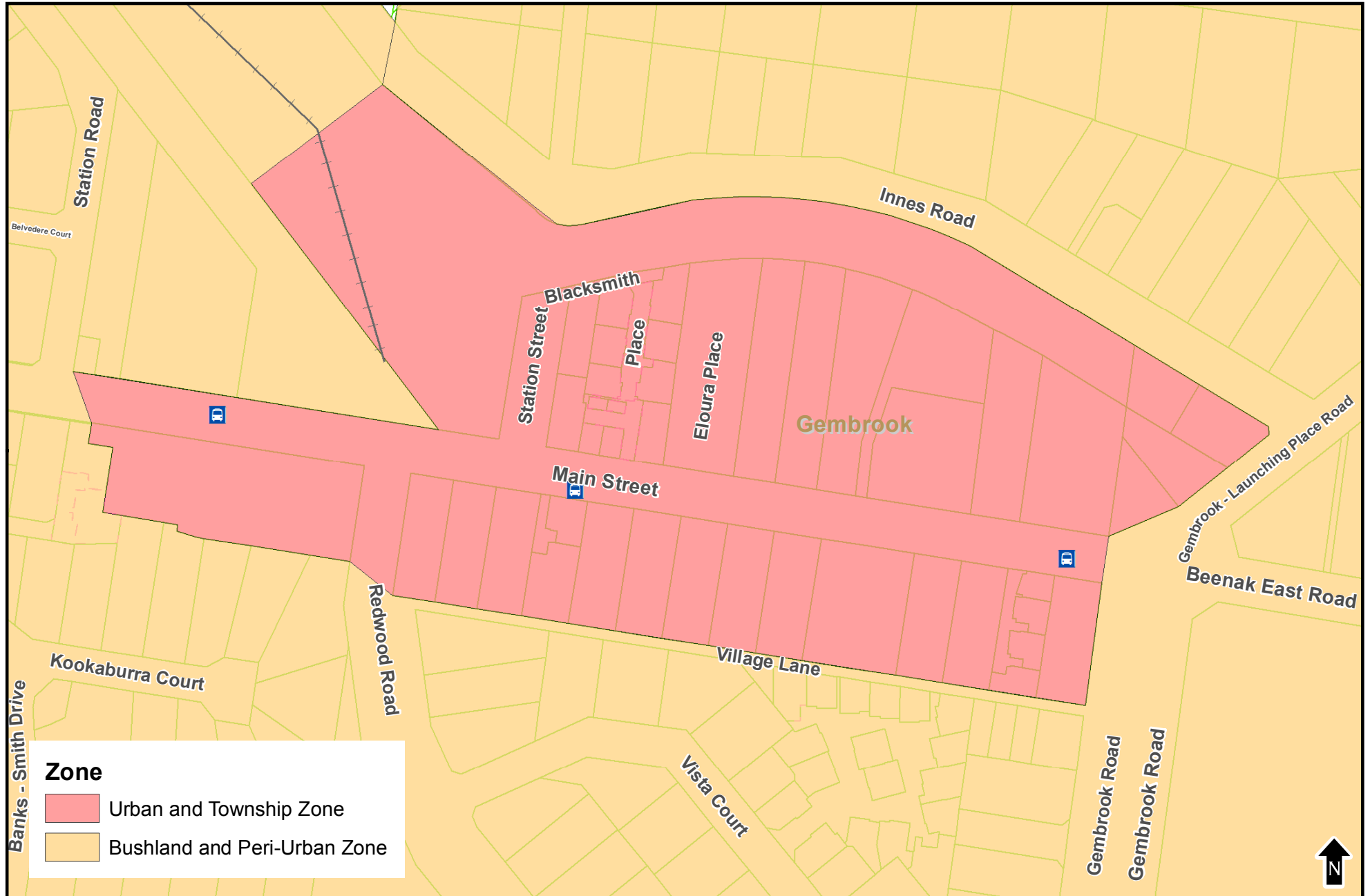


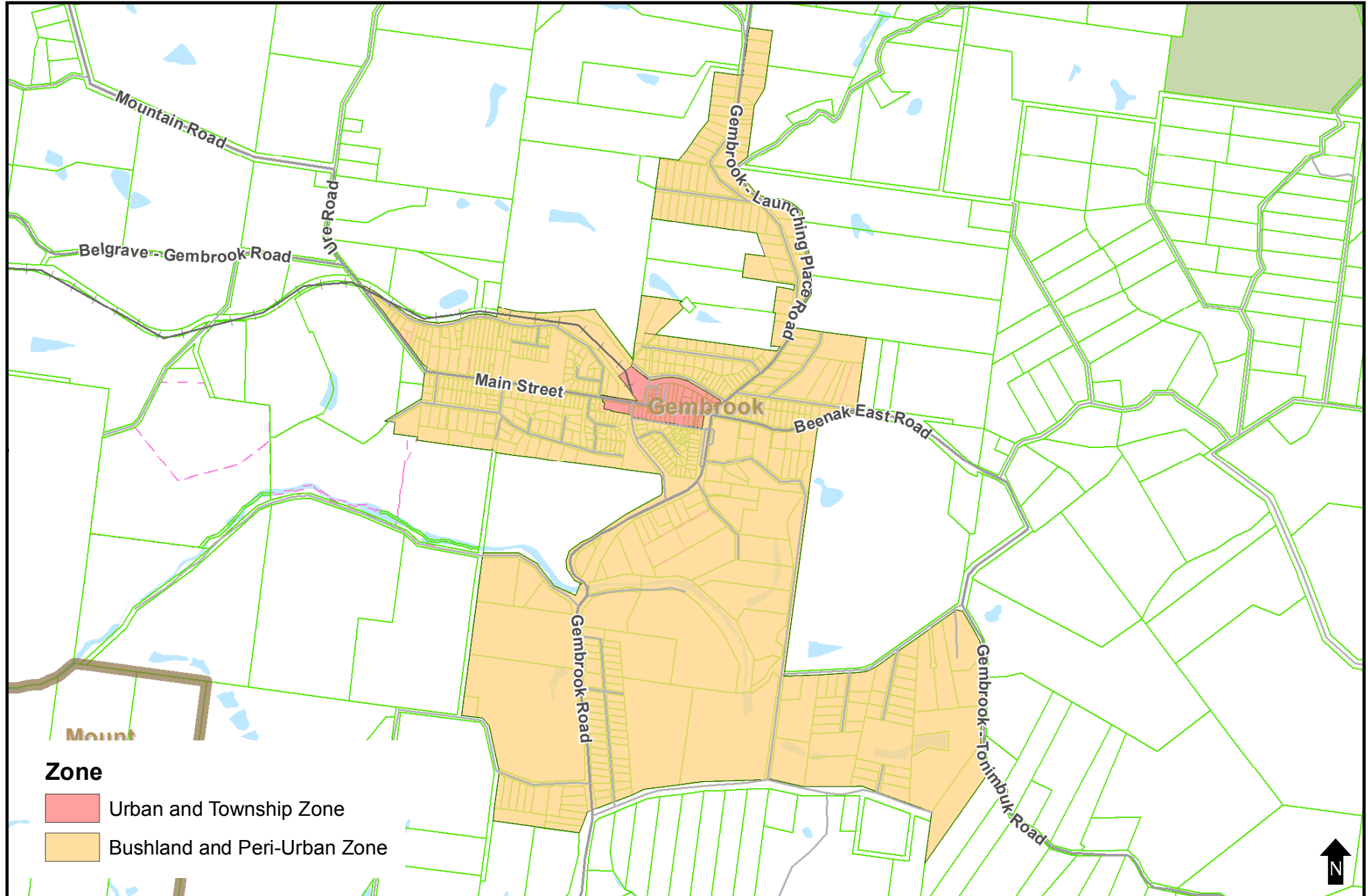
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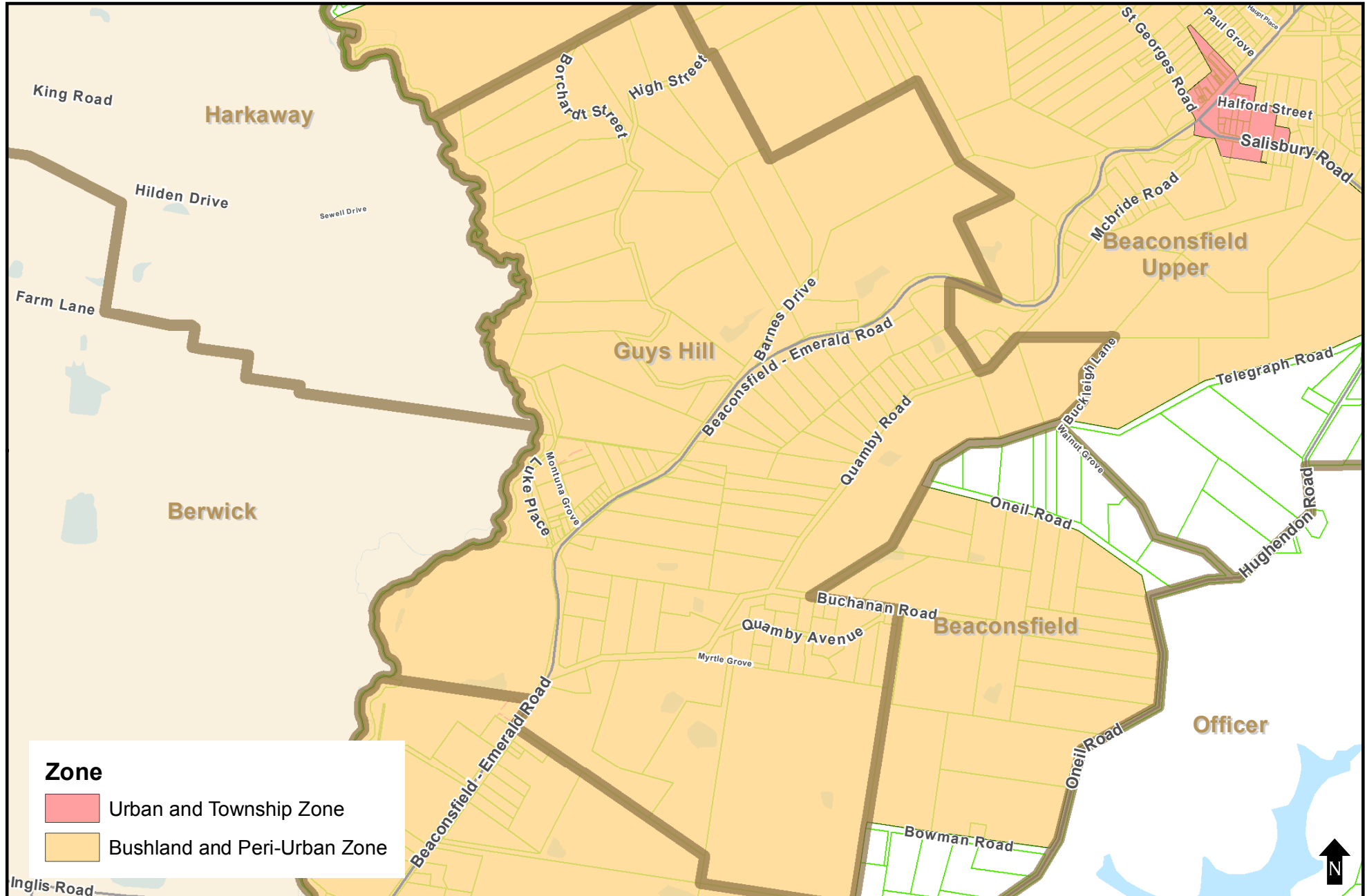


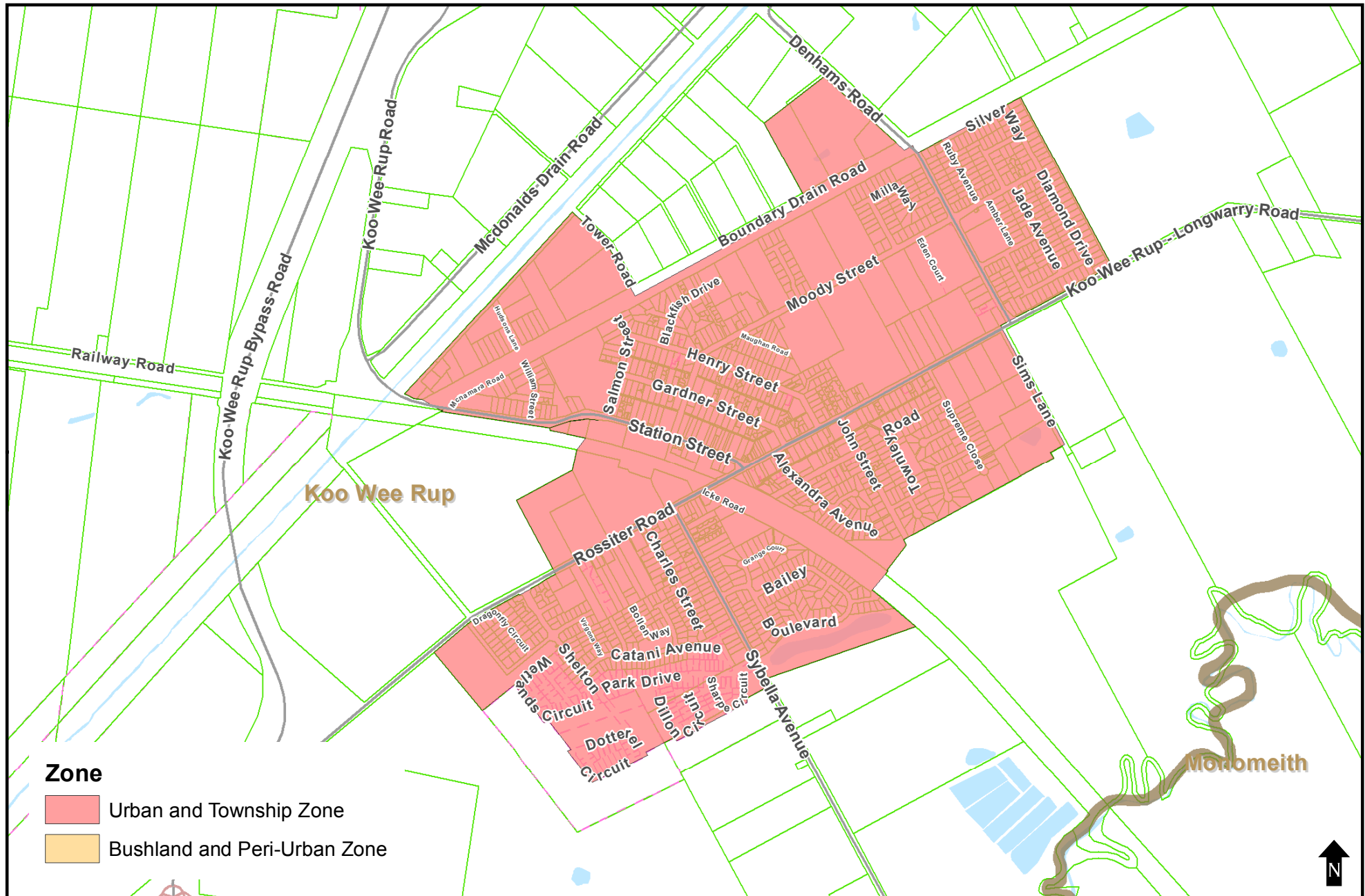
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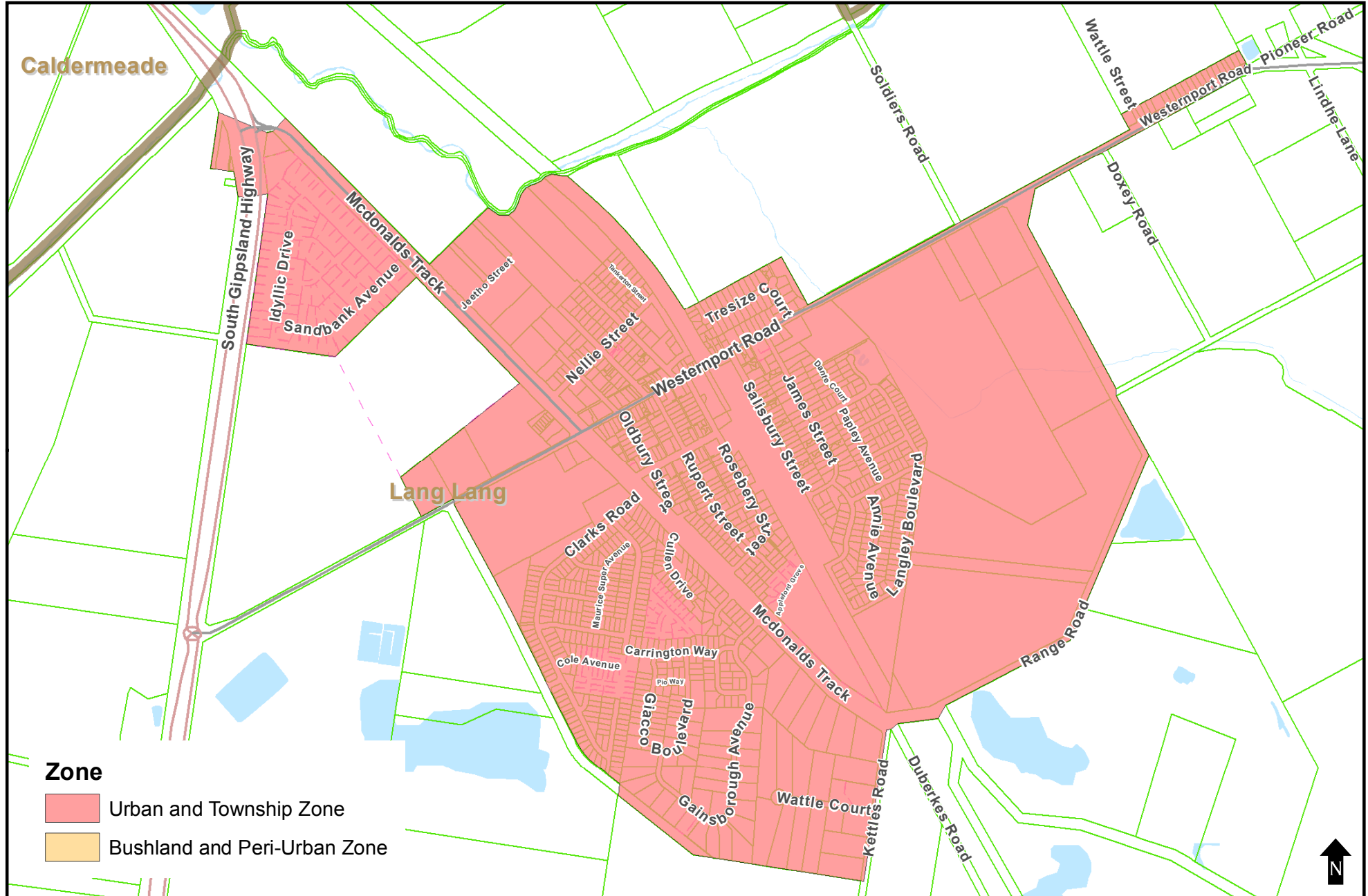


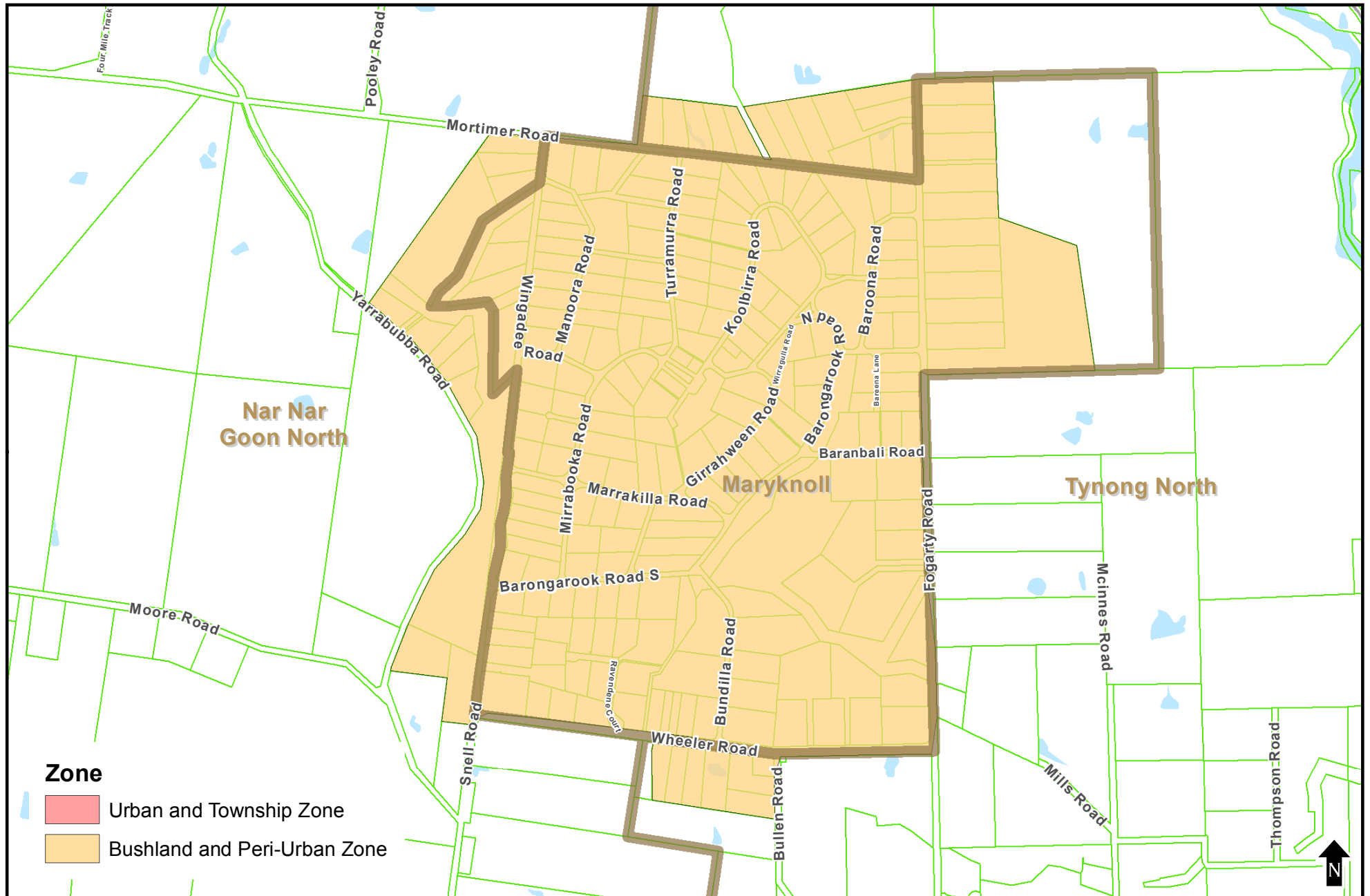


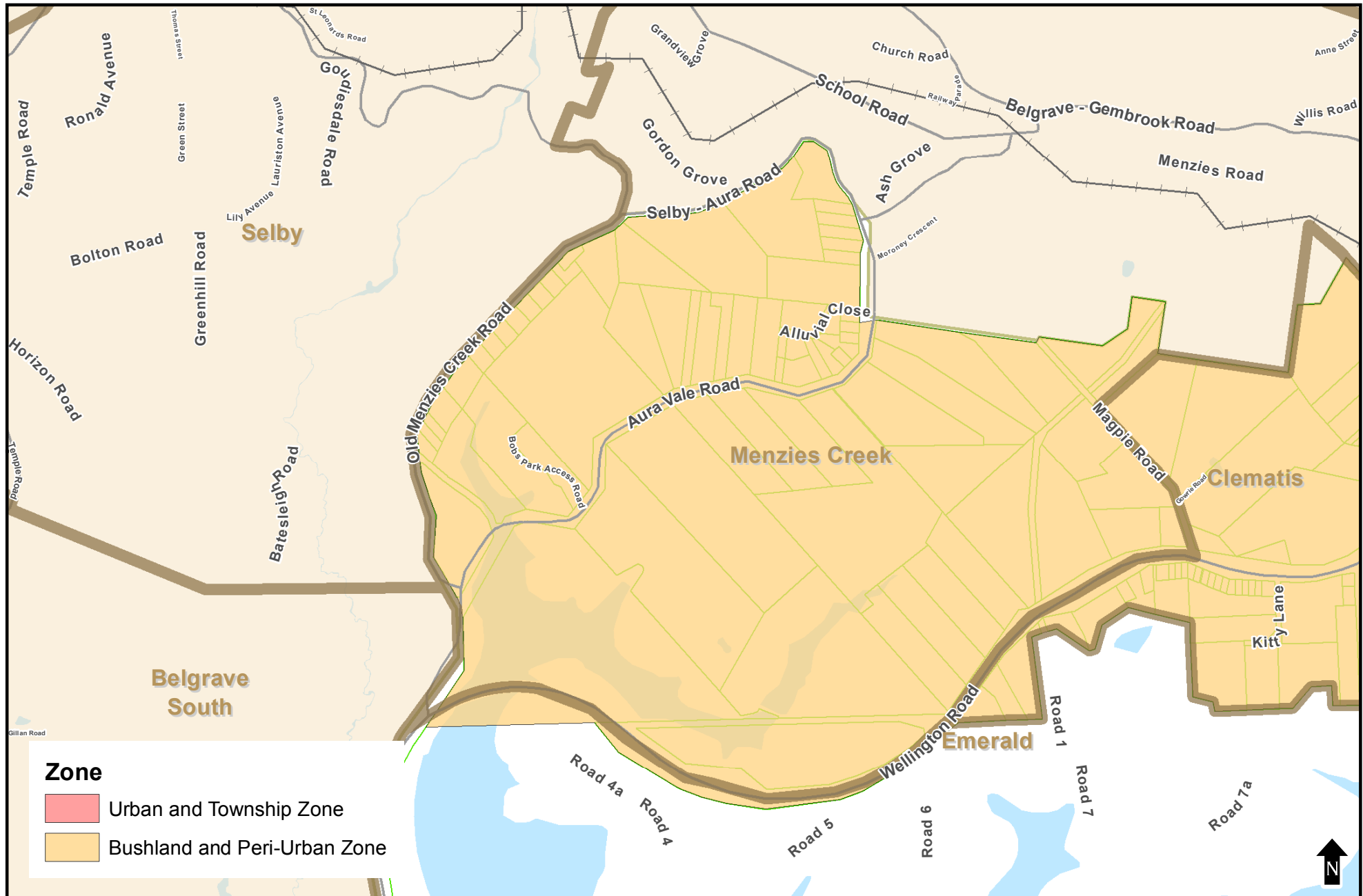


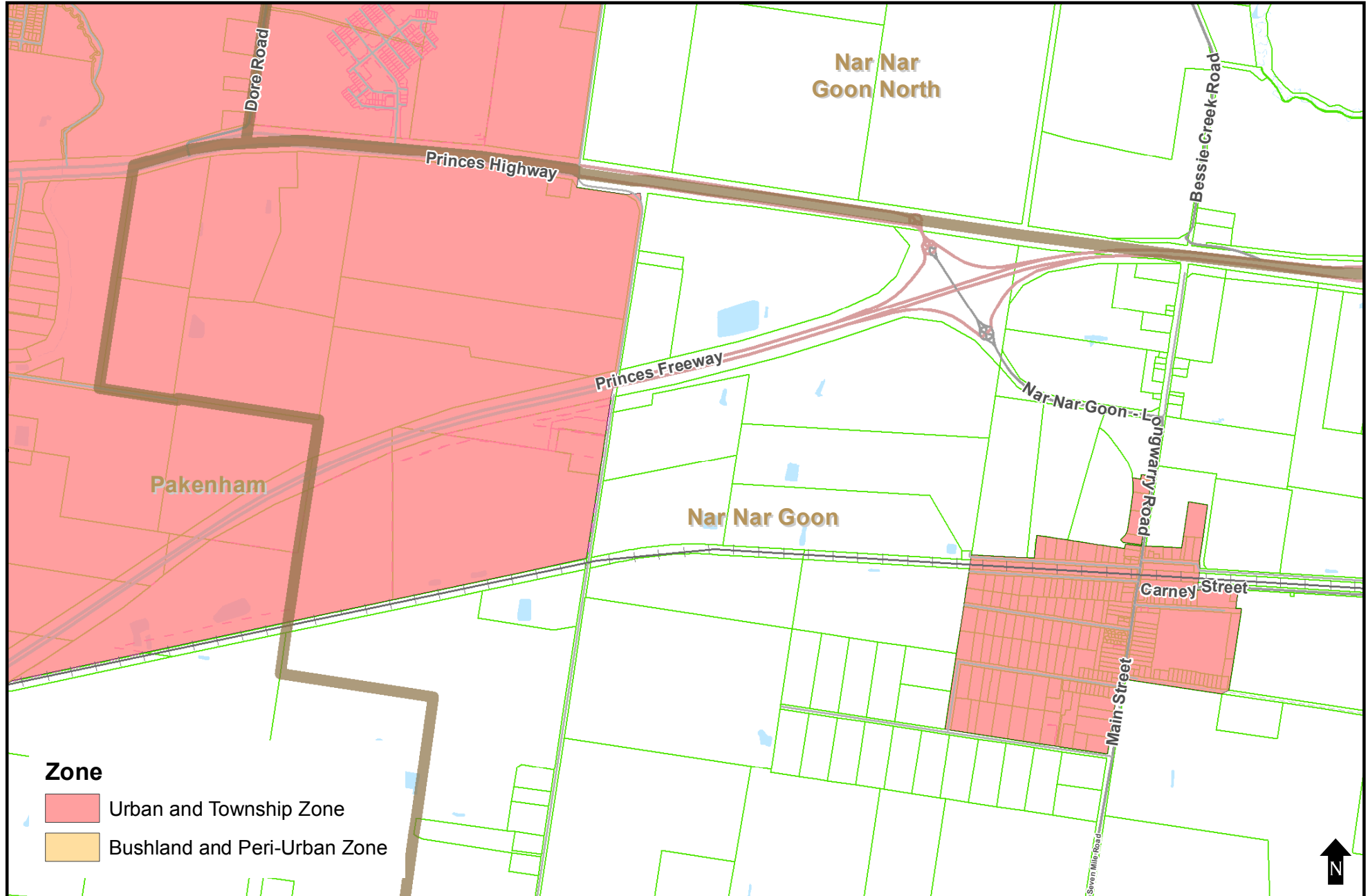




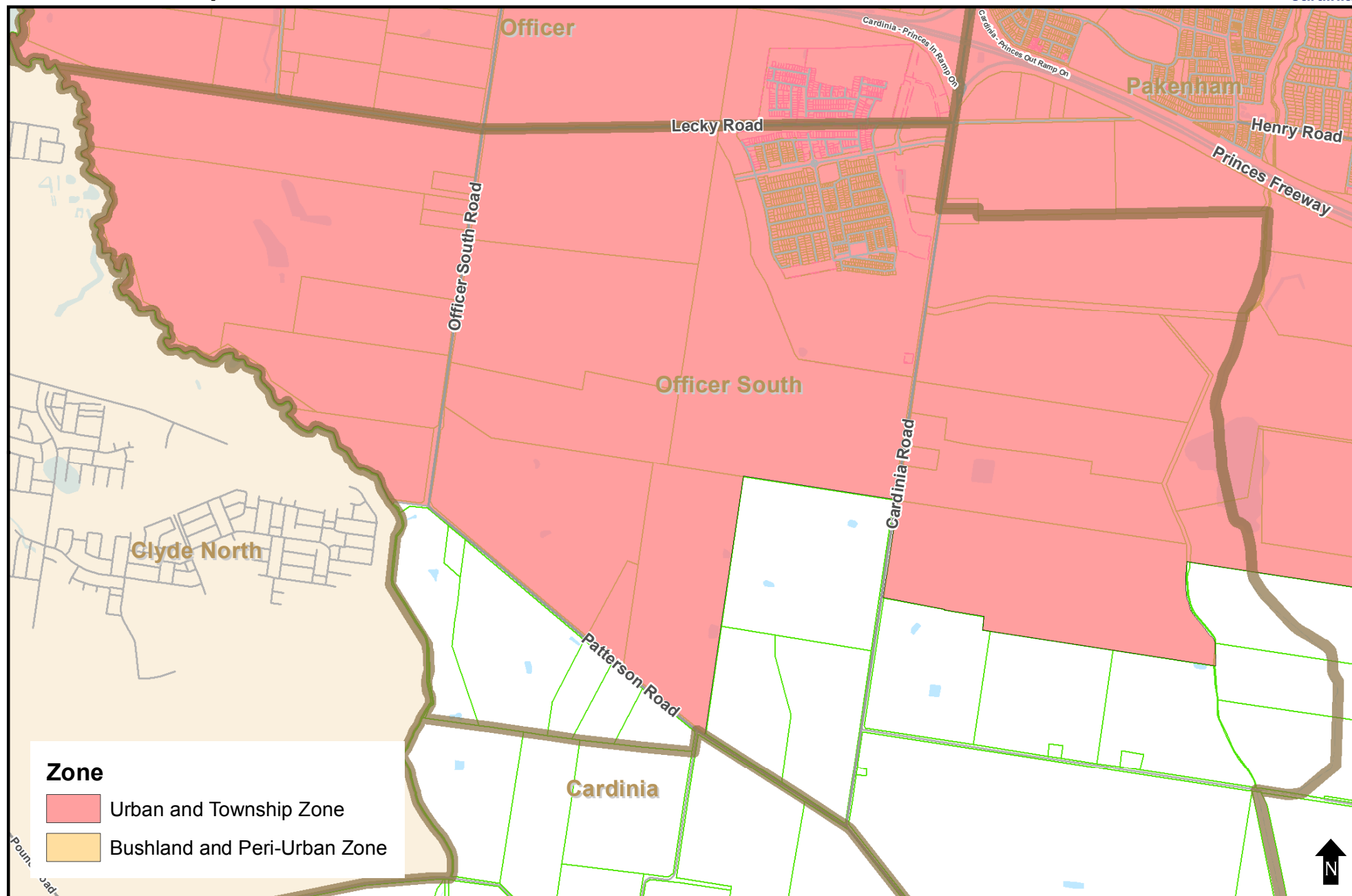


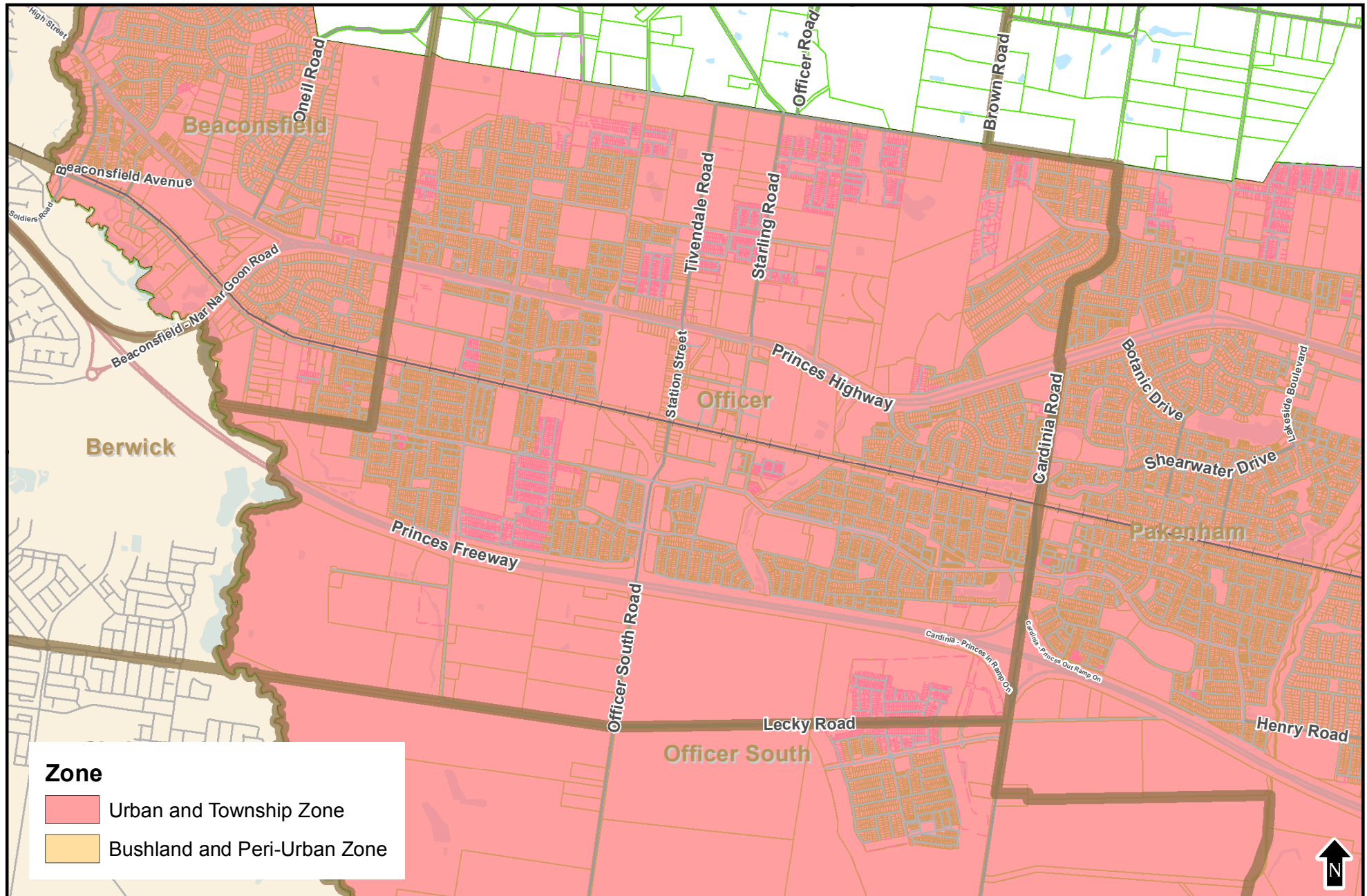


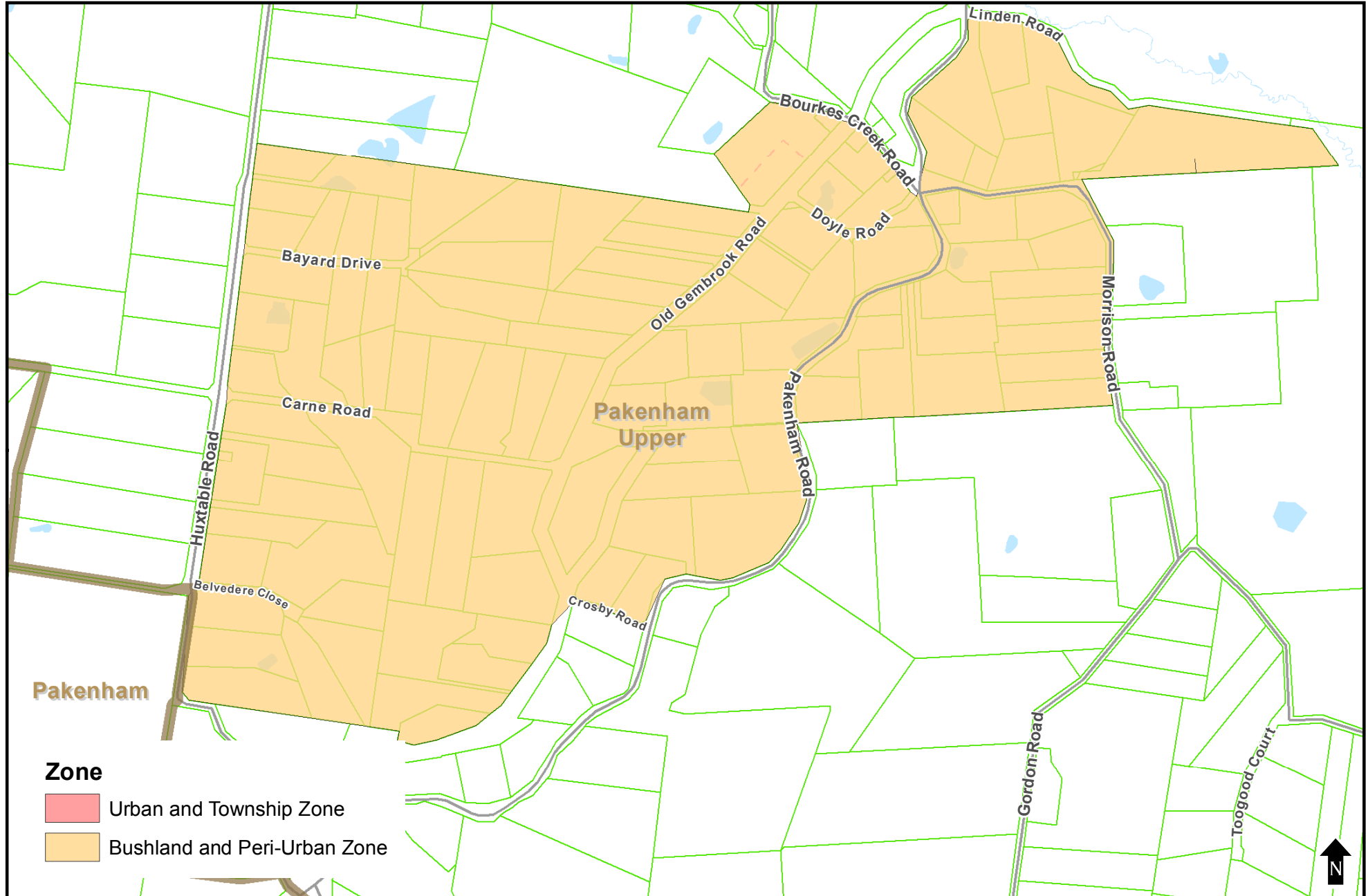


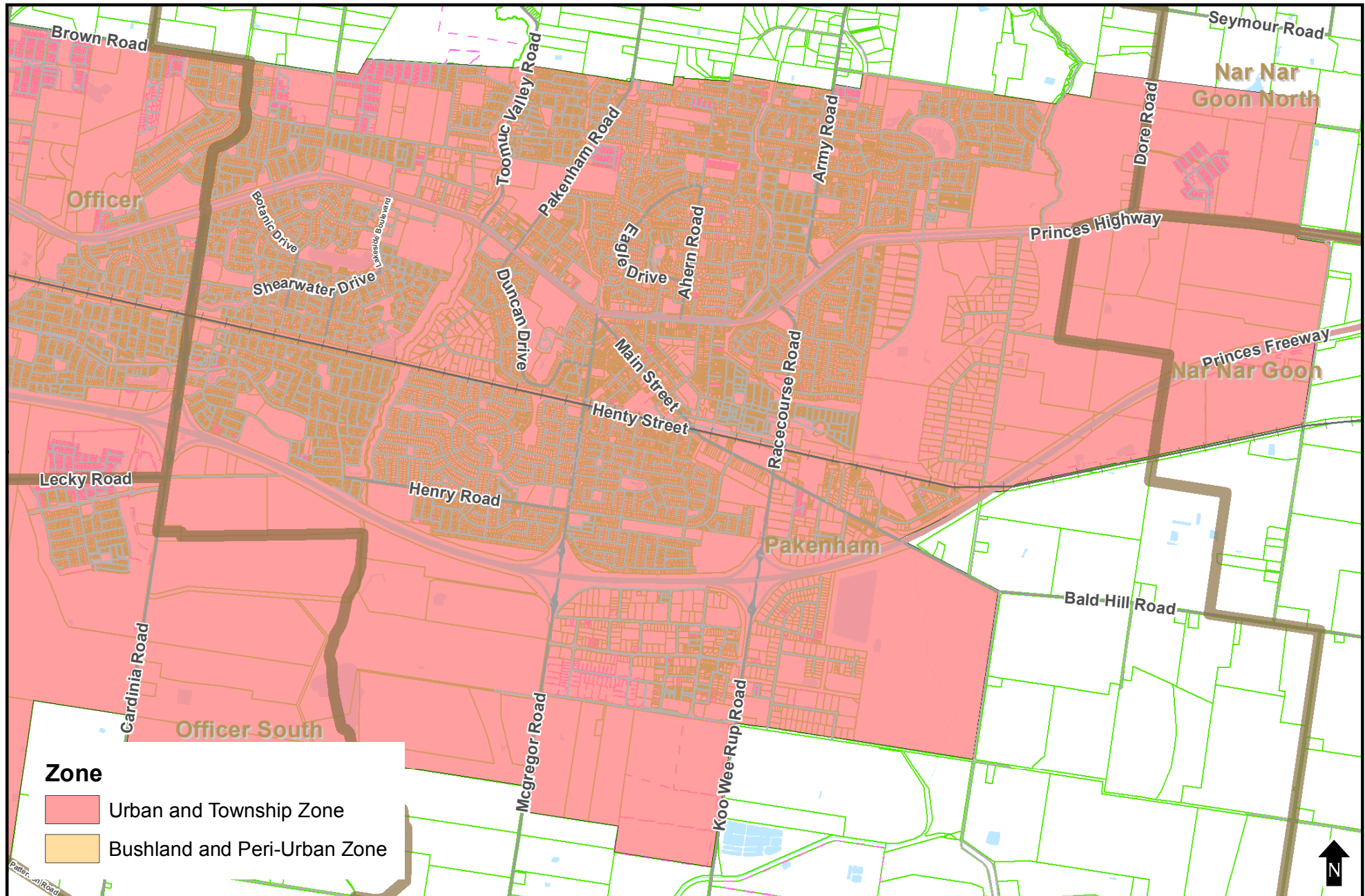


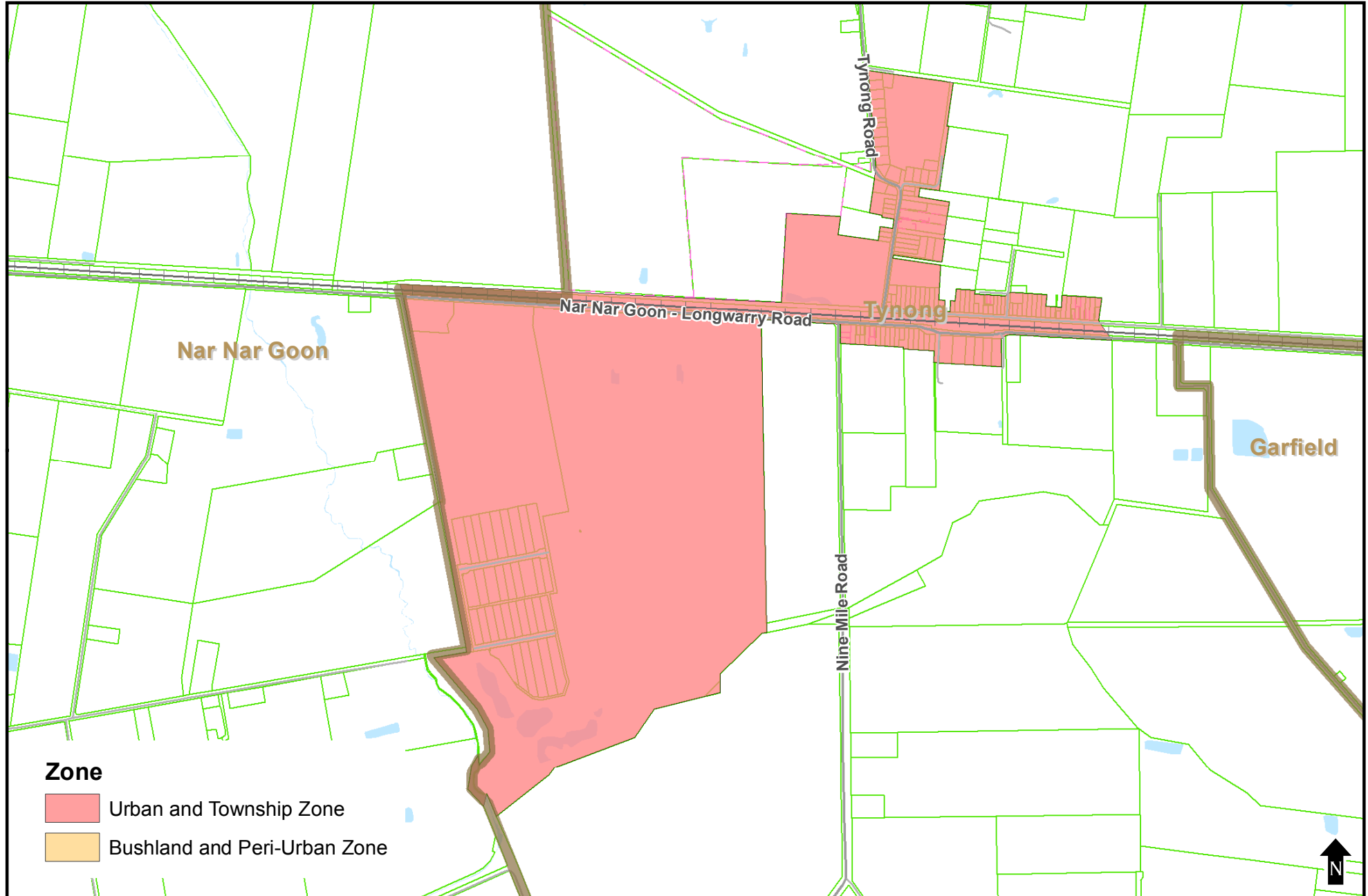
Local Law 20 Open Air Fires - Officer South



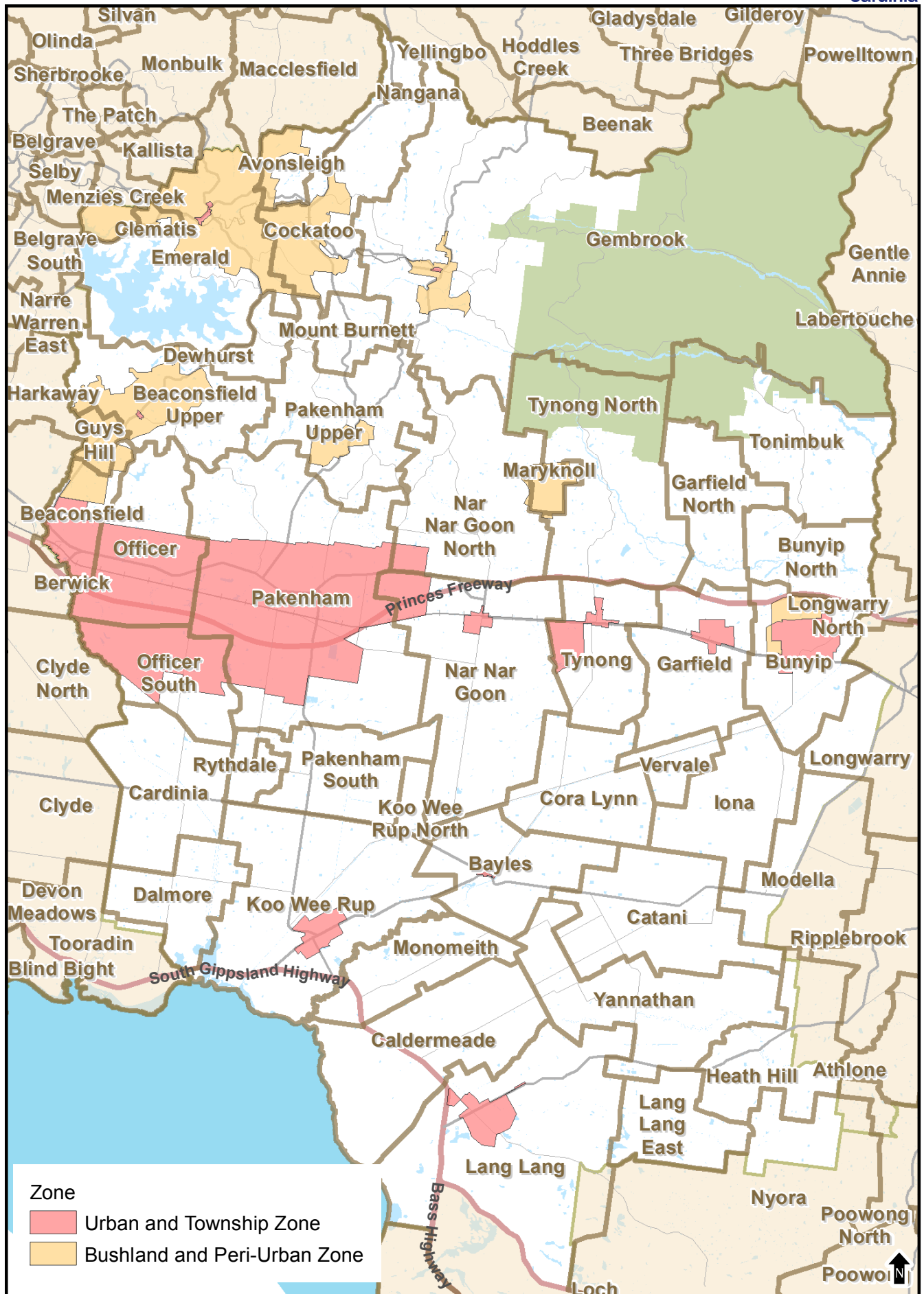








Local Law 20 Open Air Fires



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**CERTIFICATE PURSUANT TO SECTION 74(1) OF THE
LOCAL GOVERNMENT ACT 2020**

I, **Marcus Heath**, being a qualified person as defined in section 74(2) of the *Local Government Act 2020 (Act)*, hereby certify pursuant to section 74(1) of the Act that I am of the opinion that the proposed **Cardinia Shire Council Local Law 20 – Open Air Fires Local Law** is consistent with the local law requirements that are set out in section 72 of the Act.

Dated: 1 December 2021

A handwritten signature in blue ink, appearing to read 'Marcus Heath', written over a horizontal line.

Marcus Heath

Level 12, 469 La Trobe Street, Melbourne, Victoria 3000

An Australian Legal Practitioner within the meaning of The Legal Professional Uniform Law (Victoria)

Cardinia Shire Council



Open Air Fires Local Law Policy pursuant to Clause 39

Policy in respect of issuing permits, pursuant to Clause 39

For internal use only

February 2022

Version History

Version number		Effective dates
1.0.1	First working draft (not for distribution)	
1.1	Further draft review	
2.0	Final Version	24 Jan 2022

Endorsement

This policy has been reviewed by the Team Leader – Emergency Management and endorsed by the Manager – Regulatory Service.



.....
Team Leader – Emergency Management



.....
Manager – Regulatory Services

Date: 24/01/2022

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Policy Alignment

This policy aligns with the objectives of the Cardinia Shire 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.

This policy is consistent with the State Emergency Management Plan – Bushfire Sub-Plan, adhering to the shared focus of bushfire risk reduction between government, agency, and community.

Purpose

This policy is made in accordance with Clause 38 (2) (b) Cardinia Shire Council Local Law 20 (known as “Open Air Fires Local Law”), and describes the scope, purpose and process for the issuing of permits under the Local Law

This policy is consistent with the Open Air Fires Local Law, the Municipal Fire Management Plan and the Cardinia Shire Compliance and Enforcement Policy.

Scope

This policy only applies to the issuing of permits for the purpose of Open Air Fires where required under the Open Air Fires Local Law, outside the declared Fire Danger Period.

When will permits be issued under the Open Air Fires Local Law?

Where residents have a genuine bushfire fuel reduction need and cannot comply with the requirements of the Open Air Fires Local Law, they can apply for a permit that will be reviewed by authorised Council Officers.

There is no fee payable to apply for a permit.

Clause 39 of the Open Air Fire Local Law sets out matters that the authorised staff member may consider, namely:

- 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.

Other relevant matters that the Authorised Council Officer will take into account, include (but are not limited to):

- i. The site address that the application relates to, including topography, vegetation and surrounding land features
- ii. The bushfire fuel reduction needs of the applicant
- iii. The permit history of the applicant, including history of compliance with previously issued permits
- iv. Whether other fuel reduction measures are reasonably available to the applicant
- v. Where it is possible, the weather conditions that may impact of an open air fire that is authorised by a permit
- vi. Cardinia Shire Municipal Fire Management Plan

Authorised Council officers may undertake a site visit prior to a permit being issued.

Permits will typically include conditions that specify matters, such as

- The days of the week, and the times of the day that open air fires may be lit, or may remain alight, and
- the size and number of piles that may be burned, and
- any other condition that is relevant to the circumstances of the application.

Permit Application and Processing

Permits applications should be made online via the Council website and will be allocated to the Emergency Management SharePoint due tray.

Applications may be completed over the phone or in person where residents do not have access to or are unable to utilise the internet,

Application are usually assessed by a member of the Emergency Management Team. The Officer may contact the applicant to request further information. For complex applications and sites with elevated risks, Council officers may seek input from other agencies, such as CFA, FRV and public land managers.

If a permit cannot be issued within the decision time described below, Council staff will advise the applicant accordingly.

In addition to Council's Emergency Management Team, all Council Authorised Officers, are "Authorised Staff Members", for the purposes of issuing permits under the Open Air Fire Local Law.

Common circumstances that may result in permits

The following table describes some common scenarios which may give rise to permit applications. Permits will typically be issued in accordance with the durations outlined below.

Circumstances giving rise to the application	Common examples	Typical permit conditions and duration	Typical decision time for application
Applicant manages a residential property and believes that current zone requirements do not allow for adequate bushfire fuel reduction activities	This may include bushland or rural blocks that are immediately adjacent to growth area boundaries, or where land use and context changes over time..	The conditions and duration of permits will vary and will be tailored to each unique site circumstances. Such permits may be issued for specified works, or seasonally. The permit renewal process will allow Council to understand the changing needs on the site over time, monitor compliance and to determine whether site should be considered for future zone changes. Permits may be issued on a provisional basis in some circumstances.	Up to 3 business days
Applicant has a temporary need to burn off in a way that does not comply with one or more requirements (eg day of the week, pile size, minimum distances etc)	This may include where: Blocks experience an unusually high fuel load, or where weather conditions limit the frequency of open air fires.	Will typically be issued for 2-4 week periods.	Up to 3 business days
Other large and complex permit application	Will often include: - applicants managing non-residential sites,	The conditions and duration of each permit will vary, depending on the nature of the proposal, the site and	Up to 15 business days

	- proposed landscape burns - very large properties	the input of other referral agencies. Permits will typically be seasonal or per each burn unit.	
Other permit application	any other reasons		Up to 15 business days

Applications for seasonal and burn unit permits will only be decided by Municipal Fire Prevention Officer.

Permit Revocation

Permits can be revoked at any time at the discretion of Council Officers. Permits will typically only be revoked if the conditions of the permit are not met, if the open air fire poses (or is likely to pose) an unacceptable risk to community safety and amenity, or the information supplied in the permit application is false or misleading.

If a permit is revoked, the resident will receive a formal revocation notification.

Standard Permit Conditions

Permit conditions will vary from application to application, but permits will include the following standard permit conditions :

1. The perimeter of the open air fire must be at least 12 metres from any structure
2. The perimeter of the open air fire must be clear of all combustible material and other vegetation to a distance of 5 metres (unless the vegetation is grass cut to below 100mm)
3. Open air fires must be actively supervised at all times by a person who has the means and capacity to extinguish the fire
4. Any material that is not dry vegetation must not be burnt. This includes but is not limited to any by-product waste from any industrial or commercial activity, materials that may be toxic, noxious or offensive, and any flammable liquids
5. Open air fires are not permitted on a day declared to be Poor, Very Poor or Extremely Poor air quality by the Environment Protection Authority Victoria.
6. A person must not light an open air fire at any time when a Severe Weather Warning (issued by the Bureau of Meteorology) applies to the property upon which the open air fire is to be lit.
7. Open air fires must not create a danger or nuisance to another person or property, including excessive smoke.
8. The fire must be immediately extinguished if directed by a member of an emergency service or an Authorised Officer of Council.
9. The Emergency Services Telecommunication Authority (ESTA) must be notified of the open air fire prior to ignition.
10. This permit does not allow any fire to be lit or remain alight on any day declared a Total Fire Ban or during the Fire Danger Period.

Review of refusal to issue permit

If an application is refused, the Officer must advise the applicant in writing outlining the reason/s it was refused.

An applicant may request a review of a decision to refuse an application. The applicant must request a review in writing to the Team Leader – Emergency Management, no later than 14 days after the application was denied.

The Team Leader – Emergency Management will review the application and advise the resident of the outcome. If the Team Leader – Emergency Management made the decision that is subject of the review, the application will be re-considered by the Manager, Regulatory Services.

Landscape Fuel Reduction

Where a resident wants to undertake landscape fuel reduction, a permit will be required. Council may request a fuel management plan for the property and conduct a site visit. Council officers may request information from other agencies.

Landscape fuel reduction is more complex and additional safeguards are required. Applications for this purpose will require the applicant to demonstrate that they are sufficiently experienced to conduct such activities, and the permit application process may take considerable time to consider.

Landscape fuel reduction is the controlled application of fire under specified environmental conditions to a predetermined area and at the time, intensity, and rate of spread required to attain planned resource management objectives. This can also be known as planned burning or prescribed burning. This typically involves the introduction of fire over a wide area, compared to tradition heaps or piles that most residents are used to.

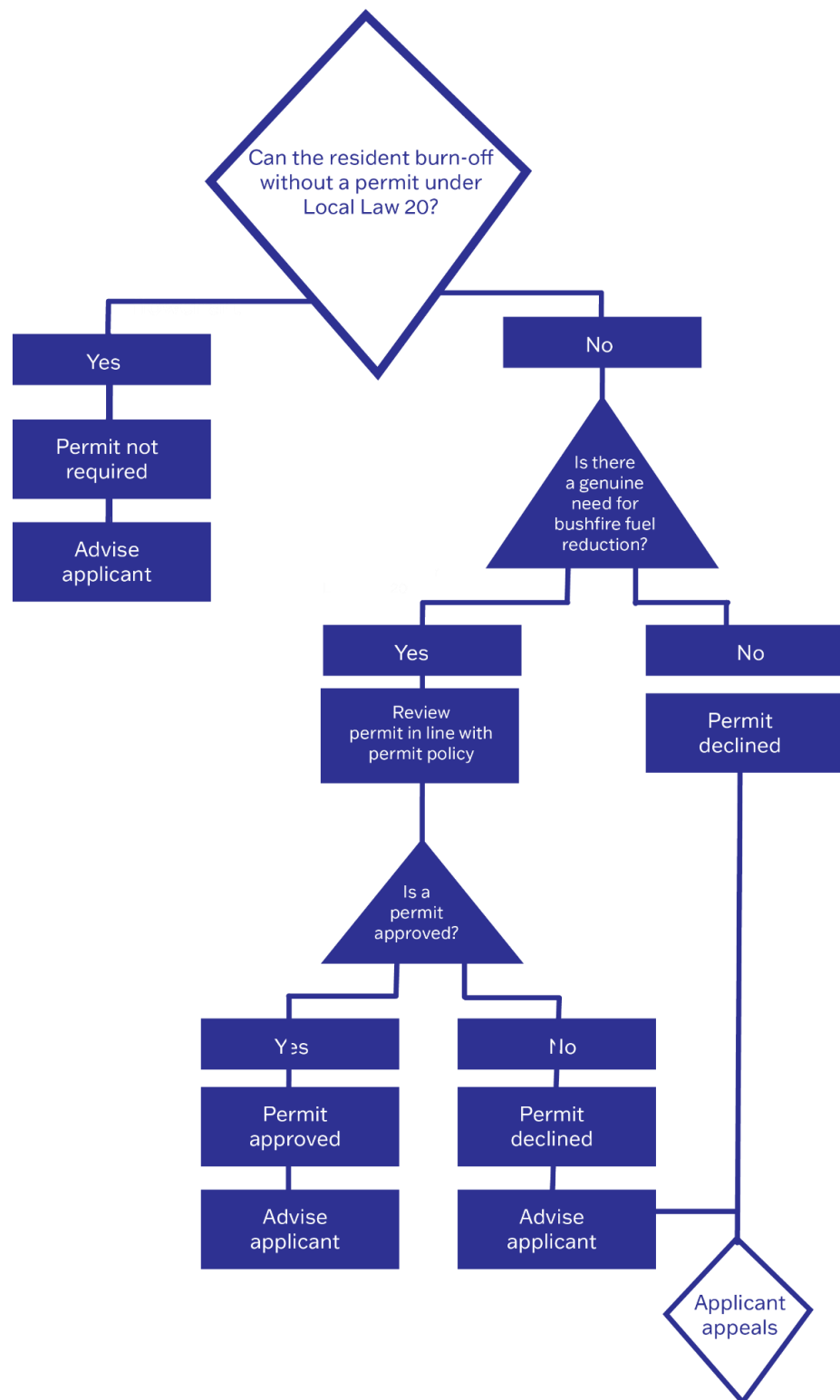
Fire Danger Period

Cardinia Shire Council does not issue permits during the declared Fire Danger Period (FDP). If a resident requires a permit during the FDP, they can be referred to www.firepermits.vic.gov.au/

Country Fire Authority and Fire Rescue Victoria notification

Once a permit has been issued Council will send a copy of the permit to the local Country Fire Authority Brigade or Fire Rescue Victoria Station notifying them of the approved permit and associated conditions.

Please note that this does not replace the requirement for the owner/resident to notify the Emergency Service Telecommunications Authority prior to ignition.

Process

Compliance

The monitoring and enforcement of permit conditions will be carried out by Council officers. Failing to comply with the conditions of a permit may be an offence under the Open Air Fire Local Law.

If Council officers detect non-compliance with the Local Law, they may take Enforcement steps, which may include issuing official warnings, infringements, court prosecution and the revocation of permits.

Related Documents

Cardinia Shire Local Law 20 – Open Air Fires
Cardinia Shire Compliance and Enforcement Policy
Cardinia Municipal Fire Management Plan

Cardinia Shire Council



Local Law Community impact statement

Local Law 20 – Open Air Fires Local Law

21 January 2022

Version 1.1

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, which 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 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.

Local Law 20 – Open Air Fires Local Law (version 4.0) was prepared in line with the requirements of the Local Government Act 2020. Council has confirmed that *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 held a 28-day consultation period about the Local Law from 20 August to 17 September 2021. Submissions were invited from Cardinia Shire residents.

Following the closure of the consultation period, residents who and expressed interest in presenting to Council were invited to do so at an Ordinary Council Meeting, held on 6 December 2021. Residents were allocated four minutes to address Councillors.

Objectives

The objectives of the local law are to:

- provide for the peace, order and good governance 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 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 supports 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 local law is the correct and preferable approach.

Overlap of existing legislation

Council is satisfied that the 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 local law will be ineffective.

The existing Acts listed below also include provisions that are related to the subject matter of the 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's permission may be required.
- *Infringements Act 2006* – this Act sets out the processes when infringements are issued and enforced.

The provisions of the 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 in the 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 local law reflect the current policy or are unchanged from *Local Law 17 – Part 5A*. Where open air fires are more restricted under the 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 considered the approach to this local law. In the case of open-air fires there is a wide range of views within the community, and the local law attempts to balance these needs. As such, Council has adopted a moderately prescriptive approach, to promote clarity and consistency across the new 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 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. 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 on a case by case basis.

Restriction of competition

The 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 local law, infringement penalty amounts will be higher than previously applied under the former local law. This is because 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 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 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 local law and will be assessed on a case-by-case basis.

Fees

The 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 with Casey and Baw Baw was undertaken given 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 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, which reflect the geographic diversity of the municipal district.

The 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 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 promotes and protects 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 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 local law has been reviewed for compatibility with the Charter and is considered to be compatible. To the extent that the 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 affected.

Consultation

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 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 was conducted from 20 August to 17 September 2021, which allowed the community to provide feedback on the draft version of the local law as required by Section 73 of the *Local Government Act 2020*.

Submissions

On 16 August 2021, Council gave public notice of its intention to enact the local law and provided members of the public with the opportunity to make a written submission to Council in relation to the local law. Council received 426 written submissions overall, with 403 being received during the formal consultation period. All submission were reviewed and considered by Council.

Based on community feedback, recommendations to Councillors were in some instances made to amend the proposal and recommendations made to amend the proposal based on community feedback.

Persons who indicated their wish to be heard by Councillors regarding their submission had the opportunity to do so on 6 December 2021.

Local Law 20 – Open Air Fires will take effect from 1 March 2022 and will be in effect until 29 February 2032.

Cardinia Shire Council

Local Law 20 – Open Air Fires Promotion Activities



Cardinia Shire Local Law 20 – Open Air Fires

Council will undertake a range of promotion, engagement, and education activities to support the roll-out of Local Law 20 – Open Air Fires. The activities outlined below will be enacted in the lead up to Local Law 20 coming into effect and throughout 2022.

Promotion

Social Media

- Facebook
- Twitter
- Instagram

Newspapers

- Rangers Trader
- Pakenham Gazette
- Pakenham News

Posters/Flyer

A new flyer will be developed along with posters to be displayed on community noticeboards across the Municipality.

Mail Out

A mailout to all properties (residents and landowners) will be conducted in the Rural Zone and Bushland and Peri-Urban Zone, outlining which zone residents are in and what restrictions apply to those properties, and where to get additional information and view the Local Law.

All properties that are now included in the Urban and Township Zone that previously were able to burn-off without a permit will receive a letter outlining the changes in restrictions for their property and how to apply for a permit if required.

Creating Cardinia

Creating Cardinia will be updated to close out the Local Law review. It will include information on the process and where residents can find out more information about the new Local Law 20.

Connect Magazine

An article will be published in the Autumn and Winter issues of Connect Magazine, which is delivered to every household in the Shire. Approximately 48000 households.

Council Website

Council's website will be updated to reflect the changes in the Local Law. Information of permits, zone review requests and general considerations.

It will also include a search function for residents to find out what restrictions apply to their property

Email and SMS to submitters

SMS message will be sent out to residents who were engaged during the consultation period. This includes residents who have previously contacted Council regarding burning-off. This will be approximately 1000 residents.

Education

Commencing in 2022, Council will work collaboratively with CFA, including local brigades, to deliver education sessions on how to burn safely, targeted to those residents in the highest risk bushfire areas. This may include theory and practical sessions.

Council will also heavily promote the recently developed online learning training bushfireprepare.online, which aims to increase the communities understanding and community decision making involvement with bushfire risk reduction activities and support of community decision making for risk reduction strategies.