

Open Air Fires Local Law

Local Law 20 – Open Air Fires Local Law 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)

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)
4.2	Local Law 20 – Open Air Fires	Proposed version (following amendment resolution of 21 March 2022)

PART 1	INTRODUCTORY CLAUSES	4
1.	Title	4
2.	Objectives	4
3.	The power to make this Local Law	4
4.	Commencement	4
5.	Revocation	4
6.	Application.....	4
7.	Exemption – emergency services and government agencies.....	5
8.	General exemptions	5
9.	Exemption – Indigenous cultural practices	6
10.	Chief Executive Officer may suspend clauses in this Local Law.....	6
11.	Definitions.....	6
PART 2	OPEN AIR FIRE ZONES	9
12.	Establishment and Application of Open Air Fire Zones	9
13.	Permit may be issued	10
PART 3	REQUIREMENTS OF OPEN AIR FIRES THAT APPLY TO ALL OF THE MUNICIPAL DISTRICT ..	11
14.	Part 3 applies to all of the Municipal District	11
15.	No open air fires without the consent of the land owner or public land manager.....	11
16.	No open air fires during July	11
17.	Times when open air fires must not be ignited.....	11
18.	Person must supervise and be able to extinguish an open air fire	12
19.	Person must comply with direction.....	12
20.	Offence to not comply with direction	12
21.	Requirement to notify Emergency Services Telecommunications Authority	13
22.	Severe weather.....	13
23.	Air quality.....	14
24.	Open air fires must not cause a danger or nuisance	14
25.	Use of incinerators is prohibited	14
26.	Use of accelerants is prohibited	15
27.	No industrial waste may be burned	15
28.	No domestic waste may be burned.....	15
29.	Windrows.....	16
PART 4	URBAN AND TOWNSHIP ZONE	17
30.	Application of Part 4 - Urban and Township Zone	17
31.	Open Air Fires prohibited, unless with a permit.....	17
PART 5	BUSHLAND AND PERI-URBAN ZONE	18
32.	Application of Part 5 - Bushland and Peri-Urban Zone.....	18
33.	Days and sizes of open air fires	18
34.	Maximum number of piles	19
PART 6	RURAL ZONE	20
35.	Application of Part 6 - Rural Zone.....	20
36.	Days and sizes of open air fires	20
37.	Maximum number of piles	21
PART 7	PERMITS	22
38.	<i>Authorised staff member</i> may issue permits.....	22
39.	Deciding whether to issue a permit or what conditions a permit should have	23
40.	Correction of errors in permits	23
41.	Council can set a fee for permits, or classes of permits	23
42.	Offence provision – Person who lights an open air fire contrary to conditions of a permit.....	24
PART 8	ENFORCEMENT PROVISIONS OF THIS LOCAL LAW	25

43.	Service of documents	25
44.	Discretionary powers.....	25
45.	Power to Act in urgent circumstances.....	25
46.	Infringement notices	26
PART 9 AMENDMENTS TO LOCAL LAW 17 AND SAVING CLAUSE		27
47.	Previous Local Laws relating to Open Air Burning revoked.....	27
48.	Savings provision – inconsistency.....	27
SCHEDULE 1 OPEN AIR FIRE ZONE MAPS		28

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*.

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.

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***.

‘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**.

‘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.

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

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.

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

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

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.

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

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

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

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

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.

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

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.

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

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

- 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.

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

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.

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.

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

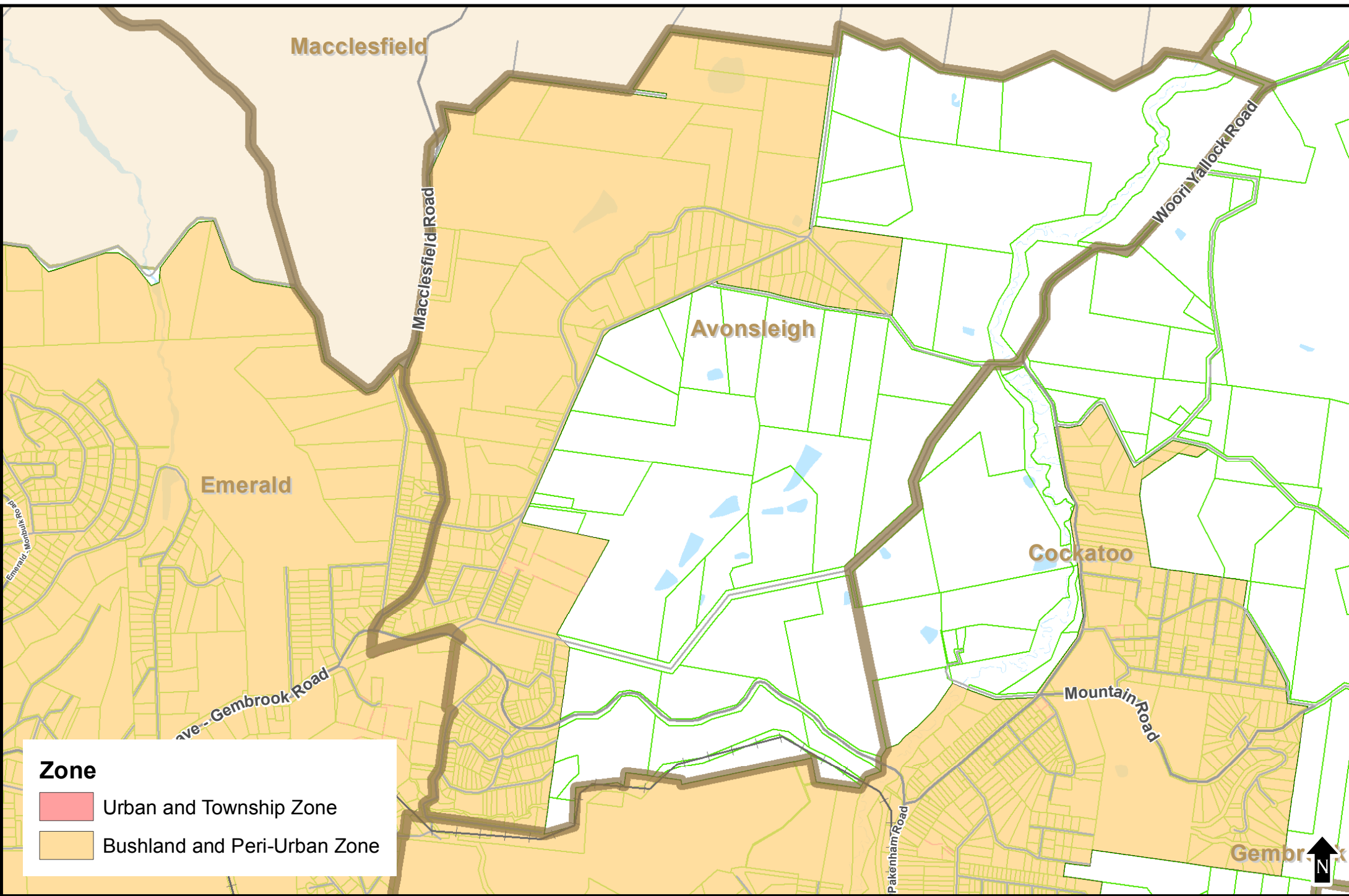
If there is any inconsistency between this Local Law and the 1989 Act, the 2020 Act or any other Act, the part of this Local Law to which the inconsistency applies will be of no effect, and all other clauses of this Local Law continue to operate.

Schedule 1 Open Air Fire Zone Maps

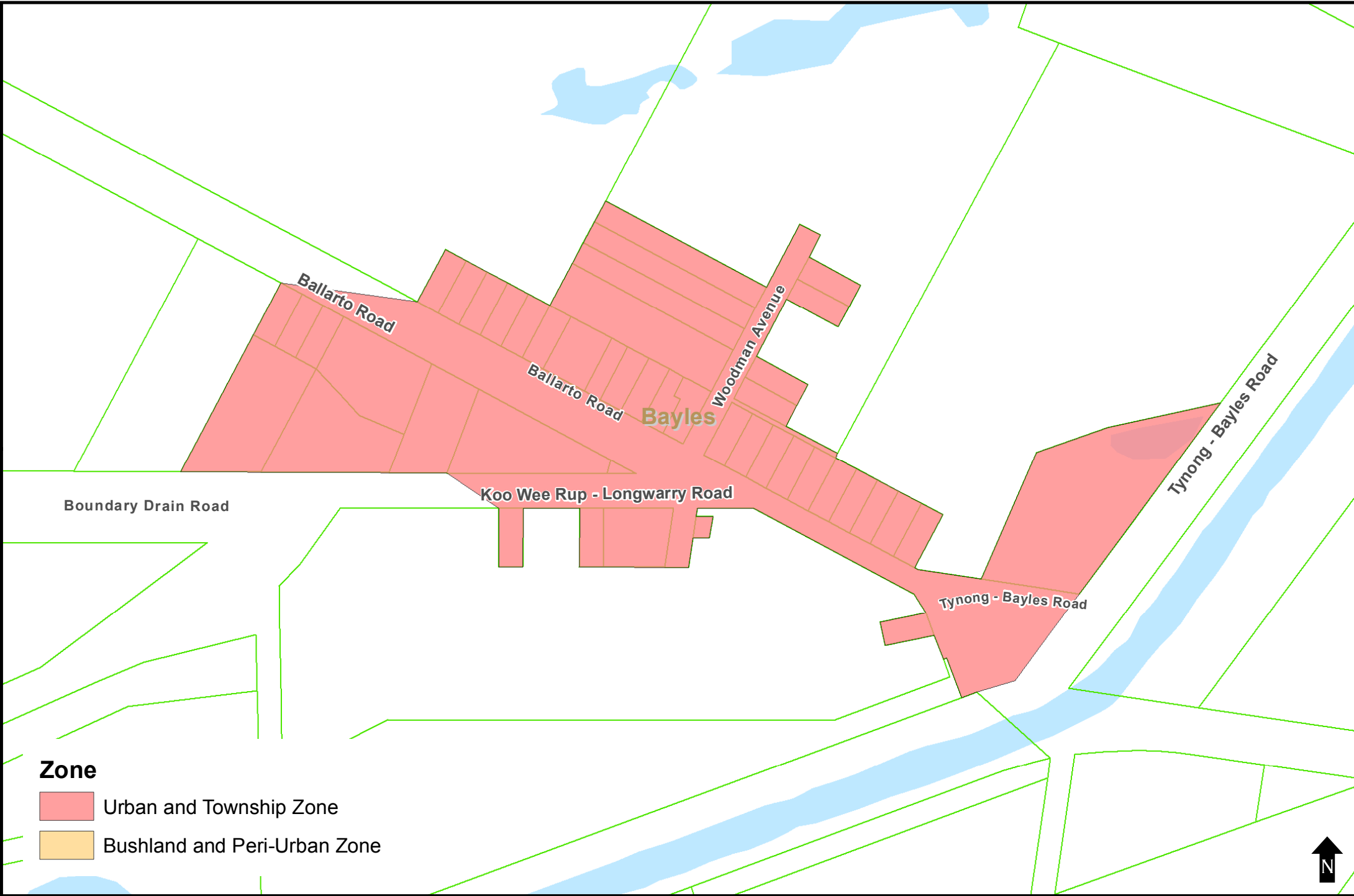
In accordance with Clause 12, in this Local Law,

- 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.

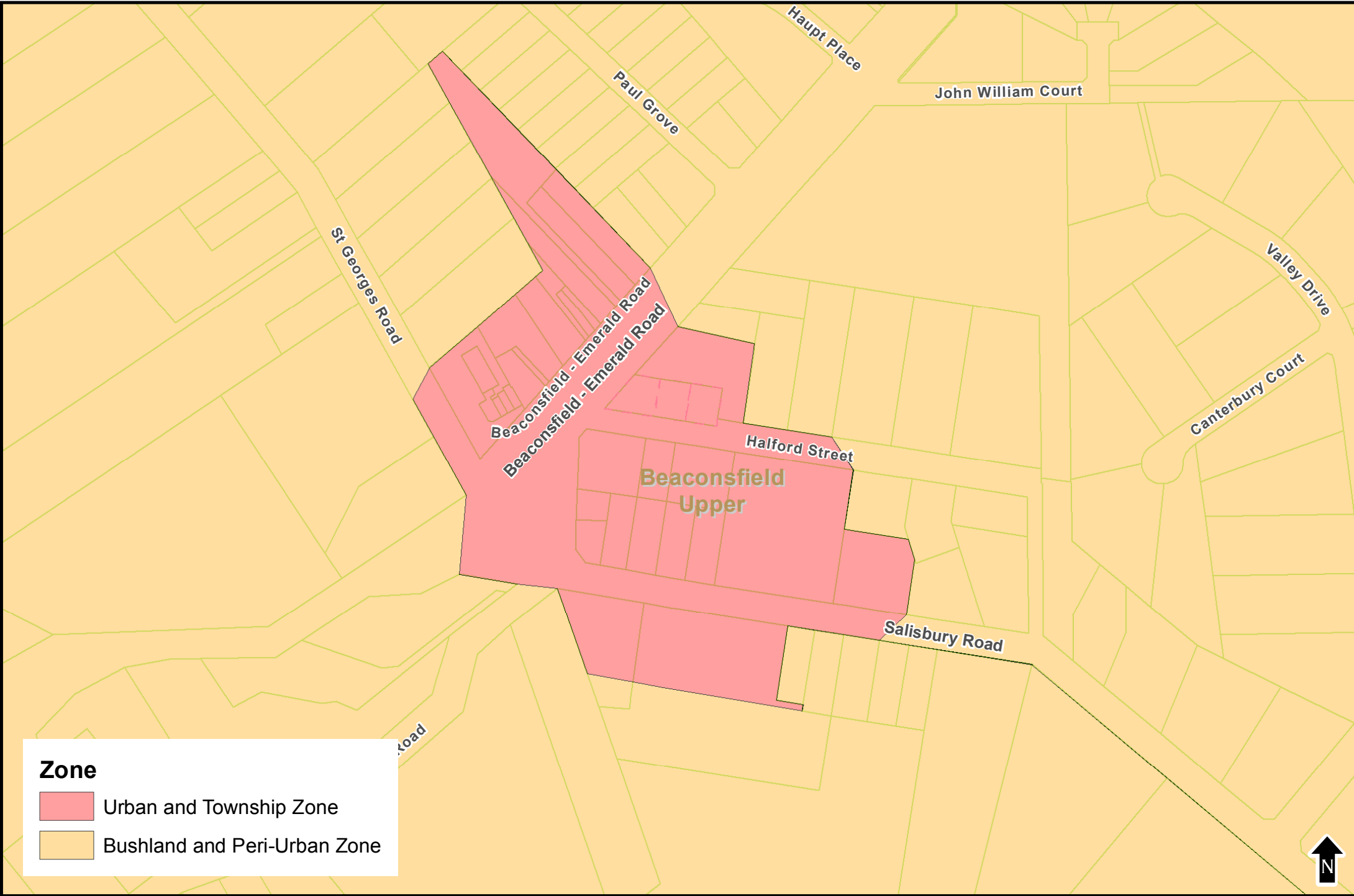
Local Law 20 Open Air Fires - Avonsleigh



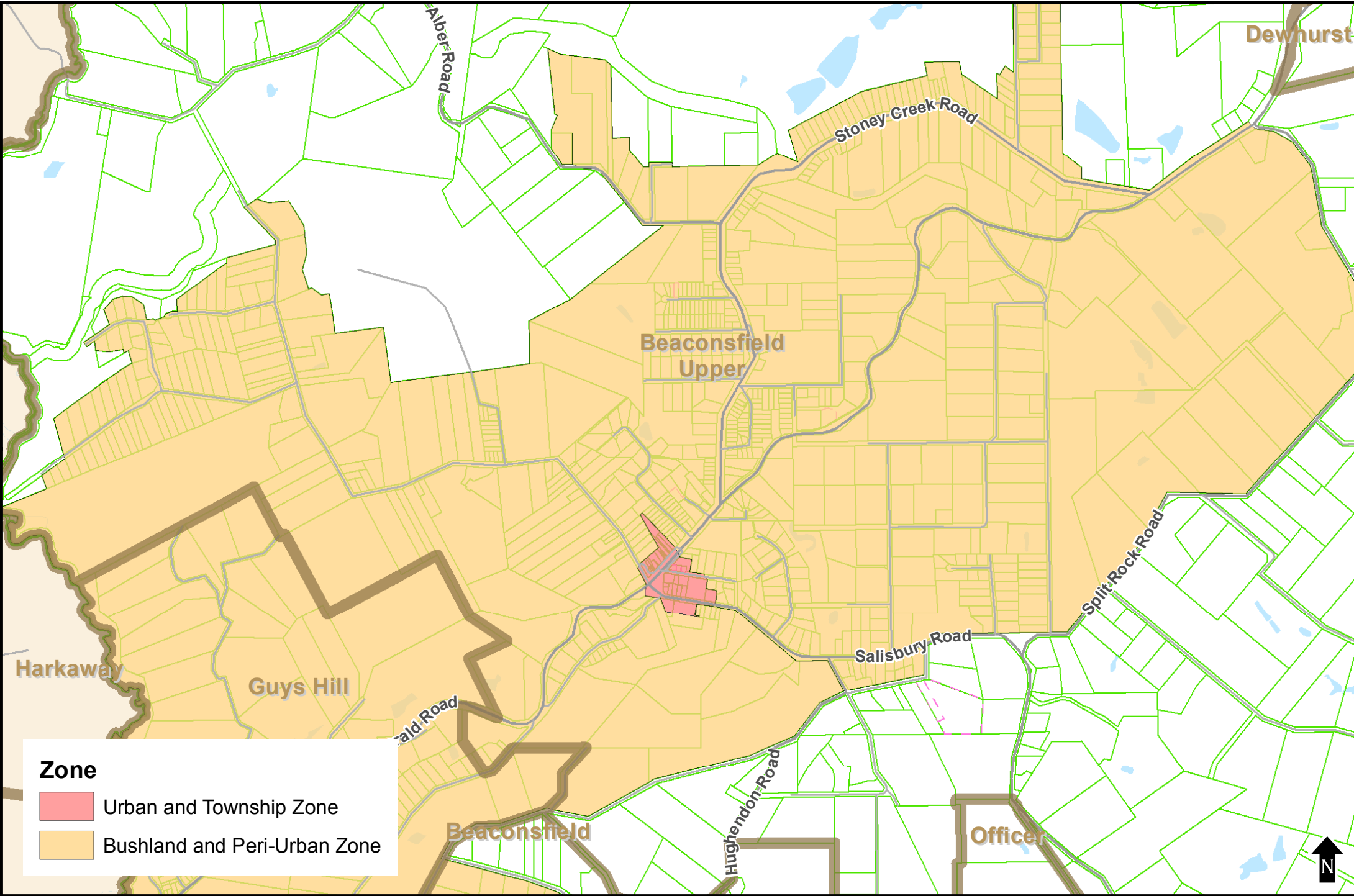
Local Law 20 Open Air Fires - Bayles



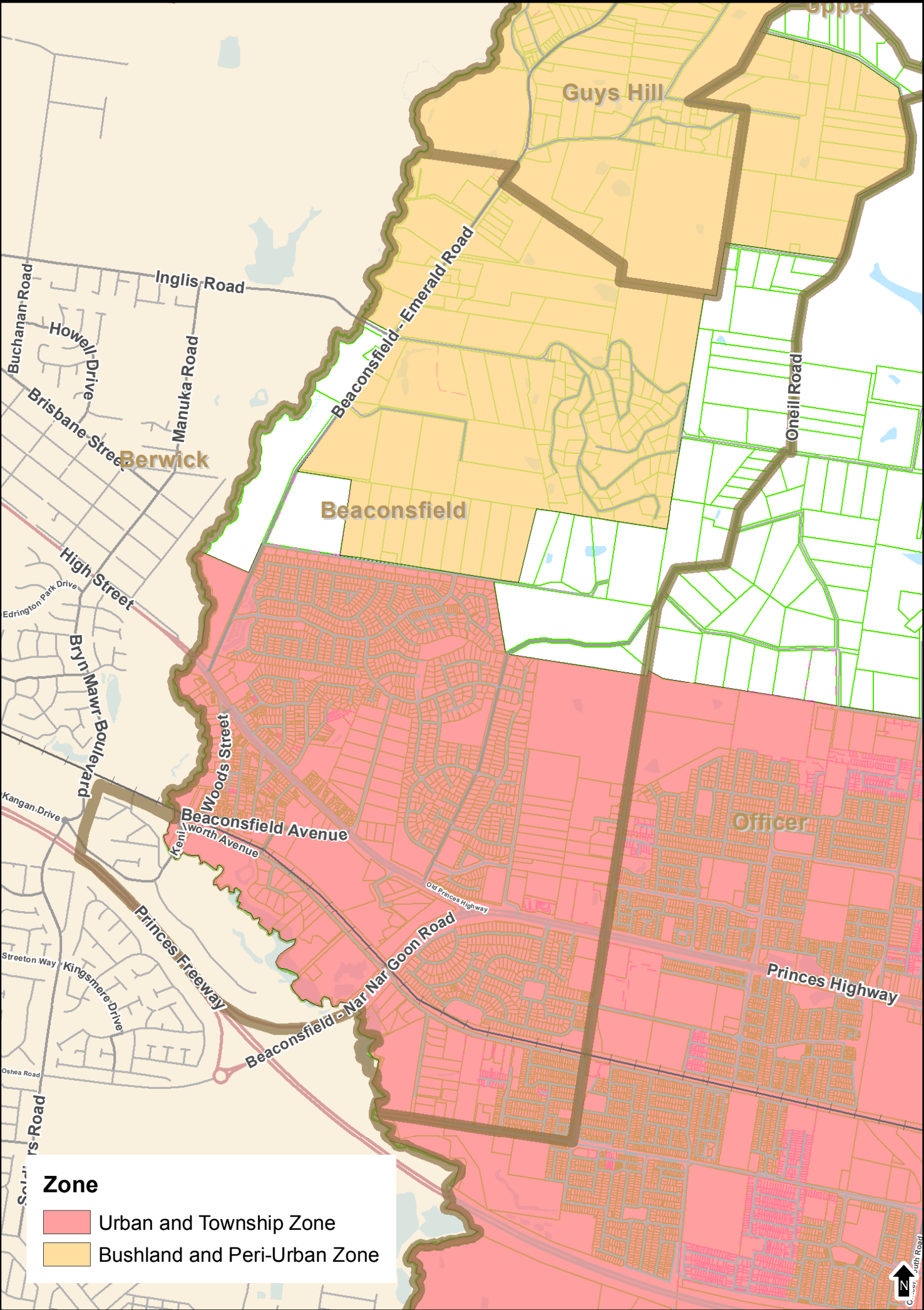
Local Law 20 Open Air Fires - Beaconsfield Upper



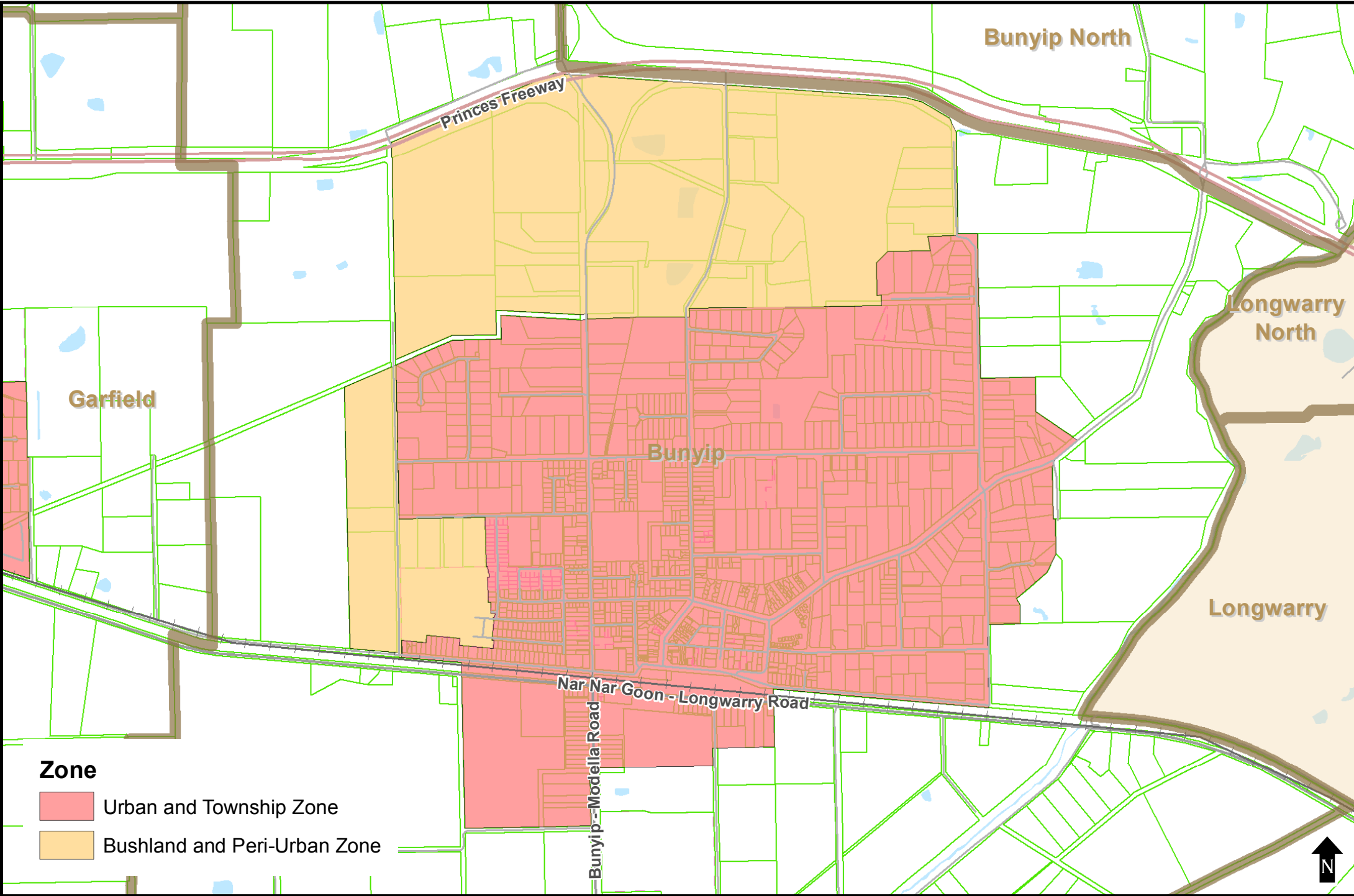
Local Law 20 Open Air Fires - Beaconsfield Upper



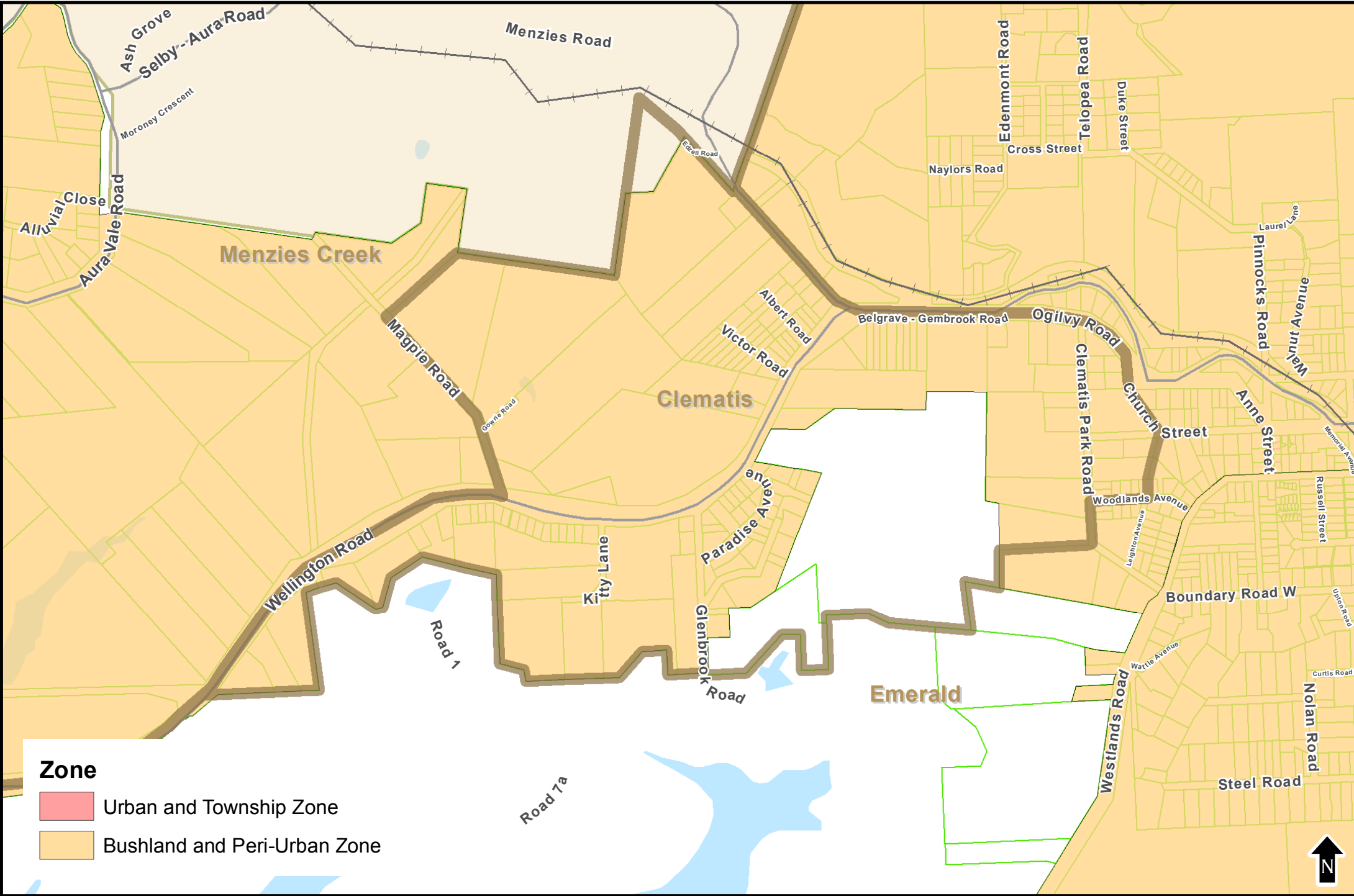
Local Law 20 Open Air Fires - Beaconsfield



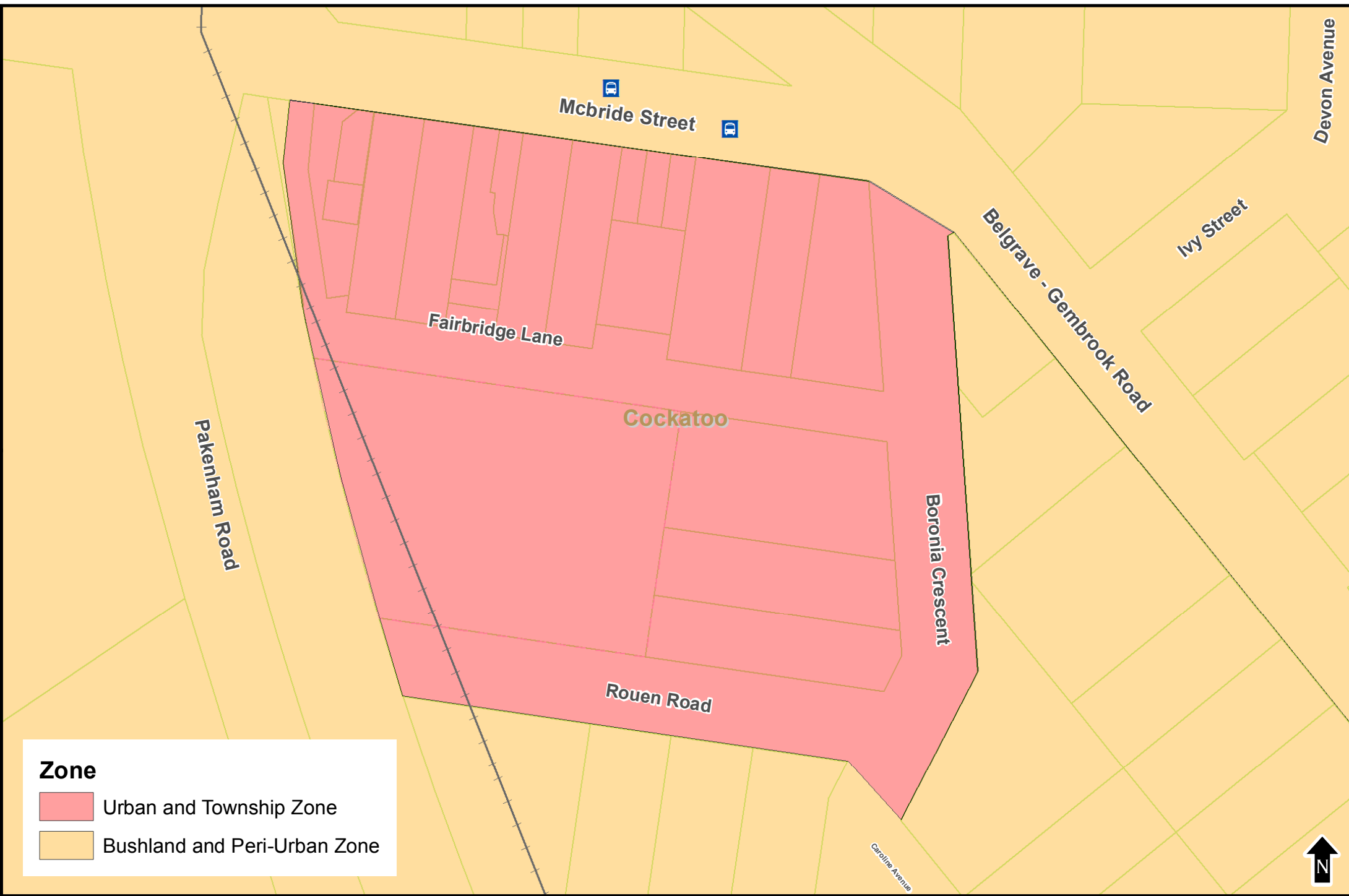
Local Law 20 Open Air Fires - Bunyip



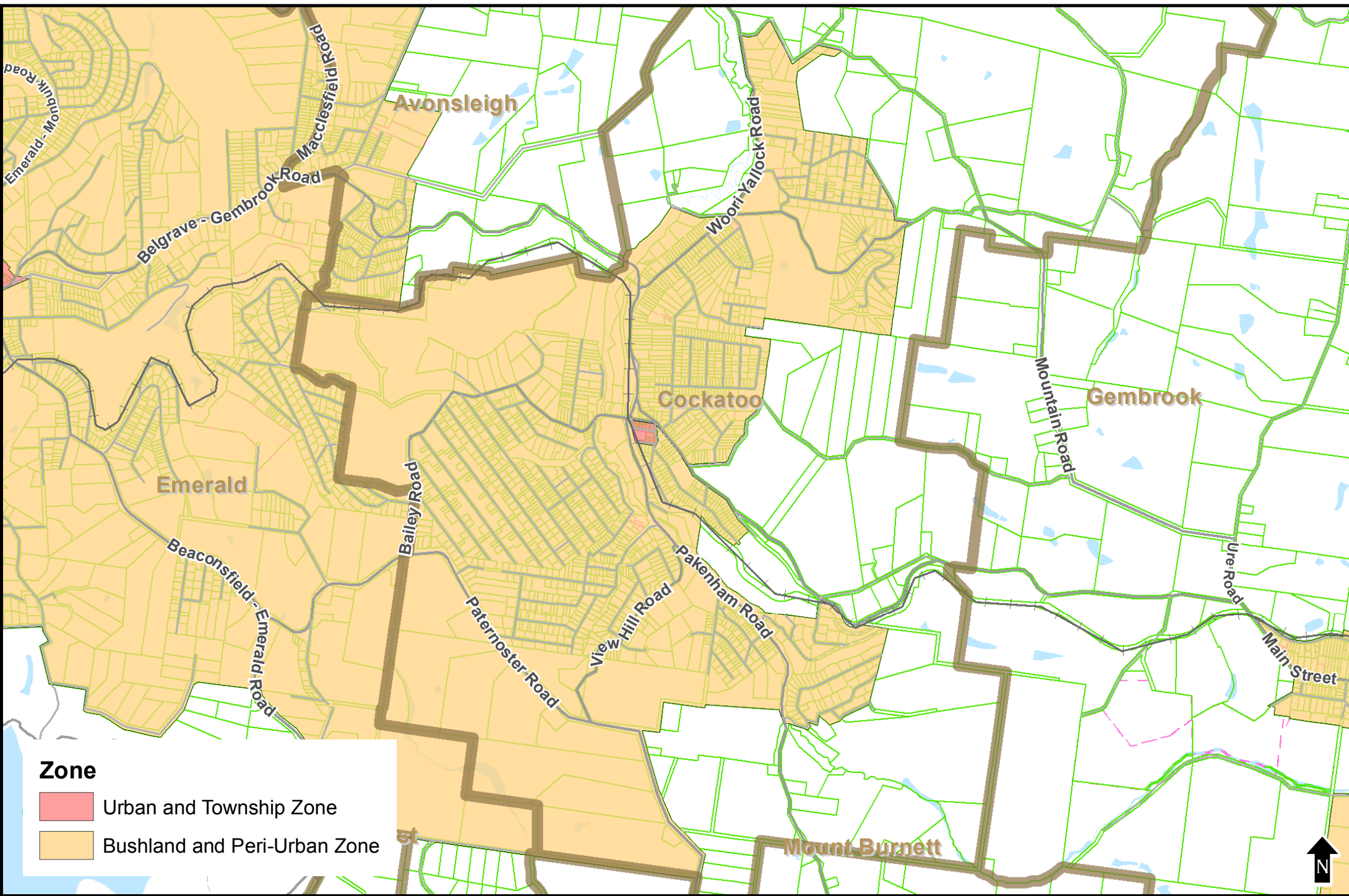
Local Law 20 Open Air Fires - Clematis



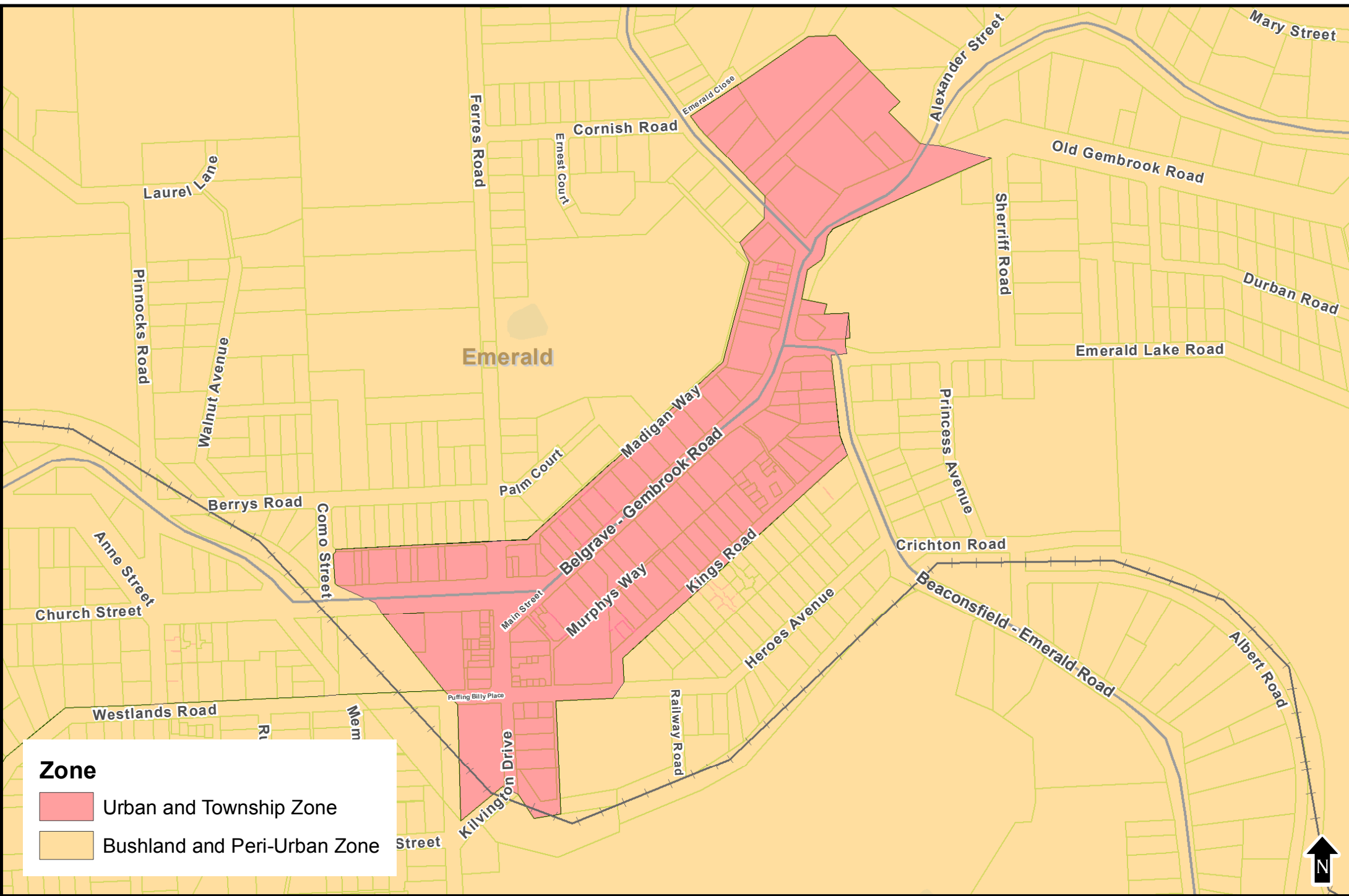
Local Law 20 Open Air Fires - Cockatoo



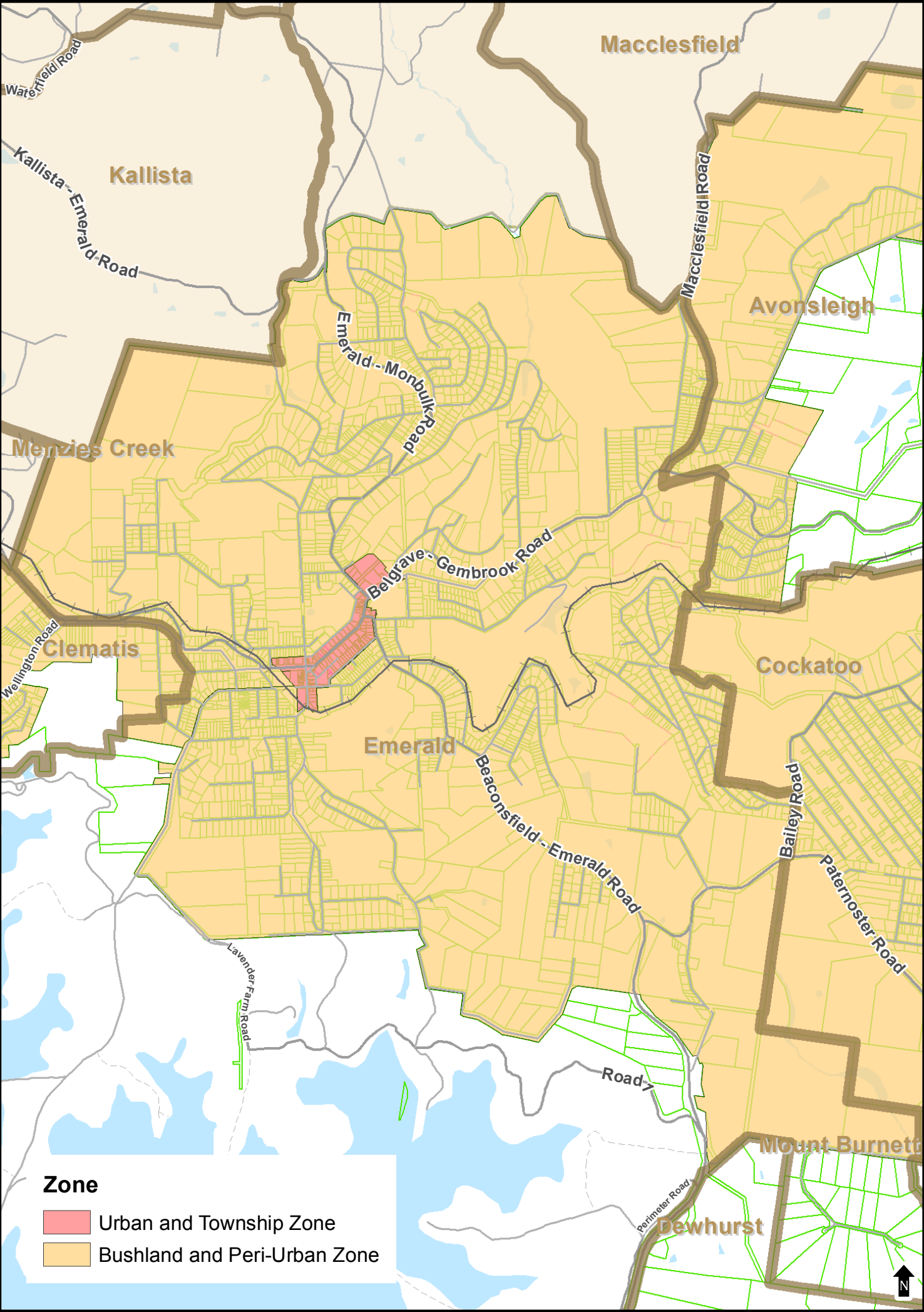
Local Law 20 Open Air Fires - Cockatoo



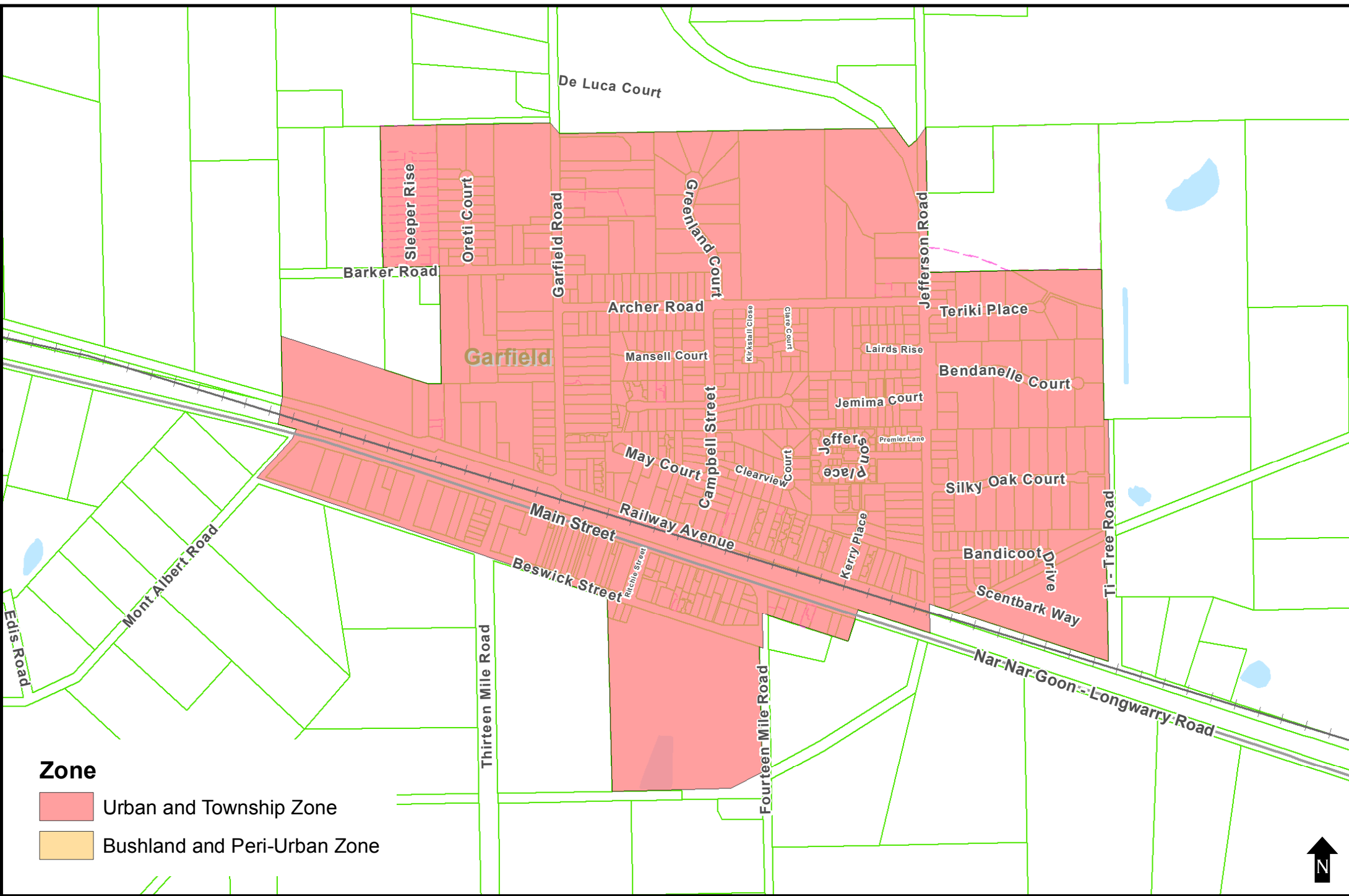
Local Law 20 Open Air Fires - Emerald



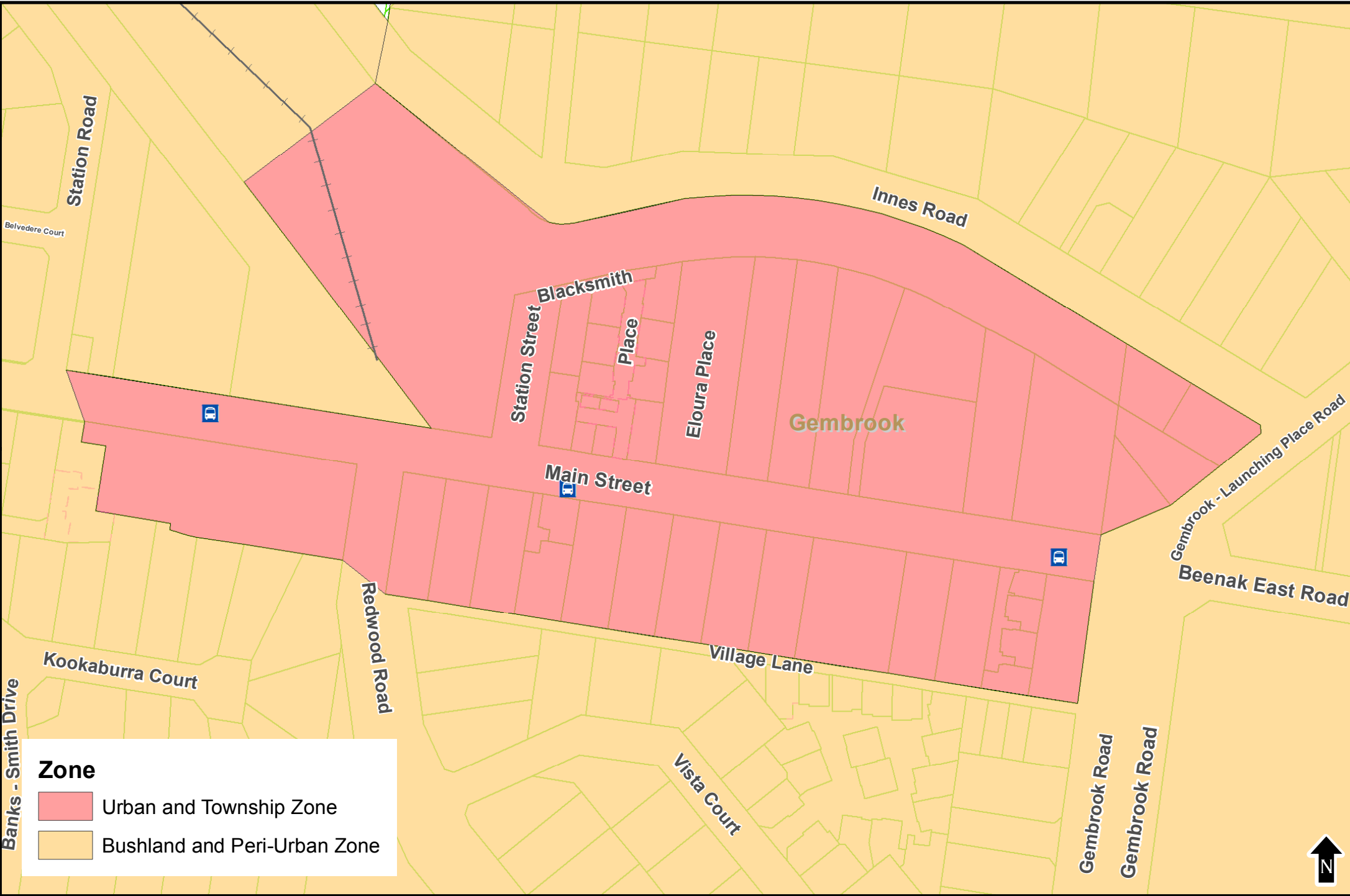
Local Law 20 Open Air Fires - Emerald



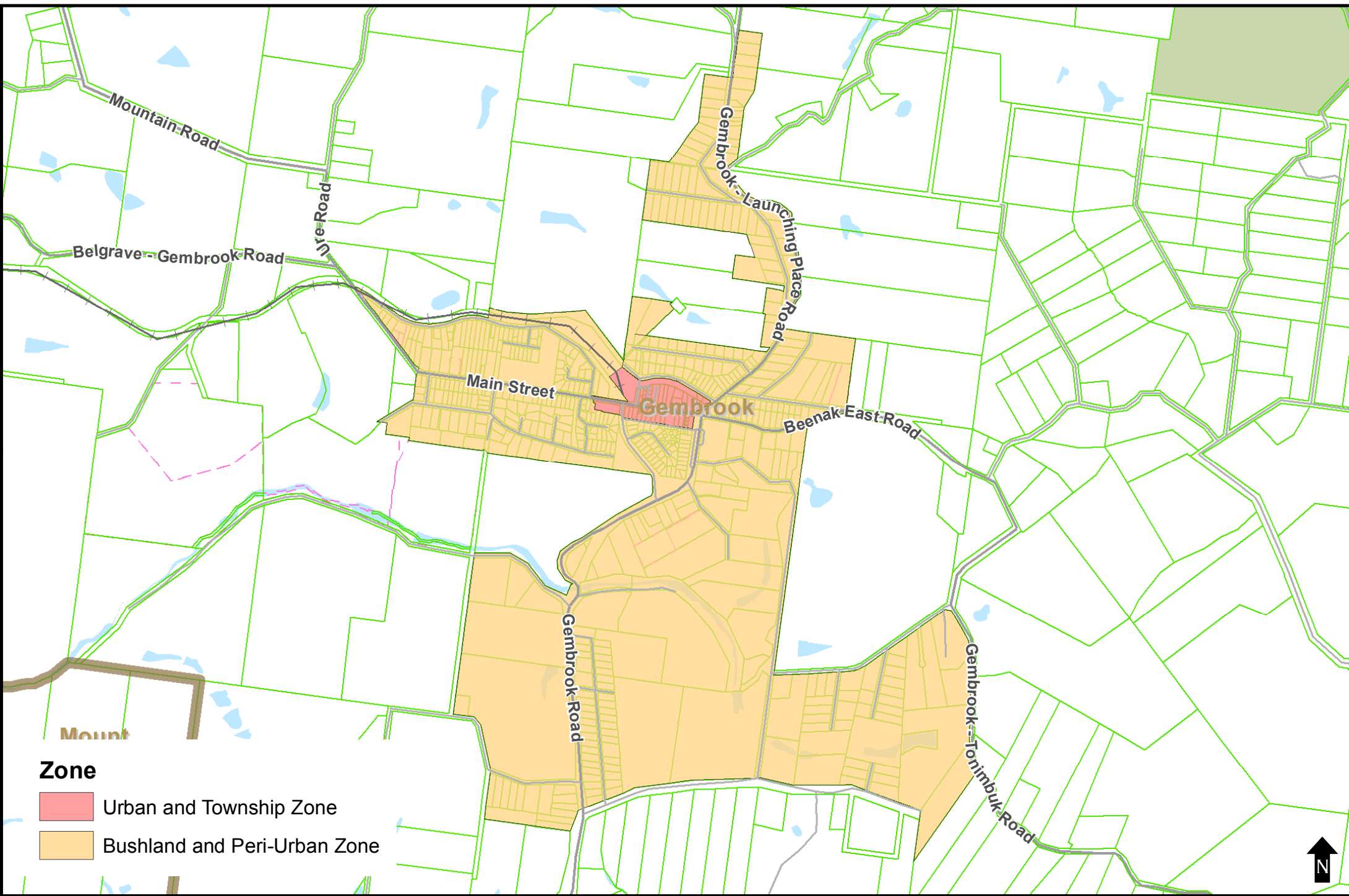
Local Law 20 Open Air Fires - Garfield



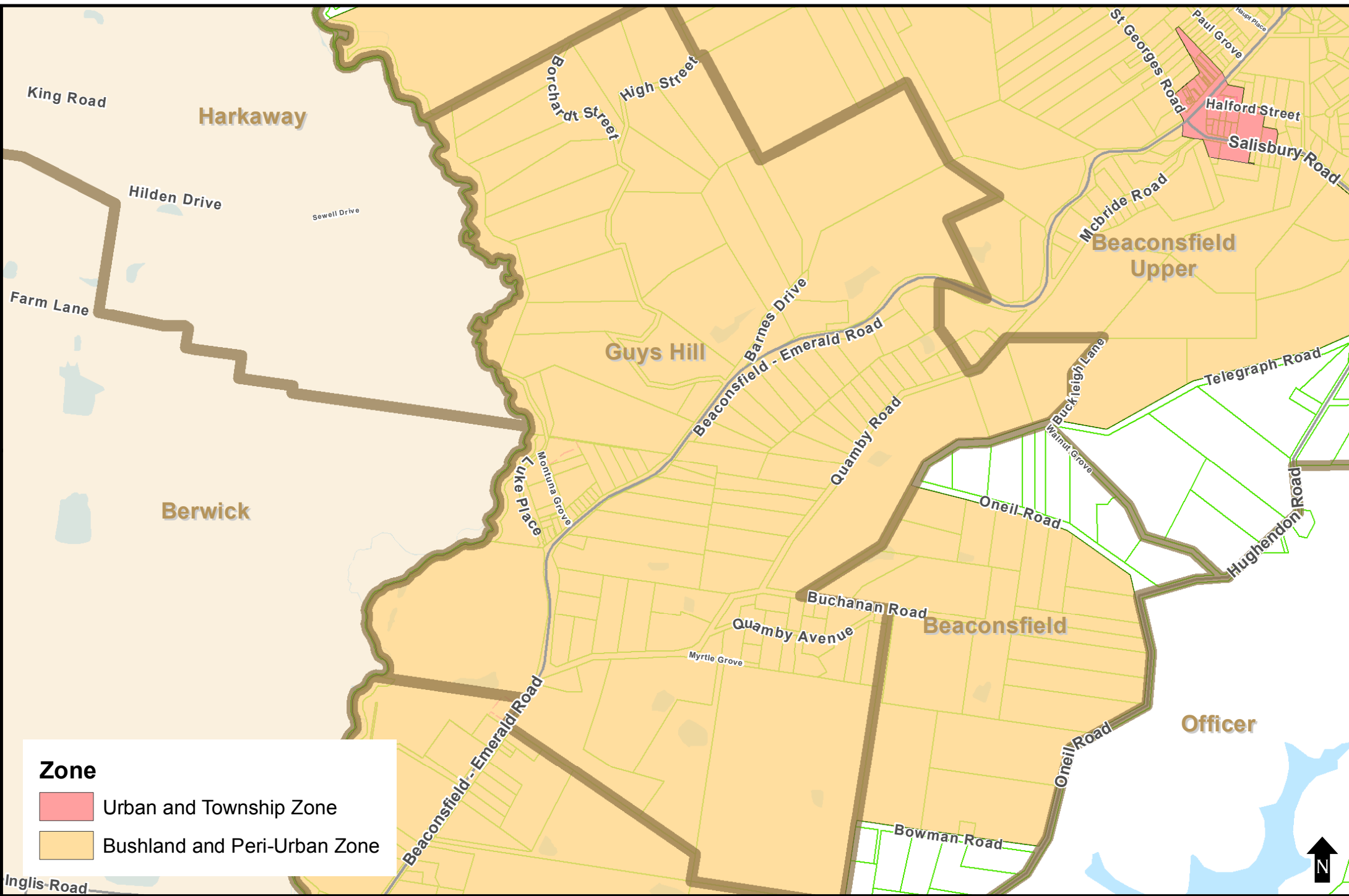
Local Law 20 Open Air Fires - Gembrook



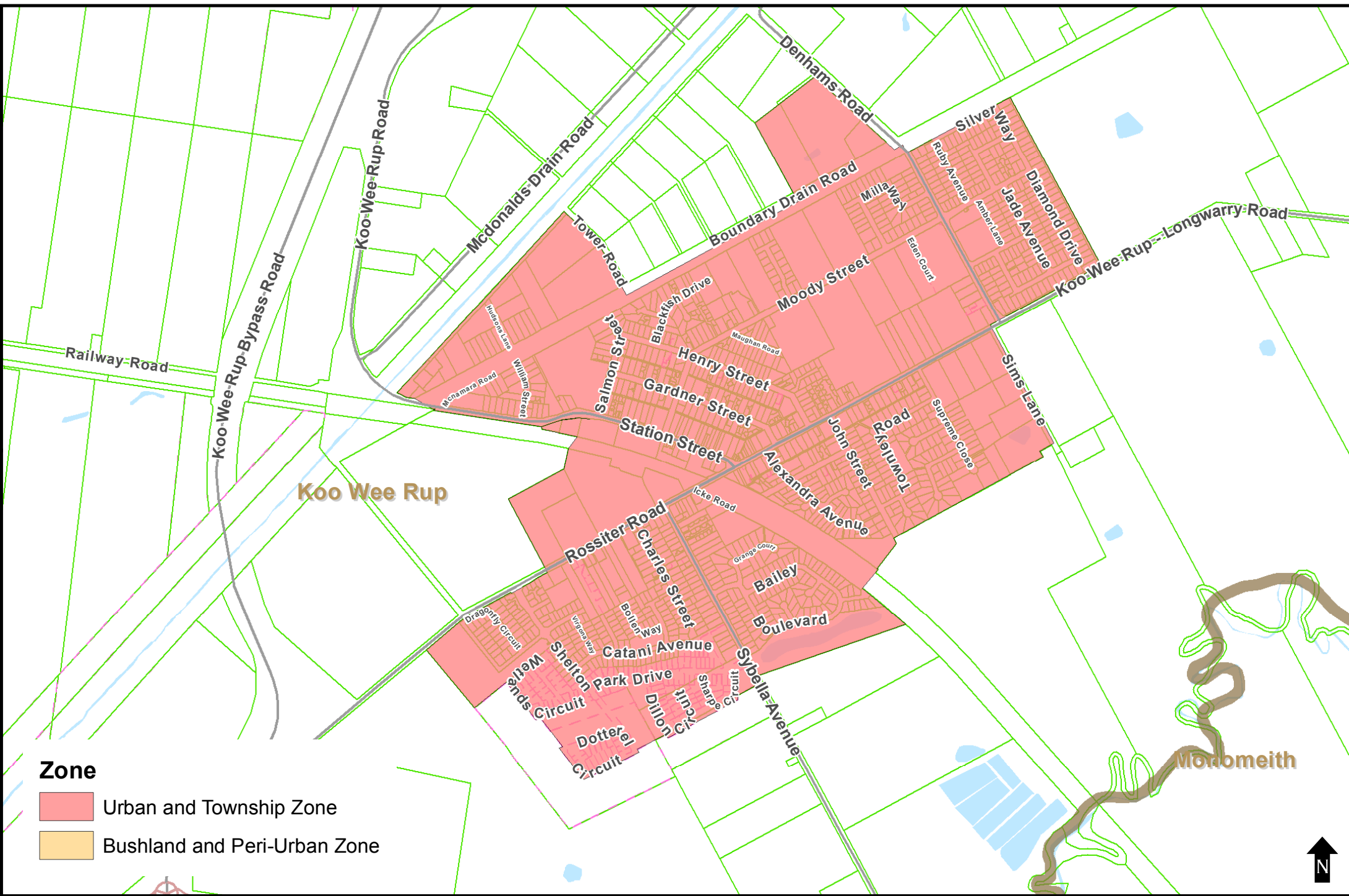
Local Law 20 Open Air Fires - Gembrook



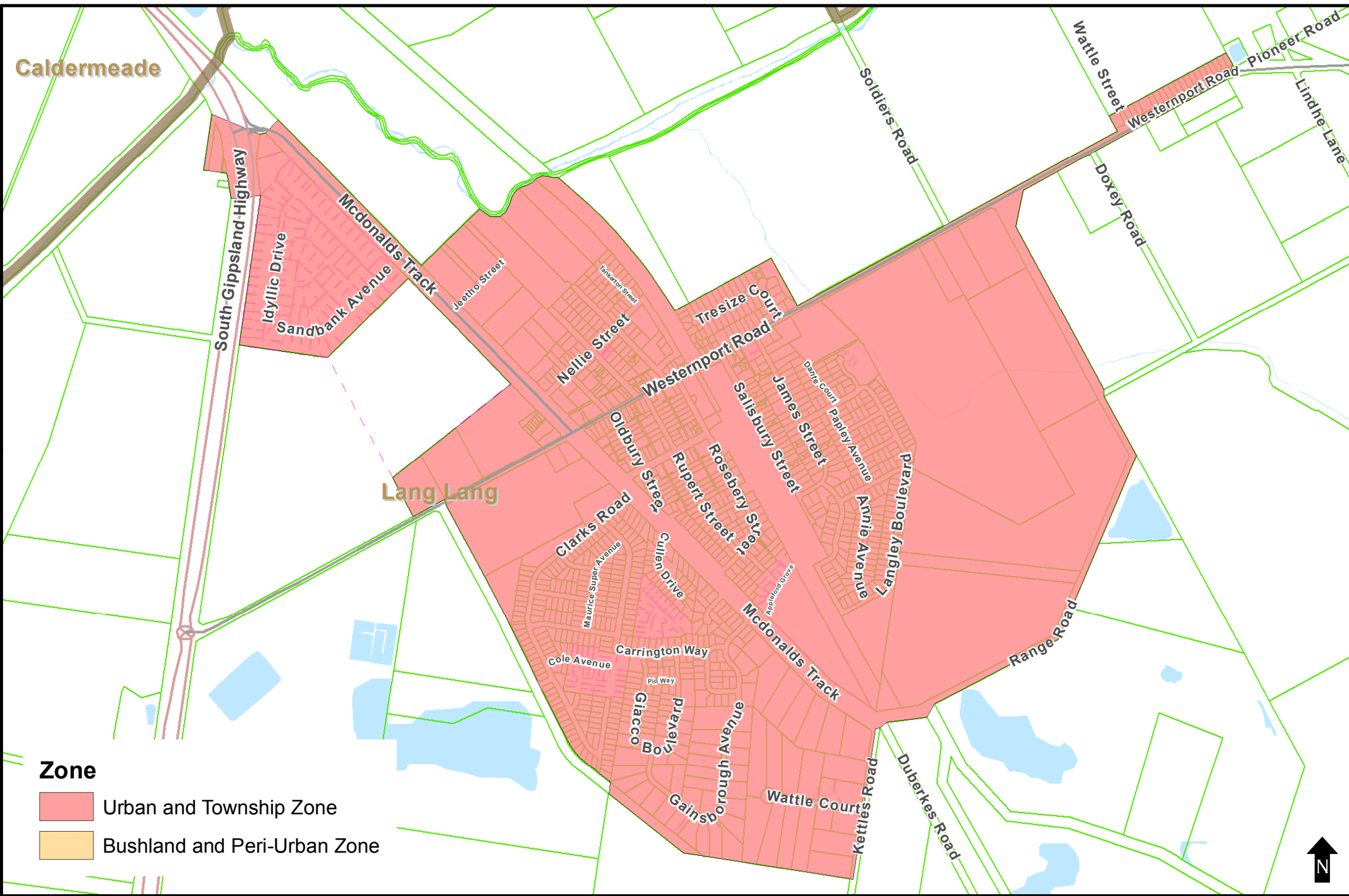
Local Law 20 Open Air Fires - Guys Hill



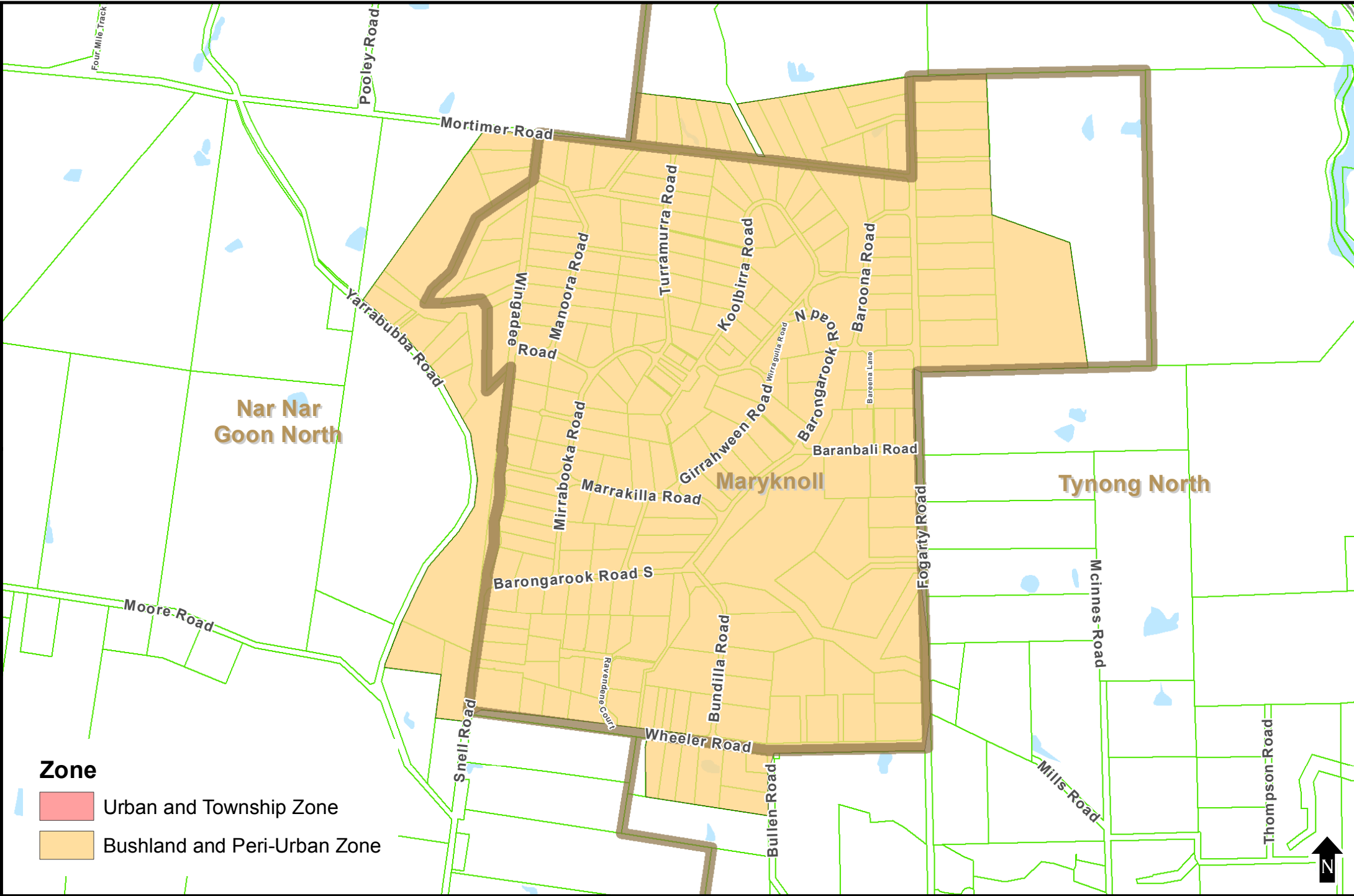
Local Law 20 Open Air Fires - Koo Wee Rup



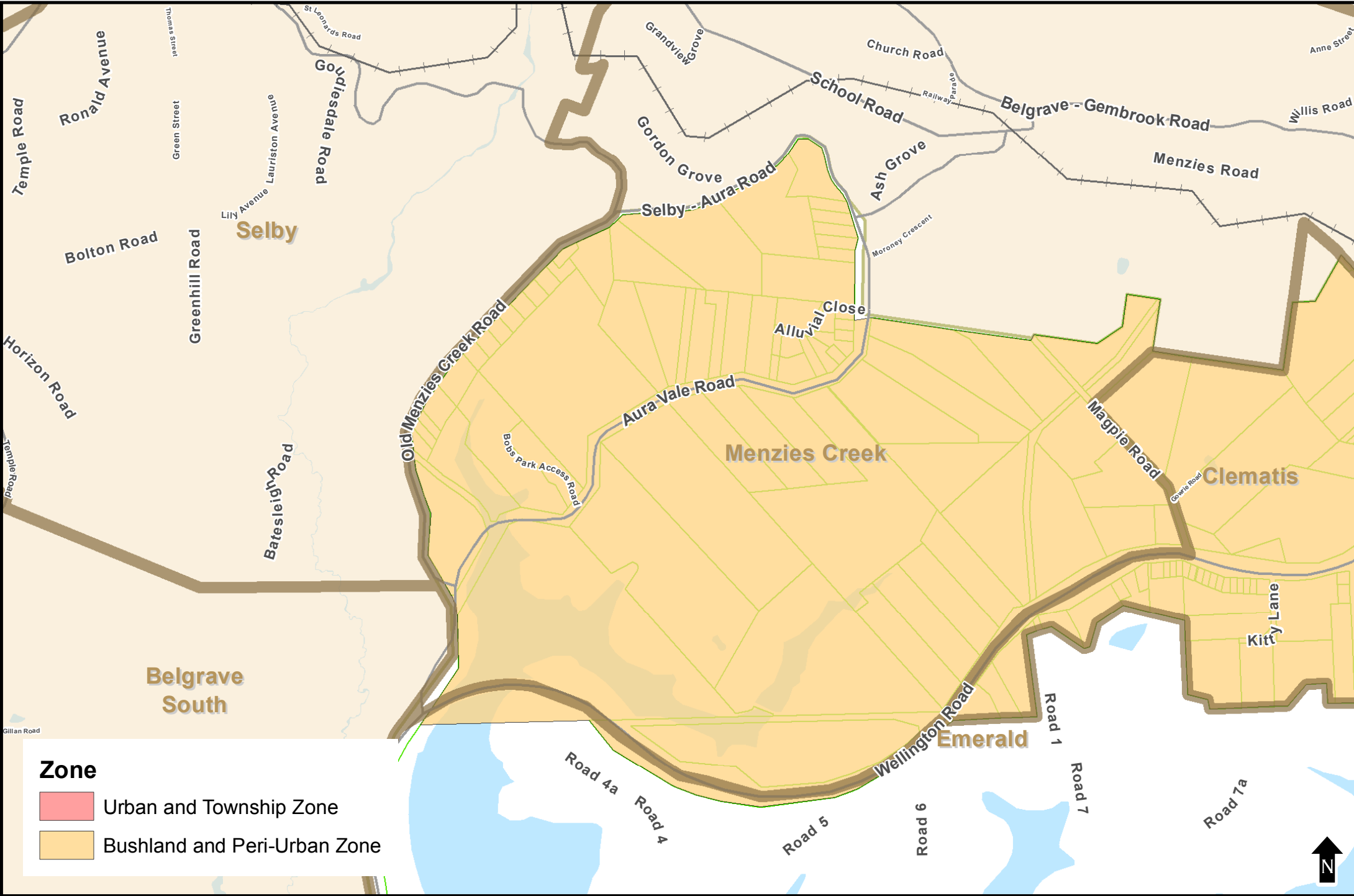
Local Law 20 Open Air Fires - Lang Lang



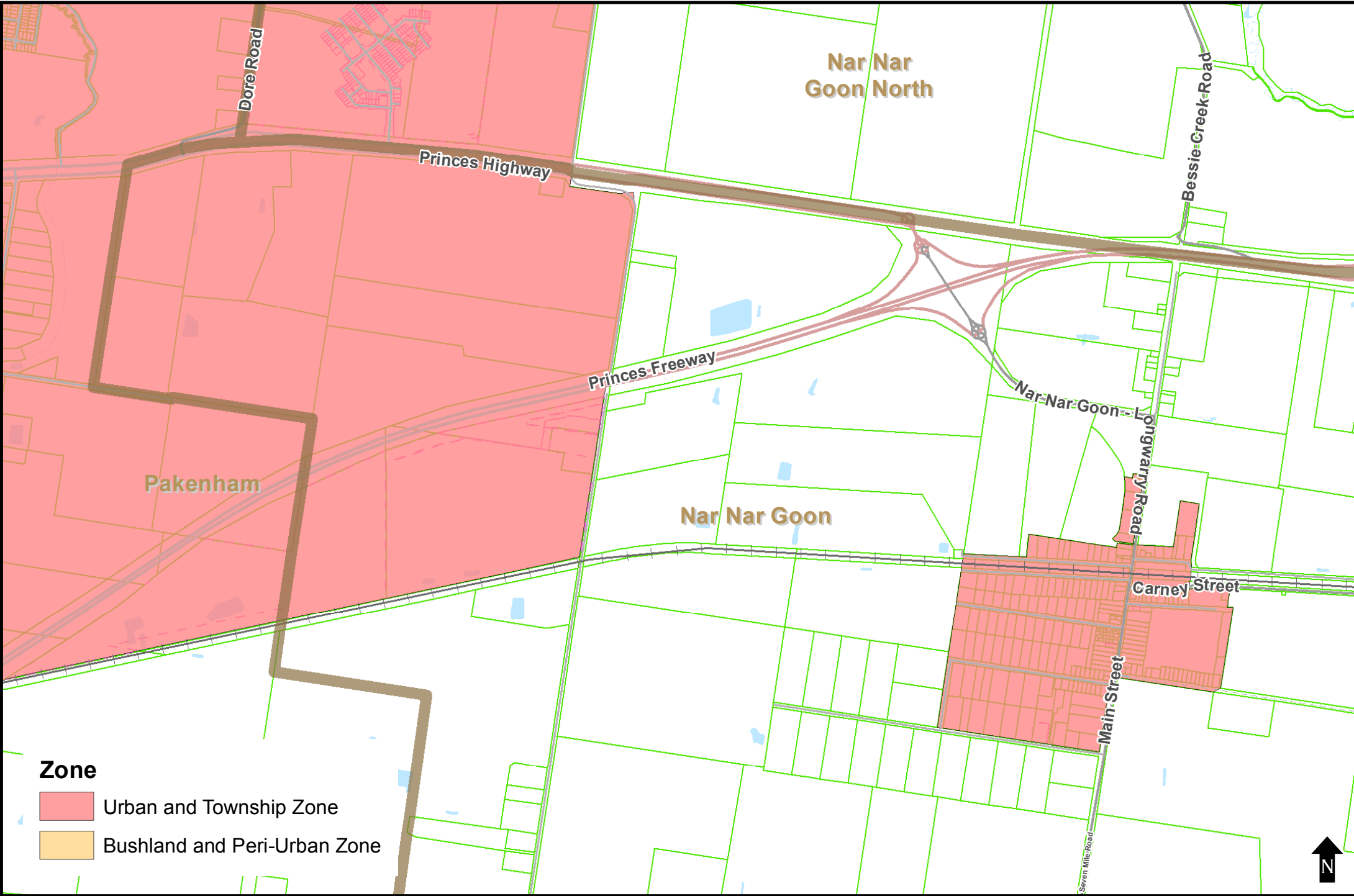
Local Law 20 Open Air Fires - Maryknoll



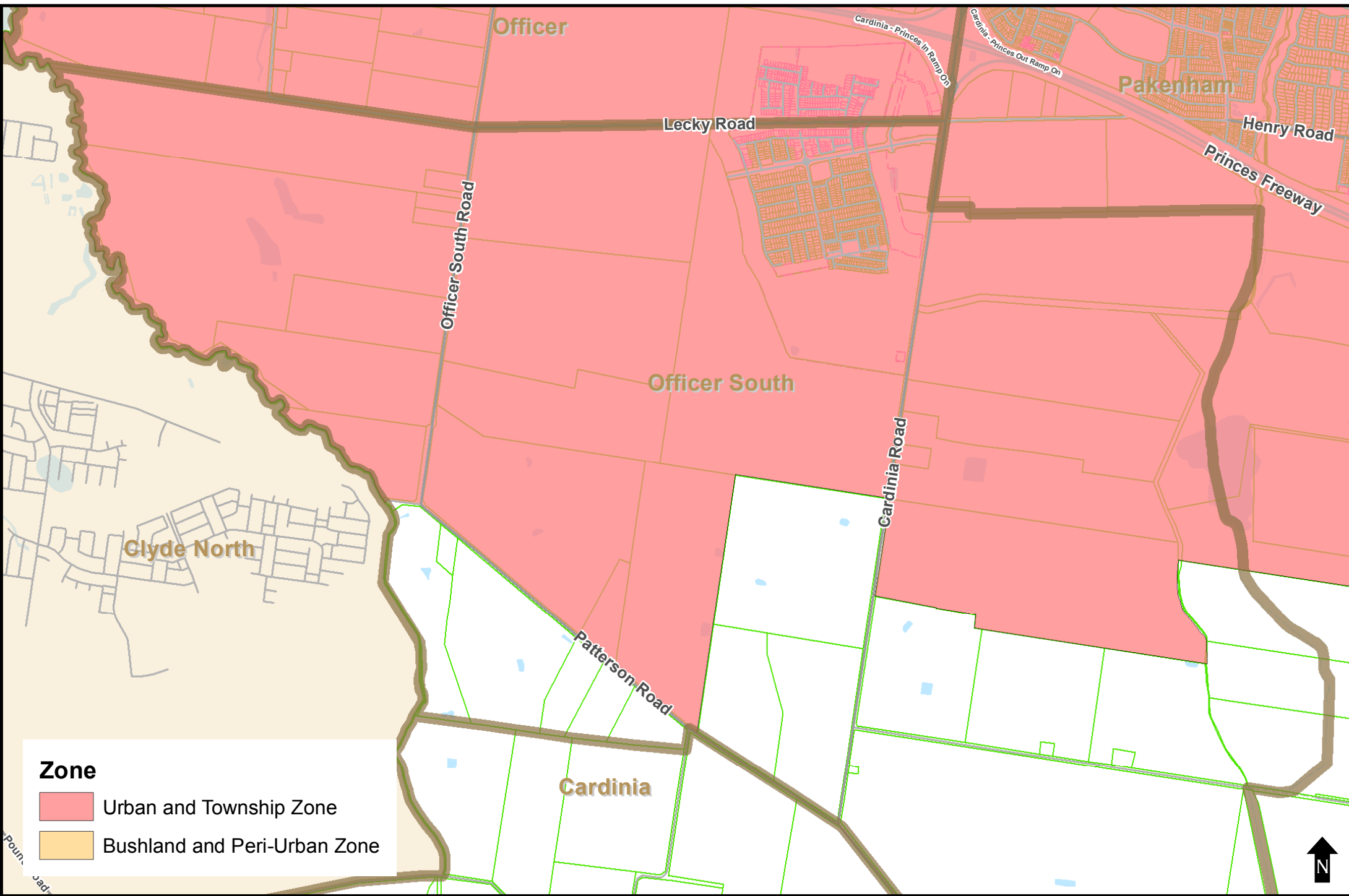
Local Law 20 Open Air Fires - Menzies Creek



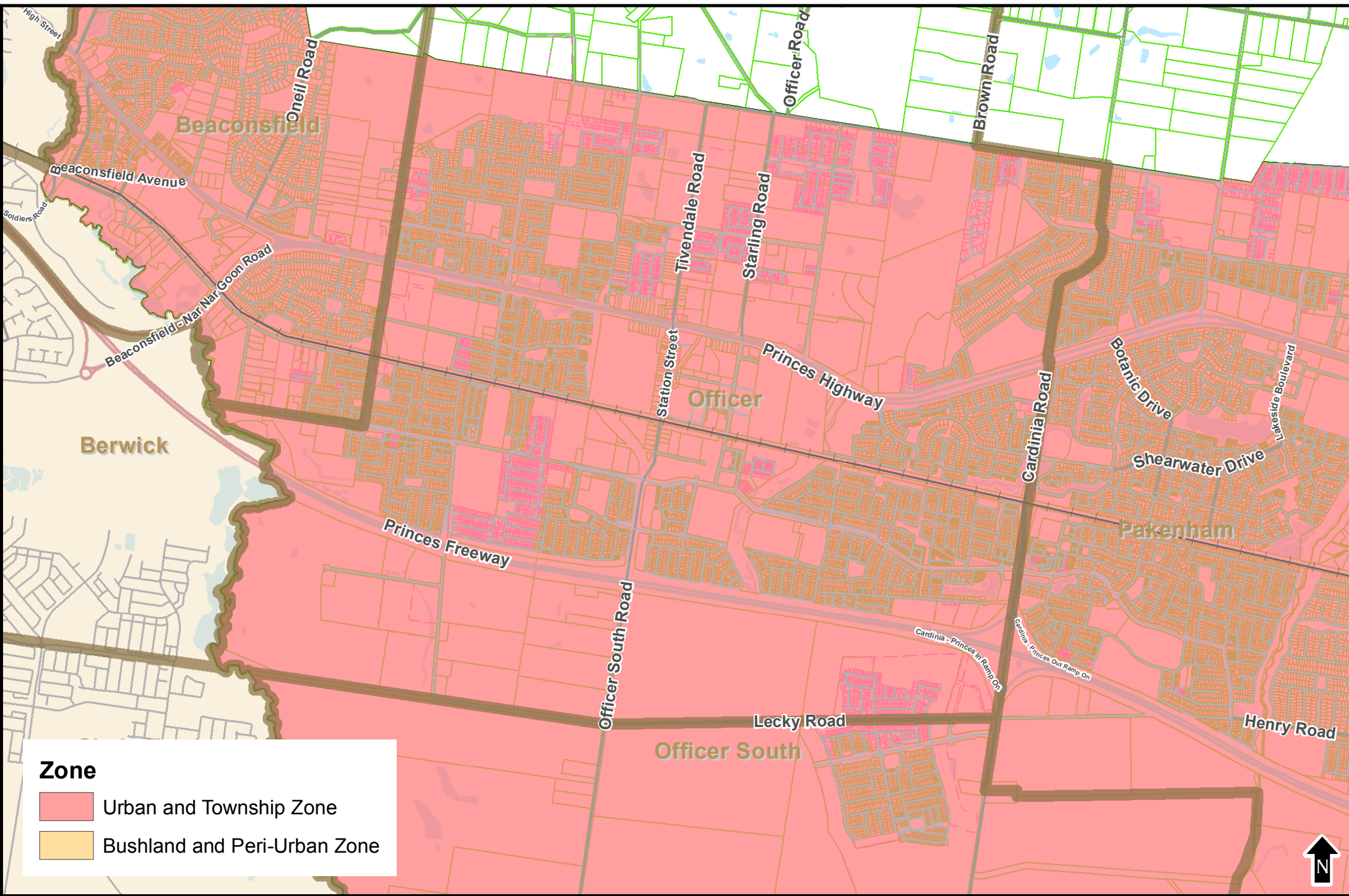
Local Law 20 Open Air Fires - Nar Nar Goon



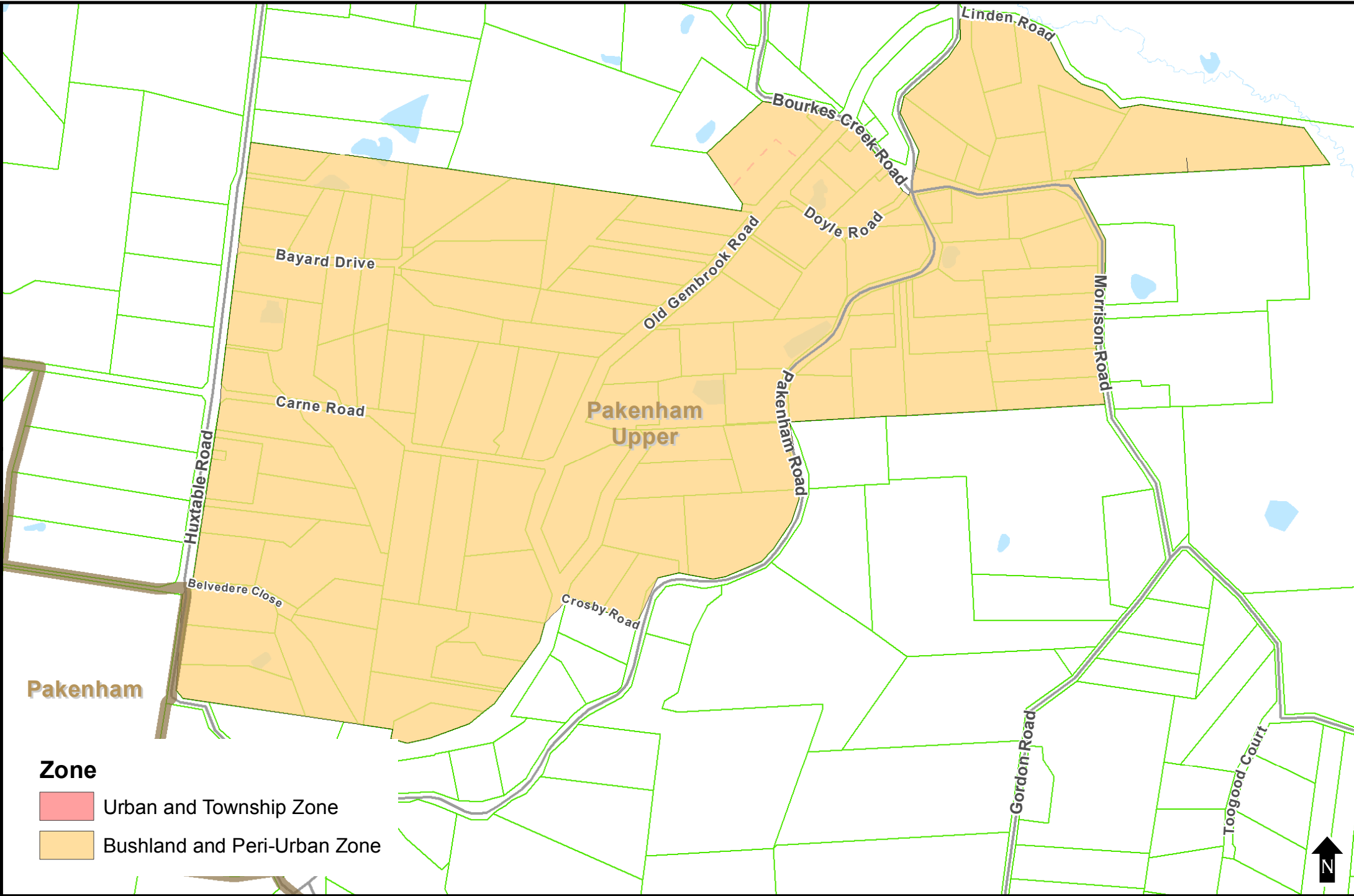
Local Law 20 Open Air Fires - Officer South



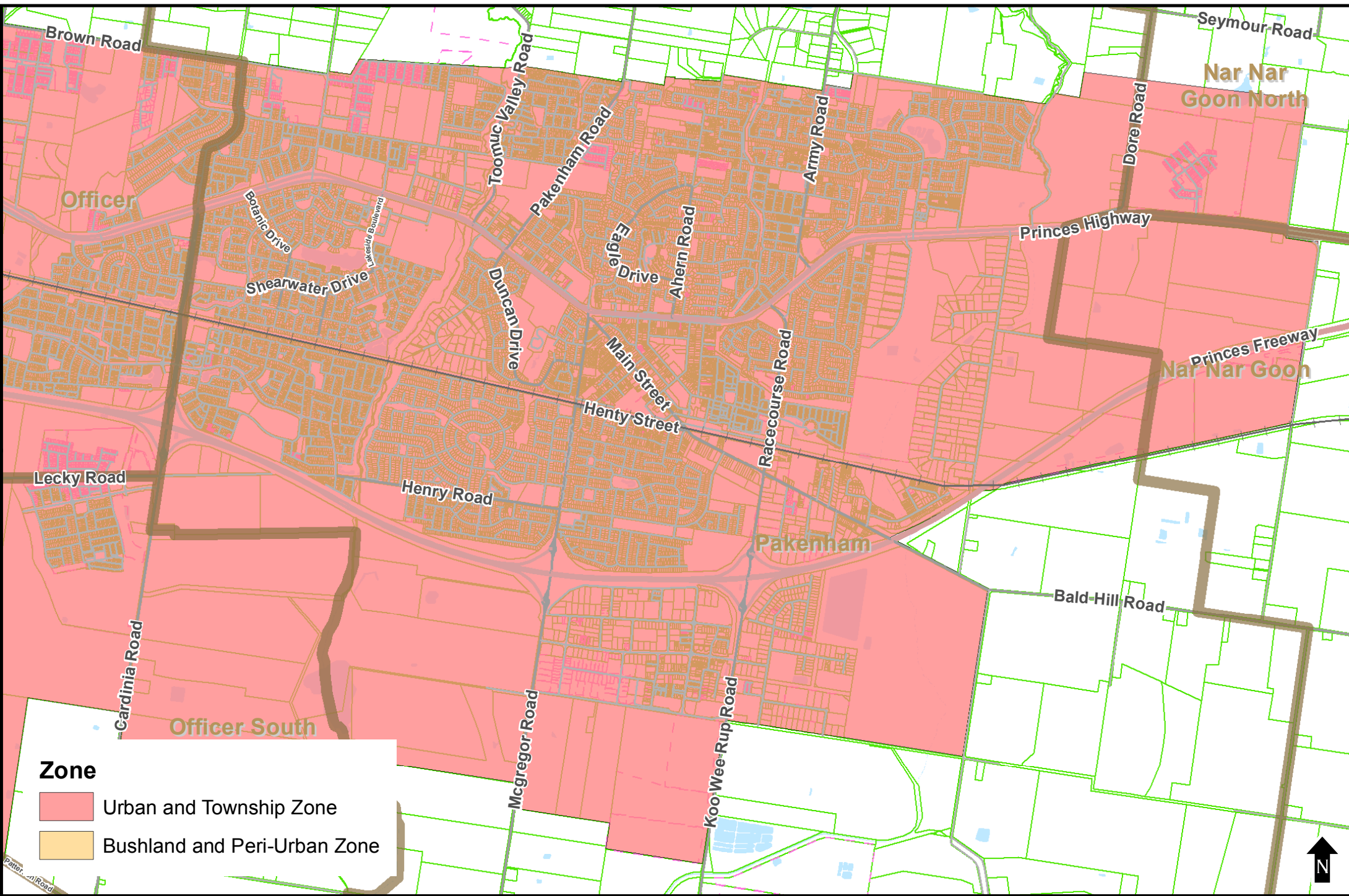
Local Law 20 Open Air Fires - Officer



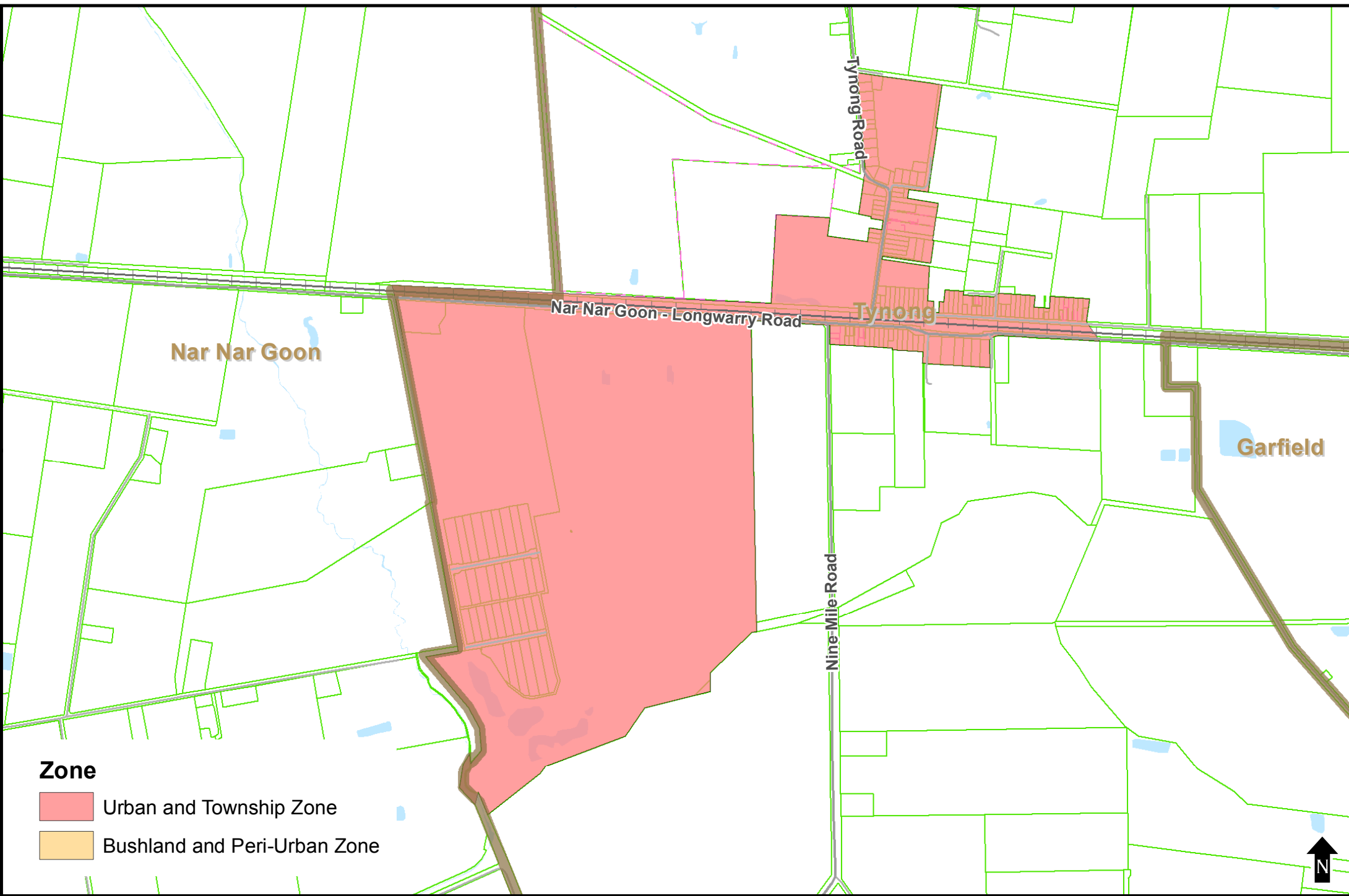
Local Law 20 Open Air Fires - Pakenham Upper



Local Law 20 Open Air Fires - Pakenham



Local Law 20 Open Air Fires - Tynong



Local Law 20 Open Air Fires

