

44.06

BUSHFIRE MANAGEMENT OVERLAY

31/07/2014
VC109

Shown on the planning scheme map as **BMO** or **WMO** with a number (if shown).

Purpose

To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.

To ensure that the development of land prioritises the protection of human life and strengthens community resilience to bushfire.

To identify areas where the bushfire hazard warrants bushfire protection measures to be implemented.

To ensure development is only permitted where the risk to life and property from bushfire can be reduced to an acceptable level.

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Permit requirement

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Subdivision

A permit is required to subdivide land. This does not apply if a schedule to this overlay specifically states that a permit is not required.

Buildings and works

A permit is required to construct a building or construct or carry out works associated with the following uses:

- Accommodation (including a Dependent person's unit)
- Child care centre
- Education centre
- Hospital
- Industry
- Leisure and Recreation
- Office
- Place of assembly
- Retail premises
- Timber production

This does not apply to any of the following:

- If a schedule to this overlay specifically states that a permit is not required.
- A building or works consistent with an agreement under Section 173 of the Act prepared in accordance with a condition of permit issued under the requirements of Clause 44.06-3.
- An alteration or extension to an existing building used for a dwelling or a dependent person's unit that is less than 50 percent of the gross floor area of the existing building.

- An alteration or extension to an existing building (excluding a dwelling and a dependent person's unit) that is less than 10 percent of the gross floor area of the existing building.
- A building or works ancillary to a dwelling if the following requirements are met:
 - The combined floor area of all buildings ancillary to the dwelling does not exceed 150 square metres.
 - The building or works are located more than 10 metres from any existing building used for Accommodation.
- A building or works associated with Timber production provided the buildings or works are not within 150 metres of Accommodation or land zoned for residential or rural residential purposes.

44.06-2 Requirement of Clause 52.47

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An application to construct a building, construct or carry out works or to subdivide land must meet the requirements of Clause 52.47 unless a schedule to this overlay specifies different approved measures or additional alternative measures and decision guidelines to those set out in Clause 52.47.

44.06-3 Mandatory condition

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Subdivision

A permit which creates a lot for a single dwelling on land zoned for residential or rural residential purposes must include the following condition:

“Before the statement of compliance is issued under the Subdivision Act 1988 the owner must enter into an agreement with the responsible authority under Section 173 of the Planning and Environment Act 1987. The agreement must:

- *State that it has been prepared for the purpose of an exemption from a planning permit under Clause 44.06-1 of the [*insert name of applicable planning scheme] Planning Scheme.*
- *Incorporate the plan prepared in accordance with Clause 52.47-2.4 of this planning scheme and approved under this permit.*
- *State that if a dwelling is constructed on the land without a planning permit that the bushfire mitigation measures set out in the plan incorporated into the agreement must be implemented and maintained to the satisfaction of the responsible authority on a continuing basis.*

The land owner must pay the reasonable costs of the preparation, execution and registration of the Section 173 Agreement.”

This does not apply:

- If a schedule to this overlay specifies that a Section 173 Agreement is not required.
- Where the relevant fire authority states in writing the preparation of an agreement under Section 173 of the Act is not required for the subdivision.
- For the subdivision of the land into lots each containing an existing dwelling or car parking space.

A permit to subdivide land must include any condition specified in a schedule to this overlay.

Buildings and works

A permit to construct a building or construct or carry out works must include the following condition:

“The bushfire mitigation measures forming part of this permit or shown on the endorsed plans, including those relating to construction standards, defendable space, water supply and access, must be maintained to the satisfaction of the responsible authority on a continuing basis. This condition continues to have force and effect after the development authorised by this permit has been completed.”

A permit allowing a dwelling to be constructed to the next lower bushfire attack level in accordance with AM1.2 in Clause 52.47-1 must include the following condition:

“Before the development starts, the owner must enter into an agreement with the responsible authority under section 173 of the Planning and Environment Act 1987 to provide for the following:

- *A dwelling constructed in accordance with planning permit [*insert planning permit reference] must not be occupied until a private bushfire shelter (a Class10c building within the meaning of the Building Regulations 2006) is:*
 - *Constructed on the same land as the dwelling.*
 - *Available for use by the occupants of the dwelling at all times.*
 - *Maintained in accordance with the requirements of the building permit issued for that private bushfire shelter.*

The land owner must pay the reasonable costs of the preparation, execution and registration of the Section 173 Agreement.”

A permit to construct a building or construct or carry out works must include any condition specified in a schedule to this overlay.

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Referral of applications

An application must be referred under Section 55 of the Act to the person or body specified as the referral authority in Clause 66.03, unless a schedule to this overlay specifies otherwise.

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Notice and review

An application under this overlay is exempt from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the Act, unless a schedule to this overlay specifies otherwise.

A schedule to this overlay may specify that notice be given to any person or body in accordance with Section 52(1)(c) of the Act.

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Decision guidelines

Before deciding on an application, in addition to the decision guidelines in Clause 52.47 and Clause 65, the responsible authority must consider, as appropriate:

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- Any other matters specified in a schedule to this overlay.

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Transitional arrangements

The requirements of the Wildfire Management Overlay in Clause 44.06 of this scheme in force immediately before 18 November 2011 continue to apply to any planning permit application lodged before this date.

The requirements of Clause 44.06 Bushfire Management Overlay of this scheme do not apply to:

- Any development of land for which a permit under the Building Act 1993 was issued before the date specified in the schedule to this overlay.
- Any development of land for which a planning permit was issued under the requirements of Clause 44.06 Wildfire Management Overlay in force immediately before 18 November 2011.

Notes:

Refer to the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement, for strategies and policies which may affect the use and development of land.

Check the requirements of the zone which applies to the land.

Other requirements may also apply. These can be found at Particular Provisions.