

# **YARRA RANGES SHIRE COUNCIL**

## **OPEN AIR BURNING LOCAL LAW 2018**

### **PREAMBLE**

Yarra Ranges Shire Council's Open Air Burning Local Law 2018 is designed to control burning-off for essential fire prevention and fuel reduction on land other than Council land and as far as possible to protect the Shire's air quality. The Local Law embraces best practice local law making by embodying the principles of accessibility, accountability, compliance, consistency, currency, efficiency, enforceability, necessity and transparency. The Local Law is also consistent with the principles of justice and fairness. Broad community consultation has been undertaken in the preparation of this Local Law.

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## **PART 1 – PRELIMINARY, OBJECTIVES AND DEFINITIONS**

### **1. TITLE**

This Local Law is called Open Air Burning Local Law 2018 and is referred to hereafter as 'this Local Law'.

### **2. OBJECTIVES**

The objectives of this Local Law are to:

- (1) control open air burning, incinerators and other devices in different areas and on particular days for fuel reduction and fire prevention purposes;
- (2) control certain fire-related activities and unwanted consequences;
- (3) protect, as far as possible, the air quality and visual amenity of the municipal district;
- (4) be consistent with the Council's overall objectives and strategies, in particular:
  - a) to contribute to safe, resilient, healthy, inclusive and socially well connected communities, where quality services are accessible to everyone;
  - b) to help protect quality facilities, infrastructure and hubs of activity that foster wellbeing, creativity and innovation;
  - c) to help protect and enhance the natural environment for a healthier environment for future generations;
  - d) to assist a vibrant leading economy in tourism, agriculture, health, manufacturing and other industries by encouraging strong investment and attraction which underpins sustainable economic growth and job creation;
  - e) to contribute to a high performing innovative and responsive organisation that listens and delivers quality and value for money services to the community;
- (5) embrace best practice local law making principles of accessibility, accountability, compliance, consistency, currency, efficiency, enforceability, necessity and transparency;
- (6) provide for the administration of Council's powers and functions; and
- (7) revoke Open Air Burning Local Law No. 4 of 2007.

### **3. AUTHORISING PROVISIONS**

The Council's authority to make this Local Law is contained in section 111 of the *Local Government Act 1989*.

### **4. COMMENCEMENT**

This Local Law commences operation on the day following the day on which notice of the making of this Local Law is published in the *Victoria Government Gazette*.

### **5. DATE THIS LOCAL LAW CEASES OPERATION**

Unless this Local Law is revoked sooner, its operation will cease on the day which is 10 years after the day referred to in clause 4.

### **6. REVOCATION**

Council's Open Air Burning Local Law No. 4 of 2007 is revoked.

### **7. SCOPE**

- (1) This Local Law applies to the whole of the municipal district, except where it is apparent from its wording that a clause or provision applies to a specific area.
- (2) Where this Local Law applies to a road, it applies to all parts of the road.
- (3) The provisions of this Local Law apply to the extent that they are not inconsistent with any Act or Regulation applicable to the Council or its municipal district.

## **8. HOW TO READ THIS LOCAL LAW AND INCORPORATED DOCUMENTS**

Parts 1 and 3 of this Local Law set out administrative provisions for meeting the objectives of this Local Law. These Parts focus on matters generally described as preliminary and administrative, including objectives, scope, definitions, powers, appeals, fees and penalties.

Schedule 1 summarises the infringement notice penalties which may apply.

Schedule 2 sets out the open air burning restrictions applicable to each of the three property categories.

Attached are the municipal maps of the three Open Air Burning Category areas which, as amended from time to time, are incorporated by reference in this Local Law.

If a provision of any document incorporated by reference, or referred to, in this Local Law is inconsistent with any provision in this Local Law (excluding State and Commonwealth Acts, the Regulations made thereunder and any relevant planning scheme), the provisions in this Local Law prevail.

## 9. DEFINITIONS

<i>Act</i>	Means the <i>Local Government Act 1989</i> .
<i>adequate water supply</i>	Means a water supply available in the form of a connected and charged hose of suitable length or in a container at hand at all times to control the fire and prevent it spreading or escaping.
<i>Appeals Officer</i>	Means an officer of the Council appointed by the Chief Executive Officer and who is separate and independent from, and not the supervising officer of any Authorised Officer who made any decision, exercised any power, issued any notice or otherwise acted or refused to act under this Local Law in the matter subject of the written representation or appeal.
<i>appropriate fee</i>	Means the fee determined by the Council in accordance with clause 20.
<i>Authorised Officer</i>	Means an Authorised Officer appointed under section 224 of the Act.
<i>barbeque</i>	Means a device used for the cooking of food outdoors, whether constructed or manufactured and whether powered by gas, electricity, liquid or solid fuel, or any combination of them, and includes a device for spit roasting.
<i>CFA</i>	Means the Country Fire Authority.
<i>CFA Act</i>	Means the <i>Country Fire Authority Act 1958</i> .
<i>Chief Executive Officer</i>	Means the person appointed by the Council to be its Chief Executive Officer or any person acting in that position.
<i>clause</i>	Means a clause of this Local Law, and a sub-clause has a corresponding meaning.
<i>Council</i>	Means Yarra Ranges Shire Council.
<i>Council Land</i>	Means any land owned, or vested in, or under the control or management of the Council excluding a road or road reserve.
<i>DELWP</i>	Means the Department of Environment, Land, Water and Planning.

<i>Direction</i>	Means a written or verbal instruction given to a person by the Council or an Authorised Officer, requiring compliance with a provision of this Local Law.
<i>domestic quantities</i>	Means quantities normally associated with residential activities and excludes trade waste generated by commercial, business, industrial activities or waste repeatedly brought onto the premises for the purpose of disposal.
<i>ESTA</i>	Means the Emergency Services Telecommunications Authority.
<i>fire danger period</i>	Has the same meaning as in the CFA Act.
<i>fuel reduction</i>	Means the reduction of natural flammable organic materials for the purpose of fire prevention and may be achieved by burning and any other method, including recycling or green waste disposal.
<i>green waste</i>	Means all types of organic waste produced or accumulated on any land that the Council designates as acceptable waste for any green waste collection.
<i>incinerator</i>	Means a structure, device or contraption (not enclosed in a building) which is:  (a) used or intended, adapted or designed to be used or capable of being used for the purpose of burning any matter, material or substance; and  (b) not a barbeque or a manufactured fireplace designed and used for the purpose of outdoor heating or cooking.
<i>infringement notice</i>	Means an infringement notice issued under this Local Law.
<i>manufactured fireplace</i>	Means a brazier, chimenea, fire pit, or other self-contained, manufactured item for outdoor burning designed exclusively for cooking, heating or comfort, but not intended to burn offensive materials and which, when in use, does not produce offensive smoke or a smoke hazard.
<i>MFB</i>	Means the Metropolitan Fire Brigade.

<i>MFB Act</i>	Means the <i>Metropolitan Fire Brigades Act 1958</i> .
<i>municipal district</i>	Means the district under the local government of the Council.
<i>offensive material</i>	Means any material which, when burned, is known or is likely to create offensive smoke or injurious emissions which are of a noxious, harmful, annoying, offensive or injurious nature, whether or not burnt in domestic quantities including on a single occasion or on infrequent occasions.
<i>offensive smoke</i>	Means the emission of smoke, ash, odour or other air pollutant which, due to its intensity, duration, frequency or other factor, unreasonably interferes with a person's comfort or activities.
<i>open air</i>	Means a fire in the open air in any place other than within a permanent structure.
<i>open air burning</i>	Means lighting a fire, authorising the lighting of a fire or allowing a fire to remain alight in the open air.
<i>Open Air Burning - Urban Category</i>	<p>Means the open air burning area within those parts of the municipal district where the land use and built environment is predominantly urban in character and to which the Council has applied this category.</p> <p><i>[Schedule 2.1 provides details of the relevant category restrictions. A map of the category area is attached and incorporated by reference.]</i></p>
<i>Open Air Burning – Bushland Category</i>	<p>Means the open air burning area within those parts of the municipal district where the land use and the built environment is predominantly bushland residential in character, or small acreage and/or larger properties, on the urban fringe with high fuel reduction/fire prevention values and to which the Council has applied this category.</p> <p><i>[Schedule 2.2 provides details of the relevant category restrictions. A map of the category area is attached and incorporated by reference.]</i></p>



<i>Open Air Burning - Rural Category</i>	Means the open air burning area within those parts of the municipal district where the land use and built environment is predominantly rural or farming in character, including areas of large acreages and to which the Council has applied this category.  <i>[Schedule 2.3 provides details of the relevant category restrictions. A map of the category area is attached and incorporated by reference.]</i>
<i>penalty unit</i>	Has the same meaning as in the <i>Sentencing Act</i> 1991.
<i>permanent structure</i>	Means a structure of a permanent kind consisting of a roof and fully enclosed on all sides and includes a caravan but does not include a tent.
<i>permit</i>	Means a permit to burn issued pursuant to the <i>Country Fire Authority Regulations</i> 2014.
<i>person</i>	Has the same meaning as in the Act, except that it includes any other legal entity, whether a corporation, incorporated association or otherwise.
<i>Planning Scheme</i>	Means the Yarra Ranges Planning Scheme.
<i>property</i>	Means any land in separate ownership or occupation.
<i>public highway</i>	Has the same meaning as in the <i>Road Management Act</i> 2004.
<i>road</i>	Has the same meaning as in the Act.
<i>Schedule</i>	Means a Schedule to this Local Law.
<i>smoke hazard</i>	Means the creation of an ongoing and hazardous adverse visibility impact on a road or other property by smoke from burning off and includes an adverse impact on sight distances for road users.
<i>traffic</i>	Means the movement of people by foot or in or on a vehicle along, across or within a road.
<i>windrow</i>	Means an accumulation of felled, fallen or cleared trees or other vegetation, the volume of which is 50 cubic metres or more.



## **PART 2 – OPEN AIR BURNING - CATEGORIES AND OFFENCES**

### **Introductory Explanatory Notes**

Victoria is a state in which uncontrolled fire is a significant threat to life, health, property and the environment. Landowners and occupiers of properties are reminded that their responsibilities relating to fires and fire prevention are not limited to the open air burning restrictions imposed by this Local Law.

There are legislative conditions, prohibitions, and offences (some with significant financial or criminal penalties) relating to preventing and lighting fires. For example, the Council may direct property owners to clear undergrowth and create fire-breaks on rural and bushland properties. There are also strict fire restrictions during the fire danger period and on total fire ban days and for lighting a fire with intent to cause injury or property damage. Offences are punishable by up to 20 years' jail.

Even when a fire may be lawfully lit there are regulations regarding location and size, containment, attendance, wind speed, water supply and extinguishing the fire. There are also requirements to avoid burning toxic or offensive materials, to avoid polluting the atmosphere and to avoid creating a nuisance injurious to health and comfort.

Many of these requirements can be found in the CFA Act, the *Crimes Act 1958*, the *Emergency Management Act 1986*, the *Emergency Management Act 2013*, the *Environment Protection Act 1970*, the MFB Act, the *Public Health and Wellbeing Act 2008* and the *Summary Offences Act 1966*.

Other government agencies with significant fire prevention and suppression responsibilities include the DELWP and Parks Victoria. There are separate and strict fire regulations and penalties on land managed by these agencies.

A person who lights or authorises the lighting of a fire or allows a fire to remain alight may also be found personally liable for any injury or damages caused by that fire (including after it escapes from a property).

## 10. OPEN AIR BURNING CATEGORIES

- (1) This Local Law divides the municipal district into three (3) Open Air Burning categories entitled:
  - a) Category 2.1 – Urban;
  - b) Category 2.2 – Bushland; and
  - c) Category 2.3 – Rural.
- (2) Each property within the municipal district is within a category and it is the responsibility of each owner or occupier to know to which category their property belongs and to comply with the relevant open air burning restrictions.
- (3) Open Air Burning Category prohibitions, controls and other conditions are shown in Schedule 2. Open Air Burning Category municipal maps are attached and are incorporated by reference from time to time into this Local Law.
- (4) Council may from time to time alter the category applicable to any individual property.

***Explanatory note:*** The three Open Air Burning Categories are separate to and should not be confused with the zones and overlays of the Planning Scheme.

## 11. OPEN AIR BURNING OFFENCES

- (1) A person must not, without a permit, engage in open air burning or use an incinerator other than in accordance with this Local Law.

**Penalty for first offence: 10 penalty units**

**Penalty for second and subsequent offences: 20 penalty units**

- (2) A person must not burn offensive materials.

**Penalty for first offence: 5 penalty units**

**Penalty for second and subsequent offences: 10 penalty units**

- (3) A person must not have on a property, a fire or windrow that:
  - a) is a danger to any person or neighbouring property before, during or after burning;
  - b) is burnt without adequate attendees, tools and an adequate water supply available to control the fire or windrow and prevent it spreading or escaping at all times; or
  - c) is burnt without prior notification to the ESTA and reasonable attempts have been made to notify neighbouring landowners or occupiers.

**Penalty for first offence: 10 penalty units**

**Penalty for second and subsequent offences: 20 penalty units**

- (4) A person must not engage in open air burning or use an incinerator and thereby cause a smoke hazard or offensive smoke.

**Penalty for first offence: 5 penalty units**

**Penalty for second and subsequent offences: 10 penalty units**

- (5) A person must:
- a) except on land in an Open Air Burning – Rural Category, extinguish an open air fire or incinerator before leaving it unattended; and
  - b) immediately extinguish any fire or burning substance when instructed to do so by an Authorised Officer, or by a member of the CFA, MFB or Victoria Police.

**Penalty for first offence: 10 penalty units**

**Penalty for second and subsequent Offences: 20 penalty units**

- (6) A person must not light a fire, allow the lighting of a fire, or allow a fire to continue to burn on Council Land unless he or she has been issued with a permit to burn by Council, an Authorised Officer, the CFA, MFB or another emergency service or relevant authorised agency.

**Penalty for first offence: 10 penalty units**

**Penalty for second and subsequent offences: 20 penalty units**

- (7) The following exemptions apply to this clause 11:
- a) in relation to clause 11(1)
    - a barbeque or a manufactured fireplace designed and used for the purpose of outdoor cooking, heating or comfort, except where a total fire ban or other restrictions apply. This exemption for a barbeque or manufactured fireplace ceases immediately if offensive materials are burnt or if offensive smoke or a smoke hazard is caused;
  - b) in relation to clause 11(6):
    - a barbeque or a manufactured fireplace constructed, provided or otherwise approved by Council for the purpose of outdoor cooking heating or comfort, except where a total fire ban or other restrictions apply. This exemption for a barbeque or manufactured fireplace ceases immediately if offensive materials are burnt or if offensive smoke or a smoke hazard is caused; and
  - c) in relation to all of clause 11:
    - a fire lit by a member of Council staff, a CFA officer or member, or an employee of the MFB, the DELWP, Parks Victoria or other relevant authorised agency in the course of their functions and duties.

## **PART 2 – ADMINISTRATION, APPEALS, FEES AND PENALTIES**

### ***Administration***

#### **12. EXERCISE OF DISCRETIONS**

- (1) In exercising any discretion contained in this Local Law, the Council or an Authorised Officer must have regard to:
  - a) the objectives of this Local Law;
  - b) any other policies adopted by the Council from time to time, provided that such policies are not inconsistent with this Local Law; and
  - c) any other matter that the Council or Authorised Officer thinks fit.
- (2) The Council may, from time to time, adopt policies for use by the Council, Council staff and other persons for the purposes of the operation and application of this Local Law.
- (3) The Council may amend the Open Air Burning Categories incorporated by reference in this Local Law from time to time.

#### **13. APPLICATIONS TO CHANGE OPEN AIR BURNING CATEGORIES**

- (1) A property owner or occupier may apply to the Council for a change to the Open Air Burning Category that applies to their property or for an exemption from any clause of this Local Law.
- (2) Where an application is made under sub-clause (1), the Council may require the applicant to provide such information as it considers necessary for determining the application.
- (3) A person who deliberately makes any false representation or declaration (whether oral or in writing) in an application made under sub-clause (1) is guilty of an offence.

**Penalty: 3 penalty units**

#### **14. POWER TO ISSUE A DIRECTION**

The Council or an Authorised Officer may, by serving a Direction, request any property owner, occupier or other person to remedy any situation that constitutes a breach of this Local Law.

**Penalty for first offence: 2 penalty units**

**Penalty for second and subsequent offences: 5 penalty units**

## **15. FORM OF DIRECTION**

A direction issued under clause 14 may be verbal or written.

## **16. POWER TO ACT – URGENT CIRCUMSTANCES**

In urgent circumstances arising from any failure to comply with this Local Law, an Authorised Officer may:

- (1) take action to remove, remedy or rectify the failure without the necessity to serve a Direction; or
- (2) take any other action necessary to abate an immediate danger or threat.

## **17. POWER TO IMPOUND**

- (1) If an Authorised Officer detects an item or other thing in breach of, or being used contrary to, the provisions of this Local Law, the Authorised Officer may impound that item or other thing.
- (2) Clauses 25.8, 25.14, 25.15 and 25.16 of the Council's General Provisions Local Law 2012 – (No. 1 of 2012) apply to any item or other thing that is impounded under sub-clause (1) as if it was impounded under that Local Law.

## **18. APPEALS – MATTERS OTHER THAN INFRINGEMENT NOTICES**

- (1) Any person who is aggrieved by any decision under this Local Law may apply to the Council to be heard and may make a written submission for consideration by the Council within twenty-eight (28) days of the date of the decision concerned.
- (2) Making an application under sub-clause (1) will not in any way remove that person's obligation to act in accordance with any obligations, directions or notices arising from the subject decision.
- (3) An application made under sub-clause (1) will be determined by an Appeals Officer who had no involvement in making the subject decision.

## **19. APPEALS – LOCAL LAW INFRINGEMENT NOTICES**

- (1) An Authorised Officer may serve an infringement notice on a person who has committed an offence requiring the person to pay the penalty for that offence within 28 days.
- (2) The penalty fixed for infringement notices is the applicable penalty stated in Schedule 1, or, if no applicable penalty is stated in Schedule 1, two penalty units.

## **20. FEES AND CHARGES**

The Council may, from time to time, determine the fees and charges, if any, to apply and may include an administration or processing fee or charge.

*Note:*

*The Council's fees and charges are determined by Council in its annual budget and are available from the Council's website or by enquiry to Council.*

*The amount of a penalty unit is determined by statutory provision, not by the Council.*

## **21. WAIVER OR ALTERATION TO FEES AND CHARGES**

The Council or an Authorised Officer may waive, reduce or alter any fee or charge with or without conditions upon receipt of a written submission from the applicant stating the reasons why any such fee or charge should be reconsidered.

## **22. OFFENCES**

(1) Where any provision in this Local Law:

- a) prohibits any act or thing, any person who contravenes such provision is guilty of an offence;
- b) prohibits any act or thing between specified hours of the day or night, or during specified months of the year, or on certain days, or in, or at, specified locations or specified parts of those locations, any person who contravenes such provision is guilty of an offence; or
- c) requires any act or thing to be done, any person who is required to do the act or thing but does not do it contravenes such provision and is guilty of an offence.

(2) Any person who is guilty of an offence against this Local Law is liable to the penalty shown in Schedule 1 in respect of that offence or, if no such penalty is indicated, a penalty of:

**Penalty for first offence: 10 penalty units**

**Penalty for second and subsequent offences: 20 penalty units**



## SCHEDULE 1 – INFRINGEMENT NOTICE PENALTIES

**Explanatory Note:** *Why are infringement notice penalties different from maximum penalties?*

**Infringement notice penalties** are used to simplify the process of enforcing less serious breaches of the law. Infringement notices avoid the complex process of Court prosecution. When infringement notices are paid on time, no conviction is recorded by a Court. The amount of an Infringement penalty is normally significantly less than the potential maximum penalty a Court might impose for the same offence.

**Maximum penalties** may be imposed by a Court when:

- Council chooses to prosecute an offence, rather than issue an infringement notice; or
- a person receiving an infringement notice chooses to have the matter heard in Court.

If any offence under the Local Law is not set out in *Table 1* below, the infringement penalty for that offence will be two penalty units.

*Table 1* details relevant offences showing the maximum penalties and infringement notice penalties.

Clause	Offence	Maximum Penalty Units	Infringement Notice Penalty Units
11(1)	Open air burning or using an incinerator in a prohibited manner.		
	First offence	10	2
	Second and subsequent offences	20	5
11(2)	Open air burning or using an incinerator in a prohibited manner by burning offensive materials		
	First offence	10	5
	Second and subsequent offences	20	10

Clause	Offence	Maximum Penalty Units	Infringement Notice Penalty Units
11(3)	Open air burning or using an incinerator in a prohibited manner on an Open Air Burning - Rural Category property or lighting or allowing to remain alight, a fire or windrow that is a danger to a person or neighbouring property before, during or after burning, that is burnt without sufficient attendees, water or tools to prevent its spread or escape or that is burnt without prior notification to the ESTA and without reasonable attempts to notify neighbouring landowners and occupiers.		
	First offence	10	2
	Second and subsequent offences	20	5
11(4)	Open air burning or using an incinerator in a prohibited manner by causing a smoke hazard or offensive smoke.		
	First offence	10	5
	Second and subsequent offences	20	10
11(5)	Failure to extinguish an open air fire or an incinerator when unattended or when directed to do so.		
	First offence	10	2
	Second and subsequent offences	20	5
11(6)	Lighting a fire, authorising the lighting of a fire or allowing a fire to continue to burn on Council Land without authorisation.		
	First offence	10	2
	Second and subsequent offences	20	5
13(3)	Deliberately making a false representation or omitting relevant information on an application to change an OAB Category or any other exemption.	15	3

<b>Clause</b>	<b>Offence</b>	<b>Maximum Penalty Units</b>	<b>Infringement Notice Penalty Units</b>
14	Failure to comply with a lawful direction when contravening the Local Law.		
	First offence	10	2
	Second and subsequent offences	20	5
22(2)	Offence where no penalty is given.		
	First offence	10	2
	Second and subsequent offences	20	5

*Table 1.*

## SCHEDULE - 2 OPEN AIR BURNING RESTRICTIONS

### 2.1 URBAN CATEGORY

Residents in urban areas are encouraged to utilise recycling, mulching, Council's green waste collection service and Council's waste transfer stations to deal with green waste.

The following restrictions apply within the Open Air Burning - Urban Category.

1. A person must not, without a permit, engage in open air burning or use an incinerator at any time.
2. A person must not, without a permit, direct another person to use an incinerator at any time.
3. The following exemptions apply:
  - a) a barbeque or a manufactured fireplace designed and used for the purpose of outdoor cooking, heating or comfort is exempt except:
    - (i) on a total fire ban day or when other CFA or MFB restrictions apply;
    - (ii) a gas or electric barbeque may be used in accordance with CFA or MFB requirements; and
  - b) a fire lit by a member of Council staff, a CFA member, or an employee of the MFB, the DELWP, Parks Victoria or other relevant authorised agency in the course of their functions and duties.

EASY GUIDE – URBAN CATEGORY	
Open air burning allowed	If a permit is obtained.
Open air burning prohibited	<ul style="list-style-type: none"><li>• During the fire danger period.</li><li>• On total fire ban days.</li></ul>

## 2.2 BUSHLAND CATEGORY

Residents in bushland areas are encouraged to utilise recycling, mulching, and Council's waste transfer stations to deal with green waste.

The following restrictions apply within the Open Air Burning - Bushland Category.

### 1. Days and times

A person must not engage in open air burning or use an incinerator at the following times:

- a) during the fire danger period, on total fire ban days or at any other time the CFA declares fire restrictions;
- b) during the months of June and July; or
- c) on any Sunday, Tuesday or Wednesday.

EASY GUIDE – BUSHLAND CATEGORY	
Burning allowed	Monday, Thursday, Friday and Saturday
Burning prohibited	<ul style="list-style-type: none"><li>• During the fire danger period.</li><li>• On total fire ban days.</li><li>• Sunday, Tuesday and Wednesday.</li><li>• In June and July.</li></ul>

### 2. Conditions Applied to Open Air Burning

A person may engage in, or authorise another person to engage in, open air burning or burning material in an incinerator provided that all of the following conditions are met:

- a) the person has given prior notification to the ESTA;
- b) it is on a permitted day;
- c) the burning is for the purpose of fuel reduction for fire prevention and biosecurity control;
- d) the fuel is not noxious or offensive;
- e) where the burning is to occur on a property of less than two hectares in area, reasonable measures are taken by the person to advise neighbouring landowners and occupiers at least 24 hours beforehand;
- f) the distance from the outer extremity of the fire to any other fuel is at least three metres, including above the fire;
- g) the wind at the site of the fire does not exceed 19 kilometres per hour;
- h) there is an adequate number of attendees and supply of tools and adequate water supply available to hand at all times to control the fire and prevent it spreading or escaping; and

- i) the smoke and/or odour from the fire does not cause offensive smoke to enter another property or create a smoke hazard, especially for traffic on a road.

### **3. Exemptions**

The following exemptions apply:

- a) a barbeque or a manufactured fireplace designed and used for the purpose of outdoor cooking, heating or comfort is exempt, except where:
  - i. a total fire ban or other CFA or MFB restrictions apply;
  - ii. offensive materials are burnt or offensive smoke or a smoke hazard is caused;
- b) a fire lit by a member of Council staff, a CFA member or an employee of the MFB, the DELWP, Parks Victoria or other relevant authorised agency in the course of their functions and duties;
- c) restrictions related to days of the week are suspended, but only during the final seven days leading up to the introduction of the fire danger period each year.
- d) where a property in the Open Air Burning – Bushland Category is greater than two (2) hectares and the land is cleared for an approved building construction and a windrow of felled trees and vegetation is thereby created, this windrow will be treated for open air burning purposes as if it was a windrow on an Open Air Burning - Rural Category property of an equivalent size, provided that:
  - i. the open air burning of such a windrow occurs only on a day and time when open air burning is allowed on a property in the Open Air Burning - Bushland Category;
  - ii. all other conditions, restrictions and offences applicable to such a windrow on a property in the Open Air Burning - Bushland Category; and
  - iii. once this windrow is burnt or otherwise removed, exemption will cease.

## 2.3 RURAL CATEGORY

Residents in rural areas are encouraged to utilise recycling, mulching and Council's waste transfer stations to deal with green waste.

The following restrictions apply within an Open Air Burning - Rural Category.

### 1. Days and time

A person must not engage in open air burning or use an incinerator during the fire danger period, on total fire ban days and at any other time the CFA declares fire restrictions.

EASY GUIDE – RURAL CATEGORY	
Burning allowed	Everyday
Burning prohibited	<ul style="list-style-type: none"><li>• During the fire danger period.</li><li>• On total fire ban days.</li></ul>

### 2. Conditions Applied to Open Air Burning

A person may engage in, or authorise another person to engage in, open air burning or burning any material in an incinerator provided that all of the following conditions are met:

- the person has given prior notification to the ESTA;
- it is on a permitted day;
- the burning is for the purpose of fuel reduction for fire prevention and biosecurity control;
- the fuel is not noxious or offensive;
- the distance from the outer extremity of the fire to any other fuel is at least three metres, including above the fire;
- the wind at the site of the fire does not exceed 19 kilometres per hour;
- adequate measures are taken to ensure the open air burning is confined to the property;
- there is an adequate number of attendees and supply of tools and an adequate water supply available to hand at all times to control the fire and prevent it spreading or escaping; and
- the smoke and/or odour from the fire does not cause offensive smoke to enter another property or create a smoke hazard, especially for traffic on a road.

### 3. Exemptions

The following exemptions apply:

- a barbeque or a manufactured fireplace for the purpose of outdoor cooking, heating or comfort is exempt, except where:

- i. a total fire ban or other CFA or restrictions apply;
  - ii. offensive materials are burnt or offensive smoke or a smoke hazard is caused; and
- b) a fire lit by a member of Council staff, a CFA member, or an employee of the DELWP, Parks Victoria or other relevant authorised agency in the course of their functions and duties;
- c) restrictions related to days of the week are suspended, but only during the final seven days leading up to the introduction of the fire danger period each year.

#### **4. Windrows, large fires and multiple fires**

A person on a property in the Open Air Burning - Rural Category may engage in, or authorise another person to engage in, open air burning, or the burning of windrows provided that:

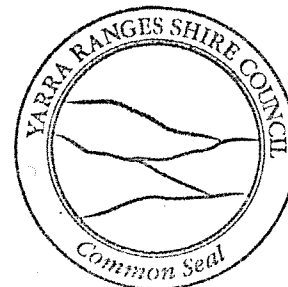
- a) all conditions listed in item 2 above are adhered to;
- b) any windrow or large fire or multiple fires must not pose a danger to any person or neighbouring property before, during or after burning;
- c) any windrow or large fire or multiple fires must have adequate supervision, tools and water supply to control the fire and prevent it from spreading or escaping at all times;
- d) where the burning is to occur on a property of less than two hectares in area, reasonable measures are taken by the person to advise neighbouring landowners and occupiers at least 24 hours beforehand; and
- e) the person has given prior notification to the ESTA.

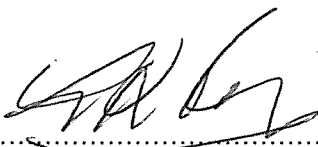


Resolution for the making of this Local Law was agreed to by the Council on the twenty fourth day of July 2018.

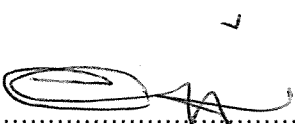
The Common Seal of **YARRA RANGES SHIRE COUNCIL**

was affixed this thirty first day of July 2018  
in the presence of:



  
.....

Mayor/Councillor

  
.....

Chief Executive Officer

Notices of the proposal to make and of the making of this Local Law were included in the Victoria Government Gazette dated the 5 April 2018 and 2 August 2018 respectively.

Public Notices of the proposal to make and confirmation of the making of this Local Law were inserted in *Leader and The Mail Newspapers* on 3 April 2018 and on 7 August 2018.

A copy of this Local Law was sent to the Minister for Local Government on the third day of August 2018.

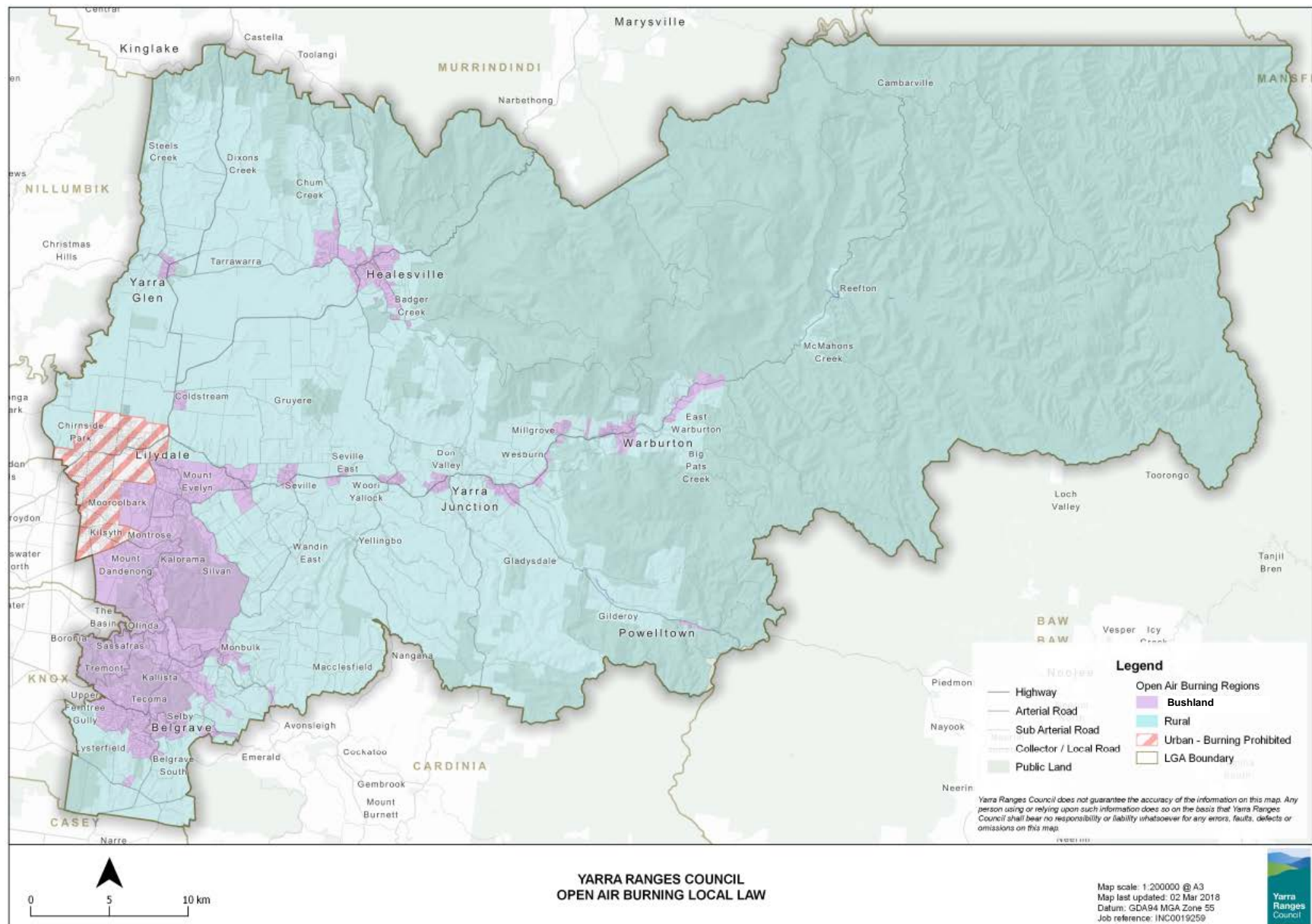
## **ATTACHMENT**

### **OPEN AIR BURNING CATEGORY MUNICIPAL MAPS**

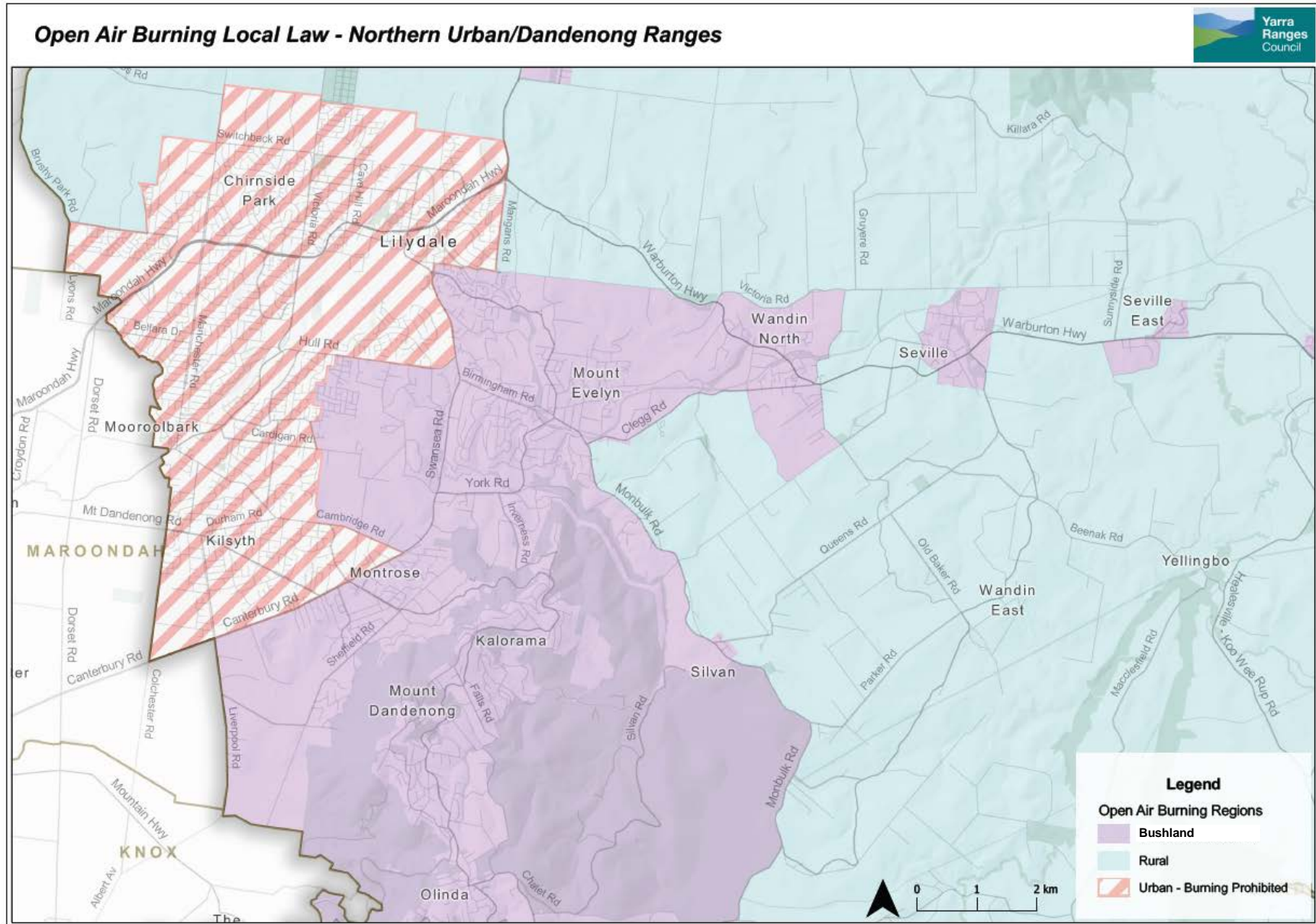
These Open Air Burning Category Municipal Maps in the following pages as determined from time to time are incorporated by reference into the Open Air Burning Local Law 2018.

Attachments in the following pages show first, the entire municipal district and second, maps of each Open Air Burning Category, including multiple maps where necessary.

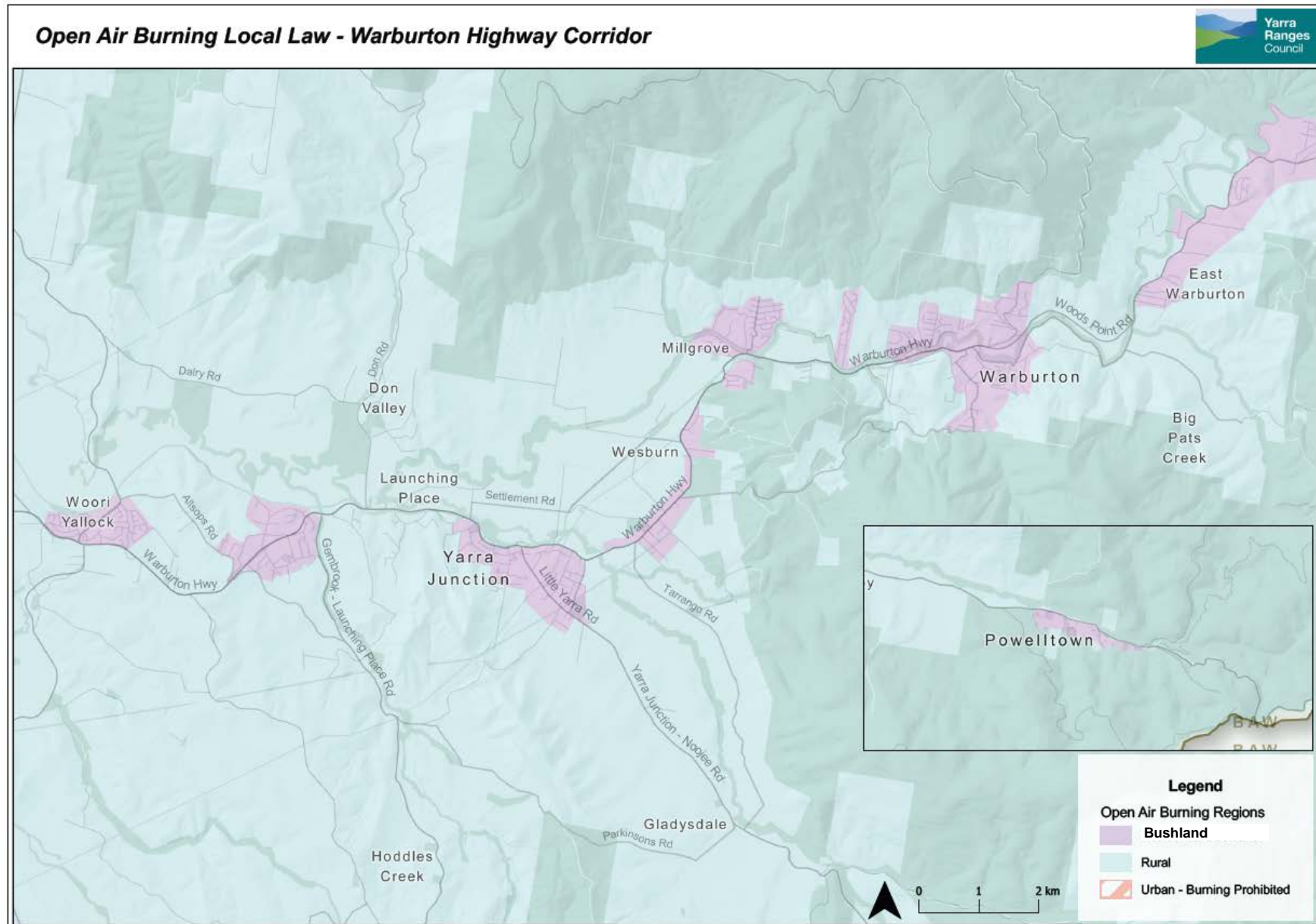
Map 1 - Open Air Burning Categories – Entire Municipality



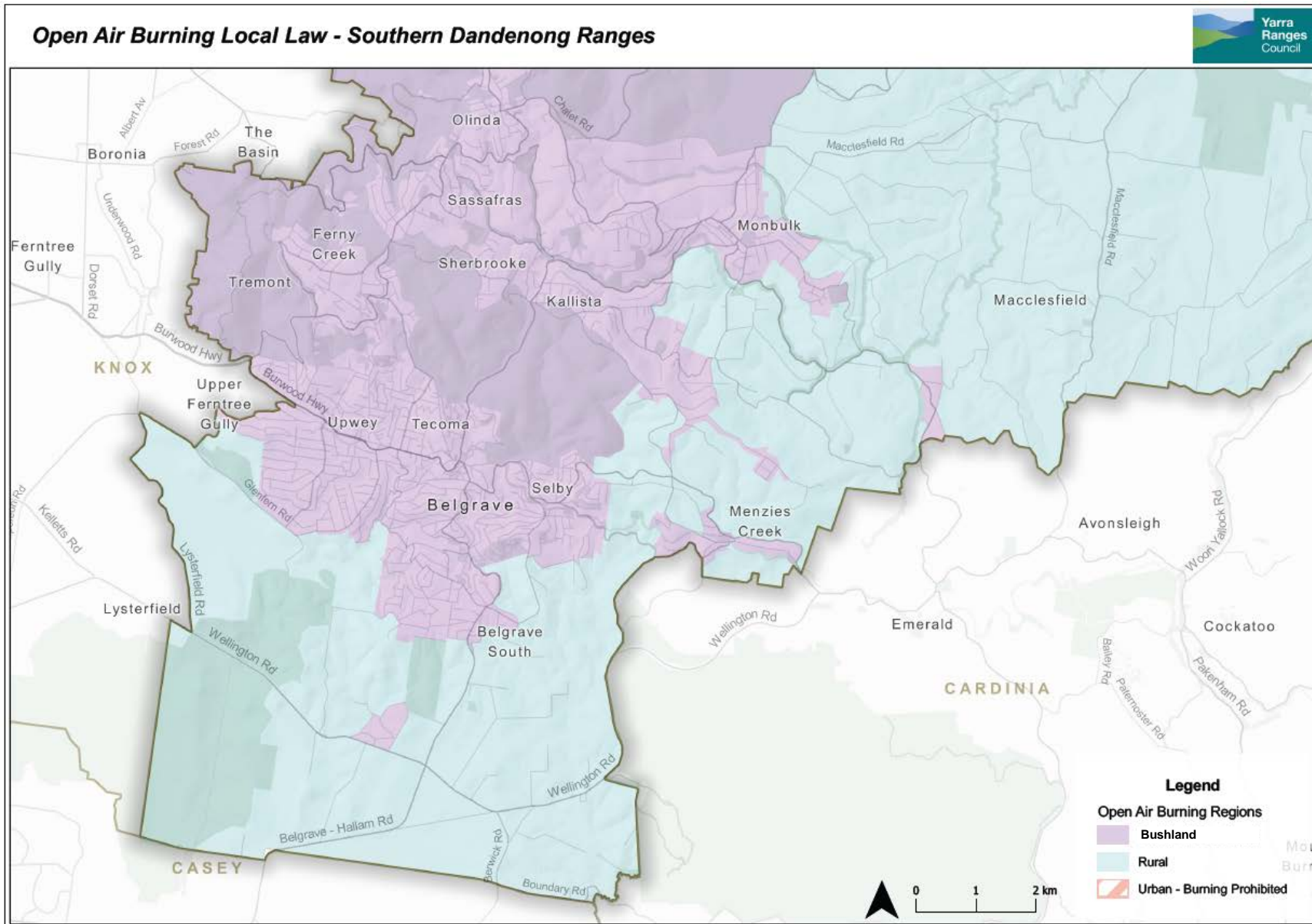
Map 2 - Open Air Burning Categories – Northern Urban and Dandenong Ranges



Map 3 - Open Air Burning Categories – Warburton Highway Corridor



Map 4 - Open Air Burning Categories – Southern Dandenong Ranges



Map 5 - Open Air Burning Categories – Northern Valley Region

