

## **44.06 BUSHFIRE MANAGEMENT OVERLAY**

18/11/2011  
VC83

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 assist to strengthen community resilience to bushfire.

To identify areas where the bushfire hazard requires specified bushfire protection measures for subdivision and buildings and works to be implemented.

To ensure that the location, design and construction of development considers the need to implement bushfire protection measures.

To ensure development does not proceed unless the risk to life and property from bushfire can be reduced to an acceptable level.

### **44.06-1 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 44.06-4.
- 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 floor area of the existing building.

- An alteration or extension to an existing building used for accommodation (excluding a dwelling and a dependent person's unit) that is less than 25 percent of the floor area of the existing building.
- A building or works with a floor area of less than 100 square metres ancillary to a dwelling not used for accommodation.

#### **44.06-2 Application requirements**

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#### **Locality and site description and bushfire management statement**

An application must be accompanied by:

- A locality and site description.
- A bushfire management statement.

#### **Locality and site description**

The locality and site description must use a site plan and may use photographs or other methods to accurately describe the site and land within 250 metres of the site boundary and must include the following information:

- In relation to the site, an accurate description of:
  - Site shape, dimensions, size, orientation and contours.
  - The existing use and siting of buildings or works on the land.
  - The number and location of existing and proposed vehicle access arrangements.
  - Existing vegetation types, condition and coverage.
  - Any other features and constraints of the site relevant to bushfire hazard.
- In relation to the surrounding area, an accurate description of:
  - Existing land uses and the location of nearby buildings.
  - Access to infrastructure.
  - Existing road networks.
  - The landscape, including any major landscape features, significant vegetation and topography.
  - Any other features or characteristics in the area relevant to bushfire hazard.

If in the opinion of the responsible authority a requirement of the site and context description is not relevant to the evaluation of the application, the responsible authority may waive or reduce the requirement.

#### **Bushfire management statement**

The bushfire management statement must:

- Contain a bushfire site assessment prepared to calculate defendable space and construction requirements in accordance with Standards 6.1, 7.1 and 8.1 of Clause 52.47 as appropriate.
- Demonstrate the way in which an application meets the relevant objectives, standards, mandatory standards and decision guidelines set out in this clause, in a schedule to this overlay and in Clause 52.47.

#### **44.06-3 Requirement of Clause 52.47**

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An application to subdivide land, construct a building or construct or carry out works must meet the requirements of Clause 52.47 unless a schedule to this overlay specifies otherwise.

The schedule to this overlay may specify requirements for the standards set out in Clause 52.47.

If a requirement is not specified in the schedule to this overlay, the requirement set out in the relevant standard of Clause 52.47 applies.

#### **44.06-4 Mandatory condition**

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##### **Subdivision**

A permit which creates a lot for residential development in the Residential 1 Zone, Residential 2 Zone, Residential 3 Zone, Low Density Residential Zone, Mixed Use Zone, Township Zone, Rural Living Zone, Green Wedge A Zone, Comprehensive Development Zone or Priority Development Zone 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 and make application to the Registrar of Titles to have the agreement registered on the title to the land under Section 181 of the Act. The agreement must set out the following matters:*

- *That it has been prepared for the purpose of an exemption from a planning permit under Clause 44.06-1 of this planning scheme.*
- *The building envelope and defensible space envelope to achieve the Bushfire Attack Level approved under this permit.*
- *Vegetation management requirements and arrangements suitable to implement and maintain the defensible space approved under this permit.*
- *The access and water supply requirements approved under this permit.*

*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, defensible space, water supply and access, must be maintained to the satisfaction of the responsible authority and the*

*relevant fire 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 to construct a building or construct or carry out works must include any condition specified in a schedule to this overlay.

#### **44.06-5 Referral of applications**

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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.

#### **44.06-6 Exemption from notice and review**

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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.

#### **44.06-7 General decision guidelines**

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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.
- The locality and description and the bushfire management statement.
- The objectives, standards and decision guidelines of Clause 52.47.
- Whether the level of risk to life, property and community infrastructure from bushfire is acceptable.
- Any relevant approved State, regional or municipal fire prevention plan.
- The impact of any relevant existing or planned State, regional or local bushfire management and prevention actions on the level of risk to life, property and community infrastructure from bushfire.
- Any relevant guidance published by the relevant fire authority.
- Any other matters specified in a schedule to this overlay.

#### **44.06-8 Transitional arrangements**

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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.

This clause expires on 30 June 2014.

*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.*