



Building Amendment Regulations 2016 (bush fire)

The Building Amendment Regulations 2016 (the Amendment Regulations) will be published in the *Government Gazette* on Tuesday 5 April 2016 and will come into operation on Friday 8 April 2016. The Amendment Regulations will:

- defer until 1 May 2018 the requirement for certain minor alterations and additions to existing residential buildings to comply with the bush fire construction requirements of the Building Code;
- clarify requirements for roof mounted evaporative air conditioner units by putting beyond doubt that installation of such units must comply with applicable building standards, while exempting such work from the need for a building permit in certain circumstances; and
- clarify building surveyors' existing role in certifying compliance with the applicable building standards, namely the Building Code requirements, for certain buildings in designated bush fire prone areas. These requirements apply to compliance certificate signed by building surveyors to support applications for building permits, and certain occupancy permits or building approval certificates for particular types of residential buildings and associated incidental structures.

Please note that from 8 April 2016 there is no longer a four month transitional exemption from the application of the bush fire construction requirements of the Building Code for areas that were identified as bush fire prone on the *Map of Bush Fire Prone Areas 2015* that came into operation on 8 December 2015. For further information on how this transition works, please read [IB058/2015](#) and [IB059/2015](#).

The key provisions of the Amendment Regulations are outlined below:

Reg. 2 provides that the substantial provisions in these Amendment Regulations come into operation on 8 April 2016.

Reg. 3 provides that these Amendment Regulations amend the Building Regulations 2012 (the Regulations).

Reg. 4 (1) creates new definitions of **AS3959**, **building site**, **bushfire attack level (BAL)**, **bush fire performance requirement and relevant edition of the Building Code**. These are self-explanatory; and

(2) amends the existing definition of **AS** to link it to the relevant edition of the Building Code.

Reg. 5 creates new reg. 6A which prescribes as **building work** the installation of a roof mounted evaporative cooling unit on a building or incidental structure. This puts beyond doubt that this work must comply with the applicable building standards.

Reg. 6 amends reg. 18A to create new requirements with which a certificate of design compliance (CDC) must comply:

- (1) New paragraph (e) requires the building surveyor who signs a CDC for a Class 1, Class 2, Class 3 building or an associated Class 10a building or deck which is, or will be, located less than 6 metres from a Class 1, Class 2 or Class 3 building to provide –
 - (i) a statement about whether the building or deck is, or will be, in a bush fire prone area; and
 - (ii) if the building or deck is, or will be, located in a bush fire prone area and if a bush fire performance requirement applies under subreg. 31BA(2), the extra information mentioned in subreg. (2).
- (2) New subreg. (2) sets out the following extra information the building surveyor must provide under subreg. (1)(e)(ii):
 - (a) for all buildings and structures covered by subreg. (1) –
 - (i) the BAL for the building site; or
 - (ii) if the building surveyor used some other measure to assess compliance with a bush fire construction performance requirement, details of the measure used and results of the assessment¹; and
 - (b) for a Class 1 building, a statement about each alternative solution to the bush fire performance requirement and details of the assessment method used².

Reg. 7 amends reg. 31BA to insert exemptions for specified minor alterations (renovations, alterations, extensions, improvements or repairs) from meeting the bush fire performance requirements of the Building Code.

- (1) inserts subreg. (1A), which defines the following terms:

excluded building work means alterations to a relevant building if:

- (a) the estimated value³ of the alteration is less than \$20,000; or
- (b) the alteration does not increase the risk of ignition from bush fire attack for the existing building being altered.

(For further information please see Appendix: **“Meeting the definition of excluded building work”**).

1 This might apply if, due to the terrain of the building site, it is not possible to calculate the BAL or if a BAL contour map has been used.

2 Para (a)(ii) only requires the building surveyor to detail the measure (of bushfire attack) on the building and provide details of the assessment used. Para (b) requires the building surveyor to state any alternative solutions, which might include any alternative measure of intensity of bushfire attack but additionally requires the building surveyor to list any alternative solutions in respect of the bushfire design or construction of the building.

3 **estimated value** is defined in reg. 3 to mean the value of the building work estimated in accordance with Schedule 1 to the Regulations.

renovation, alteration, extension, improvement or repair – this excludes the installation of a roof mounted evaporative air conditioning unit. This means the exemptions for specified minor alterations do not apply to such installations;

relevant building means an existing Class 1, Class 2 or Class 3 building or an associated Class 10a building or deck that is located less than 6 metres from the Class 1, Class 2 or Class 3 building which was not required to comply with a bush fire performance requirement when constructed. The Building Code only applies the bushfire performances requirements to these particular classes of buildings and structures.

- (2) replaces r. 31BA(2) to provide that the applicable building standards for buildings for which a building permit is required are the requirements in reg. 31A(2) except that the bush fire performance requirements do not apply if –
 - (a) the existing building is located in a bush fire prone area for less than 4 months at the time the permit application is made; or
 - (b) the building or structure is a relevant building and an application for a permit for excluded building work is made before 1 May 2018. A relevant building does not have to comply with the bush fire performance requirements; there would be no point in making them comply if the existing building did not have to.
- (3) amends reg. 31BA(4) to provide that the applicable building standards for building work done without a building permit are the requirements in reg. 31E(2) except that the bush fire performance requirements do not apply if –
 - (a) the existing building is located in a bush fire prone area for less than 4 months at the time construction commenced; or
 - (b) the building or structure is a relevant building and excluded building work commenced before 1 May 2018.
- (4) replaces the reference in reg. 31BA(6) to the bush fire performance requirements in the Table to reg. 31BA with a reference to the new definition of **bush fire performance requirements**.
- (5) deletes the Table in reg. 31BA – this is superfluous due to the new definition of **bush fire performance requirements**.

Reg. 8 amends reg. 36(2) to prescribe the following new requirements with which a building surveyor completing a certificate of building compliance (CBC) must comply:

- (a) new paragraph (aa) – requires a building surveyor completing a CBC for an application for a replacement occupancy permit for a permanent change of a building's classification to a Class 2 or Class 3 building to provide –
 - (i) statement about whether the building is in a bush fire prone area; and
 - (ii) if the building has been in a bush fire prone area for at least 4 months at the time the application for the occupancy permit is made:
 - (I) the BAL for the building site; or
 - (II) if the building surveyor used some other measure to assess compliance with a bush fire construction performance requirement, details of the measure used and results of the assessment.

- (b) creates new paragraph (ba) – requires a building surveyor completing a CBC for an application for an occupancy permit or building approval certificate for unauthorised work in respect of a Class 1, Class 2 or Class 3 building or an associated Class 10a building or deck that is located less than 6 metres from the Class 1, Class 2 or Class 3 building to provide –
 - (i) a statement about whether the building is in a bush fire prone area; and
 - (ii) if it has been in a bush fire prone area for at least 4 months at the time the application for the occupancy permit or building approval certificate is made:
 - (I) the BAL for the building site; or
 - (II) if the building surveyor used some other measure to assess compliance with a bush fire construction performance requirement, details of the measure used and results of the assessment.

Reg. 9 amends reg. 47 as follows:

- (1) New subreg. (1A) defines **applicable technical aspects** to mean, for a notice required under this regulation:
 - (a) the technical aspects of the construction set out in the Building Code current at the time the notice is given; but
 - (b) does do not include the Building Code’s bush fire construction requirements if:
 - (i) the building or structure is in a bush fire prone area; and
 - (ii) the area has been a bushfire prone area for less than 4 months at the time the notice is given.
- (2) Replaces existing reg. 47(1) with a requirement for the notice to include:
 - (a) evidence of the building or structure’s compliance with the **applicable technical aspects** for its proposed classification; and
 - (b) if the building or structure’s proposed classification is Class 1 –
 - (i) a statement about whether it is in a bush fire prone area; and
 - (ii) if the building or structure has been in a bush fire prone area for at least 4 months at the time the notice is given:
 - (I) the notice must state the BAL for the building site;
 - or
 - (II) if some other measure was used to assess compliance with the relevant bushfire construction performance requirement, the notice must state details of the measure used and results of the assessment.

Reg. 10 amends clause 2 of Schedule 4 to the Regulations by inserting in the Table the following type of building work for which a building permit is not required:

Item 13. The installation of a roof mounted evaporative cooling unit on a building or incidental structure. This type of work will only be exempt from the need for a building permit if:

- (a) the building or structure is not in a bush fire prone area; or
- (b) the building is Class 4 to Class 9; or
- (c) the building or incidental structure is located in a bush fire prone area and the BAL for the building site is BAL-Low; or
- (d) the building or structure:
 - (i) is in a bush fire prone area; and
 - (ii) the BAL for the building site is BAL-12.5, BAL-19 or BAL-29; and
 - (iii) the installation of the unit complies with the requirements for roof penetration in AS3959.

Appendix: “Meeting the definition of excluded building work”

For the purposes of applying the definition of **excluded building work** in new reg. 31BA(1A), the scenarios outlined below are intended to provide general guidance only as to how to assess whether an alteration (including a renovation, extension, improvement or repair) meets this definition.

Scenario 1

The applicant proposes an alteration to an existing house where the estimated value of the building work is \$10,000. Therefore, this addition is **excluded building work**, regardless of whether the alteration increases the risk of ignition from bush fire attack for the existing building.

Scenario 2 (see Figure A)

The applicant proposes an addition to an existing house which is to be constructed from the same materials as the existing building on the side of the existing building that is not exposed to the bush fire prone vegetation. The existing house was not required to comply with the bushfire construction requirements of the Building Code at the time of its construction. This addition does not reduce the setback between the existing building and the vegetation or use different materials, so it will not increase the risk of ignition from bush fire attack to the existing building. Therefore, this addition is **excluded building work**, regardless of the estimated value of the building work.

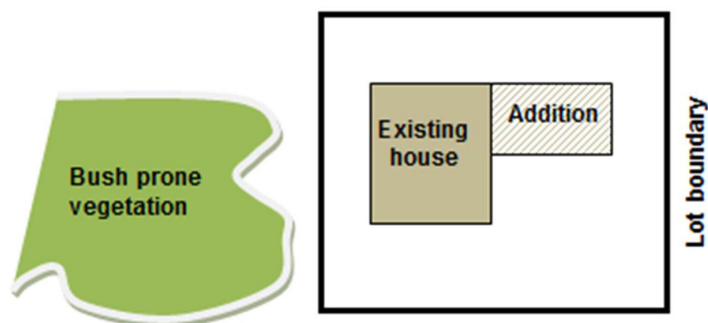
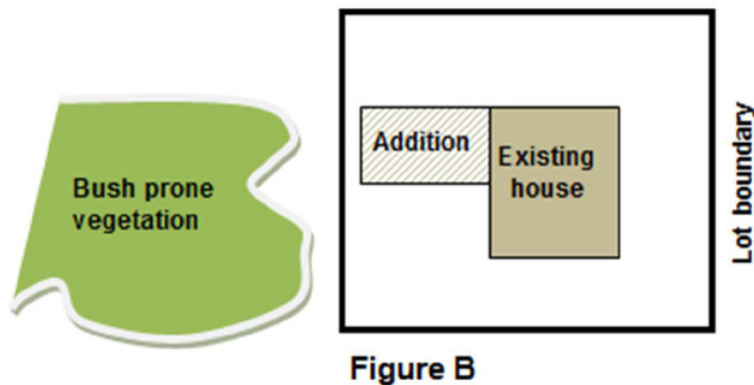


Figure A

Scenario 3 (see Figure B)

The applicant's existing house is located 40 metres from bush fire prone vegetation. The applicant proposes to construct an addition between the existing house and the vegetation using the same materials as the existing house. The addition of this new part of the building will reduce the setback between the building and vegetation to 20 metres. This increases the risk of ignition from bush fire attack to the existing building. Therefore, if the estimated value of the building work for this addition is over \$20,000, this addition is not **excluded building work**. If the value of the building work for this addition is under \$20,000, this addition is **excluded building work**.



Scenario 4

An applicant proposes to construct a two storey addition that proposes to use combustible cladding over the footprint of an existing building that uses non-combustible cladding. While the construction of the new storey does not in itself increase the BAL for the building site by reducing setbacks between the existing building and the vegetation, the use of combustible cladding on the addition increases the risk of ignition from bush fire attack to the existing building. Therefore, if the estimated value of the building work for this addition is over \$20,000, this addition is not **excluded building work**. If the value of the building work for this addition is under \$20,000, this addition is **excluded building work**.

Disclaimer

The information contained in this bulletin is provided as general information only and should not be relied upon as legal advice or as an accurate statement of the relevant legislation provisions. If you are uncertain as to your legal obligations you should obtain independent legal advice.

April 2016