

Building Amendment Regulations 2021

SL 2021/42

Made by the Lieutenant-Governor and deputy of the Governor in Executive Council.

1. Citation

These regulations are the *Building Amendment Regulations 2021*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on 1 May 2021.

3. Regulations amended

These regulations amend the *Building Regulations 2012*.

4. Regulation 3 amended

In regulation 3 in the definition of *bush fire performance requirement*:

- (a) in paragraph (a) delete “building —” and insert:

building or a Class 10a building or deck associated with a Class 2 or Class 3 building —

- (b) in paragraph (b) delete “or Class 10 building —” and insert:

building or a Class 10a building or deck associated with a Class 1 building —

5. Regulation 18A amended

In regulation 18A(1)(e)(ii) delete “regulation 31BA(2),” and insert:

regulation 31BA(1) or 31D,

6. Regulation 31BA amended

- (1) In regulation 31BA(1A) delete the definition of ***relevant building***.
- (2) In regulation 31BA(1A) insert in alphabetical order:

bush fire standard means —

- (a) a bush fire performance requirement; or
- (b) to the extent not covered by paragraph (a), a requirement imposed under any written law that is a requirement relating to —
 - (i) a technical aspect of the construction of a building or incidental structure; and
 - (ii) bush fires;

Note for this definition:

Paragraph (b) includes, for example, requirements imposed under the *Building Regulations 1989*.

relevant building means a Class 1, Class 2 or Class 3 building that was not required to comply or substantially comply with a bush fire standard at the latest of the following times —

- (a) when the building was constructed;
- (b) if 1 or more applications or notices under section 49(b) or 51(2) or (3) or regulation 47(1) have been made or given in respect of the building — when the application or notice, or the last application or notice, was made or given;
- (c) if the building has been relocated — when the building was last relocated.

- (3) Delete regulation 31BA(1) to (8) and insert:

- (1) For the purposes of the definition of ***applicable building standard*** in section 3, the building standards set out in Column 2 of the Table are prescribed as applicable building standards for the purposes set out in Column 1 of the Table opposite the standards.

Table

Item	Column 1 Purposes	Column 2 Applicable building standards
1.	Section 19(3) in respect of all kinds of buildings and	The requirements mentioned in regulation 31A(2) except that the bush fire performance requirements are not applicable

Item	Column 1 Purposes	Column 2 Applicable building standards
	incidental structures located in a bush fire prone area	building standards if — <ul style="list-style-type: none"> (a) the building or incidental structure is or will be located in an area that, at any time during the 4-month period ending on the day on which the application is made, was not a bush fire prone area; or (b) the building work that is proposed to be done in respect of the building or incidental structure is excluded building work only; or (c) the building or incidental structure is or will be — <ul style="list-style-type: none"> (i) a Class 10a building or deck; and (ii) associated with a relevant building.
2.	Section 37(1) in respect of all kinds of buildings and incidental structures located in a bush fire prone area	The requirements mentioned in regulation 31A(2) except that the bush fire performance requirements are not applicable building standards if — <ul style="list-style-type: none"> (a) the building or incidental structure is located in an area that, at any time during the 4-month period ending on the day on which the application for the building permit was made, was not a bush fire prone area; or (b) the building work done in respect of the building or incidental structure under the building permit is excluded building work only; or (c) the building or incidental structure is — <ul style="list-style-type: none"> (i) a Class 10a building or deck; and (ii) associated with a

Item	Column 1 Purposes	Column 2 Applicable building standards
		<p>relevant building.</p> <p>Note for this item: See also regulation 31HB(2).</p>
3.	Section 37(2) in respect of all kinds of buildings and incidental structures located in a bush fire prone area	<p>The requirements mentioned in regulation 31E(2) except that the bush fire performance requirements are not applicable building standards if —</p> <ul style="list-style-type: none"> (a) the building or incidental structure is located in an area that, at any time during the 4-month period ending on the day on which the building work in respect of the building or incidental structure commenced, was not a bush fire prone area; or (b) the building work done in respect of the building or incidental structure is excluded building work only; or (c) the building or incidental structure is — <ul style="list-style-type: none"> (i) a Class 10a building or deck; and (ii) associated with a relevant building. <p>Note for this item: See also regulation 31HB(3).</p>

Item	Column 1 Purposes	Column 2 Applicable building standards
4.	Section 57(3) for an application mentioned in section 49(b) in respect of all kinds of buildings located in a bush fire prone area	The requirements mentioned in regulation 31G(2) except that the bush fire performance requirements are not applicable building standards if the building is located in an area that, at any time during the 4-month period ending on the day on which the application is made, was not a bush fire prone area.
5.	Section 57(3) for an application mentioned in section 51(2) in respect of all kinds of buildings located in a bush fire prone area	<p>The requirements mentioned in regulation 31G(2) except that the bush fire performance requirements are not applicable building standards if —</p> <ul style="list-style-type: none"> (a) the building is located in an area that, at any time during the 4-month period ending on the day on which the application is made, was not a bush fire prone area; or (b) the unauthorised work done in respect of the building is excluded building work only.
6.	Section 57(3) for an application mentioned in section 51(3) in respect of all kinds of buildings and incidental structures located in a bush fire prone area	<p>The requirements mentioned in regulation 31G(2) except that the bush fire performance requirements are not applicable building standards if —</p> <ul style="list-style-type: none"> (a) the building or incidental structure is located in an area that, at any time during the 4-month period ending on the day on which the application is made, was not a bush fire prone area; or (b) the unauthorised work done in respect of the building or incidental structure is excluded building work only; or

Item	Column 1 Purposes	Column 2 Applicable building standards
		(c) the building or incidental structure is — <ul style="list-style-type: none"> (i) a Class 10a building or deck; and (ii) associated with a relevant building.

- (2) Item 1, 2 or 3 (as the case may be) of the Table to subregulation (1) does not apply if the building work is the assembly, reassembly or securing of a relocated building or a relocated incidental structure.

Note for this subregulation:

See also regulation 31D.

- (3) Column 2 paragraph (b) of item 1, 2, 3, 5 or 6 (as the case may be) of the Table to subregulation (1) does not apply if the excluded building work is part of a larger project of building work that has been divided up for the sole or dominant purpose of taking advantage of that paragraph.
- (4) In determining whether building work is excluded building work for the purposes of Column 2 paragraph (b) of item 2 or 3 (as the case may be) of the Table to subregulation (1), the definition of that term in subregulation (1A) applies as if the definition of **relevant building** had not been replaced by the *Building Amendment Regulations 2021* regulation 6(1) and (2) if —
- (a) in the case of item 2 — the building permit for the building work was obtained before 1 May 2021; or
 - (b) in the case of item 3 — the building work commenced before 1 May 2021.

7. Regulation 31D amended

- (1) Before regulation 31D(1A) insert:

- (1AA) In this regulation —
relevant building has the meaning given in regulation 31BA(1A).

- (2) In regulation 31D(2) delete “mentioned in regulation 31A(2)” and insert:

in relation to the technical aspects of the construction of the relocated building or incidental structure that were imposed under the written law applicable at the time the relocated building or incidental structure was first assembled,

- (3) In regulation 31D(3) delete the passage that begins with “The building standards” and ends with “incidental structure.” and insert:

The applicable building standards include those that relate to a performance requirement that is —

- (a) listed in the Table; and
 - (b) applicable to buildings or incidental structures of the classification of the relocated building or incidental structure; and
 - (c) set out in the edition of the Building Code —
 - (i) for sections 19(3) or 37(1) — mentioned in regulation 31A(2)(a), (b) or (c), subject to regulation 31A(2A) and (3); or
 - (ii) for section 37(2) — in effect at the time the assembly, reassembly or securing of the relocated building or incidental structure commenced.
- (4) In regulation 31D(4) delete the passage that begins with “The building standards” and ends with “incidental structure.” and insert:

The applicable building standards include those that relate to a performance requirement that is —

- (a) listed in the Table; and
- (b) applicable to buildings or incidental structures —
 - (i) of the classification of the relocated building or incidental structure; and
 - (ii) in the geographical area where the relocated building or incidental structure was first assembled;

and

- (c) set out in the edition of the Building Code in effect —
 - (i) if subparagraph (ii) does not apply — at the time of, or 12 months before, the first application for a building permit to assemble the relocated building or incidental structure (whichever was applied by the building surveyor in respect of the building or incidental structure); or
 - (ii) if no building permit to assemble the relocated building or incidental structure has ever been required — at the time of the first assembly of the relocated building or incidental structure.

(5) At the end of regulation 31D(4) insert:

Note for this subregulation:

This subregulation does not apply if the conditions in paragraph (c) cannot be met because —

- (a) a building permit to assemble the relocated building or incidental structure has been required but none has ever been applied for; or
- (b) no edition of the Building Code was in effect at the relevant time mentioned in paragraph (c).

(6) Delete regulation 31D(5) and insert:

- (5) The bush fire performance requirements are not applicable building standards for the purposes of the section set out in Column 1 of the Table in the circumstances set out in Column 2 of the Table opposite the section.

Table

Column 1 Section	Column 2 Circumstances
s. 19(3)	<p>If —</p> <ul style="list-style-type: none"> (a) the relocated building or incidental structure will be relocated to an area that, at any time during the 4-month period ending on the day on which the application is made, was not a bush fire prone area; or

Column 1 Section	Column 2 Circumstances
	<p>(b) the relocated building or incidental structure —</p> <p>(i) is a Class 10a building or deck; and</p> <p>(ii) will be associated with a relevant building once relocated.</p>
s. 37(1)	<p>If —</p> <p>(a) the relocated building or incidental structure is relocated to an area that, at any time during the 4-month period ending on the day on which the application for the building permit was made, was not a bush fire prone area; or</p> <p>(b) the relocated building or incidental structure —</p> <p>(i) is a Class 10a building or deck; and</p> <p>(ii) is associated with a relevant building once relocated.</p> <p>Note for this item: See also regulation 31HB(2).</p>
s. 37(2)	<p>If —</p> <p>(a) the relocated building or incidental structure is relocated to an area that, at any time during the 4-month period ending on the day on which the assembly, reassembly or securing of the relocated building or incidental structure commenced, was not a bush fire prone area; or</p> <p>(b) the relocated building or incidental structure —</p> <p>(i) is a Class 10a building or deck; and</p> <p>(ii) is associated with a relevant building once relocated.</p> <p>Note for this item: See also regulation 31HB(3).</p>

8. Regulation 31E amended

In regulation 31E(2) delete “construction commenced.” and insert:

the building work mentioned in section 37(2) commenced.

9. Regulation 31HB inserted

At the end of Part 4 Division 1 Subdivision 1 insert:

31HB. Transitional provisions for *Building Amendment Regulations (No. 3) 2015*

- (1) In this regulation —
commencement day means the day on which the *Building Amendment Regulations (No. 3) 2015* regulation 6 comes into operation;
local planning scheme has the meaning given in the *Planning and Development Act 2005* section 4(1).
- (2) For the purposes of item 2 Column 2 paragraph (a) of the Table to regulation 31BA(1), and the item relating to section 37(1) in the Table to regulation 31D(5), the area is taken to have been a bush fire prone area for the whole of the 4-month period if —
 - (a) immediately before commencement day, the area was identified in any way under a local planning scheme as an area that is subject, or likely to be subject, to bush fires; and
 - (b) the application for the building permit was made in the 4-month period beginning on commencement day.
- (3) For the purposes of item 3 Column 2 paragraph (a) of the Table to regulation 31BA(1), and the item relating to section 37(2) in the Table to regulation 31D(5), the area is taken to have been a bush fire prone area for the whole of the 4-month period if —
 - (a) immediately before commencement day, the area was identified in any way under a local planning scheme as an area that is subject, or likely to be subject, to bush fires; and
 - (b) the building work commenced in the 4-month period beginning on commencement day.

10. Regulation 31 amended

In regulation 31 in the definition of *transitional bush fire application* paragraph (a) delete “1 May 2021; and” and insert:

1 September 2023; and

11. Regulation 36 amended

In regulation 36(2):

- (a) in paragraph (aa)(ii) delete “has been located in a bush fire prone area for a period of 4 months or more at the time the application is made —” and insert:

is located in a bush fire prone area and, in accordance with item 4 of the Table to regulation 31BA(1), a bush fire performance requirement applies to the building —

- (b) in paragraph (ba)(ii) delete “has been located in a bush fire prone area for a period of 4 months or more at the time the application is made —” and insert:

or deck is located in a bush fire prone area and, in accordance with item 5 or 6 (as the case may be) of the Table to regulation 31BA(1), a bush fire performance requirement applies to the building or deck —

12. Regulation 47 amended

- (1) In regulation 47(1A) in the definition of *applicable technical aspects* delete paragraph (b)(ii) and insert:

- (ii) at any time during the 4-month period ending on the day on which the notice is given, the area was not a bush fire prone area.

- (2) In regulation 47(2)(b)(ii) delete “has been located in a bush fire prone area for a period of 4 months or more at the time” and insert:

was located in a bush fire prone area during the whole of the 4-month period ending on the day on which

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