

Building requirements for hazardous areas

When do the new building requirements for hazardous areas apply?

The requirements for building work in areas subject to natural hazards are changing during 2020/2021.

New statewide planning and building controls are being implemented for hazardous areas. These include areas potentially subject to landslip, bushfire, flooding, coastal erosion and coastal inundation. The changes are set out in Part 5 of the [Building Regulations 2016](#), and in new hazardous area Determinations which will be issued later in 2019.

Part 5 of the *Building Regulations 2016* has not commenced so does not currently apply to work in hazardous areas.

The changes to planning and building controls for hazardous areas will take effect in each municipal area at the same time as the new Tasmanian Planning Scheme. The Tasmanian Planning Scheme is expected to begin in the first municipal areas in 2020/2021.

Until then, specific building requirements for areas subject to bushfire, landslip and flooding, set out in the *Building Act 2000* and *Building Regulations 2014*, continue to apply.

Summary of current requirements and future changes

Hazardous area	Requirements which apply from 1 January 2017	Requirements which apply from the commencement of Tasmanian Planning Scheme (for a particular municipal area) – from 2020/2021
Landslip	<ul style="list-style-type: none"> • Previous requirements still apply • Controls apply to 'landslip A' and 'landslip B' areas • Requirements are set out in Division 1 of Part 10 of the <i>Building Act 2000</i>, and Division 1 of Part 2 of the <i>Building Regulations 2014</i> 	<ul style="list-style-type: none"> • New requirements apply to 'landslip hazard areas' as well as landslip A and landslip B areas • Landslip hazard areas will be defined in planning scheme maps • Requirements are set out in Part 5 of the <i>Building Regulations 2016</i> and in the new Landslip Determination (to be issued in 2019/2020)

Hazardous area	Requirements which apply from 1 January 2017	Requirements which apply from the commencement of Tasmanian Planning Scheme (for a particular municipal area) – from 2020/2021
Flooding	<ul style="list-style-type: none"> • Previous requirements still apply • Controls apply to land subject to flooding • Requirements are set out in Section 159 of the <i>Building Act 2000</i>, and Division 3 of Part 2 of the <i>Building Regulations 2014</i> 	<ul style="list-style-type: none"> • New requirements apply to ‘land subject to riverine inundation’ • Requirements are set out in Part 5 of the <i>Building Regulations 2016</i> and in the new Riverine Inundation Determination (to be issued in 2019/2020)
Coastal inundation	<ul style="list-style-type: none"> • Previous requirements still apply • Controls apply to land subject to tidal flooding • Requirements are set out in Section 159 of the <i>Building Act 2000</i>, and Division 3 of Part 2 of the <i>Building Regulations 2014</i> 	<ul style="list-style-type: none"> • New requirements apply to ‘coastal inundation hazard areas’, which are defined in planning scheme maps • Requirements are set out in Part 5 of the <i>Building Regulations 2016</i> and in the new Coastal Inundation Determination (to be issued in 2019/2020)
Coastal erosion	No requirements	<ul style="list-style-type: none"> • New requirements apply to ‘coastal erosion hazard areas’ which are defined in planning scheme maps • Requirements are set out in Part 5 of the <i>Building Regulations 2016</i> and in the new Coastal Erosion Determination (to be issued in 2019/2020)
Bushfire	<ul style="list-style-type: none"> • Previous requirements still apply • Requirements are set out in <ul style="list-style-type: none"> ➢ Part 1A of the <i>Building Regulations 2014</i>, the ➢ Requirements for Building in Bushfire-prone areas Determination ➢ Application of requirements for building bushfire-prone areas Determination <p>To read the Determinations go to www.cbos.tas.gov.au and search ‘bushfire prone’</p>	<ul style="list-style-type: none"> • New requirements apply to ‘bushfire-prone areas’ which are either defined in planning scheme maps or based on proximity of bushfire prone vegetation • Requirements are set out in Part 5 of the <i>Building Regulations 2016</i> and in the new Bushfire Determination (to be issued in 2019/2020)

What are ‘hazardous areas’?

Section 4 of the Building Act 2016 defines ‘hazardous areas’ as including land that is:

- Prone to bushfire, landslip or flooding
- Subject to slope instability
- Subject to erosion or coastal inundation
- Subject to sea level rises or storm surges.

Transitional provisions

Schedule 6 of the *Building Regulations 2016* sets out transitional provisions that provide that relevant parts of the *Building Act 2000* and the *Building Regulations 2014* continue to apply for building work in hazardous areas after 1 January 2017.

Part 5 of the *Building Regulations 2016*, relating to hazardous areas, sets out the transitional provisions. The provisions will come into effect only when the new Tasmanian Planning Scheme starts in a particular municipal area.

Building Act 2000 and Building Regulations 2014 requirements still apply

Previous requirements under the *Building Act 2000* and *Building Regulations 2014* still apply until Part 5 of the *Building Regulations 2016* is active in a municipal area.

Any definitions which are contained in section 3 of the *Building Act 2000* or regulation 3 of the *Building Regulations 2014* which are necessary to give effect to the requirements need to be considered.

For example refer to 'bushfire-prone area' and 'bushfire-prone vegetation' (contained in regulation 3 of the *Building Regulations 2014*) because they are necessary to give effect to Part 1A of the *Building Regulations 2014*.

Requirements for land subject to landslip

The previous requirements in the *Building Act 2000* and *Building Regulations 2014* relating to building work in landslip A and landslip B areas still apply.

Requirements are set out in Division 1 of Part 10 of the *Building Act 2000*, and Division 1 of Part 2 of the *Building Regulations 2014*.

Requirements for land subject to flooding

Previous requirements in the *Building Act 2000* and *Building Regulations 2014* relating to building work on land subject to flooding still apply.

Requirements are set out in Section 159 of the *Building Act 2000*, and Division 3 of Part 2 of the *Building Regulations 2014*.

Requirements for bushfire-prone areas

Previous requirements in the *Building Act 2000* and *Building Regulations 2014* relating to building work in bushfire-prone areas still apply.

In addition, two bushfire determinations set out specific requirements, and the application of the requirements to low risk work and notifiable work.

Bushfire determinations

The *Requirements for Building in Bushfire-Prone Areas Determination*, along with Part 1A of the *Building Regulations 2014*, sets out the current requirements for building in bushfire-prone areas.

The *Application of Requirements for Building in Bushfire-Prone Areas Determination* specifies the types of low risk work in bushfire-prone areas that are to be considered as notifiable work, and specifies the types of low risk work and notifiable work in bushfire-prone areas that are subject to specific controls. Under this Determination, low risk work and notifiable work does not necessarily become permit work if it is located in a hazardous area.

To read either of these Determinations go to www.cbos.tas.gov.au and search 'bushfire prone'

How do the requirements under the Building Regulations 2014 work with the new Categories of Work Determination?

The requirements of the *Building Regulations 2014* generally operate as they did previously. However, those requirements work in unison with the new system of obtaining a building permit (ie. with reference to the *Categories of Building and Demolition Work Determination*).

Consequently, the definition of 'building work in a bushfire-prone area' in regulation 3 has been amended to delete (d) and (e) to be as follows:

building work in a bushfire-prone area means –

- (a) the erection, re-erection or construction of a new building; and
- (b) additions or alterations, requiring a building permit, of existing buildings; and
- (c) a change from a non-residential class of building to a residential class –

but does not include the following:

- ~~(d) any work exempted by the Building Regulations from requiring a building permit;~~
- ~~(e) minor alterations or minor repairs of an existing building;~~
- (f) any work where the BAL has been assessed as BAL-Low unless the building use is a vulnerable use;
- (g) demolition or removal of a building, or part of a building, unless that work would expose a habitable building to a higher bushfire attack level from embers or radiant heat;
- (h) erection of a non-habitable building (Class 10a) that is separated from a habitable building by 6 metres or more;
- (i) erection of a structure (Class 10b);
- (j) internal building work that requires a building permit;
- (k) a change of use of a building that requires a building permit for new work, but not:
 - (i) for a change of use of a building that is classed as a vulnerable use; or
 - (ii) where the new use is classed as a hazardous use that requires planning approval, as hazardous chemicals or explosives will be stored on the site.
- (l) a change of building classification that requires a building permit for new work (but not for a vulnerable use, or a hazardous use that requires planning approval);

Items (d) and (e) have been deleted because under the new risk-based approach to obtaining a building permit in the *Building Act 2016*, there is no longer a concept of 'exempt' or 'minor' work.

When deciding if building work is '**building work in a bushfire-prone area**' practitioners must decide if the building work fits into (a), (b) or (c) and then decide if it can nevertheless be excluded as building work in a bushfire-prone area by application of (f) through to (l).

Low risk or notifiable building work in a bushfire-prone area

The *Application of Requirements for Building in Bushfire-Prone Areas Determination* sets out the low risk work and notifiable work in a bushfire-prone area to which the previous requirements for permit work under the *Building Act 2000* and *Building Regulations 2014* still apply.

Alternative Solutions and the Tasmania Fire Service for permit work

The requirement for an “alternative solution” or a “performance solution” (as defined in the National Construction Code) in a bushfire-prone area to be referred to the Chief Officer of the Tasmania Fire Service was formerly in Schedule 2 of the *Building Regulations 2014*.

Please note that Schedule 2 of the *Building Regulations 2014* is no longer operative. Practitioners should instead refer to Schedule 1 of the *Building Regulations 2016* (which unlike Part 5 is already active).

Future requirements for hazardous areas

Part 5 of the *Building Regulations 2016* (sections 48 to 64 inclusive) sets out the future requirements for work in hazardous areas.

Part 5 is not active in respect to a municipal area until the new Tasmanian Planning Scheme come into effect in that municipal area. The Tasmanian Planning Scheme will contain new planning hazard codes relating to hazardous areas, as well as maps which define land subject to various natural hazards.

Part 5 will therefore generally become active on a Council by Council basis. Practitioners will need to check if the Tasmanian Planning Scheme has come into force for that municipal area.

The Director of Building Control will also issue a range of new Determinations in relation to hazardous areas before the commencement of Part 5.

Legislation

You can get a copy of the relevant legislation by going to www.legislation.tas.gov.au and searching for the Act name (for example *building act 2016*).

If you want to read the previous legislation, search using the text ‘*building act 2000*’ or ‘*building regulations 2014*’. You must also select the ‘As Made’ check box.

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