

Building Practice Note BF-01: Emergency Accommodation Buildings – Part 11A

This Practice Note provides guidance on Part 11A of the Regulations that sets out the requirements for emergency accommodation buildings.

The context below provides guidance for:

- What are emergency accommodation buildings
- Notification to be given to the relevant councils
- Construction requirements
- Exemptions from certain requirements
- Offences



The emergency accommodation building exemptions were introduced following the 2019-2020 Black Summer bushfires to help affected owners by allowing them to construct and live in temporary buildings while they rebuild. These exemptions importantly will help in the recovery of future emergency events.

Abbreviations & Definitions

The abbreviations and definitions set out below are for guidance only. They are not intended to vary those set out in the Building Act 1993 (the Act), Building Regulations 2018 or the National Construction Code (NCC).

- **Act** – The Building Act 1993
- **Class 1a building** – a detached house, town house, villa or terrace house
- **Emergency** – A class 1 or 2 emergency within the meaning of the Emergency Management Act 2013
- **Emergency accommodation building** – The same meaning under regulation 166B of the Regulations
- **BCA** – Building Code of Australia, Volume 2
- **Maximum occupation period** – 3 years commencing after the notified commencement date
- **MBS** – Municipal Building Surveyor
- **Notified commencement date** – the date notified to the relevant council by the owner of occupation
- **Owner** – the owner of the land in which the building is constructed or proposed to be constructed
- **RBS** – Relevant Building Surveyor
- **Regulations** – The Building Regulations 2018

What are emergency accommodation buildings

An emergency accommodation building is a building that can be constructed and occupied without permits if an existing Class 1a building has been destroyed or rendered unfit for occupation as a result of an emergency and the Class 1a building was the owner's principal place of residence.

Under regulation 166B of the Regulations, an emergency accommodation building must be intended for use as the principal place of residence of the owner before or during the repair of an existing Class 1a building or the construction of a new Class 1a building on the land. The emergency accommodation building must not have a floor area greater than 60 m² unless allowed by the relevant council.

Notification to be given to the relevant council

Before the construction of the emergency accommodation building begins, the owner must notify the relevant council in writing of the owner's intention to occupy the building as their principal place of residence and the proposed date of when they intend to occupy the building.

The owner must notify the relevant council no later than the day on which the emergency accommodation building begins construction or 14 days before the owner intends to occupy the building, whichever is earlier.

The owner may notify the council in writing of a change in the proposed commencement date of occupation.

A person must not occupy an emergency accommodation building for residential purposes before the notified commencement date.

Construction requirements

The Regulations only require emergency accommodation buildings to comply with certain requirements that are appropriate for the temporary nature of emergency accommodation buildings. Importantly it does not require emergency accommodations buildings to fully comply with the BCA. The requirements under regulation 166F of the Regulations are:

- (a) Performance requirements of the BCA mainly relating to safe and suitable occupation of a home being:
- i. P2.1.1 – Structural suitability
 - ii. P2.1.2 – Flood hazard area
 - iii. P2.2.2 - Weatherproofing
 - iv. P2.2.3 – Protection from moisture from the ground
 - v. P2.3.1 – Spread of fire from the boundary or nearby buildings
 - vi. P2.3.2 – Smoke detection
 - vii. P2.4.1 – Waterproofing of bathrooms, laundries, sanitary facilities and the like
 - viii. P2.4.3 – Personal hygiene and other facilities
 - ix. P2.7.3 – Heating appliances including open fireplace, chimney, or the like
- (b) If the emergency accommodations building forms part of or is attached to any other building, the emergency accommodations building must have elements which will avoid the spread of fire from another building to the emergency accommodations building except for Class 10 buildings (e.g. garage, shed etc).
- (c) The building must be connected to:
- i. A reticulated drinkable water supply or alternative drinkable water supply
 - ii. A reticulated electricity supply or to an alternative energy source (e.g. solar, batteries, generator)
 - iii. A reticulated sewerage system or to a septic tank system approved by the relevant council

An emergency accommodation building does not have to be a Class 1a building. It could be for example an existing Class 10a private garage or shed. However, if an emergency accommodation building is not a Class 1a building, the performance requirements above apply to the building as if it were a Class 1a building. This would likely mean that the building would need building work to comply with the performance requirements. A building permit is not required for this change of use as explained in the following section.

Exemption from certain requirements

Regulation 166G of the Regulations exempts emergency accommodation buildings from all Parts of the Regulations except Part 11A of the Regulations which deals with emergency accommodation buildings. This means that a building permit is not required for the building work to construct an emergency accommodation building and for the most part only needs to comply with the construction requirements under Part 11A of the Regulations and the Plumbing Regulations 2018.

Importantly, the exemption only applies for a maximum occupation period of 3 years and only if the owner has complied with the notification requirements to be given to the relevant council and the construction requirements.

The exemption ceases to operate before the end of the maximum occupation period if:

- (a) the MBS has identified a non-compliance at an inspection of the emergency accommodation building and the owner does not rectify the non-compliance within the period time required by the MBS; or
- (b) the owner no longer occupies the building as the owner's principle place of residence.

A planning permit for an emergency accommodation building may still be required particularly when not related to a bushfire event. Owners are advised to check with the relevant council if any planning permit exemption exists and conditions of any applicable exemptions. Clause 52.07 of the planning scheme gives a planning permit exemption for temporary housing for up to 3 years for the purpose of bushfire recovery.

Offences

The following offences relate to emergency accommodation buildings:

- Regulation 166D – A person must not occupy an emergency accommodation building for residential purposes before the notified commencement date.
- Regulation 166H – A person must not occupy an emergency accommodation building for residential purposes if an exemption under regulation 166G has ceased to operate unless the building complies with the Act, the Regulations that apply to that class of building.

The MBS may serve a building infringement notice to an owner or occupier who has committed an offence.

Related Documentation

- Building Act 1993
- Building Code of Australia Volume Two
- Building Regulations 2018
- Emergency Management Act 2013

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Contact Us

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