

Major Refurbishments – Guidance Note

This Guidance Note addresses how the disclosure obligations under the [Building Energy Efficiency Disclosure Act 2010](#) (the **BEED Act**) may apply to buildings subject to major refurbishment. It includes examples of how the disclosure obligations apply to buildings at different stages of major refurbishment, from planning to completion, to assist owners, lessors or sublessors to understand their obligations.

Legal context: The BEED Act and Major Refurbishment

Under the BEED Act, certain commercial buildings and areas of buildings that are used, or capable of being used, as an office are affected by energy efficiency disclosure obligations. The BEED Act requires the disclosure of a building's energy efficiency information to the market when this space is offered for sale or lease.

Corporations that own or lease a '**disclosure affected**' building or area ('**building owners**') must:

- obtain a Building Energy Efficiency Certificate (**BEEC**) before selling, letting or subletting the building or area of the building, or offering or inviting offers to do so;
- disclose a National Australian Built Environment Rating System (**NABERS**) Energy star rating (as set out in the BEEC) in advertisements for the building or area of the building; and
- provide all prospective commercial purchasers, lessees or sublessees with a copy of the current, registered BEEC as soon as reasonably practical or upon written request.

Together, these are the '**disclosure obligations**' under the BEED Act. Only a CBD accredited assessor (**Assessor**) can apply the assessment methods to obtain the energy ratings necessary to apply for a BEEC under the Commercial Building Disclosure (**CBD**) program.

In certain circumstances, a person may apply for an exemption to the application of the disclosure obligations, including, as discussed below, where a major refurbishment is underway.

What is a major refurbishment?

A major refurbishment is defined under regulation 5B(1) of the [Building Energy Efficiency Disclosure Regulations 2010](#) as a refurbishment of the building that, according to an Assessor, will alter the NABERS base building energy rating of the building **by at least half a star**. This assessment must be based on the rules contained in the *NABERS Energy and Water for Offices Rules (NABERS Rules)*, published by the NSW Office of Environment and Heritage.

Major refurbishment and disclosure obligations

Depending on the stage of the project, the fact that a building (or area of building) is subject to major refurbishment may mean that it:

- **is disclosure affected** and subject to the disclosure obligations. In some circumstances, an exemption from the obligations may be sought, including where the major refurbishment is currently underway; or
- **is not disclosure affected**, and does not require a BEEC or an exemption.



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In summary:

- *Before* a major refurbishment begins and throughout the planning stage, a building that is disclosure affected remains so affected.
 - In some circumstances, an exemption may be granted, but not on the basis that a major refurbishment is planned. For example, an exemption may be granted where a building has been fully vacant for more than 12 months and a NABERS Energy rating cannot be completed.
- While a major refurbishment of a building is *underway*, a building that is disclosure affected remains so affected.
 - However, an exemption may be granted on the basis that the refurbishment is underway. A building that has a current exemption does not need a BEEC.
- Once the major refurbishment is *completed*, the building will automatically not be disclosure affected for up to two years from the date of issue of a certificate of occupancy (or equivalent). If a certificate of occupancy or equivalent is not issued, the building will not fall within this category and will remain disclosure affected and subject to the disclosure obligations in the BEED Act.
 - Once the refurbishment works are complete, no exemption can be granted due to the major refurbishment. However, exemptions can be sought for other reasons such as where a building has been fully vacant for more than 12 months and a NABERS Energy rating cannot be completed.

For more information about disclosure obligations, including when a building (or area of a building) is disclosure affected, and other possible exemptions from these obligations, please refer to the relevant Guidance Notes available on the [CBD Program website](#).



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Planning a major refurbishment

If you are planning a major refurbishment and your building is disclosure affected, the building remains so affected, despite the planning activities.

Although the major refurbishment is expected to change the NABERS Energy rating, if you offer the building for sale, lease or sublease, you will still need a BEEC and all advertising must display the current NABERS Energy rating. You can market the planned energy improvements in other ways.

In some circumstances, you may seek an exemption from the disclosure obligations. However, no exemption is available because of the refurbishment, as the project that is still being planned and is not yet underway.

Example 1 – Planning a Refurbishment

AAA Offices Pty Ltd has accepted a concept plan for a mechanical services upgrade in an office building. The tender documents are being drawn up but no contracts have been signed for the work. An Assessor engaged by AAA estimates that the building's NABERS rating will increase from 2 stars to 4 stars when the works are complete. The building is not eligible for an exemption because the work is not considered to be underway until the contract is signed, so the owner will require a BEEC to sell, let or sublet the building.

A major refurbishment is underway

A major refurbishment is considered 'underway' when the contracts for construction or equipment supply have been executed.

While a major refurbishment of a building is underway, a building that is disclosure affected remains so affected, despite the refurbishment being underway. However, an exemption to the obligations may be granted on the basis that the major refurbishment is underway. An application for such an exemption must include:

- an assessment by an Assessor that the refurbishment is a 'major refurbishment' for the purposes of the BEED Act . This should include evidence regarding the project scope, status, timeline and expected NABERS Energy improvement; **and**
- the Assessor's conflict of interest statement.

If granted, the exemption will be in force for 12 months. If the major refurbishment of the building is not completed within this time, the applicant can apply for another exemption.



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Example 2 – Contracts signed

The board of AAA Offices has approved investment in the air-conditioning upgrade at their office building to achieve a 2 star improvement in the NABERS Energy rating. Contracts have been signed and the first stage construction work is due to start. The project is now considered to be underway as contracts have been executed, so AAA can seek an exemption from the disclosure obligations on the basis that the major refurbishment is now underway.

Example 3 – Delays in project works

There have been delays with the scheduling for the upgrade at AAA Offices and the start date for the major upgrade of the air conditioning system has been pushed back by six weeks. The project is still considered to be underway as the contract has been executed, so AAA can seek an exemption from the disclosure obligations on the basis that the major refurbishment is underway.

Example 4 – NABERS rating changes by less than half a star

The owners of a disclosure affected office building have signed contracts to upgrade the lifts and foyer. A CBD Accredited Assessor has advised that this will not increase the building's NABERS Energy rating by half a star and therefore will not meet the definition of a major refurbishment for the purposes of the Act. Even though the work is underway, it is not possible to grant an exemption from the disclosure obligations on this basis. If the building is offered for sale, lease or sublease, the building will require a BEEC or an exemption that has been sought on a different basis, such as extended vacancy or metering issues.

For more information on exemptions, including how to apply for an exemption, please refer to the ['Exemptions Guidance Note'](#).



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The major refurbishment is complete

After a major refurbishment project has been completed, a building is not disclosure affected for two years from the date the certificate of occupancy (or equivalent) is issued. If there are staged certificates for different areas of the building, the building is not disclosure affected from the date the last certificate was issued.

The building's disclosure status changes automatically: you do not need to apply. As part of the CBD program's compliance monitoring activities, you may be asked by the CBD team to provide information to substantiate that the major refurbishments were undertaken and are completed.

Once the certificate of occupancy (or equivalent) is more than two years old, the building will become disclosure affected again. It will require a BEEC or an exemption if it is offered for sale, lease or sublease.

However, if the nature of the works is such that no new certificate of occupancy is issued when the project is complete, the building remains disclosure affected. The conditions for issuing a Certificate of Occupancy vary between jurisdictions. In many locations, no Certificate of Occupancy will be issued when air conditioning plant items have been replaced but there have been no changes to fire services or the building classification.

After a major refurbishment: What if your building is still not eligible for a NABERS Energy Rating?

In some circumstances, a refurbished building might be disclosure affected but not eligible for a NABERS rating necessary to obtain a BEEC. Under the NABERS Rules, if your building is subject to major refurbishment, it will only be eligible for a rating when one of the following requirements is met (whichever occurs first):

- the entire building is fit for occupation and is 75% occupied; **or**
- it has been two years since the certificate of occupancy (or state-based equivalent) was issued.

In other words,

- once the occupancy increases above 75% after the refurbishment, the building will be eligible for a NABERS Energy Rating even if the occupancy certificate is less than two years old.
- once the certificate of occupancy is more than two years old, the building will be eligible for a NABERS Energy Rating regardless of whether the occupancy rate is less than 75%.

Where a building subject to major refurbishment is not eligible for a NABERS rating, an exemption may be sought to the disclosure obligations on this basis.

Once a building becomes eligible for a NABERS Energy Rating, an Assessor must begin collecting 12 months of data on the building (the 'Rating Period'). You will also need to allow time to prepare and process the NABERS rating; NABERS Assessors are allowed up to 4 months to submit their application. An exemption may be granted to cover the Rating Period and submission time. The longest exemption is 12 months. However, multiple exemptions may be granted if it is not yet possible to work out its NABERS rating.



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Example 5 – 75% occupancy maintained throughout project works

AAA Offices has completed a major refurbishment and received a certificate of occupancy. The building is not disclosure affected for two years. AAA has maintained an occupancy rate above 75% throughout the process. This means that the building is eligible for a NABERS rating immediately and can begin gathering rating data at any time. Once the certificate of occupancy is more than two years old, the building will become disclosure-affected and a BEEC or exemption will be required if the building is offered for sale, lease or sublease. AAA organises an Assessor to complete the NABERS rating and BEEC application **before** the second anniversary of completion, noting that NABERS allows up to four months for an Assessor to lodge a rating application. By starting early, AAA is able have the BEEC application approved as soon as the building becomes disclosure affected.

In this example, as the building is eligible to gather NABERS Energy data at any time, AAA could also opt to voluntarily submit a BEEC application earlier in the non-disclosure period.

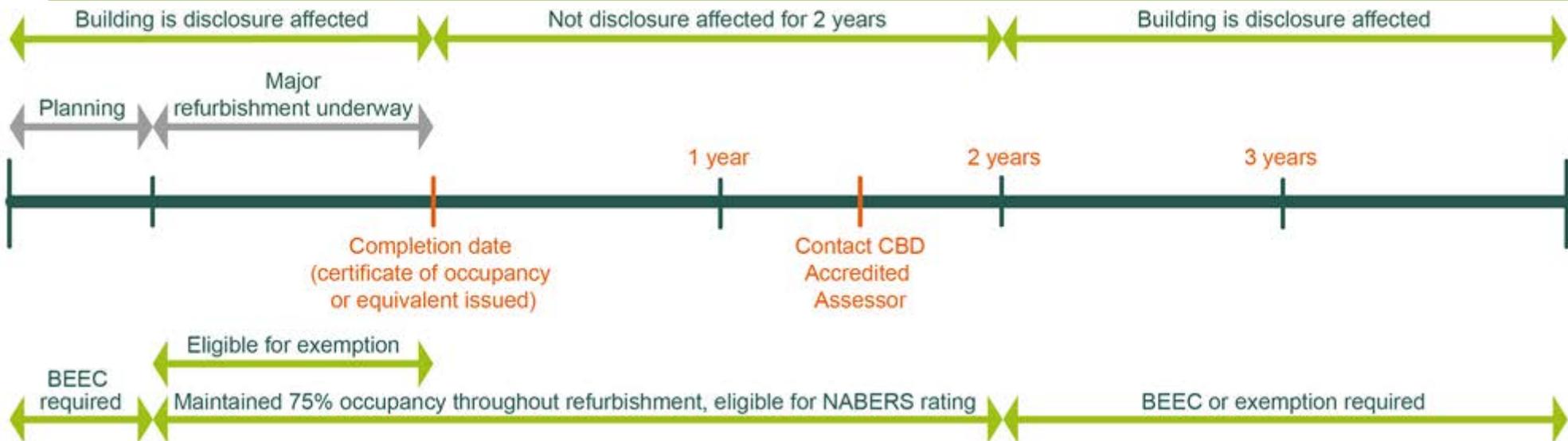


Figure 1: 75% occupancy maintained during refurbishment period

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Example 6 – No certificate of occupancy issued

ZZ Company applied for and received a twelve month exemption while its office building was undergoing major refurbishment. The work was completed in 6 months. However, due to the nature of the work, a certificate of occupancy (or state-based equivalent) was not required or issued. As such, the building remains disclosure affected. Once the exemption expires, the building will need a BEEC or another exemption (on different grounds) if it is offered for sale, lease or sublease.

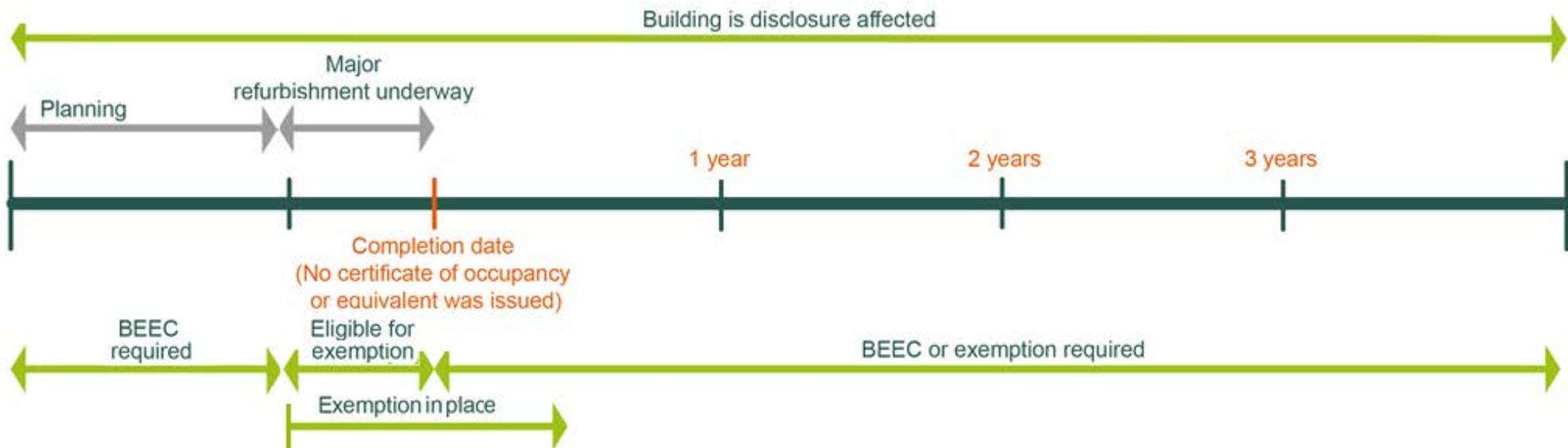


Figure 2: No certificate of occupancy



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Example 7 – No certificate of occupancy issued and 75% occupancy reached within two years of project completion

A major refurbishment takes a year to complete, with a twelve month exemption issued approximately half way through the process. Due to the nature of the works, no certificate of occupancy is issued. Therefore, the building remains disclosure affected.

However, as occupancy remains below 75%, and the building is not immediately eligible for a NABERS rating, based on the NABERS eligibility criteria. When the first exemption expires, a further exemption is sought and obtained for the maximum duration of 12 months.

Eight months after the major refurbishment was completed, the building achieves 75% occupancy and the NABERS Rating Period for data collection begins. However, it takes a further four months for the NABERS rating application to be lodged. The building owner seeks and obtains a third, shorter, exemption cover the final months of the NABERS Rating Period for data gathering and the four month lodgement period.

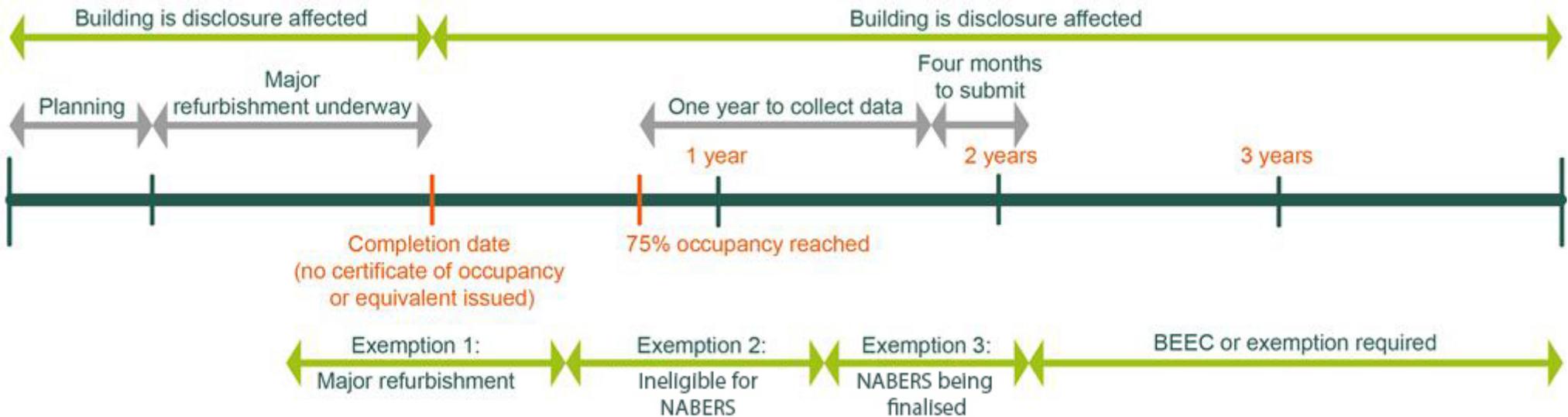


Figure 3: Multiple exemptions and no certificate of occupancy



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Example 8 – Certificate of occupancy issued and 75% occupancy reached within two years

Building Enterprise Pty Ltd seeks and receives a twelve month exemption due to major refurbishment works. When the works are complete, a certificate of occupancy is issued. The building automatically enters the two year non-disclosure period. Occupancy reaches 75% when the certificate of occupancy is 18 months old and data gathering for the NABERS Energy rating begins. The building becomes disclosure affected six months later, when the certificate of occupancy is two years old.

The NABERS rating cannot be obtained until an Assessor has collected twelve months data (at the end of the Rating Period) and then applied for a NABERS Rating (up to four months). This occurs six to ten months after the building becomes disclosure affected. When the building becomes disclosure affected, the owners apply for and receive a ten-month exemption as the building is non-assessable until the NABERS Rating can be finalised.



Figure 4: Certificate of occupancy issued and 75% occupancy reached within two years



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Example 9 – Occupancy remains below 75% two years after certificate of occupancy is issued

Commercial Properties Pty Ltd seeks and receives a twelve month exemption due to major refurbishment works. When the works are complete, a certificate of occupancy is issued. The building automatically enters the two year non-disclosure period. Occupancy only reaches 60% during this period and therefore the building remains ineligible for a NABERS Rating. The building becomes disclosure affected when the certificate of occupancy is two years old. On the same day, the building becomes eligible to start the NABERS Rating period.

The rating cannot be obtained until an Assessor has collected 12 months data and then applied for a NABERS Rating (up to 4 months). During the data gathering period, the building owner receives a 12 month exemption on the grounds that the building is not assessable. The building owner then applies for and receives a further four month exemption to cover the NABERS lodgement period. At the end of the third exemption, the BEEC is issued.

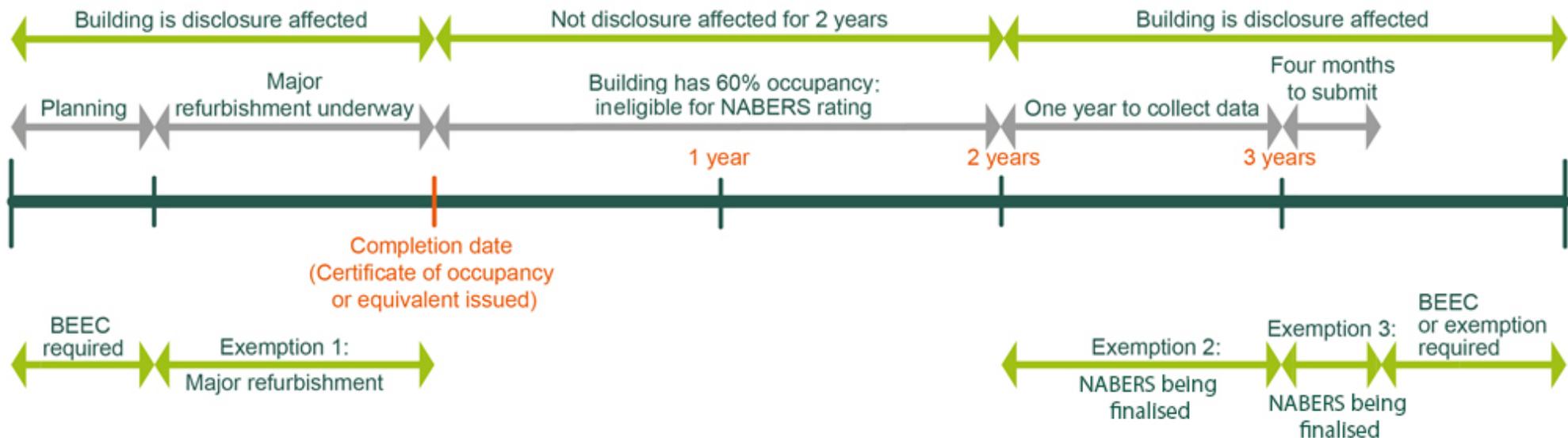


Figure 5: Occupancy remains below 75% for two years after certificate of occupancy is issued



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Disclaimer

The information in this Guidance Note does not, and is not intended to, constitute legal advice on the obligations under the *Building Energy Efficiency Disclosure Act 2010* (the BEED Act) and should not be taken to indicate the Department's commitment to a particular course of action. Please see the Disclaimer on the Department's CBD Program website at <http://cbd.gov.au> for more information.

The Guidance Note provides guidance on how the disclosure obligations under the BEED Act may apply to buildings at different stages of major refurbishment. The Department recommends that building owners, lessors and sub-lessors obtain their own independent legal advice if they are unsure about any obligations that they might have under the BEED Act.

Contact Us

For further information regarding the CBD Program, please see the CBD Program website at: <http://cbd.gov.au>. You can also contact the CBD Team during business hours on our toll free hotline 1800 020 131 or via email info@cbd.gov.au.

