

What is an Office – Guidance Note

This Guidance Note provides guidance on how the disclosure obligations under the [Building Energy Efficiency Disclosure Act 2010 \(the BEED Act\)](#) may apply to buildings depending on their use. It includes examples of how the disclosure obligations may apply to buildings which are or have been used for educational, retail and warehouse activities and how these obligations may change if the use of the building changes.

Legal context: the BEED Act

Under the [Building Energy Efficiency Disclosure Act 2010 \(the BEED Act\)](#), certain commercial buildings and areas of buildings which are used, or are capable of being used as an office may have energy efficiency disclosure obligations.

Corporations that own or lease a disclosure affected building or area of a building 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. They must also disclose a National Australian Built Environment Rating System (NABERS) Energy 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 practicable upon written request.

A building or an area of a building will be disclosure affected under the BEED Act, if it:

- is used or capable of being used as an office; and
- meets the requirements of the Building Energy Efficiency Disclosure (Disclosure Affected Buildings) Determination 2016 (Determination) and does not fall within one of the prescribed exceptions in the Determination (for example, being newly constructed or having had a major refurbishment within the past two years. See section 5, subsections (4), (5), and (6) of and section 6 subsections (4), (5), and (6) of the Determination.)

The building also must not have been exempted under sections 17 or 17A of the BEED Act.

Under sections 5 and 6 of the Determination, a building or area of a building is disclosure affected if:

- at least 75% of the space in the building by Net Lettable Area (or Gross Lettable Area if Net Lettable Area is not available) is for administrative, clerical, professional or similar information-based activities, including any support facilities for those activities; and
- the Net Lettable Area (or Gross Lettable Area if Net Lettable Area is not available) of the space in the building or area of building that is for administrative, clerical, professional or similar information-based activities, including any support facilities for those activities, is at least 1000 square metres.

The phrase ‘administrative, clerical, professional or similar information-based activities’ is intended to encompass all activities that would typically take place in a commercial office space. A building may contain commercial office space and non-office areas such as warehouses, manufacturing/support facilities, medical centres, hotels or retail outlets. For an explanation of how disclosure obligations apply in buildings that contain a mix of uses, including both office and non-office areas, please refer to the [Guidance Note for Mixed Use Buildings](#).



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What is an office: When is a building or area *for* administrative, clerical, professional or similar information-based activities?

This Guidance Note sets out several examples as guidance on determining when a building or area of a building is for office use, as part of determining whether it is disclosure affected under the BEED Act.

If it is disclosure affected, then a BEEC or an exemption is required. While it is generally easy to determine whether or not a space is an office, some more difficult circumstances are discussed below.

Spaces originally created as offices, but currently used for other purposes

If a building or area of a building was originally created for administrative, clerical, professional or similar information-based activities, but has been fitted out for other activities, then the building and the spaces in it are not for office activities and not disclosure affected. This may include buildings fitted out and used for:

- Education and training, including English language colleges and areas classified as “educational offices” under the current NABERS *Energy and Water for Offices Rules (NABERS Rules)*.
- Medical and doctors surgeries, including areas classified as ‘medical offices’ under the NABERS Rules.
- Commercial gyms, retail or other non-office uses.

For the purposes of the CBD Program, these spaces are not disclosure affected while they are occupied for non-office uses. However, the disclosure status of the building may change if the building is no longer occupied and the vacant space is suitable for office use.

Example 1

Building 1 was originally constructed as a commercial office building. AA Business College has leased the entire building for three years. The College has fitted out several large seminar rooms, computer training rooms, a student common room, reception area, and cellular offices for the teaching staff. The owner wants to sell the building.

The building is **not disclosure affected** because the building is not for administrative use, even if the advertising states that the building was constructed as office and could potentially be used in future as an office. The building can be advertised for lease or sale without a BEEC or an exemption, while it is still leased by the educational tenant AA Business College.



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Example 2

Building 2 was originally built as an office. The Catering College Pty Ltd leased the entire building and fitted it out with commercial kitchens, a training café, and a room for cooking demonstrations.

The lease ends in six months, and the owner wants to advertise now to any potential tenants, including those seeking office accommodation.

The building is **not disclosure affected** because the building is not for administrative use, even if the advertising states that the building was constructed as office and could potentially be used in future as an office. The building can be advertised for lease or sale without a BEEC or an exemption, while it is still leased by the educational tenant The Catering College Pty Ltd.

Example 3

Building 3 was built as an office and 50% of it is leased as office space. The Good Food College Pty Ltd leased 50% of the building and fitted those spaces out with commercial kitchens, a training café, and a room for cooking demonstrations.

The lease ends in six months, and the owner wants to advertise now to any potential tenants, including those seeking office accommodation.

The building is **not disclosure affected** because under 75% of the building is for administrative use, even if the advertising states that the building was constructed as office and could potentially be used in future as an office. The building can be advertised for lease or sale without a BEEC or an exemption, while more than 25% of it is still leased by The Good Food College Pty Ltd.

Spaces designed for non-office uses

If a building or an area of a building was created for activities **other than** administrative, clerical, professional or similar information-based tasks, and it remains adapted for those activities, then the building or area of a building is not disclosure affected. There are no disclosure obligations, even if advertising highlights the potential for the building to be converted to an office in the future.

However, if the building or an area of the building is converted to office use then it will become disclosure affected.



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Example 4

Building 3 is a 5,000m² warehouse. The building is double height with high bay lighting, minimal insulation and no air-conditioning. The owner has been unable to attract a warehouse tenant and wants to advertise that the building could be refurbished for office use.

The building is **not disclosure affected** as it was not constructed as an office and cannot be used as an office in its current state. The owner can advertise the building without a BEEC or an exemption. However, if the building or an area of the building is converted to office use then it will become disclosure affected.

For an explanation of how disclosure obligations apply in buildings where a major refurbishment is planned, underway or recently completed, please refer to the [Guidance Note for Major Refurbishments](#).

Example 5

Building 4 is a 5,000m² warehouse. The building is double height with high bay lighting, minimal insulation and no air-conditioning. The owner was unable to attract a warehouse tenant but has received interest in his building from several potential tenants who would move in if it was fitted out for office use, but they will only occupy part of the building. The owner decides to refurbish the whole building to make it fit for office space, but needs to advertise to fill the remaining empty office space he will create.

For the purposes of the CBD Program this would count as a Major Refurbishment, please refer to the [Guidance Note for Major Refurbishments](#). The building is **not disclosure affected** while the building refurbishment is planned or underway as it was not constructed as an office and cannot be used as an office in its current state. The owner can advertise the planned new office spaces without a BEEC or an exemption while the refurbishment is being planned or underway.



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Multi-purpose spaces

If a building or area of a building has been designed for a variety of uses and has not been fitted out at all (or has a shell and core fitout), then it may be disclosure affected if it is offered for sale or lease if it could be used for office space. However, building owners and their agents should consider whether at least 75% of the building is suitable for office use in its current form and it is at least 1000 square metres. Please refer to the [Guidance Note for Mixed Use Buildings](#) for more information.

Vacant Spaces

If a space is vacant, it may be disclosure-affected if it is suitable for office use. This include spaces in buildings created for non-office or multiple use, including where a non-office fit out has been removed or 'made good'.

Some buildings in these circumstances may be disclosure-affected but still unable to obtain a NABERS rating, because of previous use for non-office activities. The building owner or lessor may apply for an exemption from the disclosure obligations under the BEED Act on the basis that the building or area is non-assessable as it is not possible to certify the NABERS Rating due to the characteristics of the building or area. Please see the [Exemption application – Guidance note](#) on the CBD website.

A building owner may intend for their building to be used for a non-office purpose in the future. However, if the building in its current state is capable of being used as an office space, the building owner must comply with the disclosure obligations under the BEED Act.



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Example 6

Following the sale of Building 1 (see Example 1), AA Business College closed down and vacated the building. The furniture has been removed and the building has been vacated. The space is now empty with services provided which would make it suitable for office use pending a fitout.

The new owners want to offer the space for lease to any potential tenants, including those seeking office accommodation.

The building **is now disclosure affected** because it is suitable for office use. However, it is not possible to calculate a NABERS Energy rating for the building, because of its previous use by an educational tenant. The NABERS rated area is zero. This means that the building cannot obtain a BEEC.

To meet their disclosure obligations, the new owners will need an exemption for the building. In the exemption application, applicants must:

- obtain a statement from a CBD Accredited Assessor to support the exemption application; and
- include confirmation from the NABERS Administrator that the NABERS Energy rating cannot be calculated as a supporting statement.

Please see the [Exemption application – Guidance note](#) on the CBD website.

Example 7

When they closed down the Catering College Pty Ltd broke their lease in Building 2 (Example 2), which was originally built for office use. They moved out without completing any make-good works, leaving the kitchens and educational fit-out in place. The owners now want to offer the space to any potential tenants, including those seeking office accommodation.

The building is **not disclosure affected** because the fit-out of the previous educational tenant remains in the building and it is unsuitable for office use.



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Example 8

If the vacated space in Example 2 is offered or advertised for lease after the Catering College Pty Ltd fit-out has been removed and make good works completed, then it **will be disclosure affected** as it would then be suitable for office use.

However, it will not be possible to complete a NABERS Rating for the building, because the NABERS rateable area will be zero because of its previous use as a catering college. This means that the building cannot obtain a BEEC.

To meet their disclosure obligations, the owners will need an exemption for the building. In the exemption application, applicants must:

- obtain a statement from a CBD Accredited Assessor to support the exemption application; and
- must include confirmation from the NABERS Administrator that the NABERS Energy rating cannot be calculated as a supporting statement

Please see the [Exemption application – Guidance note](#) on the CBD website.

Example 9

Building 9 is an office building that has been fully vacant for more than 12 months. Due to high vacancies in the office rental market, the owner wishes to sell the site to a developer to convert it for residential use. Prior to commencing marketing, the owner obtains Development Approval from the local council for a redevelopment.

The building **is disclosure affected**. Even though the owner does not intend for the building to be used as an office in the future, it is being offered as a vacant office block capable of being used as an office.

However, it is not possible to calculate a NABERS Energy rating for the building, because the NABERS rateable area is zero due to the vacancies. This means that the building cannot obtain a BEEC.

To meet their disclosure obligations, the owner will need an exemption for the building. In the exemption application, applicants must:

- obtain a statement from a CBD Accredited Assessor to support the exemption application; and
- provide written evidence from the building owner or their agent, confirming that the building has been vacant for more than 12 months; and
- provide photographs of the vacant areas of the building.

Please see the [Exemption application – Guidance note](#) on the CBD website.



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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 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 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 located 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.

