

APPLICATION FOR SECTION 160 MODIFICATION

MODIFICATION OF BUILDING REGULATIONS

1 SITE DETAILS

Address

Street Address:

Suburb:

State:

P/Code:

Municipality

Is the copy of a recent title search (less than three months) and plan of subdivision/title plan (if applicable) for the allotment attached?

✓

Yes		Note: If the applicant is a company, a Company Extract must also be provided and must be dated less than three months of the date of the application being lodged. Go to: ASIC Connect .
No		You are required to attach a recent (less than three months) title search and plan of subdivision/title plan (if applicable) for the allotment. Go to: LANDATA® .

2 APPLICANT

Name

Company name and ACN (if applicable)

Address

Street Address:

Suburb:

State:

P/Code:

Phone Business hours:

Mobile:

Email:

Who is the applicant in this application?

Tick relevant box below:

✓

☒	The applicant is the owner.
☐	The applicant is the purchaser of a lot under a contract of sale, which is of a kind referred to in s 9AA(1) of the <i>Sale of Land Act 1962</i> .
☐	The applicant is a Department Head within the meaning of the <i>Public Administration Act 2004</i> .
☐	The applicant is a public authority.
☐	The applicant is a municipal building surveyor.

If you are a representative of the applicant, please complete the Authority to Act form on page 8 of this document. Under section 248(1) of the *Building Act 1993* (the Act), it is an offence for a person to act on behalf of an owner of a building or land for the purpose of making an application unless the person is authorised in writing to do so.

The Act requires that a copy of this application document must be served on other parties, namely:

- any other 'party concerned' (this would generally include other people with a direct and immediate interest in the outcome of the application); and
- if the modification relates to a building or land on a register under the *Heritage Act 2017*.

3 RELEVANT BUILDING SURVEYOR

List Relevant Building Surveyor (RBS) involved in this matter

Name

Company name and ACN (if applicable)

Address

Street Address:	
Suburb:	
State:	P/Code:
Phone Business hours:	Mobile:
Email:	

4 REGULATORY PROVISIONS

4A Outline of section 160 of the Act

Under section 160 of the Act, an application may be made to the Building Appeals Board (the Board) for a determination that a provision of the building regulations (as defined in section 160(1) of the Act):

- **does not apply;** or
- **applies with the modifications or variations** specified in the application.

The Board must not determine that:

- a provision of the regulations does not apply to a building or land unless satisfied that, in the particular circumstances, the provision is **inappropriate**;
- a provision of the regulations applies to a building or land in a modified or varied form unless satisfied that to do so is **reasonable** and **not detrimental to the public interest**.

If the application relates to an access provision of the building regulations, within the meaning of section 160B(8) of the Act, you must apply under section 160B of the Act (rather than under section 160).

Before determining an application under section 160, the Board:

- (a) must consult:
- (i) any authority that would be a reporting authority if the application were an application for a permit; and
 - (ii) the Building and Plumbing Commission, if the application discloses that any aspect of the matter has been considered by it; and
 - (iii) if the application shows that any aspect of the matter relates to a building permit, the relevant building surveyor; and
- (b) if the application concerns a building included in the Heritage Register established under the *Heritage Act 2017*, must consider any recommendation received from the Heritage Council before the hearing of the application; and
- (c) may consult the municipal building surveyor; and
- (d) may consult any other body or person.

4B Nature of application under section 160 of the Act

What is the nature of your application?

✓

	That a provision of the building regulations does not apply.	Complete question 4C
	That a provision of the building regulations applies in a modified or varied form.	Complete question 4D
	That: • a provision of the building regulations does not apply; and, in the alternative • a provision of the building regulations applies in a modified or varied form.	Complete questions 4C and 4D

Building Appeals Board

Nominate the Building Code of Australia (BCA) Performance Requirement(s)	Nominate the BCA Deemed to Satisfy provision(s) (if relevant)

Nature of application for modification of the building regulations:

Example nature of an application made under s 160(2)(a):

An application dated [INSERT DATE] and made under s 160(2)(a) of the *Building Act 1993* to permit clause/regulation [INSERT CLAUSE/REGULATION] of the *Building Code of Australia* [INSERT YEAR], Volume [INSERT VOLUME]/Building Regulations 2018 not to apply to a Class [INSERT CLASS] building, namely; to permit the proposed/existing [INSERT PROPOSAL], as indicated in the submission, instead of [INSERT WHAT IS PRESCRIBED].

Example nature of an application made under s 160(2)(b):

An application dated [INSERT DATE] and made under s 160(2)(b) of the *Building Act 1993* to modify clause/regulation [INSERT CLAUSE/REGULATION] of the *Building Code of Australia* [INSERT YEAR], Volume [INSERT VOLUME]/Building Regulations 2018 applying to a Class [INSERT CLASS] building, namely; to permit the proposed/existing [INSERT PROPOSAL], as indicated in the submission, instead of [INSERT WHAT IS PRESCRIBED].

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4C Regulations that do not apply

Tick the relevant box below and list the regulatory provisions that, in your view, should **not apply** to the building or land specified in this application.

✓	Regulatory provisions	Specify the provision
	BCA Performance Requirements	
	BCA Deemed to Satisfy provisions	
	<i>Building Regulations 2018</i>	
	Previous Building Regulations	
	Australian Standards	
	Other	

4D Regulations that apply in a modified or varied form

Tick the relevant box below and list the regulatory provisions that, in your view, should apply to the building or land specified in this application in a modified or varied form.

✓	Regulatory provisions	Specify the provision
	BCA Performance Requirements	
	BCA Deemed to Satisfy provisions	
	<i>Building Regulations 2018</i>	
	Previous Building Regulations	
	Australian Standards	
	Other	

5 RELEVANT BUILDING / LAND DETAILS

Use of Building	
BCA Classification - (Go to: Building classes)	
No of storeys	
Floor area of existing building	
Floor area of new building	
Type of construction	(not relevant to class 1 & 10)
Effective height	(not relevant to class 1 & 10)
Volume of the building	(not relevant to class 1 & 10)

6 INFORMATION APPLICABLE TO APPLICATION

Please answer the questions below and provide relevant documents where necessary

	Yes	No
Has an application for a building permit been lodged?		
Has the building permit been issued?		
Has work that forms part of this application commenced?		
If yes what percentage is completed		%

Building Appeals Board

Nominate the edition/year of the BCA and/or the version of the building regulations that is to be modified or not to apply.		
Are there any Building Notices or Building Orders that may directly or indirectly relate to the matter raised in this application? If yes, provide a copy of the Building Notice or Building Order.		
Has any fire engineering, fire safety assessment or other expert reports, alternative building solution or dispensation been undertaken that may in any way relate to the matters raised in the application? If yes, provide copies.		
Is there a relevant planning permit?		
Is the building on a register under the <i>Heritage Act 1995</i> ?		

Aside from the matters outlined in this application has any aspect of this matter been or being considered by the Building Appeals Board or the Building and Plumbing Commission?

✓

Yes		Provide details and attach to this application
No		

7 MANDATORY INFORMATION

A written submission must be provided together with this application form to support the application. In addition to the information sought in questions 4, 5 and 6 above, the submission must include the following:

1. The background of the proposal and the reasons why this application is being made.
2. Comments from the RBS where applications relate to a Building Permit - alternatively the Board will refer your application to the RBS.
3. Where the application relates to the BCA nominate:
 - the relevant primary Performance Requirements; and
 - the applicable deemed to satisfy provisions.
4. Where the application relates to a BCA Performance Requirements, the applicant must provide commentary on the implications for each of the individual clauses of the Performance Requirement.
5. If the application is seeking a determination that a provision of a building regulation (as defined by section 160(1)) does not apply, outline:
 - the implication of such a provision not applying;
 - why the provisions are inappropriate; and
 - why the Board should make the determination.
6. If the application is seeking a determination that a provision of a building regulation (as defined by section 160(1)) applies in a modified or varied form, outline:
 - the implication of making such a modification or variation;
 - why such modification or variation would be reasonable and not detrimental to the public interest ; and

Building Appeals Board

- why the Board should determine that the above provisions apply in a modified or varied form.
7. Commentary on the following issues, to the extent that they are relevant:
 - Class of building
 - Rise in storeys
 - Protection from spread of fire
 - Active fire detection and early warning systems
 - Occupant life safety
 - Special characteristics of fuel load
 - Safe movement and access to and within the building
 - Exposure to allotment boundary
 - Potential Ignition sources
 - Bushfire protection
 - Health and Amenity of occupants
 8. Documentation, such as drawings, photographs and plans, which is numbered or clearly described. The drawings MUST be marked up clearly to highlight the determination sought.
 9. Any other information that will assist the Board to determine this application.

8 FEES / PAYMENT

A separate fee is to be paid for each matter to be determined. The fees are outlined at [Forms, fees and templates | Building Appeals Board](#).

- Always refer to the current prescribed fee schedule for modification application costs prior to submitting your application.
- Complete the [Payment Details Form](#).

Please indicate your total fee amount payable for this application.

Total Amount

\$

9 SIGNATURE

I understand that, under section 248(1) of the *Building Act 1993* (the Act), it is an offence for a person to act on behalf of an owner of a building or land for the purpose of making an application unless the person is authorised in writing to do so.

I acknowledge that it is an offence to knowingly make any false or misleading statement or provide any false or misleading information to the Building Appeals Board in relation to an application (s 246 of the Act).

SIGNATURE: _____

DATE: _____

AUTHORITY TO ACT FORM

1 OWNER/S DETAILS

Name of owner/s

Company Name and ACN (if applicable)

Address

Street Address:	
Suburb:	
State:	P/Code:
Phone Business hours:	Mobile:
Email:	

2 SITE DETAILS

Address (please note a copy of title search/contract of sale is required to confirm ownership of the land/building)

Street Address:	
Suburb:	
State:	P/Code:

3 SIGNATURE OF OWNER/S

DECLARATION

I confirm I am the owner of the above site and consent to the following person acting on my behalf:

Name of person or representative: _____

I also acknowledge that it is an offence to knowingly make any false or misleading statement or provide any false or misleading information to the Building Appeals Board in relation to an application (section 246 of the *Building Act 1993*).

SIGNATURE OF FIRST OWNER: _____

PRINT NAME: _____

DATE: _____

SIGNATURE OF SECOND OWNER _____

PRINT NAME: _____

DATE: _____

APPLICATION CHECKLIST

Use this checklist to ensure all your required documents are submitted. If all the required information is not provided at the time of submission your application may not proceed.

1 SITE DETAILS	✓
A copy of the recent title search (less than three months) and plan of subdivision/title plan (if applicable) for the allotment is attached.	☐
2 APPLICANT	
If the applicant has appointed another person to act on their behalf, the 'Authority to Act' Form has been completed and signed by the applicant.	☐
3 MANDATORY INFORMATION	
The background of the proposal and the reasons why this application is being made.	☐
Comments from the RBS where applications relate to a Building Permit - alternatively the Board will refer your application to the RBS.	☐
Where the application relates to the BCA nominate: - the relevant primary Performance Requirements; and - the applicable deemed to satisfy provisions.	☐
Where the application relates to a BCA Performance Requirements, the applicant must provide commentary on the implications for each of the individual clauses of the Performance Requirement.	☐
If the application is seeking a determination that a provision of a building regulation (as defined by section 160(1)) does not apply, outline: - the implication of such a provision not applying; - why the provisions are inappropriate; and - why the Board should make the determination.	☐
If the application is seeking a determination that a provision of a building regulation (as defined by section 160(1)) being varied or modified, outline: - the implication of such a provision being varied or modified; - why modifying or varying the provisions is reasonable and not detrimental to the public interest; and - why the Board should make the determination.	☐
Documentation, such as drawings, photographs and plans, which is numbered or clearly described. The drawings MUST be marked up clearly to highlight the determination sought.	☐
4 FEES/PAYMENT	
Total fee amount payable for this application is identified.	☐
Payment Details Form has been completed and is attached.	☐
5 DECLARATION AND SIGNATURE	
You have acknowledged that it is an offence under section 246 of the Act to knowingly make any false or misleading statement or provide any false or misleading information to the Board in relation to this application.	☐