

APPLICATION FOR SECTION 160B MODIFICATION

MODIFICATION OF BUILDING REGULATIONS RELATING TO ACCESS FOR PERSONS WITH DISABILITIES

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 of the building or land.
☐	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 the lessee of the building, who proposes to have, or is having, building work carried out in respect of the building.
☐	The applicant is any person acting on behalf of a person referred to above, other than the relevant building surveyor.

If you are a representative of the applicant, please complete the Authority to Act form on page 10 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 *Historic Buildings Act 1981*, the Historic Buildings Council.

3 RELEVANT BUILDING SURVEYOR

It is a requirement that the Building Appeals Board (the Board) receive comment from the Relevant Building Surveyor (RBS) in relation to the request for a determination.

Name

Company name and ACN (if applicable)

Address

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

4 PERFORMANCE REQUIREMENTS

4A Nature of applications under section 160B

Under section 160B of the Act, an application may be made to the Board for a determination that an access provision of the building regulations (as defined in section 160B(8) of the Act):

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

An application must be made on the grounds that compliance with the access provision of the building regulations would impose **unjustifiable hardship** on the applicant.

Section 160B has detailed provisions relating to such applications. What is the nature of your application?

✓

	That an access provision of the building regulations does not apply.	Complete question 4B
	That an access provision of the building regulations applies in a modified or varied form.	Complete question 4C
	That: • an access provision of the building regulations does not apply; and, in the alternative • an access provision of the building regulations applies in a modified or varied form.	Complete questions 4B and 4C
	Building Code of Australia (BCA) Performance Requirement(s)	BCA Deemed to Satisfy provision(s)
Nature of modification of building regulations relating to access for persons with disabilities: Example nature of an application made under s 160B(1)(a): An application dated [INSERT DATE] and made under s 160B(1)(a) of the <i>Building Act 1993</i> to permit clause [INSERT CLAUSE] of the <i>Building Code of Australia</i> [INSERT YEAR], Volume [INSERT VOLUME] 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 160B(1)(b): An application dated [INSERT DATE] and made under s 160B(1)(b) of the <i>Building Act 1993</i> to modify clause [INSERT CLAUSE] of the <i>Building Code of Australia</i> [INSERT YEAR], Volume [INSERT VOLUME] 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]. 		

4B Access provisions that do not apply

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

Deemed to satisfy provisions that do not apply

Applicable performance clause(s) to be modified	✓	List the Deemed to Satisfy provision(s) that, in your view, should not apply (Specify whether these are based on the current edition of the BCA, or a specified earlier edition)
DP1		
DP4		
DP6		
DP8		
DP9		
EP3.4		
FP2.1		

Australian Standards that do not apply

List the Australian Standards (AS 1428.1) clause that, in your view, should not apply.

4C Access provisions that apply in a modified or varied form

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

Deemed to satisfy provisions to be modified or varied

Applicable performance clause(s) to be modified ✓	List the Deemed to Satisfy provision(s) to be modified or varied (Specify whether these are based on the current edition of the BCA, or a specified earlier edition)
DP1	
DP4	
DP6	
DP8	
DP9	
EP3.4	
FP2.1	

Australian Standards to be modified or varied

List the Australian Standards (AS 1428.1) clause to be modified or varied.

5 BUILDING DETAILS / SCOPE OF WORKS



☐	New Building
☐	Additions to existing building
☐	Alterations to existing building
☐	Change of use

If Change of use is selected above, please provide the following information:

Existing Use	
Proposed Use	

PROVIDE THE FOLLOWING DETAILS:

Use of Building	
BCA Classification - (Go to: Building classes)	
No of storeys	
Floor area of existing building	
Floor area of new building	
Estimated total cost of building work (including labour and material)	

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?		%
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.	☐	☐
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 in your attached submission and then go to question 9.
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 above the submission must include the following:

1. The background of the proposal and the reasons why this modification is being sought.
2. Comments from the RBS where the application relates 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;
 - the applicable deemed to satisfy provisions;
 - the edition of the BCA that is being modified;
 - the relevant Australian Standards and clause(s) to be modified.
4. 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.
5. Any other information that will assist the Board to determine this application.

7A MANDATORY INFORMATION UNJUSTIFIABLE HARDSHIP

Please also provide the following information to Board:

(Note: this information is required in order for the Board to determine whether compliance with the access provision would impose unjustifiable hardship on the applicant)

- (a) Any additional capital operating or other costs, or loss of revenue, that would be directly incurred by, or reasonably likely to result from, compliance with the provision.
- (b) Any reductions in capital, operating or other costs, or increases in revenue, that would be directly achieved by, or reasonably likely to result from, compliance with the provision.
- (c) The extent to which the construction of the building has or will be financed by government funding.
- (d) The extent to which the building:
 - (i) is used for public purposes; and
 - (ii) has a community function.
- (e) The financial position of the applicant.

- (f) Any effect that compliance with the provision is reasonably likely to have on the financial viability of the applicant.
- (g) Any exceptional technical factors (such as the effect of load-bearing elements on the structural integrity of the building) or geographic factors (such as gradient or topography), affecting a person's ability to comply with the provision.
- (h) Financial, staffing, technical, information and other resources reasonably available to the applicant, including any grants, tax concessions, subsidies or other external assistance provided or available.
- (i) Whether the cost of alterations to make any premises accessible is disproportionate to the value of the building, taking into consideration the improved value that would result from the alterations.
- (j) Benefits reasonably likely to accrue from compliance with the provision, including benefits to persons with disabilities, to building users or to other affected persons, or detriment likely to result from non-compliance.
- (k) Detriment reasonably likely to be suffered by the applicant, building developer, or building manager, or by persons with disabilities or other building users, including in relation to means of access, comfort and convenience, if compliance with the provision is required.
- (l) If detriment under paragraph (k) involves loss of heritage significance, the extent to which the heritage features of the building are essential, or merely incidental, to the heritage significance of the building.
- (m) Any evidence regarding efforts made in good faith by the applicant or a person required to comply with the provision, including consulting access consultants or the relevant building surveyor.
- (n) If the applicant has given an action plan (within the meaning of Part 3 of the *Disability Discrimination Act 1992* (Cth)) to the Building and Plumbing Commission under section 64 of that Act, the terms of the action plan and any evidence of its implementation.
- (o) The nature and results of any processes of consultation, including at local, regional, state, national, international, industry or other level, involving, or on behalf of the applicant, a building developer, building manager or the relevant building surveyor and persons with disabilities, about means of achieving compliance with the provision, including in relation to the factors listed in this subsection.

If a substantial issue of unjustifiable hardship is raised having regard to the factors mentioned above, then the Board must also consider the following additional factors:

- (a) the extent to which substantially equal access to public premises is or may be provided otherwise than by compliance with the access provision of the building regulations; and
- (b) any measures undertaken, or to be undertaken, by, on behalf of, or in association with, a person or organisation in order to ensure substantially equal access.

The Board is required to provide for compliance with an access provision of the building regulations to the maximum extent possible not involving unjustifiable hardship.

Please note that many applications to the Board under section 160B of the Act provide insufficient information, which delays the Board's determination of the matter. Please ensure that this application includes all relevant information.

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

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 modification is being sought.	☐
Comments from the RBS where the application relates 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; - the applicable deemed to satisfy provisions; - the edition of the BCA that is being modified; - the relevant Australian Standards and clause(s) to be modified.	
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.	
Mandatory information required at item 7A and 7B.	
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.	