

Building (Master Builders Fidelity Fund Assets) Determination 2009

Disallowable Instrument DI2009-92

made under the

Building (Prudential Standards) Determination 2005, Schedule, clause 34(d)

EXPLANATORY STATEMENT

Under section 96 of the *Building Act 2004* (Building Act) a fidelity fund scheme may be approved by the Planning and Land Authority.

Section 104 of the Building Act makes it an offence if the trustees of an approved fidelity fund scheme fail to ensure that the scheme complies with the Prudential Standards. The Prudential Standards are established under the *Building (Prudential Standards) Determination 2005*.

Under clause 34 of the Prudential Standards, assets of an approved scheme must only be applied to the following:

- to meet liabilities or expenses incurred for the purposes of maintaining the approved scheme;
- to make an investment in accordance with the Prudential Standards;
- to pay a request made pursuant to a fidelity certificate; or
- for such other purpose determined by the Minister in writing.

This determination is to allow the trustees of the Master Builders Fidelity Fund (the fidelity fund), an approved scheme under the Building Act, to apply funds for such other purpose as determined by the Minister in writing in accordance with clause 34(d) of the Prudential Standards.

The objective of this determination is to provide a necessary extension of the fidelity fund to allow the application of its assets toward a purpose that is in keeping with the purpose of the fidelity fund. Specifically, assets of the fidelity fund may be applied by the Master Builders Association for use in the ACT Skills Centre Building Fund and in accordance with the objects of the MBA Skills Centre Trust Deed.

The application of the fidelity fund's assets in this manner is permitted provided that the conditions under section 4 of the Determination are met. Those conditions are that the assets are surplus to the solvency requirements of the fidelity fund and the dominant purpose for applying them in the manner determined is for the purpose of providing essential and pre-emptive risk management initiatives that will protect the future assets of the fidelity fund.