

Australian Capital Territory

Building (Minimum Documentation and Information for Building Approval Applications – Class 2-9 Buildings) Guideline 2019

Disallowable instrument DI2019-178

made under the

Building Act 2004, 139BA (Approval of guidelines)

EXPLANATORY STATEMENT

Unless exempt, the *Building Act 2004* (the Act) requires that before building work is carried out, a building approval must be issued for the work. The Act and *Building (General) Regulation 2008* (the Regulation) provide for certain information to be provided in, or with, a building approval application.

In June 2016, the ACT Government announced the *Improving the ACT Building Regulatory System* reforms. <https://www.planning.act.gov.au/build-buy-reno/reviews-and-reforms/building-reforms> (link current at time of publication).

Reform 1 is to develop guidelines for minimum design documentation for building approval applications. As part of the reform program, the [Building and Construction Legislation Amendment Act 2016](#) included a new section 139BA of the Act, which empowers the Minister to approve guidelines for the Act. A guideline may set out standards and other matters about building approval applications, documentation, plans and specifications for building work.

This guideline is for land owners and people preparing plans and other documents to accompany an application for a building approval for a new class 2-9 building or a substantial alteration to a class 2-9 building. Class 2-9 buildings include residential apartment buildings, and buildings with a commercial use.

The guideline provides general information about building approvals and the approval process, as well as guidance on what should be considered when designing a building and documenting the design. This information is in notes, text boxes and general text.

The guideline also includes requirements for documents and information (the required information) to be included in the plans and accompanying documents that form part of a building approval application. This information is in specific parts and sections indicated

by a number. The information relates to section 17 (2) of the Regulation, which provides that plans in relation to the erection or alteration of a building must contain sufficient information about the proposed finished dimensions, arrangement, locations and inherent characteristic of materials making up every element of the proposed building work to allow—

- a) a building certifier to work out if a building erected or altered in accordance with the plan would contravene the Act;
- b) a competent builder to carry out the building work in accordance with the plans and the Act;
- c) a building certifier to work out if the building work, if carried out, complies with the plan and the Act; and
- d) a building certifier to work out if the building work is exempt from all or part of the Act.

The guideline outlines the minimum expected information in plans and other documents. Plans accompanying a building approval application for a new or substantially altered class 2-9 building will need to comply with the required information in these guidelines.

It is not an exhaustive list of all possible requirements for all projects. Depending on the nature of the project and its complexity, an application may need to include additional information.

Under the Act, a building certifier deciding on an application for a building approval may, by written notice, ask the applicant to give the certifier further information in relation to the application if the certifier believes on reasonable grounds that the information will help the certifier to decide the application. Nothing in the guideline prevents the building certifier requesting further information if the certifier considers it is required to decide the application.

Disapplication of notification requirement

Australian Standards and other instruments are incorporated into the guideline. The *Legislation Act 2001* (Legislation Act), s 47 (5) provides that an incorporated document is taken to be a notifiable instrument. A notifiable instrument must be notified on the legislation register under the Legislation Act. However, the Legislation Act, s 47 (5) may be displaced by the authorising law (the Act) or the incorporating instrument (this instrument) (see s 47 (7)). The Legislation Act, s 47 (5) is displaced here because the incorporated standards are subject to copyright and may be purchased over the Internet.

Copyright to the Building Code of Australia (BCA) is collectively owned by the Australian Government and the states and territories. The arrangement between jurisdictions is that the BCA will be published on behalf of the jurisdictions in a single place by the Australian Building Codes Board (ABCB). It would not be appropriate to publicly notify the code on an ACT Government website. Section 6 of the instrument provides for alternative access to the BCA as it is not being notified on the Legislation Register.

The ACT Appendix also makes reference to other Australian Standards already adopted under the BCA. Australian Standards are subject to copyright, and cannot be republished by the ACT Government. Adopted standards are available for inspection at the ACT Environment, Planning and Sustainable Development Directorate shopfront during business hours and can be purchased at www.standards.org.au.

The breadth of subjects and the level of expertise required to develop standards means that not all standards are developed by governments or to be provided available without cost. Adoption of technical standards is important to the effective functioning of building regulation. Where it is not possible to publish a standard, the instrument and schedule provide information on where to access standards.

Regulatory Impact Statement (RIS)

Section 34 of the *Legislation Act 2001* provides that if a proposed subordinate law or disallowable instrument (the proposed law) is likely to impose appreciable costs on the community, or a part of the community, then, before the proposed law is made, the Minister administering the authorising law (the administering Minister) must arrange for a regulatory impact statement to be prepared for the proposed law.

A RIS is not required for this instrument as the provisions of the guideline are not expected to impose appreciable costs on the community or part of the community. Section 17 (2) of the Regulation includes a long-standing provision that there must be sufficient information in plans to determine compliance with the Act, and plans must also comply with drafting standards. As such, the guideline does not fundamentally affect the law's application or operation.

Some building approval applications already contain the required technical information and plans. For other projects, the information is prepared by designers, but not included in the building approval application, or some, but not all, of the information is prepared. Therefore, any additional costs would attach to projects for which the required documents and information would not otherwise have been prepared. This cost would vary from project to project; however, is expected to represent a relatively small proportion, less 1% of the overall cost of a construction project. Further, investment in design at the beginning of the project may save additional costs of rework and rectification later in the project.

A project summary and development statement are comprised of information designers should have readily to hand and do not impose an appreciable cost.

Human Rights

The Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) terms of reference require consideration of human rights impacts, among other matters. There are no human rights impacts related to this instrument. It provides for information requirements for building approval applications that do not impact on human rights.

Provisions of the instrument

Section 1 names the instrument as the *Building (Minimum Documentation and Information for Building Approval Applications – Class 2-9 Buildings) Guideline 2019*.

Section 2 provides that the instrument commences on 1 September 2019.

Section 3 makes Schedule 1 to the instrument, the Minimum Documentation and Information for Building Approval Applications – Class 2-9 Buildings Guideline, as a guideline under the Building Act.

Section 4 provides that Legislation Act, s47 (5) does not apply to this instrument. Legislation Act, s47 (5) provides that an incorporated document is taken to be a notifiable instrument. A notifiable instrument must be notified on the legislation register under the Legislation Act. However, the Legislation Act, s 47 (5) may be displaced by the authorising law (the Act) or the incorporating instrument (this instrument) (see s 47 (7)). The Legislation Act, s 47 (5) is displaced here because the incorporated standards are subject to copyright and may be purchased over the Internet.

The BCA and Australian Standards mentioned in the document are subject to copyright, making it inappropriate to notify on the legislation register. The BCA is freely available online to any person via the ABCB web site (see section 6).

Section 5 is to make the community aware of how they can access a copy of the guideline.

Section 6 is to make the community aware they can access the Building Code of Australia for free at <https://ncc.abcb.gov.au/ncc-online/NCC>.

Section 7 is to make the community aware where they can access Australian Standards.

Schedule 1 provides the guideline.

About this guideline provides information about building approvals, the building approval process, and role of a building certifier, and the application of the guideline to building approval applications.

Application of the Guideline provides information about the status of the guideline, how it applies to a range of scenarios and information to aid interpretation.

About building approvals and applications provides general information about the building approval and certification system in the ACT, it outlines the important concept of sufficient information to accompany a building approval application to allow the building certifier to make sure the building work complies with the Building Act and a competent builder to build the building.

Part 1 provides for what is required information for a building approval application for a new class 2-9 building, or substantial alteration to a class 2-9 building. It refers to the information outlined in other sections, including general requirements for plans.

Part 2 includes requirements for a summary of information about a project and the design and construction practitioners involved in the project. This is to help people who certify, inspect and own the building can readily locate the information.

The section also provides information on the use of design summaries. Design summaries are not mandatory.

Part 3 outlines general requirements for plans, other drawings and certificates. These requirements relate to the clarity, internal consistency and content of documents.

Part 4 relates to the classification of buildings and provides for circumstances where a building, or part of a building, may have uses covering more than one classification, or be subject to more than one standard.

Part 5 provides for development statements (5.1), location plans (5.2), and site plans (5.3).

Accurate site and location plans and associated documentation are important to determine whether plans accompanying the building approval application are consistent with any development approval (DA) requirements.

They are also important for identifying any features that could affect compliance with the Act or building code, such as the location of nearby structures and availability of suitable building access and egress paths in the case of an emergency.

A development statement will help identify any differences between the DA and the building approval application documentation and the grounds for any exemption from requiring an amended DA.

Part 6 outlines the minimum detail required in floor plans, elevations, detail drawings, specifications, certificates and supporting documentation to be considered sufficient information for the Building Act.

It includes specific requirements for major elements of a building, demolition plans, and engineering drawings and details, and the structure and content of specifications.

Sections 26 – 28 outline important concepts being:

- Where practicable, information must be included in plans or detailed drawings.
- If it is not feasible to include certain information in plans or detailed drawings, the relevant information must be included in specifications or supporting documents and referenced in the plans and other drawings.
- Unless otherwise specified, required detailed information in subsections of part 6.5 need not be provided in separate documents but can be combined with

other information in a single document.

This Part also includes explanatory information as to why the information is important and examples of drawings that comply with the required information.

Part 7 provides information about the development of performance solutions and the minimum documentation and information required for a performance solution. It requires, amongst other things, that any conditions, limitations or restrictions on the design are in a prominent place in the documentation. A performance solution may only be compliant with performance requirements in certain situations, which may not allow for use of materials or products with certain systems, or substitution of products. This needs to be apparent to people working on the building project.

Part 8 requires maintenance information for the building's essential safety systems. This is a new requirement.

Considering maintenance requirements at the design stage helps in the selection of appropriate materials and products and in designing the building to allow for reasonable access for maintenance of the building and its systems.

Outlining maintenance requirements enables building owners to better plan for, and cost, ongoing maintenance, retain accurate records of maintenance, and identify problems in a building sooner.

Designers of building systems are best placed to determine general maintenance requirements for those systems, including whether existing maintenance standards are sufficient.

Maintenance information for a building can be added to over the course of construction as final selections of materials and products are made.

The maintenance requirements are not approved by the building certifier, as it is not part of the approved building work, but the certifier must make sure the information is provided in the application.

A standard format is provided at Appendix 2 to the guideline that people can complete it and submit with the approval.

Part 9 applies if the applicant has undertaken any previous consultation with a referral or consultation entity prior to applying for the building approval.

Part 10 prescribes other supporting documents that may be required to support the application.

The **Dictionary** provides for definitions for important concepts used in the guideline.

Appendix 1 provides example drawings for reference. The drawings are not for use in building approval applications and provided for information only.

Appendix 2 provides a template for maintenance of essential safety measures. The template can be used for compliance with Part 8.