

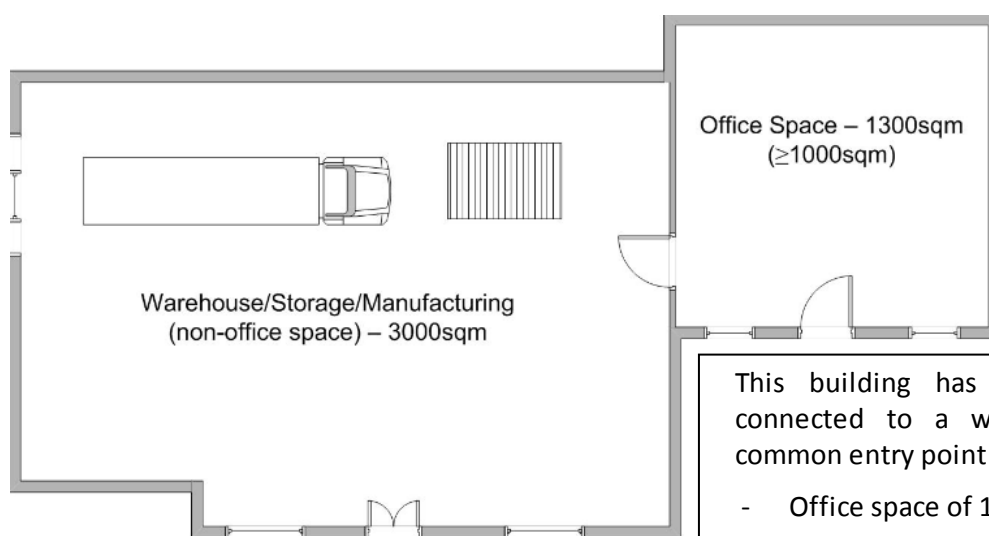
Guidance for Mixed Use Buildings

This Guidance Note includes common examples of when mixed use buildings may be considered 'disclosure affected buildings' to assist owners, lessors or sublessors to determine whether their buildings or areas of buildings are affected by energy efficiency disclosure obligations under the Act. In particular, the examples illustrate when office space may or may not be considered internally connected to non-office space to determine what constitutes a building or area of a building for the purposes of the Determination. Legal requirements and definitions are set out later in this guidance note.

Office space internally connected to non-office space

Office buildings generally have a common primary entry point, such as a lobby or main entranceway. Where office space is internally connected to non-office space or these spaces share a common primary entry point, it is considered to be part of the same building and together comprise an 'area of a building' for the purposes of the Determination. The criteria of the Determination must be then applied to this 'area of a building'.

Example 1



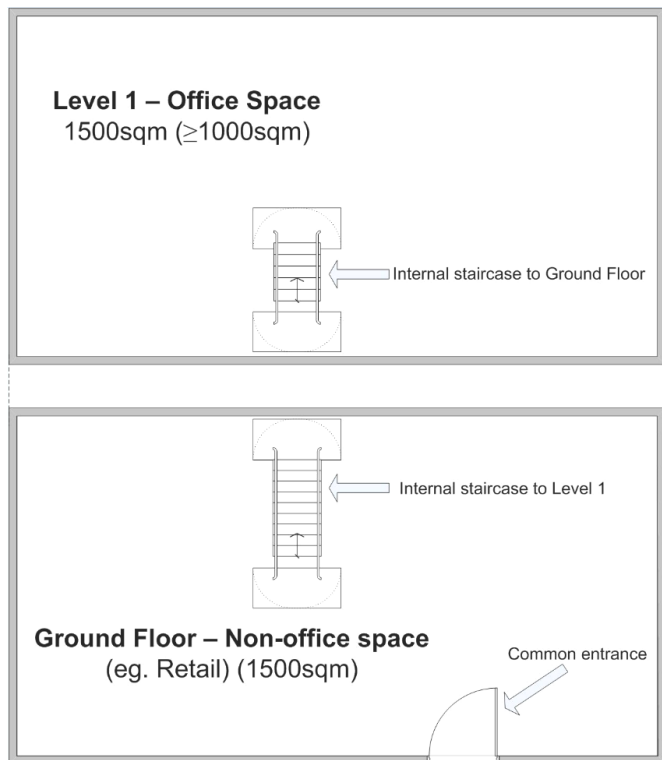
This building has office space internally connected to a warehouse area, with a common entry point:

- Office space of 1300sqm; and
- Warehouse (non-office space) of 3000sqm

As the office space is less than 75% of the NLA of the building, both the building and the office area **are not disclosure affected**.

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Example 2



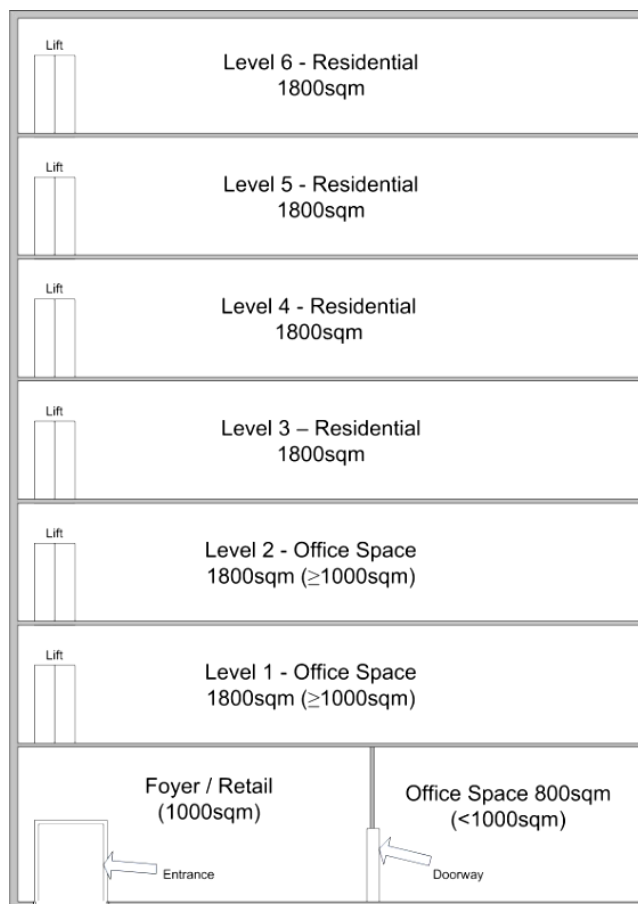
This two storey building has office space on level 1 (1500sqm) that sits directly above the ground floor non-office space (1500sqm) and these spaces are internally connected by a stairway, with a common entrance point.

As the office space is less than 75% of the NLA of the building, both the building and the office area **are not disclosure affected**.

Example 3

This building includes office space internally connected to residential and retail space, with a common entrance point.

As the office space (4400sqm) is less than 75% of the total building NLA, both the building and the office area **are not disclosure affected**.

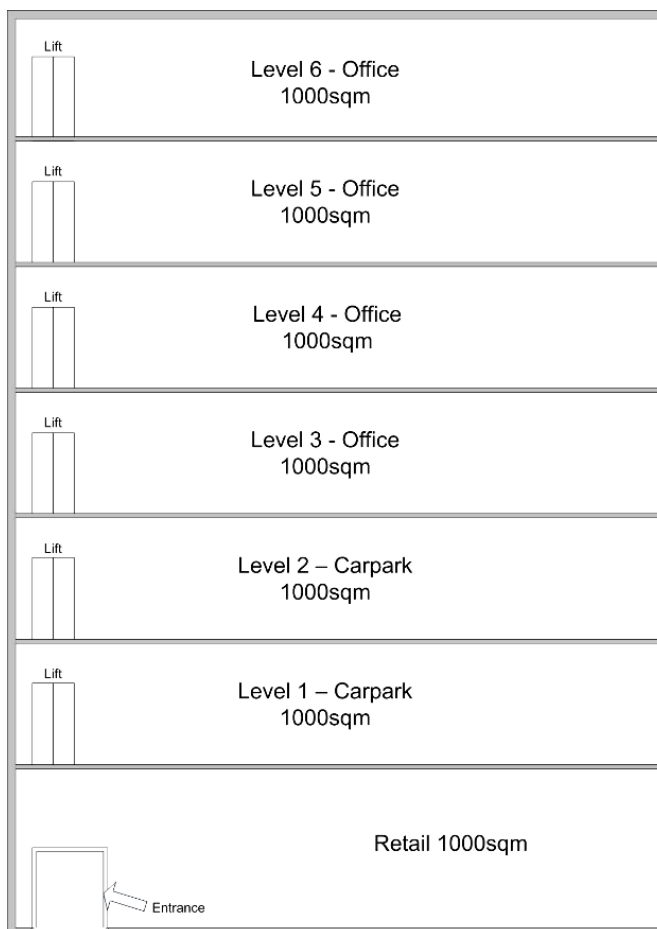


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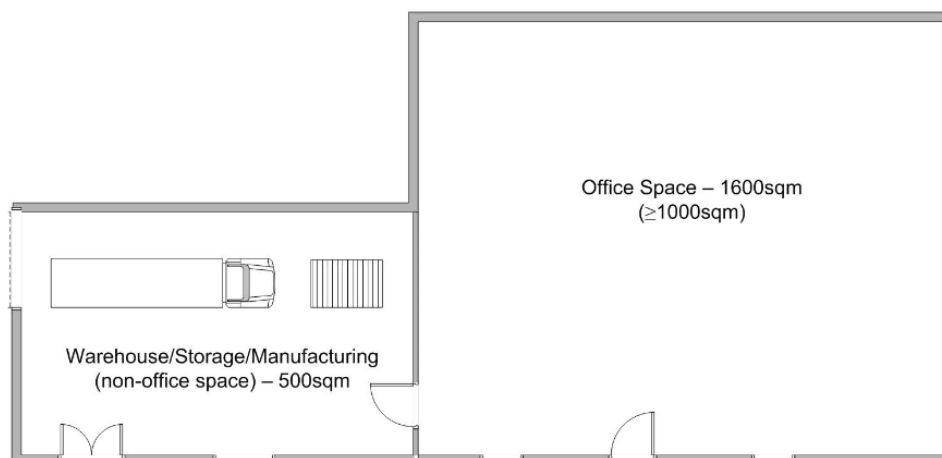
Example 4

This building includes office space internally connected to retail space, with a common entrance point. The office space (4000sqm) is more than 75% of the total building NLA and therefore the building is **disclosure affected**.

Carpark areas are not included in the calculation for NLA, as stated in the 'Method of Measurement for Lettable Area 1997'



Example 5



This building includes internally connected office space (1600sqm) and warehouse space (500sqm) with a common entrance point.

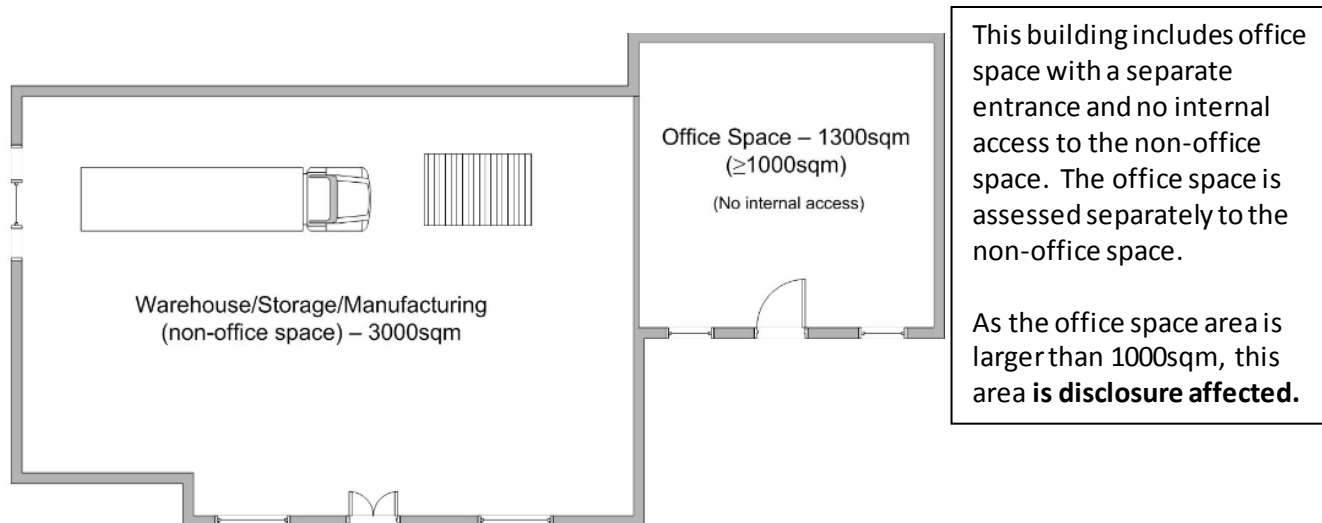
As the office space is greater than 75% of NLA of the building and total office area is at least 1000sqm, the building is **disclosure affected**.

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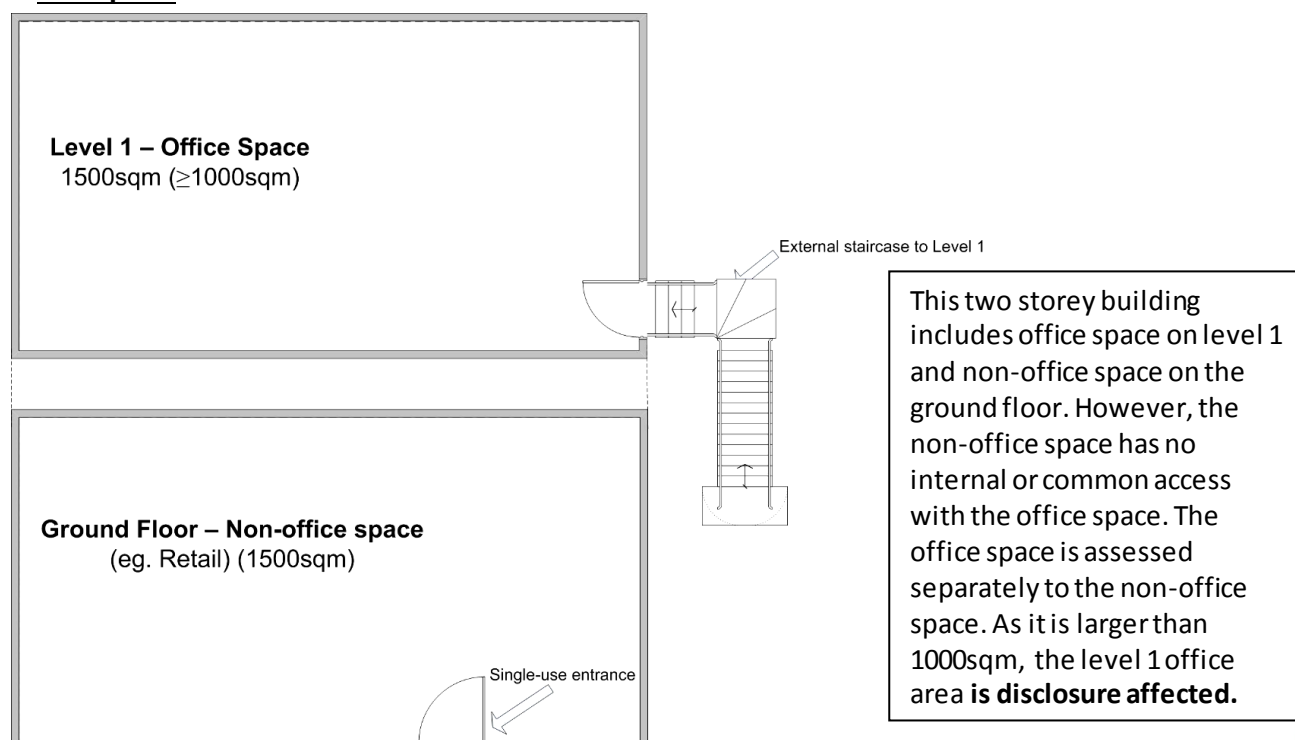
Office space not internally connected to non-office space

If the office space is not internally connected to the non-office space and/or has a separate entrance, the spaces are not considered to comprise an 'area of a building' for the purposes of the Determination. The criteria of the Determination must be then applied to the office space as a building separate to the non-office space.

Example 6



Example 7

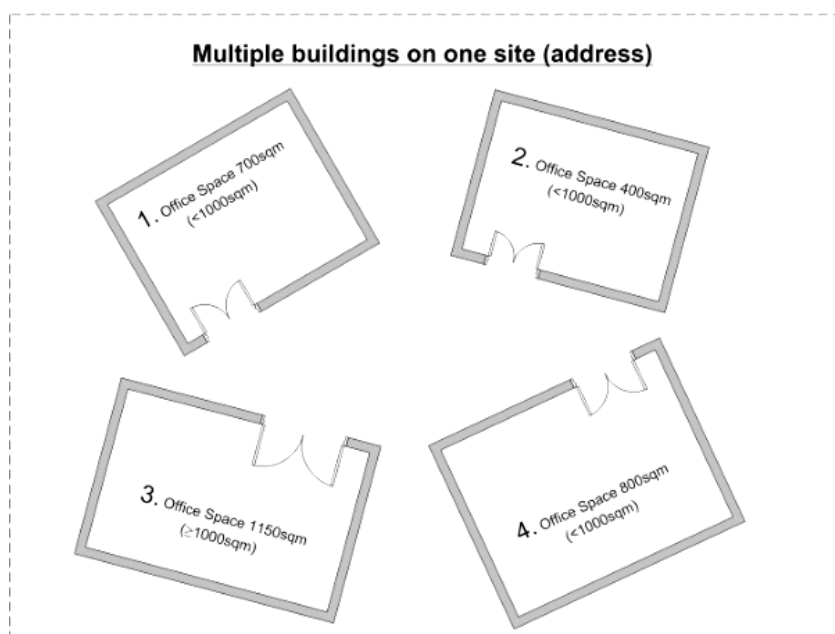


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Multiple buildings on one site

When there are multiple buildings on one site, each building is treated individually, unless the buildings are interconnected. As above, where office space is internally connected to non-office space or shares a common primary entry point, the spaces are considered to be part of the same building and together comprise an 'area of a building' for the purposes of the Determination. The criteria in the Determination for determining whether the office space is disclosure affected can then be applied to this area of the building.

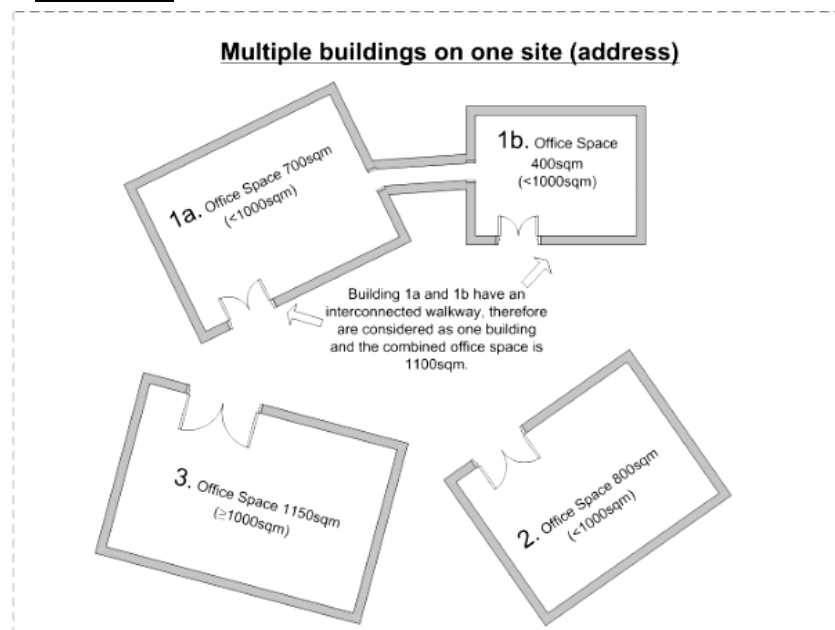
Example 8



Example 8 of multiple buildings on one site:

- Each building is assessed separately as they are not connected internally.
- Buildings 1, 2 and 4 are smaller than 1000sqm and **are not disclosure affected**.
- Building 3 is larger than the 1000sqm threshold and **is disclosure affected**.

Example 9

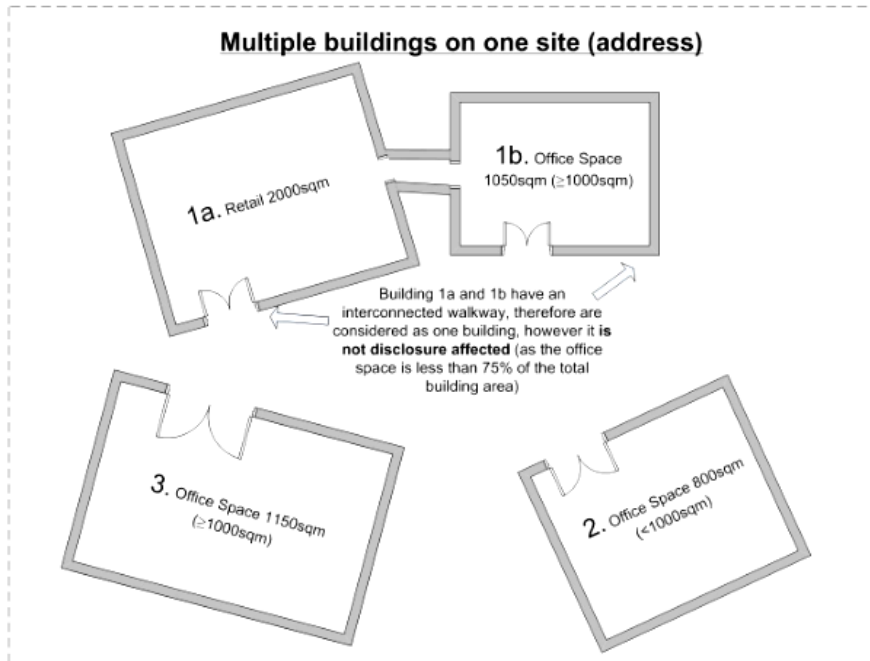


Example 9 of multiple buildings on one site:

- Building 1a and 1b are internally connected, meaning they are assessed as one building, and together (constituting 1100sqm) are larger than 1000sqm and therefore **disclosure affected**.
- Building 2 is under the 1000sqm threshold and **is not disclosure affected**.
- Building 3 is over the 1000sqm threshold and **is disclosure affected**.

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Example 10



Example 10 of multiple buildings on one site:

- Building 1a and 1b are interconnected, meaning they are assessed as one building. However, as the office space (1050sqm) is less than 75% of the building NLA, the building is **not disclosure affected**.
- Building 2 is under 1000sqm and is **not disclosure affected**.
- Building 3 is larger than the 1000sqm threshold and is **disclosure affected**.

Overview of mandatory disclosure and mixed use buildings

Under the *Building Energy Efficiency Disclosure Act 2010* (**the Act**), certain commercial buildings and areas of buildings which are used, or capable of being used, as an office are affected by energy efficiency disclosure obligations. This requires the mandatory disclosure of a building's energy efficiency information to the market when the commercial office space is offered for sale or lease.

Corporations which 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 star 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.

Mixed use buildings, which combine office space with other functions such as warehouses, storage facilities, retail and/or manufacturing facilities, may trigger the disclosure obligations under the Act. The way in which the office space is connected to the rest of the building will determine whether the mixed use building is a 'disclosure affected building' for the purposes of the Act.

Guidance for Mixed Use Buildings

Disclosure affected buildings and areas of a building

A building or area of building will be disclosure affected for the purposes of the Act (section 3) and subject to the disclosure obligations under the Act, if it:

- (a) is used or capable of being used, as an office;
- (b) meets the requirements of the [Building Energy Efficiency Disclosure \(Disclosure Affected Buildings\) Determination 2016 \(the Determination\)](#) and does **not** fall within one of the prescribed conditions of non-disclosure under subsections (4), (5) and (6) of sections 5 and 6 of the Determination; and
- (c) has not been exempted under sections 17 or 17A of the Act.

The Determination defines that the 'area of a building' includes '*physically separate spaces within the building that share access to the outside of the building, or that are linked internally to a space that provides such access, that may be grouped together for the purposes of offering to let or sublet or inviting offers to lease or sublease*'.

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

- (a) at least 75% of the space in the building by Net Lettable Area (NLA, or Gross Lettable Area if NLA is not available) is for administrative, clerical, professional or similar information-based activities, including any support facilities for those activities. Where this criterion is not met, this building is not disclosure affected, nor does it contain any disclosure affected areas; and
- (b) the NLA (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 (2000 square metres prior to 1 July 2017, see below).

Where a building or area of building meets these criteria, it is a disclosure affected building or area of a building unless it meets the criteria under subsections (4), (5) and (6) of sections 5 and 6 of the Determination (for example, being a new building or having had a major refurbishment completed less than years ago).

The phrase 'administrative, clerical, professional or similar information-based activities' is intended to encompass all activities that would usually take place in a commercial office space. Such activities are often associated with other functions such as warehouses, manufacturing/support facilities, medical centres, hotels or retail outlets.

Further details are available on the CBD website on what is considered a '[disclosure affected building](#)'.

Important changes to the Legal Framework from 1 July 2017

From 1 July 2017, the Net Lettable Area required for office space to be disclosure affected was lowered from **2000 to 1000 square metres**. The effect of this change is that owners and lessors of smaller commercial office buildings may need to disclose their building's energy efficiency when selling or leasing their building after this date. The examples of mixed use buildings provided below apply this new threshold requirement.

Further information [on these changes](#) can be found on the CBD website.



Guidance for Mixed Use Buildings

Mixed use buildings

Applying the criteria in the Determination, mixed use buildings which include total office space (that is, space that is for administrative, clerical, professional or similar information-based activities) that:

- (a) comprises less than 75 per cent of the building or area of building by Net Lettable Area (or Gross Lettable Area if Net Lettable Area is unavailable); or
- (b) is less than 1000 square metres (post 1 July 2017);

are not disclosure affected buildings or areas of buildings and would not be subject to the disclosure obligations under the Act.

However, to apply these criteria for mixed use buildings, it is first necessary to consider how the office space is connected to the other non-office spaces to determine what constitutes the building or area of building for the purposes of the Determination. The Determination defines an 'area of a building' to include '*physically separate spaces within the building that share access to the outside of the building, or that are linked internally to a space that provides such access, that may be grouped together for the purposes of offering to let or sublet or inviting offers to lease or sublease*'. After assessing the areas within a building, the criteria for whether the building or area of the building is disclosure affected are applied.

Further information

For further information regarding the CBD Program, please see the CBD Program website at:
<http://cbd.gov.au/>.

For further information you can also contact the CBD Team during business hours on 1800 020 131 or via email info@cbd.gov.au.

Disclaimer

The information in this Guidance Note does not, and is not intended to, constitute legal advice on the obligations under the *Building Energy Efficiency Disclosure Act 2010* (the Act) and should not be taken to indicate the Department's commitment to a particular course of action.¹ It provides common examples where mixed use buildings may be considered 'disclosure affected buildings' to assist owners or lessors to determine whether their buildings or areas of buildings are affected by energy efficiency disclosure obligations under the Act. 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 Act.

¹ Please see the Disclaimer on the Department's [CBD Program website](http://cbd.gov.au/) for more information.

