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## The green ratings war – winning strategies

*The concept of “going green” is often a lot easier than a green reality. When setting out to achieve a Green Star or NABERS rating for a building, one needs to think through carefully the type of green rating to be obtained, what is required to obtain that rating, how the rating is obtained, what roles each party is to play, and what are the consequences if the rating is not obtained. Here, the authors consider some key issues when becoming involved in a green rated project.*

### INTRODUCTION

Energy efficient buildings are becoming an increasing focus for the government, developers, investors, builders and prospective tenants.

Statistics show that an energy efficient building is a more marketable proposition, particularly with demands being placed on government departments to be more energy efficient, and a general business community attitude to seek out more environmentally friendly business solutions.

On 18 December 2008, the Australian government released consultation documents for the proposed implementation of a mandatory energy efficiency disclosure requirement for the sale or lease of all commercial office building areas greater than 2,000m<sup>2</sup>. This disclosure may be based on National Australian Built Environment Rating System (NABERS) Energy ratings.

The rules that apply to obtaining an energy efficient rating or understanding environmental practices require an appreciation as to how buildings are built and how they subsequently operate in order to properly manage risks. A failure to set up the right legal framework can lead to a failure to achieve a rating or to maintain a rating.

### GREEN BUILDING RATING SCHEMES

This article does not deal with residential dwelling environmental rating tools or schemes.

A number of green rating schemes currently operate in Australia across a range of development types. The two most prominent are the following:

- a) the Green Star rating scheme operated by the Green Building Council of Australia (GBCA); and
- b) the National Australian Built Environment Rating System administered nationally by the New South Wales Department of Environment and Climate Change (DECC).

This article focuses on the Green Star scheme and the NABERS schemes – previously referred to as the Australian Building Greenhouse Rating (ABGR) scheme – since these are the two currently accepted rating schemes for commercial buildings in Australia.

## GREEN STAR

### What is Green Star?

Green Star is a national and voluntary environmental rating scheme that evaluates the environmental design of buildings at a conceptual stage and at an as-built stage. It assesses a building's potential to reduce its environmental impact. It does not assess a building's operation. It therefore rates achievement without assessing operational factors.

Green Star measures the potential environmental impact of a building in relation to eight building element categories, namely environmental management, indoor environment quality, energy use, transport arrangements, water use, use of materials, land use and ecology, and emissions. An assessment of innovation is considered a ninth category.

**Diagram 1 – Green Star and NABERS Ratings**

	<b>GREEN STAR</b>	<b>NABERS Energy</b>	<b>NABERS Water</b>
Mandatory / voluntary	Voluntary	Voluntary	Voluntary
Office fitout (new)	Yes	Yes	Yes
Office base-building (new)	Yes	Yes	Yes
Office whole building (new)	Yes	Yes	Yes
Office existing fitout	No	Yes	Yes
Retail centre	Yes	No	No
Education facility	Yes	No	No
Healthcare	Yes (pilot)	No	No
Office existing building	Yes (extended pilot)	Yes	Yes
Multi-unit residential	Yes (pilot)	No	No
Mixed use	Yes (pilot)	Yes (office)	Yes (office)
Industrial facility	Yes (pilot)	No	No
Hotel	No	Yes	Yes

### Green Star rating tools

The GBCA has developed and continues to develop rating tools for different phases of a building's life cycle (such as design, construction/fitout and use) and for different building types (such as office, retail, industrial and residential). The GBCA explains that the reason there are different rating tools for different phases is because responsibility for each phase may fall on different parties (such as the developer, owner, design team, contractor and tenant).

Rating tools are currently available for commercial office design and construction, namely the *Office Design*, *Office As Built* and *Office Interiors* rating tools. The process for *Office Interiors* is essentially the same as that for *Office As Built*. Rating tools for retail centres and education facilities were recently released.

### Pilot rating tools

Pilot rating tools are available for healthcare, multi-unit residential, mixed use, industrial and office existing building.

The pilot phase of a rating tool allows for the registration of a limited number of pilot projects. Once the available places for pilot assessment have been filled, no other projects can register until

version 1 of the tool is released. The release of version 1 of a rating tool can take three to 12 months from the close of the stakeholder feedback period (which is during the pilot phase). The release date depends on the amount of stakeholder feedback, the assessment of the pilot projects and approval by the GBCA.

### Versions of Green Star rating tools

It is useful to note that the date of registration of a project determines the applicable version of a rating tool. Later versions may impose greater requirements for the achievement of the ratings.

Office projects that register after 1 May 2008 must register under Green Star – *Office Design* v3 and Green Star – *Office As Built* v3. Version 2 ceased to be available for unregistered projects as from that date.

**Diagram 2 – Green Star Process**



### Registration and the certification agreement

A project will only be assessed for Green Star certification if it meets all of the eligibility criteria at the time of registration. To be eligible for assessment, a project must meet each of the following technical criteria: spatial differentiation, space use, conditional requirements and certification timing.

Once the project is registered, the GBCA will issue a standard certification agreement and its Certification Trade Mark Rules (discussed further below). The terms of the certification agreement are not negotiable.

The relevant certification agreement must be entered into for the rating tool chosen. If more than one rating tool is chosen, the rating process is repeated for each tool. The certification agreement contains various undertakings by the applicant, including:

- a) that at the earliest time possible (preferably at design concept stage), the applicant will provide all consultants and contractors involved in the design, construction, commissioning and management of the development with written notice of its commitments under the certification agreement;
- b) the applicant will provide the GBCA with a list of the consultants and contractors engaged in the development; and
- c) the applicant agrees that the GBCA has the right to audit the applicant's advice to its consultants and contractors regarding the applicant's commitment to the certification agreement.

### Assessment

A project can only be assessed for its Green Star rating when the following milestones have been reached, to ensure that appropriate documentation, drawings and calculations are available to satisfy the Green Star credit requirements:

- a) *Office Design* – when the design process is 60-80% complete. Only then will there be sufficient documentation generated to allow for assessment to take place; and
- b) *Office As Built* and *Office Interiors* – when construction is complete and preferably prior to occupation or within the first few months of occupation. This will minimise potential operational impacts. The assessment is of the building's potential to reduce its environmental impact, not whether it actually does reduce its environmental impact. *Office As Built* and *Office Interiors* ratings must be obtained within 24 months of practical completion.

Each rating tool has a technical manual which sets out the criteria that the design or building must meet in order to achieve the relevant rating under that tool.

Each of the nine categories mentioned above has a number of credits available. Each category is weighted differently, and this varies on a State by State basis (to reflect the particular environmental concerns for that State). The credits are aggregated and the final score determines the rating achieved.

Assessment involves a panel of certified assessors awarding points (or credits) for achievement of compliance requirements as set out in the technical manual for the relevant rating tool.

The assessment requires the applicant to submit the relevant documentation in order for the assessment panel to review and consider the points/credits claimed by the applicant. The assessment panel reviews the submission and makes recommendations to the GBCA.

Few projects achieve their desired rating in the first round of assessment. The assessment panel considers the points/credits claimed by the applicant against the compliance requirements and either confirms the applicant's achievement or identifies why the points/credits were not achieved.

Points/credits may not have been achieved because more information is required or the wrong information was supplied. The assessment panel will identify why the points/credits were not awarded and if it is as a result of incorrect or missing information will return the submission noting the points/credits which are to be confirmed.

The applicant is then given a chance to lodge a second submission correcting any missing or incorrect information. The panel then conducts an assessment of the second submission. If the assessment validates the project's achievement of a rating, the GBCA will award a Green Star certified rating.

### **Credit interpretation requests**

The applicant does have an opportunity, where a proposed method of achieving a particular credit or point does not adhere to the relevant technical manual, to make a Credit Interpretation Request (CIR).

If the technical advisory panel of the GBCA determines that the alternative method does not achieve the particular aim, the applicant has the opportunity to revise its solutions to achieve the particular points/credits. CIR rulings are essentially precedents and are published on the GBCA website.

### **What are the rating levels?**

Green Star only certifies buildings that achieve a rating of four, five or six stars. These stars have the following meanings:

- a) four-star Green Star Certified Rating (score 45-59) signifies "Best Practice";
- b) five-star Green Star Certified Rating (score 60-74) signifies "Australian Excellence"; and
- c) six-star Green Star Certified Rating (score 75-100) signifies "World Leadership".

Lower ratings are signified by the following scores: one star (score 10-19), two star (score 20-29) and three star (score 30-44).

## Trade mark use

The GBCA has recognised that prior to obtaining a Green Star rating applicants will want to communicate that their projects are aiming to achieve a Green Star certification.

The GBCA has dealt with this situation by clarifying when Green Star “advertising” can be undertaken by an applicant. If a project is registered with the GBCA, an applicant can state (prior to receiving official certification): “Registered for a Green Star – [Office Design, Office As Built, Office Interiors, Education, Retail Centre Design etc] rating.” If a project is not registered, statements referring to Green Star cannot be made and any such claims will be viewed as trade mark infringements.

Where a project goes through the certification process and is awarded a Green Star rating of four stars and above, the applicant is granted a non-transferable, non-exclusive licence from the certification date. The licence allows the applicant to use and display the Green Star trade mark showing the rating.

The rating once achieved does not lapse or require renewal.

## NABERS

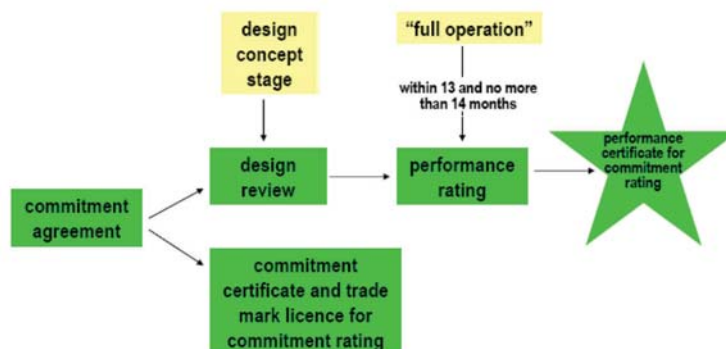
### What is NABERS?

NABERS is a performance-based, voluntary rating system for existing commercial office buildings and hotels. It rates an existing building on the basis of its measured operational impacts on the environment.

The NABERS system utilises rating tools to assess a building’s energy and water efficiency. Low consumption of these resources is awarded with a high NABERS rating, whereas a poor rating indicates an inefficient use of resources.

Other elements are being developed to enable buildings to be rated on a full range of measured operational impacts. NABERS also proposes to launch NABERS Energy and Water tools for retail and education premises.

### Diagram 3 – NABERS Energy (for new buildings) rating process



### New buildings and existing buildings

NABERS applies to both existing buildings and to new buildings. A rating for an existing building is called a performance rating. The process for obtaining a performance rating merges with the process for a rating of a new building described below. A rating for a new building is called a commitment rating, which is only available for NABERS Energy.

Both performance ratings and commitment ratings can be awarded for base buildings (eg central services, air-conditioning, lifts and common area lighting), tenancies or whole buildings.

## **Commitment agreement**

To achieve a commitment rating, the applicant needs to sign a commitment agreement with the DECC.

Separate commitment agreements are available for:

- a) new commercial office buildings and upgrades or refurbishments of whole or base buildings; and
- b) new tenancies, tenant fitouts and refurbishments.

This article will focus on the process for new buildings and refurbishments.

Despite NABERS being a performance-based rating based on operational data, the commitment agreement allows owners and developers to promote and market their commitment rating from the commencement of a project. Under the commitment agreement, the applicant nominates the star level the development will perform at once it is fully operational. Since three stars represents current best market practice, commitment agreements are expected to be at least at a four-star level.

The commitment agreement covers all phases of a development, including design, construction, commissioning and occupation, as well as a 12-month operating phase. Once a commitment agreement is signed, the applicant is to design and construct the development to operate at the nominated NABERS Energy star level.

The commitment agreement places certain requirements on applicants including:

- a) a requirement that at the earliest possible stage (preferably at design concept stage), the applicant provide all consultants and contractors involved in the development with written notice of the commitments under the Commitment Agreement; and
- b) a requirement that the applicant include in any agreement to lease or lease entered into after the date of the commitment agreement, a clause that discloses the applicant's commitment and which provides that, while the applicant is the landlord, it will use its best endeavours to achieve the commitment rating by a certain date, maintain that rating for the duration of the lease, and provide details of the actual current rating for the building or base building on each anniversary of the lease commencement date.

Under the commitment agreement the parties are to nominate the planned date for full operation, being when the premises are expected to be fully commissioned and are at least 75% occupied. The parties also nominate the planned date for the performance of the rating assessment, being a date within 13 months and not more than 14 months from the date of full operation. Both dates can be amended by mutual agreement.

## **Assessment**

NABERS rates buildings according to their performance, using 12 month's worth of data. The rating is derived from the actual amount of energy or water consumed in a year and also takes into account some operational factors. The rating reflects the way energy or water is managed as well as how efficiently the building is designed.

Under a commitment agreement, a design review is to be conducted by a member of the NABERS review panel (a person independent of the applicant's design team). The design review is to be conducted at a stage of the project that is sufficiently early to allow for design changes. This would usually take place before the development application is lodged. This review is often accompanied by a computer simulation which can be done without a commitment agreement and does not result in a NABERS rating, only a predicted rating.

The applicant is to notify the DECC when full operation is reached. At this stage, it is worth the parties confirming when the rating assessment is to take place. When the planned date for the performance of the rating assessment is agreed, the DECC will arrange for a NABERS accredited certifier to carry out the rating assessment. As identified, the rating assessment can only be performed once there is 12 month's worth of performance data available following full operation.

The applicant is to provide data for this purpose in accordance with data collection guidelines. The DECC and NABERS accredited assessor may access the building at reasonable times and on reasonable notice for the purpose of collecting additional operational data they require to allow the rating assessment to take place.

If the commitment rating has been met or exceeded, the DECC will grant a performance certificate stating the rating achieved. The certificate (and therefore the rating) is effective for 12 months from the date of issue. If the commitment rating is not achieved, a 12-month review period with the DECC commences so that the applicant can try to improve the performance of the building.

To maintain the rating, a rating assessment must be carried out every 12 months which entails the continuous collection of data.

### **What are the rating levels?**

The NABERS scheme rates buildings from 0 to five stars (in half-star increments). Ratings can be awarded for:

- a) a whole building;
- b) the base building (central services); and/or
- c) a tenancy.

The ratings have the following meanings:

- a) four-star NABERS signifies “strong performance” or “excellent”; and
- b) five-star NABERS signifies “best building performance” or “exceptional”.

### **Trade mark use**

Within four weeks of signing the commitment agreement (and the applicant paying the relevant fee), the DECC provides the applicant with a commitment certificate setting out the commitment rating and copies of the trade mark relating to the commitment rating.

At this stage, the applicant may use the trade mark for promotional purposes. The trade mark must not be used in a way that might give the impression that the commitment rating has been achieved. Once the rating assessment has been performed, the trade mark for the relevant rating may only be used if the commitment rating is achieved. The use of the trade mark ends 12 months after the issue of the performance certificate, unless another rating assessment is successfully completed.

## **ENERGY EFFICIENCY IN GOVERNMENT OPERATIONS POLICY**

### **Commonwealth commitment**

The *Energy Efficiency in Government Operations Policy 2006* sets out a strategy for Australian government agencies to achieve revised energy intensity portfolio targets by the 2011-2012 financial year.

The policy specifies minimum energy performance standards in contracts, leases and other relevant documentation for new buildings, major refurbishments and new premises over 2,000m<sup>2</sup> if owned or leased by the Australian government. It sets out the following standards:

<b>Development type</b>	<b>Minimum energy performance</b>	<b>Further information</b>
New building	NABERS 4.5 star (or equivalent)	An independent NABERS performance assessment must be undertaken for all new buildings within 15 months of handover.
Major refurbishment (works that impact at least 2,000m <sup>2</sup> and represents over 50% of the base building and/or tenanted area)	NABERS 4.5 star (or equivalent)	An independent NABERS performance assessment must be undertaken for all major refurbishments within 15 months of handover
New lease agreements and MOUs for buildings with tenancy areas over 2,000m <sup>2</sup>	NABERS 4.5 star (or equivalent)	Documentation must include mutual obligations to achieve and maintain NABERS or equivalent performance standard (to be extended to facility managers, tenant advocates, maintenance contractors, cleaners, security and other relevant subcontractors). Green Lease Schedule templates are available to facilitate implementation and ongoing compliance with the relevant standard.

Exceptions to the ratings may apply where it is not practical or cost effective to achieve 4.5 stars NABERS or equivalent, eg heritage listed buildings.

### **State government commitments**

Each State government has its own policy on environmental sustainability with similar goals to the Commonwealth government.

For example, the Queensland Department of Mines and Energy and the Environmental Protection Agency are amongst the Queensland government departments which have publications and policies regarding environmental sustainability in Queensland.

### **NSW commitment**

In September 2008, the New South Wales government released a sustainability policy requiring its agencies to obtain NABERS Energy and Water ratings for their office buildings or their tenancies. The policy sets out the following standards:

<b>Development type</b>	<b>NABERS Requirements</b>
Agency-owned or tenanted office building (over 1,000m <sup>2</sup> )	4.5 star NABERS Energy and Water ratings by 1 July 2011, where cost effective.

Energy and water efficiency improvements are only required where they will be cost effective. "Cost effective" is defined as having an internal rate of return of 12% where the additional cost of achieving a higher rating is assessed against energy and water cost savings.

## **MANAGING THE RATINGS**

### **General**

It is important to understand the system which is being utilised in order to adopt the appropriate strategies. It is also vital to understand the role of each participant or person involved in, or that may affect, the ability to achieve the rating when establishing the correct risk allocation and legal framework. It is not sufficient to simply include an obligation to “achieve a Green Star and NABERS Rating”. To truly be successful, the certification and commitment agreements need to be in place and the parties committed to achieving the desired ratings.

Where the design control rests with the developer, it would be usual for more risk to lie with the developer. Where the design risk is with the contractor, it is usual for more risk to be with the builder.

When adopting strategies and planning projects, it is necessary to consider the timing requirements of the rating systems, when participant obligations arise and when ratings can be achieved. This is particularly relevant to achievement of a NABERS rating because of the occupancy requirement relevant to achievement of a rating.

During the documentation stage of the project, contractual provisions should accommodate any ongoing obligations or protections.

One also needs to consider the costs of these obligations and ensuring proper performance. Finally, it is vital to correctly describe the ratings to be achieved to avoid confusion.

### **Green Star**

The achievement of a Green Star rating, whether design or as built, depends upon the submissions, including all information which is required in order to obtain the points/credits which are being sought.

Therefore, for a design rating, consideration should be given to the appointment of a lead consultant at the outset of the project to manage the design process and to place obligations on each design consultant as to the quality of design and information to be provided. Additional obligations should be included to abide by and participate in an environmental sustainability design group.

In relation to an as-built rating, there is a need to collect all invoices, records and documents which evidence that the intended design has been achieved and that the relevant point/credit sought can be substantiated.

Since some points/credits are able to be achieved by the manner in which the contract documents are completed, care should be taken to ensure the contract terms reflect the obligations of the points/credits being sought.

### **NABERS**

NABERS is more about performance; therefore, it is important that the ability to have sufficient meters, access to the meters and accurate meters to record usage of energy and water is maintained.

During construction there may need to be limitations on the power to vary the works where there could be an adverse ratings impact.

There is no possibility that the NABERS Energy rating will be achieved under the normal definition of “practical completion” for a construction contract. Nor would it normally be achieved within the defects liability period because it requires 12 months continuous data from when the building is at full operation (75% or more occupancy).

Consideration has to be given to the framework to be maintained throughout this process. The impact of tenants and tenant's contractors may be significant if it affects the overall performance of the building due to, eg changes which affect air-conditioning or other thermal elements of the building. In addition, the manner in which the building's facilities and equipment are commissioned, managed and serviced may also have an impact.

The process for managing tenants, leasing and tenants' fitout contractors should be considered, including imposing design constraints on fitouts, rights of access and rights to monitoring ongoing compliance with approved fitout to ensure the rating performance of the building is not compromised.

As a developer, consideration should also be given to whether the contractor is to have ongoing involvement with the building after the final certificate. Some form of ongoing security for the contractor's performance may also be appropriate.

As a contractor, consideration should be given to ensuring all consultants (including novated consultants) and subcontractors have back-to-back obligations. This applies equally to Green Star ratings. There may also need to be a sunset date added for the collection of data to protect against being committed indefinitely to a project which fails to promptly achieve the required occupancy levels.

## **Conclusion**

The environmental ratings systems and environmental ratings are continuously changing.

For project which has environmental sustainability features, or which desires to have those features, it is best to build on a legal framework with sufficient flexibility to allow the project to continue to match the market.