

**Coming in 2010:
A legal requirement to disclose an
office building's NABERS Energy rating
at sale or lease**

A Research Note from Big Switch Projects

Need to know

The draft framework by which office building owners will have to disclose the energy and greenhouse performance of their buildings and tenancies has now been published by the Australian Government.

The proposal is that from 2010 all building owners will have to disclose a NABERS Energy rating when an office building or tenancy over 2000m² is for sale or lease. The rating must be shown in advertising and in material provided to buyers and tenants.

The ratings must be no more than 12 months old.

The scheme is known as the Mandatory Disclosure of Commercial Office Building Energy Efficiency.

1. The Australian Government's objective

Big Switch Projects has reviewed the two background documents published by the Australian Government on December 18, 2008: the *Mandatory Disclosure of Commercial Office Building Energy Efficiency Consultation Regulation Document* and the *Consultation Regulation Impact Statement*. This client note should be treated as initial commentary; some of the material in the documents leaves the reader somewhat unclear on implementation detail.

The objective of the scheme is to overcome what are viewed as two types of market failure in the delivery of energy-efficient office buildings and tenancies. The first is that tenants may have an interest in energy efficiency but are unable to influence the owner, or that owners are interested in energy efficiency but have insufficient incentive to improve energy efficiency because costs are passed on to tenants. The second is simply that buyers or potential tenants currently find it difficult to easily and cheaply determine the energy efficiency of a building.

This is the same rationale governments have used to justify energy efficiency labels on fridges and fuel efficiency labels on new cars. Now they're applying it to office buildings. "The essence of mandatory disclosure," the Government says, "is to ensure that participants in the buildings market have access to credible information regarding the energy efficiency of a prospective building or tenancy" (Consultation Regulation Document, p23).

2. When will owners have to disclose energy performance?

The Consultation Regulation Document (p41) states:

"The central requirement of the proposed scheme is that when a commercial office building with a NLA of 2000 m² or more, or any part of such a building that is greater than 2000 m² NLA is to be sold, leased, or sub-leased, an appropriate energy efficiency rating and assessment report of the building must be disclosed:

- In any advertisement about that sale or lease (disclosure requirement is limited to an appropriate star rating, *excluding* Green Power);
- To prospective buyers and tenants (a valid Building Energy Efficiency Certificate (BEEC) and Energy Efficiency Assessment Report (EEAR)); and

- to a central registry (a valid BEEC and EEAR).”

Initially, the new Building Energy Efficiency Certificate will use the NABERS Energy rating, although other rating schemes may be accredited over time. Green Star will not be used because Green Star Office Design and Office As-Built are “based on predicted rather than verified performance, and therefore are not suitable for like-for-like comparison of actual energy efficiency of existing office buildings” (Consultation Regulation Document p24).

Public disclosure of ratings is not required, other than in advertising material for buildings for sale or lease. This makes the scheme different to the European Union directive which mandates that any building occupied by public authorities or by institutions providing public services must have an energy certificate prominently displayed.

The central registry will be run by the Australian Government’s environment department.

3. At sale, it’s not just the base building rating you must disclose

The Australian Government seems to be proposing that when an office building over 2000m² is sold, not only must the base building NABERS Energy rating be disclosed – that’s clear in the consultation documents – but as well the NABERS Energy ratings for all tenancies over 2000m² in the building must be disclosed too. “It is important to note that, under this [recommended] option, the thresholds for the size of property apply directly to leased space as well as sold space” (Consultation Regulation Impact Statement, p25).

The national legislation for Mandatory Disclosure will require tenants to provide the necessary information to an accredited assessor. This tenancy information will be provided to the assessor, not the owner.

New buildings and tenancies of less than 12 months as well as some extreme cases where a valid rating and assessment is not possible, will be exempt.

4. At time of lease, disclose your base building rating and the tenancy's too

When owners are leasing more than 2000m² to a single tenant, they will need to disclose the energy rating of the base building and the tenancy area being leased.

When sub-leasing, the requirement is for the leased area only, although a base building rating should be provided if readily available to the lessor.

5. What will the Building Energy Efficiency Certificates cover?

Core proposed requirements for BEECs include standard NABERS Energy inputs and the star rating, building assessor details, and whether the building has any co- or tri-generation facilities.

See Appendix 1 for a mock-up certificate. A BEEC will be valid for 12 months

6. How do my EEARS look?

The Government proposes that an Energy Efficiency Assessment Report will be included in the mandatory reporting framework to inform both tenants and existing and prospective owners with respect to the options they have to improve the building or tenancy. The EEAR will be valid for seven years and is expected to include opportunities to improve energy efficiency in such areas as controls, heating and air conditioning, lighting, hot water, the building envelope and office equipment.

7. Other types of commercial building later

At this stage, only office buildings will be covered by Mandatory Disclosure of Energy Efficiency but the Australian Government has signalled its intent to expand this measure to additional building types, subject to further cost-benefit analyses.

8. Big Switch Projects' comment

Owners of office buildings that have never been rated on NABERS Energy, or that have been rated and remain poor performers, will under this scheme face significant financial and reputation risk.

On the other hand, the scheme offers owners of high NABERS-rating buildings a new government-endorsed platform to promote their high-performing assets.

Based on the information in the published documents, Big Switch Projects' initial advice to office building owners is:

- **have all office buildings rated** on NABERS Energy thereby establishing your baseline portfolio performance – and while you're at it, do NABERS Water too;
- **Produce a strategy** for property upgrades over a realistic timeframe, say the next three years;
- **Set a target** for portfolio-average NABERS ratings;
- **Engage with your tenants** on their energy efficiency and indeed broader environmental, performance;
- **Tap into government funding** schemes;
- **Build long-term partnerships** with service providers and other sources of advice such as government and non-government organisations.

Stakeholder workshops on Mandatory Disclosure of Commercial Office Building Energy Efficiency are proposed for next month. Big Switch Projects will provide updated advice arising from what we learn.

We will be making our own submission on the proposal. Written comments are due to the government by February 27.

Appendix 1: A mock-up BEEC

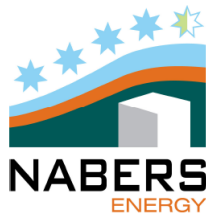
BUILDING ENERGY EFFICIENCY CERTIFICATE

Company name	Certificate reference number 2008-1234ABC
Building name	Certificate issued by Department of the Environment, Water, Heritage and the Arts
101 Something Street	Certificate Date 30 October 2008
Sydney NSW 2000	

Building Information

This certificate covers energy consumption in the base building, with a net lettable area of 12,800 m².

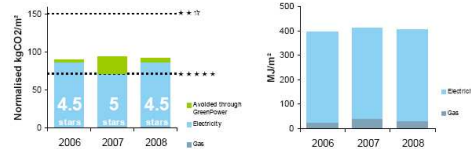
NABERS Energy rating



This building has achieved a **4 star** NABERS Energy rating

With 5% GreenPower, this rating is increased to 4.5 star
Rating is valid until 30 October 2009

Building performance history



Building energy consumption details

For the period 1 September 2008 – 30 September 2008, this building has:

- 394 MJ/m² p.a. energy consumption
- 1,261,298 kgCO₂ p.a. actual greenhouse gas emissions
- 92 kgCO₂/m² p.a. normalised greenhouse emissions without GreenPower (equivalent to a 4 star rating)
- 4 kgCO₂/m² p.a. greenhouse emissions offset using GreenPower

Building assessment details

Assessor name:	John Smith
Assessor number:	XYZ012345
Employer name:	Energy Engineering
Trading address:	12 One St Sydney NSW 2000
Issue date:	1 July 2009

About NABERS

- 1 Star – Poor energy management or outdated systems
- 2 Star – Below average building performance
- 3 Star – Good – above average market performance
- 4 Star – Very good – strong performance
- 5 Star – Excellent – best building performance

This performance rating is based on 12 months operational energy use in the Base building only. Please note that if you are intending to sell or lease the rated premises, you may be required to provide a separate tenancy rating certificate to comply with the requirements of the *National Mandatory Disclosure of Building Energy Efficiency Act 2008*.
NABERS is an initiative of the Commonwealth, New South Wales, Northern Territory, Tasmania, Victoria and Western Australia Governments, to rate the environmental performance of Australian buildings. It is managed by the Department of Environment and Climate Change NSW Government.

For more information about how to interpret and use this certificate, visit www.buildingrating.gov.au/commercial.

Source: Consultation Regulation Document, p69

Appendix 2: Office buildings and carbon emissions

The Mandatory Disclosure of Commercial Office Building Energy Efficiency documents report that energy-related carbon emissions from all types of commercial buildings in Australia have grown from 32 million tonnes in 1990 to 60 million tonnes in 2006, an 87 per cent increase in a span of 15 years. Commercial buildings now emit 10 per cent of Australia's total greenhouse gas emissions. Office buildings, the largest contributor of the commercial building sector, account for 27 per cent of these emissions, and they are estimated to have doubled between 1990 and 2010, from 8.5 to 16.5 million tonnes.

The Government notes Australia has a legal commitment under the Kyoto Protocol to cut its greenhouse emissions, and that every sector of the economy "must contribute in an equitable and cost-effective manner" (Consultation Regulation Document, p9).

Governments have accepted evidence from a number of recent reports, both international and Australian, that some of the most cost-effective cuts in carbon emissions can be delivered through improving energy-efficiency in buildings, both commercial and residential.



Further information:

Sydney: Gavin Gilchrist (02) 8270 7700 or 0407 663 125
Adelaide: Vikram Kenjle (08) 8212 0466 or 0410 184 587

The consultation documents can be viewed at
www.environment.gov.au/buildings.

Research note issued January 12, 2009