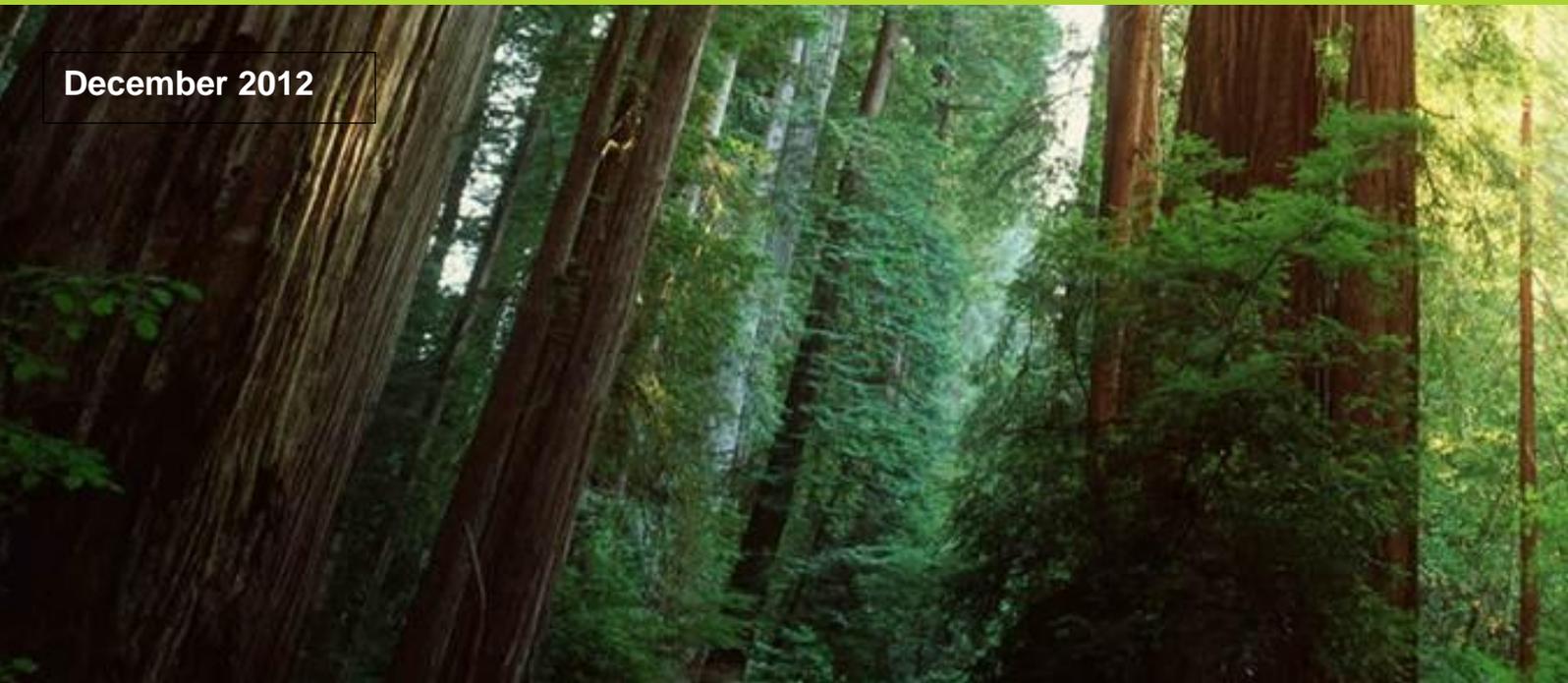




NEGOTIATING GREEN LEASES CASE STUDIES

**COUNCIL OF AUSTRALIAN GOVERNMENT (COAG)
NATIONAL STRATEGY ON ENERGY EFFICIENCY**

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GREEN LEASES

WHERE TO START

You know that sustainable outcomes and environmental performance do matter. This is particularly true for the property sector where buildings are massive users of energy and resources. Green leases are an important part of ensuring that all buildings are operated as efficiently as possible.

To remain a trusted adviser in the property space, you need to be able to talk 'green' with your clients and their other advisers – but where to start?

We invite you to learn from others to avoid the common pitfalls and pick up 'best practice' tips.

These case studies are taken from real life green lease negotiations. We have provided general descriptions only of the parties and buildings to protect identities.

The case studies have been chosen to illustrate a variety of scenarios and outcomes. In each, we draw out the lessons that can be learnt from that transaction.

- **Case study 1** – a question of approach – where a tenant sought hard green remedies
- **Case study 2** – left too late – where more may have been achieved if 'green' goals had been on the table from the outset
- **Case study 3** – you can't monitor what you don't measure – where the importance of metering was emphasised
- **Case study 4** – working together for a better outcome – where the tenant co-operated with the landlord's requirements in a multi-tenanted building

These case studies are a companion to the [Green Lease Handbook](#).



Case study **1** A QUESTION OF APPROACH

The scenario

Parties: Private sector owner, government tenant

Premises: 15 year lease of approximately 40,000 square metres of office accommodation. The whole of the building.

Position: Major refurbishment of an existing building. The refurbishment was largely motivated by a desire to attract a government tenant to an aging building. The landlord understood the importance of bringing the building up to 4.5 star NABERS energy base building to achieve this. The landlord was a sophisticated owner with its own commitment to sustainability.

What happened during negotiations?

The negotiations were difficult in relation to all issues – including the green lease obligations. There was a lack of trust between the parties which translated into a reluctance to compromise or work together on any particular issue.

Even though the landlord commenced negotiations accepting the 4.5 star target and inclusion of a green lease schedule, the green lease schedule was still the subject of extensive negotiations. The tenant also had not considered in advance whether it would change some of its 'usual' building requirements, such as in relation to air-conditioning parameters, in order to accommodate greener outcomes for the building.

Some of the negotiations arose from the tenant wanting to incorporate more punitive remedies. In particular, the tenant wanted the right to reduce the rent payable and ultimately terminate the lease if the landlord failed to reach the required target. This appeared to be driven more by a desire to maintain a strategic position in the negotiations rather than any sustainability concerns. There was no appetite on the part of the tenant to entertain similar reciprocal remedies for the landlord if the tenant failed to achieve its target rating.



Case study **1** A QUESTION OF APPROACH (cont'd)

What was the outcome?

At the end of the day, a form of green lease was agreed which reflected a more co-operative approach. It did not include those 'hard' elements looked for by the tenant.

Most importantly, the refurbishment works were successfully carried out. Further, the building was sold for a significant price in difficult market conditions to a major investor who was very comfortable with the green lease obligations.

Lessons learnt

- In green lease negotiations, it is important to consider in advance the drivers and requirements of each party.
- If the parties have an imbalance in their preparation and understanding of the green lease requirements, this can lead to difficulties (including increased time and cost) in securing an efficient lease negotiation.
- A balanced green lease is not a market deterrent and can return significant financial gains for an owner when looking to sell.

For further information

- There is a discussion of 'hard' and 'soft' green leases and sample clauses on pages 30 and 44 of the Green Lease Handbook.
- Key questions to consider before negotiations commence are set out on page 24 of the Green Lease Handbook. These questions will help to identify each party's objectives regarding green lease provisions.

Case study **2** LEFT TOO LATE

The scenario:

Parties: Private sector owner, private sector tenant

Premises: 5 year lease of approximately 800 square metres of office accommodation. A single floor in a multi-tenanted building - approximately 5% of the building.

Position: A new lease for an existing tenant in an existing building. The tenant was very committed to green lease outcomes and sought to use the 'green' credentials of its home as a promotional tool. The draft lease included some limited environmental obligations on the tenant. The tenant wanted to include in the new lease some reasonable green lease obligations on the landlord to enhance the environmental efficiency of the building.

What happened during negotiations?

Although the environmental outcomes were important to the tenant, the leasing proposal agreed between the parties was silent on this issue. The tenant only sought to include additional environmental obligations once the leasing proposal had been signed and a draft lease had been prepared by the landlord. Some of the amendments requested by the tenant included positive obligations on the landlord to:

- maintain and improve the energy rating for the base building,
- reduce emissions, water consumption and waste, and
- improve recycling and reuse.

The landlord was reluctant to accept the extent of green lease terms proposed by the tenant, particularly as the negotiation leverage in the deal for the tenant had passed.

Even though there was no target rating for the landlord, the landlord sought to manage the efficient operation of the building in part by limiting the maximum permitted occupancy levels by the tenant.



Case study **2** **LEFT TOO LATE** **(cont'd)**

What was the outcome?

The tenant was able to successfully negotiate the inclusion of some green lease provisions into the lease (although they were more limited than those originally sought). For example, the final lease terms include general requirements to co-operate and act in good faith to promote environmental efficiency and other identified environmental objectives. Importantly, these obligations are now reciprocal obligations on both the landlord and tenant.

The tenant accepted a maximum occupancy density of 1 person per 10 square metres - which is unlikely to be exceeded based on its current or projected staff levels.

Lessons learnt

- If green lease considerations are not included in the leasing proposal, it is more difficult to introduce them at a later stage in the negotiations.
- As with other terms in a commercial negotiation, sufficient strategic thought needs to be given about how to secure green lease/building objectives.

For further information

- Sample clauses for green performance obligations ranging from specific targets to aspirational statements are included on page 40 of the Green Lease Handbook.
- There is a discussion of the relationship between green objectives and other (regular) lease provisions on page 36 of the Green Lease Handbook.

Case study **3** **YOU CAN'T MONITOR WHAT YOU ~~CAN'T~~ DON'T MEASURE**

The scenario:

Parties: Private sector owner, government tenant

Premises: 15 year lease of approximately 50,000 square metres of office accommodation comprising essentially the whole of the building.

Position: A new lease for an existing tenant in an existing building. The landlord agreed to undertake a major refurbishment of the existing building in order to secure a commitment from the tenant to the new lease. As part of the refurbishment works, the landlord agreed to improve the NABERS energy base building rating at minimal cost.

What happened during negotiations?

The existing building was designed and constructed at a time when environmental efficiency was not a key consideration in building outcomes. As such, retrofitting the building to achieve the desired NABERS energy base building was going to be relatively difficult (and expensive). The landlord indicated that the proposed up-grade works would improve the operation of the building, but would not bring it up to the target rating desired by the tenant.

An important issue in relation to obtaining ratings and monitoring performance was that the building did not currently have accurate or effective metering. This led to negotiations regarding:

- the installation of new metering - in particular, the type and accuracy of the electricity metering to be installed to the premises; and
- the type of building management system (BMS) to be installed in the premises and what information would be made available to the tenant.



Case study **3** **YOU CAN'T MONITOR WHAT YOU ~~CAN'T~~ DON'T MEASURE (cont'd)**

What was the outcome?

The parties agreed to NABERS energy rating targets (both base building and tenancy) within the frameworks of the standard green lease used by the tenant. The standard green lease provisions provided a valuable starting point for the negotiations and assisted in the explanation and acceptance of green leasing concepts.

Given the constraints of the building and the relative costs of additional refurbishment works, the tenant agreed to reduce the target base building rating. In return, the tenant insisted that the refurbishment works include the installation of metering throughout the building and a new BMS to provide accurate and timely information to the landlord and tenant. Both parties recognised that the installation of the correct metering and BMS was essential to capture the required information for the NABERS energy ratings. They are also critical to enable the parties to better monitor, understand and reduce energy consumption in the building.

In the budget for the project, the parties anticipated that significant cost savings would be achieved.

Lessons learnt

- The importance of metering and a BMS to provide information on consumption should not be underestimated.
- Publicly available examples of green lease provisions can greatly help to overcome unfamiliarity and reluctance.

For further information

- A discussion of the technical considerations when upgrading an existing building is on page 28 of the Green Lease Handbook.
- Suggestions of ways in which an energy management plan can be tailored are on page 46 of the Green Lease Handbook.

Case study **4** **WORKING TOGETHER FOR A BETTER OUTCOME**

The scenario

Parties: Private sector owner, small publicly-funded tenant

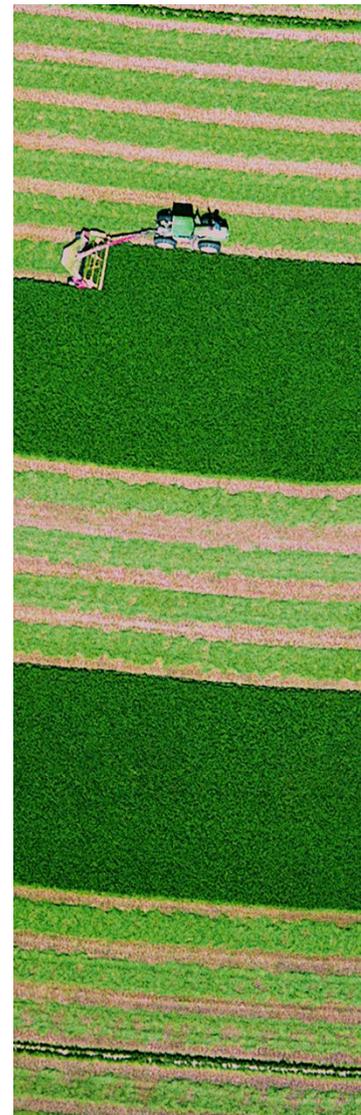
Premises: 12 year lease of 2,000 square metres of office accommodation. Part of a floor only in a multi-tenanted building – less than 15% of the building.

Position: A new building. Other tenants in the building already had green leases requiring the landlord to maintain a minimum NABERS energy base building rating. The landlord was very concerned to ensure that the actions of this tenant (or any other tenant) would not impact on its ability to meet its target.

What happened during negotiations?

The landlord came to the lease negotiations with the benefit of the expertise of environmental consultants engaged throughout the design and construction of the new building. The landlord had also already put in place green leases with other tenants. The landlord sought to manage the building performance by placing parameters on the way in which the tenant could occupy their premises. These included specified limits for hours of operation, occupation density limit of 1 person per 15 square metres, tenant electrical equipment density limit of 15W per square metre and a requirement for active use of blinds.

It isn't just the case that the landlord would be relieved of its obligation to meet the target if the tenant did not comply – these are real constraints on the way in which the tenant can occupy and use its premises. The tenant's legal advisers were very concerned that this was too risky – and that the landlord shouldn't control the way in which the tenant chose to run its business.



Case study **4** **WORKING TOGETHER FOR A BETTER OUTCOME (cont'd)**

What was the outcome?

The tenant was concerned about accepting these types of limits on its business operations. However, the landlord had clear advice from its environmental consultants that, if a tenant did operate outside these parameters, extra demand would be placed on the base building air-conditioning system and the desired base building rating could be jeopardised. The landlord did accept that, if the tenant installed its own supplementary air-conditioning, it could exceed some of the limits.

The tenant also assessed that the parameters set by the landlord were consistent with its own current working practices and operational requirements. In this context the landlord's requirements regarding occupation of the building were not too onerous for the tenant. With a better understanding of the landlord's rationale and the likely low impact on the tenant's business, the tenant was willing to accept the restrictions.

The tenant believed they had struck a good deal in a building of a much higher quality than its former premises.

Lessons learnt

- Although green leases may impose new or different types of obligations on parties, these may be acceptable in the context of the deal as a whole and the outcomes to be achieved.
- Clauses can be drafted more clearly and negotiations can be more productive where the landlord has a strong working understanding of how the operation of the building impacts on their target ratings.

For further information

- There are sample clauses for use where one party's actions may impact on the other party's ability to achieve its target ratings on page 43 of the Green Lease Handbook.

WHERE TO **NEXT?**

Green leases are here and they are becoming more and more mainstream. The introduction of environmental obligations into a traditional landlord tenant relationship may be confronting at first. Without doubt, these provisions do potentially introduce new risks and additional costs. But do not feel locked in or forced to accept provisions that do not work for you or your client. Green provisions are flexible and variable enough to be adapted to suit particular requirements.

Green leases represent an opportunity - an opportunity for landlords and tenants to engage with each other on how their buildings are operated, reduce their costs and meet their sustainability objectives.

USEFUL REFERENCES

- [Green Lease Handbook](#)
- [Tenant's Guide to Green Leases](#)
- [National Green Leasing Policy](#)
- [Commonwealth Green Lease Schedule, Environmental Management Plan and Building Management protocols](#)
- [NABERS Energy Management Guide for Tenants.](#)

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