



Tenant's Guide to Green Leases

August 2012

Council of Australian Governments (COAG)

National Strategy on Energy Efficiency

Published by the Department of Climate Change and Energy Efficiency

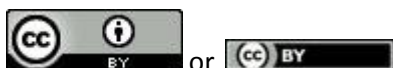
www.climatechange.gov.au

ISBN: 978-1-922003-69-0

© Commonwealth of Australia 2012

This work is licensed under the Creative Commons Attribution 3.0 Australia Licence. To view a copy of this license, visit <http://creativecommons.org/licenses/by/3.0/au>

The Department of Climate Change and Energy Efficiency asserts the right to be recognised as author of the original material in the following manner:



© Commonwealth of Australia (Department of Climate Change and Energy Efficiency) 2012.

IMPORTANT NOTICE – PLEASE READ

This document is produced for general information only and does not represent a statement of the policy of the Commonwealth of Australia. The Commonwealth of Australia and all persons acting for the Commonwealth preparing this report accept no liability for the accuracy of or inferences from the material contained in this publication, or for any action as a result of any person's or group's interpretations, deductions, conclusions or actions in relying on this material.

Acknowledgment

As part of the National Strategy on Energy Efficiency the preparation of this document was overseen by the Commercial Buildings Committee, comprising officials of the Department of Climate Change and Energy Efficiency, Department of Resources, Energy and Tourism and all State and Territory governments.

Tenant’s Guide to Green Leases

Table of Contents

Tenant power to make buildings greener.....	4
What is a Green Lease?.....	4
Incorporating green leasing concepts.....	5
Why a Green Lease?	5
Benefits for tenants	6
Benefits for Landlords.....	6
Improved tenant-landlord relationship	7
Costs of a Green Lease – from a tenant perspective	7
Common Misconceptions	8
Key Elements of a green lease	9
‘Green leasing’ is not ‘green washing’!.....	9
Five key green leasing elements	9
1. Target environmental performance standards.....	10
2. Metering and data reporting requirements	12
3. Environmental Management Plan	13
4. Building Management Committee.....	15
5. Remedial action / dispute resolution regime	16
Questions for consideration	17
Use of Green Leases in Governments.....	18
Further information	19

Tenant power to make buildings greener

Because of the relatively long term and heavily capitalised nature of the investment required in the development and operation of commercial buildings, building owners do whatever they can to attract and maintain good tenants, so as to ensure a stable and profitable return. Green performance of a building has recently become a new marketing tool that the industry has focused on to sharpen their competitiveness. This situation offers tenants the perfect opportunity to leverage their power as clients to demand a green and productive work environment, so that they can maximise the value for money of their rent. A green lease will provide a systematic approach to the negotiation and inclusion of terms and conditions into a tenancy agreement that will enable both parties to achieve their environmental obligations, and at the same time harness their associated economic and social benefits.

This guide presents information for tenants about Green Leases. It aims to demystify the concept of a 'green lease' – explaining what it is, how it operates and highlighting the benefits to both tenants and the environment from green leasing.

The guide examines a green leasing concept based on the National Green Leasing Policy, which was developed for leased government buildings. The Australian Government's Green Lease Schedules are used as an example to illustrate this concept.¹

However, green leasing and green leases, are still relatively new concepts. Subsequently this allows for some adaptability and customisation in the creation of a green lease – one that can optimise outcomes for tenant, landlord, and importantly, for the environment.

What is a Green Lease?

A 'green lease' is a lease between the landlord and tenant which aims to ensure that the ongoing use and operation of the building minimises environmental impacts.

A 'green lease' distinguishes itself from conventional leases in that it incorporates ecologically sustainable development (ESD) principles. These provide a framework under which both landlord and tenant can achieve and maintain energy efficiency and other sustainability goals throughout the lease term.

Essentially, a 'green lease' can be applied to any building – provided that it fulfils the necessary environmental criteria. It can also be applied to fulfil the needs of any tenant-landlord situation. There is no one prescribed green lease format. Rather a 'green lease' is a document that results from a collaborative process between tenant and landlord in response to their particular leasing situation.

¹ Green Leasing requirements and standard documents for state and territory government buildings may vary between jurisdictions. Government tenants and private owners of building with government tenants are advised to consult with their respective state or territory government property department for details.

However, under the National Green Leasing Policy, the Australian, State and Territory Governments are leading by example in establishing minimum Green Lease standards for government office accommodation.

Additionally, the co-operative approach is not just taken at the initial phase of creating a green lease, it is encouraged throughout the life of the lease and thereby transforms the traditional adversarial landlord-tenant relationship into one of common vision and mutual benefit.

Incorporating green leasing concepts

Green leasing concepts can be included in a conventional property lease in the body of a lease, or attached as an additional schedule.

Often when green leasing concepts are incorporated in the body of a lease, green provisions are scattered throughout, and careful drafting is required. In particular, the green provisions may unintentionally take on additional weight, as a breach of these may constitute a breach of the lease and therefore may be grounds for default and termination.

However, if the green lease terms take the form of a schedule to the lease, the ordinary lease terms will be clearly separated and isolated from the green lease provisions. The advantages of a separate schedule include:

- Some parties may be more comfortable—particularly as it helps to clearly identify or isolate the “green” elements of the lease rather than having to sift out the additional terms or modifications to the lease.
- Those parties responsible for the ongoing management of the green lease provisions are able to easily identify the key provisions for them.
- A green schedule typically includes the consequences that flow from a failure to meet the relevant green targets, which are distinct from the usual remedies for breach contained in a lease.

Why a Green Lease?

Green leases are an improved business model of building management for both tenant and landlord. The biggest rewards will be seen where the green aspects of the building are maintained throughout the full term of the lease. A good understanding of the benefits available for both parties is essential in reaching a mutual agreement in applying green leasing concepts in a lease.

Benefits for tenants

- From a tenant perspective, a green lease can lead to significant cost savings, both direct (for example, in lower electricity bills) and indirect (where through outgoings a tenant contributes to wider building costs such as waste management, water usage and air conditioning).
- Aside from the usual profitability measures, green leases can enhance a tenant's reputation for corporate social responsibility, in the sense of doing the right thing for the environment, employees and the community. Enhanced corporate social responsibility in turn leads to better staff retention rates and improved employee wellbeing, resulting in improved productivity and reduced absenteeism.
- Green leases, and the enhanced work environments they can produce, may facilitate better organisational learning and a safer work environment overall—for example, improved indoor air quality.
- Tenants under green leases can occupy a more productive work environment and may be less likely to seek to relocate at the end of a lease term, lowering the costs associated with future office relocation.
- Green leases encourage tenants and their employees to take ownership and improve their awareness of and engagement in building energy efficiency measures. It supports both tenants and landlords in operating the building as it was intended.
- Traditionally, there is little incentive for a tenant to invest in energy saving measures, as the fixtures, plant or equipment installed may not be relocatable at the end of the lease and will need to be removed and restored to the original state (the make good clause). Green leases can incorporate the flexibility and creativity that allows energy efficiency improving retrofits installed by a tenant be retained after the expiry of the lease.

Benefits for Landlords

- From a landlord perspective, green leases can result in not only cost savings associated with operating buildings but also happier tenants, meaning longer-term leasing arrangements and fewer landlord-tenant disputes.
- There is a clear green premium for office buildings adopting the sorts of energy efficiency and other measures associated with green leases. There is also a proven statistical correlation of green properties with improved rents, reduced vacancies, reduced outgoings and reduced incentives.
- Green leases can enhance a landlord's reputation for CSR. This will assist to attract blue chip tenants, such as government agencies and large corporations that are likely to be environmentally aware.

- Green leases encourage a collaborative approach between landlord and tenant. This allows a closer working relationship with tenants and hence more positive influence on tenant's behaviour to enable better management of the building.
- Often buildings with green leases are likely to be operated in a more efficient manner and hence largely reduce the maintenance costs and extend the average life span for equipment and mechanical services.
- Green leases encourage a shift from the traditional services-focused mentality to an efficiency-focused practice.
- In a green lease, provisions can be included to ensure that work done by the tenant to the premises is carried out with full disclosure and consistent with the environmental objectives of the lease. This will minimise the chance that such work will hinder the base building from achieving the target performance standards. As mentioned above, this approach will also provide the flexibility and creativity that allows energy efficiency improving retrofits installed by a tenant be retained after the expiry of the lease. From the landlord's perspective, these retrofits may further increase the green credential of the building and hence the building value.

Improved tenant-landlord relationship

- The usual assumptions in a contractual relationship such as that between a landlord and tenant are that the parties are conducting an arm's-length transaction, with each side seeking only to promote its own interest and maximise its own profits according to the terms of the contract. In the situation of a green lease, in order to achieve the desired sustainability outcomes of both parties, a landlord and tenant must work together, on an ongoing basis.
- Green leases promote energy efficiency by creating lease structures which equitably align the costs and benefits of efficiency investments between landlords and tenants.

Costs of a Green Lease – from a tenant perspective

From a tenant perspective, costs of using a Green Lease can be divided into two types. The first type relates to the administration of green lease requirements, e.g. costs associated with NABERS tenancy ratings, preparing and attending building management meetings, and keeping the required records.

The second type includes costs that are needed to modify the tenant's own behaviour. That is, to a greater or lesser extent, the tenant may need to change the way they use the building in order to meet the tenancy energy targets that are set in the green lease. For example: The tenant may need to turn off all the lights and appliances when they leave their space. After hours, tenants may need

to use desk lights rather than whole floor lighting; or pay attention to the use of the air conditioning. Energy efficient appliances or equipment are likely to be required.

The behavioural changes that may be necessary under a green lease are, for the most part, easily achievable. They are not changes that put undue stress on the building occupants or compromise the usability of the building. With appropriate education and awareness campaigns, these changes can be achieved within a period of re-adjustment and be reinforced into a common practice.

The experience of using green leases in government and private sector has demonstrated that the energy and financial savings well outweigh the management costs and any initial inconvenience.

Common Misconceptions

Some landlords may resist using a green lease due to misconceptions about green leases. Understanding those common misconceptions maximises the chance of successful negotiation of a green lease. The following table summarises these common misconceptions and the associated truths.

Misconception	Truth
To implement a functioning green lease, landlords need to purchase state-of-the art plant and equipment, such as trigeneration infrastructure.	It is possible for property owners to raise their NABERS Energy rating to 4 stars without major capital investment by better management practices (<i>Warren Centre for Advanced Engineering at Sydney University Low Energy High Rise Building Research Report</i>).
Green leases are only relevant to brand new buildings with modern energy efficiency features.	Existing buildings, even heritage-listed buildings, can have a management plan or be retrofitted to meet the specified requirements of green leasing. In fact many buildings, if well managed, could operate with a green lease to optimise its environmental performance.
Landlord is responsible for the cost of new plant and equipment or other capital investment which improves the performance of the building and the tenant reaps the savings and improved work environment.	Often green leases include arrangements for cost offset or recovery to reflect the reduced expenditure otherwise payable by the tenant under the lease.
Green buildings are more expensive to construct and run.	Green buildings are built with more durable, low-maintenance materials and may therefore have longer economic lives. They are less prone to obsolescence. The savings in energy and water costs as well as enhanced market value also create greater enduring economic benefit.

Green leases create significant amount of administrative workload for the landlord, e.g. collection of energy consumption data, attending meetings, keeping records, etc.	Green leases should reflect the best practices in relation to building management. In other words, the requirements in green leases should be merely the activities that should have already been incorporated into an effective and efficient building operation and management arrangement.
---	---

Key Elements of a green lease

‘Green leasing’ is not ‘green washing’!

‘Green washing’ is a scenario that has the appearance of applying ecologically sustainable development (ESD) principles without actually doing so. The intention is to be seen as ‘green’.

In an effort to increase the marketability of a building, a landlord could present the building to a tenant in a way that implies compliance with ESD principles, when in fact no significant green measures are in place. For example, a lease may include a simple aspirational statement that the parties wish to take into account environmental considerations, without specifying any clear environmental performance targets and ways to achieve them.

Five key green leasing elements

To ensure it is not merely a “green washing” attempt, a green lease must establish a mechanism that is functional and capable of delivering positive environmental outcomes. This section of the guide explores the five key elements that are designed to ensure that a lease is a genuine green lease, and the importance of incorporating them from a tenant perspective.

These five key elements are:

1. Target environmental performance standards
2. Metering and data reporting requirements
3. Environmental management plan
4. Building management committee
5. Remedial action / dispute resolution regime.

1. Target environmental performance standards

A functional green lease must include a set of clearly defined environmental performance standards that are required to be met by the landlord and tenant. It is also essential that the lease specifies the way that these standards are measured.

For example, the National Green Leasing Policy provides that:

- the energy target standards are:
 - 4.5 star NABERS Energy rating for base building (landlord's responsibility)
 - 4.5 star NABERS Energy rating for tenancy (tenant's responsibility)²
- the landlord must achieve their energy rating 15 months after the date the lease commenced
- the tenant must achieve their energy rating 15 months after the date the lease commenced³
- the ratings are to be maintained throughout the term of the lease⁴
- the landlord and tenant must each provide a certificate issued by a NABERS Accredited Assessor showing that the rating has been achieved within 3 months of each anniversary of the commencement date of the green lease.⁵
- Other environmental performance standards, such as water efficiency, waste management and indoor environment quality can be included in a Green Lease in a similar manner.

In this example, evidence of compliance is demonstrated by certificate provided at specified dates, agreed in advance by the parties. The compliance regime may further be supported by an auditing power that could be exercised by a party if the other party's compliance of the target standards is in doubt. For example, the Australian Government's Green Lease Schedule provides that one party can, at any time, request evidence from the other party if they suspect they are not complying with its green obligations under the lease. This provision ensures that parties are able to monitor compliance with the lease obligations at all times throughout the term of the lease.

There are a variety of tools which can be used to specify environmental performance requirements.

NABERS Energy

Most of the green leases in Australia use NABERS to specify and measure the performance standards. NABERS is a performance-based rating system for existing buildings. Buildings are rated on the basis of their measured operational impacts on the environment. The assessment requires at least 12 months of actual data related to the performance of the rated building. NABERS uses a

² This applies only to governments, e.g. the Australian Government's Green Lease Schedule, that elect to govern and deliver the tenancy requirement through the Green Leasing arrangement between the landlord and the government tenant. Individual governments may elect to specify and monitor their tenancy rating requirement through other government mechanisms, e.g. government directives, independently of the Green Leasing arrangement. In those cases, the other mechanisms will determine and prescribe the tenancy rating requirements.

³ Same as above

⁴ Same as above

⁵ Same as above

nationally consistent methodology to compare buildings within their market and provides investors, designers, builders, owners and tenants with a common language for measuring, comparing and managing different elements of building sustainability. Being a commonly accepted and easy to use rating tool, NABERS helps simplify the setting and verifying of the target standards for green leases.

Further information about NABERS can be found at www.nabers.gov.au.

Green Star

Green Star is a national voluntary environmental rating scheme that evaluates the environmental design and construction of buildings. It was developed to establish a common language of green building attributes, promote integrated, whole-building design, recognise environmental leadership, and identify building life-cycle impacts. The Green Star system assesses the environmental design and construction of buildings by considering their management, indoor environmental quality, energy use, transport proximity, water and materials use, land use and ecology, emissions, and innovative features.

Further information about Green Star can be found through the Green Building Council of Australia website at www.gbca.org.au/green-star.

Building Energy Efficiency Certificate

The lighting assessment component of the Building Energy Efficiency Certificate (BEEC) under the Australian Government Commercial Building Disclosure program can be used as a standard for specifying the tenancy lighting energy efficiency requirements.

Further information about BEECs can be found at www.cbd.gov.au.

National Construction Code

New and existing buildings at time of renovation (such as an alteration or addition) are required to achieve minimum energy efficient design and installation standards for certain features under the National Construction Code (NCC) as part of a building application. These include the building fabric, glazing, building sealing, air conditioning and ventilation systems, artificial lighting and power. These requirements are set out in Section J, Volume One.

Under the NCC, maintenance standards also apply for certain energy efficient installations. These include adjustable or motorised shading devices; time switches and motion detectors; room temperature thermostats; plant thermostats; motorised air dampers and control valves; reflectors, lenses and diffusers of light fittings; and heat transfer equipment. The building owner and/or occupier is responsible for components of these services to ensure that they perform to a standard not less than they were originally required to achieve.

Further information about the NCC can be found at www.abcb.gov.au/en/ncc-products.

Setting the standards

In negotiating standards, it is essential to take into consideration the maximum environmental performance that could potentially be achieved by the building in its existing state, and what cost-effective measures could be implemented to further improve its performance. The objective of setting standards is to optimise the environmental outcomes by operating the building at its

maximum potential and identifying appropriate improvement opportunities that will suit the parties' operational and financial conditions.

From a tenant's perspective, it is important to understand the energy performance of the existing lighting system, which accounts for roughly half of the energy consumption that will determine the performance for the tenancy rating. A tenant should also carefully review its business and operating requirements in terms of energy consumptions, e.g. type of appliance and equipment used, hours of operation, etc, before committing to a tenancy target.

2. Metering and data reporting requirements

The availability of accurate and timely energy consumption and other sustainability performance data is vital to the successful operation and management of a green building. Therefore, setting sufficient metering requirements and an appropriate data reporting regime is fundamental to the success of green leasing. This enables tenants and landlords to better understand and actively manage their own energy usage and cost. It also allows early identification and rectification of inefficient use of energy as well as system errors.

Landlord's obligation to install metering

In negotiating a green lease, a tenant should make sure that a requirement of the landlord to install sufficient and appropriate metering that supports the on-going monitoring and verification of the environmental performance standards is included. For example, in the Australian Government's Green Lease Schedules, the landlord is required to install NABERS compliant electricity, water and gas metering. The landlord is further required to ensure that, from the commencement date and during the term of the lease, the tenant and base building consumptions are separately metered for all services: electricity; water (hot and cold) and where practicable, separate water uses; and gas.

Separate metering

Separate metering (or 'sub-metering') for tenant and base building consumptions is essential to the tenant's ability to:

- effectively manage their energy consumption by being individually billed (instead of sharing costs between tenants)
- purchase electricity in an accurate, efficient and cost effective manner
- demonstrate value for money in purchasing electricity, and
- ensure the tenant and base building performances can be rated accurately.

Sub-metering is a regulatory requirement for certain classes of buildings in some States e.g. new commercial buildings which are covered by the [Queensland Development Code 4.1–Sustainable buildings](#).

Data reporting obligations

The data reporting and sharing under a green lease is not characteristically part of usual lease arrangements. However, it helps both parties to understand not only their own performance, but

also how well the other party is progressing in meeting their performance standards. This lays the foundation of a cooperative working relationship on which an effective management framework can be established. This will be further discussed under the topics of Environmental Management Plan and Building Management Committee below.

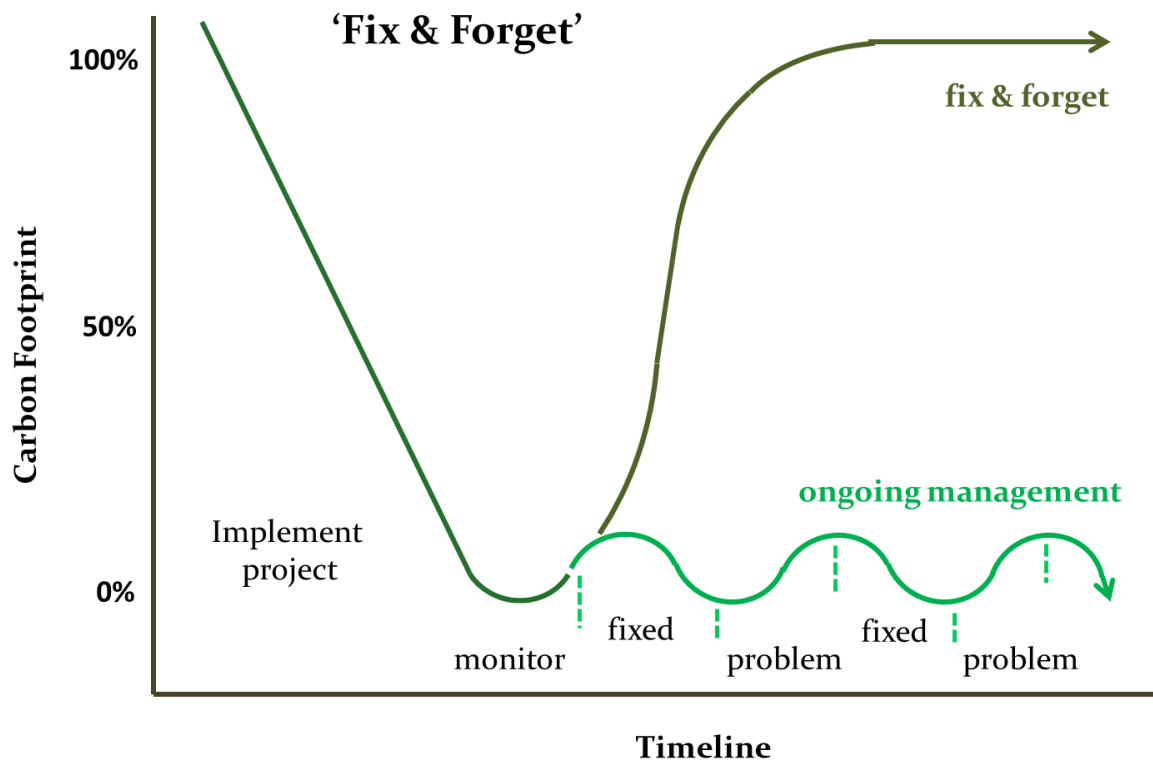
A green lease should include provisions clearly prescribing both parties' reporting obligations to ensure that relevant required data is maintained and shared. This is necessary to:

- support the achievement of the required ratings and comply with the green lease
- obtain data necessary to assess ratings, and
- provide tenants with an audit trail of performance and compliance.

3. Environmental Management Plan

An Environmental Management Plan (EMP) is a key component of an effective and functional building management regime. In a nutshell, it is the blueprint for successful delivery of the environmental performance standards specified in a green lease. It includes strategies for managing the energy consumption of both tenant and base building and other sustainability performances.

An EMP typically includes descriptions of a building's mechanical and electrical systems and equipment, preventative maintenance required, and occupancy schedules and run-times. At its essence, an EMP is about maintaining the performance ratings associated with a building and establishing a periodic and transparent monitoring and problem-fixing regime. It is designed to address the "fix and forget" attitude, which is common in existing building management practice that, while initially achieving short-term gains in energy efficiency, leads to deteriorating performances over time. The graph below shows that the "fix and forget" attitude does not lead to a positive and long-term environmental outcome.



Developing an EMP

As each building is different, an EMP is required to be developed to reflect the needs and conditions of that building. Often it is not possible to include a completely developed and agreed EMP at the point of signing a green lease. Therefore, it is essential that a mechanism of developing an EMP is included in the green lease. For example, in the Australian Government's Green Lease Schedules, the landlord and tenant are required to jointly develop and agree to an EMP within 3 months after the commencement of the green lease. If an EMP is not agreed to by both parties within this timeframe, the sample EMP (developed by the Australian Government) will be used as the default EMP.

Key elements in an EMP

There is no uniform model for an EMP. Rather, the following list includes the elements that are common to most EMPs and can be helpful in drafting and reviewing an EMP:

- type of energy consumed in building
- minimum energy consumption targets for an established period
- how energy and water use is being monitored in respect of common and individual use over time against targets
- the nature and extent of energy consumption reduction measures being implemented in the building
- the aspirations of both base building and tenant to meet these targets
- protocols for the recording, keeping and dissemination of data obtained through the monitoring process

- short-, medium- and long-term goals for energy consumption reduction
- the establishment of an Building Management Committee (BMC), including its constitution, membership, objectives and functions, including meeting frequency and powers
- a clear set of defined house rules for the operation of the BMC.

Sample EMP

The Australian Government has developed a sample EMP, which includes generic terms and conditions that could be used for most commercial office buildings. It is encouraged to be used as a starting point for developing a more specific EMP for each individual building. The sample EMP is available at www.climatechange.gov.au/government/initiatives/eego/forms-and-templates.aspx.

4. Building Management Committee

The BMC is the machinery of a green lease. Typically, a BMC is formed from both tenant and landlord representatives. These personnel are authorised to act on behalf of the tenant or landlord in relation to the implementation of the green lease and the EMP. It is not necessary for the BMC representatives to be accredited building or energy experts or to hold specialist qualifications. Rather, they need the necessary understanding of the requirements under the green lease and EMP to be able to manage the landlord or tenant's needs and obligations. However, under certain circumstances, involvement of accredited building or energy experts could be beneficial. For example, seeking input or advice from experts when preparing the Building Management Plan or encountering complicated technical issues could help ensure that appropriate and effective solutions are developed.

Naturally, the building and facility managers have an essential role in conducting BMC business and taking action on decisions made by the BMC. As IT systems have direct and indirect impacts on the energy consumption of the base building and tenancy, it is advisable that representatives from the IT area from both tenant and landlord are on the BMC. Parties may also consider having representatives from the human resources area, as the promotion of efficient use of the building by staff, including appliances and equipment, is paramount in achieving the target standards.

What does a BMC do?

The overarching aim of a BMC is to reduce the environmental impact by managing the building's performance to what is stipulated in the EMP. Specifically, the BMC:

- has access to all relevant data and updates the EMP as required
- is across all fit outs and processes of the building
- liaises with building performance stakeholders
- focuses on keeping all parties interested in the building by informing them about new developments

- produces and maintains various building environmental management reports
- conducts on-going monitoring and review of environmental performance data collected to identify inefficiencies and improvement opportunities
- acts as a vehicle for consultation on issues arising from the green lease or EMP and proposing recommendations and solutions to the landlord and tenant.

What are the costs involved with a BMC?

In a typical building, the basis of a BMC will likely already exist through periodic (often quarterly) meetings held to manage the building's maintenance, fault reports, and occupational health and safety. Therefore, most property owners and tenants in commercial buildings already have representatives to manage their interests so the BMC should entail only a small additional cost. This cost can be offset by the utility savings gained through the effective operational management of the building.

5. Remedial action / dispute resolution regime

What really differentiates a genuine green lease from a "green washing" lease is whether or not it contains a well defined and effective remedial action and dispute resolution regime. It is essential for a green lease to include a remedial action and dispute resolution regime that prescribes a systematic approach to deal with compliance failures and develop a solution to rectify the problem.

Depending on how the green requirements are prescribed in the lease, if there are no clear provisions dealing with compliance failures, there will be two possible outcomes. Both of these outcomes are not desirable and will not deliver positive environmental results.

The first possible outcome is that if the green provisions are drafted to be isolated from the base lease's remedial action / dispute resolution regime, then all the green provisions are effectively not subject to any meaningful enforcement regime and will be merely aspirational. For example, if a party fails to achieve the target energy rating, the other party will not be able to do anything more than complain about the compliance failure and persuade the other party to take actions to fix the problem.

On the contrary, the second possible outcome is that if the green provisions are drafted in a way that they are not isolated from the base lease at all, then the base lease's remedial action / dispute resolution regime will be the default regime. A compliance failure may trigger significant and undesirable consequences, such as:

- the usual lease sanctions for breach, including ultimately forfeiture of the lease
- rent abatement (where the landlord is in breach), and
- the ability for the non-defaulting party to step-in and rectify at the other party's cost.

Middle ground approach

It is, therefore, highly recommended that a middle ground approach is used to deal with green lease related compliance failures. This approach involves a separate and self-contained regime for dealing with compliance failures. It recognises the collaborative model of the green lease provisions, as opposed to the usual ways in which contractual provisions may be enforced by either party. In a green lease, preserving the cooperative approach of both parties to achieving energy efficiency and other environmental improvements is crucial to consistently reaching the required green targets.

For example, a middle ground approach may seek to allocate to the defaulting party the cost of remedying the default, and a failure to pay this cost would then represent a breach of the lease in the usual sense.

Australian Government's model

The Australian Government has developed a remedial action / dispute resolution regime, which is incorporated in its Green Lease Schedules. It is designed to minimise and resolve green lease disputes, and includes mechanisms, such as remedial notices, arbitration, mediation and expert determination. The objective is to ensure compliance with the green lease obligations, but preclude termination of the lease where there is a failure to comply. Prospective green lease landlords and tenants are encouraged to review the Australian Government's model and use it as a starting point for developing a model that would suit their needs and conditions. The Australian Government's Green Lease Schedules are available at

www.climatechange.gov.au/government/initiatives/eego/forms-and-templates.aspx.

In a nutshell, the Australian Government's model includes the following steps:

- Raise the issue with the BMC, if the issue cannot be resolved at BMC level and a green lease obligation has been breached, the other party may issue a remedial notice that formally requests dialogue or the taking of remedial action.
- Typically fifteen days are allocated to meet and agree to the remedial action. If the issue cannot be resolved within this timeframe, an expert is appointed to raise an enforcement notice.
- The expert decides how the dispute will be resolved, including cost allocation, and the decision is then binding on the parties.

Questions for consideration

There are many aspects a tenant needs to consider when embarking on the green lease process. Here are some questions that may be helpful in guiding the preliminary thinking process:

- What are the key reasons for wanting a green lease? What aspects of a green lease are particularly of interest?
- What are the operational capabilities of your property in relation to energy and water, the indoor environment and waste management?
- What would be realistic targets to set for energy and water use with respect to improving energy efficiency?
- What risks could be involved with meeting these targets and how could they be mitigated?
- What would be reasonable consequences for failing to meet targets?
- Are you 'ready, willing and able' to adapt to your behaviour regarding the way the building would be used under a green lease? And if so, what behavioural changes would be acceptable?
- What measures could you take to inform and educate your staff about the required new behaviours?
- How could your relationship with the landlord be optimised? What obstacles need to be overcome?

Use of Green Leases in Governments

The Energy Efficiency in Government Operations (EEGO) policy first stipulated the requirement for a green lease in 2006. Since that time, green leases have been taken up by Canada, France, and the United Kingdom.

Since 2010 there has been a National Green Leasing Policy requirement for all new Commonwealth, State and Territory leases where the office space is more than 2000m² and the lease term is more than two years.

In co-operation with the States and Territories, the Australian Government is now continuing to drive change in the private sector with respect to the introduction of green leases in the commercial building arena - both in Australia and overseas.

Further information

Australian Government's Green Lease Schedules and Energy Management Plan templates:

www.climatechange.gov.au/government/initiatives/green-lease-schedule.aspx

Australian Government's sample Environmental Management Plan:

www.climatechange.gov.au/government/initiatives/green-lease-schedule/energy-management-plan.aspx

NABERS ratings:

www.nabers.gov.au/

Green Star Rating:

www.gbca.org.au/green-star

National Green Leasing Policy:

www.apcc.gov.au

National Construction Code:

www.abcb.gov.au/en/ncc-products