Australian Government

Green Lease Schedule

Guidance Notes

Version 2.0

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Green Lease Schedule Guidance Notes 2025

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1. Introduction

1.1. Aim of the Green Lease Schedule Guidance Notes

The aim of the Green Lease Schedule Guidance Notes is to provide a resource for Commonwealth Tenants, and their legal advisers and property consultants, in implementing and managing the Australian Government's net zero energy efficiency objectives by assisting them in selecting and implementing an appropriate Green Lease Schedule.

1.2. Who should use these Guidance Notes?

The Green Lease Guidance Notes are designed for use by:

- Commonwealth Tenants (which are bound by the Australian Government's Net Zero in Government Operations Strategy (the **Policy**)) when sourcing commercial lease accommodation;
- other Commonwealth Tenants (which are not bound by the Policy but who wish to participate in the Australian Government initiatives contained in that Policy) sourcing commercial lease accommodation; and
- property consultants and legal advisers to Commonwealth Tenants in the above circumstances.

1.3. Who should use Green Lease Schedules?

Non-corporate Commonwealth entities are required to use Green Lease Schedules in accordance with the Policy. Corporate Commonwealth entities and Commonwealth companies are encouraged to do so.

2. How to use these Guidance Notes and the Green Lease Schedules

Commonwealth Tenants and their professional advisers will be able to get optimum value from these Green Lease Guidance Notes by taking the following approach:

1) Developing familiarity with the Policy. Ensure that the accommodation brief and lease acquisition strategy factors in the requirements of the Policy.
2) Ensuring that any Property Management Plan factors in the requirements of the Policy.
3) Taking into account the accommodation requirements (including the space requirements), identifying the appropriate Green Lease Schedule for the lease acquisition process, and incorporating the Green Lease Schedule into the lease acquisition strategy.

   Note: There may be situations where the initial lease acquisition strategy necessitates more than one Green Lease Schedule being issued because the proportion that the net lettable area of the premises bears to the net lettable area of the building cannot yet be ascertained or because the Commonwealth Tenant prefers a gross lease (in keeping with the Policy objectives) but professional advice at the time and the particular market indicates that a net lease may need to be considered.
4) Ensuring that the appropriate Green Lease Schedule is selected and included in negotiations at the outset, and dealt with adequately in settling any heads of agreement.
5) Lawyers drafting, preparing or settling the lease documents should:
   a. ensure that an appropriate Green Lease Schedule has been selected; and
   b. bear in mind the need to review the base lease document in light of the Green Lease Schedule to ensure compatibility, to reconcile provisions, and to enable the Commonwealth tenant to be adequately advised of the impact of base lease provisions on the Green Lease Schedule (and vice versa). This process should continue through the entire lease negotiation process up to execution of the final form of lease incorporating a Green Lease Schedule.**Use of Green Lease Guidance Notes**

These Guidance Notes:

- are in a summary form;
- are not exhaustive;
- do not constitute legal advice;
- do not replace the need to fully consider the Policy, the Green Lease Schedules, the base lease clauses themselves in each transaction, and any amendments agreed in negotiations.

2.2. Warning

Lease negotiators and legal advisers should fully assess each Green Lease Schedule clause in the context of a particular transaction and in light of the base lease being used for the

transaction. Care must be taken to check the interaction of the base lease with the Green Lease Schedule to avoid ambiguity, to ensure consistency and compatibility, and to give efficacy to the intent of the parties.

Commonwealth entities should put in place arrangements that will ensure compliance with the Policy requirements at all times.

2.3. Strategic Lease Planning

The acquisition process for a lease needs thorough planning to:

- optimise the Commonwealth Tenant's opportunities (legally and commercially);
- achieve compliance with Commonwealth laws, guidelines and policies (for example, the *Lands Acquisition Act 1989* (Cth), the Commonwealth Tenant's own enabling legislation, the Commonwealth Property Management Framework, the Commonwealth Procurement Rules, and the Policy);
- enable the Commonwealth Tenant to optimise its bargaining position early on in the process before it is committed to the premises (whether legally or as a matter of practical necessity) and so avoid being put in a position where it needs to consider making concessions because its accommodation options have become limited; and
- ensure transparency and defensibility of the process.

The Green Lease Schedules need to be introduced into the lease acquisition process at a very early stage and Tenants are required to use and incorporate into the lease transaction a Green Lease Schedule where specified in the Policy.

2.4. Whole of Commonwealth Approach

Commonwealth Tenants are encouraged to take a 'whole of Commonwealth approach' in endorsing and using the Policy and the Green Lease Schedules in a positive way to contribute to an understanding and acceptance in the market place of Commonwealth requirements. A consistent approach across all Commonwealth tenancies will optimise market acceptance of the Policy and the Green Lease Schedules.

3. Commonly used terms

This section contains a description of terms and acronyms commonly used in these Guidance Notes and the Green Lease Schedules. These are listed below in alphabetical order.

Accredited Assessor	An accredited assessor under NABERS.
Accredited Rating Certificate	A certificate issued by the NABERS National Administrator evidencing a NABERS Energy Rating.
Adjusted NABERS Energy Rating	A NABERS Energy Rating determined by the Expert and being an adjustment to the Target Building NABERS Energy Rating or the Target Tenancy NABERS Energy Rating or both.
Building Management Committee	The committee established under a GLS which is comprised of the Tenant's Energy Representative and Landlord's Energy Representative. A Building Management Committee is required by GLS A1, GLS A2, GLS B1 and GLS B2.
Building Management System or BMS	A computer based control system which centralises and automates control and monitoring of electrical and mechanical services, such as HVAC, lighting and security systems
Commitment Agreement	A contract signed by a developer or owner to commit to design, build and commission a building to achieve a specific NABERS Energy Rating.
Energy Intensity	Megajoules of energy consumed per square metre of the net lettable area of the Building or the Premises (as the case may be).
Energy Management Plan	The plan to be established by the Landlord and Tenant under the GLS which is intended to support the achievement of the objectives of the Policy and the GLS by setting out the strategies to be employed by the parties in support of their GLS obligations. An Energy Management Plan is required by GLS A1, GLS A2, GLS B1, GLS B2, GLS C1 and GLS C2.
Enforcement Notice	A notice given by one party to another under a Green Lease Schedule due to the recipient not complying with a Remedial Notice or Remedial Plan.
Expert	An independent third party who is a qualified practicing professional and appropriate industry expert appointed at the request of either Party in accordance with the Green Lease Schedule by: a. the chairperson for the time being of the Resolution Institute ABN 69 008 651 232 in the State or Territory in which the Building is located; or b. if there is no such body in existence at the time of the request, the chairperson for the time being of an equivalent body.

GLS A1	The GLS for use in a gross lease entered into for four or more years where the premises are 1,000 square metres or more of net lettable area and the Tenant occupies 100% of the net lettable area of the building.
GLS A2	The GLS for use in a net lease entered into for four or more years where the premises are 1,000 square metres or more of net lettable area and the Tenant occupies 100% of the net lettable area of the building.
GLS B1	The GLS for use in a gross lease entered into for four or more years where the premises are 1,000 square metres or more of net lettable area and the Tenant occupies 50% to 99% of the net lettable area of the building.
GLS B2	The GLS for use in a net lease entered into for four or more years where the premises are 1,000 square metres or more of net lettable area and the Tenant occupies 50% to 99% of the net lettable area of the building.
GLS C1	The GLS for use in a gross lease entered into for four or more years where the premises are 1,000 square metres or more of net lettable area and the Tenant occupies 49% or less of the net lettable area of the building.
GLS C2	The GLS for use in a net lease entered into for four or more years where the premises are 1,000 square metres or more of net lettable area and the Tenant occupies 49% or less of the net lettable area of the building.
GLS D1	The GLS for use in a gross lease where the net lettable area of the premises is less than 1,000 square metres.
GLS D2	The GLS for use in a net lease where the net lettable area of the premises is less than 1,000 square metres.
Green Lease Schedule or **GLS**	A Green Lease Schedule designed to be attached to a lease of premises which by its terms will be deemed to be incorporated into a lease agreement. There are 8 different Green Lease Schedules designed for particular types of tenancies. The Green Lease Schedules are intended to be used with any base lease document, but lease negotiators and legal advisers should review both the base lease document and the relevant GLS to ensure compatibility of terminology and provisions.
Guidance Notes	These Green Lease Schedule Guidance Notes.
Heating, Ventilation, and Air Conditioning or HVAC	Any system that is used for heating, ventilating or conditioning the air in an enclosed space.
Indoor Environment Quality or IEQ	Is part of a NABERS Indoor Environment tool for measuring performance of buildings and tenancies using objective measurements that provide results in a clear and simple way.

Key Performance Indicator or KPI	A building energy rating system can include Energy Intensity (measured in kWh/m²/year), renewable energy usage as a percentage, and the number of stars in the NABERS rating. Assists in tracking a building's energy performance and progress towards sustainability goals.
Landlord	The landlord/lessor under a lease.
Landlord's Energy Representative	The person appointed by the Landlord as its representative on the Building Management Committee. This is only applicable to GLS A1, GLS A2, GLS B1 and GLS B2.
Metro City	An area included in the Major Cities of Australia class in the Australian Statistical Geography Standard Edition 3 Remoteness Structure published by the Australian Bureau of Statistics (**Remoteness Structure**) and in the event of the Remoteness Structure being discontinued or abolished such geographical remoteness structure as the Australian Statistician substitutes for it. Note: whether or not a building and tenancy is within a Metro City for the purposes of this GLS is determined at the commencement of the Lease, and this initial classification will remain for the entire term of the Lease despite any future changes to the Remoteness Structure that impact the areas included in the Major Cities of Australia class.
NABERS	The National Australian Built Environment Rating System (including any system or scheme updating or replacing it from time to time), administered by the Department of Climate Change, Energy, the Environment and Water, acting for and on behalf of the Crown in right of the State of New South Wales (or by any successor or other body administering NABERS from time to time), in the form in which it applies at the Commencement Date.
NABERS Assessor	Has the same meaning as the Accredited Assessor.
NABERS Energy Rating	A rating relating to energy for offices certified by an Accredited Assessor.
Non-Metro City	An area located outside Metro city (refer 'Metro City' definition above)
Performance Rating Agreement	A contract signed to measure and achieve a specific NABERS Energy Rating for the existing building.
Policy	The policy entitled 'Net Zero in Government Operations Strategy' as amended from time to time and which supersedes the policy entitled "Energy Efficiency in Government Operations".
Premises	The part of the building leased to the tenant under the lease and as described in the lease.

Refurbishment	Any refurbishment, renovation, fit-out or restoration involving any replacement, upgrade or repair of a material nature which involves the base building services and which affects the base building services in or servicing 50% or more of: a. the net lettable area of the Premises; b. the net lettable area of the building; or c. the common areas (as defined in the lease).
Remedial Notice	A notice given by one party to another under a Green Lease Schedule notifying the recipient that it has breached an obligation the Green Lease Schedule.
Remedial Plan	A plan setting out remedial action and a timeframe for that action agreed or determined under a Green Lease Schedule in response to a Remedial Notice.
Target Building NABERS Energy Rating	The NABERS Energy Rating to be achieved and maintained under the relevant Green Lease Schedule in relation to the building (either whole building or base building, as applicable), an obligation of the Landlord.
Target Tenancy NABERS Energy Rating	The NABERS Energy Rating to be achieved and maintained under the relevant Green Lease Schedule in relation to the Premises, an obligation of the Tenant and supported by the applicable Landlord obligations.
Tenant	The Commonwealth entity tenant/lessee under the lease.
Tenant's Energy Representative	The person appointed by the Tenant as its representative on the Building Management Committee. This is only applicable to GLS A1, GLS A2, GLS B1 and GLS B2.
Uninterruptible Power Supply or UPS	Is a device that provides backup power when the main electricity source fails, ensuring that devices, such as computers and internet routers, keep running without interruption.

4. Green Lease Schedules

4.1. What are the Green Lease Schedules?

The Green Lease Schedules are self-contained documents designed to be attached to and incorporated into a lease.

There are 8 different Green Lease Schedules designed to be used in a variety of situations. There are Green Lease Schedules to deal with both gross and net lease transactions.

The appropriate Green Lease Schedule is selected by considering the net lettable area of the premises and what proportion the net lettable area of the premises bears to the net lettable area of the building.

The Green Lease Schedules serve a twofold purpose:

- they establish the mechanism for achieving the energy efficiency objectives required by the Policy by imposing legal obligations on the parties to achieve stipulated NABERS Energy Rating(s); and
- they provide the support tools to deal with issues relevant to the achievement of NABERS Energy Ratings and allow preventative action to be taken before there is a failure to achieve or maintain the NABERS Energy Rating targets.

4.2. Summary of Green Lease Schedules

A very brief summary of the key features of each Green Lease Schedule appears below.

GLS A1

This is for use in a gross lease entered into for four or more years where the premises are 1,000 square metres or more of net lettable area and the Tenant occupies 100% of the net lettable area of the building. Key features include:

- Target Building NABERS Energy Rating by Landlord (supported by Tenant
- Target Tenancy NABERS Energy Rating to be achieved by the Tenant
- Building Management Committee
- Energy Management Plan
- Separate electricity metering - digital 30 minute on market status

GLS A2

This is for use in a net lease entered into for four or more years where the premises are 1,000 square metres or more of net lettable area and the Tenant occupies 100% of the net lettable area of the building. Key features include:

- Target Building NABERS Energy Rating by Landlord (supported by Tenant
- Target Tenancy NABERS Energy Rating to be achieved by the Tenant
- Building Management Committee
- Energy Management Plan
- Separate electricity metering - digital 30 minute on market status

GLS B1

This is for use in a gross lease entered into for four or more years where the premises are 1,000 square metres or more of net lettable area and the Tenant occupies 50% - 99% of the net lettable area of the building. Key features include:

- Target Building NABERS Energy Rating to be achieved by Landlord
- Target Tenancy NABERS Energy Rating to be achieved by the Tenant.
- Building Management Committee
- Energy Management Plan
- Separate electricity metering - digital 30 minute on market status

GLS B2

This is for use in a net lease entered into for over four or more where the premises are 1,000 square metres or more of net lettable area and the Tenant occupies 50% - 99% of the net lettable area of the building. Key features include:

- Target Building NABERS Energy Rating to be achieved by Landlord
- Target Tenancy NABERS Energy Rating to be achieved by the Tenant).
- Building Management Committee
- Energy Management Plan
- Separate electricity metering - digital 30 minute on market status

GLS C1

This is for use in a gross lease entered into for four or more years where the premises are 1,000 square metres or more of net lettable area and the Tenant occupies 49% or less of the net lettable area of the building. Key features include:

- Target Tenancy NABERS Energy Rating to be achieved by the Tenant
- Energy Management Plan
- Separate electricity metering – digital

GLS C2

This is for use in a net lease entered into for four or more years where the premises are 1,000 square metres or more of net lettable area and the Tenant occupies 49% or less of the net lettable area of the building. Key features include:

- Target Tenancy NABERS Energy Rating to be achieved by the Tenant
- Energy Management Plan
- Separate electricity metering – digital

GLS D1

This is for use in a gross lease where the premises are less than 1,000 square metres of net lettable area. Key features include:

- No target NABERS Energy Rating
- Separate electricity metering – digital
- Premises lighting systems to use less than 10 watts per square metre of the net lettable area of the premises

GLS D2

This is for use in a net lease where the premises are less than 1,000 square metres net lettable area. Key features include:

- No target NABERS Energy Rating
- Separate electricity metering – digital
- Premises lighting systems to use less than 10 watts per square metre of the net lettable area of the premises

4.3. What is the aim of the Green Lease Schedules?

The Green Lease Schedules provide a mechanism for assisting Commonwealth Tenants to implement the Policy in a practical and legally effective way. The Green Lease Schedules do not deal with all aspects of the Policy but do address key elements relevant to the Landlord and Tenant relationship which are needed to support compliance with the Policy.

By incorporating a Green Lease Schedule into a base lease, a legally enforceable green lease regime is created within a lease.

The Policy of itself creates internal requirements for Commonwealth entities but as it is not a statutory framework it does not bind non-Commonwealth Landlords. Therefore, in third party transactions, its implementation and enforceability will depend on negotiations and the agreement between the parties.

The Green Lease Schedules intend to:

- provide a consistent approach in the Commonwealth leasing sphere by avoiding the need for Commonwealth entities to make decisions on a case by case basis on how and when to implement the Policy via a lease;
- reinforce an appreciation that the Policy is best supported by legal implementation via a lease and minimise the possibility that lease negotiations will not factor in Policy requirements; and
- make lease negotiations on the subject matter of the Policy simpler and more cost effective.

The Green Lease Schedules assist in implementing the Policy aims through a legal mechanism. As a result:

a) the parties to a lease with a Green Lease Schedule have available to them remedies which are enforceable at law if there is non-compliance by a party with Green Lease Schedule obligations;
b) Commonwealth Tenants take on legal liability for certain aspects, thereby increasing the compliance level for the Policy;
c) the legal obligations of the Commonwealth Tenant are complemented by the legal obligations of the Landlord;
d) the legal risk is shared and the Green Lease Schedules adopt an approach based on mutuality of benefit and obligation; and
e) measuring tools are available for monitoring performance against the Policy.

4.4. Why are there 8 different Green Lease Schedules?

It is desirable to have a comprehensive suite of Green Lease Schedules as the circumstances of different lease transactions impact on the underlying drivers of lease negotiations.

By way of example, the types of clauses which are desirable in a gross lease will differ in some respects from those in a net lease. For instance, a net lease will contain obligations for the Tenant to pay outgoings such as electricity.

The Green Lease Schedules also deal with several categories of lease based on the net lettable area of the premises and the proportion of the net lettable area of the building which the premises occupy. This is because as a matter of practicality and commercial reality, a

larger tenancy will reasonably and properly require a wider range of obligations and mechanisms those which can be reasonably expected for a smaller tenancy.

In addition, the greater the proportion of the building occupied by the Tenant the greater will be the commercial opportunity for the Tenant to secure a more comprehensive commitment from Landlords via the Green Lease Schedule.

This is why the Green Lease Schedules for larger tenancies where the Tenant occupies a larger proportion of the net lettable area of the building have a broader range of obligations on the Landlord.

4.5. How do the Green Lease Schedules Work?

The Green Lease Schedules are designed to be largely self-contained and to integrate into a wide range of base lease documents.

Once it is selected, the relevant selected Green Lease Schedule is designed to be incorporated into and form part of the lease document for the transaction. It becomes a 'schedule' to the base lease document in the same way that schedules dealing with commercial terms or other special conditions can be incorporated into a lease document.

The Green Lease Schedules contain a number of flexible concepts and terminology which minimise the need to redraft the base lease document or the Green Lease Schedule document in an individual lease transaction. However, given the vast variety of commercial lease documents in the property market, it is essential that in all cases lease negotiators and legal advisers fully assess the relevant Green Lease Schedule in light of the terms of the particular base lease to be used and the particular circumstances of that transaction to ensure that there is consistency and compatibility between the documents.

In addition, Commonwealth Tenants need to be aware that the terms of the base lease document can have a significant impact on the Green Lease Schedule.

Some examples of matters which need to be considered appear below. This is not an exhaustive list of considerations but provides examples of how the base lease can impact on the Green Lease Schedule.

Breach, notice and termination clauses

These will impact on the consequences of non-compliance by Landlord and Tenant and affect the risk levels under the Green Lease Schedule.

- For example, the base lease will probably contain a more onerous breach regime than the one in the Green Lease Schedule. It may have different notice and rectification periods, may treat breach more broadly, may allow for a wider range of remedies (such as damages for indirect or consequential loss or additional indemnities) and may allow for termination of the lease. The Green Lease Schedules are designed to have a much more limited breach regime to minimise risk.

Reimbursement or payment of costs clauses

- Different clauses in the base lease could mean that a party bears costs which are the responsibility of the other party directly or indirectly which is contrary to the intent of the Green Lease Schedules.

Definitions of what area comprises the premises and responsibility for services, plant and equipment

- The definition of the premises should generally be limited to the underside of the false ceiling, the internal surface of the floor and the surfaces of internal walls so as to avoid the Tenant being responsible for space, plant and equipment in wall cavities, above ceiling and the like.
- If the definition is broader and the plant and equipment is leased or is the responsibility of the Tenant then this may alter the arrangements and responsibilities contemplated by the Green Lease Schedule and the ability of the respective parties to meet their obligations in relation to the Target Building NABERS Energy Rating, Target Tenancy NABERS Energy Rating, and other associated Green Lease Schedule requirements.

Rights of entry provisions, consent and approval clauses, alterations to premises provisions

- These should not be so onerous or tight that they frustrate the ability of the parties to comply with the Green Lease Schedule.
- For example, the Green Lease Schedule allows rights of entry to effect rectification in certain circumstances and this right needs to be considered in light of the overall right of entry provisions under the lease.

Given the myriad possibilities, users of the Green Lease Schedules need to be alert to the need to consider the impact of the base lease on the Green Lease Schedules.

4.6. Structure of Green Lease Schedules

The Green Lease Schedules are separated into four parts and some annexures.

Part 1 Introduction

This contains

a. the context and background provisions;
b. the interpretation and general operational provisions; and
c. the provisions incorporating the Green Lease Schedule into the base lease document.

Part 2 Building Management Committee

This contains the provisions which govern the establishment and functions of the Building Management Committee. This only appears in GLS A1, GLS A2, GLS B1 and GLS B2.

Part 3 Green Lease Performance

This contains the key provisions dealing with the energy related components of the Green Lease Schedule. It includes the essential obligations relating to the required NABERS Energy Rating, the Energy Management Plan, metering and the supporting lease performance and reporting obligations.

Part 4 General provisions applicable to Green Lease Schedule

This contains general overarching provisions which support performance of the Green Lease Schedule, provides remedies for non-compliance, establishes a dispute resolution mechanism and contains the basic requirements for all reports required by the Green Lease Schedule.

Annexure A

This contains the Building Management Committee Protocols - only applicable to GLS A1, GLS A2, GLS B1 and GLS B2.

Annexure B

This contains the Energy Management Plan Template - only applicable to GLS A1, GLS A2, GLS B1, GLS B2, GLS C1 and GLS C2 (it appears as Annexure A in GLS C1 and GLS C2).

Annexure C

This allows optional additional clauses to be attached. It appears as Annexure B in GLS C1 and GLS C2, and Annexure A in GLS D1 and GLS D2.

4.7. Regime created by Green Lease Schedule

The Green Lease Schedules provide a regime which has the following results.

a. The Green Lease Schedule drives effective management of energy efficiency and supports energy improvements. This is achieved through the NABERS Energy Rating obligations, the energy performance measures, the Energy Management Plan, separate metering and the remedies available for non-compliance.
b. The Green Lease Schedule creates accountability for energy efficiency and provides measurement tools for identifying achievement of the Green Lease Schedule requirements. This is achieved though the Building Management Committee, reporting requirements, audit opportunities and NABERS Energy Rating obligations.

4.8. Important Features of the Green Lease Schedules

<u>What is NABERS Energy about?</u>

NABERS is a national initiative managed by the NSW Government on behalf of the Federal, State and Territory governments of Australia.

NABERS is a national program that measures and rates the environmental performance of buildings and tenancies in Australia. It assesses factors like energy efficiency, water usage, waste management, indoor environment quality, and carbon emissions, providing a star rating to help compare building performance.

NABERS uses the concept of star ratings. The more stars, the better the performance of the building. Star ratings can be awarded for:

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

The ratings are based on energy-related greenhouse gas emissions, adjusted to account for climate and how the building is used. Performance based ratings are obtained for existing buildings based on actual metered energy consumption (the previous 12 months of energy data).

Participation in NABERS is voluntary. A rating can be initiated by a:

a. building owner;
b. building manager; or
c. tenant.

NABERS can apply to both existing buildings, through a Performance Rating Agreement, and to new buildings through a Commitment Agreement. The Green Lease Schedules are the vehicle for creating a legally binding agreement between a Landlord and a Commonwealth Tenant to actually achieve and maintain the relevant NABERS Energy Rating(s).

It is sound commercial practice to improve energy performance to achieve a higher NABERS Energy Rating. The investment can reduce energy costs (and it is possible for it to pay for itself) and the higher NABERS Energy Rating can give the building and organisation a competitive advantage.

Energy efficiency solutions may often be very simple and produce additional benefits such as providing an 'insurance strategy' against rising electricity costs and reducing maintenance costs.

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

4.9. NABERS Energy Ratings in the Green Lease Schedules

GLS A1, GLS A2, GLS B1, GLS B2, GLS C1 and GLS C2 all require the achievement and maintenance of the Target Building NABERS Energy Rating and Target Tenancy Energy Rating specified in the relevant Green Lease Schedule.

A NABERS Energy Rating needs to be certified by the National Administrator under NABERS. The Party responsible for achieving and maintaining the relevant NABERS Energy Rating needs to obtain the appropriate Accredited Rating Certificate evidencing the achievement of the required NABERS Energy Rating(s).

4.10. Target Building NABERS Energy Rating and Target Tenancy NABERS Energy Rating

The nature of the NABERS Energy Rating obligations of each party varies according to which Green Lease Schedule applies.

Target Building NABERS Energy Rating

Which Green Lease Schedules contain a Target Building NABERS Energy Rating?

GLS A1, GLS A2, GLS B1, and GLS B2 contain a requirement to achieve and maintain a Target Building NABERS Energy Rating.

Whose responsibility is it to achieve the Target Building NABERS Energy Rating?

It is the Landlord's responsibility to achieve and maintain the Target Building NABERS Energy Rating (supported by the applicable Tenant's obligations in the relevant Green Lease Schedule). The Tenant's responsibilities to achieve and maintain an NABERS Energy Rating are discussed under the Tenancy NABERS Energy Rating section.

What is the Target Building NABERS Energy Rating?

In accordance with the Policy, the Target Building NABERS Energy Rating under GLS A1, GLS A2, GLS B1, and GLS B2 is as follows:

a. for buildings within a Metro City – either:

    i. a 5.5 star or higher whole building NABERS Energy Rating; or
    ii. if a whole building NABERS Energy Rating cannot be obtained, a 5.5 star or higher base building NABERS Energy Rating; or

b. for buildings outside a Metro City – either:

    i. a 4.5 star or higher whole building NABERS Energy Rating; or
    ii. if a whole building NABERS Energy Rating cannot be obtained, a 4.5 star or higher base building NABERS Energy Rating, certified by an Accredited Assessor.

GLS C1, GLS C2, GLS D1 and GLS D2 do not impose a Target Building NABERS Energy Rating obligation on the Landlord.

Target Tenancy NABERS Energy Rating

Which Green Lease Schedules contain a Target Tenancy NABERS Energy Rating?

GLS A1, GLS A2, GLS B1, GLS B2, GLS C1 and GLS C2 contain a requirement to achieve and maintain a Target Tenancy NABERS Energy Rating.

Whose responsibility is it to achieve the Target Tenancy NABERS Energy Rating?

It is the Tenant's responsibility to achieve and maintain the Target Tenancy NABERS Energy Rating (supported by the applicable Landlord's obligations in the relevant Green Lease Schedule).

Should a whole building rating be obtained, consistent with GLS A1 and GLS A2, the Tenant is obliged to support the landlord to achieve and maintain the Target Building NABERS Energy Rating.

Accredited Rating Certificates

Having a whole building rating means that since the Tenant occupies 100% of the net lettable area of the building, the building can be rated once as a whole building covering both tenancy and central services. It is a more sensible time and cost-effective option for the Landlord to organise the assessment and obtain the Accredited Rating Certificate. However, the Green Lease Schedules provide that the Tenant will bear 50% of the cost because the assessment of the building will include the leased premises. The Tenant would support the Landlord by providing the necessary data and co-operating with the Accredited Assessor undertaking the assessment of the building needed to enable the Landlord to obtain the Accredited Rating Certificate.

What is the Target Tenancy NABERS ENERGY Rating?

In accordance with the Policy, the Target Tenancy NABERS Energy Rating under GLS A1, GLS A2, GLS B1, GLS B2, GLS C1, and GLS C2 is as follows:

a. for tenancies within a Metro City – a 5.5 star or higher tenancy NABERS Energy Rating; or
b. for tenancies outside a Metro City – a 4.5 star or higher tenancy NABERS Energy Rating, certified by an Accredited Assessor.

In addition, for tenancies outside a Metro City the Policy requires agencies to ensure that provision is included in their leases which require the achievement of a 5.5 star Tenancy NABERS Energy Rating 2 years after the Commencement Date.

GLS D1 and GLS D2 do not impose a Target Tenancy NABERS Energy Rating obligation on the Landlord.

Improved NABERS ENERGY Rating

Which Green Lease Schedules allow for an Improved NABERS ENERGY Rating?

GLS A1, GLS A2, GLS B1, GLS B2, GLS C1 and GLS C2 contain the concept of an Improved NABERS Energy Rating.

What is an Improved NABERS ENERGY Rating?

An Improved NABERS Energy Rating is a NABERS Energy Rating which is higher than the Target Building NABERS Energy Rating or the Target Tenancy NABERS Energy Rating.

The parties are to meet and consider in a reasonable and co-operative manner whether an Improved NABERS Energy Rating can be achieved. The parties meet for this purpose no later than 3 months after each anniversary of the Commencement Date and on any Refurbishment during the term of the lease.

It is not mandatory for the parties to agree on and achieve an Improved NABERS Energy Rating. Rather the aim is to encourage active consideration of whether an Improved NABERS Energy Rating is achievable and if it is feasible to reach mutual agreement on it.

If an Improved NABERS Energy Rating is agreed, the Green Lease Schedule will be varied to reflect that agreement, with the Improved NABERS Energy Rating becoming the new Target Building NABERS Energy Rating or the new Target Tenancy NABERS Energy Rating (as the case may be).

If an Improved NABERS Energy Rating is not agreed by the parties after meeting as required by the Green Lease Schedule, then the existing NABERS Energy Rating obligations do not change.

Where else does the Improved NABERS ENERGY Rating arise?

An Improved NABERS Energy Rating can also arise after an Adjusted NABERS Energy Rating has been implemented. This is described in the following section.

It is recognised that there may be circumstances where it is not possible for the Landlord to meet and/or maintain the Target NABERS Energy Rating in so far as the base building (central services are concerned) or for the Tenant to meet the Tenancy NABERS Energy Rating (or in the case of GLS A1 and GLS A2, the Tenancy NABERS Energy Rating) due to

factors which are genuinely outside the control of the relevant Party. To cater for this, GLS A1, GLS A2, GLS B1, GLS B2, GLS C1 and GLS C2 provide for an Adjusted NABERS Energy Rating. The aim is to allow an opportunity for the relevant NABERS Energy Rating obligations to be decreased in certain limited circumstances.

The Adjusted NABERS Energy Rating is not to be less than 4 star for the relevant NABERS Energy Rating obligation.

Improved NABERS Energy Rating after there has been an Adjusted NABERS Energy Rating

If an Adjusted NABERS Energy Rating is implemented and it is considered that circumstances later warrant an improvement in that rating a party can request an Improved NABERS Energy Rating.

At least 12 months must pass after an Adjusted NABERS Energy Rating before a request for an Improved NABERS Energy Rating can be made.

Unlike the Improved NABERS Energy Rating where there is a Refurbishment or the yearly review (where there will not be an Improved NABERS Energy Rating unless the Parties agree), in this case there is a mechanism for referring the issue to the Expert if the Parties do not agree on an Improved NABERS Energy Rating. The rationale for this is that since this right only occurs once the NABERS Energy Rating has been reduced it is reasonable to allow an opportunity for reinstating it if the circumstances warrant it. This is because the aim should be to achieve and maintain where possible the original rating requirements as contemplated by the Parties when the lease was agreed. The mechanism for this appears in clauses 9.2.4 to 9.2.6 of GLS A1, GLS A2, GLS B1 and GLS B2 and in clauses 8.2.4 to 8.2.6 of GLS C1 and GLS C2.

4.11. Metering

All the Green Lease Schedules require the premises to be separately metered. This is an essential component under the Green Lease Schedules and, in the case of electricity meters, is critical to the Tenant's ability to purchase its own power with a focus on energy efficiency.

The Green Lease Schedules place the obligation on the Landlord to provide the separate metering. The requirement for separate metering of the premises for electricity is not a new concept introduced by the Green Lease Schedules and has long been the preferred Commonwealth requirement.

The Green Lease Schedules take a comprehensive approach to metering in the interests of optimising energy efficiency and the achievement of required NABERS Energy Ratings. For example, the Green Lease Schedules:

- require all services, including electricity, gas and water (both hot and cold), to the Premises to be separately metered; and
- require all central services, including electricity, gas and water (both hot and cold), in the building (including common areas) and tenancies (where this is required to achieve the Target NABERS Energy Rating) to be separately metered.

Electricity meters must be digital meters, and in the case of GLS A1, GLS A2, GLS B1 and GLS B2, they must be digital 30 minute on market status electricity meters.

Meters to the Premises must have an accuracy class suitable for customer billing and the meter register needs to be readily accessible for billing.

These are important measures to enable Commonwealth Tenants:

- to effectively manage energy consumption;
- to purchase electricity in an efficient and cost effective manner; and
- to demonstrate value for money in purchasing electricity.

Market trends indicate that the cost of metering is becoming more commercially reasonable and Landlords are of their own initiative starting to separately meter leased premises.

4.12. Building Management Committee

Which Green Lease Schedules require a Building Management Committee?

The Building Management Committee is a feature of the Green Lease Schedules for larger tenancies where the Commonwealth Tenant has greater bargaining power in the lease acquisition process. It appears in GLS A1, GLS A2, GLS B1 and GLS B2.

What is a Building Management Committee and what does it do?

The Building Management Committee is intended to operate as a communication, consultation and record keeping vehicle for the Green Lease Schedule.

The Building Management Committee is not a decision making committee in lieu of the Landlord and Tenant (that is, it does not exercise the powers of the Landlord and the Tenant under the lease or Green Lease Schedule), and the Landlord and Tenant retain their respective rights and obligations under the lease and Green Lease Schedule. Rather it is intended to provide a simple and non-confrontational means for addressing any issues or matters which arise under the Green Lease Schedule and for proposing recommendations and solutions to the Landlord and the Tenant on matters pertaining to the Green Lease Schedule.

The Building Management Committee is also a valuable tool for monitoring information and data relating to the Green Lease Schedule, as it acts as a repository for all reports prepared under the Green Lease Schedule and for the information needed to:

a. enable an Accredited Assessor to assess and report on the issuing of an Accredited Rating Certificate; and
b. establish the extent of compliance by the Landlord and the Tenant with their respective obligations.

Who is a member of the Building Management Committee?

The Building Management Committee consists of the Landlord's Energy Representative and the Tenant's Energy Representative. These persons are to be nominated by each Party and the Building Management Committee is to be established within 10 working days after the commencement of the lease.

In a smaller tenancy (particularly where the Landlord is a natural person), the Landlord's Energy Representative may be the Landlord itself. In a larger tenancy with a major commercial Landlord, the Landlord's Energy Representative may be the Landlord's building manager or another person. The Parties have a great deal of flexibility in deciding who will

perform the role of Landlord's Energy Representative and Tenant's Energy Representative and these persons do not need to be specialist consultants.

When does the Building Management Committee meet?

The Building Management Committee will meet quarterly or as otherwise agreed by the Landlord's Energy Representative and the Tenant's Energy Representative with the Landlord's and Tenant's approval and it produces and maintains written minutes of its meetings.

Building Management Committee Protocols

The Building Management Committee Protocols appear at Annexure A of GLS A1, GLS A2, GLS B1 and GLS B2. These need to be considered and completed as part of the lease procurement process.

The Parties are free to agree the Building Management Committee Protocols and Annexure A is provided for guidance only. However, care should be taken to ensure the intent underpinning the role of the Building Management Committee is protected and that any agreed arrangements support the Green Lease Schedule objectives.

Costs relating to the Building Management Committee

The parties bear their own costs relating to the Building Management Committee and they are not to pass these costs on to each other. Given that the Green Lease Schedules are built on the concept of mutuality, it is important that Commonwealth Tenants do not erode this approach by agreeing to arrangements which allow the Landlord to claw back its costs relating to the Building Management Committee.

This is particularly important in net leases, and the Tenant's legal advisers will need to check the outgoings provisions to ensure they do not allow for the reimbursement of such costs contrary to the Green Lease Schedule position. The reasoning is that the Building Management Committee affords benefits for both parties (including facilitating communication and managing risk and compliance with the Green Lease Schedule), it is not solely for the benefit of the Tenant and to pass the cost on to the Tenant alone is not consistent with the approach of mutual benefit and mutual cost.

4.13. Energy Management Plan

The Energy Management Plan is a feature of all the Green Lease Schedules except GLS D1 and GLS D2.

The Energy Management Plan is intended to be agreed and signed by the Landlord and the Tenant within 3 months of the commencement of the lease.

The Green Lease Schedule includes certain minimum requirements for the Energy Management Plan, but the parties are free to add any additional requirements. The minimum requirements vary slightly between the different Green Lease Schedules. However, they all are geared towards agreeing strategies for maintaining the required NABERS Energy Ratings, for effectively managing Energy Intensity and for achieving Energy Intensity improvements.

To avoid the risk of there not being an Energy Management Plan in place if the parties do not agree, the Energy Management Plan Template is provided at Annexure B (Annexure A in the

case of GLS C1 and C2) of the Green Lease Schedule and it will automatically operate as the Energy Management Plan until the parties agree on an alternative Energy Management Plan or until a variation to the Energy Management Plan Template is determined by an Expert.

The Energy Management Plan Template has several 'blanks' relating to transaction specific details which must be completed before the lease is signed. Ideally, the Energy Management Plan Template should be provided when the Green Lease Schedule is first given to the Landlord so that the Tenant's requirements can be addressed in the negotiation process.

Commonwealth Tenants should avoid eroding the Energy Management Plan Template to the point where it does not provide adequate support or tools for achievement of the Policy and Green Lease Schedule objectives.

A copy of the Energy Management Plan must be given to the Building Management Committee (in GLS A1, GLS A2, GLS B1 and GLS B2 only). The Building Management Committee will review it from time to time (but not less than once every 2 years) and will refer any recommendations for amendment to the Landlord and the Tenant for consideration.

In GLS C1 and GLS C2, review of the Energy Management Plan is undertaken by the Landlord and Tenant themselves not less than once every 2 years.

4.14. Maintenance Contracts

Good contract implementation and management for maintaining the building services is important in achieving the Policy's objectives.

Implementing an appropriate maintenance regime optimises the level of compliance with, and also reduces risk and cost associated with non-compliance with, the Green Lease Schedule and the Policy.

All GLS other than GLS D1 and D2 contain obligations relating to the content of maintenance contracts which support the expected outcomes. These obligations are practical in nature and commercially realistic. They are designed to minimise the risk for the party which is responsible for maintenance of the building services under the lease and reflect rights which a commercially prudent Landlord or Tenant would be seeking to achieve in a maintenance contract.

In recognition of the possibility that in some cases the maintenance contracts in place at the commencement of the lease may not comply with the above-mentioned requirements, there is also an exemption for existing non-compliant contracts. However, once those non-compliant contracts have expired, the Landlord must ensure any new maintenance contracts are compliant.

4.15. Cost Structure

The Green Lease Schedules are based on the underlying principle that each party performs its obligations under the Green Lease Schedules at its own cost as each party enjoys the savings and benefits under the Green Lease Schedule. For example:

a. energy efficiencies result in reduced energy costs for both Landlord and Tenant;
b. maintenance contracts which comply with the Green Lease Schedule benefit Landlords in achieving their NABERS Energy Rating obligations and protect them in terms of warranties and contract handover if the maintenance contractors change during the term of the lease;

c. good NABERS Energy Ratings:
   - improve the capital value and income stream of the building and provide better revenue earning opportunities for a Landlord;
   - provide market recognition and a competitive advantage;
   - enhance the Landlord's and the building's standing from an environmental and community perspective; and
   - are a valuable marketing tool for a Landlord;
d. the Building Management Committee will improve co-operation and communication and reduce the risk of formal disputes under the Green Lease Schedule, thereby reducing the risk of incurring dispute resolution, legal or litigation costs; and
e. reporting and information keeping will make it easier to achieve and maintain NABERS Energy Ratings and will assist in monitoring compliance.

The Green Lease Schedules emphasise mutuality of benefit and cost. This is reflected in a regime where each party bears its own costs in relation to its own obligations and these costs are not to be passed on to the other party directly or indirectly.

The Green Lease Schedules provide Commonwealth Tenants with an opportunity to drive energy efficiency in the commercial accommodation market and to engender a market approach where both landlords and tenants share in the benefits and the cost. The lease procurement strategy should support this outcome, and any shift in the Green Lease Schedule cost regime which seeks to pass the cost of the Landlord's obligation to the Commonwealth Tenant needs to be factored into the risk assessment and the value for money assessment when seeking approval to acquire the lease interest.

Commonwealth Tenants and their advisers need to be aware that individual agreements to alter the Green Lease Schedules arrangements will not only alter the burden of risk and value for money in the individual transaction, but may impede the objectives of the Policy and allow landlords the benefits of the Policy initiatives but relieve them of bearing their financial share of the investment. Therefore, in negotiating Green Lease Schedules into lease transactions the 'whole of Commonwealth' considerations should form part of the decision making process.

4.16. Remedial Provisions

The Green Lease Schedule contemplates a co-operative approach to rectifying non-compliance with its provisions. It allows for:

a. a party to notify the non-compliant party of a breach of a Green Lease Schedule obligation by issuing a Remedial Notice;
b. the parties meeting after the issuing of the Remedial Notice to agree a Remedial Plan which will set out remedial action and a timetable for completion of the remedial action. Failure to meet in the specified time or agree on a Remedial Plan will result in the Remedial Plan (or any parts of it not agreed) being determined by an Expert under the dispute resolution provisions; and
c. if the Remedial Plan is not complied with, the complying party can issue an Enforcement Notice which will enable it to claim compensation for loss or damage incurred as a direct result of the breach (if the breach is not capable of being rectified) or remedy the breach (if it is capable of being rectified) and claim the cost of doing so from the non-compliant Party.

GLS D1 and GLS D2 do not contain a requirement for a Remedial Plan or dialogue as given the smaller size of the tenancy and the very small number of obligations these additional steps are not warranted.

It is important to note that the rights in the Remedial Action clause in the Green Lease Schedule are in lieu of any other rights the parties may have and the Parties agree not to rely on any other remedies.

It is important to manage the legal risk of Commonwealth Tenants by not allowing a breach of a Green Lease Schedule to give rise to rights of termination or damages indirectly caused by the breach or to consequential damages. Under the Green Lease Schedule, the loss or damage needs to be directly caused by the breach before it becomes compensable.

The aim here is to manage risk and avoid the possibility of lease termination or other more onerous consequences due to a breach of the Green Lease Schedule. Legal advisers should check compatibility between the Green Lease Schedule and the base lease and manage the drafting and settling of the lease so as to avoid conflict or ambiguity and so as not to compromise the intent of the Green Lease Schedule.

4.17. Dispute Resolution

The Green Lease Schedule contains its own dispute resolution clause as, given the specialist nature of the Green Lease Schedule, it is preferable that there is a clear process for resolving issues under the Green Lease Schedule and that an appropriate Expert can be appointed.

The base lease will generally contain its own dispute resolution clause. Legal advisers need to check for compatibility and avoid ambiguity. It is likely that the base lease dispute resolution clause is not suitable for the Green Lease Schedule and hence the Green Lease Schedule clause is intended to take precedence. However, the need to carefully check for compatibility must not be overlooked.

4.18. Which takes precedence - GLS or Base Lease?

The Green Lease Schedule provides in clause 1.2.16:

> *If any conflict arises between the terms and conditions contained in the Lease and any clauses or parts of the clauses of the Green Lease Schedule, then unless the terms and conditions contained in the Lease expressly provide that they prevail over the Green Lease Schedule, the clauses (or the relevant parts of the clauses) of the Green Lease Schedule prevail to the extent necessary to resolve the conflict.*

This is important because the Green Lease Schedule is designed to be used with any base lease.

If a Landlord's lease is used as the base lease, it will in all likelihood contain provisions which are lower in standard in terms of energy issues than the Green Lease Schedule and if they take precedence they will override the Green Lease Schedule. The legal adviser needs to carefully review the base lease and the Green Lease Schedule and to reconcile differences so as to avoid ambiguity and to adequately protect the Green Lease Schedule provisions.

Examples of clauses which need special attention to ensure that any lower or different standards in the base lease do not cause problems from the Green Lease Schedule perspective include:

- the provision of services clauses;
- minimum building standards/performance standards;
- metering arrangements, maintenance and repair obligations;
- default clauses;
- remedies for breach;
- outgoings recovery (particularly in net leases);
- definition of what comprises the premises;
- maintenance of plant and equipment;
- rights of entry provisions (to ensure the rectification rights under the remedial action clauses of the Green Lease Schedule can be relied on); and
- alterations to premises provisions, consent and approval processes and the dispute resolution clauses.

The above is not an exhaustive list but highlights the need to carefully consider the base lease and the Green Lease Schedule comprehensively during the lease preparation and negotiation process.

4.19. Reporting

Except for GLS D1 and GLS D2, the Green Lease Schedules contain a reporting regime which is designed to:

- support the achievement of the required NABERS Energy Ratings and general Green Lease Schedule compliance;
- provide data which will assist in the process of obtaining NABERS Energy Ratings;
- provide Commonwealth Tenants with an audit trail of performance and compliance; and
- provide a tool for Commonwealth Tenants to demonstrate their compliance with the Policy.

A copy of all reports is required to be given to the Building Management Committee in GLS A1, GLS A2, GLS B1 and GLS B2 only. GLS D1 and GLS D2 do not contain reporting obligations.

4.20. Optional Clauses

The Green Lease Schedules allow for the use of optional clauses which deal with other green lease initiatives such as water and waste management, transport, ICT and the like. As these are not mandatory at present they are not included in the main body of the Green Lease Schedules but can be adopted and incorporated in whole or in part as required in a particular transaction.

However, entities who wish to use these clauses will need to undertake their own risk assessment and cost evaluation if they intend to use all or any of these clauses as this task has not formed part of their preparation.

4.21. Other Important Considerations - Interaction of Green Lease Schedules on other Building Performance Standards

It should be borne in mind that the Green Lease Schedules deal with energy efficiency measures arising from the Policy, and it should not be assumed that they deal with all building and service performance issues.

Commonwealth Tenants will still need to ensure that each lease contains adequate provisions dealing with minimum performance standards of the building and services, that the Commonwealth health and safety objectives are protected and that there is no compromise of other key performance standards such as indoor air quality. It is possible to have an energy efficient building and still have a 'sick' building. Therefore, the Green Lease Schedules are only one of many matters to be addressed in Commonwealth leases.

Commonwealth entities are encouraged to obtain sufficient premises-specific advice when negotiating individual leases. Legal advice is only part of the advice which a Commonwealth Tenant needs to obtain in a lease transaction.

Matters such as performance standards and health and safety considerations should also be assessed by suitably qualified experts (and these will not be the legal advisers nor in many cases even the property advocates or managers) and the Commonwealth entity should consider and factor in the relevant expert advice into the final lease document. If the required overall outcome is not achievable because of the position taken by a Landlord or the lower performance capability of a particular building, a risk assessment and value for money assessment should be undertaken before a decision is made to proceed with the proposed lease or before the Commonwealth Tenant no longer has other accommodation options available to it.

4.22. Ongoing Management of the Green Lease Schedules

As with any lease it is important to remember that a lease incorporating a Green Lease Schedule is an 'active' document which needs to be proactively managed, complied with and, if necessary, enforced during the life of the lease.

It is essential that Commonwealth Tenants implement a management regime (including imposing positive legal obligations on outsourced property managers) to ensure that the ongoing processes under the Green Lease Schedules are performed on time and to the required standard and that any failure to perform or comply receives prompt attention.

Persons responsible for managing the lease should be fully familiar with its terms and should ensure that they do not compromise the Commonwealth Tenant's position by failure to actively manage the lease provisions or by causing the Commonwealth Tenant's legal rights to be waived or otherwise lost due to express communications (for example, relieving the Landlord of an obligation to do something via a letter or email), by verbally altering the arrangements, or by managing the lease in a way which could give rise to an implication that the rights and processes in the signed documents have been waived or varied. If there is any doubt about the implications of correspondence or any action or inaction legal advice should be sought.

Effective and proactive lease management will ensure that the benefits of the Green Lease Schedule are not compromised and that its integrity is protected thereby minimising the risk of legal uncertainty, dispute and attendant costs.

4.23. Further Information

Commonwealth Tenants can obtain more information on the Policy and the Green Lease Schedules at:

https://www.finance.gov.au/government/climate-action-government-operations/aps-net-zero-emissions-2030