

6 April 2010
Reference: SENCOM MDS002

Committee Secretary
Senate Standing Committee on Environment, Communications and the Arts
Via web submission

Dear Sir/Madam

Re: Energy Efficiency Disclosure Bill 2010

On behalf of Napier & Blakeley Pty Ltd I write to express our views and provide comment on the documents released relating to this Bill and trust that this will assist your review of the legislation, should this proceed.

The submission reviews the aspects of the Bill relating to the provision of the energy ratings, particularly the impact of this on older building stock and also the penalties applicable for non compliance and the possible impact on unaware owners.

Understanding the importance of the development of the policy and legislation to deliver reductions in greenhouse gas emissions we openly provide this submission which does include components of our intellectual property in this area.

Napier & Blakeley is an Australian based, independent, integrated property services consulting organisation with more than 25 years experience. We specialise in the management and optimisation of property costs, sustainability solutions and take a commercial approach to all we do.

Napier & Blakeley have been providing independent property cost consulting services to both building owners and tenants for over 25 years. In helping our clients to optimise their property costs we have always worked independently of suppliers and other business organisations to ensure that the advice we give is in the best long term interest of our clients.





Our organisation delivers asset advisory services including our five main service lines;

- Sustainability - Property and business operations
- Quantity Surveying
- Technical Due Diligence, Building Consulting
- Property Tax Depreciation
- Project Management

This document has been completed by Napier & Blakeley's directors, led by our Head of Sustainability, Roger Walker. Mr Walker is a qualified real estate valuer and has worked for the last ten years in building operations with large corporate organisations, delivering cost effective sustainable solutions. This includes completing full energy efficiency assessment reports with reviews of new technology implementation, covering façade changes, tri-generation, solar installations, power management, BMS, lighting, retro-commissioning and HVAC upgrades.

We have based our comments on what we see as the most significant practical issues and implications of the proposed regulation including some suggested strategic changes that you may wish to consider in your review of the legislation.

To discuss or provide comment on our submission please direct your queries via e-mail to:

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NSW Government Green Globe Award Winner – Individual Award - Environmental Sustainability Champion 08
Facility Management Association of Australia - Winner - Environmental Achievement Award 08
Asia Real Estate Facilities Projects Magazine Shortlist Nomination – Excellence in FM 09

ADPIA (Australian Direct Property Investment Association) Sustainability Committee Chair
APREA (Asian Public Real Estate Association) Sustainability Committee Member





Executive Summary

To ensure the Bill is delivered as economically as possible to the property industry, does not have a negative long term impact of additional carbon creation through the encouragement of knock down and rebuild of existing buildings and does not impose unreasonable penalties for non compliance, the following is recommended for review by the Senate Committee.

The Bill has an allowance for older existing buildings to demonstrate best possible performance to avoid these buildings being penalised in the market as perceived inefficient buildings. This would encourage best possible performance and possibly avoid knockdown and rebuild market pressures for older building stock which this legislation may encourage.

NABERS has a new accredited assessor category for completion of Base Building Energy ratings only. This will enable cost effective ongoing management of the legislative requirements and encourage more regular updating and disclosure of energy performance ratings.

It is also requested that the penalties liable under the bill be reviewed and capped at an amount commensurate with a percentage of the value of the building or annual rental to ensure that building owners unaware of the requirements are not unreasonably penalised for non compliance.

Older Existing Building Allowance – Avoiding knock down and rebuild

A risk of the legislation is that older buildings which have significant capital restrictions to upgrading to a high energy performance level will have increased market demand encouraging the knock down and rebuild of the property. This will provide for the delivery of a more energy efficient building but the carbon cost of the new construction would in most circumstances provide for a carbon payback period greater than the life expectancy of the new building. That is, the improvement in the energy efficiency cumulative over the life of the building may not be greater than the carbon involved in the demolition and new property construction. This then has the impact of creating a market which increases the carbon released to the atmosphere for these buildings. Whilst the total impact of the legislation would remain carbon reduction positive this issue for existing buildings which cannot perform to market standards may be able to be resolved and at the same time improve market total carbon impact awareness.

It is proposed that there be the development of a higher grade of building performance assessment which includes the comparison of the existing operating performance with a reasonable economically viable upgrade assessment. This would then allow a building performance to be assessed on capable delivery rather than a set performance hurdle. The ability to have the application of this assessment completed may be set for specific buildings only, including heritage buildings and buildings over a set age.

This assessment would be a development of an Energy Efficiency Assessment Report (EEAR), but may be extended to include other aspects besides energy performance if this was seen as applicable for the legislative requirements for this exception rule.

Napier & Blakeley commenced the delivery of full energy efficiency assessment reports in 2008 as a part of due diligence for purchasers of buildings and for existing building owners reviewing the energy efficiency options for their buildings. The detail required varies on the requirements of the client, a full EEAR from Napier & Blakeley includes the review of façades, power





management, BMS, lighting, retro-commissioning, hot water systems, fans and motor controls and HVAC upgrades.

We have designed the EEARs that we undertake to include the life cycle cost analysis and net present value calculations, including taking into account avoided capital costs that efficiency work will provide in the future.

The EEAR service that we provide can be used to calculate an existing buildings reasonable operational efficiency given set payback periods for the client.

We would like to work with interested parties to review the application of this to provide an EEAR rating for existing buildings, to provide existing buildings with an option for what we would hope would be seen as an improved environmental assessment above the requirements of a NABERS Energy rating.

Under this assessment a property could receive an optimal performance rating based on a detailed EEAR. We propose that this rating can be used in lieu of a NABERS Energy Rating for the purposes Building Energy Efficiency Disclosure, where the EEAR assessment is above a set minimum performance to assessment ratio. This would demonstrate excellence in environmental performance of an existing building and be a useful tool, enabling the market to determine the value of such existing building performance and may avoid the market knock down and rebuild pressure that the Bill in its current form may provide.

As an example, where a building is performing at 2 star NABERS Energy and an EEAR is completed that identifies energy efficiency with a payback period of seven years can be undertaken to move the building performance to 3.5 stars, the building, once the energy work is undertaken and is performing at 3.5 stars would obtain a Gold Star EEAR rating. If they move the building to 3 stars they could obtain a Silver Star EEAR rating, which may be a measure from 80% to 95% of optimal performance. Continued performance of the building at 2 stars would not gain an EEAR rating and as such the NABERS Energy rating would have to be disclosed.

A building owner (for specified buildings) would have the option of choosing to disclose the EEAR rating or the NABERS Energy rating.

This scheme may also be considered to be an available option to any building but would be a significant option for older buildings to demonstrate optimal performance on what is reasonable to be completed in a given payback period.

The provision of this option for building owners will allow them to demonstrate best practice and encourage them to deliver optimum performance. This will hopefully provide an option for tenants, investors and the public to reward building owners that operate as best they can, not simply rewarding who has a building at the highest star rating. This may provide relief from negative market sentiment of a lower star rating when they are perfectly good buildings operating efficiently, thus reducing the amount of knock down and rebuilds that may occur due to the implementation of the Bill





Base Building Energy Efficiency Ratings

The volume of energy assessments for commercial buildings under the Bill will increase dramatically, this will put pressure on the capacity of assessors to deliver the ratings and the fees for ratings may increase as a result. As a legislative requirement, in a building with net leases this may be charged through to the occupant as an outgoing charge, thus the end payer for the requirements will in most cases be the building tenants.

The provision of a base building energy efficiency rating is, under NABERS, the simplest form of assessment of the rating tools. The assessment requires the information of net floor area, hours of agreed service, energy consumed by central services and postcode.

This information is easily accessible to a building manager and it is recommended that to enable the Bill;

- to be delivered with minimal cost impact to commercial building owners and occupiers and;
- to ensure resources are available to meet the increased ongoing demand for these ratings, that:
 - the NABERS Energy rating is permitted to be completed by a building manager, with NABERS base building energy on-line training completed;
 - with additional sign off by the building owner or company director or portfolio manager.

The above recommendation will reduce costs and increase the building manager and owners understanding of the NABERS Energy assessment criteria, providing for increased direct education of responsible parties to deliver energy savings.

Penalties for non compliance

The penalties for non disclosure of the energy efficiency rating can be \$110,000 per day for a building owner. Over a four week marketing period for the lease of an area over 2000sqm this can result in applicable fines of over \$3,000,000 for the property owner.

When taking into account that the most likely owners to not be aware of the legislation and/or aware of the consequences of non compliance will be individual owners of smaller properties this means that the percentage of the fine when considering the value of the building will be unreasonable.

It is recommended that there be a maximum penalty applicable for non compliance by the building owner and this be reflective of a small percentage of the property value or annual rental received.





Conclusion

Whilst the Building Energy Efficiency Disclosure Bill 2010 will encourage the improvement in energy efficiency the possible negative impacts of the legislation should be considered to ensure the most positive environmental outcome is achieved. The delivery of the ongoing requirements and penalties under the legislation can be reviewed to provide a more cost effective management for the industry and severe impact that penalties may have on some building owners.

Regards,

Napier & Blakeley Pty Ltd.

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