



ACT Environmental Leasing Policy

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Acronyms

ACTELP	ACT Environmental Leasing Policy
ACTPG	ACT Property Group (in the Territory and Municipal Services Directorate)
BMC	Building Management Committee
COAG	Council of Australian Governments
EMP	Environmental Management Plan
GLS	Green Lease Schedule
GOAC	Government Office Accommodation Committee
GPG	Government Property Group
GREP	ACT Government Real Estate Policy
MOU	Memorandum of Understanding
NABERS	National Australian Built Environment Rating System
NGLP	National Green Leasing Policy
RMP	Resource Management Plan
WOFGAS	Whole of Government Accommodation Strategy

1 Introduction

The National Green Leasing Policy (NGLP) is the first nationally consistent approach by the Commonwealth, State and Territory governments to drive lasting environmental improvement in the operation of commercial buildings through government leasing practices. It is an initiative of the Council of Australian Governments and has been developed jointly by the Government Property Group (GPG) and the National Framework for Energy Efficiency, which report to the Australian Procurement and Construction Council and the Ministerial Council on Energy respectively.

The objective of the NGLP is “to use government leasing to drive a reduction in the environmental impact of buildings through improved operational performance”. It provides guidance and information for a partnership based approach to improve the operational performance of buildings, sets minimum performance standards and outlines requirements for landlords and government tenants.

The NGLP was finalised and jointly endorsed by the Minister for Land and Property Services and the Minister for Energy in 2010 and is now included in the ACT Government Real Estate Policy (GREP).

2 Purpose

The ACT Environmental Leasing Policy (ACTELP) has been developed to support the implementation of the NGLP and other green leasing practices in the ACT Government.

The ACTELP should be read in the context of the NGLP, however it should be noted that the ACTELP is specific to the ACT Government and does not form part of the NGLP or reflect the position of any other jurisdiction.

The purpose of this policy is to:

- i) Provide guidance on the green leasing process as it relates to tenant agencies;
- ii) Establish the Government’s position on green leasing matters which are either not covered by the NGLP or exceed the standards of the NGLP;
- iii) Clearly define the roles and responsibilities of ACT Government entities in regards to green leasing; and
- iv) Set out the conditions and circumstances under which exemptions from the NGLP may be sought and how the exemption process works.

Unless otherwise specified, the terms and phrases used in this policy are intended to be consistent with those used in the GREP. For more information on the GREP or the NGLP, refer to the references in section 8.

3 Background

3.1 Green leasing

'Green Leasing' is the full set of environmental activities, considerations and impacts that occur throughout the leasing process. This process includes the period leading up to the lease agreement, the term of the lease and the end of a lease.

While green leasing is typically an initiative of prospective tenants wishing to limit their environmental impact, it is becoming an increasingly common practice with benefits for both tenants as well as building owners, including:

- significant reductions in a building's operational expenses;
- reduced exposure to increasing utility costs;
- increases in the effectiveness of building management; and
- brand recognition for the building and/or building owner.

3.2 The National Green Leasing Policy

The NGLP sets a number of minimum performance standards for both tenants and landlords. Individual jurisdictions may choose to exceed these minimum standards at their discretion.

The standards are defined in a Green Lease Schedule (GLS) which forms part of the lease agreement between ACT Property Group (ACTPG) and the private landlord.

The scope of the NGLP is such that it is applicable to new leases (either gross or net) and lease renewals where the leased area is at least 2,000m² and the term of the lease is two or more years.

The fundamental requirements of the NGLP are that for any applicable leases:

- i) The building owner and tenant will achieve a NABERS Energy for offices rating of 4.5 stars;
- ii) There will be a limit on contributions to the final rating made from the use of GreenPower;
- iii) An Environmental Management Plan (EMP) will be prepared for the building; and
- iv) A Building Management Committee (BMC) will be formed consisting of representatives from the tenant and landlord.

More details on these requirements can be found in the NGLP and GLS template.

3.3 Policy environment

The commercial buildings sector will play an important role in achieving the targets set under the ACT's *Climate Change and Greenhouse Gas Reduction Act (2010)*. Other policies dealing in this area are likely to be introduced at both the Territory and Commonwealth levels in the future. It is important that all policies in this space are complementary without placing an undue administrative burden on Government directorates or the private sector.

The ACTELP forms part of a range of initiatives aimed at supporting the broader community response to climate change. While this policy focuses on one specific aspect of operations, it should be considered in the broader context of the Government's climate change strategy – *Weathering the Change*.

Action # 2 of *Weathering the Change*, in particular, requires all agencies to monitor energy, water and waste through the use of a Resource Management Plan (RMP). RMPs and green leasing should be considered complementary activities. Agencies accommodated under a green lease should ensure that their RMPs recognise and take advantage of mechanisms such as EMPs and BMCs that will be required.

3.4 Memoranda of Understanding

Section 7 of the GREP stipulates that the Economic Development Directorate (EDD) is the sole agency with the authority and responsibility to enter into a commercial lease or license with non-Government lessors. As a result, EDD acts as the lessee for all office accommodation that is leased from the private sector and effectively sub-leases that accommodation to other agencies.

Because ACT Government directorates are unable to enter into legally binding contracts with each other, EDD cannot legally require another agency to fulfil conditions in a lease for which EDD is the lessee. For this reason, GLSs used by the ACT Government cannot include a legal obligation for the lessee to obtain a specified NABERS tenancy rating.

In addition to section 5 of this policy, the NGLP requirement for tenant ratings is addressed in a Memorandum of Understanding (MOU) used between ACTPG and all agencies for all properties either owned or managed by ACTPG.

3.5 Ratings

The nominated rating tool for use in the NGLP is the National Australian Built Environment Rating System (NABERS) – specifically the Energy rating for offices tool. NABERS is a national scheme administered by the NSW Department of Environment, Climate Change and Water and succeeds the previous Australian Buildings Greenhouse Rating tool. NABERS measures the operational environmental performance of a building and provides a benchmarked rating from one to five stars according to the normalised greenhouse gas emissions of the building or tenancy. For more information on the NABERS scheme, see the references in section 8.

4 Commitment to green leasing

The NGLP represents a set of minimum standards for green leasing as agreed to by Commonwealth, States and Territories. However, it does not restrict or limit the extent to which jurisdictions may exceed these requirements or implement other sustainable management practices in their leasing operations.

This section sets out the Government's position on a number of green leasing issues that are currently outside of the scope of the NGLP.

4.1 Green Leasing Triggers

While the NGLP only applies to leases over 2,000m² with terms of two years or longer, use of a GLS may be pursued for leases under 2,000m² or terms shorter than two years at the discretion of individual jurisdictions.

The ACT Government is committed to green leasing and will endeavour to utilise GLSs, as far as practicable, for all office accommodation leased from the private sector where the area is over **1,000m²**. It should be noted that any decision not to utilise a GLS for leases between 1,000-2,000m² will be at the discretion of the Government Office Accommodation Committee (GOAC) and is not required for inclusion in exemption reports to the GPG.

4.2 Green Leasing Scope

The NGLP focuses on energy efficiency as the primary performance indicator with water ratings as an optional component. However, there are a number of other aspects of sustainability which it may also be possible to include in a GLS. For example, the NABERS program offers ratings tools for assessing waste management and indoor environment quality and the Green Building Council of Australia has a suite of rating tools known as Green Star, which assess many sustainable design aspects of buildings and fit-outs.

Presently, the primary barrier to the inclusion of ratings for waste, water or other aspects of sustainability in GLSs is the availability of the required data in a suitably accurate and disaggregated format. As the practice of green leasing becomes more commonplace and markets are increasingly able to provide the data required for other environmental ratings, the ACT Government will endeavour to build upon the current GLS template to produce more robust environmental outcomes in its leasing activities.

4.3 Owned offices

The primary aim of green leasing policies is to encourage energy efficiency improvements in offices owned by the private sector, which currently accounts for approximately 55% of the Government's office accommodation portfolio. The remainder of the portfolio consists of a number of buildings owned by ACTPG.

The ability of the Government to apply the principles of the NGLP to its owned office portfolio is limited in many cases by the age and design of the buildings, which were often built specifically for government needs and differ from typical commercial office properties.

However, in order to meet the Government's climate change targets and promote equity between agencies regardless of whether they are accommodated in leased or owned buildings, agencies in owned office buildings will, where possible, be expected to meet the same standards required of agencies in leased accommodation.

4.4 City Switch

City Switch is a national initiative which aims to reduce the greenhouse gas emissions and energy consumption of office tenancies through commitments from organisations to achieve a NABERS Energy for Office (Tenant) rating of 4 stars or higher. In addition to the environmental benefits of the program, City Switch provides a number of benefits to participating organisations, including:

- access to a range of resources to assist agencies improve and maintain their energy efficiency;
- a communications toolkit containing templates and resources;
- access to a dedicated Program Manager; and
- discounted or waived NABERS administration fees.

Although participation is voluntary, agencies in offices covered by the NGLP will generally already meet the requirements of the City Switch program. Therefore, agencies are strongly encouraged to become City Switch signatories.

In the ACT, the City Switch program is delivered by the Environment and Sustainable Development Directorate. More information is available from the City Switch Program Manager on 6207 5669.

5 Tenant responsibilities

The NGLP takes a mutual approach to improving the performance of buildings and requires similar obligations for tenants as those required for building owners. Although ACTPG technically fulfils the legal role of tenant for the purposes of Government leasing, the tenant obligations as specified in the NGLP and any GLSs are the responsibility of the agency (or agencies) occupying the accommodation.

Unless otherwise negotiated in regards to a specific GLS, the following roles and responsibilities will be applicable to the agency occupying the leased office accommodation, **not** the legal lessee – i.e. ACTPG.

In the event that two or more separate agencies share occupation of a building which is subject to a single lease agreement between ACTPG and the lessor, all agencies are expected to fulfil the obligations assigned to tenants under the NGLP.

5.1 Tenancy performance

Tenancies are required to achieve and maintain energy efficiency performance equivalent to a NABERS energy rating of at least 4.5 stars. Responsibility for achieving the levels of performance required under the NGLP lies solely with the agency that occupies the tenancy.

Where a tenancy is shown not to achieve this standard, it will be required to include in the GLS Environment Management Plan specific strategies and timeframes detailing plans to improve its energy efficiency. This information will be shared with the building owner and subject to regular reporting through mechanisms under the GLS.

5.2 Rating frequency

The NABERS scheme requires 12 months of activity before a rating can be calculated. As tenancy ratings are based on the day-to-day operations of the office, they tend to be inherently more stable than base building performance, which may be heavily impacted by seasonal changes in temperatures and daylight hours.

Therefore, where an agency can demonstrate that is achieving the requirements of the NGLP – i.e. an accredited 4.5 star energy rating – it will only be *required* to undergo the rating process every two years. In each alternate year, the tenant agency will still be required to undergo a level 2 energy audit compliant with Australian Standard AS:NZS3598 in order to verify performance but will not be required to proceed to the formal NABERS accreditation stage. This provision is only applicable where the composition and function of the office remain constant over the two year period - i.e. there is no significant change in factors that would impact the energy intensity of the tenancy, such as occupational density or equipment in use.¹

In the event that an office achieves a rating below the required level (taking into account any exemptions granted) the tenant agency will be required to undergo the rating process annually until its performance achieves the required level.

Each rating should be obtained within three months of the expiration of the previous rating.

¹ In the event of uncertainty as to whether a change in composition or function has occurred the final decision will be made by the GOAC.

5.3 Use of Green Power

The ACT Government has a policy of utilising renewable energy in its operations. This includes the use of accredited Green Power as well as non-accredited renewable energy from biomass sites in the ACT. In 2009-10, the targeted proportion of renewable energy was 30% of the Government's total consumption and the target for 2010-11 is 32.5%.

The NGLP recognises the importance of Green Power for reducing national greenhouse gas emissions but places restrictions on the amount that can be used to achieve the targeted ratings. This retains focus on the need to design and maintain buildings that achieve high levels of energy efficiency, as opposed to simply offsetting their emissions.

The policy does not restrict or prevent the proportion of Green Power used by either the building owner or tenant, but simply limits the contribution which the use of Green Power can make to the targeted energy rating.

Tenant agencies are subject to the same requirements as the building owner:

- In existing buildings, no more than one star of the NABERS energy rating may be attributable to the use of GreenPower; and
- In new or refurbished buildings, Green Power cannot contribute any improvement to the NABERS energy rating.

5.4 Building management committees

A core component of the NGLP is the use of Building Management Committees (BMC) to facilitate an open and cooperative approach to achieving the aims of the policy. BMCs are required to meet at least twice per year, but in most cases will meet quarterly, and must be attended by at least one representative for the building owner and one representative for the tenant.

Agencies are responsible for:

- Providing a representative to attend all BMC meetings for buildings in which they have an office;
- Ensuring any data or documentation required for the purposes of the BMC are available and accurate; and
- Implementation of any actions arising from the activities of the BMC in regards to their tenancy.

ACTPG will also attend all BMC meetings to ensure that any ancillary lessee interests are represented.

6 Exemptions

The NGLP recognises that there are a number of scenarios in which it may be either impossible or prohibitively costly to procure office accommodation in line with the NGLP. Section 9.4 of the NGLP states that each jurisdiction will be responsible for developing and implementing its own procedures and guidelines with regards to the use of exemptions.

It should be noted that the exemption provisions of the NGLP and ACTELP deal specifically with the accommodation procurement process and are not applicable for any party wishing to seek an exemption during the term of a green lease which is already in place.²

While jurisdictions' respective exemption processes are effectively separate from the NGLP itself, all jurisdictions are required to report to the GPG annually on all exemptions granted and/or sought including the barriers which lead to the exemption being sought.

6.1 Use of exemptions

While the NGLP allows for exemptions to be made, their use is discouraged. Where an exemption from the policy is desired, the scope of the exemption should be minimised as much as possible. Agencies should endeavour to fulfil all requirements of the NGLP and only seek exemptions where absolutely necessary.

6.1.1 Acceptable reasons for seeking an exemption

There are a number of scenarios in which Agencies may need to seek an exemption from the NGLP. For example, an Agency may wish to exercise an option to renew a lease on accommodation procured prior to the development of the NGLP. Improving the building to the standards required by the NGLP may take two years, during which time the accommodation would be non-compliant with the NGLP. However, to relocate the office to new accommodation would be both costly and likely to have environmental impacts associated with the physical move and potentially the procurement of a new fit-out. In this scenario it would be more efficient to seek an exemption that allows the accommodation to be retained on the condition that a staged improvement to make the building compliant has been negotiated with the owner.

Reasons agencies may need to seek exemptions include:

- Lack of suitable options in the market;
- Critical operational requirements;
- Inefficient environmental outcomes; and
- Unreasonable costs.

This list is not exhaustive and each application will be considered on its merits. See Section 7 for more information on how applications will be assessed.

² These matters should be dealt with using GLS mechanisms such as the Building Management Committee.

6.1.2 Reasons that will not be considered

The NGLP promotes collaborative relationships between tenants and landlords and recognises that in some instances, meeting the full requirements of the NGLP may need to be staged over a number of years. Exemptions will not be considered where an Agency has failed to conduct adequate accommodation planning. Additional guidance on accommodation planning is contained in the ACT Government Office Accommodation Framework.

6.2 Approval process

The green leasing exemption process will form part of regular accommodation planning and approval processes. Applications for an exemption may be sought by either ACTPG or the client agency, depending on the circumstances under which the exemption is sought. For example, ACTPG may choose to seek an exemption for proposed accommodation on the basis that it contributes to a whole of Government strategy whereas an agency may choose to apply for an exemption if a specific property is required for operational reasons but is not NGLP compliant.

Requests for exemption from the NGLP must first be approved by the Director General of the Directorate for which the exemption is being sought. Applications including a case justifying the application should be submitted for consideration to the Government Office Accommodation Committee (GOAC). More information on the GOAC and other accommodation planning and approval processes is contained in the Government Office Accommodation Framework suite of documents.

6.3 Required information

Applications for exemption from any or all aspects of the NGLP should outline the reason(s) for which an exemption is being sought. As a minimum, the request should include the following:

- Why the exemption is being sought;
- The nature of the exemption being sought;
- Estimated financial costs of achieving full compliance with the NGLP; and
- Estimated environmental impact of the exemption being sought.

Any other information which supports the application may also be included. More information on the above elements is provided below.

6.3.1 Background

The request should provide a background outlining any accommodation planning and market testing that has already been conducted. This section should include the following details for the accommodation concerned:

- The size of the area required;
- The number of staff to be accommodated;
- Specific location requirements;
- Any atypical functions that will be performed at the accommodation (e.g. shopfronts, call centres, data centre facilities etc.); and
- Whether the lease is a renewal, option/extension or new lease. If the lease is new, information on any accommodation being vacated may also be required.

ACTPG will be able to assist agencies complete these details.

6.3.2 Nature of the exemption

This section should detail the components of the NGLP from which exemptions are being sought as well as the extent of the exemption being sought. For example, an exemption may be requested to alter the NABERS Energy Base Building requirement from 4.5 to 4.0 stars.

It should also outline what efforts have already been taken to achieve compliance prior to an exemption being sought.

6.3.3 Financial impacts

Where possible, the request should note the estimated costs to achieve full compliance with the policy as well as the cost of the alternative accommodation. Costs should be based on the full term of the lease.

Exemptions will not be considered solely on the basis that non-compliant accommodation may be available at a cheaper rate. Non-compliant accommodation can potentially lead to higher long term expenditure on energy and more exposure to rising energy prices.

6.3.4 Environmental impacts

The request should clearly state the environmental impact of the exemption being sought. This will generally require an assessment of likely greenhouse gas emissions of the accommodation proposed under the exemption and emissions that would be expected under NGLP-compliant accommodation.

6.4 Factors for consideration

6.4.1 Lease renewals and options

Leases for office accommodation are generally entered into on a long-term basis. Therefore, the commencement of new leases that fall under the NGLP will be relatively irregular and infrequent.

In instances where the lease for an agency's existing accommodation is approaching expiration, there may be financial and environmental benefits from renewing the existing lease rather than pursuing new accommodation. This arises from the requirement to physically relocate all personnel and equipment from one building to another if new accommodation is procured.

In some cases, vacating existing premises may produce outcomes contrary to the intention of the NGLP, which is to encourage improvements to the energy efficiency of existing buildings.

Therefore, exemptions may be considered for renewals or extensions of existing leases where a genuine commitment to achieving the requirements of the NGLP has been demonstrated.³

³ This requires formal agreement on an Energy Management Plan to improve the energy efficiency of the building over an agreed period of time, such that it moves towards full compliance with the NGLP.

6.4.2 Whole of Government Strategies

EDD is responsible for preparing and managing a Whole of Government Accommodation Strategy (WofGAS), which aims to rationalise and consolidate Government office accommodation. While much of the current WofGAS has already been implemented, there will occasionally be a need to initiate a new lease. In certain circumstances it is possible that the commencement of a new lease as part of WofGAS could fail to achieve full compliance with the NGLP while still contributing to an overall improvement in the energy efficiency of the Government's office accommodation portfolio.

In the event that a non-compliant lease is pursued as part of a broader accommodation strategy, consideration for an exemption will take into account the full benefits achieved by the strategy.⁴

6.4.3 Market availability/operational requirements

There may be occasions in which the market is unable to supply office accommodation which simultaneously satisfies the operational requirements of the business unit and the requirements of the NGLP. For example, this may occur if an office is required to service a specific district in which there is a limited availability of NGLP compliant accommodation.

Exemptions from the NGLP may be considered in the event that the market cannot supply accommodation consistent with both the NGLP *and* operational requirements.

6.4.4 Financial inefficiencies/prohibitive expense

While it is not generally anticipated that a market will be completely incapable of supplying NGLP-compliant accommodation, it is possible that there may be an associated price premium. Agencies may choose to seek an exemption for accommodation for which it would be unreasonably expensive to achieve NGLP compliance. Unreasonable expense is to be determined by ACTPG in relation to market prices at the time the exemption is sought.

Analysis by various organisations has shown that energy efficient buildings do not generally impact on base rent prices and exemptions will not be considered solely on the basis of a perceived cost impost.

Exemptions will be considered where the cost of specific NGLP-compliant accommodation is empirically higher than would ordinarily be the case.

6.4.5 Other inefficient outcomes

It is possible, however unlikely, that in very specific circumstances an NGLP-compliant building could potentially have a comparatively negative impact on the environment compared to a non-NGLP-compliant building. For example, if the location of an NGLP-compliant office significantly increases the amount of car travel required for staff to either commute or perform their duties, the increased vehicular emissions may negate the energy efficiency of the accommodation.

These issues will be incrementally resolved as the NGLP and Territory-specific green leasing policies are refined and expanded to incorporate additional aspects of sustainability, such as waste, indoor environment quality and transport requirements.

Exemptions will be considered where there are negative net environmental outcomes arising from an NGLP-compliant lease.

⁴ This consideration will also apply to any accommodation strategies arising from a decision regarding the Whole of Government Office Block project currently being considered by the Government.

7 Review

The NGLP will undergo its first full review after two full years of operation. The review will be conducted by the project steering committee and will consider the effectiveness of the NGLP and the potential to expand the scope of the policy to improve environmental outcomes.

The ACTELP will undergo an interim review to coincide with the next review of the GREP in August 2012. A full review of this policy will take place following the first review of the NGLP.

8 References

- ACT Government Real Estate Policy
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<http://www.gbca.org.au/green-star/>
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- *Weathering the Change* – ACT Climate Change Strategy
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