

06 February 2009

Commercial Building Energy Efficiency Team
Department of the Environment, Water, Heritage and the Arts
GPO Box 787
Canberra, ACT 2601



Dear Sir/Madam,

Submission – Mandatory disclosure of commercial office building energy efficiency

Macquarie Real Estate Funds are committed to sustainable business practices across its portfolio of assets. Our commitment is being translated into measurable action as shown by Macquarie Office Trust, which has agreed through the Total Environment Centre “Existing Buildings Project” to achieve a cross portfolio base building NABERS Energy average rating of 4.5 by January 2012.

Whilst we are committed to improving the sustainability of our business operations, and we support the disclosure of the energy efficiency of commercial buildings, we believe further analysis is required in relation to some of the measures proposed. This letter provides our formal comment on the Consultation Regulation Document - Mandatory Disclosure of Commercial Office Building Energy Efficiency, as sought by the Department of the Environment, Water, Heritage and the Arts.

Please find below our comments in relation to the provisions outlined in the Consultation Regulation Document:

- 1) We support the disclosure of the energy efficiency of commercial buildings from a base building perspective as part of the sale, lease or sublease process.
- 2) We believe further analysis is required relating to the broader implications of mandatory disclosure of tenancy ratings for the sale of whole or a proportion of the building. Further consideration should be given to the commercial implications of mandatory disclosure of tenancy ratings as tenancy areas are not under the control of the building owner; and the timing and duration in obtaining accredited tenancy energy ratings could adversely impact the sale process, particularly in buildings where there are multiple tenants.

- 3) We believe further consideration should be given to the mandatory disclosure of tenancy ratings for the lease of an area meeting the size thresholds. As stated previously, tenancy areas are not under the control of the building owner. A tenant NABERS Energy rating will be dependent on the specific operational characteristics of that business. In our opinion, an existing tenancy NABERS Energy rating would not be relevant to a new business seeking to let the same space, as the new business' operational profile may be significantly different to that of the existing tenant.
- 4) We support the disclosure of energy efficiency ratings that excludes the Green Power component. However in order to ensure alignment with other publicly disclosed information, we believe that the energy efficiency rating including the Green Power component should also be disclosed.
- 5) Whilst we support the use of NABERS Energy as the accredited energy efficiency rating tool. The processing and approval of NABERS Energy ratings by the certifying Agency will need to be timely to meet the demand imposed by the proposed mandatory disclosure.
- 6) We note that the scheme makes provision for other rating tools to be accredited in the future. Any new rating tools would need to demonstrate strong alignment with the existing accredited energy rating tool. A clearly defined transition period would be required to ensure "like-with-like" comparison of commercial buildings could be made.
- 7) NABERS Energy is currently a voluntary tool administered by the NSW Department of Environment and Climate Change (DECC). As a voluntary tool, we understand that updates and amendments to the validation protocol for the NABERS Energy tool are managed by DECC and focus groups appointed by DECC. By mandating the use of the NABERS Energy tool, we would seek a more public consultation process on any future changes to the NABERS Energy validation protocol.
- 8) The Consultation Regulation Document indicates that the BEEC would be valid for a 12 month period and the EEAR would be valid for a seven year period. Whilst we would be supportive of these proposed time scales, we have the following comments in relation to the content of the EEAR:
 - EEAR should not contain the BEEC due to the different validity periods.
 - EEAR should only contain energy efficiency measures over which the owner has operational control. Tenant advice to improve energy efficiency should be provided separately to the EEAR. (refer to comments in point 3).
 - EEAR should not provide cost data for energy efficiency measures due to the commercial sensitivities and also the time period of validity of the report.
 - EEAR should be advisory only and not provide a mechanism for mandating energy efficiency improvements to the building.

9) The Consultation Regulation Document proposes an enforcement option that withholds the balance of the purchase price. We do not support this enforcement option, for the following reasons:

- If tenancy ratings are required, that payment may be withheld due to circumstances beyond the control of the building owner.
- All external ratings are subject to verification by external parties, whose response time is beyond the control of the building owner.
- Commercial implications of withholding the balance of the purchase price rather than a prescribed amount.

If possible, an alternative enforcement option such as the civil penalty scheme described in the Consultation Regulation Document should be considered.

Macquarie Real Estate Funds is pleased to have the opportunity to comment on Consultation Regulation Document - Mandatory Disclosure of Commercial Office Building Energy Efficiency. Should you have any queries in relation to our submission, please contact Matthew Nolan on (02) 8232 9879 or Claire Orton on (02) 8232 5073.

Yours faithfully,



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Macquarie Capital Funds



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