PROSPERITY | JOBS | STRONG COMMUNITIES

6 November 2019

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Dear Mr. Manners,

Property Council feedback on CIE draft report – review of CBD Program

The Property Council welcomes the opportunity to provide feedback on The Centre for International Economics (CIE) draft report as part of its independent review of the Commercial Building Disclosure (CBD) Program.

The Property Council champions the industry that employs more than 1.4 million Australians and shapes the future of our communities and cities. Property Council members invest in, design, build and manage places that matter to Australians: our homes, retirement villages, shopping centres, office buildings, industrial areas, education, research and health precincts, tourism and hospitality venues and more.

The Property Council and our members are supporters of the CBD Program as it has operated since 2011, leveraging NABERS as a robust framework to promote energy performance within buildings and drive demand for better performance.

We thank The CIE for your work as summarised in this comprehensive draft report and are pleased to see the success of the CBD program appropriately acknowledged in the review. We support many of The CIE's recommendations and have restricted our commentary on this draft report to content that is either new and didn't appear in the preliminary draft report or relates to areas of previous feedback that have not been sufficiently addressed.

We look forward to engaging further with The CIE and the Department of Environment and Energy through the stakeholder reference group as the review progresses to its final stages.

Yours faithfully,

Mike Zorbas

Group Executive Policy

1. Support for draft report recommendations

The Property Council's response to The CIE's recommendations for potential changes to the CBD program is outlined below in Table 1 with further detail in subsequent sections.

Table 1: Property Council responses to draft recommendations

No.	Recommendation	Property Council response
1	The CBD Program should be continued for office buildings.	Supported.
2	The impact of the CBD Program for offices should be enhanced by funding programs to support the upgrade of buildings with lower NABERS energy star ratings.	Supported.
3	The CBD Program should be extended to office tenancies.	Supported. Further comments in Section 3.
4	Disclosure of energy performance should not be mandated for shopping centres.	N/A.
5	The CBD Program should be expanded to hotels through a staged process that involves mandatory NABERS ratings that initially do not need to be disclosed, and later need to disclosed in hotel foyers and hotels' primary websites.	Supported. Further comments in Section 4.
6	The CBD Program should not be expanded to data centres at the present time.	Supported. We believe there is a case for expanding the CBD Program to data centres at a future date. In the interim, we strongly support The CIE's proposal for governments to obtain NABERS ratings for their own data centres to support future consideration of expanding the CBD Program to this sector.
7	Disclosure of energy performance for apartment buildings through state and territory legislation should be investigated in detail.	Supported.
8	State and territory government should agree to a detailed examination of mandatory disclosure of NABERS ratings for apartment buildings, including consideration of an appropriate legal framework.	Supported.
9	As recovering the costs incurred by DEE in administering CBD Program (including compliance and enforcement costs) through user charges would be consistent with the Australian Government Cost Recovery Guidelines, DEE should the develop a compliant cost recovery framework.	N/A.

2. Effectiveness of the CBD Program – taking full account of the benefits

The Property Council considers The CIE's estimate that the CBD program has delivered net benefits of $86 million a useful figure that represents a conservative, lower-bound estimation of the program's benefits.

The benefits delivered through NABERS and the CBD program go beyond the benefits that could be quantified in The CIE's cost benefit analysis which are confined to energy bill savings and societal benefits from GHG savings. We appreciate the additional commentary included on other benefits and reiterate that NABERS and the CBD Program build capital and contribute to boosting competitiveness and business growth, a headline objective of the NEPP.

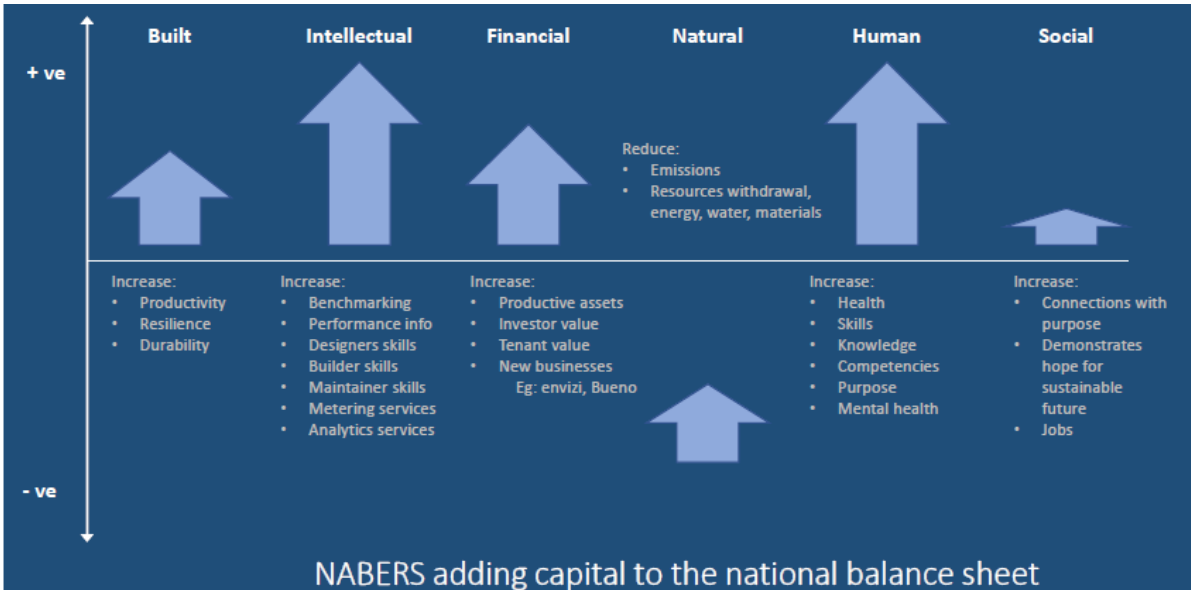

Figure 1: NABERS builds capital in many ways across Australia's economy

Managing NABERS ratings has also been the catalyst for the development of new intellectual property often delivered by new companies that have created new jobs. Companies like envizi, Bueno, Switch automation are all Australian companies that have found global markets for their energy analytics services. Similarly, Australian building services companies have developed building modelling skills that are in demand from other parts of the world. These new businesses create skilled, purposeful new jobs in buildings services, IT, metering systems, data analytics.

3. Expansion to Office Tenancies

The Property council strongly supports the expansion of the CBD Program to office tenancies, leveraging the NABERS Co-Assess pathway which provides a convenient and low-cost option for tenants to achieve a rating at the time the base building rating is conducted.

We believe the legal obligation to achieve a tenancy rating must lie with tenant, not the building owner. While Co-Assess provides a mechanism that allows tenants to achieve their rating with minimal cost and administrative burden, a more detailed legal review is required to determine how this would be given legal effect and work in practice, particularly regarding the building owner's access to tenancy energy data to facilitate ratings through Co-Assess.

Please see the below summary in Table 2 for a summary of our responses to the various design options presented with further commentary provided in Sections 3.1 to 3.4.

Table 2: Property Council response to design options for expansion of CBD Program to office tenancies.

Design elements	Design options from The CIE	Property Council response
Thresholds	▪ No specific limitations on what threshold should apply. ▪ Threshold could apply to (depending on choice of trigger for a BEEC): – Space being sold/leased – Whole building size	▪ We support building floor area as a threshold with further analysis required to determine where a cost-effective threshold lies. ▪ Consideration should be given to whether small tenancies should initially be excluded from the requirement to rate. ▪ Further information at section 0.
Trigger for disclosure	▪ Sale/lease ▪ Periodic trigger (i.e. every year or every two years)	▪ We support a periodic trigger of every two years and to maintain the requirement for disclosure of the current rating at point of sale/lease. ▪ Further information at section 3.2.
Information disclosed	▪ NABERS Energy without greenpower ▪ NABERS Energy with greenpower ▪ TLA ▪ Estimated energy bill ▪ Energy consumption per m^2 ▪ Energy cost per m^2	▪ Support NABERS Energy without GreenPower as the highest priority and supported disclosure of NABERS Energy with GreenPower in addition. ▪ Further information at section 3.3.
Disclosure arrangements	▪ All advertising material ▪ Leases ▪ Building foyer ▪ Annual report ▪ No external disclosure	▪ Maintain disclosure of base building performance at point of sale/lease ▪ Tenant ratings should be displayed at the entrance to tenancy or on floor of tenancy ▪ Further information at section 3.2.
Other administrative arrangements	▪ Cost recovery arrangements ▪ Compliance and enforcement ▪ Time periods over which a rating is valid	▪ Please refer to Section 3.4 on legal obligation and data access issues.

3.1. Threshold for disclosure

We support building floor area as an appropriate reference for the threshold if moving to a periodic trigger. We strongly support expansion of mandatory disclosure to office tenancies implemented through NABERS Co-Assess, however there should be some thought given to the size of the tenancies required to undertake ratings if the building triggers the threshold.

As part of a more detailed cost benefit analysis, an appropriate threshold for the building will need to be determined and suggest thresholds from 500m^2 and higher are investigated. In line with approach taken in early stages of the CBD Program, we suggest looking at initially exempting smaller tenancies from having to do a rating through Co-Assess, possibly those less than 1,000m^2 initially.

The analysis of net benefits and benefit to cost ratio by tenancy size threshold in the feasibility assessment conducted by EnergyAction for the City of Sydney[1] shows that substantial benefits can be achieved with a minimum tenancy size of 1000 m^2.

Table 3: Policy Option Net Benefits and BCR by tenancy size threshold

	Option 1: Annual - Stand Alone		Option 2: Annual - Co-Assess		Option 3: CBD Triggered - Co-Assess	
Size threshold	Net Benefits ($M)	BCR	Net Benefits ($M)	BCR	Net Benefits ($M)	BCR
> 500 m^2	29	1.07	221	1.98	184	2.16
> 1,000 m^2	64	1.22	187	2.10	151	2.25
> 2,000 m^2	67	1.45	117	2.17	94	2.29
> 3,000 m^2	54	1.54	85	2.22	67	2.31
> 4,000 m^2	48	1.54	74	2.22	58	2.30

Figure 2: Summary of Net Benefits and Benefit Cost Ratios for three different policy options explored in EnergyAction's study for the City of Sydney, "Expansion of Mandatory Disclosure to Office Tenancies – Feasibility Assessment"

3.2. Trigger for disclosure and disclosure arrangements

The Property Council supports the expansion of the CBD Program to tenancies and periodic disclosure is a more appropriate trigger when including tenancies. We agree with the suggested periodic trigger of two years for tenancy ratings.

This would also entail a transition to a two-year periodic rating for base buildings. This would not impact on building owners who already do annual ratings, but should act to capture private, mid-tier and smaller office owners who rarely sell buildings or lease spaces currently captured in the CBD Program. This presents a significant potential expansion of coverage that should be supported by complementary programs including expert advice and support for undertaking

[1] EnergyAction for City of Sydney, "Expansion of Mandatory Disclosure to Office Tenancies – Feasibility Assessment", 2018

initial ratings, as well as access to existing incentive programs like white certificate schemes and finance options.

In supporting the shift to a periodic trigger, we further note the location of disclosure for the base building and tenancies needs to be examined. Our members are supportive of a requirement to display the NABERS Energy rating for the base building rating in a public location in an ongoing basis, noting consideration needs to be given to whether that should be physically in the building or on a relevant website. For tenancies, we support public display of tenancy ratings on each tenancy's floor within a building, either in the foyer or at the entrance to each tenancy.

We also strongly support maintaining the existing requirement for disclosure of the NABERS Energy rating of the base building at the point of sale/lease.

3.3. Information disclosed

We support disclosure of both the NABERS Energy without GreenPower rating and the NABERS with Green Power rating of the base building but note the priority should be for the rating *without* GreenPower as this aligns more closely with the objectives of the program and the market failures the program has been most successful in addressing.

NABERS Energy with GreenPower gives information on emissions reduction and will provide useful information in that regard to tenants (hopefully driving a stronger demand for the purchase of renewable energy) but should not be disclosed in preference to the NABERS Energy without GreenPower rating.

In isolation the rating with GreenPower can obscure information about the energy efficiency performance of the building, and in the case of poor-performing buildings buying a lot of GreenPower to make up for this shortfall, doesn't provide a positive correlation with energy bills. Our leading members have shown however, that high performing assets that purchase GreenPower are still cheaper to operate than poor performing assets buying standard (grid) power.

We therefore believe disclosure of both the NABERS Energy rating without GreenPower and the NABERS Energy rating with GreenPower should be disclosed, noting that some further work on how this is communicated simply and meaningfully needs to be done.

3.4. Legal responsibility for disclosure of tenancy performance

The Property Council strongly recommends that a detailed legal review is commissioned to advise how legal effect can most simply and effectively be given to the disclosure of office tenancy performance.

Key issues identified in this review for further interrogation include how office tenants can be made legally responsible and how building owners can more easily be given access to tenant energy data for the purpose of facilitating a rating on their behalf.

Office tenants should be legally responsible

Undertaking and disclosing an office tenancy rating should be the legal responsibility of the tenant.

While building owners can facilitate a rating on the tenant's behalf by doing this at the time of the base building rating through Co-Assess, access to tenants' energy data for this purpose has proven extremely difficult in our members' experience. Despite many of our members seeking to engage with tenants and facilitate access to this data through lease clauses, these are typically stripped out in practice, even in the case of large corporate tenants with their own sustainability objectives. We strongly feel that the tenant must therefore be made legally responsible for undertaking and disclosing a rating to change the current dynamic.

A review is required to determine how legal responsibility could be imposed on office tenants. For the sake of consistency, efficiency and minimising complexity, our strong preference would be for this to be done through Federal legislation, not a series of amendments to state-based legislation.

While some entities may fall outside the scope of the *Corporations Act 2001*, such as partnership structures like those used by large accounting firms or law firms, these are high profile businesses that could be compelled through other means, such as the public name and shame strategy the CIE found as a motivating factor with some businesses. Priority should be given to determining the likely proportion of office tenants who are entities covered under the Act and what legislative changes would be required to make tenants liable for ratings.

While we note there is existing legal precedent for providing access to premises in state and territory legislation, this is not the preferred option. For example, the NSW *Strata Schemes Management Act 2015* puts in place provisions for accessing premises for fire safety inspections, however our members advise many issues in gaining access to premises at agreed times which impose unnecessary time and cost imposts on the building owners.

Access to energy data must be streamlined

The most convenient and cost effective option for tenants to achieve ratings would be through Co-Assess at the time of the base building rating. Currently, the biggest barrier to uptake of Co-Assess in our members' buildings is the ease of access to tenant data in buildings that don't have embedded networks. A legal review should focus on identifying a mechanism that allows easier access to tenant data through the network to facilitate a rating.

It is common for tenants to refuse to provide energy bills to facilitate a NABERS tenancy rating in our members' experience. In order for the CBD Program to be effectively expanded to office tenancies, there needs to be streamlined, potentially automated process for direct access to relevant data for the building owner to undertake a rating on a tenant's behalf. If this cannot be provided for, it is likely to impose significant time and cost for the building owners to facilitate a rating on their behalf.

4. Expansion to Hotels

We believe the hotel sector is in a slightly less advanced position to where the office sector was prior to the CBD Program commencing, particularly in terms of the sector's ability to leverage energy performance benchmarking provided through NABERS in making cost-effective operational changes.

In contract to the hotel sector, we note there was already a good level of voluntary uptake of NABERS Energy for offices by leading property companies prior to mandatory disclosure. In that spirit we agree that the NABERS team should engage closely with the hotel sector to build confidence in the NABERS Energy tool for hotels. This could include information and demonstration sessions to highlight how the rating is geared towards business hotels as well as making potential refinements to the rating tool to improve the accuracy of the benchmarks if required.

The Property Council supports the staged process recommended by the CIE that involves mandatory NABERS ratings that initially do not need to be disclosed, and later need to be disclosed in hotel foyers and hotels' primary websites. We also support recommendations for targeted programs to assist hotels with funding support to undertake initial ratings and provide expert advice on where the most cost-effective performance improvements can be made.