

THEFIFTHESTATE



**OUR PLANET
OUR REAL ESTATE**

THE TENANTS & LANDLORDS GUIDE TO HAPPINESS

BEST PRACTICE AND GREEN LEASING

**PRINCIPAL AUTHOR
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A COLLABORATION WITH THE BETTER BUILDINGS PARTNERSHIP



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FOREWORD

Welcome to *The Tenants & Landlords Guide to Happiness*. We mean it. In the world of commercial leases what could be more valuable than to get everyone on the same page, singing from the same songbook?

It's the way of the future.

There are simply too many challenges and shifting paradigms to survive any other way. Let alone prosper.

The old adversarial methods for negotiating and managing leases are just that: old and adversarial.

Today's environment will reward the tenants and landlords who know that to create more productive, more efficient and more sustainable workplaces they will need to collaborate with each other on all the elements that contribute to shared goals.

Call the leases that will deliver this green, sustainable, best practice... it really doesn't matter.

What's important is the intent and the outcomes.

Thanks to the leadership of the Better Buildings Partnership, a collaborative enterprise of Sydney's leading landlords, this book will be developed over the next 10 months with exactly those goals in mind, as a resource to be shared with all of Australia's tenants and landlords.

Key to this book is to find what makes a good tenant-landlord relationship tick. How do you make a start—an ideal start—to the relationship?

How do you get through the inevitable hurdles that challenge and provoke all human endeavours? And how do you make sure those challenges only serve to make your relationship stronger?

We thank the BBP for collaboration on this important book dedicated to all the landlords and tenants of Australia, and the fantastic help of the City of Sydney, as manager of the BBP and a collaborator on this publication.

Our methods:

You will notice this is just the start:
Chapter 1

The remaining chapters, 10 in all, will be rolled out on a monthly basis over the coming months.

We think this synthesis of old (think Charles Dickens and his serialised novels) blended with the wonderful technology that's available to us today, makes for the best outcomes: time to read and absorb, and then wait, with some delicious anticipation, for what's next.

Just like the business world of today, really.

Tina Perinotto
Managing editor, *The Fifth Estate*

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CHAPTER ONE: Getting To First Base



NAB House, 255 George Street, Sydney

Not so long ago green leases were a hot topic in property circles, particularly among top tier property owners. Then along came the global financial crisis and the focus shifted to value for money and getting deals signed off. Now green leases are back on the agenda but just don't mention the word green—these days best practice is the new green in leasing.

So what happened to the green lease agenda and why the new terminology?

“Best practice is something everyone can relate to. The fact is sustainable and responsible property management is best practice and it should be standard”

Joel Quintal, director of sustainability, Australia, with Jones Lang LaSalle, told *The Fifth Estate* the term “best practice” is much better understood than “green” and has more positive connotations.

GREEN LEASES ARE GOOD—CALL THEM WHAT YOU LIKE

“The green lease was poorly understood and ‘green’ was often associated with more work and more expense,” Quintal says.

“Best practice is something everyone can relate to. The fact is sustainable and responsible property management is best practice and it should be standard.”

And while leading landlords often include green clauses in leases, tenants have been slow to do so. This is the next big challenge.

“It is very rare for tenants to seek green clauses. Personally I haven't come across it,” says Quintal.

“This is where things need to be pushed so that there is more reciprocity in leases.”



GPT head office, MLC Centre, Martin Place, Sydney

It is not that hard for leases to be more reciprocal, says Quintal. But first tenants need to be educated about the benefits of sustainable buildings.

Evidence of the link between productivity and sustainable buildings is now readily available

“More efficient buildings mean lower outgoings. And greener buildings mean more productive, healthier staff.

“We expect understanding of this to grow in the future. The industry has been trying to get its head around energy efficiency but productivity is the next key area. The C-suite [senior executives such as chief executives] needs to understand that productive employees equal profitable business.”

Evidence of the link between productivity and sustainable buildings is now readily available through pre- and post-refurbishment occupancy studies and other research. GPT, for example, estimated that refurbishment of its head office in Sydney and a shift to an activity based workplace resulted in a 15 per cent boost to productivity.

At Macquarie Group’s 6 star Green Star headquarters at One Shelley Street, Sydney, a post-occupancy study found there was an average of 15 per cent net increase in perceived productivity for employees in the new building.

Local Government Super went further, estimating productivity gains as a result of sustainable upgrades to its portfolio of properties were worth nine times more to occupants than electricity savings (\$188 a square metre compared with \$15 a sq m to \$20 a sq m).

See *The Fifth Estate*’s story on this »



**“MORE EFFICIENT BUILDINGS
MEAN LOWER OUTGOINGS
AND GREENER BUILDINGS
MEAN MORE PRODUCTIVE
HEALTHIER STAFF”**



**“WE NEED TO CHANGE
THE LANGUAGE OF
GREEN LEASING TO
CREATE INCENTIVES FOR
MORE COLLABORATIVE
APPROACHES”**



Robin Mellon,
Green Building Council of Australia



The Green Building Council of Australia highlights the link between productivity and indoor environment quality (IEQ) in its educational material and ratings tool descriptions.

GBCA's chief operating officer, Robin Mellon, says despite the evidence that Green Star and NABERS rated buildings attract a premium in value and rent to building owners (The **Building Better Returns** report), and that they boost productivity and wellbeing for occupants, this is not translating into more green leases.

CHANGE THE LANGUAGE

The main reason, Mellon says, is that the language of green lease agreements—which emphasises penalties if one party does not achieve the agreed targets—often acts as a disincentive.

“We need to change the language of green leasing to create incentives for more collaborative approaches—something the GBCA has actively set out to do in our new Green Star—Performance and Green Star—Interiors rating tools. In these, we talk about ‘collaborative approaches to rectifying non-compliance’ and eschewed reference to penalties all together,” says Mellon.

In addition “green” can be seen to cost extra or to be a “nice to have” rather than an essential, in a slower market.

One Shelley Street, Sydney—Brookfield

GETTING ON THE SAME PAGE



Bruce Precious, GPT, left; Tom Belsham, City of Sydney, centre; Rowan Griffin, Colonial First State Asset Management, right

“It is important to communicate that 'green' is now becoming synonymous with 'quality', as evidenced by the Property Council of Australia's revised *Guide to Office Building Quality* that identifies 5 star Green Star and 5 star NABERS Energy ratings as the benchmarks for new premium grade buildings,” Mellon says.

Rowan Griffin, head of sustainability, property, Colonial First State Global Asset Management, says it can be a battle getting tenants to think about their own impact on building performance.

“The industry needs a campaign to educate tenant representatives on the benefits of sustainable fitouts and of green leases”

CFS is proactive in promoting green leases for its properties. Since November 2011, CFS has included a green lease schedule for all of its wholly owned A grade and upper B grade buildings as part of every new lease. Of leases signed since then, all have included commitments by CFS to sustainability outcomes for the building.

Remarkably, of all the leases signed since November 2011, with landlord obligations, 30 per cent had diluted or no voluntary obligations from the tenant, and 70 per cent of leases included voluntary tenant obligations of some sort, where the tenants agreed to work with the landlord to achieve a better sustainability outcome for the building.

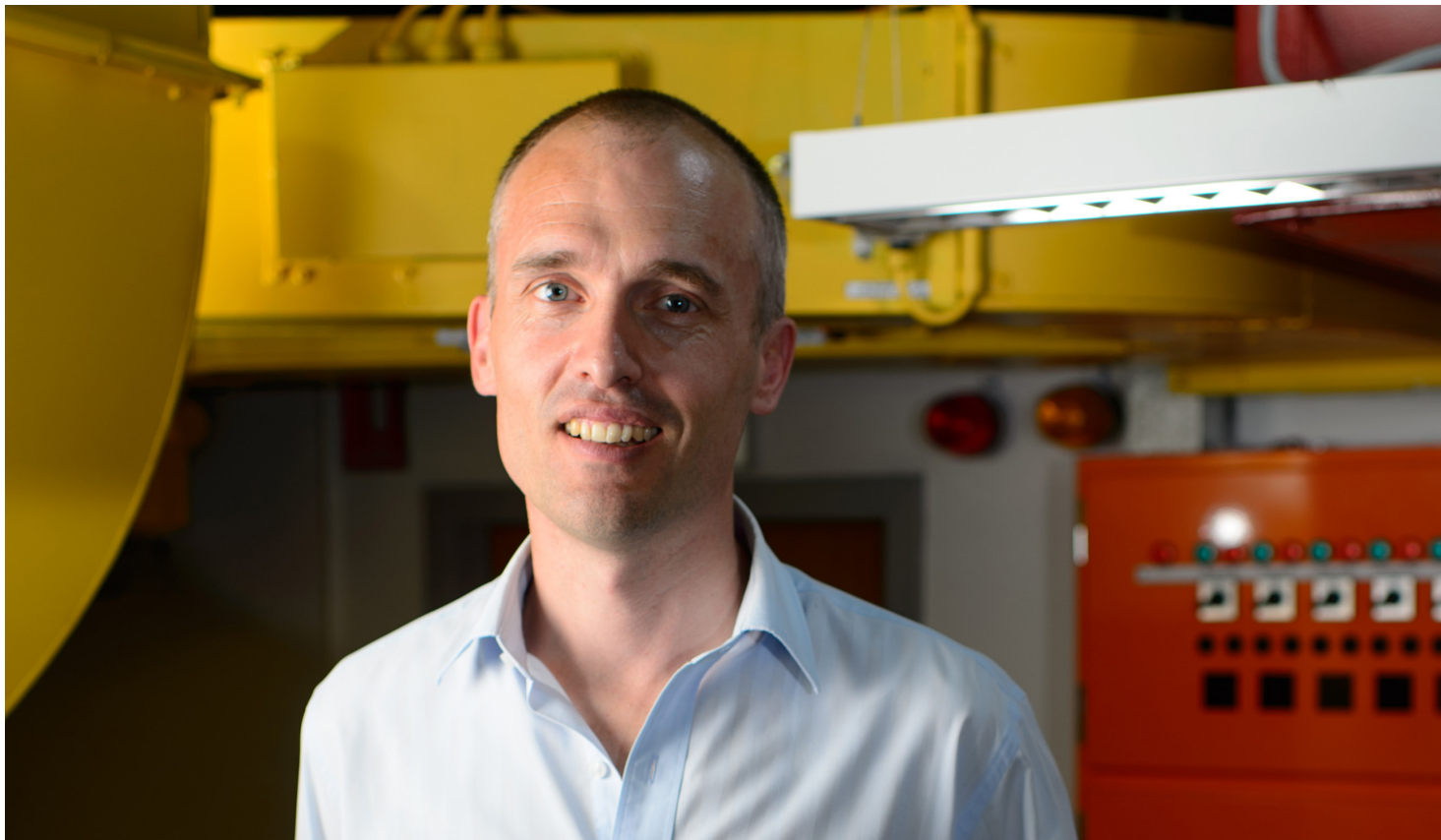
“I don't think enough tenants are getting the information they need on the benefits of sustainable buildings,” says Griffin.

“A lot of tenants employ a tenant rep to get the right commercial and legal details but very often the sustainability aspect is neglected. The industry needs a campaign to educate tenant representatives on the benefits for tenants of sustainable fitouts and of green leases.”

According to chief executive of Buildings Alive Craig Roussac, a key reason for the lack of progress in green leasing is the process itself.

Roussac, who was at the forefront of the development of green leases during his time as general manager—sustainability, safety and environment at Investa, says “the lack of alignment between the parties who negotiate leases is hampering progress”.

It doesn't matter how keen landlords and tenants are on sustainable buildings if lawyers and agents are primarily focused on getting a deal done, Roussac says.



Craig Roussac, Buildings Alive

LOST AND FOUND IN TRANSLATION

“For best practice leases to become standard, the leasing process requires alignment of goals between the parties. There needs to be a common goal and there must be incentives.

“We need to use the lease to connect the various parties and to do that we need to give people data that matters and present it in an understandable format. Property is mostly about doing deals, and leasing agents and lawyers are focused on that, not on green clauses in leases.”

“But if they really understand the benefits to their clients and are offered incentives for negotiating for this it will become a priority,” Roussac says.

“Performance leases could be a way of aligning goals for both sides. The focus should be on what each party gets out of it. Measuring and monitoring is the key to this.”

Goals must be measurable through effective monitoring of building performance and tenant achievements such as productivity and staff wellbeing, Roussac says.



**MEASURING AND
MONITORING IS KEY
TO PERFORMANCE**

TENANTS SHOULD BE THINKING ABOUT HOW BUILDINGS IMPACT ON THEIR COMPANY'S PERFORMANCE WHEN NEGOTIATING LEASES



Esther Bailey, City of Sydney

A GUIDE TO A GREAT PARTNERSHIP

The Better Buildings Partnership is actively promoting cross-industry collaboration and improved understanding for those navigating the leasing process. The partnership's new online **Leasing Lifecycle Tool** aims to guide key parties—from the tenant and building manager, to the designer consultant and leasing agent—in each step of the leasing process, providing information on who to engage, when to engage them and importantly sets out the key expectations and the issues to consider.

A collaboration between Sydney's major property owners and developers, the City of Sydney, educational institutions and agents, the Better Buildings Partnership aims to improve the environmental performance of Sydney's existing building stock.

Esther Bailey, Better Buildings Partnership manager at the City of Sydney, says tenants should be thinking about how buildings impact on their company's performance when negotiating leases.

“Even if sustainability hasn't been high on the priority list, achieving a best practice lease should be—because the fact is, it will give you the best possible performance outcomes for your workspace. The Leasing Lifecycle Tool helps navigate this process and identify

the opportunities to optimise performance outcomes from the onset,” Bailey says.

The Leasing Lifecycle Tool contains links to the best industry resources to help facilitate mutual benefits and optimise outcomes for agents, operators and occupants engaged in the process of commercial leasing.

“Even if sustainability hasn't been high on the priority list, achieving a best practice lease should be”

BBP's work on best practice leasing focuses on each stage of the process—from site consideration, site selection and the lease agreement, to fitout design and ongoing management—with effective engagement, negotiation and education underpinning the success of each outcome.

BBP provides links to existing resources, including the federal government's *Green Lease Handbook*, which was developed under the Council of Australian Governments' National Strategy on Energy Efficiency. The guide can be accessed via a link in the Leasing Lifecycle Tool and is available in hard copy from CitySwitch for signatories.

FLEXIBILITY IS CRUCIAL

Sparke Helmore Lawyers is working with the Better Buildings Partnership Tenant Technical Working Group on a range of initiatives designed to facilitate change in leasing practices. A key project is the development of sample green lease clauses accompanied by information about the potential risks and benefits of each clause.

“The way to counteract these challenges is to ensure that parties are properly educated about the real risks and benefits presented by green leasing”

Sparke Helmore lawyer Claire Hashman says that by combining the technical expertise and experience of the BBP members with a legal perspective, the firm hopes to create a resource that will educate tenants and landlords and also offer easy to use example clauses.

“These will demonstrate how standard leases may be modified to promote sustainable outcomes,” Hashman says.

Tenants and landlords can be reluctant to move away from business as usual lease clauses, which they understand well, into unfamiliar green leasing arrangements,” she says.

“The problem with many standard lease clauses is that they create inflexibility and mandate how the parties interact. These types of arrangements deny both landlords and tenants financial and operational benefits.”

One example is make-good clauses, which require tenants to make-good premises to the standard they were in before the tenant took over the lease, Hashman says. The landlord often renovates the premises again to make it more up to date and attractive to potential lessees.

Flexibility around make-good clauses can reduce waste and cost to both landlord and tenants.

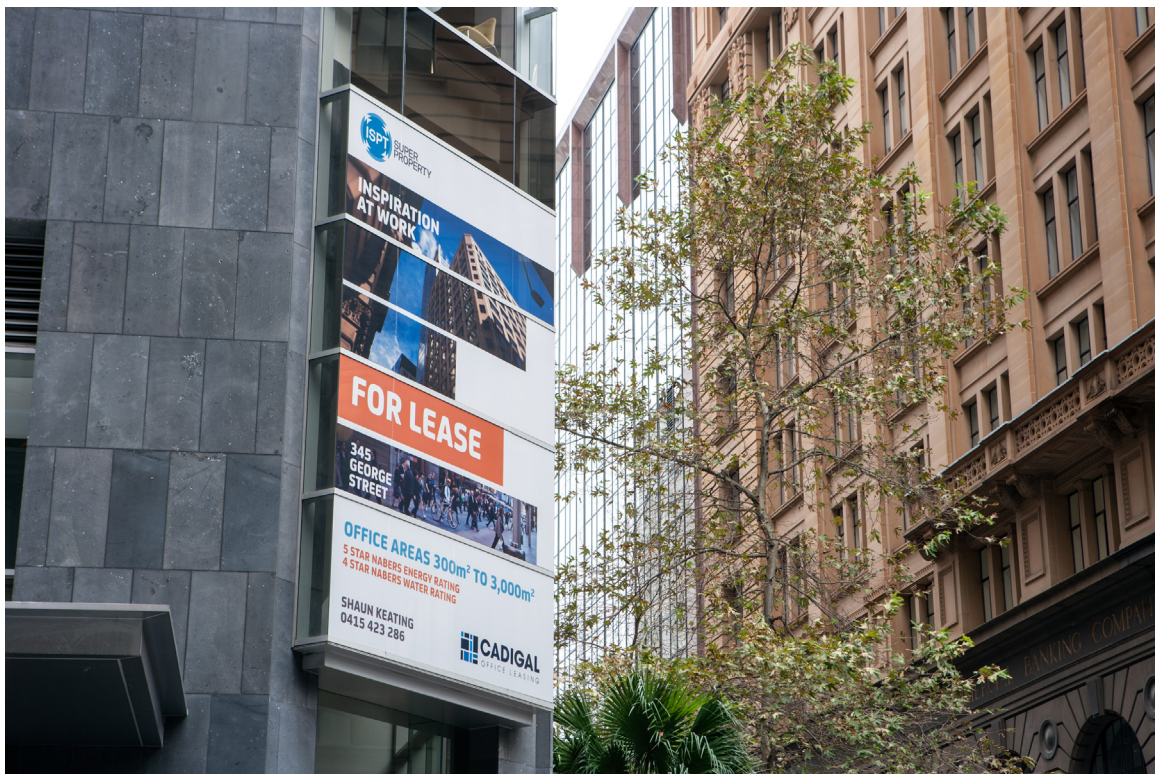
“The way to counteract these challenges is to ensure that parties are properly educated about the real risks and benefits presented by green leasing. Green leases need to be viewed as an improved business model of building management for both tenant and landlord.”

**“GREEN LEASES NEED TO
BE VIEWED AS AN
IMPROVED BUSINESS
MODEL OF BUILDING
MANAGEMENT FOR BOTH
TENANT AND LANDLORD”**



Claire Hashman, Sparke Helmore

WHEN LANDLORDS AND TENANTS COLLABORATE ON GREEN LEASE CLAUSES EVERYONE BENEFITS





Michael Goldrick, Frasers Property; Chris Derksema, City of Sydney;
Jamie Loader, Brookfield Properties

GETTING IN TUNE

Sparke Helmore partner Leon Sakaris and the firm's leasing specialist Wayne Kaplan are both keen to see increased education regarding green leases and their impact across the industry.

“Not all tenants and landlords are experienced in leasing or have sophisticated levels of understanding”

“Misconceptions typically stem from a lack of understanding about how rating systems operate and how various technologies work in practice,” says Kaplan.

“For example, there are sometimes misunderstandings about the differences between base building, tenancy and whole building NABERS ratings and how they are achieved, which can result in unnecessary debate.

“It is important to recognise that not all tenants and landlords are experienced in leasing or have sophisticated levels of understanding about asset management,” Kaplan says.

“For people who infrequently negotiate leases, it is vital that the lawyers, leasing agents and tenant representatives have the accurate facts about the risks and benefits of entering into green leasing arrangements.

“The aim is to convince landlords and tenants that if they work in collaboration in introducing green lease clauses in their leases there are benefits for both parties in the form of cost savings and reputational gains.”

VOX POPS— What the Industry thinks

Recorded at the BBP Best Practice Leasing Forum

As part of a Better Buildings Partnership forum, key representatives from across the property sector share their view on how the resistance to best practice leasing can be overcome. The Better Buildings Partnership is a collaboration between leading property owners working to improve the sustainability performance of existing commercial and public sector buildings across Sydney.



Introduction

Emlyn Keane, AMP Capital Investors

Our intent is to collaborate and drive further sustainability initiatives across the city. And to do that we need the collaboration of tenants. We're looking at best practice around the globe and leases that don't hamper the intent of the two parties.

Watch all the videos, see what everyone said.



Craig Roussac, Investa Property Group

Where we've arrived is: you can't just act alone. Other building owners have been doing very innovative things as well, facing the same sort of barriers, so the question is what's common among these approaches, what makes sense, can we get a broader base of support for these things?



Lexia Wilson, Piper Alderman

Flexibility in leasing gives rise to greater risk for the landlord and tenant, so we need to see a preparedness by the landlord and tenant to accept those risks, and educate and encourage their lawyers that they don't need to de-risk the transaction.



Jenine Cranston, CBRE

A growing voice is that tenant reps need both to be accredited and they need to be regulated—that's a really important part... it will have greater improvement or significant improvement on the industry.



Steve Hennessey, WT Sustainability

We really want to work together but we're almost conditioned to take an adversarial approach, and if we can break down that adversarial approach, we will deliver better buildings.



Esther Bailey, City of Sydney

We're really lucky that we have a highly engaged building owner segment and they've come together through the Better Buildings Partnership to really look at how they can take the competitive value they've delivered into the market.



**Professor Bill Duncan,
Queensland University of Technology**

Education is needed, not only in the general community but educating people going into these agreements so they properly understand, not only that they are getting a cheaper tenancy, because outgoings might drop, but also they are contributing to the common good.



Robert Milagre, GBCA

Industry needs multiple incentives to be able to adopt best practice leases... In particular, lease agreements that allow other aspects of sustainability to be addressed.



**Professor Susan Bright,
Oxford University**

There are lots of exciting possibilities; one is to encourage people to be talking to each other early on, and to certainly bring a discussion about environmental issues right to the forefront of negotiating between parties.



Catherine Hallgath, Mills Oakley

We need to allow a certain level of uncertainty in the lease to allow the exciting possibility of innovations and improvements, and to allow the lease to deal with the changes that are going to happen.



**Professor Richard de Dear,
University of Sydney**

Comfort has got at least six physical parameters... we can easily shift the temperature of the whole building from 21 to 26 degrees and still maintain exactly the same comfort assessment of the occupant by compensating with clothing adjustments.



Rowan Griffin, Colonial First State Global Asset Management

It's getting people like the owners and the tenants to understand that the ultimate objective is really better sustainable outcomes for the way a building is operated. It's been great getting everyone in the room.



Peter Frith, Napier & Blakeley

As a major investor in Australian property, the superannuation funds might require that buildings have green leases, as part of their compliance to the new superannuation regime that the government perhaps has the opportunity to alter at the moment.



Professor Sharon Christenson, Queensland University of Technology

Resistance to green leasing—I think one of the biggest issues is culture... between landlords and tenants, which historically has been a very adversarial relationship [and] needs to be developed more towards a collaborative or partnership style of arrangement... that is starting to happen.



Cathy Sherry, University of NSW

What I'm seeing, from my perspective as a strata lawyer, is buildings where too many people have rights of veto, and if you have to get too many people to agree, a building will never change. It's what we call "tragedy of the anti-commons".

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