[redacted]

22 September 2024

Commercial Buildings Policy Team
Department of Climate Change, Energy, the Environment and Water
GPO Box 3090
Canberra ACT 2601, Australia

[redacted]

Dear Commercial Buildings Policy Team

Property Council submission on Commercial Building Disclosure Program expansion consultation

The Property Council of Australia welcomes the opportunity to provide this submission in response to the Australian Government's consultation on expanding the Commercial Building Disclosure (CBD) Program.

This initial feedback has been developed in consultation with members of the property sector who will be directly impacted by expansion and responds to the proposed 'High Level Roadmap for Expansion' and discussion paper. Expansion of the CBD program is an important opportunity to encourage more building owners and occupiers to explore the range of services, resources and technologies that can deliver building upgrades, often at relatively low cost, with attractive payback periods.

The Property Council and our members are strong 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. The CBD Program has been a critical lever in unlocking the emissions reduction potential of our existing buildings stock while raising awareness of building energy performance among owners and occupants, delivering cost savings and creating jobs. We look forward to further consultation on this process, once more detailed policy proposals are made available.

About us

The Property Council of Australia is the leading advocate for Australia's largest industry – property. Our industry represents 13% of Australia's GDP, employs 1.4 million Australians and generates $72 billion in tax revenues. Property Council members invest in, design, build and manage places that matter to Australians across all major built environment asset classes.[1]

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[1] **Property Council commentary in no way applies to shopping centre or retail matters, only to other commercial assets. We recommend that shopping centre and retail matters are discussed with the Shopping Centre Council of Australia.**

Australia's property industry leaders are world leaders in sustainability. They have a demonstrated commitment to ESG, topping indices like the Global Real Estate Sustainability Benchmark and the Dow Jones Sustainability Index for thirteen consecutive years. Most of our leading members have net zero goals by 2030 or before (Scopes 1 & 2), with several having reached it already at a fund level.

Our members have a long-term stake in ensuring our capital and regional cities thrive and want to see decisive action on both climate mitigation and adaptation to avoid the worst projected impacts of climate change.

General Comments

Buildings account for over half Australia's electricity usage and almost a quarter of emissions through their operations, split fairly evenly between residential and commercial buildings.[2] Over the last decade, market leading property companies have demonstrated the potential for increased energy performance and have reduced their emissions intensity by 52 per cent compared to a 2005 baseline.[3] However, over the same period, overall energy intensity improved by only 2 per cent for commercial buildings and by 5 per cent for residential buildings.[4] Modelling undertaken by ClimateWorks shows cost-effective energy efficiency actions across the sector could deliver a 23 per cent reduction in emissions by 2030, and 55 per cent by 2050.[5]

While market leaders in the commercial building sector have made significant progress in recent years, energy efficiency and resilience investments remain a low priority for many stakeholders in the built environment. We welcome the Australian Government's renewed consideration to expand the coverage of the CBD program to more building types. The Property Council and our members have been closely and constructively engaged with previous consultation processes dealing with expansion of the program, including most recently, the 2019 Independent Review.

We understand work is well underway to jointly update the Trajectory for Low Emissions Buildings as well as a new Built Environment Sector Plan – which will contain a suite of targeted policy measures to decarbonise and future proof Australia's buildings. It is appropriate that strategic expansion of the CBD program and the development of Minimum Energy Performance Standards (MEPS) should form part of a broader suite of initiatives. However, given the speed and scale of decarbonisation we need to achieve in our built environment (in the near term) to pave the way for other hard to abate sectors, disclosure and MEPS must not be considered in isolation. It is essential that additional supporting policies are introduced to accelerate the improved performance in our existing building stock, including targeted ratings-linked incentives.

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[2] Australian Government Department of Climate Change, Energy, the Environment and Water, 2023; Australian Government, Department of Industry, Science, Energy and Resources, National Energy and Emissions Audit 2020.
[3] Better Buildings Partnership, Annual Results FY18, 2018
[4] ClimateWorks for ASBEC, Low Carbon, High Performance, 2016
[5] Ibid.

Detailed feedback

We have provided detailed feedback the 'High level roadmap for expansion' and discussion paper **Annexure A,**[6] and a summary response to the consultation questions at **Annexure B.**[7]

While we have engaged widely across our membership to develop this submission and sought highlight key issues, it is not intended to be exhaustive of industry views on the CBD Program. As an industry, we support continuous improvement of the CBD Program and strongly encourage the Australian Government to provide long term funding commitments to support the uptake and availability of relevant rating tools like NABERS to more building types. This will ensure the breadth of Australia's built environment can benefit from the ongoing measurement, verification and performance management of buildings the program provides.

We agree that MEPS is a powerful tool to target under-performance in some market segments, but note the success of similar programs internationally has involved a range of complementary policy and initiatives to lift the performance of existing building stock. In Australia, a targeted national program that links incentives to annual improvements NABERS would be complimentary to further expansion of the CBD Program or introduction of MEPS and help with cost of capital upgrades to improve performance.

Noting that the introduction of any new disclosure requirements, and MEPS, would separately need to be supported by a detailed cost-benefit analysis and regulatory impact statement - our intention is present initial feedback that might inform the direction of that process.

Our Recommendations

1. **Commit to continued support for NABERS**
   The Australian Government should provide long term funding commitments to support the expansion of NABERS to other building types and deepen the maturity of newer tools – e.g. develop new tools for Purpose-Built Student Accommodation and Build to Rent. This would ensure the breadth of Australia's commercial buildings can benefit from the ongoing measurement, verification and performance management of buildings the program provides.

2. **Move to periodic disclosures and lower floor space threshold for office buildings**
   We recommend that where mandatory disclosures is required, it should be required on a periodic basis (for example every 2-3 years) noting that many industry members already complete a NABERS rating annually. We note that existing sale and lease disclosure requirements should continue to apply to office buildings. For commercial office buildings we also support lowering the floor space threshold for inclusion in the scheme.

3. **Require disclosure for tenants not just building owners**
   We support the inclusion of tenants with the CBD program. For example, we strongly support expansion of the scheme to commercial office tenancies, provided liability for disclosure sits with the tenant.

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[6] Annexure A – Property Council feedback - Commercial Building Disclosure (CBD) Program Expansion Public Consultation Paper

[7] Annexure B – Property Council feedback – Summary response to consultation questions

4 Require disclosure of NABERS Energy and NABERS Renewable Energy Indicator and consider expansion to further benchmarks at a future date

Consistent with the objects of the CBD Act we support the initial inclusion of NABERS Energy and the Renewable Energy Indicator information in BEECs – particularly to inform the first round of disclosures for new sub-sectors entering the scheme. As maturity increases, we recommend that future reviews of the CBD program consider the role of other benchmarks such as NABERS Water and NABERS Waste.

5 Structure expansion to new sub-sectors to reflect both NABERS maturity and the likely impact of disclosure to drive improved building performance

We support the expansion of the program to commercial building sub-sectors beyond the commercial office space. As a priority, the roadmap for expanding the CBD Program should seek to identify and prioritise opportunities where mandatory disclosure – and by extension mandatory use of NABERS benchmarks - would support industry overcomes either a market failure (information asymmetry) or behavioural failure (information gap).

6 Expand to relevant ownership structures

We support the expansion of the CBD Program to capture a variety of ownership/tenant structures – beyond constitutional corporations.

7 Revise high-level roadmap approach to separate disclosure and MEPS

We strongly recommend that the expansion of the CBD Program and a process to develop MEPS for commercial buildings are de-coupled for the purposes of assessing the relevance of disclosure and sequencing expansion of mandatory disclosure requirements.

8 Consult on proposed content and timeline for the introduction of Minimum Energy Performance Standards (MEPS)

We support the development of MEPS and recommend that an initial policy framework should be linked to a broader policy context and avoid unintended consequences such as stranding of assets. We strongly recommend that initial policy design guardrails are established to ensure that requirements are evidenced-based and target the low-performing tail of a subsector. Additionally, the roll of our MEPS must be effectively sequenced and communicated. Finally, we note that the development of MEPS should consider the role of clear exemptions and support the sale / purchase of low performing assets where there is an intention to re-develop.

9 Commit to regular review timetable for the CBD program

We welcome the Australian Government's clear ambition to expand the CBD program. Industry would strongly encourage the program is reviewed periodically to allow for further detailed and appropriately sequenced consultation.

The Property Council looks forward to further engagement on this important work program. We would be very pleased to meet with you and discuss our research and recommendations in more detail. Please contact [redacted] should you wish to discuss this submission in further detail.

Kind regards,

[redacted]

Annexure A

Detailed Feedback on Commercial Building Disclosure Program Expansion and Minimum Energy Performance Standards

Contents

Introduction

We agree that expanding the CBD Program over time to encompass additional commercial building types is an effective lever to encourage sectors that had not previously been exposed to building energy efficiency to consider changes. As noted in the consultation paper, this is an important opportunity to drive significant emissions savings and empower the private sector to reduce their energy consumption.

We welcome the department's commitment to a detailed cost benefit analysis, regulatory impact statement (RIS) as well as further industry consultations on the specific details for program expansion. We have therefore structured our feedback to align with the department's consultation priorities, and look forward to further constructive engagement:

A. Expansion of the CBD Program to different types of commercial buildings in line with the suggested road map.

B. Expansion of the CBD Program to different ownership structures such as trusts, partnerships and individuals.

C. What energy and emissions information should be disclosed.

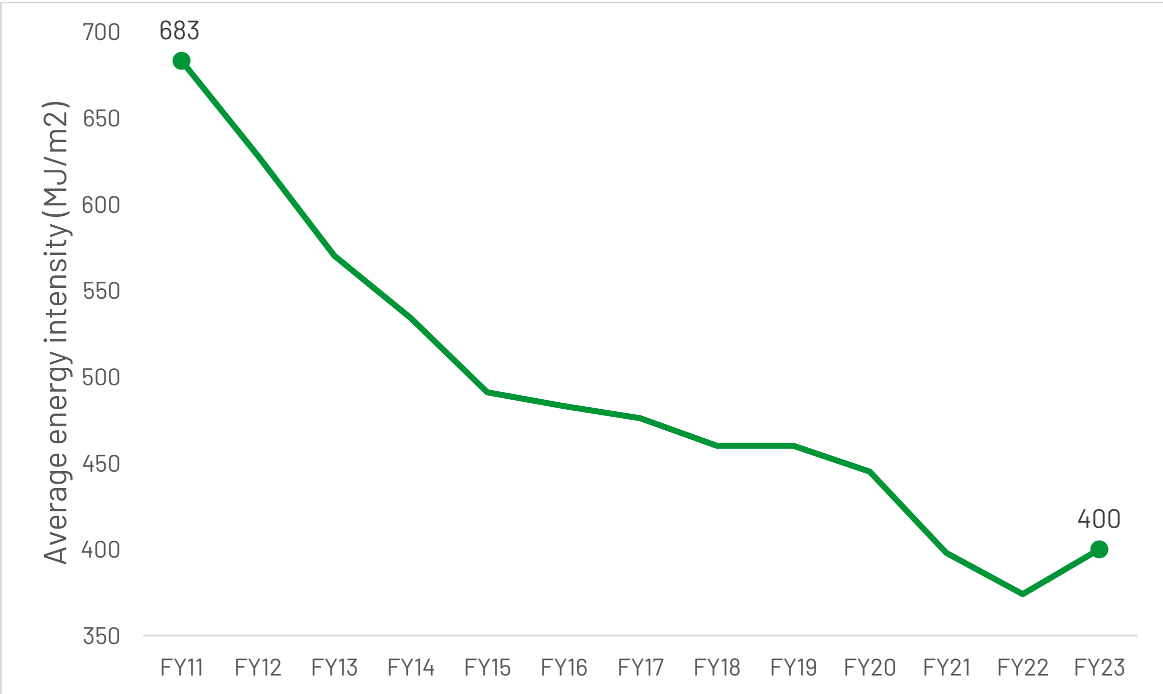
D. Future use of minimum energy performance standards to improve the energy efficiency of any commercial buildings that do not respond to disclosure.

Background

Success of the Commercial Building Disclosure program improving NABERS ratings

The CBD program was first introduced in 2010. What followed was the fastest reduction of energy use across any building sector in Australia, and possibly globally. The following graph shows the sustained trajectory of energy savings in NABERS-rated buildings since CBD was introduced, with an average decline in energy use of over 40% between FY11 and FY23 (*Figure 2*).[8]

Figure 2. Reduction in energy use in the office market since CBD release [9]



(Source: NABERS, August 2024)

NABERS has also provided analysis that tracks performance of the office sector into three groups, showing that the rapid rate of energy savings has been achieved across a broad range segments of the office market (Figure 3):

1. **Trailblazers**: buildings certifying under NABERS before these were mandated, mostly owned by large property portfolios with a long record of sustainability leadership. These buildings continue to lead the way on energy efficiency to this day.

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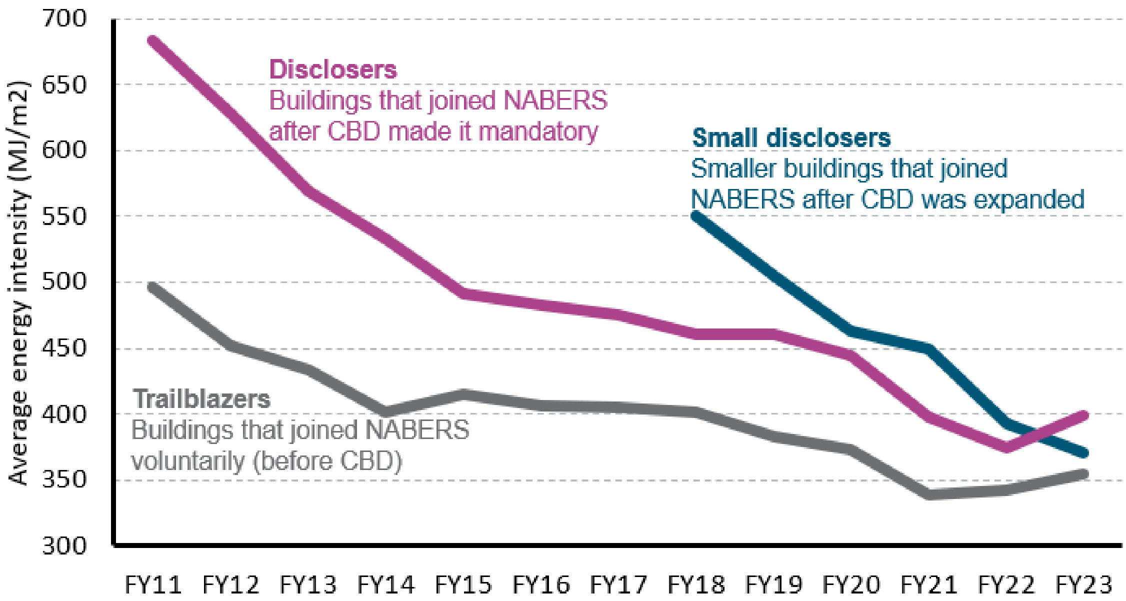
[8] Data provided by NABERS, August 2024.
[9] NABERS, August 2024. Note - *energy use from FY21 and parts of FY22 has been impacted by low occupancy rates due to the COVID-19 pandemic.*

2. **Disclosers:** buildings that received their first NABERS rating after these were mandated. This group is made largely of mid-tier (non-prime) buildings, often owned by private portfolios. These unsurprisingly used vastly more energy use than the Trailblazers in FY11, but since CBD was introduced have reduced their energy use by an astounding 41%.

3. **Small disclosers**: smaller buildings that obtained their first NABERS rating after FY17, when CBD was expanded to capture smaller offices. This group is made mostly of mid-tier buildings, many of them in regional areas and outside central business districts. These buildings initially used more energy than those already participating in NABERS. However, in the 6 years since they started disclosing their NABERS rating they have reduced energy use by an average of 32%.

Figure 3. Reduction in energy use in offices since CBD[10]



(Source: NABERS, August 2024)

Unprecedented financial and emissions savings

The Commercial Building Disclosure (CBD) program to date has only been applied to a single building sub-sector (offices). Offices are also not required to disclose energy use by tenants, meaning that only half of the office sector's energy use is captured in the scheme. This means disclosure has only been applied to a very small part of the Australian built environment. However, it has reduced emissions by 11274M kgCO2 p.a. since 2010, saving users an estimated $1638M on energy bills.[11]

[10] *NABERS, August 2024. Note - energy use from FY21 and parts of FY22 has been impacted by low occupancy rates due to the COVID-19 pandemic.*
[11] NABERS, August 2024

Recommendation

Commit to continued support for NABERS

The Australian Government should provide long term funding commitments to support the expansion of NABERS to other building types and deepen the maturity of newer tools – e.g. develop new tools for Purpose-Built Student Accommodation and Build to Rent. This would ensure the breadth of Australia's commercial buildings can benefit from the ongoing measurement, verification and performance management of buildings the program provides.

Drivers for success in commercial office spaces

In addition to the clear incentive to reduce energy costs, the rapid success of the CBD program has served a motivated and informed market of consumers that reward better performing buildings. Over time, the CBD Program has demonstrated value to captured entities (building owners for office spaces <1000m2, at the point of sale or lease) by delivering a clear indication of performance compared to like buildings.

Equipped with a comparable metric, sophisticated and informed buyers and tenants, motivated by their own desire to minimise energy consumption sustainability quickly developed a preference for better performing building ratings. Likewise, those directly captured by the scheme (being sellers and lessors) benefit from the CBD program, as they are able to reference government certified energy efficiency information in their advertising to improve the building's marketability to potential buyers and tenants.

For commercial office buildings, the confluence of mutual benefits to building owners and potential buyers and tenants of office spaces <1000m2, has seen that segment of the Australian property market make significant and sustained improvements in energy efficiency. In large part, these improvements have occurred in response to pure market demands; without other policy and regulatory settings to drive improved energy performance. We note that this segment of the market took some time to mature – as prospective tenants/purchasers became more familiar with the content of Building Energy Efficiency Certificates (BEECs), and NABERS ratings to develop a preference for higher performance buildings.

Finally, disclosure has been very impactful in this market segment due to the high level of comparability of rated buildings. Given the similar use profile of office tenancies – commercial office spaces typically will be designed to with relatively consistent amenities and layout. The disclosure of BEECs, leveraging NABERS tools, has therefore supported tenants compare the performance of assets that are, in both form and function like-for-like in many ways. This has, in turn, supported the maturity and ongoing refinement of the NABERS tool for commercial office buildings to reflect meaningful and consistently comparable metrics in this asset class.

Extending the success of CBD program to more commercial buildings by understanding drivers

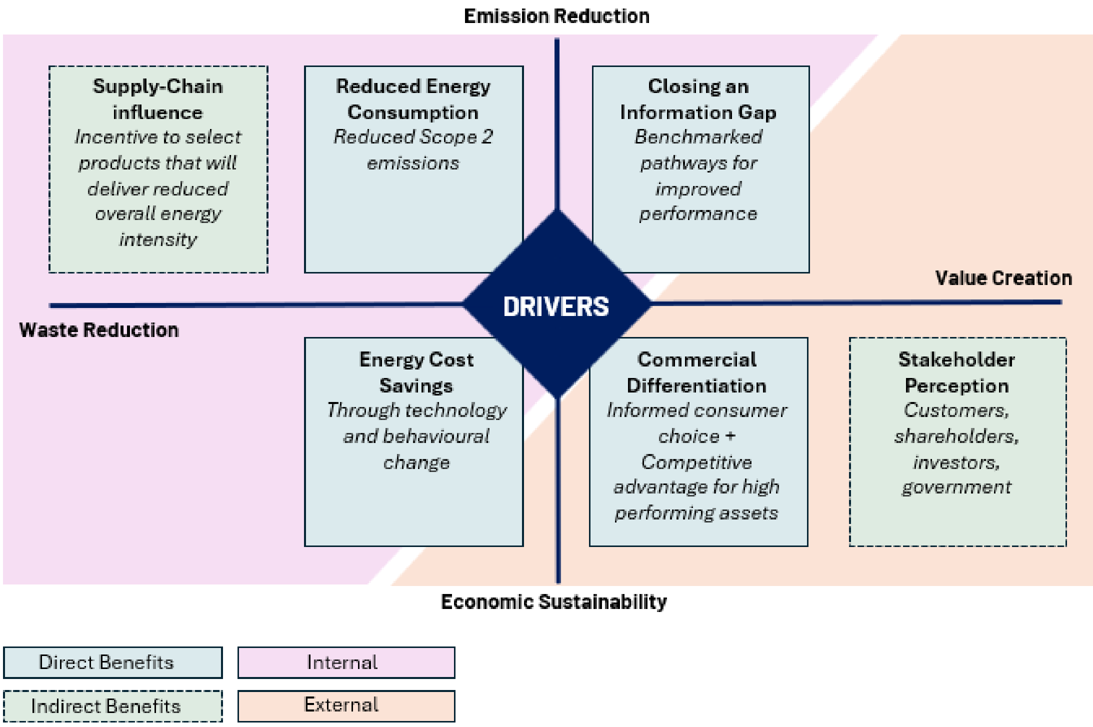
While there are certainly learnings that should be drawn from the experience from office building disclosures, there are a range of externalities, specific to different types of commercial buildings which will influence how mandatory disclosure will impact both behaviours and markets for commercial buildings.

Consistent with the objectives of the CBD program, the primary drivers for high performance of large commercial office space have led to clear opportunities for value creation through commercial differentiation, and emissions reduction through reduced energy consumption, resulting in energy cost savings. Benchmarked performance has also empowered building owners to invest in building improvements that will meaningfully uplift energy performance by closing an information gap. As this segment of the commercial building sector has matured and significant uplift in performance has been achieved, owners of commercial office spaces have leveraged this high performance within their own operations, to derive additional indirect benefits. This includes supply-chain influence in the selection of upstream products and services to support improved operational performance, as well as improved stakeholder perception.

In general, commercial building owners and occupiers stand to derive benefits by engaging with rating tools, with the same direct and indirect benefits apply across building typologies. However, it should not be assumed that all liable entities who would captured by the proposed roadmap for expansion operate within similarly strong market pressures, or will have consistent opportunities for upgrades to deliver an ROI.

The variety of benefits can be mapped across commercial and strategic drivers reducing wasted resources, creating value, emission reduction and economic sustainability (*Figure 1*).

Figure 1 – Drivers and benefits to be derived from disclosure of building performance

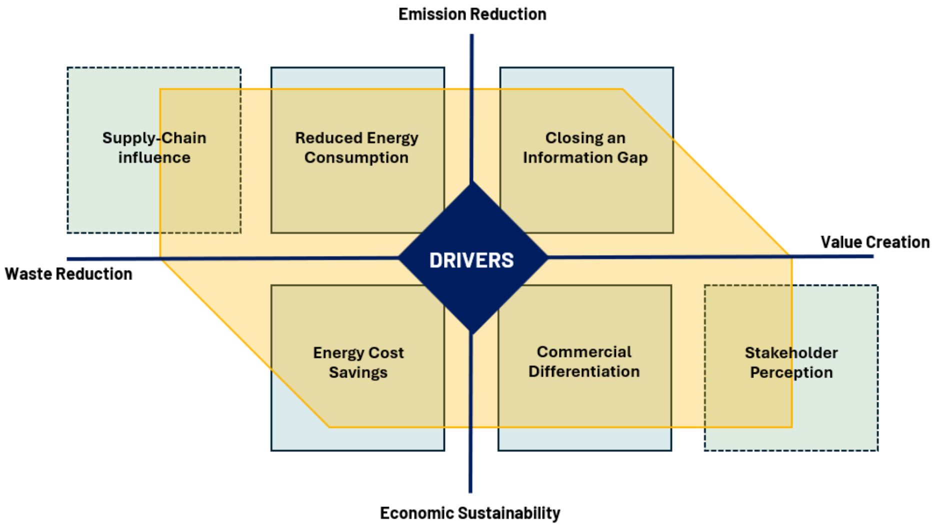


In expanding the CBD program, we strongly recommend that the Australian government considers what factors ('drivers') are most likely to motivate new subsectors entering the scheme to voluntarily improve their NABERS ratings and consider how those drivers influence where disclosure is located. i.e. where it is likely that there will be external drivers, public disclose would be supported, where it is likely a subsector would be driven primarily by internal drivers, disclosure may be required to government. In both cases, mandatory disclosure offers opportunity for government to help direct private investment into meaningful energy and emission reduction actions – simply by bringing more building types into contact with rating tools that provide a pathway for lower energy costs and reduced Scope 2 emissions. The difference may be the relevant location for disclosures.

To illustrate this point, we would expect the owner of a large commercial office building, seeking to fill an office tenancy would be likely to be driven by internal and external benefits to achieve and maintain a high NABERS rating. However, an owner-occupied commercial building is likely to be driven by internal factors to improve building performance (*Figure 2.*).

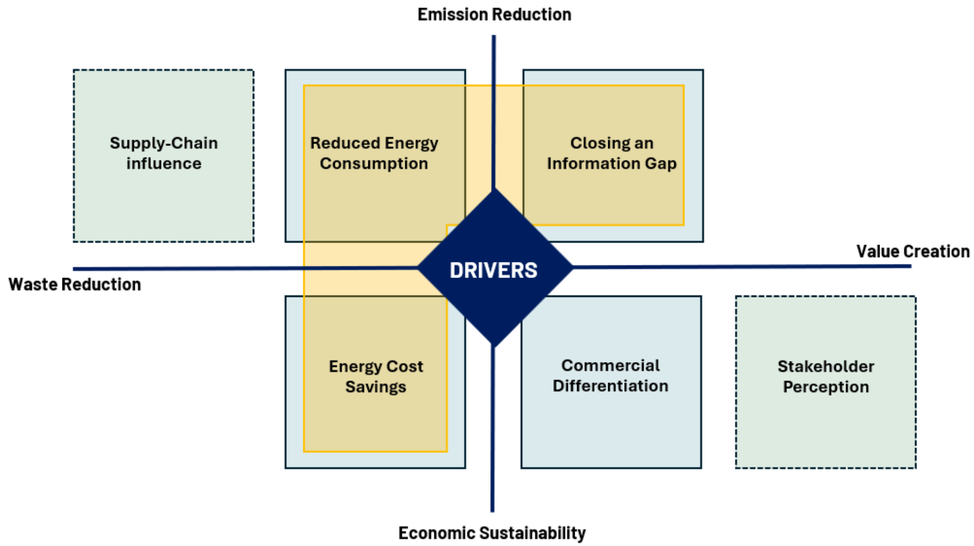
Figure 2. Commercial Office Buildings – comparison between drivers to improve NABERS ratings

Commercial office building – space offered for lease



As the most mature sub-sector using of NABERS tools, liable entities for mandatory disclosure in this context are likely to consider a range of direct and indirect benefits associated with ensuring a high NABERS rating is achieved.

Other commercial building – space owner occupied



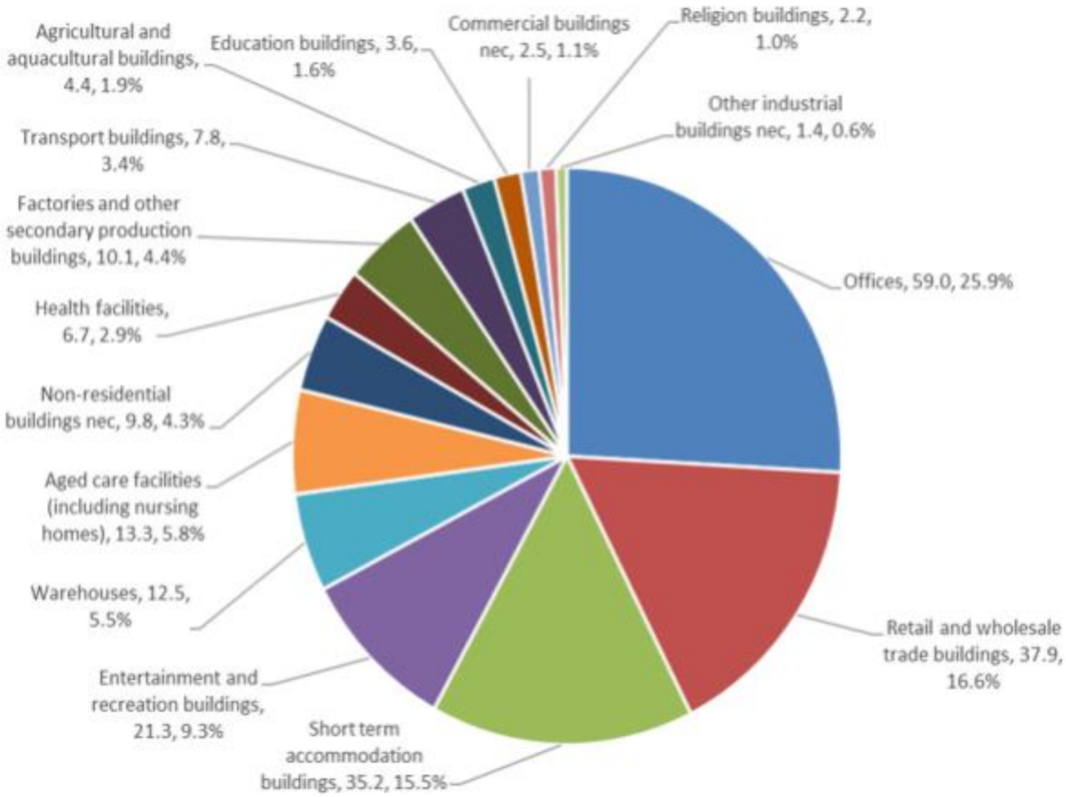
Where a benchmark is applied due to a mandatory disclosure requirement, absent an external interest in that rating, reduced energy consumption and energy costs savings via closed information gaps will remain drivers for improved performance.

Where should disclosures be located to align with drivers?	
Public disclosure needed to unlock all relevant drivers	**Disclosure to government likely sufficient to unlock relevant drivers**

Part A: Expand the CBD Program to different types of commercial buildings in line with the suggested road map

The term 'commercial building' covers many types of property: from large CBD office towers to small retail shops in country towns, and everything in-between. While non-residential buildings are often referred to collectively, the way these diverse buildings use energy is shaped by many variables including use, access to affordable energy sources, and the value of space. Different uses also impact that proportion of energy consumption of building types (*Figure 2*).

Figure 2. Commercial building sub-sector energy use (PJ) and shares of energy use[12]



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[12] Department of Climate Change, Energy, Environment and Water, 2022, Commercial Building Baseline Study 2022, https://www.dcceew.gov.au/sites/default/files/documents/commercial-buildings-energy-consumption-baseline-study-2022.pdf

Why expand CBD Program to more building types?

Reflecting on the objectives of the *Building Energy Efficiency Disclosure Act 2010* "to promote the disclosure of information about the energy efficiency of buildings; [13] and to contribute to the achievement of Australia's greenhouse gas emissions reduction targets."[14] While expansion of the CBD Program to the groups listed in the roadmap is clearly aligned with promoting disclosure of information about the energy efficiency of buildings, it is not clear how the roadmap aligns to Australia's emissions reduction targets.

The KPMG report states:

> "Actions are timed to make a significant contribution to emissions reduction, while being sensitive to the NABERS maturity in different segments of commercial buildings and phasing implementation as capacity grows and more information is available. Such a roadmap will build energy and emissions performance over time, though clear signalling now has the potential to bring activity and benefits forward and reduce implementation costs, as owners anticipate and undertake improvements optimally."[15]

While we agree that phased expansion of the program is needed, we recommend that some of the proposed sequencing is revised to target those buildings where mandatory disclosure is likely to have the greatest impact on stakeholders to voluntarily take steps to reduce energy consumption – as a result of completing a NABERS rating. It may be the case that

While we separately support a process to develop Minimum Energy Performance Standards (MEPS), we are concerned that the proposed sequencing for expanding disclosure requirements appears to be primarily designed such that disclosure is soled viewed as a stepping stone to MEPS – this is also reflected in the roadmap principles in the KPMG report.[16] While clear signalling about the potential introduction of MEPS will be essential, the experience in the commercial office sector demonstrates that, equipped with relevant NABERS benchmarks, mandatory disclosure alone can provide captured entities with a pathway and incentives to voluntarily improve their buildings.

Revise high-level roadmap approach to separate disclosure and MEPS

We strongly recommend that the expansion of the CBD Program and a process to develop MEPS for commercial buildings are de-coupled for the purposes of assessing the relevance of disclosure and sequencing expansion of mandatory disclosure requirements.

[13] *Building Energy Efficiency Disclosure Act 2010* (Cth), 2A (b).
[14] Ibid, 2A (b).
[15] p 2.
[16] p 6.

How should expansion of the CBD prioritise expansion to more building types?

The current objects of the *Building Energy Efficiency Disclosure Act 2010* (Cth) (the Act) are "to promote the disclosure of information about the energy efficiency of buildings;[17] and to contribute to the achievement of Australia's greenhouse gas emissions reduction targets."[18] Requiring asset owners of large commercial office spaces to disclosure the energy performance of their buildings, leveraging National Australian Built Environment Rating System (NABERS) tool has demonstrated that where industry knows better, it can do better.

Where mandatory disclosure is likely to be effective in driving behavioural change to improve building performance, the second consideration in sequencing expansion should be to target those sub-sectors most likely to contribute to meeting Australia's greenhouse gas emissions targets. We note this has been considered in the KPMG analysis and in pervious reviews of the program.

In some instances, the primary source of emissions in buildings will relate to the end use of the building – e.g. tenant process emissions in the industrial and logistics sector. This is outside the operational control of building owners, and as such, the requisite behavioural change that could be driven by disclosure is likely to sit with the tenant. This is supported by the independent review in 2019, which found:

> "Poor performers may be incentivised (due to realising that lower costs are possible) to improve their overall energy efficiency. This of course, hinges on overall materiality of the energy savings. The private benefits of reduced energy consumption need to outweigh any costs associated with enacting a behavioural change. If energy costs are a small proportion of overall tenants' costs, then they may lack the incentive to reduce energy consumption."

On that basis, the second limb in prioritising expanded disclosures should be to consider the likely materiality of the energy savings within the control or influence of the entity required to disclose. While we support eventual disclosure of energy performance across a variety of commercial building typologies, resourcing should initially be focused on those sub-sectors and entities that are most likely to adopt behaviours that will improve building performance as a direct result of disclosure.

Recommendation

Structure expansion to new sub-sectors to reflect both NABERS maturity and the likely impact of disclosure to drive improved building performance

We support the expansion of the program to commercial building sub-sectors beyond the commercial office space. As a priority, the roadmap for expanding the CBD Program should seek to identify and prioritise opportunities where mandatory disclosure – and by extension mandatory use of NABERS benchmarks - would support industry overcomes either a market (information asymmetry) or behavioural failure (information gaps).

[17] *Building Energy Efficiency Disclosure Act 2010* (Cth), 2A (b).
[18] Ibid, 2A (b).

Finally, we strongly support the progressive expansion of the CBD to more building types and commend the ambition to maximise the coverage of the program. We agree that consideration should be given to the relative maturity of sub-sectors in the use of NABERS tools before disclosure becomes mandatory. If it can be first be established that mandatory disclosure is likely to be an effective tool to motivate improved building performance, consideration should be given to the suitability of current rating tools to establish comparable industry metrics and improved performance. Specifically, where there is only limited voluntary uptake of rating tools, it is possible that benchmarks may require re-calibration as more data about that building type is collected.

We have set out the framework we recommend is applied when investigating expansion of the CBD program (*Figure 3*).

Figure 3. Prioritisation Hierarchy for expansion of CBD

Is it likely, based on the commercial building typology that mandatory disclosure will drive behaviour that will improve the performance of a building due to either –

Behavioural failure: by resolving gaps in knowledge and understanding about a building's performance compared other like buildings / identify opportunities to materially reduce energy costs; or

Market failure: by closing information asymmetries to support a market for improved performance – e.g. high base building performance likely to be preferred by prospective tenant; OR transparency about tenant energy efficiency supports building owner to address whole building performance.

Yes

No

Are relevant behavioural changes to improve building performance within the operational control of the building owner or tenant?

Disclosure = LOW priority

Where disclosure is unlikely to address a behavioural or market failure, it is unlikely to be an effective measure to improve the performance that building typology.

Yes

No

Are relevant behaviour changes to improve building performance likely to represent a material opportunity to reduce energy consumption costs, relevant to the cost of upgrades?

Disclosure = LOW priority

Consider application of other government measures to target emissions reduction (e.g. minimum performance standards for appliances, regulation for total process emissions.)

Yes

No

Is there a high degree of maturity in the sub-sector to use / understand NABERS ratings?

Yes

No

Disclosure = HIGH priority

Disclosure is likely to be effective policy lever to improve the energy efficiency performance of buildings without other supporting policies.

Disclosure = MEDIUM priority

In short term, consider focus on increased voluntary NABERS participation.

In medium term consider non-public disclosure and parallel development of complementary programs and incentives to improve the business case for improved performance.

Expansion to different types of commercial buildings

Across all building types, the primary benefit of disclosure is likely to be that it empowers building owners and occupiers with robust information about how the building they own or lease performs compared to other like buildings. By engaging with relevant rating tools, these stakeholders are equipped with a proven pathway to make cost effective and high impact technology and behavioural change – with those changes delivering a clear return on investment in the form of energy cost savings. The main barriers that mandatory disclosure would therefore overcome are behavioural failures, rather than an information asymmetry or split incentives. As such, a periodic trigger in most cases would be most appropriate.

This benefit, however, is predicated on an assumption that the rating/s that have fed into a disclosure allow for consistent, comparable and reliable benchmarking (e.g. allowing for different size, location and occupiers) – or can rely on sufficient capacity in the sector to make adjustments to achieve suitable comparability using normalised data. This has been the experience in the commercial office market.

Our members strongly support NABERS and commend the incredible progress that has been made to expand the availability of voluntary rating tools. However, we note that some building typologies offer a higher degree of variance in terms of both function and form, compared to large commercial office tenancies – for example industrial assets. Anecdotally, these variances can make comparability challenging and has been identified by some members as a barrier to the voluntary uptake of ratings tools. Additionally, where there are challenges with the comparability of benchmarks, this will undermine the role of disclosure – providing clarity on opportunities to reduce energy consumption and emissions.

Prioritisation

We have applied this hierarchy to inform our feedback on the proposed roadmap (Table 1). Notwithstanding the prioritisation for expanding disclosure, we strongly support the progressive roll out to more buildings.

While this table is intended to indicate priority subsectors to be investigated in a cost-benefit analysis, it does not reflect the relevant timing for expansion - i.e. we have sought to answer the question, 'which subsectors should be covered by the CBD Program?.' This table does not seek to answer the question - 'when should subsectors be covered by the CBD Program.’

Once it is determined which sub-sectors should be included within the CBD Program, the sequencing of new CBD requirements will need to reflect the relative maturity of rating tools. We agree that many of the considerations outlined in the KPMG report - including the need to increase voluntary uptake of relevant tools will be an important preparatory step for some high and medium priority sub-sectors.

Recommendation **Commit to regular review timetable for the CBD program**

We welcome the Australian Government's clear ambition to expand the CBD program. Industry would strongly encourage the program is reviewed periodically to allow for further detailed appropriately sequenced consultation.

Table 1. Expansion of CBD - Priority sub-sectors[19]

Sub-Sector / Liability	Threshold	Trigger	Content
High Priority			
Office – Base Building Liability: Building Owner	Investigate reduced threshold for all offices to buildings over 500m^2	Periodic Noting that existing sale and lease disclosure requirements should continue to apply	NABERS Energy NABERS Renewable Energy Indicator
Office – Tenancy Liability: Building Tenant	Investigate initial threshold for tenancies over 1,000m^2 Investigate application only to a leases 5+ years. Investigate requirement that base building disclosure and co-assess is a threshold for capture of tenancies.	Periodic Requirements should commence from point of lease to include condition to participate in a co-assessment process in the second year of the lease.	NABERS Energy NABERS Renewable Energy Indicator
Hotels	Not Clear	Periodic	NABERS Energy NABERS Renewable Energy Indicator

[19] We have used the same classification of sub-sectors as has been included in the department's 'High-level road map for how CBD program could be expanded.' Property Council commentary in no way applies to shopping centre or retail matters, only to other commercial assets. Please note that for this reason we have omitted Shopping Centres, Retail Stores and Supermarkets from this table. We have not considered these asset types to be part of the "other" category.

Medium Priority			
Public Hospitals	Not Clear	Periodic	NABERS Energy NABERS Renewable Energy Indicator
Public Schools	Not Clear	Periodic	NABERS Energy NABERS Renewable Energy Indicator
Private Schools	Not Clear	Periodic	NABERS Energy NABERS Renewable Energy Indicator
Retirement Living	Not Clear	Likely Periodic	NABERS Energy NABERS Renewable Energy Indicator
Residential Aged Care	Not Clear	Likely Periodic	NABERS Energy NABERS Renewable Energy Indicator
Cold Stores	Not Clear	Periodic	NABERS Energy NABERS Renewable Energy Indicator

Data Centres	Not Clear	Not Clear	NABERS Energy NABERS Renewable Energy Indicator
Low Priority			
Warehouses	Feedback provided at 28		
Medical Centres	Not yet covered by NABERS		
Private Hospitals			
Higher Education			
Other (e.g. galleries, sporting facilities)			

1.High Priority

Offices – Base Buildings

The Property council strongly supports expansion to smaller office buildings. As office buildings are already covered by the program, maximising the application of the program to more office buildings by lowering the threshold is a logical first step to expansion. Additionally, we strongly recommend that the trigger for disclosure is updated to ensure that the introduction of tenant disclosures can align to a Co-Assess process.

Offices – Tenancies

The Property council strongly supports the expansion of the CBD Program to office space 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.

However, 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.

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. 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.

Recommendation

Require disclosure for tenants not just building owners

We support the inclusion of tenants with the CBD program. For example, we strongly support expansion of the scheme to commercial office tenancies, provided liability for disclosure sits with the tenant.

Thresholds

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 500m2 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 1,000m2 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 shows that substantial benefits can be achieved with a minimum tenancy size of 1000 m2.

The requirement for mandatory disclosure could be specified based on the characteristics of the building. This would provide an opportunity to link the requirement for a tenancy rating to the requirement for a base building rating. Specifically, a NABERS rating would be required for all tenancies within a building where the requirement for a BEEC has been triggered. Linking the requirement for a tenancy rating to a base building rating is likely to have significant benefits by simplifying the administrative arrangements and reducing cost, particularly regulatory costs (i.e. the cost of obtaining a NABERS rating could be minimised by co-assessment for tenants when the base building is rated).

Recommendation

Move to periodic disclosures and lower floor space threshold for office buildings
We recommend that where mandatory disclosures is required, it should be required on a periodic basis (for example every 2-3 years) noting that many industry members already complete a NABERS rating annually. We note that existing sale and lease disclosure requirements should continue to apply to office buildings. For commercial office buildings we also support lowering the floor space threshold for inclusion in the scheme.

2. Medium Priority

Applying the prioritisation hierarchy, the sub-sectors we have identified as a medium priority for CBD expansion (Table 1) should be considered in a detailed cost-benefit analysis to determine the likely potential energy savings and emissions reduction, relative to the likely cost of upgrades that could be achieved through mandatory disclosure. It is also likely that building owners of these asset types will have control over the primary sources of energy intensity in the operation of these buildings.

Prima facie, by bringing these sectors into contact with relevant rating tools via mandatory disclosure is likely to result in improved performance either by addressing an information asymmetry or providing a clear pathway to reduced energy costs. However, the limited maturity in these subsectors using rating tools requires closer examination to ensure that these tools offer sufficient comparability across like buildings. It will also be important to ensure that current participation does not reflect a self-selection bias on the part of market participants where a decision to use or not use rating tools is based on anticipated rating outputs.

Triggers & Thresholds

These sub-sectors have not previously been considered within an independent review of the program and it is therefore challenging to provide detailed feedback on their potential inclusion in the program and the relevant thresholds/triggers that are likely to support relevant behavioural or market changes.

A determination should consider current NABERS data and options for preparatory steps that may be needed. For example, we would anticipate that for some sub-sectors one or more of the following steps below being satisfactorily accomplished before mandatory disclosure will be an effective lever to improve performance:

- Increased voluntary participation is achieved OR Consultation with industry to improve rating tool benchmarks offer sufficient comparability for the purpose of mandatory disclosure
- a period one year should be allowed for an undisclosed ratings to be done by prior to mandatory disclosure being put in place
- Relevant exemptions are considered and provided for consultation.

3. Low Priority

Applying the prioritisation hierarchy, the sub-sectors we have identified as a low priority for CBD expansion (Table 1) are those asset types where disclosure is unlikely to address a behavioural or market failure and / or the relevant behavioural changes to improve building performance are within the operational control of the building owner. We have assumed that for the purposes of this consultation, that the liable entity for all building types is consistent with the application of the available rating tools. this means, with the exception of office tenancies, liability for disclosure would sit with the building owner.

We note that disclosure is not the only policy mechanism available to government to improve the performance of our existing buildings. And we recommend that the sub-sectors identified as high and medium priority reflect the immediate focus for CBD expansion. We strongly support the regular review and progressive expansion of the CBD program, and acknowledge that further consideration of these building types may be appropriate in the future.

Data centres

The independent review of the CBD program in 2019 found: "There is little evidence to suggest that mandatory disclosure would drive energy efficiency improvements in data centres."[20] this was due to a range of factors including a perception that these building types offer limited opportunities for low-cost operational changes to improve performance. This supports a finding that it is unlikely that mandatory disclosure would address a market or behavioural failure.

Warehouses

It is not clear that bringing this subsector into contact with relevant rating tools via mandatory disclosure is likely to result in improved performance either by addressing an information asymmetry or providing a clear pathway to reduced energy costs. The way the NABERS tool applies in the context of industrial buildings does not differentiate between base building and tenant energy use. Given the wide variety of uses that would likely be captured by this category, and in many cases the disproportionate role of tenant processes contributing to energy consumption in these buildings, there are other policy and regulatory emissions that may be better suited to targeting emissions reduction in these buildings.

As described previously, for building types with a less homogenous tenant uses, the case for disclosure to drive behavioural change is less clear and other policy levers may be more effective to contribute to Australia's emission reduction targets. In these circumstances there are a variety of options that should be considered to promote improved energy efficiency and / or reduced emissions intensity – which may or may not relate to the building.

While it is outside the scope of the current consultation, there are other Australian government programs to control the performance of appliances (e.g. Greenhouse and Energy Minimum Standards (GEMS) Act) and overall process emissions (e.g. Safeguard mechanism) already in place. Other relevant policies to both measure and reduce energy intensity of process emissions are also

[20] p 144.

under development including the Guarantee of Origin Scheme, Carbon Leakage Review, and Climate Related-Financial Disclosures.

Potential role for tenant disclosures

To the extent that disclosure could play a role in the industrial sector, it should target the entity with the greatest level of control over energy consumption – occupants / tenants. Given the diversity of uses, we recommend that if there is expansion of the CBD program to industrial buildings, alternative metrics to NABERS Warehouses may be needed to ensure there is comparability.

Higher Education, Private Hospitals, Medical Centres and Other

There subsectors are not yet covered by a relevant NABERS rating tool. Once tools are developed expansion should be considered as part of a future review. We also note that in addition to the development of a universal NABERS indicator, there may be additional voluntary rating tools that are developed e.g. NABERS Energy for Purpose Built Student Accommodation and Built to Rent. In line with our previous feedback in 'medium priority' as NABERS expands to more asset types, it would be appropriate to consider the role of mandatory disclosure within future CBD program reviews.

Part B: Expansion of the CBD Program to different ownership structures such as trusts, partnerships and individuals.

In principle, our members are not opposed to the expansion of CBD Program to additional ownership structures – beyond constitutional corporations currently captured by the program. We note that with the reduced threshold for offices and the proposal to capture tenant data in commercial office spaces a broader range of corporate structures should be able to be captured by the program.

Extending liability to individuals and smaller entities should be given detailed consideration in a cost-benefit analysis to ensure there is not undue administrative burden associated with compliance. We note that may be more efficient begin with an assumption that relevant entities of all structures would be captured and establish relevant exemptions or alternative compliance pathways to avoid an unacceptable cost and compliance burden.

Recommendation

Expand to relevant ownership structures
We support the expansion of the CBD Program to capture a variety of ownership/tenant structures - beyond constitutional corporations.

Part C: What energy and emissions information should be disclosed.

Consistent with the objects of the CBD Act we support the initial inclusion of NABERS Energy and the Renewable Energy Indicator information in BEECs – particularly to inform the first round of disclosures. As a priority, we recommend that the initial focus of expansion should be to extend disclosure to more building types. As maturity increases, we recommend that future reviews of the CBD program consider the role of NABERS Water and NABERS Waste.

Recommendation

Require disclosure of NABERS Energy and NABERS Renewable Energy Indicator and consider expansion to include water and waste at a future date

Consistent with the objects of the CBD Act we support the initial inclusion of NABERS Energy and the Renewable Energy Indicator information in BEECs - particularly to inform the first round of disclosures for new sub-sectors entering the scheme. As maturity increases, we recommend that future reviews of the CBD program consider the role of NABERS Water and NABERS Waste.

Part D: Future use of minimum energy performance standards to improve the energy efficiency of any commercial buildings that do not respond to disclosure.

Many countries and subnational jurisdictions are exploring the implementation or bolstering of energy efficiency standards for existing buildings. While Australia's National Construction Code (NCC) is vital to ensuring that new buildings perform to a minimum standard, it only affects existing buildings when they are substantially upgraded or rebuilt. A review of Australia's energy policies by the International Energy Agency stated that energy efficiency in existing buildings deserves more attention at both national and state levels because of the long lifetime of buildings. In addition, the triggers for adoption of the NCC energy efficiency requirements in renovations vary significantly across jurisdictions.

The Australian Government should investigate the options, benefits and costs of introducing minimum energy performance standards for existing buildings to reduce emissions and improve comfort. Possible considerations include strengthening the requirements of the NCC to apply to a greater number of renovations in existing buildings. If the application of minimum standards goes beyond renovations it should be underpinned with extended lead times and a strong incentives program.

Key consideration for development of MEPS

Within a broader policy context that provides a clear pathway for improved building performance, we support further work to develop minimum standards. We believe that this process must be supported by detailed industry consultation with those entities who would be required to comply with minimum standards.

Sequencing

We note that the high-level roadmap anticipates the development of MEPS for all commercial buildings captured by disclosure requirements. We strongly agree that the sequenced implementation of MEPS should reflect the relative maturity of a relevant NABERS tool within a sub-sector. It would be appropriate to focus on the development of MEPS to apply to sub-sectors where there is a high level of maturity – e.g. offices. Additionally, we agree that once standards are developed, the timeline for the commencement of regulations must be clearly communicated. This should be supported by early education and advice to impacted entities on compliance requirements is provided to impacted entities.

Content of Standards

We note there are a range of options that might be contemplated to target the underperforming tail of assets – which might not otherwise engage with energy efficiency rating tools. We believe that minimum requirements should therefore set reasonable performance requirements targeting those assets that are performing in the lowest percentiles; compared to the rest of that sub-sector – for example the lowest 10% of buildings captured by the program. An initial move to a periodic trigger for disclosures will be essential to provide sufficient baseline data to determine the reasonable content of minimum standards.

When collecting this baseline data, consideration should also be given to the comparability of ratings across diverse building uses. It is likely that MEPS will only be effective, where there is sufficient comparability of metrics.

Finally, we note that a liable entity for MEPS should only be responsible for improvements within the operational control of a building. We note that this should be carefully considered where available rating tools do not differentiate between owner and tenant energy consumption and in sub-sector.

Exemptions

Careful consideration should be given to the application of exemptions to avoid unintended consequences including the standing of assets. Importantly, our members are keen to ensure that MEPS does not create a perverse incentive to replace, rather than retrofit existing buildings. Many older and underperforming buildings (e.g. those buildings likely to achieve a 0-1 Star NABERS energy rating) offer valuable re-development opportunities. A MEPS scheme should provide flexibility and not a barrier in relation to the purchase / sale of these buildings. To support credibility of the program, conditional exemptions that link the sale and transfer of these assets could be made contingent on relevant commitments on the part of the purchaser to achieve minimum standards within a reasonable timeframe following the sale. Likewise, owners of existing buildings may have assets within their portfolio that they intend to substantially re-develop. MEPS regulations should provide flexibility in these circumstances, noting the timeframes associated with achieving relevant planning approvals for these developments.

It is already an objective in the CBD to support Australia's emissions reduction objectives. Adaptive re-use of existing buildings supports circularity and can result in a lower embodied carbon within a development. MEPS therefore should be designed to accommodate instances where an existing building will be re-developed or sold for the purpose of re-development.

Recommendation

Consult on proposed content and timeline for the introduction of Minimum Energy Performance Standards

We support the development of MEPS and recommend that an initial policy framework should be linked to a broader policy context and avoid unintended consequences such as stranding of assets. We strongly recommend that initial policy design guardrails are established to ensure that requirements are evidenced-based and target the low-performing tail of a subsector. Additionally, the roll of our MEPS must be effectively sequenced and communicated. Finally, we note that the development of MEPS should consider the role of clear exemptions and support the sale / purchase of low performing assets where there is an intention to re-develop.

Annexure B- Response to Consultation Questions

Commercial Building Disclosure (CBD) Program Expansion Public Consultation Paper	
Question	PCA Response
1. What are your views on expanding the CBD Program to different types of commercial buildings in line with the suggested road map?	We have provided a detailed response to this question at **Annexure A**
2. Where should disclosure information (e.g. energy ratings) be displayed? Some examples include on advertising (including online advertising), on your business website, in the foyer.	The appropriate location to disclose information will largely depend on the building type. As the CBD program expands to a potentially large volume of commercial buildings (ideally on a periodic basis) we recommend that the Australian Government should developing a register of disclosures. We recommend there is value in retaining the current public disclosure requirements where a commercial building or space is made available for lease or sale – this should be linked to the most recent periodic disclosure. Additionally, where tenants of office buildings are required to make disclosures, this information should also be provided to the building owner.
3. What should trigger disclosure? Some examples include on sale or lease, or a periodic trigger such as yearly or once every two years.	Consistent with the findings of the 2019 Independent Review of the CBD Scheme, we recommend that transitioning to a periodic trigger is likely appropriate as the scheme expands to commercial building types which may never (owner occupied) or not regularly made available for sale or lease. We recommend the reasonable cadence of periodic disclosures may vary across building typologies. This should be considered as part of a cost benefit analysis. Additionally, if the CBD is expanded to include office tenancies, we note that the co-assess process is often the most efficient way to coordinate base-buildings and tenancy NABERS ratings. Trigger requirements for

	office base buildings and tenancies should therefore be designed to accommodate a co-assessed rating – specifically, we note that while an owner would be able to complete a rating at the point of lease, tenants would ordinarily require energy consumption information (bills) for approximately 1 year preceding the assessment.
4. Who would be most interested in your energy use?	NA
5. What are the barriers to you getting and disclosing your building's energy rating? What might be needed to help you overcome those barriers?	NA
6. Should other information also be disclosed in addition to the NABERS energy rating? Possibilities include Scope 1 emissions from on-site activities (for example gas use, diesel use and refrigerants) or the NABERS Renewable Energy Indicator which displays the proportion of the building's energy that comes from on-site renewable energy generated and off-site renewable energy procured.	We support the CBD program to require the disclosure of the **NABERS Energy** rating and the **NABERS Renewable Energy Indicator**. The disclosure of both of these ratings is consistent with the dual objectives of the *Building Energy Efficiency Disclosure Act 2010* "to promote the disclosure of information about the energy efficiency of buildings;[21] and to contribute to the achievement of Australia's greenhouse gas emissions reduction targets."[22] We question the ongoing relevance of requiring Tenancy Lighting Assessment (TLA) as part of a Building Energy Efficiency Certificate (BEEC). For the most mature sub-sector, commercial offices we recommend that a future CBD review considers expansion of disclosure requirements for **NABERS Waste** and **NABERS Water** – noting that analysis will need to consider the suitability of rating tools for the purposes of mandatory disclosure and will likely require clear division of liability between tenants and owners.

[21] *Building Energy Efficiency Disclosure Act 2010* (Cth), 2A (b).
[22] Ibid, 2A (b).

7. What are your views on the use of minimum energy performance standards to improve the energy efficiency of commercial buildings?	We have provided a detailed response to this question at **Annexure A**