

7 October 2011

Property Law e-alert

Reminder – you need a BEEC from 1 November 2011.

We have previously provided two e-alerts on the Building Energy Efficiency Certificate (“BEEC”) requirements under the *Building Energy Efficiency Disclosure Act 2010* (which can be viewed by clicking [here](#) and [here](#), or visiting <http://www.hunthunt.com.au/articles-and-events/publications/property/>), and indicated that we would keep our clients updated on developments.

We are forwarding this e-alert because the transition period under the *Building Energy Efficiency Disclosure Act 2010* ends on 31 October 2011.

What does that mean?

From 1 November 2011, a BEEC is required if your building is disclosure affected and you are selling, leasing or sub-leasing a building or area of a building. As discussed in our earlier e-alerts, an owner or tenant cannot offer to sell or lease a building that is disclosure affected unless they have a valid and current BEEC registered with the Building Energy Efficiency Register. A BEEC is required from the day the building/space is first offered for sale or lease, until the time when it is no longer offered for sale/lease. This includes the requirement that all advertisements must display the energy efficiency rating for that building in the applicable BEEC.

Some practical issues

There are two pre-requisites that a vendor or landlord must organise to obtain a BEEC:

- A current NABERS energy for offices rating; and
- A current lighting assessment for the building/tenancy.

The BEEC will also contain a general energy efficiency guidance statement, however this is a statement that is uniform and not tailored for each building.

So what is the catch?

A BEEC will be valid for up to 12 months. The catch is, the BEEC is only valid during the time that both the NABERS energy rating for offices and the lighting assessment remain current. The moment one ceases is the moment the BEEC ceases validity.

Vendors and landlords should therefore consider how long it may take to sell or lease the premises, and whether their NABERS energy for offices rating or lighting assessment will expire during the time the office space is offered for sale or lease. Without anticipating this issue, vendors and landlords might find that their BEEC loses currency for sale or lease before a purchase or lease has been finalised.

Applying for a BEEC

To obtain a BEEC, vendors and landlords need to engage a Commercial Building Disclosure Accredited Assessor (“Assessor”). Only an Assessor can apply for a BEEC. Vendors and landlords should only engage an Assessor accredited and listed on the Building Energy Efficiency Register (at <http://cbd.gov.au/FindAssessor.aspx>).

Time frames

Timing is everything. The Department of Climate Change and Energy Efficiency (“Department”) aims to process all BEEC applications within 28 days, although the Department aims to process BEEC applications within a shorter time frame.

The key question to ask is *how long will it take the Assessor to apply for a BEEC for your building or lease area?* The answer will depend on how prepared you are. For example, if the building or area has an existing current NABERS energy for office rating, the Assessor will only need to conduct a lighting assessment (and vice versa). However, the building or area may have neither. An Assessor would therefore need to carry out both a lighting assessment and apply for a NABERS Energy for offices rating. This must be obtained before the Assessor applies for the BEEC.

Assessors are likely to take between 6 and 8 weeks to fully complete a simple assessment, but more complicated assessments may take 12 or even 16 weeks. During this time, you won't have a BEEC and will therefore be in breach of the *Building Energy Efficiency Disclosure Act 2010* if you offer the disclosure affected building or space for sale or lease.

Checklist for vendors and landlords:

- Do we have a NABERS rating, and if so when does it expire?
- Do we have a lighting assessment, and if so when does it expire?
- Do we need to extend our existing ratings to ensure maximum validity of the BEEC?
- How long will it be before an Assessor can attend our building to perform the assessment or rating?
- Are there any issues that might delay the Assessor? For example, do we have to give notice to our tenants to ensure the Assessor will be allowed to access leased areas?
- Do we have the required paperwork for the Assessor to consider when the inspection occurs, like relevant electricity bills and individual light power consumption?

As at 26 September 2011, only 98 Assessors were listed on the Building Energy Efficiency Register. These Assessors are likely to be in high demand, and it may pay to contact them early. A current list of accredited assessors can be found at <http://cbd.gov.au>.

Contacts

Ned Boyce, Sydney (City)	+61 2 9391 3001	eboyce@hunthunt.com.au
Ian Miller, Sydney (North West)	+61 2 9804 5704	imiller@hunthunt.com.au
Bill Hazlett, Melbourne	+61 3 8602 9259	bhazlett@hunthunt.com.au
Lynette Reynolds, Brisbane	+61 7 3292 9735	lreynolds@macrossans.com.au
Egils Olekalns Adelaide	+61 8 8414 3342	eolekalns@hunthunt.com.au
Darren Miller, Perth	+61 8 9488 1300	darren.miller@marksandsands.com.au
Antony Logan, Hobart	+61 3 6210 6213	alogan@hunthunt.com.au
Chris Osborne, Darwin	+61 8 8924 2600	cosborne@huntn.com.au