



# **New South Wales Accelerating Net Zero Buildings — New Buildings Program**

## *Conditions of Offer*

Version 1.0

Released 08 December 2021

### **1. Background**

With support from the NSW Government, NABERS is pleased to Offer an opportunity designed to support New Buildings and buildings undergoing Major Upgrades in NSW to set ambitious and verifiable energy efficiency targets.

The Offer available to buildings in NSW is as follows:

Accelerating Net Zero Buildings — New Buildings Program: This Offer is to encourage developments committing to high energy performance using NABERS Commitment Agreements.

This document refers to the New Building stream that will run until 30 June 2022 (or until funding is fully exhausted).

This Offer opens on Wednesday 08 December 2021.

### **2. New Buildings Program**

This program is designed to reduce emissions by supporting designers, consultants and Building Owners in NSW to set and achieve ambitious emissions targets for New Buildings and Major Upgrades of existing buildings.

This Offer will contribute funding to eligible NSW buildings that enlist in the NABERS Commitment Agreement process by 30 June 2022 (or until funding is fully exhausted).

As part of this offer, the NSW Government will cover the following costs for approved buildings:

NABERS Commitment Agreement Fee worth \$7,210 (excluding GST).

For both New Buildings and Major Upgrade projects, a completed Independent Design Review (IDR) report confirming the project's capability and likelihood of achieving the targeted star rating must be submitted to NABERS within eight (8) months of Offer participation being approved by the NABERS administrator. If an IDR report is not received within the required timeframes, the Applicant will be invoiced for the waived NABERS Commitment Agreement Fee.

### 3. Eligibility criteria

- 3.1 The project must be a New Building or a Major Upgrade to a building in NSW.
- 3.2 The project must be in the design stage<sup>1</sup> and the Applicant can sign a NABERS Commitment Agreement.
- 3.3 The target energy rating for the project must be greater than or equal to the star rating as set out in Table 1 below.
- 3.4 The project must have an Independent Design Review report completed and submitted to NABERS within eight (8) months of Offer participation being approved by the NABERS administrator. The IDR report must confirm that the project is capable of achieving the target rating and is actively mitigating risks to achieving the target rating.
- 3.5 In the case of a Major Upgrade, the building must have a current or NABERS Rating certified in the two (2) years prior to the start date of this Offer to identify a baseline and calculate energy and emissions savings.
- 3.6 If an Applicant is not employed by the Building Owner(s), they must provide NABERS with evidence of approval from the Building Owner(s) before applying for the Offer.

**Table 1: Minimum star rating targets for eligibility under the Offer**

| Project type  | Sector  | Minimum NABERS target rating           |
|---------------|---|--|
| New Build     | Offices   | 6                                      |
| New Build     | Shopping centres                                      | 4.5                                    |
| New Build     | Hotels  | 4                                      |
| New Build     | Apartment buildings                                   | 4.5                                    |
| New Build     | Data centres  | 4.5                                    |
| New Build     | Residential Aged Care and Retirement Living           | 5                                      |
| Major Upgrade | All sectors with a current star rating 3* or less     | 4                                      |
| Major Upgrade | All sectors with a current star rating 3.5* or higher | 1 star greater than the current rating |

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<sup>1</sup> Offer eligibility can only be approved by the NABERS administrator before a Construction Certificate is applied for. As per the Commitment Agreement contract, the IDR report must also be completed and signed off by NABERS before a Construction Certificate is granted.

## 4. Application process

### 4.1 Lodgement

- (a) Applications must be lodged by email to NABERS by:
  - (i) requesting to be assessed under this offer; and**
  - (ii) attaching a completed NABERS Commitment Agreement.**
- (b) Applications must be lodged on, or before, 30 June 2022. Any applications submitted after this date will not be accepted or reviewed by NABERS.

### 4.2 Assessment

- (a) If the application is successful, NABERS will:
  - (i) inform the Applicant via email within four (4) weeks from the date the application was received by NABERS (i.e. Offer Confirmation Email); and**
  - (ii) waive the NABERS Commitment Agreement Fee of the signed Commitment Agreement.**
- (b) If the application is unsuccessful, NABERS will inform the Applicant via email within four (4) weeks from the date the application was received by NABERS.

### 4.3 Independent Design Review

The Independent Design Review (IDR) report must:

- (a) be submitted to NABERS within eight (8) months or 31 July 2022 (whichever is the earliest) from the date of the Offer Confirmation Email; and
- (b) confirm that the project target star rating, or a rating that is at or above the minimum target rating outlined in Table 1 can be attained.

# Terms and Conditions

By participating in the 'New Buildings Program', the Applicant accepts the following Terms and Conditions.

## 5. Definitions

- (a) **Applicant** means the person, firm or company that applies for an Offer under the 'New Buildings Program'.
- (b) **Assessor** means an accredited person authorised by the National Administrator to conduct NABERS ratings for office buildings.
- (c) **Building Owner(s)** means an individual or organisation which has legal ownership of a site or premises. For tenancy and data centre IT equipment ratings, Building Owner means a tenant with access rights to a space via a legal lease agreement.
- (d) **Commitment Agreement(s)** means a contract between the Crown in right of the State of New South Wales by its the Department of Planning, Industry and Environment acting through the Energy, Climate Change and Sustainability Directorate, and an Applicant to design, build and commission a building to achieve a certain star rating.
- (e) **Commitment Agreement Fee** means the administration fee of \$7,210<sup>2</sup>, excluding GST, charged by NABERS to manage the Commitment Agreement.
- (f) **Construction Certificate** means a certificate issued by a certifying authority, such as a council, approving the start of construction of a proposed design.
- (g) **Eligibility Criteria** means the requirements that must be met for an Applicant to qualify under this offer.
- (h) **Independent Design Review** or **IDR** means an independent review of a project's design documentation and energy modelling. This review must be conducted by a member of the Independent Design Review Panel qualified to conduct reviews on the relevant building type and must be completed before a Construction Certificate is granted for a project.
- (i) **Independent Design Review Panel** means the panel of approved design reviewers selected by NABERS to undertake Independent Design Reviews.
- (j) **Major Upgrade(s)** means works that can be demonstrated via a Commitment Agreement to increase a building's star rating by at least one star (to a minimum of 4 stars).

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2 Price current as of 31/12/2021. Fees are subject to annual consumer price index (CPI) rate increases that are dependent on annual inflation.

- (k) **NABERS** means the National Australian Built Environment Rating System administered by the NSW Department of Planning, Industry and Environment acting through the Energy, Climate Change and Sustainability Directorate.
- (l) **New Building(s)** means a building in the design stage, where a Construction Certificate has not been granted for the project. For projects where no council approval is required, construction must not have begun at the time of application or before the Independent Design Review is complete and approved by NABERS.
- (m) **Offer** means a fee waiver as determined by NABERS under the 'New Buildings Program' which is capped at eight (8) Offers per Building Owner(s).
- (n) **Offer Confirmation Email** means the email sent by NABERS to the Applicant when they have been accepted under the offer.

## 6. Application

- 6.1 NABERS reserves the right to review and amend these Terms and Conditions at any time without notice. The replacement Terms and Conditions will take effect on being posted to the [NABERS website](#).
- 6.2 Applicants are responsible for checking the NABERS website for the most up-to-date Terms and Conditions, including information about the Eligibility Criteria, how to apply for an Offer and any key dates relating to the delivery of the 'New Buildings Program'.

## 7. Changes to the New Buildings Program

- 7.1 NABERS reserves the right to change and vary the Offer at any time without notice. NABERS will endeavour to take into consideration, where appropriate, the impact on any outstanding applications before any action is taken.
- 7.2 Applicants are responsible for checking the NABERS website for the most up-to-date Offer.

## 8. Applicant obligations

- 8.1 The Applicant must:
  - (a) ensure that all information submitted in an application for an Offer is true and correct at the time of submission;
  - (b) promptly notify NABERS if there are any changes to the information submitted to NABERS;
  - (c) obtain the relevant consents and permissions from the Building Owner and/or operator prior to submitting the application to NABERS;

- (d) if applicable, notify the Building Owner(s) that it intends to submit an application for an Offer, and if the application is successful, the Applicant will pass on the savings under the Offer to the Building Owner(s); and
  - (e) submit an Independent Design Review report within eight (8) months, or any such date as determined by NABERS, from the date of the Offer Confirmation Email.
- 8.2** The Applicant is responsible for checking the NABERS website for the most up-to-date information relating to the Eligibility Criteria and any other information that is required to participate in the 'New Buildings Program'.
- 8.3** The Applicant acknowledges that submitting an application to NABERS will not guarantee an Offer.
- 8.4** The Applicant agrees to reimburse the waived Commitment Agreement Fee if it does not comply with the obligations under this clause.

## **9. Invoices and purchase orders**

No invoice will be issued for the Commitment Agreements where fees are waived, unless specifically requested by the Applicant.

## **10. Collection and use of information**

- 10.1** Confidential information submitted with an application will be treated as confidential by NABERS unless otherwise required by law.
- 10.2** All participants in the 'New Buildings Program' consent to NABERS using, storing and releasing their personal information for lawful purposes. Participants should note that NABERS may seek and share information about an application with other NSW Government departments for the purposes of assessing applications, delivering and maintaining the integrity of the 'New Buildings Program' but only on a need-to-know basis.

## **11. Due diligence and audits**

NABERS reserves the right, at its discretion, to conduct such due diligence enquiries on Applicants as it sees fit during the 'New Buildings Program' to verify any information and ensure value for money and the integrity of the program. Therefore, information submitted with an application may be subject to investigation, reference checking, invoice comparison, searches, interview, enquiries and confirmation.

## **12. Release and indemnity**

- 12.1** The Applicant declares and warrants to NABERS that they have read, understood and fully accept these Terms and Conditions. The Applicant agrees to release and indemnify

NABERS against all loss, damage or other consequence whatsoever, whether direct or indirect, which may arise from the Applicant's participation in the 'New Buildings Program'.

**12.2** The release and indemnity contained in this clause survives the period of participation in the 'New Buildings Program'.

### **13. Liability and general**

**13.1** NABERS is not liable for any loss or damage, including personal injury, which may be sustained by the Applicant, including an Assessor, Building Owner(s), tenant or operator, which may arise from the Applicant's participation in the 'New Buildings Program'.

**13.2** The Applicant must not assign or subcontract its rights and obligations under the Terms and Conditions or in relation to an Offer, without NABERS' prior written consent.

**13.3** No rights under these Terms and Conditions will be waived except by notice in writing signed by the waiving party.

**13.4** These Terms and Conditions are governed by the laws of the State of New South Wales.