

**GREEN BUILDING COUNCIL OF AUSTRALIA  
ENVIRONMENTAL RATING SYSTEM FOR BUILDINGS**  
Website: [www.gbcaus.org](http://www.gbcaus.org)

**CERTIFICATION TRADE MARK RULES**

**TRADE MARK NO. 960850**

**March 2005<sup>1</sup>**

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<sup>1</sup> May be subject to change

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**GREEN BUILDING COUNCIL OF AUSTRALIA  
GREEN STAR ENVIRONMENTAL RATING SYSTEM FOR BUILDINGS  
CERTIFICATION TRADE MARK RULES  
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**1. INTRODUCTION**

The principal objective of the Green Building Council of Australia ACN 100 789 937 (“**GBCA**”) is to promote sustainable development in the Australian property industry by promoting green building programs, technologies, design practices and operations. The GBCA has developed a comprehensive, industry-owned, national, voluntary environmental rating system, which evaluates the environmental design and potential performance of buildings (the “**Rating System**”).

The Rating System evaluates the potential environmental performance of Australian buildings based on a number of criteria, currently including energy and water efficiency, quality of indoor environments and resource conservation.

As part of the Rating System, the GBCA has created rating tools to assess the environmental credentials of Buildings.

The Rating System, including the rating tools are intended to:

- establish a common language and standard of measurement for green buildings;
- promote integrated, whole-building design;
- recognise environmental leadership;
- identify building life cycle impacts;
- raise awareness of green building benefits; and
- transform the built environment and reduce the environmental impact of development.

The GBCA has developed and is developing rating tools for different phases of the building life cycle (design, fit out and operation) and for different building classes (including, but not limited to office, retail, industrial and residential).

The reason there are rating tools for different phases of the building life cycle is because the responsibility for each phase of the building life cycle may fall upon different parties. For example, responsibility may vary between the developer and the design team, the builder and contractors, the tenant and interior design team and the Building owner, depending on the stage of the building life cycle that the Building is in.

The certification trade mark set out in the Schedule (“**Trade Mark**”) is owned by the GBCA.

The Trade Mark is used in relation to the existing rating tools (such as the Green Star – Office Design rating tool) and will be used in relation to any rating tools that the GBCA may develop in the future.

The Trade Mark is used for two purposes, namely:

- (1) by the GBCA, to promote the GBCA and the Rating System; and
- (2) by Applicants who are awarded a Certified Rating by the GBCA, and therefore a licence to use the Trade Mark in relation to an aspect of a Building (for example, the design, its construction or an existing building), to promote the Certified Rating awarded to them.

In accordance with section 173(1) of the *Trade Marks Act 1995* (Cth) these rules set out provisions regarding the following:

- (a) the persons (approved certifiers) who may be approved for the purpose of certifying aspects of Buildings;
- (b) the cases in which aspects of Buildings are to be certified;
- (c) the conditions under which an approved user is to be allowed to use the Trade Mark in relation to a Building or otherwise;
- (d) the use of the Trade Mark by the GBCA and any approved user; and
- (e) the settlement of any dispute arising from a refusal:
  - (i) to enter into a Certification Agreement and / or to certify Buildings; or
  - (ii) to allow the use of the Trade Mark.

Certain terms appearing in these rules are defined in the Glossary contained in Part 8 of these rules.

**2. THE PERSONS (APPROVED CERTIFIERS) WHO MAY BE APPROVED FOR THE PURPOSE OF CERTIFYING BUILDINGS**

Approved certifiers (Certified Assessors or a Certification Panel) will provide assessment and recommendations to the GBCA in relation to certification.

At the date of these rules the GBCA was using a Certification Panel to carry out certifications, although the GBCA may also use Certified Assessors.

Certified Assessors must be independent of the GBCA, knowledgeable in the operation of relevant aspects of the buildings under consideration and with experience in the green building industry, and have such assessment qualifications as the GBCA may from time to time determine.

The Certification Panel must be collectively knowledgeable in the operation of the relevant aspects of the buildings to be assessed (including, if applicable to the relevant rating tool, the design of the buildings) and with experience in the green building industry and have such assessment qualifications as the GBCA may from time to time determine.

The GBCA will assign Certified Assessors or a Certification Panel to Applicants who register for Green Star certification and enter into a Certification Agreement. The Certified Assessors or Certification Panel will then carry out an Independent Assessment of the relevant aspect of the Building (for example, its design or the as-built building), which must be carried out in accordance with the Technical Manual released by the GBCA for use with the relevant rating tool.

### 3. THE CASES IN WHICH BUILDINGS ARE TO BE CERTIFIED

The GBCA will award a Certified Rating and grant a right to use the Trade Mark (under a limited non-exclusive and non-transferable licence on the terms set out in a relevant Certification Agreement), to Applicants who have entered into a Certification Agreement with the GBCA and where the relevant aspect of the subject Building is assessed by the GBCA and the relevant Independent Assessor or Certification Panel as having reached an appropriate standard of environmental design and/or performance to be awarded a Certified Rating.

Assessment is by review of submitted documentation and certification, and the granting of a licence to use the Trade Mark, is at the discretion of the GBCA, subject to any rights of reconsideration and rights of appeal set out in the relevant Certification Agreement and herein. In making its decision as to whether or not to award a Certified Rating, the GBCA will consider the opinion of one or more Certified Assessors or a Certification Panel appointed by the GBCA to carry out an Independent Assessment or a Certification Panel Assessment of the Building.

The use of any rating tool without formal certification by the GBCA does not entitle the user or any other party to promote the achieved Green Star Rating or to use the Trade Mark.

The formal certification process includes collecting validation documentation, Independent Assessment or Certification Panel Assessment and the award of certification by the GBCA.

As the Rating System and the rating tools are reviewed periodically by the GBCA, the certification process may be amended over time and therefore this Part sets out the certification process at the time of submission of these rules to IP Australia.

For the most recent information on the certification process see the GBCA website located at [www.gbcaus.org](http://www.gbcaus.org).

To receive a Certified Rating it is necessary for the relevant aspects of an Applicant's Building to be assessed by one or more Certified Assessors or a Certification Panel. The GBCA will coordinate the Independent Assessment or Certification Panel Assessment.

Each rating tool has a Technical Manual published by the GBCA, which sets out the criteria that a Building or its design must meet in order to achieve a Certified Rating under that tool. The GBCA establishes a number of categories under which specific key criteria are grouped and assessed and these are set out in the relevant Technical Manual. Each category has a description of the Credits available to achieve a Green Star Rating. Each Credit is introduced with the aim of the Credit, and a succinct outline of the documents to be submitted to demonstrate compliance with the Credit criteria.

Credits available in each category reflect options to improve the environmental potential of the submitted Building or its design.

Once all the Credits within each category have been assessed, a percentage score for each category is calculated, and an environmental weighting factor is then applied to give a single score. By applying a weighting to each category score the GBCA

intends to ensure that each category is appropriately represented within the relevant rating tool.

This approach means that a Credit in one category is not of equal value to a Credit in another category. This also permits Credits to be added or deleted within individual categories without affecting the overall environmental importance of an issue.

The weightings vary by State and Territory to reflect differing environmental concerns across the Australian continent. The GBCA periodically updates Credits and weightings within the various rating tools to assist the GBCA to adapt to best practice as knowledge and technology in the green building industry improves.

In some cases an Applicant may have clearly satisfied the stated intent of a Credit through a solution that does not allow that requirement to be demonstrated through the stated compliance requirements in the relevant Technical Manual and in such cases the Applicant may request a Credit Interpretation.

Any request for a Credit Interpretation must be in accordance with the following procedure:

- (a) the Applicant must first consult the relevant Technical Manual for guidance on compliance requirements and review the Credit Interpretation information on the GBCA website;
- (b) if the relevant Technical Manual does not adequately address the issue, then the Applicant may register a Credit Interpretation request with the GBCA; and
- (c) the GBCA's Certified Assessor(s) will then consider the Credit Interpretation, advise the Applicant of the Credit Interpretation fee, and following confirmation from the Applicant that the Credit Interpretation fee is acceptable, a final determination will be made by the GBCA.

The GBCA has a review process that ensures that there is a consistent approach to the assessment of Credit Interpretations.

Credit interpretations that are supported by the GBCA may be used to update the Green Star rating tools and the Technical Manuals.

The submission of Credit Interpretations for consideration by the GBCA is only available as an adjunct to the certification assessment process.

#### 4. THE CONDITIONS UNDER WHICH AN APPROVED USER IS TO BE ALLOWED TO USE THE CERTIFICATION TRADE MARK IN RELATION TO A BUILDING OR OTHERWISE

With the exception of the GBCA, no person may use the Trade Mark unless granted a licence by the GBCA.

The GBCA may, at its discretion and subject to the rights of reconsideration and appeal set out below, grant, renew or refuse to grant a licence.

If an Applicant has entered into a Certification Agreement with the GBCA and the GBCA awards a Certified Rating to the Applicant, the Applicant will be granted a non-transferable, non-exclusive license, from the Certification Date, to use and display the Trade Mark showing the Certified Rating in accordance with the Style Guide, which will be provided to successful Applicants. The licence may not be sub-licensed. In particular, the Applicant may not permit any third party, including without limitation any contractor or consultant, to use the Trade Mark to promote its association with the Certified Rating, except, in accordance with the Style Guide, for the purpose of representing the certified building only.

If an Applicant is not awarded a Green Star Rating of 4 stars or above, being a Certified Rating, that Applicant will not be granted a licence to use the Trade Mark and will be prohibited from promoting its Green Star Rating.

A Licensee shall only use the Trade Mark or claim an entitlement to use the Trade Mark in relation to the Building covered by the licence granted under the relevant Certification Agreement and only on the terms set out in that Certification Agreement, unless otherwise agreed in writing by the GBCA.

Under the terms of the Certification Agreement entered into by an Applicant the Applicant agrees that the GBCA retains all copyright and other proprietary rights in the rating tools and the Trade Mark and agrees not to sell, modify, or use the Trade Mark except in accordance with the relevant Certification Agreement and the Style Guide.

#### Termination of licence by the GBCA

The GBCA may terminate any licence granted under a Certification Agreement, by terminating the relevant Certification Agreement and all the Applicant's rights arising under it, by giving the Applicant a written notice, if the Applicant:

- (a) **(misleading and deceptive conduct):** engages in any conduct in relation to the relevant rating tool, the relevant Independent Assessment or Certification Panel Assessment, as the case may be, or the Trade Mark which in the GBCA's reasonable opinion is likely to, or does, mislead or deceive;
- (b) **(transfer without approval):** sells, transfers, assigns or otherwise disposes of its rights or obligations in relation to the Building the subject of the relevant Certification Agreement, without obtaining the GBCA's prior written approval for the assignment of relevant rights and obligations to the purchaser or transferee of the rights or obligations in relation to the Building; or

or any of the following events occur by or in relation to the Applicant:

- (a) (**performance default**): any default under the relevant Certification Agreement resulting from failure by the Applicant to perform any provision of, or liability under, the relevant Certification Agreement, except for a rectifiable default, which is rectified within 30 days following written notice from the GBCA requiring rectification;
- (b) (**misrepresentation**): material non-compliance by the Applicant with or the fact of material inaccuracy of any representation made or deemed to be made or repeated by the Applicant in the relevant Certification Agreement, or in any document delivered to the GBCA under or in connection with the relevant Certification Agreement;
- (c) (**attachment**): the fact of any attachment against any asset of the Applicant;
- (d) (**security enforcement**): the enforceability of any security interest over any asset of the Applicant securing payment for any amount subsequent to the occurrence of any default event under that security interest;
- (e) (**receivership**): the appointment of any receiver over, or possession taken by any secured party of, any asset of the Applicant;
- (f) (**insolvency**): cessation of payment generally by the Applicant or the inability of the Applicant, or the GBCA reasonably deciding the Applicant is unable, to pay all its debts as and when they become due and payable;
- (g) (**administration**): the appointment of any administrator of the Applicant;
- (h) (**liquidation**): any legal action, not being in the reasonable decision of the GBCA a disputed action, being commenced, judicial order made or resolution passed for the liquidation of the Applicant;
- (i) (**debt arrangement**): the creation by the Applicant of any debt arrangement with its creditors generally or any class of creditors;
- (j) (**business cessation**): the cessation or proposal for cessation of business generally by the Applicant;
- (k) (**act of bankruptcy**): the Applicant, if a natural person, committing an act of bankruptcy or compounding with his or her creditors;
- (l) (**operation of law of bankrupts**): the Applicant, if a natural person, bringing his or her estate within the operation of any law relating to bankrupts; or
- (m) (**Part X of Bankruptcy Act**): the Applicant, if a natural person, becoming the subject of a sequestration order or entering into a composition, deed of assignment or deed of arrangement pursuant to Part X of the *Bankruptcy Act 1966* (Cth) with his or her creditors.

#### **Termination of licence by the Applicant**

The Applicant may terminate any licence it has been granted to use the Trade Mark by terminating the relevant Certification Agreement at any time by giving 30 days

written notice to the GBCA. Upon termination of the Certification Agreement, the Applicant shall immediately cease any and all use of the Trade Mark and do such further things as may be reasonably required by the GBCA to protect the GBCA's right, title and interest in the Trade Mark.

**5. THE USE OF THE CERTIFICATION TRADE MARK BY THE GBCA AND ANY APPROVED USER**

The GBCA will use the Trade Mark for promotion of the rating tools and for general promotion of the GBCA.

The use of the Trade Mark by the GBCA may include, but is not limited to, publishing the Trade Mark in documents produced by the GBCA and on the GBCA website and may also include, without limitation, displaying the Trade Mark on signs, plaques, print media, web site(s) and in multi-media presentations and television commercials.

The GBCA may also, in its absolute discretion, grant licences to Applicants to whom the GBCA awards a Certified Rating, to use the Trade Mark in accordance with the relevant Certification Agreement entered into between the GBCA and the Applicant and the Style Guide that will be issued to successful Applicants.

The GBCA may also grant licences to other third parties to use the Trade Mark for purposes consistent with the objects of the GBCA set out in the Constitution of the GBCA.

**6. DISPUTE RESOLUTION IN RELATION TO A REFUSAL BY THE GBCA TO ENTER INTO A CERTIFICATION AGREEMENT OR TO GRANT A CERTIFIED RATING OR TO ALLOW THE USE OF THE TRADE MARK**

**Right of reconsideration of decision**

In the event of a person ("**Complainant**") wishing for a decision in relation to any of the following matters to be reconsidered it shall comply with the procedure set out in this Part 6:

- (a) a decision of the GBCA to refuse to enter into a Certification Agreement with the Complainant;
- (b) a decision by the GBCA to refuse to grant a Certified Rating in relation to a Building the subject of a Certification Agreement; or
- (c) a decision by the GBCA to refuse to allow the use of the Trade Mark for any reason whatsoever.

The Complainant shall, within 14 days of having received written notification of such decision, give notice in writing to the Secretary of the GBCA at the address set out in Part 7 of these rules of its desire to have the decision reconsidered, whereupon it shall be furnished, within one month of receipt of this notice by the GBCA, with the grounds of such decision in writing, and a meeting with a senior executive of the GBCA responsible for the administration of the rating tools shall be held on a date not less than 14 days nor more than 30 days after the delivery of such grounds, and the Complainant shall be given at least 7 days notice of the time and place of such meeting. At such meeting the Complainant shall be entitled to appear and be heard in relation to the decision for which it is requesting reconsideration. The senior executive of the GBCA shall provide the Complainant within 30 days of the meeting with its decision in writing together with reasons.

**Right of appeal**

In the event of a Complainant wishing to appeal against any decision of a senior executive of the GBCA arising from any reconsideration it shall, within 14 days of having received written notification of such decision, give notice in writing to the Secretary of the GBCA, seeking determination by an independent person or body.

The Complainant and GBCA shall agree upon the appointment of a suitable qualified person or body to be the independent body or failing such agreement the parties shall appoint any person or body recommended by the President of the Law Society of New South Wales at the request of either of the Complainant or the GBCA. The independent person or body shall agree a process for both parties to make submissions in respect of the appeal. The independent person or body shall notify the parties in writing of its decision together with reasons. The parties agree to each bear half the costs of the independent person or body in hearing the appeal. The appeal shall be scheduled as quickly as possible after notification by the Complainant to the GBCA. The decision of the independent person or body shall be final.

**7. NOTICES**

Any notice or other communication to be given or sent by the GBCA to any person in relation to these rules shall be deemed to be duly given or sent if sent by post or facsimile transmission to the address last known to the GBCA and shall be deemed to be given at the time when the same would ordinarily have been received depending upon the method employed.

The address for notices to the GBCA shall be:

The Secretary  
The Green Building Council of Australia  
Level 4, 249 Pitt Street  
Sydney NSW 2000

Fax: (02) 8252 8223

## 8. GLOSSARY OF TERMS USED IN THESE RULES

**“Applicant”** means a person who has entered into a Certification Agreement with the GBCA;

**“Building”** includes any building or proposed building, as may be represented by designs, specifications or plans, and any land upon which the building or proposed building is situated, the subject of a Certification Agreement entered into between an Applicant and the GBCA;

**“Certification Agreement”** means any certification agreement entered into between the GBCA and an Applicant in relation to any of the rating tools, as varied from time to time;

**“Certification Date”** means the date of confirmation in writing by the GBCA to the Applicant that the Applicant has received a Certified Rating;

**“Certification Panel”** means a panel of persons, nominated by the GBCA, collectively knowledgeable in the operation of the relevant aspects of the buildings to be assessed (including, if applicable to the relevant rating tool, the design of the buildings) and with experience in the green building industry, who have such assessment qualifications as the GBCA may from time to time determine;

**“Certification Panel Assessment”** means an assessment by a Certification Panel of aspects of a Building (including, if applicable to the relevant rating tool, the design of the Building) the subject of a Certification Agreement;

**“Certified Rating”** means a rating of 4, 5 or 6 stars that may be awarded by the GBCA under a Certification Agreement;

**“Corporate Board”** means the board of directors of the GBCA;

**“Credit”** means a point to be counted towards the total points towards a Green Star Rating as specified in the relevant Technical Manual and designated as a “Credit”;

**“Credit Interpretation”** means consideration and determination of the requirements for an Applicant to obtain a Credit where that Credit cannot be demonstrated by the Applicant in the way set out in the Technical Manual;

**“Green Star Rating”** means a rating of 1 to 6 stars under the relevant rating tool;

**“Certified Assessor”** means a person, independent of the GBCA, nominated by the GBCA, knowledgeable and with experience in the green building industry, who has such assessment qualifications as the GBCA may from time to time determine;

**“Independent Assessment”** means an independent assessment by one or more Independent Assessor/s of aspects of a Building (including, if applicable to the relevant rating tool, the design of the Building) the subject of a Certification Agreement;

**"Licensee"** means an Applicant awarded a licence to use the Trade Mark;

**"Style Guide"** means the guide for use of the Trade Mark published by the GBCA from time to time;

**"Technical Manual"** means the version of the "Green Star Technical Manual" in relation to the relevant rating tool in respect of any Independent Assessment or Certification Panel Assessment to be undertaken by the relevant Independent Assessor or Certification Panel current at the date of execution of the relevant Certification Agreement, as varied from time to time; and

**"Technical Working Group"** means a committee of the Corporate Board designated as the "Technical Working Group".

**SCHEDULE**  
**GREEN STAR TRADE MARK**