
Building
a sustainable
future

Green Building
Council of Australia
Certification Trade
Mark Rules
Trade Mark No
1508439

Environmental Rating System for Communities

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GREEN BUILDING COUNCIL OF AUSTRALIA
GREEN STAR RATING SYSTEM FOR COMMUNITIES
CERTIFICATION TRADE MARK RULES
TRADE MARK NO. 1508439

1. INTRODUCTION

This document sets out the rules governing the use of Certification Trade Mark No 1508439 (the **Trade Mark**) (the **Rules**).

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, national, voluntary rating system, which evaluates the sustainability of Australian Communities and is known as the Green Star Rating System (the **Rating System**).

The Rating System evaluates the attributes of Australian Communities based on a number of criteria and across six categories: liveability; economic prosperity; environment; community; design; governance and innovation.

As part of the Rating System, the GBCA develops rating tools to assess the attributes of Communities.

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

- establish a common language and standard of measurement for sustainable Communities;
- promote integrated, holistic planning, design & construction;
- recognise leadership in sustainability;
- raise awareness of sustainable development; and
- benchmark development at a community scale.

The Trade Mark is set out in Schedule A (**Trade Mark**) and is owned by the GBCA. The Trade Mark is or will be used in relation to the GBCA's communities rating tools, which are listed in Schedule B of these Rules.

The Trade Mark is used for two purposes, namely:

- (1) by the GBCA – to promote the GBCA and the Rating System; and
- (2) by the Applicants who are awarded a Certified Rating by the GBCA and a licence to use the Trade Mark in relation to a Community – 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 the following:

- (a) the requirements that aspects of Communities must meet for the Trade Mark to be applied to them;
 - (b) the process for determining whether Communities or aspects of those Communities meet those requirements;
 - (c) the attributes of persons who may be approved for the purpose of assessing Communities or aspects of Communities;
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- (d) the requirements that a person must meet to use the Trade Mark;
 - (e) other requirements about the use of the Trade Mark; and
 - (f) the procedure for resolving a dispute about:
 - (i) whether an aspect of a Community meets the certification requirements; or
 - (ii) any other issues relating to the Trade Mark.

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

2. THE PERSONS WHO MAY BE APPROVED FOR THE PURPOSE OF CERTIFYING COMMUNITIES (CERTIFIED ASSESSORS)

An Assessment Panel, consisting of one or more Certified Assessors will conduct assessments for the purpose of certification.

A Certified Assessor must:

- be independent of the GBCA
- be knowledgeable in the planning and construction of communities;
- have an industry relevant tertiary qualification (such as a degree in urban planning);
- have a Green Building Council of Australia relevant Green Star specific qualification; and
- undertake relevant continuing education.

To register for certification, and Applicant enters into a Certification Agreement with the GBCA. The GBCA will then assign an Assessment Panel to conduct an independent assessment of the relevant aspect or aspects of the Community. This independent assessment must be carried out in accordance with the Submission Guideline developed by the GBCA for use with the relevant rating tool.

3. THE CASES IN WHICH COMMUNITIES ARE TO BE CERTIFIED

The GBCA will award a Certified Rating and grant a right to use the Trade Mark to Applicants who have entered into a Certification Agreement with the GBCA and where the relevant aspect of the Community, or an aspect of a Community, has reached the standard of sustainable planning and /or construction to be awarded a Certified Rating. An Applicant's right to use the Trade Mark will be under a limited non-exclusive and non-transferable licence on the terms set out in the relevant Certification Agreement.

The formal certification process involves:

- the Applicant collecting and submitting validation documentation in accordance with the relevant rating tool;
- independent assessment of the Applicant's documentation by an Assessment Panel in accordance with the relevant rating tool; and
- the award of certification by the GBCA if the Applicant meets the criteria set out in the relevant rating tool.

The use of any rating tool without formal certification by the GBCA does not entitle the user or any other party to promote the Green Star Rating or to use the Trade Mark otherwise than in accordance with these Rules.

CERTIFICATION IN ACCORDANCE WITH SUBMISSION GUIDELINE

Each rating tool has a Submission Guideline published by the GBCA, which sets out the criteria that a Community master plan must meet in order to achieve a Certified Rating under that tool. These Submission Guidelines are detailed and comprehensive. The following is a simplified summary of their operation.

Each Submission Guideline identifies a number of categories under which specific key criteria are grouped and assessed. Each category has a description of the Credits available to achieve a Certified 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.

The Credits available in each category reflect options to improve the sustainability of the relevant aspect of a Community master plan.

Once all the Credits within each category have been assessed, a percentage score for each category is calculated and a weighting factor is then applied to give a single score. By applying a weighting the GBCA's aim is to ensure that each category is appropriately represented within the relevant rating tool. The weightings that apply to each rating tool are provided in the relevant Submission Guideline.

The GBCA periodically updates Credits within the various rating tools to assist the GBCA to adapt to best practice as knowledge and technology in sustainability improves. Credits and weightings only change with a new version of a tool and are fixed in relation to that tool from the time the relevant Submission Guideline is published.

In some cases, an Applicant may satisfy the stated intent of a Credit through a new or alternative solution that is not set out in the relevant Submission Guideline. 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 Submission Guideline for guidance on compliance requirements and review the Credit Interpretation information available on the GBCA website, located at www.gbca.org.au;
- (b) if the relevant Submission Guideline does not adequately address the issue, the Applicant may register a Credit Interpretation request with the GBCA; and
- (c) the GBCA or a Certified Assessor/s will then review the Credit Interpretation and respond accordingly.

The GBCA has a review process that ensures that there is a consistent approach to the assessment of Credit Interpretations. There are three steps completed to ensure consistency which are as follows:

- (1) Every Credit Interpretation which is received is checked against previous CIR responses;
- (2) One person reviews all final Credit Interpretation responses prior to them being sent to the project teams; and
- (3) A set of guiding principles are followed when Credit Interpretations are assessed.

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 COMMUNITY OR OTHERWISE

With the exception of the GBCA, no person may use the Trade Mark unless a licence has been granted to do so by the GBCA.

Subject to these Rules, the GBCA may grant, review or refuse to grant a licence to use the Trade Mark.

If an Applicant has entered into a Certification Agreement with the GBCA and is awarded a Certified Rating, the Applicant will be granted a non-transferable, non-exclusive licence, from the Certification Date, to use and display the Trade Mark showing the Certified Rating. Use of the Trade Mark must be in accordance with the Style Guide, which is available on the GBCA's website, located at www.gbca.com.au. The licence may not be sub-licensed. In particular, the Licensee 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 these Rules.

If an Applicant is not awarded a Certified Rating (that is, a Green Star Rating of 4 stars or above), that Applicant will not be granted a licence to use the Trade Mark and will not be permitted to promote 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 aspect or aspects of the Community 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

In certain circumstances, 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. The GBCA may terminate a Certification Agreement by giving the Applicant 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 Assessment Panel, 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 Community 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 Community; or

if 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;
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- (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

A Licensee may terminate at any time a licence it has been granted to use the Trade Mark by terminating the relevant Certification Agreement 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, website(s) and in multi-media presentations and television commercials.

The GBCA may also grant a non-transferable, non-exclusive licence to Applicants in accordance with these Rules.

Licensees may use the Trade Mark in accordance with these Rules, the relevant Certification Agreement and the Style Guide provided by the GBCA.

The GBCA may also grant to other third parties non-transferable, non-exclusive licences to use the Trade Mark consistent with the objects of the GBCA and Style Guide, where those third parties have been directly connected with the Community, for example in the capacity of planner, developer, head builder, developer, engineer, architect, or consultant.

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

If a person (a **Complainant**) disagrees with:

- (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 Community 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 may seek to have that decision reconsidered by complying with the procedure set out in this Part.

Within 14 days of receiving written notification of the relevant decision, the Complainant shall give written notice to the Secretary of the GBCA that it is seeking to have the decision reconsidered and specifying the grounds for the reconsideration.

Within one month of receipt of receiving notice from a Complainant, the Secretary shall provide the Complainant in writing with the grounds on which the decision was made.

The Secretary shall arrange for a meeting between the Complainant and the senior executive of the GBCA responsible for the administration of the rating tools, which shall be held on a date not less than 14 days and not more than 30 days after the Complainant has received the written grounds for the decision. The Complainant shall be given at least 7 days notice of the time and place of the meeting. At this meeting, the Complainant shall be entitled to appear and be heard in relation to the decision for which it is requesting reconsideration.

Within 30 days of the meeting, the senior executive of the GBCA shall provide the Complainant with its decision in writing, together with reasons.

RIGHT OF APPEAL

If a Complainant wishes to appeal against any decision of a senior executive of the GBCA arising from a reconsideration under this Part, the Complainant shall, within 14 days of having received written notification of such decision, give written notice to the Secretary of the GBCA, seeking determination by an independent person or body.

The Complainant and the GBCA shall agree upon the appointment of a suitable qualified person or body to determine the appeal 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. Unless otherwise agreed, the parties shall 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 is given 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 15

179 Elizabeth Street

Sydney NSW 2000

Fax: (02) 8252 8223

8. GLOSSARY

In these Rules, the terms listed below have the following meanings:

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

"**Assessment Panel**" means a panel of one or more Certified Assessors;

"**Certification Agreement**" means any certification agreement entered into between the GBCA and an Applicant in relation to any of the rating tools;

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

"**Certification Assessor**" means a person, independent of the GBCA, nominated by the GBCA, knowledgeable in the building and construction of the relevant aspect or aspects of the Community under consideration, having experience in the green building industry, Green Building Council of Australia Green Star qualification and industry relevant tertiary qualifications and having undertaken appropriate ongoing education;

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

"**Community**" means a community-level development project and includes any community or proposed community, as may be represented by designs, specifications or plans, and any land upon which the community or proposed community is situated, the subject of a Certification Agreement entered into between an Applicant and the GBCA;

"**Credit**" means a point to be counted towards the total points towards a Green Star Rating as specified in the relevant Submission Guideline 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 Submission Guideline;

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

"**Independent Assessment**" means an independent assessment by the Assessment Panel of aspects of a Community the subject of a Certification Agreement;

"**Licensee**" is an Applicant that has been awarded a licence to use the Trade Mark;

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

"**Submission Guideline**" means the version of the Green Star Submission Guideline relating to the relevant rating tool the subject of the Independent Assessment.

SCHEDULE A

Green Star Trade Mark

green building council australia

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SCHEDULE B

List of rating tools for which the Trade Mark will be used

The Trade Mark will be used in connection with the following rating tools:

- Green Star – Communities PILOT v0.0
- Green Star – Communities PILOT v0.1
- Green Star – Communities v1

together with any updates to these rating tools.
