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| **PRESENCE TEST** | | **FURTHER INSTRUCTION** | |  | |
| Does the lease encourage, facilitate or require the reduction of the environmental impact from works within the building or premises? | | Clauses could relate to:   * the landlord accepting a make good payment in lieu of reinstatement works to ensure that the premises is upgraded to the landlords or a new tenant’s specifications * allowing the landlord access to the premises to show tenants / consultants through, with a view to recycling the fitout. * the monitoring of waste from works * the minimisation of waste from works, enabling fitout to be reused, recycled, repurposed or redirected from landfill. | |  | |
| **OVERVIEW** | | CONCERN/RISK | |  | |
| Clauses around make good can result in the minimisation of financial and resource waste that often occurs at the end of the lease.  RICS has produced the Guide to Greening Make Good to assist the property industry in reducing waste at lease end through valuing the materials used and trying to avoid waste through planning, agreement and sharing responsibility. For more information on the RICS Guide go to: <http://www.rics.org/au/> | | The BBP Stripout Waste Guidelines  These guidelines set a new best practice standard to achieve a minimum resource recovery target of 60% during the office strip-out and refurbishment process. These guidelines and its associated workbook provide a framework to improve stripout operations, procurement processes, and ensure consistent measurement and reporting. They are aligned with Green Star Interiors and Performance rating tools, and could be utilised as part of the evidence used to earn credits. For more information on these guidelines go to:  <http://www.betterbuildingspartnership.com.au/stripout> | |  | |
| **DEFINITIONS** |  | |  | | |
| **Make Good** means [insert definition];  [Drafting note - the definition of make good will vary according to the Lease and commercial negotiations]  **Make Good Price** means the amount determined by clause 1.2(a) or clause 1.2(c) (as the case may be);  **Make Good Period** means the period during which the Make Good is to be carried out;  **Re-letting Period** means [insert date prior to the Expiry of the Lease]; Building;] | |  | | **Green Star - Performance**  Make Good information may be used as an input into Green Star – Performance compliance requirements | **Green Star - Interiors**  Minimising waste from make good is a recognised element in Green Star – Interiors. |
| **SAMPLE CLAUSES** |  | |  | | |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.1 Commitment  The Landlord and the Tenant commit to using reasonable endeavours to minimise waste from the fitout of the Premises. | none noted | none noted |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.2 No reinstatement  The Tenant must not be required to reinstate any fitout or alterations which have been carried out with the consent of the Landlord during the Term and which improve the energy or water efficiency of the Premises unless such reinstatement is reasonably required by the Landlord to improve its ability to re-let the Premises after the Expiry of the Lease. | The Tenant may incur costs if the landlord requires it to reinstate the Premises to its original state prior to the lease. | This clause creates the potential for tenants to save on fitout costs. Many standard make-good clauses do not provide such an option and mandate that tenants must re-instate their premises, regardless of any operational benefits to the landlord.  The clause still provides for a fall-back position of the landlord retaining the money paid by the tenant for the cost of the make good works if a new tenant cannot be found to take over the existing fitout. |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| The BBP Stripout Waste Guidelines recommend agreeing on the conditions and timeline of the make good settlement 6 to 9 months prior to lease end. | 1.3 Costing Make Good   1. At least [insert #] [weeks / months] prior to the Expiry of the Lease the parties must meet and co-operate in good faith to agree a fixed price to undertake and complete the Make Good works during the Make Good Period acceptable to the Landlord and Tenant. 2. The Make Good Price must itemise in as muc­h detail as is practicable the individual costs of each component of the Make Good. 3. If the parties do not reach agreement within [insert #] days of meeting, then [either party may refer the matter for resolution by an Expert appointed under the Lease / the Tenant will be required to reinstate the Premises in accordance with the Make Good clause under the Lease, having regard to clause 1.2]. 4. The Tenant must pay to the Landlord the Make Good Price to the Landlord within [insert #] days of the Landlord providing a tax invoice to the Tenant for the Make Good Price to be held by the Landlord on trust on behalf of both parties for distribution in accordance with clause 1.4. | none noted | none noted |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.4 Re-use of fitout   1. During the Re-letting Period the Landlord must use its reasonable endeavours to secure a new tenant to lease the Premises with as much of the Tenant’s fitout remaining in the Premises as possible. 2. If the Landlord secures a new tenant for the Premises and that new tenant agrees to utilise the whole or part of the existing fitout in the Premises, the Landlord: 3. will refund to the tenant, within [insert #] days of entering into a binding agreement with the new tenant, an amount equal to the Make Good Price less the cost of Make Good of those items that the new Tenant does not require be removed from the Premises; and 4. the Landlord may retain the balance of the Make Good Price after deducting the amount referred to in clause 1.4 (i). 5. If the Landlord does not secure a new tenant for the Premises during the Re-letting Period, the Landlord may [retain the Make Good Price / refund to the Tenant the Make Good Price and require that the Tenant carries out the Make Good works in accordance with the Lease].   [Drafting note – delete (d) if the Landlord elects to have the Tenant carry out the Make Good Works]   1. At the end of the Re-letting Period the Tenant is released in full from its Make Good obligations under the Lease. | none noted | none noted |
|  |  | **ADDITIONAL BENEFITS** |  |
|  |  | **Green Star - Performance**  Make Good information may be used as an input into Green Star – Performance compliance requirements | **Green Star - Interiors**  Minimising waste from make good is a recognised element in Green Star – Interiors. |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| The BBP Stripout Waste Guidelines provides an excellent Waste Management Report Template, which outlines the process by which contractors and tenants can ensure all office stripout waste is transported and disposed of in accordance with the requirements of the building owner/tenants and environmental law. This Waste Management  Report template includes the necessary details to ensure all material is accounted for, whether its destination is landfill or recycling facilities. For more, go to: <http://www.betterbuildingspartnership.com.au/stripout> | 1.5 Reporting   1. The parties will use reasonable endeavours to deal with waste from works carried out in relation to the Building or the Premises in a sustainable way. [#The parties aim to divert 60% of that works waste from landfill.#] 2. A party carrying out work in relation to the Building or the Premises must use its reasonable endeavours to:    1. record the amount of waste that is dealt with in a sustainable way rather than being sent to landfill and the total amount of waste; and    2. provide that information to the other party. 3. The Landlord will use its reasonable endeavours to assist the Tenant to dispose of fitout waste and waste resulting from doing works in the Building or the Premises in a sustainable way. | none noted | none noted |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| The creation, maintenance and communication of an up-to-date materials inventory, shared in good faith with all parties, enables better outcomes; more accurate pricing and labour estimation by builders, designers and demo contractors; and creates a longer lead time for resource recovery across the entire process. For an excellent Resource Inventory template refer to section 3e of the BBP Stripout Waste Guidelines here: <http://www.betterbuildingspartnership.com.au/stripout> | 1.6 Resource Inventory   1. The parties will use their reasonable endeavours to agree on the make good works the Tenant is required to carry out at least 6 months and not more than 9 months before the expiry date of the Lease. 2. The Tenant will prepare an inventory of that part of the fitout of the Premises that the Tenant is required to remove and which could reasonably be reused elsewhere and provide it to [#insert name of BBP fitout advertising list#] at least 6 months prior to the expiry date of the Lease. 3. This clause does not lessen the obligations of the Tenant under the Lease, but is intended to give the opportunity for at least part of the fitout of the Premises to be reused. | none noted | none noted |