



BETTER
BUILDINGS
PARTNERSHIP





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What is Make Good?

- ❖ Tenant's obligations and Landlord's rights at lease end
- ❖ Repair Covenants – apply during lease term but are relevant to Make Good
- ❖ Specific Make Good or End of Lease Clauses



Repairing Covenants

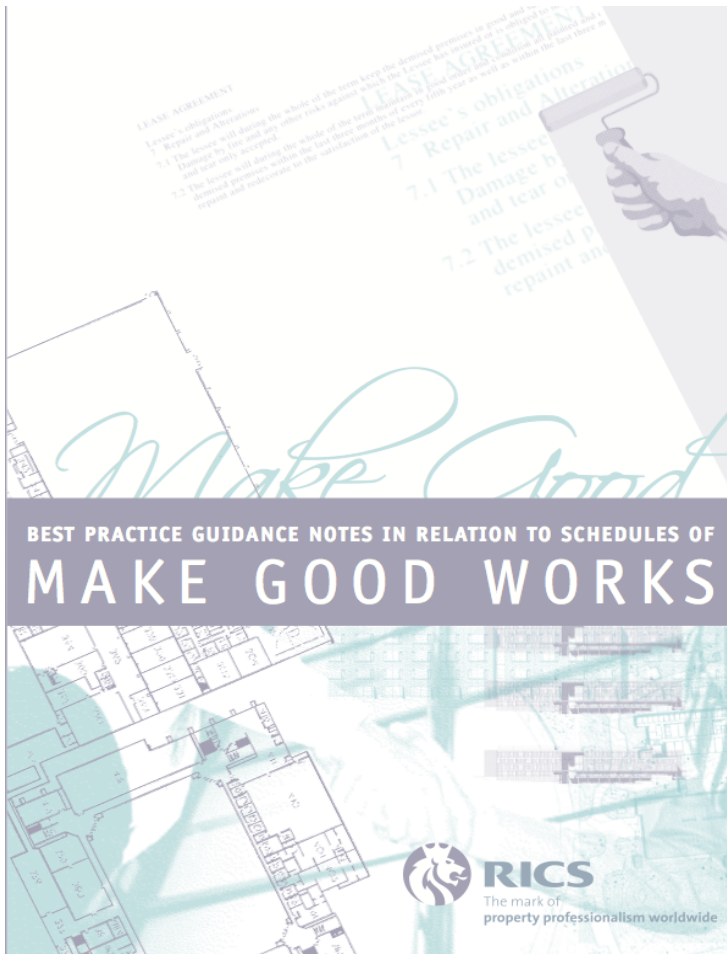
- ❖ Tenant to 'yield up the premises in a state of repair consistent with its obligations to keep in repair'
- ❖ Excludes 'fair wear and tear';
- ❖ Relates to condition of premises at start of the lease;
- ❖ Not responsible for structural repairs;



Make Good Clauses

- ❖ The lease may contain specific requirement to remove fit out back to open plan or base building layout;
- ❖ Obligation to redecorate or replace floor coverings at end of lease;

Documenting the Make Good



- ❖ Typically Landlord should serve a Schedule of Make Good;
- ❖ Schedule should document tenant obligations in premises against specific lease clauses;
- ❖ Schedule should be factual and capable of being priced;
- ❖ Tenant can respond – Scott Schedule;

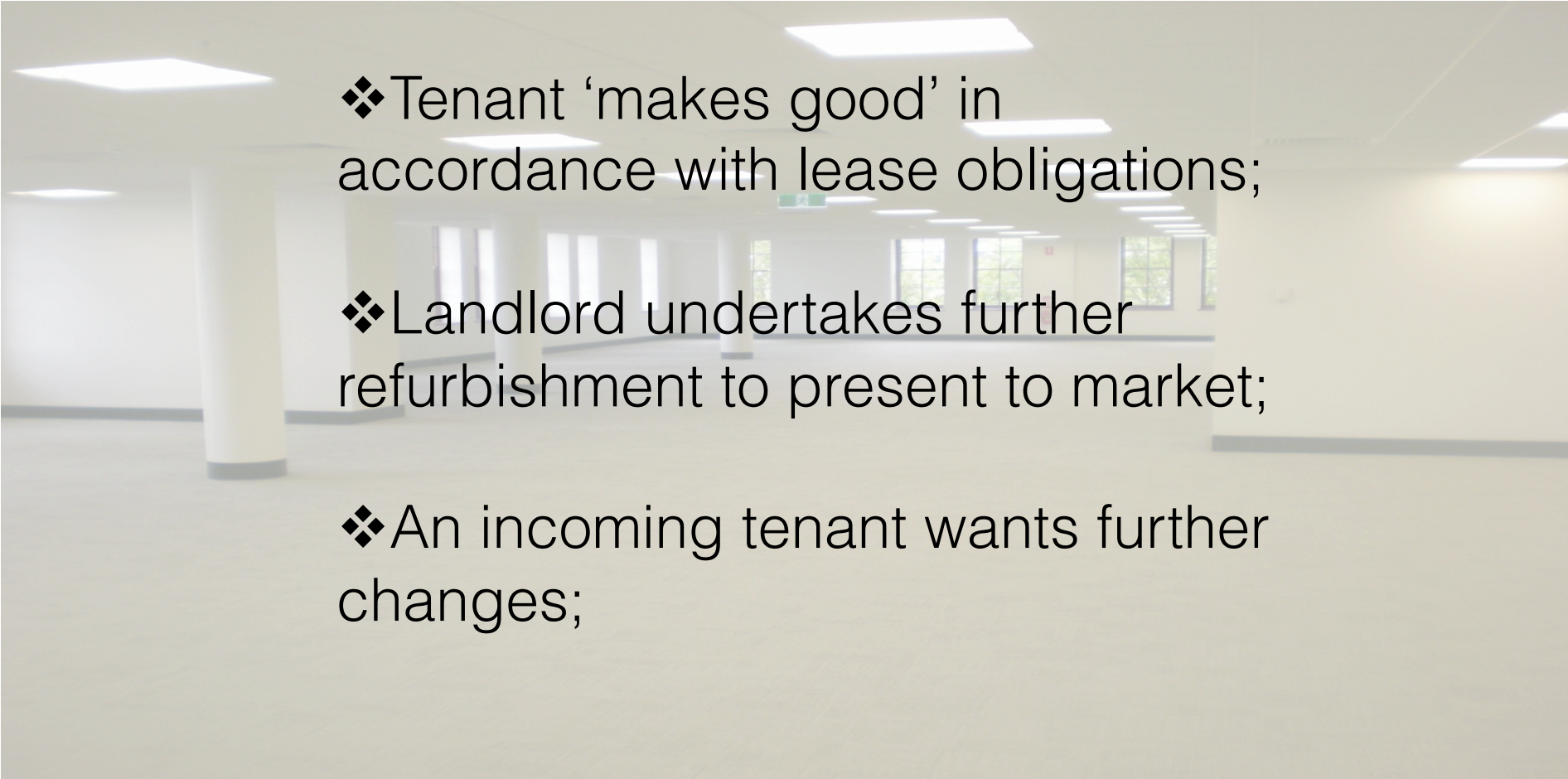


What are the Parties Seeking?

- ❖ Neither party should profit at the expense of the other;
- ❖ Landlord wants certainty about extent of work required;
- ❖ Tenant wants certainty about cost; to limit distractions to its relocation.
- ❖ Both parties want to minimise costs – and ideally the process should avoid unnecessary waste



Triple Waste

- 
- A photograph of a long, empty office hallway with white walls, white columns, and a light-colored floor. The hallway is illuminated by recessed ceiling lights and has large windows at the end. The text is overlaid on this image.
- ❖ Tenant 'makes good' in accordance with lease obligations;
 - ❖ Landlord undertakes further refurbishment to present to market;
 - ❖ An incoming tenant wants further changes;



Considering the End - at the Start

❖ Pre-lease assessment;

- ❖ Work out which services and finishes you would alter at fit out;

- ❖ Discuss with landlord - possibly look at opportunities to share costs;

- ❖ Seek agreement that 'improvements' be excluded from Make Good;

- ❖ Make sure all agreements are documented in detail – spell out in the lease.



Reducing Waste at Make Good

❖ Minimise impact of fit out:

- ❖ Avoid removing/replacing base building services, equipment or finishes if possible;

- ❖ Use free standing and modular fit out to avoid damage to base building;

- ❖ Maximise 'open plan' layouts;

- ❖ Consider wireless data systems, low embodied energy and recycled materials;

- ❖ Lease integrated fit out or previous tenant fit out.





Agree Make Good at Lease Commencement

- ❖ Make Good obligation assessed at start of lease, costed and paid for through lease term;
- ❖ Provides certainty for both parties;
- ❖ Tenant can occupy right to end of lease;
- ❖ Landlord can test the market with existing fit out – reducing waste

RICS OCEANIA

Landlord's address and representative

Make Good Deed

Make Good Deed

Date of Make Good Deed:	
Lessor:	
Lessee:	
Premises:	
Date of Lease:	

1. In connection with the outstanding Make Good obligation of XXXXXXXXX Pty Ltd at termination of its lease.

Commencement Date:		
Termination Date:		
Hold Over Date		

2. The Lessee has agreed to provide a bond, bank guarantee or other surety for the sum of \$XXXXX (XXXXX dollars) in connection with its outstanding Make Good liability relating to the above lease term. The Lessor has agreed to hold this bond, bank guarantee or surety for a period of X months from the date of expiry of the held over lease term.

3. If a tenant is secured during that period and the remaining xxxxxxxx fit out is incorporated into the incoming tenant's fit out, lease obligation or Agreement to Lease, the bond, bank guarantee or other surety will be released in its entirety.

4. If an incoming tenant can only incorporate part of the remaining fit out then costs will be deducted as agreed below.

5. The bond will be held for a period of x months. If at the expiration of x months, no new tenant is secured then the Lessor has the option to undertake the work to the maximum cost of the bond (as it determines will best suit the retail market) or to release The Tenant from its remaining obligations and return the bond, bank guarantee or other surety in its entirety at the end of the 6 month period. Any costs not expended in removal of The Tenant remaining fit out will be returned. Any costs expended in undertaking the works by the Lessor or its agents are to be reasonable, substantiated and specifically related to the clause obligations noted below.

Date of expiry of option to hold bond:		
Date at which Lessor must determine return of Bond or part thereof or intention to carry out works.		
Make Good Liability	Clause XXX Tenant's property:	
	- remove fitments and partitions to changing rooms, remove from site and make good;	
	- remove full height partition, door opening, shelving and fit out to rear stock room, remove from site and make good;	\$
	- remove ceiling, including coffers and duct enclosure and tenant	\$

Make Good Deed generic.doc

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- ❖ Prepare and cost a Schedule of Make Good in usual way;
- ❖ The agreed works are included in the Make Good Deed with costs per item;
- ❖ The Landlord markets the space as it stands for a pre- agreed period of time;
- ❖ Tenant provides security to the extent of the full cost of Make Good works



Advantages of a Make Good Deed

- ❖ Reduces triple waste concept;
- ❖ Provides certainty to both parties;
- ❖ Landlord gets early vacant possession and can start marketing space immediately;
- ❖ Outgoing tenant can focus on its move knowing the worst case scenario - and can occupy to lease end;
- ❖ Both parties meet its obligations but without unnecessary waste



Challenges of a Make Good Deed

- ❖ The outgoing tenant may have costs associated with a bank guarantee wrapped up for 6 months, or more;
- ❖ If an incoming tenant can't use what is there, can revert to full make good costs anyway;
- ❖ Agents may need to rethink marketing strategies;
- ❖ Landlord and incoming tenant must clearly document Make Good intentions in next lease.



RICS Greening Make Good Guide



- ❖ Reduces waste through planning, sharing responsibility;
- ❖ Raises environmental standards at end of lease term
- ❖ Process will evolve with experience and use;
- ❖ Can be adopted in an existing lease, if both parties agree.



Green Star Interiors Pilot Tool

- ❖ Management credit notes a commitment to reducing waste from demolition & replacement at lease end;
- ❖ Suggests using Make Good clauses reflecting a 'Green' Make Good;
- ❖ Requires mutually agreed methodology between building owner and tenant



green building council australia

ACCREDITED PROFESSIONAL
AUG 2010 - SEP 2012



Environmental Performance Clauses

BUILDING USERS GUIDE
39 HUNTER STREET SYDNEY



- ❖ Building User Guide (BUG) - specific to the premises;
- ❖ Covers all environmental areas;
- ❖ Customise to suit building type;
- ❖ Includes tenant fit out and occupation of building;
- ❖ Ensure BUG reflects lease conditions;



Thank you