

ATTACHMENT A

CITY OF SYDNEY ENVIRONMENTAL
UPGRADE AGREEMENTS POLICY (WITH
DELETIONS SHOWN IN ~~STRIKETHROUGH~~
AND ADDITIONS IN ***BOLD ITALICS***)

Environmental Upgrade Agreements Policy

Purpose

The purpose of this document is to provide a framework for the City of Sydney Council (the City) to determine under which circumstances the City will enter into an Environmental Upgrade Agreement.

This policy applies to all applications for Environmental Upgrade Agreements from the date it is endorsed by Council.

Scope

This policy sets out the City's requirements for entering into and administering EUA's. This policy will be supported by the City's EUA procedures. All enquiries regarding EUA's should be made to the City's EUA Officer.

Background

On 18 February 2011, the Local Government Amendment (Environmental Upgrade Agreements) Act 2010 took effect amending the Local Government Act 1993 so as to establish a legislative framework that provided for and authorised Councils to enter into Environmental Upgrade Agreements ("EUA").

An EUA is a voluntary agreement between a Building Owner, a Finance Provider and a Council where:

- a Building Owner agrees to carry out environmental upgrade works to a building (works to improve the energy, water, or environmental efficiency or sustainability of the building); and
- a Finance Provider agrees to advance funds to the Building Owner to finance those environmental upgrade works; and
- the advance is repaid by means of a charge on the relevant land that is levied by the Council.

The City's role in an EUA is to levy the Environmental Upgrade Charge that will run with the land like other council charges, which will be payable at dates and times identified in the EUA. Through recovery of this charge, the City will assume the role of debt collector and receive payments intended for the finance provider, hold them on trust, deduct a "service fee" and/or a "late payment fee" and then remit the balance to the finance provider. Should a Building Owner fail to meet payment of the charge, the City will be required to exercise its "best endeavours" to recover the debt through processes that are set out in the City's Environmental Upgrade Agreement Enforcement Procedure. The City will not become liable for repayment of the charge to the Finance

Provider. The City will rely on representations and warranties provided by the Building Owner and Finance Provider that each party is able to meet its obligations under the Agreement.

Generally, an EUA may be entered into by a Building Owner, a Finance Provider and a Council in relation to either:

- a) a non-residential building; or
- b) a strata building that is the subject of a multi-residence scheme comprising more than 20 lots.

The purpose of an EUA is to encourage Building Owners to low carbon retrofit buildings by providing access to less expensive funds provided over a longer term.

The charge on the land that is created by an EUA is for the whole of the amount funded plus Council's administration fee. This charge is made at the commencement date of the EUA and takes priority (with rates) over all other debts on the land which is the subject of the EUA.

Responsibilities

This policy and application of its principles is the responsibility of the Manager, Sustainability Programs.

Policy

1. The City may only enter into an EUA if:
 - (a) The proposed environmental upgrade works
 - i. relate to an existing, non-residential building within the Sydney Local Government Area;
 - ii. are for works as defined within Section 54E of the Local Government Act 1993 and as described in section 3.3 of the guidelines (http://www.nsw.gov.au/sites/default/files/No_16_of_2011.pdf); and
 - iii. are the subject of all necessary approvals.
 - (b) The total amount of any Environmental Upgrade Charge to be charged to the subject land (including the cumulative amount in the event that there is more than one EUA relating to the subject land) must not exceed the unimproved value of the land;
 - (c) The building is not subject to a registered Strata Plan;
 - (d) There are no outstanding Orders that have been issued in relation to the building pursuant to any relevant legislation;
 - (e) The Building Owner:
 - i. has no overdue debts to the City;
 - ii. agrees that the City may effect service for the purpose of the EUA at an address in Australia as nominated in the EUA. For the purposes of a corporation this will be the registered company address and otherwise, the office of the Building Owner's legal representative or accountant;

- iii. provision of registered mail notification to Existing Secured Financiers (where the land the subject of the EUA provides the security for the existing loan). The Existing Secured Financiers will have 21 days within which to advise the City that it objects to the EUA;
 - iv. consents to disclosure of the EUA to prospective purchasers or finance providers in a manner that is acceptable to the City. Where the value of the proposed environmental upgrade works plus interest exceeds \$5M, the Building Owner may be required to consent to registration of a caveat on the title to the land which is the subject of the EUA disclosing the City's interest in the land and the total amount of the charge that will be levied on the land.
 - v. warrants that all calculations and reports that are required to be prepared and submitted to the City under the terms of the EUA will be prepared by a suitably qualified person and in accordance with any legislative requirements;
 - vi. where the Building Owner intends to pass on part of the cost of the Environmental Upgrade Charge to its tenants, completes the Lessee Cost Savings Estimate at Annexure 3 of the EUA, and provides the City with a statutory declaration that it has provided a copy of same to the tenants; and
 - vii. provides the City with a report prior to entry of an EUA and thereafter annually that includes a description of the proposed Environmental Upgrade Works, the costs of those works and the annual anticipated environmental and cost savings that will be realised once the works are completed. The calculations for the anticipated savings are to be provided in accordance with Section 5.3 of the Guidelines.
- (f) The Financial Provider warrants that it has undertaken a credit assessment of the Building Owner that satisfies it that at the time of entry of the EUA the Building Owner will be able to comply with its obligations under the Funding Document at the date of the EUA; and
- (g) Both the Building Owner and Financial Provider agree to be bound by the City's Environmental Upgrade Agreement Enforcement Procedure and this Policy as amended from time to time;
2. The City will:
- (a) issue Notices to the Building Owner on a quarterly basis showing the Environmental Upgrade Charges due on the 31 August, 30 November, 28 February and 31 May of each year in accordance with the Agreed Repayment Arrangements;
 - (b) only accept payment of an Environmental Upgrade Charge by Direct Debit;
 - (c) only accept pre-payments of Environmental Upgrade Charges equal to or greater than the value of one Charge Payment as set out in the Agreed Repayment Arrangements of the EUA;
 - (d) only accept pre-payments of the Environmental Upgrade Charge when 14 days prior notice in writing is given;

- (e) not be a party to any dispute that may arise between the Building Owner and a tenant as to any matter relating to an EUA; and
- (f) require the Building Owner to fully discharge the Charge Obligations before lodging a plan of subdivision for registration in respect of the land the subject of the EUA, unless the City otherwise agrees, in the circumstances of the Agreement and in its complete discretion that a variation to the Agreement is acceptable. Although the City can not predict in what circumstances it may agree that full discharge of the charge obligations before lodging a plan of subdivision for registration is not required, it is anticipated that the City would not agree to a variation unless:
 - i. the Building Owner procures a deed of release from the Finance Provider to the effect that no claim will be made by it against the Council in relation to the subdivision or any other matter related to the Environmental Upgrade Agreement. This deed would also be required to be accepted by any finance provider that takes on the existing Environmental Upgrade Agreement; and
 - ii. the City is satisfied that the subdivided lot sought to be substituted in the Agreement as the land to be charged satisfies the eligibility criteria in the legislative framework.

References

Laws and standards	<ul style="list-style-type: none"> • Local Government Act 1993 and Local Government (General) Regulation 2005 • Guidelines for Environmental Upgrade Agreements as published in the Government Gazette of NSW dated 18 February 2011
Policies and procedures	<ul style="list-style-type: none"> • Related Policies and Procedures including the EUA Enforcement Procedure

Approval

Council endorsed this policy on ~~10 December 2012~~.

Review

Review period	Next review date	TRIM reference
The Manager, Sustainability Programs will review this policy within 12 months two years from the date of its adoption and/or review .	December 2013 February 2016	2012/235205