

## Item 2.

### Revised Environmental Upgrade Agreements Policy

File No: S101626

#### Summary

Environmental Upgrade Agreements are voluntary funding agreements between a building owner, a finance provider and a local council which are designed to help overcome barriers to the implementation of environmental upgrades and retrofits to existing buildings.

The Building Upgrade Finance program, through which these agreements are managed, is intended to address the following key barriers:

- (a) the "split incentive" issue, where a building owner pays for an environmental upgrade but it is the tenant that benefits financially (for example from lower electricity bills); and
- (b) the availability of competitively priced capital with long-term repayment schedules.

Under an Environmental Upgrade Agreement, a finance provider advances funds to a building owner to upgrade their existing building. These funds are repaid by means of a charge on the relevant land, which is levied and collected by the council, as Environmental Upgrade Charges.

The City's Environmental Upgrade Agreements Policy specifies the circumstances under which the City will enter into and administer an Environmental Upgrade Agreement, and provides for the management of any risks to the City and third parties where such risks are not addressed in the template contract. Council adopted the current Environmental Upgrade Agreement Policy on 15 August 2016.

City staff have undertaken a review of the policy and program with feedback from the NSW Office of Environment and Heritage, key participating councils and finance providers. It is recommended that Council continue to participate in the program, with minor policy changes, and modifications to the fees it charges the building owner to process and manage the contract.

This report recommends three minor amendments to the policy including:

- (a) clarification of the delegations for entering into and varying Environmental Upgrade Agreements;
- (b) minor adjustment to require a building owner to hold authorisations for project works at the time of executing an Environmental Upgrade Agreement rather than at Environmental Upgrade Agreement application stage; and
- (c) the renaming of the policy to the "Building Upgrade Finance (using Environmental Upgrade Agreements) Policy".

Feedback from stakeholders indicates that the current fee structure presents a barrier to building owners with smaller value projects. Staff will undertake a comprehensive review of the fees and charges for the service as part of Council's annual fees and charges review to inform 2019/20 fees to ensure they are suitable for all loan values. In the interim, it is recommended that Council approve a reduction in Council's fees to \$0 for new Environmental Upgrade Agreements with a value of under \$500,000 to incentivise take-up of the lower cost projects such as commercial solar.

## Recommendation

It is resolved that:

- (A) Council adopt the revised City of Sydney Building Upgrade Finance Policy (formerly known as the City of Sydney Environmental Upgrade Agreements Policy), as shown at Attachment A to the subject report;
- (B) authority be delegated to the Chief Executive Officer to:
  - (i) negotiate, execute and administer Environmental Upgrade Agreements and to negotiate, execute and administer any variation to any Environmental Upgrade Agreement;
  - (ii) make or amend Environmental Upgrade Charges under Environmental Upgrade Agreements; and
  - (iii) make minor amendments to the Environmental Upgrade Agreement Enforcement Procedure as required from time to time;
- (C) Council note that Resolutions C and E made by Council under Item 7.3 of the Resolution of Council dated 19 September 2011 will continue to apply, namely that:
  - (i) Council endorse only the use of Environmental Upgrade Agreement templates that contain the Environmental Upgrade Agreement mandatory provisions as approved or as otherwise agreed by the Director General of the Department of Premier and Cabinet from time to time; and
  - (ii) Council endorse the Environmental Upgrade Agreement Enforcement Procedure;
- (D) Council approve an administrative fee of \$0 for new Environmental Upgrade Agreements with a value of \$500,000 or less for the period from the date of this resolution until the date the Council's annual fees and charges for the 2019/2020 financial year are adopted; and
- (E) Council note that the administrative fees and charges for the Building Upgrade Finance Program will be reviewed as part of the Council's annual Fees and Charges review to inform fees for Council consideration for the 2019/20 financial year.

**Attachments**

**Attachment A.** City of Sydney Building Upgrade Finance (using Environmental Upgrade Agreements) Policy

**Attachment B.** Council Resolution dated 19 September 2011

## Background

1. On 18 February 2011, amendments took effect to the Local Government Act 1993 to establish a legislative framework that provided for and authorised councils to enter into Environmental Upgrade Agreements. On 19 September 2011, Council adopted an Environmental Upgrade Agreements Policy and resolved to enter into Environmental Upgrade Agreements in the local government area.
2. An Environmental Upgrade Agreement is a voluntary agreement between a building owner, a finance provider and a local council within NSW where:
  - (a) a building owner agrees to carry out environmental upgrade works to a building (for instance works to improve the energy, water or waste efficiency of the building);
  - (b) a finance provider agrees to advance funds to the building owner to finance those environmental upgrade works; and
  - (c) the advance is repaid by means of a charge on the relevant land that is levied and collected by the council, as Environmental Upgrade Charges, which Council then pays back to the finance provider.
3. Building Upgrade Finance addresses the "split incentive" barrier by enabling the building owner to pass on a proportion of the cost of the upgrade to their tenants, via the lease outgoings, as long as the tenant is no worse off.
4. As the finance provider can secure the funds advanced, through having the charge levied as a debt against the land, their financing risk is lowered. This means that they can offer competitive interest rates and longer term repayment schedules that reflect the timeframe over which cost savings arising from an environmental upgrade can accrue.
5. The upgrade charge is attached to the land. If the land is sold, the debt may be transferred to the new owner or discharged on settlement.
6. The City's role is to levy an Environmental Upgrade Charge as with other council rates and charges, which is then payable through the rates system at dates and times as specified in the Environmental Upgrade Agreement.
7. In 2016, the NSW Office of Environment and Heritage simplified and restructured the contract template which contains mandatory provisions to be complied with by each party. Changes included legal corrections, simplification of language, and improved protections and processes for the contracting parties.
8. There is also a standard set of additional conditions that can be selected and included in the contract at the discretion of each council. In 2017, the NSW Office of Environment and Heritage rebranded the Environmental Upgrade Agreement Program as the Building Upgrade Finance Program; however legislation and the mandatory contract template retain the term Environmental Upgrade Agreements.
9. The City's Environmental Upgrade Agreements Policy outlines the conditions under which the City will enter into and administer an Environmental Upgrade Agreement. The policy also provides for the management of any risks to the City and third parties which are not addressed in the template contract.

10. The City revised and adopted its current Environmental Upgrade Policy on 15 August 2016. At that time, Council agreed that the policy would be reviewed two years from that date.
11. Since 2011, market uptake of Environmental Upgrade Agreements has been low, with only six agreements signed in New South Wales, four of which were signed by the City of Sydney. These agreements were with Frasers Central Park, Country State Development, the Anglican Church Property Trust and Intrasia Oxley (RDB) Pty Ltd.
12. Building Upgrade Finance is offered in Victoria, where over 40 Environmental Upgrade Agreements have been signed. The mechanism has also been recently introduced in South Australia where two agreements have been signed to date.
13. The growth in Victoria has been driven in part by a handful of suppliers advising their clients of the finance mechanism at point of sale. The projects have predominantly been for the installation solar photovoltaics on commercial and industrial buildings and lighting upgrades. These projects have mostly required funding of less than \$500,000 and have mostly been enabled by the Sustainable Melbourne Fund.
14. To date, finance providers in NSW have had a minimum \$500,000 threshold for providing funds for an Environmental Upgrade Agreement. Based on the success of the mechanism in Victoria, the NSW finance providers have indicated that they will lower their funding threshold to encourage a greater uptake.
15. Two of the suppliers showing Victorian success have indicated their intention to start promoting their products, with Environmental Upgrade Agreement funding built-in, in NSW. The NSW Office of Environment and Heritage has agreed to support this intention by offering additional promotional activity in the three key local government areas currently offering Building Upgrade Finance namely Blacktown Council, City of Sydney and Parramatta Council.
16. The Local Government Act 1993 authorises a council to charge a fee to cover costs of entering into or administering an agreement. Legislation, and the City's existing delegations permit the making or amending of this fee, as the Environmental Upgrade Charge under delegation by the Chief Executive Officer.
17. Feedback from key stakeholders was that the lowering of the lending threshold and potential for renewed interest in the program may warrant Council's re-consideration of its fee structure. Parramatta Council recently set Council's administrative fee at \$0 for the next 10 projects to incentivise up-take.
18. The City originally designed its fee structure to recover costs in managing the program and processing Environmental Upgrade Agreement applications and contracts, and had done so, understanding that lending amounts were always to be above \$500,000 and typically \$1 million.
19. Council's current fees do not differentiate between the scale and value of projects that come through the program. Any building owner wishing to enter into an Environmental Upgrade Agreement for a 10-year loan term pays an \$8,250 fee which is levied as an upfront payment at the time of the first scheduled repayment of the loan.
20. Stakeholders report that this is likely to present a barrier for the lower value commercial solar and lighting projects that the City would like to encourage. Technical service providers also report that the fee hinders their efforts to market the finance mechanism to building owners with smaller cost projects.

21. The City has an interest in supporting efforts to revitalise the program, and would like to enable building owners with smaller value projects to benefit from the program. Concurrently, some cost recovery for larger scale projects (where the fee does not present a barrier) aligns with Council's interest in responsible financial management.
22. Staff will undertake a review of administrative fees and charges charged for the service concurrent with the City's annual fees and charges review to inform 2019/20 fees. In the interim, setting Council's administrative fee at \$0 for new projects with a value of \$500,000 or less until the Council's annual fees and charges review, would meet many of the City's objectives above. Staff will track foregone value.
23. Feedback from external stakeholders has been considered and the results of the review recommend Council continue to offer the program with minor changes to the policy.
24. It is proposed that the revised Environmental Upgrade Policy include three minor amendments including:
  - clarification of the delegations for entering into and varying Environmental Upgrade Agreements;
  - minor adjustment to require a building owner to hold authorisations for project works at the time of executing an agreement rather than at Environment Upgrade Agreement application stage; and
  - the renaming of the policy from the Environmental Upgrade Policy to the City of Sydney Building Upgrade Finance (using Environmental Upgrade Agreements) Policy.
25. Council's resolution of 19 September 2011 delegates authority to the Chief Executive Officer for entering into Environmental Upgrade Agreements, making or amending Environmental Upgrade Charges under Environmental Upgrade Agreements; and making minor amendments to the Environmental Upgrade Agreement Enforcement Procedure as required from time to time. It is recommended that the policy reference the delegated authority and acknowledge that this delegation extends to approving variations to an agreement (such as change of ownership of a building).
26. The second proposed change is a minor process change around the timing of authorisations required for environmental works. The existing policy requires that the building owner obtain all authorisations and statutory requirements for the environmental works prior to the building owner submitting an Environmental Upgrade Agreement application.
27. Stakeholders, including the NSW Office of Environment and Heritage, suggest this is unnecessarily onerous and recommend that the policy stipulate that building owners have these authorisations prior to execution of contract (rather than application). This requirement can be signalled in the application form, and aligns with the requirements of the mandatory contract template. Providing confirmation that the works are eligible for this type of funding provides the owner with confidence to invest further in the project, including the costs involved with getting any required authorisations for the works.

28. The third change is to rename the policy to the Building Upgrade Finance (using Environmental Upgrade Agreements) Policy, which aligns the policy name to the new program name adopted by the NSW Office of Environment and Heritage and participating councils in 2017.
29. The next review deadline for this policy is within five years from date of its adoption.

## **Key Implications**

### **Strategic Alignment - Sustainable Sydney 2030 Vision**

30. Sustainable Sydney 2030 is a vision for the sustainable development of the City to 2030 and beyond. It includes 10 strategic directions to guide the future of the City, as well as 10 targets against which to measure progress. This program is aligned with the following strategic directions and objectives:
  - (a) Direction 2 provides a road map for the City to become A Leading Environmental Performer - Retrofitting buildings to improve their environmental performance will be essential and Environmental Upgrade Agreements is in place to help to facilitate this.

### **Organisational Impact**

31. The revised policy will have no impact on the City's management and administration of Building Upgrade Finance nor create additional risk to the City.

### **Risks**

32. A review of risks has been undertaken and the revised policy will continue to address the key risks appropriately. No new risks have been identified as a consequence of the review.

### **Environmental**

33. The introduction of Building Upgrade Finance by the City was intended to accelerate action by building owners to improve the environmental performance of the city's existing building stock. Despite low current uptake, Environmental Upgrade Agreements remain a unique financial option in the market to help contribute to the achievement of Sustainable Sydney 2030 targets.

### **Budget Implications**

34. If the recommended \$0 administrative fee catalyse more projects, staff estimate a maximum of \$82,500 will be foregone in fees.

### **Relevant Legislation**

35. Local Government Act 1993, Part 2A Environmental Upgrade Agreements.
36. Local Government (General) Regulation 2005.
37. Guidelines for Environmental Upgrade Agreements as published in the Government Gazette of NSW 18 February 2011.

**Critical Dates / Time Frames**

38. The date for the next review is 29 October 2023.

**Public Consultation**

39. The City has consulted with: the NSW Office of Environment and Heritage; the key participating Councils of North Sydney, Parramatta and Blacktown; and Bank Australia, Westpac, the Commonwealth Bank, and AXA Investment Managers – Real Assets who has funded a number of the agreements to date. Feedback from these stakeholders has informed the proposed changes.

**ANN HOBAN**

Director City Life

Kate Read, Sustainability Engagement Coordinator

Tom Belsham, Manager, Sustainability Programs