

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 19 September 2011.

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.

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.

SCOPE

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

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);
 - 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 Environmental Upgrade Agreement at an address in Australia as nominated in the Environmental Upgrade Agreement. 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. warrants that it has notified the Existing Secured Financiers of its intention to enter into an EUA;
 - iv. 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 Environmental Upgrade Agreement, and provides the City with a statutory declaration that it has provided a copy of same to the tenants; and
 - v. 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 agreed to be bound by the City's Environmental Upgrade Agreement Enforcement Procedure.

2. The City will:

- (a) Issue Notices to the Building Owner on a quarterly basis showing the Environmental Upgrade Charges due on the 31st August, 30th November, 28th February and 31st 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; and
- (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 Environmental Upgrade Agreement.

REFERENCES

- Related Legislation & Standards
- Local Government Act 1993 No 30 – Part 2A Environmental Upgrade Agreements
- Local Government (General) Regulation 2005 – Part 5A Environmental Upgrade Agreements
- Guidelines for Environmental Upgrade Agreements as published in the Government Gazette of NSW dated 18 February 2011
- Related Policies and Procedures
- Environmental Upgrade Agreements Enforcement Procedure

APPROVAL AND REVIEW

Review Period

The City will review this policy within 12 months from the date of its adoption

Next Review Date

September 2012

TRIM Reference Number

Document number: 2011/322155

AUTHORISATION

Approved by Council on 19 September 2011

Resolution of Council

19 SEPTEMBER 2011

ITEM 7.3 ENVIRONMENTAL UPGRADE AGREEMENTS (S093968)

It is resolved that:

- (A) Council adopt the Environmental Upgrade Agreements Policy as shown at Attachment B to the subject report;
- (B) Council enter into Environmental Upgrade Agreements within the City of Sydney Local Government Area provided that:
 - (i) the number of Environmental Upgrade Agreements entered into in the next 12 months being limited to a maximum of 10; and
 - (ii) the Environmental Upgrade Agreements referred to in (i) above only relate to non-residential buildings that are not subject to a registered Strata Plan;
- (C) 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;
- (D) Council endorse the City of Sydney's Schedule of Fees for Environmental Upgrade Agreements as shown at Attachment C to the subject report;
- (E) Council endorse the Environmental Upgrade Agreement Enforcement Procedure as shown at Attachment A to the subject report;
- (F) authority be delegated to the Chief Executive Officer to:
 - (i) enter into Environmental Upgrade Agreements;
 - (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;

- (G) the Chief Executive Officer report back to Council, in the Quarterly Sustainability Report, on the number of Environmental Upgrade Agreements executed; and
- (H) the Chief Executive Officer report back to Council within 12 months as to the outcomes of the Environmental Upgrade Agreements entered into in accordance with this Resolution.

Carried unanimously.