

Attachment C

Building Finance Upgrade Policy
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Building Upgrade Finance (using Environmental Upgrade Agreements) Policy

Purpose

The purpose of this document is to specify the circumstances under which the City of Sydney Council (City) will enter into and administer an Environmental Upgrade Agreement.

Scope

This policy applies to all applications for and subsequent Environmental Upgrade Agreements to which the City is a party from the date it is endorsed by Council.

This policy is supported by the EUA Legislation, EUA Template, the Additional Conditions, and the City's EUA Enforcement Procedure.

Building Upgrade Finance

Building Upgrade Finance enables Building Owners to access finance through a tripartite agreement known as an Environmental Upgrade Agreement.

The Local Government Act 1993 provides a legislative framework that authorises Councils to enter into an Environmental Upgrade Agreement (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
- a Council levies a charge on relevant land (**EUA Charge**) to enable the repayment of the funds advanced.

The purpose of an EUA is to encourage Building Owners to invest in environmental improvements to their existing buildings by providing access to reduced interest and longer term finance.

Council's role in levying and collecting EUA Charge

The City's role in an EUA is to levy a charge on the land for the whole of the amount funded by the Finance Provider to the Building Owner plus a Council administration fee as set out in the City's EUA Schedule of Fees. This charge is known as the EUA Charge and is levied on the commencement date of the EUA. The EUA Charge takes priority (with rates) over all other debts on the land which is the subject of the EUA.

The City assumes the role of debt collector and receives payments on behalf of the Finance Provider, holds them on trust, deducts its administration fee and then remits the balance to the Finance

Provider. If a Building Owner fails to pay any part of the EUA Charge as and when it falls due, the City is required to exercise its “best endeavours” to recover the debt through processes that are set out in the City’s EUA Enforcement Procedure. The City is not liable for repayment of any or all of the EUA Charge to the Finance Provider.

Delegation to the Chief Executive Officer

Council delegates authority to the Chief Executive Officer

- (i) to negotiate, execute and administer EUAs and to negotiate, execute and administer any variation for an existing EUA
- (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

Eligibility

The City will only consider an application to enter into an EUA if the following criteria are met.

1. EUA Works

- 1.1. The proposed EUA Works comply with EUA Legislation.

2. Unimproved value of the land must exceed the EUA Charge

- 2.1. The total amount of any EUA Charge (including the cumulative amount if there is more than one EUA relating to the subject land) does not exceed the unimproved value of the land.

3. Building

- 3.1. The building is located in the City of Sydney Local Government Area.
- 3.2. The building is not subject to a registered Strata Plan or Company Title Strata Plan.
- 3.3. There are no outstanding Orders that have been issued in relation to the building pursuant to any relevant legislation.

4. Building Owner

- 4.1. The Building Owner agrees to be bound by the requirements of the EUA Template, Additional Conditions, the City’s EUA Enforcement Procedure and this Policy.
- 4.2. The Building Owner has no overdue debts to the City.
- 4.3. The Building Owner confirms that it will obtain all Authorisations and comply with all statutory requirements to undertake the Environmental Upgrade Works prior to entering into an EUA agreement.
- 4.4. The Building Owner must have an Australian address specified in the EUA for the service of notices. If the Building Owner is a corporation, the Australian address must be the company’s registered office address in Australia. In all other cases the Australian address must be the Australian office address of the Building Owner’s legal representative or accountant.
- 4.5. The Building Owner acknowledges and agrees that the City will not get involved in any dispute that may arise between the Building Owner and Finance Provider or a tenant as to any matter relating to an EUA.

5. Caveat

- 5.1. Where the value of the proposed EUA Works plus interest exceeds \$5M, if requested by the City, the Building Owner must consent to the registration of a caveat on the title to the land disclosing the City’s interest in the land and the total amount of the EUA Charge that will be levied on the land.

6. Finance Provider

- 6.1. The Finance Provider agrees to be bound by the requirements of the EUA Template, Additional Conditions, the City's EUA Enforcement Procedure and this Policy.
- 6.2. The Finance Provider must provide written confirmation that it has undertaken a credit assessment of the Building Owner and is satisfied that at the commencement date of the EUA the Building Owner is able to comply with its obligations under the EUA.
- 6.3. The Finance Provider acknowledges and agrees that the City will not get involved in any dispute that may arise between the Finance Provider and the Building Owner as to any matter relating to an EUA.

Role of the City

The City will:

- (a) issue notices to the Building Owner on a quarterly basis showing the amount of the EUA Charge due on the 31 August, 30 November, 28 February and 31 May of each year in accordance with the Agreed Repayment Arrangements; and
- (b) only accept pre-payments of EUA Charges with a Minimum Prepayment Amount equal to or greater than the value of one Charge Payment as set out in the Agreed Repayment Arrangements.

Subdivision

If the Building Owner intends to subdivide the land which is the subject of an EUA, the City will not consent to the subdivision and or registration of the plan of subdivision unless:

- (a) the Building Owner fully discharges the outstanding EUA Charge Obligations; or
- (b) all parties to the EUA enter into a Deed of Variation whereby the land the subject of the EUA is amended so as to reflect the relevant new title details of the land on which the Building the subject of the EUA Works is located (**New Lot**). The City will not enter into a Deed of Variation unless:
 - i. the Finance Provider and its successors and assigns release the City from any claims it may have against the City in relation to the subdivision;
 - ii. the EUA, as amended by the Deed of Variation, continues to meet the eligibility criteria in the legislative framework;
 - iii. the New Lot has an unimproved land value which is greater than the outstanding EUA Charge; and
 - iv. the EUA Works are located on the New Lot.

References

Laws and standards

- 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

- EUA Enforcement Procedure

Authorisation

Adopted by Council on 29 October 2018.

Review

Review period	Next review date	TRIM reference
The Manager, Sustainability Programs will review this policy within five years from the date of its adoption and/or review.	October 2023	2018/337681-01