



# ENVIRONMENTAL UPGRADE AGREEMENT POLICY

D1-03

Page 1 of 4

**Policy Owner:** Director Community, Planning & Environment

**Category:** Strategic

**Direction:** 1. Our Living Environment

## 1. STATEMENT OF INTENT

- 1.1 This Policy outlines North Sydney Council requirements for entering into and administering Environmental Upgrade Agreements (EUA).
- 1.2 The purpose of an EUA is to encourage Building Owners to invest in environmental improvements to their existing buildings by providing access to fixed rate, long loan tenor finance.
- 1.3 This Policy applies to all applications for and subsequent EUAs to which Council is a party from [insert date it is endorsed].
- 1.4 The Policy is supported by the EUA Legislation, EUA contract template, the Additional Conditions, and the Council's EUA Enforcement Procedure.

## 2. ELIGIBILITY

- 2.1 This Policy applies across the whole of the North Sydney local government area (LGA).

## 3. DEFINITIONS

- 3.1 Environmental Upgrade Agreement - the Local Government Amendment Act 2010 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) 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
  - b) a Finance Provider agrees to advance funds to the Building Owner to finance those environmental upgrade works; and
  - c) a Council levies a charge on relevant land (EUA Charge) to enable the repayment of the funds advanced.

---

## 4. PROVISIONS

4.1 EUA Eligibility Criteria - Council will only consider an application to enter into an EUA if the following criteria are met.

- a) EUA Works:
  - i) The proposed EUA Works comply with EUA Legislation.
  - ii) The building owner has consulted with Council's Executive Planning Adviser and has been advised about all the authorisations or statutory requirements required to undertake the EUA Works.
- b) Unimproved value of the land must exceed the EUA Charge:
  - i) 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.
- c) Building:
  - i) The building is located in the North Sydney LGA.
  - ii) The building is not subject to a registered Strata Plan or Company Title Strata Plan.
  - iii) There are no outstanding Orders that have been issued in relation to the building pursuant to any relevant legislation.
- d) Building Owner:
  - i) The Building Owner agrees to be bound by the requirements of the EUA Template, Additional Conditions, Council's EUA Enforcement Procedure and this Policy.
  - ii) The Building Owner has no overdue debts to Council.
  - iii) 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.
  - iv) The Building Owner acknowledges and agrees that Council 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.
- e) Caveat:
  - i) Where the value of the proposed EUA Works plus interest exceeds \$5M, if requested by Council, the Building Owner must consent by entering into this Agreement, the property owner agrees that Council has an equitable interest in the land and consents to Council lodging a caveat on the title of the property.
- f) Finance Provider:
  - i) The Finance Provider agrees to be bound by the requirements of the EUA Template, Additional Conditions, Council's EUA Enforcement Procedure and this Policy.

- ii) 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.
- iii) The Finance Provider acknowledges and agrees that Council 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.

#### 4.2 Council's role in levying and collecting EUA Charge

- a) Council'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 Council's EUA Schedule of Fees. This charge is known as the EUA Charge and is levied on or before 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.
- b) Council 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, Council is required to exercise its "best endeavours" to recover the debt through processes that are set out in Council's EUA Enforcement Procedure. Council is not liable for repayment of any or all of the EUA Charge to the Finance Provider.

#### 4.3 Role of Council - Council 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.

#### 4.4 Subdivision - If the Building Owner intends to subdivide the land which is the subject of an EUA, Council 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). Council will not enter into a Deed of Variation unless:

- i. the Finance Provider and its successors and assigns release Council from any claims it may have against the Council 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.

## 5. RESPONSIBILITY/ACCOUNTABILITY

5.1 Council's Environmental Services Department is responsible for administering this policy and taking actions as defined in Section 4 of this Policy.

## 6. RELATED POLICIES/DOCUMENTS/LEGISLATION

The Policy should be read in conjunction with the following Council policies and documents:

- Environmental Upgrade Agreement Enforcement Procedure
- FAQ: How EUAs Work
- Fact Sheet: Environmental Upgrade Agreements
- EUA Application Form
- EUA Additional Conditions

The Policy should be read in conjunction with the following documents/legislation:

- Local Government Act 1993
- Local Government (General) Regulation 2005
- Guidelines for Environmental Upgrade Agreements (February 2011)
- Environmental Upgrade Agreement Contract NSW, OEH v1.1 (July 2016)

Version	Date Approved	Approved by	Resolution No.	Review Date
1	13 August 2012	Council	470	2012/13
2	18 February 2013	Council	61	2016/17
3	26 June 2017	Council	207	2017/18
4	25 June 2018	Council	214	2020/21
5	22 August 2022	Council	251	2024/25