



New South Wales

# Local Government Amendment (Environmental Upgrade Agreements) Regulation 2011

under the

Local Government Act 1993

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Local Government Act 1993*.

FRANK SARTOR, MP  
Minister for Climate Change and the Environment

## Explanatory note

The object of this Regulation is to make further provision in respect of environmental upgrade agreements and charges in order to facilitate the commencement of the *Local Government Amendment (Environmental Upgrade Agreements) Act 2010*.

This Regulation:

- (a) specifies the types of works that are considered to be environmental upgrade works and, accordingly, that can be made the subject of an environmental upgrade agreement, and
- (b) modifies the application of the charge provisions of the *Local Government Act 1993* to environmental upgrade charges, in particular, to facilitate the levying of the charge in respect of strata buildings and buildings owned by the Crown, and
- (c) requires a certificate issued by a council in respect of land affected by an environmental upgrade agreement to include a statement of environmental upgrade charges, and
- (d) modifies the *Retail Leases Act 1994* in connection with the payment of contributions by lessees to environmental upgrade charges, and
- (e) specifies the mandatory requirements of the Ministerial guidelines relating to entry into environmental upgrade agreements, and
- (f) provides for other matters relating to the recovery of environmental upgrade charges.

This Regulation is made under the *Local Government Act 1993*, including sections 54E, 54J, 54N, 54Q and 748 (the general regulation-making power).

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Clause 1

Local Government Amendment (Environmental Upgrade Agreements)  
Regulation 2011

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**Local Government Amendment (Environmental Upgrade Agreements) Regulation 2011**

under the

Local Government Act 1993

**1 Name of Regulation**

This Regulation is the *Local Government Amendment (Environmental Upgrade Agreements) Regulation 2011*.

**2 Commencement**

This Regulation commences on 18 February 2011 and is required to be published on the NSW legislation website.

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## Schedule 1      Amendment of Local Government (General) Regulation 2005

### Part 5A

Insert after Part 5:

### Part 5A Environmental upgrade agreements

#### 136A What are environmental upgrade works?

- (1) For the purposes of section 54E of the Act, *environmental upgrade works* include any works in respect of a building that result in an environmental improvement in respect of the use and occupation of the building.
- (2) Works result in an *environmental improvement* if the works:
  - (a) increase the efficiency of energy or water consumption, or
  - (b) reduce energy or water consumption, or
  - (c) prevent or reduce pollution, or
  - (d) eliminate or reduce the discharge of wastes, or other substances, that are harmful to the environment, or
  - (e) reduce the use of materials, or
  - (f) enable the recovery or recycling of materials, or
  - (g) enable the monitoring of environmental quality, or
  - (h) reduce greenhouse gas emissions, or
  - (i) encourage or facilitate alternative methods of transportation to the use of a private motor vehicle (such as walking and cycling).
- (3) Without limiting the above, the following works are environmental upgrade works if they result in an environmental improvement:
  - (a) the replacement, modification, removal or installation of end-user equipment,
  - (b) the modification of the usage of end-user equipment.
- (4) In this clause:  
*end-user equipment* means any equipment, process or system that:
  - (a) directly consumes energy or water, causes a risk to human health, or degrades the environment, or

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- (b) controls or influences the impact any other equipment, process or system has on the consumption of energy or water, human health, or the environment.

### 136B Delegation of power to impose charge

- (1) A council may, by resolution, delegate to the general manager of the council the function of making or amending environmental upgrade charges under an environmental upgrade agreement.
- (2) The general manager cannot sub-delegate such a function.
- (3) Sections 377 and 378 of the Act are modified to the extent necessary to give effect to this clause.

### 136C Form of charge

- (1) It is not necessary for a council, when making an environmental upgrade charge, to give a short separate name for each amount of the charge.
- (2) Section 543 of the Act is modified to the extent necessary to give effect to this clause.

### 136D Curing of irregularities

Section 545 of the Act is modified so that a reference to the Minister, in relation to an environmental upgrade charge, is to be read as a reference to the Minister for Climate Change and the Environment or the Minister's delegate.

### 136E Levying of charge on strata buildings

- (1) An environmental upgrade charge levied on land that is the subject of a strata scheme is a charge on all lots that are the subject of the strata scheme.
- (2) However, the amount of any unpaid environmental upgrade charge is to be apportioned between the lots the subject of the strata scheme, so that the charge payable in respect of each lot the subject of the strata scheme is taken to be the relevant proportion of the unpaid environmental upgrade charge.
- (3) If the charge payable in respect of a particular lot is paid by the owner of the lot, the unpaid environmental charge to which the payment relates ceases to be a charge on that lot.
- (4) In this clause, the *relevant proportion* is the proportion that the unit entitlement of a lot bears to the aggregate unit entitlement of all lots the subject of the strata scheme.

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- (5) Unit entitlements are determined in accordance with the *Strata Schemes (Freehold Development) Act 1973*, or the *Strata Schemes (Leasehold Development) Act 1986*, as appropriate.
  - (6) Section 550 of the Act, and the provisions of Part 7 of Chapter 15 of the Act that apply in respect of environmental upgrade charges, are modified to the extent necessary to give effect to this clause.
  - (7) To avoid doubt, a reference in this clause to the amount of any unpaid environmental upgrade charge includes a reference to any amount charged under an environmental upgrade agreement for late payment of an environmental upgrade charge.

**136F Payment of environmental upgrade charges by lessees**

- (1) The Crown is liable to pay an environmental upgrade charge in respect of land owned by the Crown if the environmental upgrade charge is levied under an environmental upgrade agreement that the Crown entered into as owner of the land.
- (2) This clause applies even if the land is held under a lease for private purposes.
- (3) Section 561 of the Act is modified to the extent necessary to give effect to this clause.
- (4) This clause does not affect the application of section 54N of the Act in respect of any lease of the land by the Crown.

**136G Payment of environmental upgrade charges by instalment**

Section 562 of the Act applies to the payment of environmental upgrade charges, unless otherwise agreed by the parties to the environmental upgrade agreement.

**136H Accrual of interest on overdue charges**

- (1) Section 566 of the Act applies in relation to any interest on an unpaid environmental upgrade charge that is charged by or on behalf of a finance provider under an environmental upgrade agreement in the same way as it applies in relation to rates and charges levied by a council under Chapter 15 of the Act.
- (2) Accordingly, a reference in section 566 (3) of the Act to the rate of interest set by the council is to be read as a reference to the rate of interest charged by or on behalf of the finance provider.

**136I Application of payments**

Section 568 of the Act applies to environmental upgrade charges.

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### **136J Certificate issued by Council as to environmental upgrade charges**

- (1) A certificate issued by a council under section 603 of the Act in respect of a parcel of land that is affected by an environmental upgrade agreement is to state (in addition to the matters referred to in that section) the amount of any environmental upgrade charges that are due and payable under the agreement.
- (2) Land is affected by an environmental upgrade agreement if there is an environmental upgrade agreement in force that enables the council to levy an environmental upgrade charge in respect of the land.
- (3) Section 603 of the Act is modified to the extent necessary to give effect to this clause.

### **136K Sale of land to pay charge**

- (1) If a council sells land as a result of a failure to pay an environmental upgrade charge, the unpaid environmental upgrade charge ceases to be a charge on the land when the purchase money for the land is paid to the council (even if the purchase money is insufficient to satisfy the amount of the unpaid environmental upgrade charge).
- (2) However, if the purchase money is insufficient to satisfy the amount of the unpaid environmental upgrade charge, a person who, before the sale, was liable to pay the environmental upgrade charge continues to be liable to pay the outstanding amount of the unpaid environmental upgrade charge.
- (3) Section 719 (b) of the Act does not apply in respect of an environmental upgrade charge.

### **136L Modification of Retail Leases Act 1994**

- (1) Section 12 of the *Retail Leases Act 1994* does not apply to a provision of a lease that requires a lessee to pay an environmental upgrade contribution.
- (2) Accordingly, an environmental upgrade contribution may be recovered whether or not the contribution is disclosed in a disclosure statement given to the lessee in accordance with Part 2 of that Act.
- (3) Section 24A of the *Retail Leases Act 1994* does not apply to a provision of a lease to that requires a lessee to pay an environmental upgrade contribution.

- (4) In this clause, an *environmental upgrade contribution* means a contribution towards an environmental upgrade charge payable under an environmental upgrade agreement.

**136M Mandatory requirements of guidelines**

Sections 4–7 of the guidelines made under section 54Q of the Act and published in the Gazette on 18 February 2011 are adopted as mandatory requirements.

**Note.** A council must comply with any mandatory requirements of the guidelines in exercising its functions under Part 2A of Chapter 6 of the Act.