

Passed by both Houses



New South Wales

# Local Government Amendment (Environmental Upgrade Agreements) Bill 2010

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*I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2010*



New South Wales

## **Local Government Amendment (Environmental Upgrade Agreements) Bill 2010**

Act No , 2010

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An Act to amend the *Local Government Act 1993* to make provision for environmental upgrade agreements.

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*I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.*

*Assistant Speaker of the Legislative Assembly.*

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**The Legislature of New South Wales enacts:**

**1    Name of Act**

This Act is the *Local Government Amendment (Environmental Upgrade Agreements) Act 2010*.

**2    Commencement**

This Act commences on a day or days to be appointed by proclamation.

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## Schedule 1      Amendment of Local Government Act 1993 No 30

### [1] Chapter 6, Part 2A

Insert after Part 2:

## Part 2A Environmental upgrade agreements

### 54C Definitions

In this Part:

*environmental upgrade agreement*—see section 54D.

*environmental upgrade charge*—see section 54G.

*environmental upgrade works*—see section 54E.

*owners corporation* for a strata scheme means the owners corporation for the strata scheme constituted under the *Strata Schemes Management Act 1996*.

*strata building* means a building containing a lot or part of a lot that is the subject of a strata scheme.

*strata scheme* means a strata scheme under the *Strata Schemes (Freehold Development) Act 1973* or a leasehold strata scheme under the *Strata Schemes (Leasehold Development) Act 1986*.

### 54D Environmental upgrade agreement

- (1) A council may enter into an environmental upgrade agreement with a building owner and a finance provider in relation to a building.
- (2) An *environmental upgrade agreement* is an agreement under which:
  - (a) a building owner agrees to carry out environmental upgrade works in respect of a building, and
  - (b) a finance provider agrees to advance funds to the building owner to finance those environmental upgrade works, and
  - (c) the council agrees to levy a charge on the relevant land for the purpose of repaying the advance to the finance provider.
- (3) A building owner is a person who is the owner of the land on which the building is erected.

- (4) For a building erected on land that is the subject of a strata scheme, the owners corporation for the strata scheme is taken to be the building owner.
- (5) The function of entering into an environmental upgrade agreement can be delegated by a council only to the general manager of the council. The delegation must specify the building or buildings to which the delegation relates.
- (6) Other persons may also be party to an environmental upgrade agreement.

**54E What are environmental upgrade works?**

- (1) For the purposes of this Part, *environmental upgrade works* are works to improve the energy, water or environmental efficiency or sustainability of the building to which the agreement relates.
- (2) Environmental upgrade works include any works declared by the regulations to be environmental upgrade works.
- (3) Environmental upgrade works do not include any works declared by the regulations to be excluded works.
- (4) More than one environmental upgrade agreement may be entered into in relation to the same environmental upgrade works.

**54F Buildings that can be subject of environmental upgrade agreement**

- (1) An environmental upgrade agreement must relate to an existing building (that is, a building that is complete and ready for lawful use and occupation at the time the agreement is entered into).
- (2) The building must be a non-residential building or a strata building that is the subject of a multi-residence scheme.
- (3) A non-residential building is a building used wholly or predominantly for commercial, industrial or other non-residential purposes.
- (4) A multi-residence scheme is a strata scheme comprising more than 20 lots (disregarding utility lots and lots used for parking).
- (5) The building must be located in the council's area at the time that the agreement is entered into.

**54G Contents of environmental upgrade agreement**

- (1) An environmental upgrade agreement must specify the following:
  - (a) the environmental upgrade works to be carried out by or on behalf of the building owner under the agreement,
  - (b) the amount of the advance or advances to be made by the finance provider under the agreement,
  - (c) the arrangements for repayment of the advance or advances (the *agreed repayment arrangements*).
- (2) The agreed repayment arrangements may require the council to levy a charge (an *environmental upgrade charge*) for the purpose of discharging the building owner's obligation to repay the advance or advances made by the finance provider under the agreement (including any interest or other charges payable under the agreement).
- (3) The agreed repayment arrangements must specify:
  - (a) the amount of the environmental upgrade charge or charges to be levied by the council under the agreement (or a method for calculating the amount of the charge or charges), and
  - (b) the date or dates on which the charge or charges are to be levied by the council, and
  - (c) any adjustments to be made to the charge or charges in the event of late payment.
- (4) Money paid to a council in respect of an environmental upgrade charge is to be paid by the council to the finance provider in accordance with the environmental upgrade agreement.
- (5) An environmental upgrade agreement may permit the early repayment of any amount payable under the agreement.
- (6) An environmental upgrade agreement must be in writing.
- (7) An environmental upgrade agreement may include any other provisions agreed to by the parties.
- (8) An environmental upgrade agreement may be varied or terminated by further agreement between the council, the finance provider and the building owner for the time being.

**54H Council fees under agreement**

- (1) An environmental upgrade agreement may authorise a council to deduct from any money paid in respect of an environmental upgrade charge, and retain, as a council fee:
  - (a) a service fee, being a fee to cover any costs incurred by the council in entering into, or administering, the agreement, and
  - (b) a late payment fee, being the amount, or a part of the amount, charged under the agreement for late payment of an environmental upgrade charge.
- (2) The environmental upgrade agreement must specify the amount of, or a method for calculating, any such council fee.
- (3) Part 10 of Chapter 15 does not apply in respect of a council fee charged under an environmental upgrade agreement.
- (4) However, section 610D applies to the service fee component of the council fee.

**54I Power to levy environmental upgrade charge**

- (1) A council may levy an environmental upgrade charge in accordance with an environmental upgrade agreement.
- (2) An environmental upgrade charge may be levied only on the land on which the building to which the environmental upgrade agreement relates is erected or, in the case of a strata building, the land that is the subject of the relevant strata scheme.

**54J Application of other charge provisions to environmental upgrade charge**

- (1) The relevant provisions apply in respect of an environmental upgrade charge in the same way as they apply in respect of a charge levied under Chapter 15.
- (2) The *relevant provisions* are the following provisions:
  - (a) Chapter 15—sections 543, 544, 545, 546 (1), (3), (4) and (5), 550, 561, 569, 571, 573, 602 and 603,
  - (b) Chapter 17—sections 695, 696 and 712 and Division 5 of Part 2.
- (3) The relevant provisions apply with the following modifications:
  - (a) in section 545, a reference to a provision of Part 4 of Chapter 15 is taken to include a reference to a provision of this Part,

- (b) in section 550, a reference to a rate or charge levied under this Act is taken to include a reference to any amount charged under an environmental upgrade agreement for late payment of an environmental upgrade charge.
- (4) The regulations may further apply, disapply or modify the operation of any provision of this Act that relates to charges levied by a council in respect of an environmental upgrade charge.

**54K Special provisions relating to strata buildings**

- (1) An environmental upgrade charge that is levied in respect of land that is the subject of a strata scheme is payable by the owners corporation for that strata scheme.
- (2) This section has effect despite section 561, as applied by this Part.
- (3) An owners corporation may determine whether environmental upgrade charges are to be paid from its sinking fund or its administrative fund.
- (4) An owners corporation for a strata scheme must, on the request of an owner of a lot that forms part of the strata scheme, provide to the owner a copy of any environmental upgrade agreement that relates to premises the subject of the strata scheme.
- (5) The regulations may disapply or modify the operation of any provision of the *Strata Schemes Management Act 1996* in relation to environmental upgrade charges.

**54L Payment of environmental upgrade charge**

- (1) An environmental upgrade charge is to be paid within 28 days after notice of the charge is served on the person liable to pay it.
- (2) When an environmental upgrade charge is paid to a council, the council may deduct from the payment, and retain, any amount that the council is authorised to deduct and retain as a council fee under the agreement.
- (3) Money paid to a council in respect of an environmental upgrade charge, other than any council fee retained by the council, must be held, pending its payment to the finance provider to which it is to be paid, in the council's trust fund in trust for the finance provider.
- (4) A separate account is to be established in the council's trust fund for money paid in respect of environmental upgrade charges.



- (5) Money paid to a council in respect of an environmental upgrade charge does not form part of the council's general income under Part 2 of Chapter 15.

**54M Liability of council to recover charge**

- (1) A council must use its best endeavours to recover an environmental upgrade charge in accordance with any requirements imposed on it by an environmental upgrade agreement.
- (2) However, a council is not liable for any failure by a person to pay an environmental upgrade charge or part of an environmental upgrade charge.
- (3) Accordingly, any such failure does not make the council liable to pay the outstanding amount to the finance provider.

**54N Recovery of contributions from lessees**

- (1) A provision of a lease may require a lessee to pay to the lessor a contribution towards an environmental upgrade charge payable under an environmental upgrade agreement that relates to premises that are the subject of the lease.
- (2) The amount recoverable by the lessor as a contribution must not exceed a reasonable estimate of the cost savings to be made by the lessee, as a consequence of the environmental upgrade works provided for by the environmental upgrade agreement, during the period to which the contribution relates.
- (3) An environmental upgrade agreement may make provision for the recovery of contributions by a lessor (including by providing for the methodology by which the cost savings to be made by a lessee are to be estimated), in which case a contribution is recoverable only in accordance with that agreement.
- (4) The methodology may permit both savings made directly by the lessee and a proportion of savings made by all occupants of the relevant building to be counted towards the cost savings made by the lessee.
- (5) The parties to a lease may agree that subsections (2)–(4) do not apply in respect of the lease. In such a case, the lease may make alternative provision for the payment by the lessee of a contribution towards an environmental upgrade charge payable under an environmental upgrade agreement.
- (6) A lessor is not entitled to recover a contribution from a lessee towards the payment of an environmental upgrade charge unless

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the lessor provides to the lessee, on request by the lessee, a copy of the environmental upgrade agreement to which the contribution relates.

- (7) This section applies despite section 23 of the *Retail Leases Act 1994* and section 40 of the *Residential Tenancies Act 2010*.
- (8) To avoid doubt, a contribution referred to in this section is an outgoing for the purposes of the *Retail Leases Act 1994*.  
**Note.** See, in particular, section 27 of the *Retail Leases Act 1994*.
- (9) The regulations may make further provision for or with respect to the making of contributions towards environmental upgrade charges by lessees.
- (10) In particular, the regulations may disapply or modify the operation of any provision of the *Retail Leases Act 1994* or the *Residential Tenancies Act 2010* in relation to any such contribution.
- (11) In this section:  
*lease* means an agreement under which a person grants to another person for value a right of occupation of premises.

**54O Agreements to be made on a voluntary basis**

- (1) Entry into an environmental upgrade agreement is voluntary.
- (2) A council must not require a person to enter into an environmental upgrade agreement, whether as a condition of a development consent or a requirement of an order under the *Environmental Planning and Assessment Act 1979* or by any other means.
- (3) This section does not prevent a planning agreement under the *Environmental Planning and Assessment Act 1979* making provision for entry into an environmental upgrade agreement.

**54P Reporting requirements**

- (1) A council must include particulars of any environmental upgrade agreement entered into by the council in its annual report, in accordance with any requirements imposed under section 406.
- (2) The Director-General is to consult with the Director-General of the Department of Environment, Climate Change and Water regarding the requirements that are to apply under that section in respect of environmental upgrade agreements.

- (3) A council is authorised to disclose information about any environmental upgrade agreement to which it is a party to the Director-General of the Department of Environment, Climate Change and Water.
- (4) A council is required to disclose any information about an environmental upgrade agreement to which it is a party that is requested by the Director-General of the Department of Environment, Climate Change and Water.

**54Q Guidelines**

- (1) The Minister for Climate Change and the Environment may, with the concurrence of the Minister administering this Act, from time to time prepare, adopt or vary guidelines relating to environmental upgrade agreements and the functions of councils under this Part.
- (2) In particular, the guidelines may specify provisions that may be included in an environmental upgrade agreement with respect to:
  - (a) the making of contributions by lessees towards environmental upgrade charges payable under an agreement (including by providing for the methodology by which the cost savings to be made by a lessee as a consequence of environmental upgrade works are to be estimated), and
  - (b) progress or implementation reports to be made by a building owner under an environmental upgrade agreement.
- (3) The methodology may permit both savings made directly by the lessee and a proportion of savings made by all occupants of the relevant building to be counted towards the cost savings made by the lessee.
- (4) A council must take the guidelines into consideration before exercising any of its functions under this Part.
- (5) The regulations may adopt the guidelines, or any part of the guidelines, as mandatory requirements.
- (6) A council must comply with any mandatory requirements of the guidelines in exercising its functions under this Part.
- (7) Guidelines made under this section are to be published in the Gazette.

**54R Changes to council area**

The functions of a council under an environmental upgrade agreement may be exercised by any council to which the assets, rights and liabilities of the council with respect to the agreement are transferred by proclamation referred to in section 213.

**[2] Section 55 What are the requirements for tendering?**

Insert at the end of section 55 (3):

- a contract that is an environmental upgrade agreement (within the meaning of Part 2A)

**[3] Schedule 8 Savings, transitional and other provisions consequent on the enactment of other Acts**

Insert at the end of clause 1 (1):

*Local Government Amendment (Environmental Upgrade Agreements) Act 2010*

**[4] Schedule 8, Part 33**

Insert after Part 32:

**Part 33 Provisions consequent on enactment of  
Local Government Amendment  
(Environmental Upgrade Agreements) Act  
2010**

**98 Effect of environmental upgrade agreement on existing leases**

- (1) A term of a lease entered into before the commencement of section 54N, as inserted by the *Local Government Amendment (Environmental Upgrade Agreements) Act 2010*, that requires a lessee to pay to the lessor any charge payable by the lessor to a council under Chapter 15 is taken to also require the lessee to pay to the lessor a contribution towards any environmental upgrade charge payable under any environmental upgrade agreement that relates to the premises that are the subject of the lease.
- (2) Section 54N applies in respect of the contribution.
- (3) The contribution is to be paid on the date or dates on which a charge under Chapter 15 is payable or as otherwise agreed by the parties to the lease.

- (4) This clause does not prevent the parties to a lease agreeing to a variation of the term provided for by this clause, or agreeing that the term does not apply.

**99 References to Residential Tenancies Act 2010**

A reference in Part 2A of Chapter 6, as inserted by the *Local Government Amendment (Environmental Upgrade Agreements) Act 2010*:

- (a) to the *Residential Tenancies Act 2010* includes a reference to the *Residential Tenancies Act 1987*, and
- (b) to section 40 of the *Residential Tenancies Act 2010* includes a reference to section 19 of the *Residential Tenancies Act 1987*.