



New South Wales

Local Government Amendment (Environmental Upgrade Agreements) Bill 2010

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Local Government Act 1993* (the *principal Act*) to authorise councils to enter into environmental upgrade agreements with building owners and finance providers.

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 (that is, 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) the advance is repaid by means of a charge on the relevant land that is levied by the council.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Local Government Act 1993 No 30

Schedule 1 [1] makes the amendment described in the Overview.

In addition to authorising a council to enter into an environmental upgrade agreement, the amendment makes provision for the following:

- (a) the buildings that can be the subject of an environmental upgrade agreement (commercial buildings and strata buildings),
- (b) the types of works that can be authorised by an environmental upgrade agreement,
- (c) requirements as to the content of environmental upgrade agreements.

The amendment authorises a council to levy a charge (an *environmental upgrade charge*) in respect of the land on which a 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.

Money paid to the council in respect of an environmental upgrade charge is to be paid by the council to the finance provider under the environmental upgrade agreement, after deduction of any council fees that the council is authorised to retain.

The amendment applies various provisions of the principal Act that relate to the levying and payment of charges on rateable land to an environmental upgrade charge. This means that the charge will be recoverable against any occupier of the land on which it is charged.

In relation to strata buildings, the amendment requires the owners corporation for the building to pay the environmental upgrade charge.

An environmental upgrade charge must be paid within 28 days after notice of the charge is served on the person liable to pay it. A council must hold the charge, pending its payment to the finance provider, in a separate account in its trust fund.

A council is to use its best endeavours to recover a charge, but a failure by a person to pay the charge does not make the council liable to pay the charge to a finance provider.

The amendment also allows a provision of a lease to require a lessee to pay to the lessor a contribution towards an environmental upgrade charge payable under an environmental upgrade agreement that relates to the premises that are the subject of the lease. 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. An environmental

upgrade agreement may make provision for the methodology for determining those cost savings. However, the parties to a lease may agree on a different method of calculation of the lessee's contribution.

Entry into an environmental upgrade agreement is voluntary, and a council cannot require a person to enter into an agreement, whether by condition of a development consent, order or otherwise.

The amendment also requires a council to include information relating to environmental upgrade agreements in its annual report and authorises a council to provide information to the Director-General of the Department of Environment, Climate Change and Water.

The Minister for Climate Change and the Environment may, with the concurrence of the Minister administering the principal Act, make guidelines relating to environmental upgrade agreements and the functions of councils under the new provisions. In particular, the guidelines may make provision for the terms that may be included in environmental upgrade agreements with respect to the recovery of contributions towards environmental upgrade charges by lessees and the progress or implementation reports to be made by a building owner under an agreement. The regulations may make any of these requirements mandatory requirements.

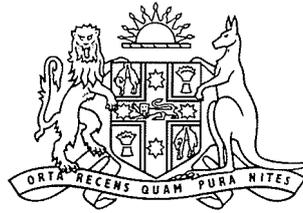
The amendment also makes it clear that the functions of a council under an environmental upgrade agreement may be exercised by any council to which the assets, rights and liabilities of the council entering the agreement are transferred (for instance, in the event of a change to the council's area).

Schedule 1 [2] provides that the public tendering requirements do not apply in respect of an environmental upgrade agreement.

Schedule 1 [3] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [4] provides for transitional matters. In particular, the amendment makes it a term of any existing lease that already requires the lessee to pay council charges that the lessee pay a contribution towards environmental upgrade charges in accordance with the arrangements for contributions referred to above. However, the parties to a lease may agree that a contribution is not required.

First print



New South Wales

Local Government Amendment (Environmental Upgrade Agreements) Bill 2010

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New South Wales

Local Government Amendment (Environmental Upgrade Agreements) Bill 2010

No. , 2010

A Bill for

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

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Local Government Amendment (Environmental Upgrade Agreements) Act 2010</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6

Schedule 1	Amendment of Local Government Act 1993 No 30	1 2
[1] Chapter 6, Part 2A		3
Insert after Part 2:		4
	Part 2A Environmental upgrade agreements	5
54C	Definitions	6
	In this Part:	7
	<i>environmental upgrade agreement</i> —see section 54D.	8
	<i>environmental upgrade charge</i> —see section 54G.	9
	<i>environmental upgrade works</i> —see section 54E.	10
	<i>owners corporation</i> for a strata scheme means the owners corporation for the strata scheme constituted under the <i>Strata Schemes Management Act 1996</i> .	11 12 13
	<i>strata building</i> means a building containing a lot or part of a lot that is the subject of a strata scheme.	14 15
	<i>strata scheme</i> means a strata scheme under the <i>Strata Schemes (Freehold Development) Act 1973</i> or a leasehold strata scheme under the <i>Strata Schemes (Leasehold Development) Act 1986</i> .	16 17 18
54D	Environmental upgrade agreement	19
	(1) A council may enter into an environmental upgrade agreement with a building owner and a finance provider in relation to a building.	20 21 22
	(2) An <i>environmental upgrade agreement</i> is an agreement under which:	23 24
	(a) a building owner agrees to carry out environmental upgrade works in respect of a building, and	25 26
	(b) a finance provider agrees to advance funds to the building owner to finance those environmental upgrade works, and	27 28
	(c) the council agrees to levy a charge on the relevant land for the purpose of repaying the advance to the finance provider.	29 30 31
	(3) A building owner is a person who is the owner of the land on which the building is erected.	32 33

(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.	1 2 3
(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.	4 5 6 7
(6)	Other persons may also be party to an environmental upgrade agreement.	8 9
54E	What are environmental upgrade works?	10
(1)	For the purposes of this Part, <i>environmental upgrade works</i> are works to improve the energy, water or environmental efficiency or sustainability of the building to which the agreement relates.	11 12 13
(2)	Environmental upgrade works include any works declared by the regulations to be environmental upgrade works.	14 15
(3)	Environmental upgrade works do not include any works declared by the regulations to be excluded works.	16 17
(4)	More than one environmental upgrade agreement may be entered into in relation to the same environmental upgrade works.	18 19
54F	Buildings that can be subject of environmental upgrade agreement	20 21
(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).	22 23 24
(2)	The building must be a non-residential building or a strata building that is the subject of a multi-residence scheme.	25 26
(3)	A non-residential building is a building used wholly or predominantly for commercial, industrial or other non-residential purposes.	27 28 29
(4)	A multi-residence scheme is a strata scheme comprising more than 20 lots (disregarding utility lots and lots used for parking).	30 31
(5)	The building must be located in the council's area at the time that the agreement is entered into.	32 33

54G	Contents of environmental upgrade agreement	1
(1)	An environmental upgrade agreement must specify the following:	2
		3
(a)	the environmental upgrade works to be carried out by or on behalf of the building owner under the agreement,	4
		5
(b)	the amount of the advance or advances to be made by the finance provider under the agreement,	6
		7
(c)	the arrangements for repayment of the advance or advances (the <i>agreed repayment arrangements</i>).	8
		9
(2)	The agreed repayment arrangements may require the council to levy a charge (an <i>environmental upgrade charge</i>) 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).	10
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(3)	The agreed repayment arrangements must specify:	16
(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	17
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		19
		20
(b)	the date or dates on which the charge or charges are to be levied by the council, and	21
		22
(c)	any adjustments to be made to the charge or charges in the event of late payment.	23
		24
(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.	25
		26
		27
(5)	An environmental upgrade agreement may permit the early repayment of any amount payable under the agreement.	28
		29
(6)	An environmental upgrade agreement must be in writing.	30
(7)	An environmental upgrade agreement may include any other provisions agreed to by the parties.	31
		32
(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.	33
		34
		35

54H Council fees under agreement	1
(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:	2
(a) a service fee, being a fee to cover any costs incurred by the council in entering into, or administering, the agreement, and	3
(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.	4
(2) The environmental upgrade agreement must specify the amount of, or a method for calculating, any such council fee.	5
(3) Part 10 of Chapter 15 does not apply in respect of a council fee charged under an environmental upgrade agreement.	6
(4) However, section 610D applies to the service fee component of the council fee.	7
54I Power to levy environmental upgrade charge	8
(1) A council may levy an environmental upgrade charge in accordance with an environmental upgrade agreement.	9
(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.	10
54J Application of other charge provisions to environmental upgrade charge	11
(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.	12
(2) The <i>relevant provisions</i> are the following provisions:	13
(a) Chapter 15—sections 543, 544, 545, 546 (1), (3), (4) and (5), 550, 561, 569, 571, 573, 602 and 603,	14
(b) Chapter 17—sections 695, 696 and 712 and Division 5 of Part 2.	15
(3) The relevant provisions apply with the following modifications:	16
(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,	17

(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.	1 2 3 4
(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.	5 6 7 8
54K	Special provisions relating to strata buildings	9
(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.	10 11 12
(2)	This section has effect despite section 561, as applied by this Part.	13
(3)	An owners corporation may determine whether environmental upgrade charges are to be paid from its sinking fund or its administrative fund.	14 15 16
(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.	17 18 19 20
(5)	The regulations may disapply or modify the operation of any provision of the <i>Strata Schemes Management Act 1996</i> in relation to environmental upgrade charges.	21 22 23
54L	Payment of environmental upgrade charge	24
(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.	25 26
(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.	27 28 29 30
(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.	31 32 33 34 35
(4)	A separate account is to be established in the council's trust fund for money paid in respect of environmental upgrade charges.	36 37

(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.	1 2 3
54M	Liability of council to recover charge	4
(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.	5 6 7 8
(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.	9 10 11
(3)	Accordingly, any such failure does not make the council liable to pay the outstanding amount to the finance provider.	12 13
54N	Recovery of contributions from lessees	14
(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.	15 16 17 18
(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.	19 20 21 22 23
(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.	24 25 26 27 28
(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.	29 30 31 32
(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.	33 34 35 36 37
(6)	A lessor is not entitled to recover a contribution from a lessee towards the payment of an environmental upgrade charge unless	38 39

	the lessor provides to the lessee, on request by the lessee, a copy of the environmental upgrade agreement to which the contribution relates.	1 2 3
(7)	This section applies despite section 23 of the <i>Retail Leases Act 1994</i> and section 40 of the <i>Residential Tenancies Act 2010</i> .	4 5
(8)	To avoid doubt, a contribution referred to in this section is an outgoing for the purposes of the <i>Retail Leases Act 1994</i> . Note. See, in particular, section 27 of the <i>Retail Leases Act 1994</i> .	6 7 8
(9)	The regulations may make further provision for or with respect to the making of contributions towards environmental upgrade charges by lessees.	9 10 11
(10)	In particular, the regulations may disapply or modify the operation of any provision of the <i>Retail Leases Act 1994</i> or the <i>Residential Tenancies Act 2010</i> in relation to any such contribution.	12 13 14 15
(11)	In this section: <i>lease</i> means an agreement under which a person grants to another person for value a right of occupation of premises.	16 17 18
54O	Agreements to be made on a voluntary basis	19
(1)	Entry into an environmental upgrade agreement is voluntary.	20
(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 <i>Environmental Planning and Assessment Act 1979</i> or by any other means.	21 22 23 24 25
(3)	This section does not prevent a planning agreement under the <i>Environmental Planning and Assessment Act 1979</i> making provision for entry into an environmental upgrade agreement.	26 27 28
54P	Reporting requirements	29
(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.	30 31 32
(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.	33 34 35 36

(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.	1 2 3 4
(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.	5 6 7 8
54Q	Guidelines	9
(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.	10 11 12 13 14
(2)	In particular, the guidelines may specify provisions that may be included in an environmental upgrade agreement with respect to:	15 16
(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	17 18 19 20 21 22
(b)	progress or implementation reports to be made by a building owner under an environmental upgrade agreement.	23 24 25
(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.	26 27 28 29
(4)	A council must take the guidelines into consideration before exercising any of its functions under this Part.	30 31
(5)	The regulations may adopt the guidelines, or any part of the guidelines, as mandatory requirements.	32 33
(6)	A council must comply with any mandatory requirements of the guidelines in exercising its functions under this Part.	34 35
(7)	Guidelines made under this section are to be published in the Gazette.	36 37

54R	Changes to council area	1
	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 3 4 5
[2]	Section 55 What are the requirements for tendering?	6
	Insert at the end of section 55 (3):	7
	<ul style="list-style-type: none">a contract that is an environmental upgrade agreement (within the meaning of Part 2A)	8 9
[3]	Schedule 8 Savings, transitional and other provisions consequent on the enactment of other Acts	10 11
	Insert at the end of clause 1 (1):	12
	<i>Local Government Amendment (Environmental Upgrade Agreements) Act 2010</i>	13 14
[4]	Schedule 8, Part 33	15
	Insert after Part 32:	16
	Part 33 Provisions consequent on enactment of Local Government Amendment (Environmental Upgrade Agreements) Act 2010	17 18 19 20
98	Effect of environmental upgrade agreement on existing leases	21
(1)	A term of a lease entered into before the commencement of section 54N, as inserted by the <i>Local Government Amendment (Environmental Upgrade Agreements) Act 2010</i> , 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.	22 23 24 25 26 27 28 29
(2)	Section 54N applies in respect of the contribution.	30
(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.	31 32 33

Local Government Amendment (Environmental Upgrade Agreements)
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Schedule 1 Amendment of Local Government Act 1993 No 30

- (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. 1
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99 References to Residential Tenancies Act 2010 4

A reference in Part 2A of Chapter 6, as inserted by the *Local Government Amendment (Environmental Upgrade Agreements) Act 2010*: 5
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- (a) to the *Residential Tenancies Act 2010* includes a reference to the *Residential Tenancies Act 1987*, and 8
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- (b) to section 40 of the *Residential Tenancies Act 2010* includes a reference to section 19 of the *Residential Tenancies Act 1987*. 10
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