

What are your rights and obligations under an Environmental Upgrade Agreement?

Environmental Upgrade Finance (EUF) is a new and growing form of finance provided by major banks in Australia for commercial building upgrades that reduce operating costs and improve energy, waste or water efficiency or increase renewable energy. The key rights and obligations of building owners under the EUF financing agreement, known as an Environmental Upgrade Agreement (EUA) are outlined below.

Repayments		
Who do I borrow money from?	The owner borrows the costs of the environmental upgrade works from the finance provider. Funding is currently offered by three banks: NAB, ANZ and Bankmecu.	
Do I have to give notice to existing mortgagees before I sign an EUA?	<p><i>New South Wales</i></p> <p>The terms of your existing mortgages will determine whether or not you need to give notice of the EUA.</p>	<p><i>City of Melbourne</i></p> <p>You must give notice of the EUA to existing mortgagees, and provide details of your existing mortgages to council.</p>
How does the charge work?	The council places a special charge ('Environmental Upgrade Charge' or EUC) on the land on which the building is situated. The EUC provides security over the funds.	
Who do I repay the money to?	You repay the borrowed money to the council in the same way as you pay rates, and council pays back the finance provider.	
What other fees to I have to pay?	You will be required to pay administrative fees (these vary by council area), which can be included in the finance amount. You will also be liable to pay penalty interest if you make late payments.	
What if I default on my payments?	The council can charge penalty interest for payments that are made late. If you default on your payments, the council is required to use its enforcement powers to recover the charge and repay the finance provider. Council can issue proceedings and recover the charge, penalty interest and costs. The charge will be prioritised over any other non-council charges or encumbrances over the land	
Tenant contributions		
Can I recover any of the costs of the environmental upgrade works from my Tenant(s)?	<p><i>New South Wales</i></p> <p>You do not need to obtain the consent of tenants before entering an EUA, but you do have obligations to notify the tenant of the EUA.</p> <p>You can recover contributions under a lease term which requires the tenant to pay council rates and charges, or with specific agreement of the tenant through a new lease provision. The contributions must be no more than the expected cost savings attributable to the upgrade works for that period.</p>	<p><i>City of Melbourne</i></p> <p>You can not pass the cost through to the tenant without their consent to the imposition of the EUC. When seeking consent, you must give a notice to the tenant setting out:</p> <ul style="list-style-type: none"> • the total payments that the tenant would be required to pay; • a repayment schedule; and • the opportunity to consent or object. <p>The council must see evidence of tenant consent before it enters the EUA.</p>

<p>What if a Tenant defaults and the rent is outstanding?</p>	<p>Your obligation to pay the charge remains regardless of whether a tenant defaults. Your rights against the defaulting tenant would be determined by the terms of the particular lease.</p>	
<p>What if the energy cost savings are less than expected?</p>	<p><i>New South Wales</i></p> <p>The legislation requires that the tenant's contributions do not exceed a reasonable estimate of the cost savings attributed to the works during the relevant contribution period. Any unreasonable discrepancy would be in breach of the owner's legislative obligations and may also breach terms of the lease if they reflect this obligation.</p>	<p><i>City of Melbourne</i></p> <p>There is no legislative restriction regarding the reasonableness of tenant contributions.</p> <p>Any rights will depend on the terms of the lease and consent to the EUA.</p>
<p>Monitoring and reporting</p>		
<p>For energy upgrades, what assessments do I need to undertake prior to signing an EUA?</p>	<p>If the works involve upgrades to improve energy efficiency or increase renewable energy, you must:</p>	
<p>What are my reporting obligations?</p>	<p><i>New South Wales</i></p> <p>Undertake energy savings calculations that would comply with the Energy Savings Scheme Rule (as made under Part 9 Division 13 of the Electricity Supply Act from time to time).</p>	<p><i>City of Melbourne</i></p> <p>Undertake a Level 2 energy audit to verify that the work will deliver energy savings.</p>
<p>What if I want to sell or buy a building with an Environmental Upgrade Charge?</p>	<p>You must get the consent of the finance provider and the council to any sale or dealing in the land (other than leases). In some circumstances it is possible that consent may be refused. In this case, you can fully pay out the charge in order to be able to proceed with the proposed dealing. If you want to assign your obligations under the EUA, the purchaser would need to sign a deed poll agreeing to be bound by the terms of the EUA.</p>	
<p>What if I want to convert a building to a type that can't have an EUA?</p>	<p>In general, the charge will remain on the land until it is paid. If the conversion involves a dealing or subdivision of the land you will need the consent of the other parties to that dealing.</p>	



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