

Environmental Upgrade Agreements (EUAs) FREQUENTLY ASKED QUESTIONS*

FOR TENANTS

How will EUAs benefit tenants?

The benefits of more efficient, comfortable and environmentally friendly buildings to work in can be enjoyed by tenants as soon as the works are complete, including reduced day to day operating costs and energy bills.

Building owners can ask tenants to contribute towards the cost of the upgrade through an increase in council charges, as long as this amount does not exceed a reasonable estimate of the cost savings that tenants will gain from the upgrade. Tenants are encouraged to talk to their building management about how the environmental performance of their building can be improved.

Do building owners have to seek consent from tenants?

Under the NSW EUA legislation, building owners are not required to obtain the consent of tenants before they enter into an EUA. If the lease allows recovery of Council charges, then the building owner may require their tenants to contribute towards the repayment of the EUC. However, under the EUA legislation, building owners have an obligation to notify their tenants about the EUA and ensure tenants' contribution to the EUC remains reasonable. Please refer to the section on "What are the obligations of building owners towards their tenants?" for more information.

Do all leases allow building owners to seek contribution from tenants?

Not all leases will allow building owners to seek a EUC contribution from their tenants. Building owners may require tenants to pay a contribution to the EUC in two ways;

- By specific agreement through new lease provision, or
- By existing lease provisions requiring payment of councils rates or charges by the tenant.

What are the obligations of building owners towards their tenants?

When tenants have been requested to make a contribution to an Environmental Upgrade Charge (EUC), building owners are obliged to:

- When tenants request it in writing, provide tenants with relevant sections of the EUA
- Ensure that the contribution does not exceed a reasonable estimate of the cost savings gained by the tenants from the upgrade
- Ensure the calculation of the cost saving estimate complies with the methodology set out in the EUA Guidelines http://www.nsw.gov.au/sites/default/files/No_16_of_2011.pdf
- Provide tenants with the cost savings estimate and any subsequent amendment
- Amend the contribution if the cost savings estimate is no longer reasonable
- Provide an annual report to tenants as set out in the Template stating the actual cost savings achieved in the reporting year versus anticipated cost savings estimated for the period.

Building owners should refer to the full description of their obligations in the legislation and in the EUA. Please note, councils may impose additional obligations that building owners will need to comply to.

Do building owners have to seek contribution from their tenants?

No, building owners do not have to seek contribution from their tenants. They may choose to bear the full cost of repaying the loan and seek no contribution from their tenants or seek limited contributions.

What if tenants do not agree to pay the contribution?

If a tenant has signed a lease before the start of the EUA legislation on 18 February 2011 that requires the tenant to contribute to council charges, then the tenant is required to contribute to the Environmental Upgrade Charge (EUC).

Should tenants default on their contributions, the building owner remains liable for the payment of the EUC to the Council and for reconciling with tenants when and as appropriate.

If lease conditions do not require tenants to pay council's charges, then unless new lease conditions are negotiated, the building owners cannot require tenants to contribute to the EUC

What if prospective tenants don't agree to pay the contribution?

Energy efficiency retrofits will result in lower building operational costs that will be passed onto the tenant through competitive leasing rates. Building owners have the ability to structure tenancy agreements that include passing on the costs of the EUA loan, to ensure repayment. Accordingly, the tenancy agreement will have to be updated to include this condition. Like any commercial agreement, all parties have the capacity to negotiate elements of the terms and conditions of the lease. If the tenant does not agree to pay a contribution towards the Environmental Upgrade Charge (EUC), the building owner may decide not to proceed with the tenancy agreement. Building management will approach the tenancy market like they always have – promoting the benefits of the building, charging appropriate rates and negotiating terms and conditions.

What are the reporting requirements for building owners?

Building owners must submit a yearly report to tenants and local council. The report provides an update on the progress of the upgrade and states the actual cost savings achieved in the reporting year versus estimated cost savings estimated for the period. [The format of the report is included as an annexure in the Template].

Building owners must also notify the local council and finance provider within 45 days of completion of the works, following successful commissioning and testing. The notice must be prepared by a suitably qualified professional. Please note that local councils and finance providers may impose additional reporting requirements, as a part of their own policies, or as a part of the EUA agreed between the parties.

What if the cost saving estimates were incorrect? Could building owners still recover contributions?

In some instances, anticipated cost savings would not occur or would be delayed, for example due to project hold ups. Factors that affect the cost saving estimation could also change over time such as utility costs, climatic variations or opening hours.

Building owners have an obligation under the legislation to ensure that contributions do not exceed a reasonable estimate of the cost savings to be made by the tenants due to the upgrade works, during the period to which the contribution relates. Building owners would be in breach of their legal and contractual obligations if they ignored unreasonable discrepancies between estimates and actual cost savings.

What should tenants do if they disagree with the contribution they are charged?

Tenants need to check the information and calculations that their building owner should have provided them with (Link to the FAQ: 'What are the obligations of building owners towards their tenants?'). If this is not adequate, then tenants should approach their landlord to discuss the basis for the calculation of their contribution. Building owners have a legal obligation to ensure that the contributions are based on a reasonable estimate of the cost savings to their tenants. If this does not occur, then building owners must modify the contribution they require from their tenants. Tenants should contact the Fair Trading Information Centre on 13 32 20 or visit their nearest Fair Trading Centre if they are not satisfied with these outcomes.

***DISCLAIMER:** The information contained in these Frequently Asked Questions (FAQs) is based on the Environmental Upgrade Agreement legislation/Template. Specific councils or finance providers may impose additional obligations consistent with the legal framework and with the Template.

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