

South Australia

Local Government (Building Upgrade Agreements) Regulations 2016

under the *Local Government Act 1999*

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1—Short title

These regulations may be cited as the *Local Government (Building Upgrade Agreements) Regulations 2016*.

2—Commencement

These regulations will come into operation on the day on which the *Local Government (Building Upgrade Agreements) Amendment Act 2015* comes into operation.

3—Interpretation

In these regulations—

Act means the *Local Government Act 1999*.

4—Interpretation—definition of upgrade works

- (1) For the purposes of the definition of ***upgrade works*** in clause 1 of Schedule 1B of the Act, any of the following works in relation to a heritage building are prescribed:
 - (a) works for the purposes of maintaining, repairing, upgrading or reinstating the heritage significance of the building;
 - (b) works associated with compliance with requirements under the Building Code (within the meaning of the *Development Act 1993*) or the *Disability Discrimination Act 1992* of the Commonwealth;
 - (c) works for the purposes of facilitating the ongoing occupation of the building.

(2) In this regulation—

heritage building means a building suitable for occupation—

- (a) that is, or forms part of, a State Heritage Place under the *Heritage Places Act 1993*; or
- (b) designated as a place of local heritage under the *Development Act 1993*.

5—Prescribed buildings

For the purposes of clause 2(2) of Schedule 1B of the Act, a building on land that is used primarily for commercial, industrial or other non-residential purposes is a building of a prescribed kind.

6—Rate of penalty interest

For the purposes of clause 2(3) of Schedule 1B of the Act, the rate of penalty interest is to be determined as follows:

- (a) a fine of 2 per cent of the amount in arrears is payable;
- (b) on the expiration of each full month from the date on which an amount was due under the building upgrade agreement, penalty interest at the prescribed percentage of the amount in arrears (including the amount of any previous unpaid fine and interest from any previous month) accrues;
- (c) the *prescribed percentage* is calculated as follows:

$$P = \frac{CADR + 3\%}{12}$$

where—

P is the prescribed percentage;

CADR is the cash advance debenture rate for the financial year to which the calculation of the prescribed percentage relates.

7—Contents of agreement

- (1) For the purposes of clause 5(1)(f) of Schedule 1B of the Act, the following matters are prescribed:
 - (a) requirements designated by the Minister as mandatory requirements applying to the building owner relating to reporting to the parties to the building upgrade agreement on—
 - (i) the upgrade works, including the date of practical completion of the works; and
 - (ii) in the case of a building upgrade agreement involving environmental upgrade works—the environmental performance of the building in the first year after practical completion of the environmental upgrade works compared with such performance before the works, including—
 - (A) any improvements in the environmental performance of the building relating to the efficiency or consumption of energy or water; and

- (B) any other improvements in the environmental performance of the building resulting from the environmental upgrade works; and
 - (C) any cost savings resulting from the environmental upgrade works; and
 - (D) any environmental performance rating given by an accredited body designated by the Minister for the purposes of this subparagraph relating to the building;
- (b) requirements designated by the Minister as mandatory requirements applying to the parties to the building upgrade agreement relating to the use and disclosure of information provided in accordance with the agreement or in connection with Schedule 1B of the Act.
- (2) For the purposes of clause 5(3) of Schedule 1B of the Act, requirements under subregulation (1) prevail against other matters provided for in a building upgrade agreement to the extent of any inconsistency.
- (3) A requirement designated by the Minister under subregulation (1) may be published in such manner as the Minister thinks fit.

8—Special provisions relating to building subject to strata or community scheme

- (1) If a building upgrade charge payable under a building upgrade agreement relates to a building that is the subject of a strata scheme or community scheme—
- (a) the strata corporation or community corporation (as the case may be) may determine to pay the building upgrade charge—
 - (i) in the case of strata scheme or community scheme that has an administrative or sinking fund and where the corporation has determined to pay the charge from the administrative or sinking fund—from the administrative or sinking fund; or
 - (ii) in any other case—from the funds of the corporation; and
 - (b) if the building upgrade charge in respect of a particular unit (in the case of a strata scheme) or community lot (in the case of a community scheme) has been paid, the building upgrade charge in relation to which the payments were made ceases to be a charge on that unit or lot;
 - (c) the strata corporation or community corporation (as the case may be) must, on the request of a unit holder (in the case of a strata scheme) or lot owner (in the case of a community scheme), provide the unit holder or lot owner (as the case requires) with a copy of the building upgrade agreement.
- (2) For the purposes of subregulation (1)(b), a reference to the building upgrade charge in respect of a particular unit or community lot includes a reference to any portion of a late payment fee attributable to the unit or lot.

9—Sale of land for non-payment of building upgrade charge

For the purposes of clause 9(1) of Schedule 1B of the Act, the following provisions apply:

- (a) before a council sells the relevant land, the council must send a notice to the building owner stating—
 - (i) the amount for which the building owner is liable; and
 - (ii) the period for which that amount has remained unpaid; and
 - (iii) that if that amount is not paid in full within 1 month of service of the notice (or such longer time as the council may allow), the council intends to sell the land for non-payment;
- (b) if a council considers that it is unlikely that a notice sent under paragraph (a) would come to the attention of the building owner the council may effect service of the notice by—
 - (i) placing a copy of the notice in a newspaper circulating throughout the State; and
 - (ii) leaving a copy of the notice in a conspicuous place on the relevant land;
- (c) if the amount specified in a notice under paragraph (a) is not paid in full within the time allowed under that paragraph, the council may proceed to have the relevant land sold;
- (d) the sale will be by public auction (and the council may set a reserve price for the purposes of the auction);
- (e) an auction under this regulation must be advertised on at least 2 separate occasions in a newspaper circulating throughout the State;
- (f) if, before the date of an auction, the amount specified in a notice under paragraph (a) and the costs incurred by the council in proceeding under this regulation are paid to the council, the council must cancel the auction;
- (g) if an auction fails, the council may sell the relevant land by private contract for the best price that it can reasonably obtain.

10—Recovery of contribution towards building upgrade charge from lessee

- (1) Subject to subregulation (2), for the purposes of clause 12(3) of Schedule 1B of the Act, the following requirements apply to a lessor recovering a contribution from a lessee by virtue of an entitlement to recover contributions under clause 12(2)(b)(ii) of that Schedule:
 - (a) the lessor must provide the lessee with an annual report on the cost savings made by the lessee (calculated in accordance with the approved methodology) within 3 months of the end of the period to which the report relates;
 - (b) if the contributions of a lessee for a period exceed the cost savings made by the lessee during the period (calculated in accordance with the approved methodology)—
 - (i) the lessor must—

- (A) if the lessee requests that the excess amount of the contributions be refunded—refund the excess amount; or
 - (B) in any other case—adjust the next contribution payable so that the lessee receives a credit for the excess amount; and
 - (ii) the lessor must ensure that future contributions payable by the lessee are reduced to reflect the cost savings made by the lessee (and any payment made by a lessee in respect of a future contribution before the reduction must be refunded or credited to the lessee in accordance with subparagraph (i);
 - (iii) the lessor must not recover a contribution from a lessee until the upgrade works that give rise to the cost savings to which the contribution relates (or, if upgrade works involve 2 or more elements or stages, an element or stage of the upgrade works that gives rise to the cost savings to which the contribution relates) are completed;
 - (c) to avoid doubt, if the contributions of a lessee for a period are less than the cost savings made by the lessee during the period (calculated in accordance with the approved methodology), the lessor is not entitled to require the lessee to pay an additional contribution in respect of the period.
- (2) The lessor and lessee may agree that a requirement under subregulation (1)(a) or (b) does not apply, or applies with agreed modifications.
- (3) For the purposes of clause 12(3) of Schedule 1B of the Act, if—
- (a) a building upgrade charge is paid in full; or
 - (b) a building upgrade agreement is terminated,
- a lessor recovering a contribution from a lessee under clause 12 of that Schedule must inform the lessee of the full payment of the charge or termination of the agreement (as the case requires).

11—Register of building upgrade agreements

- (1) For the purposes of clause 13(2) of Schedule 1B of the Act, a register of building upgrade agreements kept by a council must include the following information in relation to each building upgrade agreement on the register:
- (a) the address of the building;
 - (b) a description of the upgrade works;
 - (c) the total value of the building upgrade charge;
 - (d) the duration of the agreement (including the date of execution and date on which the agreement expires).
- (2) A council must keep its register of building upgrade agreements up to date and, in particular, must ensure that—
- (a) a record (including the information required under this regulation) of a building upgrade agreement is entered on the register within 5 days after execution of the agreement; and
 - (b) a record of a building upgrade agreement is removed from the register within 5 days after—

- (i) the building upgrade charge is paid in full; or
 - (ii) the agreement is terminated,
- (whichever occurs first).

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council

on

No of 2016