



Environment

Local Government Association
of South Australia

A Guide to

Building Upgrade Finance

for

South Australian Councils

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Courtesies

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The LGA would also like to acknowledge the input provided by its member councils to the guide.

What is Building Upgrade Finance?

The Building Upgrade Finance (BUF) mechanism is largely an economic development initiative, with regeneration, environmental and greenhouse gas reduction overtones.

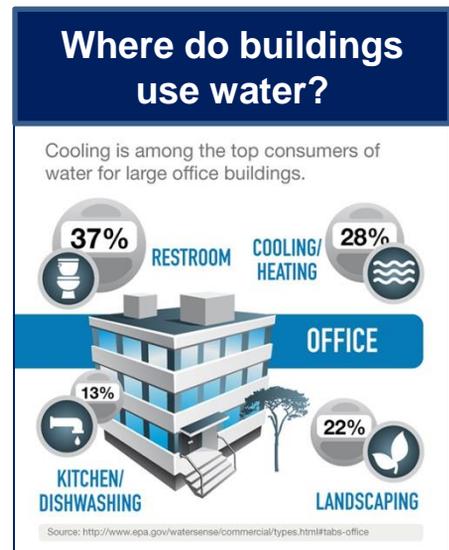
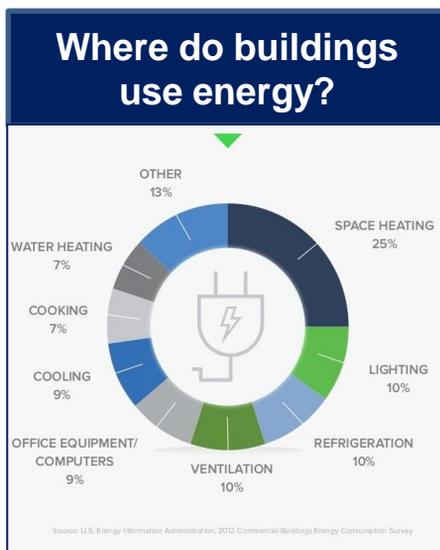
Under the BUF mechanism, a council, building owner and finance provider can **voluntarily** enter into a Building Upgrade Agreement (BUA).

Under this agreement:

- The building owner agrees to undertake environmental or heritage upgrade works on their (primarily non- residential) building.
- The finance provider agrees to advance money to the building owner for the purpose of funding the upgrade works.
- The council agrees to declare and levy a Building Upgrade Charge (BUC) against the land on which the building is situated.

The BUC is then paid by the building owner to the council as a repayment of finance. The council passes the repayment on to the finance provider once it is received from the building owner.

The debt is tied to the property not the owner. Therefore, if the building owner wants to sell the building and the purchaser agrees, the charge can be transferred to the new owner.



The barriers that often prevent building owners from investing in upgrades include:

- Access to the capital to fund upgrade projects in terms of short payback periods and unfavorable interest rates.
- Disincentives in relation to building owners incurring the cost of the upgrades and the tenant receiving the benefits through reduced utility bills and improved accommodation.

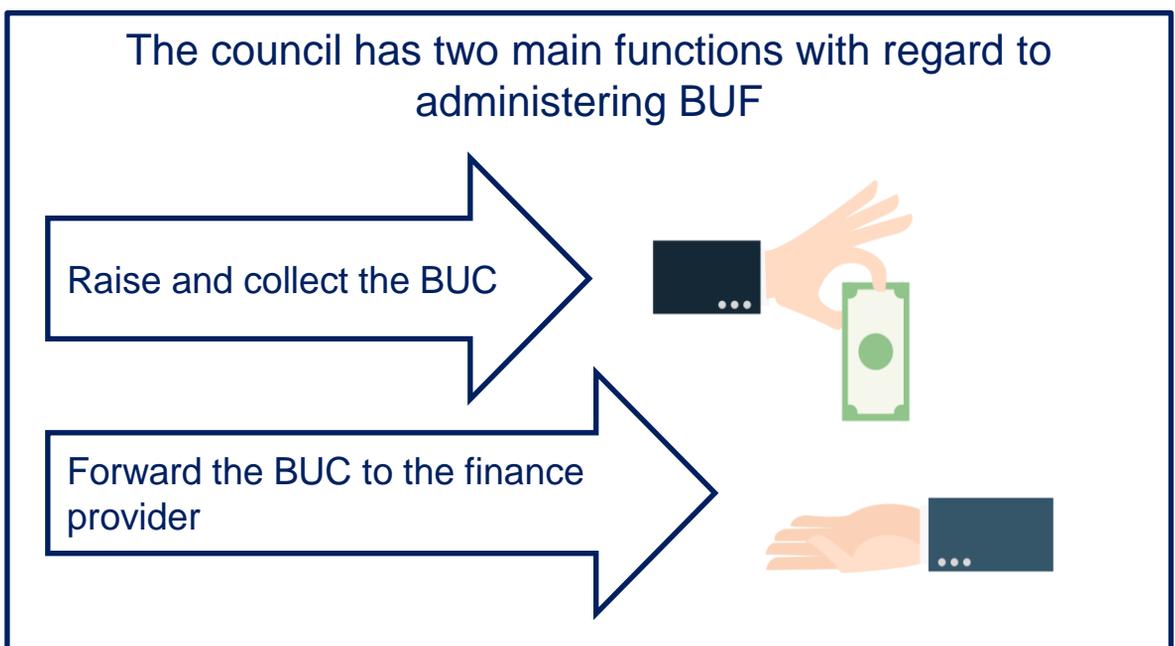
Diagram 1 overleaf demonstrates the differences between traditional finance and BUF, and how BUF overcomes barriers to building owners upgrading their buildings.

The diagram also demonstrates the relationship between the council, building owner and finance provider, plus the building owner and the tenant.

The building owner brokers the terms of the loan with the finance provider. The building owner also agrees on tenant contributions with the tenant.

A council need not be concerned about the terms of the loan apart from ensuring that the amounts are correctly inserted into the BUA. The council also does not need to concern itself with the agreement of tenant contributions, as this is solely between the building owner and the tenant.

A more detailed explanation of a council's role and the BUA can be found in Section 3.



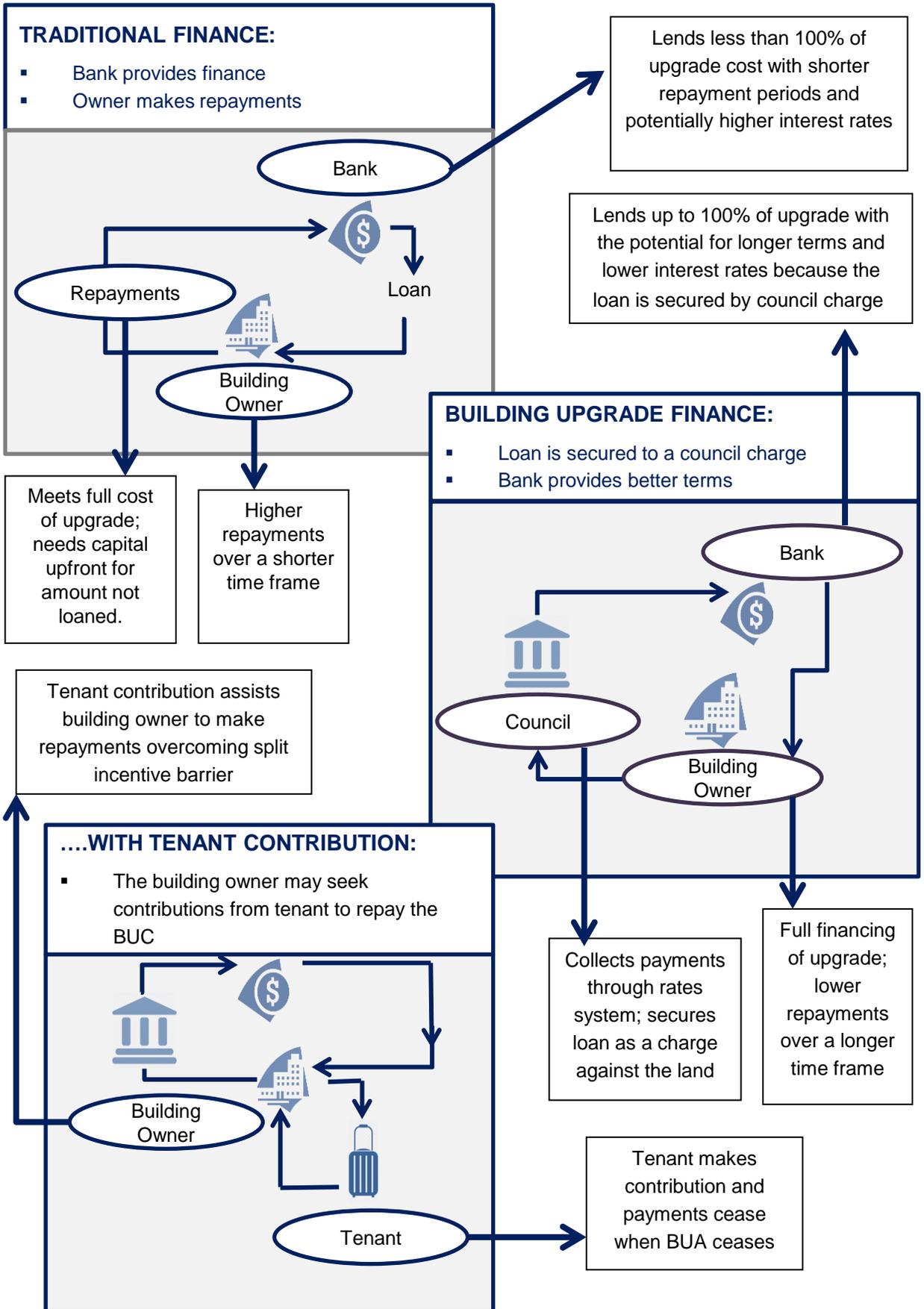


Diagram 1- Detailed machinations of the Building Upgrade Finance Mechanism

What are the benefits of Building Upgrade Finance?

Energy demand from the built environment is a major contributor to South Australia's greenhouse gas emissions.

Improving the energy and water efficiency of non-residential buildings by undertaking a range of upgrades that reduce electricity and water usage should deliver a range of community benefits that councils can unlock through offering BUF to local business owners.

BUF in South Australia also incorporates upgrades to heritage buildings, with the aim of reactivating empty heritage buildings and improving the performance of those already in use.

The state government has amended the *Local Government Act 1999* (LG Act) to enable the BUF mechanism to operate in South Australia to maximise these benefits.

The changes to the LG Act were made in response to advocacy from a range of stakeholders (including the Local Government Association of South Australia). More information on the legislative framework can be found in Section 5.

Benefits for Councils:

- ✓ Creating economic opportunities (activating underutilised premises).
- ✓ Rejuvenating business precincts.
- ✓ Attracting and retaining businesses and residents.
- ✓ Expanding rates base (upgrades may increase building values).
- ✓ Demonstrating social responsibility (by reducing carbon emissions).
- ✓ Providing an additional council service on a cost recoverable basis.
- ✓ Making heritage buildings more attractive for commercial purposes.
- ✓ Assisting in regeneration of urban environments.
- ✓ Contributing to the preservation of historical places.

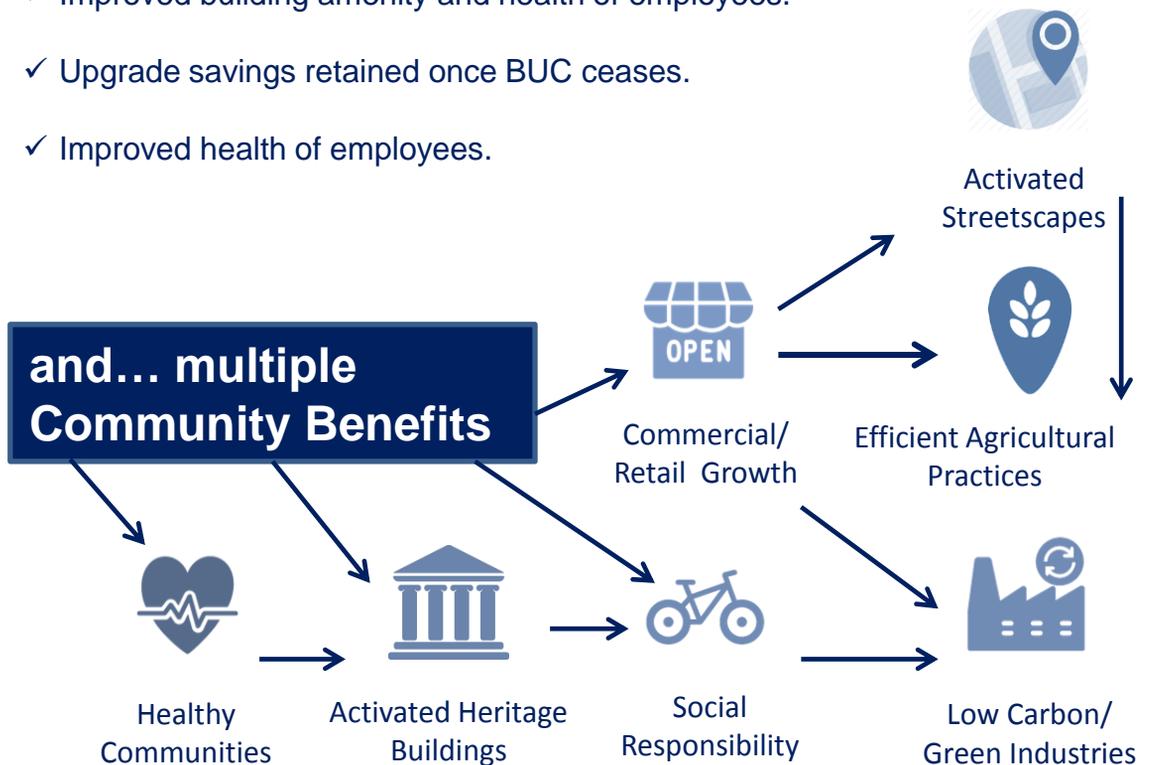
- ✓ Increasing building and disability code compliance.
- ✓ Delivering environmental benefits.

Building Owner Benefits:

- ✓ Up to 100% finance, removing the need for up-front capital.
- ✓ Longer loan terms (10-20 years).
- ✓ Reduced vacancy rates.
- ✓ The ability to share upgrade costs with tenants.
- ✓ Demonstrating social responsibility (by reducing carbon emissions).
- ✓ Structured payments that can stay on the land if ownership changes.

Tenant Benefits:

- ✓ Improved building amenity and health of employees.
- ✓ Upgrade savings retained once BUC ceases.
- ✓ Improved health of employees.



What is the role of councils in Building Upgrade Finance?

Council participation in BUF is **voluntary**.

However, a council must not enter into a BUA unless the building owner has notified all existing mortgagees of the intention to enter into a BUA, and that the value of the building upgrade charge combined with all debt against the property does not exceed 80% of the capital value of the land/ building/s prior to the upgrade.

A council should receive a statutory declaration from the building owner confirming this is the case before entering into a BUA.

The broad role of councils is to enter into BUA's and raise the BUC utilising existing rates processes, and then pass the payment on to the finance provider. A more detailed outline of a council's role is depicted in the diagram below.

A council must not delegate the power to enter into, or to vary or terminate, a building upgrade agreement except to the Chief Executive Officer (CEO).

The council administration may need to provide advice to the CEO and elected body on the following matters when seeking such delegation:

- Eligible buildings.
- Legislative requirements.
- Resource implications.
- Benefits and perceived risks.

Once a council makes the decision to opt in to BUF and offer BUA's, it is likely that Economic Development, Rates and Environmental Sustainability staff within councils will all play a part in offering BUF and administering BUA's.

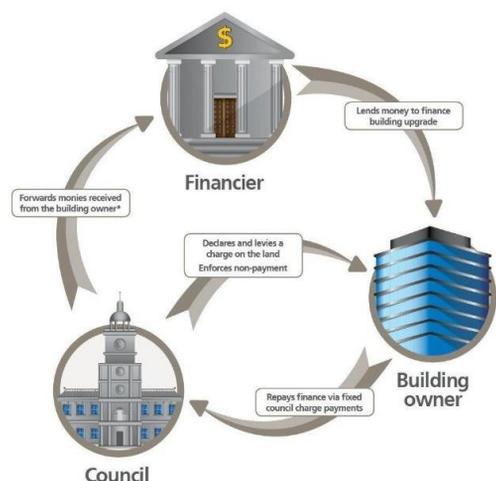


Diagram 2- Building Upgrade Finance Mechanism in simple terms

Operational aspects will be determined on a council by council basis, and will be supported by a Central Facilitator. Operational aspects are simplified in diagram 2 opposite. A more detailed depiction is provided in diagram 3 overleaf.

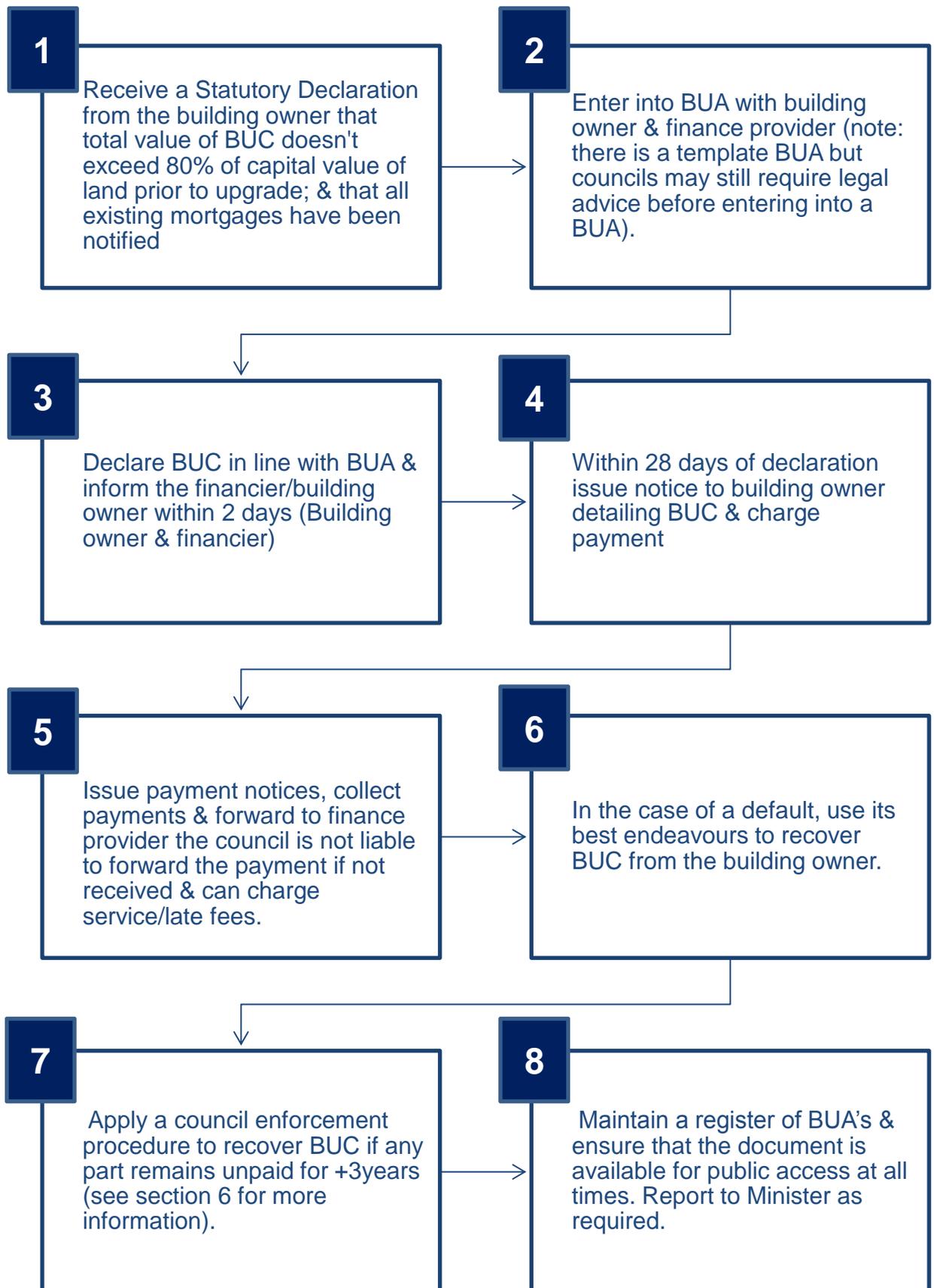
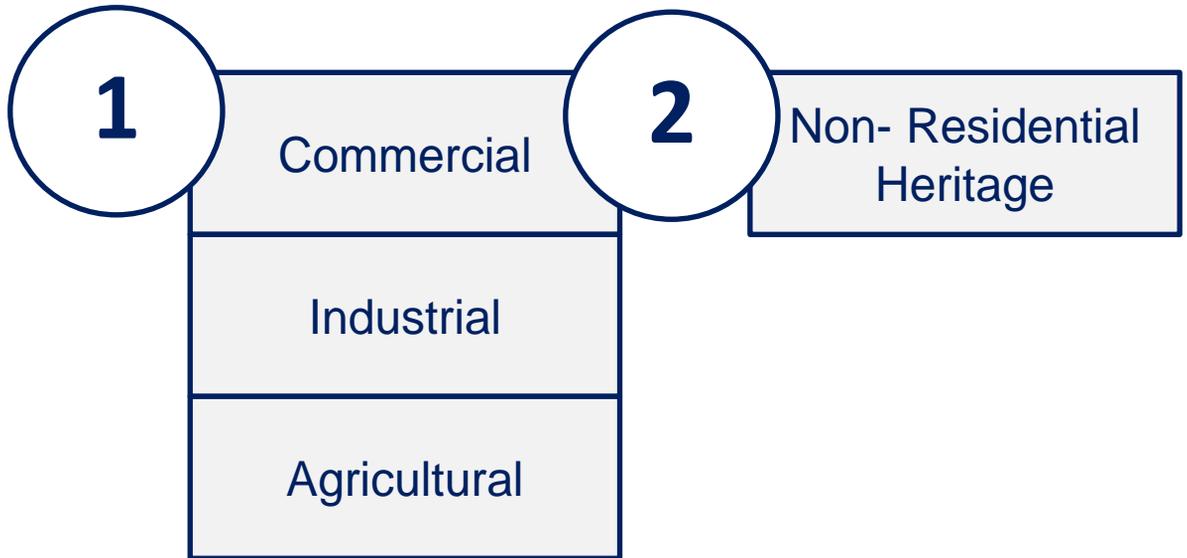


Diagram 3- Building Upgrade Finance Mechanism step-by-step for councils

What buildings are eligible for Building Upgrade Finance?

There are a broad range of buildings that are eligible to be upgraded utilising the BUF mechanism. These buildings must be at least 2 years post construction in age and fall within two categories:



Category 1: Commercial Buildings

Eligible buildings in this category include (but are not limited to):

Malls/ Shops

Hotels/ Motels

Offices

Case Study 1: Commercial Buildings to be advised



Photo courtesy of the Sustainable Melbourne Fund

A 380Kw tri-generation system is being installed at 123 Queen Street Melbourne.

It is expected that the system will provide annual savings of \$180,000 and 2,500 tonnes of carbon emissions.

Category 1: Industrial Buildings

Eligible buildings in this category include (but are not limited to):

Factories

**Processing
Plants**

**Storage
Facilities**

Case Study 2: Industrial Buildings to be advised



Photo courtesy of the NSW Dept of Environment & Heritage

A Glen Innes New South Wales printing business installed energy efficiency lighting & optimised its use of heating, ventilation and air conditioning.

For a capital investment of \$30,000, the upgrade achieved energy savings of \$220,000 per year.

Category 1: Industrial Buildings

Eligible buildings in this category include (but are not limited to):

Abattoirs

Wineries

Glass Houses

Additional Inclusions:

Buildings on non-rateable land and on Crown land (subject to the consent of the relevant Minister) are included in the mechanism. The building charge will be collected through the council's rating system in the same manner as any separate or special rate that applies to a non-rateable property.

Case Study 3: Agricultural Buildings to be advised



Photo courtesy of NSW Dept of Heritage & Environment

A New South Wales cotton farmer replaced a gas guzzling diesel engine with a solar diesel hybrid powered irrigation system with savings of 60% in diesel fuel consumption, which equates to \$46,000 per year.

Other eligible building types include:

- Churches.
- Educational institutions.
- Recreational facilities.
- Community halls.
- Libraries.

Category 1: Targeted Outcomes

Targeted outcomes for category 1 buildings are defined in the legislation as:

- Improvements to energy or water efficiency.
- Minimisation of waste to landfill through the reuse, recovery or recycling of materials.
- Prevention, reduction or elimination of pollution generated from the building.
- Tenants and business attraction and retention.

Category 1: Examples of Eligible Works

Efficient HVAC replacement

Energy efficient lighting replacement

Energy efficient glazing / external shading

Green or living roofs

Installation of renewable energy systems

Solar PV system (with or without storage)

Co-generation and tri-generation systems

Water efficiency systems

Waste infrastructure systems

Category 2: Heritage Buildings

Eligible buildings in this category include those that are on either a State or Local Heritage Register and predominantly non- residential.

For category 2 buildings, eligible works must achieve the following targeted outcomes:

- Enhancements that repair, maintain, or reinstate heritage significance.
- Improvements that result in Building Rules and Disability Code compliance.
- Modifications that facilitate the heritage building's activation or ongoing occupation.

Category 2: Examples of Eligible Works

Works associated with protection and preservation of building fabric

Equitable access upgrades in accord to the *Disability Discrimination Act*

Removal of later additions un-sympathetic to heritage significance

Service upgrades triggered by regulatory requirements

Reinstatement of missing heritage fabric

Sympathetic window replacement*

Sympathetic insulation installation*

Sympathetic installation of LED lighting*

Sympathetic installation of solar panels*

* In compliance with heritage building and planning codes

Where can I find the enabling legislation and support?

The legislative framework

The amendments to LG Act were inserted into the Act as Schedule 1B with consequential amendments being made to Sections 4, 44 and 187 and an amendment to Schedule 6.

The *Local Government (Building Upgrade Agreements) Regulations 2017* and Building Upgrade Agreement Template complete the legislative provisions. Diagram 4 below depicts the relationship between the legislative instruments.

The legislation principally applies to **building owners, finance providers** and **councils. Tenants** are included in the legislation in relation to recovery of contributions towards a **BUC**.

The 'No Worse Off' Methodology for estimating tenant cost savings has been developed to regulate tenant contributions recovered by the building owner. See Section 6 for more detail on the legislative framework.

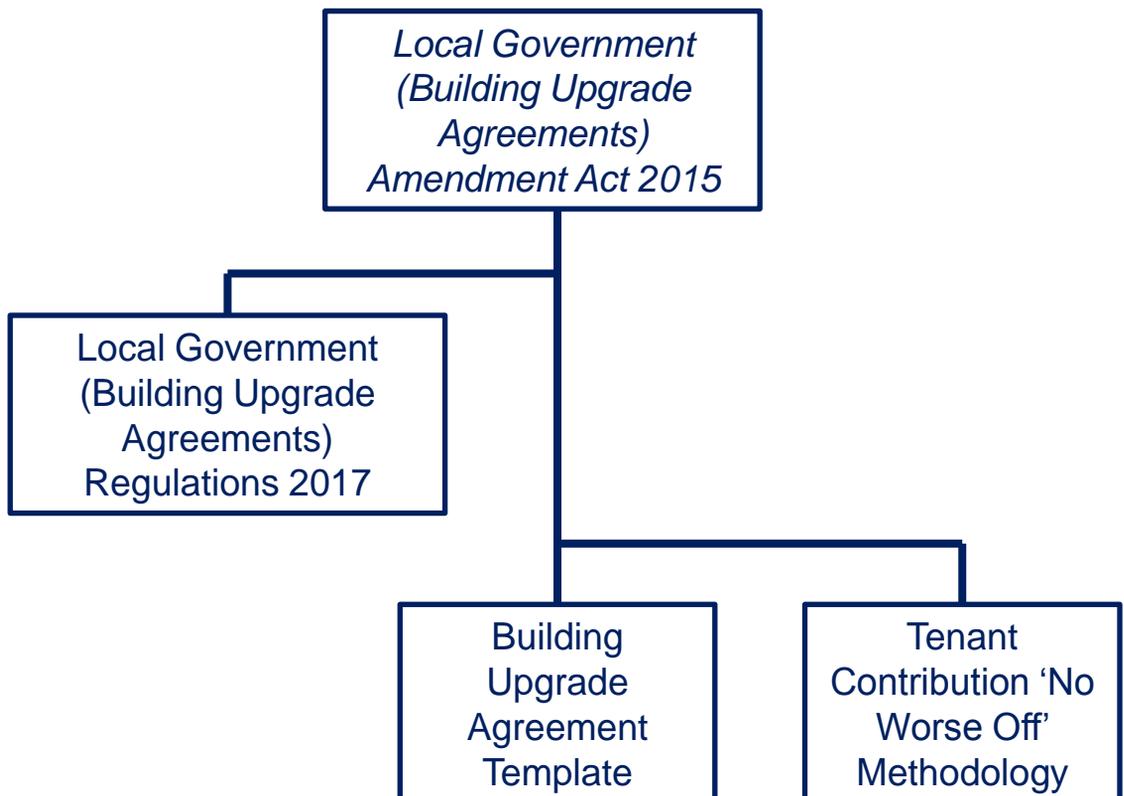


Diagram 4- Relationship between the legislative instruments

Hold for information about the Central Facilitator

Which parts of the legislation are relevant to councils?

The main aspects for a council to understand in relation to the legislation are the requirements of the **parties**, the **definition of a BUA** and a **BUC**.

The parties

The term **building owner** means:

- The **owner** of the relevant land on which the building is located.
- Community corporation (where a strata plan exists) or the owners of community lots (in relation to community schemes).
- Strata corporation (in relation to strata schemes).

In relation to land subject to the *Crown Land Management Act 2009*, if the Minister has delegated a person or body as the lessee of the land, the power to enter into, vary or terminate a BUA remains with that person or body.

The term **finance provider** is not specifically defined but broadly means any person or organisation providing finance to the **building owner**. The term **council** means a council constituted under the LG Act.

Building owners, finance providers and councils are termed the **primary parties**.

The building upgrade agreement

A BUA is an agreement between the **primary parties** where:

- A **finance provider** agrees to lend money to a building owner.
- A building owner agrees to undertake upgrade works on a building or buildings.
- A council agrees to levy a BUC on the land on which the building or buildings are located and to collect monies paid by the building **owner** to the **finance provider**.

A **BUA** may only be made:

- For eligible works in largely non-residential buildings whose construction was completed at least two years before the agreement is made.
- On a voluntary basis and cannot be a requirement of a development authorisation under the *Development Act 1993*.

A template BUA may be varied or terminated only by the **primary parties** to the agreement. A template BUA has been developed to assist councils in opting in to the mechanism.

A BUA must be in writing and include:

- Details of the upgrade work to be undertaken by the building owner.
- The amount of money to be advanced by the finance provider.
- The BUC to be levied by the council and a payment schedule.
- Information on the service and late payment fees payable to the council.
- Building owner reporting provisions.
- Disclosure and use of information provisions.

A BUA may include:

- Provisions relating to early payment.
- Other provisions agreed by the parties.

A **council** must not enter into a **BUA** unless the **building owner** has notified all existing mortgagees of the intention to enter into a BUA and provided the council with a Statutory Declaration confirming that the:

'total amount of taxes, rates, charges and mortgages **owing** on the relevant land...

...plus the **total value** of the **BUC** does not exceed 80% of the capital value of the land **prior to** carrying out the upgrade works'.

The power to enter into a **BUA** and declare and levy a **BUC** may only be delegated to the relevant **council CEO**.

Diagram 5 below can be used as a BUA content checklist.

<input checked="" type="checkbox"/>	Details of the upgrade works to be undertaken by the building owner
<input type="checkbox"/>	The amount of money to be advanced by the finance provider
<input type="checkbox"/>	The BUC to be levied by the council and a payment schedule
<input type="checkbox"/>	Information on the service and late payment fees payable to the council
<input type="checkbox"/>	Building owner reporting provisions
<input type="checkbox"/>	Disclosure and use of information provisions
<input type="checkbox"/>	To the owner of the land

Diagram 5- BUA Checklist

The state government worked with the LGA, property and finance sectors to develop a template BUA. The aim of the template is to reduce costs associated with entering into BUA and is consistent with the requirements of the LG Act and regulations.

However, the template should not negate the need for a council to seek legal advice before entering into a BUA.

The Building Upgrade Charge

A **BUC** is set out in the **BUA**. The **BUC** recovers the money advanced by the **finance provider** to the **building owner** and any interest or other financier charges.

A **council** may charge a **service fee** which 'covers any costs incurred by a council in entering into, and administering, a **BUA**'. A **council** may also recover late payment fees.

In the case of non-payment of the BUC, councils must use their 'best endeavours' to recover the BUC and may sell the land for non-payment if any part of the BUC remains unpaid for more than three years.

Each council will have different enforcement procedures and may under normal circumstances decide against taking enforcement action. However, in entering into a BUA, the building owner accepts that the council may exercise their right to sell the land for non-payment after three years.

Diagram 6 below shows the order in which proceeds from any sale of land are applied:

1	Council cost of sale
2	Any liabilities to the council in respect of the land
3	The liability to the council for the BUC services and late payment of fees
4	Any liability to Crown Land
5	Any liability secured by a registered mortgage encumbrance or charge
6	Other mortgages, encumbrances or charges
7	To the owner of the land

Diagram 6- Order in which proceeds from the sale of land will be allocated



**Further information can be provided
by the Building Upgrade Finance
Central Facilitator:**

To be confirmed