

9.2 Rescission of Building Upgrade Finance (using Environmental Upgrade Agreements) Policy

REPORT BY THE MANAGER PROPERTY AND REVENUE
TO 19 APRIL 2023 ORDINARY MEETING
GOV400103, EN200067

RECOMMENDATION

That Council:

1. **receive the report by the Manager Property and Revenue on the Rescission of Building Upgrade Finance (using Environmental Upgrade Agreements) Policy;**
2. **cease to offer Environmental Upgrade Agreements as provided for in accordance with the Local Government Act 1993;**
3. **endorse the proposal that the Building Upgrade Finance (using Environmental Upgrade Agreements) Policy, is proposed to be rescinded;**
4. **place notice on public exhibition for 28 days that the Building Upgrade Finance (using Environmental Upgrade Agreements) Policy, is proposed to be rescinded; and**
5. **rescind the Building Upgrade Finance (using Environmental Upgrade Agreements) Policy, if no submissions are received following the public exhibition period.**

Executive summary

The purpose of this report is for Council to review its offer to provide Environmental Upgrade Agreements (EUAs) and to consider rescinding the Building Upgrade Finance (using Environmental Upgrade Agreements) Policy (the Policy).

Disclosure of Interest

Nil

Detailed report

Council's resolution of 13/10/2021 endorsed the implementation of EUAs and directed appointment of a third-party provider to administer the EUAs (Minute 301-21). The appointment of a third-party provider was favoured as opposed to Council self-administration of the EUA process, as it was considered that most of the administration burden would be removed from Council and cost recovery measures for any staff time would be covered in a formalised *Services Agreement* with the third-party provider.

The Policy adopted by Council on 15/6/2022 was in response to these directions (Minute 178-22).

The report of 13/10/2021, Minutes and Policy are appended to this Report as Attachments 1, 2, 3 and 4, respectively.

Information has subsequently been received which indicates the appointment of a third-party provider will not satisfy all of Council's obligations as directed under the Local Government Act 1993 (LGA), Local Government (General) Regulation 2005 and other relevant legislation in relation to EUAs. The advice is appended as Attachment 5 to this Report.

In view of this information, it is considered it would not be prudent for Council to enter into a *Services Agreement* to appoint a third-party provider. The options now available are:

1. That Council continue to offer EUAs and carry out the administrative processes entirely, whereby –
 - Council would need to review all of the documentation and templates (provided by NSW Government), develop finance processes and legislative administration and would need to undertake the business, economic development and communication processes associated with offering the EUAs to the local business community and maintain these over a long period of time (up to 20-25 years).
 - A budget of \$50,000 would be required for implementation: consultancy advice and review of elements as listed in the dot point above, and then advice on eligibility etc. of any applications received and; for extra Council resources to maintain this system and progress and maintain any eligible/approved EUAs.
 - The level of cost-recovery fees (per application) which would need to be charged by Council would likely be prohibitive, making it untenable for local businesses to apply for EUAs. Assuming there are no applications or very few, the cost of implementation would then be borne by the wider community.
 - It is noted generally, that the uptake of EUAs within the few NSW local government areas that have endorsed the implementation has been minimal.
2. That Council cease to offer EUAs –
 - The benefits to Council and the business/building owners, as outlined in the 13/10/2021 report, may not be as readily realised.
 - The costs of implementation and sustaining the EUA process will not be applicable.

It is recommended that Council cease to offer EUAs and rescind the Policy.

Community Plan implications

Theme	Good Government
Goal	An effective and efficient organisation
Strategy	Prudently manage risks association with all Council activities

Strategic implications

Council Strategies

Not Applicable

Council Policies

Building Upgrade Finance (using Environmental Upgrade Agreements) Policy which is proposed to be rescinded.

Legislation

Local Government Act 1993

- Part 2A - Environmental Upgrade agreements
- s372 – Rescinding or altering resolutions

Local Government (General) Regulation 2005 – Part 5A Environmental Upgrade Agreements

Guidelines for Environmental Upgrade Agreements as published in the Government Gazette of NSW dated 18 February 2011 Mandatory Requirements 4-7

Guide – NSW Department Planning, Industry and Environment NSW Local Council's Building Upgrade Finance Guide – Building Upgrade Finance March 2020

Financial implications

If Council wishes to cease offering EUAs, no budget will be required.

If Council wishes to continue to offer EUAs, a budget of between \$50,000 would be required for implementation of the EUA process.

It should be noted that fees would need to be developed to be cost neutral, and any ongoing operational budget would require a revenue contra amount. At this stage, an estimate of ongoing budgets is difficult to calculate and a further report would be required after implementation is underway, should Council wish to endorse the continuation of the program.

Associated Risks

If Council wishes to cease offering EUAs there may be a risk that the benefits to Council and the business/building owners, as outlined in the 13/10/2021 report, may not be as readily realised.

If Council wishes to continue to offer EUAs –

- Legislative/operative risks will be negated as a third-party provider will not be appointed, instead the entirety of the EUA process will be conducted by Council.
- Cost recovery may not be achieved if there is no or low uptake of EUAs.

DIANE SAWYERS
MANAGER PROPERTY AND REVENUE

30 March 2023

- Attachments:*
1. Report to Council EUAs 13/10/2021. (separately attached)
 2. Minute 301-21 13/10/2021. (separately attached)
 3. Minute 178-22 15/6/2022. (separately attached)
 4. Building Upgrade Finance (using environmental Upgrade Agreements) Policy - adopted 15/6/2022. (separately attached)
 5. Information. (Confidential - separately attached)

APPROVED FOR SUBMISSION:

LEONIE JOHNSON
CHIEF FINANCIAL OFFICER