

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

REPORT BY THE MANAGER PROPERTY AND REVENUE  
TO 19 JULY 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; and**
2. **rescind the Building Upgrade Finance (using Environmental Upgrade Agreements) Policy.**

---

### Executive summary

The purpose of this report is for Council to finalise the process to rescind the Building Upgrade Finance (using Environmental Upgrade Agreements) Policy (the Policy).

### Disclosure of Interest

Nil

### Detailed report

Council's resolution of 19 April 2023 endorsed to cease to provide Environmental Upgrade Agreements and to rescind the Policy if no submissions were received (Minute 69/23).

The public exhibition period for the proposed Policy rescission was notified in the Mudgee Guardian and on Council's website seeking submissions from 21 April 2023 to 19 May 2023.

The attached letter, appended as Attachment 1, was received, but was not directed to the General Manager as a submission.

Upon consideration of the information in the letter, it is recommended that Council finalise this matter and formally rescind the Policy for the reasons provided in the council report on the 19 April 2023. It is noted that no submissions were received from parties interested in taking up an Environmental Upgrade Agreement.

### Community Plan implications

<b>Theme</b>	<b>Good Government</b>
--------------	------------------------

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Building Upgrade Finance (using Environmental Upgrade Agreements) Policy which is proposed to be rescinded.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

## Financial implications

Not Applicable

## Associated Risks

Not Applicable

DIANE SAWYERS  
MANAGER PROPERTY AND REVENUE

LEONIE VAN OOSTERUM  
CHIEF FINANCIAL OFFICER

19 June 2023

*Attachments:* 1. Letter 12-5-2023 Solar Australia.  
2. Building Upgrade Finance (using Environmental Upgrade Agreements) Policy.

### APPROVED FOR SUBMISSION:

BRAD CAM  
GENERAL MANAGER



12<sup>th</sup> May 2022

Dear Mayor Kennedy and Councillor Shelley,

It is truly a disappointing move that Mid-Western Council has passed a motion to rescind the establishment of an Environmental Upgrade Finance program. As a sustainability-focused business, I help business owners to save money while reducing their environmental impact. This move shows that council will not take steps to support local businesses and will not take action to mitigate climate change that will have devastating impact on this community.

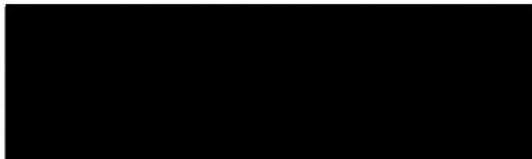
As a local installer, I was eagerly awaiting confirmation of your EUF program so that I could offer this form of finance to clients looking to undertake projects that improve their sustainability and reduce their business costs. One major challenge to businesses making sustainable building upgrades is access to cash and the impact on cashflow, which EUF mitigates. The decision to rescind the establishment of the program will have a material and financial impact on my business as clients who were hoping to use EUF to finance their project will be unable to proceed.

We were starting to get traction on significant technology developments for more sustainable farming – projects that are in excess of \$500,000 investment - of which this funding source is the only pathway for many.

It is extremely disappointing that business owners such as myself were not engaged in the decision-making process. I believe if you had consulted with the business community and sustainability providers, you would have found overwhelming support for the establishment of an EUF program.

As such, I request that Mid-Western Council strikes the motion to rescind their EUF program and that council shows their support for local businesses by establishing this form of finance.

Regards,

A large black rectangular redaction box covering the signature of Tim Dixon.

Tim Dixon

Managing Director

A black rectangular redaction box covering contact information, likely a phone number or email address.



## POLICY

### Building Upgrade Finance (using Environmental Upgrade Agreements)

*A prosperous  
and progressive  
community.*

ADOPTED		VERSION NO	1.1
COUNCIL MEETING MIN	178/22	REVIEW DATE	30 JUNE 2024
DATE:	15 JUNE 2022	FILE NUMBER	ENV200067, ENV200033

## Objective

The objective of the Building Upgrade Finance (using Environmental Upgrade Agreements) Policy (Policy) is to specify the circumstances under which Mid-Western Regional Council (Council) will enter into and administer an Environmental Upgrade Agreement (EUA) during the Trial Period.

## Scope

During the Trial Period, this Policy applies to:

- EUAs for existing buildings in the Mid-Western Council Local Government area
- parties such as building owners, finance provider and program administrator who are involved in the EUAs
- the time-frame commencing from the date upon which the Policy is endorsed by Council until 30 June 2024.

## Definitions

In this Policy –

- **building owner** – is a person who is the owner of the land on which the building proposed to be retrofitted is located
- **building upgrade finance (BUF)** – a loan secured against the rateable land on which the building proposed to be retrofitted is located. An EUC is levied by Council on the land to enable the repayment of funds advanced. BUF is accessed through an EUA
- **environmental upgrade agreement (EUA)** – an agreement between a finance provider, Council and a building owner for the environmental upgrade of an existing building and the provision of building upgrade finance in accordance with section 54D LGA
- **EUA Enforcement Procedure** – refers to the conditions and procedures cited in Council's Debt Management and Recovery Policy
- **EUA legislation** – comprises:
  - Local Government Act 1993 No 30 (LGA) – Part 2a Environmental Upgrade Agreements; and
  - Local Government (General) Regulation 2021 (REG) – Part 5A Environmental Upgrade Agreements; and
  - Guidelines for Environmental Upgrade Agreements (Guidelines) as published in the Government Gazette of NSW dated 18 February 2011

**POLICY: BUILDING UPGRADE FINANCE (USING ENVIRONMENTAL UPGRADE AGREEMENTS) | 1.1, 15 JUNE 2022**

- Guide – NSW department Planning, Industry and Environment NSW Local Council's Building Upgrade Finance Guide – Building Upgrade Finance March 2020
- **EUA Supporting Documents** – comprise:
  - The Building Upgrade Finance (using Environmental Upgrade Agreements) Policy; and
  - The EUA Enforcement Procedure; and
  - EUA Application Form; and
  - EUA Fees and Charges
- **environmental upgrade charge (EUC)** – see section 54G LGA
- **Environmental Upgrade Finance Program (EUFP)** - a program under which a finance provider, Council and a Building Owner facilitate the environmental upgrade works of an existing building and the provision of financial accommodation in accordance with sections 54D and 54G LGA.
- **environmental upgrade works (EUW)** – see section 54E LGA and regulation 136A REG
- **existing building** – see section 54F LGA
- **finance provider** – the institution advancing funds to the building owner to finance the EUW
- **program administrator** - an independent third-party service provider contracted to help Council establish and administer the BUF and EUA requirements
- **strata building** – means a building containing a lot or part of a lot that is the subject of a strata scheme
- **trial period** – commencing the date upon which the Policy is endorsed by Council until 31 May 2024 and during which time, a Program Administrator will be contracted

## Legislative requirements

- Local Government Act 1993 No 30 (LGA) – Part 2a Environmental Upgrade Agreements
- Local Government (General) Regulation 2021 (REG) – Part 5A Environmental Upgrade Agreements
- Guidelines for Environmental Upgrade Agreements (Guidelines) 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

## Related policies and plans

- Privacy Management Plan
- Debt Management and Recovery Policy
- Community Plan Implication – Protecting Our Natural Environment Strategy – support programs that create environmental awareness and promote sustainable living

## Policy

### 1. Building upgrade finance

Building Upgrade Finance enables Building Owners to access finance through a tripartite agreement known as an Environmental Upgrade Agreement.

The EUA Legislation provides the framework that authorises Council to enter into an EUA. An EUA is a voluntary agreement between a Building Owner, a Finance Provider and a council regarding the purpose, terms and collection process of the BUF, where:

- a Building Owner agrees to carry out Environmental Upgrade Works to a building (works to improve the energy, water, or environmental efficiency or sustainability of the building); and
- a Finance Provider agrees to advance funds to the Building Owner to finance those EUWs; and
- a council levies an EUC on relevant land in accordance with an agreed repayment schedule to enable the repayment of the funds advanced.

The purpose of an EUA is to encourage Building Owners to invest in EUW to their existing buildings by providing access to BUF at reduced interest and longer term finance.

1.1 Council will only accept and review EUA applications received for the following project scales during the course of the Trial Period:

- 1.1.1 two small projects (i.e. below \$50,000); and
- 1.1.2 two medium projects (i.e. between \$50,000 and \$100,000); and
- 1.1.3 one large project (i.e. above \$500,000).

1.2 Council reserves the right to reject any EUA application if the quotas in 1.1.1 to 1.1.3 have already been achieved during the course of the Trial Period.

1.3 Notwithstanding this Policy lapses on 30 June 2024, any the EUAs authorised by Council during the Trial Period will require Council being involved with the life of the BUF which has been authorised.

### 2. Roles

#### 2.1 Program Administrator

- 2.1.1 Council's appointed Program Administrator will assist in establishing the Environmental Upgrade Finance Program (EUFP) and work with Council to provide administrative services to facilitate Council meeting its obligations under the EUA Legislation.
- 2.1.2 All applications for EUAs initially assessed by the Program Administrator are required to be conducted in accordance with the EUA Legislation and Council's *Additional Eligibility Criteria* in cl 3 and, in conjunction with the standard financial and suitability for loan assessment by the Finance Provider.

#### 2.2 Council

- 2.2.1 Council will review and consider for authorisation EUA applications submitted by the Program Administrator; and

**POLICY: BUILDING UPGRADE FINANCE (USING ENVIRONMENTAL UPGRADE AGREEMENTS) | 1.1 , 15 JUNE 2022**

- 2.2.2 if an application is authorised by Council, a charge will be levied on the rateable land on which the building proposed to be retrofitted is located, for the whole amount funded by the Finance Provider to the Building Owner, plus a Council administration fee as set out in the EUA schedule of fees. This charge is known as the Environmental Upgrade Charge (EUC) and is levied on the commencement date of the EUA. The EUC takes priority (with rates) over all other debts on the land which is the subject of the EUA. The EUC is payable by the Building Owner on dates as specified in the EUA.
- 2.2.3 Council will facilitate the dispatchment of the Building Owner's payments to the Finance Provider.
- 2.2.4 If a Building Owner fails to pay any part of the EUA Charge as and when it falls due, Council will exercise its authority to recover the debt in accordance with the EUA Enforcement Procedure. Council is not liable for repayment of any or all of the EUA Charge to the Finance Provider.
- 2.2.5 Council delegates authority to the General Manager to:
  - 2.2.5.1 negotiate, execute and administer EUAs and to negotiate, execute and administer any variation for an existing EUA in the Mid-Western Regional Council's Local Government Area; and
  - 2.2.5.2 make and amend the EUCs under EUAs; and
  - 2.2.5.3 make and amend EUA Supporting Documents as required.

### 3. Eligibility

Council will only consider an application to enter an EUA if the following criteria are met and reserves the right to not participate in an EUA if compliance with EUA Legislation or any other criteria in this Policy is not satisfied. If Council does not participate, loan funds cannot be released by the Finance Provider.

#### 3.1 Environmental Upgrade Works

- 3.1.1 The proposed EUA works have complied with Council's development compliance requirements.
- 3.1.2 The proposed EUW complies with EUA Legislation.

#### 3.2 Value of the Land Must Exceed the EUC

- 3.2.1 The total amount of any EUC (including the cumulative amount if there is more than one EUA relating to the subject land) does not exceed the unimproved land value of the subject land as provided to Council by the Valuer General for rating and taxing purposes.

#### 3.3 Building

- 3.3.1 The Existing Building is located in the Mid-Western Regional Council area on rateable land.
- 3.3.2 The Existing Building must be used for non-residential purposes.
- 3.3.3 The Existing Building is not a strata building or company title that is subject to a strata scheme under the *Strata Schemes Development Act 2015*.



POLICY: BUILDING UPGRADE FINANCE (USING ENVIRONMENTAL AGREEMENTS) | 1.1, 15 JUNE 2022

3.3.4 There are no outstanding orders that have been issued in relation to the Existing Building pursuant to any legislation.

3.3.5 There are no unacceptable legal encumbrances.

3.4 Building Owner

3.4.1 The Building Owner agrees to be bound by the requirements of the EUA application form, Additional Conditions, the EUA Enforcement Procedure and this Policy.

3.4.2 The Building Owner must submit an EUA application directly to Council's Program Administrator.

3.4.3 The Building Owner has no current overdue debts to Council.

3.4.4 The Building Owner has no on-going dispute with Council.

3.4.5 The Building Owner has no history of late/defaulting payments owed to Council during the 5 year period preceding the date of the application referred by the Program Manager.

3.4.6 The Building Owner acknowledges and agrees that Council will not get involved in any dispute that may arise between the Building Owner and the Finance Provider or a tenant as to any matter relating to an EUA.

3.5 Finance Provider

3.5.1 The Finance Provider agrees to be bound by the requirements of the EUA application form, Additional Conditions, the EUA Enforcement Procedure and this Policy.

3.5.2 The Finance Provider must provide written confirmation that it has undertaken a credit assessment of the Owner and is satisfied that at the commencement date of the EUA the Owner is able to comply with its obligations under the EUA.