

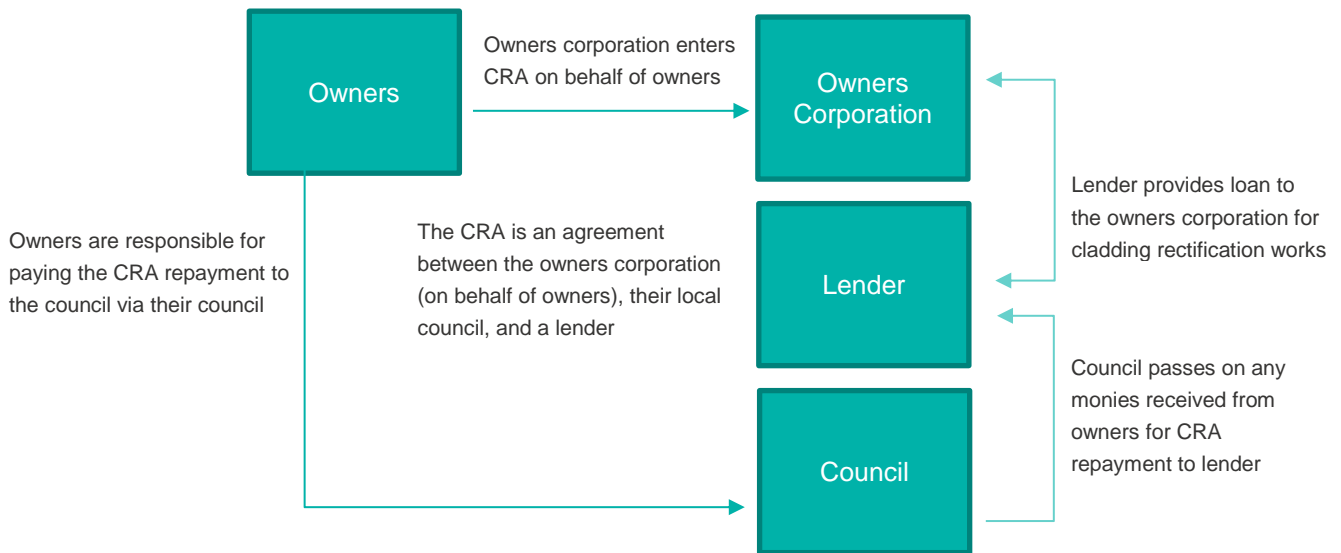
Information Guide for Councils

What are Cladding Rectification Agreements (CRAs)?

Legislation is now in place to enable three-way voluntary agreements between an owner or owners corporation, lender and council to fund cladding rectification works and repay through rates. These agreements are called cladding rectification agreements (CRAs).

CRAs are an option for funding cladding rectification works. There are a number of other pathways, including self-funding, securing a traditional strata loan, refinancing an existing mortgage, or taking out a personal loan.

Part 8B of the *Local Government Act 1989* provides for councils to enter into a CRA to fund works that rectify buildings on rateable land. In accordance with section 185I of the *Local Government Act 1989*, a council may enter into a CRA in respect of rateable land with an existing building on it, to fund works that rectify cladding on buildings.



The council may enter a CRA with:

- the owner of the rateable land, or the owners corporation if the rateable land is managed by one
- a lending body
- any other person who the parties agree should also be party to the agreement.

The CRA must:

- be in writing
- outline the works to be undertaken on the rateable land
- provide for the lending body to advance specified funds to conduct the works
- provide for the council to levy a cladding rectification charge on the rateable land
- provide for the council to use the money received under the cladding rectification charge to repay the lending body the principal amount plus any agreed interest, with any agreed administrative charge to be retained by council.



What is the role of the council in a CRA?

If the council agrees to be party to a CRA , it will be responsible for:

- satisfying themselves that all lot owners are not overleveraged
- declaring the CRA charge as a rate on the land
- collecting payment of the CRA rate through council's rate system
- passing on the principal amount and agreed interest to the relevant lender
- using its best endeavours to recover a cladding rectification charge

How do we work out if an owner is overleveraged?

The council may enter into a CRA if it is satisfied that, for each rateable lot, the total amount of the following financial costs does not exceed the total capital improved value of the property (once the rectification works are complete):

- taxes
- rates
- charges
- mortgages
- the proposed cladding rectification charge (for that individual lot)

If it is determined that an owner is ineligible for participation in the scheme, the council may deem them eligible if their existing mortgage holder provides written consent.

What happens if the owner doesn't provide details to council to conduct the overleveraging assessment?

Council is required to write to each owner requesting the details to allow the overleveraging assessment within 60 days. If the owner does not provide the details within the specified timeframe, the council may still choose to deem the owner as eligible for the scheme.

How does the council work out how much the charge will be for each owner?

The lender will provide the council with a schedule of repayment amounts for each owner. Section 185L(6) of the *Local Government Act 1989* requires the cladding rectification charge be expressed to be repayable in equal instalments over a period of no less than 10 years.

Are we required to participate in the scheme?

The CRA scheme is a voluntary one; therefore a council, owners corporation or lender can choose to participate.

Councils can choose to delegate authority to council Chief Executive Officers to execute the scheme on councils' behalf in accordance with s185L(4) of the *Local Government Act 1989*.

Is the council liable for the CRA charge if the owner doesn't pay?

Under s185N(2) of the *Local Government Act 1989*, the council is not liable for any failure of the owner to pay the cladding rectification charge.

Under s185N(1) of the *Local Government Act 1989* Council must use its best endeavours to recover a cladding rectification charge through its existing powers contained in the *Local Government Act 1989*. If owners default on a repayment, the council will be able to use the same process they currently implement for non-payment of normal council rates.



Is the council able to set an administration charge to recoup the costs associated with administering the scheme?

Yes. Section 185I(5)(e)(ii) of the *Local Government Act 1989* can retain an administrative charge. This administrative charge must be agreed in a CRA.

Who is eligible for a CRA?

Any owners corporation requiring financing to undertake cladding rectification works may be eligible for a CRA. Owners corporations will be able to enter a CRA, subject to having written approval from at least 75% of lot owners in the affected building.

Loan repayments will be distributed across all owners in the agreement based on their individual lot entitlement. As the CRA will be declared a rate on the land, if the property is sold the responsibility for repayment will pass to the new owner.

Lenders are required to undertake their own financial assessment to determine whether the owners corporation is eligible for a loan, in line with the *National Consumer Credit Protection Act 2009* (Cth).

Once the lender has confirmed the owners corporation is eligible, the owners corporation needs to contact its local council who will decide whether to enter a CRA.

What kind of works can be funded through a CRA?

The following works can be funded through a CRA, as specified by Victorian Government Gazette No. S515, published on 29 October 2018:

- removal or replacement of combustible cladding
- extension or installation of an automatic suppression (sprinkler) system
- installation of fire breaks in cladding
- installation of smoke or fire isolation or extraction systems
- connection of doors to the fire alarm system so they open automatically in a fire and form an alternative exit
- removal of combustible material in lobbies and paths of travel
- installation of smoke detectors
- upgrade or installation of an alarm system
- connection of alarm systems to a monitoring agency such as the fire brigade
- installation of emergency lighting and exit signage
- installation of a Building Occupant Warning System (BOWS)
- installation of a Fire Indicator Panel
- installation of fire containment measures such as fire walls and fire doors
- installation of alternative means of egress (exit)
- removal or isolation of ignition sources
- upgrading of Essential Safety Measures in a building to provide additional risk reduction measures
- installation of enhancements identified by the Metropolitan Fire Brigade or Country Fire Authority following an Operational Assessment
- any other cladding rectification works determined by the Building Appeals Board.



What steps would I need to take?

- Step 1:** Owners corporation advises council that they wish to enter a CRA, provides evidence of the owners corporation resolution to enter a CRA, and provides council with a list of owners and their contact details.
- Step 2:** Council writes to owners requesting details to complete overleveraging assessment within 60 days – a template is at **Appendix 1**.
- Step 3:** When details are received, council undertakes the overleveraging assessment – a template checklist for collation of details is at **Appendix 2**.
- Step 4:** After the 60 days has lapsed, the council can deem the remaining owners as eligible.
- Step 5:** The lender or owners corporation confirms the lender has agreed to enter a provide a loan and enter the CRA.
- Step 6:** The lender provides the agreement and seeks execution by the council and owners corporation.
- Step 7:** The council declares the CRA charge as a rate on the land – a template is at **Appendix 3**.
- Step 8:** The lender provides the council with a schedule of rates for inclusion on each owners rates notice.
- Step 9:** The council issues the rates notice, including the CRA charge.
- Step 10:** The owner pays their rates, including the CRA charge.
- Step 11:** The council forwards on any monies received for the CRA charge to the lender.

Where can I find out more information?

To find out more information about CRAs:

Email: claddingtaskforce@delwp.vic.gov.au

Phone: (03) 8392 5449



APPENDIX 1

Example Letter from council to owner seeking details to undertake eligibility assessment

[insert date]

Name
Street Address
Suburb
CITY
Post Code

Dear property owner

RE: Cladding Rectification Agreement for rectification works on [insert property address]

The [insert name of council] has been advised that the owners corporation [owners corporation number] for [insert property address] is seeking to enter into a Cladding Rectification Agreement (CRA).

A CRA is a voluntary loan agreement made under Part 8B of the *Local Government Act 1989* between the owners corporation, lender, and council. A CRA will allow owners to pay off the cost of rectification works over time through the council rates system. More information about the CRA can be found in the attached Owners Guide to CRAs.

To allow [council name] to perform its eligibility assessment, you are required to fill out the form at **Attachment A** and statutory declaration at **Attachment B** and return it by [insert due date] to [insert address].

If council enters into a CRA with your owners corporation, you will be subject to the terms of the CRA and be liable for payment in line with all requirements under the *Local Government Act 1989*.

If you require any further information please contact [name], [position], on [number] or [email].

Yours sincerely

[insert name and title]

Example Cladding Rectification Agreement: Statutory Declaration for the provision of information from owners to conduct eligibility test. Please fill out and return to [council name]

I, [name] of [address], in the State of Victoria, [occupation] do solemnly and sincerely declare as follows:

1. I am the owner of [Lot x] of [address].
2. The information attached is an accurate and complete summary of the details of:
 - (a) all registered and unregistered mortgages over the rateable land including—
 - (i) the total amount owing in respect of each mortgage; or
 - (ii) if a relevant mortgage is held against 2 or more properties including the Rateable Land, the proportion of the debt secured by the mortgage that applies to the Rateable Land calculated in accordance with section 185J(1) of the *Local Government Act 1989*; and
 - (b) all taxes, rates and charges owing on the Rateable Land (including the total amount owing in respect of each tax, rate or charge) imposed by or under an Act.

I acknowledge that this declaration is true and correct and I make it in the knowledge that a person making a false declaration is liable to the penalties of perjury.

.....
Declarant

Declared at [place])
in the State of Victoria on the)
[date] day of [month] [year])
Before me:

.....
Signature of Authorised Witness

The authorised witness must print or stamp his or her name, address and title under section 107A of the *Evidence (Miscellaneous Provisions) Act 1958* (as of 1 January 2010), (previously *Evidence Act 1958*), (eg. Justice of the Peace, Pharmacist, Police Officer, Court Registrar, Bank Manager, Medical Practitioner,

Owner details

Owner name(s):

Property address:

Unit number:

Lot number(s):

Owners corporation contact details:

Existing mortgage details

Please list the names and addresses of existing mortgagees of the Rateable Land, mortgages owing on the Rateable Land and the total amount owing in respect of each mortgage on that lot.

"Existing mortgagee" means any holder of a mortgage for the Rateable Land, regardless of whether the mortgage is registered or unregistered.

	Mortgage number	Date of mortgage	Name of mortgagee	Address of existing mortgagee	Total amount owing on the mortgage
1					
2					
3					
TOTAL					\$

Evidence of notifications sent to existing mortgagees

Please provide copies of the notifications sent to existing mortgagees that advise the existing mortgagees that the Owner intends to enter into a Cladding Rectification Agreement.

Charges, rates and charges

Please list all taxes, rates and charges owing on the Rateable Land (including the total amount owing in respect of each tax, rate or charge) imposed by or under any Act.

	Type of tax, rate or charge owing on the Rateable Land (eg land tax, council rates)	Name of person to whom tax, rate or charge is owed (eg State Revenue Office, City of Melbourne)	Date that payment of tax, rate or charge is due	Total amount owing
1				
4				
3				
Total:				

APPENDIX 2

Example Checklist for councils – collection of details from owners to conduct eligibility test

Property address:

Owners corporation manager:

Proposed lender:

Number of lots:

Date request for owner information was sent:

Date owner information due to council:

Lot number	Owner name	Taxes	Rates	Charges	Mortgages	Other