



GUIDANCE NOTE

Approvals for Owners Corporations

Owners corporations (**OCs**) will be required to make decisions during the Cladding Rectification Program (**Program**). Decisions might include entering an agreement to receive funding, and appointing consultants, surveyors, and builders. In some cases, OCs will need to make decisions to fund additional works which are not eligible for CSV funding.

OCs must comply with the law and their OC's special rules when making decisions. This will ensure that all private lots owners can contribute to decisions during the Program.

This guidance note suggests an approach to decision-making which OCs may wish to consider when planning their involvement in the Program. This approach will support timely rectification of this important safety issue.

Introduction

OCs have obligations under the *Owners Corporations Act 2006 (Vic)* (**Act**), *Owners Corporations Regulations 2018 (Vic)* (**Regulations**) and their OC's special rules (if applicable).

This guidance note is designed to assist your OC to meet the requirements of the Act and Regulations by identifying the points in the Program at which the OC and private lot owners need to make decisions.

Your OC's rules may contain additional requirements which your OC must observe throughout the Program. The guidance contained in this document is subject to your validly constituted OC rules. Nothing in this document should be taken as guidance on how to act within your OC rules.

CSV suggests that the approach provided in this guidance note will support rectification of your building in the most efficient way possible. This will help your OC to address this important occupant safety issue and the regulatory requirements imposed by the Municipal Building Surveyor (**MBS**) in the appropriate time frame.

The tasks listed in this document are those generally required of all OCs involved in the Program. However, some OCs may need to perform additional functions and obtain additional approvals. Please contact your Customer Liaison Officer (**CLO**) at CSV if you require further guidance.

Your OC's role in cladding rectification

Construction is complex and requires careful preparation – this is especially the case for cladding rectification on apartment buildings.

As the owner of the common property where the cladding is usually located, your OC will need to make decisions in a timely manner. This will ensure that the cladding gets fixed and will also reduce the risk of the OC being exposed to unnecessary delays and costs, or further regulatory action.

The draft resolutions recommended in this guidance note will support your OC to ensure that all private lot owners can contribute to this important project. The OC decision-making process involves private lot owners considering resolutions at meeting or by ballot, as described in this document.

Key steps towards rectification

To help you understand the points at which your OC will need to make decisions, CSV has developed the 10 key steps for cladding rectification as follows.

Phase	Key steps	OC decisions required?
1 – Preparation	1 – Referral to CSV	No – the MBS refers buildings to CSV.
	2 – OC Registration	Yes – the OC needs to register and provide information and documents to CSV. Then, the OC should delegate relevant powers to an individual or group, including authority to use the common seal.
	3 – Due Diligence Report	Yes – the OC will need to provide access the common property and some private property.

Phase	Key steps	OC decisions required?
	4 – Investment Board Decision	No – CSV will use the above information to determine the amount of funding for the OC. The OC may contribute additional funds for additional works.
	5 – Independent Project Manager (IPM) Appointment	Yes – whilst CSV is prepared to appoint the IPM for the OC, the OC must execute a deed permitting the IPM to commence works.
	6 – Execute OC Funding Agreement	Yes – the OC must meet the conditions precedent and other requirements of the Funding Agreement to receive funding.
2 – Works	7 – Execute Design & Construct Contract	Yes – the OC and private lot owners need to understand their rights and obligations under the contract.
	8 – Contract Management and Administration	Yes – the OC will need to address variations as they arise during construction, especially regarding latent conditions which CSV will not fund.
	9 – Contract Completion	Yes – the OC will need to confirm that the scope of works has been carried out by the builder.
	10 – Program Acquittal	Yes – the OC will need to confirm completion at the end of the defect liability period.

Phase 1 – Preparation

We suggest that OCs delegate most of the decision-making functions required to carry out the Program to a single decision-maker.

Some owners corporations will prefer to delegate all necessary authorities for the entire Program to a decision-maker during Phase 1. Others will delegate separate authorities for Phases 1 and 2.

The OC may ask the delegate to report back to the OC about progress or issues which arise.

Whichever the preferred approach, a draft instrument of delegation and associated resolutions have been included in this guidance note for your OC to consider (see **Attachment 1**).

Although your OC may already have delegated a general authority to act on the OC's behalf, we suggest authorising a separate delegation (or delegations) specific to this Program.

The OC's representative can then engage professionals and provide information to CSV and its advisors in preparation for the cladding rectification works.

Most importantly, during Phase 1, CSV will work closely with the OC's representative and an Independent Project Manager (**IPM**) to prepare a scope of proposed works. The IPM will be engaged by CSV but their primary role is to provide professional support to OCs during this complex project.

The Funding Agreement is one of the key documents in the Program. We suggest that the Funding Agreement is distributed to the OC and private lot owners early during Phase 1. This will allow people to ask questions, so they fully understand their rights and obligations in the Program. A copy

of the Funding Agreement is attached to this guidance note for your assistance (see **Attachment 2**).

We also suggest that the OC delegates authority to an individual to execute the Funding Agreement during Phase 1.

Phase 2 – Works

During the tender process, builders will review the scope of works prepared by the IPM. The IPM will then support the OC and CSV by preparing an evaluation report.

Once the builder has been selected, CSV will finalise the maximum amount of the grant payable to the OC for cladding rectification and issue the schedule of milestone payments to the OC.

The OC will be required to formally approve the scope of works and delegate authority to execute the building contract. Draft resolutions have also been prepared for the OC to consider during this phase.

Once the building contract has been executed, rectification works can begin.

If serious issues arise during the works, the OC's representative may need to communicate with the OC and private lot owners. However, this communication must not delay works continuing or additional costs may be incurred by the OC, payable to the builder.

To minimise the risk of excess costs being incurred by the OC during construction, the OC's representative should be authorised to:

- assist the IPM as requested to approve milestone payments to the builder; and
- address mid-construction variations such as extensions of time, or changes to the scope of works arising from the identification of latent conditions which will not be funded by CSV.

Lastly, the OC's representative will need to work with the IPM to confirm that the works are completed by the builder, and will also need to ensure that any defects are identified and addressed during the relevant time frame.

Draft resolutions

Attachment 1 provides a draft instrument of delegation and draft resolutions which OCs might like to consider when planning their involvement in the Program.

All Phases

An OC can delegate authority by either:

- Draft Instrument 1 and Draft Resolution 1; or
- Draft Resolution 2.

Draft Instrument 1 with Draft Resolution 1 are likely to provide the most efficient mechanism for all authorisations required throughout the Program.

	Description	Notes
Draft Instrument 1	Draft Instrument of Delegation	<p>Execution of an Instrument of Delegation must be supported by a resolution such as that suggested at Draft Resolution 1.</p> <p>An OC can delegate authority by either:</p> <ul style="list-style-type: none"> • Draft Instrument 1 and Draft Resolution 1; or • Draft Resolution 2.
Draft Resolution 1	Draft resolution authorising affixing the common seal to the Instrument of Delegation	
Draft Resolution 2	Draft resolution authorising relevant delegations (where an instrument of delegation is <u>not</u> used)	

Phase 1 – Preparation

In addition to the above draft resolutions, OCs can prepare for rectification by passing resolutions such as the following.

	Description	Notes
Draft Resolution 3	Draft resolution authorising affixing the common seal to the Direct Deed	<p>Items 3, 4 and 5 (or similar) should be considered by all OCs involved in the Program.</p> <p>We suggest that the Funding Agreement is distributed to the OC and private lot owners early during Phase 1 to allow all parties to ask any questions they may have before execution. A copy is attached to this guidance note.</p> <p>Note that CSV will finalise the maximum amount of the grant at the conclusion of the tender period.</p>
Draft Resolution 4	Draft resolution authorising affixing the common seal to the Funding Agreement	
Draft Resolution 5	Draft resolution authorising affixing the common seal to other agreements required during Phase 1	
Draft Resolution 6	Draft special resolution to apply for BAB approval	<p>Item 6 should be considered by an OC if a partial removal option is to be pursued.</p> <p>The Act requires special resolutions to be passed to authorise applications to the BAB.</p>

Phase 2 – Works

The following resolutions will support decisions which are required before rectification works can commence.

	Description	Notes
Draft Resolution 7	Draft resolution authorising the final statement of works	The OC should ensure that the final statement of works to be undertaken by the builder aligns with the OC's expectations of works to be undertaken by the builder.

	Description	Notes
Draft Resolution 8	Draft resolution authorising affixing the common seal to the contract	Execution of a building contract is an important decision which should be supported by a resolution.

How does an OC pass a resolution?

The draft approvals suggested in this guidance note involve resolutions which lot owners must approve at a general meeting or by ballot.

To minimise disruption to lot owners, CSV suggests that OCs convene one meeting or ballot in each Phase.

It is important that OCs comply with the procedural requirements when passing resolutions. Non-compliance with the rules set out in the Act may result in resolutions being challenged and cause delays to the delivery of the Program.

The Act provides that only the chairperson, secretary, manager, or, in certain cases, a lot owner, may convene a ballot, or a general meeting that is not an annual general meeting. The person convening the meeting or ballot must do the following:

General meeting

- Give written notice to each lot owner at least 14 days before the meeting. The notice must include:
 - the date, time, and place of the meeting
 - the agenda for the meeting
 - the text of any special or unanimous resolution to be moved at the meeting; and
 - a statement that the lot owner has the right to appoint a proxy.
- Prepare an agenda setting out the matters to be dealt with at the meeting.

Ballot

- Give written notice to each lot owner at least 14 days before the closing date of the ballot. The notice must include:
 - the closing date for the ballot
 - the ballot document containing the motion, including the text of any resolution to be voted on in the ballot; and
 - a statement that the lot owner has the right to appoint a proxy.

Remote voting

Remote meetings are permitted under the Act, and lot owners may participate in a general meeting by teleconference and by proxy. At the meeting, lot owners may vote on resolutions by a show of hands or in another prescribed manner. This means remote voting may be conducted via:

- a show of hands over videoconference; or
- in another remote manner as resolved by a show of hands over videoconference at the meeting (e.g. via an online voting platform or submitting votes via email during the remote meeting).

The Act also allows for ballots to be conducted electronically.

Consumer Affairs Victoria provides [guidelines for OCs](#) on how to conduct a vote at a meeting or by ballot, including sample instructions and voting cards.

Quorum required

A quorum must be present at the meeting for a resolution to be passed. This means that;

- at least 50% of the total votes must be present; or
- at least 50% of the total lot entitlement must be present.

If the vote is being conducted by ballot, the number of votes returned by the closing date must also meet these conditions.

If there is no quorum, all resolutions passed are interim resolutions which only become final in accordance with the provisions of the Act.

Special resolutions

A special resolution of the OC will be required to commence an application to the Building Appeals Board (**BAB**) seeking approval of a partial removal solution.

The additional requirements for special resolutions include that OC members with at least 75% of lot entitlements will need to vote for the motion unless the interim provisions apply.

Why does an OC need to pass a resolution to execute a document?

In short, the Act provides that an OC executes documents by attaching its common seal. The Act also provides that the attaching of the common seal must be authorised by a resolution of the owners corporation (unless otherwise authorised by the Act or Regulation).

What can and cannot be done remotely?

Legislation

The *Electronic Transactions (Victoria) Act 2000 (ETA)* facilitates electronic execution of documents.

The *COVID-19 Omnibus (Emergency Measures) (Electronic Signing and Witnessing) Regulations 2020 (Omnibus Regulations)* extends the application of the ETA to:

- include deeds;
- allow for remote witnessing of documents via audio visual link; and
- provide for validity of execution even if there is no one copy of the document on which all signatures appear.

The Omnibus Regulation is currently set to expire on 26 April 2021.

Witnessing and signing remotely

Under the amendments, lot owners can witness the use of the common seal via audio visual link. Lot owners can also remotely and electronically sign documents as a witness. Proxies are only permitted to vote at meetings – they may not execute documents or witness the affixation of the OC's common seal.

However, under the amendments, an OC is unable to affix its common seal remotely or electronically.

OCs must maintain good document management and keep accurate records of documents which have been executed and witnessed remotely.

CSV has produced a guidance note about the remote execution of documents, which is available from your CLO. We suggest you read that document carefully and seek advice if you have any questions.

Will the OC require additional funding?

CSV is responsible for distributing public funds for the rectification of cladding on privately-owned apartment buildings. Some OCs will require access to funds to address building issues which will not be funded by CSV.

For example, your OC might be subject to a regulatory requirement to address issues beyond the cladding – and these issues might need to be dealt with before, after, or at the same time as, the cladding rectification works.

The OC may need to raise funds to address any issues which require additional building works.

The Act provides several mechanisms for your OC to raise funds. Your OC will need to consider the approach which is most suitable for your circumstances.

Funding options generally require the OC to make decisions by passing resolutions. Please note that these resolutions are outside the scope of this guidance note and should be considered by your OC separately.

The MBS for your building, along with CSV and the IPM assigned to your building, will be able to discuss this issue in more detail after CSV has reviewed the condition of your building during the due diligence phase.

What about latent conditions?

CSV will not fund rectification of latent conditions.

A latent condition is one which becomes apparent during construction and which needs to be addressed but which could not have been identified by the builder during the tender process.

For example, a builder may remove cladding and uncover structural issues which were not identified during the tender period.

The OC and the IPM will have a chance to review and comment on the issue, and the relevant building surveyor (**RBS**) might use their statutory powers to require the issue to be addressed as part of the works.

The OC will have to fund rectification of the issue if it is decided that the builder could not have been expected to identify the issue during the tender process.

All parties, including the OC, need to address mid-construction issues such as latent conditions, promptly. This will reduce the risk of further delay costs being incurred by the OC.

The draft resolutions in this guidance note propose that the OC should delegate authority to an individual to address mid-construction issues on behalf of the OC. The OC may wish to provide this

authority subject to conditions, such as the delegate informing the OC and private lot owners of the potential for cost over-runs.

Access during construction

The builder will require access to the common property to undertake construction works. The builder might also require entry to indoor and outdoor sections of private lots to access the cladding.

The IPM will work with the builder and the OC to develop a schedule for accessing private lots where necessary.

Private lot owners, residential lease holders, and the OC, will be expected to fully cooperate with the IPM and the builder at all stages. The OC has an important role to play in supporting the IPM, CSV and the builder to communicate with private lot owners and occupiers, as required.

In the unlikely event that access is denied, your OC may be required to exercise entry powers provided in the Act to allow the builder to carry out rectification works.

However, with proper planning and communication, CSV expects that access will nearly always be provided by lot occupiers without issue.

The OC may be responsible for delay costs if the builder cannot access private lots to undertake works as required.

The builder is required to have and comply with a High Risk COVIDSafe Plan to reduce the risk that coronavirus will be transmitted to or from occupants and workers.

OC decisions during the Cladding Rectification Program

	Step	Recommended decision	Options for making the decision	Outcome
Phase 1 – preparation	1 – Referral to CSV	-	-	-
	2 – OC Registration	The OC decides to register for potential financial assistance from CSV.	The OC assigns responsibility for registration to an individual or group.	The OC indicates its interest in potential financial assistance from CSV and provides all necessary information and documents.
		<p>The OC delegates power to an individual or group to do all things required to rectify the external cladding.</p> <p>The OC expressly authorises the use of the common seal on the:</p> <ol style="list-style-type: none"> a. Direct Deed b. Funding Agreement; and c. Any agreements required to prepare and finalise the scope of works. 	<p>Instrument or Ordinary resolutions (>50%)</p> <p><i>See Attachment 1 for a sample instrument and associated resolutions.</i></p>	<p>The delegate will be able to carry out those tasks which are required for the delivery of the Program.</p> <p>Some examples include:</p> <ol style="list-style-type: none"> i. Registering the OC with ATO for GST purposes. ii. Granting a licence to CSV and contractors to enter onto, inspect and take samples from common property, as necessary. iii. Giving permission for CSV to approach an Original Builder to gauge their interest in rectifying the cladding on a no-profit basis. iv. Appointing any surveyor or consultant as required to prepare for rectification works. v. Providing all information and reasonable assistance to CSV and the Independent Project Manager (IPM). vi. Ensuring ongoing compliance with the OC's obligations under all agreements executed for the delivery of the Program. vii. Facilitating communication between CSV and individual lot owners/ occupiers. viii. Facilitating consultation between the IPM and lot owners regarding the scope of works. ix. Appointing an individual (for example, an OCM) to affix, and witnesses to witness the affixation of, the OC's common seal to documents where execution has been approved by resolution.
	3 – Due Diligence Report	The OC provides access to CSV.	If authorised above.	Due diligence activities mean that CSV can review the cladding and identify potential solutions and an appropriate amount of funding.
	4 – Investment Board Decision	Nil OC decision required. CSV will use the above information to determine the amount of funding for the OC. The OC may contribute additional funds for additional works.	-	-
	5 – Independent Project Manager (IPM) Appointment	The OC appoints the IPM by executing the Direct Deed.	<p>If authorised above.</p> <p><i>See Attachment 3 for a sample IPM Direct Deed.</i></p>	The IPM has authority to act on behalf of the OC, to access common property and to engage all non-builder contractors/consultants.

	Step	Recommended decision	Options for making the decision	Outcome
		Partial removal only: OC authorises an application to the Building Appeals Board (BAB) to have partial removal solution approved.	Special resolution (>75%) <i>See Attachment 1 for an example text for this resolution.</i>	OC can bring legal proceedings to the BAB for approval of rectification solutions involving partial removal.
	6 – Execute OC Funding Agreement	The OC executes the Funding Agreement with CSV.	If authorised above. <i>See Attachment 2 for details of the Funding Agreement, including a checklist for conditions precedent</i>	The Funding Agreement sets out the terms with which the OC must comply to receive funding for rectification. The OC must comply with the conditions precedent. Note that CSV will finalise the maximum amount of the grant, and the milestone payment schedule, at the conclusion of the tender period.
<i>IPM conducts the tender process to select a builder – approximately 7 weeks</i>				
Phase 2 – construction works	7 – Execute Design & Construct Contract	The OC approves the final scope of works.	Instrument or Ordinary resolutions (>50%) <i>See Attachment 1 for a sample instrument and associated resolutions.</i>	The final scope of works forms the basis of the Principal’s Project Requirements (PPR) for the builder to implement under the contract. It is preferable that a specific resolution is passed to approve the final scope of works as agreed with the builder before the contract is executed. CSV also recommends a specific delegation for execution of the building contract. Finally, the OC representative should be delegated authority to manage the contract, including: <ul style="list-style-type: none"> i. Approving mid-construction milestone payments and addressing contract variations, including extensions of time and changes to the scope of works which may arise from the identification of latent conditions which will not be funded by CSV. This authority may be made subject to conditions, such as the representative providing timely information to the OC and private lot owners about possible delays and costs. ii. Confirming that the scope of works has been carried out. iii. Identifying any defects which the builder may be liable to rectify during the defect liability period.
		The OC authorises the OC representative to execute the Design & Construct contract.		
		The OC delegates power to an individual or group to do all things required to administer the contract to rectify the cladding.		
	8 – Contract Management and Administration	The OC and IPM address variations as they arise during construction.	If authorised above.	The OC representative should promptly communicate with the OC and private lot owners as agreed in the Instrument of Delegation or resolution, particularly regarding additional costs and latent conditions (which will not be funded by CSV).
9 – Contract Completion	The OC and the IPM confirm that the scope of works has been carried out by the builder.	If authorised above.	The OC is required to confirm that the builder has discharged their requirements under the contract.	
10 – Program Acquittal	The OC and the IPM identify defects during the defect liability period.	If authorised above.	The builder may be liable to rectify certain defects identified during the Defects Liability Period.	

Attachment 1

Draft Instrument 1: Instrument of Delegation

Owners Corporations Act 2006 Section 11, Owners Corporations Regulations 2018 and Owners Corporation Rules

Under section 11 of the *Owners Corporations Act 2006* an owners corporation may delegate, by instrument, any power or function of the owners corporation (other than a power or function that requires a unanimous resolution or a special resolution) to:

- the committee of the owners corporation;
- the manager of the owners corporation;
- the chairperson of the owners corporation;
- the secretary of the owners corporation;
- an employee of the owners corporation;
- a lot owner.

Details of owners corporation authorising delegation

Name and plan number of owners corporation	
Address	
ABN	

Delegation

This delegation is given to:

Name(s)	Position/capacity (chairperson, secretary, committee member, manager, lot owner, owners corporation employee)

Powers or functions being delegated must be in accordance with the Act, Regulations and Rules. Detail below what powers or functions are being delegated.

The owners corporation authorises the delegation of:

(1) its function to repair and maintain common property pursuant to section 4(b)(i) of the *Owners Corporations Act 2006* in respect of any external cladding on or within the common property; and

(2) all powers necessary to enable the performance of this function as provided by section 6(b) of the *Owners Corporations Act 2006*

##Note: the following text could also be included but is not strictly necessary. These functions could instead be explained to members as background when they vote on the ordinary resolution to execute this document. Some owners corporations may be prepared to delegate all necessary powers for Phases 1 and 2 in a single resolution. Other owners corporations may prefer to delegate authority in two stages.].

– ‘including, but not limited to:

Phase 1 – Preparation

- Registering the OC with ATO for GST purposes.
- Granting a licence to CSV and contractors to enter onto, inspect and take samples from common property as necessary.
- Approaching an Original Builder to gauge their interest in rectifying the cladding on a no-profit basis.
- Appointing any surveyor or consultant (but not a builder) as required to undertake rectification works.
- Providing all information and reasonable assistance to CSV and IPM.
- Ensuring ongoing compliance with the OC’s obligations under all agreements entered for the delivery of the Program.
- Facilitating communication between CSV and individual lot owners/ occupiers.
- Facilitating consultation between the IPM and lot owners regarding the scope of works.
- Appointing an individual to affix, and witnesses to witness the affixation of, the OC’s common seal to documents where execution has been approved by resolution.

Phase 2 – Works

- Approving mid-construction milestone payments and addressing contract variations, including extensions of time and changes to the scope of works which may arise from the identification of latent conditions which will not be funded by CSV. This authority may be made subject to conditions, such as the representative providing timely information to the OC and private lot owners about possible delays and costs.
- Confirming that the scope of works has been carried out.
- Identifying any defects which the builder may be liable to rectify during the defect liability period.’

Commencement

This delegation/authorisation commences on (insert date)

and continues until revoked or replaced by a general meeting of the owners corporation.

Owners corporation declaration and signatures

<p>The common seal of owners corporation no.</p> <p>was affixed and witnessed by and in the presence of persons who declare they are lot owners of separate lots and members of the owners corporation or by a director of a corporation that is a lot owner in accordance with section 20 and 21 of the <i>Owners Corporations Act 2006</i></p>	
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Witness 1

Signature of witness	
Name of witness (print full name)	
Address of witness	
Position (lot owner or director)	
Date	

Witness 2

Signature of witness	
Name of witness (print full name)	
Address of witness	
Position (lot owner or director)	
Date	

Delegates' declaration and signatures

I hereby accept the delegated responsibilities on behalf of the owners corporation and agree to act in accordance with the *Owners Corporations Act 2006*, Owners Corporations Regulations 2018 and Owners Corporation Rules.

Signatures and addresses of all persons accepting the delegations

Signature	Printed name	Address

More information is available in the [Owners corporations section of the Consumer Affairs Victoria website](http://consumer.vic.gov.au/ownerscorp) (consumer.vic.gov.au/ownerscorp).

Draft Resolution 1: resolution authorising affixing the common seal on the instrument of delegation

To enable the owners corporation to replace combustible cladding on common property through participation in the Cladding Rectification Program, your owners corporation may wish to delegate certain functions and powers by executing an instrument of delegation.

Members of the owners corporation with at least 50% of lot entitlements will need to vote for the following motion to achieve this.

I/we who are members of owners corporation plan No [##insert plan number] hereby authorise the execution of the instrument of delegation which delegates functions and powers to [##insert name of delegate], [##insert position/capacity of delegate] by affixing the common seal of owners corporation plan No [##insert plan number] in accordance with sections 10 and 20 of the *Owners Corporations Act 2006* (Vic).

Draft Resolution 2: resolution authorising relevant delegations (if an instrument of delegation is not used)

To enable the owners corporation to remove and replace combustible cladding on common property through participation in the Cladding Rectification Program, your owners corporation will delegate certain functions and powers. These include, but are not limited to:

Phase 1

- Registering the OC with ATO for GST purposes.
- Granting a licence to CSV and contractors to enter onto, inspect and take samples from common property as necessary.
- Approaching an Original Builder to gauge their interest in rectifying the cladding on a no-profit basis.
- Appointing any surveyor or consultant (but not a builder) as required to undertake rectification works.
- Providing all information and reasonable assistance to CSV and IPM.
- Ensuring ongoing compliance with the OC's obligations under all agreements entered into for the delivery of the Program.
- Facilitating communication between CSV and individual lot owners/ occupiers.
- Facilitating consultation between the IPM and lot owners regarding the scope of works.
- Appointing an individual (for example, an OCM) to affix, and witnesses to witness the affixation of, the OC's common seal to documents where execution has been approved by resolution.

Phase 2

- Approving mid-construction milestone payments and addressing contract variations, including extensions of time and changes to the scope of works which may arise from the identification of latent conditions which will not be funded by CSV. This authority may be made subject to conditions, such as the representative providing timely information to the OC and private lot owners about possible delays and costs.
- Confirming that the scope of works has been carried out.
- Identifying any defects which the builder may be liable to rectify during the defect liability period.

Members of the owners corporation with at least 50% of lot entitlements will need to vote for the following motion to achieve this.

I/we who are members of owners corporation plan No [##insert plan number] hereby move to delegate the following functions and powers to [##insert name of delegate], [##insert position/capacity of delegate], in accordance with section 11(2) of the *Owners Corporations Act 2006* (Vic):

1. **the function of repairing and maintaining common property pursuant to section 4(b)(i) of the *Owners Corporations Act 2006* (Vic) in respect of external cladding; and**
2. **all powers necessary to enable the performance of this function as provided by section 6(b) of the *Owners Corporations Act 2006* (Vic).**

Draft Resolution 3: resolution authorising affixing the common seal on the Direct Deed

To enable the owners corporation to remove and replace combustible cladding on common property through participation in the Cladding Rectification Program, your owners corporation needs to enter into a deed with Cladding Safety Victoria and the Independent Project Manager appointed by Cladding Safety Victoria (Appointed IPM). The terms of the Direct Deed include that the owners corporation:

- authorises the Appointed IPM to act as its agent in:
 - overseeing and coordinating the carrying out of the design and construction of the removal and replacement of some or all of the external cladding of the building, including any associated rectification work;
 - carrying out the tender process for engagement of the builder;
 - liaising with any regulatory authorities where necessary;
 - project managing the building work; and
- grants the Appointed IPM a licence to enter the common property for the purpose of carrying out the services outlined above.

Members of the owners corporation with at least 50% of lot entitlements will need to vote for the following motion to achieve this.

I/we who are members of owners corporation plan No [##insert plan number] hereby authorise the execution of the Direct Deed between the owners corporation, Cladding Safety Victoria and the Appointed IPM by affixing the common seal of owners corporation plan No [##insert plan number].

Draft Resolution 4: resolution authorising affixing the common seal on the Funding Agreement

To enable the owners corporation to remove and replace combustible cladding on common property through participation in the Cladding Rectification Program, your owners corporation needs to enter into an agreement with Cladding Safety Victoria to fund the design and construction of the removal and replacement of the combustible cladding. The terms of the Funding Agreement include that the owners corporation:

- will receive funding from Cladding Safety Victoria to be used for the purposes of carrying out the removal and replacement of the combustible cladding; and
- must engage consultants and a builder to design and construct the removal and replacement of the combustible cladding; and
- is responsible for meeting all costs and general operating expenses in connection with construct the removal and replacement of the combustible cladding.

Members of the owners corporation with at least 50% of lot entitlements will need to vote for the following motion to achieve this.

I/we who are members of owners corporation plan No [##insert plan number] hereby authorise the execution of the Funding Agreement between the owners corporation and Cladding Safety Victoria by affixing the common seal of owners corporation plan No [##insert plan number] in accordance with sections 10 and 20 of the *Owners Corporations Act 2006* (Vic).

Draft Resolution 5: resolution authorising affixing the common seal on other agreements required during Phase 1

To enable the owners corporation to remove and replace combustible cladding on common property through participation in the Cladding Rectification Program, your owners corporation may need to enter into agreements to provide services in relation to the design or approval of the removal and replacement of the combustible cladding.

Members of the owners corporation with at least 50% of lot entitlements will need to vote for the following motion to achieve this.

I/we who are members of owners corporation plan No [##insert plan number] hereby authorise the execution of any agreements or other documents required to develop the statement of works on behalf of the owners corporation by affixing the common seal of owners corporation plan No [##insert plan number] in accordance with sections 10 and 20 of the *Owners Corporations Act 2006* (Vic).

Draft Resolution 6: partial removal only: special resolution to apply for BAB approval

Note: the text of this special resolution must be included on the notice of general meeting provided to lot owners.

To enable the owners corporation to remove and replace combustible cladding on common property through participation in the Cladding Rectification Program, your owners corporation needs to lodge an application with the Building Appeals Board for approval of the design prepared for the partial removal and replacement of the combustible cladding.

Members of the owners corporation with at least 75% of lot entitlements will need to vote for the following motion to achieve this.

I/we who are members of owners corporation plan No [##insert plan number] hereby authorise the owners corporation to lodge an application with the Building Appeals Board under [##consult with your project manager to identify the correct section: section 160 or section 160A] of the *Building Act 1993* (Vic) for approval of the design prepared for the removal and replacement of the combustible cladding at [##insert address of building] in accordance with section 18(1) of the *Owners Corporations Act 2006* (Vic).

Draft Resolution 7: resolution to approve the final statement of works

To enable the owners corporation to remove and replace combustible cladding on common property through participation in the Cladding Rectification Program, your owners corporation needs to approve the statement of works for a builder to design and construct the removal and replacement of the combustible cladding.

Members of the owners corporation with at least 50% of lot entitlements will need to vote for the following motion to achieve this.

I/we who are members of owners corporation plan No [##insert plan number] hereby approve the statement of works for a builder to design and construct the removal and replacement of the combustible cladding.

Draft Resolution 8: resolution to affix common seal to building contract

To enable the owners corporation to remove and replace combustible cladding on common property through participation in the Cladding Rectification Program, your owners corporation needs to enter into an agreement with **##insert name of Contractor** for the design and construction of the removal and replacement of the combustible cladding. The terms of the Building Contract include that:

- the owners corporation:
 - must pay all amounts due to **##insert name of Contractor** in accordance with the Building Contract;
 - appoints **##insert name of IPM** as Superintendent to manage the Building Contract; and
 - grants **##insert name of Contractor** access to the common property at **##insert address of building**; and
- the **##insert name of Contractor** must contact private lot owners to obtain any access required for the removal and replacement of the combustible cladding.

Members of the owners corporation with at least 50% of lot entitlements will need to vote for the following motion to achieve this.

I/we who are members of owners corporation plan No **##insert plan number hereby authorise the execution of the Building Contract between the owners corporation and **##insert name of Contractor** by affixing the common seal of owners corporation plan No **##insert plan number** in accordance with sections 10 and 20 of the *Owners Corporations Act 2006* (Vic).**

Attachment 2

Funding Agreement

The Funding Agreement is a contract between CSV and the OC which outlines the amount of money being granted to rectify the cladding on your building, and the conditions which must be met before being granted those funds.

The conditions will reflect those in this draft Funding Agreement.

Conditions Precedent Checklist for Owners Corporations

Before the Funding Agreement can be executed, OCs must meet the following conditions precedent. This checklist provides a practical overview of how to meet the requirements for each condition.

The OC's representative should email the required confirmation to your CLO promptly after each condition is met. Some conditions can be met immediately after passing Resolution 1, whilst others cannot be met until after the rectification works have been approved by the CSV Investment Board. All conditions involve an ongoing duty to disclose new information as it becomes available.

Condition	Documentation Required	When	<input checked="" type="checkbox"/>
(a) Provide evidence of the current status of any identification investigations, interim risk management measures and rectifications works that the OC has undertaken	Any relevant reports on building health, including: <ul style="list-style-type: none"> Any scope of works obtained, and Reports in relation to Essential Safety Measures (ESMs). 	<ul style="list-style-type: none"> After Resolution 1; and when new reports are drafted. 	<input type="checkbox"/>
(b) Provide evidence of all planning and building approvals for the Building and the design and construction of the Building.	<ul style="list-style-type: none"> Building Permit; Occupancy Permit; and Architectural plans and elevations. 	After Resolution 1	<input type="checkbox"/>
(c)(i) Provide evidence that the OC is validly constituted.	Please provide your final plan of subdivision and CSV can assist in conducting an OC search report or Landata search.	After Resolution 1	<input type="checkbox"/>
(c)(ii) Confirm that the OC has individuals appointed in all relevant office holder positions. <ul style="list-style-type: none"> <i>OCs affecting less than 13 lots must elect a chairperson at a minimum.</i> <i>OCs affecting 13 lots or more must elect a committee of 3-12 members.</i> 	Any of the following; <ul style="list-style-type: none"> Instrument of delegation; Evidence in writing; or OC meeting minutes. 	After Resolution 1	<input type="checkbox"/>
(c)(iii) Provide evidence that the OC has established and maintains a bank account in accordance with section 27 of the <i>Owners Corporation Act 2006 (Vic)</i>	A copy of the OC bank statement or a Bank letter confirming: <ul style="list-style-type: none"> Name of the banking institution; Account Name; and Account Number and BSB. 	After Resolution 1	<input type="checkbox"/>
(c)(iv) Provide evidence that the OC is registered for GST	<ul style="list-style-type: none"> OC's GST certificate 	After Resolution 1	<input type="checkbox"/>
(d) Confirm that Lot owners of the Building have approved the OC's entry into the Funding Agreement in accordance with the <i>Owners Corporation Act 2006 (Vic)</i> .	<ul style="list-style-type: none"> An email confirming that a majority of owners (more than 50%) consent to entering the Funding Agreement; or An email confirming that the Committee has delegated authority and consents to entering the Funding Agreement <p><i>Note: Conditions (d) & (e) can be combined in one email.</i></p>	After Resolution 1	<input type="checkbox"/>

(e)	Confirm that Lot owners of the Building have approved any necessary access to the Building for the purpose of carrying out the Project.	<ul style="list-style-type: none"> • An email confirming that a majority of owners (more than 50%) consent to granting necessary access to the building for the purpose of carrying out the project; or • An email confirming the Committee has delegated authority and consents to providing access. <p><i>Note: Conditions (d) & (e) can be combined in one email.</i></p>	After Resolution 1	<input type="checkbox"/>
(f)	Provide evidence that insurance policies are in place which, at a minimum, satisfy the requirements in clause 15.4 and will be effective by no later than 20 business days after the commencement date.	A copy of the OC's insurance policy and/or certificate of currency showing public liability coverage is \$20 million	After appointment of IPM	<input type="checkbox"/>
(g)	Provide confirmation of any form of monetary contribution towards the rectification of the external cladding on the building including from any insurer, builder and/or other third party.	Notice of any insurance claims made/monies paid out for the purposes of cladding rectification and any monies received from the builder and/or third parties. If this requirement is not applicable, please outline this in an email.	After Resolution 1	<input type="checkbox"/>
(h)	Provide evidence that the Recipient has implemented/taken reasonable steps to implement fire safety risk mitigation measures to effectively reduce any fire safety risk.	The most current essential safety measure (ESM) audit and/or a copy of log books including complying with any Emergency orders or Building Orders related to ESM issues.	<ul style="list-style-type: none"> • After Resolution 1; and • when new information becomes available. 	<input type="checkbox"/>

Attachment 3

IPM Agreement