

# Submission to the Ministerial Panel for the Local Government Rating System Review

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## Executive summary

The Victorian Government has committed to the Local Government Rating System review, tasking a Ministerial Panel (**Panel**) to report back upon improvements to the system by March 2020. The Panel's core tenant of their review is fairness and equity of the system.

Within the context of different rates and charges declared upon property within the local government act is a unique form of council charge in the form of Environmental Upgrade Agreements (**EUA**).

EUAs enable councils to declare Environmental Upgrade Charges (**EUC**) on certain types of land for a 3<sup>rd</sup> party Lender to provide financial accommodation for certain types of projects. Broadly, EUAs currently enable funding of projects upon land used for predominantly non-residential purposes that yield a public benefit good (of improved environmental outcomes) for existing buildings upon such land.

The Victorian Government has demonstrated willingness to broaden the applicability of EUAs to that currently within the Local Government Act 1989 (**Act**). The Exposure Draft of the Local Government Bill (**Bill**) envision EUAs being applied to residential property.

While the Bill expands the applicability of EUAs to more Victorians, Sustainable Australia Fund (**SAF**) believes the Bill does not fully and equitably cover enough Victorians. The Bill as proposed, limits EUAs to residential and non-residential land with buildings upon it, for a narrow set of projects. As such, farmers, first homebuyers, community facilities, tenants of residential properties and strata titled properties with flammable cladding are still excluded from the potential to access the benefits of EUAs.

SAF welcomes the attempts of the Bill to reduce transaction costs associated with EUAs but does not believe it goes far enough to simplify the operational aspects of EUAs, resulting in unnecessarily cumbersome and duplicative processes. As such, the transaction costs, especially for small residential EUAs, is inequitably high. Regional Councils, with limited resource, hungry for local investment may not have the internal capacity to offer EUAs to their communities, thus disadvantaging residents and businesses within regional Victoria.

This submission outlines opportunities to improve the Bill and demonstrates how changes to the Bill could become available to more projects throughout the Victorian economy to contribute to achieving the Victorian Government's Climate Change Act and the government's Net Zero Emissions by 2050 targets. In doing so the Bill, and specifically the EUA provisions become more fairly available to more Victorians and not disadvantage smaller projects and regional councils.

This submission outlines some potential opportunities of how EUAs can be used in a policy context to deliver positive community outcomes, examines and makes recommendations to improve the legislation to capture these opportunities for the state in a fair and equitable manner.

EUAs were originally established to mobilise private sector capital into projects that yielded both a private and public benefit. Sustainable Australia Fund has over 10 years' experience in EUAs across Australia, this experience informs the recommendations of this paper.

## Key Points:

1. **Sustainable Australia Fund has been launched:** with over \$200m in capital available for EUAs and Cladding Rectification Agreements. SAF is in discussions to expand the total capital available up to c \$500m for EUAs across Australia, both commercial and residential;
2. **Legislative efficacy:** Simple amendments to the EUA legislation focused upon a reduction in transaction costs and breadth of applicability can further enhance the public benefit outcomes of this finance structure, retain the original policy intent of retrofitting commercial office buildings and deliver equitable outcomes within the rates system for more Victorians. New opportunities include:
  - a. **New Housing – Zero Net Carbon (ZNC) Homes:** at the same price as a current 5-star Victorian Residential Efficiency Scorecard (the Scorecard) built home, with lower costs to operate;
  - b. **Home renovations:** Long term EUAs available for moving the average house from 3 to 10 stars, while decreasing cost of living within a currently vibrant annual renovation market in Victoria;
  - c. **Flammable Cladding:** The Victorian Government introduced Cladding Rectification Agreements (similar to EUAs) into the Local Government Act 1989 in 2018 aimed at retrofitting flammable cladding out of existing buildings. The legislation as passed is only functional in a limited number of cases but is otherwise unworkable. This submission envisions the policy outcome (removing flammable cladding from Victoria) to be achievable through SAF's recommended changes to the EUA provisions of the Bill.
3. **Better Building Finance:** is currently servicing 36 Local Governments in Victoria, which has resulted in an annual doubling of the EUA volumes written. BBF simplifies an EUA transaction by providing shared services to councils thus making residential EUAs more likely to succeed by reducing the transaction costs associated with EUAs. Because of this activity, Victoria currently has the largest EUA marketplace in Australia.

## Public policy rationale of EUAs

Upgrading buildings for greater energy, water and waste efficiency is a cost-effective way for businesses to cut energy bills, improve building value and reduce greenhouse gas emissions<sup>1</sup>. While the economics of such projects are attractive, barriers exist to unlocking these opportunities. EUAs were created to provide a tool to help overcome such barriers as the split incentive and enabling access to attractive capital.

Broader public benefits of EUAs include job creation and increased access to finance in Victoria<sup>2</sup>.

Victoria has set ambitious climate change targets to reach zero net emissions by 2050, is focused upon regional jobs, water security and enabling the State to transition to a renewable energy future. Significant amounts of investment across a broad range of activity will be required across the Victorian economy. Environmental Upgrade Agreements are a tool, which, when established efficiently, can assist in this ambition by attracting private capital into Victoria.

## What Are EUAs

EUAs are fixed interest, long term loans, provided by specialist lenders, which are secured through an Environmental Upgrade Charge declared by a Council on land. The nature of the loan enables the private sector to mobilise large amounts of capital to projects which deliver a specific environmental public benefit while unlocking immediate private benefit to owners and occupiers of properties on rateable land. EUAs were pioneered in Victoria with the City of Melbourne and are now also available New South Wales and South Australia.

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<sup>1</sup> <https://www.energy.vic.gov.au/energy-efficiency/environmental-upgrade-agreements>

<sup>2</sup> <https://www.energy.vic.gov.au/energy-efficiency/environmental-upgrade-agreements>

## Why EUAs

Whether a customer is an owner of land or a tenant upon land, an EUA is an attractive form of finance for projects that deliver environmental benefits through the financing of activities that deliver reductions in utility bills. Owners benefit from projects that are additive to property valuation whilst for tenants, EUAs finance projects which deliver immediate cash flow benefits to their businesses.

EUAs can provide up to 100% of the capital for projects, require no personal or director guarantees and can be easily transferred to new owners of land or future tenants in a building. These features make EUAs a very attractive new source of capital available to borrowers for qualifying projects.

## Background and detail

### Enabling legislation

EUAs were first created in Victoria in 2010 through an amendment to the *City of Melbourne Act 2001* and then expanded state-wide through an amendment to the *Local Government Act 1989* in 2015. New South Wales (2011) and South Australia (2017) have passed similar enabling legislation. In South Australia EUAs are referred to as Building Upgrade Finance (BUF), but the legislative framework is the same, while also enabling upgrade works to buildings that deliver positive heritage outcomes as well as lower utility bill outcomes.

Various State governments outside the above are exploring the EUA opportunity including Queensland, Western Australia and Tasmania.

In Victoria, EUAs can also be used to fund the rectification of combustible cladding through a different part of the Act and are referred to as Cladding Rectification Agreements.

### Launch of Sustainable Australia Fund

Sustainable Melbourne Fund has been renamed Sustainable Australia Fund and has been recapitalised through a funding agreement with Bank Australia with more than \$200M of capital available for EUAs in Victoria and Australia.

SAF can mobilise this capital towards EUAs and a limited amount towards Cladding Rectification Agreements (due to legislative barriers). SAF is currently in discussions to expand its current available capital from \$230m to \$500m. This capital is available to projects across, agriculture, manufacturing and industrial, commercial office and, where legislation enables efficient deployment of capital, into residential EUAs. Through this national expansion, SAF has a target of \$750m in EUA originations over a 5-year period.

### Better Building Finance

Better Building Finance (BBF) is a service platform, offering shared services for Local Governments, enabling them to offer EUAs to communities through a simple, streamlined and tested framework at the least cost. The BBF platform is designed to create a standardised EUA marketplace, making it easy for stakeholders across multiple municipal boundaries to benefit from them.

BBF acts as a Council's 'front desk' to raise awareness of and support businesses, service providers and lenders through the application and signing of the EUAs. BBF has facilitated over \$30m in investments and has delivered the single biggest EUA marketplace in the country. .

### EUA administration across Australia

In NSW and South Australia, a council 'self-administration' model has been implemented, resulting in each council setting up and running their EUA offering independently. This has resulted in fragmentation of the administrative model for EUAs and higher internal costs for councils to offer EUAs to their communities. In Victoria, through the provision of its services, BBF has been able to ensure a common and consistently applied administrative framework for market participants.

Market participants, like solar installers, Councils, builders, property owners and lenders must invest internal resources (time and money) into understanding and utilising EUAs in their business models. Where that cost exceeds value, an EUA will not be considered as a viable tool for their business. Victoria, because of the activity of BBF, has reduced the transaction costs of EUAs making their value exceed the cost, delivering a net benefit to market participants. The result has been year on year growth in the EUA marketplace in Victoria, while stagnation has occurred in other states.

As residential EUAs become available, it is important that legislation further simplifies the transaction costs of EUAs, as smaller individual project sizes cannot efficiently handle high administrative costs. BBF can facilitate residential EUAs through its current platform and where legislative simplicity for EUAs is in place, the take up of residential EUAs in Victoria will be more likely.

### Councils offering EUAs

Victoria, since passing state-wide enabling legislation in November 2015, has grown from 1 to 36 Councils offering EUAs in a 3-year period, while other States have had challenges in opening up a market.

State	Number of Councils offering EUAs
Victoria	36 Municipalities
New South Wales	6 Municipalities
South Australia	4 Municipalities

### EUA Value Proposition #1 – Loan Tenor

An EUA is a fixed interest rate product, and as such, is more expensive than a variable interest rate product over the same tenor. An EUA is available up to 20 years in tenor. There is no other fixed interest finance product available in Australia up to this length in time. The interest rate on a fixed interest EUA of 20 years will be higher than a 10-year EUA, however the same project financed by these two rates will be more cashflow positive (i.e. have greater positive impact upon cost of living) when financed by a 20 year EUA (Figure 1). Simply put, the amount of capital is paid back over a longer term, making the amount paid back each year less, while the project savings remain the same no matter how the project has been financed.

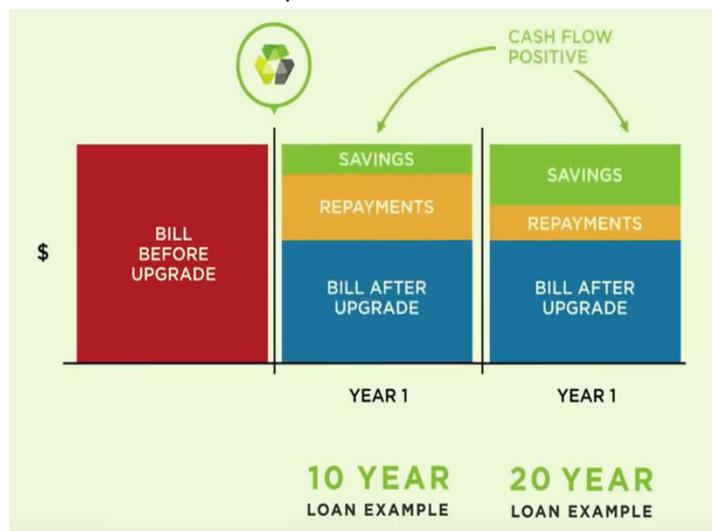


Figure 1 Loan Tenor - A tool to create cash, today.

### EUA Value Proposition #2 – The Charges stay with the land

An EUA is secured and repaid via by a Council rate called an Environmental Upgrade Charge (EUC). Like other council rates, when you sell your home the charges are picked up by the future owners. Because of this, Loan Tenor becomes attractive. If you are not in your home for the full term of the EUA you still get the positive net benefit from the project due to the immediate positive cashflow from the project financed by the EUA while you live there. When you sell, the charges and the benefit stay with the home for future owners to equitably benefit from.

### Economic impact

EUAs are an instrument for economic stimulation which yield positive environmental outcomes, targeted at financing projects which reduce energy and other utility bills and increasing activity in the construction sector. SAF estimates that every 1MW of installed roof top solar capacity generates the equivalent of 3.8 FTE through construction and ongoing jobs within the growth of solar retail businesses<sup>3</sup>.

<sup>3</sup> Sustainable Australia Fund market data

The improvement in energy performance in buildings in Australia over the past decade has resulted in \$28 billion in avoided energy bills. The economic impact of these savings, however, is likely to be substantially higher because of re-investment of energy savings back into the economy<sup>4</sup>.

ARUP has estimated that EUAs could unlock up to \$4 billion in additional economic opportunity within non-residential property Victoria, stimulating up to 18,000 jobs<sup>5</sup> while giving businesses up to \$0.4 billion in annual cost savings<sup>6</sup>. Expanding the applicability of EUAs and simplifying the legislations could deliver results above this identified opportunity.

## New Housing – Zero Net Carbon (ZNC) Homes

On average, 35,000 new houses are constructed each year in Victoria<sup>7</sup>, the majority of which do not perform any greater than the building code. Research shows that Australian consumers want sustainable homes – they just don't use the word 'sustainability' when describing their desires. But houses delivered to code today do not meet these needs. Delivering ZNC homes is estimated to save Australian households in order of \$600m in utility bill savings<sup>8</sup>. ASBEC and the Low Carbon Living CRC, in their report '*Growing the Market for Sustainable Homes: Industry Roadmap*' recommended to unlock the opportunity leveraging the finance sector to deliver lower cost finance for high performing homes<sup>9</sup>. Enabling EUAs to be applied to new housing construction can achieve this outcome, enabling new home buyers to own houses at the **same upfront cost** as current market prices with a lower cost to operate. As discussed above, the tenor of an EUA is what reduces the total cost of occupancy as well as the ability of an EUA to transfer with the land, delivers this outcome.

Utilising data available through the Victorian Residential Efficiency Scorecard, SAF has analysed the opportunity to deliver ZNC homes. ZNC homes could be sold at the same price point of a code-built house and be, on average \$AUD220 p.a. cheaper to occupy, when the marginal capital costs to deliver a ZNC home are financed by a 20-year EUA and repaid by the new homeowner.

Rocky Mountain Institute (RMI) has examined the opportunity in the United States of using Property Assessed Clean Energy (PACE) – the US version of EUAs – finance to deliver Net Zero Energy (NZE) homes. RMI's analysis looked at 7 different climatic zone and concluded that American new home owners would be, on average \$USD160 per annum better off, while paying no extra for the home (Figure 2).



Figure 2 RMI's Business Case for NZE homes

A comparison between both cases confirms approximately 10% cost reduction to occupy better performing houses after EUA repayments have been made (Figure 3).

<sup>4</sup> ASBEC (2018). *Built to perform: An industry led pathway to a zero carbon ready building code*. ASBEC & ClimateWorks Australia.

<sup>5</sup> ARUP – report for Eastern Alliance for Greenhouse Action – *EUA finance for the regions report 2013*

<sup>6</sup> ARUP - *EUA Finance for the Regions Addendum 2014*

<sup>7</sup> <https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/8752.0Dec%202018?OpenDocument>

<sup>8</sup> <https://www.asbec.asn.au/wordpress/wp-content/uploads/2019/06/190701-ASBEC-CRCLCL-Growing-Market-for-Sustainable-Homes-web.pdf>

<sup>9</sup> <https://www.asbec.asn.au/wordpress/wp-content/uploads/2019/06/190701-ASBEC-CRCLCL-Growing-Market-for-Sustainable-Homes-web.pdf>

	RMI (\$USD)	SAF (\$AUD)
Annual Repayment	\$1,475	\$2,182
Project annual Savings	\$1,635	\$2,402
Net Annual Benefit	\$160	\$220
Savings to Investment Ratio (SIR)	1.11 x	1.10 x

*Figure 3 Comparison between RMI and SAF research*

## Home renovation markets

Annually, Victorians spend in aggregate \$2.58 billion<sup>10</sup> in this market. Using data through the Victorian Residential Efficiency Scorecard, the average Victorian home of 3-star rating, costs \$1,357 p.a in energy bills. To upgrade that same house to a 10-star equivalent would cost on average an amount in order of \$14,835. The energy bills of a 10-star house would be negative \$301 per annum, meaning the home earns net income from export electricity each year. When financed with an EUA over 20 years, the homeowner is \$266 better off each year.

## Victoria's – Australia's EUA leader

The Victorian government created EUAs and other states have followed. Amendments to the Act in 2015 broadened its applicability across Victoria and made it simpler at that time. The opportunity to build upon 9 years of legislative experience to expand EUAs applicability, making it available to more Victorians and reducing the transaction costs for EUAs goes to the core of the Panels mandate to make Victoria's rating system fairer and more equitable.

The economic opportunity is large, with an estimated \$300M - \$1Bn annual opportunity in new residential construction alone. Simple drafting changes to the Bill will work (in part) to unlocking both economic opportunity as well as greater public benefits.

### Critical success factors in the Victorian legislation

SAF's experience in nearly 100 EUA transactions throughout Victoria has informed our recommendations to optimise both equity, simplicity and therefore fairness of the Bill. SAF's recommended changes to the Bill are made below to increase equitable access to EUAs, which are focused upon two distinct aspects:

1. **Breadth of Applicability of EUAs:** Broaden the public benefits to which EUAs could be applied, and;
2. **Reduce transaction costs:** smaller projects and councils require simplicity to effectively roll out EUA offerings to the Victorian economy.

### Broaden the applicability of EUAs across Victoria.

Widening the applicability of EUAs across more land and project types will provide for more equitable access to EUAs than that currently drafted into the Bill. Such changes do not compromise the current use of EUAs in the state.

1. **Enable EUAs to be applied to a wider range of property types:** Clause 134 is proposed to be amended to allow EUA's with respect to residential land, which SMF regards as a positive move. SAF would recommend that EUC's can be declared upon a wider range of property types than that defined in the Bill including:

<sup>10</sup> <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/8755.0Main+Features1Jun%202018?OpenDocument>

- 1.1. **Vacant Land:** enable projects relating to new building construction (residential and non-residential), agricultural projects such as water efficiency projects upon irrigated properties, land remediation and carbon projects as well as grid connected, community-scale renewable energy projects. Removing a reference to an existing building may achieve this.
  - 1.2. **Strata Titled Land:** SAF notes that Strata-titled land currently could use EUAs however is currently prohibitively difficult. As currently drafted, 100% consent of all lot owners is required to both agree, then execute one EUA which is unworkable. SAF believe this unfairly excludes apartment owners (and commercial property) from unlocking opportunities within their properties. SAF has proposed new sub-sections 134(6) and 134(7) to the Bill which provide a limited power for Owners Corporations to enter an EUA on behalf of the members of the Owners Corporation in respect of works on common property that are prescribed in regulation. Regulations could limit this power to the replacement of external flammable cladding, public safety and other common area upgrades where a direct environmental benefit is not directly obvious. It is SAF's proposal that the cost of these works be recovered by an environmental upgrade charge which is levied directly on members of the Owners Corporation. The Owners Corporation would only have a power to enter into the environmental upgrade agreement in accordance with the existing rules that apply to a special resolution (75% majority vote of members).
  - 1.3. **Tenanted Residential Property:** SAF recommends that the government should consider the ability for EUC's to be passed through to consenting tenants in residential properties. The current drafting precludes Victoria's 400,000 tenanted residential properties from accessing EUAs, but not commercial tenants. Removing the exclusion of s137 to residential property in s. 134(2) may achieve this outcome.
  - 1.4. **All land, not just rateable land:** to enable a range of projects to occur upon a wider range of property types, including community and sporting facilities, government owned property such as schools and hospitals as well as significant infrastructure and Public-Private Partnership (PPP) properties. Removing a reference to 'rateable' may achieve this. Sustainable Australia Fund recognises that other barriers to such investment may exist, such as schools seeking the relevant approvals to enter an EUA, however, currently under the Bill's drafting the opportunity is not available to explore.
2. **Enable EUAs to a wider range of project types:** include that the environmental upgrade works that are the subject of an EUA should achieve a "*net benefit with respect to energy, water or environmental efficiency, sustainability, environmental adaptation or public safety within the State of Victoria*". SAF notes that similar financing mechanisms have been used in other jurisdictions to enable (in South Australia) heritage upgrades, disability access and (in the United States) improvements to withstand seismic and storm events. In SMF's submission, the EUA mechanism provides an opportunity to compliment current government funding in relation to the replacement of flammable cladding in Victoria.

The proposed changes would enable more property owners to access EUAs within their communities, where currently only businesses with existing buildings on the land are only able to access EUAs. By widening the definition of project types to those which deliver environmental and wider benefits to the state of Victoria enables market innovation to occur while limiting projects to delivering a public benefit. This aligns with private benefits (access to a unique form of capital – long term (20years), fixed interest finance available for 100% of qualify project costs). An example of projects that may be delivered, subject to markets responding to the opportunities:

- New high efficiency Zero Net Carbon (ZNC) homes and buildings, improving environmental and cost of living outcomes;
- Upgrades that help finance the cost of bushfire upgrades to homes and buildings;

- Assist local Councils to deal with the enforcement of septic tank repairs;
- Community scale renewable energy projects;
- Replacement of flammable cladding across residential and commercial properties;
- Water irrigation and drought protection works,
- Climate adaptation works, construction of seawalls or inundation protection works;
- Complement Solar Victoria in the grant and no interest loan program to expand a solar array and add batteries to all projects;
- Land remediation and carbon sink projects; plus, more.

## Reducing Transaction Costs

Where a wider range of projects become available under EUAs, current constraints within the Act and proposed Bill will limit the availability of EUAs to unlock the potential. Consideration to how these projects are financed, ownership structures of land and impacts upon councils must be given with a view to simplification. Where transactions costs (being costs in time as well as money) are onerous and therefore costly, smaller projects such as that already envisioned within the Bill (residential property) become unattractive for all parties involved. Inequity is introduced to the legislation where larger projects can bear higher transaction costs (in absolute terms, but lower on a percentage basis) while smaller projects cannot. Operational inefficiency places burden upon councils with limited resources.

### 2. Remove unnecessary complexity to the Bill

- **Section 135 (2):** makes it a pre-requisite for a Council entering into an EUA that they assess total value of the taxes, rates, charges and mortgages (collectively, debts) which are related to or secured by the rateable land against Capital Improved Value (CIV) of the rateable land. This statement has two implications:
  - **Unnecessarily involving councils in credit risk assessment:** It compels councils to become involved in the process assessing the risk of losing money upon sale of a property to recover defaulted payments. Unless Council acts as the lender, it is not Councils money to lose, rather a Lenders risk of loss. The Lender, in agreeing to provide financial accommodation to a borrower under an EUA assesses, and consequently either accepts or declines the risks of doing so. A Lender must assess the risk of a borrower's propensity to be able to make repayments and where an event of default occurs (less than 1% of the time in accordance with SAF's experience) the risk of total financial loss under the security arrangements of an EUA. Further, a lender must assess the risk associated with councils acting as the collection agent for repayments as, under an EUA, a lender does not have the ability to enforce non-payment of EUAs, a council does (using best endeavours). Where both a council and a lender (acting in its own right) must complete credit assessments, Transactions costs are duplicated and a barrier to uptake is introduced, especially for smaller projects.
  - **Introduces a non-conventional credit metric:** The method of assessing the potential for loss of a Lenders money in a default acts as a constraint to potential project types. The requirement to assess the total debt attached to the rateable land against the CIV (before the environmental upgrade works are undertaken) has become a complicating factor in the EUA process for the following reasons:
    - It has been applied by Council's with reference to the CIV figure on the most recent rates' notice which may be out-of-date and often does not align with normal lending practice, being Market or As if Complete Valuations. This has acted as a loan capping exercise and barrier to investment preventing investment in local communities especially regional Victoria.

- The current wording requires that the principal plus interest component of a loan is considered (the EUC's). Normal credit assessments aim to protect capital against loss, as opposed to the potential to lose income (interest).
- It adds a project risk for the building owner by adding another layer of approval in the finance application process adding unnecessary delay and increased uncertainty. Both of which are important to efficient business operations.
- Councils have been misusing information gathered through this methodology as evidence to justify a supplementary valuation of the property in order to raise general rates revenue of a council. Despite recent changes to moving revaluations to an annual basis, SAF recently experienced such actions in October 2019. This acts as a disincentive for borrower to actively pursue projects which cannot be financed alternatively and resulted in investments not being made in a local regional community preventing public and private benefits (local jobs and environmental impact).

The above becomes particularly problematic where vacant land is considered. It is normal lending practice to lend money to a borrower for the construction of a new property, often in excess of the current valuation of the land. A Lender in these circumstances' places other controls in construction finance to reduce (but not eliminate) the risk of loss prior to completion of a project and the full value of the land (and construction) is complete. Figure 4 demonstrates how the current wording of the Act would prevent investment into delivery of high performing residential new homes despite homeowners, over the life of a 20-year EUA benefiting in order of \$21,000. Residential home loans could advance up to \$600,000 to the same project while an EUA could not be advanced due to clause 134 (3) as drafted into the Bill would be assessed as being 260% of the CIV.

CIV prior to construction		\$250,000
Value of House to be built		\$500,000
<b>Total Cost (assumed total Value)</b>	<b>A</b>	<b>\$750,000</b>
Loan to Value Ratio (LVR) of Mortgage	B	80%
<b>Loan secured by Mortgage</b>	<b>C = A x B</b>	<b>\$600,000</b>
Sum of EUCs (20 year term) (ZNE Home marginal costs)	D	\$53,161
<b>Clause 135(2) assessed debts</b>	<b>=C+D</b>	<b>\$650,885</b>
Land value of CIV (cl135(2))		\$250,000
<b>LVR relative to CIV</b>		<b>260%</b>
Lifetime benefit to homeowner		
Electricity savings (escalated at 1.5% CPI)		\$74,599
EUA Costs (Sum of fixed charges)		-\$53,161
<b>Net Lifetime benefit</b>		<b>\$21,438</b>

*Figure 4 worked example of CIV*

The same rationale applies to agricultural land, regional property and home renovation markets. SAF is proposing that clauses 135(2) is removed from the proposed Bill which will align the Victorian EUA legislation with NSW.

## Appendix I – Division 5 Mark-up

### Division 5—Environmental upgrade agreements

#### 134 Environmental upgrade agreement

- (1) ~~Subject to section 135, Aa~~ Council may enter into an environmental upgrade agreement in respect of ~~rateable~~ land ~~with an existing building on it~~, to fund works ~~on that land that provide a net benefit with respect to improve the energy, water or environmental efficiency, or sustainability, public safety or climatic adaptive capacity within the State of Victoria of the building on that rateable land~~ with—
  - (a) the owner of the ~~rateable~~ land; and
  - (b) a lending body, ~~unless the Council is the lending body~~; and
  - (c) any other person that the other parties to the agreement agree should be a party to the agreement and agrees to be a party to the agreement.
- (2) Sections 135(1)(~~ab~~) and (~~be~~) and 137 do not apply to an environmental upgrade agreement in respect of ~~rateable~~ land that is used for a residential purpose.
- (3) The Minister administering the **Victorian Energy Efficiency Target Act 2007** may, after consultation with the Minister, publish guidelines in the Government Gazette specifying the types of works to be funded by an environmental upgrade agreement.
- (4) A Council must have regard to the guidelines published under subsection (3) before entering into an environmental upgrade agreement.
- (5) An environmental upgrade agreement must—
  - (a) be in writing; and
  - (b) outline the works to be undertaken on the ~~rateable~~ land of the owner; and
  - (c) contain provisions that provide for the lending body to advance specified funds to conduct the works; and
  - (d) provide for the Council to levy an environmental upgrade charge on the ~~rateable~~ land; and
  - (e) provide for the Council to use the funds received under the environmental upgrade charge—
    - (i) to repay the lending body the principal amount initially advanced to the owner plus any agreed interest accrued since that advance; and
    - (ii) for an agreed administrative charge to be retained by the Council.
- (6) For the purposes of this Division, references to an owner of land shall include, in relation to land that is the subject of a strata title, the Owners Corporation for the land, who may enter into an environmental upgrade agreement on behalf of all members of the Owners Corporation in accordance with special resolution of the members of the Owners Corporation.
- (7) An environmental upgrade agreement entered into by an Owners Corporation under sub-clause (6):

- ~~(i) will bind the members of the Owners Corporation and a Council must issue an environmental upgrade charge to each member of the Owners Corporation in accordance with the environmental upgrade agreement;~~
- ~~(ii) is not subject to section 135.~~

### 135 Conditions to be met before entering into environmental upgrade agreement

(1) Before entering into an environmental upgrade agreement, the owner of the **rateable** land—

~~(a) must give the Council details in writing of—~~

~~(i) 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; and~~

~~(ii) all registered and unregistered mortgages over the rateable land; and~~

~~(ab) must notify any existing mortgagee of the intention to enter into an environmental upgrade agreement; and~~

~~(be) may obtain the written agreement of an occupier to pay the environmental upgrade charge that will apply in respect of their occupancy.~~

~~(2) A Council must not enter into an environmental upgrade agreement unless the Council is satisfied that the total amount of taxes, rates, charges and mortgages owing on the rateable land when added to the total value of the environmental upgrade charge is an amount that does not exceed the capital improved value of the land prior to any works that would be undertaken as part of the environmental upgrade agreement.~~

### 136 Environmental upgrade charge

(1) After entering into an environmental upgrade agreement a Council must, in accordance with the conditions of that agreement, declare an environmental upgrade charge in respect of the **rateable** land that is the subject of the environmental upgrade agreement.

(2) Subject to the provisions of the environmental upgrade agreement, the environmental upgrade charge may be varied to provide for any of the following—

(a) a variation in the works;

(b) a variation in the cost of the works;

~~(c) a variation in the interest rate;~~

~~(de) an additional penalty interest in the event of a failure to pay the charge in accordance with the environmental upgrade agreement.~~

(3) This Part applies to an environmental upgrade charge as if it were a service charge.

(4) A Council may, by instrument of delegation, delegate to the Chief Executive Officer the power to declare and levy an environmental upgrade charge.

~~(5) The Chief Executive Officer must not delegate the power delegated to the Chief Executive Officer under subsection (4) to any other person.~~

### **137 Liability of occupier to pay environmental upgrade charge**

- (1) Despite any provision of any existing lease or agreement between an owner of a **rateable** land which is subject to an environmental upgrade charge and an occupier, the occupier is not liable to pay any part of the environmental upgrade charge unless the occupier or a previous occupier of the **rateable** property has specifically agreed in writing to pay the environmental upgrade charge.
- (2) If an occupier or a previous occupier has agreed in writing to pay an environmental upgrade charge and the occupier fails to do so by the due date, the occupier is liable to pay any penalty interest accruing as a result of that failure.

### **138 Liability of Council to recover environmental upgrade charge**

- (1) Subject to subsections (2) and (3), a Council must use its best endeavours to recover an environmental upgrade charge in accordance with any requirements imposed on it by this Act and the environmental upgrade agreement.
- (2) A Council is not liable for any failure by an owner or any occupier to pay an environmental upgrade charge.
- (3) A failure by an owner or any occupier under subsection (2) does not make the Council liable to pay the outstanding amount under the environmental upgrade charge to the lending body.