

BOARD OF INQUIRY INTO THE MCCRAE LANDSLIDE

FURTHER RESPONSE TO THE SECOND LIST OF QUESTIONS FOR THE STATE OF VICTORIA

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A OVERVIEW

- 1 On 16 April 2025, the Solicitor Assisting **the Board** of Inquiry into the McCrae Landslide wrote to the lawyers for **the State** of Victoria requesting that the State produce witness statements in response to a **second list of questions** for certain entities.¹ On 17 April 2025, the lawyers for the State (Clayton Utz) wrote to the Solicitor Assisting the Board offering to answer the second list of questions by way of submission for each of the specific entities that it represents, such submission being settled by the State's external legal team, including its counsel.² The Solicitor Assisting confirmed this alternative was acceptable.³
- 2 The State makes the submission referred to at [1] in answer to the second list of questions for the entities referred to below in **Section C**. The State does not make any submission for the following specific entities for whom the lawyers for the State do not act in this Inquiry:
 - (a) South East Water Corporation;⁴
 - (b) Melbourne Water Corporation;⁵
 - (c) Southern Rural Water Corporation;⁶
 - (d) the Energy and Water Ombudsman Victoria;⁷
 - (e) the Victorian Ombudsman.⁸
- 3 In making this submission, the State has sought only to answer the second list of questions. It is not making any final submission as to specific issues the subject of the Inquiry. The State generally reserves its position to make any oral and/or written submission directed to any specific issue of fact or law that relates to any of its answers to the second list of questions

¹ Letter from Georgie Austin, Solicitor Assisting to Pip Mitchell, Partner, Clayton Utz dated 16 April 2025.

² Letter from Pip Mitchell, Partner, Clayton Utz to Georgie Austin, Solicitor Assisting dated 17 April 2025.

³ Letter from Georgie Austin, Solicitor Assisting to Pip Mitchell, Partner, Clayton Utz dated 17 April 2025.

⁴ Second list of questions; list of entities at [2.8]; see, Letter from Pip Mitchell, Partner, Clayton Utz to Solicitor Assisting dated 17 April 2025.

⁵ Second list of questions; list of entities at [2.10]; see, Letter from Pip Mitchell, Partner, Clayton Utz to Solicitor Assisting dated 17 April 2025.

⁶ Second list of questions; list of entities at [2.11]; see, Letter from Danielle Taske, Director Legal, Victorian Ombudsman to Solicitor Assisting dated 24 April 2025.

⁷ Second list of questions; list of entities at [2.20]; see, Letter from Pip Mitchell, Partner, Clayton Utz to Solicitor Assisting dated 17 April 2025.

⁸ Second list of questions; list of entities at [2.21]; see, Letter from Danielle Taske, Director Legal, Victorian Ombudsman to Solicitor Assisting dated 24 April 2025.

in order for the Board to discharge the requirements of procedural fairness⁹ in conducting the Inquiry.¹⁰ This reservation includes any oral and/or written submission as to the scope of the Board's Terms of Reference.¹¹ Further, this submission makes discrete reference to certain Victorian legislation, and provisions therein, however, this submission is not (and does not purport to be) a comprehensive or exhaustive reference of any legislation or provision referred to therein.

- 4 The submission has been prepared by the State in the time available.¹² The State's answers to the second list of questions do not purport to be completely exhaustive. If any further relevant information to the second list of questions becomes available to the State, it generally reserves its position to supplement this submission as necessary to assist the Board. If the Board would be assisted by any further information arising from a specific answer, the State will consider and provide its response to any such request as soon as is reasonably practicable.
- 5 The State provided the first part of its submission to the Board on 30 April 2025. As foreshadowed at [5] of that first submission, the Board now provides this further submission for the specific entities listed below in **Sections C.6, C.9, C.11 and C.15**.¹³

B THE SECOND LIST OF QUESTIONS

- 6 The second list of questions is as follows:

[1] For each of the entities listed below (including any predecessors if applicable, describe the responsibilities, powers, duties and functions (collectively, **role**) it has or exercises in relation to the prevention and management of landslides and landslips in Victoria in the period from 14 January 2019 to date, including by reference to any

⁹ *Inquiries Act 2014* (Vic) s 59: A Board of Inquiry may conduct its inquiry in any manner that it considers appropriate, subject to –

- (a) the requirements of procedural fairness;
- (b) the establishing Order for the Board of Inquiry; and
- (c) this Act, the regulations and any other Act.

¹⁰ The Board's Terms of Reference are contained in the Order in Council, No. 6 111, dated 18 March 2025 at [3].

¹¹ Terms of Reference at [3.4(a)]: "Without limiting the scope of your inquiry or the scope of any recommendations arising out your inquiry that you may consider appropriate you are directed to: (a) Conduct your inquiry as you consider appropriate, subject to the requirements of procedural fairness".

¹² The request was received on 16 April 2025 and a response was requested by 30 April 2025. During this period, there were three public holidays that fell on 18 April, 21 April, and 25 April, such that only seven business days were available to acquit the request.

¹³ Letter from Clayton Utz to Solicitor Assisting dated 30 April 2025.

applicable regulations or legislation. In explaining each entity's role, please specifically indicate the extent to which each entity's role concerns:

- [1.1] erosion management in Victoria;
- [1.2] stormwater management in Victoria;
- [1.3] maintenance or the replacement of infrastructure and assets (**works**), including (but not limited to) roads, pipes and channels, being works which contribute (directly or indirectly) to the prevention and management of landslides and landslips in Victoria;
- [1.4] responding to complaints or concerns raised by persons such as (but not limited to) landowners, land managers, or local authorities about changes or issues in the landscape or infrastructure (including local water infrastructure) that may, on an objective assessment, indicate the risk of a landslide or landslip occurring; and
- [1.5] commissioning or undertaking risk assessments to determine the likelihood of landslides and landslips in Victoria.

C SPECIFIC ENTITIES

7 The State answers the second list of questions for the following specific entities¹⁴ listed below:

- (a) the Department of Energy, Environment and Climate Action (**DEECA**) (see **Section C.1**);¹⁵
- (b) the Department of Government Services (**DGS**) (see **Section C.2**);¹⁶
- (c) the Department of Jobs, Skills, Industry and Regions (**DJSIR**) (see **Section C.3**);¹⁷
- (d) the Department of Justice and Community Safety (**DJCS**) (see **Section 10**);¹⁸
- (e) the Department of Premier and Cabinet (**DPC**) (see **Section C.5**);¹⁹

¹⁴ Where appropriate, this submission uses specific sub-headings for some entities: "**Erosion management**", "**Stormwater management**", "**Maintenance or replacement works**", "**Responding to complaints or concerns**" or "**Risk assessments**".

¹⁵ Second list of questions; list of entities at [2.1].

¹⁶ Second list of questions; list of entities at [2.2].

¹⁷ Second list of questions; list of entities at [2.3].

¹⁸ Second list of questions; list of entities at [2.4].

¹⁹ Second list of questions; list of entities at [2.5].

- (f) the Department of Transport and Planning (**DTP**) (see **Section C.6**);²⁰
- (g) the Department of Treasury and Finance (**DTF**) (see **Section C.7**);²¹
- (h) the Essential Services Commission (see **Section C.8**);²²
- (i) the Victorian Building Authority (**VBA**), including municipal building surveyors contracted by the VBA (see **Section C.9**);²³
- (j) the Victorian Managed Insurance Authority (**VMIA**) (see **Section C.10**);²⁴
- (k) the Victorian Planning Authority (**VPA**) (see **Section C.11**);²⁵
- (l) Emergency Management Victoria (**EMV**) (see **Section C.12**);²⁶
- (m) Victoria State Emergency Service (**VICSES**) (see **Section C.13**);²⁷
- (n) Victoria Police (see **Section C.14**);²⁸
- (o) VicRoads (see **Section C.15**); and
- (p) Worksafe Victoria (see **Section C.16**).²⁹

C.1 Department of Energy, Environment and Climate Action

8 This section was provided as part of the State's first submission.

C.2 Department of Government Services

9 This section was provided as part of the State's first submission.

C.3 Department of Jobs, Skills, Industry and Regions

10 This section was provided as part of the State's first submission.

²⁰ Second list of questions; list of entities at [2.6].
²¹ Second list of questions; list of entities at [2.7].
²² Second list of questions; list of entities at [2.9].
²³ Second list of questions; list of entities at [2.12].
²⁴ Second list of questions; list of entities at [2.13].
²⁵ Second list of questions; list of entities at [2.14].
²⁶ Second list of questions; list of entities at [2.15].
²⁷ Second list of questions; list of entities at [2.16].
²⁸ Second list of questions; list of entities at [2.17].
²⁹ Second list of questions; list of entities at [2.19].

C.4 Department of Justice and Community Safety

11 This section was provided as part of the State's first submission.

C.5 Department of Premier and Cabinet

12 This section was provided as part of the State's first submission.

C.6 Department of Transport and Planning

13 On 1 January 2023, the name of the Department of Transport was changed to the Department of Transport and Planning (**DTP**), reflecting the transfer of portfolio responsibility for Planning from the former Department of Environment, Land, Water and Planning (**DELWP**) (see **Section C.1** of the State's first submission). DTP brings together transport, planning, building, land precinct and policy functions within a single department.

14 DTP supports and provides advice to four ministers, including the Minister for Planning, the Minister for Roads and Road Safety, the Minister for Housing and Building and the Minister for Development Victoria and Precincts. DTP's role includes providing support and advice for the administrative responsibilities those ministers may have (either jointly or severally) under specific Acts (or parts of Acts), including:

- (a) The *Building Act 1993* (Vic) (**the Building Act**),³⁰ the *Building Regulations 2018* (Vic) (**the Building Regulations**);³¹ and the *Plumbing Regulations 2018* (Vic) (**Plumbing Regulations**);³²
- (b) the *Planning and Environment Act 1987* (Vic) (**Planning and Environment Act**)³³ and the *Planning and Environment Regulations 2015* (Vic) (**Planning and Environment Regulations**);³⁴ and
- (c) the *Road Management Act 2004* (Vic) (**Road Management Act**).³⁵

³⁰ This submission refers to Authorised Version No. 141 of the Building Act unless otherwise stated.

³¹ This submission refers to [Authorised Version No. 027](#) of the Building Regulations unless otherwise stated.

³² This submission refers to Authorised Version No. 008 of the Plumbing Regulations unless otherwise stated.

³³ This submission refers to [Authorised Version No. 157](#) of the Planning and Environment Act unless otherwise stated.

³⁴ This submission refers to Authorised Version No. 008 of the Planning and Environment Regulations unless otherwise stated.

³⁵ This submission refers to [Authorised Version No. 066](#) of the Road Management Act unless otherwise stated.

- 15 DTP is responsible for setting policy related to new building works and plumbing standards. DTP is also responsible for building reform in relation to safety, liveability and sustainability of Victoria's built environment, including through the *Building Statement: Strengthening Victoria's Building System*.³⁶
- 16 DTP also includes Land Use Victoria, which is the State's key agency for land registration (including the public registers of land and water), property information, spatial data services and maps, surveying and government land policy and advice.

C.6.1 *Building Act 1993 (Vic)*

- 17 DTP is responsible for administering the Building Act, the Building Regulations and the Plumbing Regulations.
- 18 Some of the main purposes of the Building Act are to: regulate building work and building standards;³⁷ provide for the accreditation of building products, construction methods, building components and building systems;³⁸ provide an efficient and effective system for issuing building and occupancy permits and administering and enforcing related building and safety matters and resolving building disputes;³⁹ and to regulate building practitioners, building employees and plumbers.⁴⁰ The role of the Victorian Building Authority (VBA) in relation to compliance and enforcement under the Building Act is outlined in **Section C.9**.
- 19 The objectives of the Building Act include to protect the safety and health of people who use buildings⁴¹ and to facilitate the adoption and application of national building standards.⁴² Part 2 of the Building Act provides for "Building standards" and includes a regulation-making power for or with respect to prohibiting or regulating: the construction, use, maintenance, demolition and removal of buildings;⁴³ and any matters relating to the safety of buildings.⁴⁴ Such regulations may deal with matters that are included in Part 1 of Sch 1 to the Building Act, which includes, for example: design and siting of buildings;⁴⁵ form and

³⁶ < <https://www.planning.vic.gov.au/guides-and-resources/building-policy/building-reform> >

³⁷ Building Act s 1(a).

³⁸ Building Act s 1(b).

³⁹ Building Act s 1(c).

⁴⁰ Building Act s 1(d).

⁴¹ Building Act s 4(1)(a).

⁴² Building Act s 4(1)(d)(i).

⁴³ Building Act s 7(1)(a).

⁴⁴ Building Act s 7(1)(b).

⁴⁵ Sch 1 to Building Act at Item 1.

contents of plans and specifications for building work;⁴⁶ structural strength, integrity, stability, durability and insulating properties of building work and materials;⁴⁷ and the safety of buildings.⁴⁸ The Objectives of the Building Regulations include prescribing requirements for the design, siting and access requirements for single dwellings and associated buildings and for small second dwellings⁴⁹ (which are then set out in Part 5 of the Building Regulations).

- 20 Building regulations made under the Building Act may also empower a municipal council to make local laws for or with respect to any matter in Part 1 of Sch 1 to the Building Act,⁵⁰ which, if made, is a building regulation in force in relation to the municipal district.⁵¹ The effect of any planning schemes under the Planning and Environment Act is also provided for in the Building Act, if there are overlapping building regulations which apply.⁵²
- 21 Building regulations made under the Building Act can apply, adopt and incorporate (wholly, partly or with modifications) any matter that is contained in the Building Code of Australia,⁵³ which is comprised of Volumes One and Two of the National Construction Code (including any Victorian or other additions therein).⁵⁴ The Building Regulations adopt the Building Code of Australia.⁵⁵ The National Construction Code sets the minimum required level for safety, health, amenity, accessibility and sustainability of certain buildings.
- 22 The Plumbing Regulations, also made under the Building Act, specify work that is plumbing work to which Part 12A of the Building Act applies, and adopt the Plumbing Code of Australia set out in National Construction Code Volume 3 as part of the Regulations.⁵⁶

⁴⁶ Sch 1 to Building Act at Item 2.

⁴⁷ Sch 1 to Building Act at Item 7.

⁴⁸ Sch 1 to Building Act at Item 34.

⁴⁹ Building Regulations reg 1(e).

⁵⁰ Building Act s 8(1).

⁵¹ Building Act s 8(2).

⁵² Building Act s 11.

⁵³ Building Act s 9(1).

⁵⁴ Building Act s 3(1) definition of “**Building Code of Australia**”, inserted by the *Building Legislation Amendment and Other Matters Act 2024* (Vic) s 24(1) ([Authorised Version No. 43 of 2024](#)).

⁵⁵ Building Regulation reg 10.

⁵⁶ Plumbing Regulations reg 7.

- 23 The National Construction Code is published on the website⁵⁷ of the Australian Building Codes Board on behalf of the Australian Government and each State and Territory Government:
- (a) Volume One contains technical design and construction requirements for all Class 2 to 9 buildings (multi-residential, commercial, industrial and public assembly buildings).⁵⁸
 - (b) Volume Two contains technical design and construction requirements for certain residential and non-habitable building structures (Class 1 and 10 buildings).⁵⁹
 - (c) Volume Three contains technical requirements for the design and construction for plumbing and drainage systems in new and existing buildings. It applies to these systems in all classes of buildings whenever plumbing work is carried out. It additionally applies to sites where water services are constructed independent of buildings.⁶⁰ There are specific requirements for stormwater roof drainage (part E3) and stormwater surface and sub-surface drainage systems (part E4).
- 24 In 2015, the Australian Building and Codes Board revised for publication a non-mandatory handbook on “Landslide Hazards”,⁶¹ which is designed to support the provisions of the National Construction Code.⁶²
- 25 Part 3 of the Building Act deals with “Building permits” and includes offence provisions (Div 1), the application process for building permits (Div 2) and the decision-making process for building permits (Div 3), which includes the obligation on a “relevant building surveyor”⁶³ to decide an application for a building permit by issuing it (with or without

⁵⁷ < <https://ncc.abcb.gov.au> > See, too, Building Act s 3(1) definition of “**National Construction Code**”, inserted by the *Building Legislation Amendment and Other Matters Act 2024* (Vic) s 24(3) ([Authorised Version No. 43 of 2024](#)).

⁵⁸ Introduction to National Construction Code Volume One, p 11. See, too, Building Regulations reg 12: “For the purposes of these Regulations, buildings must be classified as set out in the Building Code of Australia”.

⁵⁹ Introduction to National Construction Code Volume Two, p 8. See, too, Building Regulations reg 12: “For the purposes of these Regulations, buildings must be classified as set out in the Building Code of Australia”.

⁶⁰ Introduction to National Construction Code Volume Three, p 8.

⁶¹ < <https://ncc.abcb.gov.au/sites/default/files/resources/2022/Handbook-landslide-hazards-2015.pdf> >

⁶² Landslides Hazard Handbook (2015) at [1.1] p 1.

⁶³ Building Act s 3(1) definition of “**relevant building surveyor**” “means (a) in relation to an application to, or permit, approval, inspection, direction, notice or order issued or given by, a municipal building surveyor, means the municipal building surveyor; and (b) in relation to an application to, or permit, approval, inspection, direction, notice or order issued or given by, a private building surveyor, means the private building surveyor; and (c) in relation to the carrying out by the [VBA] of the functions of a municipal building surveyor or a function specified in section 205P, means the [VBA]....”

conditions) or refusing it.⁶⁴ The criteria for issuing building permits involves a relevant building surveyor being satisfied as to:⁶⁵

- (a) compliance with the Building Act, the Building Regulations⁶⁶ and any binding determinations;
- (b) any required consent of a reporting authority being obtained;
- (c) any required planning permit having been obtained; and
- (d) that the building permit will be consistent with any planning permit or other prescribed approval.

26 The Building Regulations set out the information which must be provided in a building permit application, including a copy of any planning permit, detailed drawings, specification of materials and methods to be used in construction, any computations or necessary reports, and an allotment plan showing certain information including levels and drainage.⁶⁷

27 Part 4 of the Building Act deals with “Inspection of building work” and includes the power of a relevant building surveyor to cause building work for which a permit has been issued under Part 3 to be inspected at any time.⁶⁸ This power applies in addition to a series of mandatory inspection stages imposed in the legislation.⁶⁹

28 Part 8 of the Building Act provides for “Enforcement of safety and building standards”, including:

- (a) for “Emergency Orders” (Div 1), which includes the power of a municipal building surveyor⁷⁰ to make an order if they are of the opinion it is necessary because of a danger to life or property arising out of the condition or use or proposed use of: a building, the land on which building work is being or is proposed to be carried out, or a place of

⁶⁴ Building Act s 19(1).

⁶⁵ See, for example, Building Act s 24(1).

⁶⁶ Including the standards set in the National Construction Code and given effect through the Building Regulations.

⁶⁷ Building Regulations reg 25.

⁶⁸ Building Act s 35.

⁶⁹ Building Act s 34.

⁷⁰ Building Act s 3(1) definition of “*municipal building surveyor*” means a person for the time being appointed, employed or nominated by a council as its municipal building surveyor for the purposes of this Act”.

public entertainment.⁷¹ An emergency order might direct an owner or occupier to vacate a building, land or place of public entertainment;⁷²

- (b) for “Building notices and building orders” (Div 2), which includes the power of a municipal building surveyor or a private building surveyor⁷³ to cause a building notice to be served on the owner of a building, land or place of public entertainment if they are of the opinion, for example, that the building, land or place or building work on the building, land or place is a danger to life, safety or health.⁷⁴ The issuing of a building notice can trigger the making of a building order, which could include, for example, to take certain necessary work to address such danger;⁷⁵
 - (c) general powers (Div 3), which includes the specific power of a municipal building surveyor to carry out work as required by an emergency order or building order where an owner has failed to carry out such work,⁷⁶ the Minister for Planning to authorise action where there is immediate danger to life or property where an owner of a building or place or public entertainment cannot be contacted or is unwilling or unable to take immediate action to comply with an emergency order.⁷⁷
- 29 Part 10 of the Building Act establishes the Building Appeals Board, a specialist tribunal which is empowered to make decisions about matters related to the Building Act and Building Regulations, including the application of the National Construction Code.
- 30 Division 1 of Part 12 of the Building Act deals with the “Role of the Minister” (the Minister for Planning or the Minister for Housing and Building) in “Building administration”, which includes the power to issue guidelines⁷⁸ or binding directions⁷⁹ applicable to municipal building surveyors and private building surveyors (see, for example, the Minister’s Guideline “MG-12: Siting and Design of Single Dwellings” made on 13 December 2023, referred to

⁷¹ Building Act s 102.

⁷² Building Act s 103(1).

⁷³ Division 1 of Part 6 of the Building Act deals with the appointments of private building surveyors. Building Act s 3(1) definition of “*private building surveyor*” means a building surveyor registered under Part 11 [including] other than (a) a municipal building surveyor...”

⁷⁴ Building Act s 106(d).

⁷⁵ Building Act s 111(5A), inserted by the *Building Legislation Amendment and Other Matters Act 2024* (Vic) s 6 ([Authorised Version No. 43 of 2024](#)).

⁷⁶ Building Act s 121.

⁷⁷ Building Act s 122.

⁷⁸ Building Act s 188(1)(c).

⁷⁹ Building Act s 188AA(1) & (3).

below in **Section C.6.3**). The Minister also has the power to require the VBA to act as a building surveyor in certain circumstances.⁸⁰ In addition, the Minister has a power of delegation of functions under the Building Act⁸¹ and has general enforcement powers in relation to councils and municipal building surveyors if, the Minister considers that their functions under the Building Act are not being satisfactorily carried out.⁸²

- 31 The Minister for Planning also has a specific role in relation to alpine resorts. The role concerns the administration and enforcement of certain parts of the Building Act and Building Regulations in that area.⁸³

C.6.2 Erosion management – building

- 32 Volume One of the National Construction Code, Part B1 deals with “Structural provisions” which focuses on safeguarding people from injury caused by structural failure, loss of amenity caused by structural behaviour (deflections, creep, vibration, settlement and the like), protection of other property from physical damage caused by structural failure and safeguarding people from injury that may be caused by failure of, or impact with, glazing. One of the specific “Performance Requirements” is “Structural Reliability” (B1P1) which provides at (1):⁸⁴

By resisting the actions to which it may reasonably be expected to be subjected, a building or structure, during construction and use, with appropriate degrees of reliability, must—

- (a) perform adequately under all reasonably expected design actions; and
- (b) withstand extreme or frequently repeated design actions; and
- (c) be designed to sustain local damage, with the structural system as a whole remaining stable and not being damaged to an extent disproportionate to the original local damage; and
- (d) avoid causing damage to other properties.

- 33 The actions that are considered to satisfy B1P1(1) above include, but are not limited to, ground movement caused by landslip or subsidence (at B1P1(2)(m)(ii)).

⁸⁰ Building Act s 190(1).

⁸¹ Building Act s 189(1).

⁸² Building Act s 222.

⁸³ Building Act s 192(1).

⁸⁴ National Construction Code Volume One, pp 86-87. See, too, National Construction Code Volume Two, pp 81-82 (H1P1).

- 34 Regulation 119 of the Building Regulations provides for retaining walls and the power of a municipal building surveyor to require the owner of an allotment to provide retaining walls or other means of maintaining the stability of the soil if the municipal building surveyor considers the stability of the ground on the allotment or any adjoining property has been or may be adversely affected by any excavation or filling of soil on the allotment.⁸⁵

C.6.3 Stormwater management - building

- 35 In Volume One of the National Construction Code, Part F1 deals with “Surface water management, rising damp and external waterproofing” and is intended to minimise the risk of water leaking into or accumulating within a building and causing unhealthy conditions or damaging building elements by corrosion or rot. It is also intended to prevent water redirected away from building damaging nearby properties. One of the “Deemed-to-Satisfy Provisions” is for “Stormwater drainage” (F1D3) which provides that stormwater drainage must be designed and constructed in accordance with Australian Standard/New Zealand Standard 3500.3.⁸⁶
- 36 Regulation 133 of the Building Regulations provides for stormwater drainage and includes requirements as to the design of stormwater drainage systems to be approved by the relevant building surveyor.⁸⁷
- 37 The Plumbing Regulations and Volume 3 of the National Construction Code also include various provisions relating to stormwater and drainage. For example, “E4F1 Vic” of Volume 3 contains the following information (called a ‘functional statement’) under “subsurface and surface drainage systems”: “Buildings and their surroundings are to be provided with a surface drainage and subsurface drainage installation and be constructed in such a manner as to provide protection for people, property and the environment from the adverse effects of stormwater”.
- 38 The Minister’s Guideline “MG-12: Siting and Design of Single Dwellings” made on 13 December 2023 (**DTP.0001.0002.0166**) provides for “Siting requirement 6: Permeability” which has the Objective “to reduce the impact of increased stormwater run-off on the drainage system and to facilitate on-site stormwater infiltration”.

⁸⁵ Building Regulations reg 119(1).

⁸⁶ National Construction Code Volume One, p 299. See, too, National Construction Code, Volume Two, pp 107-108 (H2D2).

⁸⁷ Building Regulations reg 133(1) and reg 133(3).

C.6.4 *Planning and Environment Act 1987 (Vic)*

- 39 DTP is responsible for administering the Planning and Environment Act and the Planning and Environment Regulations. The principal objective of the Planning and Environment Regulations is to prescribe the information to be included in any applications, notices, permits and requests required to be given by the Planning and Environment Act⁸⁸ and information that it is to be made available by responsible authorities to the public and the Minister.⁸⁹
- 40 In October 2022, DTP published a document titled *Using Victoria's Planning System (DTP.0001.0002.0454)*; it has since been republished in March 2024 (**Planning System Guide**) (DTP.0001.0002.0212). The Planning System Guide sets out the administrative procedures under the Planning and Environment Act and the Planning and Environment Regulations and how those laws interact with other related legislation and planning schemes. It is a technical guide to interpretation of the planning system in Victoria. Chapter 1 of the Planning System Guide provides an overview of Planning Schemes.
- 41 The purpose of the Planning and Environment Act is to establish a framework for planning the use, development and protection of land in Victoria in the present and long-term interests of all Victorians.⁹⁰ The objectives of planning in Victoria are set out in s 4(1) and the objectives of the planning framework are set out in s 4(2). One of the specific objectives of the planning framework is to establish a system of planning schemes, based on municipal districts, to be the principal way of setting out objectives, policies and controls for the use, development and protection of land.⁹¹
- 42 Part 2 of the Planning and Environment Act concerns "Planning schemes". A planning scheme for an area must seek to further objectives of planning in Victorian within the area covered by the scheme,⁹² and may make any provision relates to the use, development, protection or conservation of any land in the area.⁹³ A planning scheme is then generally binding on every Minister, government department, public authority and municipal council

⁸⁸ Planning and Environment Regulations 2015 reg 1(f).

⁸⁹ Planning and Environment Regulations 2015 reg 1(h). See, for example, reg 9 in Part 2, which provides for information to be submitted to the Minister under s 31(1) of the Planning and Environment Act for amendments to planning schemes.

⁹⁰ Planning and Environment Act s 1.

⁹¹ Planning and Environment Act s 4(2)(b).

⁹² Planning and Environment Act s 6(1)(a).

⁹³ Planning and Environment Act s 6(1)(b).

except to the extent that there is an exception published by a published Order made by the Governor in Council (on the recommendation of the Minister for Planning).⁹⁴

- 43 Part 3 of the Planning and Environment Act concerns “Amendment of Planning Schemes”, and includes provisions as to “Exhibition and notice of amendment” (Div 1), “Public submissions about an amendment” (Div 2), and “Adoption and approval by amendment”, including the power of approval of amendments by the Minister for Planning (as prepared by the Minister or as may be submitted to the Minister).⁹⁵
- 44 Part 4 of the Planning and Environment Act concerns “Permits”, and includes provisions as to “Permits required by planning schemes” (Div 1), “Amendment of permits by responsible authority” (Div 1A), “Provisions relating to Ministers, government departments and responsible authorities” (Div 4), and “Powers of Minister in relation to applications” (Div 6), which includes the “Call in power” of the Minister for Planning to direct a responsible authority to refer an application to the Minister in certain circumstances.⁹⁶
- 45 Section 13 of the Planning and Environment Act identifies who is a “responsible authority” for the administration and enforcement of planning schemes or provisions in a planning scheme. For example, a municipal council is the responsible authority if the planning scheme applies to land which is wholly or partly in its municipal district, unless the planning scheme specifies any other person as the responsible authority.⁹⁷ Section 14 of the Planning and Environment Act identifies the duties of a “responsible authority”, which include the efficient administration and enforcement of the planning scheme,⁹⁸ implementing the objectives of the planning scheme⁹⁹ and to provide information and reports as required by the Minister for Planning.¹⁰⁰ Section 171 provides for the powers of a responsible authority, which include all powers necessary for the purpose of carrying out its functions and duties under the Planning and Environment Act¹⁰¹ and carrying into the effect the objectives of a planning scheme for which it is the responsible authority.¹⁰²

⁹⁴ Planning and Environment Act s 16.

⁹⁵ Planning and Environment Act s 35(1).

⁹⁶ Planning and Environment Act s 97B(1).

⁹⁷ Planning and Environment Act s 13(2)(a).

⁹⁸ Planning and Environment Act s 14(a).

⁹⁹ Planning and Environment Act s 14(b).

¹⁰⁰ Planning and Environment Act s 14(d).

¹⁰¹ Planning and Environment Act s 171(1)(a).

¹⁰² Planning and Environment Act s 171(1)(b).

46 The Minister for Planning is a “planning authority”¹⁰³ under the Planning and Environment Act, with the duties and powers set out in s 12 (“What are the duties and powers of planning authorities?”). The Minister for Planning has the power to prepare:¹⁰⁴

(a) a planning scheme for any municipal district or other area in Victoria; or

(b) amendments to any provision of a planning scheme.

47 Municipal councils are also planning authorities for municipal districts,¹⁰⁵ with specific obligations to review planning schemes.¹⁰⁶ The duties and powers of planning authorities include: implementing the objectives of planning in Victoria,¹⁰⁷ providing sound, strategic and co-ordinated planning of the use and development of land in its area,¹⁰⁸ regular review of planning schemes,¹⁰⁹ preparing amendments¹¹⁰ and explanatory reports¹¹¹ about proposed amendments to a planning scheme and providing information and reports as required by the Minister for Planning.¹¹²

48 To assist in providing a consistent and co-ordinated framework for planning schemes in Victoria, the Minister for Planning has the power to prepare and approve the “Victoria Planning Provisions” (see below in **Section C.6.5**) which may contain any matter referred to in Planning and Environment Act s 6 (“What can a planning scheme provide for?”).¹¹³ The Minister for Planning has the power to make amendments to the Victoria Planning Provisions.¹¹⁴

49 A planning scheme for an area must include and must specify separately State standard provisions,¹¹⁵ which must consist of provisions selected from the Victoria Planning Provisions.¹¹⁶

¹⁰³ Planning and Environment Act s 8(2).

¹⁰⁴ Planning and Environment Act s 8(1).

¹⁰⁵ Planning and Environment Act s 8A.

¹⁰⁶ Planning and Environment Act s 12B.

¹⁰⁷ Planning and Environment Act s 12(1)(a).

¹⁰⁸ Planning and Environment Act s 12(1)(b).

¹⁰⁹ Planning and Environment Act s 12(1)(c).

¹¹⁰ Planning and Environment Act s 12(1)(d).

¹¹¹ Planning and Environment Act s 12(1)(e).

¹¹² Planning and Environment Act s 12(1)(f).

¹¹³ Planning and Environment Act s 4A(1).

¹¹⁴ Planning and Environment Act s 4B.

¹¹⁵ Planning and Environment Act s 7(1)(a).

¹¹⁶ Planning and Environment Act s 7(2).

- 50 The Minister for Planning has the power to delegate some statutory powers, discretions or functions under the Planning and Environment Act to, for example, the Secretary of DTP¹¹⁷ or the Victorian Planning Authority (VPA).¹¹⁸ The role of the VPA is outlined below in **Section C.11**. The Minister for Planning is also the responsible authority and the planning authority for the six alpine resorts.¹¹⁹

C.6.5 Victoria Planning Provisions

- 51 The Victoria Planning Provisions (VPP) is a template document containing a comprehensive set of planning provisions for Victoria.¹²⁰ It is not a planning scheme and does not apply to any land. It is a statewide reference used, as required, to construct a planning scheme. It is a statutory device to ensure that consistent provisions for various matters are maintained across Victoria and that the construction and layout of planning schemes is always the same. The VPP is published from time-to-time on the DTP website,¹²¹ as are the amendments to the VPP and the planning scheme histories.
- 52 There is a ministerial direction¹²² (most recently made on 11 April 2025) which provides for the “Form and Content of Planning Schemes” (**DTP.0001.0002.0001**). This direction includes identification of which of the VPP must be included in a planning scheme and how these provisions are to be referred to, such as “Overlays”¹²³ and “Particular Provisions”¹²⁴ (see the examples below in **Section C.6.8** and **Section C.6.9**).¹²⁵ A planning scheme will have two components as a strategic foundation: the municipal planning strategy (which contains only local policy content) and the Planning Policy Framework which includes State, regional and local policy content.¹²⁶ Local municipalities may also use “Schedules” to

¹¹⁷ Planning and Environment Act s 186(1)(a).

¹¹⁸ Planning and Environment Act s 186(1)(d).

¹¹⁹ Planning and Environment Act ss 8 & 13(2)(a) and (c); Alpine Resorts Planning Scheme, Schedule to clause 72.01 (**DTP.0001.0005.0001**).

¹²⁰ Planning System Guide at [1.2], p 5 (**DTP.0001.0002.0212**).

¹²¹ < <https://planning-schemes.app.planning.vic.gov.au/Victoria%20Planning%20Provisions/ordinance> >

¹²² Made under s 7(5) of the Planning and Environment Act.

¹²³ Planning System Guide “Overlays” at [1.8.4] p 13 (**DTP.0001.0002.0212**): “...standard overlays for statewide application are included in the VPP. Each planning scheme includes only those overlays required to implement the strategy for that municipality”. Overlays must also have a “strategic justification”.

¹²⁴ Planning System Guide “Particular Provisions” at [1.8.5] p14 (**DTP.0001.0002.0212**): “Unless specified otherwise, the particular provisions apply in addition to the requirements of a zone or overlay. Some particular provisions have schedules for local requirements”.

¹²⁵ Planning System Guide at [1.7], pp 10-11 (**DTP.0001.0002.0212**).

¹²⁶ Planning System Guide at [1.8], p 11-12 (**DTP.0001.0002.0212**).

supplement the State wide provisions of a State-standard clause, zone or overlay in a planning scheme.¹²⁷

- 53 DTP's role in prevention and management of landslides and landslips in Victoria arises from its general administration of the planning system in Victoria, which includes the VPP. The planning system is an important component of the overall response to risks posed by natural hazards, including landslides (the movement of mass earth materials down a slope¹²⁸). For example, the "Planning Policy Framework", under "Infrastructure" (VPP-19;¹²⁹ **DTP.0001.0002.0712**), requires infrastructure planning to avoid, minimise and offset environmental impacts, and incorporate resilience to natural hazards, including future climate change risks. "Environmental Risks and Amenity", "Soil Degradation", and "Erosion and landslip" are also included within the VPP (VPP 13.04-2S is dealt with further below at paragraph 64(b)).
- 54 DTP also works with municipal councils in relation to planning schemes, for example, in the potential application of the Erosion Management Overlay (see below at [64(c)]) to land within its municipal district. Each municipal council is responsible for identifying landslide and erosion risks as part of their general obligations as a planning authority and responsible authority (see above at [45]).

C.6.6 Coastal hazard and climate change risks

- 55 On 6 September 2021, the Minister for Planning issued¹³⁰ an amended¹³¹ Direction No. 13 "Managing Coastal Hazards and the Coastal Impacts of Climate Change") (**DTP.0001.0002.0164**) the purpose of which is "to set out the general requirements for consideration of the impacts of climate change within coastal Victoria as part of an amendment which would have the effect of allowing non-urban land to be land to be used for an urban development". The Direction applies to any planning scheme amendment that provides for the rezoning of non-urban land for urban use and development of all land:

¹²⁷ Planning System Guide at [1.8.7, p 14 (**DTP.0001.0002.0212**).

¹²⁸ See, definition at [1.4] in the former DELWP *Guideline for effective stakeholder engagement – Planning for settlements exposed to natural hazard and climate change risks* at https://www.planning.vic.gov.au/data/assets/pdf_file/0024/632922/Guideline-for-effective-stakeholder-management.pdf

¹²⁹ Applicable from 10 June 2022, VC216.

¹³⁰ This direction was issued under Planning and Environment Act s 12(2)(a).

¹³¹ This direction was first issued on 18 December 2008. It was subsequently amended on 30 July 2018 and again on 6 September 2021.

- (a) abutting the coastline or a coastal reserve; or
- (b) less than 5 metres Australian Height Datum within one kilometre of the coastline including the Gippsland Lakes.

The Direction requires a planning authority to include in the explanatory report for the proposed amendment how the amendment addresses coastal hazard, which the Direction defines as including “landslip”.

- 56 In February 2022, DELWP published a Built Environment Climate Change Adaptation Action Plan 2022-2026 (DEE.0001.0001.0002). This plan includes the following item: review the landslide policy and strategic approach in the planning system, including the Erosion Management Overlay, as more extreme rainfall events and bushfires will increase risk.
- 57 In November 2023, DTP issued *Planning Practice Note 53* “Managing Coastal Hazards and the Coastal Impacts of Climate Change” (DTP.0001.0002.0206), which provides guidance on managing coastal hazards, the decision-making process for assessing coastal hazard risk and planning for development in coastal areas.

C.6.7 Landslide and erosion risks

- 58 DTP has a role in relation to setting state planning policy and standard planning scheme provisions to enable planning authorities to identify risks associated with landslide (and landslips) for the purposes of the planning system. DTP has a more specific role for risk identification in relation to the six alpine resorts for which the Minister for Planning is the sole planning authority and responsible authority (as there is no municipal government for those resorts).¹³²

C.6.7.1 Alpine Geotechnical Risk Assessment 2018-2020

- 59 In 2018, the former DELWP announced the Alpine Geotechnical Risk Assessment 2018-2020 Project, which involved commissioning Golder Associates Pty Ltd to undertake a geotechnical asset risk assessment relevant to each of the four resort management boards covering the six alpine resorts. This project was designed to allow the former DELWP and

¹³² The six alpine resorts are Falls Creek, Lake Mountain, Mt Baw Baw, Mt Buller, Mt Stirling and Mt Hotham. The six alpine resorts are declared to be alpine resorts under the *Alpine Resorts Act 1983* (Vic). The *Alpine Resorts (Management) Act 1997* (Vic) establishes Alpine Resorts Victoria as an entity (s 14) and it is the subject of general direction and control of the Minister for Environment (s 18). This submission refers to the Authorised Version No. 049 of the *Alpine Resorts (Management) Act 1997* (Vic) unless otherwise stated.

individual boards to understand, manage and prioritise their geotechnical risk profile as it related to land stability and risk to life. The report (**DTP.0001.0002.0751**) was subsequently used by DTP in the development of Planning Scheme Amendment C31alpr to the Alpine Resorts Planning Scheme.

C.6.7.2 DELWP Discussion Paper: Landslide and erosion risks

60 At the time of publication of *Plan Melbourne 2017-2050* (the Victorian Government’s long-term planning strategy), the former DELWP was identified as the Lead Agency (in partnership with the Victorian Planning Authority and local councils) for Action #85 in the *Plan Melbourne Implementation Actions: Plan Melbourne 2017-2050* (**DTP.0001.0002.0193**), which was identified as “[i]mprovement of natural-hazard, climate change and environmental adaptation and risk-mitigation strategies in the Victoria Planning Provisions”. The “Action Details” for Action #85 were identified as:

Review, update and improve the implementation of natural hazard, climate change and environmental adaptation and risk-mitigation strategies in the Victoria Planning Provisions and planning schemes to:

- ensure the right identification of the hazard through agreed technical criteria with data custodians;
- ensure a consistent statewide policy approach targeted to relevant natural hazards and climate change impacts;
- improve the approach to settlement resilience in areas exposed to high natural hazard and climate change risk;
- ensure provisions remain current and based on the best available climate change science;
- influence growth and settlement patterns to avoid and reduce long-term risk.

61 In early 2022, the former DELWP sought submissions on a discussion paper *Landslide and Erosion in the Planning System* (**DTP.0001.0001.0085**) (**DELWP Landslide and Erosion Discussion Paper**). DELWP undertook a targeted engagement process with planners and land managers to help understand appropriate planning controls for landslide and erosion and to assist DELWP to develop a position on how the VPP should respond to these issues in

future.¹³³ The DELWP Landslide and Erosion Discussion Paper identified key issues, including defining landslide and erosion, and the role of the planning system role in responding to these hazards, specific landslide issues, and water and wind erosion issues. This included the approach to landslide risk assessment and criteria,¹³⁴ and the approach to the requirements in the EMO.¹³⁵

- 62 Following the consultation, in June 2023, DTP finalised a desktop review of the VPP and Victorian Planning Schemes in a written report (**DTP.0001.0001.0140**).

C.6.8 Erosion management – planning

- 63 Land use planning influences appropriate settlement patterns, subdivision design, building siting and design, soil excavation and vegetation removal. The planning system has a role in ensuring development proposals provide responses to any risk to life or property posed by landslide or erosion. Such assessments also help to ensure new developments do not elevate existing landslide or erosion risks.

- 64 The VPP provide various specific provisions which relate to:

- (a) in the context of “Climate Change Impacts”, “Coastal inundation and erosion” (VPP 13.01-2S;¹³⁶ **DTP.0001.0002.0703**) which has the Objective “[to] plan for and manage coastal hazard risk and climate change impacts”, with the “Strategies”, “Policy guidelines” and “Policy documents” referred to therein;
- (b) in the context of “Environmental Risks and Amenity” and “Soil Degradation”, “Erosion and landslip” (VPP 13.04-2S;¹³⁷ **DTP.0001.0002.0708**), which has the Objective “[to] protect areas prone to erosion, landslip or other land degradation processes” with the following Strategies:
 - (i) identify areas subject to erosion or instability in planning schemes and when considering the use and development of land;
 - (ii) prevent inappropriate development in unstable areas or areas prone to erosion;

¹³³ DELWP Landslide and Erosion Discussion Paper p 4 (**DTP.0001.0001.0085**).

¹³⁴ DELWP Landslide and Erosion Discussion Paper at [2.3] p 14 (**DTP.0001.0001.0085**).

¹³⁵ DELWP Landslide and Erosion Discussion Paper at [3.6] p 20 (**DTP.0001.0001.0085**).

¹³⁶ Applicable from 20 March 2023, VC229.

¹³⁷ Applicable from 31 July 2018, VC148.

- (iii) promote vegetation retention, planting and rehabilitation in areas prone to erosion and land instability.

There are also specific “Policy Guidelines”, such as any applicable regional catchment strategy or any special area plan approved under the *Catchment and Land Protection Act 1994* (Vic);

- (c) in the context of “Land Management Overlays”, an “Erosion Management Overlay” (**EMO**) (VPP 44.01;¹³⁸ **DTP.0001.0002.0723**). The Purpose of the EMO is to:
 - (i) implement the Municipal Planning Strategy and Planning Policy Framework; and
 - (ii) protect areas prone to erosion, landslip, other land degradation or coastal processes by minimising land disturbance and inappropriate development.

A schedule to the EMO may contain “Erosion Management objectives and statement of risk” (VPP 44.01-1¹³⁹). An EMO also deals with the permits required for “building and works” (VPP 44.01-2¹⁴⁰) (for example, roadworks) and “vegetation removal” (VPP 44.01-3¹⁴¹) and a specific “table of exemptions” (VP 44.01-4¹⁴²) (for example, emergency works and road safety). An EMO can also provide for “Decision guidelines” (VPP 44.01-8¹⁴³).

An example of a schedule (see above at [52]) is contained in the Mornington Peninsula Planning Scheme. The applicable EMO has Schedules that deal with, for example, “Erosion Prone Slopes” (Sch 1;¹⁴⁴ **DTP.0001.0002.0176**), “Unstable Slopes” (Sch 2¹⁴⁵; **DTP.0001.0002.0177**), permit applications that must be accompanied by a report prepared by a suitably qualified geotechnical engineer with experience in slope stability (Sch 3,¹⁴⁶ **DTP.0001.0002.0178**) and for “Land Susceptibility Areas”

¹³⁸ Applicable from 6 September 2021, VC171, which were amendments made to strengthen coastal hazard planning and to implement the *Marine and Coastal Policy 2020*.

¹³⁹ Applicable from 31 July 2018, VC148.

¹⁴⁰ Applicable from 14 December 2023, VC253.

¹⁴¹ Applicable from 31 July 2018, VC148.

¹⁴² Applicable from 16 August 2024, VC262.

¹⁴³ Applicable from 14 January 2025, VC237.

¹⁴⁴ Applicable to the Mornington Peninsula Planning Scheme since 6 June 2022, C267morn.

¹⁴⁵ Applicable to the Mornington Peninsula Planning Scheme since 6 June 2022, C267morn.

¹⁴⁶ Applicable to the Mornington Peninsula Planning Scheme since 22 January 2021, C255morn.

(Sch 4,¹⁴⁷ **DTP.0001.0002.0180**; Sch 5,¹⁴⁸ **DTP.0001.0002.0183**), which have the specific erosion management objectives “[to] ensure land in areas susceptible to landslide is developed with proper regard to geotechnical hazard and risk assessment, including appropriate risk management”, and for “Erosion Hazard – Beach and Foreshore Areas” (Sch 6¹⁴⁹; **DTP.0001.0002.0186**).

C.6.9 Stormwater management – planning

65 The planning system has a role in ensuring that stormwater is appropriately managed, including for on-site and off-site runoff. The specific provisions of the VPP concerning stormwater management do not make direct reference to landslide or erosion, however detrimental land management issues are mitigated through State-wide drainage requirements, and specified measures to reduce site runoff imposed through the VPP. Within the “Planning Policy Framework” for “Integrated water management” (VPP 19.03-3S,¹⁵⁰ **DTP.0001.0002.0713**), there is the Objective “[to] sustainably manage water supply and demand, water resources, wastewater, drainage and stormwater through an integrated water management approach” and Strategies which pertain to stormwater.

66 The VPP provide various specific provisions which relate to:

- (a) in the context of “Particular Provisions” relating to “One dwelling on a lot or a small second dwelling on a lot” for “Site layout and building massing”, the “Permeability objectives” (VPP 54.03-4;¹⁵¹ **DTP.0001.0002.0728**). These objectives are to:
 - (i) reduce the impact of increased stormwater run-off on the drainage system; facilitate
 - (ii) facilitate on-site stormwater infiltration;
- (b) in the context of “Particular Provisions” relating to “Two or more dwellings on a lot and residential buildings” and “Sustainability”, for the “Permeability and stormwater management objective” (VPP 55.05-1¹⁵²; **DTP.0001.0002.0733**). These objectives are to:

¹⁴⁷ Applicable to the Mornington Peninsula Planning Scheme since 22 July 2021, C279morn.

¹⁴⁸ Applicable to the Mornington Peninsula Planning Scheme since 22 July 2021, C279morn.

¹⁴⁹ Applicable to the Mornington Peninsula Planning Scheme since 9 January 2025, C271morn.

¹⁵⁰ Applicable from 22 November 2024, VC263.

¹⁵¹ Applicable from 15 July 2013, VC 100.

¹⁵² Applicable from 31 March 2025, VC267.

- (i) reduce the impact of increased stormwater run-off on the drainage system and downstream waterways;
- (ii) facilitate on-site stormwater infiltration;
- (iii) encourage stormwater management that maximises the retention and reuse of stormwater; and
- (iv) contribute to urban cooling;

VPP 55.05-1 also includes “Standard B5-1” which features specific design requirements for the development of a stormwater management system. There is also a similarly stated objective (VPP 57.05-1;¹⁵³ **DTP.0001.0002.0740**) in the context of “Sustainability” for “Two or more dwellings on a lot residential buildings of four storeys”;

- (c) in the context of “Particular Provisions” for “Residential Subdivision” and “Integrated Water Management”, the “Stormwater management objectives” (VPP 56.07-4;¹⁵⁴ **DTP.0001.0002.0738**). These objectives are to:

- (i) minimise damage to properties and inconvenience to residents from stormwater;
- (ii) ensure that the street operates adequately during major storm events and provides for public safety;
- (iii) minimise increases in stormwater and protect the environmental values and physical characteristics of receiving waters from degradation by stormwater;
- (iv) encourage stormwater management that maximises the retention and reuse of stormwater;
- (v) to encourage stormwater management that contributes to cooling, local habitat improvements and provision of attractive and enjoyable spaces.

VPP 56.07-4 also provides for “Standard C25” which sets out the obligatory design content of a stormwater management system;

¹⁵³ Applicable from 31 March 2025, VC267.

¹⁵⁴ Applicable from 26 October 2018, VC154.

(d) in the context of “Particular Provisions” for “Apartment Developments” and “Site Layout”, the “Integrated water and stormwater management objectives” (VPP 58.03-8;¹⁵⁵ **DTP.0001.0002.0745**). These objectives are to:

- (i) encourage the use of alternative water sources such as rainwater, stormwater and recycled water;
- (ii) facilitate stormwater collection, utilisation and infiltration within the development;
- (iii) encourage development that reduces the impact of stormwater run-off on the drainage system and filters sediment and waste from stormwater prior to discharge from the site.

VPP 58.03-8 also provides for “Standard D13” which sets out the design requirements for a stormwater management system.

C.6.10 Road Management Act 2004 (Vic)

67 DTP is responsible for administering the *Road Management Act 2004 (Vic)* (**Road Management Act**) and the Road Management (General) Regulations. Under the *Transport Integration Act 2010 (Vic)* (**Transport Integration Act**),¹⁵⁶ DTP (as the relevant Department) has a principal function in relation to the transport system, including to assist the Minister and the Head, Transport for Victoria which is an entity established under Part 4A of the Transport Integration Act, and has various functions under the Road Management Act.

68 From 1 January 2020 the Head, Transport for Victoria (the road authority) replaced the Roads Corporation trading as VicRoads (see below in **Section C.15**) as the responsible road authority for freeways and arterial roads. DTP is also the “Lead Response Support Agency” for the Critical Transport core capability¹⁵⁷ under the State Emergency Response Plan (see **Section C.12** of the State's first submission).

¹⁵⁵ Applicable from 26 October 2018, VC 154.

¹⁵⁶ This submission refers to [Authorised Version No. 073](#) unless otherwise stated.

¹⁵⁷ < <https://www.emv.vic.gov.au/responsibilities/state-emergency-management-plan-semp/roles-and-responsibilities/agency-roles-and-responsibilities-alignment-to-victorian-preparedness-framework/critical-transport-core-capability> >

- 69 Through the provisions in the Road Management Act, DTP is responsible for landslide management within the road network where a landslide impacts road safety.
- 70 The Road Management Act establishes a statutory framework for the management of the road network¹⁵⁸ and for the role, functions and powers of a “road authority”.¹⁵⁹ It also facilitates the making of road management plans as part of the management system to be implemented by a road authority in the performance of “road management functions”,¹⁶⁰ and sets out the road management functions of infrastructure managers and works managers in providing infrastructure or coordinating works. It also provides for the making of Codes of Practice,¹⁶¹ the obligation on a road authority to keep a register of public roads and for the construction, inspection, maintenance and repair of public roads.¹⁶²
- 71 The primary object of the Road Management Act is to establish a coordinated management system that will promote a road network at State and local levels that operates as part of an integrated and sustainable transport system consistent with the transport system objectives (in Div 2 of Part 2) the *Transport Integration Act 2010* (Vic).¹⁶³ The primary objective is achieved through, for example:
- (a) the establishment of a system of classification for roads and clear principles about the division of responsibilities between State and local road authorities;¹⁶⁴
 - (b) decision-making processes in relation to standards for the construction, inspection, maintenance and repair of State and municipal roads which take into account certain matters, such as available funding;¹⁶⁵ and

¹⁵⁸ Road Management Act s 2.

¹⁵⁹ Road Management Act s 2. See, s 3(1) definitions “**road authority**” “means a person or body specified in or under [s 37]”.

¹⁶⁰ Road Management Act s 2. See, s 3(1) definitions “**road management function**”.

¹⁶¹ Road Management Act s 24(1) provides for the purposes of Codes of Practice, which include practical guidance for (a) setting out benchmarks of good practice in relation to the performance of road management functions by road authorities and the conduct of works managers, infrastructure managers and providers of public transport.

¹⁶² Road Management Act s 2 & s 4(2)(e).

¹⁶³ Road Management Act s 4(1). This submission refers to the [Authorised Version No. 073](#) of the *Transport Integration Act 2010* (Vic) unless otherwise stated.

¹⁶⁴ Road Management Act s 4(2)(c).

¹⁶⁵ Road Management Act s 4(2)(f)(iii).

- (c) setting out the powers and duties of road authorities to manage roads, the duties of infrastructure managers which install and maintain infrastructure on roads and the duties of works managers which carry out works on roads.¹⁶⁶

- 72 Part 2 of the Road Management Act provides for the “Rights of road users” which confer specific rights which are legally enforceable on members of the public using roads.¹⁶⁷ Part 3 of the Roads Management Act provides for the “Road System”, including the power to declare and name a road,¹⁶⁸ to fix its boundaries and to make other declarations about a road.¹⁶⁹ It also provides for the general concept of a “public road”¹⁷⁰ (for example, a freeway) which can include (declared) municipal roads.¹⁷¹
- 73 Part 4 provides for “Management of roads”. The principal object of road management is to ensure that a network of roads is provided primarily for the movement of persons and goods as part of an integrated transport system and that road reserves are available for other appropriate uses.¹⁷² The principles that apply for the management of works and infrastructure include the minimisation of road safety hazards¹⁷³ and the efficient use of resources of road authorities and infrastructure managers and the minimisation of cost to the community of infrastructure and services.¹⁷⁴
- 74 The Minister has the power to require information or advice from,¹⁷⁵ or to give specific directions to, road authorities.¹⁷⁶ Road authorities are required to perform functions having regard to the principal object of road management and the works and infrastructure principles (see above at [73]).¹⁷⁷ The general functions and powers of a road authority are identified in Div 2 of Part 4, which includes the identification of the responsible road authority,¹⁷⁸ and the power of a road authority to make a policy or policy decision relating to road management.¹⁷⁹ The Road Management Act provides that in seeking to achieve its statutory functions, a road

¹⁶⁶ Road Management Act s 4(2)(g).

¹⁶⁷ Road Management Act s 7.

¹⁶⁸ Road Management Act s 11.

¹⁶⁹ Road Management Act s 14.

¹⁷⁰ Road Management Act s 17(1).

¹⁷¹ Road Management Act s 14(1)(b) & s 17(1)(g).

¹⁷² Road Management Act s 20(1).

¹⁷³ Road Management Act s 20(2)(a).

¹⁷⁴ Road Management Act s 20(2)(f).

¹⁷⁵ Road Management Act s 21.

¹⁷⁶ Road Management Act s 22.

¹⁷⁷ Road Management Act s 33, s 38(1)(a)-(b).

¹⁷⁸ Road Management Act s 37.

¹⁷⁹ Road Management Act s 39.

authority should take steps as are reasonably practicable to ensure the structural integrity and safety of public roads.¹⁸⁰ Road authorities are also obliged to determine policies and priorities for the construction and maintenance of roads,¹⁸¹ and to seek to ensure that, for example, the public road network and infrastructure for which it is responsible are as safe for users as is reasonably practicable.¹⁸² For a “coordinating road authority”,¹⁸³ there are requirements to coordinate the development and use of “road reserves”,¹⁸⁴ including the carrying out of works and the installation of infrastructure on roads so as to ensure the safety of road users and the community¹⁸⁵ and to protect the physical integrity of the road and infrastructure in the road reserve.¹⁸⁶

75 Division 3 of Part 4 of the Road Management Act sets out “Specific powers and duties of road authorities”, such as the duty to inspect, maintain and repair public roads,¹⁸⁷ and the specific road construction, repair and maintenance powers of State road authorities (in Sch 3 to the Act),¹⁸⁸ specific road property provisions powers and duties (in Sch 5 to the Act), and specific protection of roads and adjoining land powers of State road authorities (in Sch 6 to the Act):

- (a) Schedule 3 provides for several powers of a State road authority, for example, to inspect, construct, maintain and repair roads;¹⁸⁹ to deviate a road,¹⁹⁰ and to provide for temporary roads;¹⁹¹
- (b) Schedule 5 provides for specific road property provisions powers and duties, for example, the power of a State road authority (with approval of the Minister) to purchase or compulsorily acquire any land which is or may be required by the State road authority for or in connection with the performance of its functions;¹⁹²

¹⁸⁰ Road Management Act s 34(3).

¹⁸¹ Road Management Act s 38(2)(a).

¹⁸² Road Management Act s 38(2)(c)(iii).

¹⁸³ Road Management Act s 3(1) definitions “*coordinating road authority*” “in relation to a road, means the road authority which has coordination functions as determined in accordance with [s 36]”.

¹⁸⁴ Road Management Act s 3(2) definitions “*road reserve*” “means all of the area of land that is within the boundaries of a road”.

¹⁸⁵ Road Management Act s 38(2)(d)(i).

¹⁸⁶ Road Management Act s 38(2)(d)(iv).

¹⁸⁷ Road Management Act s 40.

¹⁸⁸ Road Management Act s 43.

¹⁸⁹ Road Management Act Sch 3 cl 1.

¹⁹⁰ Road Management Act Sch 3 cl 3.

¹⁹¹ Road Management Act Sch 3 cl 7.

¹⁹² Road Management Act Sch 5 cl 11(1).

- (c) Schedule 6 provides for specific protection of roads and adjoining land powers of State road authorities, such as the power of a State road authority to take remedial action if it considers is an emergency or that the works are required urgently to ensure public safety, the structural integrity of the road or the movement of traffic on the road.¹⁹³
- 76 Division 4 of the Part 4 of the Road Management Act deals with “Infrastructure and works on roads”, which include the specific duties and powers in relation to infrastructure and works on roads that are set out in Part 1 of Sch 7 to the Act.¹⁹⁴ Schedule 7 provides for “Infrastructure and works on roads”, and includes the duty¹⁹⁵ on an infrastructure manager or works manager to have regard to specific principles in the performance of its functions or the exercise of powers in the provision of “non-road infrastructure”¹⁹⁶ on roads, such as, minimisation of any risk to the safety and property of road users and the public generally in works and infrastructure management.¹⁹⁷ There is also a duty on a works manager to take all reasonable measures to ensure the safety of the works for road users and adjoining properties.¹⁹⁸
- 77 Division 5 of Part 4 of the Road Management Act provides for “Road management plans”. Road management plans are voluntary, and are for the purpose of establishing a management system for the road management functions of a road authority based on policy and operational objectives and available resources and to set the relevant standard in relation to the discharge of duties in the performance of road management functions.¹⁹⁹ The *Road Management Plan 2021*²⁰⁰ (DTP.0001.0005.0002) sets out the circumstance, the manner and the standards to which the road authority will perform its inspection, maintenance and repair responsibilities required to discharge its duties in the performance of those road management functions.

¹⁹³ Road Management Act Sch 6 cl 4(b).

¹⁹⁴ Road Management Act s 48(1)-(2).

¹⁹⁵ Road Management Act Sch 7 cl 1.

¹⁹⁶ Road Management Act s 3(1) definitions “*non-road infrastructure*” “means infrastructure in, on, under or over a road which is not road infrastructure” and “**Examples:** Non-road infrastructure would include gas pipes, water and sewerage pipes, cables, electricity poles and cables, tram wires, rail infrastructure (including boom gates, level crossings and tram safety zones), bus shelters, public telephones, mail boxes, roadside furniture and fences erected by utilities or providers of public transport”.

¹⁹⁷ Road Management Act Sch 7 cl 14(2) & cl 14(3)(d).

¹⁹⁸ Road Management Act Sch 7 cl 11(b).

¹⁹⁹ Road Management Act s 50.

²⁰⁰ < <https://www.vic.gov.au/road-management-plan> >

- 78 Part 6 of the Road Management Act provides for “Civil Liability”, which include specific provisions as to the limitations²⁰¹ and available defences²⁰² of road authorities.
- 79 Part 7 provides general powers, including powers of delegation,²⁰³ performance of road management functions by road authorities,²⁰⁴ and conduct of works by agreement with the owner or occupier or land adjacent to a road.²⁰⁵ The Governor-in-Council may make regulations under the Act.²⁰⁶ Under Part 4 the Minister may also direct a road authority to perform functions or exercise powers.²⁰⁷
- 80 The Road Management (General) Regulations contain provisions which empower a road authority to remove any object or substance deposited on a road, for which it is the appropriate road authority,²⁰⁸ or to direct another responsible person to remove it.²⁰⁹
- 81 There are specific Codes of Practice made under s 29 of the Road Management Act, for example:
- (a) Code of Practice – Operational responsibility for public roads (dated 8 May 2017) (**DTP.0001.0005.0026**). A purpose of this Code of Practice is to provide practical guidance to clarify or determine how the operational responsibility for different parts or elements of a road reserve is to be allocated between road authorities.²¹⁰ Note #3 to cl 10 (Urban Area – Between Intersections) identifies the responsibilities of road authority for road embankments, cutting or retaining walls in urban areas.²¹¹ DTP (through Transport for Victoria) performs these types of functions of a responsible road authority where such road embankments, cuttings or retaining walls are clearly required to support or protect the structural integrity or to facilitate the operation of use of the adjacent roadways or shoulder of an arterial road;

²⁰¹ See, for example, Road Management Act s 102.

²⁰² See, for example, Road Management Act s 103.

²⁰³ Road Management Act ss 117, 118, 119.

²⁰⁴ Road Management Act s 120.

²⁰⁵ Road Management Act s 121.

²⁰⁶ Road Management Act s 132.

²⁰⁷ Road Management Act s 22.

²⁰⁸ Road Management (General) Regulations reg 25.

²⁰⁹ Road Management (General) Regulations 2016 reg 24.

²¹⁰ Code of Practice – Operational responsibility for public roads (dated 8 May 2017) cl 1(a) p 6 (**DTP.0001.0005.0026**).

²¹¹ Code of Practice – Operational responsibility for public roads (dated 8 May 2017) pp 23-25 (**DTP.0001.0005.0026**).

- (b) Code of Practice – Management of infrastructure in in road reserves (dated 6 April 2016) (**DTP.0001.0005.0086**). A purpose of this Code is to provide practical guidance and identify benchmarks of good practice for utilities, providers of public transport and road authorities, who are expected to work together cooperatively to facilitate the installation, maintenance and operation of road and non-road infrastructure within road reserves.²¹²
- 82 DTP also has internal policy for geotechnical hazard management, including landslide management. The policy includes the Roadside Asset Management Guideline, S1 – Geotechnical Hazards (April 2022) (**DTP.0001.0004.0001**) and a Technical Note, *Risk Management of Road Geotechnical Hazards* (April 2022) (**DTP.0001.0004.0230**). The purpose of this technical note is to provide an overview of the process adopted by VicRoads (now DTP) to undertake risk management of road geotechnical hazards in accordance with the Australian Geomechanics Society Practice Note Guidelines for Landslide Risk Management 2007 (AGS 2007).
- 83 In February 2022, a standard specification for the delivery of routine maintenance services was published (**DTP.0001.0004.0012**). Routine Maintenance is conducted to control the prevalence of hazards and other defects within the public road network. The specification details the technical requirements and rectification standards to be achieved when undertaking routine maintenance on the road network. Landslips is one of the hazards considered in this document.
- 84 Finally, DTP has prepared an Earthworks and Land Under Roads (ELUR) Management Plan (April 2025) (**DTP.0001.0004.0237**). This asset management plan documents the overall integrated planning framework to guide and improve DTP’s long-term strategic management of ELUR assets to cater for the community’s required levels of service. This includes road availability, accessibility, safety, reliability, environment sustainability and cost effectiveness into the future. The effect of landslides and landslips is one of the matters considered in the Plan.

²¹² Code of Practice – Management of infrastructure in in road reserves cl 1 p 7 (dated 6 April 2016) (**DTP.0001.0005.0086**).

C.6.11 DTP's role and the second list of questions

85 Other than is described above in **Section C.6**, DTP has no specific role in relation to the prevention and management of landslides (or landslips) including in relation to any of the matters listed in [1.1] to [1.5] of the second list of questions.

C.7 Department of Treasury and Finance

86 This section was provided as part of the State's first submission.

C.8 Essential Services Commission

87 This section was provided as part of the State's first submission.

C.9 Victorian Building Authority (including contracted municipal building surveyors)

88 The Victorian Building Authority (VBA) is established by the Building Act,²¹³ and is accountable to the Minister.²¹⁴

89 The functions of the VBA include:

- (a) issuing building permit numbers to relevant building surveyors who issue the building permits, upon application and in accordance with the relevant provisions;²¹⁵
- (b) monitoring and enforcing compliance with the Building Act and the Building Regulations;²¹⁶
- (c) to administer the scheme under Part 11 of the Building Act for the registration of building practitioners,²¹⁷ including building surveyors;²¹⁸
- (d) to supervise and monitor the conduct and ability of registered building practitioners,²¹⁹ including building surveyors;²²⁰

²¹³ Building Act s 193.

²¹⁴ Building Act s 195(1): "The Authority is subject to the direction and control of the Minister. Those directions may be general or specific".

²¹⁵ Building Act s 18AA and Division 3AA.

²¹⁶ Building Act s 197(a), and noting the Building Regulations adopt the National Construction Code.

²¹⁷ Building Act s 197(ab).

²¹⁸ Building Act s 3(1) definition of "*building practitioner*".

²¹⁹ Building Act s 197(ac).

²²⁰ Building Act s 3(1) definition of "*building practitioner*".

- (e) to administer the scheme under Part 12A for the licensing and registration of plumbers;²²¹
 - (f) to participate on behalf of Victoria in the development of national building standards and national plumbing standards;²²²
 - (g) to monitor developments relevant to the regulation of building standards and plumbing standards in Victoria;²²³
 - (h) to provide, gather or obtain information (including advice) or data for analysis, such as to assist the Minister in administering the Building Act;²²⁴
 - (i) to carry out any other function conferred on the VBA by or under the Building Act or any other Act or under any agreement to which the State is party.²²⁵
- 90 The VBA may also appoint a State Building Surveyor,²²⁶ who has the specific objectives in s 206A, which include to be a primary source of technical expertise on the standards and requirements for building and plumbing work to the building and plumbing industries and the building system regulators to facilitate compliant building and plumbing work and sound building and plumbing practices.²²⁷ The State Building Surveyor office came into effect in February 2024. The State Building Surveyor has the specific functions in s 206B(1), which include to:
- (a) prepare and issue binding determinations on interpreting the standards and requirements for building work and plumbing work that are prescribed by the Building Act and the Building Regulations;²²⁸
 - (b) advise the Minister in relation to significant strategic and regulatory issues within the building and plumbing industries;²²⁹

²²¹ Building Act s 197(b).

²²² Building Act s 197(c).

²²³ Building Act s 197(d).

²²⁴ Building Act s 197(ia); inserted by the *Building Legislation Amendment Act 2023* ([Authorised Version No. 11 of 2023](#)) s 44.

²²⁵ Building Act s 197(n).

²²⁶ Building Act s 206(1).

²²⁷ Building Act s 206A. Division 3 of Part 12 of the BA was inserted by the *Building Legislation Amendment Act 2023* (Authorised Version No. 11 of 2023) s 14.

²²⁸ Building Act s 206B(1)(a).

²²⁹ Building Act s 206B(1)(c).

- (c) represent the State on bodies developing national building and plumbing standards and requirements;²³⁰
 - (d) monitor councils' delivery of their building control functions and to provide councils with advice and support on the performance of those functions.²³¹
- 91 The VBA can exercise certain powers of inspection²³² (under Div 2 of Part 13) and to issue directions to fix building work (under Div 2 of Part 4). The VBA also can exercise specific power under Part 7 of the Building Act which deals with the “Protection of adjoining property”, to declare specific emergency protection work is required in respect of particular adjoining properties.²³³
- 92 The VBA also exercises specific functions under Div 3 of Part 11 relating to “Disciplinary proceedings and actions” for registered building practitioners.
- 93 Sub-division 5 of Div 2 of the Part 12 of the BA also deals with “Specific powers of the [VBA] relating to building surveyors”. These powers include where the VBA considers it necessary for the purposes of the Building Act or the Building Regulations to direct a municipal building surveyor or private building surveyor to carry out their statutory functions,²³⁴ or where the VBA considers it necessary to make recommendations to the person who appointed a municipal building surveyor or private building surveyor to take specified action.²³⁵
- 94 The VBA is also empowered to act as a municipal building surveyor under specific circumstances. These include in relation to applications for building permits under Part 3 or any matter referred to it by a private building surveyor under Part 8 of the Building Act,²³⁶ and any determination by the VBA in carrying out this assumed function is given effect as if it were the determination of a municipal building surveyor.²³⁷

²³⁰ Building Act s 206B(1)(d).

²³¹ Building Act s 206B(1)(e).

²³² The VBA has the power to appoint inspectors: Building Act s 204A.

²³³ Building Act s 89(1).

²³⁴ Building Act s 205M(1).

²³⁵ Building Act s 205M(3).

²³⁶ Building Act s 205N(1). An example under Part 8 is set out in s 115 of the Building Act where there is non-compliance with a building order made by a private building surveyor.

²³⁷ Building Act s 205O(2).

- 95 The Minister has the power, if they are of the opinion it is in the public interest to do so, to declare any or all of the functions of a municipal building surveyor under the Building Act or Building Regulations to be carried by the VBA for certain building works or classes of building on certain land in a municipal district.²³⁸

C.10 Victorian Managed Insurance Authority

- 96 This section was provided as part of the State's first submission.

C.11 Victorian Planning Authority

- 97 The Victorian Planning Authority (VPA) is established²³⁹ under the *Victorian Planning Authority Act 2017* (Vic) (**VPA Act**).²⁴⁰ The primary object of the VPA is to provide advice and assistance in accordance with the objectives of planning in Victoria,²⁴¹ which includes collaboration with municipal councils²⁴² and encouraging land development that is sustainable and that takes into account natural and other hazards.²⁴³
- 98 The VPA has the specific functions in s 8(1) of the VPA Act, which includes to: provide the Minister for Planning with advice and assistance in relation to planning the use, development and protection of land in Victoria.²⁴⁴ The VPA can provide Councils with such advice and assistance if the Minister for Planning (or a person authorised by them) has approved the giving of advice or assistance in a specified case or class of cases.²⁴⁵ The VPA is also obliged in performing its functions and exercising its powers to engage, consult and collaborate with other planning entities, including Councils, in relation to their functions as planning authorities and responsible authorities,²⁴⁶ and to seek to achieve State Government policy objectives through coordination between all levels of government, government agencies and with the private sector.²⁴⁷

²³⁸ Building Act s 190(1).

²³⁹ VPA Act s 4(1).

²⁴⁰ This submission refers to [Authorised Version No. 007](#) of the VPA Act unless otherwise stated.

²⁴¹ VPA Act s 7(1).

²⁴² VPA Act s 7(2)(a).

²⁴³ VPA Act s 7(2)(f).

²⁴⁴ VPA Act s 8(1)(a).

²⁴⁵ VPA Act s 8(3).

²⁴⁶ VPA Act s 10(2)(a).

²⁴⁷ VPA Act s 10(2)(d).

- 99 VPA develops spatial growth plans for particular designated areas, which are given effect through planning scheme amendments. Such plans may include provision for stormwater management related infrastructure and funding.
- 100 Other than as is described above, the VPA has no specific role in relation to the prevention and management of landslides (or landslips) including in relation to any of the matters listed in [1.1] to [1.5] of the second list of questions.

C.12 Emergency Management Victoria

- 101 This section was provided as part of the State's first submission.

C.13 Victoria State Emergency Service Authority

- 102 This section was provided as part of the State's first submission.

C.14 Victoria Police

- 103 This section was provided as part of the State's first submission.

C.15 VicRoads

- 104 On 4 December 2019²⁴⁸, the *Transport Legislation Amendment Act 2019* (Vic)²⁴⁹ commenced with the purpose of consolidating and integrating the Victorian government's transport portfolio by abolishing the Roads Corporation (known as VicRoads), and integrating the functions of VicRoads and the Public Transport Development Authority (also known as Public Transport Victoria, or PTV) into the Department of Transport to create one transport body for the overall strategic planning and operation of the Victorian transport system.
- 105 Accordingly, VicRoads' responsibilities under all legislation relating to the management and safety of the road network was transferred to the Department of Transport, specifically the Head, Transport for Victoria. The following statutes were substantively amended to reflect these changes:
- (a) *Transport Integration Act 2010* (Vic);
 - (b) *Road Safety Act 1986* (Vic);

²⁴⁸ With certain provisions coming into operation at later dates.

²⁴⁹ This submission refers to Authorised Version 49 of 2019 of the *Transport Legislation Amendment Act 2019* unless otherwise stated.

- (c) *Accident Towing Service Act 2007* (Vic);
- (d) *West Gate Tunnel (Truck Bans and Traffic Management) Act 2019* (Vic); and
- (e) *Road Management Act 2004* (Vic).

- 106 Since the Roads Corporation was abolished, VicRoads now operates as a joint venture between the Victorian Government and a consortium of Aware Super, Australian Retirement Trust and Macquarie Asset Management where it oversees Victoria's registration and licencing for driver licence holders for cars, motorcycles, heavy vehicles and boats.
- 107 As a result of the above, no input has been sought or obtained from VicRoads for this submission.

C.16 Victorian WorkCover Authority (WorkSafe)

- 108 This section was provided as part of the State's first submission.