

## **BOARD OF INQUIRY INTO THE MCCRAE LANDSLIDE**

### **WITNESS STATEMENT OF STUART RODERICK MENZIES**

I, Stuart Roderick Menzies, of 1 Spring Street, Melbourne, in the State of Victoria, say as follows:

- 1 I am the Executive Director State Planning Policy in the Planning and Land Services Group of the Department of Transport and Planning (**DTP**). I have held this position since November 2024.
- 2 My responsibilities as Executive Director State Planning Policy include oversight of the Victorian Planning system (including the Victoria Planning Provisions (**VPPs**)), administration of planning scheme amendments (including the exercise of delegated authority) and strategic land use planning for the state (including Plan for Victoria).
- 3 Before working in this position, I worked as Director State Planning Services at DTP and the former Department of Environment, Land, Water and Planning (**DELWP**) (between 2018 and 2024) and Director City Development, Brimbank City Council (between 2013 and 2018).
- 4 I hold tertiary qualifications in environmental studies, public policy and planning.
- 5 I am authorised to make this witness statement for and on behalf of the State of Victoria (**the State**) and DTP. I make this statement based on my own knowledge, unless otherwise stated. Where I make a statement based on information provided to me, I believe that information to be true and correct. In preparing my witness statement, some of the matters identified below are based on information that has been generated at my request from individuals within DTP and from available records and data held by DTP.
- 6 I make this witness statement in response to the “Second request to produce witness statement” from the Board of Inquiry dated 30 May 2025, addressing the “Third List of Questions” to the State. I answer each of the questions in my witness statement below. I have also read the Terms of Reference for the Inquiry in the Order in Council dated 18 March 2025. I have also read the State’s **Submissions** to the Inquiry lodged on 30 April 2025 and the State’s **Further Submissions** to the Inquiry lodged on 2 May 2025 in so far as those submissions outline a summary of the role of DTP in the prevention and management of landslides and landslips in Victoria.

## A.1 Question 1

7 I have read question 1 in the “Third List of Questions”, which is:

***Q1. Following the November 2022 Landslide, did the Department of Transport and Planning seek information, advice or reporting from the Mornington Peninsula Shire Council, as the relevant planning authority for McCrae, on its erosion management overlays or its administration or enforcement of the planning scheme?***

8 In response to the question 1, and to the best and my knowledge and belief, and based on a review of available records held by DTP, the answer is “No”.

## A.2 Question 2

9 I have read question 2 in the “Third List of Questions”, which is:

***Q2. Describe whether the State is currently reviewing or planning to review the landslide policy and strategic approach in the planning system, including the Erosion Management Overlay (EMO)? If yes, describe the process and timing of that review.***

10 In response to the question 2, I say as follows.

11 The State is not currently reviewing or planning to review the landslide policy and strategic approach in the planning system, including the EMO. The State will consider and respond to any recommendations made by the Board of Inquiry on this topic upon the publication of its findings and recommendations.

12 In 2021, the former DELWP commenced a staged review into the landslide related planning provisions. This is outlined in the State’s Further Submissions in **Section C.6.7.2** at [60]. The review was an initiative under Action #85 of the *Plan Melbourne 2017-2050* Five-Year Implementation Plan<sup>1</sup> to improve the VPP and planning schemes strategic response to natural hazard risk, supported by geotechnical engineering expertise.

13 The staged review included targeted consultation in 2022 on the current provisions to inform any future reforms.<sup>2</sup> This is outlined in the State’s Further Submissions in **Section C.6.7.2** at [61]. Mornington Peninsula Shire Council participated in targeted consultation. Following the targeted consultation, in June 2023, DTP finalised its desktop review of the VPPs and

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<sup>1</sup> See, **DTP.0001.0002.0193**.

<sup>2</sup> See, **DTP.0001.0001.0085**.

Victorian Planning Schemes in an internal written report.<sup>3</sup> This is outlined in the State's Further Submissions in **Section C.6.7.2** at [62].

- 14 Further work on landslide related planning provisions did not progress at the time, in part because after the 2022 flood event in Victoria, changes to managing flood hazard in the Victorian planning system and supporting councils to update planning schemes were a priority of the Victorian Government and DTP.
- 15 The State's *Built Environment Climate Change Adaptation Action Plan 2022-2026*<sup>4</sup> includes as a proposed action (at p 38) for governance and regulation to update planning provisions to respond to climate change based on the most current advice from relevant natural resource and emergency management authorities. One of the responses to the proposed action is "a review of the landslide policy and strategic approach in the planning system, including the [EMO], as more extreme rainfall events and bushfires will increase risk". This is outlined in the State's Submissions in **Section C.1.3** at [22(a)] in relation to the *Climate Action Act 2017* (Vic).
- 16 Further work on the review of landslide related planning provisions and the proposed action under the *Built Environment Climate Change Adaptation Action Plan 2022-2026* is subject to resource capacity within DTP.

### A.2.1 Question 3

- 17 I have read question 3 in the "Third List of Questions", which is:

*Q3. Provide a detailed explanation of the process a planning authority would need to follow to:*

*3.1 introduce an interim or emergency EMO schedule for areas that are assessed as being highly susceptible to landslides; and*

*3.2 obtain a planning scheme amendment to extend the application of existing EMO schedules.*

*In particular, identify:*

*3.3 the anticipated timeframes for each step in the process; and*

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<sup>3</sup> See, **DTP.0001.0001.0140**.

<sup>4</sup> See, **DEE.0001.0001.0002**.

*3.4 any difficulties or barriers to the implementation of these measures.*

- 18 In responding to question 3, my response is based on my own experience as the Executive Director State Planning Policy and my knowledge of how the *Planning and Environment Act 1987* (Vic) (**the Planning and Environment Act**) generally operates.
- 19 Part 3 of the Planning and Environment Act provides for the “Amendment of planning schemes”. Division 1 of Part 3 sets out a process of “Exhibition and notice of amendment” to planning schemes. Under section 19(1)(b) of the Planning and Environment Act, a planning authority must give notice of its preparation of an amendment to a planning scheme to the owners and occupiers of land that it believes may be materially affected by the amendment.
- 20 Section 20 of the Planning and Environment Act provides for an exemption process from giving notice and enables a planning authority to apply to the Minister to exempt it from any of the requirements of giving notice for an amendment in section 19 or the Regulations made under the Planning and Environment Act.
- 21 Section 20(2) of the Planning and Environment Act provides for the Minister to exempt a planning authority from the requirement of section 19 to give notice of an amendment if the Minister considers that compliance with any of those requirements is not warranted, or that the interests of Victoria or any part of Victoria make such an exemption appropriate. This power cannot be exercised to exempt the planning authority itself from giving notice in some specific circumstances, for example, the requirement of the planning authority to give notice to the owner of any land of any amendment that provides for the closure of a road which provides access to that land (see section 20(3)(a)(ii)).
- 22 However, in circumstances where the Minister for Planning is the planning authority for an amendment, using powers under section 20(4), the Minister can exempt themselves from the requirements of exhibition and notice, if the Minister considers that such compliance is not warranted or that the interests of Victoria or any part of Victoria make such an exemption appropriate.
- 23 Therefore, to introduce an EMO on an interim or emergency basis, a planning authority would need to:

- (a) request the Minister for Planning use their powers under section 20(4) of the Planning and Environment Act to become the planning authority for the amendment and exempt themselves from the notice requirements of the Planning and Environment Act;
  - (b) the council's request would need to be accompanied by the required amendment documentation (explanatory report, draft schedule, planning scheme mapping and technical or strategic work supporting the request);
  - (c) the council would also need to provide an explanation as to how the request meets the tests set out in section 20(4) of the Planning and Environment Act to warrant exemption from the usual notice requirements;
  - (d) if the request is considered by the Minister to be appropriately justified and meet the tests of intervention under section 20(4), the amendment could be determined, and if approved and gazetted, take effect in the planning scheme.
  - (e) the planning controls could be introduced on an interim basis if an expiration date is included in the EMO schedule.
- 24 There are no statutory timeframes for amendments where the Minister for Planning is the planning authority and the amendment is exempt from notice requirements under section 20(4) of the Planning and Environment Act. If the amendment documentation and the tests for Ministerial intervention were met, an amendment could be processed within two to four weeks by DTP to enable a decision to then be made by the Minister.
- 25 Otherwise, to make a planning scheme amendment to extend existing EMO schedules, the planning authority would need to seek authorisation from the Minister for Planning to prepare and exhibit an amendment to the planning scheme in accordance with the processes in Parts 2 and 3 of the Planning and Environment Act, which are:
- (a) in Part 2, which sets out the power of the planning authority to prepare amendments to a planning scheme (section 12(1)(d));
  - (b) in Part 3 Division 1, the process of "Exhibition and notice of amendment";
  - (c) in Part 3 Division 2, the process of "Public submissions about an amendment". This may involve referral of submissions received by the planning authority to a panel appointed under Part 8 of the Planning and Environment Act (section 23(1)(b)), which

may then involve a hearing by the panel (section 24) and a report by the panel (section 25).

- (d) in Division 3, the process of “Adoption and approval of amendment”, involves the planning authority (having complied with Division 1 and Division 2), adopting the amendment (section 29), the submission by the planning authority of the adopted amendment to the Minister (section 31), a potential further submissions process (section 34), and the approval of the amendment by the Minister (section 35).

26 The processes above would involve the planning authority:

- (a) providing a request for authorisation pursuant to section 8A of the Planning and Environment Act, including providing the required amendment documentation (explanatory report, draft planning ordinance, planning scheme mapping and technical or strategic work underpinning the request);
- (b) if the authorisation request is granted, the planning authority would need to meet any conditions of authorisation and then commence public notification of the amendment in accordance with the requirements of the Planning and Environment Act for not less than one month (section 19(4)(b));
- (c) following completion of the exhibition period, the planning authority would consider all submissions, and either make changes in response or resolve to send any unresolved submissions to a Planning Panel for review;
  - (i) if there are no unresolved submissions, the planning authority could resolve to adopt the amendment and submit it to the Minister for Planning for approval;
  - (ii) following receipt of the planning panel’s report (if applicable), the planning authority must consider the Panel’s report and determine whether to accept the recommendations of the planning panel and ultimately whether to adopt the amendment.
- (d) if adopted, the planning authority must submit the amendment to the Minister for Planning for approval.

27 Other than for authorisation, where there is a timeframe of 10 business days to decide on the authorisation request or place the request on further review, and the public exhibition of an

amendment being for not less than one month, there are no statutory timeframes specified in the Planning and Environment Act for the planning scheme amendment process.

28 However, *Ministerial Direction 15 – The planning scheme amendment process (DTP.0001.0013.0001)* sets out standard timeframes for the stages of the planning scheme amendment process. The timelines include:

- (a) a planning authority giving notice of amendment within 40 business days of receiving authorisation;
- (b) a planning authority requesting the appointment of a panel within 40 business days of the closing date for submissions;
- (c) a panel appointed under Part 8 of the Planning and Environment Act to commence its functions within 20 business days of its appointment;
- (d) a panel to provide its report within 20 to 40 business days after the last date of a panel hearing (depending on the number of members);
- (e) a planning authority making a decision to abandon or adopt an amendment within 40 to 60 days (depending on whether submissions were made to a panel);
- (f) a decision by the Minister for Planning on an adopted amendment within 40 business days.

29 A full process for an amendment that is publicly exhibited and has unresolved submissions referred to a panel can take at least one year. This process can take longer if there is any delay such as a request for further information, review of the authorisation request, or extended exhibition or hearing processes. The median time for a medium complexity planning scheme amendment in Victoria in the last three years is 378 days.

30 Potential difficulties or barriers to the implementation of either of these measures include:

- (a) use of powers under section 20(4) of the Planning and Environment Act is at the discretion of the Minister for Planning and subject to the statutory criteria. A planning authority may not sufficiently establish the circumstances which may enliven the discretion.

- (b) the quality of technical or strategic work put forward to justify the amendment and whether it can be relied upon either on an interim or a permanent basis.

- 31 As a matter of general practice, where a planning control is introduced on an interim basis without public notice, a council is directed to seek authorisation to prepare a planning scheme amendment to introduce a like permanent control. This second amendment is subject to the normal public notice and panel review process outlined above at [23] to provide the opportunity for landowners and occupiers to make a submission and be heard at panel hearing.
- 32 DTP would provide assistance and advice to the council on the preparation and administration of any amendment if requested to do so.

#### A.2.2 Question 4

- 33 I have read question 4 in the “Third List of Questions”, which is:

*Has the State previously been approached to approve emergency or interim extensions to EMOs or the introduction of EMOs (whether in the McCrae Area or otherwise)? Have any of those extensions or introductions been approved? If so, please identify those examples and explain the process that was undertaken.*

- 34 In response to the question 4, the answer is “Yes”.
- 35 In February 2025, DTP officers exchanged email correspondence with Mornington Peninsula Shire Council officers about use of ministerial powers of intervention to introduce an interim EMO. I understand this email correspondence to have been produced by DTP to the Board of Inquiry in response to a Notice to Produce issued to DTP (NTP-DTP-004) (see, **DTP.0001.0010.0001; DTP.0001.0010.0007; DTP.0001.0010.0008**).
- 36 On 14 May 2025, officers from DTP and from the Mornington Peninsula Shire Council met to discuss a potential future request from the Council to the Minister for Planning to introduce a new EMO on an interim basis while it completes technical work to support a permanent EMO. I understand a file note of this meeting has been produced by DTP to the Board of Inquiry in response to a Notice to Produce issued to DTP (NTP-NTP-004) (see, **DTP.0001.0010.0016**).
- 37 To date, a request from Mornington Peninsula Shire Council to introduce a new EMO on an interim or emergency basis has not been received by DTP.



- 38 Other than as outlined above, to the best and my knowledge and belief, and based on a review of available records held by DTP, the answer to this question in relation to other municipal areas is “**no**”.

**6 June 2025**

**Personal Information**

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