

BOARD OF INQUIRY INTO THE MCCRAE LANDSLIDE
RESPONSE TO THE LIST OF QUESTIONS FOR THE MINISTER FOR PLANNING

Preliminaries

1. This Schedule is the response to the list of questions for the Minister for Planning, the Hon. Sonya Kilkeny MP (**the Minister**), included in the correspondence from the Chair of the Board of Inquiry into the McCrae Landslide (**the Inquiry**) dated 30 June 2025.
2. In this response, all references to legislation (or provisions in legislation) relate to the *Planning and Environment Act 1987* (Vic) (**Act**) (Authorised Version No.158¹) unless otherwise indicated.
3. All documents referred to by a **Document ID** have been previously produced to the Inquiry, or will be produced by the Department of Transport and Planning (**DTP**).
4. Where necessary, this response refers to **the State** of Victoria's "Further Response to the Second List of Questions for [the State]" dated 2 May 2025 (**DGS.0001.0005.0001**) (**Further Submission**).
5. This response also refers to the Witness Statement of Stuart Menzies, Executive Director, State Planning Policy in the Planning and Land Services Group of DTP made on 6 June 2025 (**DTP.0001.0014.0001**) (**Mr Menzies' Statement**).

Managing landslide risk

Question 1: What do you see as the primary tool for the management of landslide risk in Victoria's land use planning system?

6. I consider there are two primary tools within Victoria's land use planning system for managing landslide risk. The first is the mandatory state-wide policies contained in the Planning Policy Framework. The second is the Erosion Management Overlay (**EMO**). I refer to each of these in more detail below.
7. Both tools sit within the Victoria Planning Provisions (**VPP**), which is a document containing a comprehensive set of planning provisions for Victoria.² The VPP are not a planning scheme and do not apply to any land. It is a statutory device to ensure that consistent provisions for various matters are maintained across Victoria, including certain provisions that are mandatory in all planning schemes in Victoria.
8. **Mandatory state-wide policies:** These are contained in the Planning Policy Framework (which is one section of the VPP) and which must be included in each planning scheme.
9. One of the mandatory state-wide policies is clause 13.04-2S "Erosion and landslip" (**DTP.0001.0002.0708**),³ which sets an objective to protect areas prone to erosion, landslip or other land degradation processes, with strategies to:
 - (a) Identify areas subject to erosion or instability in planning schemes and when considering the use and development of land.

¹ < <https://www.legislation.vic.gov.au/in-force/acts/planning-and-environment-act-1987/158> >
 The Act was recently amended. Authorised Version 158 incorporates amendments commencing on 1 July 2025.

² State's Further Submission at **Section C.6.5**.

³ State's Further Submission at [64(b)].

- (b) Prevent inappropriate development in unstable areas or areas prone to erosion.
- (c) Promote vegetation retention, planting and rehabilitation in areas prone to erosion and land instability.

10. State-wide policies factor into decision-making under the Act in several ways:

- (a) Under s 12(2)(aa), in preparing a planning scheme or amendment, a planning authority must have regard to the VPP and, under s 12(2)(ab) in the case of an amendment, must have regard to any strategic plan, policy statement, code or guideline which forms part of the planning scheme. Similarly, under s 14(b) and s 14(c), the duties of a responsible authority, like a municipal council,⁴ include implementing the objectives of the planning scheme and complying with the Act and the planning scheme.
- (b) Under s 12B(1) and s 12B(2), a planning authority which is a municipal council must review its planning scheme no later than one year after each date by which it is required to approve a council plan under s 90⁵ of the *Local Government Act 2020* (Vic),⁶ or within such longer period as determined by the Minister, or at any other time that the Minister directs. Section 12B(4)(c) requires that the review evaluate the planning scheme to ensure that it makes effective use of State and local provisions to give effect to State and local policy objectives (which includes those planning policy objectives relevant to managing landslide risk that are set out above).
- (c) Under s 60(1), before deciding applications for permits, a responsible authority must consider the relevant planning scheme (s 60(1)(a)), the objective of planning in Victoria (s 60(1)(b)) and any significant effects which the responsible authority considers the environment may have on the use or development (s 60(1)(e)). Further, under s 60(1A)(g), if the circumstances appear to so require, a responsible authority may consider any other strategic plan, policy statement, code or guideline which has been adopted by a Minister, government department, public authority or municipal council.

11. Clause 65.01 of the VPP (Approval of an Application or Plan) (**DTP.0001.0019.0006**) applies state-wide and provides that before deciding on an application or approval of a plan, the responsible authority must consider certain matters, including:

- (a) The matters set out in s 60 of the Act, which I describe above.
- (b) Any significant effects the environment, including the contamination of land, may have on the use or development.
- (c) The Municipal Planning Strategy and the Planning Policy Framework (which includes the state-wide policies).
- (d) The purpose of the zone, overlay or other provision.
- (e) Any matter required to be considered in the zone, overlay or other provision.

⁴ Act s 13(2)(a).

⁵ Under s 90(2) of this Act, a “council plan” must include the following: (a) the strategic direction of the Council; (b) strategic objectives for achieving the strategic direction; (c) strategies for achieving the objectives for a period of at least the next 4 financial years; (d) strategic indicators for monitoring the achievement of the objectives; (e) a description of the Council’s initiatives and priorities for services infrastructure and amenity; and (f) any other matters prescribed by the regulations.

⁶ This response refers to [Authorised Version No. 024](#) of the *Local Government Act 2020* (Vic) unless otherwise indicated.

- (f) The orderly planning of the area.
 - (g) The effect on the environment, human health and amenity of the area.
 - (h) Factors likely to cause or contribute to land degradation, salinity or reduce water quality.
 - (i) The extent and character of native vegetation and the likelihood of its destruction.
 - (j) Whether native vegetation is to be or can be protected, planted or allowed to regenerate.
 - (k) The degree of flood, erosion or fire hazard associated with the location of the land and the use, development or management of the land so as to minimise any such hazard.
12. Clause 65.01 does not apply to specific classes of planning permit applications, including a VicSmart application and an application under Clause 55 (Two or more dwellings on a lot and residential buildings).
 13. State-wide policies may be supplemented by local policies developed at the municipal level, which may include local policies relating to landslides and landslips. Some planning schemes contain general policy statements addressing erosion, while others have dedicated local policy clauses dealing with erosion or landslide.
 14. **Erosion Management Overlay:** The EMO (VPP 44.01; **DTP.0001.0002.0723**) is one of several standard overlays for state-wide application within the VPP.
 15. An overlay imposes a requirement for a planning permit application so that a future, or proposed, development or use of land can be properly assessed in light of a special feature or risk relating to the land. An overlay will set out when a planning permit is required for any construction or change to the land, and the contents of a permit application, that apply in addition to the requirements of the particular zone in which the land is situated.
 16. Each planning scheme includes those overlays required to implement the strategy for that municipality. The standard overlay may then be supplemented with schedules prepared at the municipal level to specify local objectives and requirements, which allows the EMO to be adapted to the particular characteristics of the municipality.
 17. The EMO is a planning tool to manage risk from future, or proposed, development of land within the area where the overlay applies. It assists to manage landslide risk in the following ways:⁷
 - (a) Clause 44.01 (**DTP.0001.0002.0723**) states that one of the purposes of the EMO is "*[t]o protect areas prone to erosion, landslide, other land degradation or coastal processes by minimising land disturbance and inappropriate development.*"
 - (b) Clause 44.01-1 provides that a schedule (which will be prepared at the municipal level) may contain erosion management objectives to be achieved and a statement of risk.
 - (c) Clause 44.01-2 to 44.01-5 set out the types of development of land that will require a planning permit (unless a schedule specifically states that a permit is not required or one of the exceptions applies). Permits are required for constructing a building, carrying out works (including roadworks and construction of pools or spas), vegetation removal, and subdivision.
 - (d) Clause 44.01-06 requires that a permit application be accompanied by information showing the existing site conditions (including the land gradient and the extent of any existing erosion, landslip or other land degradation), the extent of any proposed

earthworks, the means proposed to stabilise disturbed areas, and any other information specified in a schedule.

- (e) Clause 44.01-8 sets out additional matters that the responsible authority must consider, as appropriate, when deciding a permit application. These include:

Any proposed measures to manage concentrated runoff and site drainage.

Any proposed measures to minimise the extent of soil disturbance.

Whether the removal of vegetation will increase the possibility of erosion, the susceptibility to landslip or other land degradation processes, and whether such removal is consistent with sustainable land management.

The need to stabilise disturbed areas by engineering works or revegetation.

Whether the land is capable of providing a building envelope which is not subject to high or severe erosion concern.

Whether buildings or works are likely to cause erosion or landslip.

Whether access and servicing of the site or building envelope is likely to result in erosion or landslip.

18. These requirements, together with any additional requirements set out in schedules to the EMO, ensure that development proposals provide responses to any risk to life or property posed by landslide or erosion, and that new developments do not elevate existing landslide or erosion risks.
19. As discussed below in response to **Question 3**, the effectiveness of the EMO is ultimately dependent on the content of the schedules and on landslide risk being known, mapped and understood.
20. Even where an EMO is not in place, the state-wide and any local policies concerning landslide and erosion must still be considered in most planning decisions under clause 65.01 (Approval of an Application or Plan) which I discuss above.
21. While these are the primary tools, there are other aspects of, and tools within, the planning system that contribute to management of landslide risk. One example is stormwater management planning, which is detailed in the State's Further Submission at **Section C.6.9**.

Question 2: The Inquiry understands the Victorian Government is currently reviewing the *Planning and Environment Act 1987 (Vic) (Act)*. Are any reforms being considered that would impact how landslide risk is managed in the planning system?

22. **Yes**, in the sense that the review of the Act will consider the planning scheme amendment process with a view to making it more efficient and flexible. It is my expectation that the improvements that have recently been made to the Act (discussed further below) and those that will be made to the Act following completion of the review will result in planning schemes being better able to respond to environmental risks and other hazards, including landslides.
23. By way of context, in 2023 as part of the Victorian Government's Housing Statement and the government's broad scale reforms to increase housing in the right places, the government committed to review, rewrite and modernise the Act, including with a review of the planning scheme amendment process and the roles and responsibilities of entities involved in that process. It is not a review of the VPP or planning schemes generally, and so will not involve a review of landslide policies, or the strategic approach to managing landslide risk in the planning system, or the efficacy of the EMO.

24. The review of the Act is ongoing. An initial output of the review is the commencement of the *Consumer and Planning Legislation Amendment (Housing Statement Reform) Act 2025* (Vic) (**Amendment Act**) which received Royal Assent on 18 March 2025. The Amendment Act introduces (through Part 7) amendments in relation to the planning scheme process. These specific amendments include an initial tranche of changes that will come into operation on 25 November 2025 if not proclaimed to come into operation on an earlier date.⁸
25. The amendments to the planning scheme amendment process introduced by the Amendment Act include a new Division 1AA relating to “Authorisation to prepare amendments and other preliminary matters”, which includes (but is not limited to):
- (a) Subdivision 1 “Requests for municipal councils to prepare amendments”. New s 16A will enable any person to request a municipal council to prepare an amendment to the planning scheme in force in its municipal district. Under s 16B, the municipal council must either apply to the Minister for authorisation to prepare the amendment, or refuse the request with written notice and reasons. The Minister may direct a municipal council to make a decision on the request within a specified time of not less than six weeks (s 16D). If the municipal council decides to apply to the Minister for authorisation to prepare the amendment, the Minister can similarly direct the municipal council to make the application for authorisation within a specified time of not less than six weeks (s 16E).
 - (b) Subdivision 3 “Other matters”, which includes new s 16N “Low-impact amendments” to a planning scheme that fall within a prescribed class or are otherwise determined by the Minister to be a low-impact amendment (ss 16N(1)(b), 16N(2) and 16N(3)). A low-impact amendment:
 - (i) can be prepared by a municipal council without first obtaining authorisation from the Minister. New s 23A sets out the process for low-impact amendments; and
 - (ii) can be adopted without submissions that request a change to the amendment being resolved or referred to a panel appointed under Part 8.

At this stage prescribed classes of low-impact amendments have not yet been defined.
 - (c) New ss 28A to 28D, which provide options to progress an amendment that a planning authority has abandoned.
26. The outcomes of the review of the Act will be considered by the Government and implemented as appropriate.

Erosion Management Overlay

Question 3: In your opinion, is the erosion management overlay (EMO) an effective tool for ensuring there are planning controls in areas of landslide risk?

27. Where landslide risk is known, then **yes**, the EMO is an effective tool for managing development of land because it is supported by appropriate technical information. A planning permit application must be made for development within the area covered by the EMO. The EMO sets out the purpose of the overlay, the permit requirements for development (buildings and works, including vegetation removal, and subdivision), application requirements and decision guidelines. Additional operational detail is in the schedule to an EMO prepared at a municipal level, within which the planning authority may set objectives, define the acceptable level of risk and impose additional application requirements, or may create exemptions to the requirement to seek a permit application. The EMO can only be put in place where the landslide risk is

known, understood and mapped. This is similar to other natural hazard overlays, in that they are put in place to respond to a known risk.

28. As set out below in response to **Question 4**, there is currently variation in the content and structure in EMO schedules across different planning schemes, with some being more detailed and more prescriptive than others.

Question 4: Have you been made aware of any concerns or issues with the design or application of the EMO?

29. For the purposes of preparing this response, I have been made aware of the desktop review finalised by DTP in June 2023 (**DTP.0001.0001.0140**), which is referred to in the State's Further Submission at [62] and in Mr Menzies' Statement at [13]. This desktop review was prepared by DTP as part of the staged review commenced by the former Department of Environment, Land, Water and Planning (**DELWP**), which included targeted consultation on the current landslide planning provisions. A previous Minister for Planning, the Hon Richard Wynne MP, was briefed on the initial discussion paper prepared by DELWP (**DTP.0001.0001.0085**) and approved its release on 23 December 2021. The staged review has been detailed in the State's Further Submission at [61]-[62] and in Mr Menzies' Statement at [12]-[14].

30. The desktop review identified the following concerns or issues with the design or application of the EMO:

- (a) Within the 27 planning schemes that included the EMO as of October 2022, there was local variation and lack of consistency in the content and structure of schedules to the EMO. Some EMO schedules contained content that was more thorough than others. Many schedules formed part of old-format planning schemes (pre-1997) which were translated into new format schemes.
- (b) Engagement feedback revealed a varied approach to decision making by responsible authorities on assessing and setting risk thresholds.
- (c) Much EMO mapping was derived from mapping in planning schemes prior to 1997 which were translated into new format planning schemes, which was mostly an administrative rather than investigative process.
- (d) There are no technical requirements underpinning the application of the EMO. Planning authorities are responsible for identifying and mapping landslide and erosion hazards.
- (e) Where an EMO is applied, there is usually limited information within the EMO schedules to explain why they have been applied to a specific area.

31. The matters identified by DTP present a case for improving how the EMO operates, including greater consistency in how EMO schedules are drafted and more rigour in the mapping that underpins the EMO.

Question 5: To your knowledge, has the Victorian Government previously sought to learn from events and research in other jurisdictions in relation to the use of an EMO to manage landslide risk?

32. **Yes.** In the DTP desktop review (referred to in **Question 4**), a comparison is drawn between Victoria and other jurisdictions that have a State inventory of landslide occurrences, which is an input used to inform erosion and landslide mapping.
33. Other than in the context of the DTP desktop review, I am not aware of other instances where the Victorian Government has specifically sought to learn from events and research in other jurisdictions in relation to the use of an EMO to manage landslide risk.

Question 6: Noting the connection between water and landslide risk, what role (if any) do you see for the Minister for Water, water authorities and catchment management authorities in the development and review of EMOs?

34. The Minister for Water, water authorities and catchment management authorities may have information that could assist municipal councils with mapping landslide risk and so inform the development and review of EMOs. This may include information such as overland water flows, sub-surface flows and underground springs. Further consideration would be necessary, including having regard to the Inquiry's findings and recommendations, as to how any information held by the Minister for Water, water authorities and catchment management authorities could support the technical information relied upon for the development and review of EMOs.

Question 7: Do you consider the EMO to be a tool that has broader application than land use planning?

35. **No.** As I set out in response to **Question 1**, the EMO is a specific planning control that is directed at managing the future development or use of land where a risk of erosion or landslides had been identified. It does so by triggering a permit application that must be prepared and determined in accordance with the requirements of the EMO.

Question 8: Are you aware that other Victorian Government agencies, such as emergency management and water, use the EMO as a proxy for landslide risk and use it to inform related decision about service delivery?

36. The premise of the question relates to the use of the EMO as a "proxy". I am unaware of what specific evidence the Inquiry has heard in relation to the use of the EMO in this manner. Other than in the context of the work of DTP, I am unaware of any use of the EMO as a "proxy".

Question 9: Further to (8) above, do you have any concerns with that and does the development process adequately support those broader uses?

37. Having regard to my responses to **Question 7** and **Question 8** above, assuming that there is such broader use, I would have concerns with the EMO being used as a "proxy" given it has not been designed for that purpose.

Risk identification, accountability and oversight

Question 10: How does the planning system ensure that areas of landslide risk are identified and subject to appropriate planning controls?

38. The principal ways in which the planning system ensures that areas of landslide risk are identified and subject to appropriate planning controls are through the duties and powers of planning authorities under the Act, which include the obligation to implement the objectives of planning in Victoria (s 12(1)(a)), provide sound, strategic and co-ordinated planning of the use and development of land in its areas (s 12(1)(b)), regularly review the provisions of its planning scheme (s 12(1)(c)), and prepare amendments of its planning scheme (s 12(1)(d)), with an explanatory report for any amendments (s 12(1)(e)).
39. The general obligations on municipal councils as a responsible authority are contained in s 14 and include to efficiently administer and enforce the planning scheme, and to implement the objectives of the planning scheme. Each municipal council is therefore responsible for identifying landslide and erosion risks as part of their general obligations as a planning authority and responsible authority.
40. These obligations direct municipal councils to implement any policy objectives and strategies that are detailed within the planning scheme that it administers. As stated in response to **Question 1**, each planning scheme must include the mandatory state-wide policies that are contained in the Planning Policy Framework. Several of these policies are directed to managing landslide and erosion risk. One of the strategies for achieving the policy objective stated in "Erosion and landslide" (Clause 13.04-2S of the VPP; **DTP.0001.0002.0708**), is to "[i]dentify areas

subject to erosion or instability in planning schemes and when considering the use and development of land".

41. I acknowledge that planning policy would be strengthened by practice notes and guidance specifically on landslide risk and that this is a known gap that was identified in DTP's desktop review (referred to in **Question 4**). By comparison, the mandatory state-wide policies relating to coastal inundation and erosion (Clause 13.01-2S of the VPP) (**DTP.0001.0002.0703**) and bushfire planning (Clause 13.02-1S of the VPP) (**DTP.0001.0019.0001**) are more sophisticated and responsive to those known risks. These include, for example, guidance on hazard identification and assessment, a hierarchy of interventions, and benchmark metrics to assist decision-making.
42. As detailed in response to **Question 3** and **Question 4** in relation to EMOs, much depends on landslide risk being known and understood by a municipal council. An EMO does not eliminate landslide risk, it is a tool that may be applied to mitigate against that risk, where it has been identified, in circumstances of land development. The first step is to understand where a landslide may impact an area. This will involve each municipal council undertaking the necessary strategic work, including geotechnical studies, to identify landslide risk and inform potential planning scheme amendments. In most cases, municipal councils rely solely on external technical experts, including geotechnical experts, to prepare advice on landslide risk.
43. Once landslide risks have been identified, the planning system ensures that landslide risks are subject to appropriate planning controls through:
 - (a) the state-wide mandatory policies and strategies that are described in response to **Question 1**;
 - (b) the *Ministerial Direction on the Form and Content of Planning Schemes* (**DTP.0001.0002.0001**), made under s 7(5), which require planning authorities to use the template EMO schedule;⁹ and
 - (c) in relation to coastal erosion, additional guidance in the Planning Practice Notes *PPN53 Managing coastal hazards and the coastal impacts of climate change* (**DTP.0001.0002.0206**)¹⁰ and *PPN36 Implementing a coastal settlement boundary* (**DTP.0001.0006.0142**).
44. These matters are in addition to tools that have been prepared to assist municipal councils with planning scheme amendments generally, such as the publications *Using Victoria's Planning System* (**DTP.0001.0002.0212**) and the *Practitioner's Guide to Victoria's Planning Schemes* (**DTP.0001.0006.0004**).¹¹

Question 11: The Inquiry has heard that relevant planning authorities need to seek their own geotechnical advice to determine the need for and scope of any EMO. Further to this:

- (a) **When applications are presented to you for approval, do you seek further independent or in-house departmental geotechnical expertise to assess and review the proposed amendments?**
45. Typically, **no**. Requests for the Minister's authorisation to prepare a planning scheme amendment under s 8A(2) of the Act, and requests for approval of planning scheme amendments, are typically assessed by planners within DTP without relying on independent geotechnical expertise. Planners assess whether the amendment makes appropriate use of the VPP and meets the requirements of any applicable Ministerial direction. For example, a planner will assess whether the amendment is consistent with *Ministerial Direction – The Form and*

⁹ State's Further Submission at [52].

¹⁰ State's Further Submissions at [57].

¹¹ State's Further Submission at [40].

Content of Planning Schemes (DTP.0001.0002.0001), addresses the strategic considerations set out in *Ministerial Direction 11 – Strategic Assessment of Amendments (DTP.0001.0018.0001)*, and is supported by evidence. When the evidence comprises geotechnical assessments or other modelling, DTP planners would not typically undertake peer review of that type of evidence.

46. However, if an amendment to an EMO was presented for approval, it may have been through an independent planning panel process under Part 8 of the Act, where geotechnical experts may have been called to provide evidence in relation to submissions for or against the amendment. A panel is empowered to require a planning authority or other body or person to produce documents relating to any matter being considered by the panel under the Act which it reasonably requires (s 161(2)).
- (b) **Appreciating there was a different Minister at the time, had you been the Minister would it have been reasonable to expect to receive advice when considering EMO amendments in Mornington Peninsula that these did not cover all areas of known landslide risk?**
47. **No**, it would not have been reasonable to expect to receive that advice as part of the amendment application because as Minister, I can only consider the amendment request before me. Authorisation and approval decisions are determined on their merits on the basis of all of the information provided in the application. It is normal for EMO applications to cover only part of a municipality. A municipal council will often prepare strategic studies in stages because of resource constraints and to manage the public notices process associated with the planning scheme amendments.

Question 12: Are there any review processes to ensure planning authorities are appropriately mapping landslide risks into the planning system?

48. **No**. DTP does not undertake a review process to ensure planning authorities are appropriately mapping landslide risks into the planning system.
49. Under s 12B(1) and 12B(2), the Act provides a regular review process of planning schemes which should include consideration by planning authorities of the appropriateness of their mapping of landslide risks. Section 6(1)(a) of the Act requires planning schemes to seek to further the objectives of planning in Victoria within the area covered by the scheme. Section 6(2) then sets out the matters that may be included in a planning scheme, which includes (in s 6(2)(e)), a planning scheme providing for regulation or prohibition of any use or development in hazardous areas or in areas which are likely to become hazardous. In my view, areas where landslide risks have been identified are hazardous areas for the purposes of s 6(2)(e).
50. Further, under s 12(2)(b) of the Act, when preparing amendments to planning schemes, planning authorities are under a specific obligation to take into account any significant effects which they consider the amendment might have on the environment or which they consider the environment might have on any use or development envisaged in the scheme or amendment. In my view, this should encompass landslide risks.

Question 13: What level of capability and governance do you expect local government and other relevant planning authorities to have in place to facilitate and support the design and implementation of EMOs?

51. Local government and other relevant planning authorities should have the capability and governance to fulfil their statutory duties and responsibilities under the Act. Depending on the circumstances, this may require a municipal council to facilitate and support the design and implementation of an EMO. That does not necessarily mean that a municipal council needs to always have expert capability in-house. Where specific expertise, such as geotechnical expertise, is required, a planning authority could engage external experts on an *ad hoc* basis.

Question 14: This Inquiry has heard that seeking geotechnical risk assessments is often cost prohibitive. Noting the Victorian Government already has programs in place to support councils to implement flood studies in planning controls, has any consideration been given to providing all

hazards financial support (or other types of support) to ensure risks to the community are appropriately managed in the planning system?

52. All-hazards financial support to councils is not under current active consideration. However, the government does provide a range of supports to councils as outlined below. The government will carefully consider the Inquiry's findings and recommendations regarding an all-hazards approach to support to local councils. It is likely that any proposals for broadened financial support will need to be considered through the State Budget process.
53. DTP administers support to regional councils to implement flood studies as part of planning schemes. This included the Regional Flood-related Amendments Program which concluded in June 2025.
54. For regional councils, DTP also administers the Victorian Government's Regional Planning Hubs Program which provides financial support to councils for strategic planning studies and planning scheme amendments. Regional councils would be eligible to seek financial support to engage experts to assist with landslide risk assessment and the preparation of a planning scheme amendment for an EMO. The current Regional Hubs Program is providing specific assistance to flood-affected regional councils until June 2026.
55. For example, as part of the Regional Hubs Program, support was provided to South Gippsland Shire Council in 2023 for the "Steep Slopes" project. The project was undertaken by DTP for the Council and included the preparation of amendment documentation to update erosion management planning controls. The project did not include undertaking a landslide risk assessment. The revised schedule to the EMO was implemented as Amendment C119sgip in August 2024.
56. DTP also administers a coastal planning grants program.
57. In each of these instances, the programs have been to assist the implementation of already completed flood studies or coastal hazard assessments as part of planning schemes through a planning scheme amendment process. Flood studies and coastal hazard assessments are separately supported by local, state and federal funding, with the involvement of the Department of Energy, Environment and Climate Action, catchment management authorities and Melbourne Water. If the same approach were taken for landslide risk, any support would likely be directed to assist with the implementation of a completed geotechnical risk assessment as part of the local planning scheme through a planning scheme amendment process.

Question 15: The Inquiry has received correspondence from a Municipal Council in which the Council states that to effectively respond to landslide risk, the State Government is best placed to take a lead role in funding and undertaking statewide mapping and to follow through with a planning scheme amendment for relevant Councils, which recognises the areas of risk. The Council considers that this would introduce consistency, ensure high risk areas are identified in all planning schemes, and ensure that the most recent technology is used to produce high-definition mapping of risk. What is your response to this suggestion?

58. I have not sighted the correspondence referred to in this question. Whether the State would take on this suggested role would need to be considered as part of a Whole-of-Victorian-Government response to the Inquiry's findings and recommendations, including in the context of the scheme of the Act overall and the State Budget.

Ministerial powers and decisions relating to McCrae

Question 16: - Are there any mechanisms for you as the relevant Minister to request or direct planning authorities to take action where landslide risk is identified, but planning amendments are not being pursued?

59. There is no specific mechanism to allow me, as the relevant Minister, to request or direct a planning authority to take action if the council, as planning authority, has not commenced an amendment to the planning scheme.

60. However, if the council, as the planning authority, has commenced an amendment but has subsequently abandoned the amendment, so that it is no longer being pursued, new s 28A (when that provision introduced by the Amendment Act comes into force) will empower me, as the relevant Minister, to continue the amendment and become the planning authority .
61. There are also mechanisms available to me, as the Minister which may be used to address planning authority inaction or delay whilst an amendment process is on foot . For example, under s 185A(1), the Minister can direct a planning authority to take any steps required to be taken under Part 3 in respect of an amendment to a planning scheme within a specified time. However, this power can only be exercised after the council as planning authority has commenced the planning scheme amendment process.
62. For the avoidance of doubt, where landslide risk has been identified but the council, as the planning authority, has not commenced an amendment (as in McCrae at present), neither the existing provisions nor the new provisions (which are not yet in effect) would operate to give me the power to direct the council in relation to pursuing an amendment.

Question 17: Is there a mechanism for you to take any such action in the Mornington Peninsula Shire Council (MPSC) where:

- (a) **there have been two significant landslides in McCrae since 2022; and**
- (b) **the MPSC has mapping which identifies large areas of land in McCrae prone to landslide, but the MPSC has still not sought to introduce new EMO schedules for high susceptibility landslide areas or sought planning amendments?**
63. Without pre-empting any proposed action that might be taken by the MPSC or me in the future, or the findings and recommendations of the Inquiry itself, as a general matter, the mechanisms that may be available to me to respond to this scenario are my statutory powers to prepare:
- (a) a planning scheme for any municipal district or other area of Victoria (in s 8(1)(a)); or
- (b) amendments to any provision of a planning scheme (in s 8(1)(b)).
64. Where I am called upon to act as a planning authority and prepare an amendment, I have the power as Minister under s 20(4) to exempt such amendment from the notice requirements in ss 17, 18 and 19, if the criteria in s 20(4) are met (that is, if I consider that compliance with any of the requirements in ss 17-19 is not warranted or that the interests of Victoria or any part of Victoria make such an exemption appropriate). In principle, these provisions would enable me as the Minister to introduce an amendment to the Mornington Peninsula Planning Scheme if the MPSC did not do so. This process is set out in greater detail in Mr Menzies' Statement (in response to Question 3).
65. However, where I am called upon to act as the planning authority, in practice I am still reliant on a municipal council to have undertaken or obtained the relevant mapping, risk assessments and other preparatory work to support the planning scheme amendment. In this circumstance, I could not prepare an amendment to introduce an EMO in McCrae without this type of information. I would generally ask for this type of information and data to be provided by the municipal council.
66. More generally, there is also the power of the Governor in Council to make regulations with respect to providing for matters to be covered in a review of a planning scheme (s 202(1)(ba)). Regulations could be made to require such an action to be taken by municipal councils .

Question 18: Do you consider that the Act provides you with sufficient powers to ensure planning and development prioritises Victorians' safety in respect of landslide risk or do you consider reforms to be necessary?

67. **Yes**, insofar as it establishes a general and flexible framework for planning the use, development and protection of land in Victoria, I consider that the Act provides me (and councils) with sufficient

powers to ensure planning and development prioritises the safety of Victorians in respect of a wide range of natural and other hazards.

68. Section 6(1) provides that a planning scheme for an area must seek to further the objectives of planning in Victoria within the area covered by the scheme.
69. Several of the objectives in s 4 of the Act support the prioritisation of Victorian s' safety generally and would include landslide risk in that context, specifically the objectives in ss 4(1)(b), (c), (e), (g), and 4(2)(a)-(d) and (g). Planning schemes may, for the purposes of the requirement in s 6(1)(a), set out policies and specific objectives (s 6(2)(a); regulate and prohibit the use or development of any land (s 6(2)(b)); and regulate and prohibit any use or development in hazardous areas, or in areas which are likely to become hazardous areas (s 6(2)(e)).
70. The duties and powers of planning authorities (which in most cases are municipal council s and the Minister) also enable prioritisation of Victorian s' safety more generally, including in respect of landslide risk, by reason of the obligations to implement the objectives of planning in Victoria (s 12(1)(a)); provide sound, strategic and co-ordinated planning of the use and development of land in its area (s 12(1)(b)); and review regularly the provisions of the planning scheme for which it is a planning authority (s 12(1)(c). In preparing a planning scheme or amendment, a planning authority must take into account any significant effects which it considers the scheme or amendment might have on the environment, or which it considers the environment might have on any use or development envisaged in the scheme or amendment (s 12(2)(b). Planning authorities are also empowered to carry out studies and commission reports (s 12(3)(a)), and to do all things necessary to encourage and promote the orderly and proper use, development and protection of land in the area for which it is a planning authority (s 12(3)(b)).
71. The Act provides a framework for planning in Victoria with coordinated responsibility between levels of government, with councils providing primary oversight of localised risks within a state-wide policy framework. To that end, the Act and the VPP enable the application of EMOs in areas identified as susceptible to landslide risk, to ensure that use and development of land in those areas is appropriate.
72. The Act does not specifically refer to landslide risks. However, it provides a flexible overall framework to deal with a wide range of risks to Victorians' safety in the planning context. Emerging risks can be responded to without necessarily amending the Act. For example, State planning policy for bushfire has been implemented as part of the VPP without changes to powers under the Act. The Bushfire Management Overlay (**BMO**), part of the VPP, has a purpose of ensuring that the development of land prioritises the protection of human life.
73. As noted under **Question 2** above, I am overseeing a comprehensive review of the Act, which I expect to lead to efficiencies in and improvements to the planning scheme amendment process.

Question 19: Has any consideration been given to directing the relevant planning authority in McCrae to expedite amendments to its EMO under s 185A of the Act, should a request for an amendment be made? If not, under what kinds of circumstances would such a power be used?

74. Without pre-empting any proposed action that might be taken by the MPSC or me in the future, or the findings and recommendations of the Inquiry itself, at this stage, no such consideration has been given to this proposal because the relevant planning authority in McCrae has not made any request or application for an amendment.
75. As set out in response to **Question 16**, the power under s 185A can only be exercised once a planning scheme amendment application has been made. It would otherwise be premature to consider exercising that power without details about what the amendment proposes. This power would typically only be used in a situation where the planning authority was unreasonably delaying progressing an amendment and where the Minister was prepared to become the planning authority for the amendment.

Question 20: Has any consideration been given to exempting the relevant planning authority in McCrae under section 20 of the Act from relevant notice periods, should a request for an amendment be made?

76. Without pre-empting any proposed action that might be taken by the MSPC or me in the future, or the findings and recommendations of the Inquiry itself, at this stage, no such consideration has been given as the relevant planning authority in McCrae has not made any request or application for an amendment. It would otherwise be premature to consider exercising that power without details about what the specific amendment might involve and before understanding whether the relevant planning authority intends to apply for an exemption under s 20(1) of the Act. If and when such an application is received, the exercise of this power will be considered against the criteria in s 20(2) of the Act.
77. Generally, the power to exempt a planning authority from notice periods would be used for matters of State significance.

Effectiveness and timeliness of the planning system

Question 21: Can you assist the Inquiry to understand the reason(s) why planning scheme amendments require an extended period of time to be prepared and determined?

78. The time taken for planning scheme amendments to be prepared and determined reflects the process that is required under the Act, which is described in Mr Menzies' Statement (in response to Question 3). A previous Minister for Planning issued *Ministerial Direction 15 – The planning scheme amendment process (DTP.0001.0013.0001)*, which sets out standard timeframes for the stages of the planning scheme amendment process. However, the time that is required can vary considerably depending on processes of the planning authority, the complexity and scale of the amendment, the number of properties affected, the number and nature of the public submissions, the extent of matters to be considered in the panel's report, the quality of material that is submitted in support of an amendment, and various other matters that may arise throughout the application process.
79. The time taken for planning scheme amendments to be determined is one of the matters being considered in the review of the Act that I describe in response to **Question 2**.

Question 22: Do you have a view on the suggestions made by the Municipal Association of Victoria in its submission 'Reforming Victoria's Planning System' that the Victorian Government should apply new methods for introducing and updating erosion-related land management overlays in planning schemes, including consideration by a specialist standing panel and the relevant Minister being the planning authority?

80. I have read Recommendation 10 in the submission of the Municipal Association of Victoria. Whether such reforms are necessary is a matter that will need to be considered as part of a Whole-of-Victorian-Government response to the Inquiry's findings and recommendations, including in the context of the scheme of the Act overall.
81. As a preliminary response in my capacity as Minister, this proposal is worthy of further consideration because it has the potential to streamline the process for the implementation of a completed landslide risk assessment into the planning scheme.
82. I note that this proposal is for a streamlined planning scheme amendment process to implement a **completed** landslide risk assessment. It does not include the preparation of the risk assessment itself.
83. Similar streamlined planning scheme amendment processes have been used for a variety of matters including activity centres, flood-related amendments and floodplain restoration, government land, priority projects and Victorian Planning Authority projects.
84. These streamlined planning scheme amendment processes have involved the Minister for Planning as planning authority, and may include using powers under s 20(4), consultation under s 20(5) and consideration of submissions and any other relevant matters by a standing advisory committee appointed under s 151 of the Act.

Question 23: Do you have a view on the suggestion made by Katanya Barlow, Manager – Strategy and Infrastructure Planning at the MPSC, at transcript 781.22-30 and 798.20-799.11 of her evidence to the Inquiry?

85. I have read the evidence of Ms Barlow as referred to in the Transcript references in **Question 23**. In overview, I understand Ms Barlow's suggestions to be:
- (a) that an interim or emergency EMO cannot be put in place expeditiously even in circumstances where two landslides have occurred in relatively close proximity [Transcript at 781.22-30];
 - (b) there should be a more expedited process available for managing landslide and landslip risks [Transcript at 798.20-24];
 - (c) the Minister for Planning should be the planning authority and use the best available data to apply environmental risk controls such as an interim EMO [Transcript at 798.26-31];
 - (d) there is a systemic issue with environmental risk overlays where the data comes out and it takes time for it to go into the system [Transcript at 798.38-40];
 - (e) bushfire risk is different because the Minister for Planning has essentially already put in the BMO, and that process would be better for environmental risk more generally [Transcript at 798.42-47]; and
 - (f) the way bushfire risk is managed in the planning system gets rid of the need for interim overlays and you could go straight to a permanent overlay [Transcript at 799.7-11].
86. Whether Ms Barlow's specific suggestions could be practically adopted would need to be considered as part of a Whole-of-Victorian-Government response to the Inquiry's findings and recommendations.
87. As a preliminary response in my capacity as Minister, I make the following comments:
- (a) A planning scheme amendment can be implemented expeditiously using powers under s 20(2) or s 20(4) of the Act if I consider that compliance with the usual notice requirements is not warranted or that the interests of Victoria or any part of Victoria make such an exemption appropriate. There would need to be sufficient justification for an amendment and information in support of proposed planning scheme provisions.
 - (b) The BMO is able to be implemented and updated expeditiously because the bushfire prone area is identified and verified through a mapping process in collaboration with DTP, relevant fire authorities including but not limited to the CFA (which has the relevant technical expertise) and local government. DTP prepares a BMO planning scheme amendment based on this mapping and I regularly approve updates to the BMO (generally every six months) using powers under s 20(4) of the Act.
 - (c) A similar process for application of the EMO would rely on the preparation of landslide risk assessments that can be the basis of a planning scheme provisions and maps. DTP does not have a role or the technical expertise to prepare landslide risk assessments. Any process would benefit from an agreed methodology for landslide risk assessments by technical experts and support to local councils to prepare such assessments.